



AGENDA

Wednesday, July 1, 2026

6:00 P.M. OPEN SESSION

SPECIAL MEETING CITY COUNCIL

THIS MEETING WILL BE HELD IN PERSON AND VIRTUALLY (HYBRID).

Council Chambers
211 Hillcrest Avenue
Marina, California

AND

Zoom Meeting URL: <https://zoom.us/j/730251556>

Zoom Meeting Telephone Only Participation: 1-669-900-9128 - Webinar ID: 730 251 556

PARTICIPATION

The agenda for this Special Meeting includes an in-person site visit. During a site visit, the City Council may only discuss the item(s) on this Special Meeting site visit agenda. The agenda does not allow any formal votes or motions on any proposed project or other matters. The site visit is an informational meeting where the Council may ask questions from or hear statements from members of the public attending the visit. No comments made during the site visit by the Council are binding or required to be carried through to any public meeting/hearing where actions might be taken.

AGENDA MATERIALS

Agenda materials, staff reports and background information related to regular agenda items are available on the City of Marina's website www.cityofmarina.org. Materials related to an item on this agenda submitted to the Council after distribution of the agenda packet will be made available on the City of Marina website www.cityofmarina.org subject to City staff's ability to post the documents before the meeting.

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)**

LAND ACKNOWLEDGEMENT

The City recognizes that it was founded and is built upon the traditional homelands and villages first inhabited by the Indigenous Peoples of this region - the Esselen and their ancestors and allies - and honors these members of the community, both past and present.

1. CALL TO ORDER 
2. ROLL CALL & ESTABLISHMENT OF QUORUM: (City Council, Airport Commissioners, Marina Abrams B Non-Profit Corporation, Preston Park Sustainable Communities Nonprofit Corporation, Successor Agency of the Former Redevelopment Agency Members and Marina Groundwater Sustainability Agency)
Jennifer McAdams, Brian McCarthy, Kathy Biala, Mayor Pro-Tem/Vice Chair Liesbeth Visscher, Mayor/Chair Bruce C. Delgado
3. MOMENT OF SILENCE & PLEDGE OF ALLEGIANCE (Please stand)
4. OTHER ACTION:
 - a. [Adopting Resolution No. 2026-, authorizing the City Manager to execute Amendment No. 3 to Agreement No. A-15987 with the County of Monterey for Hitchcock Road Animal Services, extending the agreement through June 30, 2027, subject to review and approval by the City Attorney.](#)
 - b. [Adopting Resolution No. 2026-, receive presentation from the Monterey Bay Hotels LP regarding new proposed upper-upscale luxury resort hotel and provide direction; and provide direction to staff regarding amending the existing Hotel Development Agreement and bring back to City Council; and provide direction to staff regarding an Economic Development Subsidy Report and a proposed transient occupancy tax \(TOT\) revenue sharing agreement and bring back to City Council.](#)
5. 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 6:00 p.m., Friday, June 26, 2026.

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.cityofmarina.org), 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.

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@cityofmarina.org. Requests must be made at least **48 hours** in advance of the meeting.

June 25, 2026

Item No. **4(a)**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of July 1, 2026

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2026-,
APPROVAL OF AMENDMENT NO. 3 TO THE AGREEMENT WITH THE
COUNTY OF MONTEREY FOR HITCHCOCK ROAD ANIMAL
SERVICES; AND AUTHORIZING THE CITY MANAGER TO EXECUTE
THE AMENDED AGREEMENT SUBJECT TO FINAL REVIEW AND
APPROVAL BY THE CITY ATTORNEY.**

RECOMMENDATION: It is requested that the Marina City Council:

1. Adopt a Resolution No. 2026-, authorizing the City Manager to execute Amendment No. 3 to Agreement No. A-15987 with the County of Monterey for Hitchcock Road Animal Services, extending the agreement through June 30, 2027, subject to review and approval by the City Attorney; and
2. Authorizing the Finance Director to make any necessary accounting and budgetary adjustments.

DISCUSSION

The City contracts with Hitchcock Road Animal Services (HRAS), operated by the County of Monterey, to provide animal sheltering and related services supporting the Marina Police Department's animal control responsibilities. Amendment No. 3 extends the existing agreement for one additional year, through June 30, 2027. The amendment does not modify the scope of services, fee schedule, or other contractual provisions; all remaining terms continue unchanged.

Approval of the amendment will ensure uninterrupted regional animal shelter services, including animal impoundment, sheltering, reunification, adoption support, bite investigation support, quarantine coordination, and dangerous animal case support while participating agencies continue evaluating the future Joint Powers Agency structure.

FISCAL IMPACT

There is no additional fiscal impact associated with Amendment No. 3. The amendment continues the existing agreement under the current fee structure. Funding is included within the adopted Fiscal Year 2026-27 Police Department budget, and no additional appropriation is required.

ENVIRONMENTAL REVIEW

Pursuant to CEQA Guidelines Section 15378, approval of this amendment is an administrative activity that does not constitute a project under CEQA.

Respectfully Submitted

REVIEWED/CONCUR:

Randy Hopkins
Chief of Police
City of Marina

Layne Long
City Manager
City of Marina

RESOLUTION NO. 2026-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA
AUTHORIZING THE CITY MANAGER TO EXECUTE AMENDMENT NO. 3 TO
AGREEMENT NO. A-15987 WITH THE COUNTY OF MONTEREY FOR
HITCHCOCK ROAD ANIMAL SERVICES

WHEREAS, the City contracts with the County of Monterey for Hitchcock Road Animal Services;

WHEREAS, Amendment No. 3 extends the agreement through June 30, 2027;

WHEREAS, the amendment does not change the fee schedule, scope of services, or other material terms;

WHEREAS, funding is included in the adopted FY 2026-27 budget;

WHEREAS, continuation of the agreement serves the public health, safety, and welfare of the City.

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

1. Authorize the City Manager to execute Amendment No. 3, subject to review and approval by the City Attorney.
2. Authorize the Finance Director to make any necessary accounting and budgetary adjustments.
3. Find that the amendment provides continuity of animal shelter services and does not create any additional fiscal obligation beyond the adopted budget.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on this 1st day of July 2026 by the following vote:

AYES, COUNCIL MEMBERS:

NOES, COUNCIL MEMBERS:

ABSENT, COUNCIL MEMBERS:

ABSTAIN, COUNCIL MEMBERS:

Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

**AMENDMENT NO. 2
TO AGREEMENT BY AND BETWEEN
COUNTY OF MONTEREY AND
THE CITY OF MARINA**

THIS AMENDMENT NO. 2 to AGREEMENT No. A-15987 is made by and between the County of Monterey, a political subdivision of the State of California and the Lead Agency of Hitchcock Road Animal Services (HRAS), (hereinafter referred to as "COUNTY"), and the City of Marina (hereinafter referred to as "CITY") with respect to the following.

WHEREAS, the COUNTY established the Health Department Animal Services Center, located at 160 Hitchcock Road, Salinas, to shelter animals within the unincorporated areas of the Monterey County; and

WHEREAS, on September 7, 2022, COUNTY and CITY entered into AGREEMENT NO. A-15987 for the term July 1, 2022 through June 30, 2024, for the use of the Animal Services Center and the provision of other animal services; and

WHEREAS, on January 1, 2023, Hitchcock Road Animal Services was established with the objective of merging the City of Salinas and the County of Monterey entities, for the betterment of all animals in our communities' requiring services, as well as the residents and taxpayers of both entities, with the ability to utilize shared equipment, resources, and personnel; and

WHEREAS, COUNTY serves as the Lead Agency for Hitchcock Road Animal Services, encompassing the contracting parties: County of Monterey and City of Salinas; and

WHEREAS, CITY desired to contract with COUNTY for the provision of services at Hitchcock Road Animal Services; and

WHEREAS, COUNTY and CITY entered into AMENDMENT NO. 1 to replace EXHIBIT A, and extend the AGREEMENT Term by one (1) additional year for a revised AGREEMENT Term of July 1, 2022 – June 30, 2025, as Agency's entities work together to find an Agreement to plan for fiscal sustainability and accountability via the newly formed Hitchcock Road Animal Services Joint Powers Agency; and

WHEREAS, COUNTY and CITY wish to amend AGREEMENT No. A-15987 to replace EXHIBIT A to apply an eight percent (8%) fee increase, and extend the AGREEMENT Term by one (1) additional year for a revised AGREEMENT Term of July 1, 2022 – June 30, 2026, as Agency's entities work together to find an Agreement to plan for fiscal sustainability and accountability via the newly formed Hitchcock Road Animal Services Joint Powers Agency.

NOW THEREFORE, COUNTY and CITY hereby agree to amend the AGREEMENT as follows:

1. **Section 5.0, "TERM AND TERMINATION", Section 5.A, shall be amended by removing "This Agreement shall be effective July 1, 2022 and shall terminate on June 30, 2025, unless sooner terminated pursuant to the terms of this Agreement," and replacing it**

CITY OF MARINA
Amendment No. 2
Term: 07/01/22 – 06/30/26

with “This Agreement shall be effective July 1, 2022 and shall terminate on June 30, 2026, unless sooner terminated pursuant to the terms of this Agreement.”

2. **EXHIBIT A, “Fees for Services”, shall be amended by** removing EXHIBIT A of this AGREEMENT **and replacing it with “EXHIBIT A-2”**. All references in AMENDMENT NO. 2 to EXHIBIT A shall be construed to refer to EXHIBIT A-2.
3. Except as provided herein, all remaining terms, conditions, and provisions of the AGREEMENT are unchanged and unaffected by this AMENDMENT NO. 2 and shall continue in full forces and effect as set forth in the AGREEMENT.
4. The recitals to this Amendment No. 2 are hereby incorporated by this reference.
5. A copy of the Amendment No. 2 shall be attached to the original AGREEMENT executed by COUNTY on September 7, 2024.
6. This Amendment No. 2 is effective July 1, 2025.

*****SIGNATURE PAGE TO FOLLOW*****

IN WITNESS WHEREOF, COUNTY and CITY have executed this AMENDMENT NO. 2 as of the day and year written below.

COUNTY OF MONTEREY

THE CITY OF MARINA

By: _____
Contracts/Purchasing Officer

Date: _____

By: _____
Department Head (if applicable)

Date: _____

By: _____
Board of Supervisors (if applicable)

Date: _____

Approved as to Form¹

By: _____
County Counsel

Date: _____

Approved as to Fiscal Provisions²

By: _____
Auditor/Controller

Date: _____

Approved as to Liability Provisions³

By: _____
Risk Management

Date: _____

THE CITY OF MARINA

Business Name*

By: _____
(Signature of Chair, President, or Vice-President)*

Layne Long, City Manager

Name and Title

Date: 5/22/25

By: _____
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Assistant Treasurer)*

(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Assistant Treasurer)*

Anita Sharp, Deputy City Clerk

Name and Title

Date: May 22, 2025

*INSTRUCTIONS: If CITY is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CITY is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this AGREEMENT on behalf of the partnership. If CITY is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the AGREEMENT.

¹Approval by County Counsel is required ²Approval by Auditor-Controller is required

Exhibit B-2

1. Fees for Services

The CITY shall be billed the fees listed below for stray or surrendered animals found within the incorporated boundaries of the CITY and admitted to the Animal Services Center.

Where an animal is returned to the owner and owner pays fees related to the board/care of the animal, CITY shall not be charged for duplicate fees collected for services provided to the animal and will be issued a credit for the fees paid by owner to reduce overall invoice.

Fees for Services

Stray/Surrendered animal holding (up to 5 days): \$297.00 per animal *

**In the event that a pregnant stray animal admitted to the shelter subsequently deliver its litter while in custody of the COUNTY, CITY will be billed only the rate of \$297.00 and COUNTY will assume responsibility of the litter at no additional cost to CITY. However, in the event that a stray animal is brought in with its live litter, CITY will be billed \$297.00 for each live stray animal brought in.*

Extended holding (up to 10 days): \$545.00 per animal

Additional holding over 10 days: \$48.00 per day

Domestic Animal Carcass disposal: \$31.00 per animal

Animal Control Officer Assist (dog/cat) or Emergency Medical Treatment Transportation
\$139.00/officer/hour

Rabies testing:

1. Head Removal

- i. Small Dog/Cat \$ 100.00 each
- ii. Medium Dog \$ 146.00 each
- iii. Large Dog \$ 193.00 each
- iv. X-Large Dog \$ 380.00 each

2. Rabies testing (not including head removal)

- i. Bats, wildlife, human exposure, rush test @ MCHD: \$165.00 each
- ii. Non-human exposure @ Santa Clara + shipping: \$Actual Cost pass thru

Veterinary Clinic Services**A. Clinic Fees:**

1. Exam Fee (15 minutes)	\$62.00	each
2. X-Ray (Per view, minus exam or sedation)	\$135.00	per view
3. Cat spay	\$125.00	each
4. Cat neuter	\$112.00	each
5. Additional fee if animal is in heat	\$ 62.00	each
6. Additional fee if animal is pregnant	\$ 74.00	each
7. Dewclaw removal (attached)	\$ 137.00	each
8. Dewclaw removal (pair-attached)	\$ 193.00	each
9. Dewclaw removal (unattached)	\$ 61.00	each
10. Dewclaw removal (pair-unattached)	\$ 99.00	each
11. Umbilical hernia	\$ 60.00	each
12. FIV/FELV test	\$ 32.00	each
13. Pain medication	\$ 9.00	per dose
14. Obese animal fee	\$ 74.00	each
15. Fvrpcp	\$ 11.00	each
16. Da2pp	\$ 14.00	each
17. Tooth extraction	\$ 50.00	each
18. Heartworm testing	\$ 28.00	each
19. Grooming/shaving	\$ 2.00	per minute
20. Unilateral retained testicle removal	\$ 74.00	each
21. Unilateral retained monorchid crypt	\$118.00	each
22. Bilateral crypt	\$176.00	each
23. Miscellaneous surgery (e.g., biopsy, bump removal), determined at time of surgery based on time and extent.	\$ 5.00	per minute plus lab fees
24. Feral Cat Spay	\$ 93.00	each
25. Feral Cat Neuter	\$ 57.00	each
26. Rabbit Spay	\$ 137.00	each
27. Rabbit Neuter	\$ 95.00	each
28. Dog Neuters		
i. Small up to 15 lbs	\$ 167.00	each
ii. Medium 16-40 lbs	\$ 178.00	each
iii. Large 41 lbs and over	\$ 200.00	each
29. Dog Spays		
i. Small up to 15 lbs	\$ 194.00	each
ii. Medium 16-40 lbs	\$ 203.00	each
iii. Large 41 lbs and over	\$ 226.00	each
30. Bordatella	\$ 21.00	each
31. Flea Treatment		
i. Cat	\$ 4.00	each
ii. Dog up to 25 lbs	\$ 6.00	each
iii. Dog 26-100 lbs	\$ 17.00	each
32. Felv only test	\$ 34.00	each
33. Antibiotics		
i. Convenia	\$ 68.00	per mL
ii. Penicilin	\$ 21.00	per mL
iii. Enrofloxacin	\$ 22.00	per MI

34. Pain Medication (specific)		
i. Meloxicam	\$ 30.00	per mL
ii. Buprenorphine	\$ 31.00	per mL
iii. Butorphanol	\$ 25.00	per mL
iv. Onisor	\$ 28.00	per mL
v. Carprofen	\$ 2200	per mL
35. Health Certificate	\$ 49.00	per animal
36. Foreign Body (foxtail)Probe (with sedation)		
i. Cat	\$ 92.00	per animal
ii. Dog up to 25 lbs	\$ 85.00	per animal
iii. Dog up to 50 lbs	\$ 105.00	per animal
iv. Dog up to 100 lbs	\$142.00	per animal
37. Sedation		
i. Cat	\$ 64.00	per animal
ii. Dog up to 22 lbs	\$ 77.00	per animal
iii. Dog 23-45 lbs	\$ 93.00	per animal
iv. Dog 46-100 lbs	\$122.00	per animal
38. Abscess Treatment		
i. Cat	\$ 99.00	per animal
ii. Dog up to 25 lbs	\$ 90.00	per animal
iii. Dog 26-50 lbs	\$111.00	per animal
iv. Dog 51-100 lbs	\$14700	per animal
39. Wound Care (Sedation excluded)		
i. Cat	\$ 84.00	per animal
ii. Dog up to 25 lbs	\$ 63.00	per animal
iii. Dog 26-50 lbs	\$ 68.00	per animal
iv. Dog 51-100 lbs	\$ 74.00	per animal
40. Laceration Repair (Sedation included)		
i. Cat	\$ 105.00	per animal
ii. Dog up to 25 lbs	\$ 98.00	per animal
iii. Dog 26-50 lbs	\$118.00	per animal
iv. Dog 51-100 lbs	\$154.00	per animal
41. Enucleation (Eye Removal) (Excludes e-collar and species specific pain medication)		
i. Up to 15 lbs	\$ 319.00	per animal
ii. 16 lbs and over	\$ 330.00	per animal
42. Mass Removal (Excludes e-collar and species specific pain medication)		
i. Up to 15 lbs	\$ 300.00	per animal
ii. 16 lbs and over	\$ 311.00	per animal
43. Tail Amputation (Excludes e-collar and species specific pain medication)		
i. Up to 15 lbs	\$ 264.00	per animal
ii. 16 lbs and over	\$ 275.00	per animal
44. Parvo Test	\$ 51.00	each
45. Ear mite treatment (Cats)	\$ 64.00	each
46. Ear cleaning and treatment (dogs) (sedation excluded)	\$ 31.00	each
47. Bandage/Splint Application (sedation excluded)	\$ 137.00	each
48. E-Collar	\$ 15.00	each

**AMENDMENT NO. 3
TO AGREEMENT BY AND BETWEEN
COUNTY OF MONTEREY AND
THE CITY OF MARINA**

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WHEREAS, the COUNTY established the Health Department Animal Services Center, located at 160 Hitchcock Road, Salinas, to shelter animals within the unincorporated areas of the Monterey County; and

WHEREAS, on September 7, 2022, COUNTY and CITY entered into AGREEMENT NO. A-15987 for the term July 1, 2022 through June 30, 2024, for the use of the Animal Services Center and the provision of other animal services; and

WHEREAS, on January 1, 2023, Hitchcock Road Animal Services was established with the objective of merging the City of Salinas and the County of Monterey entities, for the betterment of all animals in our communities' requiring services, as well as the residents and taxpayers of both entities, with the ability to utilize shared equipment, resources, and personnel; and

WHEREAS, COUNTY serves as the Lead Agency for Hitchcock Road Animal Services, encompassing the contracting parties: County of Monterey and City of Salinas; and

WHEREAS, CITY desired to contract with COUNTY for the provision of services at Hitchcock Road Animal Services; and

WHEREAS, COUNTY and CITY entered into AMENDMENT NO. 1 to replace EXHIBIT A, and extend the AGREEMENT Term by one additional year for a revised AGREEMENT Term of July 1, 2022 – June 30, 2025, as Agency's entities work together to find an Agreement to plan for fiscal sustainability and accountability via the newly formed Hitchcock Road Animal Services Joint Powers Agency; and

WHEREAS, the AGREEMENT expired by its terms on June 30, 2025; and

WHEREAS, the COUNTY and CONTRACTOR mutually desired to reinstate the AGREEMENT with effect retroactive to July 1, 2025, and to amend the AGREEMENT as provided below; and

WHEREAS, COUNTY and CITY entered into AMENDMENT NO. 2 to AGREEMENT No. A-15987 to replace EXHIBIT A to apply an eight percent (8%) fee increase and incorporate a provision allowing for the acceptance of emergency animals at Blue Pearl Specialty & Emergency Pet Hospital and to ensure CITY IS invoiced accordingly, and extend the AGREEMENT Term by one additional year for a revised AGREEMENT Term of July 1, 2022 – June 30, 2026, as Agency's entities work together to find an Agreement to plan for fiscal sustainability and accountability via the newly formed Hitchcock Road Animal Services

CITY OF MARINA
Amendment No. 3
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Joint Powers Agency; and

WHEREAS, COUNTY and CITY wish to amend AGREEMENT No. A-15987 to extend the AGREEMENT Term by one additional year for a revised AGREEMENT Term of July 1, 2022 – June 30, 2027, as Agency’s entities work together to find an Agreement to plan for fiscal sustainability and accountability via the newly formed Hitchcock Road Animal Services Joint Powers Agency.

NOW THEREFORE, COUNTY and CITY hereby agree to amend the AGREEMENT as follows:

1. **Section 5.0, “TERM AND TERMINATION”, Section 5.A, shall be amended by removing** “This Agreement shall be effective July 1, 2022 and shall terminate on June 30, 2026, unless sooner terminated pursuant to the terms of this Agreement,” **and replacing it with** “This Agreement shall be effective July 1, 2022 and shall terminate on June 30, 2027, unless sooner terminated pursuant to the terms of this Agreement.”
2. Except as provided herein, all remaining terms, conditions, and provisions of the AGREEMENT are unchanged and unaffected by this AMENDMENT NO. 3 and shall continue in full forces and effect as set forth in the AGREEMENT.
3. The recitals to this Amendment No. 3 are hereby incorporated by this reference.
4. A copy of the Amendment No. 3 shall be attached to the original AGREEMENT executed by COUNTY on September 7, 2024.
5. This Amendment No. 3 is effective July 1, 2026.

*****SIGNATURE PAGE TO FOLLOW*****

CITY OF MARINA
Amendment No. 3
Term: 07/01/22 – 06/30/27

IN WITNESS WHEREOF, COUNTY and CITY have executed this AMENDMENT NO. 3 as of the day and year written below.

COUNTY OF MONTEREY

THE CITY OF MARINA

By: _____
County Purchasing Agent

Date: _____

By: _____
Department Head (if applicable)

Date: _____

By: _____
Board of Supervisors (if applicable)

Date: _____

Approved as to Form¹

By: _____
County Counsel

Date: _____

Approved as to Fiscal Provisions²

By: _____
Auditor/Controller

Date: _____

Approved as to Liability Provisions³

By: _____
Risk Management

Date: _____

THE CITY OF MARINA

Business Name*

By: _____
(Signature of Chair, President, or Vice-President) *

Layne Long

Name and Title

Date: _____

By: _____

(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Assistant Treasurer)*

Alma Gonzalez

Name and Title

Date: _____

*INSTRUCTIONS: If CITY is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CITY is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this AGREEMENT on behalf of the partnership. If CITY is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the AGREEMENT.

¹Approval by County Counsel is required ²Approval by Auditor-Controller is required

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of July 1, 2026

CITY COUNCIL RECEIVE A PRESENTATION FROM MONTEREY BAY HOTELS LP (FORMER DADWAL MANAGEMENT GROUP) REGARDING NEW PROPOSED UPSCALE RESORT HOTEL ON OPPORTUNITY SITE 1A IN THE DUNES DEVELOPMENT REPLACING THE APPROVED MARRIOTT AC, MARRIOTT ELEMENT, AND HYATT HOUSE HOTELS ON OPPORTUNITY SITE 1A; PROVIDE DIRECTION TO STAFF REGARDING AMENDING EXISTING HOTEL DEVELOPMENT AGREEMENT; PROVIDE DIRECTION TO STAFF REGARDING A PROPOSED ECONOMIC DEVELOPMENT SUBSIDY REPORT AND A TRANSIENT OCCUPANCY TAX REVENUE SHARING AGREEMENT TO ASSIST WITH THE CONSTRUCTION COSTS AND SITE DEVELOPMENT OF AN UPPER-UPSCALE LUXURY HOTEL

RECOMMENDATION

1. Receive presentation from the Monterey Bay Hotels LP and provide direction.
2. Provide direction to staff regarding amending the existing Hotel Development Agreement and bring back to City Council.
3. Provide direction to staff regarding an Economic Development Subsidy Report and a proposed transient occupancy tax (TOT) revenue sharing agreement and bring back to City Council.

BACKGROUND

On December 22, 2020, Marina Community Partners (Dunes) gave the City notice that it would not be able to enter into an agreement with a hotel developer as called for in the Operating Agreement and acknowledged the City's option to acquire the Hotel Site. The Operating Agreement granted the City an option to acquire the approximately 9.5-acre Hotel Site located on Opportunity Site 1A, parcel A and parcel B (**EXHIBIT A**) with the backbone infrastructure and utility improvements to the Hotel Site installed if Marina Community Partners was unable to enter into an agreement with the hotel developer by December 2020. The Operating Agreement also allowed for the City to assign its Option. Pursuant to the Operating Agreement, the City's option grants the City the right to acquire the Hotel Site for a purchase price of \$3,600,000. The City had one year from the date of the MCP's notice to exercise the option.

On August 17, 2021, the City Council heard presentations from four hotel developers interested in the Hotel Site. Based on direction from the City Council, staff negotiated the terms of a Hotel Development Agreement with the Dadwal Management Group. The Development Agreement required the developer to develop the Hotel Site in two phases. The first phase would consist of a dual hotel comprised of a ninety-room Marriott Element hotel and a 110-room Marriott AC hotel. Phase Two would consist of an additional one hundred-room hotel at the level of a Hyatt House.

Pursuant to the terms of the Hotel Development Agreement, the City gave MCP the required Option Exercise Notice and subsequently assigned its right to acquire the Hotel Site to the Dadwal Management Group subject to certain conditions being met. These conditions were met and the Dadwal Management Group acquired the Hotel Site for \$3.6 million dollars (**EXHIBIT B**).

Due to PG&E utility infrastructure delays, and then consequently MCP delays for installing roads and other infrastructure, the Dadwal Management Group was unable to move forward with developing the property according to the terms of the Schedule of Performance included in the Hotel Development Agreement. The Dadwal Management Group at the same time was trying to purchase a 2.73-acre parcel adjacent to Site A which would give them more flexibility and the ability to make parking and site improvements in developing Site A. This process took over a year, and money is now in escrow for the Dadwal Management Group to acquire the adjacent property.

Section 9.13 of the Development Agreement provides: “Notwithstanding anything set forth in this Agreement, the City Manager may authorize extensions of any of the Developer’s deadlines in the Schedule of Performance or set forth herein in his or her sole discretion at the request of the Developer.” Initially the City Manager was working with the Developer to establish extensions to the Schedule of Performance now that the road and utility infrastructure were completed and the development could start. During these discussions, the Developer conducted a new Market Demand & Economic Feasibility Study by CBRE Hotels Advisory Group that recommended that an upper-upscale luxury hotel would be a superior hotel in Marina. Based on the results of the Study, the Developer requested amending the Development Agreement to switch the approved hotel brands in the Development Agreement from the Marriot AC and Element brand to an upper-upscale luxury hotel brand. This type of amendment to the agreement requires the approval of the City Council.

ANALYSIS

The CBRE Hotel Study compared the midscale or upper-midscale motels like the newly opened Marriott Courtyard and Residence Inn in Sand City and the Monterey Beach Hotel, a Marriott Tribute Hotel in Monterey which was recently renovated from the Monterey Tides to the upper-midscale hotel. The Study determined that the upper-upscale luxury hotel would be the superior product. The Study took into consideration the performance levels of competitive hotels, and the proposed additions anticipated to enter the market over the near term. The Study determined that there is sufficient market demand to support the development of an upper-upscale luxury hotel at Site A.

The report concluded, “Given the market trends into 2026, constructing an upper-upscale luxury resort hotel is likely the superior strategy for the Monterey area, despite higher construction costs. Monterey County is experiencing strong Average Daily Rate growth driven by affluent leisure travelers, while the upper-upscale luxury market shows high resilience compared to midscale segments.” The report broke down the following factors to consider.

Why Upper-UpScale is Superior

- Strong revenue per available room (RevPAR) Growth: Monterey County is expected to exceed 2019 RevPAR levels by 26% in 2026, driven by higher ADR, as travelers to this area are less price sensitive.
- High-Value Demand: The area is successfully attracting high-value travelers who prefer unique, experiential, and luxurious accommodation (e.g., the new 99-room Kimpton Mirador in Pacific Grove).
- Defying National Slowdown: While the US market is seeing a slowdown in lower-tier segments, high-end travel remains robust in the Monterey area, fueled by, for instance, a 10-day 85% occupancy rate during Car Week in early August.
- Brand Alignment: Monterey’s strategy is to increase presence in the luxury segment and move away from volume towards premium, high-value visitors.
- “Experience-First” Tourism: There is high demand for resorts that offer unique, immersive, and sustainable experiences, such as spa, wellness, and local culinary, rather than just accommodation.

- **Supply Scarcity:** Despite the upcoming additions, overall hotel supply growth is limited, allowing existing and new luxury assets to maintain high average daily rates.
- **Regional Economic Drivers:** The market is bolstered by high-value drive-to tourism from the San Francisco Bay Area, major events, and the full reopening of State Highway 1 in Big Sur, which boosts access.

The Study determined that midscale hotels brands would continue to be successful at the site, however, it determined there would be more competition in that market now with more planned in the near future. Given Site A’s tourist destination, large site size, and ocean view potential, a premium product would likely be more financially feasible for the site compared to midscale hotels. Additionally, the upscale luxury segment enjoys better profitability and low volatility, as high-net worth guests are less affected by economic downturns.

Development Challenges and Constraints

- **High Barriers to Entry:** Development is challenged by high construction costs, rising interest rates, and the coastal nature of the region, which requires navigating strict environmental regulations.
- **Cannibalization Risks:** Experts have noted that if not effectively managed, the rapid addition of new rooms could “cannibalize” existing, older properties, though demand currently remains strong.

In reviewing hotel brands, there are three hotels in the upper upscale category: Autograph Collection by Marriot, Curio Collection by Hilton, and the Unbound Collection by Hyatt. The Hilton Curio Collection is under-represented in the market compared to Marriott in terms of number of existing rooms. The Hyatt’s Unbound Collection currently has the largest hotel in the market in the 560-room Hyatt Regency Monterey Hotel & Spa and the proposed Hyatt Grand Seaside Resort with 330 rooms. The Autograph leans toward a more polished or “hip” aesthetic, whereas the Hilton Curio brand tends to focus on local characteristics [?]. The Hilton brand may be willing to offer capital incentives and tends to have more flexible brand standards. Based on this, the Curio brand seems to be the best fit for Marina.

Overall Proposed Upper-Upscale Luxury Hotel Design

The proposed hotel resort will offer a total of 150 rooms, combining 125 traditional guestrooms along with twenty-five private, stand-alone villas. Typical to full-service upper-upscale luxury hotels, in addition to the guestrooms the improvements will also offer a restaurant, bar/lounge, spa, fitness center, pool and hot tub, indoor and outdoor event facilities, and on-site activities with a focus on wellness, culinary arts, and curated entertainment. Common activities could include curated wine tastings, chef-led cooking classes, mixology seminars, live music events, yoga, and unique experiences like tours of local attractions. **(EXHIBIT C)**

The 125 standard rooms will offer a blend of modern luxury and comfort, featuring curated, high-end amenities such as plush bedding, premium bath products, and in-room technology. Rooms will be designed to offer scenic views of the ocean.

The resort restaurant will serve as a culinary destination, offering farm-to-table cuisine, locally sourced ingredients, and a curated wine list. Guests will enjoy diverse dining options, ranging from intimate, elegant meals to vibrant, social settings, complemented by a scenic terrace for alfresco dining.

A cornerstone of the resort experience is the extensive wellness offerings, anchored by a full-service spa. The spa will feature several treatment rooms, a smaller pool and hot tub separate from the rest of the facility, and a menu of rejuvenating services. Nearby, the state-of-the art fitness center would offer wellness classes, including outdoor morning yoga and personal training sessions.

The resort will offer versatile, high-end wedding and event facilities, including an indoor ballroom alongside various outdoor venues. With specialized wedding planning services, the property will be designed to host a wide range of occasions from small ceremonies to large receptions.

Beyond the on-site amenities, the resort provides access to curated regional experiences through strategic local partnerships. Guests can participate in guided tours of premier local attractions, explore nearby vineyards and tasting rooms in Monterey County's wine country, or utilize convenient connections to Marina's local business centers and restaurants.

The twenty-five stand-alone villas or casita-style units, also known as cottage or bungalow-style units, have gained in popularity, primarily due to the propagation of short-term residential rental competition in the market over the recent past. The construction of the villa-style guest rooms in new hotel developments is increasingly focused on creating a "home-away-from-home" experience, prioritizing privacy, space, and a seamless indoor-outdoor lifestyle. These units maximize natural surroundings and provide exclusive amenities like private plunge pools, outdoor showers, terraces and often feature lofty ceilings, floor-to ceiling windows, and locally inspired design elements that blend with the surrounding landscape.

The restaurant has a space for two hundred guests, banquet and reception space for six hundred seats, and an 8,000 square foot meeting space. It also has a 7,000 square foot greenhouse. Total hotel size is 165,601 square feet.

Hotel Feasibility

The City has contracted with Keyser Marston (Debbie Kern)¹ to provide a Pro Forma Package to the City of the Hotel including the following services:

- Review Development Program - including site plan and conceptual renderings, breakdown of square footage uses.
- Schedule for Development
- Development of Cost Pro Forma including:
 - Direct development costs
 - Indirect development costs
 - 10-year annual operating projections
 - Reversion analysis to include a developer profit margin.
 - Sources and uses of funds – amount and sources of debt and equity and terms for debt and equity
- Need for City TOT Sharing Assistance

Keyser Marston has preliminarily determined that the hotel construction and operations are feasible, however, it will require an estimated \$25 million TOT revenue sharing agreement anticipated to be structure 50:50. Development cost models are still being refined as well as operating models, debt service models, and cash flow analysis.

CBRE Projected Market Performance

- Year 2030 total TOT Revenue - \$2,897,000
- Year 2031 total TOT Revenue - \$3,702,000
- Year 2032 total TOT Revenue - \$3,986,000

Hotel Development Agreement

The Hotel Development Agreement called for the development of three hotels in two phases and established a Schedule of Performance for the completion of the development. As noted above,

¹ The City entered into a reimbursement agreement on or about March 2026 with the hotel developer to cover the cost of Keyser Marston's services.

the Developer was unable to meet the Schedule of Performance due to factors outside the Developer's control, including delays in the installation of the infrastructure needed to access the Site. Under the terms of the Hotel Development Agreement, the City could determine the Developer to be in default and exercise its remedies under the Agreement, which include the right to purchase Opportunity Site A from the Developer for the \$3.6 million that the Developer paid for the Site. If the City were to exercise its Option to purchase the site, it would then have to comply with the Surplus Land Act before disposing of the site. The Surplus Land Act requires that the City first offer the site to affordable housing developers, or entities that will use the site for open space. The Surplus Land Act process could take up to a year to complete if the City receives interest in the site from affordable housing developers. Only after the Surplus Land Act process is complete and if the City cannot reach agreement on terms of disposition of the property for affordable housing with a developer after conducting good faith negotiations can the City consider conducting a process for selection a new hotel developer for the property.

If the City Council were to consider the proposal for the development of the upper upscale hotel to replace the two phase, three hotel development current contemplated, the Hotel Development Agreement would need to be amended to reflect the new parameters of the development project including an updated schedule of performance. The schedule of performance proposed by the CBRE report would have construction of the new hotel completed in 2030.

ENVIRONMENTAL DETERMINATION

The recommended actions are administrative and informational in nature and do not approve, authorize, fund, or commit the City to any definite course of action that could result in a direct or reasonably foreseeable indirect physical change in the environment. As such, the recommended actions do not constitute a "project" as defined by CEQA Guidelines Section 15378. The certified and approved EIR adopted in May of 2005 for the University Villages Specific Plan has served as the environmental documentation for the approval of the Hotel Development Agreement . The Hotel Development Agreement contemplates the a hotel/conference center as originally proposed and studied for the EIR. However, before the City grants final regulatory approval of the development proposed in a new or amended Hotel Development Agreement, the City will once again evaluate the development proposed to determine if it is consistent with the EIR and whether additional environmental analysis is required.

CONCLUSION

This staff report, resolution, and associated exhibits are submitted for City Council consideration.

Respectfully submitted,

Karen Tiedemann

REVIEW/CONCUR

Layne Long
City Manager
City of Marina

ATTACHMENTS

Exhibit A- Site Plan

Exhibit B- Hotel Development Agreement

Exhibit C- Proposed luxury hotel rendering

RESOLUTION NO. 2026-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA RECEIVING A PRESENTATION FROM MONTEREY BAY HOTELS LP (FORMER DADWAL MANAGEMENT GROUP) REGARDING NEW PROPOSED UPSCALE RESORT HOTEL ON OPPORTUNITY SITE 1A IN THE DUNES DEVELOPMENT REPLACING THE APPROVED MARRIOTT AC, MARRIOTT ELEMENT, AND HYATT HOUSE HOTELS ON OPPORTUNITY SITE 1A; PROVIDE DIRECTION TO STAFF REGARDING AMENDING EXISTING HOTEL DEVELOPMENT AGREEMENT; PROVIDE DIRECTION TO STAFF REGARDING A PROPOSED ECONOMIC DEVELOPMENT SUBSIDY REPORT AND A TRANSIENT OCCUPANCY TAX REVENUE SHARING AGREEMENT TO ASSIST WITH THE CONSTRUCTION COSTS AND SITE DEVELOPMENT OF AN UPPER-UPSCALE LUXURY HOTEL

WHEREAS, on December 22, 2020, Marina Community Partners (Dunes) gave the City notice that it would not be able to enter into an agreement with a hotel developer as called for in the Operating Agreement and acknowledged the City's option to acquire the Hotel Site; and

WHEREAS, the Operating Agreement granted the City an option to acquire the approximately 9.5-acre Hotel Site located on Opportunity Site 1A (Exhibit A); and

WHEREAS, the City gave MCP the required Option Exercise Notice and subsequently assigned its right to acquire the Hotel Site to the Dadwal Management Group subject to certain conditions being met. These conditions were met and the Dadwal Management Group acquired the Hotel Site for \$3.6 million dollars (Exhibit B); and

WHEREAS, on August 17, 2021 the City Council approved negotiating a Hotel Development Agreement with Dadwal Management Group to construct on phase one a ninety-room Marriott Element hotel and a one hundred ten-rooms Marriott AC Hotel, and in phase two a one hundred-room Hyatt hotel; and

WHEREAS, the proposed hotel resort will offer a total of 150 rooms, combining 125 traditional guestrooms along with twenty-five private, stand-alone villas. Typical to full-service upper-upscale luxury hotels, in addition to the guestrooms the improvements will also offer a restaurant, bar/lounge, spa, fitness center, pool and hot tub, indoor and outdoor event facilities, and on-site activities with a focus on wellness, culinary arts, and curated entertainment. (Exhibit C); and

WHEREAS, the Dadwal Management Group, now the Monterey Bay Hotel LP, is requesting to modify the Hotel Development Agreement and build a upper-upscale luxury resort hotel.

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

1. Receive presentation from the Monterey Bay Hotels LP and provide direction.
2. Provide direction to staff regarding amending the existing Hotel Development Agreement and bring back to City Council
3. Provide direction to staff regarding an Economic Development Subsidy Report and a proposed transient occupancy tax (TOT) revenue sharing agreement and bring back to City Council

PASSED AND ADOPTED by the City Council of the City of Marina at special meeting duly held on the 1st day of July by the following vote:

AYES, COUNCIL MEMBERS:

NOES, COUNCIL MEMBERS:

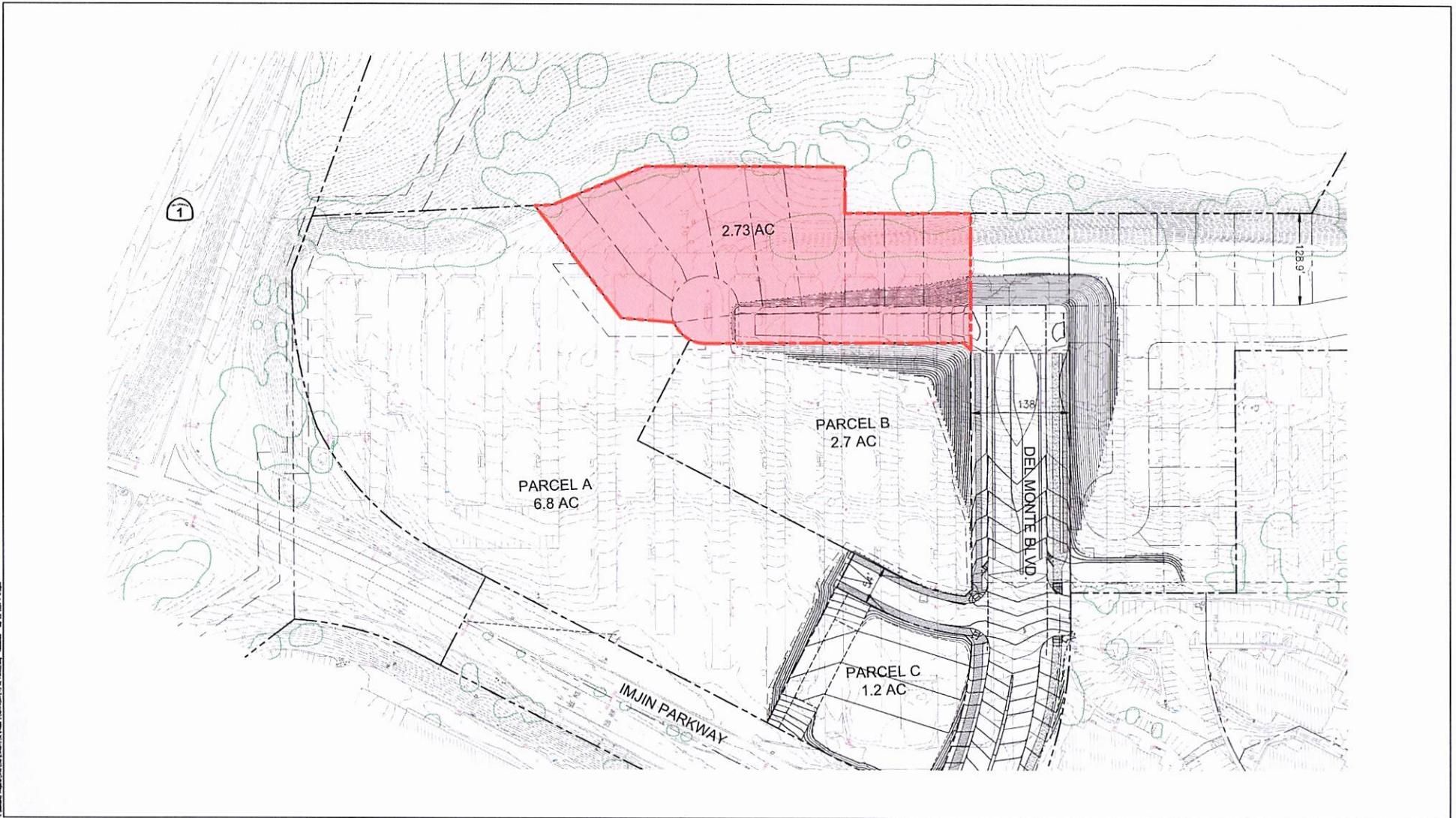
ABSENT, COUNCIL MEMBERS:

ABSTAIN, COUNCIL MEMBERS:

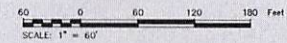
Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk



PHASE 2 NORTH - 2.73 AC PARCEL
THE DUNES ON MONTEREY BAY
CITY OF MARINA, CALIFORNIA



Sept. 23, 2024
Project No.:3140.35

Whitson
ENGINEERS

Civil Engineering
Land Surveying
11495 Coast
Avenue, Marina, CA 94028
831.649.0225
www.whitsoneng.com

Sheet 1 of 1

HOTEL DEVELOPMENT AGREEMENT

BETWEEN

THE CITY OF MARINA,

AND

MONTEREY BAY HOTELS, LP

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HOTEL DEVELOPMENT AGREEMENT

THIS HOTEL DEVELOPMENT AGREEMENT (this "Agreement") is made as of August 2, 2022, by and among the City of Marina, a municipal corporation (the "City"), and Monterey Bay Hotels, LP, a California limited partnership ("Developer"), with reference to the following facts, purposes, and understandings.

RECITALS

- A. Capitalized terms used herein are defined in Article 1 of this Agreement.
- B. The former Redevelopment Agency of the City of Marina entered into a Disposition and Development Agreement with Marina Community Partners, LLC, a Delaware limited liability company ("MCP") dated May 31, 2005 as modified by an Implementation Agreement dated September 6, 2006 and a Second Implementation Agreement dated August 5, 2008 (collectively referred to as the "DDA") and as further modified by that certain Operating Agreement Clarifying and Modifying Certain Project Approvals for the Specific Plan for the Dunes on Monterey Bay dated December 17, 2019 ("Operating Agreement").
- C. The City and MCP also entered into that certain Development Agreement dated June 7, 2005 ("Development Agreement").
- D. Under the terms of the DDA and the Development Agreement, MCP was granted certain rights to develop a mixed-use project on an approximately 290-acre portion of the former Fort Ord (the "Property") including up to 1237 residential units, 750,000 square feet of retail space, 760,000 square feet of business park development and up to 500 hotel rooms (the "Project").
- E. In accordance with the terms of the entitlements and approvals for the Project, a portion of the Property identified as Opportunity Site 1A, as more particularly described in Exhibit A attached and incorporated herein ("Opportunity Site 1A"), is designated for the development of visitor servicing uses including hotel uses. In accordance with the terms of the DDA as amended by the Operating Agreement, MCP acquired Opportunity Site 1A in 2020.
- F. In accordance with the terms of the Operating Agreement, MCP was required to enter into an agreement with a hotel developer for the development of at least 150 hotel rooms on Opportunity Site 1A by the time set forth in the Operating Agreement. Under the terms of the Operating Agreement, if MCP failed to enter into an agreement with a hotel developer as required, the City was granted an option to acquire a portion of Opportunity Site 1A designated as Parcels A and B as shown on Exhibit A (the "Hotel Site") for a purchase price of Three Million Six Hundred Thousand Dollars (\$3,600,000) ("Hotel Site Purchase Price"). On December 22, 2020 MCP gave notice to the City that it was unable to enter into an agreement with a hotel developer ("Notice of Hotel Option"), which notice gave the City one year to exercise its option to acquire the Hotel Site.

G. The Developer submitted a proposal to the City for the development of three hotels on the Hotel Site to be developed in two Phases. Phase 1 is proposed to consist of two hotels, an Element with 90 rooms and an AC with 110 rooms to be developed on Parcel A of the Hotel Site. Phase 2 is proposed to consist of a third hotel with an additional 100 rooms to be developed on Parcel B of the Hotel Site. Collectively, Phase 1 and Phase 2 are referred to as the Hotel Development. Developer's proposed Hotel Development is described in more detail in the Scope of Development attached and incorporated herein as Exhibit D. The Hotel Development is expected to generate approximately \$2 million per year in transient occupancy tax to the City and create 200 to 300 jobs.

H. The Developer has provided the City with a Preliminary Financing Plan for Phase 1 of the Hotel Development that demonstrates that Developer has sufficient cash equity to finance the acquisition of the Hotel Site and letters of interest from lenders and equity resources to develop Phase 1 of the Hotel Development, a copy of which is attached and incorporated herein as Exhibit C.

I. In accordance with the terms of the Operating Agreement, the City intends to exercise its option to acquire the Hotel Site by giving MCP an Option Exercise Notice, on or before December 22, 2021 and then assign its option to acquire the Hotel Site to the Developer to facilitate the development of the Hotel Development in exchange for Developer's agreement to construct the Hotel Development in accordance with the terms of this Agreement.

J. The City has determined that the Developer has the necessary expertise, and that the development of the Hotel Development is financially feasible based on the Preliminary Financing Plan.

NOW, THEREFORE, in reference to the foregoing Recitals in consideration of the promises, covenants and agreements set forth in this Agreement and other good and valuable consideration, receipt of which is hereby acknowledged, the City and the Developer hereby agree as follows:

ARTICLE 1.
DEFINITIONS

Section 1.1 Definitions. In addition to the terms defined elsewhere in this Agreement, the following capitalized words shall have the following meanings:

- (a) "Agreement" shall mean this Hotel Development Agreement.
- (b) "Building Permit" shall mean the building permit issued by the City evidencing its approval for the construction of Phase 1 or Phase 2 of the Hotel Development.
- (c) "Business Day" shall mean a calendar day which is not a weekend day or a federal or State holiday and on which the City is open for business.
- (d) "CEQA" shall mean the California Environmental Quality Act.

- (e) "Certificate of Completion" shall mean a certificate issued by the City to the Developer pursuant to Section 4.6 of this Agreement.
- (f) "City" shall mean the City of Marina, California, a municipal corporation.
- (g) "City Approvals" shall mean, collectively, zoning approvals, use permit and any other discretionary approvals required for construction of the Hotel Development. For definitional purposes in this Agreement, "City Approvals" do not include the Building Permit.
- (h) "Completion Date" shall mean that date on which the City issues a Certificate of Completion for each Phase of the Hotel Development.
- (i) "Concept Design Drawings" shall mean the drawings attached to the Scope of Development.
- (j) "Control" shall mean (i) direct or indirect management or control of the managing member or members in the case of a limited liability company; (ii) direct or indirect management or control of the managing general partner or general partners in the case of a partnership and (iii) (a) boards of directors that overlap by fifty percent (50%) or more of their directors, or (b) direct or indirect control of a majority of the directors in the case of a corporation.
- (k) "Design Development Drawings" shall mean the design development drawings described in Section 3.3 of this Agreement.
- (l) "Developer" shall mean Monterey Bay Hotels, LP, a California limited partnership and its permitted assigns.
- (m) "Developer Event of Default" shall mean any default by the Developer as set forth in Section 8.3, subject to any applicable notice and cure rights set forth therein.
- (n) "Disposition and Development Agreement" means the Disposition and Development Agreement dated as of May 31, 2005, by and between the City and MCP as amended by the Implementation Agreement dated September 6, 2006, and the Second Implementation Agreement dated August 5, 2008.
- (o) "Effective Date" shall mean the date which is the latest of (i) the date this Agreement is executed by the Developer, and (ii) the date the City Council approves and the City executes this Agreement.
- (p) "Final Construction Drawings" shall mean the construction drawings described in Section 3.4 of this Agreement.
- (q) "Financing Plan" shall mean the Developer's plan for financing each Phase of the Hotel Development submitted to the City pursuant to Section 2.2.
- (r) "Hazardous Materials" shall mean:

(1) any "hazardous substance" as defined in Section 101(14) of CERCLA (42 U.S.C. Section 9601(14)) or Section 25281(d) or 25316 of the California Health and Safety Code at such time;

(2) any "hazardous waste," "infectious waste" or "hazardous material" as defined in Section 25117, 25117.5 or 25501(j) of the California Health and Safety Code at such time;

(3) any other waste, substance or material designated or regulated in any way as "toxic" or "hazardous" in the RCRA (42 U.S.C. Section 6901 et seq.), CERCLA Federal Water Pollution Control Act (33 U.S.C. Section 1521 et seq.), Safe Drinking Water Act (42 U.S.C. Section 3000 (f) et seq.), Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.), Clear Air Act (42 U.S.C. Section 7401 et seq.), California Health and Safety Code (Section 25100 et seq., Section 3900 et seq.), or California Water Code (Section 1300 et seq.) at such time; and

(4) any additional wastes, substances or material which at such time are classified, considered or regulated as hazardous or toxic under any other present or future environmental or other similar laws relating to the Project.

The term "Hazardous Materials" shall not include: construction materials, gardening materials, household products, office supply products or janitorial supply products customarily used in the construction, maintenance, rehabilitation, or management of commercial property, or commonly used or sold by hardware, home improvement stores, or medical clinics and which are used and stored in accordance with all applicable environmental ordinances and regulations.

(s) "Hazardous Materials Laws" shall mean all federal, state, and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials in, on or under the Project or any portion thereof.

(t) "Hotel Development" shall mean (i) the acquisition of the Hotel Site and (ii) the development of Phase 1 and Phase 2 of the Improvements as more fully set forth in the Scope of Development.

(u) "Hotel Operating Agreement" shall mean the operating agreement or operating agreements between the Developer and the Hotel Operator for the operation of each of the hotels included in the Scope of Development.

(v) "Hotel Operator" shall mean for Phase 1 of the Hotel Development Marriott International, Inc. (or another hotel management company approved by the City in its sole discretion) and its approved successors and assigns.

(w) "Improvements" shall mean the (i) the 90 room Element hotel; (ii) the 110 room AC hotel; (iii) the 100-room hotel included as part of Phase 2 and (iv) related improvements and landscaping to be constructed on and within the Property in conformance with the Scope of Development.

(x) "Parties" shall mean the City and the Developer.

(y) "Phase 1" shall mean Phase 1 of the Hotel Development consisting of a dual hotel comprised of a 90 room Element hotel and a 110 room AC hotel, a package of amenities, landscaped gardens and parking as specified in the Scope of Development attached as Exhibit D to be developed on Parcel A of the Hotel Site.

(z) "Phase 2" shall mean Phase 2 of the Hotel Development consisting of a 100-room hotel to be constructed on Parcel B of the Hotel Site.

(aa) "Preliminary Financing Plan" shall mean the proposed plan of financing attached as Exhibit C.

(bb) "Project Documents" shall mean the design and construction documents developed pursuant to Section 3.3 of this Agreement.

(cc) "Schedule of Performance" shall mean the summary schedule of actions to be taken by the Parties pursuant to this Agreement to achieve the acquisition of the Hotel Site and the construction of both Phase 1 and Phase 2 of the Improvements. The Schedule of Performance is attached to this Agreement as Exhibit B.

(dd) "Schematic Design Drawings" shall mean the drawings for the Project described in Section 3.4 of this Agreement.

(ee) "Scope of Development" shall mean the description of the basic physical characteristics of the Hotel Development, including the size specifications of the hotels and amenities on each of the Parcels that comprise the Hotel Site, which will serve as a basis for the Developer's application for the City Approvals and for the preparation of the Project Documents and including the features from the Developer's proposal included within the Scope of Development. The Scope of Development is attached to this Agreement as Exhibit D.

(ff) "Term" shall mean the term of this Agreement, commencing as of the date of this Agreement and ending on the earlier of (i) fifty-five (55) years following the date of this Agreement or (ii) the date of any termination of this Agreement in accordance with the provisions hereof.

(gg) "Transfer" shall mean a transfer of this Agreement or a transfer of an interest in the Developer, as more particularly described in Section 6.1

Section 1.2 Exhibits. The following exhibits are attached to and incorporated into this Agreement:

Exhibit A:	Legal Description of the Property
Exhibit B:	Schedule of Performance
Exhibit C:	Preliminary Financing Plan
Exhibit D:	Scope of Development
Exhibit E:	Memo of Agreement

ARTICLE 2.
ASSIGNMENT OF OPTION

Section 2.1 Assignment. The City has or will exercise its option to acquire the Hotel Site on or before December 22, 2021. Subject to the Developer meeting the conditions set forth in Section 2.2, the City shall assign to the Developer its right to acquire the Hotel Site in accordance with the City's Option Exercise Notice and the terms and conditions in the Operating Agreement and Developer shall accept the assignment of the City's right to acquire the Hotel Site, which acquisition shall include rights to a water allocation sufficient to construct the Hotel Development. The City expects that a parcel map consistent with Exhibit A creating Parcels A and B will be recorded prior to the close of escrow for the Hotel Site.

Section 2.2 Conditions Precedent to Assignment. The City's obligation to assign its rights to acquire the Hotel Site to the Developer is contingent on the Developer meeting the following conditions within the times set forth in the Schedule of Performance:

(a) Updated Financing Plan. No later than the time specified in the Schedule of Performance, the Developer shall submit to the City, for the City's review and approval, an updated Financing Plan for Phase 1. The updated Financing Plan shall include: (1) a projected cost estimate breakdown for Phase 1 of the Hotel Development based upon design documents and contemplated government permits and approvals; (2) a true copy of each letter of interest from lenders, mortgage brokers and/or equity partners to provide funds in the amounts necessary to fully finance the projected costs of development of the Phase 1 Improvements; (3) a sources and uses table identifying the proposed use of each source of funding for the Phase 1 Improvements during the construction period; (4) evidence, reasonably satisfactory to the City, that the Developer is contributing equity in an amount not less than twenty percent (20%) of the total cost of development of Phase 1 of the Improvements; (5) evidence reasonably satisfactory to the City that the Developer has sufficient additional sources of funds available and is committing such sources of funds to cover the difference, if any, between projected costs of development of Phase 1 of the Improvements and the amount available to the Developer from external sources; and (6) evidence satisfactory to the City in its sole discretion that the Developer has sufficient liquid assets to pay the Hotel Site Purchase Price.

The City's review of the updated Financing Plan for Phase 1 shall be for the sole purpose of determining if the contemplated financing will be reasonably available, will provide sufficient funds for acquisition of the Hotel Site in accordance with the Option and development of the Phase 1 of the Hotel Development consistent with the terms of this Agreement, the proposed use of the funds comply with the requirements of the funding source and the funds will otherwise be provided on terms consistent with the terms and conditions of this Agreement.

(b) Hotel Operating Covenant. The Parties have agreed to the form of a hotel operating covenant to be recorded against Parcel A of the Hotel Site (the "Hotel Operating Covenant"). The Hotel Operating Covenant shall require that the Hotel Development be used for hotel and related uses for a term of no less than thirty (30) years following the date of the Certificate of Completion for the Phase 1 Improvements and shall contain such other provisions as mutually acceptable to the Parties.

(c) Hotel Site Purchase Price. Developer shall have provided evidence to the City of the availability of the Hotel Site Purchase Price in the form of cash. Such evidence shall be in the form of bank statements demonstrating liquid deposits in the amount of the Hotel Site Purchase Price.

Section 2.3 Close of Escrow on Hotel Site. Upon satisfaction of the conditions set forth in Section 2.2, the City shall assign its right to acquire the Hotel Site to the Developer with the understanding that Developer is obligated to close escrow within sixty (60) days of the date of the City's Option Exercise Notice to MCP. If for any reason the Developer has not demonstrated to the City's satisfaction that it will close escrow on the Hotel Site within the sixty (60) days, the City may terminate the assignment and immediately proceed to close escrow on the Hotel Site. Developer hereby grants the City a power of attorney coupled with an interest to take all actions necessary to achieve the close of escrow on the Hotel Site including transfer of the Hotel Site to the City if for any reason Developer fails to perform its obligations under the terms of the Option or fails to enforce the terms of the Option against MCP as set forth in the Operating Agreement. Developer recognizes that the City is entering into this Agreement with Developer to ensure that the Hotel Site is developed with a hotel or hotels that provide significant benefits to the City and that Developer's obligation to perform under the terms of the Option is an essential term of this Agreement, the failure of which will deprive the City of the benefits of the terms of this Agreement.

ARTICLE 3. DESIGN AND PREDEVELOPMENT REQUIREMENTS

Section 3.1 Hotel Operating Agreement. No later than December 15, 2022, the Developer shall provide to the City a fully executed Hotel Operating Agreement for Phase 1 with Marriott International for the dual use hotel. Developer acknowledges that a Hotel Operating Agreement is an essential term of this Agreement, and it is in reliance on the Developer's representations that it will be able to obtain a Hotel Operating Agreement with Marriott that the City assigned its right to acquire the Hotel Site. Developer's obligation pursuant to this Section 3.1 is not subject to extension pursuant to Section 9.4 or for any other reason and failure by the Developer to meet this condition shall be grounds for the City to immediately terminate this Agreement and exercise any and all remedies including the City's option to purchase the Hotel Site pursuant to Section 8.4. Until the Developer has presented to the City a fully executed Hotel Operating Agreement, the Developer shall not encumber the Hotel Site in any way.

Section 3.2 Design in Conformance with Scope of Development and Concept Design Drawings. In designing and constructing the Hotel Development, the Developer shall cause all subsequent design documents to be substantially consistent with the Scope of Development attached as Exhibit D and the Schematic Design Drawings. The Scope of Development and the Schematic Design Drawings shall establish the baseline design standards from which the Developer shall prepare all subsequent Project Documents. In addition the Developer shall design the Hotel Development to a minimum standard of environmental sustainability to qualify for the equivalent of a LEED Platinum or higher rating and include within the features of the Hotel Development those features that are set forth in the Developer's proposal that is attached to the Scope of Development

Section 3.3 Project Documents. The Developer shall cause its architect to proceed diligently and within the times set forth in the Schedule of Performance to prepare Design Development Drawings and Final Construction Drawings for each phase of the proposed Hotel Development, substantially consistent with the Scope of Development and the Schematic Design Drawings, including, without limitation, such drawings as may reasonably be required to show the location, bulk, height and other principal external features of the proposed Hotel Development. In connection with its submittal to the City for its approval, the Developer shall provide to the City such elevations, sections, plot plans, specifications, diagrams and other design documents at each of the stages described in Section 3.4 ("Project Documents"), as may reasonably be required by the City for its review. The Project Documents shall incorporate the relevant mitigation measures adopted in conjunction with its CEQA review and final approval of each Phase of the Hotel Development and any conditions imposed by the City's entitlement process.

Section 3.4 Submittal and Review of Design and Construction Documents. Within the times set forth in the Schedule of Performance, the Developer shall submit to the City the Project Documents for each Phase of the Hotel Development in the following stages based on the Concept Design Drawings:

(a) **Schematic Design Drawings.** The Schematic Design Drawings shall Logically Evolve, as defined below, from the approved Concept Design Drawings, by clearly defining the development of the Improvements. These drawings shall include floor plans, elevations, features in public areas, landscape features, locations for signs, parking facilities with all spaces indicated, building sections indicating general construction techniques and major building materials under consideration, potential exterior materials, the colors and textures to be used, and the off-site public improvements to be implemented by the Developer. Key interior, exterior, and structural dimensions shall be established and a detailed tabulation of floor area by use provided.

(b) **Design Development Drawings.** The Design Development Drawings shall be based on the Schematic Design Drawings and the Scope of Development. The Design Development Drawings shall indicate estimated wall thickness, structural dimensions, and delineation of site features and elevations, the building core, materials and colors, landscaping, a refined exterior signage plan and other features reasonably required by the City. The drawings shall fix and describe all design features, as well as the size, character, and quality of the entire Hotel Development as to architectural, structural systems. Key details shall be provided in preliminary form. Samples of key materials to be used in publicly visible areas shall accompany the Design Development Drawings submittal.

(c) **Final Construction Drawings.** The Final Construction Drawings are to be a continuation of approved Design Development Drawings. The Final Construction Drawings must provide all the detailed information necessary to obtain a building permit to build the Improvements including complete building, mechanical systems, site, landscape, exterior and signage construction details, requirements, standards, and specifications. The Developer shall provide additional material samples upon the reasonable request of the City.

Section 3.5 Approval of Project Documents. Within the times set forth in Section 3.6, the City, in its proprietary capacity and not its regulatory capacity, shall have the right to review and approve the Project Documents. The purpose of the City's review of the Project Documents pursuant to this Agreement is to ensure consistency with the Scope of Development, the provisions of this Agreement, and conformance to the DDA. For purposes of this Article 3, the phrase "Logical Evolution" or "Logically Evolve" means a refinement or amplification of the Concept Design Drawings into subsequently approved architectural drawings and design material which flow naturally and foreseeably therefrom, which reflect good architectural and engineering design and local construction practices, code requirements, applicable plan check and permit conditions, and the timely availability of materials.

Section 3.6 New Material Concerns. If the City determines that there are material changes which are not Logical Evolutions from previously approved Project Documents or which raise material concerns that were not reviewable in previously approved Project Documents, in approving or disapproving such Project Documents, the City shall act in its reasonable discretion. Any disapproval of the new Project Documents shall be in writing and shall state the reasons for the City's disapproval.

Section 3.7 Approval Process. The City shall approve or disapprove submittals under this Article 3 within thirty (30) days of receipt of the submittal from the Developer. Failure of the City to approve or disapprove such submittals within thirty (30) days shall be deemed to be approval of such submittals. In the event the City disapproves a submittal of the Project Documents pursuant to Section 3.4 or Section 3.5, the City shall submit a list of reasons for such disapproval to the Developer, together with its notice of disapproval. Upon receipt of such a list, the Developer shall have thirty (30) days to resubmit a revised submittal. Again, upon the City's receipt of a revised submittal, the City shall have ten (10) business days (or in the event City Council action is required as soon as reasonably possible) to approve or disapprove of the revised design. If, in the City's reasonable judgment, City Council action is not required to consider the revised submittal, failure to approve or disapprove within ten (10) business days shall be deemed to be approval of such change. The times for approval of the Project Documents set forth in the Schedule of Performance shall be automatically adjusted to reflect time for the Developer to make resubmittals, if required to obtain the City approval, as allowed by this Section 3.6.

Section 3.8 No Change in Project Documents. Subject to the provisions of Section 3.6, once the City has approved Final Construction Drawings for a specific phase, the Developer shall not make any material changes (as defined in Section 4.3(b) below) in those documents which would materially impact the matters set forth in Section 3.4 without the prior written approval of the City, acting in its reasonable discretion and within the time periods set out in Section 3.6, provided, however, that after the commencement of construction, any document submitted to the City for its approval shall be reasonably approved or disapproved, within ten (10) business days following receipt by the City. Failure of the City to approve or disapprove a submittal within the time periods set forth above shall constitute approval of the submittal.

Section 3.9 Additional Permits and Approvals. Within the time specified in the Schedule of Performance, Developer shall use commercially reasonable efforts to obtain all permits and approvals necessary to construct the Phase 1 Improvements including the City

Approvals and the Building Permit. All applications for such permits and approvals shall be consistent with the approved Project Documents. The Developer shall not obtain a building permit for a phase of construction until the City has approved the Final Construction Drawings for that phase. The Developer acknowledges that execution of this Agreement by the City does not constitute approval by the City of any required permits, applications, or allocations, and in no way limits the discretion of the City in the permit, allocation and approval process.

Section 3.10 City Review. The Developer shall be solely responsible for all aspects of the Developer's conduct in connection with the Hotel Development, including, but not limited to, the quality and suitability of the Project Documents, the supervision of construction work, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by the City with reference to the Hotel Development is solely for the purpose of determining whether the Developer is properly discharging its obligations to the City and should not be relied upon by the Developer or by any third parties as a warranty or representation by the City as to the quality of the design or construction of the Improvements.

Section 3.11 Phase 1 Construction Contract. Developer has represented to the City that it intends to enter into a design/build construction contract for Phase 1 of the Hotel Development with Klassen Construction generally on the terms of that certain proposal submitted by Klassen to Developer dated November 8, 2021 ("Klassen Proposal"). No later than the time specified in the Schedule of Performance, the Developer shall submit to the City for review and approval a copy of the construction contract with Klassen Construction that includes all improvements and sustainability features specified in the Scope of Development and is substantially consistent with the terms set forth in the Klassen Proposal ("Klassen Contract"). The City's review and approval of a proposed Klassen Contract shall be limited to a determination of the following in the exercise of the City's reasonable judgment: that the scope and cost of work have been clearly fixed and are consistent with the scope and cost set forth in the Project Documents, the Financing Plan and the Klassen Proposal, that the construction contract requires the payment of prevailing wages consistent with Section 4.7, and that the provisions of Klassen Contract are consistent with the provisions of this Agreement. The City shall approve or disapprove the Klassen Contract within fifteen (15) days following the date of the submission of the construction contract. The City's failure to either approve or disapprove the proposed Klassen contract within such fifteen (15) day period shall be deemed approval. Any disapproval of the Klassen Contract shall state in writing the reasons for disapproval and the changes which the City requests. The Developer shall thereafter submit, or cause to be submitted, a revised Klassen contract to the City for its approval within ten (10) days of the City notification of disapproval. If the revised Klassen Contract is disapproved, then the Developer shall have an additional ten (10) days to submit a further revised Klassen Contract. The periods for submission of a revised Klassen Contract, review, and approval or disapproval shall continue to apply until a construction contract for Phase 1 has been approved by the City. Notwithstanding the above, the Developer may prior to the date set forth in the Schedule of Performance propose to the City for the City's approval a different contractor. The City shall approve or disapprove the proposed contractor in its sole and absolute discretion.

Section 3.12 Phase 2 Design and Predevelopment Conditions.

(a) Phase 2 Financing Plan. No later than the time specified in the Schedule of Performance, the Developer shall submit to the City, for the City's review and approval, a Financing Plan for Phase 2. The Phase 2 Financing Plan shall include: (1) a projected cost estimate breakdown for Phase 2 of the Hotel Development based upon design documents and contemplated government permits and approvals; (2) a true copy of each letter of interest from lenders, mortgage brokers and/or equity partners to provide funds in the amounts necessary to fully finance the projected costs of development of the Phase 2 Improvements; (3) a sources and uses table identifying the proposed use of each source of funding for the Phase 2 Improvements during the construction period; (4) evidence, reasonably satisfactory to the City, that the Developer is contributing equity in an amount not less than twenty percent (20%) of the total cost of development of Phase 2 of the Improvements; and (5) evidence reasonably satisfactory to the City that the Developer has sufficient additional sources of funds available and is committing such sources of funds to cover the difference, if any, between projected costs of development of Phase 2 of the Improvements and the amount available to the Developer from external sources.

The City's review of the Financing Plan for Phase 2 shall be for the sole purpose of determining if the contemplated financing will be reasonably available, will provide sufficient funds for development of the Phase 2 of the Hotel Development consistent with the terms of this Agreement, the proposed use of the funds comply with the requirements of the funding source and the funds will otherwise be provided on terms consistent with the terms and conditions of this Agreement.

(b) Hotel Operating Agreement. No later than the time specified in the Schedule of Performance, the Developer shall have entered into a Hotel Operating Agreement for the Phase 2 hotel with a national hotel brand of a quality comparable to a Hyatt House, which Hotel Operating Agreement shall be subject to approval of the City. The City shall approve the Hotel Operating Agreement if it is with an operator of similar quality as Hyatt House and the terms are substantially similar to the terms for the Hotel Operating Agreement for Phase 1 of the Hotel Development.

(c) Phase 2 Design and Construction Documents. No later than the times specified in the Schedule of Performance, the Developer shall have submitted Project Documents for Phase 2 of the Hotel Development consistent with the requirements of Section 3.3 and the City shall have approved such Project Documents consistent with Sections 3.4 and 3.5.

(d) Additional Permits and Approvals. Within the time specified in the Schedule of Performance, Developer shall use commercially reasonable efforts to obtain all permits and approvals necessary to construct the Phase 2 Improvements including the City Approvals and the Building Permit. All applications for such permits and approvals shall be consistent with the approved Phase 2 Project Documents. The Developer shall not obtain a building permit for the Phase 2 construction until the City has approved the Final Construction Drawings for Phase 2. The Developer acknowledges that execution of this Agreement by the City does not constitute approval by the City of any required permits, applications, or allocations, and in no way limits the discretion of the City in the permit, allocation and approval process.

(e) Phase 2 Construction Contract. No later than the time specified in the Schedule of Performance, the Developer shall submit to the City for review and approval a copy of the construction contract for Phase 2 of the Hotel Development. The City's review and approval of a proposed Phase 2 construction contract shall be limited to a determination of the following in the exercise of the City' reasonable judgment: that the scope and cost of work have been clearly fixed and are consistent with the scope and cost set forth in the Project Documents and the Phase 2 Financing Plan, that the construction contract requires the payment of prevailing wages consistent with Section 4.7, and that the provisions of Phase 2 construction contract are consistent with the provisions of this Agreement. The City shall approve or disapprove the Phase 2 construction contract within fifteen (15) days following the date of the submission of the construction contract. The City' failure to either approve or disapprove the proposed Phase 2 construction contract within such fifteen (15) day period shall be deemed approval. Any disapproval of the Phase 2 construction contract shall state in writing the reasons for disapproval and the changes which the City requests. The Developer shall thereafter submit, or cause to be submitted, a revised Phase 2 construction contract to the City for its approval within ten (10) days of the City notification of disapproval. If the revised Phase 2 construction contract is disapproved, then the Developer shall have an additional ten (10) days to submit a further revised Phase 2 construction contract. The periods for submission of a revised Phase 2 construction contract, review, and approval or disapproval shall continue to apply until a construction contract for Phase 2 has been approved by the City.

ARTICLE 4. CONSTRUCTION OF THE IMPROVEMENTS

Section 4.1 Commencement of Construction. The Developer shall commence construction of each Phase of the Improvements within the time set forth in the Schedule of Performance. Construction shall be deemed to commence on each Phase on the date the Developer starts physical work on the applicable portion of Hotel Site pursuant to a valid Building Permit from the City.

Section 4.2 Completion of Construction. The Developer shall diligently prosecute to completion the construction of each Phase of the Improvements and shall complete construction of each Phase of the Improvements within the time set forth in the Schedule of Performance. As between the City and the Developer, the Developer shall be solely responsible for the construction of the Improvements, including all costs of construction.

Section 4.3 Construction Pursuant to Scope and Plans.

(a) The Developer shall construct the Improvements substantially in accordance with the Scope of Development, the approved Final Construction Drawings, the City Approvals, and the terms and conditions of all City and other governmental approvals.

(b) The Developer shall submit or cause to be submitted for City approval any proposed change in the Final Construction Drawings which materially changes the size, location, or elevations of the Improvements, including the landscape and/or hardscape, or signage of the Improvements, or which materially changes the quality or appearance of the exterior materials of

the Improvements or the public areas of the interior of the Hotels, including but not limited to the lobbies, or which would require an amendment to any City Approval prior to making such change (each, a "Material Change"). The City shall approve or disapprove a proposed Material Change within fifteen (15) days after receipt by the City. Failure to approve or disapprove within fifteen (15) days shall be deemed to be approval of such change. If the City rejects the proposed Material Change, then the City shall provide the Developer with the specific reasons therefor, and the approved Final Construction Drawings shall continue to control.

(c) No change which is required for compliance with building codes, government health and safety regulations or other applicable laws or regulations, or to comply with changes or corrections required of the Developer in the plan check process shall be deemed material. However, the Developer must submit to the City any change that is required for such compliance within ten (10) days after making such change, and such change shall become a part of the approved Final Construction Drawings, binding on the Developer.

Section 4.4 Mechanics' Liens. The Developer shall indemnify the City and hold the City harmless against and defend the City in any proceeding related to any mechanic's lien, stop notice or other claim brought by a subcontractor, laborer or material supplier who alleges having supplied labor or materials in the course of the construction of the Improvements by the Developer. This indemnity obligation shall survive the issuance of a Certificate of Completion by the City and the termination of this Agreement.

Section 4.5 Compliance with Applicable Law. The Developer shall cause all work performed in connection with construction of the Improvements to be performed in compliance with (a) all applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies now in force or that may be enacted hereafter, (including, without limitation, the prevailing wage provisions of Sections 1770 et seq. of the California Labor Code, but only to the extent applicable), and (b) all directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction. The work shall proceed only after procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, and the Developer shall be responsible for the procurement and maintenance thereof, as may be required of the Developer and all entities engaged in work on the Hotel Site.

Section 4.6 Certificate of Completion. When the obligations of the Developer under this Article 4 have been met with respect to each Phase, the Developer may request that the City issue a certificate to such effect for the applicable Phase (a "Certificate of Completion") in a form recordable in the Official Records, which the City shall provide within thirty (30) days of such a request if the Developer has met the requirements for such issuance. The City shall issue the Certificate of Completion upon the completion of the following obligations: (i) the City has issued a certificate of occupancy or a temporary certificate of occupancy for the applicable Phase of the Improvements, (ii) the Developer has caused the completion of construction of the applicable Phase of the Improvements in substantial accordance with the Final Construction Drawings and the Scope of Development, and (iii) the Developer has completed all of the obligations set forth in this Agreement to be completed prior to the completion of the applicable Phase of the Improvements, as reasonably determined by the City. Such certification shall not be deemed a notice of completion under the California Civil Code, nor shall it constitute evidence

of compliance with or satisfaction of any obligation of the Developer required by Section 4.7, or to any holder of deed of trust securing money loaned to finance any Phase of the Hotel Development or any portion thereof. If the Developer requests issuance of a Certificate of Completion, but the City refuses, then the City shall provide the Developer with a written explanation of its refusal within ten (10) days of the Developer's request.

Section 4.7 Prevailing Wages. The Developer shall pay or cause to be paid to all workers employed in connection with the development of the Improvements, not less than the prevailing rates of wages, as provided in the statutes applicable to public work contracts, including without limitation the Fort Ord Reuse Authority Master Resolution and Sections 1770-1780 of the California Labor Code.

(a) The Developer shall monitor and enforce the prevailing wage requirements imposed on its contractors and subcontractors, including withholding payments to those contractors or subcontractors who violate these requirements. In the event that the Developer fails to monitor or enforce these requirements against any contractor or subcontractor, the Developer shall be liable for the full amount of any underpayment of wages, plus costs and attorneys' fees, as if the Developer was the actual employer, and the City may declare the Developer in default of this Agreement and pursue any of the remedies available under this Agreement.

(b) Any contractor or subcontractor who is at the time of bidding debarred by the Labor Commissioner pursuant to Section 1777.1 of the California Labor Code is ineligible to bid on the construction of the Improvements or to receive any contract or subcontract for work covered under this Agreement. The Developer agrees to include, or cause to be included, the requirements of this Section 4.7 in all bid specifications for work covered under this Agreement.

(c) The Developer shall indemnify, defend (with counsel reasonably acceptable to the City), and hold harmless the City, its council members, officers, directors, employees and agents and MCP ("Indemnified Parties") against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including the Developer and its contractors) to pay prevailing wages as determined pursuant to the FORA Master Resolution or the Labor Code Sections 1720 et seq., to employ apprentices pursuant to Labor Code Sections 1777.5 et seq., or to comply with the other applicable provisions of Labor Code Sections 1720 et seq. and 1777.5 et seq., to meet the conditions of Section 1771.4 of the Labor Code, and the implementing regulations of the DIR in connection with the construction of the Improvements. The Developer's obligation to indemnify, defend and hold harmless under this Section 4.7(c) shall survive termination of this Agreement, and shall be interpreted broadly so as to apply to any legal or administrative proceeding, arbitration, or enforcement action.

The Developer agrees to include, or cause to be included, the above provision, to be applicable to contractors and subcontractors, in each contract and subcontract for work covered under this Agreement.

Section 4.8 Progress Reports. Until a Certificate of Completion has been issued by the City for a Phase, the Developer shall provide the City with periodic progress

reports, as reasonably requested by the City (but not more than once every calendar month), regarding the status of the construction of the Improvements. Such report shall consist of an executive summary of the work to date, including, but not limited to, the causes for any delays and the work that is anticipated for the following month, a reasonable number of construction photographs taken since the last report submitted to the City, and shall be in form reasonably acceptable to the City.

Section 4.9 Entry by the City. Until a Certificate of Completion has been issued by the City for a Phase, the Developer shall permit the City, through its officers, agents, or employees, to enter the Hotel Site during normal business hours after reasonable notice to inspect the work of construction to determine that such work is in substantial conformity with the Scope of Development and the approved Final Construction Drawings or to inspect the Hotel Site for compliance with this Agreement. Additionally, until a Certificate of Completion has been issued by the City for any Phase of the Hotel Development, the Developer shall retain at the Hotel Site, or such other location reasonably acceptable to the City, all original receipts, invoices, contracts, agreements or other paperwork documenting the expenditure of all funds for labor and materials related to the applicable Phase of the Hotel Development. Upon reasonable notice to the Developer, the City shall have access to all such original documentation for review and/or duplication. The City is under no obligation to (a) supervise construction, (b) inspect the Hotel Site, or (c) inform the Developer of information obtained by the City during any inspection. The Developer shall not rely upon the City for any supervision or inspection. The rights granted to the City pursuant to this section are in addition to any rights of entry and inspection the City may have in exercising its municipal regulatory authority.

Section 4.10 Non-Discrimination During Construction; Equal Opportunity. The Developer, each for itself and its successors and assigns, and transferees of its obligations under this Agreement, agrees that in the construction of the Improvements provided for in this Agreement:

(a) It will not discriminate against any employee or applicant for employment because of race, color, religion, creed, national origin, ancestry, disability, medical condition, age, marital status, sex, sexual preference/orientation, Acquired Immune Deficiency Syndrome (AIDS) acquired or perceived, or retaliation for having filed a discrimination complaint. The Developer will ensure that applicants that are employed by the Developer's contractors, and that their employees, are treated without regard to the nondiscrimination factors during employment including, but not limited to, activities of: upgrading, demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Developer agrees to post in conspicuous places, available to its employees and applicants for employment, the applicable nondiscrimination clause set forth herein.

(b) It will ensure that its solicitations or advertisements for employment are in compliance with the aforementioned nondiscrimination factors; and

(c) It will cause the foregoing provisions to be inserted in all contracts for the construction of the Improvements entered into by the Developer after the Effective Date of this Agreement and shall make a good faith effort to ensure that its general contractor shall insert the

foregoing provisions in the general contractor's subcontracts; provided, however, that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

Section 4.11 Insurance Requirements.

At all times during the term of this Agreement, Developer shall maintain the following forms of insurance:

(a) Worker's Compensation insurance and Employer's Liability insurance, with limits of not less than One Million Dollars (\$1,000,000) each accident for bodily injury, One Million Dollars (\$1,000,000) for bodily injury by disease and One Million Dollars (\$1,000,000) each employee for bodily injury by disease.

(b) Broad Form Commercial General Liability insurance with a combined single limit per occurrence, of not less than One Million Dollars (\$1,000,000) each occurrence and not less than Ten Million Dollars (\$10,000,000) in the annual aggregate for Bodily Injury and Property Damage, and including coverage for Contractual Liability, Personal Injury, Products and Completed Operations. The limits of liability of the insurance coverage may be provided by a combination of primary and excess liability insurance policies, provided that not less than Two-Million Dollars (\$2,000,000) of such coverage shall be carried as primary insurance and provided further that the limitation on the amount of insurance shall not limit the responsibility of the Developer to indemnify the City or pay damages of injury to persons or property resulting from the Developer's activities or the activities of any other person or persons for which the Developer is otherwise responsible. The insurance described in this subsection may be carried under a blanket policy for commercial general liability to include other locations, however, the City shall have the right to require an increase in the aggregate limits accordingly. All insurance carried pursuant to this subsection shall name the City as additional insureds.

(1) Automobile Liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence, providing coverage for all owned, non-owned and hired vehicles.

(2) A Builders Risk policy shall be provided during the course of construction to meet the property insurance requirements. Builder's Risk insurance covering the Improvements during the course of the construction phase (and Property Insurance thereafter) covering all risks of loss, excluding earthquake, flood or other risks customarily excluded from "All-Risks" coverage in an amount equal to full replacement cost, including all improvements at the time of loss.

(3) Property insurance covering the Hotel Site for all risks of loss, including fire, earthquake (but only if required in connection with the construction financing or if it is commercially affordable at a reasonable price and with a reasonable deductible) and flood, if applicable, for one hundred percent (100%) of the replacement value.

(c) Contractor's Insurance. The Developer shall cause any general contractor or agent working on the Improvements under direct contract with the Developer to maintain insurance of the types and in at least the minimum limits described in subsections b.(1), b.(2),

and b.(3) above, and shall require that such insurance shall meet all of the general requirements of subsection (d). below. Subcontractors working on the Hotel Development under indirect contract with the Developer shall be required to maintain the insurance described in subsections b.(1), b.(2), and b.(3) above unless otherwise approved by the City. The Developer shall cause any architects and engineers working on the Hotel Development under direct contract with the Developer to maintain Professional Liability insurance with limits not less than One Million Dollars (\$1,000,000). Commercial General Liability insurance policies to be maintained by such contractors and agents pursuant to this subsection shall name as additional insureds the City, its councilmembers, officers, agents, and employees.

(d) General Requirements. The required insurance shall be provided under an occurrence form.

Commercial General Liability, and Automobile Liability insurance policies shall be endorsed to name as additional insureds the City and its councilmembers, officers, agents, and employees. All policies shall be endorsed to provide thirty (30) days prior written notice of cancellation, reduction in coverage, or intent not to renew to the address established for notices to the City set forth in Section 9.2 below.

(e) Cancellation. With respect to the interest of the City, such insurance shall not be cancelled, reduced in coverage or limits or non-renewed, except after thirty (30) days written notice by receipted delivery has been given the City's and the City's respective risk management department.

(f) Certificates of Insurance. Upon the City' request, the Developer shall provide certificates of insurance, in a form reasonably acceptable to the City, evidencing compliance with the requirements of this Section.

ARTICLE 5.
OBLIGATIONS WHICH CONTINUE THROUGH
AND BEYOND THE COMPLETION OF CONSTRUCTION

Section 5.1 Use of the Project. Throughout the term of this Agreement, the Developer shall not use or operate the Hotel Development for any use other than the as contemplated in this Agreement or for such other uses as may be consistent with all City and other governmental approvals. The Developer shall use the Hotel Development for the operation of three hotels consistent with the Scope of Development for a term of not less than thirty (30) years following the date of the issuance of the final Certificate of Completion.

Section 5.2 Maintenance. The Developer hereby agrees that prior to completion of construction of the Improvements, the Hotel Site shall be maintained in a neat and orderly condition to the extent practicable and in accordance with industry health and safety standards, and that, once each Phase of the Hotel Development is Completed, the completed Phase shall be well maintained as to both external and internal appearance of the buildings, the common areas, and the parking areas. The Developer shall maintain or cause to be maintained the Improvements in good repair and working order, and in a neat, clean and orderly condition,

including the walkways, driveways, parking areas and landscaping, and from time to time make all necessary and proper repairs, renewals, and replacements. In the event there arises a condition in contravention of the above maintenance standard, then the City shall notify the Developer in writing of such condition, giving the Developer thirty (30) days from receipt of such notice to commence and thereafter diligently to proceed to cure said condition. In the event the Developer fails to cure or commence to cure the condition within the time allowed, the City shall have the right to perform all acts necessary to cure such a condition, or to take other recourse at law or equity the City may then have. The City shall receive from the Developer the City' reasonable cost in taking such action and shall provide reasonable evidence of such costs to the Developer. The Parties hereto further mutually understand and agree that the rights conferred upon the City expressly include the right to enforce or establish a lien or other encumbrance against any portion of the Hotel Site not complying with this Agreement. The foregoing provisions shall be a covenant running with the land until expiration of the Term of this Agreement, enforceable by the City and its successors and assigns.

Section 5.3 Developer To Indemnify City. Except as expressly provided in this Agreement, the Developer shall indemnify, defend, and hold the Indemnified Parties harmless against all claims for bodily injury, death or property damage which arise out of or in connection with entry onto, ownership of, occupancy in, or construction on the Hotel Site by the Developer or its contractors, subcontractors, agents, employees or tenants. This indemnity obligation related to the Indemnified Parties shall not extend to any claim to the extent arising solely from the Indemnified Parties' gross negligence or willful misconduct, and shall survive both the issuance of a Certificate of Completion by the City and termination of this Agreement.

Section 5.4 Hazardous Materials.

(a) **Certain Covenants and Agreements.** Following obtaining possession of the Hotel Site, the Developer hereby covenants and agrees that:

(1) The Developer shall not knowingly permit the Hotel Site or any portion thereof to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Materials or otherwise knowingly permit the presence of Hazardous Materials in, on or under the Hotel Site in violation of any applicable law;

(2) The Developer shall keep and maintain the Hotel Development and each portion thereof in compliance with, and shall not cause or permit the Hotel Development or any portion thereof to be in violation of, any Hazardous Materials Laws;

(3) Upon receiving actual knowledge of the same the Developer shall within ten (10) days advise the City in writing of: (A) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against the Developer or the Hotel Development or any portion thereof, pursuant to any applicable Hazardous Materials Laws; (B) any and all claims made or threatened by any third party against the Developer or the Hotel Development or any portion thereof relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in the foregoing clause (A) and this clause (B) are hereinafter referred to as "Hazardous Materials Claims"); (C) the presence of any Hazardous Materials in, on or under the Hotel Site in

such quantities which require reporting to a government agency; or (D) the Developer's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Hotel Development, or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Hotel Development under any Hazardous Materials Laws. If the City reasonably determines that the Developer is not adequately responding to a Hazardous Material Claim, the City shall have the right, upon ten (10) days written notice to the Developer, to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any such Hazardous Materials Claims and to have its reasonable attorney's fees in connection therewith paid by the Developer.

(b) Indemnity. Without limiting the generality of the indemnification set forth in Section 5.3, the Developer hereby agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the City) the Indemnified Parties from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, but not limited to, reasonable attorney's fees and expenses), arising directly or indirectly, in whole or in part, out of: (1) the failure of the Developer, its agents, employees, or contractors to comply with any Hazardous Materials Law relating in any way whatsoever to the handling, treatment, presence, removal, storage, decontamination, cleanup, transportation or disposal of Hazardous Materials into, on, under or from the Hotel Development; (2) the presence in, on or under the Hotel Development of any Hazardous Materials or any releases or discharges of any Hazardous Materials into, on, under or from the Hotel Site; or (3) any activity carried on or undertaken on or off the Hotel Development, subsequent to the conveyance of the Hotel Site to the Developer, and whether by the Developer or any employees, agents, contractors or subcontractors of the Developer at any time occupying or present on the Hotel Site, in connection with the handling, treatment, removal, storage, decontamination, cleanup, transport or disposal of any Hazardous Materials at any time located or present on or under the Hotel Site (collectively "Indemnification Claims"). The foregoing indemnity shall further apply to any residual contamination on or under the Hotel Site, or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, treatment, storage, transport or disposal of any such Hazardous Materials, and irrespective of whether any of such activities were or will be undertaken in accordance with Hazardous Materials Laws. The foregoing indemnity of an Indemnified Party shall not apply to any claim based solely on such Indemnified Party's gross negligence or willful misconduct.

(c) No Limitation. The Developer hereby acknowledges and agrees that the Developer's duties, obligations and liabilities under this Agreement, including, without limitation, under Section 5.4(b) above, are in no way limited or otherwise affected by any information the City may have concerning the Hotel Site and/or the presence within the Hotel Development of any Hazardous Materials, whether the City obtained such information from the Developer or from its own investigations.

Section 5.5 Taxes. The Developer shall pay when due all real property taxes and assessments assessed and levied on Hotel Development and the Improvements. The Developer

may, however, contest the validity or amount of any tax, assessment, or lien on the Hotel Development and the Improvements.

Section 5.6 Non-Discrimination. The Developer covenants by and for itself and its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, sex, sexual orientation, marital status, ancestry or national origin in the construction, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of Hotel Development, nor shall the Developer or any person claiming under or through the Developer establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, vendees or employees in the Hotel Site or the Hotel Development. The foregoing covenant shall run with the land and shall remain in effect in perpetuity.

Section 5.7 Mandatory Language in All Subsequent Deeds, Leases and Contracts. All deeds, leases or other real property conveyance contracts entered into by the Developer on or after the date of execution of this Agreement as to any portion of the Hotel Site or the Hotel Development shall contain the following language:

(a) In Deeds:

"Grantee herein covenants by and for itself, its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, sex, sexual orientation, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed nor shall the grantee or any person claiming under or through the grantee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, vendees, or employees in the property herein conveyed. The foregoing covenant shall run with the land."

(b) In Leases:

"The lessee herein covenants by and for the lessee and lessee's heirs, personal representatives and assigns and all persons claiming under the lessee or through the lessee that this lease is made subject to the condition that there shall be no discrimination against or segregation of any person or of a group of persons on account of race, color, religion, creed, sex, sexual orientation, marital status, ancestry or national origin in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased nor shall the lessee or any person claiming under or through the lessee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, vendees, or employees in the land herein leased."

(c) In Contracts:

"There shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, creed, sex, sexual orientation, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, vendees, or employees of the land."

ARTICLE 6.
ASSIGNMENT AND TRANSFERS

Section 6.1 **Definitions.** As used in this Article 8, the term "Transfer" means:

- (a) Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode of form, of or with respect to this Agreement, or of the Hotel Site, or any part thereof or any interest therein or of the Hotel Development or any portion thereof constructed thereon, or any contract or agreement to do any of the same; or
- (b) Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode or form, of or with respect to more than 20% ownership interest in the Developer, or any contract or agreement to do any of the same, provided that such transfer does not result in a change of Control.

Section 6.2 **Purpose of Restrictions on Transfer.** This Agreement is entered into solely for the purpose of development and operation of the Improvements on the Hotel Site and its subsequent use in accordance with the terms of this Agreement. The qualifications and identity of the Developer are of particular concern to the City, in view of:

- (a) The importance of the redevelopment of the Hotel Site to the general welfare of the community; and
- (b) The fact that a Transfer as defined in Section 6.1 above is for practical purposes a transfer or disposition of the Hotel Site.

It is because of the qualifications and identity of the Developer that the City is entering into this Agreement with the Developer and that Transfers are permitted only as provided in this Agreement.

Section 6.3 **Prohibited Transfers.** The limitations on Transfers set forth in this Article 6 shall apply from the date of this Agreement until a Certificate of Completion is issued by the City for each Phase. Except as expressly permitted in this Agreement, the Developer represents and agrees that the Developer has not made or created and will not make or create or suffer to be made or created, any Transfer, either voluntarily or by operation of law, without the prior approval of the City, which shall not be unreasonably withheld, conditioned, or delayed. Any Transfer made in contravention of this Section 6.3 shall be void and shall be deemed to be a default under this Agreement, whether or not the Developer knew of or participated in such Transfer.

Section 6.4 Permitted Transfers. Notwithstanding the provisions of Section 6.3, the following Transfers shall be permitted (subject to satisfaction of the conditions of Section 6.5):

- (a) Any Transfer creating a Security Financing Interest.
- (b) Any Transfer directly resulting from the foreclosure of a Security Financing Interest or the granting of a deed in lieu of foreclosure of a Security Financing Interest.
- (c) Any Transfer resulting directly from the death or mental incapacity of an individual.
- (d) The conveyance or dedication of a portion of the Hotel Site to any public entity, including a public utility, required to allow for the development of the Improvements.
- (e) The granting of temporary or permanent easements or permits to facilitate development of the Hotel Development.
- (f) A Transfer otherwise approved by the City.

Section 6.5 Effectuation of Permitted Transfers.

(a) Other than as permitted in Section 6.4, no Transfer of a direct interest in this Agreement shall be permitted unless, at the time of the Transfer, the person or entity to which such Transfer is made, by an agreement reasonably satisfactory to the City and in form recordable among the land records (the "Assumption Agreement"), expressly agrees to perform and observe, from and after the date of the Transfer, the obligations, terms and conditions of this Agreement; provided, however, that no such transferee shall be liable for the failure of its predecessor to perform any such obligation. The Assumption Agreement shall be executed by Developer and the assignee or transferee and shall name the City as express third-party beneficiaries with respect to such agreement with a copy thereof delivered to the City and the City within thirty (30) days after the effective date thereof. Upon Transfer of a direct interest in this Agreement pursuant to an Assumption Agreement, the assignor shall be relieved of liability with respect to any such obligations relating to the Hotel Development accruing from and after the date of such assignment or transfer. Notwithstanding the foregoing, unless such assignee specifically assumes pursuant to the Assumption Agreement the obligations under this Agreement to indemnify City with respect to the Hotel Development, the assignor will retain such obligations and remain jointly and severally liable for such indemnity obligations with such assignee.

Section 6.6 Change in Hotel Operator. A change in the identity of the Hotel Operator, by way of transfer of the Hotel Operating Agreement or otherwise, shall constitute a Transfer requiring the prior written approval of the City. The City shall approve a replacement operator if the proposed operator is a nationally recognized hotel operator with equal or greater brand recognition as the Hotel Operator and the proposed operator has successfully operated one or more hotels comparable in quality to standards set forth for the Hotel Operating Agreement.

ARTICLE 7.
SECURITY FINANCING AND RIGHTS OF HOLDERS

Section 7.1 No Encumbrances Except for Development Purposes. Notwithstanding any other provision of this Agreement, mortgages and deeds of trust, or any other reasonable method of security are permitted to be placed upon the Hotel Site for the purpose of securing loans approved by the City pursuant to the approved Financing Plan. Mortgages, deeds of trust, or other reasonable security instruments securing loans approved by the City pursuant to the approved Financing Plan are each referred to as a "Security Financing Interest." The words "mortgage" and "deed of trust" as used in this Agreement include all other appropriate modes of financing real estate acquisition, construction, and land development. Notwithstanding the above, the Developer may only secure loans obtained for purposes of constructing or operating Phase 1 of the Hotel Development with Parcel A of the Hotel Site and may only secure loans obtained for purposes of constructing or operating Phase 2 of the Hotel Development with Parcel B of the Hotel site and any such loans shall not include cross default provisions between Phase 1 and Phase 2 or any other financing obtained by the Developer.

Section 7.2 Holder Not Obligated to Construct. The holder of any Security Financing Interest authorized by this Agreement is not obligated to construct or complete any improvements or to guarantee such construction or completion. However, nothing in this Agreement shall be deemed to permit or authorize any such holder to devote the Hotel Site or any portion thereof to any uses, or to construct any improvements thereon, other than those uses of improvements provided for or authorized by this Agreement.

Section 7.3 Notice of Default and Right to Cure. Whenever the City pursuant to its rights set forth in Article 8 of this Agreement delivers any notice or demand to the Developer with respect to the commencement, completion, or cessation of the construction of the Improvements, the City shall at the same time deliver to each holder of record of any Security Financing Interest creating a lien upon the Developer's interest in the Hotel Site or any portion thereof a copy of such notice or demand. Each such holder shall (insofar as the rights of the City are concerned) have the right, but not the obligation, at its option, within ninety (90) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default or breach affecting the Property which is subject to the lien of the Security Financing Interest held by such holder and to add the cost thereof to the security interest debt and the lien on its security interest. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the Improvements (beyond the extent necessary to conserve or protect such improvements or construction already made) without first having expressly assumed in writing the Developer's obligations to the City relating to such Improvements under this Agreement pursuant to an assignment and assumption agreement prepared by the City. The holder in that event must agree to complete, in the manner provided in this Agreement, the Improvements to which the lien or title of such holder relates. Any such holder properly completing such Improvements pursuant to this paragraph shall assume all rights and obligations of Developer under this Agreement.

Section 7.4 Right of City to Cure. In the event of a default or breach by the Developer of a Security Financing Interest prior to the completion of the construction of applicable Phase of the Hotel Development, and the holder has not exercised its option to complete the construction

of the applicable Phase of the Hotel Development, the City may cure the default, prior to the completion of any foreclosure. In such event the City shall be entitled to reimbursement from the Developer of all costs and expenses incurred by the City in curing the default.

Section 7.5 Modifications. If a holder of a Security Financing Interest should, as a condition of providing financing for Hotel Development or any portion of the Hotel Development, request any modification of this Agreement in order to protect its interests in the Hotel Development or this Agreement, the City shall consider such request in good faith consistent with the purpose and intent of this Agreement and the rights and obligations of the parties under this Agreement.

ARTICLE 8. DEFAULT AND REMEDIES

Section 8.1 Application of Remedies. The provisions of this Article shall govern the Parties' remedies for breach of this Agreement.

Section 8.2 Fault of City.

(a) Event of Default. Following notice and cure as set forth in subsection (b) below, the following event constitutes a "City Event of Default" and a basis for the Developer to take action against the City:

(1) The City breaches any material provision of this Agreement.

(b) Notice and Cure Procedure; Remedies. Upon the occurrence of the above-described event, the Developer shall first notify the City in writing of its purported breach or failure, giving the City thirty (30) days from receipt of such notice to cure such breach or failure. In the event the City does not then cure the default within such thirty-day period (or, if the default is not reasonably susceptible of cure within such thirty-day period, the City fails to commence the cure within such period and thereafter to prosecute the cure diligently to completion), then the Developer shall be entitled to any rights afforded it in law or in equity by pursuing any or all of the following remedies: (1) terminating this Agreement by written notice to the City; (2) prosecuting an action for damages (excluding punitive damages and consequential damages); or (3) seeking any other remedy available at law or in equity (excluding punitive damages and consequential damages). If the Developer elects to terminate this Agreement, the provisions of this Agreement that are specified to survive termination shall remain in full force and effect.

Section 8.3 Fault of Developer.

(a) Event of Default. Following notice and cure as set forth in subsection (b) below, each of the following events constitutes a "Developer Event of Default" and a basis for the City to take action against the Developer:

(1) The Developer fails to obtain a fully executed Hotel Operating Agreement for Phase 1 by the time set forth in Section 3.1.

(2) The Developer fails to satisfy the conditions precedent to the assignment of the Option set forth in section 2.2 within the time set forth in the Schedule of Performance;

(3) The Developer fails to close escrow on the Hotel Site as required in Section 2.4;

(4) The Developer fails to construct the Improvements in the manner and by the deadlines set forth in Article 4 and the Schedule of Performance;

(5) The Developer fails to commence construction of Phase 2 within the time set forth in the Schedule of Performance;

(6) The Developer attempts or completes a Transfer except as permitted under Article 6.

(7) The Developer breaches any other material provision of this Agreement.

(8) Prior to the issuance of a Certificate of Completion by the City for any Phase, the Developer defaults under the construction or permanent lender documents and has not cured such default within the applicable time period contained therein.

(9) The Developer's: (1) filing for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any such involuntary filing brought by another party before the earlier of final relief or ninety (90) days after the filing; (2) making a general assignment for the benefit of creditors; (3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or ninety (90) days after the filing; (4) insolvency; or (5) failure, inability or admission in writing of its inability to pay its debts as they become due.

(b) Notice and Cure Procedure. Upon the happening of the above-described event contained in Section 8.3(a)(1) this agreement shall immediately terminate, and the City shall have all rights and remedies under this Agreement. Upon the happening of any of the above-described events contained in Section 8.3(a)(2) or (3) this Agreement shall immediately terminate, the Assignment of the Option in Section 2.3 shall terminate, and the City shall have all rights and remedies under this Agreement. Upon the happening of any of the above-described events contained in Section 8.3 (a) (4), (5), (6),(7) and (8), the City shall first notify the Developer in writing of its purported breach or failure, giving the Developer thirty (30) days from receipt of such notice to cure such breach or failure. If the Developer does not cure the default within such thirty-day period (or if the default is not reasonably susceptible of being cured within such thirty-day period, the Developer fails to commence the cure within such period and thereafter to prosecute the cure diligently to completion), then the City shall be afforded all of its rights at law or in equity by taking any or all of the following remedies: (1) terminating this

Agreement by written notice to the Developer; (2) prosecuting an action for damages (excluding punitive damages and consequential damages); or (3) seeking any other remedy available at law or in equity (excluding punitive damages and consequential damages). If the City elects to terminate this Agreement, the provisions of this Agreement that are specified to survive such termination shall remain in full force and effect.

Section 8.4 Option to Purchase.

(a) In addition to any other remedies that the City may have for a Developer Event of Default, the City shall have the additional right at its option to purchase the Hotel Site or any portion thereof that is not subject to a Certificate of Completion issued by the City with all improvements thereon. City shall give the Developer written notice of its intent to exercise its option to purchase the Hotel Site or any portion thereof within sixty (60) days following a Developer Event of Default. The City shall seek to close escrow on the purchase of the Hotel Site or any portion thereof subject to the City's Option within ninety (90) days of giving the option exercise notice.

(b) The purchase price for the Hotel Site or any portion thereof subject to the City's option shall be the amount paid by the Developer in cash to MCP to acquire the Hotel Site. If the City is only acquiring a portion of the Hotel Site, the purchase price for the portion acquired shall be a proportionate amount of the purchase price paid by the Developer to MCP to acquire the Hotel Site based on the square footage of the portion of the Hotel Site to be acquired by the City. By way of example, if the City exercises its option pursuant to this Section 8.4 as a result of the Developer failing to commence construction of Phase 2 of the Hotel Development within the times set forth in the Schedule of Performance but the City has issued a Certificate of Completion of Phase 1 of the Hotel Development, the City shall have the right to acquire Parcel B of the Hotel Site. The purchase price for Parcel B shall be \$1,008,000 which represents 28% of the Hotel Site Purchase Price. Parcel B consists of 2.66 acres and is 28% of the total square footage of the 9.53 acres Hotel Site.

(c) The City may assign its option to purchase the Hotel Site or any portion thereof without the consent of Developer.

(d) The City's option rights provided pursuant to this Section 8.4 shall be subordinate and subject to and be limited by and shall not defeat, render invalid or limit any Security Financing Interest with respect to the portion of the Hotel Site subject to the option granted herein, or any rights or interests provided in this Agreement for the protection of the older of a Security Financing Interest, provided that the Holder of such Security Financing Interest has elected to complete the Improvements in a manner provided in this Agreement, provided however, if the City exercises its option rights because the Developer fails to meet the requirements of Section 3.1, the City's option shall be prior to any Security Financing Interest.

(e) The City may record a memorandum of the City's Option on the Hotel Site and the Developer shall cooperate with such recordation.

Section 8.5 Plans, Data and Approvals. If this Agreement is terminated pursuant to Section 8.3, then the Developer shall promptly deliver to the City copies of all plans and

specifications for the Hotel Development or the applicable Phase (subject to being released by any architects or engineers possessing intellectual property rights), all permits and approvals obtained in connection with the Hotel Development, and all applications for permits and approvals not yet obtained but needed in connection with the Hotel Development.

Section 8.6 Rights and Remedies Cumulative. Except as otherwise provided, the rights and remedies of the Parties are cumulative, and the exercise or failure to exercise any right or remedy shall not preclude the exercise, at the same time or different times, of any right or remedy for the same default or any other default.

Section 8.7 Survival. Upon termination of this Agreement under this Article 8, the following provisions of this Agreement shall survive: the indemnification obligations in Sections 4.4, 4.7, 5.3, 5.4, and 9.19. This Section 8.7 exists for reference purposes only and does not alter the scope or nature of the surviving provisions.

ARTICLE 9. GENERAL PROVISIONS

Section 9.1 Identity of Developer. The Developer represents and warrants to the City as of the Effective Date as follows:

(a) Organization. The Developer is a California limited partnership company, duly organized, validly existing and in good standing under the laws of the State of California, with full power and authority to conduct its business as presently conducted and to execute, deliver and perform its obligations under this Agreement.

(b) Authorization. The Developer has taken all necessary action to authorize its execution, delivery and, subject to any conditions set forth in this Agreement performance of the Agreement. Upon the date of this Agreement, this Agreement shall constitute a legal, valid and binding obligation of the Developer, enforceable against the Developer in accordance with its terms.

(c) No Conflict. The execution, delivery and performance of this Agreement by the Developer does not and will not conflict with, or constitute a violation or breach of, or constitute a default under (i) the charter or incorporation documents of the Developer, (ii) any applicable law, rule or regulation binding upon or applicable to the Developer, or (iii) any material agreements to which the Developer is a party.

(d) No Litigation. Unless otherwise disclosed in writing to the City prior to the date of this Agreement, there is no existing or, to the Developer's actual knowledge, pending or threatened litigation, suit, action or proceeding before any court or administrative City affecting the Developer or the Hotel Development that would, if adversely determined, materially and adversely affect the Developer or the Hotel Development or the Developer's ability to perform its obligations under this Agreement or to develop and operate the Hotel Development.

(e) No Material Adverse Change. There has been no material adverse change in the financial condition of the Developer since the date of this Agreement.

(f) Default Under Other Agreements. There is no event, act or omission which constitute, or but for the passage of time or the giving of notice, or both, would constitute a breach, violation or default under any agreement materially related to the development or operation of the Hotel Development, including but not limited to any partnership agreement, joint venture agreement, or loan agreement.

Until the expiration or earlier termination of this Agreement, Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 9.1(a) not to be true, immediately give written notice of such fact or condition to the City. The representations and warranties contained in this Section 9.1 shall be true for any transferee assuming the obligations of this Agreement as of the date of the Transfer.

Section 9.2 Notices, Demands and Communications. Formal notices, demands, submittals and communications between the City and the Developer shall be sufficiently given if, and shall not be deemed given unless, delivered personally, or dispatched by certified mail, return receipt requested, or by reputable overnight delivery service with a receipt showing date of delivery, to the principal offices of the City and the Developer as follows:

City

The City of Marina
211 Hillcrest Avenue
Marina, CA 93933
Attn: City Manager

With copies to:

Goldfarb & Lipman LLP
1300 Clay Street, 11th Floor
Oakland, CA 94612
Attn: Karen Tiedemann

Developer:

Monterey Bay Hotels, LP
c/o Dadwal Management Group
1534 Fremont Blvd., Suite D
Seaside, CA 93955

Such written notices, demands, and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate by mail as provided in this Section 9.2. Delivery shall be deemed to have occurred at the time indicated on the receipt for delivery or refusal of delivery.

Section 9.3 Non-Liability of Officials, Employees and Agents. No member, official, employee or agent of the City or the City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the City or the City or for any

amount which may become due to the Developer or on any obligation under the terms of this Agreement.

Section 9.4 Enforced Delay. In addition to specific provisions of this Agreement, performance by either Party shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God or other deities; acts of the public enemy; epidemics; quarantine restrictions (other than restrictions and governmental orders in place related to the COVID 19 pandemic as of the Effective Date); moratoria, or other governmental restrictions; freight embargoes; or court order; an act or omission of the other Party; or any other similar causes (other than lack of funds of the Developer or the Developer's inability to finance the Project) beyond the control or without the fault of the Party claiming an extension of time to perform. An extension of time for any cause will be deemed granted if notice by the Party claiming such extension is sent to the other within thirty (30) days from the commencement of the cause and the Party receiving such notice does not object to the extension within thirty (30) days of receipt of the notice. In no event shall the cumulative delays exceed twenty-four (24) months, unless otherwise agreed to by the Parties in writing.

Section 9.5 Submittals and Approvals. Various submittals are required by the Developer pursuant to this Agreement. As expressly provided by this Agreement, the City shall approve or disapprove certain submittals from Developer within specified timeframes or else such submittal shall be deemed approved by the City. Notwithstanding the provisions for deemed approval, no submittal or matter shall be deemed approved unless the request for approval contains the following provision, in bold print with the appropriate time period stated:

**NOTICE IS HEREBY GIVEN THAT PURSUANT TO SECTION __ OF
THE HOTEL AGREEMENT THAT FAILURE TO APPROVE OR DISAPPROVE THE
REQUESTED
MATTER WITHIN __ DAYS SHALL BE DEEMED AN APPROVAL.**

Section 9.6 Inspection of Books and Records. The City has the right at all reasonable times and upon two (2) business days prior written notice to inspect on a confidential basis the books, records and all other documentation of the Developer pertaining to its obligations under this Agreement.

Section 9.7 Title of Parts and Sections. Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any part of its provision.

Section 9.8 Applicable Law. This Agreement shall be interpreted under and pursuant to the laws of the State of California.

Section 9.9 Severability. If any term, provision, covenant or condition of this Agreement is held in a final disposition by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 9.10 Binding Upon Successors; Covenants to Run With Land. This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, and assigns of each of the Parties; provided, however, that there shall be no Transfer except as permitted in Section 6.4. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any successor, heir, administrator, executor, successor, or assign of such Party who has acquired an interest in compliance with the terms of this Agreement or under law.

The terms of this Agreement shall run with the land and shall bind all successors in title to the Hotel Site until the termination of this Agreement, except that the provisions of this Agreement that are specified to survive termination of this Agreement shall run with the land in perpetuity and remain in full force and effect following such termination. Every contract, deed, or other instrument hereafter executed covering or conveying the Property, or any portion thereof, shall be held conclusively to have been executed, delivered and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless the City expressly releases Hotel Site, or the applicable portion of the Hotel Site, from the requirements of this Agreement.

Section 9.11 Parties Not Co-Venturers. Nothing in this Agreement is intended to or does establish the Parties as partners, co-venturers, or principal and agent with one another.

Section 9.12 Entire Understanding of the Parties. This Agreement constitutes the entire understanding and agreement of the Parties with respect to the Hotel Development.

Section 9.13 City Approval. Whenever this Agreement calls for City approval, consent, or waiver, the written approval, consent, or waiver of the City Manager, or his or her designee, shall constitute the approval, consent, or waiver of the City, without further authorization required from the City Council. The City hereby authorizes the City Manager, or his or her designee, to deliver such approvals or consents as are required by this Agreement, or to waive requirements under this Agreement, on behalf of the City. Notwithstanding anything set forth in this Agreement, the City Manager may authorize extensions of any of the Developer's deadlines in the Schedule of Performance or set forth herein in his or her sole discretion at the request of the Developer.

Section 9.14 Discretion Retained By City. The City's execution of this Agreement does not constitute approval by the City and in no way limits the discretion of the City in the permit and approval process in connection with the Project.

Section 9.15 Counterparts. This Agreement may be executed in counterparts and multiple originals.

Section 9.16 Amendments. The Parties can amend this Agreement only by means of a writing signed by both Parties.

Section 9.17 Recordation of Memorandum of Agreement. The Developer consents to the recordation of a memorandum of this Agreement in the Official Records against the Hotel Site.

Section 9.18 Standard of Approval. Any consents or approvals required or permitted under this Agreement shall not be unreasonably withheld or made, except where it is specifically provided that a sole discretion standard applies.

Section 9.19 Indemnity: City. Except for the sole gross negligence or willful misconduct of the City, the Developer undertakes and agrees to indemnify, hold harmless and defend (by counsel reasonably satisfactory to the City) the Indemnified Parties from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, reasonable attorney's fees and costs of litigation, damage or liability of any nature whatsoever, arising in any manner by reason of or incident to the performance of this Agreement. The Developer's indemnification obligation under this Section 9.19 shall include but not be limited to any litigation related to any challenges made to the City's action regarding the approval of this Agreement or the environmental review conducted for the Hotel Development and the City's actions related thereto under CEQA.

Section 9.20 Effectiveness of Agreement. This Agreement is dated for convenience only and shall only become effective on the Effective Date.

[REST OF PAGE LEFT INTENTIONALLY BLANK]

WHEREFORE, the Parties have executed this Agreement as of the date first above written.

Dated: 8/2/22

APPROVED AS TO FORM:

By: Heidi Quinn
City Attorney

Date: 8/2/2022

CITY:

THE CITY OF MARINA, a municipal corporation

By: [Signature]

DEVELOPER:

MONTEREY BAY HOTELS, LP, a California limited partnership

By: [Signature]

Name: Harbhajan S. Dastwal

Its: Limited Partner

EXHIBIT A
(Legal Description of the Property)

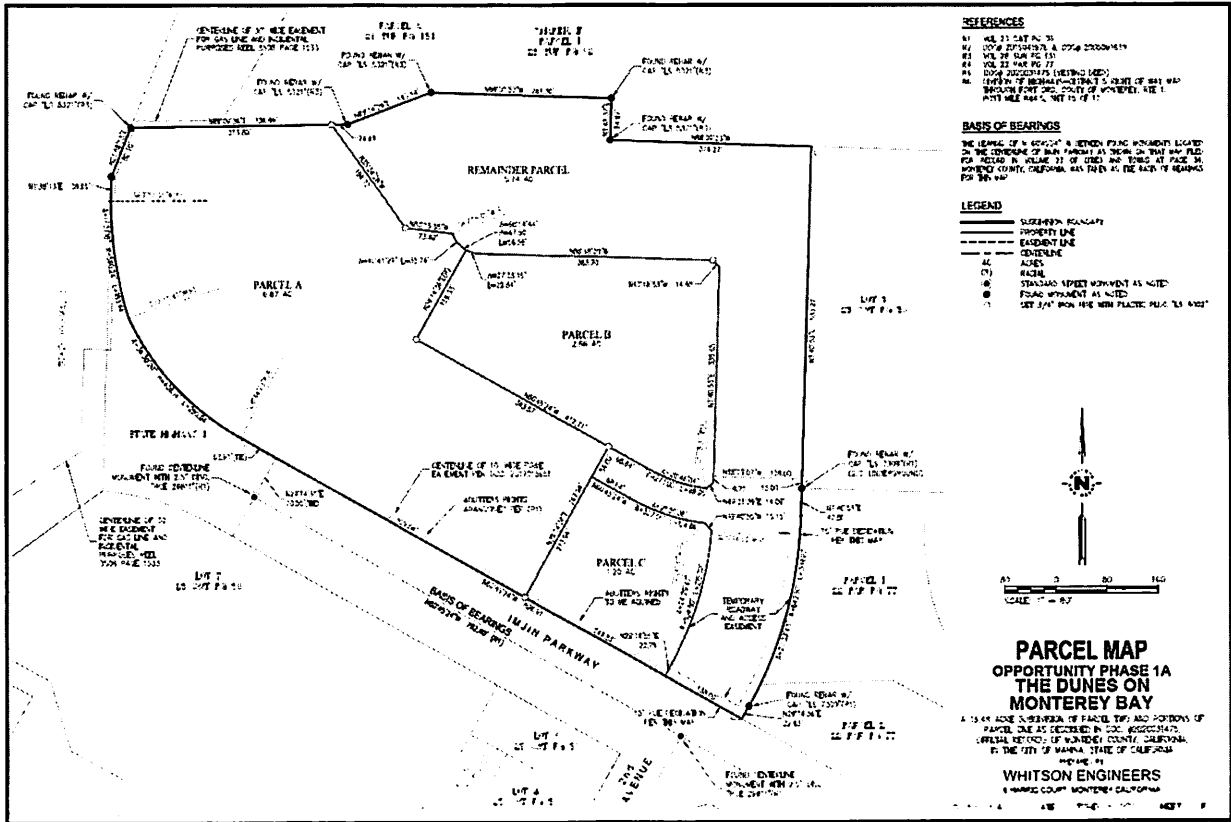


EXHIBIT B
(Schedule of Performance)

This Schedule of Performance summarizes the schedule for various activities under the Hotel Development Agreement (the "Agreement") to which this exhibit is attached. This Schedule of Performance shall not be deemed to modify in any way the provisions of the Agreement to which such items relate. Section references herein to the Agreement are intended merely as an aid in relating this Schedule of Performance to other provisions of the Agreement and shall not be deemed to have any substantive effect.

Action	Responsible Party	Projected Date
1. Developer submits updated Financing Plan for Phase 1 of the Hotel Development. (§2.2(a))	Developer	No later than January 30, 2022
2. Developer submits the Hotel Operating Agreement for Phase 1. (§2.2(b))	Developer	No later than December 15,, 2022.
3. Developer and City have agreed on a form of Hotel Operating Covenant (§2.2(c))	Developer and City	No later than August31, 2022
4. Developer deposits Hotel Site Purchase Price in escrow		At least 10 days before the close of escrow
5. Developer closes escrow on Hotel Site (§2.4)	Developer	No later than August 31, 2022 -Within 60 day of City's Option Exercise Notice to MCP
6. Developer submits Schematic Design Drawings for Phase 1 (§3.4(a))	Developer	March 1, 2023
7. Developer submits Design Development Drawings for Phase 1 (§3.4(b))	Developer	May 1, 2023
8. Developer submits Final Construction Drawings for Phase 1 (§3.4(c))	Developer	No later than August 28, 2023
9. Developer obtains City Approvals, Building Permit and other governmental approvals for Phase 1 (§3.9)	Developer	No later than December 30, 2023
10. Developer submits the Klassen Contract to the City (§3.11)	Developer	No later than December 1, 2023
11. Developer submits to the City evidence of financing commitments for Phase 1	Developer	No later than December 1, 2023
12. Developer commences construction of the Phase 1 Improvements (§4.1)	Developer	No later than December 30, 2023

13. Developer completes construction of the Phase 1 Improvements (§4.2)	Developer	No later than December 30, 2025
15. Developer submits detailed scope of development for Phase 2 to the City for City Approval.	Developer	No later than 90 days after issuance of first certificate of occupancy for Phase 1
16. Developer submits Phase 2 Financing Plan (§3.12(a)).	Developer	No later than 90 days after issuance of first certificate of occupancy for Phase 1
17. Developer submits Hotel Operating Agreement for Phase 2r (§3.12(b))	Developer	No later than 120 days after issuance of first certificate of occupancy for Phase 1
18. Developer submits Schematic Design Drawings for Phase 2 (§3.4(a) and §3.12(c))	Developer	At time of submission of Hotel Operating Agreement for Phase 2
19. Developer submits Design Development Drawings for Phase 2 (§3.4(b) and §3.12(c))	Developer	Within 120 days of City approval of Schematic Design Drawings.
20. Developer submits Final Construction Drawings for Phase 2 (§3.4(c) and §3.12(c))	Developer	No later than 120 days after submission of Schematic Design Drawings for Phase 2
21. Developer obtains City Approvals, Building Permit and other governmental approvals for Phase 2 (§3.12(d))	Developer	No later than 30 days prior to commencement of construction of Phase 2
22. Developer submits Phase 2 construction contract to City and evidence of debt financing commitments (§3.12(e))	Developer	No later than 30 days prior to commencement of construction of Phase 2
23. Developer commences construction of Phase 2 Improvements (§4.1)	Developer	No later than 120 days after submission of Final Construction Drawings for Phase 2.
24. Developer completes construction of Phase 2 Improvements (§4.2)	Developer	No later than two years after commencement of construction of Phase 2.

Exhibit C
Preliminary Financing Plan

Sources	Amount
Developer Equity	\$16,199,150
Debt	\$57,433,350
Total Funds	\$73,632,500
Uses	
Land purchase price	\$3,600,000
Design build Turn Key Project	\$58,575,000
Pre-opening Expenses, Working Capital, and Other costs	\$1,000,000
Legal, Taxes & Insurance & Fees	\$5,957,500
Financing costs and interest	\$3,500,000
Contingency	\$1,000,000
Total costs	\$73,632,500

Exhibit D
Scope of Development

1. Proposed Development Plan:

Phase 1 – Dual Hotel

Brand 1 – Element Hotel -	90 rooms
Brand 2 – AC Hotel -	110 rooms
Gross Square footage of Hotel Building	135,000
Square footage of Lobby	5,000
Square footage of Food and Beverage	2,500
Square footage of pool	2,500
Square Footage of Recreation Fac.	5,000
Square footage of meeting space	8,000
Square footage of guest rooms	89,500
square footage of corridor and support	15,000
Square footage of back of house	5,000
Square Footage of walls/shafts	2,500
Rooftop	25,000
All amenities, including recreation	160,000
Parking	300 spaces
landscaped garden	<hr/>

Phase 2 100 Room Hyatt Hotel or hotel of comparable quality subject to the approval fo
the City and 150 parking spaces

Excerpts from Developer's Proposal

Environmental Sustainability Features:

- Organic greenhouse Farm-to-Table restaurant with Roof-top Dining and biodynamic wine tasting venue with local sourcing
- Eco-themed and eco-enhanced Bar & Lounge style seating with views of magnificent Monterey Bay
- Integrated renewable energy sources such as solar panels, car charging stations and/or Eco-Vert wind turbines (to use Marina's high winds for energy generation)
- Roof-top gardens with inside building live plant walls to increase oxygenation and carbon capture with eco-recreation & wellness focus
- Contemporary LEED-qualified design using energy-efficient floor to ceiling glass throughout hotel & guest rooms
- Gold or Platinum LEED certification with radiant floor central heating and cooling, energy saving appliances etc.
- Rooftop and back patio would include gas fire pits to increase outdoor ambiance and energy saving
- Provide a sustainable hospitality training facility for interns and entry-level work-force from the one-of-a-kind Sustainable Hospitality Management Program at California State University, Monterey Bay(CSUMB) for local talent sourcing

Economic Benefits:

- Maximum TOT to Marina: \$2M=>\$4M/ yr. over 10 yrs. totaling to \$35 million(LE)
- No incentive sought in spite of loss in yr. 1
- ADR of \$230-\$330 likely to be exceeded with average yearly revenue of \$20M
- Economic multiplier for Marina and environs to exceed \$60M/yr. (\$600 million over 10 years) with 3.0 multiplier
- No competing hotel in MBR (no rate war)
- Direct (200-300) & indirect jobs for many
- Legacy project for Marina & MBR community with high LT "localism" impact
- Not money but community impact focus

Exhibit E
Memo of Agreement



3827 HILLO ROAD
ALDEN, NY, 14004
716-631-0600

DESIGN PROFESSIONAL
MARK W. THEDEMANN
LICENSE # - C-41122
STATE OF CALIFORNIA

WARNING:
IT IS A VIOLATION OF THE LAW FOR ANY
PERSON, OTHER THAN THE DESIGNER,
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WITHOUT THE WRITTEN PERMISSION
OF THE DESIGNER.

DRAWING QUESTIONS
CALL NEW USA CORP
1-800-717-5816

PROJECT OWNER
MARINA CITY, CA

HOTEL
LUMINAIRE
MARINA CITY, CA 93933

REVISIONS

NO.	DESCRIPTION	DATE	BY

ISSUED FOR:
OWNERS REVIEW
30% SUBMISSION

PROJECT NO.: 22-002
DATE: 5/11/25
DRAWN BY: MV
CHKD BY: MWT

EXTERIOR
RENDERINGS

SHEET



EXTERIOR - REAR VIEW

IMPORTANT NOTE TO ALL CONTRACTORS AND SUBCONTRACTORS: COMPLETE BUILDING SYSTEMS AND/OR INSTALLATIONS
 1. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE CALIFORNIA BUILDING CODE (CBC) AND ALL APPLICABLE LOCAL ORDINANCES.
 2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL JURISDICTION.
 3. ALL MATERIALS AND METHODS OF CONSTRUCTION SHALL BE APPROVED BY THE ARCHITECT PRIOR TO INSTALLATION.
 4. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AND UTILITIES AT ALL TIMES.
 5. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED TIME FRAME.
 6. THE CONTRACTOR SHALL BE RESPONSIBLE FOR PROTECTING ALL EXISTING UTILITIES AND STRUCTURES.
 7. ALL WORK SHALL BE COMPLETED IN ACCORDANCE WITH THE LATEST EDITIONS OF THE CALIFORNIA BUILDING CODE (CBC) AND ALL APPLICABLE LOCAL ORDINANCES.
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ALDEN, NY 14004
716-631-0600

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MARK W. TIEDEMANN
LICENSE #: C-41122
STATE OF CALIFORNIA

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IF ANY ARCHITECT
OR ENGINEER HAS BEEN CONSULTED
ON THIS PROJECT, THE ARCHITECT'S
AND ENGINEER'S SEAL AND LICENSE
NUMBER SHALL BE PLACED ON THIS
DRAWING IN THE APPROPRIATE
LOCATION.

PROJECT OWNER
MARINA CITY, CA

HOTEL
LUMINAIRE
MARINA CITY, CA 93933

REVISIONS

NO.	DESCRIPTION	DATE	BY

ISSUED FOR:
OWNERS REVIEW
30% SUBMISSION

PROJECT NO.: 22-002
DATE: 5/11/20
DRAWN BY: MV
CHKD BY: MWT

EXTERIOR
RENDERINGS

SHEET



EXTERIOR - REAR VIEW 2

DISCLAIMER NOTICE TO ALL CONTRACTORS AND SUBCONTRACTORS: ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE CONTRACT DOCUMENTS AND THE CITY OF ALDEN, NY. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF ALDEN, NY. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF ALDEN, NY. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF ALDEN, NY.

