



# AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING  
Meeting Date: April 1, 2014

Agenda Item 6-G

**Approvals:**

City Manager [Signature]

Dept. Head [Signature]

Attorney AT

Finance [Signature]

**Department:** Public Works / Engineering  
**Prepared By:** Tom Bonigut, Assistant City Engineer TB

**Subject:** **APPROVAL AND CONSENT OF AGREEMENT TO ASSIGN THE ACQUISITION AGREEMENT FOR COMMUNITY FACILITIES DISTRICT (CFD) No. 2006-1 FROM LV MARBLEHEAD LLC TO MARBLEHEAD DEVELOPMENT PARTNERS LLC.**

**Fiscal Impact:** None.

**Summary:** Staff recommends City Council approval and consent of the agreement between LV Marblehead LLC<sup>1</sup> and Marblehead Development Partners LLC<sup>2</sup> to assign the Acquisition Agreement for CFD No. 2006-1 to Marblehead Development Partners LLC as discussed below.

**Discussion:** As the City Council is aware, LV Marblehead LLC is finalizing a sale of the residential portion of the Marblehead Coastal development to Marblehead Development Partners LLC. A separate report has been provided to the City Council for approval of an agreement to assign development obligations from LV Marblehead LLC to Marblehead Development Partners LLC. Similarly, the Acquisition Agreement related to CFD No. 2006-1 (discussed in more detail in a February 4, 2014 report to the City Council) must also be assigned to Marblehead Development Partners LLC. The attached agreement provides for this assignment, consistent with Sections 11.7 and 11.14 of the January 1, 2007 Acquisition Agreement for CFD No. 2006-1.

Staff and the City Attorney have reviewed the attached agreement and recommend City Council approval.

**Recommended Action:** STAFF RECOMMENDS THAT the City Council approve and authorize the Mayor to sign and consent to the agreement between LV Marblehead LLC and Marblehead Development Partners LLC to assign the Acquisition Agreement for CFD No. 2006-1 from LV Marblehead LLC to Marblehead Development Partners LLC.

**Attachments:** Proposed agreement.

**Notification:** None.

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<sup>1</sup> LV Marblehead LLC is the limited liability company formed by Lehman Brothers Holdings Inc.

<sup>2</sup> Marblehead Development Partners LLC is a limited liability company owned by affiliates of Taylor Morrison of California LLC, and certain funds and accounts managed by Oaktree Capital Management, L.P. and TPG (an investment firm).

## ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT ("**Assignment**") is made as of the 8th day of April, 2014, by and between **LV MARBLEHEAD LLC**, a Delaware limited liability company ("**Assignor**"), and **MARBLEHEAD DEVELOPMENT PARTNERS LLC**, a Delaware limited liability company ("**Assignee**"), with reference to the following facts:

A. The City of San Clemente, a municipal corporation and a political subdivision of the State of California ("**City**"), for purposes of forming Community Facilities District 2006-1 for City ("**CFD**"), and SunCal Marblehead, LLC, a Delaware limited liability company, as legal predecessor-in-interest to Assignor, Assignor entered into that certain Acquisition Agreement dated January 1, 2007 (the "**Agreement**"), pertaining to the development of certain real property owned by Assignor and located in the City of San Clemente, California, informally known as the Marblehead Coastal Development Project (the "**Property**"), and more particularly described in the Agreement.

B. Assignor is conveying title to the Property to Assignee and, in connection therewith, Assignor desires to assign and transfer to Assignee, and Assignee desires to assume, all of Assignor's right, title and interest as the "Developer" under the Agreement, subject to all of the terms, conditions and restrictions set forth in the Agreement.

C. In accordance with Section 11.7 of the Agreement, Assignor has requested that City consent to the assignment and transfer of Assignor's right, title and interest in and to the Agreement to Assignee.

D. Section 11.7 of the Agreement permits an Assignment of the Developer's interests, rights and title under the Agreement pursuant to the terms thereof. Pursuant to the terms and conditions of Section 11.7 of the Agreement, City has approved and consented to this Assignment as evidenced by the consent attached hereto.

NOW THEREFORE, in consideration of the foregoing facts and the mutual covenants and conditions herein below set forth, it is agreed:

1. Effective as of the date that Assignor has conveyed title to the Property to Assignee as evidenced by the recordation of a grant deed in the Official Records of the County of Orange, (i) Assignor hereby assigns and transfers to Assignee all of Assignor's right, title and interest accruing to the Developer under the Agreement, subject to the terms, covenants and restrictions set forth in the Agreement, and (ii) Assignee hereby accepts the assignment and transfer of the Agreement and shall be entitled to all rights and benefits accruing to the Developer under the Agreement.

3. Assignee agrees to assume, fulfill, perform and discharge all of the obligations, liabilities, covenants, duties and agreements of Assignor as the Developer under the Agreement, and Assignor is hereby released from all such duties and obligations.

4. Assignee hereby agrees to indemnify, defend, save and hold harmless Assignor and its shareholders, officers, directors, employees and agents (collectively "**Assignor Parties**")

from and against any actual claims, liabilities or damages arising out of or with respect to, in connection with or otherwise relate in any manner or to any extent to the Agreement and arise on or after the date of this Assignment, including, without limitation, all reasonable attorneys' fees and other actual and out-of-pocket costs and expenses incurred by Assignor in connection therewith; provided however, the foregoing indemnity shall not apply to matters resulting from the gross negligence or willful misconduct of any Assignor Party.

5. Nothing contained herein shall in any way or manner expand, enhance, modify or alter any obligation or liability of the Developer under the Agreement or under local laws or otherwise create or impose any additional liability or obligation on the Developer under the Agreement or under local laws.

6. Assignor warrants and represents to Assignee that (i) Assignor has full right and authority to make this Assignment and vest in Assignee the rights, interests, powers and benefits hereby assigned, and (ii) the execution and delivery of this Assignment and the performance of its obligations hereunder by Assignor will not conflict with, result in a breach of or constitute a default under any of the terms, conditions or provisions of any agreement or instrument to which Assignor is a party or by which it is bound, including, without limitation, the Agreement.

7. This Assignment is an absolute conveyance of title in effect as well as in form and is intended to include and unconditionally convey any equitable or redemptive rights of Assignor and is not intended as a mortgage or security device of any kind.

8. This Assignment is not intended to, and shall not, merge the equitable and legal titles in any of the rights and interests assigned herein, nor shall this Assignment release any liens or security interests securing any indebtedness encumbering any of the rights and interests assigned herein, it being the intention of the Assignor and Assignee to keep such liens separate and distinct and in full force and effect and to maintain the priority of such liens against any other liens or encumbrances affecting the rights and interests assigned herein.

9. This Assignment may be executed in counterparts which taken together shall constitute one and the same instrument.

10. The provisions of this instrument shall be binding upon and inure to the benefit of Assignor and Assignee and their respective successors and assigns.

11. Assignor and Assignee each hereby covenants that it will, at any time and from time to time, execute any documents and take such additional actions as the other, or its respective successors or assigns, shall reasonably require in order to more completely or perfectly carry out the transfers intended to be accomplished by this Assignment.

12. This Assignment shall be construed and interpreted in accordance with the laws of the State of California.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of the date first set forth above.

**“ASSIGNOR”**

**LV MARBLEHEAD LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name:  
Title:

**“ASSIGNEE”**

**MARBLEHEAD DEVELOPMENT PARTNERS LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name:  
Title: Authorized Signatory

THIS ASSIGNMENT AGREEMENT BY AND BETWEEN LV MARBLEHEAD LLC, A DELAWARE LIMITED LIABILITY COMPANY (“ASSIGNOR”), AND MARBLEHEAD DEVELOPMENT PARTNERS LLC, A DELAWARE LIMITED LIABILITY COMPANY (“ASSIGNEE”), IS APPROVED AND CONSENTED TO BY CITY THIS \_\_\_ DAY OF \_\_\_\_\_, 2014:

“CITY”

**CITY OF SAN CLEMENTE,**  
a municipal corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

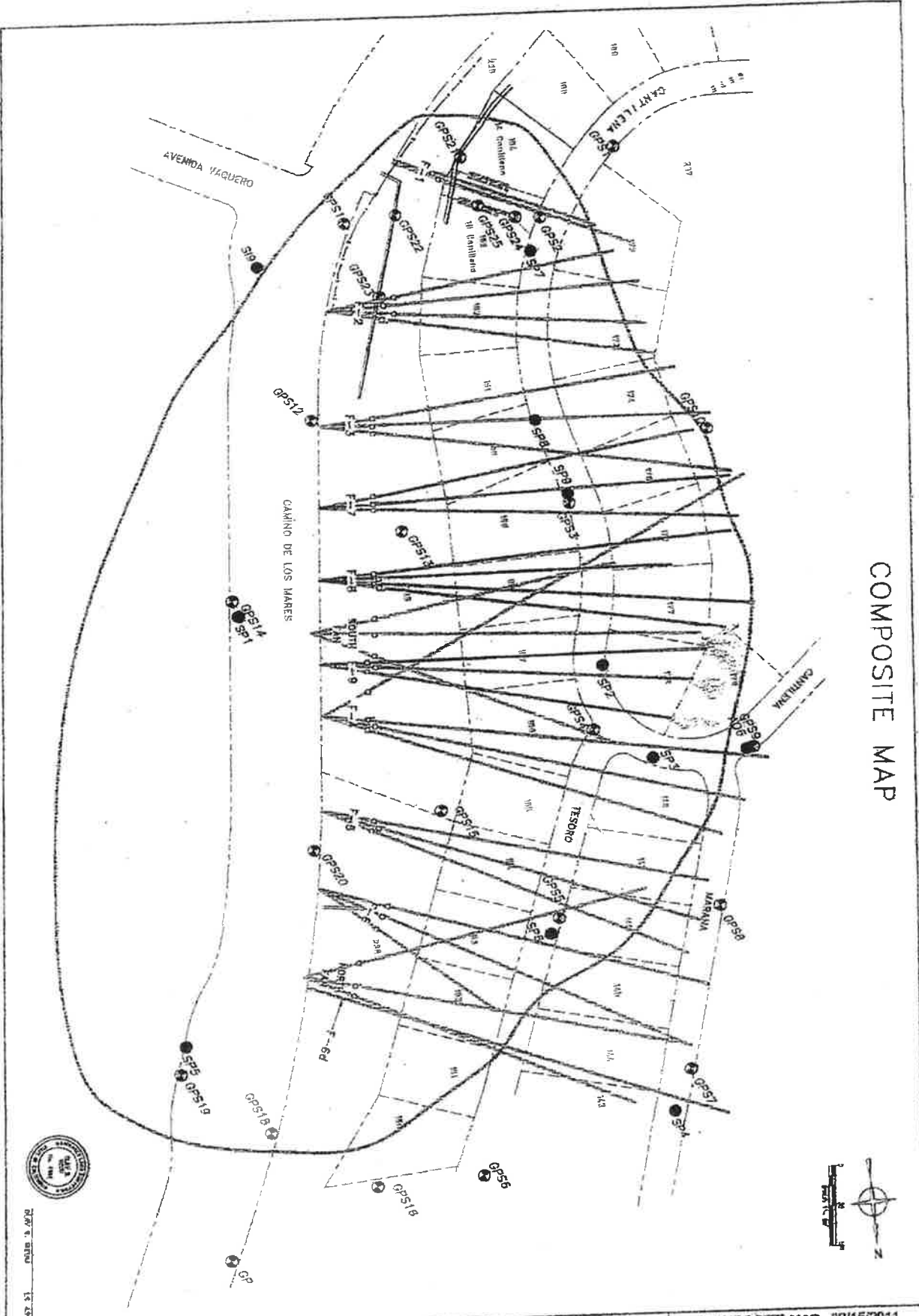
APPROVED AS TO FORM:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

# COMPOSITE MAP



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**TCAL ENGINEERING, INC.**  
 248 Engineers, Land Planners, Land Surveyors  
 122 Avenida Harbort, San Clemente, Calif. 92672  
 Tel. 949-421-0506 Fax 949-421-0120

NO.	DATE	BY	REVISION

COMPOSITE MAP - 02/15/2011  
 SEA PONTE SEAZONE  
 SAN CLEMENTE, CALIFORNIA  
 PREPARED FOR SEA PONTE HOMEOWNER ASSOCIATION