



# AGENDA REPORT

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

Agenda Item 6-H

**Approvals:**

City Manager [Signature]

Dept. Head [Signature]

Attorney [Signature]

Finance [Signature]

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

**Subject:** **APPROVAL AND CONSENT OF AGREEMENT TO ASSIGN THE MARBLEHEAD COASTAL MAINTENANCE AGREEMENT 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 Marblehead Coastal Maintenance Agreement 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. Separate reports have been provided to the City Council for approval of an agreement to assign development obligations and the Community Facilities District Acquisition Agreement from LV Marblehead LLC to Marblehead Development Partners LLC. Similarly, a maintenance agreement approved in May 2006 must also be assigned to Marblehead Development Partners LLC. The maintenance agreement specifies the developer's obligations to maintain designated areas and features (e.g. storm drains, water quality features, parkway landscaping etc.) and to provide annual contributions to the City for costs associated with maintenance of street lights and the Avenida Vista Hermosa bridge. Upon completion of the residential development these obligations transfer to the residential homeowner's association. Obligations attributed to the commercial development have already been assigned to Villa San Clemente LLC via a separate May 2006 assignment agreement. The attached agreement provides for the assignment of the maintenance agreement (residential development obligations), consistent with Sections 13.4 and 13.9 of the May 3, 2006 Marblehead Coastal Maintenance Agreement.

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

<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).

**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 Marblehead Coastal Maintenance Agreement (residential obligations) from LV Marblehead LLC to Marblehead Development Partners LLC.

**Attachment:** Proposed agreement.

**Notification:** None.

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THIS DOCUMENT WAS PREPARED BY,  
AND AFTER RECORDING RETURN TO:

Taylor Morrison  
4900 N. Scottsdale Road, Suite 2000  
Scottsdale, AZ 85251  
Attention: General Counsel

(Space Above For Recorder's Use)

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 of the State of California ("**City**"), and SunCal Marblehead, LLC, a Delaware limited liability company, as legal predecessor-in-interest to Assignor ("**SunCal**"), entered into that certain Marblehead Coastal Maintenance Agreement dated May 3, 2006 (the "**Agreement**"), and recorded May 4, 2006, as Instrument No. 2006000302381 in the Official Records of Orange County, California (the "**Official Records**"), 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 on **Exhibit A** hereto and incorporated herein by this reference.

B. Pursuant to that certain Assignment and Assumption Agreement dated May 10, 2006 and recorded on May 11, 2006 as Instrument No. 2006000318332, SunCal assigned to Villa San Clemente, LLC, a California limited liability company certain "Plaza San Clemente Obligations" pursuant to Section 11.2 of the Agreement.

C. Assignor is conveying title to the Property to Assignee, which comprises the "Marblehead Residential Project" as defined in the Agreement, and, in connection therewith, Assignor desires to assign and transfer to Assignee all of Assignor's right, title and interest as the "Subdivider" under the Agreement with respect to the Property, other than the Plaza San Clemente Obligations (the "**Assigned Interest**"), subject to all of the terms, conditions and restrictions set forth in the Agreement.

D. In accordance with Section 13.9 of the Agreement, Assignor has requested that City consent to the assignment and transfer of the Assigned Interest to Assignee.

E. Section 13.9 of the Agreement permits an Assignment of the Assigned Interest pursuant to the terms thereof with the consent of the City. Pursuant to the terms and conditions of Section 13.9 of the Agreement, the 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 the Assigned Interest, subject to the terms, covenants and restrictions set forth in the Agreement, and (ii) Assignee hereby accepts the assignment and transfer of the Assigned Interest and shall be entitled to all rights and benefits accruing to the Subdivider under the Agreement with respect to the Property.

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

3. Assignee agrees to assume, fulfill, perform and discharge all of the obligations, liabilities, covenants, duties and agreements of Assignor as the Subdivider under the Agreement with respect to the Assigned Interest.

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. 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.

6. 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.

7. 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.

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

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

10. 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.

11. 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: \_\_\_\_\_

STATE OF CALIFORNIA )

)

COUNTY OF )

On \_\_\_\_\_ before me, \_\_\_\_\_,

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(This area for notary stamp)



STATE OF CALIFORNIA )

COUNTY OF )

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(This area for notary stamp)

## **EXHIBIT A**

### **Property Description**

The land referred to herein below is situated in the City of San Clemente, County of Orange, State of California, and is described as follows:

LOTS 1 THROUGH 313, INCLUSIVE AND LETTERED LOTS A THROUGH Z, INCLUSIVE, AA THROUGH MM, INCLUSIVE, QQ THROUGH ZZ, INCLUSIVE AND AAA THROUGH HHH, INCLUSIVE OF TRACT NO. 8817 IN THE CITY OF SAN CLEMENTE, COUNTY OF ORANGE, STATE OF CALIFORNIA, ON FILE IN BOOK 880, PAGES 1 THROUGH 31, INCLUSIVE OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE ORANGE COUNTY RECORDER AND BY THAT CERTAIN INSTRUMENT ENTITLED "TRACT MAP CERTIFICATE OF CORRECTION" RECORDED SEPTEMBER 17, 2007 AS INSTRUMENT NO. 2007000566934 OF OFFICIAL RECORDS.

EXCEPT THEREFROM ALL UNDERGROUND WATER AND WATER RIGHTS, IF ANY, BUT WITHOUT THE RIGHT OF SURFACE ENTRY, AS DEDICATED TO THE CITY OF SAN CLEMENTE PER RECITALS ON THE MAP OF TRACT 8817.

APN'S: 691-421-01, 02, 03, 04; 691-422-16; 691-423-01 THROUGH 66; 691-424-01 THROUGH 81; 691-431-01 THROUGH 10, 12 THROUGH 15; 691-434-01 THROUGH 66; 691-435-01 THROUGH 52; 691-436-01 THROUGH 34 AND 691-437-01 THROUGH 56.