

PIPPIN PHASE II MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING is entered into this _____ day of _____, 2021, by and between the County of Santa Cruz, a political subdivision of the State of California ("County"), the City of Watsonville, a municipal corporation ("City"), and MP Berry Farms Associates, L.P., a corporation ("MP Berry Farms"), together sometimes referred to as the "Parties."

RECITALS

WHEREAS, on or about June 12, 2007, the City and County entered into a Memorandum of Understanding, hereinafter referred to as "2007 MOU", to jointly oversee planning and environmental review of certain properties (hereinafter referred to as "Atkinson Lane Project") primarily located in the unincorporated area of the County, but also in the Future Growth Area B under the City's Measure U¹; and

WHEREAS, as a result of that effort, an Environmental Impact Report (EIR), Planned Unit Development (PUD), and Specific Plan were prepared to address the scope of the then-proposed project of approximately 450 residential units, including identification of impacts and mitigation measures, as well as requirements for impact fees to be paid to the County and City, and a municipal services mitigation payment to be made to City by any developers of affordable rental projects; and

WHEREAS, on June 9, 2009, the final EIR was certified by the County, in conjunction with County approval of a General Plan Amendment, Rezoning, and PUD for a portion of the Atkinson Lane Project. While a draft Specific Plan had been prepared for the City's consideration, it was not acted upon by the City; and

WHEREAS, on July 8, 2009, the Santa Cruz County Farm Bureau, a corporation ("Farm Bureau"), filed a petition for a Writ of Mandate against the County, City and others with regard to certification of the 2009 EIR. As a result of this litigation, a Settlement Agreement was reached in 2011 between the Farm Bureau (2011 Settlement Agreement), the County, and the City; and both the City and County agreed that the 2009 EIR would not be used in connection with any action or proposal to develop or annex any, all, or portions of the Specific Plan Area not included within the County Entitlements, and the City agreed that nothing in the County Approvals includes approval of the Specific Plan or the EIR covering the Specific Plan area; and

WHEREAS, the 2011 Settlement Agreement does allow the City to rely upon the 2009 EIR and to approve development of two parcels currently located within the City, as they are intended to be incorporated into project(s) authorized by the County Entitlements; and

¹ An initiative approved by City voters to govern future development in various parts of the City

WHEREAS, as a result of the 2011 Settlement Agreement, the City and the County are allowed to rely upon the certified 2009 EIR and to approve developments within the County Entitlements Area as defined in the 2011 Settlement Agreement, which consists of the following four Assessor's Parcel Numbers (APNs): and

COUNTY ENTITLEMENTS AREA (<i>within existing City of Watsonville Sphere of Influence</i>)		
APN	Situs Address	Descriptor
019-236-01	78 Atkinson Lane	MP Berry Farms Housing parcel within City
048-221-09	no site address	MP Berry Farms parcel outside City within unincorporated County
019-226-42	56 Atkinson Lane	MP Berry Farms Housing parcel within City
048-211-25	56 Atkinson Lane	MP Berry Farms Housing parcel within County

WHEREAS, as result of the 2011 Settlement Agreement, the County replaced the 2009 PUD Ordinance 5048 passed and adopted on June 9, 2009 with the 2014 PUD Ordinance 5183 passed and adopted on May 20, 2014 approving development standards and developments within the County Entitlement Area as defined in the 2011 Settlement Agreement; and

WHEREAS, MP Berry Farms has, with the benefit of two separate loans from the County of Santa Cruz, acquired APN 048-211-25 and APN 048-221-09 within the County's jurisdiction, and MP Berry Farms has purchased with its own funds APN 019-226-42 and APN 019-236-01 within the City's jurisdiction, the four parcels which comprise the County Entitlements Area; and

WHEREAS, the 2011 Settlement Agreement allows the County Entitlements Area to be considered for development approval; and

WHEREAS, MP Berry Farms has already developed a stand-alone 46-unit project, in accordance with the terms and conditions of the 2014 Atkinson Lane Memorandum of Understanding (Atkinson Lane MOU), consisting of 26 units on APNs 048-211-25 and 20 units on 019-226-42, known as "Pippin Orchards Apartments" (Phase1a); and

WHEREAS, MP Berry Farms now proposes to develop an 80-unit apartment project within a portion of the County Entitlements Area on APN 048-221-09 and a temporary Emergency Vehicle Access (EVA) on APN 019-236-01, which project will be known as "Pippin Phase II" (Phase 1b). The remainder undevelopable portion within the County Entitlement Area on APN 048-221-09 is subject to a 200-foot agricultural buffer as required by the 2014 PUD Ord. 5183 and will remain vacant for future development of a

94-unit project referred to as (Phase 1c/remainder) until the agricultural lands adjacent to APN 048-221-09 are no longer used for agricultural purposes; and

WHEREAS, in April 2014, the County as CEQA Lead Agency prepared and certified an Addendum to the EIR (2014 EIR Addendum) to reflect the terms of the 2011 Settlement Agreement and to update and allocate the mitigation measures to earlier development known as Pippin Orchards Apartments (Phase 1a) and to the remainder of the County Entitlement Area; and

WHEREAS, the County expects to rely on the 2009 EIR, the 2014 EIR Addendum, the 2014 PUD Ord. 5183 for actions on the proposed Pippin Phase II (Phase 1b) project and future development of Phase 1c/remainder within the County Entitlements Area; and

WHEREAS, because the proposed Pippin Phase II project includes one parcel in the City (APN 019-236-01) and one outside the City in the County (APN 048-221-09); and

WHEREAS, parcel 048-221-09 is expected to be annexed by the City in the future, and

THEREFORE, there is a need to address 1) the infrastructure design requirements, 2) ownership of infrastructure improvements, 3) how building plan checks and inspections will occur, and 4) how payment of impact fees will be made for the Pippin Phase II (Phase 1b) project in the County Entitlements Area,

UNDERSTANDING

NOW, THEREFORE, in consideration of the mutual promises of the 2007 MOU, the terms of the 2011 Settlement Agreement, the 2009 EIR and 2014 Addendum to the EIR, the Atkinson Lane MOU, the 2014 PUD Ord. 5183, and the considerations contained herein, the Parties agree to the following:

1. Ownership of Infrastructure Improvements

- a. The City, County and MP Berry Farms agree that the City will provide the following services for the life of the Pippin Phase II (Phase 1b) project and future development – Phase 1c/reminder; and the City and County agree to support applications as necessary to the Local Agency Formation Commission (LAFCO) for extra-territorial services to the Pippin II project:
 - i. Fire
 - ii. Police
 - iii. Water
 - iv. Solid Waste
 - v. Sanitary Sewer

- b. Parties agree that public vehicular access to the Pippin Phase II (Phase 1b) project and future development (Phase 1c/remainder) on APN 048-221-09 shall be provided via a dedicated northerly Brewington Avenue extension from the 48.1' wide Brewington Avenue public street to and including the intersection of said Brewington Avenue extension and the interior road to the southeast of the common area parklet and Building C of the Pippin Phase (II) (Phase 1b). Said Brewington Avenue extension shall be a distance of approximately 680 feet with a centerline-crowned collector street with 12' travel lanes (one in each direction) and 4' bike lanes between the travel lane and parallel parking, 8' parallel parking stalls, City standard curb & gutter, and 5.5' sidewalks on both sides. However, Parties agree that the bike lane, 8' parallel parking stalls, City standard curb & gutter, and 5.5' sidewalk on the easterly side will not be developed as part of Pippin Phase II (Phase 1b) but will be developed as part of the future Phase 1c. The remaining southern leg of the Pippin Phase II (Phase 1b) development will consist of a paved 28' wide road, internal roads, bike lanes, sidewalks, parking stalls, and a paved 20' wide temporary emergency vehicle access (EVA) road on APN 019-236-01 connecting to Atkinson Lane to the northwest, which shall all be private.
- c. Stormwater control measures (SCMs), stormwater treatment and detention facilities installed within the public streets shall be maintained by the owner of Pippin Phase II (Phase 1b) and implemented by a "Stormwater Maintenance Contract" (SMC) for the benefit of and in favor of and enforceable by the City which shall be approved by the City Attorney and recorded. The SMC shall require the owner of Pippin Phase II (Phase 1b) to maintain, repair and improve the SCMs, stormwater treatment and detention facilities to meet or exceed County, State or federal statutes or regulations and to defend and indemnify the City for failure to do. Said defense and indemnity obligations include, but are not limited to City streets and the nearby slough(s). Said SMC shall also include a hold harmless in favor of the City.
- d. Landscaping planted within the public street right-of-way shall be watered and maintained by MP Berry Farms via a Landscape Maintenance Agreement with the City. Said agreement shall be recorded and run with the land in favor of the City and shall be approved by the City in its reasonable discretion.

- e. All utilities within the Brewington Avenue extension shall be public and those outside the public street shall be private, except for those within Public Utility Easements (PUE's) shown on the Pippin Phase II (Phase 1b) project plans to accommodate underground electrical, gas, telephone and communications services provided by the respective public utility purveyors.
- f. MP Berry Farms shall prepare a map or site plan depicting the development parcel, agricultural buffer zone, and the Brewington Avenue dedication up to the southern leg of the Pippin Phase II (Phase 1b) development and public & private easements and as required by the City's Municipal Code. Said easements shall include the PUE's and "20' Wide temporary EVA".
- g. MP Berry Farms shall work with the City Parks and Recreation Director to program the usable open space on APN: 019-236-01. This may include passive open space, a community garden, or small play area. The future use of the usable open space is separate from the temporary EVA allowed in the PUD in this parcel. Parties agree that any future use besides the temporary EVA should be reviewed and approved separately from the currently proposed Pippin Phase II (Phase 1b) and subject to any City required environmental review, zoning requirements, and planning/permitting requirements.

2. Infrastructure Design Requirements

- a. Parties agree that all infrastructure (streets, street lighting, trash enclosures, landscaping, irrigation, fire and domestic water, sanitary sewer, and storm drainage) shall be designed to comply with the City's Municipal Code and adopted design standard details and specifications.
- b. Project improvement plans and specifications, Stormwater Control Plan (SWCP)/Post-Construction Requirements (PCR), and a soils engineering report, shall be prepared in accordance with the City's Municipal Code.
- c. City Source Control will only approve the sewer drains in the trash enclosures if they are covered and bermed to prevent stormwater from entering the enclosures. Storage of hazardous waste or liquids is prohibited in the trash enclosure.
- d. Stormwater discharges to the project's wetlands will need to fulfill state and federal requirements Stormwater plans and calculations are required to show that there will be no adverse impact on the City's downstream storm drainage system. A statement will be needed in the SWCP for a claim of technical infeasibility that explains how compliance will be met.

3. Building Permit Process

- a. Engineering plan check shall be approved by City and County. Parties agree that for consistency, engineering plan check shall be coordinated between the City and County, with a single point of contact, to be determined for corrections and comments between the County, City, and MP Berry Farms. Engineering plan check, processing and inspection fees shall be paid to the County based on the current fee schedule, and plan check and inspection fees shall be paid at an hourly rate for the City.
- b. The City shall plan check the designs and inspect the construction of all infrastructure (streets, street lighting, trash enclosures, landscaping, irrigation, fire and domestic water, sanitary sewer, and storm drainage) designed to comply with the City's Municipal Code and adopted design standard details and specifications.
- c. Parties agree that the County shall be the jurisdiction to process building permits, including plan check, fire plan check, required inspections, and approval of occupancy of the buildings;
- d. Parties agree that the level of building plan check, processing and inspection fees paid to the County for all 80 units shall be as adopted by the County of Santa Cruz, except as provided by 3a above with regard to engineering fees.

4. Impact Fees

- a. City and County agree to use the impact fee structures of each jurisdiction that are in effect at the time of building permit issuance. Impact fees shall be paid prior to issuance of building permits. MP Berry Farms agrees to pay, in the context of approval, such impact fees to the appropriate jurisdiction as outlined below, and the County agrees not to conduct a final inspection of any portion of the project until such time that payment of all impact fees to City and County have been verified in writing.
- b. Zone 7A fees shall be paid to the County of Santa Cruz for the net increase of impervious area associated with the project based on the Unified Fee Schedule rates in place at the time of the project approval. Semi impervious surfaces are assessed at half the impervious area rates.
- c. County may collect County Childcare Impact fees.
- d. County may collect and distribute Park and Recreation Impact fee. County Park and Recreation Impact fee shall be designated to be used to improve South County Parks.

- e. The City, County, and MP Berry Farms agree that the following City impact fees shall be collected and distributed to the City for the Pippin Phase II (Phase 1b) project due to the location of the project, which is adjacent to City, may be annexed to City, and relates to City infrastructure:
 - i. Sanitary Sewer/Waste Water Connection Fee
 - ii. Water Facilities Service Fee
 - iii. Groundwater Impact Fee
 - iv. Storm Drainage Fee
 - v. Impervious Area Impact Fee
 - vi. Public Facilities Fee
 - vii. Fire Facilities Impact Fee
 - viii. Underground Utility In-Lieu Fee
 - ix. Parks and Recreation Fee

- f. City and County agree that MP Berry Farms will pay the City Streets & Signals and Traffic Impact Fees to the City for the Pippin Phase II (Phase 1b) project and the County Transportation Impact Fee and Roadside Improvement Impact Fee to the County. Further, the City and County agree that in order to ensure that adequate funding is provided to meet fair share allocations and is available for Watsonville to implement certain traffic mitigations, and to ensure that appropriate project-level requirements are made for the Pippin II Phase II (Phase 1b) project and Future Phase 1c, the County will:
 - i. Pay a portion of its transportation impact fees to the City, at a rate of \$130 per unit so the project contributes its fair share to the costs of improvements to mitigate project impacts (in addition to the \$664 per unit below to address the cumulative impact); and to provide \$20,000 in funding to assist with costs of City coordination with Caltrans and the County on two improvement projects involving Highway 1 ramps, for which the County will cover the fair share contributions of the project through the County's transportation impact fees;
 - ii. Pay a portion of its transportation impact fees to the City, at a rate of \$664 per unit so the Pippin Phase II (Phase 1b) project contributes one-half of the cost of EIR MM 4-1, a traffic signal at the East Lake Avenue/Wagner Avenue intersection to be installed in the future by the City, which is an improvement identified to mitigate a cumulative impact;

- iii. The County shall impose a condition of approval on the proposed Pippin Phase II (Phase 1b) project that requires the implementation of MM 3.13-12b and MM 3.13-11a prior to project occupancy, by either providing payment of that amount directly to the City of Watsonville or by developing and implementing a traffic calming plan on Brewington Avenue north of Crestview Drive and the installation of the southbound left-turn pocket from Freedom Boulevard to Crestview Drive to lengthen the pocket by at least 25 feet; and that this requirement is in addition to and not credited to impact fees, but which may involve a reimbursement agreement whereby MP Berry Farms may be reimbursed a portion of the cost by other future developers of projects on Phase 1c/Remainder;
 - iv. The County shall dedicate transportation and roadside impact fees that it receives from Pippin Phase II (Phase 1b) project to the cost of improvements to the East Lake (Hwy 152) / Holohan intersection; with the exception of the above-described \$130 and \$664 per unit amounts that will be provided to the City by the County from its transportation impact fees collected; and with the exception of the fair share amounts as identified in MM 3.13-6 (Hwy 1 Ramps/Harkins Slough Road) and MM 3.13-8 (Highway 1/Larkin Valley/Airport Blvd NB Ramps/Intersection), which the County must retain in order to meet the fair share contributions of projects within the County Entitlements Area to those identified improvement projects.
 - g. Parties agree that the Pippin Phase II (Phase 1b) project will comply with the "Modifications to the Approvals" in the 2011 Settlement Agreement between the Farm Bureau, the County, and the City.
5. This Pippin Phase II (Phase 1b) MOU is not a contract and is not legally binding or enforceable, imposes no enforceable obligations upon the Parties and does not grant any rights. However, the Parties shall utilize this Pippin Phase II (Phase 1b) MOU as the framework for future course of conduct, practices, agreement or agreements. The parties understand and acknowledge that any enforceable legal obligations shall be only upon approval by the Board of Supervisors, City Council and the MP Berry Farms Board of Directors or designated Officers.
6. This Pippin Phase II (Phase 1b) MOU may not be altered, amended, or modified, except in a written document that is executed by duly authorized representatives of the City, County, and MP Berry Farms.

7. This Pippin Phase II (Phase 1b) MOU is intended to bind the parties conduct for five years but may be renewed by mutual agreement.

8. Each Party shall have the right to terminate this Pippin Phase II (Phase 1b) MOU by giving three months' written notice in writing to the other Parties at any time. If the Pippin Phase II (Phase 1b) MOU is terminated by either Party, such Party shall take steps so that the termination does not affect any prior obligation, project or activity already in progress.

9. IN WITNESS WHEREOF the undersigned, duly appointed representatives of the Parties respectively, have on behalf of the Parties signed this Pippin Phase II (Phase 1b) MOU. The Parties agree to the provisions of this Pippin Phase II (Phase 1b) MOU by having their authorized representatives sign below:

City of Watsonville, by

County of Santa Cruz, by

Matt Huffaker
Watsonville City Manager

Carlos J. Palacios
County Administrator

Date signed: _____

Date signed: _____

Approved as to Form
Alan J. Smith, City Attorney

Approved as to Form
Jason M. Heath, County Counsel

Date signed: _____

Date signed: _____

MP Berry Farms Associates, L.P.,
by

Jan M. Lindenthal
Assistant Secretary

Date signed: _____

Attachments:

- 1) Modifications to the Approvals, 2011 Settlement Agreement