

Recording Requested By:

FRANK DE MARCO, JR.
707 Wilshire Boulevard
Suite 5590
Los Angeles, California 90017

When Recorded Mail to:

FRANK DE MARCO, JR.
707 Wilshire Boulevard
Suite 5590
Los Angeles, California 90017

OPTION TO PURCHASE FEE TITLE TO REAL PROPERTY

THIS OPTION AGREEMENT is made and entered into at Benicia, California, on SEPTEMBER 13, 1984, by and between THE CITY OF BENICIA ("City") and SOUTHERN CALIFORNIA SAVINGS AND LOAN ASSOCIATION, herein sometimes referred to as ("Developer") and OLD CAPITOL MARINA, LTD., a partnership ("OCM") and is made with reference to the following recitals of fact:

RECITALS

A. Pursuant to a written Lease ("Lease") dated June 10, 1982, City leased to OCM that certain parcel or parcels of land or water, consisting of a total of 1,625,833 sq. ft. and situated in the Benicia Marina in the City of Benicia, County of Solano, State of California, as more particularly described in that certain Short Form Memorandum of Ground Lease dated August 31, 1982, recorded December 29, 1982, in Book 1982, Page 86089, Series 48731, Official Records of Solano County Recorder and by reference incorporated herein as though fully set forth ("Subject Property").

B. Pursuant to a written Sublease Agreement dated June 10, 1982, OCM as "Sublessor" sublet the Subject Property to Southern California Savings and Loan Association ("Developer") as "Sublessee" for a term commencing June 10, 1982, and ending on June 9, 2042, unless sooner terminated in accordance with the terms of such Sublease.

C. Developer as such Sublessee currently is in possession of Subject Property and is developing the Subject

Property in phases into certain condominium residential units, a marina and boatyard area, and commercial areas, all as more particularly described in the Lease. Pursuant to the terms of the Sublease, Developer has agreed to fully and faithfully perform all the obligations of OCM as Lessee under the Lease.

D. Pursuant to a Condominium Plan heretofore prepared by Developer and filed with the Department of Real Estate of the State of California, Developer proposes, upon receipt of proper authority therefore from DRE to sell condominium units to be constructed on the Subject Property to the general public.

E. In connection with the sale of a condominium unit as so described in the Condominium Plan, the Developer proposes to sublease to the purchaser of such condominium unit an undivided portion of the Subject Property and the common areas as defined in the Condominium Plan for a term co-existing with the terms of Developer's sublease with OCM.

F. Pursuant to the terms of the Lease, upon expiration of the term thereof, all rights, title and interest in and to the improvements to be constructed on the Subject Property by Developer, including, specifically, the land beneath the condominium units, and all other improvements on the Subject Property, shall revert to and become the property of City.

G. City and Developer acknowledge that it may be in the best interests of the City and Developer and the ultimate purchasers of the condominium units that at some time in the future Developer be able to convey to the condominium unit purchasers a fee interest in and to all of the undivided portions of the Subject Property upon which the condominium units are constructed.

H. In order to assist in the financing of the development of the Benicia Marina, City has borrowed certain

funds from the California Department of Boating and Waterways ("Cal Boating") all as more particularly described in that certain loan Agreement dated July 12, 1976, between City and Cal Boating, ("Loan Agreement").

I. Pursuant to the provisions of California Government Code Section 37350, 37420 and 37351, City has authority to convey fee title to the Subject Property for a fair and reasonable consideration to City.

J. Developer is willing to pay to City a fair and reasonable consideration at this time for an option to purchase from City the fee title to the land beneath each phase of the condominium units for the benefit of the condominium unit owners.

NOW, THEREFORE, in consideration of the foregoing recitals, and for other good and valuable consideration, receipt of which is hereby acknowledged by the parties, the parties hereto hereby agree as follows:

1. City does hereby grant, bargain and sell to Developer without warranty of any kind, or its successors-in-interest or assigns, or to those persons as may hereafter be designated by Developer, the sole and exclusive right and option to purchase all the right, title and interest of City in and to those portions of the Subject Property constituting the land beneath the condominium residential units and common areas of Phase I as referred to in the Lease, described in the Condominium Development Plan hereinafter referred to as the "Condominium Residential Property Phase I", and as more particularly described in Exhibit "A" attached hereto.

2. For and in consideration of the City's grant of said Option to Purchase the Condominium Residential Property Phase I, Developer hereby covenants and agrees to pay to City the sum of Four Thousand Five Hundred Dollars (\$4,500) at close of each escrow at the time of the initial sale by Developer of each condominium residential housing

unit constructed within the Condominium Residential Property Phase I. Provided that, on the date five (5) years after the date of this agreement, Developer shall pay City a sum equal to \$4,500 multiplied by the number of units planned for construction in the Condominium Residential Property Phase I but which have not closed escrow for their initial sale; and upon making said payment, Developer shall have satisfied its obligations under this paragraph 2 with respect to the Condominium Residential Property Phase I units.

3. The consideration to be paid by Developer to City shall be in addition to, and is not a part of, any sums payable or required to be paid by the Lessee pursuant to the terms of the Lease in conjunction with the sale of condominium units as more particularly described in Section 56 of the Lease.

4. The covenant and agreement of Developer to pay the sums herein referred to in consideration of the grant by City of this Option to purchase title to the Condominium Residential Property Phase I as aforesaid is, and shall be deemed to be, separate and distinct from any payments required to be paid pursuant to Section 56 of the Lease or any other term or provision of the Lease and are not to be, and shall not be construed as, "rent" to City as described in the Lease.

5. This Option to Purchase shall be exercised, if at all, by Developer or its successors-in-interest or assigns, or those persons as may hereinafter be designated by Developer, only during the "Option Exercise Period" as defined hereinafter.

(a) The "Option Exercise Period" shall commence on the "Operative Date" as defined hereinafter and shall end on June 30, 2029.

(b) The Operative Date as used herein shall be deemed to mean that date upon which City shall pay to Cal

Boating all of the principal and interest due Cal Boating from City according to the terms of the Loan Agreement as specifically set forth in the Schedules attached to the Loan Agreement, reference to which is hereby made and which are incorporated herein by reference. In no event shall such Operative Date be later than December 31 in the year 2028. In the event that all such principal and interest has not been paid by City to Cal Boating by December 31 in the year 2028, then, in that event, said date, shall nevertheless be deemed to be the Operative Date.

(c) If, during the Option Exercise Period, this Option to Purchase is exercised by the person or persons then entitled to so exercise it, then upon such exercise, City shall be obligated to convey the title to the Condominium Residential Property Phase I to Developer or its nominees as aforesaid, forthwith. The form of such conveyance shall be by Grant Deed in form approved by the California Department of Real Estate. On the date of such conveyance of title ("Conveyance Date") the condition of the title to the property being conveyed shall be in the same condition as exists as of the date of the granting of this option, and in connection therewith, City shall not suffer any monetary lien or encumbrance to be placed upon the Condominium Residential Property Phase I, which would in any way defeat or diminish the title of Optionee or its successors-in-interest or assigns.

(d) This Option to Purchase, if exercised, shall be exercised by a Notice in writing from the person exercising such option stating such Optionee's election to so exercise this Option to Purchase, which Notice shall be delivered in accordance with the Notice provisions hereinafter contained in Paragraph 11.

(f) No further consideration shall be due or payable to City upon exercise of this Option to Purchase, nor upon the Conveyance Date, and it shall be deemed that

the consideration moving from Developer to City hereunder shall be deemed full and sufficient consideration for the conveyance of the Condominium Residential Property Phase I on the Conveyance Date.

(g) If this Option to Purchase is not exercised during the Option Exercise Period, then this Option shall lapse and become void, and shall be of no further force or effect whatsoever.

6. Provided that City has repaid to Cal Boating all principal and interest due Cal Boating under the Loan Agreement, then upon conveyance of the Condominium Residential Property Phase I to Developer or its assigns as aforesaid, the Guaranteed annual Rent, as defined in the Lease, in effect on the date of the conveyance of title ("Conveyance Date") shall be deemed reduced on a prorata basis which shall be determined by multiplying the aforesaid Guaranteed Annual Rent by a fraction, the numerator of which shall be the number of acres within the Subject Property contained within the Condominium residential Property Phase I, and the denominator of which shall be the total acreage contained within the Subject Property. In the event all such principal and interest has not been paid by City to Cal Boating by the Conveyance Date, there shall be no such reduction in the Guaranteed Annual Rent, until such time as all such principal and interest has been paid by City to Cal Boating, whereupon, as of the date of such last payment, the Guaranteed Annual Rent, as defined in the Lease, shall be reduced as hereinabove set forth.

7. The Deed of Conveyance to be executed by City pursuant to exercise of this Option to Purchase shall contain a restriction providing for a reversion of the land so conveyed to City if the same is not used for residential purposes.

8. Developer shall convey the Condominium Residential Property Phase I, at no enhanced value, to owners of the

Phase I units on the Conveyance Date all as required by the California Department of Real Estate.

9. Without being legally bound to do so, City will consider granting to Developer or its successors-in-interest or assigns, or to those persons as may hereafter be designated by Developer, a further Option or Options to purchase, all of the right, title and interest of City in and to those portions of the Subject Property constituting the land beneath the condominium residential units and common areas, Phase II, III and IV, referred to in the Lease, and as more particularly described in the Condominium Developmental Plan (the "Condominium Residential Property Phases II, III and IV"). Developer or OCM shall make request of City for such Option to Purchase the Condominium Residential Property Phases, II, III and IV at the tentative map stage for each such phase.

10. The transfer of the land beneath the condominium units shall not alter the BCDC requirements for the Benicia Marina.

11. Any notice, instruction or other communication to be given hereunder by either party to the other shall be in writing and delivered personally or by registered mail, postage prepaid as follows:

If to City:

City of Benicia
250 East L Street
Benicia, California 94510

If to Developer:

Southern California Savings and Loan Association
9100 Wilshire Boulevard
Beverly Hills, California 90212

A copy of any such notice shall be also served, in the manner herein set forth, upon OCM as follows:

Old Capitol Marina Limited
611 Veterans Boulevard
Redwood City, California 94063

Any notice, instruction or other communication will be effective on actual delivery except that if such notice,

instruction or other communication is sent by registered mail, it shall be deemed delivered forty-eight (48) hours after posting.

Either party may effectively change the above indicated address or written notice thereof to the other.

12. This Agreement and the obligations of the parties hereunder shall be binding upon and shall inure to the benefit of the successors, assigns, and legal representatives of the respective parties, whether by operation of law or otherwise, and shall be deemed covenants, running with the Subject Property.

13. This Agreement shall be construed under the laws of the State of California.

14. If the Sublease between OCM and Developer terminates, the then owner of the leasehold estate created under the Lease shall succeed to the rights of Developer hereunder.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day, month and year first above written.

CITY OF BENICIA

BY

MAYOR

CITY CLERK

BY

SOUTHERN CALIFORNIA SAVINGS AND LOAN ASSOCIATION

BY

PRESIDENT

OLD CAPITOL MARINA, LTD.,
A Partnership

BY

PARTNER

APPROVED AS TO FORM:

CITY ATTORNEY

RESOLUTION NO. 83-67

RESOLUTION APPROVING AGREEMENT TO CONVEY
CERTAIN PORTIONS OF THE BENICIA MARINA PROPERTY

WHEREAS, pursuant to a written Lease ("Lease") dated June 10, 1982, City leased to Old Capital Marina, Ltd., a partnership ("OCM") that certain parcel or parcels of land or water, consisting of a total of 1,625,833 sq. ft. and situated in the Benicia Marina in the City of Benicia, County of Solano, State of California, as more particularly described in Exhibit "A" attached hereto and by reference incorporated herein as though fully set forth ("Subject Property"), and

WHEREAS, pursuant to a written Sublease Agreement dated June 10, 1982, OCM as "Sublessor" sublet the Subject Property to Southern California Savings and Loan Association ("Developer") as "Sublessee" for a term commencing June 10, 1982 and ending on June 9, 2042, unless sooner terminated in accordance with the terms of such Sublease, and

WHEREAS, Developer as such Sublessee currently is in possession of Subject Property and is developing the Subject Property in phases into certain condominium residential units, a marina and boatyard area, and commercial areas, all as more particularly described in the Lease, and pursuant to the terms of the Sublease, has agreed to full and faithfully perform all the obligations of OCM as Lessee under the Lease, and

WHEREAS, pursuant to a Condominium Plan heretofore prepared by Developer and filed with the Department of Real Estate of the State of California, Developer proposes, upon receipt of proper authority therefore from DRE to sell

condominium units to be constructed on the Subject Property to the general public, and

WHEREAS, in connection with the sale of a condominium unit as so described in the Condominium Plan, the Developer proposes to sublease to the purchaser of such condominium unit an undivided portion of the Subject Property and the common areas as defined in the Condominium Plan for a term co-existing with the term of Developer's sublease with OCM, and

WHEREAS, pursuant to the terms of the Lease, upon expiration of the term thereof, all rights, title and interest in and to the improvements to be constructed on the Subject Property by Developer, including, specifically, the condominium units, and all other improvements on the Subject Property, shall revert to and become the property of the City, and

WHEREAS, City and Developer acknowledge that it is in the best interests of City and Developer and the ultimate purchasers of the condominium units that at some time in the future Developer be able to convey to the condominium unit purchasers, as a whole, a fee interest in and to all of the undivided portions of the Subject Property upon which the condominium units are constructed, and

WHEREAS, in order to assist in the financing of the development of the Benicia Marina, City has borrowed certain funds from the California Department of Navigation and Ocean Development ("Cal Boating") all as more particularly described in that certain Loan Agreement dated July 12, 1976, between City and Cal Boating, ("Loan Agreement"), and

WHEREAS, pursuant to the provisions of California Government Code Sections 37350, 37420 and 37351, City has authority to convey fee title to the Subject Property for

a fair and adequate consideration to City, and

WHEREAS, Developer is willing to pay to City a fair and reasonable consideration at this time for the promise of City to convey fee title to the Subject Property to the Developer or to the condominium unit owners, as directed by Developer, in consideration of the payment at this time by Developer to City of a reasonable and fair value of the Subject Property.

NOW, THEREFORE;

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF BENICIA, AS FOLLOWS:

1. That City enter into an agreement with Southern California Savings & Loan Association ("Developer") pursuant to the terms of which City shall, on the "Operative Date", as that term is hereinafter defined, grant, bargain, sell and quitclaim to Southern California Savings & Loan Association, or its successors-in-interest or assigns, or to those persons as may hereafter be designated by Southern California Savings & Loan Association, all of the right, title and interest of City in and to those portions of the Subject Property constituting the land beneath the condominium residential units and common areas referred to in the Lease, and as more particularly described in the Condominium Development Plan (the "Condominium Residential Property").

2. For and in consideration of City's covenant and agreement to convey the Condominium Residential Property as aforesaid, Developer shall covenant and agree to pay to City the sum of of Four Thousand Five Hundred Dollars (\$4,500.00) at close of each escrow at the time of the initial sale by Developer of each condominium residential housing unit constructed within the Condominium Residential Property.

3. Consideration to be paid by Developer to City shall be in addition to, and is not a part of, any sums payable or required to be paid by the Lessee pursuant to the terms of the Lease in conjunction with the sale of condominium units as more particularly described in Section 56 of the lease.

4. The covenant and agreement of Developer to pay the sums herein referred to in consideration of the agreement of City to convey title to the Condominium Residential Property as aforesaid is, and shall be deemed to be, separate and distinct from any payments required to be paid pursuant to Section 56 of the Lease or any other term or provision of the Lease and are not to be, and shall not be construed as, "rent" to City as described in the Lease.

5. The "Operative Date" as used herein shall be deemed to mean that date upon which City shall have paid to Cal Boating all of the principal and interest due Cal Boating from City according to the terms of the Loan Agreement as specifically set forth in the Schedules attached to the Loan Agreement, reference to which is hereby made, and which are hereby incorporated herein by reference; provided, however, in no event shall such Operative Date be later than December 31 in the year 2022, and in the event all such principal and interest has not been repaid by City by said later date, City shall nevertheless convey the Condominium Residential Property to Developer or its nominees, as aforesaid, upon payment to Cal Boating, by way of advanced rent, the then outstanding balance due under the City loan to Cal Boating.

6. Upon conveyance of the Condominium Residential Property to Developer or its assigns as aforesaid, the Guaranteed Annual Rent, as defined in the Lease, then in effect as of the Operative Date shall be deemed reduced on a prorata basis which shall be determined by multiplying the aforesaid Guaranteed Annual Rent by a fraction, the numerator of which shall be the number of acres within the Subject Property contained within the Condominium Residential Property and the denominator of which shall be the total acreage contained within the Subject Property.

RESOLVED FURTHER, that the City Attorney of Benicia and Attorney for the Developer shall forthwith prepare for review and execution by the City and the Developer a formal Agreement embodying the provisions of these resolutions and such other terms and provisions as shall be reasonable or necessary to carry out the spirit, purpose and intent of these resolutions and upon completion thereof, forward a copy to Cal Boating for its review; and

RESOLVED FURTHER, that these resolutions shall constitute an expression of the intent of City to enter into the aforesaid Agreement, it being understood and agreed that neither City nor Developer shall be bound by the terms and provisions of these resolutions until such time as the aforesaid Agreement has been reduced to writing, approved by attorneys for City and the Developer and is executed by the City and the Developer.

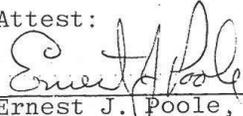
On motion of Councilman Arteaga, seconded by Councilman Ciarrocchi, the above resolution was introduced and passed by the Council of the City of Benicia at a regular meeting of said Council held on the 3rd day of May, 1983, and adopted by the following vote:

Ayes: Councilmen Arteaga, Ciarrocchi, Poole and Mayor O'Blennis

Noes: Councilman Winston

Absent: None

Attest:


Ernest J. Poole, City Clerk Pro Tempore


Warren R. O'Blennis, Mayor

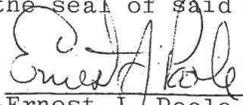
I, Ernest J. Poole, City Clerk Pro Tempore of the City of Benicia, County of Solano, State of California, hereby certify that the foregoing resolution was introduced and passed by the Council of the City of Benicia at a regular meeting of said Council held on the 3rd day of May, 1983, and adopted by the following vote:

Ayes: Councilmen Arteaga, Ciarrocchi, Poole and Mayor O'Blennis

Noes: Councilman Winston

Absent: None

WITNESS my hand and the seal of said City this 4th day of May, 1983.


Ernest J. Poole, City Clerk Pro Tempore