



CITY ATTORNEY'S OFFICE
HEATHER C. Mc LAUGHLIN
City Attorney

August 12, 2008

To Whom It May Concern:

Re: Benicia Marina Condominium Property Interests

This office was asked by the Benicia Marina Homeowners Association, for a formal letter from the City of Benicia clarifying the ownership interest of the property underlying the 69 individual Benicia Marina condominium units.¹ ***On behalf of the City of Benicia, I hereby confirm that, no later than December 31, 2028, fee title to the property underlying the Benicia Marina condominium project (the "Subject Property") will be conveyed by the City for the benefit of the Unit Owners, which are the 69 Sublessees/Purchasers of Condominiums, as tenants in common. The Subject Property shall not revert to the City of Benicia.*** The specific documentation that pertains to this future conveyance is set forth below.

Although there are many agreements that pertain to the Benicia Marina property that stem from the original lease agreement between the City and Cal Boating in 1976 to develop the project, the three agreements listed below clarify the property interests underlying the 69 condominiums that were constructed as part of Phase I. These documents are as follows:

(1) The Option to Purchase Fee Title to Real Property ("Phase I Option to Purchase") dated September 13, 1984 and recorded on December 19, 1984 in Book 1984, Page 109799, Series No. 56451, Solano County Official Records;

(2) The Irrevocable Exercise and Acceptance of Exercise of Option to Purchase ("Phase I Notice of Exercise") dated December 12, 1984 and recorded on December 31, 1984 in Book 1984, Page 113515, Series No. 53274, Solano County Official Records;
and

¹ The description of the Benicia Marina Phase I condominium property is as follows:

Lot 1 as shown on that certain map entitled "Benicia Marina – Phase I for Condominium Purposes" filed in the Office of the Solano County Recorder on December 29, 1982 in Book 42 of Maps, at Page 50.

(3) The Restated and Amended Benicia Marina Lease Agreement (Phase One Condominiums Parcel) executed on April 22, 1990 (“Lease”), which is not recorded.

To summarize very briefly, the Phase I Option to Purchase, expressly acknowledges the parties’ interest in conveying “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” at some point in the future (see Recital, Paragraph G), and provides the means to exercise the option no later than an operative date of December 31, 2028 (see Section 5 (b)).

The option to purchase was exercised in December 1984 and was officially recorded in the Phase I Notice of Exercise. It specifically cites the construction of the sixty-nine (69) condominiums and the intent of the option to be timely exercised “for the benefit of the Developer and the Sublessee/Purchasers of the Condominiums (see Recitals, paragraphs C & E). Section 4 states that the acceptance of the City of the Developer’s exercise of the option is irrevocable. Section 5 provides that the “Operative Date” for the conveyance shall be no later than December 31, 2028, even if the City has not paid all principal and interest to Cal Boating.

The Restated and Amended Lease, which was executed several years later in 1990, specifically confirms that all obligations of the tenant have been performed in order for the future conveyance of the property to be made:

Tenant has performed all obligations of Tenant under the Phase I Option to Purchase and the Phase I Notice of Exercise, and the conveyance by Landlord [City of Benicia] to Tenant for the benefit of Unit Owners of fee title to the land underlying the Phase I Condominium Project awaits only Landlord’s payoff of its loan obligations to Cal Boating on or before the Operative Date. (See Recital, paragraph E).

At the time the Restated and Amended Lease was signed, Southern California Savings and Loan Association was the tenant. However, it assigned its interests in the Lease and all related documents to The Butterfield Company, LLC, per the Memorandum of Assignment of Acceptance recorded June 30, 1995 as Instrument No. 1995-00038102, who is the current “Developer” of the property.

It is therefore clear from the three documents cited above, that the City of Benicia will convey fee title of the property underlying the 69 individual Benicia Marina condominium units no later than December 31, 2028. It appears from Section 5 of the Notice of Exercise, that the City shall either convey the property to the respective Sublessees/Purchasers (condominium unit owners) or alternatively, to the “Developer”

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[currently The Butterfield Company, LLC, aka Butterfield Ranch Company, LLC] who shall then convey fee title to the respective Sublessees/Purchasers.²

If you have any further questions, please feel free to call my office at (707) 746-4216.

Very truly yours,

A handwritten signature in black ink, appearing to read "Heather C. Mc Laughlin". The signature is fluid and cursive, with a large, stylized initial "H" and "M".

Heather C. Mc Laughlin
City Attorney
The City of Benicia, California

² Our office has been informed that when a condominium within the Benicia Marina project is purchased, the purchaser enters into a Condominium Sublease, Agreement to Convey and Grant Deed to Interest in Improvements, with the developer that assigns the developer's property interest in the underlying property to the condominium unit owner.