

RESOLUTION NO. 2017-18

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA
APPROVING THE CREATION OF A BLANKET PUBLIC UTILITY EASEMENT ON
CITY PROPERTY AND WITHIN SPECIFIC PLAN BOUNDARIES OF THE DUNES
ON MONTEREY BAY DEVELOPMENT PROJECT SUBDIVISION (FORMERLY
UNIVERSITY VILLAGE), AUTHORIZING THE CITY CLERK TO RECORD
CERTIFIED COPY OF RESOLUTION IN THE MONTEREY COUNTY OFFICE OF
THE COUNTY RECORDER, AND AUTHORIZING THE CITY MANAGER TO
EXECUTE THE EASEMENT AGREEMENT ON BEHALF OF THE CITY SUBJECT
TO FINAL REVIEW BY THE CITY ATTORNEY

WHEREAS, at the regularly scheduled meeting of May 31, 2005, the City Council adopted Resolution No. 2005-127, certifying the Final Environmental Impact Report for the University Village Development Project, and;

WHEREAS, at the regularly scheduled meeting of May 31, 2005, the City Council adopted Resolution No. 2005-128, approving the General Plan Amendments, Resolution No. 2005-130, for the Specific Plan, Resolution No. 2005-131, for the Tentative Map and Resolution No. 2005-132, Design Review for the regional retail, the Village Promenade and all residential phases for the former University Village Development Project, and;

WHEREAS, at the regularly scheduled meeting of May 31, 2005, the City Council adopted Ordinance No. 2005-07, approving the Zoning Ordinance amendments and Ordinance No. 2005-08, approving the Final Development Agreement, and;

WHEREAS, at the regularly scheduled meeting of May 31, 2005, the City Council adopted Resolution No. 2005-133, approving the Phase 1 Tree Removal Permit, and;

WHEREAS, at the regularly scheduled meeting of October 2, 2007, the City Council adopted Resolution No. 2007-229, approving Phase 1C Final Map for The Dunes on Monterey Bay Development Project Subdivision (Formerly University Village), and approving a Subdivision Improvement Agreement between the City of Marina & Marina Community Partners, LLC (MCP). This Map and Subdivision Improvement Agreement were never executed and recorded with the Monterey County Recorder's office, and;

WHEREAS, at the regular meeting of August 5, 2008, the City Council adopted Resolution No. 2008-173, approving Public Improvement Agreement between City of Marina (City) and Marina Community Partners LLC (MCP), of Marina, California, to construct public improvements in the Dunes Phase 1C area, and;

WHEREAS, at the regular meeting of October 21, 2008, the City Council adopted Resolution No. 2008-209, certifying an addendum to the Environmental Impact Report EIR SCH No. 2004091167, approving an amended tentative map and conditions of approval, revised site plan for the Dunes Phase 1B and revised Project and Tenant Sign Criteria, subject to conditions, and;

WHEREAS, at the regular meeting of March 15, 2016, the City Council adopted Resolution No. 2016-36, approving the Phase 1C Final Map for The Dunes on Monterey Bay Development Project Subdivision and; authorizing the City Manager to execute the Final Map on behalf of City subject to final review and approval by the City Attorney. This final map was considered the 3rd and final Phase of the three phase residential development for Phase 1C, and;

WHEREAS, the City, pursuant to the filing of the Final Map, accepted dedication in fee of Parcels L and M as shown on the Final Map. MCP is currently the owner in fee of that real property shown on the Final Map as Lots 273 through 295 as shown in the final map recorded on April 7, 2016 in Volume 24 of Cities and Towns at page 36 (also depicted on Exhibit C of the attached Declaration of Restrictions), and;

WHEREAS, a blanket public utilities easement needs to be created over and across the City Property. The purpose of this easement is to establish utility easements for the services of those lots referenced.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Marina does hereby:

1. Approve the creation of a blanket public utility easement on City property and within Specific Plan boundaries of The Dunes on Monterey Bay development project subdivision (formerly University Village),
2. Authorize the City Clerk to record certified copy of resolution in the Monterey County office of the County Recorder, and;
3. Authorize the City Manager to execute the easement agreement on behalf of the City subject to final review by the City Attorney.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting held on the 22nd day of February 2017, by the following vote:

AYES: COUNCIL MEMBERS: Amadeo, Morton, O'Connell, Delgado

NOES: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: Brown

ABSTAIN: COUNCIL MEMBERS: None

Bruce Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

RECORDING REQUESTED BY AND
AFTER RECORDING MAIL TO:

City of Marina
City Hall
211 Hillcrest
Marina, CA 93933

A.P.N.s: 031-255-001 through 023, 062 and
063

Exempt from recording fees:
Govt. Code 27383
Documentary Transfer Tax: \$0
No monetary value exchanged.

Space above this line reserved for recorder's use

DECLARATION OF RESTRICTIONS CREATING BLANKET PUBLIC UTILITIES EASEMENT

This Declaration of Restrictions (the "Declaration") is executed and entered into this ____ day of February, 2017 (the "Effective Date") by the CITY OF MARINA, a municipal corporation ("City") and SHEA HOMES LIMITED PARTNERSHIP, a California limited partnership ("Shea").

RECITALS

A. Shea is the Developer of the Dunes on Monterey Bay, a mixed-use development project. Shea has processed and obtained a number of entitlements for development of the project including that certain final subdivision map entitled "Phase 1C, the Dunes on Monterey Bay – Third Phase" which was filed on April 7, 2016 in Volume 24 of Cities and Towns, at page 46 in the Official Records of Monterey County, California (the "Final Map"). Shea is currently the owner in fee of that real property shown on the Final Map as Lots 273 through 295. These lots are more particularly described in Exhibit A, and collectively constitute the "Shea Property" which, for the purposes of the Declaration is the covenantee's property.

B. The City, pursuant to the filing of the Final Map, accepted dedication in fee of Parcels L and M as shown on the Final Map, the "City Property" which, for the purposes of this Declaration is the covenantor's property as more particularly described in Exhibit B. Through

inadvertence, a blanket public utilities easement was not created by the Final Map over and across the City Property. The purpose of this Declaration is to create and establish such a blanket public utilities easement. The parties intend that the provisions of this Declaration shall be covenants running with the both the Shea Property and the City Property. The Shea Property and the City Property are collectively referred to herein as the "Property".

NOW, THEREFORE, the City hereby grants to Shea for the benefit of the Shea Property, the blanket public utilities easement shown in Exhibit C and the parties hereto hereby agree, covenant and declare that the Shea Property and the City Property and every portion thereof is and shall be owned, conveyed, mortgaged, encumbered, leased, developed, improved, used and occupied subject to this Declaration and the limitations, covenants, conditions, restrictions, easements, liens and charges set forth herein, all of which are established as equitable servitudes and shall benefit, burden and run with the title to both the Shea Property and the City Property and shall be binding on and inure to the benefit of all parties having or acquiring any right, title or interests in said property or any portion thereof or their respective heirs, successors and assigns.

1. Covenants Running With The Land: The terms and conditions contained in this Declaration shall be and constitute covenants running with the land constituting the Property and shall be binding upon Shea and the City, their heirs, successors and assigns. An appropriately executed copy of this Declaration shall be recorded in the Official Records of Monterey County, California and the provisions hereof shall both bind and benefit the Property and shall run through all successors and assigns and the provisions hereof shall be fully and completely enforceable as equitable servitudes as covenants running with the land pursuant to the provisions of California Civil Code § 1468.

2. Creation of Blanket Public Utilities Easement: There is hereby created and established, a blanket Public Utilities Easement ("PUE") for the limited purpose of providing utilities to the abutting property owners together with the right of ingress and egress for construction, installation, repair, operation, inspection, maintenance, replacement, relocation, and removal of those public utilities over, under, on and across Parcels L and M as shown on the Final Map and as more particularly depicted in Exhibit C. Construction, installation, repair, operation, inspection, maintenance, replacement, relocation and removal of any facilities constructed in the PUE shall be the responsibility of the individual public utilities who shall follow such procedures on the City Property that result in the least damage and inconvenience to the City. There shall be no overhead utilities constructed or installed within the PUE and no use or deposit of any hazardous material or toxic waste or other harmful substances on the City Property. City expressly reserves for itself, its successors and its assigns, the right to use the PUE or to grant other easements or licenses at the same location so long as such uses do not unreasonably interfere with the rights herein granted.

3. Incorporation of Declaration Into Deeds: Any deed or other instrument in which all or any portion of the Property is conveyed, whether by fee, easement, leasehold interests or otherwise, shall be subject to the provisions of this Declaration whether or not such instrument makes reference to this Declaration.

This Declaration is made and entered into upon the Effective Date.

CITY:

CITY OF MARINA,
a municipal corporation

By: _____
Name: _____
Its: _____

SHEA:

SHEA HOMES LIMITED PARTNERSHIP,
a California limited partnership

By: _____
Name: _____
Its: _____

SHEA HOMES LIMITED PARTNERSHIP,
a California limited partnership

By: _____
Name: _____
Its: _____

Approved as to form and legality this ____,
_____, 2017.

By: _____
City Attorney

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____, a Notary Public, personally appeared _____, 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 _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

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County of _____)

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County of _____)

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WITNESS my hand and official seal.

Signature _____

EXHIBIT A

**SHEA PROPERTY
(COVENANTEE'S PROPERTY)**

**LEGAL DESCRIPTION
FOR BENEFIT OF PUBLIC UTILITY EASEMENT**

REAL PROPERTY IN THE CITY OF MARINA, COUNTY OF MONTEREY, AND STATE OF CALIFORNIA DESCRIBED AS FOLLOWS:

LOTS 273 THROUGH 295:

BEING ALL OF LOTS 273 THROUGH 295 AS SAID LOTS ARE SHOWN ON THAT CERTAIN FINAL MAP ENTITLED "PHASE 1C, THE DUNES ON MONTEREY BAY – THIRD PHASE", FILED ON APRIL 7, 2016 IN VOLUME 24 OF CITIES AND TOWNS AT PAGE 46, OFFICIAL RECORDS OF MONTEREY COUNTY.

A.P.N.s: 031-255-001 through 023

EXHIBIT B

**CITY PROPERTY
(COVENANTOR'S PROPERTY)**

**LEGAL DESCRIPTION
FOR PUBLIC UTILITY EASEMENT**

PARCEL L

REAL PROPERTY IN THE CITY OF MARINA, COUNTY OF MONTEREY, AND STATE OF CALIFORNIA DESCRIBED AS FOLLOWS:

BEING ALL OF PARCEL L AS SAID LOT IS SHOWN ON THAT CERTAIN FINAL MAP ENTITLED "PHASE 1C, THE DUNES ON MONTEREY BAY – THIRD PHASE", FILED ON APRIL 7, 2016 IN VOLUME 24 OF CITIES AND TOWNS AT PAGE 46, OFFICIAL RECORDS OF MONTEREY COUNTY.

A.P.N.: 031-255-062

PARCEL M

REAL PROPERTY IN THE CITY OF MARINA, COUNTY OF MONTEREY, AND STATE OF CALIFORNIA DESCRIBED AS FOLLOWS:

BEING ALL OF PARCEL M AS SAID LOT IS SHOWN ON THAT CERTAIN FINAL MAP ENTITLED "PHASE 1C, THE DUNES ON MONTEREY BAY – THIRD PHASE", FILED ON APRIL 7, 2016 IN VOLUME 24 OF CITIES AND TOWNS AT PAGE 46, OFFICIAL RECORDS OF MONTEREY COUNTY.

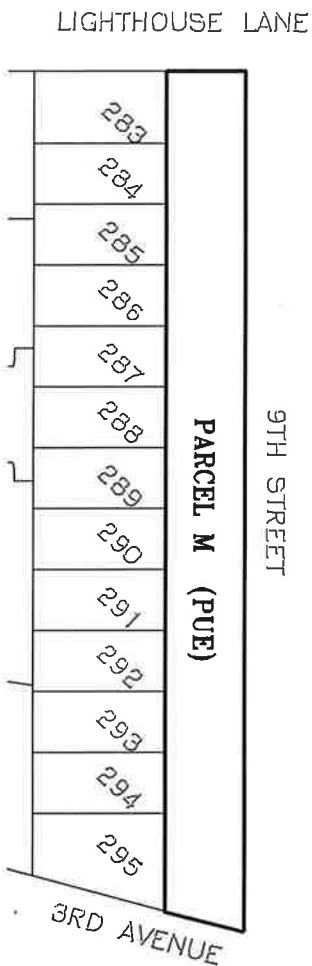
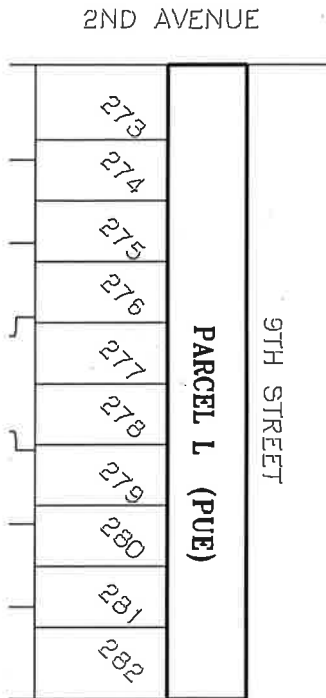
A.P.N.: 031-255-063

EXHIBIT C
DEPICTION OF PUE



SCALE 1"=100'

EXHIBIT C
PHASE 1C, DUNES ON
MONTEREY BAY - THIRD PHASE
TRACT 1524 (VOL 24 C&T PG 46)
PARCELS SUBJECT TO
BLANKET PUBLIC UTILITY EASEMENT (PUE)
THE PUE ENCOMPASSES ALL AREA COMPRISING THE
SUBJECT PARCELS.



WOOD ROGERS
BUILDING RELATIONSHIPS ONE PROJECT AT A TIME
4670 WILLOW RD, #125 TEL 925.847.1556
PLEASANTON, CA 94588 FAX 916.341.7767

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of February 22, 2017

**RECOMMENDATION TO CONSIDER ADOPTING RESOLUTION NO. 2017-,
APPROVING THE CREATION OF A BLANKET PUBLIC UTILITY
EASEMENT ON CITY PROPERTY AND WITHIN SPECIFIC PLAN
BOUNDARIES OF THE DUNES ON MONTEREY BAY DEVELOPMENT
PROJECT SUBDIVISION (FORMERLY UNIVERSITY VILLAGE),
AUTHORIZING THE CITY CLERK TO RECORD CERTIFIED COPY OF
RESOLUTION IN THE MONTEREY COUNTY OFFICE OF THE COUNTY
RECORDER, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE
EASEMENT AGREEMENT ON BEHALF OF THE CITY SUBJECT TO FINAL
REVIEW BY THE CITY ATTORNEY**

RECOMMENDATION:

It is recommended that the City Council:

1. Consider adopting Resolution No. 2017-, approving the creation of a blanket public utility easement on City property and within Specific Plan boundaries of The Dunes on Monterey Bay development project subdivision (formerly University Village),
2. Authorizing the City Clerk to record certified copy of resolution in the Monterey County office of the County Recorder, and;
3. Authorizing the City Manager to execute the easement agreement on behalf of the City subject to final review by the City Attorney.

BACKGROUND:

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At the regular meeting of March 15, 2016, the City Council adopted Resolution No. 2016-36, approving the Phase 1C Final Map for The Dunes on Monterey Bay Development Project Subdivision and; authorizing the City Manager to execute the Final Map on behalf of City subject to final review and approval by the City Attorney. This final map was considered the 3rd and final Phase of the three phase residential development for Phase 1C.

ANALYSIS:

The City, pursuant to the filing of the Final Map, accepted dedication in fee of Parcels L and M as shown on the Final Map. MCP is currently the owner in fee of that real property shown on the Final Map as Lots 273 through 295 as shown in the final map recorded on April 7, 2016 in Volume 24 of Cities and Towns at page 36 (also depicted on Exhibit C of the attached Declaration of Restrictions).

A blanket public utilities easement needs to be created over and across the City Property. The purpose of this easement is to establish utility easements for the services of those lots referenced.

FISCAL IMPACT:

None.

CONCLUSION:

This request is submitted for City Council consideration and possible action.

Respectfully submitted,

Edrie Delos Santos, P.E.
Senior Engineer, Engineering Division
City of Marina

REVIEWED/CONCUR:

Brian McMinn, P.E., P.L.S.
Public Works Director/City Engineer
City of Marina

Layne P. Long
City Manager
City of Marina