

RESOLUTION NO. 2023-28

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA
APPROVING THE PHASE 1B-PROMENADE PUBLIC IMPROVEMENT
AGREEMENT BETWEEN CITY OF MARINA AND SHEA HOMES, LP, AND
AUTHORIZING THE CITY MANAGER TO EXECUTE THE PUBLIC
IMPROVEMENT AGREEMENT ON BEHALF OF CITY SUBJECT TO FINAL
REVIEW AND APPROVAL 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 December 17, 2019, the City Council adopted Resolution No. 2019-140, approving an Operating Agreement as an administrative amendment of the Development Agreement clarifying and modifying certain project approvals for Specific Plan for The Dunes on Monterey Bay including to the Conforming Clarifications to the Schedule of Performance, and;

WHEREAS, at the regularly scheduled meeting of May 3, 2022, the City Council adopted Resolution No. 2022-52, approving an amendment to University Village Phase 1B-Promenade Tentative Map, and;

WHEREAS, Shea Homes Limited Partnership (“Developer”) has submitted a Public Improvement Agreement and will provide labor and materials and faithful performance bonds required for the recordation of the Final Map and construction of approved public infrastructure. The Map is on this Agenda as a separate item for consideration of approval, and;

WHEREAS, not all of the Phase 1B-Promenade public improvements have been approved such as street-lights, landscaping, and traffic signals. These improvements will require their own separate Public Improvement Agreement to be presented to Council for approval at a later date, and;

WHEREAS, all required future phased final maps must meet all the appropriate conditions of approval and will be presented to City Council for consideration at a future date, and;

WHEREAS, should the City Council approve this request, the City requires the Developer to provide satisfactory evidence of their ability to complete the public improvements by the posting of labor and material and faithful performance subdivision improvement bonds in an amount of 100% of the City Engineer's estimate of the cost to perform the work, and;

WHEREAS, for the construction of improvements for Phase 1B-Promenade, the Developer will post a bond in the amount of Two Million Seven Hundred Forty Eight Thousand Two Hundred ninety Seven Dollars (\$2,748,297.00), for completion of the public improvements and a bond in the amount of Two Million Seven Hundred Forty Eight Thousand Two Hundred ninety Seven Dollars (\$2,748,297.00), to secure payment for labor and materials prior to the recording of the Final Map for Phase 1B-Promenade, and;

WHEREAS, continued maintenance of public streets, sidewalks, streetlights and stormwater facilities shall be incorporated into the existing Dunes Community Facilities District (CFD) and funded by the special tax assessment collected by the special District. Administration of the District shall be in accordance with City Ordinance 3.32.

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

1. Approve the Phase 1B-Promenade Public Improvement Agreement between City of Marina and Shea Homes, LP, (“Developer”) (“**EXHIBIT A**”), and;
2. Authorize the City Manager to execute the Public Improvement Agreement on behalf of City subject to final review and approval by the City Attorney.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting held on the 21st day of March 2023, by the following vote:

AYES: COUNCIL MEMBERS: McCarthy, Visscher, Biala, Medina Dirksen, Delgado

NOES: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

ABSTAIN: COUNCIL MEMBERS: None

Bruce Delgado, Mayor

ATTEST:

Anita Sharp, City Clerk

PUBLIC IMPROVEMENT AGREEMENT

**AGREEMENT FOR IMPROVEMENT OF STREETS, INSTALLATION OF
STORM DRAINS AND OTHER PUBLIC WORKS FACILITIES**

**“The Dunes on Monterey Bay” Project
– Phase 1B the Promenade –**

This Agreement for Improvement of Streets, Installation of Storm Drains and Other Public Works Facilities (“Agreement”) is made and entered into this ____ day of _____, 2022, by and between the City of Marina, herein called the “City,” a municipal corporation, and Marina Community Partners, LLC, a Delaware limited liability company, a real property owner, developer or subdivider, herein called the “Developer.”

WHEREAS, pursuant to the Development Agreement dated July 8, 2005, the Disposition and Development Agreement dated May 31, 2005, as amended by the Implementation Agreements, and the Quitclaim Deed dated September 21, 2006, Marina Community Partners, LLC, as the “Master Developer” is the owner of the land known as The Dunes Phase 1B; and

WHEREAS, on May 31, 2005, by Resolution 2005-130 the Master Developer received approval from the City for: (1) the University Village (now “The Dunes on Monterey Bay”) Specific Plan (Resolution 2005-130); and (2) a Tentative Subdivision Map (“Tentative Map”) consistent with the City’s General Plan and the Specific Plan (Resolution 2005-131) subject to Conditions of Approval attached to Resolution 2005-131 including: Condition 3 requiring a subdivision improvement agreement and bonding; and Condition 18 requiring establishment of a Landscape and Lighting District (“LLD”) prior to approval of the first Final Map; and

WHEREAS, the Master Developer conducted deconstruction and demolition activities affecting the Property (as defined below) under the terms of a Right of Entry Agreement from the City dated September 30, 2005; and

WHEREAS, the Marina Redevelopment Agency and the Master Developer entered into the Implementation Agreement Regarding University Village on September 6, 2006, which provided for construction of the project in three major phases, Phases 1, 2 and 3 and which further split Phase 1 into three separate sub phases termed Phase 1A, Phase 1B and Phase 1C, and established Conforming Clarification(s) to the Schedule of Performance for each sub phase; and

WHEREAS, on October 2, 2007, in Resolution 2007-229 the City approved a Final Map that included Phase 1B and a Subdivision Improvement Agreement. However, due to subsequent changes in economic conditions the Phase 1B Final Map was never recorded and a Subdivision Improvement Agreement for Phase 1B was never executed. The October 2, 2007, approval of the Phase 1B Final Map and the authority to enter into the Subdivision

Improvement Agreement, were rescinded by the adoption of Resolution 2015-16 approving a Public Improvement Agreement for Phase 1A First Phase/Residential; and

WHEREAS, following the Master Developer's invocation of an excused delay in the construction of Phase 1, Phase 2 and Phase 3 due to the impact of economic conditions on the feasibility of the project, on August 5, 2008, the Marina Redevelopment Agency and the Master Developer entered into the Second Implementation Agreement Regarding University Village to provide for the Master Developer's continued construction of the project in spite of the economic downturn and made certain changes to the Disposition and Development Agreement and to the Conforming Clarifications to the Schedule of Performance; and

WHEREAS, on August 12, 2008, in accordance with Resolution 2008-173 the City and the Master Developer entered into a Public Improvement Agreement to provide for the improvement of streets, installation of storm drains and other public works facilities for a portion of Phase 1C and 2 designated as residential in the Specific Plan (the "Initial Phase/Residential"); and

WHEREAS, on October 21, 2008, by Resolution 2008-209 the City approved an amendment to the Tentative Map affecting Phase 1B, adopting two additional Conditions of Approval to the Tentative Map and thereby changing the numbering of Condition 18 to Condition 20; and

WHEREAS, on May 18, 2010, by Resolution 2010-13(MRA) the Marina Redevelopment Agency and the City, by Resolution 2010-75, approved a modification to the Schedule of Performance; and

WHEREAS, The Master Developer remains obligated under the Disposition and Development Agreement and Development Agreement for the balance of the Project not yet conveyed to third parties; and

WHEREAS, the Conditions of Approval of the Tentative Map, as adopted by Resolution 2005-131 and as amended by Resolution 2008-209 require the establishment of a Landscape and Lighting District prior to recording of a final map; and

WHEREAS, on June 2, 2015, by Resolution 2015-01 the City approved the formation of Community Facilities District No. 2015-01 (The Dunes); and

WHEREAS, by Resolution 2015-11 the Master Developer received approval from the City for an amendment to Conditions of Approval Nos.3 and 20 (Resolution 2008-209) for the Tentative Map which provided for the establishment of a Community Facilities District in lieu of a Landscape and Lighting District and permitted the Developer to record a final map for Phase 1C First Phase/Residential prior to the establishment of the Community Facilities District but that the City shall not accept any of the infrastructure improvements or easements for Phase 1C First Phase/Residential to be maintained by the

Community Facilities District, including infrastructure improvements to be completed by the Developer, until such time as the Community Facilities District is established; and

WHEREAS, on December 9, 2021, the City approved the Site and Architectural Design Review Application (SADRA) for the Promenade, a portion Phase 1B of the Dunes on Monterey Bay Specific Plan (the Project), Exhibit A; and

WHEREAS, on May 3, 2022, by Resolution 2022-52, the City approved a Tentative Subdivision Map amendment for Phase 1B of the Dunes On Monterey Bay (Exhibit B); and

WHEREAS, the Developer will subsequently submit for approval by the City and subsequent recording with the office of the Monterey County Recorder, a final map ("Final Map") for Phase 1B; and

WHEREAS, revised improvement plans entitled "The Dunes on Monterey Bay, Phase 1B" herein the "Improvement Plans," signed by the City Engineer on _____, 2022, and incorporated herein by reference, have been submitted to the City for approval and acceptance, including certain streets constituting a portion of Phase 1B of The Dunes on Monterey Bay Project, referred to herein as Phase 1B the Promenade development area, or the "Project," located on and along 2nd Avenue, from Jetty Street to a portion of 8th Street, and the southerly end of General Stilwell Drive, herein the "Property". Improvements are to include new storm drain system, curb, gutter, asphalt concrete pavement, streetlights and electrical facilities, sidewalk, striping, traffic signs, and survey monuments, as shown on Exhibit C, herein the "Improvements;" and

WHEREAS, the City will not accept any of the Phase 1B public improvements to be constructed pursuant to this Agreement until all the conditions of this Agreement are satisfied in full; and

WHEREAS, the Developer requires certain utilities and public works facilities in order to service the Project under the minimum standards established by the City; and

WHEREAS, the City, by and through its City Council, has enacted certain Codes, Ordinances and Resolutions and certain Rules and Regulations have been promulgated concerning the subject matter of this Agreement; and

WHEREAS, the City has certain responsibilities for maintenance and operation of such Improvements, utilities and public service facilities after acceptance by City, and for providing the necessary connecting system, and the City has agreed to discharge those responsibilities following its acceptance of the Improvements.

NOW THEREFORE, in consideration of the foregoing and in order to carry on the intent and purpose of said Codes, Ordinances, Resolutions, Rules and Regulations, it is agreed by and between the parties as follows:

SECTION 1

The recitals to this Agreement are hereby incorporated into the terms of this Agreement. All applicable Codes, Ordinances, Resolutions, Rules and Regulations and established policies of the City and the laws of the State of California and the United States of America concerning the subject matter of this Agreement are hereby referred to and incorporated herein to the same effect as if they were set out a length herein. Said Codes, Ordinances, Resolutions, Rules and Regulations include, but are not limited to, the following: The Municipal Code of the City of Marina, including the current Zoning Ordinance, and the currently adopted California Building Code.

SECTION 2

The Developer agrees:

- a. To perform each and every provision required by the City to be performed by the Developer in each and every one of the applicable Codes, Ordinances, Resolutions, Rules and other Regulations and to comply with the foregoing and all applicable laws.
- b. To annex the Property to Community Facilities District No.2015-01 to provide for the imposition of special assessments on the Property providing funding for the maintenance of the Improvements to be constructed by the Developer pursuant to this Agreement in a timely manner in order to ensure that the annexation to the Community Facilities District is accomplished prior to the sale or conveyance of any portion of the Property.
- c. To grant to the City or other entities entitled thereto, from property owned by the Developer, without charge and free and clear of monetary liens and encumbrances, any and all public, private, utility, drainage, construction or access easements and rights of way (herein "easements") in and to the Property necessary for the City, in order that the storm drain and street improvements to said real property may be extended; however, City shall not be obligated to accept any such easement, right-of-way or improvements thereon prior to the annexation of the Property to the Community Facilities District. At no cost to the Developer, City and Developer will work cooperatively with the owners of other real property to acquire all easements necessary to construct the Improvements. At no cost to the City, City agrees to support Developer in acquisition of easements necessary to construct the Improvements and to accept said easements upon execution of easement grant deeds to the City by grantors, subject to the condition set forth above regarding the annexation to the Community Facilities District. City also agrees to issue Developer and/or Developer's contractors encroachment permits necessary to accomplish said work.

Prior to acceptance of the Improvements by the City, to indemnify, defend with counsel of City's choice and hold the City and any of its officials, boards and commissions and members thereof, agents and employees, free and harmless from all suits, fees, claims, demands, causes of action, costs, losses, damages, liabilities and expenses (including

without limitation attorney's fees) because of or arising or resulting directly or indirectly from (i) any damage done to any utility, public facility or other material or installation of the City on said real estate as a result of the Developer or any contractor or subcontractor of the Developer, or any employee of the foregoing, grading or working upon said real estate; or (ii) any act or omission of Developer or Developer's contractors, or subcontractors, or any employee of the foregoing in connection with the design, construction or other work performed by them in connection with this Agreement, including without limitation all claims relating to injury or death of any person or damage to any property, except for such claims, demands, causes of action liability, or loss arising out of the sole active negligence of the City or any of its officials, boards and commissions and members thereof, agents and employees. City shall not be responsible for the design or construction of the Improvements pursuant to the Improvement Plans, regardless of any negligent action or inaction taken by City in approving the Improvement Plans unless the particular improvement design was specifically required by City over written objection by Developer submitted to the City Engineer before construction and acceptance of the Improvements, which objection indicated that the particular improvement design was dangerous or defective and suggested an alternate safe and feasible design. Prior to acceptance, Developer shall remain obligated for routine maintenance. After acceptance, Developer shall remain obligated to eliminate any defect in design or dangerous condition caused by the design of construction defect, however, Developer shall not be responsible for routine maintenance. Provisions of this Section shall remain in full force and effect for ten years following acceptance by City of the Improvements. The Improvement security shall not be required to cover the provisions of this Section. Developer shall reimburse City for all costs and expenses (including but not limited to fees and charges of architects, engineers, attorneys, and other professionals, and court costs) incurred by City in enforcing the provisions of this Section

d. To construct and improve all public works facilities and other improvements described on the Engineer's Estimate referenced in Section 3 of this agreement and the Improvement Plans submitted to the City in furtherance of this Agreement on file with the City. All construction and improvements shall be completed in accordance with all standards established in the applicable Codes, Ordinances, Resolutions, Rules and Regulations, all applicable laws and this Agreement, and in accordance with the grades, plans, and specifications approved by the City Engineer or his or her designee. Developer shall furnish two good and sufficient bonds, in an amount of 100% of the City Engineer's, or his or her designee's, estimated cost of the City's public Improvements, guaranteeing Developer's performance of this Agreement: (1) a Payment Bond on a form provided by the City; and (2) a Faithful Performance Bond, both of which must be secured from a surety company admitted to do business in California. Each bond shall set forth a time period for performance by the contractor of its obligations and the terms and conditions on which the City may obtain the proceeds of the bond. Alternatively, the Developer may provide a cash deposit in an amount of 100% of the City Engineer's, or his or her designee's, estimated cost of the City's public Improvements to guarantee Developer's performance of this Agreement.

The Faithful Performance Bond shall be in an amount not less than one hundred percent (100%) of the total estimated amount payable for the City's public Improvements described in this agreement, and shall secure payment to City of any loss due to the default of the Developer or its contractors or their inability or refusal to perform this contract, and to guarantee or warranty the work done pursuant to this Agreement for a period of one year following acceptance thereof by City against any defective work or labor done or defective materials furnished. The performance bond shall by its terms remain in full force and effect for a period of not less than one year after completion of the Improvements by Developer and acceptance of the Improvements by the City, provided that Developer may substitute for the performance bond securing the warranty described above with a separate warranty bond issued by an admitted surety in the amount of ten percent (10%) of the total contract price of the Improvements (provided that amount of said bond shall not be less than One Thousand Dollars (\$1,000) to cover the one-year warranty period. Government Code §66499.7, and as it may hereafter be amended, extended, or otherwise modified, shall apply to a request by Developer for release, in whole or in part, of the Faithful Performance Bond.

The Payment Bond shall be in an amount not less than one hundred percent (100%) of the total estimated amount payable for the City's public Improvements described in this Agreement. The Payment Bond shall secure the payment of those persons or entities to whom the Developer may become legally indebted for labor, materials, tools, equipment or services of any kind used or employed by the contractor or subcontractor in performing the work, or taxes or amounts to be withheld thereon. The Payment Bond shall provide that the surety will pay the following amounts should the Developer, or its contractor or subcontractors fail to pay the same, plus reasonable attorneys' fees to be fixed by the court if suit is brought upon the bond: (1) amounts due to any of the persons named in California Civil Code Sections 8520, 8530 and 9100; (2) amounts due under the Unemployment Insurance Code with respect to work or labor performed for the improvements described in this agreement; and (3) any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Developer, its contractors and subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to the work and labor. The Payment Bond shall, by its terms, inure to the benefit of any of the persons named in Civil Code Sections 8520, 8530 and 9100 so as to give a right of action to those persons or their assigns in any suit brought upon the bond

The Developer shall submit the following for both the surety that furnishes the Payment Bond and the surety that furnishes the Faithful Performance Bond: (1) a current printout from California Department of Insurances website (www.insurance.ca.gov) showing that the surety is admitted to do business in the State; or (2) a certificate from the Clerk of the County of Monterey that the surety's certificate of authority has not been surrendered, revoked, canceled, annulled, or suspended or in the event that it has, than renewed authority has been granted.

e. At all times during the term of this Agreement and until the City's public Improvements constructed by Developer are accepted by City, Developer shall, at no cost to City obtain and maintain (a) a policy of general liability and property damage insurance in the

minimum amount of Two Million Dollars (\$2,000,000), combined single limit for both bodily injury and property damage; (b) workers' compensation insurance as required by law; and (c) broad form "Builder's Risk" property damage insurance limits of not less than 100% of the estimated value of the City's public Improvements to be constructed by Developer pursuant to this Agreement (Builders Risk Insurance is not required when only mass grading and roadway-related improvements consisting of no structures are to be constructed).

All such policies shall provide that thirty (30) days written notice must be given in advance to City prior to termination, cancellation or modification. The insurance specified in (a) above shall name City as additional insured and the insurance (b) shall name the City as a loss payee, and (c) shall provide that City, although an additional insured or loss payee, may recover for any loss suffered by reason of the acts or omissions of Developer or Developer's contractors or their respective employees. Developer hereby waives, and Developer shall cause each of its contractors and subcontractors to waive, all rights to recover against City for any loss or damage arising from a cause covered by the insurance required to be carried pursuant to this Agreement, and will cause each insurer to waive all rights of subrogation against City in connection therewith. All policies shall be written on an occurrence basis and not on a claims made basis and shall be issued by insurance companies acceptable to City. Prior to commencing any work pursuant this Agreement, Developer shall deliver to City the insurance company's certificate evidencing the required coverage, or if required by City a copy of the policies obtained.

f. Not to offer for dedication to and acceptance by the City any of the public improvements constructed by Developer and located on the Property until such time as the Property is annexed to the Community Facilities District.

g. Not to convey, transfer, assign, or sell in one transaction or a series of transactions, subsequent to recordation of the Final Map for Phase 1B – the Promenade and prior to the annexation to the Community Facilities District, any portion or interest of the Developer in the Property or the Project. Notwithstanding the foregoing, Developer may transfer, assign or sell in one transaction or a series of transactions all or any portion or interest of the Developer in the Property or the Project with consent of the City, such consent not to be unreasonably delayed, conditioned or withheld, to any entity which controls, is controlled by or is under common control with the Developer or the Master Developer, provided that said assignee assumes, in full, the obligations of Developer under this Agreement.

SECTION 3

An estimate of the cost for construction of the City's public Improvements and performing land development work in connection with the public Improvements according to the Improvement Plans has been made and has been approved by the City Engineer or his or her designee. That estimated amount is Two Million Seven Hundred and Forty-

Eight Thousand Two Hundred Ninety Seven Dollars (\$2,748,297). The basis for the estimate is on file in the Office of the City Engineer and is incorporated into this Agreement by reference.

SECTION 4

Developer will commence substantial construction of the Improvements required by this Agreement within the time period set forth in the Conforming Clarifications to the Schedule of Performance ("Schedule of Performance") between City and Master Developer, as the Schedule of Performance may be subsequently amended. All the provisions of this Agreement and all work to be done pursuant to the terms of this Agreement are to be completed within the time periods set forth in such Schedule of Performance. Developer shall maintain such public works facilities and other improvements described in this Agreement at Developer's sole cost and expense at all times prior to acceptance by City in a manner which will preclude any hazard to life or health or damage to property. City shall accept the Improvements no later than six (6) months after such time as the Improvements are (i) completed to the satisfaction of the City Engineer, (ii) the annexation to the CFD is completed and (iii) the City is in receipt of funds from the CFD to maintain the Improvements.

SECTION 5

a) Default of Developer shall include, but not be limited to: (1) failure to timely commence construction of the Improvements; (2) failure to timely complete construction of the Improvements; (3) failure to timely commence and complete the annexation of the Property to the Community Facilities District; (4) failure to timely cure any defect of the Improvements; (5) failure to perform substantial construction work for a period of sixty calendar days after commencement of the work; (6) Developer's insolvency, appointment of a receiver, or the filing of any petition in bankruptcy either voluntary or involuntary which Developer fails to discharge within thirty days; (7) commencement of a foreclosure action against the project or a portion thereof, or any conveyance in lieu or in avoidance of foreclosure; or (8) failure to perform any other obligation under this Agreement. Notwithstanding the foregoing, Developer shall not be in default under this Agreement if it cures any default within thirty days' notice of such default, or if the default may not reasonably be curing within such time period, if it commences to cure within thirty days and thereafter diligently proceeds to complete the cure.

b) City reserves to itself all remedies available to it at law or in equity for breach of Developer's obligations under this Agreement. City shall have the right, subject to this Section, to draw upon or utilize the appropriate security to mitigate City's damages in the event of default by the Developer. The right of City to draw upon or utilize the security is additional to and not in lieu of any other remedy available to City. It is specifically recognized that the estimated costs and security amounts may not reflect the

actual cost of construction or installation of the Improvements and, therefore, City's damages for Developer's default shall not exceed the cost of completing the Improvements. The sums provided by the security for the Improvements may be used by City for the completion of the Improvements in accordance with the Improvement Plans referenced herein.

c) In the event of Developer's default under this Agreement, Developer authorizes City to perform such obligation sixty days after mailing written notice of default to Developer and to Developer's surety, and agrees to pay the entire cost of such performance by City. City may take over the work and prosecute the same to completion by contract or by any other method City may deem advisable, for the account and at the expense of Developer, and Developer's surety shall be liable to the City for any excess cost or damages occasioned City thereby, including but not limited to fees and charges or architects, engineers, attorneys, other professionals and court costs. In such event, City without liability for doing so, may take possession of, and utilize in completing the work, such materials, appliances, plants and other property belonging to Developer as may be on the site of the work and necessary for performance of the work.

d) Failure of City to take an enforcement action with respect to a default, or to declare a breach, shall not be construed as a waiver of that default or breach or any subsequent default or breach of Developer.

SECTION 6

That the following General Stipulations and any attached stipulations shall be completed, subject to the approval of the City Engineer.

1. Locate and properly dispose of any wells, septic tanks and underground fuel storage facilities.
2. Schedule the construction of improvements along existing public roads so that the work affecting vehicular traffic is complete with a minimum interruption of traffic
3. All work within the public right-of-way shall be subject to the approval of the City Engineer or his or her designee.
4. All construction work shall be coordinated so that the existing residents and/or businesses have access to their properties.
5. All improvements shall be installed per the approved Improvement Plans.
6. The Developer shall provide to the City of Marina electronic copy of the "As Built" Improvement Plans as an AutoCAD drawing file (DWG format, AutoCAD 2002 minimum or latest version).

7. Any reimbursements due the Developer, unless specified otherwise in writing in this agreement, will expire ten (10) years after the date of execution of this agreement.
8. Until the roads on the Property are open to the public, Developer shall give good and adequate warning to the public of each and every dangerous condition on the existing public roads, and will take all reasonable actions to protect the public from such dangerous condition.

SECTION 7

Developer shall, at Developer's expense, obtain all necessary permits and licenses for the construction and installation of the Improvements, give all necessary notices and pay all fees and taxes required by law. Developer shall make a deposit for inspection services as required by City of Marina's Municipal Code (Ordinance No. 2018-03) as may be updated from time to time. At any time the City's costs associated with inspection services for the project exceed the deposit amount(s) provided, Developer shall deposit additional funds with the City within 30 days of a request made in writing by the City to the Developer. The City will provide Developer with quarterly statements of actual costs paid for inspection services and a final statement of costs as well as a refund of unused funds (if any) will be provided within 30 days of final acceptance of the public Improvements by the City, or as otherwise agreed to by the parties in writing.

SECTION 8

Neither Developer nor any of Developer's agents, contractors or subcontractors are or shall be considered to be agents of City in connection with the performance of Developer's obligations under this Agreement.

SECTION 9

Nothing contained in this Agreement shall preclude City from expending monies pursuant to agreements concurrently or previously executed between the parties, or from entering into agreements with other developers for the apportionment of costs of water and sewer mains, or other improvements, pursuant to the provisions of the City ordinance providing therefor, nor shall anything in this Agreement commit the City to any such apportionment.

SECTION 10

Developer shall not be entitled to assign its obligations under this Agreement to any transferee of all or any part of the property within the Project or to any other third party without the express written consent of City.

SECTION 11

Acceptance of the work, or any portion of the work on behalf of the City shall be made by the City Council upon recommendation of the City Engineer after final completion and inspection of all Improvements and only after the annexation of the Property to the Community Facilities District. Such acceptance shall not constitute a waiver of defects by City.

SECTION 12

The provisions of this Agreement are severable. If any portion of this Agreement is held invalid by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect unless amended or modified by the mutual consent of the parties.

SECTION 13

In the event that suit or arbitration is brought to enforce the terms of this Agreement, the prevailing party shall be entitled to litigation costs and reasonable attorney's fees.

SECTION 14

This Agreement shall be interpreted in accordance with the laws of the State of California. Jurisdiction of all disputes of this Agreement shall be in the County of Monterey, State of California.

SECTION 15

Time is of the essence of this Agreement.

SECTION 16

This Agreement, the Conditions, the Disposition and Development Agreement as amended by the Implementation Agreements, the Agreement for Improvement of Streets,

Installation of Storm Drains and Other Public Works Facilities “The Dunes on Monterey Bay’ Project A Portion of Phase 1C – First Phase Residential, the Agreement Forming Community Facilities District No. 2015-01, and the Agreement for Improvement of Streets, Installation of Storm Drains and Other Public Works Facilities “The Dunes on Monterey Bay, Phase 1B the Promenade” constitute the entire agreement of the parties with respect to the subject matter. All modifications, amendments or waivers of the terms of this Agreement must be in writing and signed by an authorized representative of the parties.

SECTION 17

In the event the Schedule of Performance (including any Conforming Clarifications thereto) is tolled, the time for commencement of construction or completion of the Improvements hereunder shall be extended for the same duration as applies to the Schedule of Performance. Any such extension may be granted without notice to Developer’s surety and shall not affect the validity of this Agreement or release the surety on any security given for this Agreement.

IN WITNESS WHEREOF, City and Developer have executed this Agreement as of the date first written above.

ATTEST:

CITY OF MARINA

Acting Deputy City Clerk

Layne Long
City Manager

APPROVED AS TO FORM:

City Attorney

IN WITNESS WHEREOF Developer has executed this agreement as of

_____.

MARINA COMMUNITY PARTNERS, LLC, a Delaware
limited liability company.

BY: SHEA HOMES LIMITED PARTNERSHIP,
a California Limited Partnership

It's: Sole Partner

By: _____

It's: _____

By: _____

It's: _____

NOTE: If Developer is a corporation, the complete legal name and corporate seal of the corporation and the corporate titles of the persons signing for the corporation shall appear above.

State of California County of _____ On _____ before me, (here insert
name and title of the officer), 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 _____ (Seal)

Per GC Sec. 40814; CC Sec. 1181

EXHIBIT A

EXHIBIT B

RESOLUTION NO. 2022-52

THE CITY COUNCIL OF THE CITY OF MARINA HEREBY APPROVES THE TENTATIVE MAP AMENDMENT TO THE DUNES ON MONTEREY BAY (FORMERLY UNIVERSITY VILLAGES) PHASE 1B-PROMENADE TENTATIVE MAP (EIR SCH NO. 2004091167).

WHEREAS, at the regular meeting of May 31, 2005, City Council adopted Resolution No. 2005-127, certifying the Environmental Impact Report for the University Village Development Project, Resolution No. 2005-130, approving the University Village Specific Plan, Resolution No. 2005-131, approving the University Village Tentative Map and Resolution No. 2005-132, approving Sign Program for Regional Retail, Village promenade, Site Plans, Landscaping Plans, Lighting Plans and Building Elevations for Residential Units; and,

WHEREAS, at the regular meeting of October 2, 2007, the City Council adopted Resolution No. 2007-229, approving Phase 1C Final Map for The Dunes Development Project Subdivision (formerly University Village) and approving Subdivision Improvement Agreement between City of Marina and Marina Community Partners, LLC, (MCP); and,

WHEREAS, at the regular meeting of the Planning Commission on October 9, 2008, the Planning Commission reviewed and recommended that City Council open a public hearing and certify and Addendum to the Environmental Impact Report (EIR SCH No. 2004091167) originally approved by Council on May 31, 2005, approve an amended tentative map (Resolution No. 2008-27), and approve a revised site plan for the Dunes Phase 1B, subject to conditions; 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 December 17, 2019, the City Council adopted Resolution No. 2019-140 approving an Operating Agreement for the Dunes on Monterey Bay, including but not limited to, the Specific Plan, Development Agreement, the Schedule of Performance, and the 2019 project pro formas; and,

WHEREAS, as part of the approved Schedule of Performance, MCP is responsible for the construction of approximately 27,285 sq. ft of commercial pads, which the parcels are included in this amended Tentative Map; and,

WHEREAS, Marina Community Partners (MCP) proposes amendments to the previously approved Tentative Map for Phase 1B area of the Dunes on Monterey Bay (formerly University Villages). The request changes from the approved amended 2008 Tentative Map are as follows:

1. Remainder Parcel – Individual Lot Lines and Right of Way for the Linear Park Street have been incorporated into the overall site plan.
2. Remainder Parcel – Parcels have been added to create individual lot for residential buildings.
3. Property Lines – The property lines shown in the amended Tentative Map have been refined to adjust to the current design site plan for the commercial, retail, live-work and residential units.

4. Parcels – Parcels have been adjusted and added for private streets, open space area to assist with the amended Commercial Association, which will be annexed into the existing CAM.
5. Grading – The project grading concept has not substantially changed. The current grading has been refined to fit the current layout of the new site plan.
6. Street Sections – Street sections have been adjusted to reflect existing road conditions built on the site. All sections are consistent with the Specific Plan.
7. Right of Way entry to the town square from the south is realigned and narrowed to promote a more friendly pedestrian access between all the retail centers for the project.

WHEREAS, the City of Marina Planning Division determined the project is consistent with the Environmental Impact Report (SCH No.2004091167) certified for the University Villages Specific Plan and no new environmental impacts will occur and the City Council will take action on the final CEQA determination; and,

WHEREAS, at a public hearing, upon hearing and considering all testimony and arguments, if any, of all interested persons desiring to be heard, said Planning Commission did affirm the findings regarding the referenced case, and further, did recommend that the City Council approve the Amended Tentative Map, subject to conditions; and,

WHEREAS, at a public hearing, upon hearing and considering all testimony and arguments, if any, of all interested persons desiring to be heard, the City Council did affirm the findings regarding the referenced case, and further, did find the following facts to justify approval of the Amended Tentative Map, subject to conditions, as follows:

1. The proposed amended map proposes no changes to the adopted Specific Plan for the project and is consistent with the City of Marina General Plan and University Villages Specific Plan in that this proposal consolidates land uses so as to avoid urban sprawl by making efficient use of lands designated for residential uses.
2. The design or improvement of the proposed subdivision is consistent with the City of Marina General Plan and University Villages Specific Plan in that the proposed amended tentative map will implement the Specific Plan which allows for the creation of a unique fully integrated community of diverse housing types, infrastructure and recreational facilities.
3. The site remains physically suitable for development in that the proposed grading plan will allow for the general retention of the natural topography of the site, with limited need for retaining walls.
4. The site remains physically suitable for the proposed density of development in that the proposal is consistent with the General Plan commercial floor area ratio (FAR) and residential densities.
5. The design of the subdivision or the proposed amended improvements are not likely to cause substantial environmental damage nor substantially injure fish or wildlife or their habitat in that a biology report was prepared as part of the Environmental Impact Report in accordance with the California Environmental Quality Act and appropriate mitigations will be imposed.

6. The design of the amended subdivision or type of improvements are not likely to cause serious public health problems in that an Environmental Impact Report was prepared in accordance with the California Environmental Quality Report and findings were made that public health problems will be a less than significant impact with the implementation of appropriate mitigation measures.
7. The proposed amended tentative map does not contemplate or propose substantial changes in the prior project modifications, which will or would require major revisions of EIR No. 2004091167, due to the involvement of new significant environmental effects or a substantial increase in the severity of significant effects previously identified in the EIR above. Rather, the proposed modification concerns a change in, and construction related to, the approved uses within a specific area of The Dunes on Monterey Bay, which specific area is approved for retails, commercial and residential mixed use.

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

1. Find the Project exempt from the California Environmental Act (CEQA) pursuant to State CEQA Guidelines Section 15183; and,
2. Approving the Phase 1B Tentative Map Amendment, subject to finds and conditions of approval.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 3rd day of May 2022, by the following vote:

AYES, COUNCIL MEMBERS: Medina Dirksen, Burnett, Berkley, Biala, Delgado

NOES, COUNCIL MEMBERS: None

ABSENT, COUNCIL MEMBERS: None

ABSTAIN, COUNCIL MEMBERS: None

Bruce C. Delgado, Mayor

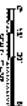
ATTEST:

Anita Sharp, Deputy City Clerk

MATCH LINE

UNIVERSITY VILLAGE APARTMENTS
UNIVERSITY VILLAGE ASSOCIATES
APN 031-282-055-000

(SEE SHEET TWO)

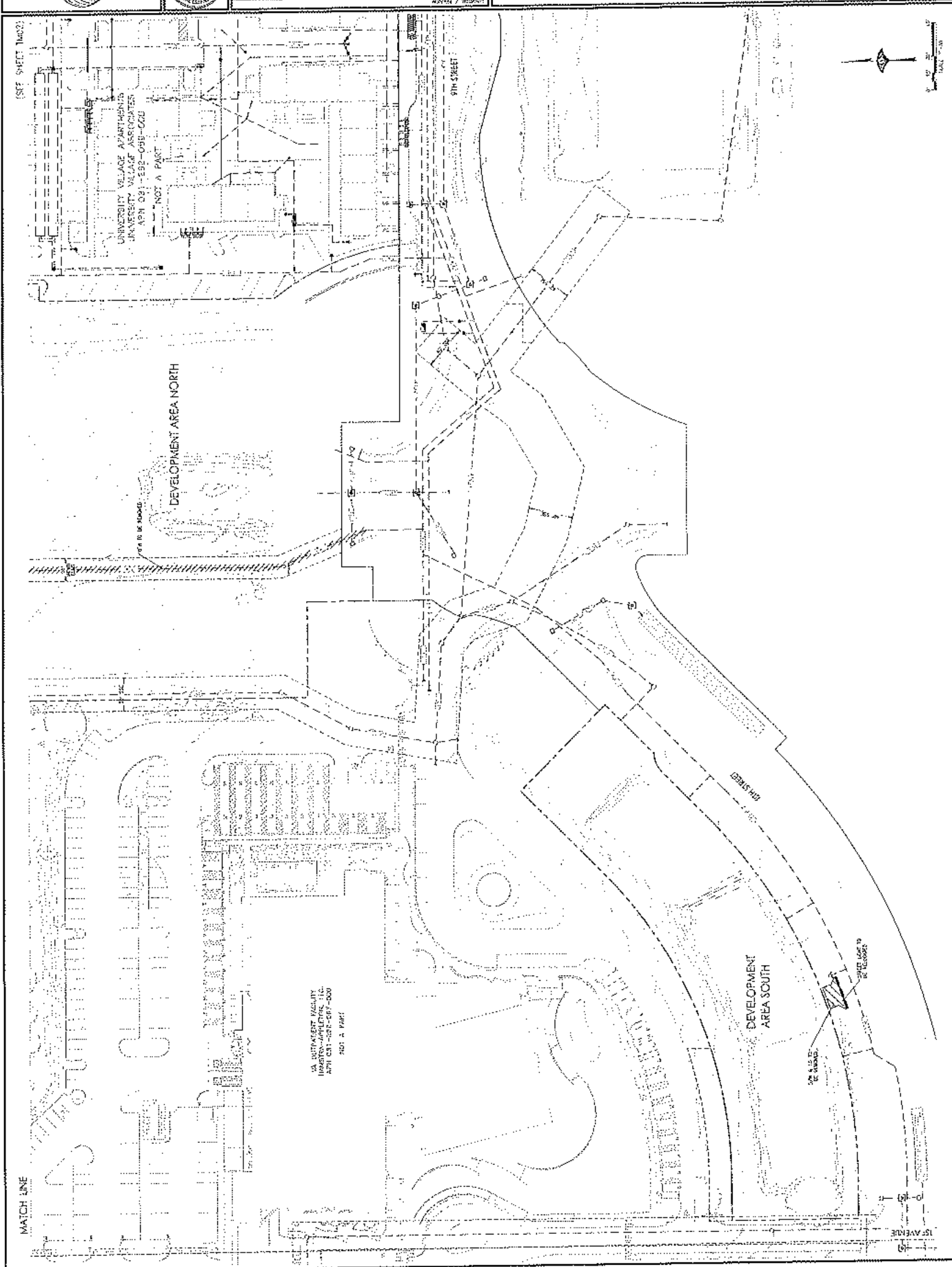


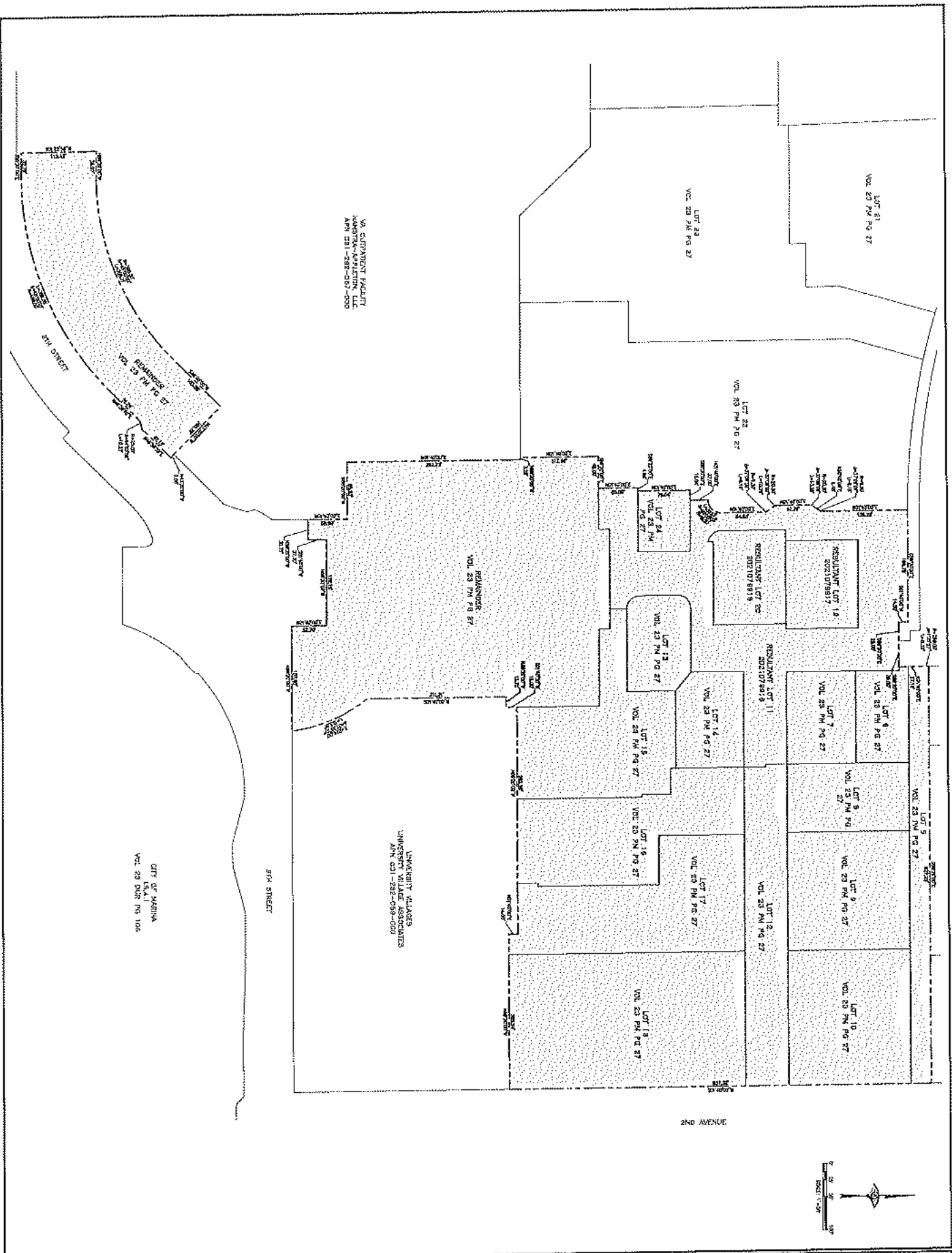
**AMENDED TENTATIVE MAP
UNIVERSITY VILLAGES - PHASE 1B**
EXISTING CONDITIONS & DEMOLITION
PLAN

DATE: 7/1/2010	CITY: SAN ANTONIO
BY: [Signature]	APPROVED BY: [Signature]
DATE: 7/1/2010	CITY: SAN ANTONIO
BY: [Signature]	APPROVED BY: [Signature]



WOOD RODGERS
ENGINEERS
4400 WILLOW ROAD, SUITE 100, SAN ANTONIO, TEXAS 78237
TEL: 214.643.1550
FAX: 214.643.1551





AMENDED TENTATIVE MAP
UNIVERSITY VILLAGES - PHASE 1B

BOUNDARY MAP EXHIBIT

SCALE: 1" = 50'

DATE: 08/11/2011

SHEET: 1

4 OF 13

NO.	DATE	DESCRIPTION
1	08/11/2011	PREPARED BY: [Name]
2	08/11/2011	APPROVED BY: [Name]
3	08/11/2011	APPROVED BY: [Name]
4	08/11/2011	APPROVED BY: [Name]

WOOD ROGERS

Surveyors and Engineers

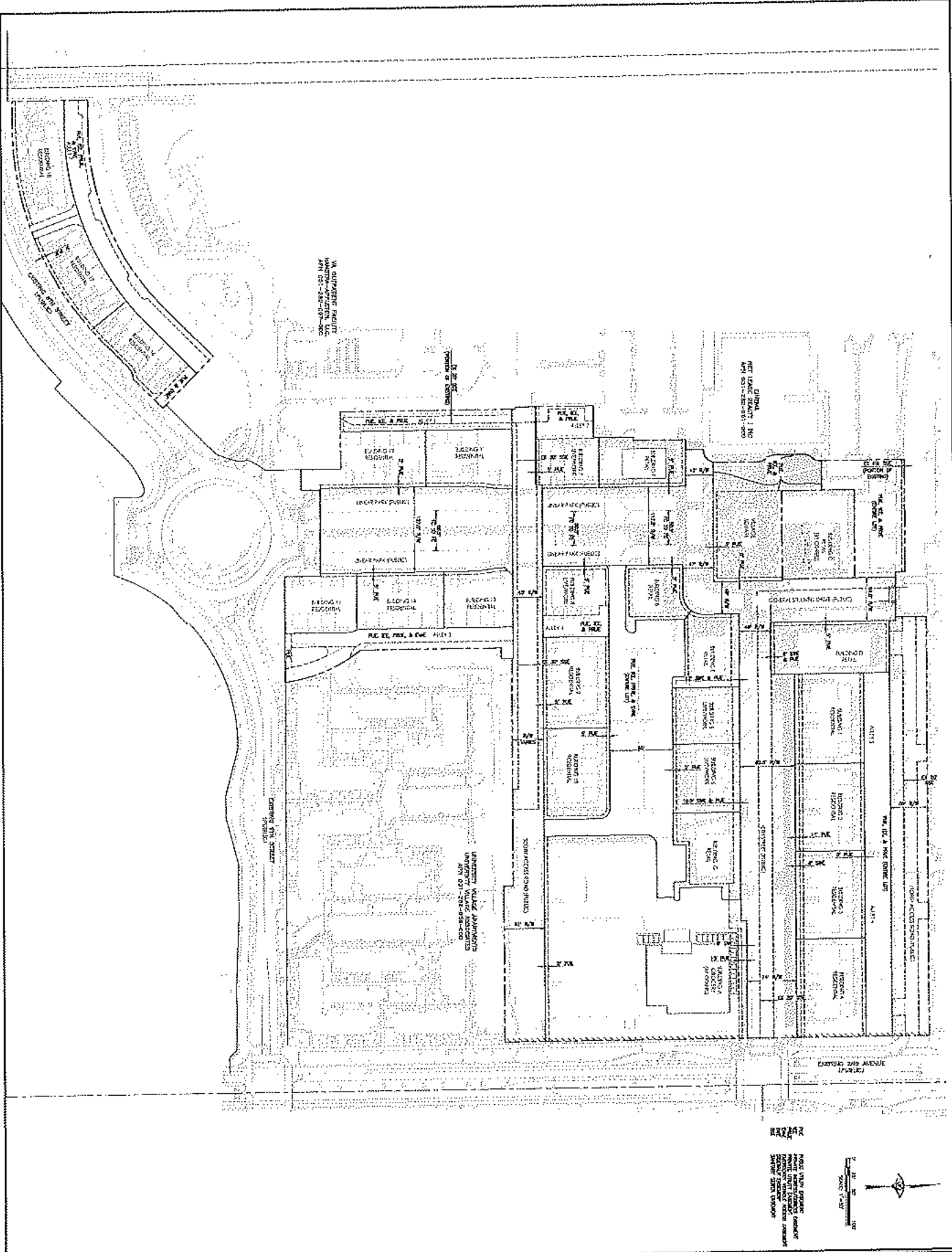
1000 N. 1st Street, Suite 100

Phoenix, AZ 85004

Phone: (602) 254-1100

Fax: (602) 254-1101

www.woodrogers.com



AMENDED TENTATIVE MAP UNIVERSITY VILLAGES - PHASE 1B PROPOSED PUBLIC RIGHT OF WAY & EASEMENTS		DATE: 11/11/11 BY: [Signature] FOR: [Signature]		DATE: 11/11/11 BY: [Signature] FOR: [Signature]		DATE: 11/11/11 BY: [Signature] FOR: [Signature]		DATE: 11/11/11 BY: [Signature] FOR: [Signature]	
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EXHIBIT C

THE DUNES PROMENADE - PHASE 1B

DEVELOPER
SEA HUNT - OREGON (2) 441-1111 10/10/10
115 10/10/10 10/10/10
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 4035 CHICAGO, ILL.
 4040 NEW YORK, N.Y.
 4045 PHILADELPHIA, PA.
 4050 PITTSBURGH, PA.
 4055 RICHMOND, VA.
 4060 WASHINGTON, D.C.

SHEET INDEX

- 70 C000 TRAIL MAPS
- 71 C001 SHAPING PLANS
- 72 C002 EROSION CONTROL PLANS
- 73 C003 DRAINAGE PLANS
- 74 C004 CONSTRUCTION PLANS
- 75 C005 FLOOD CONTROL STRUCTURES
- 76 C006 FLOOD CONTROL STRUCTURES
- 77 C007 DETAILS
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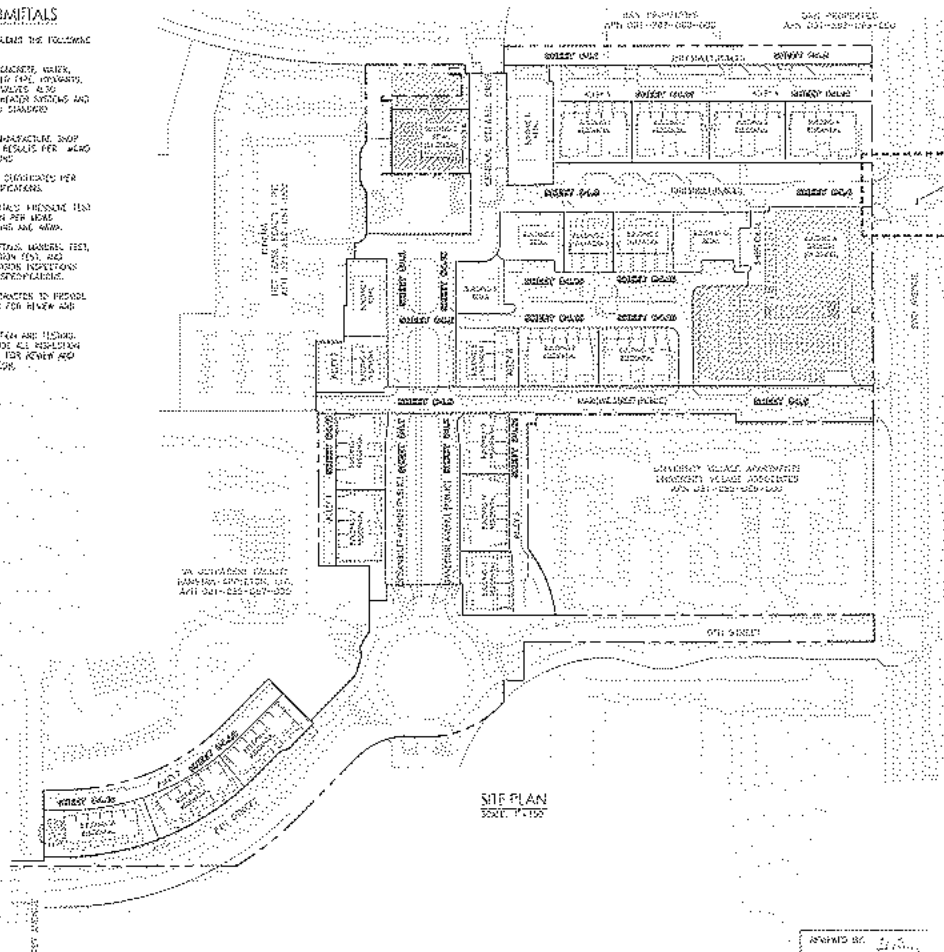
SEPARATE PERIOD

* JOURNAL & MAGAZINE DEPT.
* 507 & 576-81 LOUISIANA DEPT.

MCWID SUBMITTALS

THE ASSOCIATION OF THE STATES OF THE MIDDLE
AND NORTH AMERICAN COUNTRIES

1. MONITORING: TEST DATA, COMPOSITION, WATER, SENSITIVE MATERIAL, WASTE, PESTICIDES, TOXIC WASTES, AND SO ON. MONITORING FOR WASTE MATERIALS AND PESTICIDES FOR WASTE MANAGEMENT AND APPROPRIATE FOR WASTE MANAGEMENT.
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THE PLAN

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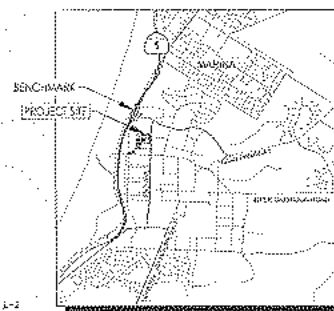
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MA 94
JOHN KENNY, JR.
JERRY LAGLER

Call for details
800-875-1100, ext. 2000

222
2246 DECEMBER 19 2145



VICINITY MAP

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PROPERTY LANE		
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FEED		
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WINDMA		
CENTER LINE		
SILVER MANTLE		
SHOULDER		
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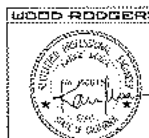
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1. *Environ. Biol. Fish.* 1997, 48: 171-182.

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THE DUNES PROMENADE

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March 8, 2023

Item No. **13b**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of March 21, 2023

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2023-,
APPROVING THE PHASE 1B-PROMENADE PUBLIC IMPROVEMENT
AGREEMENT BETWEEN CITY OF MARINA AND SHEA HOMES, LP,
AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE
PUBLIC IMPROVEMENT AGREEMENT ON BEHALF OF CITY
SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY
ATTORNEY**

RECOMMENDATION:

It is requested that the City Council:

1. Consider adopting Resolution No. 2023-, approving the Phase 1B-Promenade Public Improvement Agreement between City of Marina and Shea Homes, LP, (“Developer”) (“**EXHIBIT A**”), and;
2. Authorizing the City Manager to execute the Public Improvement Agreement on behalf of City subject to final review and approval by the City Attorney.

BACKGROUND:

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.

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.

At the regularly scheduled meeting of December 17, 2019, the City Council adopted Resolution No. 2019-140, approving an Operating Agreement as an administrative amendment of the Development Agreement clarifying and modifying certain project approvals for Specific Plan for The Dunes on Monterey Bay including to the Conforming Clarifications to the Schedule of Performance.

At the regularly scheduled meeting of May 3, 2022, the City Council adopted Resolution No. 2022-52, approving an amendment to University Village Phase 1B-Promenade Tentative Map.

ANALYSIS:

Shea Homes Limited Partnership (“Developer”) has submitted a Public Improvement Agreement and will provide labor and materials and faithful performance bonds required for the recordation of the Final Map and construction of approved public infrastructure. The Map is on this Agenda as a separate item for consideration of approval.

Not all of the Phase 1B-Promenade public improvements have been approved such as street-lights, landscaping, and traffic signals. These improvements will require their own separate Public Improvement Agreement to be presented to Council for approval at a later date.

All required future phased final maps must meet all the appropriate conditions of approval and will be presented to City Council for consideration at a future date.

FISCAL IMPACT:

Should the City Council approve this request, the City requires the Developer to provide satisfactory evidence of their ability to complete the public improvements by the posting of labor and material and faithful performance subdivision improvement bonds in an amount of 100% of the City Engineer's estimate of the cost to perform the work.

For the construction of improvements for Phase 1B-Promenade, the Developer will post a bond in the amount of Two Million Seven Hundred Forty Eight Thousand Two Hundred ninety Seven Dollars (\$2,748,297.00), for completion of the public improvements and a bond in the amount of Two Million Seven Hundred Forty Eight Thousand Two Hundred ninety Seven Dollars (\$2,748,297.00), to secure payment for labor and materials prior to the recording of the Final Map for Phase 1B-Promenade.

Continued maintenance of public streets, sidewalks, streetlights and stormwater facilities shall be incorporated into the existing Dunes Community Facilities District (CFD) and funded by the special tax assessment collected by the special District. Administration of the District shall be in accordance with City Ordinance 3.32.

CONCLUSION:

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

Respectfully submitted,

Edrie Delos Santos, P.E.
Senior Engineer
Public Works Department
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