

RESOLUTION NO. 2023-98

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA APPROVING THE REQUEST BY THE CONTRACTING PARTIES OF 104 INVESTMENTS, LLC, LOCANS INVESTMENTS, LLC, WATHEN CASTANOS PETERSON HOMES, INC., WATHEN CASTANOS PETERSON COASTAL, LP, AND MARINA DEVELOPERS, INC., TO RELEASE A PORTION OF THE PERFORMANCE SECURITY FOR PUBLIC IMPROVEMENTS IN THE SEA HAVEN PHASE 3 AREA IN THE AMOUNT OF \$6,065,795.24, ACCEPTING A SUBSTITUTE PERFORMANCE BOND SECURITY OF \$673,977.25 FOR THE REMAINING PUNCH LIST ITEMS, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE RELEASE AGREEMENTS ON BEHALF OF THE CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY

WHEREAS, at the regular meeting of February 19, 2020, and March 16, 2021, the City Council adopted Resolutions No. 2020-20 and No. 2021-18, approving Public Improvement Agreements between City of Marina (City) and the Contracting Parties of 104 Investments, LLC, Locans Investments, LLC, Wathen Castanos Peterson Homes, Inc., Wathen Castanos Peterson Coastal, LP, and Marina Developers, Inc. (Developer), to construct public improvements in the Sea Haven Phase 3A and 3B areas. The Contracting Parties, as required by the Public Improvement Agreement, filed with the City Clerk performance bonds in the combined amount of \$6,739,772.49 to guarantee completion of public improvements within Phases 3A and 3B as described in the Agreements (“EXHIBIT A”), and;

WHEREAS, on August 16, 2023, City staff received a written request from the Developer to reduce the performance bond by 90% and accept a substitute performance bond of 10% of the original bond amount for remaining punch list items. The Agreements with the Developer do not require acceptance prior to 100% completion. Government Code §66499.7 permits the Developer to seek a partial release of its performance bond following verified satisfactory completion of at least 80% of the work. A partial release of performance security does not operate as an acceptance of the completed improvements and the risk of loss and responsibility for maintenance remains with the Developer until acceptance, and;

WHEREAS, the Public Improvement Agreements with the Developer provide for security in the form of a performance bond in the total amount of the contract price (for these agreements, the total price is \$6,739,772.49). There is a one-year warranty period following acceptance for which the performance bond may serve as security or, alternatively, the developer may substitute a warranty bond in the amount of 10% of the total contract price, and;

WHEREAS, staff has confirmed that a substantial portion representing 90% of the public improvements has been completed in accordance with documentation submitted by the Developer and in conformance with the approved Improvement Plans. The remaining punch list items include site striping and signage, and staff is assured that these improvements will be completed for final acceptance of all improvements, and;

WHEREAS, the Developer shall provide substitute security in the amount of \$673,977.25 in place of the original \$6,739,772.49 in performance security. The Developer has provided an updated Title Report that shows that the bonds to be released are unencumbered by mechanical lien claims, and;

WHEREAS, there is no fiscal impact as City inspections have shown approximately \$6,065,795.24 in improvements has been completed per approved plans and any failure to complete the public improvements is covered by the substitute security in the amount of \$673,977.25.

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

1. Approve the request by the Contracting Parties of 104 Investments, LLC, Locans Investments, LLC, Wathen Castanos Peterson Homes, Inc., Wathen Castanos Peterson Coastal, LP, and Marina Developers, Inc., to release a portion of the performance security for public improvements in the Sea Haven Phase 3 area in the amount of \$6,065,795.24,
2. Accept a substitute performance bond security of \$673,977.25 for the remaining punch list items, and;
3. Authorize the City Manager to execute the release agreement on behalf of the 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 duly held on the 3rd day of October 2023, by the following vote:

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

NOES, COUNCIL MEMBERS: None

ABSENT, COUNCIL MEMBERS: Medina Dirksen

ABSTAIN, COUNCIL MEMBERS: None

Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

EXHIBIT A TO STAFF REPORT

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

“Sea Haven”

– Phase 3a –

This Agreement for Improvement of Streets, Installation of Storm Drains and Other Public Works Facilities (“Agreement”) is made and entered into this 5th day of February, 2020, by and between the City of Marina, herein called the “City,” a municipal corporation, and 104 Investments, LLC, a California limited liability company, Locans Investments, LLC, a California limited liability company, Wathen Castanos Peterson Homes, Inc., a Delaware corporation, and Wathen Castanos Peterson Coastal, LP, a California limited partnership (collectively referred to herein as “Co-Owners”) together with Marina Developers, Inc., a California corporation (referred to herein as the “Developer”). Co-Owners and Developer are collectively referred to herein as “Contracting Parties” and in the singular as a “Contracting Party.”

WHEREAS, pursuant to the grant deed from Cypress Marina Heights LLC (“Cypress Marina Heights”) dated April 13, 2019, as Document No. 2018015912, Co-Owners are now the owners of the land known as “Sea Haven Phase 3a” (the “Property”); and

WHEREAS, Developer is under contract to purchase the Property from Co-Owners and after such purchase will improve the Property according to this Agreement; and

WHEREAS, the City and Cypress Marina Heights previously entered into that certain Final Development Agreement dated as of March 3, 2004 (the “Development Agreement”), pursuant to which the City and Cypress Marina Heights, LLC agreed to certain matters with respect to the development, formerly known as Marina Heights and now known as Sea Haven, of 1,050 homes (the “Project”) on certain real property, consisting of approximately two hundred forty-eight acres located between Imjin Road, Abrams Drive and 12th Street in the City (the “Project Site”); and

WHEREAS, the City and Cypress Marina Heights amended the Development Agreement once previously with that certain Implementation Agreement dated October 11, 2007 (the Development Agreement, as so previously amended by the Implementation Agreement being referred to herein as the “Amended Development Agreement”); and

WHEREAS, Cypress Marina Heights assigned, and Wathen Castanos Peterson Homes, Inc. assumed portions of the rights and obligations of Cypress Marina Heights under the Amended Development Agreement between the City and Cypress Marina Heights; and

WHEREAS, Cypress Marina Heights remains obligated under the Amended Development Agreement for the balance of the Project not yet conveyed to third parties; and

WHEREAS, prior to its adoption of the Development Agreement, the City approved a Specific Plan for the Project Site, General Plan Amendments, a Specific Plan Zoning Ordinance and Map Amendments, a tentative Map and certified an EIR (collectively the “Project Approvals”) subject to the Conditions of Approval attached to Resolution 2004-44 and compliance with Marina Municipal Code Section 16.16.100 requiring a subdivision improvement agreement and bonding prior to approval of the first Final Map; and

WHEREAS, consistent with the Project Approvals, the Developer, with the consent of the Co-Owners, is in the process of developing the Project on the Project Site; and

WHEREAS, on July 3, 2018, the City and Wathen Castanos Peterson Homes, Inc. entered into the First Amendment to the Development Agreement ("First Amendment") amending the terms of the Amended Development Agreement; and

WHEREAS, improvement plans entitled "Street Improvement Plans for Sea Haven Phase 3a," herein "Improvement Plans," have been submitted to the City for approval and acceptance which improvements are to include new storm drain system, curb, gutter, asphalt concrete pavement, street lights and electrical facilities, sidewalk, striping, traffic signs, and survey monuments, as shown on **Exhibit A**, herein the "Improvements;" and

WHEREAS, the Developer, with the consent of the Co-Owners, 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 Sea Haven Phase 3a; and

WHEREAS, the City will not accept any of the Sea Haven Phase 3a Improvements to be constructed pursuant to this Agreement until all the conditions of this Agreement are satisfied in full; and

WHEREAS, the Co-Owners or Developer require 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, 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 City and the Contracting 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 and the Fort Ord Reuse Authority's (FORA) Master Resolution.

SECTION 2

The Contracting Parties agree:

- a. To be jointly and severally liable to perform each and every provision required by the City to be performed by the Contracting Parties 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 grant to the City or other entities entitled thereto, from property owned by the Co-Owners or subsequently 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. At no cost to the City, City and Contracting Parties 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 Contracting Parties in acquisition of easements necessary to construct the Improvements. City also agrees to issue Contracting Parties and/or Contracting Parties' contractors encroachment permits necessary to accomplish said work.

Prior to acceptance of the Improvements by the City, Contracting Parties jointly and severally agree 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 reasonable 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 Contracting Parties or any contractor or subcontractor of the Contracting Parties, or any employee of the foregoing, grading or working upon said real estate; or (ii) any act or omission of Contracting Parties or Contracting Parties' 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 or intentional actions 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 Contracting Parties 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, Contracting Parties shall remain obligated for routine maintenance. After acceptance, Contracting Parties shall remain obligated to eliminate any defect in design or dangerous condition caused by the design or construction defect, however, Contracting Parties shall not be responsible for routine maintenance. Provisions of this Section shall remain in full force and effect in accordance with California Code of Civil Procedure Sections 337.1 and 337.15 following acceptance by City of the Improvements. The Improvement security shall not be required to cover the provisions of this Section. Contracting Parties 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

c. To construct and improve all 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. Contracting Parties 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 Improvements, guaranteeing Contracting Parties' 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 Contracting Parties of their obligations and the terms and conditions on which the City may obtain the proceeds of the bond. Alternatively, the Contracting Parties 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 Improvements to guarantee Contracting Parties' 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 Improvements described in this agreement, and shall secure payment to City of any loss due to the default of the Contracting Parties or their contractors or their inability or refusal to perform this Agreement, 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 and acceptance of the Improvements by the City, provided that after completion of the improvements and acceptance of the Improvements by the City, a separate warranty bond issued by a surety admitted to issue such bonds in California may substitute for the performance bond securing the warranty described above 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 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 Improvements described in this Agreement. The Payment Bond shall secure the payment of those persons or entities to whom the Contracting Parties may become legally indebted for labor, materials, tools, equipment or services of any kind used or employed by the Contracting Parties' contractor(s) or subcontractor(s) 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 Contracting Parties, or Contracting Parties' contractor(s) or subcontractor(s) 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 person that has a lien right pursuant to Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the California Civil Code; (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 Contracting Parties their 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 person that has a lien right pursuant to Title 3 California Civil Code Section Part 6 of Division 4, commencing with Section 9000 so as to give a right of action to those persons or their assigns in any suit brought upon the bond. The Payment Bond may be released thirty-five days after the passage of time within which claims of lien are required to be recorded pursuant to California Civil Code Part 6 of Division 4 commencing with Section 8200,

but in no event shall such security be released prior to one hundred and twenty days after acceptance of the Improvements by the City Council. The amount to be released shall first be reduced by the total of all claims on which an action has been filed and notice thereof given in writing to the City. City expressly may require the surety not to release the amount of security deemed necessary by City to assure payment of reasonable expenses and fees, including reasonable attorney's fees.

The Contracting Parties 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 Insurance 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, that renewed authority has been granted.

d. At all times during the term of this Agreement and until the Improvements constructed by Contracting Parties are accepted by City, Contracting Parties 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 Improvements to be constructed by Contracting Parties 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 above shall: (a) name City as additional insured; (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 Contracting Parties or Contracting Parties' contractors or their respective employees. Contracting Parties hereby waive, and Contracting Parties shall cause each of their respective 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 authorized to conduct business in California with a current A.M. Best rating of no less than A: VII. Prior to commencing any work pursuant this Agreement, Contracting Parties shall deliver to City the insurance company's certificate evidencing the required coverage, or if required by City a copy of the policies obtained.

e. Contracting Parties' obligations under this Agreement are personal obligations of the Contracting Parties notwithstanding a transfer of all or any part of the Property subject to this Agreement. Contracting Parties shall not be entitled to assign their obligations under this Agreement to any transferee of all or any part of the Property to any third party without the express prior written consent of the City. Notwithstanding the foregoing, specifically excluding single family residential dwelling units sold to third party end-users, Co-Owners may transfer, assign or sell in one transaction or a series of transactions all or a substantial portion or interest of the Co-Owners in the Property or the Project ("Bulk Sale") with prior written notice to the City, to any entity which controls, is controlled by or is under common control with the Co-Owners, without the need for the approval of the City provided that said assignee assumes, in full, the obligations of Co-Owners under this Agreement.

SECTION 3

An estimate of the cost for construction of the Improvements and performing land development work in connection with the 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 \$4,555,413.61. 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

Contracting Parties will commence construction of the Improvements required by this Agreement within six (6) months of the date of this Agreement, provided City has approved all of Contracting Parties' Public Improvement Plans. Contracting Parties shall complete such construction of the Improvements within two (2) years of the date of this Agreement, unless otherwise extended in writing by the City Engineer. Contracting Parties shall maintain such public works facilities and other improvements described in this Agreement, at Contracting Parties' 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.

SECTION 5

a) Default of a Contracting Party shall include, but not be limited to: (1) failure to timely complete the Improvements within two (2) years of the date of this Agreement, unless otherwise extended in writing by the City Engineer; (2) failure to timely cure after written notice any defect of the Improvements; (3) failure to perform substantial construction work for a period of sixty calendar days after commencement of the work; (4) insolvency, appointment of a receiver, or the filing of any petition in bankruptcy either voluntary or involuntary which the Contracting Party fail to discharge within thirty (30) days; (5) commencement of a foreclosure action affecting all or a portion of the Property, or any conveyance of all or a substantial portion of the Property in lieu or in avoidance of foreclosure; or (6) failure to perform any other obligation under this Agreement. Notwithstanding the foregoing, a Contracting Party shall not be in default under this Agreement if it cures any default within thirty (30) days' of City's written notice of such default; or, if the default may not reasonably be cured within such time period, if it commences to cure within thirty (30) 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 a Contracting Party' 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 a Contracting Party. 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 a Contracting Party' 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 a Contracting Party's default under this Agreement, Contracting Parties authorize City to perform such obligation sixty (60) days after mailing written notice of default to Contracting Parties and to Contracting Parties' 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 Contracting Parties, and Contracting Parties' surety shall be liable to the City for any excess cost

or damages occasioned to the City thereby, including but not limited to fees and charges of 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 Contracting Parties 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 Contracting Parties.

SECTION 6

In addition to the other obligations of Contracting Parties set forth in this Agreement, Contracting Parties, subject to the approval of the City Engineer, shall:

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 undertaken with minimum interruption of traffic.
3. Obtain the approval of the City Engineer or his or her designee, for all work conducted within the public right-of-way.
4. Coordinate all construction work so that the existing residents and/or businesses have access to their properties.
5. Install all Improvements pursuant to the approved Improvement Plans.
6. Provide the City with electronic copies of the "As Built" Improvement Plans as an AutoCAD drawing file (DWG format, AutoCAD 2002 minimum or latest version).
7. Until the roads on the Property are open to the public, 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

Contracting Parties shall, at Contracting Parties' 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 including, but not limited to, fees for inspection of all improvements by the City Engineer or his or her designee.

SECTION 8

Neither Contracting Parties nor any of Contracting Parties' agents, contractors or subcontractors are or shall be considered to be agents of City in connection with the performance of Contracting Parties' 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 City and Wathen Castanos Peterson Homes, Inc., 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

Any reimbursements due the Contracting Parties, unless specified otherwise in writing in this agreement, will expire ten (10) years after the date of execution of this agreement.

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. 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 written agreement of the City and the Contracting 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, and the agreements referenced herein 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 City and the Contracting Parties.

SECTION 17

In the event a schedule of performance 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. It is understood and agreed to by the Contracting Parties that they cannot, and will not, claim force majeure or request that the time for commencement of construction or completion of the Improvements be tolled based on an economic downturn of any type. Any such extension may be granted without notice to Contracting Parties' surety and shall not affect the validity of this Agreement or release the surety on any security given for this Agreement.

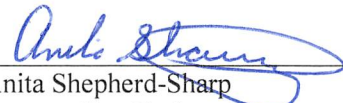
SECTION 18

Nothing in this Agreement shall in anyway whatsoever modify, amend, or waive Wathen Castanos Peterson Homes, Inc's obligations to comply with the Development Agreement, as amended, including, but not limited to Section 6 of the First Amendment.

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

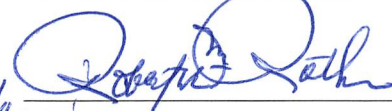
ATTEST:

CITY OF MARINA


Anita Shepherd-Sharp
Deputy City Clerk


Layne Long
City Manager

APPROVED AS TO FORM:


for the City Attorney

[Signatures Continue on Following Page]

ACKNOWLEDGMENT

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.

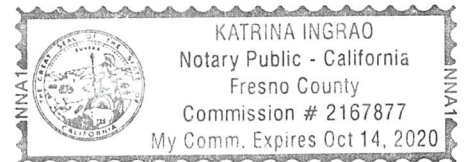
STATE OF CALIFORNIA)
)
COUNTY OF Fresno)

On February 28, 2020, before me, Katrina Ingrao,
Notary Public, personally appeared Faria Asseini,
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)



ACKNOWLEDGMENT

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 FRESNO)

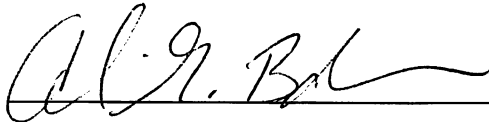
On MARCH 4, 2020 before me, ALISON G. BAKER, Notary Public
(insert name and title of the officer)

personally appeared JOSHUA E. PETERSON
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.

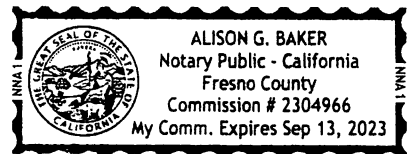
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

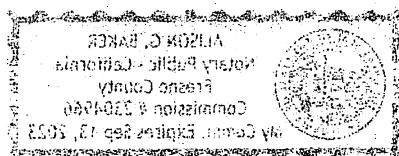
WITNESS my hand and official seal.

Signature



(Seal)



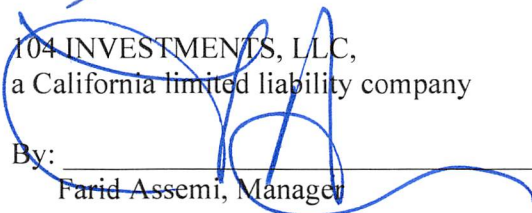


IN WITNESS WHEREOF Contracting Parties have executed this agreement as of the date first written above.

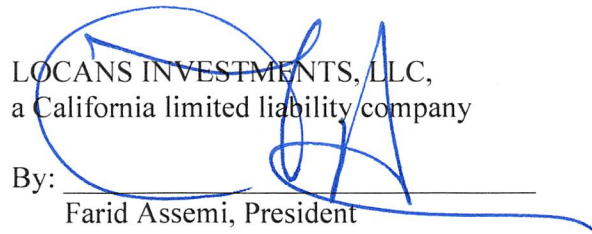
WATHEN CASTANOS PETERSON HOMES, INC.,
a Delaware Corporation

By: 
Joshua E. Peterson, President

104 INVESTMENTS, LLC,
a California limited liability company

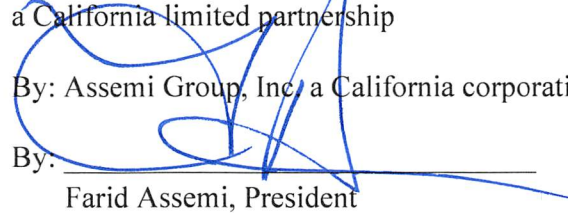
By: 
Farid Assemi, Manager

LOCANS INVESTMENTS, LLC,
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By: 
Farid Assemi, President

WATHEN CASTANOS PETERSON COASTAL, LP,
a California limited partnership

By: Assemi Group, Inc. a California corporation

By: 
Farid Assemi, President

MARINA DEVELOPERS, INC.,
a California corporation

By: 
Joshua E. Peterson, President

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.

Per GC Sec. 40814; CC Sec. 1181

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

“Sea Haven”

– Phase 3B –

This Agreement for Improvement of Streets, Installation of Storm Drains and Other Public Works Facilities (“Agreement”) is made and entered into this 17th day of May 2021, by and between the City of Marina, herein called the “City,” a municipal corporation, and 104 Investments, LLC, a California limited liability company, Locans Investments, LLC, a California limited liability company, Wathen Castanos Peterson Homes, Inc., a Delaware corporation, and Wathen Castanos Peterson Coastal, LP, a California limited partnership (collectively referred to herein as “Co-Owners”) together with Marina Developers, Inc., a California corporation (referred to herein as the “Developer”). Co-Owners and Developer are collectively referred to herein as “Contracting Parties” and in the singular as a “Contracting Party.” The City and the Contracting Parties are referred to herein as the “Parties.

WHEREAS, pursuant to the grant deed from Cypress Marina Heights LLC (“Cypress Marina Heights”) dated April 13, 2019, as Document No. 2018015912 (the “Deed”), Co-Owners are now the owners of the land known as “Sea Haven Phase 3B” (the “Property”); and

WHEREAS, the Parties acknowledge that in the development of the Property the Parties are subject to requirements for payment of prevailing wage in accordance with the Master Resolution adopted by the former Fort Ord Reuse Authority on March 14, 1997 as recorded in the Official Records of the Monterey County Recorder on April 14, 2020; and pursuant to the holding in Monterey/Santa Cruz County Building and Construction Trades Council v. Cypress Marina Heights, (2011) 191 Cal. App. 4th 1500; and

WHEREAS, Developer is under contract to purchase the Property from Co-Owners and after such purchase will improve the Property according to this Agreement; and

WHEREAS, the City and Cypress Marina Heights previously entered into that certain Final Development Agreement dated as of March 3, 2004 (the “Development Agreement”), pursuant to which the City and Cypress Marina Heights, LLC agreed to certain matters with respect to the development, formerly known as Marina Heights and now known as Sea Haven, of 1,050 homes (the “Project”) on certain real property, consisting of approximately two hundred forty-eight acres located between Imjin Road, Abrams Drive and 12th Street in the City (the “Project Site”); and

WHEREAS, the City and Cypress Marina Heights amended the Development Agreement once previously with that certain Implementation Agreement dated October 11, 2007 (the Development Agreement, as so previously amended by the Implementation Agreement being referred to herein as the “Amended Development Agreement”); and

WHEREAS, Cypress Marina Heights assigned, and Wathen Castanos Peterson Homes, Inc., assumed, portions of the rights and obligations of Cypress Marina Heights under the Amended Development Agreement between the City and Cypress Marina Heights; and

WHEREAS, Cypress Marina Heights remains obligated under the Amended Development Agreement for the balance of the Project not yet conveyed to third parties; and

WHEREAS, prior to its adoption of the Development Agreement, the City approved a Specific Plan for the Project Site, General Plan Amendments, a Specific Plan Zoning Ordinance and Map Amendments, a tentative Map and certified an EIR (collectively the “Project Approvals”)

WHEREAS, prior to its adoption of the Development Agreement, the City approved a Specific Plan for the Project Site, General Plan Amendments, a Specific Plan Zoning Ordinance and Map Amendments, a tentative Map and certified an EIR (collectively the "Project Approvals") subject to the Conditions of Approval attached to Resolution 2004-44 and compliance with Marina Municipal Code Section 16.16.100 requiring a subdivision improvement agreement and bonding prior to approval of the first Final Map; and

WHEREAS, consistent with the Project Approvals, the Developer, with the consent of the Co-Owners, is in the process of developing the Project on the Project Site; and

WHEREAS, on July 3, 2018, the City and Wathen Castanos Peterson Homes, Inc. entered into the First Amendment to the Development Agreement ("First Amendment") amending the terms of the Amended Development Agreement; and

WHEREAS, improvement plans entitled "Street Improvement Plans for Sea Haven Phase 3B," herein "Improvement Plans," have been submitted to the City for approval and acceptance which improvements are to include new storm drain system, curb, gutter, asphalt concrete pavement, street lights and electrical facilities, sidewalk, striping, traffic signs, and survey monuments, as shown on **Exhibit A**, herein the "Improvements;" and

WHEREAS, the Developer, with the consent of the Co-Owners, 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 Sea Haven Phase 3B; and

WHEREAS, the City will not accept any of the Sea Haven Phase 3B Improvements to be constructed pursuant to this Agreement until all the conditions of this Agreement are satisfied in full; and

WHEREAS, the Co-Owners or Developer require 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, 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 City and the Contracting 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 Contracting Parties agree:

- a. To be jointly and severally liable to perform each and every provision required by the City to be performed by the Contracting Parties 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 grant to the City or other entities entitled thereto, from property owned by the Co-Owners or subsequently 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. At no cost to the City, City and Contracting Parties 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 Contracting Parties in acquisition of easements necessary to construct the Improvements. City also agrees to issue Contracting Parties and/or Contracting Parties' contractors encroachment permits necessary to accomplish said work.

Prior to acceptance of the Improvements by the City, Contracting Parties jointly and severally agree 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 reasonable 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 Contracting Parties or any contractor or subcontractor of the Contracting Parties, or any employee of the foregoing, grading or working upon said real estate; or (ii) any act or omission of Contracting Parties or Contracting Parties' 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 or intentional actions 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 Contracting Parties 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, Contracting Parties shall remain obligated for routine

maintenance. After acceptance, Contracting Parties shall remain obligated to eliminate any defect in design or dangerous condition caused by the design or construction defect, however, Contracting Parties shall not be responsible for routine maintenance. Provisions of this Section shall remain in full force and effect in accordance with California Code of Civil Procedure Sections 337.1 and 337.15 following acceptance by City of the Improvements. The Improvement security shall not be required to cover the provisions of this Section. Contracting Parties 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.

c. To construct and improve all 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. Contracting Parties 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 Improvements, guaranteeing Contracting Parties' 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 Contracting Parties of their obligations and the terms and conditions on which the City may obtain the proceeds of the bond. Alternatively, the Contracting Parties 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 Improvements to guarantee Contracting Parties' 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 Improvements described in this agreement, and shall secure payment to City of any loss due to the default of the Contracting Parties or their contractors or their inability or refusal to perform this Agreement, 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 and acceptance of the Improvements by the City, provided that after completion of the improvements and acceptance of the Improvements by the City, a separate warranty bond issued by a surety admitted to issue such bonds in California may substitute for the performance bond securing the warranty described above 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 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 Improvements described in this Agreement. The Payment Bond shall secure the payment of those persons or entities to whom the Contracting Parties may become legally indebted for labor, materials, tools, equipment or services of any kind used or employed by the Contracting Parties' contractor(s) or subcontractor(s) 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 Contracting Parties, or Contracting Parties' contractor(s) or subcontractor(s) 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 person that has a lien right pursuant to Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the California Civil Code; (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 Contracting Parties their 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 person that has a lien right pursuant to Title 3 California Civil Code Section Part 6 of Division 4, commencing with Section 9000 so as to give a right of action to those persons or their assigns in any suit brought upon the bond. The Payment Bond may be released thirty-five days after the passage of time within which claims of lien are required to be recorded pursuant to California Civil Code Part 6 of Division 4 commencing with Section 8200, but in no event shall such security be released prior to one hundred and twenty days after acceptance of the Improvements by the City Council. The amount to be released shall first be reduced by the total of all claims on which an action has been filed and notice thereof given in writing to the City. City expressly may require the surety not to release the amount of security deemed necessary by City to assure payment of reasonable expenses and fees, including reasonable attorney's fees.

The Contracting Parties 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 Insurance 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, that renewed authority has been granted

d. If any on-site or off-site Improvements related to the Project, including, without limitation, the Improvements shown on the Improvement Plans, constructed by or caused to be constructed by the Contracting Parties or any of their affiliates, contractors, sub-contractors, or agents, are considered to be public works for purposes of prevailing wages under State law, then when such improvements are constructed they shall be constructed in compliance with the prevailing wage law pursuant to Labor Code §1720 et seq. and implementing regulations of the Department of Industrial Relations and shall comply with the other applicable provisions of the prevailing wage law, including, without limitation, the payment of prevailing wages in the construction of such improvements, as those wages are determined pursuant to the prevailing wage law. The City makes no representations or warranties as to whether any such improvements are considered to be public works for purposes of prevailing wages under State law. Should Contracting Parties or any of the aforementioned persons or entities fail to pay, fail to cause to be paid, or fail to have paid or caused to have been paid, prevailing wages, or to have failed to comply with the aforementioned prevailing wage laws as to any such improvements, and it is alleged, contended, or determined that Contracting Parties should have paid prevailing wages, or otherwise fail to comply with the prevailing wage law, Contracting Parties shall indemnify, defend, and hold harmless to the fullest extent permitted by law, the City from and against any and all claims, liability, loss, damage, expense, costs (including without limitation costs, attorney's fees and fees of litigation) of every nature arising out of or in connection with the failure to pay prevailing wages or comply with the prevailing wage law. This indemnification obligation shall survive the termination of this Agreement.

e. At all times during the term of this Agreement and until the Improvements constructed by Contracting Parties are accepted by City, Contracting Parties 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 Improvements to be constructed by Contracting Parties 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 above shall: (a) name City as additional insured; (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 Contracting Parties or Contracting Parties' contractors or their respective employees. Contracting Parties hereby waive, and Contracting Parties shall cause each of their respective 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 authorized to conduct business in California with a current A.M. Best rating of no less than A: VII. Prior to commencing any work pursuant this Agreement, Contracting Parties 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. Contracting Parties' obligations under this Agreement are personal obligations of the Contracting Parties notwithstanding a transfer of all or any part of the Property subject to this Agreement. Contracting Parties shall not be entitled to assign their obligations under this Agreement to any transferee of all or any part of the Property to any third party without the express prior written consent of the City. Notwithstanding the foregoing, specifically excluding single family residential dwelling units sold to third party end-users, Co-Owners may transfer, assign or sell in one transaction or a series of transactions all or a substantial portion or interest of the Co-Owners in the Property or the Project ("Bulk Sale") with prior written notice to the City, to any entity which controls, is controlled by or is under common control with the Co-Owners, without the need for the approval of the City provided that said assignee assumes, in full, the obligations of Co-Owners under this Agreement.

SECTION 3

An estimate of the cost for construction of the Improvements and performing land development work in connection with the 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 \$2,184,358.88. 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

Contracting Parties will commence construction of the Improvements required by this Agreement within six (6) months of the date of this Agreement, provided City has approved all of Contracting Parties' Public Improvement Plans. Contracting Parties shall complete such construction of the Improvements within two (2) years of the date of this Agreement, unless otherwise extended in writing by the City Engineer. Contracting Parties shall maintain such public works facilities and other improvements described in this Agreement, at Contracting Parties' 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.

SECTION 5

a) Default of a Contracting Party shall include, but not be limited to: (1) failure to timely complete the Improvements within two (2) years of the date of this Agreement, unless otherwise extended in writing by the City Engineer; (2) failure to timely cure after written notice any defect of the Improvements; (3) failure to perform substantial construction work for a period of sixty calendar days after commencement of the work; (4) insolvency, appointment of a receiver, or the filing of any petition in bankruptcy either voluntary or involuntary which the Contracting Party fails to discharge within thirty (30) days; (5) commencement of a foreclosure action affecting all or a portion of the Property, or any conveyance of all or a substantial portion of the Property in lieu or in avoidance of foreclosure; or (6) failure to perform any other obligation under this Agreement. Notwithstanding the foregoing, a Contracting Party shall not be in default under this Agreement if it cures any default within thirty (30) days' of City's written notice of such default; or, if the default may not reasonably be cured within such time period, if it commences to cure within thirty (30) 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 a Contracting Party'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 a Contracting Party. 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 a Contracting Party'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 a Contracting Party's default under this Agreement, Contracting Parties authorize City to perform such obligation sixty (60) days after mailing written notice of default to Contracting Parties and to Contracting Parties' 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 Contracting Parties, and Contracting Parties' surety shall be liable to the City for any excess cost or damages occasioned to the City thereby, including but not limited to fees and charges of 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, plans and other property belonging to Contracting Parties 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 Contracting Parties.

SECTION 6

In addition to the other obligations of Contracting Parties set forth in this Agreement, Contracting Parties, subject to the approval of the City Engineer, shall:

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 undertaken with minimum interruption of traffic.
3. Obtain the approval of the City Engineer or his or her designee, for all work conducted within the public right-of-way.
4. Coordinate all construction work so that the existing residents and/or businesses have access to their properties.
5. Install all Improvements pursuant to the approved Improvement Plans.
6. Provide the City with electronic copies of the "As Built" Improvement Plans as an AutoCAD drawing file (DWG format, AutoCAD 2002 minimum or latest version).
7. Until the roads on the Property are open to the public, 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.
8. Conduct all work in strict accordance with regulations and guidelines adopted by the California Department of Public Health (CDPH) and the California Department of Industrial Relations (DIR), Division of Occupational Safety and Health, Safety for the prevention of COVID-19 in construction; and the regulations and guidelines for the prevention of COVID -19 adopted by the County of Monterey and by the City.

SECTION 7

Contracting Parties shall, at Contracting Parties' 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 including, but not limited to, fees for inspection of all improvements by the City Engineer or his or her designee.

SECTION 8

Neither Contracting Parties nor any of Contracting Parties' agents, contractors or subcontractors are or shall be considered to be agents of City in connection with the performance of Contracting Parties' 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 City and Wathen Castanos Peterson Homes, Inc., 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

Any reimbursements due the Contracting Parties, unless specified otherwise in writing in this agreement, will expire ten (10) years after the date of execution of this agreement.

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. 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 written agreement of the City and the Contracting 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, and the agreements referenced herein 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 City and the Contracting Parties.

SECTION 17

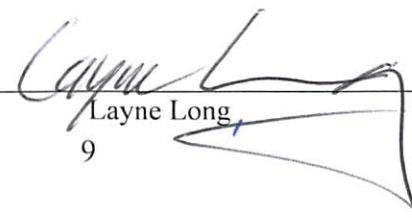
In the event a schedule of performance is tolled, the time for commencement of construction or completion of the Improvements hereunder shall be extended for the same duration as applies to the schedule of performance. It is understood and agreed to by the Contracting Parties that they cannot, and will not, claim force majeure or request that the time for commencement of construction or completion of the Improvements be tolled based on an economic downturn of any type. Any such extension may be granted without notice to Contracting Parties' 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 has executed this Agreement as of the date first written above.

ATTEST:

CITY OF MARINA

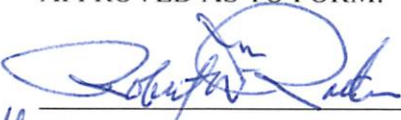

Anita Shepherd-Sharp


Layne Long

Deputy City Clerk

City Manager

APPROVED AS TO FORM:


for the City Attorney



[Signatures Continue on Following Page]

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**CIVIL CODE § 1189**

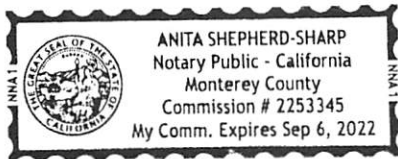
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Monterey)
On May 17, 2021 before me, Anita Shepherd-Sharp, Notary Public,
Date Here Insert Name and Title of the Officer
personally appeared Hayne Long
Name(s) of Signer(s)

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 Anita Shepherd-Sharp
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer — Title(s): _____

☐ Partner — ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

Signer's Name: _____

☐ Corporate Officer — Title(s): _____

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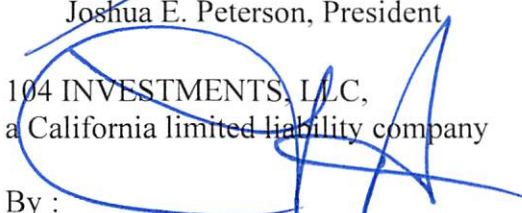
Signer Is Representing: _____

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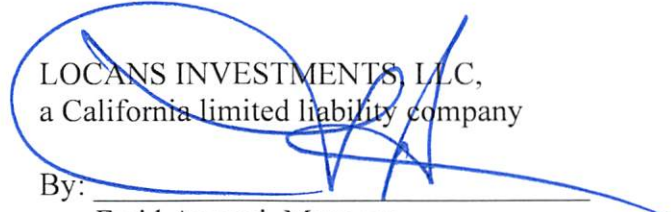
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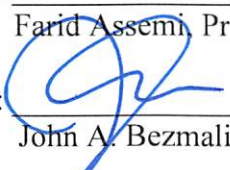
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By: 
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a California corporation

By: 
Joshua E. Peterson, President

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.

Per GC Sec. 40814; CC Sec. 1181

CALIFORNIA ACKNOWLEDGMENT

CIVIL CODE § 1189

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 Fresno

On 3/24/2021

Date

before me,

Brooke Krob, Notary Public

Here Insert Name and Title of the Officer

personally appeared

Joshua E. Peterson

Name(s) of Signer(s)

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

Brooke Krob

Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer – Title(s): _____

☐ Partner – ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer is Representing: _____

Signer's Name: _____

☐ Corporate Officer – Title(s): _____

☐ Partner – ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer is Representing: _____

ACKNOWLEDGMENT

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 FRESNO)

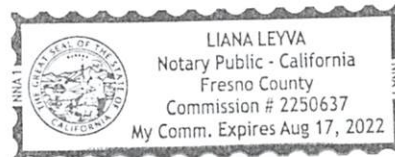
On March 31, 2021, before me, Liana Leyva,
Notary Public, personally appeared Farid Assemi,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s)
is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~
executed the same in his/~~her/their~~ 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

Liana Leyva



(Seal)

ACKNOWLEDGMENT

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.

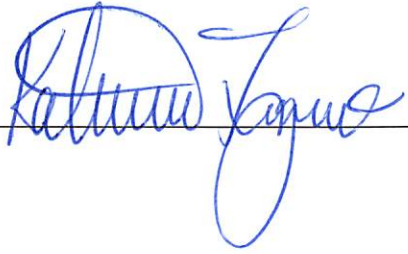
STATE OF CALIFORNIA)

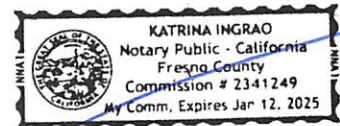
COUNTY OF Fresno)

On March 26, 2021, before me, Katrina Ingrao,
Notary Public, personally appeared John A. Beznalinski,
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)





August 16, 2023

Dana Gillespie
Wathen Castanos Homes
735 Tank Farm Rd Suite 100
San Luis Obispo, CA 93401

RE: Project Completeness Summary for Sea Haven Phase 3A and Phase 3B

At your request, C3 Engineering staff performed a site visit to review the current facilities at Sea Haven Phase 3A and Phase 3B and compared them with the Phase 3A and Phase 3B Improvement Plans. The following items are missing from the site:

Phase 3A

- 30' red curb paint centered on fire hydrant between lots 9 & 10
- 30' red curb paint centered on fire hydrant between lots 13 & 14
- 30' red curb paint centered on fire hydrant in front of lot 41

Phase 3B

- Stop Sign between lots 191 and 192 on Lane 7 @ Russell Way
- 80' long red curb centered on intersection at Pinnacles and Lassen
- 80' long red curb centered on intersection at Shasta and Lassen
- 12" wide white stripe at Arroyo Drive and Lot N15

Please note these items all fall within the "Striping and Signage" allowance of \$10,000 in the Sea Haven Phase 3A Opinion of Probable Construction Costs-City of Marina (\$4,555,413.61) and Sea Haven Phase 3B Opinion of Probable Construction Costs-City of Marina (\$2,184,358.88) which were used to develop the Performance Bonds. This item valuation is significantly less than the requested 90% reduction of the bond amount.

Please contact me if you have any questions.

A handwritten signature in blue ink that reads 'Jennifer Rudolph'.

Jennifer Rudolph, PE 67625
C3 Engineering, Inc
jrudolph@c3engineering.net
831-214-2201

8/16/2023

Date



September 28, 2023

Item No: **10f(2)**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of October 3, 2023

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2023-,
APPROVING A REQUEST BY THE CONTRACTING PARTIES OF 104
INVESTMENTS, LLC, LOCANS INVESTMENTS, LLC, WATHEN
CASTANOS PETERSON HOMES, INC., WATHEN CASTANOS PETERSON
COASTAL, LP, AND MARINA DEVELOPERS, INC., TO RELEASE A
PORTION OF THE PERFORMANCE SECURITY FOR PUBLIC
IMPROVEMENTS IN THE SEA HAVEN PHASE 3 AREA IN THE AMOUNT
OF \$6,065,795.24, ACCEPTING A SUBSTITUTE PERFORMANCE BOND
SECURITY OF \$673,977.25 FOR REMAINING PUNCH LIST ITEMS, AND
AUTHORIZING THE CITY MANAGER TO EXECUTE THE RELEASE
AGREEMENTS ON BEHALF OF THE CITY SUBJECT TO FINAL REVIEW
AND APPROVAL BY THE CITY ATTORNEY**

REQUEST:

It is requested that the City Council consider adopting Resolution No. 2023-:

1. Approving a request by the Contracting Parties of 104 Investments, LLC, Locans Investments, LLC, Wathen Castanos Peterson Homes, Inc., Wathen Castanos Peterson Coastal, LP, and Marina Developers, Inc., to release a portion of the performance security for public improvements in the Sea Haven Phase 3 area in the amount of \$6,065,795.24,
2. Accepting a substitute performance bond security of \$673,977.25 for the remaining punch list items, and;
3. Authorizing the City Manager to execute the release agreements on behalf of the City subject to final review and approval by the City Attorney.

BACKGROUND:

At the regular meeting of February 19, 2020, and March 16, 2021, the City Council adopted Resolutions No. 2020-20 and No. 2021-18, approving Public Improvement Agreements between City of Marina (City) and the Contracting Parties of 104 Investments, LLC, Locans Investments, LLC, Wathen Castanos Peterson Homes, Inc., Wathen Castanos Peterson Coastal, LP, and Marina Developers, Inc. (Developer), to construct public improvements in the Sea Haven Phase 3A and 3B areas. The Contracting Parties, as required by the Public Improvement Agreement, filed with the City Clerk performance bonds in the combined amount of \$6,739,772.49 to guarantee completion of public improvements within Phases 3A and 3B as described in the Agreements (**“EXHIBIT A”**).

ANALYSIS:

On August 16, 2023, City staff received a written request from the Developer to reduce the performance bond by 90% and accept a substitute performance bond of 10% of the original bond amount for remaining punch list items. The Agreements with the Developer do not require acceptance prior to 100% completion. Government Code §66499.7 permits the Developer to seek a partial release of its performance bond following verified satisfactory completion of at least 80% of the work. A partial release of performance security does not operate as an acceptance of the completed improvements and the risk of loss and responsibility for maintenance remains with the Developer until acceptance.

The Public Improvement Agreements with the Developer provide for security in the form of a performance bond in the total amount of the contract price (for these agreements, the total price is \$6,739,772.49). There is a one-year warranty period following acceptance for which the performance bond may serve as security or, alternatively, the developer may substitute a warranty bond in the amount of 10% of the total contract price.

Staff has confirmed that a substantial portion representing 90% of the public improvements has been completed in accordance with documentation submitted by the Developer and in conformance with the approved Improvement Plans (“**See EXHIBIT B**”). The remaining punch list items include site striping and signage, and staff is assured that these improvements will be completed for final acceptance of all improvements.

The Developer shall provide substitute security in the amount of \$673,977.25 in place of the original \$6,739,772.49 in performance security. The Developer has provided an updated Title Report that shows that the bonds to be released are unencumbered by mechanical lien claims.

FISCAL IMPACT:

There is no fiscal impact as City inspections have shown approximately \$6,065,795.24 in improvements has been completed per approved plans and any failure to complete the public improvements is covered by the substitute security in the amount of \$673,977.25.

CONCLUSION:

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

Respectfully submitted,

Edrie Delos Santos, P.E.
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