

RESOLUTION NO. 2024-100

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA  
APPROVING AN AGREEMENT BETWEEN THE CITY OF MARINA AND SHEA HOMES,  
LP, FOR THE LANDSCAPE MAINTENANCE OF CITY RIGHT OF WAY PARCELS 7, 28,  
AND 30 AS SHOWN ON THE PHASE 1B PROMENADE FINAL MAP AS WELL AS  
PORTIONS OF 2ND AVENUE AND 8TH STREET, AND; AUTHORIZING THE CITY  
MANAGER TO EXECUTE THE AGREEMENTS ON BEHALF OF CITY SUBJECT TO  
FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY.

WHEREAS, at the regularly scheduled meeting of March 21, 2023, the City Council adopted Resolution No. 2023-29, approving the Phase 1B Promenade Final Map for The Dunes on Monterey Bay Development Project Subdivision. As part of the approval for the Phase 1B Promenade Final Map, right of way had been dedicated to the City for roadway, lighting and landscape improvements.

WHEREAS, Shea Homes ("Developer") has expressed to the City interest in taking over maintenance of proposed landscaping within the parcels and streets noted in **Exhibit A**. Maintenance responsibilities to be covered shall consist of all improvements within the areas denoted in Exhibit A including but not limited to landscaping (including irrigation & meter charges), windscreens, artwork, benches and any lighting not related to public street lighting. Water charges from irrigation will also paid by the Developer. Staff has reviewed the agreement with the Developer (**Exhibit B**) and recommend it for approval.

WHEREAS, improvements within Parcels 7, 28 and 30 along with the portions of 2<sup>nd</sup> Avenue and 8<sup>th</sup> Street shall be funded and constructed by the Developer through a Homeowners Association that will continue to fully fund and manage the maintenance of these improvements noted above.

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

1. Approve an agreement between the City of Marina and Shea Homes, LP, for the Landscape Maintenance of City Parcels 7, 28 and 30 as shown on the Phase 1B Promenade Final Map as well as portions of 2nd Avenue and 8th Street, and;
2. Authorize the City Manager to execute the agreements 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 held on the 4<sup>th</sup> day of September 2024, by the following vote:

AYES: COUNCIL MEMBERS: McAdams, McCarthy, Delgado

NOES: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: Biala

ABSTAIN: COUNCIL MEMBERS: None

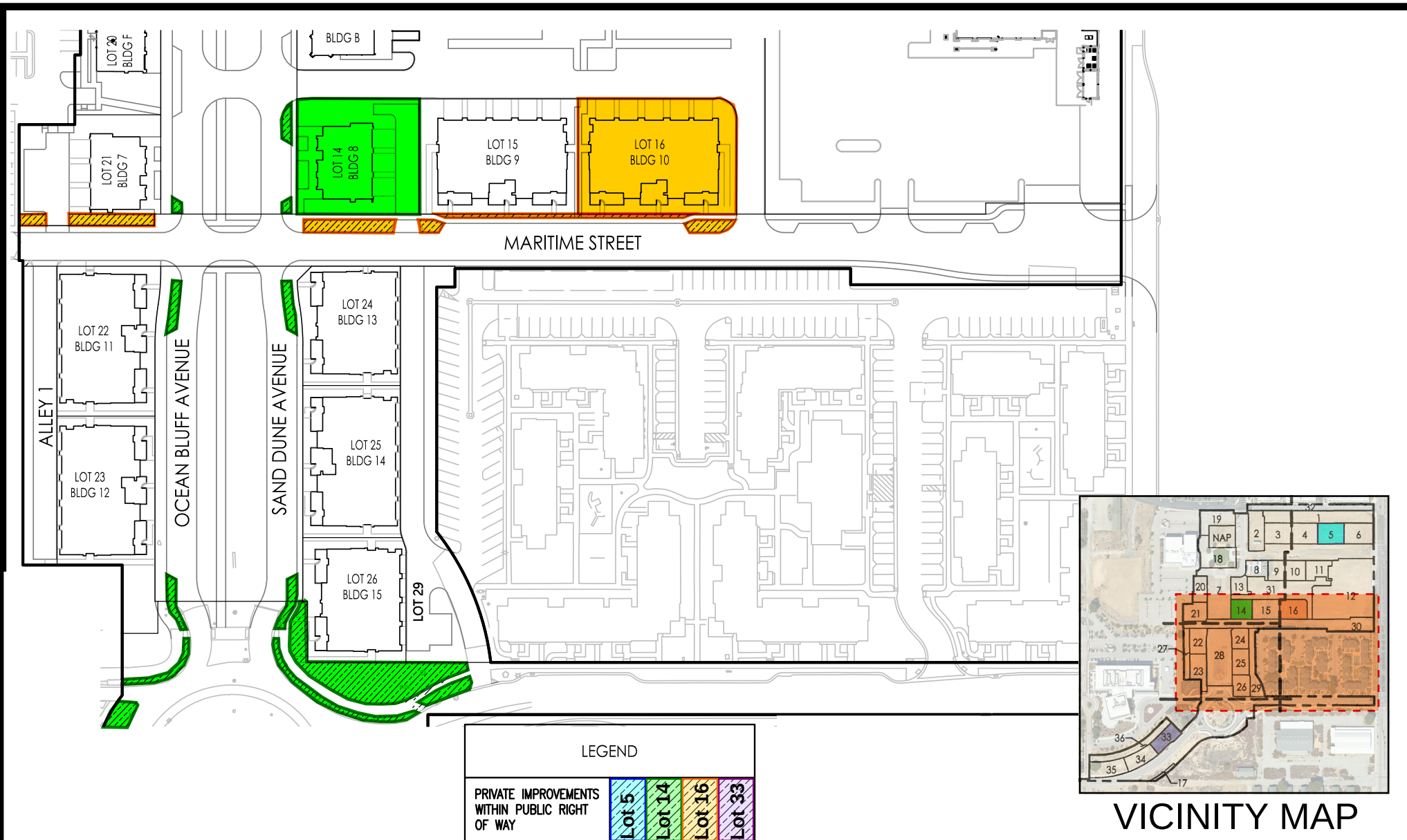
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Bruce Delgado, Mayor

ATTEST:

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Anita Sharp, City Clerk



**PUBLIC WORKS DEPARTMENT**  
CITY OF MARINA  
211 HILLCREST AVENUE  
MARINA, CALIFORNIA 93933

PH: (831) 884-1212  
FAX: (831) 384-0425



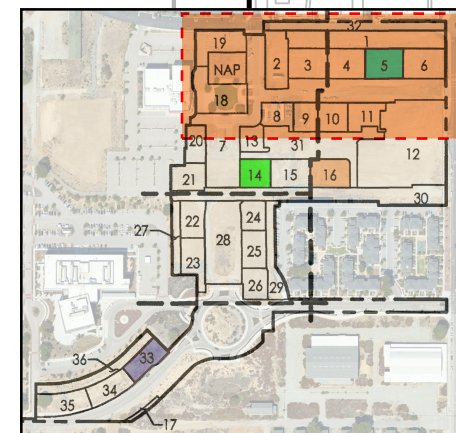
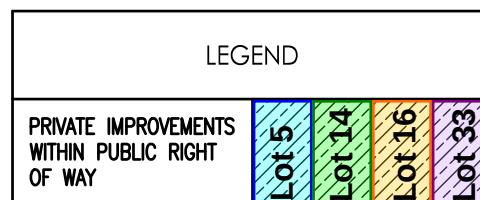
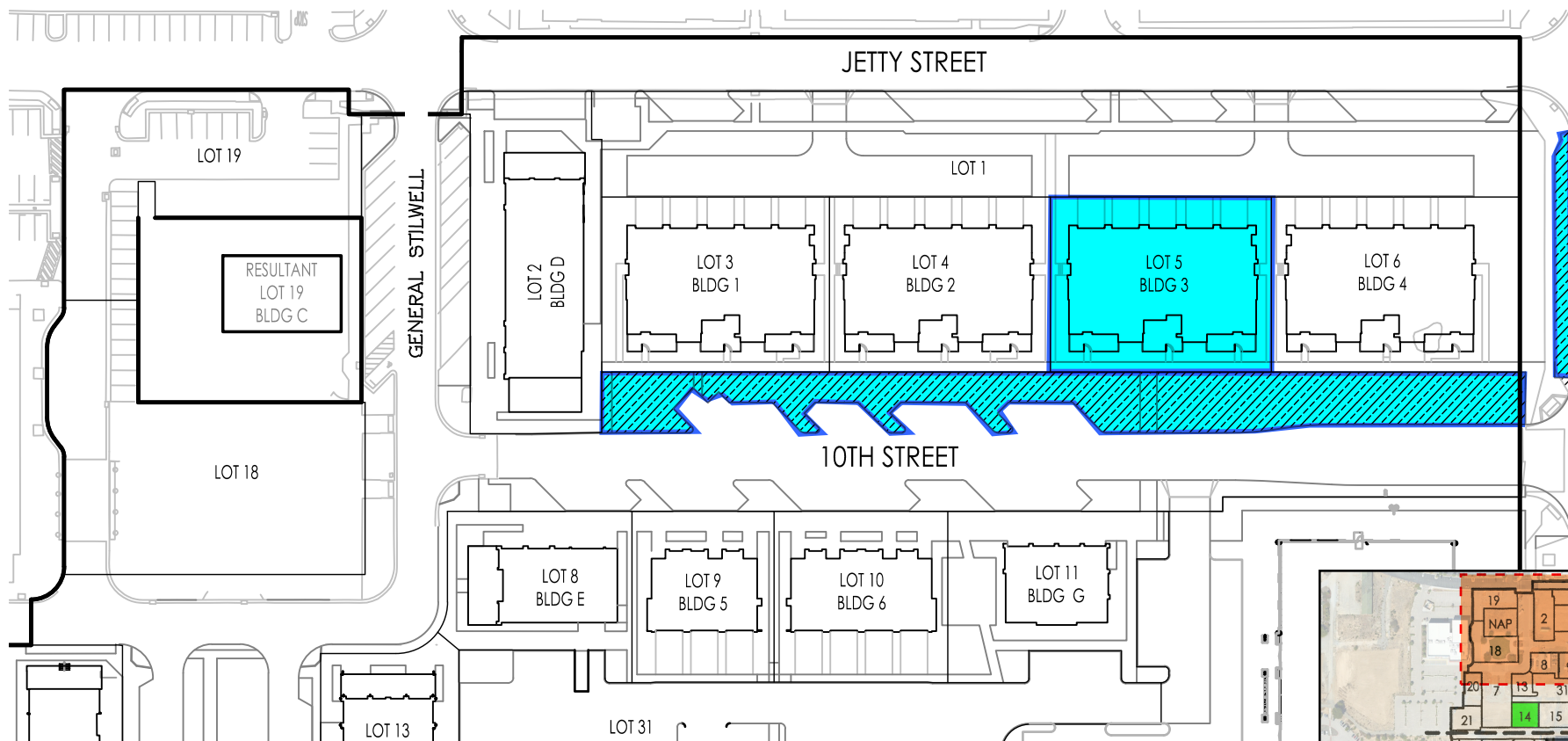
## **Landscaping, Art & Lighting Improvement Areas within Public Right-of-Way**

from "Exhibit B" of Right of Way Access &  
Maintenance Agreement

**Exhibit A  
to Staff  
Report**

07/31/2024

SCALE: NONE



VICINITY MAP



**PUBLIC WORKS DEPARTMENT**  
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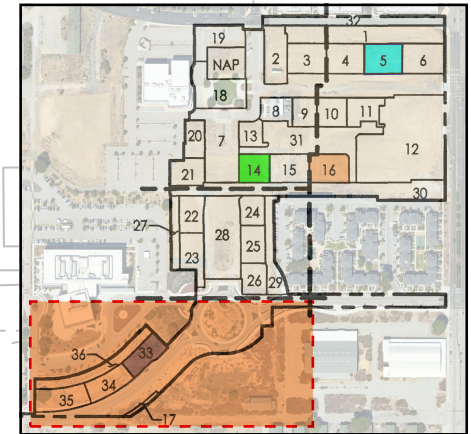
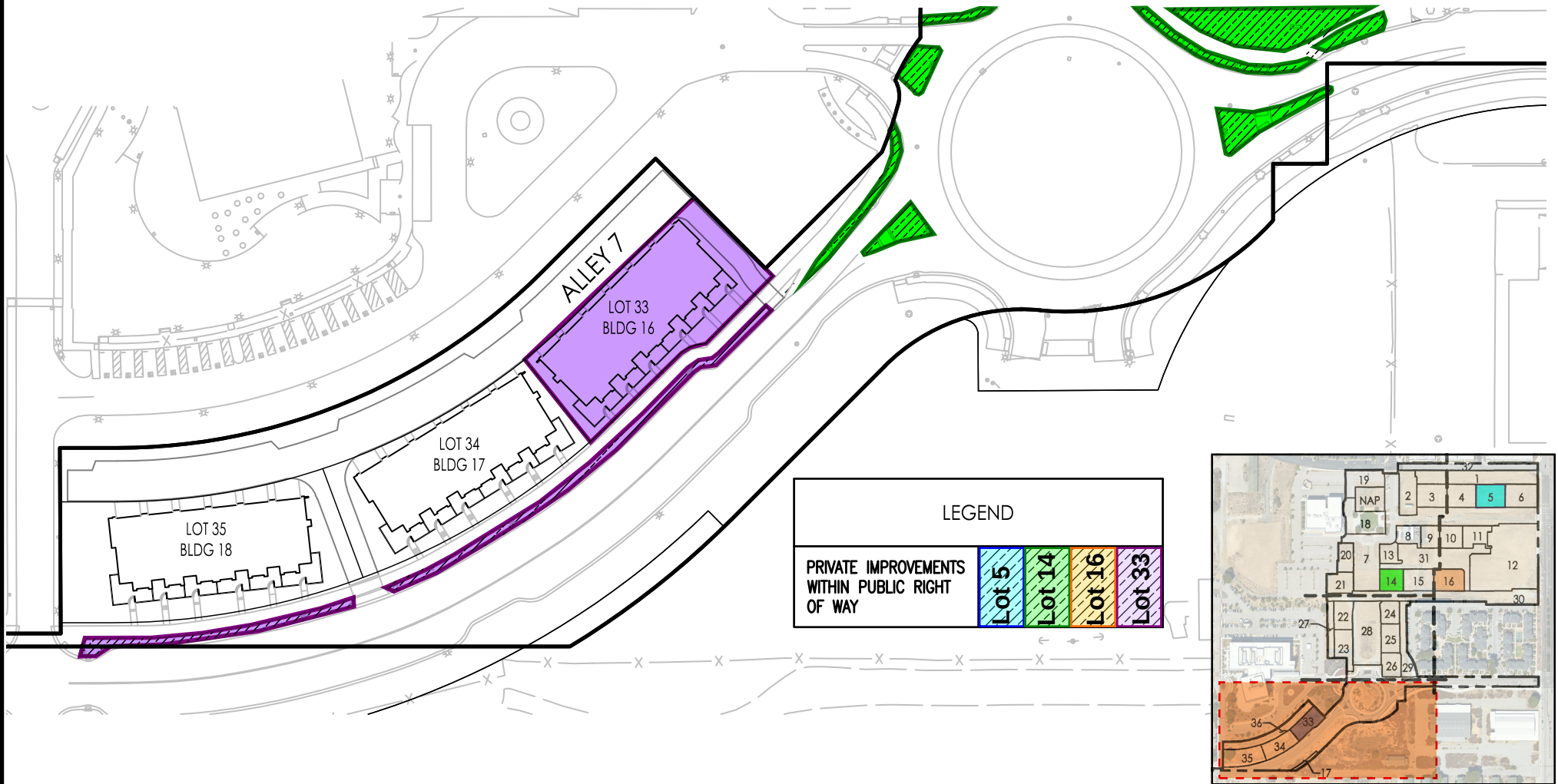
## **Landscaping, Art & Lighting Improvement Areas within Public Right-of-Way**

from "Exhibit B" of Right of Way Access &  
Maintenance Agreement

**Exhibit A  
to Staff  
Report**

07/31/2024

SCALE: NONE



VICINITY MAP



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MARINA, CALIFORNIA 93933

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FAX: (831) 384-0425



## **Landscaping, Art & Lighting Improvement Areas** **within Public Right-of-Way**

from "Exhibit B" of Right of Way Access & Maintenance Agreement

SCALE: NONE

**Exhibit A**  
**to Staff**  
**Report**

07/31/2024

**NO FEE DOCUMENT**Government Code §6103RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

City of Marina  
 211 Hillcrest Avenue  
 Marina, CA 93933  
 Attn: City Clerk

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The Above Space For Recorder's Use Only

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**RIGHT OF WAY ACCESS AND MAINTENANCE AGREEMENT**  
 (Rooftops at the Dunes Public Right of Way Maintenance Areas)

THIS AGREEMENT ("**Agreement**") is made and entered into on this \_\_\_\_ day of \_\_\_\_\_ 2024, by and between the CITY OF MARINA, a California municipal corporation ("**City**") and SHEA HOMES LIMITED PARTNERSHIP, a California limited partnership ("**Owner**") (collectively referred to as "**Parties**").

1. Owner owns real property in the City of Marina, County of Monterey, State of California, more specifically described in the legal description in **Exhibit "A"** attached hereto and incorporated herein by this reference ("**Association Property**").
2. Owner is developing the Association Property as a portion of that certain residential condominium community commonly known as "Rooftop at the Dunes". Owner will convey the Association Property to Rooftops at The Dunes Homeowners Association, a California nonprofit mutual benefit corporation in phases ("**Association**").
3. Owner has or will install landscaping, windscreens, art, benches, any lighting not maintained by the City's communities facilities district, community monumentation signage and related irrigation improvements (including but not limited to irrigation water and power meters serving such improvements) (collectively, "**Private Improvements**") within City owned right of way property depicted on **Exhibit "B"** attached hereto and incorporated herein ("**City Property**"). The City and Owner desire that the Private Improvements within the City Property be maintained (and irrigated with water provided by the Responsible Party (as hereinafter defined) for the landscaping) by the Responsible Party, in the same manner as the Association Property. Notwithstanding the foregoing, the obligation for Owner to maintain the City Property shall not commence until: (i) the Owner has confirmed that the Private Improvements have been installed within the City Property, and (ii) the City and the Owner have jointly conducted an inspection walk of the City Property (collectively, the "**Maintenance Commencement Date**").
4. The burdens and benefits of this Agreement are intended to be covenants that run with the land, binding Owner, and any subsequent party with ownership or control of the Association Property ("**Responsible Party**"). Owner shall be responsible for its obligations under this Agreement, until each date that Owner transfers a portion of the Association Property to the Association, at which time the Association shall assume all rights and obligations of Owner for the Private Improvements under this Agreement tied to such Association Property as set forth on **Exhibit "C"** ("**Association Transfer Dates**"). Owner shall have no further rights or obligations under this Agreement for any matters arising after any Association Transfer Date as to any Private Improvement which the Association is deemed the Responsible Party and the Association will be deemed the sole Responsible Party under this Agreement as to such improvements. In connection with the transfer of Association Property from Owner to the Association, each party hereto agrees to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to effectuate, carry out and perform all of the terms, provisions and conditions of this Agreement.
5. As of the Maintenance Commencement Date, the Responsible Party shall, at its sole cost and expense, be responsible for maintaining the Private Improvements in accordance with the Declaration of Covenants, Conditions and Restrictions and Establishment of Easements of Rooftop at the Dunes which has been or will be recorded in the records

of Monterey County, California, and any additional amendments thereto (collectively, the "**Declaration**") and all federal, state or local laws and regulations. Given the multiple Association Transfer Dates, both Owner and the Association may both be deemed a Responsible Party under this Agreement as to different portions of the Private Improvements.

6. If the Responsible Party makes any material alterations to the Private Improvements (excluding typical maintenance and plant replacement), the Responsible Party shall gain the approval from the City prior to completing such material alterations and provide as-built plans to the City within 2 weeks of completion of such alterations.

7. The City hereby grants to Owner, for the benefit of the Responsible Party complete access and a right-of-entry onto the City Property to accomplish its obligations under this Agreement.

8. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue in full force without being impaired.

9. This Agreement shall be deemed to be made in, and the rights and liabilities of the parties, and the interpretation and construction of the Agreement governed by and construed in accordance with the laws of the State of California. Any legal action arising out of this Agreement shall be filed in and adjudicated by a court of competent jurisdiction in the County of Monterey, State of California.

10. This Agreement may be executed in counterparts, each of which when taken together will constitute one fully executed original.

**IN WITNESS THEREOF**, the parties hereto have affixed their signatures as of the date first written above.

CITY OF MARINA,  
a Municipal corporation

SHEA HOMES LIMITED PARTNERSHIP,  
a California limited partnership

By: \_\_\_\_\_  
Name: Layne Long  
Its: City Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT "A"**  
**Legal Description of Association Property**

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

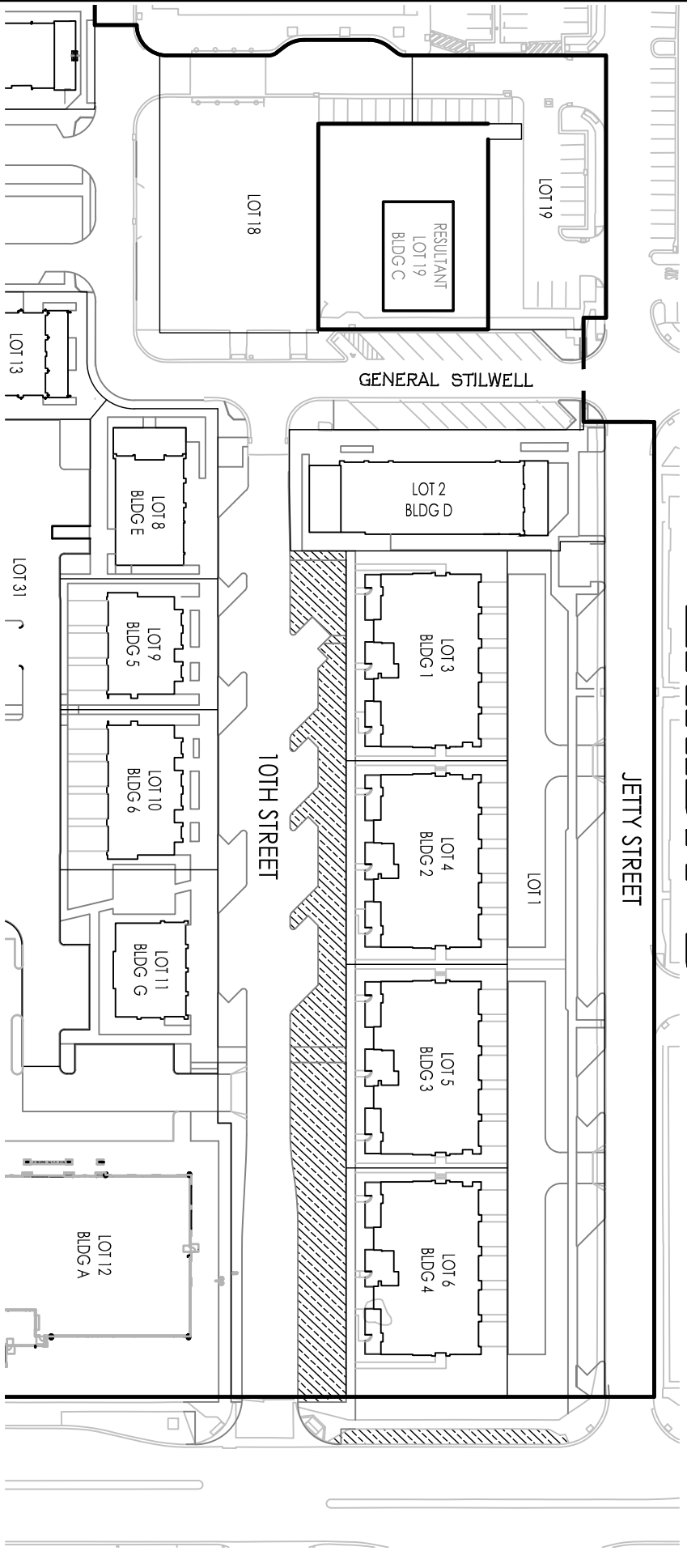
LOTS 5, 16, 33 AND 14 AS SHOWN ON THAT CERTAIN MAP ENTITLED " TRACT NO. 1563 THE DUNES PROMENADE-PHASE 1B", FILED FOR RECORD ON JUNE 1, 2023, IN VOLUME 24 OF CITIES AND TOWNS, AT PAGE 86, OFFICIAL RECORDS OF MONTEREY COUNTY.

**EXHIBIT “B”**  
**Depiction of City Property**

[Attached Hereto]



# EXHIBIT B



| LEGEND                                                |  |
|-------------------------------------------------------|--|
| PRIVATE IMPROVEMENTS<br>WITHIN PUBLIC RIGHT<br>OF WAY |  |

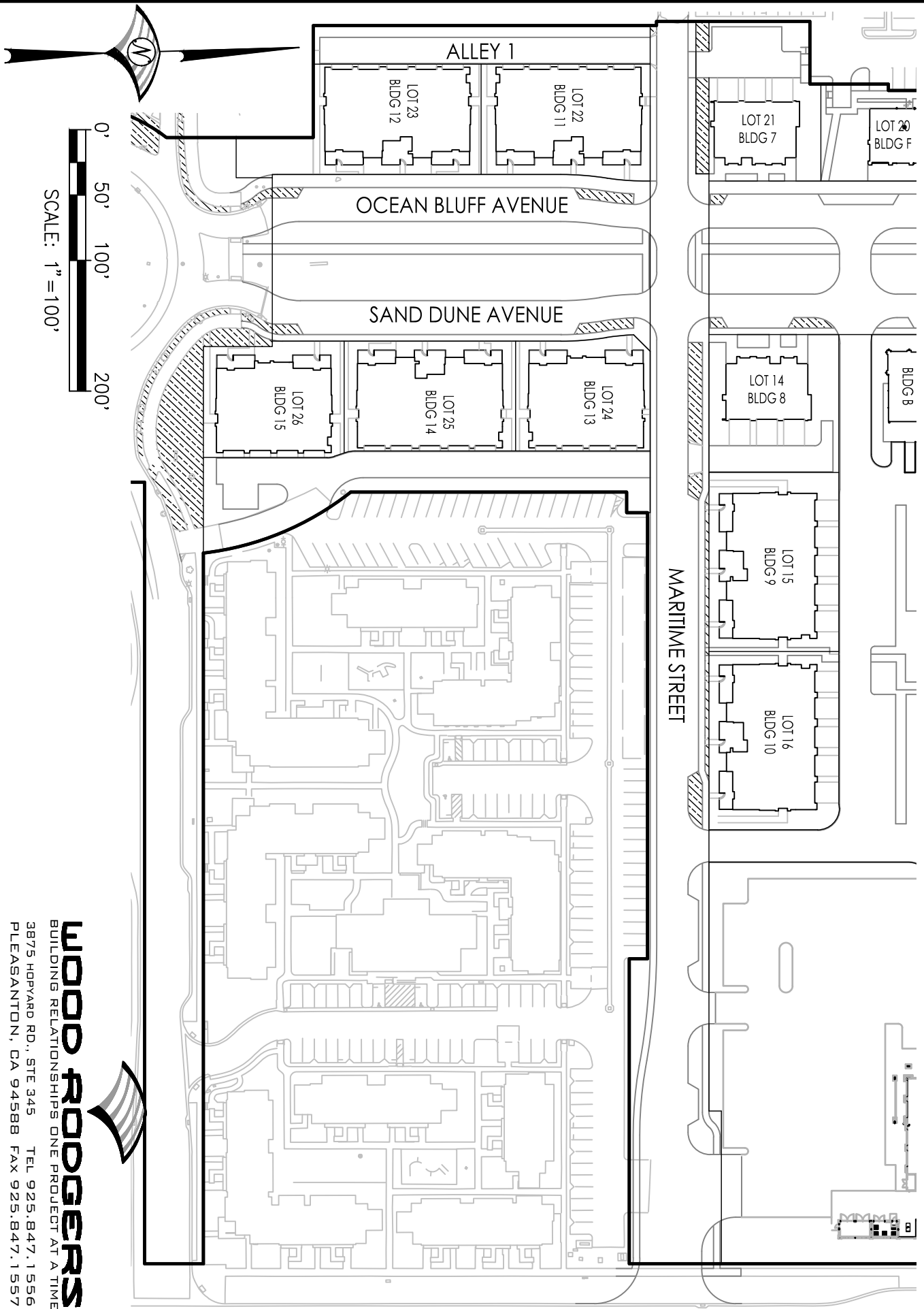


SCALE: 1"=100'



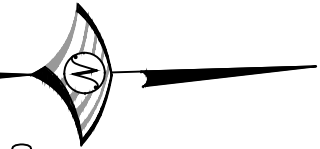
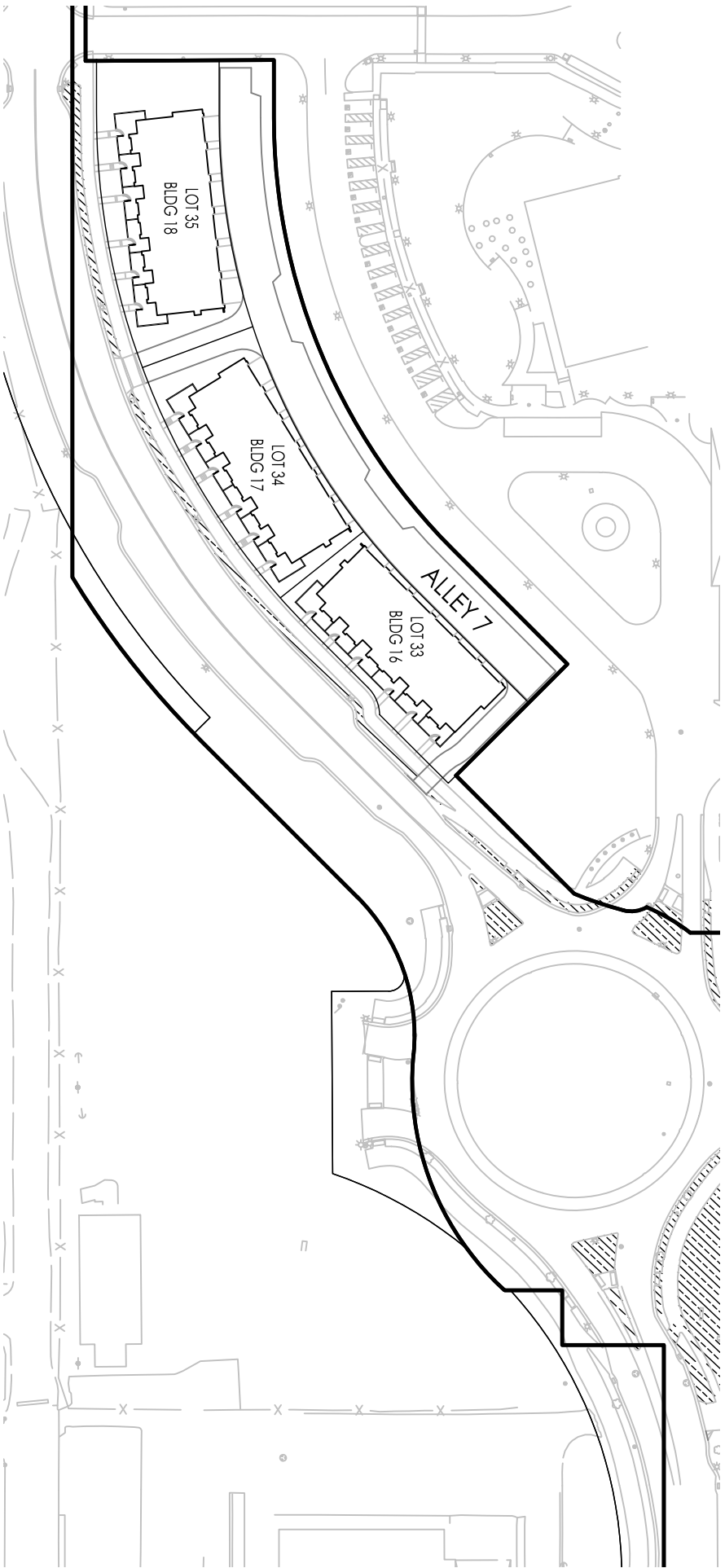
**WOOD ROGERS**  
BUILDING RELATIONSHIPS ONE PROJECT AT A TIME  
3875 HOPVARD RD., STE 345 TEL 925.847.1556  
PLEASANTON, CA 94588 FAX 925.847.1557

# EXHIBIT B



**WOOD ROGERS**  
BUILDING RELATIONSHIPS ONE PROJECT AT A TIME  
3875 HOPVARD RD., STE 345 TEL 925.847.1556  
PLEASANTON, CA 94588 FAX 925.847.1557

# EXHIBIT B



SCALE: 1"=150'



**WOOD ROGERS**

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3875 HOPVARD RD., STE 345 TEL 925.847.1556  
PLEASANTON, CA 94588 FAX 925.847.1557

**EXHIBIT "C"**  
**Association Transfer Dates**

| <b>Association Property</b> | <b>City Improvement</b>                                                        |
|-----------------------------|--------------------------------------------------------------------------------|
| Lot 5                       | 10 <sup>th</sup> Street and 2 <sup>nd</sup> Avenue Right of Ways               |
| Lot 16                      | Maritime Street Right of Ways                                                  |
| Lot 33                      | 8 <sup>th</sup> Street Right of Ways                                           |
| Lot 14                      | Ocean Bluff Avenue, Sand Dune Avenue and 9 <sup>th</sup> Street Rights of Ways |

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

State of California )  
County of )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(is), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

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

State of California )  
County of )

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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WITNESS my hand and official seal.

Signature \_\_\_\_\_

August 27, 2024

Item No. **10g(2)**

Honorable Mayor and Members  
of the Marina City Council

City Council Meeting  
of September 4, 2024

**RECOMMENDATION TO CONSIDER ADOPTING RESOLUTION NO. 2024-, APPROVING AN AGREEMENT BETWEEN THE CITY OF MARINA AND SHEA HOMES, LP, FOR THE LANDSCAPE MAINTENANCE OF CITY RIGHT OF WAY PARCELS 7, 28, AND 30 AS SHOWN ON THE PHASE 1B PROMENADE FINAL MAP AS WELL AS PORTIONS OF 2<sup>ND</sup> AVENUE AND 8<sup>TH</sup> STREET, AND; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENTS ON BEHALF OF CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY.**

**RECOMMENDATION:**

It is recommended that the City Council consider:

1. Adopting Resolution No. 2024-, approving an agreement between the City of Marina and Shea Homes, LP, for the Landscape Maintenance of City Parcels 7, 28 and 30 as shown on the Phase 1B Promenade Final Map as well as portions of 2<sup>nd</sup> Avenue and 8<sup>th</sup> Street, and;
2. Authorizing the City Manager to execute the agreements on behalf of the City subject to final review and approval by the City Attorney.

**BACKGROUND:**

At the regularly scheduled meeting of March 21, 2023, the City Council adopted Resolution No. 2023-29, approving the Phase 1B Promenade Final Map for The Dunes on Monterey Bay Development Project Subdivision. As part of the approval for the Phase 1B Promenade Final Map, right of way had been dedicated to the City for roadway, lighting and landscape improvements.

**ANALYSIS:**

Shea Homes (“Developer”) has expressed to the City interest in taking over maintenance of proposed landscaping within the parcels and streets noted in **EXHIBIT A**. Maintenance responsibilities to be covered shall consist of all improvements within the areas denoted in Exhibit A including but not limited to landscaping (including irrigation & meter charges), windscreens, artwork, benches and any lighting not related to public street lighting. Water charges from irrigation will also paid by the Developer. Staff has reviewed the agreement with the Developer (**EXHIBIT B**) and recommend it for approval.

**FISCAL IMPACT:**

Improvements within Parcels 7, 28 and 30 along with the portions of 2<sup>nd</sup> Avenue and 8<sup>th</sup> Street shall be funded and constructed by the Developer through a Homeowners Association that will continue to fully fund and manage the maintenance of these improvements noted above.

**CONCLUSION:**

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

Respectfully submitted,

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

**REVIEWED/CONCUR:**

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Nourdin Khayata, P.E.  
Interim Public Works Director/City Engineer  
City of Marina

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Layne P. Long  
City Manager  
City of Marina