

RESOLUTION NO. 2024-112

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA
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 4A AREA IN THE
AMOUNT OF \$3,351,867, ACCEPTING A SUBSTITUTE PERFORMANCE
BOND SECURITY OF \$335,186.70 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

WHEREAS, at the regular meeting of June 7, 2022, the City Council adopted Resolutions No. 2022-81, approving the Public Improvement Agreement 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 4A area. The Contracting Parties, as required by the Public Improvement Agreement, filed with the City Clerk performance bonds in the combined amount of \$3,351,867 to guarantee completion of public improvements within Phase 4A as described in the Agreements (“EXHIBIT A”), and;

WHEREAS, on September 25, 2024, 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 Agreement with the Developer does 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 this agreement, the total price is \$3,351,867). 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 (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, and;

WHEREAS, the Developer shall provide substitute security in the amount of \$335,186.70 in place of the original \$3,351,867 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 \$3,351,867 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 \$335,186.70. The City has determined this is not a project under CEQA per Article 20 Section 15378 and under General Rule Article 5 Section 15061.

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

1. Approve 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 4A area in the amount of \$3,351,867,
2. Accept a substitute performance bond security of \$335,186.70 for the remaining punch list items, and;
3. Authorize the City Manager to execute the release 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 duly held on the 15th day of October 2024, by the following vote:

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

NOES, COUNCIL MEMBERS: None

ABSENT, COUNCIL MEMBERS: None

ABSTAIN, COUNCIL MEMBERS: None

Liesbeth Visscher, Mayor Pro Tem

ATTEST:

Anita Sharp, Deputy City Clerk

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

“Sea Haven”

– Phase 4A –

This Agreement for Improvement of Streets, Installation of Storm Drains and Other Public Works Facilities (“Agreement”) is made and entered into this 3rd day of August 2022, 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, 2018, as Document No. 2018015912 (the “Deed”), Co-Owners are now the owners of the land known as “Sea Haven Phase 4A” (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 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 Environmental Impact Report ("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 Amended Development Agreement ("First Amendment") amending the terms of the Amended Development Agreement; and

WHEREAS, improvement plans entitled "Street Improvement Plans for Sea Haven Phase 4A," 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 4A; and

WHEREAS, the City will not accept any of the Sea Haven Phase 4A 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 the 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 willful misconduct 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 designee. Contracting Parties shall furnish two good and sufficient bonds, in an amount of 100% of the City Engineer's or 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 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, 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, registration and 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 designee. That estimated amount is Three Million Three Hundred Fifty-One Thousand Eight Hundred Sixty-Seven Dollars (\$3,351,867). 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 a Contracting Party 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 agree 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 Project 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 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 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 designee.

SECTION 8

Neither Contracting Parties nor any of Contracting Parties' agents, contractors or subcontractors are or shall be considered to be agents or employees 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 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 litigation 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.

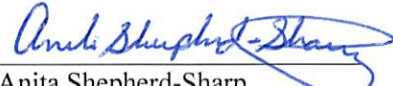
SECTION 17

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
Deputy City Clerk


Layne Long
City Manager

APPROVED AS TO FORM:


Heidi Quinn
City Attorney

[Signatures Continue on Following Page]

IN WITNESS WHEREOF Contracting Parties have executed this Agreement as of

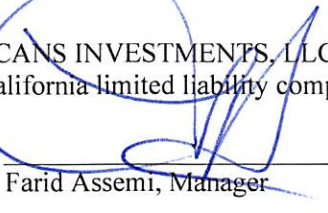
WATHEN CASTANOS PETERSON HOMES, INC.,
a Delaware Corporation

By: 
Joshua E. Peterson, President

104 INVESTMENTS, LLC,
a California limited liability company

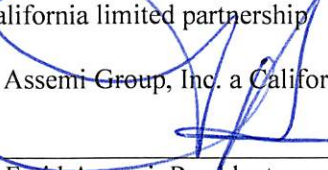
By: 
Farid Assemi, Manager

LOCANS INVESTMENTS, LLC,
a California limited liability company

By: 
Farid Assemi, Manager

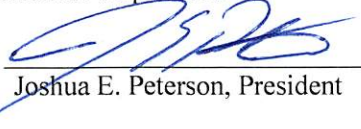
WATHEN CASTANOS PETERSON COASTAL, LP,
a California limited partnership

By: Assemi Group, Inc. a California corporation

By: 
Farid Assemi, President

By: 
John A. Bezmalinovic, Secretary

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 Govt. Code § 40814; Civ. Code §. 1181

PUBLIC IMPROVEMENTS FAITHFUL PERFORMANCE BOND

“Sea Haven Phase 4A”

Bond No.: 38K009529

Premium: \$16,759

WHEREAS, the City Council of the City of Marina, County of Monterey, State of California (hereinafter referred to as “City”) 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”), (hereinafter referred to as “Principal”) have entered into an Agreement for Improvement of Streets, Installation of Storm Drains and Other Public Improvements (hereinafter referred to as “Agreement”), whereby the Principal agrees to complete the improvement of streets, installation of storm drains and other public works facilities (hereinafter referred to as “Improvements”) for the “Sea Haven Phase 4A” located west of Abrams Drive, north of Arroyo Drive in the City which said Agreement dated August 3, 2022, is hereby referred to and made a part hereof; and

WHEREAS, said Principal is required under the terms of said Agreement to furnish a bond for faithful performance of said Agreement.

NOW THEREFORE, we, the Principal and The Ohio Casualty Insurance Company, a corporation of the State of New Hampshire, an Admitted Surety Insurer duly licensed to conduct a general surety business in the State of California as defined by California Code of Civil Procedure, Section 995.120, as corporate surety (hereinafter referred to as “Surety”), are held and firmly bound unto the City of Marina, a municipal corporation, and to and for the benefit of any and all persons who may suffer damages by breach of the conditions hereof, in the penal sum of Three Million Three Hundred Fifty-One Thousand Eight Hundred Sixty-Seven Dollars (\$3,351,867), lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the above-bound Principal, or Principal's heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, and provisions in the said Agreement as agreed between the City and Principal, including the one-year warranty period guarantee after completion and acceptance by the City of the Improvements, and any alteration thereof made as therein provided, on their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless City, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

Public Improvements Faithful Performance Bond.

Bond No.: 38K009529

As part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

It is further agreed by and between the parties that, in the event the City deems it necessary to extend the time of completion of the Improvements required under the Agreement, an extension may only be granted by the City in writing.

Provided, further, for value received, the Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Agreement or to the work to be performed thereunder or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement or to the work or to the specifications.

IN WITNESS WHEREOF, three (3) identical counterparts of this instrument, each of which shall for all purposes be deemed an original hereof, have been duly executed by Principal and Surety on the date set forth below, the name of each corporate party being hereto affixed and these presents duly signed by its undersigned representative(s) pursuant to authority of its governing body. Principal and Surety have caused this Bond to be duly executed and delivered this 22nd day of July, 2022.

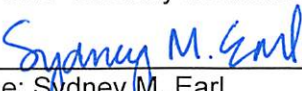
PRINCIPAL

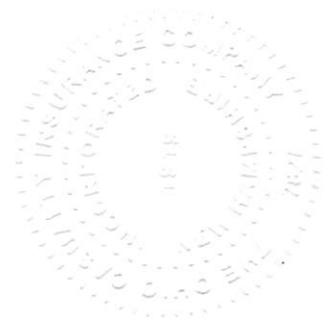
104 Investments, LLC, a California limited liability company,
Locans Investments, LLC, a California limited liability company,
Wathen Castanos Peterson Homes, Inc., a Delaware corporation,
and Wathen Castanos Peterson Coastal, LP, a California limited
partnership (collectively referred to herein as "Co-Owners")
together with Marina Developers, Inc., a California corporation
(referred to herein as the "Developer")

By: 
Joshua E. Peterson, President and authorized agent

SURETY

The Ohio Casualty Insurance Company

By 
Name: Sydney M. Earl
Title: Attorney-in-Fact
Date: July 22, 2022



Attest/Witness or Corporate Seal
Corporate Seal and Surety Seal

Attach Attorney-in-Fact Certificate,

ABOVE-SIGNATORIES MUST BE NOTARIZED

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)

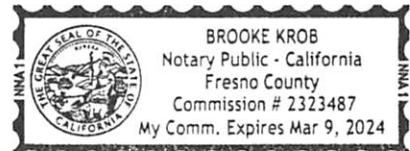
On July 25, 2022 before me, Brooke Krob, Notary Public
(insert name and title of the officer)

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)



APPROVED AS TO SURETY AND PRINCIPAL AMOUNT



Name: Brian McManus
Title: City Engineer
Date: 8/11/22 2019 pm

APPROVED AS TO FORM:



City Attorney

END OF DOCUMENT

CALIFORNIA ALL-PURPOSE 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 July 22, 2022 before me, Christine Bagetakos, NOTARY PUBLIC, personally appeared

Sydney M. Earl,

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 the 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.

Christine Bagetakos

Signature of Notary

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL
☐ CORPORATE OFFICER

- ☐ PARTNER(S) ☐ LIMITED
☒ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR

OTHER:

SIGNER IS REPRESENTING:

NAME OF PERSON(S) OR ENTITY(IES)

DESCRIPTION OF ATTACHED DOCUMENT



This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

Certificate No: **8207450-969346**

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Alison Berry, Joseph Orndoff, Linda K. Brager, Lynn Bailey, Melissa R. Hastings, Sydney M. Earl

all of the city of Fresno state of CA each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 9th day of March, 2022.



Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

By: David M. Carey
David M. Carey, Assistant Secretary

State of PENNSYLVANIA ss
County of MONTGOMERY

On this 9th day of March, 2022 before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.



Commonwealth of Pennsylvania - Notary Seal
Teresa Pastella, Notary Public
Montgomery County
My commission expires March 28, 2025
Commission number 1126044
Member, Pennsylvania Association of Notaries

By: Teresa Pastella
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV – OFFICERS: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII – Execution of Contracts: Section 5. Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation – The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization – By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 22nd day of July, 2022.



By: Renee C. Llewellyn
Renee C. Llewellyn, Assistant Secretary

PUBLIC IMPROVEMENTS LABOR AND MATERIALS BOND

"Sea Haven Phase 4A"

Bond No.: 38K009529

Premium: Included in Performance Bond

WHEREAS, the City Council of the City of Marina, County of Monterey, State of California (hereinafter referred to as "City") 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"), (hereinafter referred to as "Principal") have entered into an Agreement for Improvement of Streets, Installation of Storm Drains and Other Public Works Facilities (hereinafter referred to as "Agreement"), whereby the Principal agrees to complete the improvement of streets, installation of storm drains and other public works facilities (hereinafter referred to as "Improvements") for the "Sea Haven Phase 4A" located west of Abrams Drive, north of Arroyo Drive in the City which said Agreement dated August 3, 2022, is hereby referred to and made a part hereof; and

WHEREAS, under the terms of said Agreement, Principal is required, before entering upon performance of the work, to file a good and sufficient payment bond with the City to secure the claims to which reference is made in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code of the State of California.

NOW THEREFORE, we, the Principal and The Ohio Casualty Insurance Company, a corporation of the State of New Hampshire, an Admitted Surety Insurer duly licensed to conduct a general surety business in the State of California as defined by California Code of Civil Procedure, Section 995.120, as corporate surety (hereinafter referred to as "Surety"), are held and firmly bound unto the City of Marina, a municipal corporation, and all contractors, subcontractors, laborers, material suppliers, laborers and other persons employed in the performance of the aforesaid Agreement and referred to in the aforesaid Civil Code in the just and full sum of Three Million Three Hundred Fifty-One Thousand Eight Hundred Sixty-Seven Dollars (\$3,351,867), lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to the work or labor, that said Surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by the City in successfully enforcing such obligation, to be awarded and fixed by the court, and to be taxed as costs and to be include in the judgment therein rendered.

Public Improvements Labor & Materials Bond

Bond No.: 38K009529

It is expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies and corporations entitled to file claims under Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code, so as to give a right of action to them or their assigns so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the conditions of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

It is further agreed by and between the parties that, in the event the City deems it necessary to extend the time of completion of the Improvements required under the Agreement, an extension may only be granted by the City in writing.

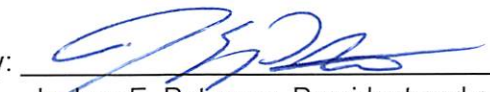
Provided further, the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Agreement or to the work to be performed thereunder or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement or to the work or to the specifications.

Provided further, that no settlement between the City and the Principal or any of them shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, three (3) identical counterparts of this instrument, each of which shall for all purposes be deemed an original hereof, have been duly executed by Principal and Surety on the date set forth below, the name of each corporate party being hereto affixed and these presents duly signed by its undersigned representative(s) pursuant to authority of its governing body. Principal and Surety have caused this Bond to be duly executed and delivered this 22nd day of July, 2022.

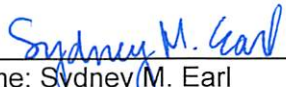
PRINCIPAL

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")

By: 
Joshua E. Peterson, President and authorized agent

SURETY

Surety Name

By: 
Name: Sydney M. Earl
Title: Attorney-in-Fact
Date: July 22, 2022



Attest/Witness or Corporate Seal
Corporate Seal and Surety Seal

Attach Attorney-in-Fact Certificate,

ABOVE-SIGNATORIES MUST BE NOTARIZED

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.

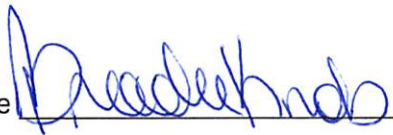
State of California
County of Fresno)

On July 25, 2022 before me, Brooke Krob, Notary Public
(insert name and title of the officer)

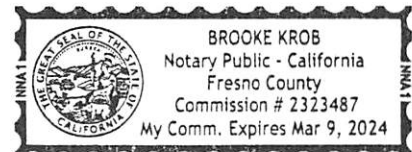
personally appeared Joshua E. Peterson,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) 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)



APPROVED AS TO SURETY AND PRINCIPAL AMOUNT



Name: BRIAN MCMININ

Title: City Engineer

Date: 8/1/22 2019 ~~year~~

APPROVED AS TO FORM:



City Attorney

END OF DOCUMENT

CALIFORNIA ALL-PURPOSE 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

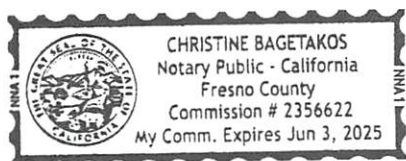
County of FRESNO

On July 22, 2022 before me, Christine Bagetakos, NOTARY PUBLIC, personally appeared

Sydney M. Earl,

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 the 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.

Christine Bagetakos

Signature of Notary

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- ☐ INDIVIDUAL
☐ CORPORATE OFFICER

- ☐ PARTNER(S) ☐ LIMITED
☒ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR

OTHER:

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)



This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

Certificate No: **8207450-969346**

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Alison Berry, Joseph Orndoff, Linda K. Brager, Lynn Bailey, Melissa R. Hastings, Sydney M. Earl

all of the city of Fresno state of CA each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 9th day of March, 2022.



Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

By:

David M. Carey
David M. Carey, Assistant Secretary

State of PENNSYLVANIA ss
County of MONTGOMERY

On this 9th day of March, 2022 before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.



Commonwealth of Pennsylvania - Notary Seal
Teresa Pastella, Notary Public
Montgomery County
My commission expires March 28, 2025
Commission number 1126044
Member, Pennsylvania Association of Notaries

By:

Teresa Pastella
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV - OFFICERS: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII - Execution of Contracts: Section 5. Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation - The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization - By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 22nd day of July, 2022.



By:

Renee C. Llewellyn
Renee C. Llewellyn, Assistant Secretary

Dana Gillespie
WCH DEVELOPERS
735 Tank Farm Rd Suite 100
San Luis Obispo, CA 93401

September 25, 2024

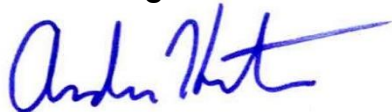
Re: Sea Haven Phase 4A
Project Completeness Summary

Per your request, a site visit was performed at Sea Haven Phase 4A to evaluate the status of subdivision improvements in relation to the Revision 6 Sea Haven Phase 4 Improvement Plans by Whitson Engineers, dated 8/7/2024. We found that the Phase 4A subdivision improvements to be substantially complete with the following items remaining:

- Minor pavement imperfections in select areas that have been identified on a City Punch List.
- Manhole rims to be raised to grade at MacArthur Drive near the conform to existing.
- Minor Signing and Striping at select streets to be completed:
 - Lamont Way and Madera Way parking
 - MacArthur Ave conform
 - Road and lane conforms along Carmel Avenue
 - Arroyo Drive north and south intersections
 - Samwill Court (all three intersections)
 - Santa Ynez
 - Santa Lucia
 - Lane 3 and Lane 7
- Incomplete ramp at El Capitan Drive and MacArthur Drive (awaiting PG&E utility completion).
- Rubicon Court pavement at stub street to Phase 4B.
- Incomplete sidewalk/ramp at the Arroyo Drive / Carmel Ave intersection (awaiting utility completion).

The current Phase 4A performance bond amount is \$3,351,867 and we concur that a 90% performance bond reduction would provide ample remaining security to complete the phase (\$335,186.70).

Sincerely,
Whitson Engineers



Andrew Hunter PE | Principal
RCE 67730

October 8, 2024

Item No: **10f(3)**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of October 15, 2024

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2024-,
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 4A AREA IN
THE AMOUNT OF \$3,351,867, ACCEPTING A SUBSTITUTE
PERFORMANCE BOND SECURITY OF \$335,186.70 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. 2024-:

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 4A area in the amount of \$3,351,867,
2. Accepting a substitute performance bond security of \$335,186.70 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 June 7, 2022, the City Council adopted Resolutions No. 2022-81, approving the Public Improvement Agreement 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 4A area. The Contracting Parties, as required by the Public Improvement Agreement, filed with the City Clerk performance bonds in the combined amount of \$3,351,867 to guarantee completion of public improvements within Phase 4A as described in the Agreements (“EXHIBIT A”).

ANALYSIS:

On September 25, 2024, 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 Agreement with the Developer does 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 this agreement, the total price is \$3,351,867). 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 \$335,186.70 in place of the original \$3,351,867 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 \$3,351,867 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 \$335,186.70.

CEQA Findings:

The City has determined this is not a project under CEQA per Article 20 Section 15378 and under General Rule Article 5 Section 15061.

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:

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

Layne P. Long
City Manager
City of Marina