

RESOLUTION NO. 2016-35

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA  
APPROVING PUBLIC IMPROVEMENT AGREEMENT BETWEEN CITY OF  
MARINA AND SHEA HOMES, LP, AND AUTHORIZING CITY MANAGER TO  
EXECUTE THE PUBLIC IMPROVEMENT AGREEMENT ON BEHALF OF CITY  
SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY

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

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

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

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

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

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

WHEREAS, at the regular meeting of February 3, 2015, the City Council adopted Resolution No. 2015-16, approving Public Improvement Agreement between City of Marina and Shea Homes, LP, ("Developer"), and authorizing the City Manager to execute the Public Improvement Agreement on behalf of City subject to final review and approval by the City Attorney. This Agreement covers the first phase of residential development within the Dunes Phase 1C (117 homes), and;

WHEREAS, at the regular meeting of November 3, 2015, the City Council adopted Resolution No. 2015-130, approving Public Improvement Agreement between City of Marina and Shea Homes, LP, ("Developer"), and authorizing the City Manager to execute the Public Improvement Agreement on behalf of City subject to final review and approval by the City Attorney. This Agreement covers the second phase of residential development within the Dunes Phase 1C (88 homes), and;

WHEREAS, Shea Homes Limited Partnership (“Developer”) has submitted the 3<sup>rd</sup> and last Phase Final Map of Phase 1C to the City for review and approval. Staff has reviewed the improvement plans for construction and approved the plans on March 11, 2016. The Developer has also submitted a Public Improvement Agreement and will provide labor and materials and faithful performance bonds required for the recordation of the 3<sup>rd</sup> Phase Final Map of Phase 1C. It has been determined that the Phase 1C Tentative Map Conditions of Approval as amended and presented to the City Council on February 3, 2015 have been met, and;

WHEREAS, the Phase 1C residential development is the last phase/residential for the entire Dunes Development Project. The Developer proposes to present in a later phase the mixed use Village Promenade that comprise the remainder of Phase 1. All required future phased final maps must meet all the appropriate conditions of approval and will be presented to City Council for consideration at a future date, and;

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

WHEREAS, for the 3<sup>rd</sup> Phase of construction for Phase 1C, the Developer will post a bond in the amount of Two Million Three Hundred Eighty Six Thousand Six Hundred Eight Six Dollars (\$2,386,686.00), for completion of the public improvements and a bond in the amount of Two Million Three Hundred Eighty Six Thousand Six Hundred Eight Six Dollars (\$2,386,686.00), to secure payment for labor and materials prior to the recording of the 3<sup>rd</sup> Phase Final Map of Phase 1C.

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

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

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting held on the 15<sup>th</sup> day of March 2016, by the following vote:

AYES: COUNCIL MEMBERS: Amadeo, Brown Morton, O’Connell, Delgado

NOES: COUNCIL MEMBERS: None

ABSTAIN: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

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Bruce Delgado, Mayor

ATTEST:

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Anita Sharp, City Clerk

**PUBLIC IMPROVEMENT AGREEMENT****AGREEMENT FOR IMPROVEMENT OF STREETS, INSTALLATION OF  
STORM DRAINS AND OTHER PUBLIC WORKS FACILITIES****“The Dunes on Monterey Bay” Project  
– A Portion of Phase 1-C – Third Phase/Residential –**

This Agreement for Improvement of Streets, Installation of Storm Drains and Other Public Works Facilities (“Agreement”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 2016, by and between the City of Marina, herein called the “City,” a municipal corporation, and Shea Homes Limited Partnership, a real property owner, developer or subdivider, herein called the “Developer.”

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

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

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

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

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

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

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

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

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

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

WHEREAS, The Master Developer transferred ownership of the Property to Developer pursuant to a grant deed recorded on June 24, 2014, as document number 2014-029107; and

WHEREAS, The Master Developer assigned, and Developer assumed, the obligations of Master Developer under the Disposition and Development Agreement and the Development Agreement between City and Master Developer with respect to the Property pursuant to a Partial Assignment and Assumption Agreement; and

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

WHEREAS, revised improvement plans entitled "Street Improvement Plans for The Dunes on Monterey Bay," herein "Improvement Plans," to those signed by the City Engineer on January 8, 2008, with revisions by Wood Rodgers dated June 17, 2014, and incorporated herein by this reference, have been submitted to the City for approval and acceptance, including certain streets constituting a portion of Phase 1-C of The Dunes on Monterey Bay Project, referred to herein as Phase 1-C Third Phase/Residential or the

“Project,” located on and along Bluewater Court, Lighthouse Lane from 8<sup>th</sup> Street to 9<sup>th</sup> Street, Sandy Clay Lane, 3rd Avenue from 8th Street to 9th Street, Sea Glass Avenue, Parkview Way and Moonshell Lane, Telegraph Boulevard from Sea Glass Avenue to Moonshell Lane, Wharf Terrace, 10<sup>th</sup> Street from Bungalow Drive to Sea Glass Avenue, Skyview Drive, 9th Street from Bungalow Drive to Parkview Way, herein the “Property”. 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;” above ground infiltration facilities may temporarily be utilized for the Project in lieu of final infiltration galleries where feasible; and

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

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

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

WHEREAS, the Developer will subsequently submit for approval by the City and subsequent recording with the office of the Monterey County Recorder, a final map (“Final Map”) for Phase 1-C Third Phase/Residential; and

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

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

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

WHEREAS, the City has certain responsibilities for maintenance and operation of such Improvements, utilities and public service facilities after acceptance by City, and for

providing the necessary connecting system, and the City has agreed to discharge those responsibilities following its acceptance of the Improvements.

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

## SECTION 1

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

## SECTION 2

The Developer agrees:

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

easement grant deeds to the City by grantors, subject to the condition set forth above regarding the annexation to the Community Facilities District. City also agrees to issue Developer and/or Developer's contractors encroachment permits necessary to accomplish said work.

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

d. To construct and improve all public works facilities and other improvements described on the Engineer's Estimate referenced in Section 3 of this agreement and the Improvement Plans submitted to the City in furtherance of this Agreement on file with the City. All construction and improvements shall be completed in accordance with all standards established in the applicable Codes, Ordinances, Resolutions, Rules and Regulations, all applicable laws and this Agreement, and in accordance with the grades, plans, and specifications approved by the City Engineer or his or her designee. Developer shall furnish two good and sufficient bonds, in an amount of 100% of the City Engineer's, or his or her designee's, estimated cost of the Improvements, guaranteeing

Developer's performance of this Agreement: (1) a Payment Bond on a form provided by the City; and (2) a Faithful Performance Bond, both of which must be secured from a surety company admitted to do business in California. Each bond shall set forth a time period for performance by the contractor of its obligations and the terms and conditions on which the City may obtain the proceeds of the bond. Alternatively, the Developer may provide a cash deposit in an amount of 100% of the City Engineer's, or his or her designee's, estimated cost of the Improvements to guarantee Developer's performance of this Agreement.

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

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

The Developer shall submit the following for both the surety that furnishes the Payment Bond and the surety that furnishes the Faithful Performance Bond: (1) a current printout from California Department of Insurances website ([www.insurance.ca.gov](http://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, then renewed authority has been granted.

e. At all times during the term of this Agreement and until the Improvements constructed by Developer are accepted by City, Developer shall, at no cost to City obtain and maintain (a) a policy of general liability and property damage insurance in the minimum amount of Two Million Dollars (\$2,000,000), combined single limit for both bodily injury and property damage; (b) workers' compensation insurance as required by law; and (c) broad form "Builder's Risk" property damage insurance limits of not less than 100% of the estimated value of the Improvements to be constructed by Developer pursuant to this Agreement (Builders Risk Insurance is not required when only mass grading and roadway-related improvements consisting of no structures are to be constructed).

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

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

g. Not to convey, transfer, assign, or sell in one transaction or a series of transactions, subsequent to recordation of the Final Map for Phase 1-C Third Phase/Residential and prior to the annexation to the Community Facilities District, any portion or interest of the Developer in the Property or the Project. Notwithstanding the foregoing, Developer may transfer, assign or sell in one transaction or a series of transactions all or any portion or interest of the Developer in the Property or the Project with consent of the City, such consent not to be unreasonably delayed, conditioned or

withheld, to any entity which controls, is controlled by or is under common control with the Developer or the Master Developer, provided that said assignee assumes, in full, the obligations of Developer under this Agreement.

### SECTION 3

An estimate of the cost for construction of the Improvements and performing land development work in connection with the Improvements according to the Improvement Plans has been made and has been approved by the City Engineer or his or her designee. That estimated amount is \$2,386,686. The basis for the estimate is on file in the Office of the City Engineer and is incorporated into this Agreement by reference.

### SECTION 4

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

### SECTION 5

a) Default of Developer shall include, but not be limited to: (1) failure to timely commence construction of the Improvements; (2) failure to timely complete construction of the Improvements; (3) failure to timely commence and complete the annexation of the Property to the Community Facilities District; (4) failure to timely cure any defect of the Improvements; (5) failure to perform substantial construction work for a period of sixty calendar days after commencement of the work; (6) Developer’s insolvency, appointment of a receiver, or the filing of any petition in bankruptcy either voluntary or involuntary which Developer fails to discharge within thirty days; (7) commencement of a foreclosure action against the project or a portion thereof, or any conveyance in lieu or in avoidance of foreclosure; or (8) failure to perform any other

obligation under this Agreement. Notwithstanding the foregoing, Developer shall not be in default under this Agreement if it cures any default within thirty days' notice of such default, or if the default may not reasonably be curing within such time period, if it commences to cure within thirty days and thereafter diligently proceeds to complete the cure.

b) City reserves to itself all remedies available to it at law or in equity for breach of Developer's obligations under this Agreement. City shall have the right, subject to this Section, to draw upon or utilize the appropriate security to mitigate City's damages in the event of default by the Developer. The right of City to draw upon or utilize the security is additional to and not in lieu of any other remedy available to City. It is specifically recognized that the estimated costs and security amounts may not reflect the actual cost of construction or installation of the Improvements and, therefore, City's damages for Developer's default shall not exceed the cost of completing the Improvements. The sums provided by the security for the Improvements may be used by City for the completion of the Improvements in accordance with the Improvement Plans referenced herein.

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

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

## SECTION 6

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

1. Locate and properly dispose of any wells, septic tanks and underground fuel storage facilities.
2. Schedule the construction of improvements along existing public roads so that the work affecting vehicular traffic is complete with a minimum interruption of traffic

3. All work within the public right-of-way shall be subject to the approval of the City Engineer or his or her designee.
4. All construction work shall be coordinated so that the existing residents and/or businesses have access to their properties.
5. All improvements shall be installed per the approved Improvement Plans.
6. The Developer shall provide to the City of Marina electronic copy of the “As Built” Improvement Plans as an AutoCAD drawing file (DWG format, AutoCAD 2002 minimum or latest version).
7. Any reimbursements due the Developer, unless specified otherwise in writing in this agreement, will expire ten (10) years after the date of execution of this agreement.
8. Until the roads on the Property are open to the public, Developer shall give good and adequate warning to the public of each and every dangerous condition on the existing public roads, and will take all reasonable actions to protect the public from such dangerous condition.

#### SECTION 7

Developer shall, at Developer’s expense, obtain all necessary permits and licenses for the construction and installation of the Improvements, give all necessary notices and pay all fees and taxes required by law.

#### SECTION 8

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

#### SECTION 9

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

## SECTION 10

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

## SECTION 11

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

## SECTION 12

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

## SECTION 13

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

## SECTION 14

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

## SECTION 15

Time is of the essence of this Agreement.

## SECTION 16

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

SECTION 17

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

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

ATTEST:

CITY OF MARINA

\_\_\_\_\_  
Acting Deputy City Clerk

\_\_\_\_\_  
Layne Long  
City Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

IN WITNESS WHEREOF Developer has executed this agreement as of

\_\_\_\_\_.

SHEA HOMES LIMITED PARTNERSHIP,  
a California Limited Partnership

BY: \_\_\_\_\_

BY: \_\_\_\_\_

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

State of California County of \_\_\_\_\_ On \_\_\_\_\_ before me, (here insert name and title of the officer), personally appeared \_\_\_\_\_

\_\_\_\_\_

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

Per GC Sec. 40814; CC Sec. 1181

# **EXHIBIT A**

# **EXHIBIT B**

March 2, 2016

Item No. **11a**

Honorable Mayor and Members  
of the Marina City Council

City Council Meeting  
of March 15, 2016

**RECOMMENDATION TO CONSIDER ADOPTING RESOLUTION NO. 2016-, APPROVING PUBLIC IMPROVEMENT AGREEMENT BETWEEN CITY OF MARINA AND SHEA HOMES, LP, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE PUBLIC IMPROVEMENT AGREEMENT ON BEHALF OF CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY**

**RECOMMENDATION:**

It is recommended that the City Council:

1. Consider adopting Resolution No. 2016-, approving Public Improvement Agreement between City of Marina and Shea Homes, LP, (“Developer”) (“**EXHIBIT A**”), and;
2. Consider authorizing the City Manager to execute the Public Improvement Agreement on behalf of City subject to final review and approval by the City Attorney.

**BACKGROUND:**

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

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

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

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

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

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

At the regular meeting of February 3, 2015, the City Council adopted Resolution No. 2015-16, approving Public Improvement Agreement between City of Marina and Shea Homes, LP, (“Developer”), and authorizing the City Manager to execute the Public Improvement Agreement on behalf of City subject to final review and approval by the City Attorney. This Agreement covers the first phase of residential development within the Dunes Phase 1C (117 homes).

At the regular meeting of November 3, 2015, the City Council adopted Resolution No. 2015-130, approving Public Improvement Agreement between City of Marina and Shea Homes, LP, (“Developer”), and authorizing the City Manager to execute the Public Improvement Agreement on behalf of City subject to final review and approval by the City Attorney. This Agreement covers the second phase of residential development within the Dunes Phase 1C (88 homes).

**ANALYSIS:**

Shea Homes Limited Partnership (“Developer”) has submitted the 3<sup>rd</sup> and last Phase Final Map of Phase 1C to the City for review and approval. Staff has reviewed the improvement plans for construction and approved the plans on March 11, 2016. The Developer has also submitted a Public Improvement Agreement and will provide labor and materials and faithful performance bonds required for the recordation of the 3<sup>rd</sup> Phase Final Map of Phase 1C. It has been determined that the Phase 1C Tentative Map Conditions of Approval as amended and presented to the City Council on February 3, 2015 have been met.

The Phase 1C residential development is the last phase/residential for the Phase 1 Dunes Development Project. The Developer proposes to present in a later phase the mixed use Village Promenade that comprise the remainder of Phase 1.

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

**FISCAL IMPACT:**

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

For the 3<sup>rd</sup> Phase of construction for Phase 1C, the Developer will post a bond in the amount of Two Million Three Hundred Eighty Six Thousand Six Hundred Eight Six Dollars (\$2,386,686.00), for completion of the public improvements and a bond in the amount of Two Million Three Hundred Eighty Six Thousand Six Hundred Eight Six Dollars (\$2,386,686.00), to secure payment for labor and materials prior to the recording of the 3<sup>rd</sup> Phase Final Map of Phase 1C.

**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, Engineering Division  
Community Development Department  
City of Marina

**REVIEWED/CONCUR:**

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Nourdin Khayata, P.E.  
Acting City Engineer  
City of Marina

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Taven Kinison Brown  
Acting Director, Community Development Department  
City of Marina

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Layne P. Long  
City Manager  
City of Marina