

Construction and Transfer of Water, Sewer and Recycled Water Infrastructure Agreement

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CONSTRUCTION AND TRANSFER OF WATER, SEWER AND
RECYCLED WATER INFRASTRUCTURE AGREEMENT
BETWEEN MARINA COAST WATER DISTRICT AND
MONTEREY BAY MILITARY HOUSING, LLC. FOR THE KIDNEY
AT FORT ORD PHASE 2 DEVELOPMENT

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Exhibits

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CONSTRUCTION AND TRANSFER OF WATER, SEWER AND RECYCLED WATER INFRASTRUCTURE AGREEMENT

This Agreement made and entered into this _____ Day of _____ 2012, by and between **Marina Coast Water District**, 11 Reservation Road, Marina, CA, 93933, hereinafter called "District", and **Monterey Bay Military Housing, LLC** a Delaware limited liability company, with its principal offices at 548 Abrego Street, Monterey, CA 93940, hereinafter called the "Developer." This Agreement pertains to the construction and transfer of water, sewer and recycled water infrastructure.

1. Recitals

1.1 The U.S. Army ("Army") owns certain real property within the Ord Military Community ("the OMC") area of the former Fort Ord in Monterey County, California, known generally as Stilwell Kidney, including land and improvements ("the Project Area"). A legal description of the Project Area is attached hereto as Exhibit "B."

1.2. The District has agreed to provide potable water and sewer service to the Project Area pursuant to the provisions of Contract No. DABT67-98-C ("the Potable Water Contract") and Contract No. DABT67-C-1002 ("the Wastewater Contract") dated September 30, 1999, between the Department of the Army and District. The Army has rights to water usage consisting of the Government Retained Usage (potable water) as defined in the Potable Water Contract and rights to sewer capacity consisting of the Government Retained Capacity (wastewater) as defined in the Wastewater Contract. Army will allocate portions of the Government Retained Usage (potable water) and the Government Retained Capacity (wastewater) sufficient to service the replacement units in the Project Area. Exhibit "A" includes the salient sheets from the Memorandum of Understanding (MOU) between the Fort Ord Reuse Authority and the Army documenting that the Government reserves 1729-acre-feet-per-year of water rights and 1.08-million-gallons-per-day of sewer discharge rights; the entire MOU is herein incorporated by reference into this Agreement.

1.3. In February of 1996 the President of the United States signed into law the Defense Authorization Bill (Public Law 104-106) creating the Military Housing Privatization Initiative which provides authority and financing for construction and improvement of military housing.

1.4 Pursuant to the Defense Authorization Bill Army has initiated a program known as the Residential Communities Initiative ("RCI") whereby Army will establish long-term business relationships with private sector companies for the purpose of improving military family housing communities.

1.5 Monterey Bay Military Housing controls 1,605 military housing units that were originally conveyed to them in 2003 by the Army. The Project Area includes improvements consisting of 299 additional residential housing units conveyed to Monterey Bay Military Housing by the Army in 2008 that will be demolished in connection with a project whereby Army proposes to replace

the 299 demolished housing units in the Project Area with approximately 299 replacement units (“the Project”).

1.6 Army has formed a limited liability company known as MONTEREY BAY MILITARY HOUSING LLC, (“the Company,” also referred to in this Agreement as “Owner”) for the purpose of implementing the Project. The Company is controlled by the United States of America by the Department of the Army and Clark Pinnacle Monterey Bay LLC.

1.7. The Potable Water Agreement and the Wastewater Agreement are applicable to District’s water and sewer system infrastructure in the areas of the Project.

1.8. Continued development of the said 299 housing units involves the construction of some new water and sewer infrastructure in the Project Area.

1.9. Owner proposes to enter into an agreement with District in the form of this Agreement to set forth the terms upon which Owner will transfer the new infrastructure to District.

1.10 Term. This Agreement commences upon execution by the parties and continues for two years (twenty-four months) or until completion of the development construction and the associated warranty period, whichever comes first, unless terminated earlier as provided in section 17 of this Agreement.

2. Design and Construction Requirements

2.1 The water, sewer, and recycled water facilities shall be designed, constructed and be operable to the District’s requirements, which shall be a condition of the District’s acceptance of the system facilities under this Agreement. District’s requirements include, but are not limited to the following:

2.1.1 The Developer shall design and construct the water, sewer and recycled water system facilities in accordance with the District’s most recent *Standard Plans and Specifications for Construction of Domestic Water, Sewer, and Recycled Water Facilities* (hereafter *Standards*), Construction Inspection Manual and any other applicable State Regulatory Agency requirements, whichever are most stringent. Any conflict in Development requirements shall be worked out during the plan review process. A licensed civil engineer registered in the State of California shall prepare all plans and specifications.

2.1.2 The Developer shall comply with the District’s most recent *Procedure Guidelines and Design Requirements* (hereafter *Procedures*) and the District’s *Standards* when submitting project plans and specifications to the District for review and consideration of approval. District’s review shall commence after determining compliance with District’s *Procedures* regarding the submittals and any other applicable State Regulatory Agency requirements, whichever are most stringent. District review of the project plans and specifications shall commence after receipt of the initial deposit (see Paragraph 2.1.7). District may approve plans concurrent with the City’s Approval.

2.1.3 The Developer shall comply with most recent District Code including, but not limited to, section 4.28 *Recycled Water*. More specifically, section 4.28.010 *Applicability* states that “[T]his chapter applies to publicly owned properties, to commercial, industrial and business properties, and to other such properties as may be specified from time to time by Marina Coast Water District ... “Section 4.28 does not require the use of recycled water for irrigation to privately owned residential lots. Improvement plans for the Development must contain recycled water lines to serve common areas and other non-residential lot irrigation within the Development. The Developer and the District will cooperatively identify recycled water turnout location(s). The Developer will also install the lateral lines from each turnout. The Developer, or its successors or assignees (such as an owners association) will obtain required permits for recycled water. This shall include, complying with the California Department of Health Services and other regulatory agency requirements prior to constructing any recycled water facilities.

2.1.4 The District will inspect the construction of water, sewer and recycled water facilities and verify that construction conforms to project plans and specifications. District responsibilities for inspection extends to five (5) feet from the building exterior at the point where the utility enters the structure. The District will also inspect special fixtures including, zero water use urinals, hot water recirculation systems, etc. The District will inform the Developer of required field changes and will contact the Developer and the City regarding easements outside publicly dedicated rights of way. The District will enter into a franchise agreement with the City for non-exclusive use within the public rights of way. Upon receipt of recorded private easements to serve the Development in accordance with the plans and specifications approved by the District, the District will quitclaim any easements not required to serve the Development and not required by the District.

2.1.5 All system facilities shall be tested to meet District requirements. No system facilities or portion thereof, including but not limited to pipes, pumps, electrical and instrumentation and control will be accepted without meeting District test requirements. The District shall have the right to inspect work in progress in the construction of either in-tract or out-of-tract water, recycled water and sewer infrastructure facilities or special fixtures, as described above.

2.1.6 **Plan Review Fees.** The Developer, on a phased basis, agrees to pay all fees and charges, including additional plan check fees and construction inspection fees as required by the District for Developer’s work. These fees will be assessed when the fee is paid. The District may also require a prepaid fee to cover staff time before preliminary level or concept level plan check begins. (See *Procedures* section 100.6.2) If the District Engineer determines consultant assistance is required for plan check review or portion thereof, the Developer agrees to prepay the additional plan check fees if that cost exceeds the balance on the initial deposit. The District shall obtain the Developer’s written approval for any costs in excess of this amount, for which approval shall not be unreasonably withheld. Upon the execution of this Agreement by both parties, the Developer shall deposit with the District the applicable administration and plan check fees. Any surplus fees shall be returned to the Developer, or at Developer’s request, used to pay subsequent fees, e.g., construction inspection fees.

2.1.7 Construction Inspection Fees. On a phased basis, the District shall require the construction inspection fee before undertaking a construction inspection review of the proposed water, recycled water and sewer facilities. As a condition precedent to the District's obligation to undertake a construction inspection review of the proposed water, recycled water and sewer facilities, the Developer shall provide to the District the construction inspection fee, which is currently five hundred dollars (\$500.00) per unit plus three percent (3%) of water, recycled water and sewer facilities construction costs, pursuant to Developer's Engineer's estimate. (See *Procedures* section 200.3.2) Any surplus inspection fees shall be returned to Developer.

3. Existing Water and Sewer Infrastructure

3.1 The Developer will comply with the District's *In-Tract Policy* regarding any water, reclaimed water and sewer mains or appurtenances within the Development. Developer, or its successors or assignees, shall assume all responsibility, and will hold District harmless, for all water/sewer infrastructure within the Development boundaries that will be removed or abandoned by Developer. Abandonment-in-place requires written approval by the District. The Developer is responsible to repair or replace water and sewer facilities within the Development boundaries during the construction of the Development which are for the exclusive use of the Development.

4. District to Serve Development

4.1 District will provide water, recycled water and sewer service to the portion of the Development as shown on Exhibit C after final Board Acceptance of the conveyance of the water, recycled water, and sewer system facilities and final Board Acceptance of the system (see *Procedures* section 300.25). The District will bill and serve them. The bill will include the prepayment of applicable meter fees and charges, cross connection charges, and other applicable fees and charges approved pursuant to the agreement with FORA for service on the former Fort Ord. Once the applicable fees and charges are made, the District will immediately begin service with the installation of the water meter(s). The District's obligations in this section are subject to District's rules, regulations, policies and ordinances, which may be updated from time to time.

5. Capacity Charge

5.1 The current capacity charges for water and sewer services are \$5,750 per EDU and \$2,150 per EDU respectively. These charges are due when the first building permit is issued. The District Board of Directors reserves its right to review and revise these charges from time to time subject to applicable law and the District's approval procedures for such charges.

6. Water Augmentation Project

6.1 In October 2004, the District Board of Directors certified its Regional Urban Water Augmentation Project Environmental Impact Report for a Water Augmentation Project. That project will provide additional water to the former Fort Ord. Alternatives included a 3,000 AFY recycled water project, a 3,000 AFY desalination project, or a 3,000 AFY hybrid project that

includes a 1,500 AFY desalination plant and a 1,500 AFY recycled water project. In June 2005, the District and FORA Board of Directors approved the Hybrid Alternative and directed staff to initiate the scoping process. The selection of the Hybrid Alternative will result in the availability of recycled water. Therefore, improvement plans must be compatible with and anticipate the availability of a non-potable water supply to serve common area open spaces within the Development, as permitted by applicable laws and regulations. If an alternative water supply satisfies the foregoing requirements, Developer and District will cooperatively identify recycled water turnout location(s).

6.2 Developer, or its successors or assignees (such as an owners association), agrees to take recycled water for non-potable use at the time it becomes available. The District shall establish a separate cost for recycled water in the same manner that it establishes the cost of potable water. Developer, or its successors or assignees agree that the District-established cost will be paid by the recycled water customers. .

7. Licensed Contractor

7.1 The Developer, or his authorized representative (contractor) performing the work, shall be licensed under the provisions of the Business and Professions Code of the State of California to do the work called for in the project. District reserves the right to waive this requirement at its discretion where permitted under state statute.

7.2 The Developer, or his contractor, shall be skilled and regularly engaged in the installation of water and sewer systems. The District may request evidence that the constructing party has satisfactorily installed other projects of like magnitude or comparable difficulty. Contractors must furnish evidence of their qualifications to do the work.

8. Permits, Easements, and Related Costs

8.1 Except as otherwise provided in this Agreement, the Developer shall obtain all necessary local, county and state permits (including encroachment permits) and conform to requirements thereof. Developer shall obtain all easements, for other than public rights of way, necessary for ingress and egress to and from the facilities for the purpose of installation, operation, maintenance and removal of said facilities. Pipeline easements shall be 20 feet in width or as otherwise agreed by the District Engineer and Developer. Easements shall be in a form reasonably approved by the District and shall be submitted/conveyed to the District in recordable form before the District provides service.

9. Final Inspection and Reimbursement of District Costs

9.1 The District's Engineer must inspect completed water, sewer and recycled water system facilities, or portion thereof. The District will not accept the facility until its Engineer has given written approval that it satisfies the District's requirements. Developer shall be responsible for all costs incurred by the District that are associated with interim and final inspection, completion, additional construction, and testing of the system facilities, subject to the limitations set forth in

Paragraph 2 *Design and Construction Requirements*. Developer shall reimburse District for costs to correct any damages to facilities related to the construction of the Development caused by the Developer or any authorized representative (developer's contractor). This reimbursement obligation is limited to the warranty period described in paragraph 15 *Warranties*. Developer shall remit to District prior to the conveyance of the water, sewer and recycled water system facilities to the District, payment of reimbursable costs, if any, incurred for inspection, administration and plan review, over and above deposits previously paid to the District. If there is a surplus in such accounts or any refunds due Developer, then District shall return to Developer the amount of such surplus or refunds.

10. Underground Obstructions

10.1 The District is not responsible for and does not assume any responsibility or liability whatsoever for Developer's (or Developers' contractors') acts and omissions during the design and construction of the water, sewer, and recycled water facilities. Any location of underground utility lines or surface obstructions given to the Developer or placed on the project drawing by District are for the Developer's convenience, and must be verified by Developer in the field. The District assumes no responsibility for the sufficiency or accuracy of such information, lines, or obstructions.

11. As-Built Plans, Specifications, Values, Etc.

11.1 Developer shall, as a condition of District's acceptance of the water, sewer and recycled water system facilities, provide to the District in accordance with Section 400.13 of the *Procedures*. Developer agrees to supply the following:

11.1.1 A set of Mylar drawing prints and AutoCAD digitized files of the improvement plans which show the water, sewer and recycled water system facilities, and a hardcopy and electronic copy of the specifications, and any contract documents used for the construction of the water, sewer and recycled water system facilities. These files may be in Adobe Acrobat format.

11.1.2 A complete, detailed statement of account, the form and content to be provided by the District at the time of conveyance, of the amounts expended for the installation and construction of the system facilities, with values applicable to the various components thereof, together with a list of any other materials and equipment (and their values) being transferred.

11.1.3 Any other documents required by Section 400.13 of the *Procedures*.

12. Indemnity, Insurance, and Sureties

12.1 Insurance and Liability - The Developer agrees to have its contractor provide the indemnity, defense, and save harmless statements and certifications to the District, its officers, agents, and employees as provided in Exhibit D, attached hereto and hereby incorporated by

reference. Insurance policies shall provide that such insurance is primary insurance. Coverages described in Exhibit D shall be maintained through the term of this Agreement, and the Developer's contractor shall file with the District prior to the execution of this Agreement, and as policy renewals occur, a Certificate of Insurance evidencing that the insurance coverages required herein have been obtained and are currently in effect.

12.2 Performance and Payment Surety - Developer or its authorized representative to do the work (contractor) shall furnish the District with a surety in the amount of the District's estimate of the project construction cost to secure the completion of and payment for the work. The surety shall be in a form satisfactory to the District such as a performance and payment bond, irrevocable letter of credit, cash deposit, or construction "set-aside" letter. Such surety may include evidence that it was submitted to another public agency of an equivalent or greater amount covering the work to be done under this Agreement.

12.3 Submittal of Insurance Certificates and Surety - The required insurance certificates shall be delivered prior to commencement of construction and performance, and payment surety shall be delivered to the District prior to District approval of plans and specifications.

13. Transfer of System Facilities to District after Completion

13.1 Developer will execute and obtain all signatures of any other parties having any interest (including any Deed of Trust), and deliver a conveyance satisfactory in form and content to District. This conveyance shall transfer unencumbered ownership of the completed water, sewer and recycled water system facilities to the District together with all real property, interest in real property, easements and rights-of-ways (including any off-site easements or real property) other than those contained in public rights of way, and all overlying and other underground water rights that are a part of, appurtenant to, or belonging to the Development now or hereafter served by the water, sewer and recycled water system facilities that are necessary or appropriate in the opinion of the District for the ownership and operation of the system. Provided all other conditions set forth herein are satisfied, the District shall accept the conveyance. All costs of construction of the system facilities, for which the Developer is responsible, shall have been paid for by Developer, the time for filing mechanics liens shall have expired (or Developer shall provide other security to protect against liens), and the title to the water, sewer and recycled water system facilities and the interests in real property transferred shall be good, clear and marketable title, free and clear of all encumbrances, liens or charges. Developer shall pay costs of title insurance deemed necessary by the District and is reasonable and customary for the insured transaction type. All construction, including final inspection punch list items must be completed prior to transfer, and the transfer shall not be completed until the conveyance transferring the water, sewer and recycled water system facilities has been formally accepted by the District. After transfer, the District shall own and be free in every respect to operate and manage the water, sewer and recycled water system facilities and to expand or improve, or interconnect with adjacent facilities, as it deems appropriate.

14. Developer Assistance

14.1 Developer shall, both before and after the transfer, secure and provide any information or

data reasonably needed by District to take over the ownership, operation and maintenance of the system facilities.

15. Warranties

15.1 Developer hereby warrants that as of the time of the District's acceptance of the conveyance of the water, sewer and recycled system facilities (or when Developer thereafter completes the installation of any works or components subsequently installed, repaired, or replaced) the water, sewer and recycled system facilities and all components thereof, will be in satisfactory working order and quality; and that the water, sewer and recycled systems facilities and all components thereof have been constructed and installed in compliance with specifications and as-built plans being provided to the District, and in accordance with applicable requirements of any governmental agency having jurisdiction. Developer also warrants that as of the time of the District's acceptance of the conveyance of the water, sewer and recycled water system facilities (or when Developer thereafter completes the installation of any works or components subsequently installed, repaired, or replaced) the system facilities will operate in good and sufficient manner for the purpose intended for one (1) year after the date of acceptance (see *Procedures* section 300.24), or 180-days from the date new facilities are subsequently re-installed, repaired, or replaced (hereafter *replacement facilities*), whichever is later and the Developer shall indemnify District for any costs or expenses (including District's own labor costs) incurred by reason of failure, malfunction, replacements, repairs or any other expenses incurred by District during the one (1) year warranty period or 180-days for *replacement facilities*, whichever is later.

15.2 Developer shall furnish the District with a Warranty Bond (or other instrument satisfactory to the District) in the amount of twenty percent (20%) of the actual construction costs to protect the District against any failure of the work due to faulty materials, poor workmanship or defective equipment within a period of one (1) year following the date of acceptance or 180-days for *replacement facilities*, whichever is later.

16. No Water, Recycled Water and Sewer Service Prior to Completion and Transfer

16.1 The Developer shall not allow any occupant or person to commence operations or use of any part of the water, recycled water and sewer system facilities without the express written consent of the District. Such consent may not be unreasonably withheld. District may impose conditions or restrictions upon any consent to such prior service, such as posting a surety bond. District recognizes that the Development, and hence the water, sewer and recycled system facilities, will be built, accepted and transferred in multiple phases. Notwithstanding any of the foregoing, Developer may use the sewer, water and recycled system facilities before they are accepted for fire protection and construction purposes in all phases, subject to satisfaction of applicable testing.

17. Performance

17.1 Developer agrees to promptly design and construct the water and sewer and recycled water system and, transfer the same to the District in accordance with the terms of this Agreement. If construction of the water and sewer and recycled water system facilities of the

Development has not been completed and accepted by District within twenty four (24) months from the date of execution of this Agreement (such date may be extended for delays beyond Developer's control, but in no event shall such delay exceed twelve (12) additional months), the District shall have the option to terminate this Agreement. If construction on any phase is not complete within twenty four months or as extended as provided above, then an Amendment to this Agreement will be necessary to address each such phase. Subsequent phases also may at District's discretion be addressed by Amendment(s) to this Agreement.

18. Assignment

18.1 Neither party may assign their rights or obligations under this Agreement within its term without the written consent of the other party. Rights to water, recycled water, and sewer service will be deemed assigned to each property owner upon acquisition of his/her commercial unit in the Development. Upon assignment, the Developer's responsibilities relating to recycled water facilities, use and approvals will become the assignee's responsibility. This provision will cease to have any effect when the District accepts title to the water facilities or the Agreement is terminated.

19. Dispute Resolution Procedure

19.1 Disputes arising under this agreement shall be resolved as follows:

19.1.1 Prevention of Claims / Meet and confer (3 days) - The parties agree that they share an interest in preventing misunderstandings that could become claims against one another under this agreement. The parties agree to attempt to identify and discuss in advance any areas of potential misunderstanding that could lead to a dispute. If either party identifies an issue of disagreement, the parties agree to engage in a face-to-face discussion of the matter within three calendar days of the initial request. If the dispute cannot be negotiated between the parties, the matter shall first be brought to the attention of the District's Board of Directors at the first available regularly scheduled Board Meeting. The District Board of Directors may seek to intervene in the negotiations or may direct staff to seek arbitration. If any disagreement remains unresolved for ten (10) days after direction is provided by the District Board of Directors, the parties agree to submit it to mediation as provided in Section 19.2 below.

19.1.2. Mediation (30 days) - Either party may demand, and shall be entitled to, mediation of any dispute arising under this agreement at any time after completing the meet and confer process described in subsection 19.1. Mediation shall commence not more than ten (10) days after the initial mediation demand and must be concluded not more than thirty (30) days after the date of the first mediation demand. If mediation is not concluded within that time, then either party may demand arbitration as set forth in Section 19.3.

Mediation shall be submitted first to a mediator with at least ten years experience in Monterey County. The mediator shall be selected by mutual agreement of the parties. Failing such mutual agreement, a mediator shall be selected by the presiding judge of the Monterey County Superior Court. In the interest of promoting resolution of the dispute,

nothing said, done or produced by either party at the mediation may be discussed or repeated outside of the mediation or offered as evidence in any subsequent proceeding. The parties acknowledge the confidentiality of mediation as required by Evidence Code 1152.5.

No mediator shall submit, and no arbitrator or court shall consider, any mediator recommendations, declarations, or findings unless the parties give their written consent to the proposed mediator statement.

19.1.3. Arbitration (60 days) - If mediation fails to resolve the dispute, the parties shall select an arbitrator by mutual agreement. Failing such agreement, the arbitrator shall be selected by the Presiding Judge of the Superior Court. The decision of the arbitrator shall be final and not subject to judicial litigation.

Arbitration shall be commenced within thirty days of the arbitration demand and concluded within 60 days of arbitration demand.

Arbitration shall follow the so-called "baseball arbitration" rule in which the arbitrator is required to select an award from among the final offers presented by the contending parties. The arbitrator may not render an award that compromises between the final offers.

Unless the arbitrator selects another set of rules, the arbitration shall be conducted under the J.A.M.S. Endispute Streamlined Arbitration Rules and Procedures, but not necessarily under the auspices of J.A.M.S. Upon mutual agreement, the parties may agree to arbitrate under an alternative scheme or statute. The Arbitrator may award damages according to proof. Judgment may be entered on the arbitrator's award in any court of competent jurisdiction.

NOTICE: IN AGREEING TO THE FOREGOING PROVISION, YOU ARE WAIVING YOUR RIGHT TO HAVE YOUR RIGHTS UNDER THIS AGREEMENT TRIED IN A COURT OF LAW OR EQUITY. THAT MEANS YOU ARE GIVING UP YOUR RIGHT TO TRIAL BY JUDGE OR JURY. YOU ARE ALSO GIVING UP YOUR RIGHT TO DISCOVERY AND APPEAL EXCEPT AS PROVIDED IN THE ARBITRATION RULES. IF YOU REFUSE TO ARBITRATE YOUR DISPUTE AFTER A PROPER DEMAND FOR ARBITRATION HAS BEEN MADE, YOU CAN BE FORCED TO ARBITRATE OR HAVE AN AWARD ENTERED AGAINST YOU BY DEFAULT. YOUR AGREEMENT TO ARBITRATE IS VOLUNTARY.

BY INITIALING THIS PROVISION BELOW, THE PARTIES AFFIRM THAT THEY HAVE READ AND UNDERSTOOD THE FOREGOING ARBITRATION PROVISIONS AND AGREE TO SUBMIT ANY DISPUTES UNDER THIS AGREEMENT TO NEUTRAL BINDING ARBITRATION AS PROVIDED IN THIS AGREEMENT.

_____s' INITIALS_____

_____'S: INITIALS_____

20. Waiver of Rights

20.1 Waiver. No waiver of any breach or default by either party shall be considered to be a waiver of any other breach or default. The waiver by any party for the time for performing any act shall not constitute a waiver of the time for performing any other act or an identical act to be performed at a later time. None of the covenants or other provisions in this Agreement can be waived except by written consent of the waiving party.

21. Notices

21.1 All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered, or mailed by certified mail, return receipt requested, or delivered by reliable overnight courier, to the respective party as follows:

To District: Marina Coast Water District
Attn: Jim Heitzman, General Manager
11 Reservation Road
Marina, California 93933

To Developer: Monterey Bay Military Housing, LLC
c/o Clark Pinnacle Family Communities, LLC
548 Abrego Street
Monterey, CA 93940

Monterey Bay Military Housing, LLC
c/o Office of the Garrison Commander
DLIFLC & POM
ATZP-GC
1759 Lewis Road, Suite 210
Monterey, CA 93944-3223

With copy to: Office of the General Counsel
Clark Enterprises, Inc.
7500 Old Georgetown Road, 15th Floor
Bethesda, MD 20814

And a copy to: W. Cleve Johnson
Clark Realty Capital, LLC
4401 Wilson Boulevard
Suite 600
Arlington, VA 22203

21.2 The address to which notice may be sent may be changed by written notification of each party to the other as above provided.

22. Severability

22.1 If any portion or provision of this Agreement is found to be contrary to law or policy of the law or unenforceable in a court of competent jurisdiction, then the portion so found shall be null and void, but all other portions of the Agreement shall remain in full force and effect.

23. Paragraph Headings

23.1 Paragraph headings are for convenience only and are not to be construed as limiting or amplifying the terms of this Agreement in any way.

24. Successors and Assignees

24.1 This Agreement shall be binding on and benefit the assignees or successors to this Agreement in the same manner as the original parties hereto.

25. Integrated Agreement

25.1 This Agreement integrates and supersedes all prior and contemporaneous Agreements and understandings concerning the subject matter herein. This Agreement constitutes the sole agreement of the parties and correctly sets forth the rights, duties and obligations of each to the others. Future amendments must be in writing signed by the parties. Any prior agreements, promises, negotiations or representations not expressly set forth in this Agreement are of no force and effect.

26. Negotiated Agreement

26.1 This Agreement has been arrived at through negotiation between the parties. Neither party is deemed the party that prepared the Agreement within the meaning of Civil Code Section 1654.

27. Attorneys Fees

27.1 If arbitration or suit is brought to enforce or interpret any part of this Agreement, the prevailing party shall be entitled to recover as an element of costs of suit, and not as damages, a reasonable attorneys' fee to be fixed by the arbitrator or Court, in addition to any other relief granted. The "prevailing party" shall be the party entitled to recover costs of suit, whether or not the suit proceeds to arbitrator's award or judgment. A party not entitled to recover costs shall not recover attorneys' fees. No sum for attorneys' fees shall be counted in calculating the amount of an award or judgment for purposes of determining whether a party is entitled to recover costs or attorneys' fees.

27.2 If either party initiates litigation without first participating in good faith in the alternative forms of dispute resolution specified in this agreement, that party shall not be entitled to recover any amount as attorneys' fees or costs of suit even if such entitlement is established by statute.

28. Exhibits

28.1 All exhibits referred to in this Agreement and attached to this Agreement are incorporated in this Agreement by reference.

29. Disclaimer/Indemnity Regarding Public Works

29.1 District has not determined whether the project would be considered a “Public Works” project for the purposes of California law, and makes no warranties or representations to Developer about whether the project would be considered a “Public Works” project. Developer is aware that if the project is considered a “Public Works” project, then Developer would have to pay “prevailing wages” under California Labor Code section 1771. If Developer fails to pay such prevailing wages, Developer acknowledges that it will be liable to, among other things, pay any shortfall owed as well as any penalties that might be assessed for failure to comply with the law. If Developer does not pay prevailing wages, and an action or proceeding of any kind or nature is brought against the District based on such failure, Developer will defend and indemnify District in the action or proceeding. District agrees to reasonably cooperate and assist Developer in any the defense of any such action.

30. No Third Party Beneficiaries

30.1 There are no intended third party beneficiaries to this Agreement.

31. Compliance with Laws

31.1 Developer will comply with all laws, rules and regulations in carrying out its obligations under this Agreement.

32. Counterparts

32.1 This Agreement may be executed in counterparts, and each fully executed counterpart shall be deemed an original document.

Signature Page

By: MONTEREY BAY MILITARY HOUSING, LLC, a Delaware Limited Liability Company

By: Clark Pinnacle Monterey Bay, LLC, a Delaware Limited Liability Company, Manager

By: Clark Realty Capital, LLC, a Delaware Limited Liability Company, Manager

By: _____

Name: _____, Title: _____

Date: _____

By: CEI Realty, Inc., A D.C. Corporation, Manager

By: _____

Name: _____, Title: _____

Date: _____

By MARINA COAST WATER DISTRICT

Jim Heitzman, General Manager
Marina Coast Water District

EXHIBIT A
WATER ALLOCATION DOCUMENTATION

DRAFT

Joseph F. Pitta
Monterey County Recorder
Recorded at the request of
Stewart Title

CRKATHLEEN
6/23/2000
8:00:00

WHEN RECORDED MAIL TO:

FORT ORD REUSE AUTHORITY

100 12th STREET - BUILDING 2880

MARINA, CA 93933

ATTN: MICHAEL HOULEMARD, JR.

0600-BT

DOCUMENT: 2000040124



2000040124

Titles: 1/ Pages: 106

Fees ...

Taxes ...

Other ...

AMT PAID

THIS SPACE FOR RECORDER'S USE ONLY

TITLE OF DOCUMENT

MEMORANDUM OF AGREEMENT

This instrument filed for record
by Stewart Title Company as an
accommodation only. It has not been
examined as to it's execution or as
to it's effect upon the title.

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**MEMORANDUM OF AGREEMENT
BETWEEN

THE UNITED STATES OF AMERICA,
ACTING BY AND THROUGH
THE SECRETARY OF THE ARMY,
UNITED STATES DEPARTMENT OF THE ARMY

AND

THE FORT ORD REUSE AUTHORITY

FOR THE SALE OF
PORTIONS OF THE FORMER FORT ORD
LOCATED IN
MONTEREY COUNTY, CALIFORNIA**

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**MEMORANDUM OF AGREEMENT
BETWEEN
THE UNITED STATES OF AMERICA, ACTING BY AND THROUGH THE
SECRETARY OF THE ARMY, UNITED STATES DEPARTMENT OF THE ARMY
AND
THE FORT ORD REUSE AUTHORITY
FOR THE SALE OF PORTIONS OF THE FORMER FORT ORD
LOCATED IN MONTEREY COUNTY, CALIFORNIA**

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FORT ORD ECONOMIC DEVELOPMENT CONVEYANCE AGREEMENT

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FORT ORD ECONOMIC DEVELOPMENT CONVEYANCE AGREEMENT

EXHIBITS

DESCRIPTION OF THE PROPERTY:

PARCEL 1 EXHIBIT A

PARCEL X EXHIBIT A

**IT IS CONTEMPLATED THAT THERE WILL BE MULTIPLE PARCELS
CONVEYED AT MULTIPLE CLOSINGS**

EXAMPLE DEED EXHIBIT B

SAMPLE FOST (PARCEL 1) EXHIBIT C

REPRESENTATIONS TO BE PRESENTED AT CLOSING:

GOVERNMENT REPRESENTATIONS EXHIBIT D-1

AUTHORITY REPRESENTATIONS EXHIBIT D-2

RESERVED EXHIBIT E

PROGRAMMATIC AGREEMENT EXHIBIT F

BILL OF SALE FOR PERSONAL PROPERTY

CONVEYED TO THE AUTHORITY EXHIBIT G

RESERVED EXHIBIT H

RESERVED EXHIBIT I

RIGHT OF ENTRY EXHIBIT J

CONVEYANCE SCHEDULE EXHIBIT K

ENVIRONMENTAL REMEDIATION SCHEDULE EXHIBIT L

ACCESS ROADS AND EASEMENTS EXHIBIT M

LIST OF GOVERNMENT REMEDIATION

DECISION DOCUMENTS EXHIBIT N

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**MEMORANDUM OF AGREEMENT
BETWEEN
THE UNITED STATES OF AMERICA, ACTING BY AND THROUGH THE
SECRETARY OF THE ARMY, UNITED STATES DEPARTMENT OF THE ARMY
AND
THE FORT ORD REUSE AUTHORITY
FOR THE SALE OF PORTIONS OF THE FORMER FORT ORD
LOCATED IN MONTEREY COUNTY, CALIFORNIA**

THIS MEMORANDUM OF AGREEMENT ("Agreement") is made as of the 20th day of June, 2000 by and between the United States of America, acting by and through the Secretary of the Army (hereinafter referred to as "Government"), and the Fort Ord Reuse Authority, created under Title 7.85 of the California Government Code, Chapters 1 through 7, inclusive, commencing with Section 67650, *et seq.*, and selected provisions of the California Redevelopment Law, including Division 24 of the California Health and Safety Code, Part 1, Chapter 4.5, Article 1, commencing with Section 33492, *et seq.*, and Article 4, commencing with Section 33492.70, *et seq.*, and recognized as the Local Redevelopment Authority (hereinafter referred to as "Authority") by the Office of Economic Adjustment on behalf of the Secretary of Defense (collectively the "Parties").

RECITALS:

WHEREAS:

a. The Government is the owner of a portion of certain real property, improvements and other rights appurtenant thereto together with all personal property thereon, located in Monterey County, California, and commonly referred to as the former Fort Ord, which was utilized as a military installation.

b. The former Fort Ord was closed on September 30, 1994 pursuant to and in accordance with the Defense Base Closure and Realignment Act of 1990, as amended (Public Law 101-510; hereinafter referred to as the "Base Closure Act").

c. In accordance with Section 2905(b)(4) of the Base Closure Act, as amended by Section 2821 of the Defense Authorization Act for Fiscal Year 2000, Pub. L. No. 106-65 (1999), and the implementing regulations of the Department of Defense (32 CFR Parts 90 and 91), the Government desires to convey and the Authority desires to acquire portions of the former Fort Ord consisting of approximately five thousand two hundred (5,200) acres of land, including all buildings, personal property, appurtenances, rights-of-way, and drainage areas (the "Property" as hereinafter defined), upon and subject to the terms and conditions set forth herein.

FORT ORD ECONOMIC DEVELOPMENT CONVEYANCE AGREEMENT

d. As soon as the Property, or discrete parcels thereof, may be conveyed consistent with the requirements of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA": 42 U.S.C. 9620[h]), as amended, and other legal and policy requirements, the Government intends to convey to the Authority by one or more quitclaim deeds the Property or parcels thereof, subject to any necessary restrictions, reservations, conditions, and exceptions at no cost, as set forth below.

AGREEMENTS

NOW, THEREFORE, in consideration of the foregoing premises and the respective representations, agreements, covenants and conditions herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Government and the Authority agree as follows:

ARTICLE 1. DEFINITIONS:

When used herein, the following terms shall have the respective meanings set forth opposite each such term:

1.01. Agreement. This Memorandum of Agreement, including the Exhibits attached hereto which are incorporated herein by reference and made a part of this Agreement.

1.02. Adjusted Gross Proceeds. All revenues received by the Authority or the Authority member jurisdictions from a sale, lease, or equivalent use of the Property (licenses, permits, concession agreements, etc.) or portions of the Property to a Bona Fide Purchaser or Lessor minus Direct Expenses as hereinafter defined.

1.03. Bona Fide Purchaser or Lessor. A non-governmental purchaser or Lessor of the Property from the Authority or an Authority member jurisdiction.

1.04. Claims. Any and all losses, costs, liability, judgment, claims, proceedings, demands, actions, fines, penalties, expenses, damages, or other fees.

1.05. Closing. The transactions during which portions of the Property transfer documents, along with other documents, are executed and delivered by the Government and the Authority, and the Government transfers a portion of the Property to the Authority. The Parties contemplate that there will be multiple closings.

1.06. Closing Documents. Those documents required to be delivered by the Parties at Closing as required herein.

FORT ORD ECONOMIC DEVELOPMENT CONVEYANCE AGREEMENT

ARTICLE 4. PERSONAL PROPERTY:

4.01. Personal Property. In addition to the conveyance of the Real Property, the Government shall transfer to the Authority the Personal Property which the Parties agree is related to and necessary to use the Real Property, as specified and identified in and pursuant to the terms and conditions in the Bill of Sale substantially in the form set forth in Exhibit G.

ARTICLE 5. WATER AND SEWER RIGHTS:

5.01. Marina Coast Water District. Immediately following the execution of this Agreement, the Government shall transfer to the Marina Coast Water District (the "District") the water and wastewater collection systems on the Property and the Presidio of Monterey Annex, including their respective water rights and wastewater discharge rights as defined in and pursuant to a no cost Public Benefit Conveyance ("PBC") in response to the application filed by the District dated August 26, 1997.

5.02. Government. The Authority understands that in the assignment of the water rights to the District, the Government reserves 1729 acre feet per year ("afy") of water exclusively for Government use ("Government Water Rights"). Also, the Government will retain ownership of 1.08 million gallons per day ("mgd") of wastewater discharge rights ("Government Wastewater Discharge Rights"). If the Authority or any other entity, at its own cost and expense, installs water conservation devices on the property not transferred to the Authority, resulting in decreased Government requirements for water or wastewater discharge, or the Government does not utilize all of the Government Water Rights or Government Wastewater Discharge Rights, the Authority shall have the right to negotiate with the Government for use of the Government Water Rights or Government Wastewater Discharge Rights not utilized by the Government (collectively "Unutilized Government Water/Wastewater Rights"). The Government and the Authority agree to meet and confer regarding the Unutilized Government Water/Wastewater Rights two (2) years following the completion of the installation of water meters at the Presidio of Monterey Annex ("POMA"). The Government shall determine the amounts of unutilized Government Water/Wastewater Rights on an annual basis and will consult with the Authority regarding this determination on an annual basis. In the event of a proposed transfer of Government Water Rights or Government Wastewater Discharge Rights to a third party, the Authority shall have the first right of refusal to any such transfer rights.

5.03. Equitable Allocation of Water. The Authority, and its successors and assigns, shall cooperate with the Marina Coast Water District, Monterey County Water Resources Agency and grantees of former Fort Ord Property to establish and apply a fair process to ensure that all grantees of former Fort Ord property will be provided an equitable supply of the water at the former Fort Ord.

FORT ORD ECONOMIC DEVELOPMENT CONVEYANCE AGREEMENT

1 5.04. Wastewater Discharge Rights. The Authority, and its successors and assigns, shall
2 cooperate with the Marina Coast Water District, the Monterey Regional Water Pollution Control
3 Agency and grantees of former Fort Ord Property to establish and apply a fair process to ensure that
4 all grantees of former Fort Ord property will enjoy equitable utilization of the existing sewage
5 treatment capacity, including existing connections to the former Fort Ord sewage collection system.
6

7 **ARTICLE 6. LEASE IN FURTHERANCE OF CONVEYANCE:** 8

9 6.01. Lease. In furtherance of and pending conveyance of the Property, at the Authority's
10 request and to the extent the Government can honor such request, the Government agrees to lease
11 the Property, in whole or in part, to the Authority, and the Authority agrees to accept such lease or
12 leases in furtherance of conveyance, pursuant to the terms, covenants, and conditions mutually
13 agreed to by the Parties as provided for in the FOSL. The Lease shall be executed by the
14 Government and the Authority as soon as the Agreement and a FOSL are executed.
15

16 **ARTICLE 7. EFFECT OF TRANSFER OF TITLE AND CONTINUING** 17 **OBLIGATIONS OF THE GOVERNMENT:** 18

19 7.01. Effects of Deeds. The delivery of the executed Deeds pursuant to this Agreement from
20 the Government to the Authority shall be deemed full performance by the Government of its
21 obligations hereunder with regard to the portions of the Property conveyed by each Deed other than
22 any obligations of the Government which are required by this Agreement or by law (including
23 without limitation any obligations under CERCLA Section 120(h) and under Section 330 of the
24 Department of Defense Authorization Act of 1993) to be performed after the delivery of each such
25 Deed.
26

27 7.02. As-is, Where-is. Except as provided herein, all of the Property conveyed or leased
28 hereunder will be in an "as-is where-is" condition and without any representation or warranty
29 whatsoever and without any obligation on the part of the United States of America except as
30 expressly provided for by law or in this Agreement.
31

32 7.03. Liabilities. 33

34 A. The Government shall remain responsible for all liabilities, claims, demands, judgments,
35 suits, litigation, amounts payable (collectively, "Pre-Closing Obligations") against the Government
36 or the Property attributable to Government activity on the Property, including activities of the
37 Government's contractors, lessees, licenses and others acting under Government authority, prior to
38 the conveyance or lease of each parcel of the Property to the Authority. The Authority shall notify
39 the Government of the existence or occurrence of any such Pre-Closing Obligations and shall
40 cooperate with the Government in the payment, settlement and disposition thereof.
41

EXHIBIT B

LEGAL DESCRIPTION

DRAFT

LEGEND

- FOUND 1" IRON PIPE, TAGGED "RCE 15310" PER VOLUME 21, PAGE 83 OF SURVEYS, UNLESS NOTED OTHERWISE.
- (R1) VOLUME 27, PAGE 91 OF SURVEYS
- (R2) VOLUME 23, PAGE 78 OF SURVEYS
- (R3) VOLUME 19, PAGE 22 OF SURVEYS
- (R4) VOLUME 29, PAGE 54 OF SURVEYS
- (T) TOTAL DISTANCE
- N 01°02'03" E 45.67' - MEASURED DATA
- (67) CORNER DESIGNATION PER VOLUME 21 OF SURVEYS, PAGE 83
- (67) CORNER DESIGNATION PER VOLUME 19 OF SURVEYS, PAGE 22
- (67) CORNER DESIGNATION PER VOLUME 29 OF SURVEYS, PAGE 54
- (67) CORNER DESIGNATION PER VOLUME 27 OF SURVEYS, PAGE 91
- (67) CORNER DESIGNATION PER VOLUME 23 OF SURVEYS, PAGE 78
- (67) CORNER DESIGNATION PER VOLUME 19 OF SURVEYS, PAGE 22
- (67) CORNER DESIGNATION PER VOLUME 29 OF SURVEYS, PAGE 54
- (67) CORNER DESIGNATION PER VOLUME 27 OF SURVEYS, PAGE 91

NOTES

- DISTANCES SHOWN HEREON ARE EXPRESSED IN FEET AND DECIMALS THEREOF.
- POINTS FOUND OR SET ARE SO NOTED. ALL OTHER POINTS ARE FOR REFERENCE ONLY.
- ENTITLEMENTS OR ENCUMBRANCES AFFECTING THIS PROPERTY MAY NOT BE SHOWN.

BASIS OF BEARINGS

THE BEARING OF N 74°30'00" W AS MEASURED BETWEEN MONUMENTS FOUND ALONG THE NORTHEASTLY BOUNDARY OF PARCEL 4, AS PER VOLUME 19 OF SURVEYS, PAGE 22, RECORDS OF MONTEREY COUNTY, CALIFORNIA, SHOWN HEREON, IS THE BASIS OF BEARINGS FOR THIS SURVEY.

#	BEARING/DELTA	LENGTH
1	N 84°00'00" W	28.78'
2	N 09°00'00" E	13.35'
3	N 87°00'00" W	128.41'
4	S 03°00'00" W	26.58'
5	N 87°30'00" W	56.00'
6	S 57°30'00" W	77.41'
7	N 61°00'00" W	86.58'
8	N 85°00'00" W	28.24'

STATEMENT OF THE CITY ENGINEER

I HEREBY STATE THAT I HAVE EXAMINED THIS RECORD OF SURVEY MAP AND SUBDIVISION MAP ACT, DIVISION 3, COMMERCIAL, MONTEREY COUNTY, CALIFORNIA, OF TITLE 7 OF THE GOVERNMENT CODE, EXCEPT FOR SECTION 66460 (9)(4), AND THE CITY OF SEASIDE SUBDIVISION ORDINANCE, APPLICABLE AT THE TIME OF APPROVAL, HAVE BEEN COMPLIED WITH.

DATED 4/25/2008

MICHAEL P. O'HALLORAN, CITY ENGINEER OF THE CITY OF SEASIDE
RCE NO. 48501
EXPIRES 6/30/08

STATEMENT OF THE CITY SURVEYOR

I HEREBY STATE THAT I HAVE EXAMINED THIS MAP PURSUANT TO THE SUBDIVISION MAP ACT, SECTION 66455 (6) (4) AND I AM SATISFIED THAT IT IS TECHNICALLY CORRECT.

DATED 4/25/2008

KENNETH N. LEWIS, ACTING CITY SURVEYOR, CITY OF SEASIDE
PLS NO. 3811
EXPIRES 6/30/08

COUNTY RECORDER'S STATEMENT

FILED THIS DAY OF 20
IN VOLUME 20 OF SURVEY MAPS AT PAGE 20
IN THE COUNTY OF MONTEREY, CALIFORNIA, AT THE REQUEST OF BESTOR ENGINEERS, INC.

STEPHEN L. VAGNINI, COUNTY RECORDER, MONTEREY COUNTY, CALIFORNIA
BY: DEPUTY
SERIAL NO.:
FEE: \$

SURVEYOR'S STATEMENT

THIS MAP CORRECTLY REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT, DIVISION 3, COMMERCIAL, MONTEREY COUNTY, CALIFORNIA, AND RECORDS ACT, DIVISION 3, COMMERCIAL, MONTEREY COUNTY, CALIFORNIA, IN THE REQUEST OF CLARK REALTY CAPITAL LLC IN SEPTEMBER, 2007.

H. PATRICK WARD, RCE #23811, STATE OF CALIFORNIA
EXPIRES 31 MARCH 2009



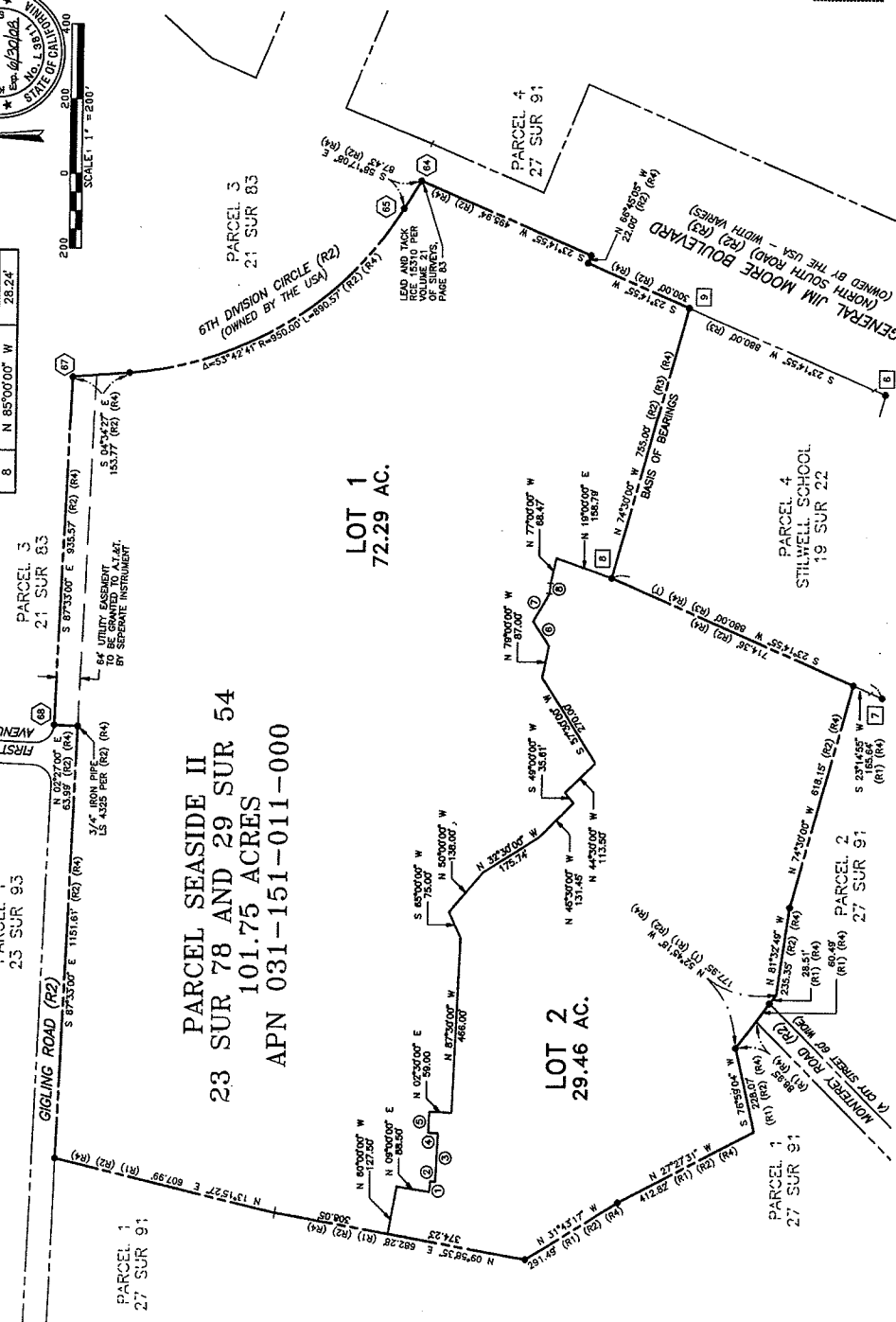
RECORD OF SURVEY OF A TWO-Lot SUBDIVISION OF PARCEL SEASIDE II AS PER MAP FILED IN VOLUME 23, PAGE 78 OF SURVEYS AND VOLUME 29, PAGE 54 OF SURVEYS RECORDS OF MONTEREY COUNTY, CALIFORNIA

FOR
CLARK REALTY CAPITAL



BESTOR ENGINEERS, INC.
CIVIL ENGINEERING - SURVEYING - LAND PLANNING
1115 MARINE AVENUE, SUITE 200, MONTEREY, CALIFORNIA 93940
PHONE: (831) 375-1111 FAX: (831) 375-1112
SALES 1" = 200' DATE 22 APRIL 2008 WDI: 6597/05

PARCEL SEASIDE II
23 SUR 78 AND 29 SUR 54
101.75 ACRES
APN 031-151-011-000



Legal Description of Lot 1

That portion of the former Fort Ord Military Reservation in Rancho Noche Buena, in the City of Seaside, County of Monterey, State of California described as follows:

Being a portion of that parcel of land designated as "Seaside II", containing 101.75 acres, as shown on the map filed in Volume 23, Page 78 of Surveys, and also shown on the map filed in Volume 29, Page 54 of Surveys, both maps being recorded in the Office of the Monterey County Recorder, more particularly described as follows:

Beginning at the most northerly corner of that parcel of land designated as Parcel 4, as per map filed in Volume 19, Page 22 of Surveys recorded in the Office of the Monterey County Recorder and designated as point number 8 per said map; thence leaving said boundary of said Parcel 4

- 1) North 19°00'00" East, 158.79 feet; thence
- 2) North 77°00'00" West, 68.47 feet; thence
- 3) North 85°00'00" West, 28.24 feet; thence
- 4) North 61°00'00" West, 86.58 feet; thence
- 5) South 57°30'00" West, 77.41 feet; thence
- 6) North 79°00'00" West, 87.00 feet; thence
- 7) South 57°30'00" West, 270.00 feet; thence
- 8) North 44°30'00" West, 113.50 feet; thence
- 9) South 49°00'00" West, 35.61 feet; thence
- 10) North 45°30'00" West, 131.45 feet; thence
- 11) North 32°30'00" West, 175.74 feet; thence
- 12) North 50°00'00" West, 138.00 feet; thence
- 13) South 65°00'00" West, 75.00 feet; thence
- 14) North 87°30'00" West, 466.00 feet; thence
- 15) North 02°30'00" East, 59.00 feet; thence
- 16) North 87°30'00" West, 56.00 feet; thence
- 17) South 03°00'00" West, 26.59 feet; thence
- 18) North 87°00'00" West, 128.41 feet; thence
- 19) North 06°00'00" East, 13.35 feet; thence
- 20) North 84°00'00" West, 28.78 feet; thence
- 21) North 09°00'00" East, 88.50 feet; thence
- 22) North 80°00'00" West, 127.50 feet to a point on the westerly boundary of said parcel "Seaside II"; thence along said westerly boundary of said parcel "Seaside II" the following 12 courses
- 23) North 09°58'35" East, 308.05 feet; thence

- 24) North 13°15'27" East, 607.99 feet to the most northeasterly corner of PARCEL 1 as per map filed in Volume 27, Page 91 of Surveys recorded in the Office of the Monterey County Recorder; thence leaving the easterly boundary of said PARCEL 1 as per said map filed in said Volume 27, Page 91 of Surveys and along said southerly boundary of PARCEL 1 as per map filed in Volume 23, Page 93 of Surveys the following two (2) courses
- 25) South 87°33'00" East, 1,151.61 feet; thence
- 26) North 02°27'00" East, 63.99 feet to a point on the southerly boundary of PARCEL 3 as per map filed in Volume 21, Page 83 of Surveys recorded in the Office of the Monterey County Recorder; thence along the southerly boundary of said PARCEL 3 the following seven (7) courses
- 27) South 87°33'00" East, 935.57 feet; thence
- 28) South 04°34'27" East, 153.77 feet to the beginning of a curve, concave to the northeast, having a radius of 950.00 feet; thence
- 29) southeasterly 890.57 feet along said curve, through a central angle of 53°42'41"; thence
- 30) South 58°17'08" East, 87.43 feet; thence
- 31) South 23°14'55" West, 495.94 feet; thence
- 32) North 66°45'05" West, 22.00 feet; thence
- 33) South 23°14'55" West, 300.00 feet to the most easterly boundary corner of said PARCEL 4 as per said map filed in said Volume 19, Page 22 of Surveys; thence leaving said westerly boundary of said PARCEL 3 as per said map filed in said Volume 21, Page 83 of Surveys and along the northeasterly boundary of said PARCEL 4
- 34) North 74°30'00" West, 755.00 feet to the POINT OF BEGINNING.

Containing 72.29 acres, more or less.

The bearing of North 74°30'00" West along the northeasterly boundary of Parcel 4 as per Volume 19, Page 22 of Surveys, records of Monterey County, California, is the basis of bearings for this description.

Dated: May 5, 2008

John W. Pettley
Bestor Engineers, Inc.
John W. Pettley
PLS 6202
Exp: 03/31/10
W.O. 6597.05



Legal Description of Lot 2

That portion of the former Fort Ord Military Reservation in Rancho Noche Buena, in the City of Seaside, County of Monterey, State of California described as follows:

Being a portion of that parcel of land designated as "Seaside II", containing 101.75 acres", as shown on the map filed in Volume 23, Page 78 of Surveys, and also shown on the map filed in Volume 29, Page 54 of Surveys, both maps being recorded in the Office of the Monterey County Recorder, more particularly described as follows:

Beginning at the most northerly corner of that parcel of land designated as Parcel 4, as per map filed in Volume 19, Page 22 of Surveys recorded in the Office of the Monterey County Recorder and designated as point number 8 per said map; thence along the northwesterly boundary of said Parcel 4

- 1) South 23°14'55" West, 714.36 feet; thence leaving said northwesterly boundary of said Parcel 4 and along the northerly boundary of PARCEL 2 as per map filed in Volume 27, Page 91 of Surveys recorded in the Office of the Monterey County Recorder the following three (3) courses
- 2) North 74°30'00" West, 618.15 feet; thence
- 3) North 81°32'49" West, 235.35 feet; thence
- 4) North 52°45'18" West, 28.51 feet to a point on the southeasterly boundary of the road commonly known as Monterey Road and the most northerly corner of said PARCEL 2; thence leaving said boundary of said PARCEL 2
- 5) North 52°45'18" West, 60.49 feet to a point on the northwesterly boundary of said Monterey Road, said point being on the easterly boundary of PARCEL 1 as per said map filed in said Volume 27, Page 91 of Surveys; thence along said easterly boundary of said PARCEL 1 and also along the southerly and westerly boundary of said parcel of land designated as "Seaside II", the following five (5) courses
- 6) North 52°45'18" West, 88.95 feet
- 7) South 76°59'04" West, 228.07 feet; thence
- 8) North 27°27'31" West, 412.82 feet; thence
- 9) North 31°43'17" West, 291.49 feet; thence
- 10) North 09°58'35" East, 374.23 feet, thence leaving said easterly boundary of said PARCEL 1 and said westerly boundary of said parcel of land "Seaside II"
- 11) South 80°00'00" East, 127.50 feet
- 12) South 09°00'00" West, 88.50 feet; thence
- 13) South 84°00'00" East, 28.78 feet; thence
- 14) South 06°00'00" West, 13.35 feet; thence
- 15) South 87°00'00" East, 128.41 feet; thence
- 16) North 03°00'00" East, 26.59 feet; thence
- 17) South 87°30'00" East, 56.00 feet; thence
- 18) South 02°30'00" West, 59.00 feet; thence

19) South 87°30'00" East, 466.00 feet; thence
20) North 65°00'00" East, 75.00 feet; thence
21) South 50°00'00" East, 138.00 feet; thence
22) South 32°30'00" East, 175.74 feet; thence
23) South 45°30'00" East, 131.45 feet; thence
24) North 49°00'00" East, 35.61 feet; thence
25) South 44°30'00" East, 113.50 feet; thence
26) North 57°30'00" East, 270.00 feet; thence
27) South 79°00'00" East, 87.00 feet; thence
28) North 57°30'00" East, 77.41 feet; thence
29) South 61°00'00" East, 86.58 feet; thence
30) South 85°00'00" East, 28.24 feet; thence
31) South 77°00'00" East, 68.47 feet; thence
32) South 19°00'00" West, 158.79 feet to the **POINT OF BEGINNING**.
Containing 29.46 acres, more or less.

The bearing of North 74°30'00" West along the northeasterly boundary of Parcel 4 as per Volume 19, Page 22 of Surveys, records of Monterey County, California, is the basis of bearings for this description.

Dated: May 5, 2008

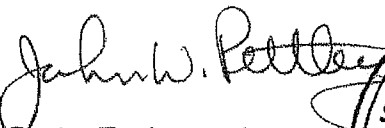

Bestor Engineers, Inc.
John W. Pettley
PLS 6202
Exp: 03/31/10
W.O. 6597.05

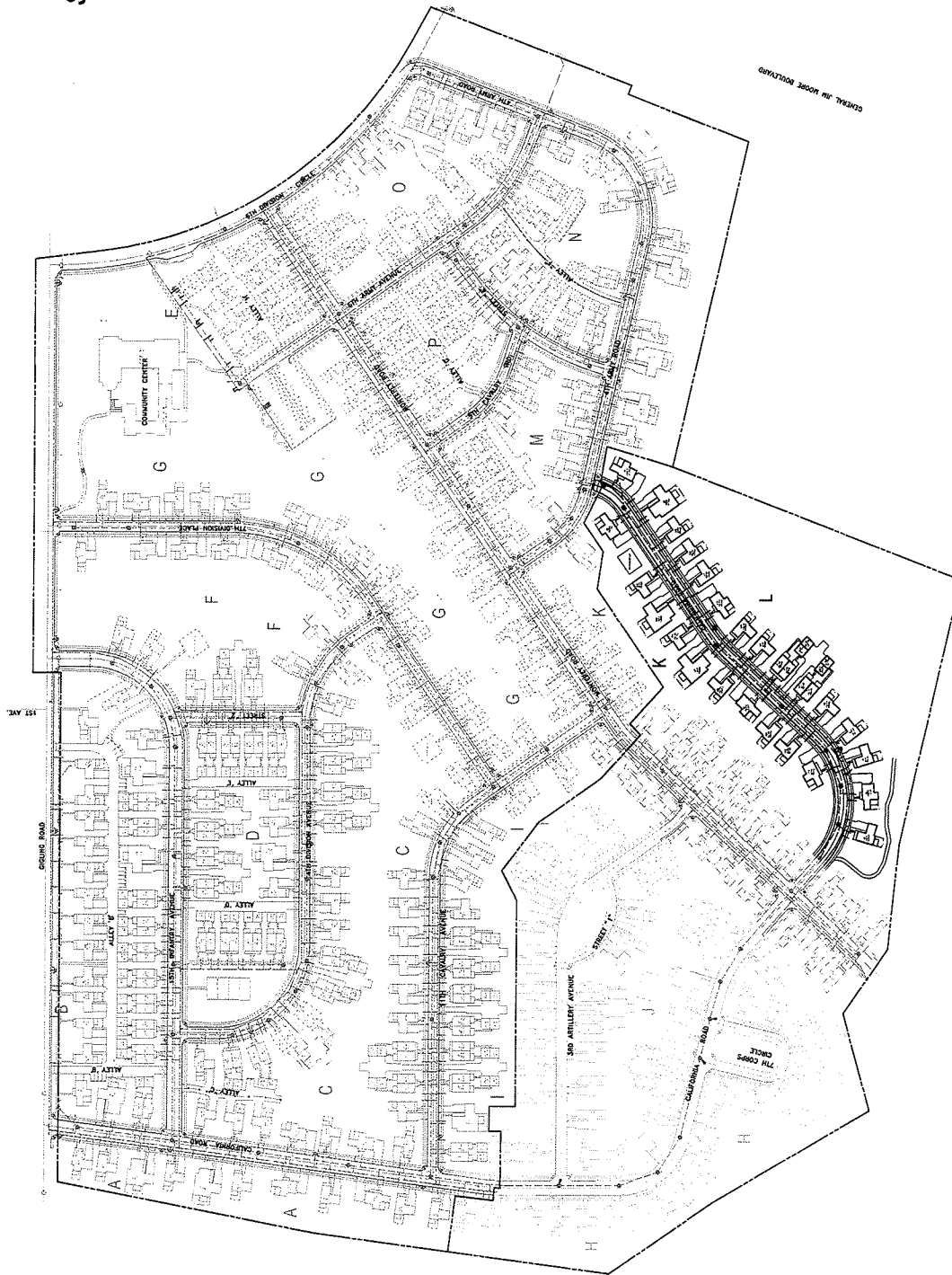
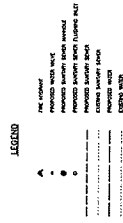


EXHIBIT C

MAP OF DEVELOPMENT

DRAFT

**SEWER & WATER SYSTEM
PHASE 2 EXHIBIT**



CLARK
REALTY CAPITAL



BESTOR ENGINEERS, INC.
CIVIL ENGINEERING - SURVEYING - LAND PLANNING
9701 BLUE LARKSPUR LANE, MONTEREY, CALIFORNIA 93940
MONTEREY: (831)375-2041 - SALINAS: (831)424-7681 - FAX: (831)648-4118

EXHIBIT D

INDEMNIFICATION AND INSURANCE REQUIREMENTS

DEVELOPER and their CONSTRUCTION CONTRACTORS

Workers' Compensation Insurance – The Developer shall require their Construction Contractor (Contractor) to certify that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing the performance of the work of the Developer's contract.

Indemnification - To the fullest extent permitted by law, the Developer will require the Contractor to indemnify and hold harmless and defend District, its directors, officers, employees, or authorized volunteers, and each of them from and against:

- a. Any and all claims, demands, causes of action, damages, costs, expenses, losses or liabilities, in law or in equity, of every kind and nature whatsoever for, but not limited to, injury to or death of any person including District and/or Contractor, or any directors, officers, employees, or authorized volunteers of District or Contractor, and damages to or destruction of property of any person, including but not limited to, District and/or Contractor or their directors, officers, employees, or authorized volunteers, arising out of or in any manner directly or indirectly connected with the work to be performed under this agreement, however caused, regardless of any negligence of District or its directors, officers, employees, or authorized volunteers, except the sole negligence or willful misconduct or active negligence of District or its directors, officers, employees, or authorized volunteers;
- b. Any and all actions, proceedings, damages, costs, expenses, penalties or liabilities, in law or equity, of every kind or nature whatsoever, arising out of, resulting from, or on account of the violation of any governmental law or regulation, compliance with which is the responsibility of Contractor;
- c. Any and all losses, expenses, damages (including damages to the work itself), attorneys' fees, and other costs, including all costs of defense, which any of them may incur with respect to the failure, neglect, or refusal of Contractor to faithfully perform the work and all of the Contractor's obligations under the contract. Such costs, expenses, and damages shall include all costs, including attorneys' fees, incurred by the indemnified parties in any lawsuit to which they are a party.
- d. Contractor acknowledges and understands that the area in and around which the work will be performed has been identified as a possible location of munitions and explosives of

concern ("MEC"). All indemnification obligations of Contractor under this Agreement shall specifically include claims and demands involving, arising out of or related to MEC.

The Developer will require their Contractor to defend, at Contractor's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against District or District's directors, officers, employees, or authorized volunteers.

The Developer will require their Contractor to pay and satisfy any judgment, award or decree that may be rendered against District or its directors, officers, employees, or authorized volunteers, in any such suit, action or other legal proceeding.

The Developer will require their Contractor to reimburse District or its directors, officers, employees, or authorized volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.

The Developer will require their Contractor to agree to carry insurance for this purpose as set out in the specifications. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the District, or its directors, officers, employees or authorized volunteers.

Commercial General Liability and Automobile Liability Insurance - The Developer will require their Contractor to provide and maintain the following commercial general liability and automobile liability insurance:

Coverage - Coverage for commercial general liability and automobile liability insurance shall be at least as broad as the following:

1. Insurance Services Office Commercial **General Liability** Coverage (Occurrence Form CG 0001)
2. Insurance Services Office **Automobile Liability** Coverage (Form CA 0001), covering Symbol 1 (any auto) (owned, non-owned and hired automobiles)

Limits - The Consultant shall maintain limits no less than the following:

1. **General Liability** - Two million dollars (\$2,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit or products-completed operations aggregate limit is used, either the general aggregate limit shall apply separately to the project/location (with the ISO CG 2503, or ISO CG 2504, or insurer's equivalent endorsement provided to the District) or the general aggregate

limit and products-completed operations aggregate limit shall be twice the required occurrence limit.

2. ***Automobile Liability*** - One million dollars (\$1,000,000) for bodily injury and property damage each accident limit.

Required Provisions - The general liability and automobile liability policies are to contain, or be endorsed to contain the following provisions:

1. The District, its directors, officers, employees, or authorized volunteers are to be given insured status (via ISO endorsement CG 2010, CG 2033, or insurer's equivalent for general liability coverage) as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the District, its directors, officers, employees, or authorized volunteers.
2. For any claims related to this project, the Contractor's insurance shall be primary insurance as respects the District, its directors, officers, employees, or authorized volunteers. Any insurance, self-insurance, or other coverage maintained by the District, its directors, officers, employees, or authorized volunteers shall not contribute to it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the District, its directors, officers, employees, or authorized volunteers.
4. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall state or be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days (10 days for non-payment of premium) prior written notice by U.S. mail has been given to the District.

Such liability insurance shall indemnify the Contractor and his/her sub-contractors against loss from liability imposed by law upon, or assumed under contract by, the Contractor or his/her sub-contractors for damages on account of such bodily injury (including death), property damage, personal injury and completed operations and products liability.

The general liability policy shall cover bodily injury and property damage liability, owned and non-owned equipment, blanket contractual liability, completed operations liability, explosion, collapse, underground excavation and removal of lateral support.

The automobile liability policy shall cover all owned, non-owned, and hired automobiles.

All of the insurance shall be provided on policy forms and through companies satisfactory to the District.

Deductibles and Self-Insured Retentions - Any deductible or self-insured retention must be declared to and approved by the District. At the option of the District, the insurer shall either reduce or eliminate such deductibles or self-insured retentions.

Acceptability of Insurers - Insurance is to be placed with insurers having a current A.M. Best rating of no less than A-:VII or equivalent or as otherwise approved by the District.

MEC Coverage: The Developer will require their Contractor to maintain insurance that includes coverage for services and work in or around MEC, or claims, damage or injury related in any way to this Agreement which arise from MEC. The Marina Coast Water District, its officers, directors and employees and any of its authorized representatives and volunteers shall be named as additional insureds under all insurance maintained by Contractor related in any way to work performed by it on behalf of the Marina Coast Water District.

Workers' Compensation and Employer's Liability Insurance - The Developer will require their Contractor and all sub-contractors to insure (or be a qualified self-insured) under the applicable laws relating to workers' compensation insurance, all of their employees working on or about the construction site, in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any Acts amendatory thereof. The Contractor shall provide employer's liability insurance in the amount of at least \$1,000,000 per accident for bodily injury and disease.

Responsibility for Work - Until the completion and final acceptance by the District of all the work under and implied by this Agreement, the Developer will require the work to be under the Contractor's responsible care and charge. The Contractor shall rebuild, repair, restore and make good all injuries, damages, re-erections, and repairs occasioned or rendered necessary by causes of any nature whatsoever.

The Developer or the Developer's Contractor will provide and maintain builder's risk insurance (or installation floater) covering all risks of direct physical loss, damage or destruction to the work in the amount specified in the General Conditions, to insure against such losses until final acceptance of the work by the District. Such insurance shall include¹ explosion, collapse, underground excavation and removal of lateral support. The District shall be a named insured on any such policy. The making of progress payments to the Contractor by the Developer shall not be construed as creating an insurable interest by or for the District or be construed as relieving the Contractor or his/her subcontractors of responsibility for loss from any direct physical loss, damage or destruction occurring prior to final acceptance of the work by the District.

The Developer will require their Contractor's insurer to waive all rights of subrogation against the

District, its directors, officers, employees, or authorized volunteers.

Evidences of Insurance - Prior to the commencement of construction activities subject to this Agreement, the Developer will require their Contractor to file with the District a certificate of insurance (Acord Form 25-S or equivalent) signed by the insurer's representative. Such evidence shall include an original copy of the additional insured endorsement signed by the insurer's representative. Such evidence shall also include confirmation that coverage includes or has been modified to include Required Provisions 1-5.

The Developer will require their Contractor, upon demand of the District, to deliver to the District such policy or policies of insurance and the receipts for payment of premiums thereon.

All insurance correspondence, certificates, binders, etc., shall be mailed to:

Marina Coast Water District
11 Reservation Road
Marina, CA 93933
Attn: Management Services Administrator

Sub-Contractors - In the event that the Contractor employs other contractors (sub-contractors) as part of the work covered by this agreement, it shall be the Developer's responsibility to require and confirm that the Contractor requires each sub-contractor to meet the minimum insurance requirements specified above.