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

DRAFT

# CONSTRUCTION AND TRANSFER OF WATER, SEWER AND RECYCLED WATER INFRASTRUCTURE AGREEMENT BETWEEN MARINA COAST WATER DISTRICT AND COMMUNITY HOSPITAL PROPERTIES

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DRAFT

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

This Agreement made and entered into this ______Day of __________ 2010, by and between **Marina Coast Water District**, 11 Reservation Road, Marina, CA, 93933, hereinafter called "District", and **Community Hospital Properties** a California Non-profit Corporation, with its principal offices at 787 Munras Avenue, Suite C, 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 Developer owns and is developing five (5) parcels of land approximately 9.53 acres generally known as the Community Hospital of Monterey Peninsula (CHOMP) Marina Campus, to be developed in phases on property described in Exhibit "B" attached hereto and made a part hereof, on the former Fort Ord in the City of Marina, California, ("City") all hereafter referred to as the "Development".

1.2 The City has approved the allocation of water and sewer capacity for the Development from the water and sewer capacity allocated to the City by FOR A. The City allocated 593-AFY of water for the University Villages development (City Resolution 2005-127). The sale of the parcels from Marina Community Partners (the owner of the University Villages development) to Developer (Feb. 12, 2009) included the water rights of 21.45 AFY. Therefore the total water allocated by the City to the Development is 21.45 AFY. However, neither the City nor the District may approve: (1) water allocations that exceed the allocations set by the Fort Ord Reuse Authority (FORA), or (2) sewer capacity established by the type and density of development as included in the FORA Consistency Determinations The District's role in the Development is to approve the plans for, and inspect the construction of the water sewer, and recycled water "facilities", (defined to mean those certain infrastructure improvements provided for in this Agreement and as approved by District as part of its review of Development plans), accept the transfer of the title, to maintain and operate the systems, and to bill customers for water and sewer service at rates set for the District's Ord Service Area from time to time.

1.3 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 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 describe 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 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 $5,700 per EDU and $2,100 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 Developer's contractor's) 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

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

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

Disputes arising under this agreement shall be resolved as follows:

*19.1. 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.

*19.2. 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.

*19.3. 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:**
Community Hospital Properties
**Attn: Kim Challis, Director**
787 Munras Ave. Suite C
Monterey, CA 93940

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: COMMUNITY HOSPITAL PROPERTIES, a California Non-profit Corporation**

________________________

Steven J. Packer, President and CEO

**By** MARINA COAST WATER DISTRICT

________________________________________

Jim Heitzman, General Manager
Marina Coast Water District

# EXHIBIT A

# WATER ALLOCATION DOCUMENTATION

DRAFT

## PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

This Purchase and Sale Agreement and Joint Escrow Instructions (the "Agreement") is made as of January 23, 2009 between Marina Community Partners, LLC, a Delaware limited liability company (the "Seller"), and Community Hospital Properties, Inc., a California corporation, (the "Buyer").

### RECITALS

A. Seller is the owner of certain real property located in the City of Marina (the "City"), County of Monterey (the "County"), State of California, more fully described in **Exhibit A** attached hereto (the "Land"), and the related appurtenances, personal property and intangible property more fully described in Section 1.2, below (collectively, the "Property").

(d) Water Rights. Those 21.45 ac-ft of water rights allocated to the Land pursuant to the "Water Supply Assessment and Written Verification of Supply, Proposed University Villages Specific Plan Development and Marina Community Partners Project", prepared by Marina Coast Water District ("MCWD") and Byron Buck 7 Associates and dated January 21, 2005.

**ARTICLE 2**
**PURCHASE PRICE**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

SELLER:

**MARINA COMMUNITY PARTNERS, LLC,**
a Delaware limited liability company

By: Shea Homes Limited Partnership, a California limited partnership
Its: Managing member

By: [signature]
Name: Scott T. Hilk
Its: Authorized Agent

By: [signature]
Name: LAYNE MARCEAU
Its: AUTHORIZED AGENT

BUYER:

**COMMUNITY HOSPITAL PROPERTIES, INC.**, a California corporation

By: ______________________

Its: ______________________

**CONSENT OF ESCROW HOLDER**

First American Title Company (the "Escrow Holder") accepts the foregoing Purchase and Sale Agreement and Joint Escrow Instructions as escrow instructions, agrees to act as escrow holder and agrees to be bound by their provisions applicable to it as Escrow Holder.

Date: January 26, 2009

FIRST AMERICAN TITLE COMPANY

By: [signature]
Its: Escrow officer

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

SELLER:

**MARINA COMMUNITY PARTNERS, LLC,**
a Delaware limited liability company

By: Shea Homes Limited Partnership, a California limited partnership
Its: Managing member

By: ________________
Name: ________________
Its: ________________

By: ________________
Name: ________________
Its: ________________

BUYER:

**COMMUNITY HOSPITAL PROPERTIES, INC.**, a California corporation

By: [signature]
Its: President / CEO

**CONSENT OF ESCROW HOLDER**

First American Title Company (the "Escrow Holder") accepts the foregoing Purchase and Sale Agreement and Joint Escrow Instructions as escrow instructions, agrees to act as escrow holder and agrees to be bound by their provisions applicable to it as Escrow Holder.

Date:________________

FIRST AMERICAN TITLE COMPANY

By: ________________
Its: ________________

RESOLUTION NO. 2005-127

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA CERTIFYING THE FINAL ENVIRONMENTAL IMPACT REPORT (SCH. NO. 2004091167) FOR UNIVERSITY VILLAGES SPECIFIC PLAN PROJECT IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND STATE AND LOCAL GUIDELINES, MAKING CERTAIN FINDINGS AND DETERMINATIONS THERETO, ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS, AND ADOPTING A MITIGATION MONITORING AND REPORTING PROGRAM

WHEREAS, the City Council of the City of Marina, California, did on the 17th of and the 31st of May 2005, hold a duly noticed public hearings to consider: (1) the certification of the Final Environmental Impact Report (EIR), (2) the adoption of certain findings and determinations, adopt statement of overriding considerations and the mitigation monitoring report (MMP); and

WHEREAS, the Planning Commission of the City of Marina, California, did on the 26th day of May, did carefully review and consider the Draft EIR, the comments thereon, and the responses to those comments, and the MMP; and

WHEREAS, the Planning Commission did on the 5th day of May, 2005, hold a duly-noticed Public Hearing, continued from the 14th day of April, 2005 and work session, on April 23, 2005, to consider a recommendation of certification of the EIR prepared for the University Villages Specific Plan and related approvals (Project); and

WHEREAS, the Planning Commission closed its public hearing on the matter on May 5, 2005; and

WHEREAS, the Planning Commission on May 26, 2005, adopted its recommendations to the City Council regarding the certification of the EIR and the MMP, which recommendation has been reviewed and duly considered by the City Council; and

WHEREAS, the Draft EIR has been prepared and circulated for public review in accordance with the California Environmental Quality Act, Public Resources Code Section 21000, *et seq.* ("CEQA"); and

WHEREAS, it was determined pursuant to CEQA and the CEQA Guidelines (14 Cal. Code of Regs. sections 15000 et seq.) that the Project could have a significant effect on the environment, and thus warranted the preparation of an Environmental Impact Report ("EIR"); and

WHEREAS, on September 20, 2004, the City of Marina, as lead agency under CEQA, prepared a Notice of Preparation ("NOP") of the EIR; mailed that NOP to public agencies, organizations, and persons likely to be interested in the potential impacts of the proposed Project; and thereafter held a public scoping meeting to gather public and agency comments concerning the preparation of the EIR; and

WHEREAS, the City thereafter caused to be prepared a Draft Environmental Impact Report ("DEIR"), which, taking into account the comments it received on the NOP, described the Project and discussed the environmental impacts resulting therefrom, and on February 14, 2005, circulated the DEIR for public and agency comments; and

WHEREAS, the public comment period closed on April 1, 2005; and

WHEREAS, staff of the City of Marina has reviewed the comments received on the draft EIR, has prepared full and complete responses thereto, and on May 2, 2005, distributed the responses in accordance with Public Resources Code section 21092.5; and

WHEREAS, a combined Final Environmental Impact Report (collectively, "FEIR") for the Project was presented to the City Council, as the decision making body of the lead agency, for certification as having been completed in compliance with the provisions of CEQA and State and local guidelines implementing CEQA; and

WHEREAS, the City Council has reviewed and considered the information and the comments pertaining to the DEIR and FEIR at a duly noticed meeting held on May 17, 2005 and continued to May 31, 2005; and

WHEREAS, the City Council has read and considered all environmental documentation comprising the FEIR, including the comments and the responses to comments, and has found that the FEIR considers all potentially significant environmental impacts of the proposed project and is complete and adequate, and fully complies with all requirements of CEQA and of the State and local CEQA Guidelines; and

WHEREAS, prior to action on this Project, the City Council has considered all significant impacts, mitigation measures, and Project alternatives identified in the FEIR and has found that all potentially significant impacts of the Project have been lessened or avoided to the extent feasible; and

WHEREAS, CEQA and the CEQA Guidelines provide that no public agency shall approve or carry out a project for which an EIR has been completed and which identifies one or more significant effects of the project unless the public agency makes written findings for each of the significant effects, accompanied by a statement of facts supporting each finding; and

WHEREAS, CEQA and the CEQA Guidelines require, where the decision of the City Council allows the occurrence of significant environmental effects which are identified in the EIR, but are not mitigated, the City Council must state in writing the reasons to support its action based on the FEIR and/or other information in the record; and

WHEREAS, the City Council has determined that the Project is necessary to serve the existing and future needs of the City of Marina.

NOW, THEREFORE, the City Council of the City of Marina resolves as follows:

SECTION 1. Certification. Based on its review and consideration of the FEIR, all written communications and oral testimony regarding the Project which have been submitted to and received by the City Council, the City Council certifies that the FEIR for the Project has been completed in compliance with CEQA and the State and local CEQA Guidelines. The City Council, having final approval authority over the Project, adopts and certifies as complete and adequate the FEIR, which reflects the City Council's independent judgment and analysis. The City Council further certifies that the FEIR was presented to the City Council and that the City Council reviewed and considered the information contained in it prior to approving the Project.

SECTION 2. CEQA Finding and Statement of Facts. Pursuant to CEQA Guidelines section 15091, the City Council has reviewed and hereby adopts the CEQA Finding and Statement of Facts as shown on the attached Exhibit "A" entitled "CEQA Finding and Statement of Facts," which exhibit is incorporated herein by reference.

SECTION 3. Statement of Overriding Considerations. Pursuant to CEQA Guidelines section 15093, the City Council has reviewed and hereby makes the Statement of Overriding Considerations to adverse environmental impacts, attached as Exhibit "B" entitled "Statement of Overriding Considerations," which exhibit is incorporated herein by reference.

SECTION 4. Mitigation Monitoring Program Approval. Pursuant to Public Resources Code section 21081.6, the Mitigation Monitoring Program for the Project is hereby adopted. The mitigation measures set forth in the University Villages Specific Plan Project Mitigation Monitoring Program are hereby adopted and approved as part of the Project, attached hereto as Exhibit C and incorporated by reference.

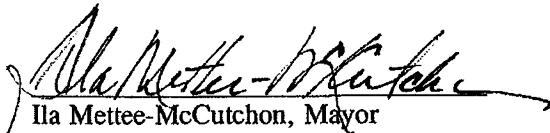
SECTION 5. Location and Custodian of Record of Proceedings. The City of Marina Strategic Development Center, located at 265 Reservation Road , Suite E, Marina, CA 93950 is hereby designated as the custodian of the documents and other materials which constitute the record of proceedings upon which the City Council's decision is based, which documents and materials shall be available for public inspection and copying in accordance with the provisions of the California Public Records Act (California Government Code Section 6250 et seq.).

SECTION 6. Notice of Determination. The Director of the Strategic Development Center shall file a notice of determination with the County Clerk of the County of Monterey and with the state Office of Planning and Research within five working days of this approval.

SECTION 7. Certification, Posting and Filing. This resolution shall take effect immediately upon its adoption by the City Council of Marina, and the City Clerk shall certify to the vote adopting this resolution and shall cause a certified copy of this resolution to be filed. The City Clerk shall post the resolution in three conspicuous places in the City of Marina.

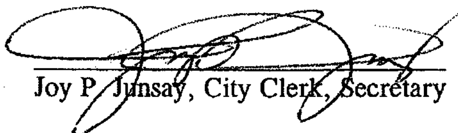
PASSED AND APPROVED by the City Council at is May 31, 2005 meeting as continued from its regular meeting on May 17, 2005, by the following vote:

AYES, COUNCIL MEMBERS: Gray, Morrison, Wilmot, McCall and Mettee-McCutchon
NOES, COUNCIL MEMBERS: None
ABSENT, COUNCIL MEMBERS: None



Ila Mettee-McCutchon, Mayor

ATTEST:



Joy P. Junsay, City Clerk, Secretary

## EXHIBIT A

## CEQA FINDINGS AND STATEMENT OF FACTS FOR THE UNIVERSITY VILLAGES SPECIFIC PLAN PROJECT

### SECTION 1: INTRODUCTION

#### 1.1 Statutory Requirements for Finding

The California Environmental Quality Act,[1] and particularly the CEQA Guidelines[2] require that:

"a. No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:

(1) Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.

(2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

(3) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR."

In short, CEQA requires that the lead agency adopt mitigation measures or alternatives, where feasible, to avoid or mitigate significant environmental impacts that would otherwise occur with implementation of the project. Project mitigation or alternatives are not required, however, where they are infeasible or where the responsibility for modifying the project lies with another agency.[3]

For those significant effects that cannot be mitigated to a less-than-significant level, the public agency is required to find that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.[4] The Guidelines state in section 15093 that:

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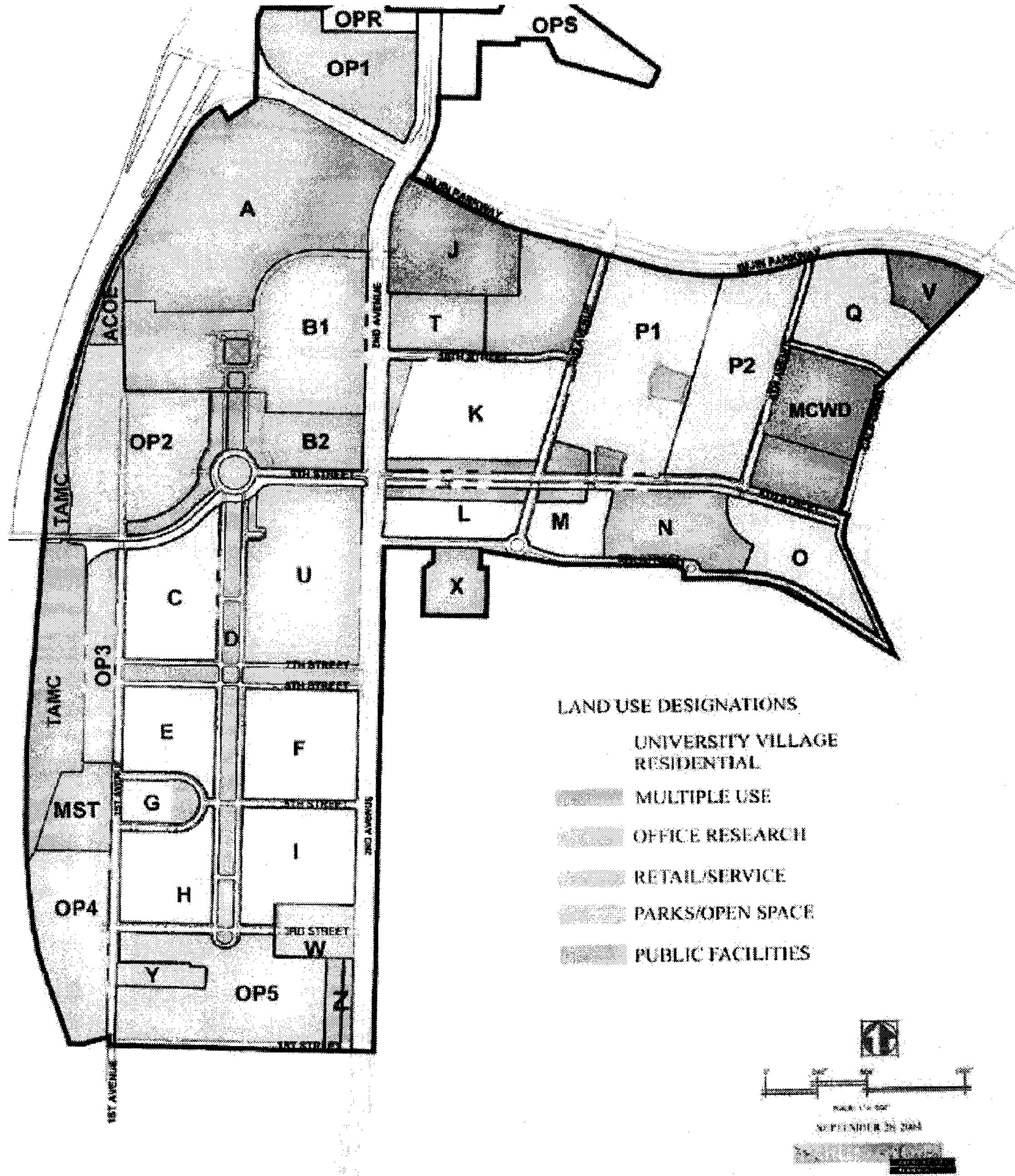
1 Public Resources Code section 21081.
2 14 California Code Regulations, section 15091.
3 *CEQA Guidelines*, section 15091(a).
4 Public Resources Code section 21081(b).

## Figure 1-2
## University Villages Specific Plan Land Uses



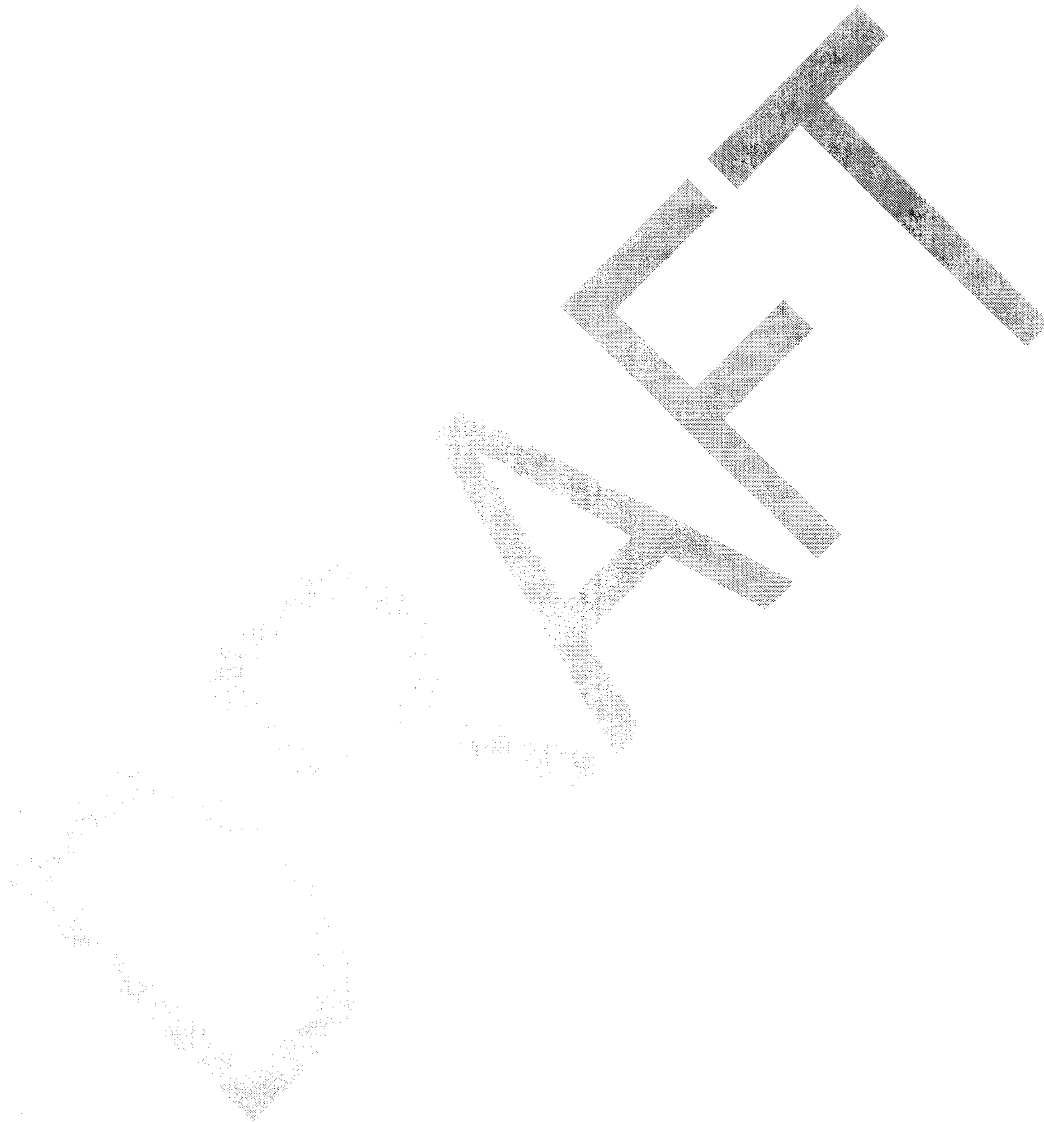

Source: University Villages Specific Plan

| Planning Area | Land Use | Parcel Size | Bldg. Size in sf. | Interior SF. Demand Fac. | Interior Demands | Irrigable Area | Percent Turf | Percent Ornamental | Turf Demand | Ornamental Demand | Total Ext. Demand | Total Demand in AF/YR | Factors and Notes |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Table 2-2 University Villages Specfic Plan Development - Non Residential Demand Projection | | | | | | | | | | | | | |
| Marina Community Partners Development | | | | | | | | | | | | | |
| A | Total Planning Area | 30.6 | | | | 15.3 | 20% | 80% | 6.426 | 18.36 | 24.79 | 24.79 | 2.1 ETo turf, 1.5 Ornamental |
| | Retail | | 385,000 | 0.00004 | 15.40 | | | | | | | 15.40 | MCWD Actual Averages |
| | Restaurant | | 20,000 | 0.001167 | 23.33 | | | | | | | 23.33 | MPWMD factor |
| | Fast Food Restaurant | | 16,500 | 0.038/seat | 43.89 | | | | | | | 43.89 | MPWMD factor |
| J | Total Planning Area | 9.6 | | | | 4.8 | 50% | 50% | 5.04 | 3.6 | 8.64 | 8.64 | 2.1 ETo turf, 1.5 Ornamental |
| | Gas Station/store | | 3,000 | 0.00004 | 0.75 | | | | | | | 0.75 | Store plus 0.1061af/pump@6 pumps |
| | Grocery Store | | 55,000 | 0.00039 | 21.45 | | | | | | | 21.45 | MCWD Factor |
| | Service | | 6,000 | 0.00034 | 2.06 | | | | | | | 2.06 | Avg. of MCWD factors |
| | Retail Shops | | 17,000 | 0.00004 | 0.68 | | | | | | | 0.68 | MCWD Actual Averages |
| B1 | Total Planning Area | 22.7 | | | | 11.35 | 20% | 80% | 4.767 | 13.62 | 18.39 | 18.39 | 2.1 ETo turf, 1.5 Ornamental |
| | Retail | | 114,000 | 0.00004 | 4.56 | | | | | | | 4.56 | MCWD Actual Averages |
| | Restaurant | | 15,000 | 0.02/seat | 17.50 | | | | | | | 17.50 | MPWMD factor |
| | Fast Food Restaurant | | 10,000 | 0.038/seat | 26.60 | | | | | | | 26.60 | MPWMD factor |
| | Cinema (1750 seats) | | 35,000 | 0.0012 seat | 2.10 | | | | | | | 2.10 | MPWMD factor |
| | Service | | 25,000 | 0.00034 | 8.58 | | | | | | | 8.58 | Avg of MCWD factors |
| | Office (above retail) | | 10,000 | 0.00012 | 1.20 | | | | | | | 1.20 | MCWD Factor |
| V | Total Planning Area | 3.6 | | | | 1.8 | 20% | 80% | 0.756 | 2.16 | 2.92 | 2.92 | 2.1 ETo turf, 1.5 Ornamental |
| | Retail | | 12,000 | 0.00004 | 0.48 | | | | | | | 0.48 | MCWD Actual Averages |
| | Restaurant | | 5,000 | 0.02/seat | 5.83 | | | | | | | 5.83 | MPWMD factor |
| | Fast Food Restaurant | | 2,000 | 0.038/seat | 5.32 | | | | | | | 5.32 | MPWMD factor |
| | Service | | 5,500 | 0.00034 | 1.89 | | | | | | | 1.89 | Avg. of MCWD factors |
| OP1 | Total Planning Area | 11.0 | | | | 5.5 | 50% | 50% | 5.775 | 4.125 | 9.90 | 9.90 | 2.1 ETo turf, 1.5 Ornamental |
| | Hotel | | 350 rooms | 0.17000 | 59.50 | | | | | | | 59.50 | MCWD Factor |
| | Retail | | 1,000 | 0.00004 | 0.04 | | | | | | | 0.04 | MCWD Actual Averages |
| | Restaurant | | 12,725 | 0.02/seat | 14.85 | | | | | | | 14.85 | MPWMD factor |
| T | Total Planning Area | 4.9 | | | | 2.5 | 50% | 50% | 2.625 | 1.875 | 4.50 | 4.50 | 2.1 ETo turf, 1.5 Ornamental |
| | Hotel | | 150 rooms | 0.17000 | 25.50 | | | | | | | 25.50 | MCWD Factor |
| OP2 | Office/light Ind. | 15.7 | 253,000 | 0.00012 | 30.36 | 7.9 | 20% | 80% | 3.318 | 9.48 | 12.80 | 43.16 | MCWD Factor |
| OP3 | Office/cultural | 5.2 | 82,000 | 0.00012 | 9.84 | 2.6 | 20% | 80% | 1.092 | 3.12 | 4.21 | 14.05 | MCWD Factor |
| OP4 | Office light Ind. | 10.5 | 170,000 | 0.00012 | 20.40 | 5.3 | 20% | 80% | 2.226 | 6.36 | 8.59 | 28.99 | MCWD Factor |
| OP5 | Office light Ind. | 15.3 | 245,000 | 0.00012 | 29.40 | 7.7 | 20% | 80% | 3.234 | 9.24 | 12.47 | 41.87 | MCWD Factor |
| Z | Total Planning Area | 2.1 | | | | 1.1 | 20% | 80% | 0.462 | 1.32 | 1.78 | 1.78 | 2.1 ETo turf, 1.5 Ornamental |
| | Retail | | 8,500 | 0.00004 | 0.34 | | | | | | | 0.34 | MCWD Actual Averages |
| | Service | | 5,000 | 0.00034 | 1.72 | | | | | | | 1.72 | Avg. of MCWD factors |
| | Restaurant | | 5,000 | 0.02/seat | 5.83 | | | | | | | 5.83 | MPWMD factor |
| | Fast Food Restaurant | | 1,500 | 0.038/seat | 3.99 | | | | | | | 3.99 | MPWMD factor |
| Totals | | 131.2 | | | 383.4 | | | | 35.7 | 73.3 | 109.0 | 492.4 | |
| Other Specific Plan Development (new uses only) | | | | | | | | | | | | | |
| | | | Lot Coverage | | | | | | | | | | |
| Monterey-Salinas Transit (MST) | | 4.3 | 15% | 0.0001 | 2.81 | 1.075 | 0% | 100% | 0 | 1.61 | 1.61 | 4.42 | BBA (bus transit related) |
| Trans. Agency of Mo.Co. (TAMC) | | 13.2 | 15% | 0.0001 | 8.62 | 3.3 | 0% | 100% | 0 | 4.95 | 4.95 | 13.57 | BBA (undefined transit related) |
| Marina Coast WD (MCWD) | | 11.3 | 25% | 0.0003 | 36.92 | 5.65 | 60% | 40% | 7.12 | 3.39 | 10.51 | 47.43 | MCWD (as elementary school) |
| US Army Corps of Engineers (ACOE) | | 2.0 | n/a | | | | | | | | | | No change in existing use |
| City Marina PBC Parcel 8th St. ** | | 17.4 | 10% | 0.0002 | 15.16 | 8.7 | 15% | 20% | 2.74 | 2.61 | 5.35 | 20.51 | MCWD (public/rec. play fields) |
| City Marina PBC Parcel 3rd St. | | 3.0 | 35% | 0.0002 | 9.15 | 0.75 | 20% | 80% | 0.32 | 0.90 | 1.22 | 10.36 | MCWD (public/rec center) |
| Goodwill Industries | | 6.0 | n/a | | | | | | | | | | No change in existing use |
| Young Nak Church | | 1.5 | 14% | 0.0001 | 0.88 | 0.725 | 50% | 50% | 0.76 | 0.54 | 1.31 | 2.19 | MCWD (proposal in process) |
| Co. of Monterey | | 1.7 | n/a | | | | | | | | | | |
| City of Marina - fire station site | | 3.3 | 35% | 0.0003 | 15.09 | 0.825 | 20% | 80% | 0.35 | 0.99 | 1.34 | 16.43 | MCWD (fire station) |
| Total Out Parcels | | 63.7 | | | 88.64 | | | | | | 26.28 | 114.9 | |

**86% irrigable area artificial turf

**EXHIBIT B**

**LEGAL DESCRIPTION**



## LEGAL DESCRIPTION

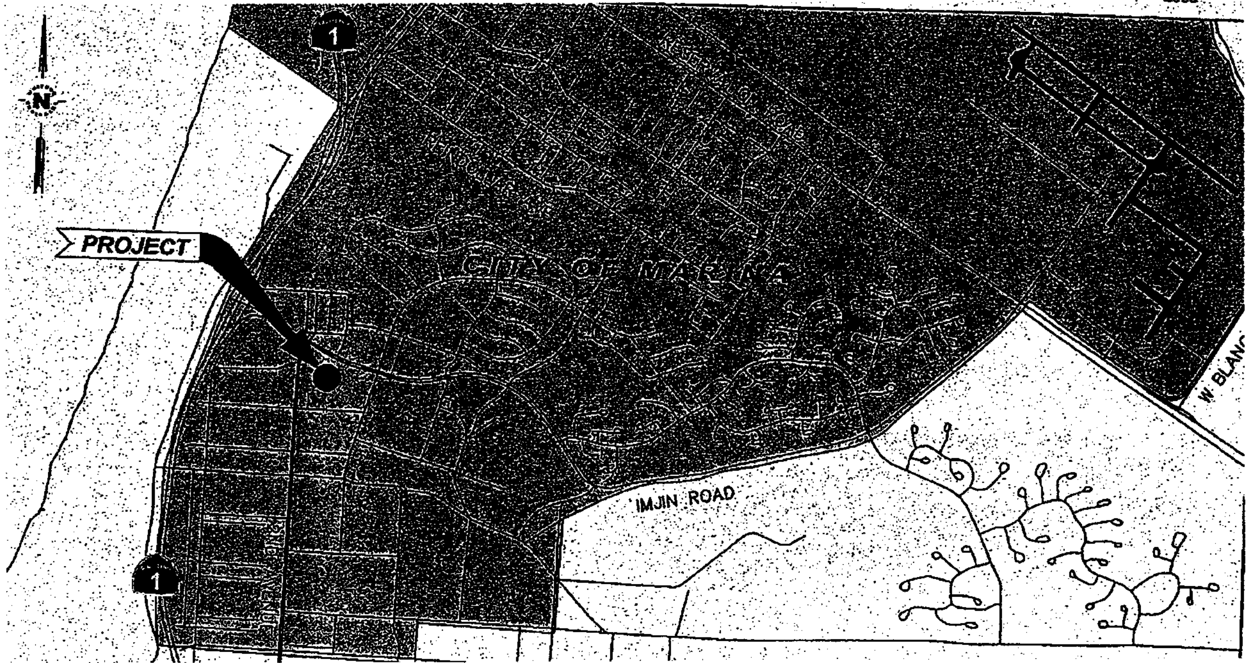
Real property in the City of Marina, County of Monterey, State of California, described as follows:

Parcels 1, 2, 3, 4 and 5, as shown on that certain map filed for record December 31, 2008 in Volume 22 of Parcel Maps, at page 106, filed in the Office of the County Recorder, County of Monterey, State of California.

APN: 031-251-028-000 (Portion)

**EXHIBIT C**

**MAP OF DEVELOPMENT**



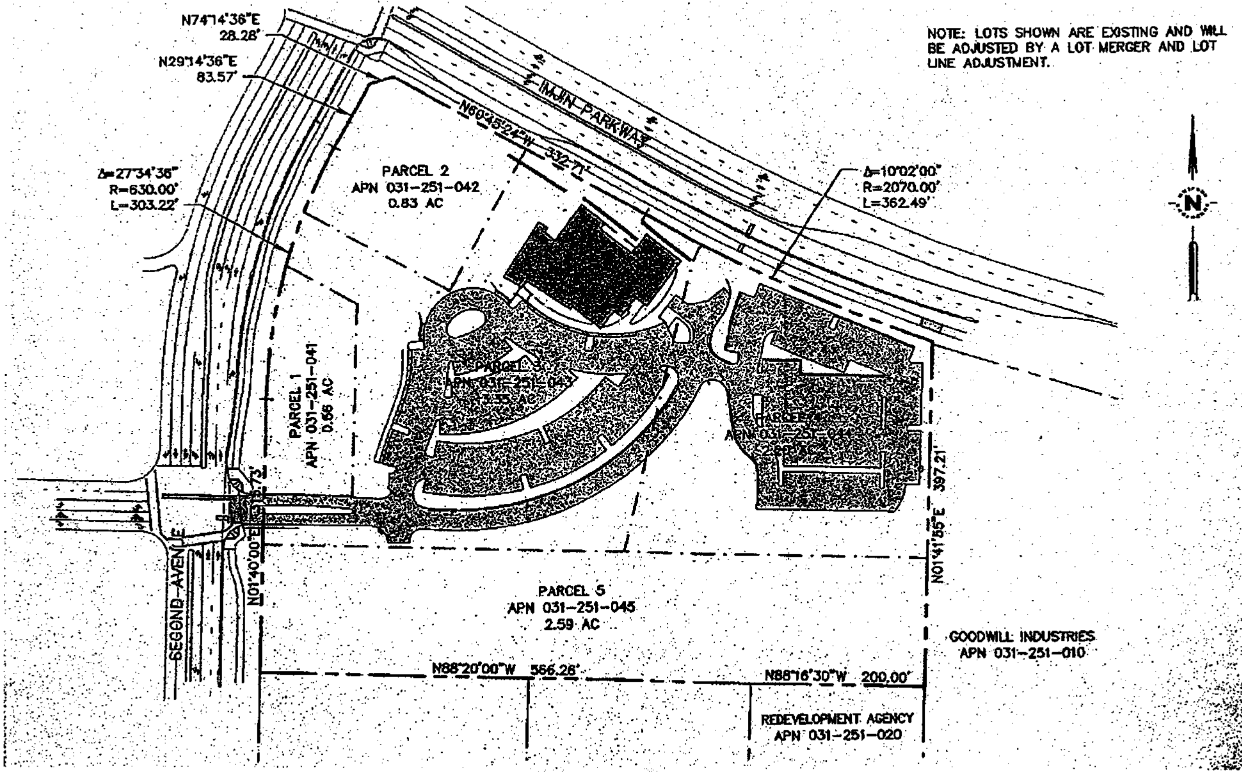

NOTE: LOTS SHOWN ARE EXISTING AND WILL BE ADJUSTED BY A LOT MERGER AND LOT LINE ADJUSTMENT.
N74°14'36"E
28.28'
N29°14'36"E
83.57'
IMJIN PARKWAY
N60°45'24"W 332.71'
Δ=27°34'36"
R=630.00'
L=303.22'
PARCEL 2
APN 031-251-042
0.83 AC
Δ=10°02'00"
R=2070.00'
L=362.49'
N
PARCEL 1
APN 031-251-041
0.56 AC
SECOND AVENUE
N01°40'00"E
N01°41'55"E 397.21'
PARCEL 5
APN 031-251-045
2.59 AC
GOODWILL INDUSTRIES
APN 031-251-010
N88°20'00"W 566.26'
N88°16'30"W 200.00'
REDEVELOPMENT AGENCY
APN 031-251-020

**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 Contractors; 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 include[1] 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.