

SUPPLEMENTAL FINANCING AGREEMENT
between the
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT
and
PEBBLE BEACH COMPANY
Dated as of December 15, 2004

supplementing (but not superseding) the
WASTEWATER RECLAMATION PROJECT
FISCAL SPONSORSHIP AGREEMENT
Dated as of October 3, 1989

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SUPPLEMENTAL FINANCING AGREEMENT

This Supplemental Financing Agreement (“Agreement”) is entered into as of December 15, 2004, 2004, by and between the **MONTEREY PENINSULA WATER MANAGEMENT DISTRICT**, a California public agency (“MPWMD”), and **PEBBLE BEACH COMPANY**, a California general partnership (“PBC”).

RECITALS

A. As is described in greater detail in MPWMD Ordinance 109, pursuant to statutory authority, beginning in 1989 MPWMD entered into a series of interrelated agreements with various parties for the finance, design, construction, and operation of facilities comprising the Original Project (as defined herein), for the production and use of recycled water in lieu of potable water for irrigation of vegetated areas within the Del Monte Forest area of the Monterey Peninsula.

B. One such agreement, which is presently and shall remain in effect as amended when this Agreement becomes effective by its terms, was the Wastewater Reclamation Project Fiscal Sponsorship Agreement dated as of October 3, 1989, as amended (“Fiscal Sponsorship Agreement”). The Fiscal Sponsorship Agreement implemented the selected method of financing the Original Project by designating PBC as the Fiscal Sponsor to guarantee all costs of designing, constructing, equipping, and operating the Original Project in exchange for the “Water Entitlement” as defined in MPWMD Ordinance 39, and as granted in the Fiscal Sponsorship Agreement.

C. Thus, in the Fiscal Sponsorship Agreement, PBC undertook the obligation to guarantee payment of the costs of the Original Project, and MPWMD granted and dedicated a Water Entitlement in the cumulative amount of 380 acre feet (“af”) annually for use within the Del Monte Forest on the “Benefited Properties” described in Exhibit “A” to the Fiscal Sponsorship Agreement. MPWMD subsequently issued Water Use Permits to PBC, to J. Lohr Properties, Inc. (“Lohr”), and the Hester Hyde Griffin Trust (“Griffin”) in the respective amounts of 365 af, 10 af, and 5 af.

D. The Original Project has been constructed and is in operation. MPWMD has supplied and will continue to supply, under the Agreements for Sale of Reclaimed Water with the owners of the various Recycled Water Irrigation Areas, non-potable water for irrigation purposes, which has enabled potable water to be conserved. However, the performance of the Original Project has not met the expectations of the parties, either with regard to quantity or quality, due to a number of factors described in MPWMD Ordinance 109.

E. The parties to the Fiscal Sponsorship Agreement and the interrelated agreements have determined that an expansion of the Original Project (the “Project Expansion” as further defined herein), if and when Completed (as defined herein), will improve the performance of the Original Project such that the Original Project together with the Project Expansion will produce sufficient quantities of Recycled Water each year to meet all of the irrigation needs of the Recycled Water Irrigation Areas without the addition of any potable water thereto (except during

an Interruption and the other circumstances described in the Recycled Water Sales Agreement, as defined herein).

F. Those parties primarily involved in the planning of the Project Expansion concluded that, given the limited availability of public funds, the most effective means to raise the funds necessary to implement the Project Expansion would be to establish a financing plan using funds raised from the private sector. MPWMD Ordinance 109 authorized such a financing plan.

G. Under the financing plan, through which PBC will attempt to raise funds sufficient to finance all Capital Costs of the Project Expansion, as authorized by Ordinance 109 and as further set forth in this Agreement, PBC may sell and convey up to 175 acre feet of its existing Water Entitlement, for such valuable consideration as PBC may determine, solely for dedication to property not owned by PBC within the Del Monte Forest being used for residential purposes, with the Proceeds (as defined herein) of such sales and conveyances to be devoted to the Capital Costs of the Project Expansion (as defined herein). MPWMD and PBC desire to enter into this Agreement to establish the terms and conditions under which the financing plan will be implemented.

1. DEFINITIONS

1.1 **Definitions for Supplemental Financing Agreement.** As used in this Agreement, including the portions of the Fiscal Sponsorship Agreement incorporated herein, the following terms shall have the following meanings:

(a) **“Actual Use of Water”** means the quantity of water that has passed through the water meter or meters installed to measure it.

(b) **“Advanced Treatment Component”** means that component of the Project Expansion consisting of the addition of advanced treatment components to the tertiary treatment plant facilities of the Original Project, as more particularly described in attached Exhibit “E.”

(c) **“Amended and Restated Construction and Operation Agreement”** means the Amended and Restated Construction and Operation Agreement among the MPWMD, CAWD, PBCSD, and PBC, dated as of December 15, 2004, as amended from time to time.

(d) **“Ancillary Project Costs”** means net revenues (gross revenues less allocable operation and maintenance and administrative and general costs, as such terms are defined in accordance with generally accepted utility practices), with respect to the potable water, subject, from time to time, to the Water Entitlement, which net revenues Cal-Am does not receive by reason of operation of the Project, all as more fully described in the Ancillary Project Cost Agreement. Such costs shall not include any return on assets of Cal-Am which have been removed from the water distribution system rate base by reason of the Project. Such costs shall be reduced over time by net revenues received by Cal-Am by reason of sales of potable water to the Benefited Properties following the Commercial Operation Date. Cal-Am’s and PBC’s rights and responsibilities with respect to Ancillary Project Costs are set forth in the Ancillary Project Costs Agreement.

(e) **“Ancillary Project Costs Agreement”** means the Ancillary Project Costs Agreement, dated as of August 1, 1990, by and between Cal-Am and PBC, as it may be amended from time to time.

(f) **“Benefited Properties”** means all properties within the Del Monte Forest, as defined herein, to which a portion of the Water Entitlement is or may be dedicated and utilized in accordance with the Fiscal Sponsorship Agreement and the Supplemental Financing Agreement, and such additional real property as has been designated and included as Benefited Properties under the Fiscal Sponsorship Agreement pursuant to amendments thereto as approved by MPWMD before the adoption of Ordinance 109.

(g) **“Bond Carrying Costs”** means the following costs incurred with respect to the Certificates of Participation: fees and expenses of trustees, remarketing agents, tender agents, and paying agents, any rebatable arbitrage required to be deposited pursuant to the Trust Agreement, arbitrage rebate calculation fees, costs and fees incurred in connection with the letter of credit or renewals of the letter of credit securing the Certificates of Participation or additional letters of credit (including bond, MPWMD, and bank counsel fees and rating agency fees), fees for preparing or updating offering circulars, auditor or accounting fees, bond counsel and other counsel fees generally, and other similar ordinary and necessary costs, incurred with respect to the Certificates of Participation. Each use of the term “letter of credit” herein has the same meaning as the term “Letter of Credit” as defined in the Trust Agreement.

(h) **“Cal-Am”** means the California American Water Company, a California corporation, and its successors and assigns.

(i) **“Capital Costs”** means the following costs related to all or any part of the Project:

(i) the cost of acquisition of all lands, structures, real or personal property rights, rights-of-way, franchises, easements, and interests acquired or used for, the Project, inclusive of fees and commissions for acquisition;

(ii) the cost of construction of the Project, including, without limitation, demolition, modification, repair, replacement, renovation, or improvement of existing structures, facilities, fixtures or equipment essential to the construction and operation of the Project; cost of improvements and materials; direct and indirect construction and administration expenses of each of the Public Participants properly allocable to the Project in accordance with generally accepted accounting principles; cost of painting, decorating, furnishing and landscaping; contractor and subcontractor profit; and costs related, by reason of the Project, to plumbing, mains, tanks, or pipes which are modified, replaced or renovated, whether owned by any of the Public Participants or others;

(iii) the cost of demolishing or removing any buildings, fixtures, equipment, or structures on land so acquired, including, without limitation, the cost of acquiring any lands to which such buildings or structures may be moved;

(iv) the cost of all new machinery, piping, equipment and furnishings, and the lesser of (i) the fair market value, or (ii) depreciated value for purposes of the applicable rate base, of machinery, piping, equipment and furnishings made obsolete or unusable to Cal-Am or any of the Public Participants by reason of the Project to the extent not replaced by the Project;

(v) costs of selling and issuing the Certificates of Participation, including, without limitation, the underwriter's discount;

(vi) interest on any funds advanced to permit payment of any of the Capital Costs prior to, during, and for a reasonable period after completion of the acquisition and construction of the Project as determined by PBC and MPWMD, including, without limitation, capitalized interest on the Certificates of Participation;

(vii) the Operation and Maintenance Reserve Fund, as defined herein (which is the fund defined as the "Operating Reserve" in the Fiscal Sponsorship Agreement); and

(viii) the cost of architectural, engineering, planning, environmental analysis, financial, accounting, auditing and legal services, plans, specifications, estimates, administrative expenses, permits, fees, adverse claims, personnel and overhead costs (both direct and indirect, to the extent properly allocable to the Project in accordance with generally accepted accounting principles), and other expenses necessary or incident to determining the feasibility of construction of any portion of the Project or incident to the planning, construction, acquisition, or financing of any portion of the Project (subject to independent audit and review pursuant to this Agreement) including, without limitation:

(A) payment during the construction period of the premiums for all title and other insurance, bonds, or undertakings required to be obtained and maintained with respect to any part of the Project, to the extent such amounts are not paid by any contractor who constructs or installs any portion of the Project;

(B) payment of the taxes, assessments and other fees or charges, if any, that may become payable during the construction period with respect to any portion of the Project, or reimbursements thereof; and

(C) payment of expenses incurred in seeking to enforce any remedy against any contractor or subcontractor in respect of any default under a contract relating to the acquisition, construction, or installation of any portion of the Project.

(j) "Capital Costs of the Project Expansion" means costs falling within the definition of Capital Costs that apply specifically to the initial approval, design, and construction of the Project Expansion, including, without limitation, payment of costs incurred beginning on January 1, 1995, concerning the Project Expansion, the need for the Project Expansion, and the drafting, negotiation, and execution of any and all agreements necessary or desirable to implement the design, construction, operation, and maintenance of the Project Expansion.

(k) "CAWD" means the Carmel Area Wastewater District (formerly known as the Carmel Sanitary District), a California public agency, its successors and assigns.

(l) "CAWD/PBCSD" means the combination of CAWD and PBCSD and/or their respective successors and assigns which entities, pursuant to the Management Agreement, will separately own the various components comprising the Project and, through the Management Committee, manage, and be responsible for the design, construction, operation and maintenance of, their respective portions of the Project.

(m) **“Certificates of Participation”** means the Variable Rate Demand Certificates of Participation (Wastewater Reclamation Project) Series 1992 issued by MPWMD in the original principal amount of \$33,900,000 to finance the Capital Costs of the Original Project (and which has the same meaning as “Bonds” as defined in the Related Agreements).

(n) **“Commercial Operation Date”** means the date the Original Project became operational.

(o) **“Completed”** with respect to the Project Expansion shall mean that each of the following events has occurred: (1) all required permits or other approvals have been obtained, and (2) all construction activities for the Advanced Treatment Component, the Forest Lake Reservoir, and all treatment and distribution facilities associated therewith have been completed and tested in accordance with their respective approved plans, permits and other approvals, and (3) Forest Lake Reservoir has been filled to capacity with Recycled Water from the Advanced Treatment Component, and (4) all portions of the distribution system are capable of delivering such Recycled Water to the Recycled Water Irrigation Areas then in operation. The Project Expansion shall be deemed Completed only if and when each of the events described in the preceding sentence have occurred as reasonably determined by CAWD/PBCSD.

(p) **“COP Documents”** means the Official Statement and all other documents prepared in connection with the execution and delivery of the \$33,900,000 Variable Rate Demand Certificates of Participation (Wastewater Reclamation Project) Series 1992 including, without limitation, the authorizing resolutions and the Trust Agreement, as defined in this Agreement.

(q) **“Costs of Sale”** means the costs incurred by PBC and by the Public Participants (to the extent that they have not been advanced or reimbursed by PBC) in connection with the negotiation, documentation, marketing, and sale of the Water Entitlement by PBC, including, without limitation, the costs thus incurred for outside attorneys’ fees for time spent developing Ordinance 109 and the agreements to implement Ordinance 109 and/or the actual documentation to offer, sell, and transfer portions of the Water Entitlement to individual buyers; mailing and copying costs for the subscription agreements; all costs of escrow, including escrow fees, recording costs, and any other governmental or title company charges in connection with the closing; any other miscellaneous costs related to the sale and reasonably and necessarily incurred.

(r) **“Del Monte Forest”** means all real property within the boundaries of the unincorporated portions of Monterey County known as the Del Monte Forest and shown on the map attached as part of Exhibit “B.”

(s) **“Distribution System”** has the meaning set forth in Section 2 of attached Exhibit “D.”

(t) **“Escrow Account”** means the escrow account established to deposit the funds received from the sale of portions of PBC’s Water Entitlement pursuant to this Agreement.

(u) **“Financial Commitment”** means the commitment of PBC, as Fiscal Sponsor, or any subsequent Fiscal Sponsors, to assume and guarantee payment of (a) Capital Costs of the Original Project (including the payment of principal and interest of the Certificates of Participation or any bonds or other obligations issued by the Public Participants), (b) any Net

Operating Deficiency; and (c) any Ancillary Project Costs, as more specifically provided in the Fiscal Sponsorship Agreement and this Agreement.

(v) **“Financing Implementation Agreement”** means the Financing Implementation Agreement Relating to Wastewater Reclamation Project, dated as of December 1, 1992, by and between MPWMD and PBC, as amended from time to time.

(w) **“Fiscal Sponsor”** means PBC and any person or persons (including partnerships, corporations, municipal corporations, or other public entities) that may succeed PBC and assume, as the Fiscal Sponsor, all of PBC’s obligations pursuant to the Fiscal Sponsorship Agreement and this Agreement.

(x) **“Fiscal Sponsorship Agreement”** means the Wastewater Reclamation Project Fiscal Sponsorship Agreement between MPWMD and PBC dated as of October 3, 1989, as amended from time to time (including the amendments thereto made by the Financing Implementation Agreement).

(y) **“Fiscal Year”** means the fiscal year for the Project, and shall be the same as the current fiscal year of CAWD/PBCSD (July 1 through June 30) unless otherwise changed by unanimous agreement of the parties to the Amended and Restated Construction and Operation Agreement.

(z) **“Forest Lake Component”** means the addition of storage, treatment, and distribution facilities at or associated with the Forest Lake Reservoir located within the Del Monte Forest, as more particularly described in attached Exhibit “E.”

(aa) **“General Manager”** means the General Manager of MPWMD.

(bb) **“Griffin”** means the Hester Hyde Griffin Trust referenced in the Fiscal Sponsorship Agreement.

(cc) **“Interruption”** means an interruption for longer than 12 hours in the supply of Recycled Water to a Recycled Water Irrigation Area.

(dd) **“Irrigation System”** means each of the recycled water irrigation systems installed and operating on each of the Recycled Water Irrigation Areas and owned, operated, and maintained by the owners of the Recycled Water Irrigation Areas.

(ee) **“IRWUG”** means the Independent Recycled Water Users Group, an unincorporated association of the owners of Cypress Point Golf Club, Poppy Hills Golf Course, and the Monterey Peninsula Country Club.

(ff) **“Lohr”** means J. Lohr Properties, Inc., referenced in the Fiscal Sponsorship Agreement in conjunction with the Winifred H. Braun Charitable Annuity Trust.

(gg) **“Management Agreement”** means the Reclamation Water Management Agreement dated as of February 22, 1991, between CAWD and PBCSD, as amended from time to time.

(hh) **“Management Committee”** means a committee composed of (a) two representatives of CAWD, (b) two representatives of PBCSD, (c) one representative of PBC, and (d) one non-voting representative of IRWUG. After the Certificates of Participation are fully paid and retired, IRWUG will become a voting member of the Management Committee,

subject to and in compliance with Section 11.4(b) of the Amended and Restated Construction and Operation Agreement.

(ii) “**MPWMD**” means the Monterey Peninsula Water Management District, a public agency, its successors and assigns.

(jj) “**Net Operating Deficiency**” for a Fiscal Year means the amount by which Operation and Maintenance Expenses exceed Operating Revenues for such Fiscal Year.

(kk) “**Net Operating Revenues**” for a Fiscal Year means the amount by which Operating Revenues exceed Operation and Maintenance Expenses and Bond Carrying Costs during such Fiscal Year.

(ll) “**Operating Revenues**” as applied to the Project, means all income, rents, rates, fees, charges and other moneys derived by the Public Participants from the ownership or operation of the Project, including, without limiting the generality of the foregoing: (i) all income, rents, rates, fees, charges or other moneys derived from the sale, furnishing and supplying of the Recycled Water (or from potable water supplied in lieu thereof); (ii) insurance and condemnation proceeds resulting from damage to or destruction of the Project facilities, or from the condemnation of any of such facilities; and (iii) interest earned on all revenues mentioned in (i) and (ii) above or on any fund or account relating to the Project under the COP Documents (excluding any amounts required to be rebated to the United States pursuant to Section 148 of the Internal Revenue Code); provided, that such term shall not include customers’ deposits or any other deposits subject to refund until such deposits have become the property of one of the Public Participants or the water supply surcharge retained by MPWMD in connection with the sale of Recycled Water in accordance with the Financing Implementation Agreement.

(mm) “**Operation and Maintenance Expenses**” as applied to the Project, means all expenses and costs of management, operation, maintenance, repair, replacement, renovation, or improvement of the Project properly chargeable to the Project in accordance with generally accepted accounting principles, including, without limitation, (a) payments to be made by the Public Participants under agreements with Cal-Am for the purchase of potable water; (b) an allowance for depreciation, amortization, and obsolescence determined pursuant to Section 5.2(b) of the Amended and Restated Construction and Operation Agreement; (c) all administrative expenses of MPWMD, CAWD, and PBCSD, incurred in connection with, and properly allocable as an expense relating to, the Project and the Certificates of Participation; and (d) an amount equal to any reduction in real property taxes allocated to MPWMD caused by a change in California state law which results in a reduction of such tax allocation based on the collection of the Operating Revenues from the sale of the Recycled Water, as more specifically provided in the Financing Implementation Agreement.

(nn) “**Operation and Maintenance Reserve Fund**” means the fund which shall be maintained and held separate and apart from other funds to pay for Operation and Maintenance Expenses as they become due and payable during a Fiscal Year to the extent the timing or amount of Operating Revenues for such Fiscal Year are insufficient to provide for such payments.

(oo) "**Ordinance 39**" means MPWMD Ordinance No. 39 adopted by the MPWMD Board of Directors on February 13, 1989.

(pp) "**Ordinance 109**" means MPWMD Ordinance No. 109 adopted by the MPWMD Board of Directors on May 27, 2004.

(qq) "**Original Construction and Operation Agreement**" means the Wastewater Reclamation Project Construction and Operation Agreement, dated as of November 1, 1990, among MPWMD, CAWD, PBCSD, and PBC.

(rr) "**Original Project**" means and consists of (1) a tertiary treatment facility at the present CAWD wastewater treatment plant site, designed to produce at least 800 acre feet per year of disinfected recycled water suitable for irrigation of the Recycled Water Irrigation Areas, as more specifically described as the Tertiary Facility in attached Exhibit "D," and, (2) the distribution system which is capable of distributing the recycled water from the Tertiary Facility to a point of distribution in the Del Monte Forest for further distribution to the Recycled Water Irrigation Areas presently in operation, as more specifically described as the Distribution System in attached Exhibit "D." Improvements to the Irrigation System on each of the Recycled Water Irrigation Areas presently in operation were also financed and constructed as part of the Original Project.

(ss) "**Owner**" means the holder (of record) of fee title to any Benefited Property.

(tt) "**PBCSD**" means the Pebble Beach Community Services District, a California public agency, its successors and assigns.

(uu) "**Proceeds**" means the funds received from the separate sale and conveyance of a portion of PBC's Water Entitlement pursuant to this Agreement and deposited in the Escrow Account, less the Costs of Sale paid from the Escrow Account, as provided in this Agreement.

(vv) "**Project**" means the Original Project and the Project Expansion.

(ww) "**Project Expansion**" means and consists of components intended to improve the Original Project, principally including (but not limited to) (a) the addition of advanced treatment components to the treatment facilities of the Original Project (the "Advanced Treatment Component"), and (b) the addition of storage, treatment, and distribution facilities at or associated with the Forest Lake Reservoir located within the Del Monte Forest (the "Forest Lake Component"), both as more specifically described in attached Exhibit "E."

(xx) "**Public Participant**" means any one or more of the following: the MPWMD, CAWD, PBCSD, or any successor public agency to any of them, including without limitation any joint powers agency formed by one or more of such agencies.

(yy) The meaning of the term "**Recycled Water**" depends upon whether or not the Project Expansion is Completed. As used in any of the Related Agreements, the term "Reclaimed Water" means "Recycled Water" as defined below.

(i) Before the Project Expansion is Completed, "Recycled Water" shall mean water originating from the Tertiary Facility.

(ii) After the Project Expansion is Completed, "Recycled Water" shall mean water originating from the Advanced Treatment Component and/or the Forest Lake Component meeting the water quality standards set forth in attached Exhibit "F."

(zz) "Recycled Water Irrigation Areas" means the golf courses and other vegetated areas as set forth on attached Exhibit "C" and located within the Del Monte Forest that now or in the future may be irrigated with Recycled Water supplied by the Project.

(aaa) "Recycled Water Sales Agreement" means each Agreement for Sale of Reclaimed Water, dated as of 1992 and currently in effect, by and between MPWMD and the owners of the Recycled Water Irrigation Areas and, after the Project Expansion is Completed, each Agreement for Sale of Recycled Water by and between MPWMD and the then current Owners of the Recycled Water Irrigation Areas.

(bbb) "Related Agreements" means the agreements, in form and substance satisfactory to each of the parties to such agreements and PBC, between or among two or more of CAWD, PBCSD, MPWMD, Cal-Am, an Owner of one or more of the Recycled Water Irrigation Areas, the Trustee, and PBC, as the case may be, reasonably necessary to implement the Project and addressing all matters related to the Project as the parties deem necessary or advisable, including, without limitation, the following agreements, as amended from time to time:

- (i) Amended and Restated Construction and Operation Agreement;
- (ii) Original Construction and Operation Agreement;
- (iii) Fiscal Sponsorship Agreement;
- (iv) Financing Implementation Agreement;
- (v) Management Agreement;
- (vi) Recycled Water Sales Agreements;
- (vii) Supplemental Financing Agreement;
- (viii) Trust Agreement;
- (ix) Water Purchase Agreement; and
- (x) Ancillary Project Cost Agreement.

(ccc) "Secondary Facilities" means the primary and secondary facilities owned and operated by CAWD and/or PBCSD for the collection, distribution, and treatment of effluent, including the existing CAWD sewage treatment plant located immediately south of the Carmel River and west of California State Highway One.

(ddd) "Supplemental Financial Commitment" means all of the following:

(i) the irrevocable written commitment by PBC to pay all Capital Costs of the Project Expansion from commencement through the time that the Project Expansion is Completed, using funds raised through the sale of such portions of its Water Entitlement pursuant to Section Three of Ordinance 109 (combined with any funds which may be independently committed by PBC, IRWUG, CAWD, PBCSD, or any other entity willing to

commit funds to the Capital Costs of the Project Expansion), and to continue to pay the Net Operating Deficiencies of the Project until the Certificates of Participation (and any bonds or other obligations issued by any Public Participant to finance such costs) have been paid in full (or for any shorter periods as permitted by MPWMD), and to continue to pay all Ancillary Project Costs; and

(ii) the written representation, as applicable, by each of PBC, CAWD, and PBCSD that each is prepared and intends forthwith to commence construction of the Project Expansion and to proceed diligently therewith until the Project Expansion is Completed.

(eee) "**Supplemental Financing Agreement**" means this Supplemental Financing Agreement between MPWMD and PBC, as amended from time to time.

(fff) "**Tertiary Facility**" has the meaning set forth in Section 1 of attached Exhibit "D."

(ggg) "**Trust Agreement**" means the Trust Agreement by and between MPWMD and First Trust of California, National Association, as initial trustee, dated as of December 1, 1992, relating to the \$33,900,000 Variable Rate Demand Certificates of Participation (Wastewater Reclamation Project) Series 1992, as amended or supplemented in accordance with its terms from time to time.

(hhh) "**Water Entitlement**" means an aggregate of 380 acre feet per year of potable water which has been dedicated (as evidenced by Water Use Permits issued pursuant to Ordinance 39, Resolution No. 89-21, and the Fiscal Sponsorship Agreement) to land within the jurisdiction of MPWMD for the purpose of providing for the payment of the Capital Costs, Ancillary Project Costs, and any Net Operating Deficiency of the Original Project. Pursuant to Ordinance 109, this Agreement provides authorization and a process by which a portion of the Water Entitlement held by PBC may be separately sold and conveyed and thereby be dedicated to other land within the Del Monte Forest with the Proceeds to be applied to the costs of the Project Expansion as more specifically described herein.

(iii) "**Water Purchase Agreement**" means the Water Purchase Agreement, dated as of December 1, 1992, by and among MPWMD, CAWD, and PBCSD as amended from time to time.

(jjj) "**Water Use Permit**" means a writing from MPWMD which evidences the dedication of the Water Entitlement as a vested property right inuring to the use and benefit of one or more of the Benefited Properties, as more fully described in this Supplemental Financing Agreement.

1.2 **Revisions to Definitions in Fiscal Sponsorship Agreement.** The parties intend to examine whether, and the extent to which, the definitions in the Fiscal Sponsorship Agreement should be revised to be consistent with the revised definitions set forth in the Related Agreements, and to amend the Fiscal Sponsorship Agreement to revise the definitions therein.

2. THE PROJECT EXPANSION

2.1. **Purpose and Intent.** The purpose of this Agreement is to implement the financing plan for the Project Expansion authorized by Ordinance 109, which, when it becomes

operative by its terms, authorizes PBC to separately convey, for valuable consideration, up to 175 acre feet of PBC's existing Water Entitlement solely for dedication to property or the portion thereof being used for residential purposes within the Del Monte Forest that is not owned by PBC as of May 27, 2004, the date that Ordinance 109 was adopted. Section 3 of this Agreement establishes a specific method by which PBC will attempt to raise funds to finance all Capital Costs of the Project Expansion. Funds thus raised (and any additional funds separately contributed) in excess of the amount needed for Capital Costs of the Project Expansion shall be applied as more specifically described in Section 3 of this Agreement. This Agreement is not intended to alter the continuing guarantees of PBC's fiscal responsibility for the Original Project.

2.2 **Description of Project Expansion.** The Project Expansion consists of components intended to improve the Original Project, principally including the addition of advanced treatment components to the tertiary treatment plant facilities of the Original Project (the "Advanced Treatment Component"), and the addition of storage, treatment, and distribution facilities at or associated with the Forest Lake Reservoir located within the Del Monte Forest (the "Forest Lake Component"). Both components of the Project Expansion are more particularly described in attached Exhibit "E."

2.3 **No Implicit Effect on Financial Commitment or Water Entitlement.** Except as expressly stated herein, this Agreement shall have no effect on the Financial Commitment made, or the Water Entitlement granted, respectively, in the Fiscal Sponsorship Agreement.

3. FINANCING OF PROJECT EXPANSION

3.1 **Method of and Procedure for Financing Project Expansion**

(a) This Agreement is intended to implement the financing plan for the Project Expansion authorized by Ordinance 109. This Agreement allows PBC, on terms and conditions set forth herein, to separately sell and convey up to 175 acre feet of its existing Water Entitlement solely for dedication to the Benefited Properties not owned by PBC as of May 27, 2004, the date that Ordinance 109 was adopted.

(b) Pursuant hereto, PBC will use its good faith efforts to sell such portions of its Water Entitlement as PBC in its discretion may determine (but not to exceed 175 acre feet) to raise the funds necessary to cover the Capital Costs of the Project Expansion. At the end of each month after the effective date of Ordinance 109, PBC shall report to MPWMD, in a manner that shall not adversely impact its continuing ability to sell such portions of its Water Entitlement, on its progress in raising funds for the Supplemental Financial Commitment.

(c) As of May 27, 2004, the date of adoption of Ordinance 109, the Capital Costs of the Project Expansion were estimated by CAWD, PBCSD, and PBC at \$22 million.

(d) All proceeds received by PBC from any separate sale or conveyance of a portion of PBC's Water Entitlement authorized by this Agreement shall be deposited in an Escrow Account requiring the signature of PBC and MPWMD to release funds therefrom to pay Costs of Sale, and requiring the signature of PBC and either CAWD or PBCSD, in the manner agreed by them, to release funds to pay for, in the first instance, the Capital Costs of the Project Expansion.

(e) PBC may provide MPWMD with the writings constituting the Supplemental Financial Commitment at any time, regardless of the amount of commitments received for sale of portions of its Water Entitlement. If the expected proceeds of the commitments received by PBC for sale of portions of its Water Entitlement within eighteen months after this Agreement becomes effective are insufficient to fund the entire Project Expansion, and if PBC is unwilling or unable to provide the writings constituting the Supplemental Financial Commitment, either by committing to use its own additional funds or because no other person or entity has come forward with sufficient additional funds to enable both components of the Project Expansion to proceed, the parties shall follow the procedures specified in Section 3.5.

(f) Capital Costs of the Project Expansion advanced by PBC or any other person (including any funds independently committed by MPWMD, PBC, IRWUG, CAWD, PBCSD, or any other entity as a part of the funding component of the Supplemental Financial Commitment) shall be reimbursed only pursuant to Section 3.6.

(g) Under no circumstances shall PBC keep any of the Proceeds received from the separate sale or conveyance pursuant to this Section 3.1, provided that nothing in this sentence shall be construed to affect the reimbursement, after the documents constituting the Supplemental Financial Commitment are provided by PBC, of Capital Costs of the Project Expansion advanced by PBC or any other entity pursuant to Section 3.6. Nothing in the preceding sentence shall be construed to limit reimbursement of Costs of Sale in accordance with Subsection 3.4(c). Any Proceeds from such sales in excess of the Capital Costs of the Project Expansion, including reimbursement of advanced Capital Costs of the Project Expansion pursuant to Section 3.6, shall be used to pay the Capital Costs of the Original Project.

(h) If PBC has not, within eighteen months after Ordinance 109 becomes effective in accordance with Section Nine thereof, given notice that all of the elements of the Supplemental Financial Commitment are present, the parties shall proceed in accordance with Section 3.5.

(i) MPWMD and PBC each acknowledge and agree that PBC does not represent, warrant, or covenant that PBC will provide the Supplemental Financial Commitment. PBC has no obligation to provide any funds, other than funds raised from the separate sale and conveyance of portions of its Water Entitlement authorized by this Agreement, to the Supplemental Financial Commitment.

3.2 Authority to Sell Portions of PBC Water Entitlement. In recognition of PBC's undertaking to attempt to raise funds for, and, upon raising such funds, to irrevocably commit such funds to, the Project Expansion through the sale of portions of its Water Entitlement (in accordance with the terms and conditions specified in this Agreement), PBC is hereby authorized, beginning on June 26, 2004, to separately sell and convey to other owners of land within Del Monte Forest, for such consideration and upon such terms and conditions as PBC in its discretion may determine, such portions of its Water Entitlement as it may choose, up to 175 acre feet, provided that each such conveyance shall conform to the limitations of Section 3.3, and that the use of each portion of the PBC Water Entitlement thus conveyed shall comply with the limitations set forth in Section 4 of this Agreement.

3.3 Procedures for Separate Sale and Conveyance

(a) No such conveyance shall be effective unless and until the writings comprising the Supplemental Financial Commitment have been received by MPWMD; and

(b) Each portion of the PBC Water Entitlement thus conveyed:

1. shall be dedicated solely to property within the Del Monte Forest that is not owned by PBC as of May 27, 2004, the date that that Ordinance 109 was adopted;

2. shall be put solely to Residential use (as defined in MPWMD Rule 11); and

3. shall be offered on the same terms and conditions to persons on the Monterey County waiting list for approved residential development projects within the Del Monte Forest which are awaiting water availability .

(c) As of and after the date that the writings comprising the Supplemental Financial Commitment are received by MPWMD, each recipient of a portion of PBC's Water Entitlement sold and conveyed pursuant to Sections 3.2 and 3.3 shall be entitled to issuance by the General Manager of a Water Use Permit, upon payment of a fee, according to a fee schedule adopted by MPWMD, in an amount sufficient to pay any expenses incurred by MPWMD to issue or amend a Water Use Permit, to track and record changes in the Water Entitlement and to verify water use capacity pursuant to Rule 23 following issuance of new Water Use Permits, to monitor compliance with or to enforce water usage in the manner required by applicable laws, ordinances, and regulations, and to make such determinations concerning adjustments, and to implement and enforce the adjustments, to Water Use Permits that may be required in 2075.

(d) The Water Use Permit shall authorize uses only through a "Residential connection" (as defined in MPWMD Rule 11), up to the amount of the Water Entitlement separately conveyed as is documented and authenticated in the conveyance documentation presented to the General Manager.

(e) All Water Use Permits issued to evidence the portions of the Water Entitlement separately conveyed by PBC pursuant to this Section 3.3 shall provide that rights memorialized thereby shall be subject to modification after year 2075 as provided in Ordinance 109 and in Ordinance 39, and shall further provide that such rights shall not be Revoked (as Revoke is defined in MPWMD Rule 11) or Terminated (as Terminate is defined in Ordinance 109) with respect to the entire Water Entitlement so conveyed except as provided in Section 4 of this Agreement.

(f) Each of the restrictions of use set forth or referenced in Section 4 of this Agreement shall be set forth on the face of the Water Use Permit, and shall bind each Owner of the Benefited Property to which the Water Entitlement is conveyed. The Water Use Permit shall also provide that MPWMD shall have such access as may be required to enable it to account for the use of water on the Benefited Property.

(g) Upon issuance of Water Use Permits pursuant to this subsection 3.3, the General Manager shall simultaneously make a record of the quantity of the Water Entitlement

thus conveyed and a commensurate reduction in the aggregate amounts of the Water Entitlement thereafter held by PBC.

3.4 **Procedures Following Consummation of Separate Sales and Conveyances**

(a) **Deposit of Revenues.** PBC shall deposit the funds received from the separate sale and conveyance of a portion of its Water Entitlement pursuant to Ordinance 109 and this Agreement into the Escrow Account.

(b) **Supplemental Financial Commitment.** The Supplemental Financial Commitment shall be established by the following procedures:

(i) PBC shall prepare, in a form approved by MPWMD, and duly execute an irrevocable written commitment to pay all Capital Costs of the Project Expansion, using funds raised through the sale of the portions of its Water Entitlement pursuant to Sections 3.2 and 3.3 of this Agreement (combined with any funds which may be independently committed by PBC, IRWUG, CAWD, PBCSD, or any other entity willing to commit funds to the Capital Costs of the Project Expansion), and to continue to pay the Net Operating Deficiencies of the Project until the Certificates of Participation (and any bonds or other obligations issued by any Public Participant to finance such costs) have been paid in full (or for any shorter periods as permitted by MPWMD), and to continue to pay all Ancillary Project Costs; and

(ii) PBC, CAWD, and PBCSD, as applicable, shall each duly execute one or more written representations that each is prepared and intends forthwith to commence construction of the Project Expansion and to proceed diligently therewith until the Project Expansion is Completed.

(c) **Costs of Sale.** Upon the provision of the Supplemental Financial Commitment, the Costs of Sale shall be reimbursed from the Escrow Account to the parties entitled to such reimbursement, provided that MPWMD shall have the right to review and approve such reimbursement, such approval not to be unreasonably withheld or delayed.

(d) **Capital Costs of the Project Expansion.** The Proceeds in the Escrow Account shall be used by CAWD and PBCSD to pay Capital Costs of the Project Expansion in the manner set forth in the Amended and Restated Construction and Operation Agreement and in Section 3.6.

3.5 **Procedures if Supplemental Financial Commitment Not Provided.** If the expected Proceeds of the commitments received by PBC for sale of portions of its Water Entitlement within eighteen months after this Agreement becomes effective are insufficient to fund the entire Project Expansion, and if PBC is unwilling or unable to provide the writings constituting the Supplemental Financial Commitment, either by committing to use its own additional funds or because no other person or entity has come forward with sufficient additional funds to enable both components to proceed of the Project Expansion, the parties shall follow the procedures specified in this Section.

(a) MPWMD may hold a hearing to determine whether, and for what period of time, if any, to allow PBC to continue selling portions of its Water Entitlement. MPWMD

shall give PBC, CAWD, PBCSD, and IRWUG not less than 14 days written notice for such hearing.

(b) The purpose of the hearing is to consider such evidence that may be presented (including written materials that may be included in an Administrative Record), and based thereon, to determine (1) whether there is a reasonable possibility that such efforts will generate funds sufficient to pay for the Capital Costs of the Project Expansion and (2) whether PBC has used good faith efforts to raise the Supplemental Financial Commitment.

(c) Upon considering the evidence presented (including written materials that may be included in an Administrative Record), which will be the basis for its determination of whether, and for what period of time, if any, PBC may continue selling portions of its Water Entitlement, MPWMD may make a determination thereon.

(d) MPWMD shall give PBC written notice of its determination, whereupon the determination shall take effect on the 15th day following service of the notice by personal delivery or by facsimile, whereupon, PBC shall immediately comply with the determination or timely challenge the same in court pursuant to section 7(b) below.

(e) To comply with any determination pursuant to this Section 3.5 to cease selling portions of its Water Entitlement, PBC shall disburse the monies received from separate sales of portions of its Water Entitlement from the Escrow Account to the respective person or persons then holding record title to the real property for which such monies have been deposited in the Escrow Account.

3.6 **Rights to Reimbursement.** PBC, MPWMD, IRWUG, CAWD, and PBCSD each has advanced, or may in the future advance, funds for expenditures with respect to design, engineering, environmental review, legal services, and other matters incident and preparatory to the Project Expansion, including, without limitation, legal and consulting fees and costs associated with the Project Expansion, Ordinance 109, this Agreement, and each Related Agreement, and each such party shall have the right, but not the obligation, to continue to advance funds for such expenditures. All such expenditures incurred thereby, to the extent not included in and paid as the Costs of Sale, shall be deemed to constitute Capital Costs of the Project Expansion and shall be reimbursed to the party expending them out of the Proceeds after the documents constituting the Supplemental Financial Commitment are provided by PBC. Upon approval by MPWMD, such approval not to be unreasonably withheld or delayed, such reimbursement shall be paid out of the Escrow Account within 30 days after the receipt by MPWMD of written evidence, in reasonable detail, that the party seeking such reimbursement actually incurred such expenditures.

4. ENTITLEMENT TO AND USE OF WATER

4.1 **Implementation of Section 4 of Fiscal Sponsorship Agreement.**

(a) Pursuant to the Fiscal Sponsorship Agreement, MPWMD has granted the Water Entitlement to PBC, Lohr, and Griffin under Section 4.1 thereof, and has issued Water Use Permits to PBC, Lohr, and Griffin under Section 4.2(a) and (b) thereof, in and for the Benefited Properties described in Exhibit "A" thereto as amended. As of the Effective Date, by virtue of the Water Entitlement, each of the Water Use Permits held by PBC, Lohr, and Griffin (and their respective successors and assigns) evidences a present vested property right enuring

to the Benefited Properties described in such Water Use Permits for the use and benefit of a specified quantity of potable water per year (in acre feet) produced by the water distribution system owned and operated by Cal-Am and authorizing the expansion and extension of the Cal-Am water distribution system to provide water service and connections for the benefit of these Benefited Properties. The rights, privileges, obligations, and limitations incident to these interests are generally described in Sections 4.1 through 4.6 of the Fiscal Sponsorship Agreement with respect to the Benefited Properties described in Exhibit "A" (as amended through May 27, 2004) to the Fiscal Sponsorship Agreement and in the respective Water Use Permits.

(b) Pursuant to Ordinance 39 and Section 4.7 of the Fiscal Sponsorship Agreement, MPWMD has entered into Agreements for Sale of Reclaimed Water with each of the owners of the Open Spaces, as defined in, and identified on Exhibit "B" to, the Fiscal Sponsorship Agreement, each of which contain all of the provisions described in said Section 4.7, and are the same in all material respects. MPWMD has supplied and will continue to supply thereunder recycled and potable water for irrigation purposes until the Project Expansion is Completed. Accordingly, compliance by MPWMD with each Agreement for Sale of Recycled Water entered into between MPWMD and the owner of each of the Recycled Water Irrigation Areas shall constitute compliance with said Section 4.7 to the extent it remains in effect.

4.2 **Implementation of Ordinance 109.**

(a) Ordinance 109 re-defines the Benefited Properties to which a portion of the Water Entitlement may be granted and for which Water Use Permits may be issued. The Benefited Properties under Ordinance 109, and this Agreement, include all real property within the unincorporated area of Del Monte Forest. The Benefited Properties include real property other than the Benefited Properties described in Exhibit "A" to the Fiscal Sponsorship Agreement (referred to only for clarity and convenience in this Section 4 as the "Original Benefited Properties," with the Benefited Properties (other than the Original Benefited Properties) being referred to as the "Other Benefited Properties").

(b) Ordinance 109, implemented by this Agreement, authorizes PBC (but not Lohr or Griffin) to separately sell, and convey to an Owner of the Other Benefited Properties a portion of PBC's Water Entitlement, and authorizes such Owner to receive a Water Use Permit from MPWMD evidencing and memorializing the portion of the Water Entitlement thereby acquired (with a corresponding reduction in the amount set forth in PBC's Water Use Permit).

(c) Upon the completion of the separate sale and conveyance by PBC as described above, the Owner shall have a vested property right upon such Other Benefited Property for the use and benefit of a specified quantity of potable water per year (in acre feet) produced by the water distribution system owned and operated by Cal-Am and authorizing the expansion and extension of the Cal-Am water distribution system to provide water service and connections for the benefit of such Other Benefited Property. The use of the Water Entitlement on such Other Benefited Properties is subject to the conditions, limitations, and procedures imposed by MPWMD and specified in Ordinance 109, MPWMD Rule 23.5, and Sections 3 and 4 of this Agreement, including the issuance of the Water Use Permit.

(d) The rights of Lohr and Griffin and their successors and assigns under their respective Water Use Permits shall not be altered or affected by this Agreement.

(e) Except as set forth in this Section 4, as specified in each Water Use Permit, the pertinent portion of the Water Entitlement may be assigned, in whole or in part, only in connection with, and as an integral part of, a conveyance of title to all or part of the Benefited Property or Properties to which it is dedicated, and, only to the successor-in-interest to such Benefited Property or Properties.

4.3 Water Use Permits.

MPWMD Rule 23.5, as amended by Ordinance 109, governs the use of the Water Entitlement and Water Use Permits from the date of this Agreement, except with respect to those of Lohr and Griffin, and their respective successors and assigns, and the successors and assigns of PBC (with respect to property conveyed by PBC before the Effective Date), or assignments thereof, which are governed by their respective Water Use Permits issued pursuant to the Fiscal Sponsorship Agreement. This Section 4.3 and the following Sections 4.4 through 4.8 shall, pursuant to Ordinance 109, govern the use of the portions of the Water Entitlement and all Water Use Permits not described in the preceding sentence.

Water Use Permits shall be subject only to the following limitations:

(1) the permit shall not limit the power of the MPWMD to curtail water use in the event of any emergency caused by drought, or other threatened or existing water shortage, as defined in Section 332 of the Monterey Peninsula Water Management Act, including without limitation the power of MPWMD to terminate water service as a consequence of a violation of water use restrictions;

(2) the permit shall not relieve or reduce any obligation of the recipient of water to pay customary fees, connection charges, user fees, surcharges, taxes, utility taxes, and/or any other customary monetary obligation which may be imposed by the California Public Utilities Commission, Cal-Am, MPWMD, or other Public Participants upon water users of the same class within the Cal Am service area, including but not limited to fees and charges due and payable to MPWMD by reason of Rule 24 of MPWMD's Rules and Regulation, nor shall such permit limit the authority of Cal-Am or MPWMD to terminate water use for non-payment of such fees and charges;

(3) the permit shall enable present use of the Water Entitlement by PBC only upon its continuing financial assurance or guarantee relating to the payment of Net Operating Deficiencies for the Project; and

(4) notwithstanding any other provision of this Agreement:

(a) the Water Entitlement allocated to the Benefited Properties as a whole shall not exceed 380 AF,

(b) the water usage under the Water Entitlement on any Benefited Property shall not exceed the amount of the Water Entitlement allocated to such Benefited Property, measured in accordance with the water use factors specified at the time of connection in the MPWMD Rules, as amended from time to time, and

(c) for purposes of collecting connection charges and fees, the projected water usage of the Benefited Properties shall be calculated by MPWMD in the manner set forth in Rule 24.

(5) Further, notwithstanding any other provision of this Agreement, once a new water connection is established pursuant to a Water Use Permit and use of all or a portion of a Water Entitlement,

(a) no user of water through such connection shall be entitled to preferential access to water over any other water user of the Cal-Am water distribution system; and

(b) the fixtures on the Benefited Property served by that connection shall be subject to verification of water use capacity in the manner specified in the MPWMD Rules, as amended from time to time; and

(c) the use of water on the Benefited Property served by such connection shall be accounted for by MPWMD in the manner specified at the time of connection in the MPWMD Rules, as amended from time to time; and

(d) the restrictions of use set forth above shall be enforced as determined by MPWMD to be necessary.

(6) The revocation and termination of any Water Use Permit shall not diminish or otherwise adversely affect present Actual Use of Water by reason of a prior expansion or extension of the Cal-Am water distribution system through any connection previously made pursuant to such Water Use Permit, except that Actual Use of Water may be reduced pursuant to the provisions of subdivisions (1) through (5) of this Section 4.3.

(7) Permits issued pursuant to this Agreement shall represent a vested property interest upon issuance and shall not be subject to revocation or cancellation except as expressly set forth in Section 4.8 below.

(8) The Water Entitlement granted by each Water Use Permit shall not be subject to reallocation pursuant to MPWMD Rule 30, nor shall it be terminated or diminished by reason of any water emergency, water moratorium or other curtailment on the setting of meters for the Cal-Am water system, nor shall it otherwise be subject to diminishment or revocation, except in the event that a Water Use Permit is Revoked or cancelled or as otherwise provided by Section 4.8 below.

4.4 Restrictions on Use of Portion of Water Entitlement Separately Sold and Conveyed.

(a) Any portion of the Water Entitlement of PBC separately conveyed pursuant to Sections 3.2 and 3.3 of this Agreement may be used only after the writings comprising the Supplemental Financial Commitment have been received by MPWMD, and then only on the specific property to which it is first dedicated following the conveyance, and the water shall be put solely to Residential use (as defined in MPWMD Rule 11).

(b) In addition, the use of water acquired pursuant to Sections 3.2 and 3.3 of this Agreement shall not exceed the quantity set forth in the Water Use Permit issued pursuant thereto and shall be measured in accordance with the water use factors specified at the time of connection in the MPWMD Rules, as amended from time to time, and shall at all times remain subject to the limitations and restrictions referenced in this Agreement.

(c) An Owner acquiring any portion of the Water Entitlement of PBC separately conveyed pursuant to Sections 3.2 and 3.3 of this Agreement shall not have the right to further sell or convey the Water Use Permit or the corresponding portion of the Water Entitlement for any use other than Residential use or on any other Benefited Property. Nothing in the foregoing sentence shall in any way limit the conveyance of the Water Use Permit so acquired, as an integral part of the conveyance of title to one or more Benefited Properties, to the successor(s)-in-interest to the Benefited Properties to which the pertinent portion of the Water Entitlement is dedicated.

4.5 **Use of Water Entitlement by PBC.** PBC may commence or continue to use the quantity of PBC's Water Entitlement that is not sold and conveyed by PBC pursuant to Sections 3.2 and 3.3 of this Agreement on any or all Benefited Properties owned by PBC as of May 27, 2004, as provided in the Fiscal Sponsorship Agreement, for any lawful use as determined by the appropriate jurisdiction with land use authority thereover. However, PBC agrees that the use of that portion of PBC's Water Entitlement granted to and retained by PBC for PBC's Original Benefited Properties shall be subject to and comply with the provisions of Ordinance 109 (specifically the provisions of MPWMD Rule 23.5 as amended by Ordinance 109) to the extent inconsistent with Section 4 of the Fiscal Sponsorship Agreement. PBC may sell and convey a parcel of land that it owns together with a specified portion of PBC's remaining Water Entitlement without being required to apply any consideration received therefor to any costs of the Project.

4.6 **Water Charges.** The water subject to the Water Entitlement shall be sold to the Owners of each of the Benefited Properties at charges which are not in excess of Cal-Am's charges (and, if applicable, any MPWMD charges) for potable water, in similar quantities and sold to similar users for similar uses, from time to time in effect. Nothing in the preceding sentence shall be construed to in any way affect the Owners' respective obligations pursuant to their Water Use Permit:

- (a) to pay the connection fee specified in Rule 23.5; and
- (b) to pay the fees set forth in Section 3.3 of this Agreement.

4.7 **No New Rights to Use Potable Water.** Nothing in this Agreement is intended to or shall be construed to create or vest any rights to use potable water in any way inconsistent with the provisions of MPWMD Rule 23.5 as revised by Ordinance 109. Nothing in this Agreement is intended to or shall be construed to adversely affect the ability of MPWMD to curtail or eliminate the Actual Use of Water through any connection previously made pursuant to a Water Use Permit to the extent that such curtailment or elimination is authorized by other laws, ordinances, or regulations as are generally applicable to all similarly situated users (Residential users within the Cal-Am system with lots classified by MPWMD as the same size) actually using water from the Cal-Am water distribution system, nor is it intended to provide or imply that any Water Use Permit holder shall not be subject to such generally applicable laws, ordinances, and regulations. For example, persons using water from the Cal-Am water distribution system are required to reduce their water usage in the various stages in MPWMD's Expanded Water Conservation and Standby Rationing Plan, and may be penalized or their water service may be terminated for failing to reduce water usage as required. Similarly, such persons must pay the rates and charges imposed for such water service, or their water service may be terminated.

4.8 Revocation and Termination of Water Use Permits Held or Conveyed by PBC.

(a) Each Water Use Permit held by PBC or a successor Fiscal Sponsor shall provide that it shall be revoked and terminated in the event that the Fiscal Sponsor shall default in any material manner upon its obligation, assurance, and guarantee of the Financial Commitment for the Project, provided that nothing herein shall preclude PBC or any other subsequent Fiscal Sponsor to PBC from disputing in good faith any claim of default made by MPWMD nor shall MPWMD terminate or revoke any Water Use Permit unless PBC or any subsequent Fiscal Sponsor shall have been given notice and a reasonable opportunity to cure any such default so long as such opportunity to cure shall not result in any payment default to the holders of the Certificates of Participation.

(b) All Water Use Permits issued to evidence the Water Entitlement conveyed by PBC pursuant to Sections 3 and 4 of this Agreement shall not be Revoked (as Revoke is defined in MPWMD Rule 11) or Terminated (as Terminate is defined in Ordinance 109) with respect to the entire Water Entitlement so conveyed except as follows:

(i) the Actual Use of Water on each of the Benefited Properties to which a portion of the Water Entitlement is dedicated (after conveyance by PBC pursuant to Sections 3 and 4 of this Agreement) shall at all times remain subject to the limitations and restrictions referenced in Sections 4.3 through 4.7 of this Agreement, which shall be enforced in the manner determined by MPWMD to be necessary. In order to facilitate enforcement of this limitation, MPWMD shall have the right to account for the use of water on the Benefited Property in the manner specified at the time of connection in the MPWMD Rules, as amended from time to time .

(ii) each Water Use Permit which on or after January 1, 2075, embodies an annual Water Entitlement in excess of requirements for planned land uses on a Benefited Property or which purports to authorize usage in excess of the constitutional limitation to reasonable and beneficial use shall be subject to modification, revocation, or termination in the sole discretion of MPWMD, such that the water usage authorized thereby shall not exceed such requirements and limitations.

Prior to any modification, termination, or revocation pursuant to this Section 4.8, the holder of the Water Use Permit, shall be entitled to notice and a hearing, and any termination, revocation, or modification shall be subject to appeal to the Board pursuant to Rule 70 of the MPWMD Rules and Regulations.

The revocation, termination, or modification of any Water Use Permit shall not diminish or otherwise adversely affect present Actual Use of Water by reason of prior expansion or extension of the Cal-Am water distribution system through any connection previously made pursuant to such Water Use Permit, provided that each Water Use Permit holder shall be subject to such laws, ordinances, and regulations as are generally applicable to all similarly situated users (Residential users within the Cal-Am system with lots classified by MPWMD as the same size) actually using water from the Cal-Am water distribution system, and nothing herein is intended to or shall affect the ability to curtail or eliminate the Actual Use of

Water through any connection previously made pursuant to a Water Use Permit to the extent such curtailment or elimination is authorized by such generally applicable laws, ordinances, or regulations applied in a non-discriminatory fashion to all similarly situated users in the Cal-Am system (Residential users with lots classified by MPWMD as the same size).

For example, persons using water from the Cal-Am water distribution system are required to reduce their water usage in the various stages in MPWMD's Expanded Water Conservation and Standby Rationing Plan, and may be penalized or their water service may be terminated for failing to reduce water usage as required. Similarly, such persons must pay the rates and charges imposed for such water service, or their water service may be terminated.

5. REPRESENTATIONS, WARRANTIES, AND COVENANTS

5.1 **Mutual Representations and Warranties.** PBC and MPWMD each hereby represents and warrants to the other that:

(a) the execution and delivery of this Agreement by it, and the performance of its obligations under this Agreement, have been duly authorized by all necessary action on its part, and it has full power, right and authority to enter into this Agreement and to perform its obligations hereunder and thereunder;

(b) neither the execution and delivery of this Agreement by it, nor the performance by it of any of its obligations under this Agreement, violates any applicable Federal, state or local law, whether statutory or common, or regulation or, with respect to PBC, partnership agreement, or constitutes a violation of, or a breach or default under, any agreement or instrument, or judgment or order of any court or governmental authority, to which it is a party;

(c) this Agreement is a valid and binding obligation of it, enforceable against it in accordance with its terms, except as such enforceability may be limited by equitable principles or by bankruptcy or other laws affecting creditors' rights generally; and

(d) no consent, approval, order or authorization of any person, entity, court or governmental authority is required on its part in connection with the execution and delivery of this Agreement or the performance by it of any of its obligations hereunder.

5.2 **Representations and Warranties of MPWMD.** MPWMD hereby represents and warrants to PBC as follows:

(a) Subject to the terms and conditions of this Agreement, each Owner of the Benefited Properties who has received by separate sale and conveyance from PBC a portion of the Water Entitlement shall have a vested right inuring to the Benefited Properties it owns for the use and benefit of a specified quantity of potable water per year (in acre feet) produced by the Cal Am distribution system and authorizing the expansion and extension of the Cal-Am water distribution system to provide water service and connections for the benefit of these Benefited Properties, free and clear of any liens, claims or encumbrances, statutory or otherwise, and not subject to revocation or termination except as expressly provided in Section 4 hereof.

(b) Each portion of the Water Entitlement separately sold and conveyed by PBC pursuant to the terms and conditions of this Agreement shall constitute a vested property right, as described in Sections 3 and 4, to the potable water that is subject to such Water Entitlement and the corresponding Water Use Permit, enforceable according to its terms, except

as such enforceability may be limited by equitable principles or by bankruptcy or other laws affecting creditor's rights generally.

(c) The terms and conditions of this Agreement are in compliance, in all material respects, with the terms and conditions of Ordinance 109.

5.3 **Covenant against Conflicting Agreements or Actions.**

MPWMD shall not enter into any agreements, or take any actions inconsistent with this Agreement, which may adversely affect or impair the right of the Owner of any portion of the Water Entitlement to such portion or to use or enjoy such portion with respect to the Benefited Properties it owns, including, without limitation, any amendment, repeal, or revocation of MPWMD Ordinance 39 or Ordinance 109.

6. **REMEDIES**

6.1 **Remedies in General.** Neither MPWMD nor PBC shall have the right to terminate this Agreement as a result of a breach of this Agreement by the other. Subject to the foregoing limitation, each party may avail itself of such rights at law or in equity as such party may have as a result of a breach of this Agreement by the other. Each of the parties hereby acknowledge that the other party may have no adequate remedy at law if such party breaches any of its obligations hereunder, and, accordingly, each of the parties shall have the right, in addition to any other rights it may have hereunder or at law, to obtain, in any court of competent jurisdiction, injunctive relief to restrain a breach or threatened breach of this Agreement by the other party or otherwise to specifically enforce any of the provisions of this Agreement involved in any such breach or threatened breach.

6.2 **Remedies for MPWMD Breach.** In the event MPWMD breaches this Agreement with respect to the Water Entitlement or the Water Use Permits:

(a) In the event that, after such breach, an Owner of a Benefited Property is entitled to less potable water for use on such Benefited Property than is contemplated by this Agreement, as and to the extent contemplated by this Agreement, MPWMD shall utilize its regulatory powers to the fullest extent to ensure that the Owner of such Benefited Property to which the Water Use Permit is appurtenant is entitled to receive, and does receive, potable water at such times, in such quantities and pursuant to such terms and conditions as are substantially equivalent to its rights with respect to potable water as specified in the Water Use Permit, and

(b) Because the damages which such Owner would suffer as a result of the breach of the covenant set forth in the preceding sentence would be irreparable and difficult to quantify, such Owner shall be entitled to specific enforcement, by a court of competent jurisdiction of its rights hereunder which are affected by such breach. Any such relief shall be determined in an action brought and prosecuted in accordance with Section 8(b)(i).

(c) Each Owner of the Benefited Properties who has received by sale and conveyance from PBC a portion of the Water Entitlement shall have the right to enforce this Section 6.2 as an intended third party beneficiary.

6.3 **Acknowledgment by PBC.** PBC acknowledges that MPWMD does not covenant in this Agreement, and is not responsible for, the release from the Escrow Account of funds to pay for the Capital Costs of the Project Expansion, and PBC shall not seek any redress

against MPWMD for any refusal or delays in the release of such funds, or any consequences thereof, including those described in Section 9.4 of this Agreement. Notwithstanding anything to the contrary, MPWMD shall not be required to pay any moneys derived from any source other than the Net Operating Revenues for the performance of any agreements or covenants required to be performed by it contained or referred to herein. No director, officer, or employee of MPWMD shall be individually or personally liable for any obligations of MPWMD contained or referred to herein.

7. INDEMNIFICATION PROVISIONS

The provisions of section 10 of the Fiscal Sponsorship Agreement are hereby incorporated into this Agreement as if fully set forth herein.

8. MISCELLANEOUS PROVISIONS

(a) The provisions of section 11 of the Fiscal Sponsorship Agreement are hereby incorporated into this Agreement as if fully set forth herein, except that section 11.3 of the Fiscal Sponsorship Agreement is hereby revised to read as follows:

“11.3 Notices. Whenever any matter herein provides for notice or other communication to be given to any of the parties, such notice shall be in writing and given to the persons, and at the addresses, designated below for such party, or to such other person or other address as such party shall provide, in writing, to the other party. All notices may be given by personal delivery, by postage prepaid, first-class United States mail, or by overnight delivery service. Each such notice shall be deemed to be effective (a) if personally delivered or sent by overnight delivery service, upon receipt, or (b) if sent by first-class mail, 5 days after being mailed.

If to PBC:

Pebble Beach Company
4005 Sunridge Road
P.O. Box 1767
Pebble Beach, CA 93953-1767

Attn: General Counsel

Fenton & Keller
2801 Monterey-Salinas Highway
Post Office Box 791
Monterey, CA 93942-0791

Attn: Thomas H. Jamison

If to MPWMD:

Monterey Peninsula Water Management District
5 Harris Court, Bldg. G
Monterey, CA 93940
P.O. Box 85
Monterey, CA 93942-0085

Attn: General Manager

David C. Laredo
De Lay & Laredo
606 Forest Avenue
Pacific Grove, CA 93950

(b) **Dispute Resolution.**

(i) The parties shall make good faith efforts to resolve all claims and disputes related to this Agreement at the lowest possible cost. Unless the parties agree upon an alternative forum of dispute resolution, any litigation concerning claims and disputes related to this Agreement shall be filed in and timely prosecuted to conclusion in the Superior Court in and for Monterey County, and each party hereby waives its right to move to change venue.

(ii) If dissatisfied with the determination made following the procedures specified in Section 3.5 of this Agreement, PBC shall have the right, within 30 days after the effective date of such determination, to file suit in the Superior Court in and for Monterey County challenging such determination in Administrative Mandamus or other available remedy based on the Administrative Record.

(iii) PBC shall comply with the determination made following the procedures specified in Section 3.5 of this Agreement unless and until expressly relieved from doing so by written order from the court.

9. EFFECTIVE DATE, TERM, EXPIRATION, AND TERMINATION

9.1 **Effective Date.** This Agreement shall commence and be effective and binding on the parties on the date this Agreement, the Amended and Restated Construction and Operation Agreement, and the Agreements for Sale of Recycled Water have each been fully executed by each signatory thereof (the "Effective Date").

9.2. **Term.** After the Effective Date, PBC shall not be able to terminate the Fiscal Sponsorship Agreement pursuant to Section 9 thereof. This Agreement shall continue and remain in effect thereafter, unless the Agreement expires pursuant to section 9.3 or is declared void pursuant to section 9.4.

9.3 **Expiration.** If any one or more of the Amended and Restated Construction and Operation Agreement, and/or the Agreements for Sale of Recycled Water is or are declared void by any party thereto pursuant to the terms thereof, and the parties to each agreement thus declared void do not execute a successor or replacement agreement therefor within 90 days, this Agreement shall thereupon cease to have any force or effect except as set forth in the following paragraph.

9.4. **Termination; Authority to Void Agreements.** MPWMD and PBC are each authorized, but not required, to declare this Agreement void if the Supplemental Financial Commitment has not been made within eighteen (18) months after the effective date of Ordinance 109. The parties agree to memorialize in writing the dates on which (1) Ordinance 109 becomes effective, and (2) the date that the documents constituting the Supplemental Financial Commitment are provided by PBC, respectively. Neither party may unilaterally terminate this Agreement in any other fashion.

IN WITNESS WHEREOF, this Agreement has been executed by the officers of each of the parties effective the date first shown above.

Pebble Beach Company

Monterey Peninsula Water
Management District

By: Mark Stowell
Its: Executive VP & General Counsel

By: [Signature]
Its: General Manager

EXHIBIT "A"
BENEFITED PROPERTIES

All real property within the boundaries of the unincorporated portions of the Del Monte Forest as defined in Exhibit "B" and such additional real property as has been designated and included as Benefited Properties under the Fiscal Sponsorship Agreement pursuant to amendments thereto as approved by the MPWMD Board before May 27, 2004, the date that Ordinance 109 was adopted.

EXHIBIT "B"
DEL MONTE FOREST

All real property within the boundaries of the unincorporated portions of Monterey County known as the Del Monte Forest and shown on the attached map.

B-1

*Supplemental Financing Agreement between MPWMD and PBC
Dated as of December 15, 2004*

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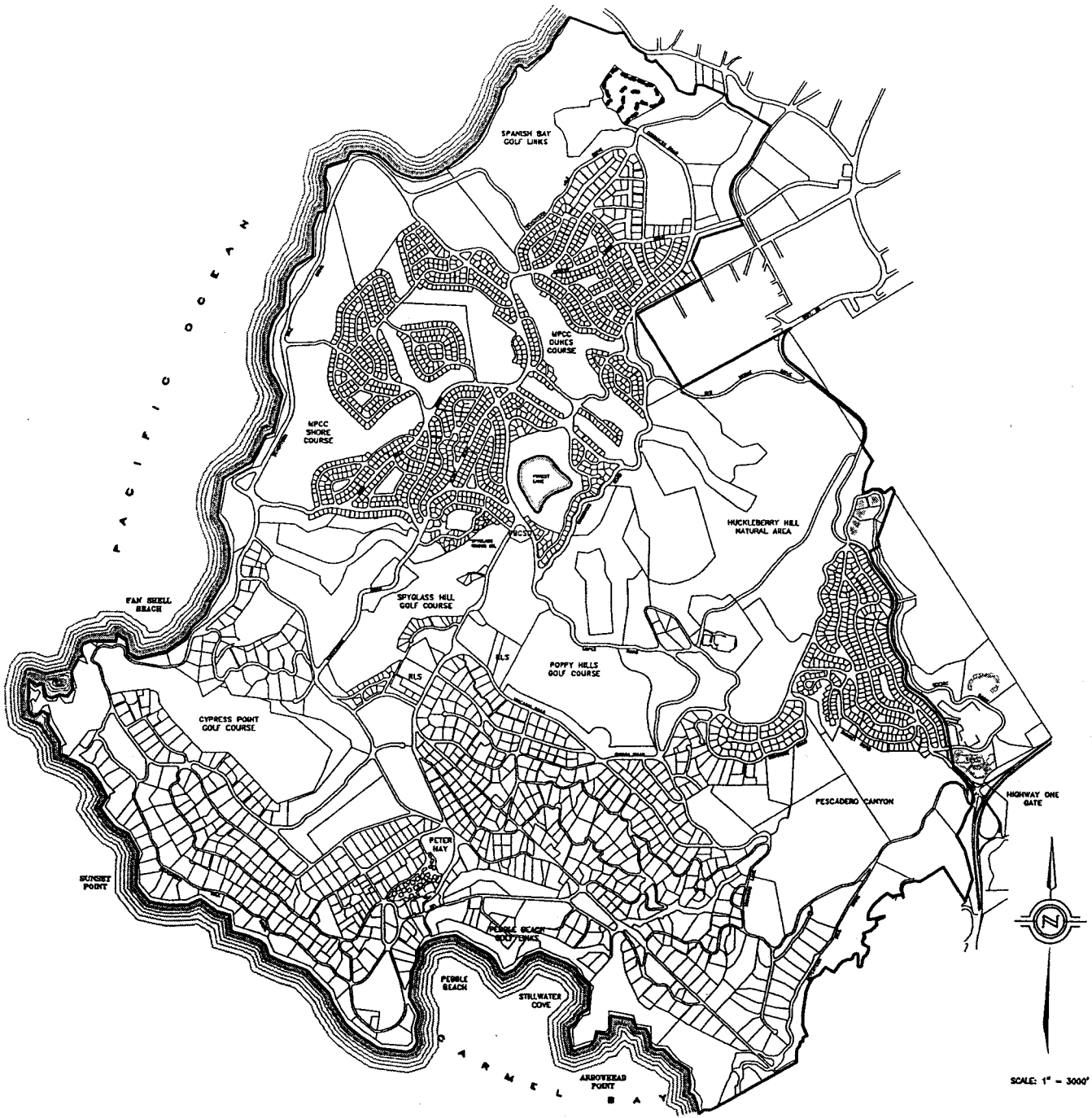


EXHIBIT B
DEL MONTE FOREST

EXHIBIT "C"
RECYCLED WATER IRRIGATION AREAS

Golf Courses

Monterey Peninsula Country
Club Dunes Course

Monterey Peninsula Country
Club Shore Course

Cypress Point Golf Course

Spyglass Hill Golf Course

Pebble Beach Golf Course

Spanish Bay Golf Course

Pebble Beach Forest Course (new)

Poppy Hills Golf Course

Other Recycled Water Irrigation Areas

Peter Hay Par 3 Golf Course

Pebble Beach Range

Equestrian Center/Field
(existing or new)

Stevenson School athletic fields (existing or new)

Spanish Bay Range (new)

EXHIBIT "D"
DESCRIPTION OF ORIGINAL PROJECT

The Original Project consists of the following components:

1. The Tertiary Facility.

(a) The tertiary treatment plant located at the CAWD wastewater treatment plant immediately south of the Carmel River and west of California State Highway One, capable of producing 1.8 million gallons per day (MGD) of tertiary treated recycled water. The existing tertiary treatment facility diverts and treats secondary level effluent from the Secondary Facilities for reuse as irrigation water using a treatment process consisting of: secondary effluent flow equalization; influent pumping; polymer and alum addition with rapid mixing for coagulation; low energy mixing for flocculation; filtration; chlorination; dechlorination; and pumping.

(b) The improvements within the Secondary Facilities to assure a consistent supply of secondary effluent from the Secondary Facilities diverted to the tertiary treatment plant. These improvements include a secondary clarifier flow split control and replacement of the existing mechanical aeration diffusers.

2. The Distribution System.

(a) The recycled water distribution system consisting of approximately 38,000 feet of distribution pipeline and a steel water storage tank (described in item (b) below) in Del Monte Forest beginning at the tertiary treatment plant and terminating at the southern portion of the Spanish Bay Golf Course and Resort in Del Monte Forest. The pipeline is located primarily within existing roads and road rights-of-way extending through the City of Carmel-by-the-Sea and unincorporated areas of Monterey County, including areas of Del Monte Forest. The distribution system also includes a connection adjacent to the storage tank (described in item (b) below) for furnishing an emergency potable water supply in the event of failure of the tertiary treatment plant or distribution pump station.

(b) The 2.5 million gallon recycled water storage tank located adjacent to the Poppy Hills Golf Course maintenance yard north of Viscaino Road in Del Monte Forest.

EXHIBIT "E"
DESCRIPTION OF PROJECT EXPANSION

The Project Expansion consists of the following components:

1. The Advanced Treatment Component.

The Advanced Treatment Component consists of the addition of microfiltration and reverse osmosis facilities ("MF/RO Facilities") to the Tertiary Facility designed to treat and deliver Recycled Water meeting the quality requirements set forth in attached Exhibit "F." This work will include all related mechanical, electrical, and structural work necessary to integrate the MF/RO facilities into the Tertiary Facility and the Secondary Facilities.

2. Forest Lake Reservoir Component.

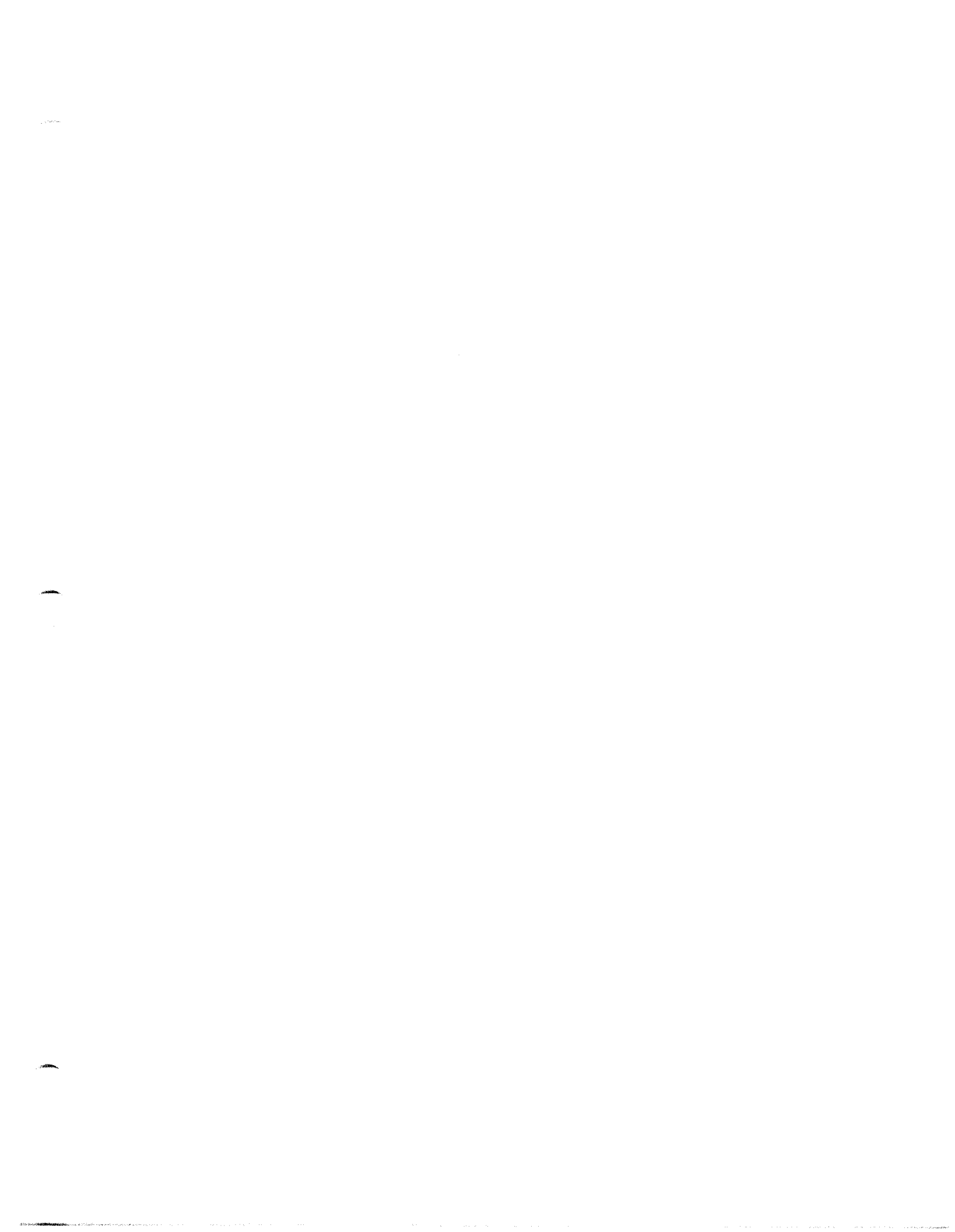
The Forest Lake Reservoir Component consists of the retrofitting of the existing Forest Lake Reservoir owned by PBCSD to hold up to 420 acre feet of recycled water in a manner that meets the requirements of the Division of Safety of Dams, California Department of Water Resources. Additionally, this Component includes the construction of a filtration, pH control, and pumping facility, and necessary distribution lines designed to treat and deliver the Recycled Water meeting the quality requirements set forth in attached Exhibit "F."

EXHIBIT "F"
WATER QUALITY STANDARDS

The Recycled Water produced by the Project shall meet all applicable regulatory and health standards, including CAWD's NPDES permit requirements, and the following additional quality criteria:

Sodium Adsorption Ratio:	3.00 or less
Adjusted Sodium Adsorption Ratio:	4.00 or less
Sodium Level:	55 mg/L or less, 95% of the time
Electrical Conductivity:	350-450 micro-mhos/cm
pH:	6.3-7.3

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PEBBLE BEACH
COMPANY

RECEIVED

APR 14 2005

MPWMD

HAND
DELIVERED

April 14, 2005

Mr. David Berger, General Manager
Monterey Peninsula Water Management District
5 Harris Court
Monterey, CA 93940

Re: MPWMD Ordinance No. 109

Dear Dave:

Please find enclosed two (2) fully executed copies of the Supplemental Financial Commitment, in the form approved by Monterey Peninsula Water Management District.

Regards,

Mark Stilwell
Executive Vice President
and General Counsel

enclosures

cc: Richard Andrews, PBCSD (w/enclosure)
Ray von Dohren, CAWD (w/enclosure)
David Laredo, MPWMD
Tom Jamison, Fenton & Keller

LEGAL AFFAIRS

Post Office Box 1767, Pebble Beach, California 93953 831-647-7500 telephone 831-625-8411 facsimile

Supplemental Financial Commitment

Pursuant to Sections 3.2 and 3.3 of the Supplemental Financing Agreement between the Monterey Peninsula Water Management District and Pebble Beach Company dated as of December 15, 2004 (the "Supplemental Financing Agreement"), PBC hereby irrevocably commits to pay all Capital Costs of the Project Expansion, using funds raised through the sale of the portions of its Water Entitlement (combined with any funds which may be independently committed by PBC), and to continue to pay the Net Operating Deficiencies of the Project until the Certificates of Participation (and any bonds or other obligations issued by any Public Participant to finance such costs) have been paid in full (or for any shorter periods as permitted by MPWMD), and to continue to pay all Ancillary Project Costs.

PBC, CAWD, and PBCSD hereby commit that they are each prepared and intend forthwith to commence design and construction of their respective components of the Project Expansion and to proceed diligently therewith until the Project Expansion is Completed.

All capitalized terms used herein have the meaning set forth in the Supplemental Financing Agreement.

PEBBLE BEACH COMPANY

By: Mark Stilwell
Mark Stilwell
Its: Executive Vice President
and General Counsel

CARMEL AREA WATER DISTRICT

By: Ray von Dohren
Ray von Dohren
Its: General Manager

PEBBLE BEACH COMMUNITY SERVICES DISTRICT

By: Richard Andrews
Richard Andrews
Its: General Manager