

EXHIBIT 24-A

**AMENDED AND RESTATED AGREEMENT FOR SALE OF RECYCLED WATER
between the
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT
and the
MONTEREY PENINSULA COUNTRY CLUB
Dated as of June xx, 2013**

**amending and restating the
AGREEMENT FOR SALE OF RECYCLED WATER
between the
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT
and the
MONTEREY PENINSULA COUNTRY CLUB
Dated as of December 15, 2004**

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TABLE OF CONTENTS

	Page
1. DEFINITIONS.....	3
1.1 “ADVANCED TREATMENT COMPONENT”	3
1.2 “AMENDED AND RESTATED CONSTRUCTION AND OPERATION AGREEMENT”	3
1.3 “ANCILLARY PROJECT COSTS”.....	3
1.4 “ANCILLARY PROJECT COSTS AGREEMENT”	3
1.5 “ANNUAL CHARGE”	3
1.6 “BASIC PENALTY”	3
1.7 “BOND CARRYING COSTS”	3
1.8 “BOND CARRYING COST ANNUAL AMORTIZATION AMOUNT”	4
1.9 “BUYER”	4
1.10 “BUYERS”	4
1.11 “BUYER’S PROPERTY”	4
1.12 “CAL-AM”	4
1.13 “CAPITAL COSTS”.....	4
1.14 “CAPITAL COSTS OF THE PROJECT EXPANSION”	5
1.15 “CAWD”	5
1.16 “CAWD/PBCSD”	5
1.17 “CERTIFICATES OF PARTICIPATION”	6
1.18 “COMMERCIAL OPERATION DATE”	6
1.19 “COMPLETED”	6
1.20 “COP DOCUMENTS”	6
1.21 “DEL MONTE FOREST”	6

1.22	“DISTRIBUTION SYSTEM”	6
1.23	“DUE DATE”	6
1.24	“EMERGENCY”	6
1.25	“FINANCIAL COMMITMENT”	6
1.26	“FINANCING IMPLEMENTATION AGREEMENT”	6
1.27	“FISCAL SPONSOR”	7
1.28	“FISCAL SPONSORSHIP AGREEMENT”	7
1.29	“FISCAL YEAR”	7
1.30	“FOREST LAKE COMPONENT”	7
1.31	“GOLF COURSES”	7
1.32	“INDEMNIFIED PARTY”	7
1.33	“INDEMNIFYING PARTY”	7
1.34	“INDEPENDENT RECYCLED WATER USERS GROUP” OR “IRWUG”	7
1.35	“INTERRUPTION”	7
1.36	“IRRIGATION SYSTEM”	7
1.37	“MANAGEMENT AGREEMENT”	7
1.38	“MANAGEMENT COMMITTEE”	7
1.39	“MONTEREY PENINSULA WATER MANAGEMENT DISTRICT LAW”	7
1.40	“MPWMD”	8
1.41	“NET OPERATING DEFICIENCY”	8
1.42	“NET OPERATING REVENUES”	8
1.43	“OPERATING REVENUES,”	8
1.44	“OPERATION AND MAINTENANCE EXPENSES,”	8

1.45	“OPERATION AND MAINTENANCE RESERVE FUND”	8
1.46	“ORDINANCE 109”	9
1.47	“ORIGINAL CONSTRUCTION AND OPERATION AGREEMENT”	9
1.48	“ORIGINAL PROJECT”	9
1.49	“OTHER RECYCLED WATER IRRIGATION AREAS”	9
1.50	INTENTIONALLY DELETED	
1.51	“PBCSD”	9
1.52	“PBC”	9
1.53	“PERCENTAGE SHARE”	9
1.54	“PERMITS”	9
1.55	“PRIOR BOND CARRYING COSTS”	9
1.56	“PROJECT”	9
1.57	“PROJECT EXPANSION”	9
1.58	“PUBLIC PARTICIPANT”	10
1.59	“RATE SCHEDULE”	10
1.60	“RECYCLED WATER”	10
1.61	“RECYCLED WATER IRRIGATION AREAS”	10
1.62	“RECYCLED WATER SALES AGREEMENT”	10
1.63	“RELATED AGREEMENTS”	10
1.64	“SECONDARY FACILITIES”	10
1.65	“SUPPLEMENTAL FINANCIAL COMMITMENT”	11
1.66	“SUPPLEMENTAL FINANCING AGREEMENT”	11
1.67	“SURPLUS RECYCLED WATER”	11
1.68	“TERTIARY FACILITY”	11
1.69	“TRUST AGREEMENT”	11

1.70	“UNPAID BALANCE”	11
1.71	“WATER PURCHASE AGREEMENT”	11
1.72	“WATER YEAR”	11
2.	PURCHASE AND SALE OF RECYCLED WATER.....	11
2.1	QUANTITIES OF RECYCLED WATER	11
2.2	CHARGES FOR RECYCLED WATER BEFORE JULY 1, 2013.....	12
2.3	CHARGES FOR RECYCLED WATER ON AND AFTER JULY 1, 2013.....	12
2.4	CHARGES FOR RECYCLED WATER USE AFTER PAYMENT OF ALL CERTIFICATES OF PARTICIPATION.....	14
2.5	PAYMENT FOR RECYCLED WATER	15
2.6	MEASUREMENT OF USE OF RECYCLED WATER	16
2.7	SUPPLEMENTAL POTABLE WATER PURSUANT TO SECTION 6.1 OR 6.2.....	16
2.8	SURPLUS RECYCLED WATER.....	16
3.	TERM	18
3.1	TERM	18
3.2	TERMINATION BY MPWMD OR BUYER	18
4.	IRRIGATION SYSTEM	19
4.1	RECYCLED WATER IRRIGATION AREA – OWNERSHIP AND OPERATION.....	19
4.2	PERMITS.....	19
5.	WATER QUALITY.....	19
5.1	QUALITY OF RECYCLED WATER	19
5.2	WATER QUALITY REPORTS.....	19
6.	WATER QUANTITY.....	19
6.1	SUPPLY OF POTABLE WATER DURING AN INTERRUPTION.....	19

6.2	POTABLE WATER SUPPLY DURING AN INTERRUPTION AND AN EMERGENCY.....	20
6.3	AUGMENTATION OF INSUFFICIENT SUPPLY WITH OUTSIDE SOURCES.....	21
6.4	SHARING OF INSUFFICIENT SUPPLY.....	22
6.5	LIMITATION TO REQUIRED USE.....	22
6.6	BUYER’S RIGHT TO RECEIVE REPORTS	22
7.	OPERATION OF THE PROJECT.....	22
7.1	STANDARDS OF OPERATION.....	22
7.2	INSURANCE ON IRRIGATION SYSTEM.....	23
7.3	INSURANCE ON PROJECT.....	23
8.	REPRESENTATIONS AND WARRANTIES.....	23
8.1	MUTUAL REPRESENTATIONS AND WARRANTIES	23
9.	REMEDIES FOR BREACH OF COVENANTS	24
9.1	REMEDIES IN GENERAL.....	24
9.2	CERTAIN ACKNOWLEDGEMENTS OF BUYER.....	24
9.3	LIMITATION OF LIABILITY OF CAWD AND PBCSD	24
10.	INDEMNIFICATION.....	25
10.1	GENERAL INDEMNIFICATION.....	25
10.2	PROCEDURE FOR INDEMNIFICATION	25
10.3	PAYMENT OF INDEMNIFIED CLAIM	25
11.	MISCELLANEOUS	26
11.1	STANDARD OF REASONABLENESS FOR APPROVALS	26
11.2	FURTHER ASSURANCES	26
11.3	RELATIONSHIP OF THE PARTIES.....	26

11.4	NOTICES.....	26
11.5	EXHIBITS	26
11.6	ASSIGNMENT.....	26
11.7	SEVERABILITY	27
11.8	WAIVER.....	27
11.9	HEADINGS AND TITLES	27
11.10	PRESUMPTIONS.....	27
11.11	AMENDMENT OR MODIFICATION.....	27
11.12	COUNTERPARTS	27
11.13	GOVERNING LAW AND DISPUTE RESOLUTION	28
11.14	ENTIRE AGREEMENT.....	28
11.15	[THIRD PARTY BENEFICIARIES	28

EXHIBITS

EXHIBIT “A”	– DESCRIPTION OF ORIGINAL PROJECT.....	A-1
EXHIBIT “B”	– DESCRIPTION OF PROJECT EXPANSION.....	B-1
EXHIBIT “C”	– RECYCLED WATER IRRIGATION AREAS.....	C-1
EXHIBIT “D”	– THE DEL MONTE FOREST	D-1
EXHIBIT “E”	– WATER QUALITY STANDARDS	E-1
EXHIBIT “F”	– BOND CARRYING COST ANNUAL AMORTIZATION SCHEDULE	F-1
EXHIBIT “G”	– ANNUAL CHARGE ESTIMATES FOR FISCAL YEAR ENDED JUNE 30, 2014.....	G-1
EXHIBIT “H”	– BILLING FORMULA EFFECTIVE JULY 1, 2013.....	H-1

EXHIBIT 24-A

AMENDED AND RESTATED AGREEMENT FOR SALE OF RECYCLED WATER

This Amended and Restated Agreement for Sale of Recycled Water (“**Agreement**”) is entered into as of June X, 2013, by and between the **MONTEREY PENINSULA WATER MANAGEMENT DISTRICT**, a California public agency (“**MPWMD**”), and **MONTEREY PENINSULA COUNTRY CLUB**, a California nonprofit mutual benefit corporation (“**Buyer**”), amending and restating the Agreement for Sale of Recycled Water between the parties dated as of December 14, 2004.

RECITALS

A. As is described in greater detail in MPWMD Ordinance 109 (as herein defined), 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. One such agreement was the Agreement for Sale of Reclaimed Water dated as of February 14, 1992 with Buyer.

B. The performance of the Original Project did not meet the expectations of the parties, either with regard to quantity or quality, due to a number of factors described in Ordinance 109, and the parties to the Agreements for Sale of Reclaimed Water determined that a Project Expansion (as defined herein) would improve the performance of the Original Project and thereby allow the use of more recycled water for irrigation and the consequent conservation of more potable water (including the potable water now used to flush the Golf Courses).

C. In connection with Project Expansion, MPWMD and each of the buyers of recycled water and owners of each of the Recycled Water Irrigation Areas (each being a “Buyer,”), the Pebble Beach Company (“**PBC**”), Cypress Point Club, Monterey Peninsula Country Club, and Poppy Holding, Inc. (collectively “**IRWUG**”), and Robert Louis Stevenson School (collectively the “**Buyers**”), each entered into an amended and restated agreement entitled Agreement for Sale of Recycled Water, dated as of December 15, 2004 (the “**Existing Agreements**”), which agreements became effective upon completion of the Project Expansion.

D. The Existing Agreements provide that the Buyers [contracting users of recycled water from the Project for the Del Monte Forest area] will pay for recycled water a monthly quantity charge based on the quantity of water used and calculated in the same manner as the quantity charge established for similarly-situated potable water users of water supplied by California American Water Company (“**Cal Am**”), until the Certificates of Participation (as defined herein) sold to finance the Project are paid in full.

E. The linking of the price of recycled water to the potable water rates approved for Cal Am by the California Public Utilities Commission (“**CPUC**”) has resulted in IRWUG and PBC participating in Cal Am rate proceedings since 2004, at a substantial expense to IRWUG members and PBC. Further, revenues from the Cal Am rates set by the CPUC have to date also

*Agreement for Sale of Recycled Water between MPWMD and Monterey Peninsula Country Club
Dated as of December 15, 2004*

been insufficient to pay in full the ongoing financing costs for the Project, requiring PBC as guarantor to cover the unpaid financing costs. Moreover, Cal Am rates have increased and sharp increases are expected between now and 2022.

F. In order to more closely align recycled water sale revenue with total Project costs, including financing, and to avoid the uncertainty of, and the costs of participating in, complex Cal Am rate-making proceedings before the CPUC, MPWMD, PBC, IRWUG, and Stevenson desire to de-link the price of recycled water from Cal Am rates for potable water.

G. In order to delink the price of recycled water from potable water rates approved for Cal Am by the CPUC, MPWMD and each of the Buyers have agreed to amend the Existing Agreements by entering into an Amended and Restated Agreement for Sale of Recycled Water (the “**Amended Agreements**”), of which this Agreement is one.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, and the covenants and representations and warranties set forth in this Agreement, the parties have agreed as follows:

1. DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings:

1.1 “**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 ”B.”

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

1.3 “**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.

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

1.5 “**Annual Charge**” means the charges payable by Buyer for any Fiscal Year (July 1st through the following June 30th) as those charges are described in Section 2.2 or 2.3 below, respectively, whichever is applicable.

1.6 “**Basic Penalty**” has the meaning set forth in Section 2.5 below.

1.7 “**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.

1.8 “**Bond Carrying Cost Annual Amortization Amount**” means the amount payable in each Fiscal Year, as shown on Exhibit F, required to amortize, over the remaining life of the Certificates of Participation, the accumulated Bond Carrying Costs which have not been reimbursed to PBC as of the date of this Agreement (the amount of \$5,520,000).

1.9 “**Buyer**” means the Buyer identified on the first page of this Agreement.

1.10 “**Buyers**” shall have the meaning set forth in Recital C and includes Buyer with respect to its ownership of Buyer’s Property.

1.11 “**Buyer’s Property**” means the Monterey Peninsula Country Club Dunes Course and the Monterey Peninsula Country Club Shore Course, the Recycled Water Irrigation Areas owned by Buyer, located in Del Monte Forest, Monterey County, California.

1.12 “**Cal-Am**” means California-American Water Company, a California corporation, and its successors and assigns.

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

(a) 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;

(b) 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;

(c) 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;

(d) 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;

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

(f) 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;

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

(h) 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:

(1) 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;

(2) 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

(3) 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.

1.14 "**Capital Costs of the Project Expansion**" means costs falling within the preceding 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.

1.15 "**CAWD**" means the Carmel Area Wastewater District, a California public agency, its successors and assigns.

1.16 "**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.

1.17 “**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 \$33.9 million to finance the Capital Costs of the Original Project (and which has the same meaning as “Bonds” as defined in the Related Agreements).

1.18 “**Commercial Operation Date**” means the date the Original Project became operational.

1.19 INTENTIONALLY DELETED

1.20 “**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.

1.21 “**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 ”D.”

1.22 “**Distribution System**” has the meaning set forth in Section 2 of attached Exhibit ”A,” as augmented by the Project Expansion.

1.23 “**Due Date**” has the meaning set forth in Section 2.5 below.

1.24 “**Emergency**” means either (1) an emergency caused by drought, or other threatened or existing water shortage in response to which MPWMD has adopted an ordinance pursuant to Section 332 of the Monterey Peninsula Water Management Law; (2) an emergency or major disaster declared by the President of the United States; or (3) a “state of war emergency,” “state of emergency,” or “local emergency,” as those terms are respectively defined in Government Code Section 8558, duly proclaimed pursuant to the California Emergency Services Act.

1.25 “**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 the Supplemental Financing Agreement.

1.26 “**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.

1.27 “**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 the Supplemental Financing Agreement.

1.28 “**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).

1.29 “**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.

1.30 “**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 ”B.”

1.31 “**Golf Courses**” means the eighteen hole golf courses, located in the Del Monte Forest, and described on attached Exhibit ”C.”

1.32 “**Indemnified Party**” has the meaning set forth in Section 10.1 below.

1.33 “**Indemnifying Party**” has the meaning set forth in Section 10.1 below.

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

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

1.36 “**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 Buyers.

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

1.38 “**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 representative of IRWUG.

1.39 “**Monterey Peninsula Water Management District Law**” means Chapter 527 of the California Statutes of 1977, as amended from time to time.

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

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

1.42 “**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.

1.43 “**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, however, 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.

1.44 “**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 any of the Public Participants under agreements with Cal-Am for the purchase of potable water; (b) an allowance for depreciation, amortization, and obsolescence determined according 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.

1.45 “**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.

1.46 “**Ordinance 109**” means MPWMD Ordinance No. 109 adopted by the MPWMD Board of Directors on May 27, 2004.

1.47 “**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.

1.48 “**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 ”A,” 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 A. 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.

1.49 “**Other Recycled Water Irrigation Areas**” means the Recycled Water Irrigation Areas described in attached Exhibit ”C” other than the Golf Courses. As of the date of execution of this Agreement, there are four existing Other Recycled Water Irrigation Areas and two planned Other Recycled Water Irrigation Areas.

1.50 Intentionally deleted.

1.51 “**PBCSD**” means the Pebble Beach Community Services District, a California public agency, its successors and assigns.

1.52 “**PBC**” means the Pebble Beach Company, a California general partnership, its successors and assigns.

1.53 “**Percentage Share**” means the percentages that are set forth on attached Exhibit ”C” for each of the Recycled Water Irrigation Areas.

1.54 “**Permits**” means all governmental permits, approvals, and authorizations required in order to use the Recycled Water on the Recycled Water Irrigation Areas as a part of the Project.

1.55 “**Prior Bond Carrying Costs**” mean those Bond Carrying Costs incurred by PBC prior to July 1, 2013, which will be reimbursed to PBC during the term of this Agreement as set forth on Exhibit F.

1.56 “**Project**” means the Original Project and the Project Expansion.

1.57 “**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 particularly described in attached Exhibit ”B.”

1.58 “**Public Participant**” means any one or more of the following: 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.

1.59 “**Rate Schedule**” has the meaning set forth in Section 2.2 below.

1.60 “**Recycled Water**” means water originating from the Advanced Treatment Component and/or Forest Lake Component meeting the water quality standards set forth in attached Exhibit ”E.”

1.61 “**Recycled Water Irrigation Areas**” means all of the Golf Courses and the Other Recycled Water Irrigation Areas as set forth on Exhibit ”C” hereto and located within the Del Monte Forest that will, as of the Effective Date of this Agreement, and in the future may be, irrigated with Recycled Water supplied by the Project.

1.62 “**Recycled Water Sales Agreement**” means each Agreement for Sale of Recycled Water, as amended from time to time, by and between MPWMD and the then current Buyers who own the Recycled Water Irrigation Areas.

1.63 “**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, Buyers who own 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, as they are defined herein or in the Amended and Restated Construction and Operation Agreement:

- (a) Amended and Restated Construction and Operation Agreement;
- (b) Original Construction and Operation Agreement;
- (c) Fiscal Sponsorship Agreement;
- (d) Financing Implementation Agreement;
- (e) Management Agreement;
- (f) Recycled Water Sales Agreement;
- (g) Supplemental Financing Agreement;
- (h) Trust Agreement;
- (i) Water Purchase Agreement; and
- (j) Ancillary Project Cost Agreement.

1.64 “**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.

1.65 “**Supplemental Financial Commitment**” means the irrevocable written commitment by PBC to pay all Capital Costs of the Project Expansion 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

1.66 “**Supplemental Financing Agreement**” means the Supplemental Financing Agreement between MPWMD and PBC dated as of December 15, 2004, as amended from time to time.

1.67 “**Surplus Recycled Water**” means, during a Water Year, Recycled Water which, PBC and IRWUG each agree, exceeds the quantity of Recycled Water necessary or desirable to assure that all of the irrigation needs of the Recycled Water Irrigation Areas will be fully satisfied during such Water Year and to further assure that sufficient quantities of Recycled Water will be stored for use during the succeeding Water Year. The existence, sale, and use of Surplus Recycled Water is governed by Section 2.8 below.

1.68 “**Tertiary Facility**” has the meaning set forth in Section 1 of attached Exhibit ”A.”

1.69 “**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.

1.70 “**Unpaid Balance**” has the meaning set forth in Section 2.5 below.

1.71 “**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.

1.72 “**Water Year**” means the period of one year beginning on October 1st and continuing through the following September 30th.

2. PURCHASE AND SALE OF RECYCLED WATER

2.1 **Quantities of Recycled Water.** During the term of this Agreement, MPWMD shall sell and deliver to Buyer, and Buyer shall purchase and accept from MPWMD, such quantities of Recycled Water as Buyer shall require, from time to time, to irrigate Buyer’s Property; provided, however, that: (a) in the event that the Project is unable to produce and deliver a sufficient quantity of Recycled Water to meet all of the irrigation requirements of the Recycled Water Irrigation Areas, Buyer shall have the right to use for such purpose (i) potable

water during an Interruption as specifically permitted under the provisions of Section 6.1 or Section 6.2 in accordance with Section 2.7, and (ii) water from any other source legally available to Buyer as specifically permitted under the provisions of Section 6.3, and (b) Buyer shall have the right to collect and use water falling upon or passing through Buyer's Property for such purpose. During the term of this Agreement, Buyer shall not use water other than Recycled Water, for the purpose of irrigating Buyer's Property, except as provided in subclauses (a) and (b) of the preceding sentence.

2.2 Charges for Recycled Water before July 1, 2013. For water supplied prior to July 1, 2013, MPWMD shall charge Buyer for service by the Project and for the use of Recycled Water as follows:

(a) A monthly quantity charge based on the quantity of Recycled Water used calculated in the same manner as the quantity charge for similarly-situated potable water users in the gravity zone as set forth in the then current Tariff Schedule for General Metered Service for the Cal-Am Monterey Peninsula Tariff Area, or any successor schedule, as approved by the California Public Utilities Commission (the "**Rate Schedule**").

(b) A monthly service charge based on the size of Buyer's Recycled Water meter(s) calculated in the same manner as the service charge for similarly-situated potable water users in the gravity zone as set forth in the Rate Schedule.

(c) A monthly equalization charge based on the aggregate amount of all taxes, charges, surcharges, assessments, fees, or other monetary impositions of any kind, however denominated and for whatever purposes, that from time to time are due and payable by similarly-situated potable water users.

The aggregate amount of all charges payable by Buyer for any Water Year is herein referred to as the "Annual Charge." The express intent of MPWMD and Buyer, except as set forth in Section 2.3 and 2.4, is that, for any period ending prior to July 1, 2013, Buyer's Annual Charge for the use of Recycled Water shall equal, to the extent practicable, and shall not exceed the annual charges Buyer would have paid to Cal-Am and MPWMD for service by the Cal-Am water system and the use of potable water for irrigation of Buyer's Property (excluding elevation zone differentials); provided, however, that the Annual Charge shall not include any quantity charge, service charge, or equalization charge under subsections (a) - (c) above, or any other charges, of Cal-Am or MPWMD that are based on increases in such charges for potable water users (irrespective of whether such users are similarly-situated users such as golf courses using potable water for irrigation) to respond to drought, rationing, emergency, excessive potable water consumption, exceedence (or threat of exceeding) legal or regulatory limitations on withdrawal from the Carmel River or Seaside Groundwater Basin, or other extraordinary conditions, and intended to induce, or require, reduction in potable water use (including but not limited to any such increases in charges reflected in the Rate Schedule).

2.3 Charges for Recycled Water on and after July 1, 2013. Commencing July 1, 2013, MPWMD shall charge Buyer for service by the Project and for the use of Recycled Water for any Fiscal Year, in an amount necessary to recover all operating, capital, reserve, financing,

and other costs of the Project during such Fiscal Year, including, without limitation, the following costs:

2.3.1 all Operation and Maintenance Expenses payable by MPWMD, CAWD, and PBCSD in such Fiscal Year, including, without limitation, amounts necessary to maintain the Operation and Maintenance Reserve Fund (as defined in the Amended and Restated Construction and Operation Agreement) at the level approved by CAWD, PBCSD, PBC, and IRWUG pursuant to the annual budget for the Project;

2.3.2 amounts necessary to maintain the Capital Reserve Fund (as defined in the Amended and Restated Construction and Operation Agreement) at the level approved by CAWD, PBCSD, PBC, and IRWUG pursuant to the annual budget for the Project ;

2.3.3 all principal installments on the Certificates of Participation's payable in such Fiscal Year and on July 1 immediately following the end of such Fiscal Year for which revenues for such payment are not on deposit with the Trustee;

2.3.4 all interest payments on the Certificates of Participation's (or estimates thereof) payable in such Fiscal Year and on July 1 immediately following the end of such Fiscal Year for which revenues are not on deposit with the Trustee;

2.3.5 all Bond Carrying Costs payable by PBC in such Fiscal Year;

2.3.6 an amount equal to the Bond Carrying Cost Annual Amortization Amount;
and

2.3.7 the cost of an IRWUG/PBC project representative (currently Brent Reitz, Project Manager for PBC)..

The costs identified above will constitute the Annual Charge to be recovered from all the Buyers during such Fiscal Year. The Annual Charge shall be determined by MPWMD at least 15 days' prior to the commencement of each Fiscal Year, provided that for the Fiscal Year commencing July 1, 2013, the Annual Charge shall be assumed to be the amounts shown on Exhibit G. Not later than July 15, 2013, PBC shall provide to MPWMD an adjustment to Exhibit G to reflect a reconciliation of all Project revenues and costs, including receivable and payables, which will be pro rated effective June 30, 2013, and identifying and quantifying any surplus revenues payable to PBC as of such date. MPWMD shall adjust the Annual Charge to reflect the PBC filing and pay any surplus revenues to PBC. In making its calculation of the Annual Charge in each subsequent year, MPWMD shall take into account any over-collection or under-collection of Bond Carrying Charges, interests payments, or of any other cost which was estimated in the prior Fiscal Year. Any undercollection shall be included as an additional charge to the first monthly installment due in the next Fiscal Year; any overcollection shall be applied to reduce the Annual Charge pro-rata over the course of the Fiscal Year.

The Annual Charge shall be determined by the Management Committee as part of its annual budget process. If for any reason the final budget is not approved prior to the commencement of any Fiscal Year, then MPMWD will utilize any preliminary budget estimates

and will adjust the Annual Charge (and remaining monthly installments) as soon as practicable following the adoption of the final budget for the Project.

The cost of the IRWUG/PBC project representative set forth in Section 2.3.7 will be set at 25% of such representative's salary and benefits (calculated at 45% of salary for such fiscal year, based upon an allocation of 25% of his time to the Project, until such time as PBC and IRWUG mutually agree on a different percentage or formula. PBC will provide this cost to MPWMD no later than 15 days prior to the commencement of each Fiscal Year.

The portion of the Annual Charge to be paid by each of the Buyers will be determined, billed, and paid by Buyer and all other Buyers pursuant to the Billing Formula attached hereto as Exhibit H.

If on any principal payment date (including, without limitation, July 1, 2013) there are insufficient Project revenues on deposit with the Trustee to pay the principal payment due on the Certificates of Participations, and PBC is required to pay such deficiency or to reimburse the Letter of Credit for payment of such deficiency, the amount of such deficiency, together with interest thereon calculated at the prime rate (or any higher rate imposed by the Letter of Credit Bank), will be paid by the Buyer or Buyers from whom such amounts are due, in equal installments over the next succeeding twelve-month period. Upon the making of any such advance by PBC or the Letter of Credit Bank (on PBC's behalf), PBC will notify MPWMD. No later than ten Business Days following notification of any such advance, MPWMD will adjust the Annual Charge and remaining monthly installments and send notice of such adjustment to the Buyers. Buyer agrees to pay any such adjusted charges. The prime rate referred to above will be the Wall Street Journal quoted prime rate on the date of such calculation by MPWMD.

2.4 Charges for Recycled Water Use After Payment of All Certificates of Participation. Upon the payment of the Certificates of Participation in full and the reimbursement of PBC of all Bond Carrying Costs, including the Bond Carrying Cost Annual Amortization Amounts, and of all advances made by PBC to pay any principal installment and/or interest on the Certificates on or after July 1, 2013, or to reimburse the Letter of Credit Bank for the same, MPWMD shall adjust Buyer's charges under Section 2.3 for the balance of the Fiscal Year to a level that assures that, to the extent practicable, Operating Revenues shall suffice to pay but not exceed the amounts required to pay the items specified in Sections 2.3.1. 2.3.2. and 2.3.7.

For purposes of establishing the Annual Charge pursuant to this Section 2.4, MPWMD shall have no discretion to vary from the decisions of the Management Committee concerning Operation and Maintenance Expenses approved by the Management Committee for the Project pursuant to the Amended and Restated Construction and Operation Agreement. The Annual Charge shall in no event exceed the Operation and Maintenance Expenses and reserve amounts for such Fiscal Year approved by the Management Committee, Operation and Maintenance Expenses and reserve amounts shall be independently audited annually.

2.5 Payment for Recycled Water.

(a) MPWMD (or its agent for purposes of billing and collection) shall invoice Buyer for all quantity charges, service charges, and equalization charges payable under Section 2.2, or the Annual Charge payable under Section 2.3 when the adjustments thereunder take effect, on a monthly basis in accordance with the Cal-Am billing procedures then in effect with respect to potable water customers.

(b) At the conclusion of each Fiscal Year, MPWMD shall prepare a final invoice for such Fiscal Year to reflect, as necessary, adjustments to assure compliance with the payment provisions of this Agreement:

(i) MPWMD shall determine whether the sum of Buyer's total payments under subsection 2.5(a) above for such Fiscal Year is equal to the Annual Charge properly payable by Buyer under Section 2.2 or, when effective, Section 2.3.

(ii) If such sum is less than the Annual Charge properly payable by Buyer for such Fiscal Year, then MPWMD shall invoice Buyer for the difference.

(iii) If such sum is greater than the Annual Charge properly payable by Buyer for such Fiscal Year, then MPWMD will refund the difference to Buyer within sixty (60) days of the end of such Fiscal Year if Operating Revenues then in the custody and control of MPWMD equal or exceed the aggregate amount of such difference for all of the Buyers. If CAWD and/or PBCSD refund to MPWMD an amount of Operating Revenues that equals the aggregate amount of such difference for all of the Buyers, MPWMD shall pay said amount over to Buyer within sixty (60) days after receipt thereof. In all other situations where the sum of Buyer's total payments under subsection 2.5(a) above for such Fiscal Year exceeds the Annual Charge properly payable by Buyer under Section 2.2 or, when effective, Section 2.3, MPWMD will credit such difference to Buyer during the subsequent Water Year.

(c) Each MPWMD invoice shall be due and payable by Buyer within the time period for payment then provided by Cal-Am with respect to potable water customers. If Buyer fails to pay to MPWMD the full amount owing under any such invoice (the "**Unpaid Balance**") on or before the last day of such time period (the "**Due Date**"), Buyer shall be obligated to pay to MPWMD a basic penalty of ten percent (10%) of the Unpaid Balance, as provided in Section 326(g) of the Monterey Peninsula Water Management District Law (the "**Basic Penalty**"). Additionally, if Buyer fails to pay the full amount of the Unpaid Balance and the Basic Penalty on or before ten (10) days after the Due Date, Buyer shall be obligated to pay to MPWMD interest on the Unpaid Balance and the Basic Penalty at the rate of one-half of one percent (1/2%) per month from the Due Date until paid, as provided in Section 326(g) of the Monterey Peninsula Water Management District Law. Additionally, MPWMD shall have all other remedies against Buyer available under the Monterey Peninsula Water Management District Law, including, without limitation, the lien rights provided by Section 326(h).

(d) MPWMD covenants and agrees to pay to CAWD and PBCSD the revenues received from the Annual Charge by MPWMD from Buyer and the other Buyers in

accordance with the Related Agreements. 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.

2.6 **Measurement of Use of Recycled Water.** The actual use of Recycled Water by Buyer for Buyer's Property shall be measured by a water meter or meters installed for the purpose of measuring such use. The measurement of such use determined by MPWMD (or its agent for purposes of billing and collection) by reading such water meter shall be deemed to be conclusive and binding on the parties, absent manifest error.

2.7 **Supplemental Potable Water Pursuant to Section 6.1 or 6.2.** Any potable water delivered to and used by Buyer pursuant to the provisions of Sections 6.1 or 6.2 shall be deemed to be "**Recycled Water**" purchased and used by Buyer for purposes of Sections 2.2, 2.4, 2.5 and 2.6 of this Agreement, but for no other purposes. Buyer shall pay MPWMD and MPWMD shall pay Cal-Am for such water.

2.8 **Surplus Recycled Water.**

(a) MPWMD and Buyer acknowledge and agree that the rights of Buyer and any other Buyers to purchase and receive Recycled Water for their respective Recycled Water Irrigation Areas shall be primary and superior to the rights of Buyer, any other Buyers, or any other person to purchase and receive Recycled Water for any suitable use on any property other than the Recycled Water Irrigation Areas. Subject to this express acknowledgement and agreement, MPWMD and Buyer acknowledge that the Project may be capable of producing more Recycled Water during certain time periods than the aggregate amount of Recycled Water required by the Recycled Water Irrigation Areas during such time periods. However, inasmuch as Buyer and the other Buyers have the primary and superior rights described above and are reliant on the Recycled Water produced by the Project to satisfy all of the irrigation needs of their Recycled Water Irrigation Areas (except as otherwise provided in Sections 6.1, 6.2, and 6.3), MPWMD and Buyer agree that MPWMD shall not sell or make available Recycled Water to any person other than Buyer and the other Buyers during any Water Fiscal Year unless and only to the extent that PBC and IRWUG each agree there exists Recycled Water which exceeds the quantity of Recycled Water necessary or desirable to assure that all of the irrigation needs of the Recycled Water Irrigation Areas will be fully satisfied during such Water Year and to further assure that sufficient quantities of Recycled Water will be stored for use during the succeeding Water Year. Recycled Water satisfying the foregoing requirement shall constitute and is defined as "**Surplus Recycled Water.**"

(b) With respect to Surplus Recycled Water, MPWMD and Buyer agree (and acknowledge that PBC and IRWUG have agreed) as follows:

(i) If the discharge of Recycled Water is required to comply with, or listed as an option for complying with, one or more conditions of approval imposed on PBC's Del Monte Forest Plan, then during any Water Year in which rainfall (measured as required by such condition(s) of approval) between October 1 and May 31 exceeds the fifty (50) year

average rainfall for this period of months by more than twenty-five percent (25%), there shall exist up to thirty (30) acre feet of Surplus Recycled Water which MPWMD shall make available as provided in this subsection 2.8 (b)(i), without further approval or agreement from PBC and IRWUG. MPWMD shall, upon the demand of PBC, make up to 30 acre feet of such Surplus Recycled Water available to CAWD without charge to CAWD or PBCSD, solely for discharge in such Water Year and October of the following Water Year as required by such condition(s) of approval. The incremental cost incurred by CAWD and PBCSD in producing and supplying such Surplus Recycled Water for discharge shall not be charged to the Project (as an Operation and Maintenance Expense or otherwise), but instead shall be paid from funds provided by PBC and/or funds arranged by PBC or CAWD to be provided from other sources.

(ii) During any Water Year, other than a Water Year as described in (b)(i) above, there shall exist an annual total of twenty (20) acre feet of Surplus Recycled Water if, and during such time periods when, the Forest Lake Reservoir contains more than two hundred ten (210) acre feet of Recycled Water. MPWMD hereby authorizes CAWD or PBCSD to sell or otherwise dispose of such twenty (20) acre feet during such time periods when the Forest Lake Reservoir contains more than two hundred ten (210) acre feet of Recycled Water, for beneficial uses approved in advance by the General Manager of MPWMD, without further approval or agreement from PBC and IRWUG, provided that no such sale or disposition will cause the Forest Lake Reservoir to contain less than two hundred ten (210) acre feet of Recycled Water. The amount of Recycled Water sold or otherwise disposed of by CAWD or PBCSD as Surplus Recycled Water pursuant to this subsection (b)(ii) shall not exceed twenty (20) acre feet on a cumulative annual basis during the applicable Water Year. The incremental cost incurred by CAWD and PBCSD in producing and supplying such Surplus Recycled Water shall either:

(A) be recovered through revenues received by CAWD and/or PBCSD for such supply which are applied to Operating Revenues; or

(B) to the extent not so recovered, shall be paid from funds provided by CAWD and/or PBCSD.

(iii) With respect to any determination and sale of Surplus Recycled Water over and above the quantity of Surplus Recycled Water specified in subsections (b)(i) and (b)(ii) above, CAWD and PBCSD may at any time advise MPWMD that they believe there exists a specified quantity of Recycled Water that may be determined to be Surplus Recycled Water, that there is a purchaser ready and willing to pay a specified amount for the quantity of Recycled Water, and that CAWD and PBCSD request authorization for a determination and sale as Surplus Recycled Water. MPWMD shall thereupon promptly give notice to PBC and IRWUG of the request. If and to the extent that PBC and IRWUG each agree, in their sole discretion, that the supply of Recycled Water exceeds the quantity necessary or desirable to assure that all of the irrigation needs of the Recycled Water Irrigation Areas will be fully satisfied during that Water Year and to further assure that sufficient quantities of Recycled Water will be stored for use during the succeeding Water Year, PBC and IRWUG shall promptly notify MPWMD of their determination. The quantity of Recycled Water specified in PBC's and IRWUG's notice to MPWMD shall then be classified as Surplus Recycled Water, and may be

sold by MPWMD pursuant to the CAWD and PBCSD request. In making their determination under this subsection (b)(iii), PBC's and IRWUG's decision must be unanimous, and they may determine that no Surplus Recycled Water exists, or that a lesser amount of Surplus Recycled Water exists than that requested. Nothing herein shall prevent MPWMD, upon obtaining the consent and authorization of CAWD and PBCSD, from requesting from PBC and IRWUG a Surplus Recycled Water determination and approval for sale under the same terms, conditions and procedures set out in this subsection (b)(iii) for a CAWD and PBCSD request.

(c) With respect to Surplus Recycled Water which MPWMD may sell or otherwise dispose of pursuant to subsection (b)(iii) above:

(i) MPWMD shall use reasonable efforts to sell any such Surplus Recycled Water to purchasers, wherever located:

(A) at the highest price then available in the market, but in no event less than the pro rata Annual Charge for the Surplus Recycled Water; and

(B) the contract shall be on an "interruptible," "as available" basis, as those terms are customarily used in the California water community (meaning that the delivery of Surplus Recycled Water may be suspended to permit the continued supply of Recycled Water to the Recycled Water Irrigation Areas owned by Buyer and other Buyers pursuant to the rights described above as "primary and superior"), with an express acknowledgement that Surplus Recycled Water can only be supplied to the proposed buyer on a daily basis to the extent the requirements of the Recycled Water Irrigation Areas have been completely satisfied.

(ii) All revenues from the sale of Surplus Recycled Water shall constitute, and be applied to, Operating Revenues of the Project.

(d) Buyer agrees that Buyer will be bound by the determinations made with respect to the existence (and related discharge, sale, or other disposition) of Surplus Recycled Water pursuant to the provisions of this Section 2.8, and shall have no claim or right of action against MPWMD, CAWD, PBCSD, PBC, or IRWUG in the event that any such determinations cause, in any Water Year, less Recycled Water to be delivered to Buyer than necessary to meet all of the irrigation requirements of Buyer's Property.

3. TERM

3.1 **Term.** This Agreement shall commence and be effective and binding as of its date, and shall continue and remain in effect until terminated pursuant to Section 3.2.

3.2 **Termination by MPWMD or Buyer.** Neither party shall have the right to terminate this Agreement without the consent of the other party as long as the Project is capable of producing and distributing a sufficient quality and quantity of Recycled Water to meet all of the irrigation requirements of the Recycled Water Irrigation Areas in accordance with this Agreement, unless an alternative long-term supply of non-potable water of sufficient quality and

quantity to meet all of the irrigation needs on Buyer's Property is then reasonably available to Buyer.

4. IRRIGATION SYSTEM

4.1 **Recycled Water Irrigation Area – Ownership and Operation.** Buyer is the owner of the Irrigation System. Buyer shall be responsible for the operation, including, without limitation, maintenance and repair, of the Irrigation System and for all related costs and expenses.

4.2 **Permits.** Buyer shall (a) timely execute and file, to the extent not previously executed and filed, all applications for all Permits necessary to use the Recycled Water on Buyer's Property in the manner contemplated or required by this Agreement, and (b) timely satisfy and comply with all terms and conditions of all Permits, provided, however, that Buyer shall have the right to object to the imposition of any unreasonable terms or conditions proposed in any Permits. Buyer shall at all times maintain the Permits in full force and effect at its own expense.

5. WATER QUALITY

5.1 **Quality of Recycled Water.** Pursuant to the Amended and Restated Construction and Operation Agreement, CAWD and PBCSD have covenanted and agreed that all Recycled Water sold to Buyer will meet the quality standards set forth in attached Exhibit "E." Buyer is an intended beneficiary of the Amended and Restated Construction and Operation Agreement as and to the extent provided therein, and has the right to enforce the requirements set forth in the preceding sentence.

5.2 **Water Quality Reports.** Upon request, Buyer shall be entitled to receive from MPWMD copies of any reports prepared by or on behalf of MPWMD relating to the quality of the Recycled Water sold to Buyer.

6. WATER QUANTITY

6.1 Supply of Potable Water During an Interruption.

(a) Prior to MPWMD Hearing. If there is an Interruption, following written notice to MPWMD from Buyer (or one of the other Buyers), CAWD, PBCSD and/or Cal-Am, are authorized to turn on the connection by which potable water enters the Distribution System serving the Recycled Water Irrigation Areas. Except as otherwise provided in Section 6.2, during the duration of the Interruption, or until the MPWMD determination becomes effective pursuant to subsection 6.1(b)(iv), whichever first occurs, Buyer may use such quantities of potable water as are required to meet the irrigation requirements of each Recycled Water Irrigation Area owned by Buyer. Reports of the quantities of potable water introduced into the Distribution System through this connection on a daily basis shall be submitted to MPWMD each week throughout the Interruption.

(b) Procedures leading up to hearing.

(i) Under normal circumstances, potable water shall not be used for irrigation of a Recycled Water Irrigation Area for any longer than the period of time reasonably required to promptly and diligently complete repair or replacement or other activities necessary to restore Recycled Water service, provided, however, that potable water shall be made available for irrigating tees and greens of the Recycled Water Irrigation Areas in sufficient quantities to maintain them in good health and condition during an Interruption, without any limitation on the duration.

(ii) If potable water has been used for irrigation of a Recycled Water Irrigation Area for 15 days, MPWMD may thereafter give notice of, and hold, a hearing (1) if it appears that the repair or replacement or other activities necessary to restore Recycled Water service are not being completed promptly or diligently, or (2) upon the request of any interested party, who asserts that due to unique or unusual circumstances there may be a need to use potable water for irrigation of a Recycled Water Irrigation Area for a period longer than the period of time reasonably required to promptly and diligently complete repair or replacement or other activities necessary to restore Recycled Water service. The purpose of the hearing, if held, will be to determine the period of time during which, and what quantities of, potable water shall continue to be supplied for irrigation of the affected Recycled Water Irrigation Areas, other than the tees and greens of the Recycled Water Irrigation Areas.

(iii) MPWMD shall give CAWD, PBCSD, Cal-Am, and the Buyers who own each of the Recycled Water Irrigation Areas not less than 30 days advance written notice for any such hearing, which notice shall set forth the basis of the hearing (as described in the preceding subsection (b)(ii)).

(iv) Upon considering the evidence presented (including written materials that may be included in an Administrative Record), MPWMD may determine the period of time during which, and what quantities of, potable water shall continue to be supplied for irrigation of the affected Recycled Water Irrigation Areas other than the tees and greens. MPWMD shall give CAWD, PBCSD, Cal-Am, and the Buyers who own the Recycled Water Irrigation Areas written notice of any such determination, and the determination shall be effective on the 15th day following service of the notice by personal delivery, or by facsimile.

(c) Compliance with MPWMD Determination. Upon the effective date of any such MPWMD determination pursuant to subsection 6.1(b)(iv), the Buyer shall comply with such determination unless and until expressly relieved from doing so by written order from a court pursuant to Section 11.13 below.

6.2 Potable Water Supply During an Interruption and an Emergency.

(a) If MPWMD has adopted an ordinance in response to any emergency caused by drought, or other threatened or existing water shortage pursuant to Section 332 of the Monterey Peninsula Water Management Law, said ordinance shall prevail over contrary provisions of Section 6.1. Notwithstanding the preceding sentence and subsection (b), potable water shall be made available for irrigating tees and greens of the Recycled Water Irrigation

Areas in sufficient quantities to maintain them in good health and condition during an Interruption, without any limitation on the duration.

(b) During an Interruption when such an ordinance is in effect, if Stage 5 Water Rationing or a higher Stage of Water Rationing is in effect under MPWMD Rules 165 through 167 (or any future amendment or restatement thereof, as may from time to time be adopted by the MPWMD Board), the use of potable water during any such Interruption shall be subject to such restrictions as may be imposed by the Board upon other golf courses and other similarly situated users within MPWMD in response to a water shortage emergency declared by the Board.

(c) Except as set forth in subsections (a) and (b) above, MPWMD shall have no obligation to authorize CAWD, PBCSD, and/or Cal-Am to supply any potable water through the connection by which potable water enters the Distribution System serving the Recycled Water Irrigation Areas (or otherwise) during an Interruption when an ordinance as described in subsection (b) is in effect.

(d) If (1) an emergency or major disaster is declared by the President of the United States, or (2) a “state of war emergency,” “state of emergency,” or “local emergency,” as those terms are respectively defined in Government Code Section 8558, has been duly proclaimed pursuant to the California Emergency Services Act, with respect to all or any portion of the territory of MPWMD, the provisions of Section 6.1 and the preceding provisions of Section 6.2 shall yield as necessary to respond to the conditions giving rise to the declaration or proclamation of the Emergency.

6.3 Augmentation of Insufficient Supply with Outside Sources.

(a) In the event the Recycled Water produced and delivered by the Project, as supplemented by potable water during an Interruption as specifically permitted under the provisions of Section 6.1 or Section 6.2 above, is insufficient to meet the aggregate requirements of the Recycled Water Irrigation Areas at any given time (“shortfall”), Buyer may purchase or use water from any other source legally available to Buyer, including percolating ground water underlying Buyer’s Property, to make up any such shortfall for so long as such shortfall exists, provided such source supplies such water from other than the Carmel River System or the Seaside Groundwater Basin.

(b) Any such use of water by Buyer pursuant to the preceding subsection 6.3(a) shall be consistent with the requirements of all Permits, and otherwise in compliance with all applicable laws and regulations, including those of MPWMD. Additionally, any such use shall be reported to MPWMD on a quarterly basis. Buyer’s report shall include the source, quantity, time(s), and duration(s) of any such use, and any other information reasonably requested by MPWMD.

6.4 **Sharing of Insufficient Supply.**

(a) In the event the Recycled Water produced and delivered by the Project, as supplemented by potable water during an Interruption as specifically permitted under the provisions of Section 6.1 or Section 6.2 above, is insufficient to meet the aggregate requirements of the Recycled Water Irrigation Areas at any given time, then the Buyers shall share the aggregate amount of Recycled Water (and such potable water as specifically permitted under the provisions of Section 6.1 and 6.2 above, during an Interruption) available through the Distribution System in the manner agreed by all of the Buyers. In the absence of such agreement, the Buyers shall share the aggregate amount of Recycled Water and potable water available in proportion to their respective Percentage Shares as set forth in attached Exhibit C.

(b) If Buyer's Property consists of more than one of the Recycled Water Irrigation Areas, then Buyer shall be entitled to aggregate the Percentage Shares for all the Recycled Water Irrigation Areas owned by Buyer, and Buyer may use its aggregate Percentage Share of Recycled Water (and any potable water specifically permitted under the provisions of Section 6.1 or Section 6.2 above during any Interruption) on all or any of the Recycled Water Irrigation Areas owned by Buyer in any manner Buyer determines in its sole discretion.

6.5 **Limitation to Required Use.** At no time shall any Recycled Water Irrigation Area receive or use a quantity of Recycled Water (and potable water specifically permitted during an Interruption under the provisions of Section 6.1 or Section 6.2 above) in excess of its irrigation requirements.

6.6 **Buyer's Right to Receive Reports.** Upon request, Buyer shall be entitled to receive from MPWMD copies of any reports prepared by or on behalf of MPWMD relating to the use of Recycled Water and potable water by the Recycled Water Irrigation Areas for irrigation, including, without limitation, any reports relating to each period in which there is an insufficient supply as more fully described in Sections 6.3 and 6.4.

7. **OPERATION OF THE PROJECT**

7.1 **Standards of Operation.** Buyer shall ensure that the Irrigation System is operated, maintained and repaired in compliance with (a) applicable provisions of federal, state and local laws, regulations, permits and approvals, including, without limitation, the Permits, (b) insurance policies in place with respect to such Irrigation System, (c) good engineering practices, and (d) prudent business practices. The Project shall be operated, maintained and repaired as provided in the Amended and Restated Construction and Operation Agreement to produce such quantities of Recycled Water as the Buyers shall require, from time to time, to irrigate the Recycled Water Irrigation Areas except during an Interruption, and to produce Recycled Water meeting the quality standards set forth in attached Exhibit "E." Buyer is an intended beneficiary of the Amended and Restated Construction and Operation Agreement as and to the extent provided therein, and has the right to enforce the requirements set forth in the preceding sentence.

7.2 Insurance on Irrigation System.

(a) Buyer shall continue to obtain and maintain in effect during the term of this Agreement insurance for the Irrigation System, with sufficient coverages therefore (including with respect to risks, amounts and deductibles), and with such insurance companies, as are authorized by the Commissioner of Insurance to supply insurance in the State of California. Each such insurance policy shall (1) name MPWMD and PBC as an additional insured thereunder, and (2) provide that it may not be terminated or amended or otherwise modified, in any material respect, without MPWMD and PBC being given at least thirty (30) days prior written notice of such termination, amendment or modification. Upon receipt of any such notice, MPWMD and PBC shall have the same approval rights with respect to any replacement policy or any material amendment or other modification as they had with respect to the original policy. Upon the initial placement and the renewal of each such insurance policy, Buyer shall provide MPWMD and PBC with written evidence, in the form of policies or certificates of insurance, of such insurance.

(b) In the event that a casualty should occur to any portion of the Irrigation System on Buyer's Property, Buyer shall promptly thereafter repair or reconstruct such portion using any proceeds of the insurance described in Section 7.2(a) above and such other funds of Buyer as are necessary to complete such work.

7.3 **Insurance on Project.** The Amended and Restated Construction and Operation Agreement requires CAWD and PBCSD to obtain and maintain insurance with respect to the portions of the Project and the operations thereof for which each is responsible, and provides that Buyer shall be named as an additional insured under any such insurance policies, as and to the extent more particularly specified therein. Buyer is an intended beneficiary of the Amended and Restated Construction and Operation Agreement as and to the extent provided therein.

8. REPRESENTATIONS AND WARRANTIES

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

(a) the execution and delivery of this Agreement, 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;

(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 its charter documents, if any, 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 or to which it or any of its property is subject;

(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) except as may be required to construct and operate the Irrigation System, 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.

9. REMEDIES FOR BREACH OF COVENANTS

9.1 Remedies in General. Neither MPWMD nor Buyer 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 acknowledges 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. Any such relief shall be determined in an action brought and prosecuted in accordance with Section 11.13(b).

9.2 Certain Acknowledgements of Buyer. Buyer acknowledges that MPWMD is not responsible for the quantity and quality of Recycled Water delivered by the Project to Buyer, and the design, construction, management, operation, and maintenance of the Project. In entering into this Agreement, MPWMD is dependant on the ability of CAWD and PBCSD to produce, deliver, and supply Recycled Water to Buyer as provided in this Agreement. Buyer is an intended beneficiary of the Amended and Restated Construction and Operation Agreement as and to the extent provided therein, and Buyer shall not seek any redress against MPWMD for the failure of the Project to deliver the quantity or quality of water meeting the standards for Recycled Water, except and to the extent such failure is caused by a breach by MPWMD of this Agreement or any of the Related Agreements to which MPWMD is a party. Further, MPWMD shall have no liability for (i) decisions made with respect to the existence of Surplus Recycled Water or the periods for which Surplus Recycled Water may be sold, or (ii) any decisions of the Management Committee, including without limitation those made with respect to Operation and Maintenance Expenses. No director, officer, or employee of MPWMD shall be individually or personally liable for any obligation of MPWMD contained or referred to herein.

9.3 Limitation of Liability of CAWD and PBCSD. Buyer acknowledges and agrees that Section 3.2(c) of the Amended and Restated Construction and Operation Agreement imposes a limit on the liability of CAWD and PBCSD for damages resulting from the delivery of water for irrigation of Buyer's Property, and that Buyer shall be bound by the terms thereof.

10. INDEMNIFICATION

10.1 **General Indemnification.** Subject to the limitations in this Section 10, each party (the “**Indemnifying Party**”) shall defend and indemnify, and hold harmless, the other party (the “**Indemnified Party**”) from and against any and all damages, liabilities, losses, and costs or expenses suffered or incurred by the Indemnified Party, arising out of, or resulting from, any breach of its representations, warranties or agreements set forth in this Agreement.

10.2 **Procedure for Indemnification.** In the event that any legal proceedings are instituted, or any claim or demand is asserted, by any third party which may give rise to any damage, liability, loss, or cost or expense in respect of which any party has indemnified, or is obligated to indemnify, the other party under Section 10.1 above, the Indemnified Party shall give the Indemnifying Party written notice of the institution of such proceedings, or the assertion of such claim or demand, promptly after the Indemnified Party first becomes aware thereof; provided, however, any failure by the Indemnified Party to give such notice on such prompt basis shall not affect any of its rights to indemnification hereunder unless such failure materially and adversely affects the ability of the Indemnifying Party to defend such proceeding. The Indemnifying Party shall have the right, at its option and at its own expense, to utilize counsel of its choice in connection with such proceeding, claim or demand, subject to the approval of the Indemnified Party, which approval shall not be unreasonably withheld or delayed, and to defend against, negotiate with respect to, settle or otherwise deal with such proceeding, claim or demand; provided, however, that no settlement of such proceeding, claim or demand shall be made without the prior written consent of the Indemnified Party, which consent shall not be unreasonably withheld or delayed, unless, pursuant to the terms and conditions of such settlement, the Indemnified Party shall be released from any liability or other exposure with respect to such proceeding, claim or demand; and provided, further, that the Indemnified Party may participate in any such proceeding with counsel of its choice at its own expense. In the event, or to the extent, the Indemnifying Party elects not to, or fails to, defend such proceeding, claim or demand and the Indemnified Party defends against, settles or otherwise deals with any such proceeding, claim or demand, any settlement thereof may be made without the consent of the Indemnifying Party if it is given written notice of the material terms and conditions of such settlement at least ten (10) days prior to a binding agreement with respect to such settlement being reached. Each of the parties agrees to cooperate fully with each other in connection with the defense, negotiation or settlement of any such proceeding, claim or demand.

10.3 **Payment of Indemnified Claim.** Upon a final judgment or award with respect to any proceeding of the nature described in Section 10.2 having been rendered by a court, arbitration board or administrative agency of competent jurisdiction and the expiration of the time in which an appeal therefrom may be made, or a settlement of such proceeding, claim or demand having been consummated, or the parties having arrived at a mutually binding agreement with respect to each separate matter indemnified hereunder pursuant to Section 10.1, the Indemnifying Party shall forthwith pay all of the sums so owing to the Indemnified Party. In the event any such proceeding is brought, in which allegations of fault are made against both of the parties, the extent of any indemnification shall be determined in accordance with the findings of the court as to the relative contribution by each of the parties to the damage suffered by the party seeking indemnity with respect to such proceeding.

11. MISCELLANEOUS

11.1 **Standard of Reasonableness for Approvals.** Whenever in this Agreement any party has the right to approve or consent to any matter, such approval or consent shall not be unreasonably withheld or delayed.

11.2 **Further Assurances.** Each of the parties agrees to execute, and deliver to the other parties, such documents and instruments, and take such actions, as may reasonably be required to effectuate the terms and conditions of this Agreement; provided, however, such covenant shall not have the effect of increasing the obligations of any party pursuant to this Agreement or require any representations and warranties by any party in addition to those of such party set forth herein.

11.3 **Relationship of the Parties.** Nothing in this Agreement shall create a joint venture, partnership or principal-agent relationship between or among any of the parties.

11.4 **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 being personally delivered or placed in the United States mail, postage prepaid, certified or registered mail, sent by facsimile transmission, or sent by overnight delivery service, addressed to the party to whom notice is to be given. Each such notice shall be deemed to be effective upon receipt, if personally delivered, sent by facsimile transmission or sent by airfreight, or five (5) days after being so mailed.

If to MPWMD:	If to Buyer:	If to IRWUG:	If to PBC:
Monterey Peninsula Water Management District 5 Harris Court, Bldg. B Monterey, CA 93940 P.O. Box 85 Monterey, CA 93942-0085 Attn.: General Manager	Monterey Peninsula Country Club 3000 Club Road Pebble Beach, CA 93953 Attn.: General Manager		Pebble Beach Company 4005 Sunridge Road P.O. Box 1767 Pebble Beach, CA 93953 Attn: Executive VP, Real Estate

11.5 **Exhibits.** All exhibits referenced in and attached to this Agreement are hereby incorporated herein and made a part of this Agreement, for all purposes, by this reference.

11.6 **Assignment.** This Agreement shall be binding upon, and inure to the benefit of, the successors and permitted assigns of the parties. Buyer shall have the right to assign any or all of its rights or obligations under this Agreement to (a) an entity which manages Buyer's Property

pursuant to a contract with Buyer; (b) a lessee of Buyer's Property and (c) a successor in interest in the ownership of Buyer's Property, and upon such assignment, Buyer shall be relieved of all such obligations so assigned. MPWMD shall have the right to assign its rights under this Agreement to a trustee (or person or entity in a similar capacity) to the extent necessary in connection with the issuance of the Certificates of Participation, or to a duly appointed successor public agency. After the Certificates of Participation are fully paid, MPWMD shall have the right to assign its rights and delegate its duties with respect to the sale and delivery of Recycled Water under this Agreement to CAWD and PBCSD, as provided in an assignment and assumption agreement as approved by MPWMD, CAWD, PBCSD, and PBC; provided, however, that MPWMD shall not be relieved of any of its regulatory rights and obligations under the Amended and Restated Construction and Operation Agreement or under Sections 6.1, 6.2, and 6.3 of this Agreement with respect to the supply of potable water during an Interruption, and otherwise as provided in those sections.

11.7 Severability. If any provision of this Agreement is declared invalid or unenforceable in any jurisdiction by a court of competent jurisdiction, then such portion or provision shall be deemed to be severable, to the extent invalid or unenforceable, from this Agreement as to such jurisdiction (but, to the extent permitted by law, not elsewhere) and shall not affect the remainder hereof. Notwithstanding the foregoing, (a) such provision of this Agreement shall be interpreted by the parties and by any such court, to the extent possible, in such a manner that such provision shall be deemed to be valid and enforceable, and (b) such court shall have the right to make such modifications to any provision of this Agreement as do not materially affect the rights or obligations under this Agreement of the parties hereto and thereto and as may be necessary in order for such provision to be valid and enforceable.

11.8 Waiver. No waiver of any right or obligation of any of the parties shall be effective unless in a writing, specifying such waiver, executed by the party against whom such waiver is sought to be enforced. A waiver by any of the parties of any of its rights under this Agreement on any occasion shall not be a bar to the exercise of the same right on any subsequent occasion or of any other right at any time.

11.9 Headings and Titles. The designation of a title, or a caption or a heading, for each section of this Agreement is for the purpose of convenience only and shall not be used to limit or construe the contents of this Agreement.

11.10 Presumptions. Because all of the parties have participated in preparing this Agreement, there shall be no presumption against any party on the ground that such party was responsible for preparing this Agreement or any part hereof.

11.11 Amendment or Modification. This Agreement may be amended, altered, or modified only by a writing, specifying such amendment, alteration or modification, executed by all of the parties hereto.

11.12 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which shall constitute one (1) and the same instrument.

11.13 Governing Law and Dispute Resolution.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of California.

(b) 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.

(c) Any party dissatisfied with the determination made following the procedures specified in Section 6.1(b) of this Agreement 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.

(d) Each party shall comply with the determination made following the procedures specified in Section 6.1(b) of this Agreement unless and until expressly relieved from doing so by written order from the court.

11.14 Entire Agreement. This Agreement and the Amended and Restated Construction and Operation Agreement constitute the entire agreement between the parties regarding the subject matter hereof and thereof, and supersede all prior or contemporaneous negotiations, understandings or agreements of the parties, whether written or oral, with respect to such subject matter.

11.15 [Third Party Beneficiaries. PBC and IRWUG as third party are hereby expressly made beneficiaries of the Agreement.]

PBC THIRD PARTY BENEFICIARY

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

Monterey Peninsula Water
Management District, a
California public agency

Monterey Peninsula Country Club, a
California nonprofit mutual benefit
Corporation

By: _____
Its: General Manager

By: _____
Its: General Manager and
Assistant Secretary-Treasurer

EXHIBIT 24-A

**EXHIBIT "A"
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 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 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. The main transmission line begins at the tertiary treatment plant and terminates 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 24-A

EXHIBIT "B" 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 "E." 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 355 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 Recycled Water meeting the quality requirements set forth in attached Exhibit "E."

EXHIBIT 24-A

**EXHIBIT "C"
RECYCLED WATER IRRIGATION AREAS**

Replace with new Exhibit C

D-1

*Agreement for Sale of Recycled Water between MPWMD and Monterey Peninsula Country Club
Dated as of December 15, 2004*

EXHIBIT "D"
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.

EXHIBIT 24-A

**EXHIBIT "E"
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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