

RULE 23.5 - PEBBLE BEACH COMPANY, J. LOHR PROPERTIES, INC., AND THE HESTER HYDE GRIFFIN TRUST ENTITLEMENTS

A. ISSUANCE OF WATER USE PERMITS

MPWMD has granted Water Entitlements to Pebble Beach Company (“PBC”), J. Lohr Properties, Inc. (“Lohr”), for the subdivision known as Macomber Estates, and the Hester Hyde Griffin Trust (“Griffin”) authorizing the Expansion and Extension of the Cal-Am Water Distribution System to provide water service and Connections for the benefit of the properties identified in the Fiscal Sponsorship Agreement (such properties being the “Benefited Properties” described in Exhibit A thereto as amended¹). By virtue of the Water Entitlement, each Water Use Permit has granted a vested property interest upon one or more Benefited Properties 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 the California-American Water Company (“Cal-Am”).

¹After July 1, 2022, Benefitted Properties not owned by Pebble Beach Company may include Residential and Non-Residential Sites.

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

1. the permit shall not limit the power of the Monterey Peninsula Water Management District (“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, Capacity Fees, 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 Rule:
 - 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 Capacity Fees 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 Rule, 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 subparagraphs A-1 through A-5.
- 7. Permits issued pursuant to this Rule shall represent a vested property interest upon issuance and shall not be subject to Revocation or cancellation except as expressly set forth in subparagraph D 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 Distribution 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 subparagraph D below.

B. WATER USE PERMIT PROVISIONS

Each Water Use Permit issued by the General Manager shall identify, with respect to the Benefited Property:

1. the nature (Industrial/Commercial/Residential) and location of the water use to be applied to each Benefited Property, and the consistency of such water use with existing land use and zoning plans;
2. the number and nature of Connections projected for each Benefited Property; and
3. the amount of the Water Entitlement dedicated to, conveyed with, or separately conveyed to, the Benefited Property.

C. AMENDMENT OF WATER USE PERMITS

1. The Owner of any Benefited Property, shall, upon request, be entitled to an amendment to any Water Use Permit to reduce, or increase (up to the amount of the Water Entitlement specified in the Water Use Permit pursuant to subparagraph B-3 of this Rule), or change the number and type of Connections and water use with respect to that Benefited Property. In addition, the Owner of any Benefited Property not described in subparagraph C-2 or C-3 below shall, upon request, be entitled to an amendment to any Water Use Permit to reduce, or increase, or change the number and type of Connections and water use with respect to any Benefited Property owned by such Owner, provided that in no event shall the aggregate amount of annual water usage for the Benefited Properties owned by that Owner exceed the aggregate Water Entitlement allocated to the Benefited Properties of that Owner, and provided further that the reallocation of Connections shall be allowed only among those locations identified as Benefited Properties).
2. As an integral part of the conveyance of title to one or more Benefited Properties, Water Use Permits shall be conveyed and assigned to the successors-in-interest to the Benefited Properties to which the pertinent portion of the Water Entitlement is dedicated.
3. Owners who have received a Water Use Permit from MPWMD for the portion of the Water Entitlement acquired by separate sale and conveyance from PBC pursuant to Section Three of Ordinance No. 109 shall be entitled to use up to the quantity of the Water Entitlement evidenced therein only on the Benefited Property to which it applies. Such Owners shall not have the right to further sell or convey the Water Use Permit or the corresponding portion of the Water Entitlement.

D. REVOCATION, TERMINATION, OR MODIFICATION OF WATER USE PERMITS

Each Water Use Permit held by the 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 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 Certificate of Participation.

All Water Use Permits issued to evidence the Water Entitlement conveyed by PBC pursuant to Subsections C and D of Section Three of Ordinance No. 109 shall not be Revoked (as defined in Rule 11) or Terminated as defined herein with respect to the entire Water Entitlement so conveyed except as set forth in the following sentences.

Notwithstanding the preceding sentences of this Subsection D, the actual use on each of the properties to which a portion of the Water Entitlement is dedicated (after conveyance by PBC pursuant to Subsections C and D of Section Three of Ordinance No. 109) shall at all times remain subject to the limitations and restrictions referenced in Subsections A through C of this Rule 23.5, which shall be enforced in the manner determined by MPWMD to be necessary. In order to facilitate enforcement of this limitation, MPWMD shall 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.

Moreover, 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 subparagraph D, 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 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 Water Distribution System.

For example, Persons using water from the Cal-Am Water Distribution System are required to reduce their water usage in compliance with MPWMD Regulation XV 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.

E. CAL-AM SYSTEM EXPANSION/EXTENSION PURSUANT TO WATER USE PERMITS

Each Water Use Permit shall entitle the Owner of a Benefited Property to Potable water service to be provided by the Cal-Am Water Distribution System for such Benefited Properties, including the installation of water meters and mains as necessary notwithstanding the existence of a moratorium or a temporary delay on new Connections, upon payment of the fees required by subparagraph E-2 and a complete application for a Water Permit as described in Rule 21-B.

1. The payment of any customary fees and Capacity Fees required by both Cal-Am and MPWMD of Water Users within the Cal-Am Service Area, calculated upon the basis of the annual water usage Capacity for the Benefited Property determined as set forth in Rule 24 of MPWMD's Rules and Regulations.
2. Upon the filing of the information and payment of the fees required above, the General Manager shall issue a Water Permit pursuant to those provisions of Rule 23 authorizing a Connection to or modification of a water use on the California American Water Water Distribution System. Customary fees and Capacity Fees shall be calculated based upon the Water Use Capacity for proposed or planned development upon Benefited Properties and calculated in the manner described in Rule 24. The water use represented by such Connection to or modification of the Cal-Am Water Distribution System shall not exceed the Water Entitlement evidenced by such Water Use Permit. In the event that an Owner of any Benefited Property requests a Connection to or modification of the Cal-Am Water Distribution System with respect to less than all of the Water Entitlement evidenced by such Water Use Permit, the General Manager shall make a record of the respective amounts deducted from and remaining under the pertinent Water Entitlement (as evidenced in the Water Use Permit).
3. The Owner of any Benefited Property to which the Owner has previously applied a portion of the Water Entitlement through prior Connection to or modification of the Cal-Am Water Distribution System shall be entitled to increase the annual water use on such Benefited Property upon presentation of the information and payment of the fees set forth in this subparagraph E, provided that such increase

does not cause the water use on the Benefited Property (or, in the case of PBC, PBC's Benefited Properties) to exceed the Water Entitlement owned by such Owner.

Cal-Am shall be authorized to execute a contract with the Fiscal Sponsor to enable the provision of water service pursuant to subsections C and D of Section Three of Ordinance No. 109 consistent with the Water Entitlement evidenced by the Water Use Permit issued under this provision. Such agreement with Cal-Am shall at the Fiscal Sponsor's option be a condition precedent to the financing pursuant to Section Three of Ordinance No. 109 that is to pay for the Capital Costs of the Project Expansion. The actions required to be taken by the General Manager pursuant to the foregoing provisions of this paragraph E shall be ministerial, non-discretionary acts which shall not be affected by any water moratorium, water emergency, Allocation decision or other curtailment on the setting of new water meters for the Cal-Am Water Distribution System and shall be enforceable by mandamus.

4. Nothing in the foregoing is intended to or shall 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 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 Regulation XV, the 2016 Monterey Peninsula Water Conservation and 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.

F. PROCEDURE IN CASE OF INTERRUPTION OF RECYCLED WATER DELIVERIES

1. The provisions of this subparagraph F shall be applicable only after the Project Expansion is Completed. After the Project Expansion is Completed, if there is an Interruption in Recycled Water deliveries to any Recycled Water Irrigation Area, the temporary use of Potable water for irrigating each such Recycled Water Irrigation Area is authorized in the manner described in this Subsection F. Following written notice to MPWMD from an Owner of the affected area, CAWD, PBCSD and/or Cal-Am, 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. Reports of the quantities of Potable water introduced into the Project through this Connection on a daily basis shall be submitted to MPWMD each week throughout the Interruption.

2. 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 that Potable water shall be made available for irrigating tees and greens during an Interruption without any limitation on the duration.
3. 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 (a) 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 (b) 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 is 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 Area(s).
4. MPWMD shall give CAWD, PBCSD, Cal-Am, and the Owners of each affected Recycled Water Irrigation Area(s) 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 sentence).
5. 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 Area(s). MPWMD shall give CAWD, PBCSD, Cal-Am, and the Owners of the affected Recycled Water Irrigation Area(s) written notice of such determination, and the determination shall be effective on the 15th day following service of the notice by personal delivery or by facsimile, whereupon, each party shall immediately comply with the determination or timely challenge the same in court.
6. 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 this Subsection F.
7. 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 this Subsection F shall yield as necessary to respond to the conditions giving rise to the declaration or proclamation.

G. DEFINITIONS IN RULE 23.5

For the purpose of Rule 23.5, the following words shall have the meanings set forth below. Other words which are defined in Rule 11 to the Rules and Regulations, when used in Rule 23.5 shall have the meanings set forth therein, unless the context otherwise indicates.

“Actual use of water” means the quantity of water that has passed through the water meter or meters installed to measure it.

“Ancillary Project Costs” means net revenues (gross revenues less allocable operation and maintenance costs and administrative and general costs as such terms are defined in accord with generally accepted utility practices), with respect to the Potable water, subject, from time to time, to the Water Entitlement, which Cal-Am shall not receive by reason of operation of the Project. Ancillary 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. Ancillary 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 first date of Project operation.

“Benefited Properties” means all real property within the boundaries of the unincorporated portions of the Del Monte Forest as defined in Exhibit “B” of the Supplemental Financial Commitment, as amended, 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.

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

“Capital Costs” as applied to the Project or any portion thereof means all or any part of:

- 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, replacement or renovation 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; costs 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 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 Operating Reserve, as defined in the Fiscal Sponsorship Agreement;
- 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 dermining 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 the Supplemental Construction and Operation 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 reimbursement 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.

“Capital Costs of the Project Expansion” means costs falling within the preceding definition of Capital Costs that apply to the Project Expansion, and without limitation specifically includes payment of expenses incurred concerning the Project Expansion, the need therefore, and related matters beginning on January 1, 1995, and continuing through 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 and any modifications thereof or thereto.

“CAWD” means the Carmel Area Wastewater District, a public agency.

“CAWD/PBCSD” means both the Carmel Area Wastewater District and the Pebble Beach Community Services District.

“Certificates of Participation” means the Certificates of Participation issued by MPWMD in 1992 in the amount of \$33.9 million to finance the Capital Costs of the Original Project.

“Completed” with respect to the Project Expansion shall mean that (1) all required permits or other approvals have been obtained, and (2) all construction activities for the advanced treatment components (being added to the tertiary treatment plant facilities of the Original Project), 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” suitable for irrigation of all portions of the Recycled Water Irrigation Areas without the addition of any Potable water thereto and otherwise meeting all regulatory and health standards for such usage, and (4) all portions of the distribution system are capable of delivering such Recycled Water to the Recycled Water Irrigation Areas. The Project Expansion shall be deemed Completed only if and when each of the events described in the preceding sentence have occurred.

“Construction and Operation Agreement” means the Wastewater Reclamation Project Construction and Operation Agreement among the Monterey Peninsula Water Management District, Carmel Area Wastewater District, the Pebble Beach Community Services District, and the Pebble Beach Company, dated as of November 1, 1990, as it may be amended from time to time.

“Del Monte Forest” means the area of unincorporated Monterey County described and/or depicted on Exhibit “B”

“Financial Commitment” means the commitment of PBC, as the Fiscal Sponsor or any subsequent Fiscal Sponsor, to assume and guarantee payment of (1) the Capital Costs of the Original Project (including the payment of the principal of and interest on the

Certificates of Participation or any bonds or other obligations issued by any Public Participant to finance such costs), and (2) 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 (3) payment of all Ancillary Project Costs.

“Financing Implementation Agreement” means the Financing Implementation Agreement Relating to Wastewater Reclamation Project, dated as of November 1, 1992, by and between MPWMD and PBC, as it may be amended from time to time.

“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 Part II of Ordinance No. 39, Ordinance No. 109, the Fiscal Sponsorship Agreement, and any amendments thereof, which person or persons shall be obligated, and liable for, and capable of paying the Capital Costs and Net Operating Deficiencies of the Project.

“Fiscal Sponsorship Agreement” means the Wastewater Reclamation Project Fiscal Sponsorship Agreement between the Monterey Peninsula Water Management District and Pebble Beach Company, dated as of October 3, 1989, as it may be amended from time to time.

“Freed-up Water” means Potable water which has been freed for new use by reason of Recycled Water deliveries from the Project. “Freed-Up Water” has the same meaning as “Franchise Water” in Ordinance No. 39.

“General Manager” means the General Manager of MPWMD.

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

“MPWMD” means the Monterey Peninsula Water Management District, a public agency.

“Net Operating Deficiency” as applied to the Project means, for any fiscal year or portion thereof, the difference between the Operating Revenues and the Operation and Maintenance Expenses for such period.

“Operation and Maintenance Expenses” as applied to the Project means all expenses and costs of management, operation, maintenance and repair of the Project, including, without limitation, payments to be made by the Public Participants under agreements with Cal-Am for the purchase of Potable water, and all incidental costs, fees and expenses incurred for such purpose properly chargeable to the Project in accordance with generally accepted accounting principles, including an allowance for depreciation, amortization, and obsolescence which is determined pursuant to generally accepted utility practices (subject to limitations set forth in the agreements applicable to the Project including but not limited to the Construction and Operation Agreement and the Fiscal Sponsorship

Agreement), further provided, however, that Operation and Maintenance Expenses shall include all administrative expenses of MPWMD and PBC incurred in connection with, and properly allocable as an expense relating to the Project and the Certificates, and further provided however that Operation and Maintenance Expenses shall include an amount equal to any reduction in real property taxes allocated to MPWMD caused by a change in 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.

“Operating and Maintenance Reserve Fund,” also called “O&M Reserve Fund,” means a reserve maintained and held, pursuant to the Water Purchase Agreement and the Financing Implementation Agreement, separate and apart from other funds for the purpose of paying for Operations and Maintenance Expenses as they become due and payable to the extent Operating Revenues are insufficient to provide for such payments, providing working capital, and paying for routine and extraordinary repairs and replacements.

“O&M Reserve Requirement” means the amount calculated on or before July 1 of each year by the Management Committee to be equal to one quarter (1/4) of the projected amount of Operation and Maintenance Expenses for the immediately succeeding fiscal year as such amount may be revised upward or downward during the course of such fiscal year.

“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 reclaimed, Non-Potable 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 Trust Agreement (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.

“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, (2) a distribution system which is capable of distributing the recycled water from the facility to a point of distribution in the Del Monte Forest for further distribution to the Recycled Water Irrigation Areas, and (3) recycled water irrigation systems on each of the Recycled Water Irrigation Areas, all of which were completed and became operational in 1994.

“Owner” means the holder (of record) of fee title to any Benefited Property.

“PBCSD” means the Pebble Beach Community Services District, a public agency.

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

“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, and (b) the addition of storage, treatment, and distribution facilities at or associated with the Forest Lake Reservoir located within the Del Monte Forest.

“Public Participant” means any one or more of the following: the Monterey Peninsula Water Management District, the Carmel Area Wastewater District, formerly the Carmel Sanitary District, the Pebble Beach Community Services District, or any successor public agency including but not limited to any joint powers agency formed by one or more of the above agencies.

The meaning of the term “Recycled Water” depends upon whether or not the Project Expansion is Completed:

1. Before the Project Expansion is Completed, “Recycled Water” shall mean water originating from the tertiary treatment facilities of the CAWD wastewater treatment plant.
2. After the Project Expansion is Completed, “Recycled Water” shall refer to water originating from said tertiary treatment facilities and thereafter receiving further treatment so as to be suitable for irrigation of the Recycled Water Irrigation Areas without the addition of any Potable water thereto (except during an Interruption as defined herein) and otherwise meeting all regulatory and health standards for such usage. Recycled Water meeting water quality standards agreed upon by the owners of the Recycled Water Irrigation Areas and CAWD/PBCSD shall be deemed “suitable for irrigation of the Recycled Water Irrigation Areas.” “Recycled Water” has the same meaning as “Reclaimed Water.”

“Recycled Water Irrigation Areas” means the golf courses and other vegetated areas located within the Del Monte Forest that are currently being irrigated with Recycled Water supplied by the Project or such golf courses and other vegetated areas wherever located that in the future may be irrigated with Recycled Water supplied by the Project.

“State Water Resources Control Board” and “SWRCB” each mean the state agency created pursuant to Water Code sections 174 and 175 which exercises the adjudicatory and regulatory functions of the State of California in the field of water resources.

“Supplemental Financial Commitment” means all of the following:

1. 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 Subsection C of 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
2. the written representation 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.

“Terminate” means the withdrawal, without formal MPWMD action, of authority to act as previously provided by a valid permit or water service connection, whichever is applicable.

“Trust Agreement” means the Trust Agreement by and between First Trust of California, National Association, as Trustee and MPWMD dated as of November 1, 1992 relating to \$33,900,000 Variable Rate Demand Certificates of Participation (Wastewater Reclamation Project) Series 1992, as it may be amended from time to time.

“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 No. 39, the Resolution, 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 Net Operating Deficiencies of the Original Project. Ordinance No. 109 provides 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 therefrom to be applied to the costs of the Project Expansion and the Original Project as more specifically described therein.

“Water Purchase Agreement” means the Water Purchase Agreement by and among MPWMD, CAWD, and PBCSD dated as of November 1, 1992, as it may be amended from time to time.

“Water Use Permit” means a writing from MPWMD which evidences the dedication of the Water Entitlement as a present vested property right enuring to the use and benefit of one or more of the Benefited Properties. A Water Use Permit shall by non-discretionary ministerial action, cause the present Connection to or modification of the California American Water Distribution System for Benefited Properties upon designation of the

location of use and upon payment of applicable Capacity Fees and fees, and issuance of a Water Permit as provided in Rule 23.5.

Rule added by Ordinance No. 39 (2/13/89); amended by Ordinance No. 71 (12/20/93); Ordinance 109 (5/27/2004); Ordinance No. 125 (9/18/2006); Ordinance No. 128 (6/18/2007), Ordinance No. 157 (12/9/2013); Ordinance No. 177 (9/18/2017)