



AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: November 19, 2013

Agenda Item 66

Approvals:

City Manager DJ
Dept. Head WBC
Attorney JAG
Finance AV

Department: Public Works / Engineering
Prepared By: Tom Bonigut, Assistant City Engineer

Subject: **APPROVAL OF AGREEMENT BETWEEN THE CITY OF SAN CLEMENTE, LV MARBLEHEAD LLC, ARCH INSURANCE COMPANY AND VILLA SAN CLEMENTE LLC CONCERNING THE MARBLEHEAD COASTAL DEVELOPMENT.**

Fiscal Impact: None.

Summary: Staff recommends City Council approval of an agreement between the City of San Clemente, LV Marblehead LLC¹, Arch Insurance Company and Villa San Clemente LLC² to assign certain subdivision improvement obligations to Villa San Clemente LLC and release LV Marblehead LLC from those obligations as described below.

Discussion: Earlier this year, the City Council approved an agreement between the City, LV Marblehead LLC and Arch Insurance Company (referred to as the "Triparty Agreement") to formally terminate a previous City-Arch Settlement Agreement and lawsuit, and to formally acknowledge LV Marblehead's assumption of all of SunCal's development obligations pursuant to various prior agreements executed between SunCal and the City. Among other provisions, the Triparty Agreement anticipated and allowed for assignment of certain development obligations from LV Marblehead LLC to other parties. LV Marblehead and Villa San Clemente LLC are currently entering into an agreement to assign completion of commercial site rough grading and the commercial bridge from LV Marblehead to Villa San Clemente. The attached First Implementation Agreement to the Triparty Agreement:

- Formally acknowledges the assignment and assumption of subdivision improvement agreement obligations related to completion of commercial site rough grading and the commercial site bridge to Villa San Clemente;
- Requires Villa San Clemente to furnish performance and payment bonds for these improvements;
- Releases these obligations from LV Marblehead; and
- Exonerates LV Marblehead's commercial bridge bond. LV Marblehead's rough grading bond was reduced under the Triparty agreement and will remain in place until the remaining portion of the overall development is completed.

Staff and the City Attorney have reviewed the attached agreement and recommend City Council approval. Staff has also reviewed and concurred with updated cost

¹ V Marblehead is the limited liability company formed by Lehman Brothers Holdings Inc. for development of the Marblehead Coastal project (primarily public infrastructure and residential portion).

² Villa San Clemente is the limited liability company formed by Craig Realty Group Inc. for development of the Plaza San Clemente retail commercial project.

estimates for the remaining commercial site grading and commercial site bridge, as well as associated updated bond amounts.

Recommended

Action: STAFF RECOMMENDS THAT the City Council approve and authorize the Mayor to execute the First Implementation Agreement between the City of San Clemente, LV Marblehead LLC, Arch Insurance Company and Villa San Clemente LLC concerning the Marblehead Coastal Development.

Attachments: Proposed agreement.

Notification: None.

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**FIRST IMPLEMENTATION AGREEMENT RESPECTING TRIPARTY AGREEMENT
AND SUBDIVISION IMPROVEMENT AGREEMENT**

THIS FIRST IMPLEMENTATION AGREEMENT RESPECTING TRIPARTY AGREEMENT AND SUBDIVISION IMPROVEMENT AGREEMENT (this "**Agreement**"), is dated and effective as of November ____, 2013 ("**Effective Date**") and is entered into by and among the CITY OF SAN CLEMENTE, a California municipal corporation ("**City**"), LV MARBLEHEAD LLC, a Delaware limited liability company ("**LV Marblehead**"), ARCH INSURANCE COMPANY, a Missouri corporation ("**Arch**") and VILLA SAN CLEMENTE, LLC, a California limited liability company ("**VSC**"). The City, LV Marblehead, Arch and VSC are collectively referred to herein as the "**Parties**".

RECITALS

A. The City and SunCal Marblehead, LLC, a Delaware limited liability company ("**SunCal**") previously entered into that certain Subdivision Improvement Agreement dated June 21, 2005 (as the same has been assigned to and assumed by LV Marblehead and as the same has been amended by the Triparty Agreement (as hereinafter defined), the "**SIA**") providing for certain construction and bonding requirements with respect to the Works of Improvement (as defined therein) relating to that certain real estate development project comprised of certain real property consisting of approximately 247 acres located in the City of San Clemente, California (the "**Marblehead Project**"). Those Works of Improvement which were bonded by surety bonds issued by Arch are referred to herein as the "**Bonded Improvements**."

B. The City and Arch previously entered into a Settlement Agreement effective on or about February 2, 2010 ("**City/Arch Agreement**") pursuant to which, among other obligations, Arch was required to arrange for certain of the Bonded Improvements to be completed in accordance with certain categories of priority.

C. The City, LV Marblehead and Arch previously entered into that certain Triparty Agreement dated and effective as of May 20, 2013 ("**Triparty Agreement**") respecting completion and bonding of certain Bonded Improvements in connection with the Marblehead Project, which Triparty Agreement operated as an amendment to the SIA in various respects. The Triparty Agreement affected a novation of, and superseded, the City/Arch Agreement.

D. VSC is the owner of the real property comprising part of the Marblehead Project described on Exhibit "A" attached hereto (the "**Commercial Property**"), on which some of the Bonded Improvements are to be constructed. LV Marblehead continues to own the balance of the Marblehead Project described on Exhibit "B" attached hereto (the "**Residential Property**").

E. Paragraph 6 of the Triparty Agreement contemplates that third parties, including adjacent landowners such as VSC, may be willing to undertake performance of certain obligations of LV Marblehead under the SIA (defined in the Triparty Agreement as the "**Assumed SIA Obligations**") and provide their own surety bonds to secure performance thereof, and provides for a mechanism for such parties to undertake to perform, and for LV Marblehead and Arch to be released from, any obligations relating to such Assumed SIA Obligations.

F. VSC and LV Marblehead are entering into an agreement (the “**VSC/LV Marblehead Settlement Agreement**”), pursuant to which, among other things and as between VSC and LV Marblehead, VSC is assuming the obligation to complete all Works of Improvement and other obligations comprising, relating to or otherwise required to be completed or performed in connection with (a) the rough grading on the Commercial Property (to be done concurrently with precise grading of a portion of the Commercial Property and as so combined, referred to herein as the “**Commercial Property Grading**”), and (b) the construction and completion of the commercial bridge to be located substantially on the Commercial Property (the “**Commercial Bridge**”) (all of the foregoing obligations together with the obligations set forth in Paragraph 1 below, being so assumed being collectively referred to herein as the “**VSC Assumed Obligations**”).

G. In furtherance of the VSC/LV Marblehead Settlement Agreement, VSC and the City desire to enter into this Agreement to, among other things, evidence VSC’s agreement to perform, for the benefit of the City, the VSC Assumed Obligations in accordance with the SIA and this Agreement and provide new surety bonds to secure the VSC Assumed Obligations in lieu of the corresponding surety bonds issued by Arch pursuant to the Triparty Agreement. Contemporaneously therewith and by the terms of this Agreement, the City and LV Marblehead desire, among other things, to amend the SIA to fully release LV Marblehead and the Residential Property from the VSC Assumed Obligations and to make clear that the City has consented to the assignment of the VSC Assumed Obligations and will not look to LV Marblehead for the performance of such obligations or otherwise condition the Residential Property on such performance. Further, by the terms of this Agreement, the City and Arch desire to release Arch from its obligation to complete the VSC Assumed Obligations. Accordingly, the Parties desire to implement the provisions contemplated in Paragraph 6 of the Triparty Agreement, pursuant to the terms and conditions of this Agreement.

A G R E E M E N T

NOW, THEREFORE, incorporating the foregoing recitals and in consideration of the mutual covenants and conditions contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. **Partial Assignment and Assumption of SIA and Triparty Agreement.** As of the “Condition Date” (defined in Paragraph 4 below), LV Marblehead assigns to VSC and VSC assumes, agrees to be solely responsible for and shall complete the VSC Assumed Obligations.

(a) Without limiting the foregoing, VSC assumes, agrees to be solely responsible for and agrees to perform and comply with the following obligations all of which shall be considered part of the VSC Assumed Obligations for purposes of this Agreement, the SIA, and the Triparty Agreement:

- (1) All of the obligations of the “Subdivider” under the SIA as they pertain or relate to the Works of Improvement and other obligations comprising, relating to or otherwise required to be completed or performed in connection with the Commercial Property Grading and/or the Commercial Bridge, including, without limitation, the “Construction Obligations”, “Time for

Performance”, “Labor”, “Security”, “Costs of Construction and Provision for Inspection Services”, “Warranty Work” and the “Indemnity” (as such quoted terms are defined in the SIA) obligations described in Sections 1, 2, 3, 4, 5, 7 and 9 of the SIA and the subsections thereof;

- (2) All obligations to post any maintenance bonds with respect to the Commercial Property Grading and/or Commercial Bridge, including without, limitation, those provided for in the Triparty Agreement; and
- (3) All of the obligations and conditions imposed by the City with respect to the Marblehead Project as they pertain or relate to the Works of Improvement and other obligations comprising, relating to or otherwise required to be completed or performed in connection with the Commercial Property Grading and/or the Commercial Bridge.

(b) VSC agrees that its rights as Subdivider under the SIA with respect to the VSC Assumed Obligations shall be subject to all of the rights and remedies of the City thereunder and limited to the Commercial Property Grading and Commercial Bridge.

(c) A “**Qualifying Residential SIA Amendment**” shall mean any amendment, modification or other agreement between the City and LV Marblehead with respect to the SIA or the Triparty Agreement which does not (i) modify the obligations of LV Marblehead with respect to the Works of Improvement identified on Exhibit “C”; or (ii) involve the Commercial Property Grading or the Commercial Bridge. VSC shall have no right to consent to or approve any Qualifying Residential SIA Amendment, and any Qualifying Residential SIA Amendment shall be effective upon the execution and delivery thereof by LV Marblehead and approval of the City alone and shall not require the signature or approval of VSC or any other Party. Any Qualifying Residential SIA Amendment shall not be binding on VSC. The City shall not be required to nor shall it join VSC in any action brought by the City to enforce the “**LV Marblehead Retained Obligations**” (defined below).

(d) A “**Qualifying Commercial SIA Amendment**” shall mean any amendment, modification or other agreement between the City and VSC with respect to the Works of Improvement constituting the Commercial Property Grading or the Commercial Bridge which does not modify or limit the releases, agreements and acknowledgements of the City provided herein, or in the Triparty Agreement or the SIA, for the benefit of LV Marblehead and the Residential Property. LV Marblehead shall have no right to consent to or approve any Qualifying Commercial SIA Amendment, and any Qualifying Commercial SIA Amendment shall be effective upon the execution and delivery thereof by VSC and approval of the City alone and shall not require the signature or approval of LV Marblehead or any other Party. Any Qualifying Commercial SIA Amendment shall not be binding on LV Marblehead. The City shall not be required to nor shall it join LV Marblehead in any action brought by the City to enforce the VSC Assumed Obligations.

(e) The City hereby consents to the foregoing assignment and assumption of the VSC Assumed Obligations.

2. **Release of LV Marblehead from VSC Assumed Obligations.** As of the Condition Date and by virtue of this Agreement and without any further action by any of the Parties, LV Marblehead and the Residential Property shall be fully released from all VSC Assumed Obligations and the VSC Assumed Obligations shall be removed as part of the Works of Improvement for which LV Marblehead or the Residential Property is responsible.

(a) In furtherance of the foregoing, the City acknowledges and agrees that it shall not (i) enforce any right or remedy (including, without limitation, those arising under Section 8 of the SIA and each subsection thereof) against LV Marblehead or the Residential Project should VSC fail to perform or satisfy the VSC Assumed Obligations or (ii) require performance of any of the VSC Assumed Obligations as a condition to (A) the development, improvement, disposition, occupancy or operation of any of the Residential Property, (B) approval of any Qualifying Residential SIA Amendment or, (C) following performance of a LV Marblehead Retained Obligation, filing a notice of completion with respect thereto, acceptance and acknowledgment thereof or any releases or exonerations therefrom or security therefor. Without limiting the foregoing, the exoneration of the "Arch Rough Grading Bond" (defined below) shall not be conditioned upon the performance of any of the VSC Assumed Obligations and LV Marblehead shall be released with respect to the Works of Improvement covered by the Arch Rough Grading Bond and such Arch Rough Grading Bond shall be exonerated upon LV Marblehead's completion of the items listed on Exhibit "D". The City hereby acknowledges and agrees that its rights and remedies for nonperformance of the VSC Assumed Obligations shall be limited to any recourse it may have against VSC and the Commercial Property.

(b) Nothing in the foregoing shall be construed as releasing LV Marblehead from any obligations under the SIA or the Triparty Agreement other than the VSC Assumed Obligations and it is understood and acknowledged that, among other things, LV Marblehead remains fully obligated under the SIA and the Triparty Agreement with respect to other grading and improvements as more particularly described therein (the "**LV Marblehead Retained Obligations**").

3. **Arch Obligations and Bonding.** On the Condition Date, VSC shall cause to be furnished to the City, Security Instruments (as defined in Section 4.1 of the SIA) in the form of performance and payment bonds, with respect to the Commercial Property Grading and the Commercial Bridge. With respect to the Commercial Property Grading, such performance and payment bond shall be in the penal sum of Three Hundred Eighty-Two Thousand Dollars (\$382,000.00) ("**Commercial Property Grading Bond**"), and shall be deemed to supplement, but not replace, the bond previously issued by Arch for Rough Grading (originally Bond No. SU5104726, subsequently replaced with Bond No. SU1121198) ("**Arch Rough Grading Bond**"). With respect to the Commercial Bridge, such performance and payment bond ("**New Commercial Bridge Bond**") shall replace the bond previously issued by Arch (originally Bond No. SU5014796 in the amount of \$3,243,200, subsequently replaced with Bond No SU1121166 ("**Arch Commercial Bridge Bond**"), and shall be in the amount of Five Million Four Hundred Three Thousand Eight Hundred Sixteen and 00/100ths Dollars (\$5,403,816.00). Upon the City's receipt of the Commercial Property Grading Bond and the New Commercial Bridge Bond, Arch

shall be deemed fully released and exonerated from all obligations under the Arch Commercial Bridge Bond and the City shall deliver to Arch a letter to such effect in the form attached hereto as Exhibit "E". Arch shall further be deemed fully released, as of the Condition Date, from all VSC Assumed Obligations.

4. **Condition Date.** This Agreement shall not be binding on any Party hereto until the date on which all of the following have occurred (with such date to be confirmed by written notice delivered by the City to the other Parties) (the "**Condition Date**"): (a) this Agreement has been fully executed by the Parties hereto; (b) the City Council for the City has approved this Agreement; (c) VSC and LV Marblehead have delivered to the City evidence that each has entered into the VSC/LV Marblehead Settlement Agreement, which evidence may consist of a fully executed and acknowledged memorandum of the VSC/LV Marblehead Settlement Agreement; and (d) VSC has delivered the Commercial Property Grading Bond and the New Commercial Bridge Bond to the City. Further, until all of the conditions set forth above have been satisfied, the City shall have no obligation to release LV Marblehead, Arch and the Arch Commercial Bridge Bond as contemplated by Paragraphs 2 and 3 of this Agreement. If the Condition Date has not occurred by February 3, 2014, then this Agreement shall be null and void ab initio.

5. **Notices.** All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given: (a) upon personal delivery to any Party to be notified; (b) when sent by electronic mail or facsimile confirmed by the recipient; (c) on the date of a registered or certified mail receipt prepared by the U.S. Postal Service; or (b) the date of a nationally recognized overnight courier's written verification of receipt. All communications shall be sent to the following, unless a written notice of changed recipient or address is exchanged among the Parties:

If to Arch:

Arch Insurance Company
c/o Arch Insurance Group
3 Parkway, Suite 1500
Philadelphia, PA 19102
Attn: Kim McNaughton, Esq.
Fax: 866-637-5861
Email: kmcnaughton@archinsurance.com

and

Arch Insurance Company
c/o Arch Insurance Group
865 S. Figueroa Street, Suite 2700
Los Angeles, CA 90017
Attn: Susan D. Neff, Esq.
Fax: 213-283-2075
Email: sneff@archinsurance.com

with copies to:

Leo & Weber, P.C.
One N. LaSalle Street, Suite 3600
Chicago, Il 60602
Attn: T. Scott Leo, Esq.
Fax: 312-854-1240
Email: sleo@leoweber.com

and

Gascou Hopkins, LLP
1801 Avenue of the Stars, Suite 230
Los Angeles, CA 90067
Attn: Ronald Hopkins, Esq.
Fax: 310-785-9149
Email: rhopkins@gascouhopkins.com

If to City:

City of San Clemente City Hall
100 Avenida Presidio
San Clemente, CA 92672
Attn: City Manager
Fax: 949-361-8283
Email: citymanager@san-clemente.org

With a copy to:

Rutan & Tucker, LLP
611 Anton Boulevard, Suite 1400
Costa Mesa, CA 92626
Attn: Jeffrey Goldfarb, Esq.
Fax: 714-546-9035
Email: jgoldfarb@rutan.com

If to LV Marblehead:

LV Marblehead LLC
c/o Lehman Brothers Holdings Inc.
19800 MacArthur Boulevard, Suite 500
Irvine, CA 92612
Attn: Eric Hoffman
Fax: 949-476-3021
Email: eric.hoffman@lehmanholdings.com

With copies to:

Lehman Brothers Holdings, Inc.
1271 Avenue of the Americas, 39th Floor
New York, NY 10020
Attn: Joelle Halperin, Esq.
Fax: 646-834-0874
Email: joelle.halperin@lehmanholdings.com

and

Weil, Gotshal & Manges, LLP
1395 Brickell Avenue, Suite 1200
Miami, FL 33131
Attn: Nellie P. Camerik, Esq.
Fax: 305-374-7159
Email: nellie.camerik@weil.com

and

Cox, Castle & Nicholson, LLP
555 California Street, 10th Floor
San Francisco, CA 94104
Attn: Mathew A. Wyman
Fax: 415-262-5199
Email: mwyman@coxcastle.com

If to VSC:

Villa San Clemente
c/o Craig Realty Group
4100 MacArthur Boulevard. Suite 200
Newport Beach, CA 92660
Attn: Steven L. Craig
Fax: 949-224-4101
Email: steve@craigrealtygroup.com

and

Villa San Clemente
c/o Craig Realty Group
4100 MacArthur Boulevard, Suite 200
Newport Beach, CA 92660
Attn: Lori Sarnier Smith, Esq. & Rino LaRosa
Fax: 949-224-4101
Email: lori@craigrealtygroup.com
rlarosa@craigrealtygroup.com

6. **Full Force and Effect.** To the extent inconsistent therewith, this Agreement shall be deemed to modify the SIA and the Triparty Agreement. Except as set forth in the foregoing sentence, the SIA and the Triparty Agreement are unmodified and shall continue in full force and effect. Further, nothing contained herein shall modify or amend the settlement agreement among Arch, LV Marblehead and certain other affiliates of LV Marblehead relating to the Marblehead Project and the bonds issued by Arch with respect thereto.

7. **Miscellaneous.**

(a) This Agreement shall bind and inure to the benefit of the Parties and each of their respective successors and assigns.

(b) This Agreement shall be governed in all respects by the internal laws of the State of California in effect on the date hereof, without regard to conflict of law principles.

(c) Each Party agrees to execute and deliver, or cause to be executed and delivered, such other and further documents and perform such other acts as may be reasonably requested by another Party to the extent reasonably necessary to effectuate the purposes of this Agreement.

(d) In any litigation arising from or relating to this Agreement, including, without limitation, proceedings in any state, federal or bankruptcy court, in addition to whatever other relief to which it may be entitled, the prevailing Party shall be entitled to recover its costs and reasonable attorneys' fees in an amount to be determined by the applicable court.

(e) The Parties agree that no third party is intended to be a third party beneficiary of this Agreement, either express or implied.

(f) This Agreement may be executed in counterparts by facsimile signature and the counterparts, when taken together, shall have the same force and effect as if a single, original document had been executed by the Parties.

(g) EACH OF THE PARTIES HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY, UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS AGREEMENT OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION HERewith OR IN RESPECT OF ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTION OF ANY PARTY OR ARISING OUT OF ANY EXERCISE BY ANY PARTY OF ITS RESPECTIVE RIGHTS UNDER THIS AGREEMENT OR IN ANY WAY RELATING TO THE TRANSACTIONS CONTEMPLATED HEREBY. TO THE EXTENT

PERMITTED BY APPLICABLE LAW, THIS WAIVER OF RIGHT TO TRIAL BY JURY IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. EACH OF THE PARTIES IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH 7(g) IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER.

[THE REMAINDER OF THIS PAGE IS LEFT BLANK]

IN WITNESS WHEREOF, the Parties have executed this First Implementation Agreement Respecting Triparty Agreement and Subdivision Improvement Agreement as of the day and year first above written above.

CITY:

CITY OF SAN CLEMENTE

By: _____
Robert Baker, Mayor

VSC:

VILLA SAN CLEMENTE, LLC,
a California limited liability company

By: Craig Realty Group – San Clemente, LLC, a
California limited liability company, its
Manager

By: San Clemente CRG Partners, a California
general partnership, its Manager

By: _____
Steven L. Craig
Managing General Partner

ATTEST:

Joanne Baade, City Clerk

APPROVED AS TO FORM:

Jeffrey Goldfarb, City Attorney

ARCH:

ARCH INSURANCE COMPANY,
a Missouri corporation

By: _____

Name: _____

LV MARBLEHEAD:

LV MARBLEHEAD LLC,
a Delaware limited liability
company

By: _____

Name: _____

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List of Exhibits

Exhibit "A" Commercial Property Legal Description

Exhibit "B" Residential Property Legal Description

Exhibit "C" LV Marblehead Works of Improvement

Exhibit "D" Residential Property Rough Grading Completion Items

Exhibit "E" Form of Exoneration Letter

Exhibit "A"

Commercial Property Legal Description

The Commercial Property is located in the City of San Clemente, County of Orange, State of California, more particularly described as follows:

PARCEL A:

LOTS 315 THROUGH 327, AND LOTS NN, OO AND PP OF TRACT NO. 8817, IN THE CITY OF SAN CLEMENTE, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP FILED IN BOOK 880, PAGES 1 THROUGH 31, OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT ALL UNDERGROUND WATER AND WATER RIGHTS, BUT WITHOUT THE RIGHT OF ENTRY TO THE SURFACE OF SAID LAND, AS QUITCLAIMED TO THE CITY OF CLEMENTE ON THE MAP OF SAID TRACT NO. 8817 OF OFFICIAL RECORDS.

PARCEL B:

A NONEXCLUSIVE EASEMENT FOR VEHICULAR AND PEDESTRIAN ACCESS, INGRESS AND EGRESS AS MORE PARTICULARLY DESCRIBED IN THE GRANT OF EASEMENT AND AGREEMENT RECORDED MAY 11, 2006 AS INSTRUMENT NO. 2006000318330 OF OFFICIAL RECORDS.

Exhibit "B"

Residential Property Legal Description

Real property in the City of San Clemente, County of Orange, State of California, described as follows:

LOTS 1 THROUGH 313, INCLUSIVE AND LETTERED LOTS A THROUGH Z, INCLUSIVE, AA THROUGH MM, INCLUSIVE, QQ THROUGH ZZ, INCLUSIVE AND AAA THROUGH HHH, INCLUSIVE OF TRACT NO. 8817 IN THE CITY OF SAN CLEMENTE, COUNTY OF ORANGE, STATE OF CALIFORNIA, ON FILE IN BOOK 880, PAGES 1 THROUGH 31, INCLUSIVE OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE ORANGE COUNTY RECORDER.

EXCEPT THEREFROM ALL UNDERGROUND WATER AND WATER RIGHTS, IF ANY, BUT WITHOUT THE RIGHT OF SURFACE ENTRY, AS DEDICATED TO THE CITY OF SAN CLEMENTE PER RECITALS ON THE MAP OF TRACT 8817.

APN: 691-421-01 through 691-421-04; 691-422-16; 691-423-01 through 691-423-66; 691-424-01 through 691-424-81; 691-431-01 through 691-431-03, 691-431-05 through 691-431-09 and 691-431-12 to 691-431-15; 691-434-01 through 691-434-66; 691-435-01 through 691-435-43, 691-435-45, 691-435-46 and 691-435-48 through 691-435-52; 691-436-01 through 34 and 691-437-01 through 56

Exhibit "C"

LV Marblehead Works of Improvement

- I. **Commercial Development Related Work**
 - a. Construction of 40 l.f. of 42" RCP storm drain, one manhole structure at Station 65+22.80, and construction of 8 l.f. of 39" RCP storm drain from station 65+22.80 to station 65+33.13;
 - b. Remove and re-construct 86 l.f. of existing 42" RCP storm drain to revised grade for Commercial Property from station 64+00 to end of line;
 - c. Remove or abandon existing 27" water line to the satisfaction of the city;
 - d. Complete Habitat Restoration in accordance with the final Habitat Management Plan on Lots "PP" and "NN";
 - e. Complete the MSE wall in accordance with the Commercial Service Entry Wall MSE Wall plans for Marblehead Coastal; and
 - f. Construct the first flush storm drain storage vaults in accordance with the Urban Run Off Plans for Marblehead Coastal and make the necessary connections to the Commercial Property on-site sewer and electrical systems.
- II. **Master Developer's Development Work**
 - a. Avenida Pico improvements in accordance with the Plan and Profile for Avenida Pico Street Improvements for Marblehead Coastal;
 - b. Avenida Vista Hermosa improvements in accordance with the Plan and Profile for Improvements of Avenida Vista Hermosa for Marblehead Coastal;
 - c. Pico Park (Lot "E") in accordance with the Park Improvement Plans for Pico Park for Precise Grading, Construction, Landscape and Irrigation;
 - d. Sunset Park (Lot "G") in accordance with the Park Improvement Plans for Ocean View Park- Lot G, Precise Grading, Construction, Landscape and Irrigation;
 - e. Access roads in accordance with the Plan and Profile Improvements of Marblehead Coastal, Avenida Costa Azul, Via Artemesia and Park Access Road for:
 - i. Avenida Costa Azul;
 - ii. Park Access Road (Lot "O");
 - f. Trails and Habitat Restoration in accordance with the First Phase Habitat Trails and Park Phasing Plan in accordance with the Coastal Development Permit 5-03-013 (as amended); and
 - g. Cal Trans grading and landscaping in accordance with the Interim Rough Grading Plan and Erosion Control Plan for Cal Trans grading for Marblehead Coastal.

Exhibit "D"

Residential Property Rough Grading Completion Items

1. general erosion and slope repair throughout on Residential Property
2. trail improvement grading on Residential Property
3. retention basin grading on Residential Property
4. general repair on Residential Property slopes above El Camino Real
5. completion of grading in Planning Area 1 (Residential Property) upon removal of temporary sales trailer
6. line and grade certification and final soils compaction report to verify completion of the above.

Exhibit "E"

Form of Exoneration Letter

_____, 2013
Susan D. Neff, Esq.
Senior Surety Counsel
Arch Insurance Group
865 N. Figueroa Street
Suite 2700
Los Angeles, CA 90017

Re: Exoneration of ARCH Bonds issued on behalf of principal Suncal Marblehead LLC

Dear Ms. Neff:

Pursuant to the terms of the Triparty Agreement between ARCH, LV Marblehead LLC and the City of San Clemente dated and effective May 20, 2013 ("Triparty Agreement"), and under which ARCH has issued certain Replacement Bonds as listed in Exhibit "C" to the Triparty Agreement which pertain to LV Marblehead LLC's performance of certain obligations to arrange for the construction of improvements on the Marblehead project, the City of San Clemente hereby releases and exonerates effective this date the original subdivision Faithful Performance Bonds issued by Arch to the City on behalf of principal Suncal Marblehead, LLC identified as Bond No. SU5014796 in the amount of \$3,243,200 pertaining to the Commercial Bridge.

Additionally, the City releases and exonerates any and all subdivision labor and material bonds accompanying Bond No. SU5014796 in the amount of \$3,243,200 prospectively as to any claims arising after this date.

To the extent that the City is in possession of Bond No. SU5014796 in the amount of \$3,243,200, the City will return such original bond to Arch at the address listed above.

The undersigned is a duly authorized representative of the City of San Clemente who has full permission from the City Council to issue these binding releases and exonerations on behalf of the municipality.

Very truly yours,

William E. Cameron
Public Works Director/City Engineer
City of San Clemente