

## **AGREEMENT AND RELEASE OF CLAIMS**

This Agreement and Release of CLAIMS (“Agreement”) is entered into by all of the following parties (collectively hereinafter the “PARTIES” or individually the “PARTY”):

### **THE PARTIES**

<b><u>No.</u></b>	<b><u>PARTY</u></b>	<b><u>Address</u></b>
1.	The City of San Clemente	100 Avenida Presidio San Clemente, CA 92672
2.	California Joint Powers Insurance Authority	8081 Moody Street La Palma, CA 90623
3.	L.H.C. Investments LLC, a California limited liability company	P.O. Box 3190 South Pasadena, CA 91031-6190
4.	GC8, a joint venture of L.H.C. Investments LLC and James and Suzan Wu, and owner of the GOLF COURSE PROPERTY	P.O. Box 3190 South Pasadena, CA 91031-6190
5.	James Wu, individually and present owner with Suzan Wu of a 10% interest in the GOLF COURSE PROPERTY and joint venture partner of GC8	P.O. Box 7593 Capistrano Beach, CA 92624
6.	Suzan Wu, individually and present owner with James Wu of a 10% interest in the GOLF COURSE PROPERTY and joint venture partner of GC8	P.O. Box 7593 Capistrano Beach, CA 92624
7.	Jorge Ortiz, an individual	257 Via Ballena San Clemente, CA 92672
8.	Christina Ortiz, an individual	257 Via Ballena San Clemente, CA 92672
9.	Frances R. Beier, individually and as trustee of that certain Declaration of Trust Dated October 25, 1990	253 Via Ballena San Clemente, CA 92672
10.	Joseph A. Arriola, an individual	251 Via Ballena San Clemente, CA 92672
11.	Richard Krumwied, an individual (former owner)	249 Via Ballena San Clemente, CA 92672
12.	Margaret Partovy Dilamy, individually and as trustee of the Margaret Partovy Dilamy 2007 Revocable Separate Property Living	247 Via Ballena San Clemente, CA 92672

<b><u>No.</u></b>	<b><u>PARTY</u></b>	<b><u>Address</u></b>
	Trust	
13.	Timothy Cole, individually and as trustee of the Timothy Cole Gift Trust dated November 19, 1993	245 Via Ballena San Clemente, CA 92672
14.	Danny Y. Chan, an individual	243 Via Ballena San Clemente, CA 92672
15.	Thomas Ojeda, individually and as trustee of that certain Declaration of Trust dated January 9, 1990	241 Via Ballena San Clemente, CA 92672
16.	Lynn J. Bartlett, an individual	239 Via Ballena San Clemente, CA 92672
17.	Frank Kling, an individual	237 Via Ballena San Clemente, CA 92672
18.	Terry Kling, an individual	237 Via Ballena San Clemente, CA 92672
19.	Jann L. Kempton, an individual	235 Via Ballena San Clemente, CA 92672
20.	Gregory C. Booth, individually and as trustee of the Booth Family Trust dated July 8, 2007	213 Calle Tinaja San Clemente, CA 92672
21.	Christine R. Booth, individually and as trustee of the Booth Family Trust dated July 8, 2007	213 Calle Tinaja San Clemente, CA 92672
22.	Andrew Whittlesey (current owner)	249 Via Ballena San Clemente, CA 92672
23.	OC Re-Hab 1, LLC, a California limited liability company	1970 Old Tustin Ave., 2 <sup>nd</sup> Floor Santa Ana, CA 92705

### **DEFINITIONS**

1. The term “BALLENA STORM DRAIN” shall mean and refer to the reinforced concrete storm drain pipe that is located within the easement between 249 and 251 Via Ballena, San Clemente, California, which transitions at the rear of those two properties to a temporary storm drain pipe that runs to the bottom of the slope, and terminates at a location that is adjacent to the 5<sup>th</sup> hole of the Shorecliffs Golf Course.

2. The term “CITY” shall mean and refer to the City of San Clemente, California, and California Joint Powers Insurance Authority.

3. The term “CLAIMS” shall mean and refer to all claims, causes of action, affirmative defenses and denials, demands, liens, agreements, contracts, covenants, debts, costs, expenses, damages, judgments, orders and liabilities of whatever kind or nature, in law, equity or otherwise, including but not limited to claims for costs including but not limited to attorneys’ fees, expert fees, and *Stearman* costs, arising out of or in any way connected with the allegations set forth in any and all pleadings in the LITIGATION.

4. The term “LITIGATION” shall mean and refer to those actions and all related cross-actions, collectively and separately, known as, Joseph A. Arriola, etc., et al. v. L.H.C. Investments LLC, etc., et al., Orange County Superior Court Case No. 30-2011-00450299-CU-CD-CXC.

5. The term “EARTH MOVEMENT” shall mean and refer to slope creep, lateral fill extension, subsidence, settling, sinking, slipping, falling away, cracking, caving in, shifting, eroding, rising, tilting, erosion, or any other movement of land or earth.

6. The term “EFFECTIVE DATE” shall mean and refer to the date on which the last PARTY signs this Agreement, at which point this Agreement shall become effective and binding, subject to the contingencies as set forth more fully in Section III.

7. The term “GOLF COURSE PARTIES” shall mean those individuals, limited liability companies, and joint ventures listed above as numbers 3 through 6 and 23, inclusive, in the description of the PARTIES.

8. The term “GOLF COURSE PROPERTY” shall mean and refer to that land commonly referred to as Cascadita Canyon and holes 5 and 6 of the Shorecliffs Golf Course more particularly described in the legal description attached hereto as **Exhibit G**.

9. The term “LANDSLIDE REMEDIATION” shall mean and refer to the private work of improvements to be performed pursuant to this Agreement, in accordance with the conceptual plans set forth in **Exhibit A** and the ultimate approved plans, including the repair of the landslide, drainage, and restoration of the 5<sup>th</sup> and 6<sup>th</sup> holes of the Shorecliffs Golf Course.

10. The term “PLAINTIFFS” shall mean and refer to those individuals listed above as numbers 7 through 21 in the description of the PARTIES.

11. The term “CROSS-DEFENDANT HOMEOWNERS” shall mean and refer to those individuals listed above as numbers 7 through 22 in the description of the PARTIES and which were sued as cross-defendants in the respective cross-complaints by the CITY and/or GOLF COURSE PARTIES.

12. The term “RELEASOR(S)” shall mean and refer to any person or entity providing a release pursuant to this Agreement; and the term “RELEASEE(S)” shall mean and refer to any person or entity receiving a release pursuant to this Agreement.

13. The term “LLC” shall refer to OC Re-Hab 1, LLC, the limited liability company formed to serve as the developer and contracting party for the LANDSLIDE REMEDIATION work and which has taken title to the GOLF COURSE PROPERTY.

14. The term “SUBJECT CANYON” shall mean the properties and slope that are bordered by Via Ballena, Calle Tinaja, and Via Senda on the South, by Via Allegra on the North, by the I-5 Freeway on the East, and by Via Cascadita on the West, and commonly referred to as Cascadita Canyon.

15. The term “SETTLEMENT FUND” shall mean the interest bearing escrow account in which the PARTIES shall deposit the SETTLEMENT PAYMENTS. “SETTLEMENT PAYMENTS” shall mean the settlement amounts paid by the PARTIES, as described more fully in Section I.

16. The term “PRE-CONSTRUCTION FUNDS” shall mean the funds released from the SETTLEMENT FUND to the LLC for PRE-LANDSLIDE REMEDIATION ACTIVITIES only, and not to exceed \$300,000. “PRE-LANDSLIDE REMEDIATION ACTIVITIES” shall mean those activities described in Section II.C.

## **RECITALS**

A. In the LITIGATION, allegations were made (and denied) that various PARTIES caused or exacerbated EARTH MOVEMENT in the SUBJECT CANYON. Such allegations included, without limitation, the following:

1. As to the CITY, allegations were made that acts, omissions and policies, including approving development, with regard to its ownership, maintenance and control of public improvements (including, but not limited to the water distribution system, storm drain system, sewer system and roadways) caused or exacerbated EARTH MOVEMENT which was a cause of damage to the PLAINTIFFS’ properties. Allegations were made and disputed that the BALLENA STORM DRAIN is a public facility, and that the stream at the toe of the Via Ballena Slope was caused by the CITY’s storm drain system which created a nuisance on the GOLF COURSE PROPERTY, interfered with the Shorecliffs Golf Course operations and acted to undermine and weaken the adjacent slopes

2. As to the GOLF COURSE PARTIES, allegations were made that acts or omissions with regard to its ownership, maintenance and control of its property caused or exacerbated EARTH MOVEMENT which was a cause of damage to the PLAINTIFFS’ properties, and which caused and/or created a nuisance upon property owned by the GOLF COURSE PARTIES which interferes with the PLAINTIFFS’ use and enjoyment of their properties; that the BALLENA STORM DRAIN is a GOLF COURSE PARTIES’ facility; and that the GOLF COURSE PARTIES made misrepresentations to and/or concealed material facts from the PLAINTIFFS which resulted in damage to the properties.

3. As to the PLAINTIFFS, allegations were made that their acts and/or omissions with regard to their ownership, maintenance and/or control of their respective properties, caused and/or exacerbated EARTH MOVEMENT which was a cause of damage to their properties.

B. Through discovery in the LITIGATION, the PARTIES obtained substantial information concerning the history of EARTH MOVEMENT affecting the SUBJECT

CANYON. The PARTIES engaged multiple experts to complete inspections, explorations and investigations of the PARTIES' properties. While the PARTIES and their experts were unable to agree on the cause(s) of the damage to said properties, the PARTIES do agree that (1) portions of the SUBJECT CANYON are presently failing due to EARTH MOVEMENT, and (2) absent repairs, those portions of the SUBJECT CANYON will continue to experience EARTH MOVEMENT.

C. The PARTIES acknowledge that, except with respect to the express undertakings set forth in this Agreement, the PARTIES admit no liability or responsibility to each other relating to the damages alleged in the LITIGATION, or causes thereof. The PARTIES specifically deny any such liability or responsibility. The PARTIES acknowledge that the promises, covenants, and releases set forth in this Agreement are in consideration of a settlement and compromise and are given for the purpose of avoiding the costs and expenses as well as the risks of any continued legal proceeding with respect to any matter which is being compromised or released.

D. The GOLF COURSE PARTIES make the following contentions which are neither agreed to nor accepted by the CITY, PLAINTIFFS and CROSS-DEFENDANT HOMEOWNERS.

1. The LANDSLIDE REMEDIATION work will provide a benefit to all PARTIES, and will require closure of the 5<sup>th</sup> and 6<sup>th</sup> holes of the GOLF COURSE PROPERTY during the construction.
2. As a result of the closure of the 5<sup>th</sup> and 6<sup>th</sup> holes, the GOLF COURSE PARTIES will also be required to close the 3<sup>rd</sup>, 4<sup>th</sup> and 7<sup>th</sup> holes for the entire period of construction as access to those holes will be impaired or blocked by the LANDSLIDE REMEDIATION work.
3. The GOLF COURSE PARTIES are not being compensated for allowing this work to take place on its property.
4. The GOLF COURSE PARTIES are not being compensated for the grant of construction easements required to complete the LANDSLIDE REMEDIATION.
5. The GOLF COURSE PARTIES are not being compensated for the dedication of the storm drain project and its easement to the CITY following completion.
6. The GOLF COURSE PARTIES are not being compensated for the closure of the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> holes, and the economic losses to be suffered by the GOLF COURSE PARTIES before or during construction of the LANDSLIDE REMEDIATION work which will provide specific benefits to the CITY and PLAINTIFFS, whereas GOLF COURSE PARTIES receive no financial recovery in this Agreement.

NOW, THEREFORE, for valuable consideration, the receipt and adequacy of which are hereby acknowledged, the PARTIES agree as follows:

**I. SETTLEMENT PAYMENTS to be Contributed and Deposited into SETTLEMENT FUND.**

The SETTLEMENT PAYMENTS total Ten Million Eight Hundred Twenty Seven Thousand Seven Hundred Fifty One Dollars (\$10,827,751) and are to be paid as follows:

- A. \$5,271,751 from the CITY, consisting of \$2,000,000 from the City of San Clemente and \$3,271,751 from the California Joint Powers Insurance Authority on behalf of the City of San Clemente.
- B. \$2,000,000 from GOLF COURSE PARTIES.
- C. \$3,556,000 collectively from the CROSS-DEFENDANT HOMEOWNERS as follows:

<b>CROSS-DEFENDANT HOMEOWNERS</b>	<b>CONTRIBUTION</b>
Jorge and Christina Ortiz	\$166,666
Frances Beier	\$476,321
Joseph Arriola	\$286,437
Richard Krumwied	\$300,000
Margaret Partovy Dilamy	\$386,585
Timothy Cole	\$0
Danny Chan	\$291,279
Thomas Ojeda	\$300,000
Lynn Bartlett	\$166,667
Frank and Terry Kling	\$166,667
Jann Kempton	\$500,000
Gregory and Christine Booth	\$515,378
Andrew Whittlesey	\$0
<b>TOTAL:</b> All of these SETTLEMENT PAYMENTS are to be paid by CROSS-DEFENDANT HOMEOWNERS' respective insurance carriers.	<b>\$3,556,000</b>

D. The SETTLEMENT PAYMENTS, listed in Sections I.A. through I.C. above, shall be deposited into an interest bearing escrow account with a reputable escrow company to be agreed upon by the PARTIES. The escrow account (SETTLEMENT FUND) shall be

established for the purpose of funding this settlement, and shall be distributed only as described in Section II below.

1. The insurance carriers for CROSS-DEFENDANT HOMEOWNERS making settlement contributions as described above shall deposit their respective SETTLEMENT PAYMENTS into the SETTLEMENT FUND within ten (10) days of the execution of this Agreement by all PARTIES. Upon payment of these SETTLEMENT PAYMENTS by the CROSS-DEFENANT HOMEOWNERS, the CITY and GOLF COURSE PARTIES shall dismiss with prejudice their respective cross-complaints against CROSS-DEFENDANT HOMEOWNERS.

2. CITY and GOLF COURSE PARTIES shall take all reasonable efforts to deposit their respective SETTLEMENT PAYMENTS within ten (10) days of notice from the Construction Manager that the contingencies set forth in Section III below have been met.

E. **Use of SETTLEMENT FUND/Construction Fund Control:** Counsel for PLAINTIFFS, GOLF COURSE PARTIES and CITY shall select a fund control manager or company to distribute the SETTLEMENT FUND for use in the LANDSLIDE REMEDIATION as requested by the contractor(s), and as approved by the Construction Manager, the LLC Management Committee and the City Engineer.

## **II. Chronology of Required Actions.**

A. The GOLF COURSE PARITES have created a Limited Liability Company, named "OC Re-Hab 1, LLC" (hereinafter "LLC"), to serve as the developer and contracting party for the LANDSLIDE REMEDIATION work. The LLC shall appoint George Zeber to serve as Construction Manager for the project.

1. The GOLF COURSE PARTIES have conveyed title to the GOLF COURSE PROPERTY to the LLC. The LANDSLIDE REMDIATION will be carried out on the GOLF COURSE PROPERTY. The LLC (OC Re-Hab 1, LLC) shall be bound by the terms of this Agreement.

2. The LLC shall be the party to contract for the LANDSLIDE REMEDIATION work to be performed.

### **B. Construction Management.**

1. Upon creation of the LLC the LLC shall appoint a "Management Committee" that shall consist of one member from the City of San Clemente, one member from the California Joint Powers Insurance Authority, and one member from the GOLF COURSE PARTIES. The City of San Clemente, the California Joint Powers Insurance Authority and the GOLF COURSE PARTIES shall choose and appoint their respective members of the Management Committee. (The GOLF COURSE PARTIES will not choose and/or appoint George Zeber as it's member of the Management Committee.) All decisions related to the LANDSLIDE REMEDIATION work by the LLC shall be made by this Management Committee based on a majority vote by its members. Each of the Management Committee members shall have one vote. Upon establishment of the Management Committee the Committee shall appoint

George Zeber to serve as the Construction Manager for the LANDSLIDE REMEDIATION work. The Construction Manager (George Zeber) shall execute a Construction Management Agreement with the LLC as set forth in **Exhibit E** to this Agreement, and shall be paid a management fee in accordance with the Construction Management Agreement.

2. With regard to the management of the LANDSLIDE REMEDIATION work the City Engineer shall have the following authority:

a. Approval of the final plans and specifications for the LANDSLIDE REMEDIATION work including, without limitation, the determination that sufficient geotechnical investigation has been performed to minimize the potential of unanticipated problems being discovered in the field once excavation begins, the determination that the plans and specifications include the restoration of the GOLF COURSE PROPERTY at the completion of the project to a condition equal to its condition immediately prior to commencement of the LANDSLIDE REMEDIATION work, and the determination that the final plans and specifications include an appropriate contingency fund to cover unforeseen costs and the amount of that contingency fund.

b. Approval of any mitigation conditions placed on the project by resource agencies whose approval of the project is required, and approval of the proper budgeting for estimated costs attributable to that work.

c. Approval of the bidding and award of the construction contract(s), including approval of the selected contractor(s).

d. Approval of the price to be paid for acquisition of any construction/permanent easement rights needed over property(ies) that are not owned by the GOLF COURSE PARTIES and/or the PLAINTIFFS.

e. Control and approval of the work of the Construction Manager and over the construction budget for the project.

f. Authority to make the decision following receipt of construction bids for the LANDSLIDE REMEDIATION work whether the contingencies set forth in Section III of this Agreement have been met keeping in mind that if those contingencies have not been met then the project shall not go forward.

g. Authority over the approval of any changes to the scope of work and approval of any change orders.

C. The PRE-LANDSLIDE REMEDIATION ACTIVITIES to be undertaken by the LLC through its Construction Manager and with the approval of the LLC Management Committee and the City Engineer shall be as follows:

1. Hire engineering professionals and consultants to finalize the conceptual plan (**Exhibit A**) and obtain approved engineering plans for all improvements and repair for the LANDSLIDE REMEDIATION to be undertaken by the LLC, which necessarily requires approval from all applicable governmental/environmental agencies, which may include but is not



limited to the California Coastal Commission, Army Corps of Engineers, and/or California Department of Fish and Wildlife, (2) obtain issuance of the required permits by the CITY for construction of the LANDSLIDE REMEDIATION, (3) obtain required easements and entitlements reasonably necessary to carry out the LANDSLIDE REMEDIATION, (4) obtain a minimum of three bids from qualified contractors, (5) select a contractor or contractors to perform all or specific portions of the work and execute a fixed price contract(s) for the LANDSLIDE REMEDIATION work, and (6) secure from each contractor a performance and payment bond with a qualified carrier for the LANDSLIDE REMEDIATION work with coverage not less than the full contract price of their contract.

2. Funds to be used to accomplish these PRE-LANDSLIDE REMEDIATION ACTIVITIES shall be referred to as PRE-CONSTRUCTION FUNDS. Upon execution of this Agreement and deposit of all SETTLEMENT PAYMENTS from CROSS-DEFENDANT HOMEOWNERS into the SETTLEMENT FUND, the PRE-CONSTRUCTION FUNDS may be approved by the LLC Management Committee and City Engineer and disbursed by the Construction Fund Control, in an amount not to exceed \$300,000, for use in the necessary PRE-LANDSLIDE REMEDIATION ACTIVITIES. In the event any of the contingencies in this Agreement are not met all PRE-CONSTRUCTION FUNDS already expended will not be replenished and will not be refunded.

3. To the extent that PLAINTIFFS have a remaining balance in favor of GeoKinetics for joint geotechnical investigation costs, conducted during the LITIGATION, those funds, not to exceed \$26,701.24, shall be paid out of the SETTLEMENT FUND, and be credited against those funds to be paid to PLAINTIFFS for costs. The funds to GeoKinetics are to be paid out of the SETTLEMENT FUND within ten (10) days of the deposit into the SETTLEMENT FUND of the settlement contributions by CROSS-DEFENDANT HOMEOWNERS' insurance carriers.

D. Upon satisfaction of each of the contingencies in Section III below and the completion of PRE-LANDSLIDE REMEDIATION ACTIVITIES in Section II.C. above, the amount of \$4,250,000 shall be distributed from the SETTLEMENT FUND to the Tomassian, Throckmorton & Inouye LLC Client Trust Account, Tax Id. 95-4417409, in payment of all damages claimed by the PLAINTIFFS, attorneys and experts fees (*Stearman* costs) and litigation costs, and the LLC shall proceed with the LANDSLIDE REMEDIATION. These funds shall be distributed to the PLAINTIFFS and their attorneys, as set forth above within 5 business days after the issuance of all permits required for the LANDSLIDE REMEDIATION, the execution of the construction contract(s) and the issuance of a performance and payment bonds. These funds are allocated among PLAINTIFFS and their attorneys as follows: \$1,500,000 for PLAINTIFFS' damages and repairs to their properties, and \$2,750,000 for PLAINTIFFS' attorneys' fees and costs.

E. The remaining funds in the SETTLEMENT FUND (\$6,577,751.00 less any PRE-CONSTRUCTION FUNDS) shall be used for the sole purpose of the LANDSLIDE REMEDIATION work. These funds shall be distributed upon request by the Construction Manager and approval by the LLC Management Committee, City Engineer and Construction Fund Control. The Construction Manager, the LLC Management Committee, the City Engineer, and the Construction Fund Control shall be required to act reasonably in making and approving

expenditures. In carrying out those tasks they shall exercise the skill and knowledge normally possessed by members of the construction management profession/trade in good standing in similar communities.

In the event that excess funds remain in the SETTLEMENT FUND after the LANDSLIDE REMEDIATION is completed the remaining funds shall be distributed as follows:

1. 33 1/3 % to GOLF COURSE PARTIES,
2. 33 1/3 % to CITY/California Joint Powers Insurance Authority, and
3. 33 1/3 % to PLAINTIFFS.

F. If any of the contingencies in Section III below are not met and the LANDSLIDE REMEDIATION work is not commenced, then the following shall occur:

1. The PARTIES shall participate in a further mediation with Ross Hart or another agreed upon mediator to seek an alternative resolution of the case.

2. If the further mediation with Ross Hart or another agreed upon mediator does not result in a settlement, and then the monies remaining in the SETTLEMENT FUND shall be distributed as follows:

a. The remainder of the \$3,556,000 in the SETTLEMENT FUND paid by CROSS-DEFENDANT HOMEOWNERS' insurance carriers, less any amounts distributed for PRE-LANDSLIDE REMEDIATION ACTIVITIES, shall be distributed among the PARTIES as follows: 1/3 share to PLAINTIFFS and 2/3 share to the CITY/California Joint Powers Insurance Authority and GOLF COURSE PARTIES. The 2/3 share shall be divided between the CITY/California Joint Powers Insurance Authority and GOLF COURSE PARTIES in the same ratio as their SETTLEMENT PAYMENTS. The 1/3 share paid to PLAINTIFFS shall be used as an offset against any judgment against the CITY or GOLF COURSE PARTIES in proportion to their respective SETTLEMENT PAYMENTS.

3. If the further mediation with Ross Hart or another agreed upon mediator does not result in a settlement, any existing stay on the LITIGATION shall be lifted and the LITIGATION proceed to trial on PLAINTIFFS' complaint, as between PLAINTIFFS, CITY and GOLF COURSE PARTIES.

G. If the contingencies in Section III below are met, the SETTLEMENT PAYMENTS have been made by CITY and GOLF COURSE PARTIES, and the LANDSLIDE REMEDIATION work is commenced but is not completed for any reason beyond the control of the parties, then the following shall occur:

1. The PARTIES shall participate in a further mediation with Ross Hart or another agreed upon mediator to seek an alternative resolution of the case.

2. If the further mediation with Ross Hart or another agreed upon mediator does not result in a settlement, then the CITY will restore Holes 5 and 6 of the Shorecliffs Golf

Course to the condition they were in at the time construction of the “LANDSLIDE REMEDIATION” began (“PRE-LANDSLIDE REMEDIATION CONDITION”). The funds to be used to accomplish this work shall be the funds remaining in the “SETTLEMENT FUND” at the time the decision is made not to complete the LANDSLIDE REMEDIATION, and before any distribution of funds is made pursuant to a ruling by the Referee (Ross Hart) as set forth below. In the event that insufficient funds remain in the “SETTLEMENT FUND” at that time to restore Holes 5 and 6 to their PRE-LANDSLIDE REMEDIATION CONDITION, the CITY shall fund the cost to restore Holes 5 and 6 to their PRE-LANDSLIDE REMEDIATION CONDITON.

3. If the further mediation with Ross Hart or another agreed upon mediator does not result in a settlement, then the parties will participate in a Judicial Reference Trial as follows:

a. The PARTIES acknowledge that PLAINTIFFS, CITY and GOLF COURSE PARTIES each claim an interest in any funds remaining in the SETTLEMENT FUND if the contingencies in Section III below are met, the SETTLEMENT PAYMENTS have been made by CITY and GOLF COURSE PARTIES, and the LANDSLIDE REMEDIATION work is commenced but is not completed for any reason beyond the control of the parties.

b. The PARTIES agree to waive their respective right to jury trial and the disposition of any such remaining SETTLEMENT FUNDS shall be submitted to a general judicial reference pursuant to Code of Civil Procedure sections 638(a), 643 and 644(a). The PARTIES intend this general reference agreement to be specifically enforceable in accordance with said sections.

c. The PARTIES hereby agree that Ross Hart be appointed as the Referee pursuant to the provisions of Code of Civil Procedure section 640 and California Rules of Court, Rules 3.901-3.904.

d. The procedures for the general reference proceeding are to be conducted within the discretion of the Referee. Nevertheless, it is the intent of the PARTIES that the general reference proceeding be limited in scope, including briefing by the PARTIES, consisting of arguments, points and authorities and evidence, a one (1) to two (2) day hearing to respond to any questions by the Referee, and opening and/or closing arguments of counsel for each party.

e. The statement of decision by the Referee shall include the disposition of any funds remaining in the SETTLEMENT FUNDS, including an award of attorneys fees for the counsel of record for the PLAINTIFFS, CITY and GOLF COURSE PARTIES. The award of attorneys fees, from the SETTLEMENT FUNDS, shall be limited to those fees incurred in connection with the general reference proceedings (not to exceed 30 hours for each PARTIES respective attorneys and at an hourly rate not to exceed \$350), including but not limited to preparing briefs and attending the hearing.

f. The LANDSLIDE REMEDIATION plans call for an underground box culvert to be constructed from the existing culvert at the I-5 Freeway to the existing Orange

County storm drain facility at Via Cascadita (see **Exhibit A**). The PARTIES hereby acknowledge and agree that in the event the LANDSLIDE REMEDIATION is abandoned without completion of the underground box culvert a proportionate share, as determined below, of the City of San Clemente's SETTLEMENT PAYMENT of \$2,000,000 will be returned to the City of San Clemente from the SETTLEMENT FUND. The proportionate share shall be based on the percentage of completion of the underground box culvert at the time the LANDSLIDE REMEDIATION is abandoned, as determined by the Construction Manager, the City Engineer and the LLC Management Committee. (As an example, if the percentage of completion of the underground box culvert is determined to be 40%, then \$1,200,000 of the City of San Clemente's SETTLEMENT PAYMENT will be returned.) In the event the PARTIES cannot agree on the amount to be returned to the City of San Clemente, and/or a unanimous agreement cannot be reached between the Construction Manager, the City Engineer and the LLC Management Committee as to the percentage of completion, these matters shall be submitted to the Referee for determination.

### **III. Contingencies.**

A. At the time of the execution of this Agreement there exists a "conceptual" slope repair plan that has been prepared by GeoKinetics Inc., with input from American Geotechnical Inc. and Opterra Inc. (see **Exhibit A**). As to the PLAINTIFFS, GOLF COURSE PARTIES and CITY, this Agreement is contingent upon (1) that "conceptual plan" being converted to a set of "engineering plans", (2) approval of the engineering plans by the CITY, (3) issuance of the required permits by the CITY for construction of the LANDSLIDE REMEDIATION, (4) the execution of engineering consultant and construction contract(s) with qualified engineering professionals, consultants and contractor(s) acceptable to the City Engineer to perform the work in accordance with the approved plans for a price not to exceed \$6,577,751, (5) the issuance of performance and payment bonds by a qualified carrier(s) for the LANDSLIDE REMEDIATION work in an amount equal to or in excess of the full amount of each construction contract.

B. All duties and obligations imposed on PLAINTIFFS, GOLF COURSE PARTIES and CITY by this Agreement are contingent upon each of the contingencies listed above, with the exception of the following:

1. The obligation of GOLF COURSE PARTIES and CITY to dismiss with prejudice their respective cross-complaints against CROSS-DEFENDANT HOMEOWNERS upon payment of the CROSS-DEFENANT HOMEOWNERS' SETTLEMENT PAYMENTS by the CROSS-DEFENANT HOMEOWNERS pursuant to Section I.D.1 of this Agreement.

2. The obligation of the GOLF COURSE PARTIES and CITY to deposit their respective SETTLEMENT PAYMENTS within ten (10) days of notice from the Construction Manager that the contingencies set forth in this Section have been met.

3. The obligation of the GOLF COURSE PARTIES to create the LLC pursuant to Section II.A of this Agreement.

4. The obligation of the LLC to enter into a construction management agreement with a construction manager acceptable to the LLC Management Committee and the City Engineer pursuant to Section II.B.1 of this Agreement.

5. The obligation of the LLC to undertake the PRE-LANDSLIDE REMEDIATION ACTIVITIES pursuant to Section II.C.1 of this Agreement.

6. The obligation of distribution of the PRE-CONSTRUCTION FUNDS pursuant to Section II.C.2 of this Agreement.

7. The distribution of SETTLEMENT FUNDS paid by CROSS-DEFENDANT HOMEOWNERS in the event that the LANDSLIDE REMEDIATION work is not commenced or completed for any reason beyond the control of the parties pursuant to Section II.G of this Agreement.

#### **IV. Other Non-Monetary Terms.**

A. The GOLF COURSE PARTIES and the PLAINTIFFS will allow the LANDSLIDE REMEDIATION work to be constructed on their respective properties pursuant to the construction licenses granted herein. The construction, repair, and improvements will be subject to all of the legal requirements applicable to this kind of construction, repair, and improvements, including environmental review and map recordation. The GOLF COURSE PARTIES, LLC and PLAINTIFFS shall continue to have any and all maintenance responsibilities and duties for their respective properties (whether or not conveyed to the LLC) during time of construction, repair, and improvements except for those contracted for by the LLC.

B. The design of the LANDSLIDE REMEDIATION will be substantially similar to the design shown in **Exhibit A**. The PARTIES recognize that the engineering plans must be prepared and the details of the design will be subject to comment and plan check prior to approval.

C. Final approved plans for LANDSLIDE REMEDIATION upon which the contractors shall bid will be completed prior to the bidding process. All PARTIES and their consultants will have the opportunity to review and comment on the plans prior to approval. The plans shall not significantly deviate conceptually from the plans developed by the PARTIES during mediation (see **Exhibit A**) and shall reflect repairs that, once completed, will accomplish the slope stability goals agreed upon during mediation.

D. The CITY agrees to proceed with all efforts concerning this Agreement and the LANDSLIDE REMEDIATION on an expedited basis and agrees to give the processing of any applications, permits, and/or plans the highest priority for its review, approval and permits required for the LANDSLIDE REMEDIATION. The CITY will agree to work with other governmental/administrative agencies to expedite any and all requests needed for the repair work and will advise other agencies that the PARTIES view the LANDSLIDE REMEDIATION as a necessary and emergency repair and are requesting that the other agencies expedite any and all applications.

E. The Hillside “V” Ditches on the GOLF COURSE PROPERTY are to be installed for the benefit of the PARTIES, including those PLAINTIFFS whose lots, in whole or in part, do not drain runoff to the CITY streets. If PLATINTIFFS or any subsequent homeowner cannot direct surface water, in whole or in part, to the CITY streets, these PLAINTIFFS or any subsequent homeowner shall be permitted to direct surface water from their respective properties to the Hillside “V” Ditches.

F. Timing: If the permit(s) for the LANDSLIDE REMEDIATION work has not been issued on or before January 31, 2016, the PARTIES will proceed with the provisions of Section II.F above.

G. Right of Entry Construction License: PLAINTIFFS and GOLF COURSE PARTIES will execute a right of entry to allow the LLC and/or the contractor(s) to enter their respective properties upon reasonable notice to perform repairs or construction pursuant to this Agreement.

H. The GOLF COURSE PARTIES agree to execute appropriate easements encumbering the GOLF COURSE PROPERTY in favor of the CITY.

I. Construction Damage: The LLC will provide general liability insurance naming the PARTIES and each of them, as additional insureds on any policy, including the course of construction. (A list of the PARTIES to be named as additional insureds is attached hereto as **Exhibit C**.)

J. Recordation: The LLC will record against each parcel of real property which is the subject of this Agreement a Disclosure and Maintenance Agreement which discloses the general nature of the lawsuit which is the subject of this Agreement and its resolution. The Disclosure and Maintenance Agreement is attached as **Exhibit D**. Title Insurance, insuring each recorded Disclosure and Maintenance Agreement, shall be obtained by the LLC as part of the construction budget naming the owner of each of the respective properties as insured’s. Each policy shall be in the amount of One Hundred Thousand Dollars (\$100,000.00). The cost of recording the Disclosure and Maintenance Agreement and obtaining title insurance will be paid from the construction budget.

K. Releases: Releases are described at Section V, below.

L. Entitlement Support: All PARTIES agree to support the various applications for entitlements and permits needed to implement the AGREEMENT.

M. Insurance: The LLC, the Construction Manager, and all engineers, contractors and subcontractors hired to perform work related to the LANDSLIDE REMEDIATION shall procure and maintain for the duration of the contract, and for five (5) years thereafter, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder, including by their respective agents, representatives, employees, or subcontractors.

1. Insurance coverage shall be at least as broad as:

a. Commercial General Liability (“CGL”): CGL coverage on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$5,000,000 per occurrence (within the Construction Manager’s discretion this amount may be reduced to \$3,000,000 for subcontractors). If a general aggregate limit applies, either the general aggregate limit shall apply separately to the LANDSLIDE REMEDIATION work or the general aggregate limit shall be twice the required occurrence limit.

b. Automobile Liability: Covering any automobile, wither owned, hired and non-owned, with limits of not less than \$5,000,000 per accident for bodily injury and property damage.

c. Workers’ Compensation: Insurance as required by the State of California, with Statutory Limits, and Employers’ Liability insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease.

d. Builder’s Risk: Course of Construction insurance utilizing an “All Risk” (Special Perils) coverage form, with limits equal to the contract value of the project and no coinsurance penalty provisions.

2. Any deductibles or self-insured retentions must be declared to and approved by the Construction Manager, LLC Management Committee and the City Engineer.

3. Each of the above referenced insurance policies shall include endorsements naming the PARTIES, the LLC and Construction Manager as additional insureds for damages arising out of the work and repairs, with acceptable deductibles and/or self insured retentions. (A list of the names that will be “additional insureds” is attached as **Exhibit C.**) Evidence of such insurance in the form of endorsements shall be supplied to the LLC and the PARTIES prior to the commencement of the LANDSLIDE REMEDIATION.

4. For any claims related to the LANDSLIDE REMEDIATION, the insurance coverage shall be primary insurance as respects the PARTIES, the LLC and Construction Manager, their officers, officials, employees, and volunteers.

5. Each insurance policy required herein shall provide that coverage shall not be canceled, except with notice to the PARTIES, the LLC and Construction Manager. Moreover, each insurance policy required herein shall not include an earth movement exclusion.

6. All contractors and subcontractors will provide performance and payment bonds with coverage equal to the full amount of their respective contracts.

7. Mediator Ross Hart agrees to mediate any disputes related this insurance provision.

N. Lien Releases. The LLC will require the release of all mechanic’s liens before the contractor is compensated. All property involved in the repair work shall not be subject to any mechanic’s liens, stop notices, or any other type of lien upon the completion of the LANDSLIDE REMEDIATION.

O. Time of Construction: Grading and construction work pursuant to this Agreement will be limited to the hours of 7 am to 7 pm, Monday through Saturday, unless emergency conditions otherwise require.

P. As-Built Plans: Any PARTY who desires a copy of “As Built” or other plans may request and obtain those from the LLC. Any and all copying costs shall be paid by that requesting PARTY.

Q. Disclaimer: No PARTY is intended to have any active involvement in the work carried out by the LLC.

R. Dispute Resolution: Any disputes arising from or related to this Agreement shall be subject to mediation before Ross Hart. In the event Mr. Hart is unavailable, the PARTIES will select an agreed upon mediator.

S. Easements: Appropriate Easements shall be recorded on the Golf Course Property as reasonably required for the LANDSLIDE REMEDIATION work.

T. Dedication: Upon completion of the LANDSLIDE REMEDIATION work, the GOLF COURSE PARTIES shall dedicate to the CITY the box culvert constructed within the SUBJECT CANYON as part of the LANDSLIDE REMEDIATION, and the CITY shall accept the dedication and thereafter the CITY shall maintain said box culvert at no expense to the GOLF COURSE PARTIES.

U. Waiver: As further and additional consideration for this Agreement in favor of the CITY, the GOLF COURSE PARTIES waive now and forever any and all claims they, it, he or she may have against the CITY for inverse condemnation or eminent domain, or related claims or causes of action, which arise from the claims set forth in the LITIGATION being settled by this Agreement, except as set forth in Section V(G).

## V. Releases.

A. Release of CROSS-DEFENDANT HOMEOWNERS. Upon execution of the Agreement, execution of the Disclosure and Maintenance Agreement, and payment of SETTLEMENT FUNDS from CROSS-DEFENDANT HOMEOWNERS, the CITY and GOLF COURSE PARTIES, on behalf of themselves and their agents, employees, officers, council-members, representatives, attorneys, insurers, successors, and assigns, hereby fully and forever release and discharge CROSS-DEFENDANT HOMEOWNERS and each of their agents, employees, officers, council-members, representatives, lessees, attorneys, insurers, successors, and assigns, past, present, and future, from any and all CLAIMS, including but not limited to CLAIMS arising out of or in any way connected with (i) the allegations set forth in any and all pleadings in the LITIGATION, (ii) the facts and/or theories disclosed in any and all discovery in the LITIGATION, (iii) CLAIMS for attorney fees or costs in connection with the LITIGATION or any RELEASED CLAIM, including but not limited to CLAIMS for such fees or costs that were, might have been, or could have been awarded or sought in connection with any other action or proceeding that had occurred or might in the future occur arising out of or related to any RELEASED CLAIM; (iv) CLAIMS arising out of or in any way connected with the



litigation or settlement of the LITIGATION, including without limitation the negotiation and documentation of the settlement memorialized by this Agreement; and (v) the performance, timing or any other aspects of the LANDSLIDE REMEDIATION.

B. Upon satisfaction of the contingencies set forth in Section III above, and upon payment of the SETTLEMENT FUNDS by the CITY and GOLF COURSE PARTIES, all PARTIES, on behalf of themselves and their agents, employees, officers, council-members, representatives, attorneys, insurers, successors, and assigns, hereby fully and forever release and discharge all other PARTIES and each of their agents, employees, officers, council-members, representatives, lessees, attorneys, insurers, successors, and assigns, past, present, and future, from any and all CLAIMS, including but not limited to CLAIMS arising out of or in any way connected with (i) The allegations set forth in any and all pleadings in the LITIGATION, (ii) The facts and/or theories disclosed in any and all discovery in the LITIGATION, (iii) CLAIMS for attorney fees or costs in connection with the LITIGATION or any RELEASED CLAIM, including but not limited to CLAIMS for such fees or costs that were, might have been, or could have been awarded or sought in connection with any other action or proceeding that had occurred or might in the future occur arising out of or related to any RELEASED CLAIM; (iv) CLAIMS arising out of or in any way connected with the litigation or settlement of the LITIGATION, including without limitation the negotiation and documentation of the settlement memorialized by this Agreement; and (v) the performance, timing or any other aspects of the LANDSLIDE REMEDIATION.

1. All PARTIES agree not to sue the LLC over the sequencing or timing of the LANDSLIDE REMEDIATION.

2. This release includes a waiver of California Civil Code section 1542, as set forth fully in Section V.C below.

3. This release does not release rights or claims arising from existing or newly created easements.

4. This release does not release rights or claims against third parties arising from the LANDSLIDE REMEDIATION.

C. Waiver of California Civil Code Section 1542.

1. It is the intention of the PARTIES executing the above-described release (hereafter referred to as "RELEASORS") that the releases shall be effective as a bar to each and every CLAIM whether known or unknown; and the RELEASORS each hereby knowingly and voluntarily waive any and all rights and benefits otherwise conferred by the provisions of Section 1542 of the California Civil Code, which reads in full as follows:

**"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."**

The RELEASORS expressly consent that, notwithstanding Section 1542 of the California Civil Code, the above-described release shall be given full force and effect according to each and all of its express terms and provisions, including those relating to unknown or unsuspected CLAIMS. The RELEASORS acknowledge and agree that this waiver is an essential and material term of this Agreement, and without such waiver, the Agreement would not have been entered into. The RELEASORS have been advised by their legal counsel with respect to this waiver, and understand and acknowledge the significance and consequence of the above-described release and of this express waiver of Civil Code section 1542.

2. Assumption of the Risk of New Facts. The RELEASORS acknowledge and understand that it is possible that they, or their agents or attorneys, may discover other or further CLAIMS or facts than the ones they presently believe to exist concerning this Agreement or the CLAIMS compromised, dismissed, or released hereby. The RELEASORS each expressly accept and assume the risk of any such other or further CLAIMS or facts, and agree that this Agreement, and the dismissals, releases, waiver of Civil Code section 1542 and other provisions hereof, and any other documentation to be delivered in connection herewith, shall remain effective notwithstanding the discovery of any such other or further CLAIMS or facts existing as of the EFFECTIVE DATE of this Agreement.

D. Intentional Tort. None of the releases and waivers contained in this Section V are intended to apply to any claims that may arise from any future active negligence or intentional tort(s) on the part of any of the PARTIES.

E. Right to Enforce Agreement. The releases granted in this Agreement do not extend to, and nothing in this Agreement will be construed to limit, any PARTY's rights to enforce this Agreement according to its terms.

F. The release and waiver only applies to the PARTIES, and no third party beneficiaries are intended.

G. Notwithstanding anything to the contrary in this Agreement, the Release or the Waivers of the provisions of Civil Code section 1542, the GOLF COURSE PARTIES and the Present and Future Owners of the GOLF COURSE PROPERTY shall and do retain the right to seek a Zone Change for the GOLF COURSE PROPERTY adversely affected by the LITIGATION or this Settlement based upon the provision of San Clemente Ordinance 1475, or similar Ordinance or Law, specifically the property comprising the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, and 7<sup>th</sup> Holes. Any Zone Change application made shall not be subject to any claims that the Releases or Waivers contained herein in any way defeat, diminish, waive or prohibit the Zone Changes request based, in whole or in part, upon the facts asserted, or claims made, in the LITIGATION.

## **VI. Warranties.**

A. Warranty of Non-Transfer of CLAIMS. Each PARTY to this Agreement represents and warrants that no CLAIM or right that would have been released or dismissed under this Agreement if held by that PARTY on the EFFECTIVE DATE has been transferred, hypothecated, assigned or given away, by way of subrogation or otherwise, by that PARTY prior to the EFFECTIVE DATE of this Agreement to any person or entity that would not be bound

hereby. The PARTIES understand and acknowledge that Danny Y. Chan and Richard Krumwied lost their homes and properties due to non-judicial foreclosure.

B. Warranty of Property Ownership. Each PARTY identified as a property owner in the list of PARTIES preceding the definitions in this Agreement by an address listed adjacent to their name excluding those PARTIES identified as “former” owners (“Owner”) represents and warrants that he/she/it owns the property so listed and is presently unaware of any other person or entity intending to make a CLAIM based on an ownership or security interest in Owner’s property. Each Owner will indemnify and hold harmless all other PARTIES from CLAIMS relating to impairment of security by lenders, mortgagees, beneficiaries of deeds of trust, or other lien holders having a security interest in Owner’s property to the extent of the payment to Owner representing any interest claimed by a secured party.

C. Warranty of Authority. Each person whose signature is affixed to this Agreement in a representative capacity represents and warrants that he/she is fully authorized to execute this Agreement. Timothy Cole warrants that he is authorized to release all of Anna Cole’s CLAIMS and all CLAIMS of her estate.

D. Warranty of Capacity. The PARTIES represent and warrant that they have carefully read this Agreement and know the content thereof, and, notwithstanding any health conditions, they are capable of understanding and consenting to enter this Agreement. No PARTY has consented to this Agreement under coercion or duress, economic or otherwise.

E. Indemnity for Breach of Warranties. Each PARTY shall indemnify, defend, and hold harmless every other PARTY from and against any and all CLAIMS (including without limitation attorneys’ fees) resulting from its own breach of any of these warranties.

## **VII. General Provisions.**

A. PARTIES Bear Own Costs, Fees, Expenses. Except as specifically provided herein, all PARTIES shall bear their own costs including but not limited to expenses, attorney fees, expert fees, and *Stearman* costs related to the LITIGATION.

B. Integrated Agreement; Modification in Writing. This Agreement and its exhibits constitute a single integrated written instrument expressing the entire agreement of the PARTIES concerning this subject matter. No covenants, agreements, representations or warranties, of any kind whatsoever, have been made by or between any of the PARTIES, except as specifically set forth in this Agreement. All prior and contemporaneous discussions and negotiations with respect to the subject matter of this Agreement have been and are merged and integrated into, and are superseded by, this Agreement. This Agreement can only be modified by a written instrument signed by all PARTIES.

C. Interpretation or Enforcement; Attorneys Fees. In the event that any legal action is necessary to enforce or interpret any provision of this Agreement (or any documentation delivered pursuant thereto or in connection therewith), or arising from or related to this Agreement, that action will be brought in the Central Justice Center of the Orange County Superior Court, and the PARTIES to this Agreement consent to personal jurisdiction and venue

in such a court. The prevailing party in any such action shall recover its costs and litigation expenses including, but not limited to, reasonable attorney fees.

D. Construction. This Agreement shall be construed under the laws of the State of California.

E. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be considered an original but all of which shall constitute one agreement.

F. Draftspersons. The language of this Agreement shall be construed as a whole, according to its fair meaning and intent, regardless of who drafted or negotiated the Agreement or any portion thereof. It is acknowledged that all PARTIES have had an opportunity to and have consulted with their lawyers concerning the terms and conditions and effect of this Agreement. This Agreement has been drafted by all PARTIES hereto and no PARTY shall claim or assert otherwise.

G. Further Acts. Each PARTY to this Agreement agrees to perform all further acts and execute all further documents necessary to carry out the purpose of this Agreement.

H. Successors and Assigns. This Agreement shall bind the successors, assigns, executors, heirs, agents, and personal representatives of each of the PARTIES.

I. Notices. Any notice to be given under or pursuant to this Agreement shall be given by personal delivery or by depositing the same in the United States Mail, certified or registered, postage prepaid, to the counsel for each PARTY at the address listed on the service list attached as **Exhibit F**. Any notice delivered personally shall be effective upon delivery. Any notice given by mail as above provided shall be effective forty-eight (48) hours after deposit in the mails. Any PARTY may change address for notice by giving written notice of such change to all other PARTIES.

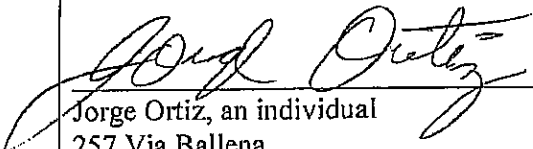
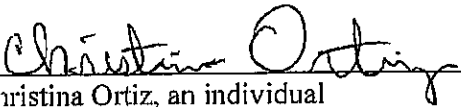
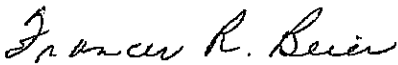
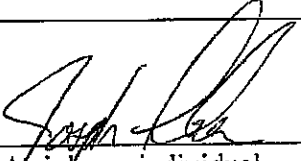
J. Enforceability. This Agreement shall be enforceable against the PARTIES according to its terms under Code of Civil Procedure section 664.6. The PARTIES agree that the Orange County Superior Court shall retain jurisdiction over the PARTIES as needed to carry out the LANDSLIDE REMEDIATION or otherwise interpret or enforce this Agreement. Any disputes arising from or related to this Agreement shall be subject to mediation before Mediator Ross Hart or another mutually agreed upon mediator, who will issue an advisory opinion to the Court on the enforceability of the Agreement.

K. List of Exhibits:

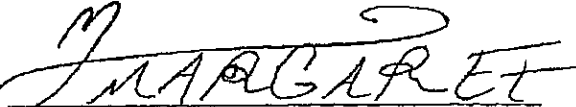
- |                  |   |  |
|------------------|---|--|
| <b>Exhibit A</b> | - | Agreed Upon Conceptual Plans (6 sheets)    |
| <b>Exhibit B</b> | - | Agreed Upon Conceptual Construction Budget |
| <b>Exhibit C</b> | - | Names To Be Named As Additional Insureds   |
| <b>Exhibit D</b> | - | Disclosure and Maintenance Agreement       |

- Exhibit E** - Construction Management Contractor Duties and Responsibilities
- Exhibit F** - Service List for Notices
- Exhibit G** - Legal Description

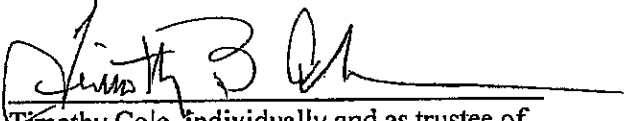
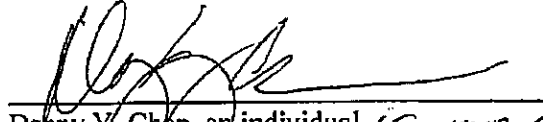
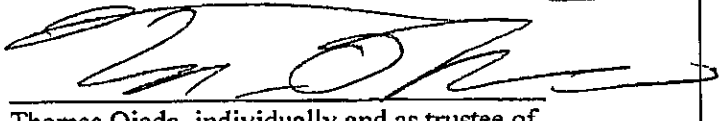
[SIGNATURES STARTING ON NEXT PAGE]


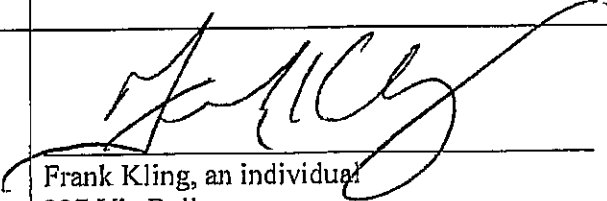
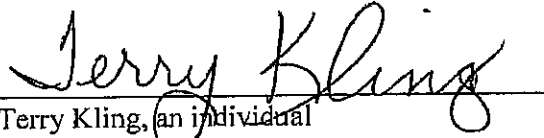
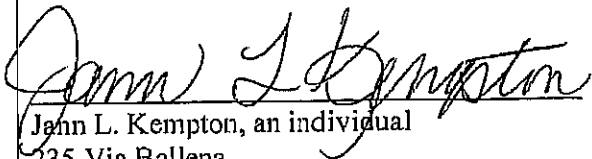
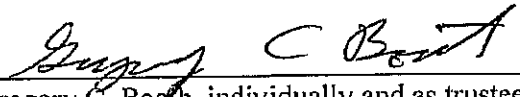
Dated: <u>9/18/2015</u>	 Jorge Ortiz, an individual 257 Via Ballena San Clemente, CA 92672 Tract 4940, Lot 66
Dated: <u>9/18/15</u>	 Christina Ortiz, an individual 257 Via Ballena San Clemente, CA 92672 Tract 4940, Lot 66
Dated: <u>9/16/15</u>	 Frances R. Beier, individually and as trustee of that certain Declaration of Trust Dated October 25, 1990 253 Via Ballena San Clemente, CA 92672 Tract 4940, Lot 64
Dated: <u>9/16/15</u>	 Joseph Arriola, an individual 251 Via Ballena San Clemente, CA 92672 Tract 4940, Lot 63
Dated: _____	_____ Richard Krumwied, an individual (former owner) 249 Via Ballena San Clemente, CA 92672 Tract 4940, Lot 62

Dated: _____	<hr/> Jorge Ortiz, an individual 257 Via Ballena San Clemente, CA 92672 Tract 4940, Lot 66
Dated: _____	<hr/> Christina Ortiz, an individual 257 Via Ballena San Clemente, CA 92672 Tract 4940, Lot 66
Dated: _____	<hr/> Frances R. Beier, individually and as trustee of that certain Declaration of Trust Dated October 25, 1990 253 Via Ballena San Clemente, CA 92672 Tract 4940, Lot 64
Dated: _____	<hr/> Joseph Arriola, an individual 251 Via Ballena San Clemente, CA 92672 Tract 4940, Lot 63
Dated: _____	<hr/> <i>RICHARD KRUMWIED,</i> <i>By Shawn M. Krumwied</i> <i>ADMINISTRATOR OF ESTATE</i> Richard Krumwied, an individual (former owner) 249 Via Ballena San Clemente, CA 92672 Tract 4940, Lot 62


Dated: <u>September 14, 2015</u>	 Margaret Partovy Dilamy, individually and as trustee of the Margaret Partovy Dilamy 2007 Revocable Separate Property Living Trust 247 Via Ballena San Clemente, CA 92672 Tract 4940, Lot 61
Dated: _____	_____ Timothy Cole, individually and as trustee of the Timothy Cole Gift Trust dated November 19, 1993 245 Via Ballena San Clemente, CA 92672 Tract 4940, Lot 60
Dated: _____	_____ Danny Y. Chan, an individual 243 Via Ballena San Clemente, CA 92672 Tract 4940, Lot 59
Dated: _____	_____ Thomas Ojeda, individually and as trustee of that certain Declaration of Trust dated January 9, 1990 241 Via Ballena San Clemente, CA 92672 Tract 4940, Lot 58




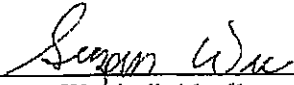


Dated: _____	<p>Margaret Partovy Dilamy, individually and as trustee of the Margaret Partovy Dilamy 2007 Revocable Separate Property Living Trust  247 Via Ballena  San Clemente, CA 92672  Tract 4940, Lot 61</p>
Dated: <u>9-16-15</u>	 Timothy Cole, individually and as trustee of the Timothy Cole Gift Trust dated November 19, 1993 245 Via Ballena San Clemente, CA 92672 Tract 4940, Lot 60
Dated: <u>9/12/15</u>	 Danny Y. Chan, an individual (FORMER OWNER) 243 Via Ballena San Clemente, CA 92672 Tract 4940, Lot 59
Dated: <u>9-12-15</u>	 Thomas Ojeda, individually and as trustee of that certain Declaration of Trust dated January 9, 1990 241 Via Ballena San Clemente, CA 92672 Tract 4940, Lot 58

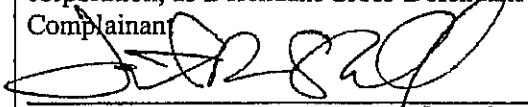
Dated: <u>9/16/15</u>	 Lynn J. Bartlett, an individual 239 Via Ballena San Clemente, CA 92672 Tract 4940, Lot 57
Dated: <u>9-16-2015</u>	 Frank Kling, an individual 237 Via Ballena San Clemente, CA 92672 Tract 4940, Lot 56
Dated: <u>9-16-2015</u>	 Terry Kling, an individual 237 Via Ballena San Clemente, CA 92672 Tract 4940, Lot 56
Dated: <u>9-16-2015</u>	 John L. Kempton, an individual 235 Via Ballena San Clemente, CA 92672 Tract 4940, Lot 55
Dated: <u>9-16-2015</u>	 Gregory C. Booth, individually and as trustee of the Booth Family Trust dated July 8, 2007 213. Calle Tinaja San Clemente, CA 92672 Tract 4940, Lot 36

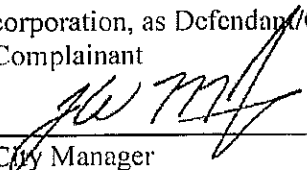
Dated: <u>9-15-15</u>	<p><u>Christine R. Booth</u>  Christine R. Booth, individually and as trustee  of the Booth Family Trust dated July 8, 2007  213 Calle Tinaja  San Clemente, CA 92672  Tract 4940, Lot 36</p>
Dated: _____	<p>_____  Andrew Whittlesey (current owner)  249 Via Ballena  San Clemente, CA 92672  Tract 4940, Lot 62</p>
Dated: _____	<p>L.H.C. Investments, LLC, a California limited liability  company</p> <p>_____  By: Fon N. Leong, Managing Member  P.O. Box 3190  South Pasadena, CA 91031-6190</p>
Dated: _____	<p>GC8, a joint venture of L.H.C. Investments LLC and  James and Suzan Wu, and owner of Shorecliffs Golf  Course</p> <p>_____  By: Fon N. Leong, Managing Member  P.O. Box 3190  South Pasadena, CA 91031-6190</p>

Dated: _____	<hr/> Christine R. Booth, individually and as trustee of the Booth Family Trust dated July 8, 2007 213 Calle Tinaja San Clemente, CA 92672 Tract 4940, Lot 36
Dated: <u>10.12.15</u> _____	 <hr/> Andrew Whittlesey (current owner) 249 Via Ballena San Clemente, CA 92672 Tract 4940, Lot 62
Dated: _____	L.H.C. Investments, LLC, a California limited liability company <hr/> By: Fon N. Leong, Managing Member P.O. Box 3190 South Pasadena, CA 91031-6190
Dated: _____	GC8, a joint venture of L.H.C. Investments LLC and James and Suzan Wu, and owner of Shorecliffs Golf Course <hr/> By: Fon N. Leong, Managing Member P.O. Box 3190 South Pasadena, CA 91031-6190


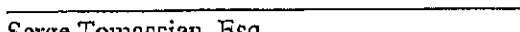
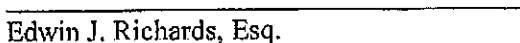
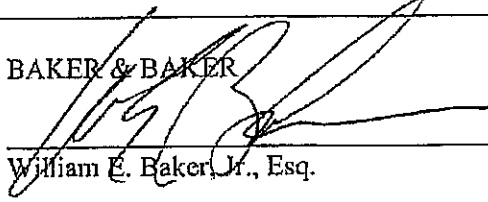
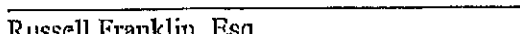

Dated: _____	_____ Christine R. Booth, individually and as trustee of the Booth Family Trust dated July 8, 2007 213 Calle Tinaja San Clemente, CA 92672 Tract 4940, Lot 36
Dated: _____	_____ Andrew Whittlesey (current owner) 249 Via Ballena San Clemente, CA 92672 Tract 4940, Lot 62
Dated: <u>4/11/2015</u> _____	L.H.C. Investments, LLC, a California limited liability company _____ By: Fon N. Leong, Managing Member P.O. Box 3190 South Pasadena, CA 91031-6190
Dated: <u>9/11/2015</u> _____	GC8, a joint venture of L.H.C. Investments LLC and James and Suzan Wu, and owner of Shorecliffs Golf Course _____ By: Fon N. Leong, Managing Member P.O. Box 3190 South Pasadena, CA 91031-6190

Dated: <u>9/11/2015</u>	 James Wu, individually and present owner with Suzan Wu of a 10% interest in the GOLF COURSE PROPERTY and joint venture partner of GC8 P.O. Box 7593 Capistrano Beach, CA 92624
Dated: <u>9/11/15</u>	 Suzan Wu, individually and present owner with James Wu of a 10% interest in the GOLF COURSE PROPERTY and joint venture partner of GC8 P.O. Box 7593 Capistrano Beach, CA 92624
Dated: _____	California Joint Powers Insurance Authority on behalf of the CITY OF SAN CLEMENTE, a California municipal corporation, as Defendant/Cross-Defendant/Cross-Complainant   Paul Zeglovitch 8081 Moody Street La Palma, CA 90623
Dated: _____	The CITY OF SAN CLEMENTE, a California municipal corporation, as Defendant/Cross-Defendant/Cross-Complainant   City Manager 100 Avenida Presidio San Clemente, CA 92672

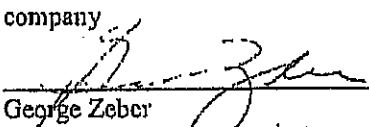
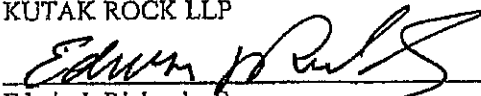
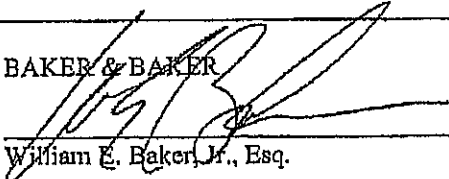
Dated: _____	_____ James Wu, individually and present owner with Suzan Wu of a 10% interest in the GOLF COURSE PROPERTY and joint venture partner of GC8 P.O. Box 7593 Capistrano Beach, CA 92624
Dated: _____	_____ Suzan Wu, individually and present owner with James Wu of a 10% interest in the GOLF COURSE PROPERTY and joint venture partner of GC8 P.O. Box 7593 Capistrano Beach, CA 92624
Dated: <u>10/28/15</u>	California Joint Powers Insurance Authority on behalf of the CITY OF SAN CLEMENTE, a California municipal corporation, as Defendant/Cross-Defendant/Cross- Complainant  Paul Zeglovitch JONATHAN R. SHULL 8081 Moody Street La Palma, CA 90623
Dated: _____	The CITY OF SAN CLEMENTE, a California municipal corporation, as Defendant/Cross-Defendant/Cross- Complainant _____ City Manager 100 Avenida Presidio San Clemente, CA 92672

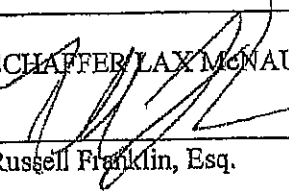
Dated: _____	_____ James Wu, individually and present owner with Suzan Wu of a 10% interest in the GOLF COURSE PROPERTY and joint venture partner of GC8 P.O. Box 7593 Capistrano Beach, CA 92624
Dated: _____	_____ Suzan Wu, individually and present owner with James Wu of a 10% interest in the GOLF COURSE PROPERTY and joint venture partner of GC8P.O. Box 7593 Capistrano Beach, CA 92624
Dated: _____	California Joint Powers Insurance Authority on behalf of the CITY OF SAN CLEMENTE, a California municipal corporation, as Defendant/Cross-Defendant/Cross- Complainant  _____ Paul Zeglovitch 8081 Moody Street La Palma, CA 90623
Dated: _____	The CITY OF SAN CLEMENTE, a California municipal corporation, as Defendant/Cross-Defendant/Cross- Complainant   _____ City Manager 100 Avenida Presidio San Clemente, CA 92672

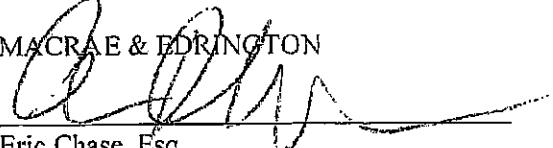


Dated: <u>9/11/2015</u>	OC Re-Hab 1, LLC, a California limited liability company  George Zeber 1970 Old Tustin Ave., 2 <sup>nd</sup> Floor Santa Ana, CA 92705
APPROVED AS TO FORM:	
	TOMASSIAN, THROCKMORTON & INOUYE LLP  Serge Tomassian, Esq.
	KUTAK ROCK LLP  Edwin J. Richards, Esq.
	BAKER & BAKER  William E. Baker, Jr., Esq.
	SCHAFER LAX McNAUGHTON & CHEN  Russell Franklin, Esq.
	MACRAE & EDRINGTON  Eric Chase, Esq.

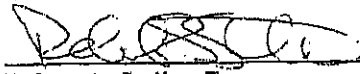
Dated: _____	<p>OC Re-Hab 1, LLC, a California limited liability company</p> <hr/> <p>George Zeber  1970 Old Tustin Ave., 2<sup>nd</sup> Floor  Santa Ana, CA 92705</p>
APPROVED AS TO FORM:	
	<p><del>TOMASSIAN, THURMORTON &amp; INOUE LLP</del></p> <hr/> <p>Serge Tomassian, Esq.</p>
	<p>KUTAK ROCK LLP</p> <hr/> <p>Edwin J. Richards, Esq.</p>
	<p>BAKER &amp; BAKER</p> <hr/> <p>William E. Baker, Jr., Esq.</p>
	<p>SCHAFFER LAX McNAUGHTON &amp; CHEN</p> <hr/> <p>Russell Franklin, Esq.</p>
	<p>MACRAE &amp; EDRINGTON</p> <hr/> <p>Eric Chase, Esq.</p>

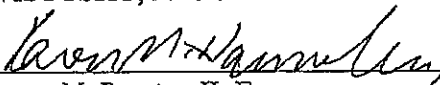
Dated: <u>9/11/2015</u>	OC Re-Hab 1, LLC, a California limited liability company  George Zeber 1970 Old Tustin Ave., 2 <sup>nd</sup> Floor Santa Ana, CA 92705
APPROVED AS TO FORM:	
	TOMASSIAN, THROCKMORTON & INOUE LLP  Serge Tomassian, Esq.
	KUTAK ROCK LLP  Edwin J. Richards, Esq.
	BAKER & BAKER  William E. Baker, Jr., Esq.
	SCHAFFER LAX McNAUGHTON & CHEN  Russell Franklin, Esq.
	MACRAE & EDRINGTON  Eric Chase, Esq.

Dated: _____	OC Re-Hab 1, LLC, a California limited liability company _____ George Zeber 1970 Old Tustin Ave., 2 <sup>nd</sup> Floor Santa Ana, CA 92705
APPROVED AS TO FORM:	
	TOMASSIAN, THROCKMORTON & INOUYE LLP _____ Serge Tomassian, Esq.
	KUTAK ROCK LLP _____ Edwin J. Richards, Esq.
	BAKER & BAKER _____ William E. Baker, Jr., Esq.
	 SCHAFFER LAX McNAUGHTON & CHEN _____ Russell Franklin, Esq.
	MACRAE & EDRINGTON _____ Eric Chase, Esq.

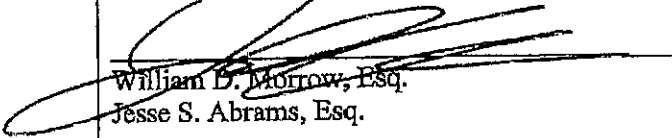
Dated: <u>9-16-15</u>	OC Re-Hab I. LLC, a California limited liability company  George Zeber 1970 Old Tustin Ave., 2 <sup>nd</sup> Floor Santa Ana, CA 92705
APPROVED AS TO FORM:	
	TOMASSIAN, THROCKMORTON & INOUE LLP  Serge Tomassian, Esq.
	KUTAK ROCK LLP  Edwin J. Richards, Esq.
	BAKER & BAKER  William E. Baker, Jr., Esq.
	SCHAFFER LAX McNAUGHTON & CHEN  Russell Franklin, Esq.
	MACRAE & EDRINGTON  Eric Chase, Esq.

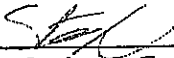
	<p>LAW OFFICE OF CARL J. KLUNDER</p> <p><i>Carl J. Klunder</i></p> <hr/> <p>Carl J. Klunder, Esq.</p>
	<p>SELMAN BREITMAN LLP</p> <hr/> <p>Robert A. Steller, Esq. Mark D. Shields, Esq.</p>
	<p>WISOTSKY, PROCTER &amp; SHYER</p> <hr/> <p>James N. Procter, II, Esq. Karen M. Harmeling, Esq.</p>
	<p>MORROW &amp; WHITE</p> <hr/> <p>William D. Morrow, Esq. Jesse S. Abrams, Esq.</p>
	<p>SPRINGEL &amp; FINK LLP</p> <hr/> <p>Adam H. Springel, Esq. Stephanie L. Millea, Esq.</p>

	<p>LAW OFFICE OF CARL J. KLUNDER</p> <hr/> <p>Carl J. Klunder, Esq.</p>
	<p>Hinchen &amp; Culbertson <i>MS</i>  <del>SPRINGER BROTHERS LLP</del>    <hr/> <p>Robert A. Steller, Esq.  <del>Mark D. Shields, Esq.</del> <i>MS</i></p> </p>
	<p>WISOTSKY, PROCTER &amp; SHYER</p> <hr/> <p>James N. Procter, II, Esq.  Karen M. Harmeling, Esq.</p>
	<p>MORROW &amp; WHITE</p> <hr/> <p>William D. Morrow, Esq.  Jesse S. Abrams, Esq.</p>
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	<p>MORROW &amp; WHITE</p> <hr/> <p>William D. Morrow, Esq. Jesse S. Abrams, Esq.</p>
	<p>SPRINGEL &amp; FINK LLP</p> <hr/> <p>Adam H. Springel, Esq. Stephanie L. Millea, Esq.</p>

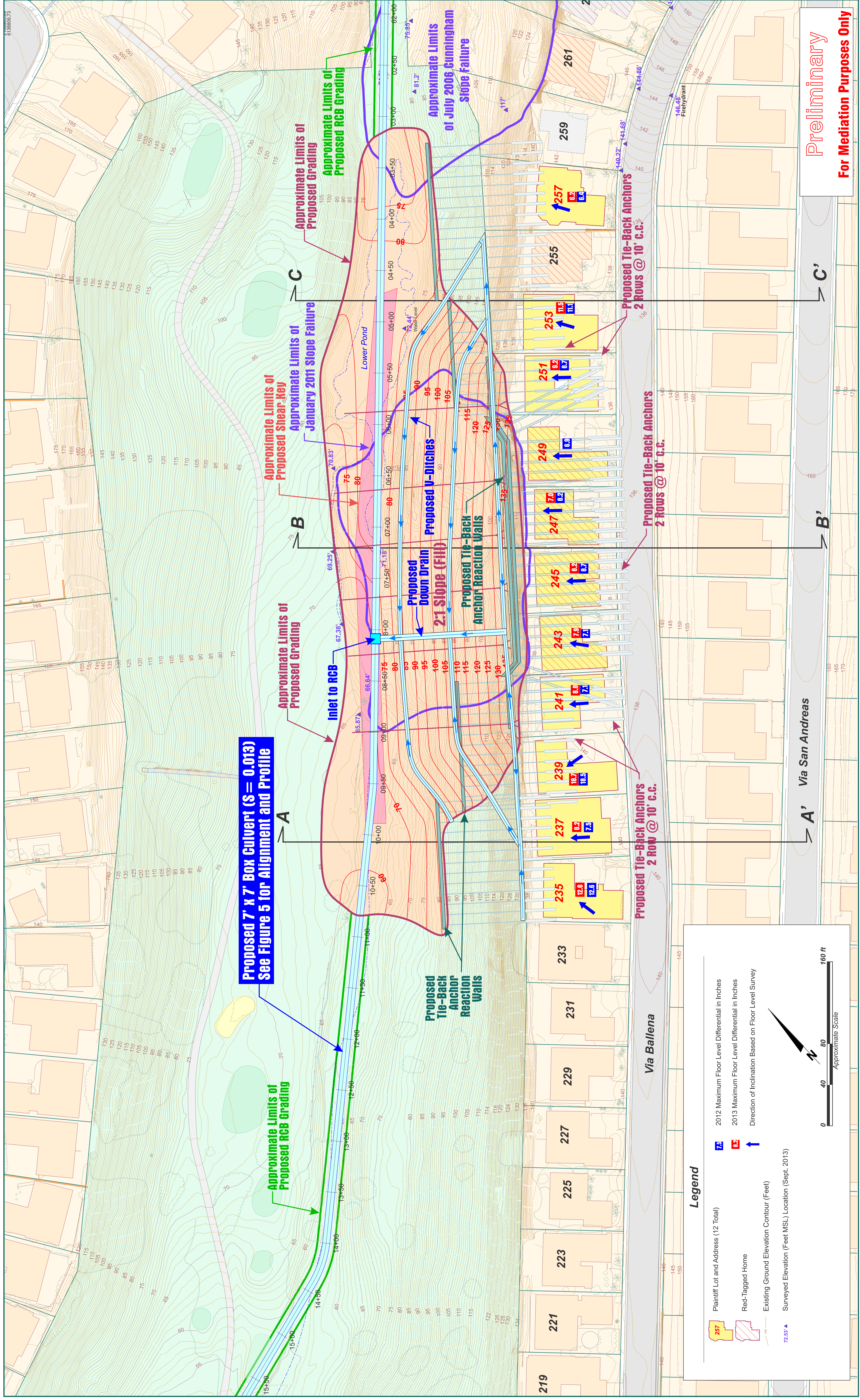


	<p>LAW OFFICE OF CARL J. KLUNDER</p> <hr/> <p>Carl J. Klunder, Esq.</p>
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	<p>WISOTSKY, PROCTER &amp; SHYER</p> <hr/> <p>James N. Procter, II, Esq. Karen M. Harmeling, Esq.</p>
	<p>MORROW &amp; WHITE</p>  <hr/> <p>William D. Morrow, Esq. Jesse S. Abrams, Esq.</p>
	<p>SPRINGEL &amp; FINK LLP</p> <hr/> <p>Adam H. Springel, Esq. Stephanie L. Millea, Esq.</p>

	<p>LAW OFFICE OF CARL J. KLUNDER</p> <hr/> <p>Carl J. Klunder, Esq.</p>
	<p>SELMAN BREITMAN LLP</p> <hr/> <p>Robert A. Steller, Esq. Mark D. Shields, Esq.</p>
	<p>WISOTSKY, PROCTER &amp; SHYER</p> <hr/> <p>James N. Procter, II, Esq. Karen M. Harmeling, Esq.</p>
	<p>MORROW &amp; WHITE</p> <hr/> <p>William D. Morrow, Esq. Jesse S. Abrams, Esq.</p>
	<p>SPRINGEL &amp; FINK LLP</p> <hr/>  <p>Adam H. Springel, Esq. Stephanie L. Millea, Esq.</p>

**EXHIBIT "A"**

**CONCEPTUAL PLANS AGREED UPON BY PARTIES AND PREPARED BY  
GEOKINETICS (5 SHEETS) AND AMERICAN GEOTECHNICAL (1 SHEET)**



**Proposed 7' x 7' Box Culvert (S = 0.013)  
See Figure 5 for Alignment and Profile**

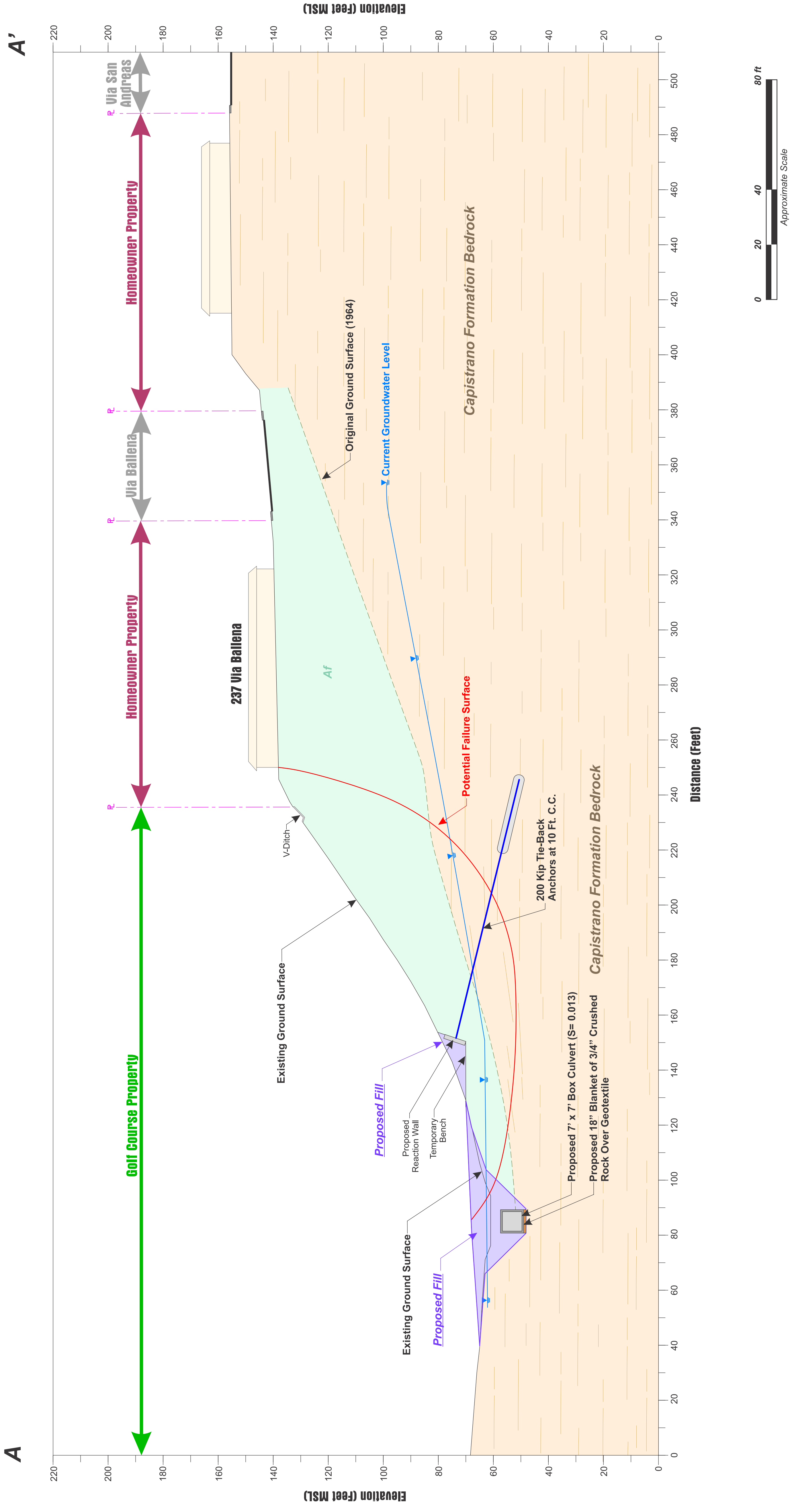
**Legend**

- Plaintiff Lot and Address (12 Total)
- 2012 Maximum Floor Level Differential in Inches
- 2013 Maximum Floor Level Differential in Inches
- Red-Tagged Home
- Direction of Inclination Based on Floor Level Survey
- Existing Ground Elevation Contour (Feet)
- Surveyed Elevation (Feet MSL) Location (Sept. 2013)

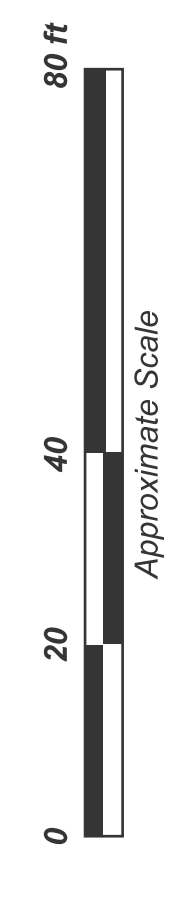
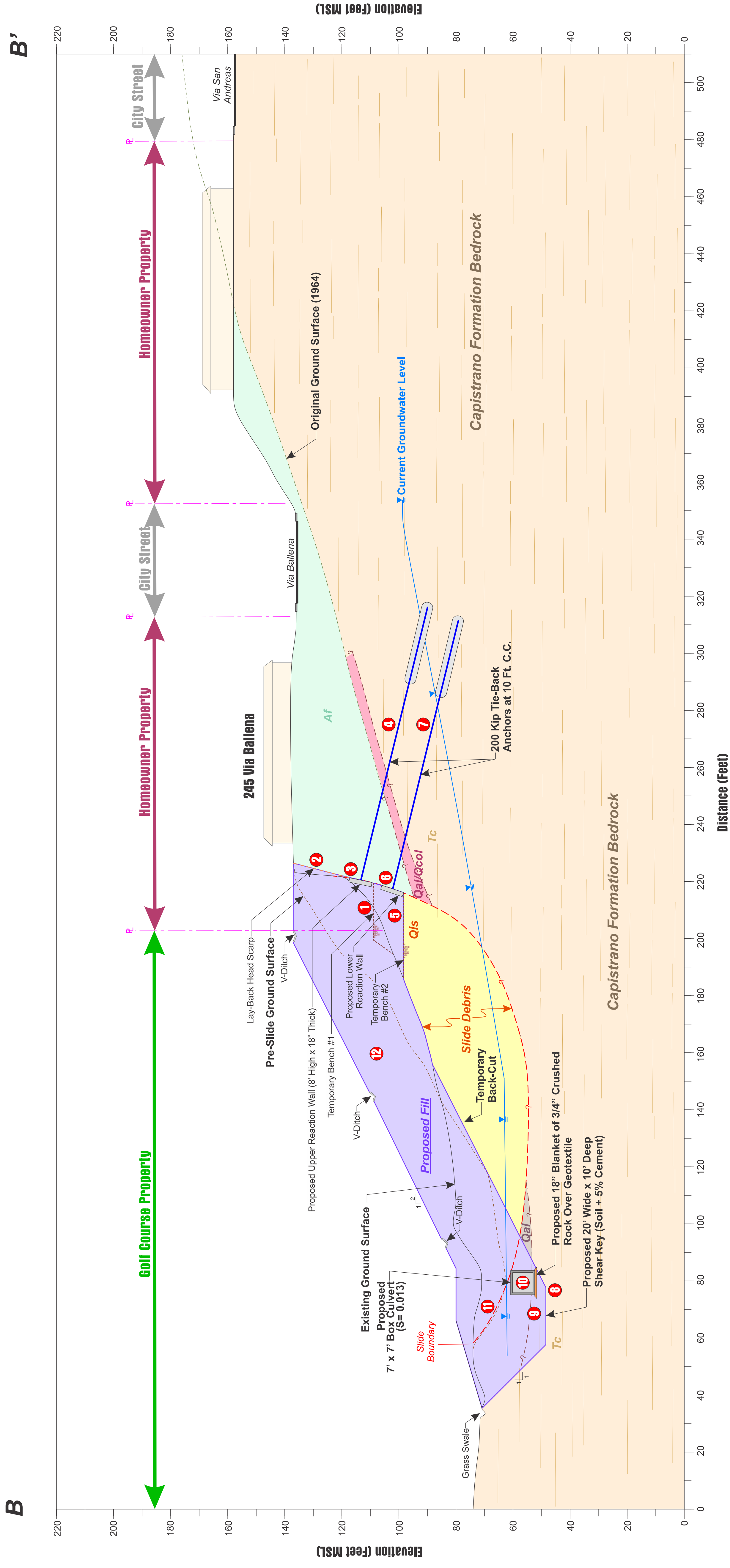
257

72.53' ▲

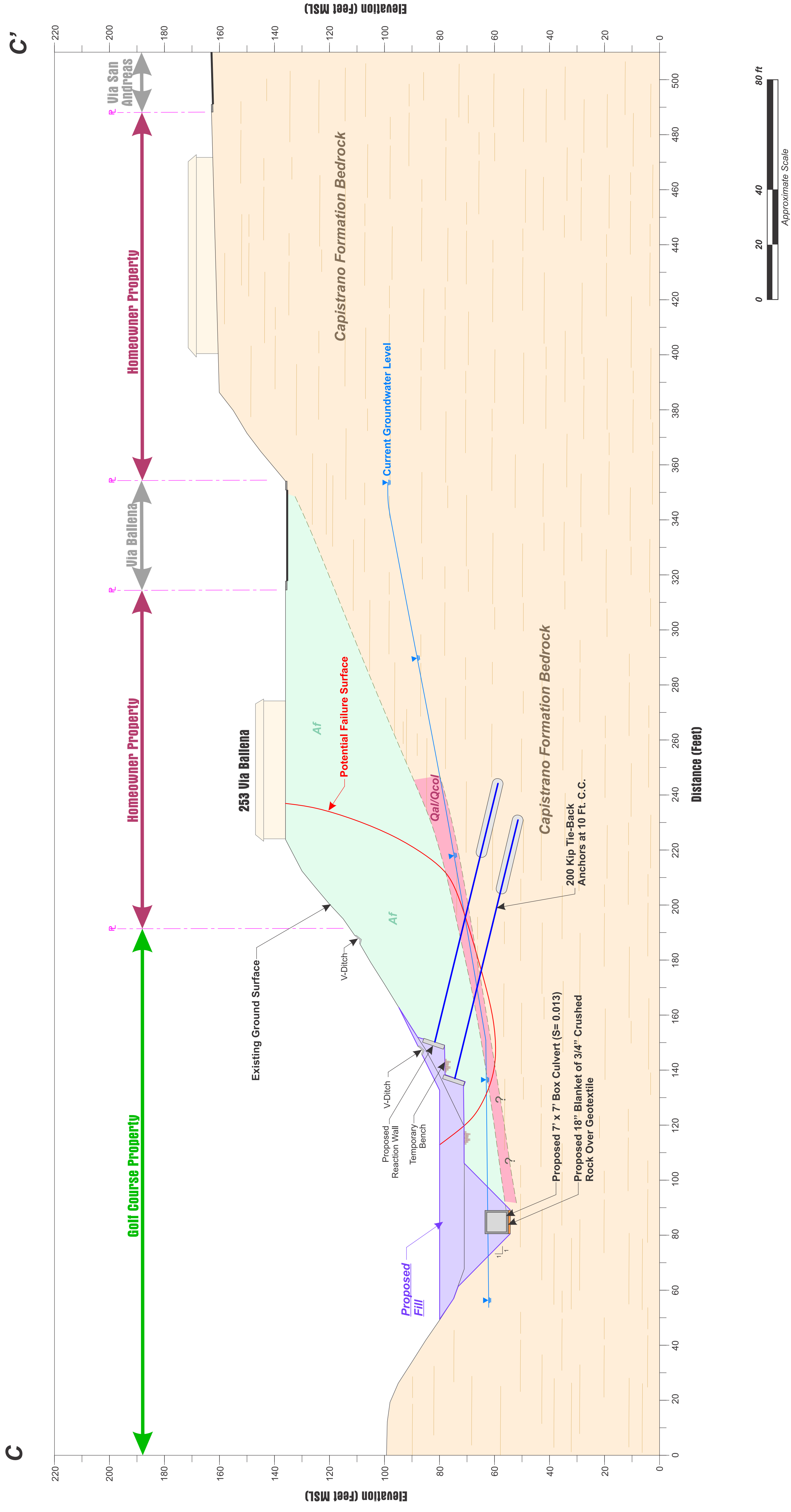
Preliminary  
For Mediation Purposes Only



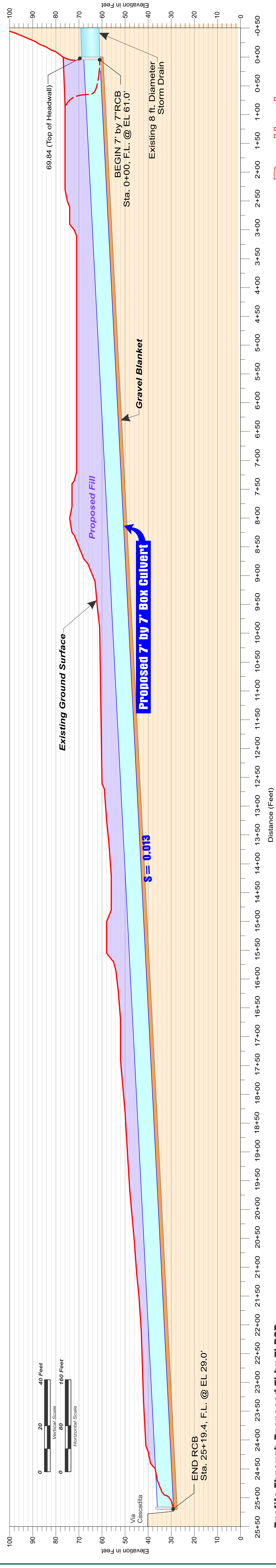
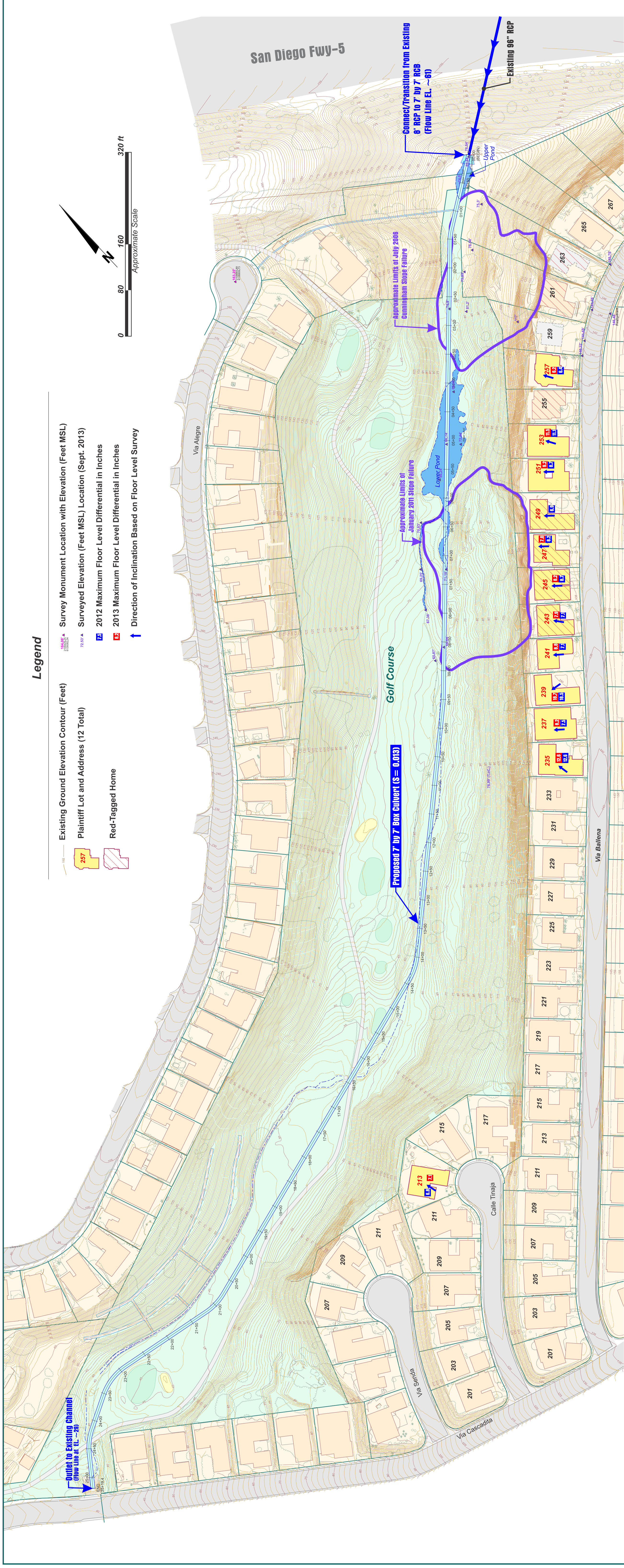
**Preliminary**  
**For Mediation Purposes Only**



**Preliminary**  
For Mediation Purposes Only



**Preliminary**  
**For Mediation Purposes Only**



Profile Through Proposed 7' by 7' RCB

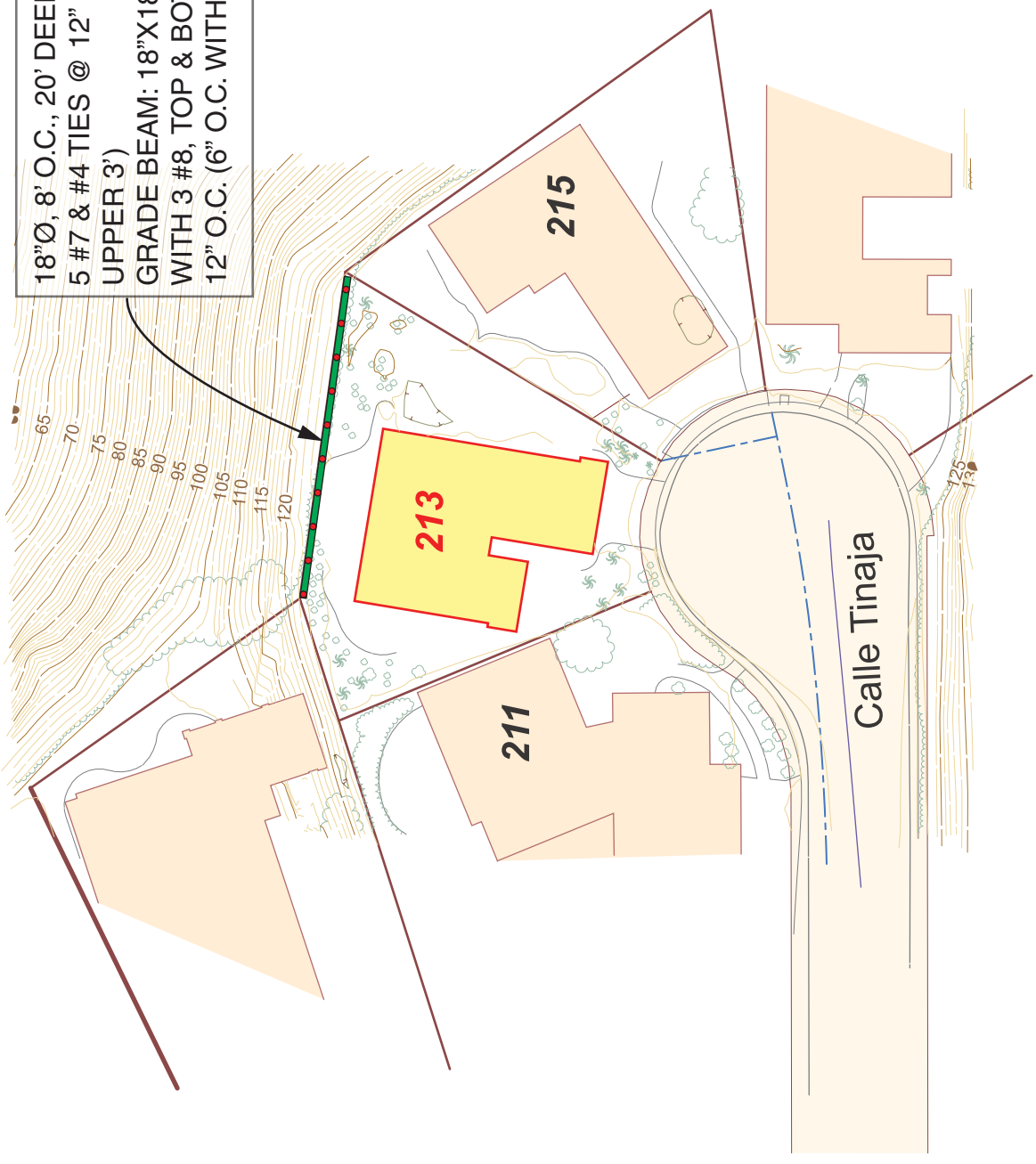
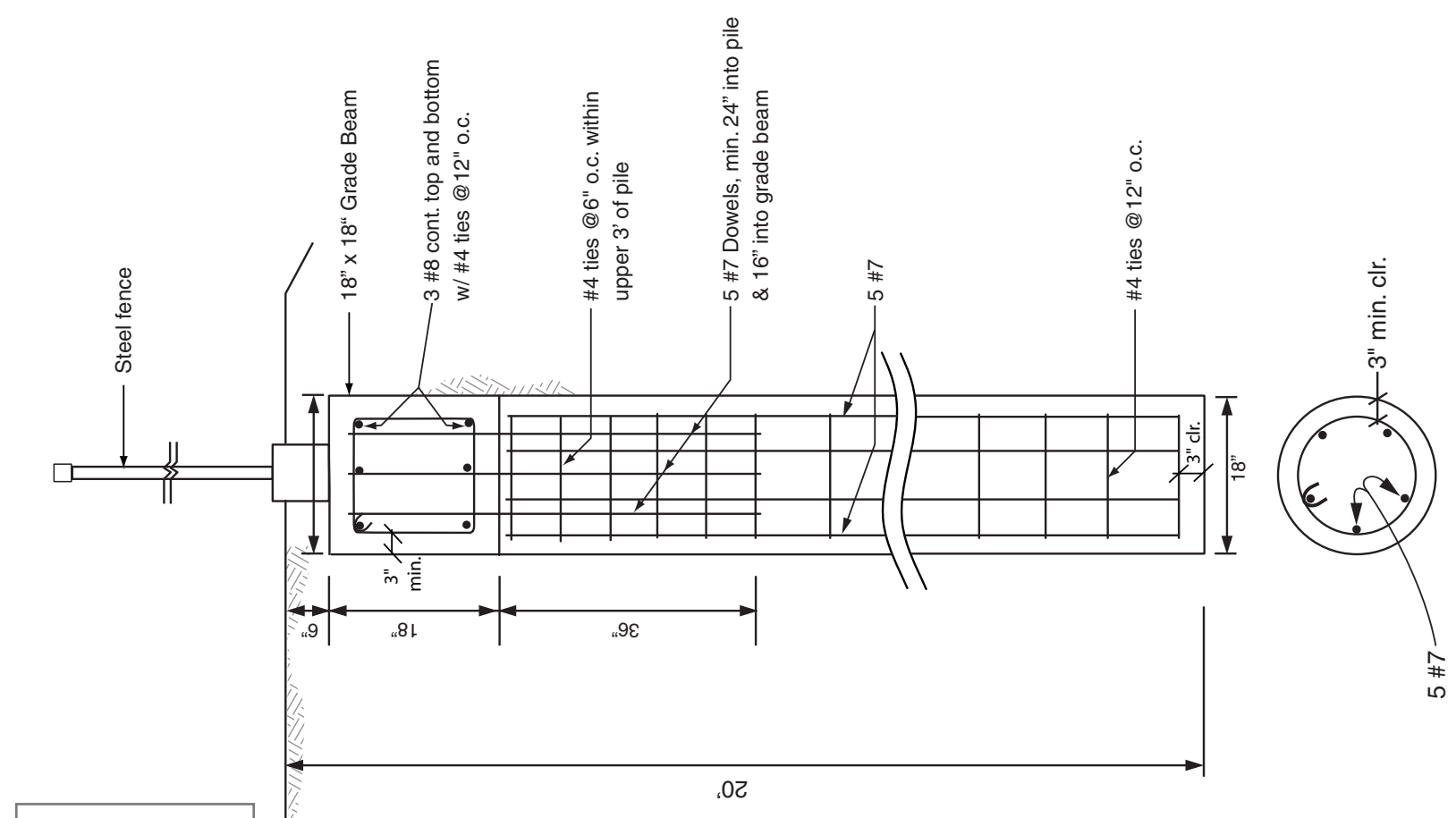
Preliminary

For Mediation Purposes Only



18"Ø, 8' O.C., 20' DEEP REINFORCED WITH 5 #7 & #4 TIES @ 12" O.C. (6" O.C. WITHIN UPPER 3')

GRADE BEAM: 18"X18" REINFORCED WITH 3 #8, TOP & BOTTOM, & #4 TIES @ 12" O.C. (6" O.C. WITHIN 2' OF PILES)



Pile / Grade Beam Detail 1  
 (Not to scale)

**EXHIBIT "B"**

**AGREED UPON CONCEPTUAL CONSTRUCTION BUDGET**

*Preliminary - For Mediation Purposes Only*

*June 9, 2015*

## **Preliminary Cost Estimate for Lower Cascadita Canyon Grading, Slope Stabilization and Surface Drainage Improvements**

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### **Option II - Install Tie-Back Anchors and Reconstruct Slope With Drainage Improvements:**

1. Preparation of grading and improvement plans: \$25,000
2. CEQA / EIR allowance: \$100,000
3. Grading permit: \$30,000
4. Legal / construction easements: \$20,000

Per D.J. Scheffler 12/13/13 proposal provided by Plaintiffs:

5. Mobilization / Demobilization
6. Lay-back / stabilize headscarp
7. Install tie-back reaction walls (1,157 ft x 8' x 18" thick)
8. Install tie-back anchors (118 x  $\approx$ 100 ft long with 200 kip capacity)
9. Clearing and grubbing
10. Construct inlet to 7' x 7' RCB
11. Provide & install 7' x 7' box culvert (2,519 ft)
12. Construct RCB transition structures (2 Each)

13. Construct rock blanket below RCB (30,000 Ft<sup>2</sup>)
14. Import of fill (64,300 yd<sup>3</sup>)
15. Over-excavation / cut (39,840 yd<sup>3</sup>)
16. Placement and compaction of fill (104,140 yd<sup>3</sup>)
17. Installation of buttress backdrain (3,600 ft)
18. Installation of subdrain outlet pipe (1,800 LF)
19. Installation of chimney drains in upper back-cut (2,000 LF)
20. Installation of Synten SF35 Geogrid (75,000 Ft<sup>2</sup>)
21. Finish grading of slope and RCB areas
22. Installation of v-ditches and downdrains (1,965 ft)
23. Installation of area drain pipe (600 LF of 8")
24. Installation of area drain inlets (12 each)
25. Construct concrete splash wall (60 LF)

D.J. Scheffler Sub-Total: \$5,624,751

26. Restoration of irrigation system: \$12,000
27. Allowance for repair of damage to fairway (80,000 ft<sup>2</sup> @ \$0.45/ft<sup>2</sup>): \$36,000
28. Hydroseed and jute netting for 2:1 slope (170,000 ft<sup>2</sup> @ \$0.40/ft<sup>2</sup>): \$68,000
29. Wetlands restoration: \$50,000
30. Slope stabilization / repair measures at 213 Tinaja: \$112,000

Permitting and Construction Sub-Total: \$6,077,751

31. Engineering observation and testing: \$250,000

32. Project management: \$250,000

Total Estimated Permitting and Construction Cost: \$6,577,751

=====

{ E N D }

**EXHIBIT “C”**

**NAMES TO BE NAMED AS ADDITIONAL INSUREDS**

1. The City of San Clemente
2. California Joint Powers Insurance Authority
3. L.H.C. Investments LLC
4. GC8, a joint venture of L.H.C. Investments LLC and James and Suzan Wu
5. Jorge Ortiz
6. Christina Ortiz
7. Frances R. Beier
8. Joseph A. Arriola
9. Richard Krumwied
10. Margaret Partovy Dilamy
11. Timothy Cole
12. Danny Y. Chan
13. Thomas Ojeda
14. Lynn J. Bartlett
15. Frank Kling
16. Terry Kling
17. Jann L. Kempton
18. Gregory C. Booth
19. Christine R. Booth
20. Andrew Whittlesy
21. OC Re-Hab 1, LLC

**EXHIBIT "D"**

**DISCLOSURE AND MAINTENANCE AGREEMENT**

RECORDING REQUESTED BY  
AND WHEN RECORDED, RETURN TO:

OC Re-Hab 1, LLC  
c/o Baker & Baker, A.P.C.  
1970 Old Tustin Avenue, Second Floor  
Santa Ana, CA 92705-7812

---

**DISCLOSURE AND MAINTENANCE AGREEMENT**

This Disclosure and Maintenance Agreement (hereinafter referred to as "Agreement") is made as of this [ADD DATE] day of September, 2015, by and between OC Re-Hab 1, LLC (hereafter referred to as "OC"), the owner of real property commonly known as Holes 5 and 6 of the Shorecliffs Golf Course, also known as Parcel 8, and more particularly described on **Exhibit "A"** attached hereto and incorporated herein by reference (hereinafter referred to as "Golf Course Property"), and [ADD OWNER'S NAME] (hereafter "Owner"), the owner of adjacent real property commonly known as [ADD OWNER'S ADDRESS], San Clemente, Orange County, California, more particularly described on **Exhibit "B"** attached hereto and incorporated herein by reference (hereinafter "Owner's Property"). OC and Owner are sometimes referred to herein as a "Party" or collectively as the "Parties".

## RECITALS

A. The Golf Course Property and the Owner's Property are contiguous with a common boundary line located on a hillside on which Owner's Property is above and the Golf Course Property is below, to the bottom of a canyon between two hillsides.

B. OC is the transferee of the Golf Course Property from GC8, a joint venture between LHC Investments, LLC and James and Suzanne Wu, the former owners. GC8 continues to own the remaining Shorecliffs Golf Course property.

C. Owner's Property is part of a development where numerous properties were constructed through grading operations, and whereby the hillside—owned primarily by OC—was engineered and created in its present form on which homes were built. Owner owns one of those homes.

D. Landslides, subsidence and earth movement have occurred in the vicinity of Owner's Property.

E. Prior lawsuits among various neighboring home owners, GC8 and the City of San Clemente have occurred in the past pertaining to landslide and subsidence. Prior lawsuits were settled. One lawsuit is now pending, Arriola, et al. v. L.H.C. Investments, LLC, etc., Orange County Superior Court Case No. 30-2011-00450299 (and related cross actions), in which OC's predecessor in interest, GC8, is a Plaintiff and Cross-Defendant (hereinafter "Arriola Litigation"). The Arriola Litigation and each of the other prior lawsuits and their respective complaints and cross-complaints are hereinafter referred to as the "Litigation."



F. The Parties enter into this Agreement for the purposes of (i) as part of a settlement of the Arriola Litigation based upon the allegations set forth in the Arriola Litigation (the “Allegations”), (ii) preventing future litigation, (iii) defining the respective rights, duties and obligations pertaining to the Parties’ care, upkeep, management and maintenance of their contiguous hillside properties, and (iv) to provide the future owners of the properties of the history of Litigation.

G. By entering into this Agreement, no Party is admitting liability, acknowledging or assuming responsibility for any claims, damages or obligations the other Party may assert or may have previously asserted.

**NOW THEREFORE**, for valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. Running with the Land. This Agreement shall be recorded so as to constitute Notice to all present and future owners and occupiers of the involved properties and shall be binding upon the successors, assigns and occupiers of the properties.

2. Hillside Landscaping. The settlement of the Arriola Litigation contemplates hillside remediation. For areas involved in the hillside remediation, each Party agrees that any plants or plantings either may install, that only drought resistant and soil retentive plants shall be used, and thereafter each shall maintain only drought resistant and soil retentive landscaping on their respective portion of the hillside.

3. Hillside Watering. The Parties agree not to equip their respective portions of the hillside with pressurized water lines or automatic sprinkler devices at any time.

4. Owner Drainage. Owner agrees to provide drainage of all surface water through drains, pipes and/or channels flowing to the street where possible, or into the V-ditches to be installed on the hillside as part of the hillside remediation. Owner agrees that no water shall be allowed to flow from his/her/their lot to the hillside except in the V-Ditches.

5. General Hillside Maintenance Provisions. No activity shall be undertaken which alters the existing slope unless it constitutes a repair of the slope which is recommended by a geotechnical expert. No activity shall occur which contributes to, causes or creates erosion, landslides or settlement problems, or which may change the direction or flow of drainage or obstruct or retard the flow of water through drain lines.

6. Watering. The Golf Course experts assert that excessive moisture placed upon the Owner's Property and the hillside could result in earth movement, subsidence, slippage and damage to the properties of the Parties. Therefore, each Party agrees to use ordinary care and reasonable caution in the placement of water upon each property governed by this Agreement, to use minimum quantities required for the survival of their plants and plantings, and to use their best efforts to prevent any excessive unnatural water (i.e., not arising from rainfall or natural occurrences) to exist upon their properties for

unreasonable amounts of time. Each Party agrees to install and maintain such water removal devices (gutters, down spouts, underground private drain lines, etc.) as are necessary to allow normal rainfall and natural irrigation to be collected, channeled and distributed to the street, public storm drains or the Hillside V-ditches.

7. Cooperation. Each Party further agrees to evaluate, in good faith, future recommendations of geotechnical and horticultural experts in an effort to decrease the possibility of future landslides, subsidence and earth movement caused by improper drainage, misdirected runoff, over irrigation and installation and maintenance of plants.

8. Access for Construction. Each Party shall grant to the other such access, licenses, temporary trespass agreements, and the like, which may be reasonably necessary for contractors, subcontractors, agents and employees to enter upon the property of the other for the purpose of performing hillside or slope repair or remediation as may be permitted by appropriate governmental officials, inspected and installed by licensed and insured contractors. Neither Party shall allow mechanic's lien(s) to affect the property of the other Party. Each Party shall be given at least thirty (30) days' notice of any intention to perform hillside or slope repair or remediation so that appropriate "Notice of Non-Responsibility" forms may be posted.

9. Future Litigation. Each Party hereto shall forever refrain and forebear from making a claim or commencing a lawsuit, action or other

proceedings against the other based on or arising out of the Arriola Litigation. Each Party shall retain the right to bring future litigation against others based on active negligence or intentional conduct occurring after the date of this Agreement.

10. Governing Law. This Agreement is to be governed by the laws of the State of California.

11. Mandatory Mediation. If the Parties hereto are unable, after good faith negotiations, which each hereby covenants to undertake, to resolve any and all disputes arising out of, relating to or in connection with this Agreement including, without limitation, in respect to the formation of this Agreement, or the construction or interpretation of this Agreement, the Parties shall commence mediation by sending a written demand for mediation to the other Party. Such demand shall set forth with particularity and with supporting detail or documentation the dispute or matter to be resolved by mediation. Failure of a Party to participate in the mediation, or participation without good faith, will deprive that Party from recovery of costs and attorneys fees even if he/she/they/it prevail(s) in a subsequent law suit.

12. Jurisdiction. The Parties agree that any issues arising from or relating to the enforcement, interpretation or performance of any Party arising from this Agreement may be enforced in the Orange County Superior Court, Central Justice Center. The Parties agree that the Court shall have jurisdiction over the Parties and property subject to this Agreement.

IN WITNESS WHEREOF, the Parties executed this Agreement on the day and year first written above.

**“OWNER”**

**“OC RE-HAB 1, LLC”**

\_\_\_\_\_  
[ADD OWNER’S NAME]  
and

\_\_\_\_\_  
By: George Zeber, Sole Member  
Manager

APPROVED AS TO FORM AND CONTENT:

**FOR OC RE-HAB 1, LLC:**

BAKER & BAKER  
A Professional Corporation

By: \_\_\_\_\_  
William E. Baker, Jr.

**FOR OWNER:**

TOMASSIAN, THROCKMORTON & INOUE LLP

By: \_\_\_\_\_  
Serge Tomassian

**Exhibit “A” - Legal Description of “Golf Course Property”**

**Exhibit “B” - Legal Description of “Owner’s Property”**

## Exhibit "A"

### Legal Description of "Golf Course Property"

PARCEL 8:

THAT PORTION OF PARCELS DESIGNATED AS "HUGO FORSTER 63.48 ACRES", "HUGO FORSTER 376.60 ACRES", AND "JOHN M. LYLE 35.101 ACRES", AS SHOWN ON A MAP FILED IN BOOK 11, PAGE 29 OF RECORD OF SURVEYS IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY, CALIFORNIA, ALSO BEING A PORTION OF RANCHO BOCA DE LA PLAYA, AS SHOWN ON A MAP RECORDED IN BOOK 4, PAGES 118 AND 119 OF PATENTS, RECORDS OF LOS ANGELES COUNTY, CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT A 1-1/2 INCH IRON PIPE TAGGED R.C.E. 10301, BEING THE MOST SOUTHERLY CORNER OF TRACT NO. 4628 AS SHOWN ON A MAP RECORDED IN BOOK 161, PAGE 28 OF MISCELLANEOUS MAPS IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY; THENCE, ALONG THE SOUTHEASTERLY BOUNDARY OF SAID TRACT NO. 4628 AND THE SOUTHEASTERLY BOUNDARY OF THAT PORTION SHOWN AS "NOT A PART OF THIS TRACT" ON SAID MAP, NORTH 68° 30' 00" EAST 987.00 FEET; THENCE, ALONG SAID TRACT NO. 4628 BOUNDARY, NORTH 47° 30' 00" EAST 264.79 FEET TO A 1-1/2 INCH IRON PIPE TAGGED R.C.E. 10301, MARKING A COMMON CORNER OF SAID TRACT NO. 4628 AND TRACT NO. 4804 AS SHOWN ON A MAP RECORDED IN BOOK 168, PAGE 20 OF MISCELLANEOUS MAPS IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY; THENCE, LEAVING THE BOUNDARY OF SAID TRACT NO. 4628, ALONG THE BOUNDARY OF SAID TRACT NO. 4804, NORTH 47° 30' 00" EAST 256.71 FEET; THENCE, CONTINUING ALONG SAID BOUNDARY OF TRACT NO. 4804, NORTH 35° 25' 39" EAST 266.93 FEET TO A 1-1/2 INCH IRON PIPE TAGGED R.C.E. 10301, MARKING A COMMON CORNER OF SAID TRACT NO. 4804 AND TRACT NO. 4937 AS SHOWN ON A MAP RECORDED IN BOOK 176, PAGES 20 AND 21 OF MISCELLANEOUS MAPS IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY; THENCE, LEAVING THE BOUNDARY OF SAID TRACT NO. 4804, ALONG THE BOUNDARY OF SAID TRACT NO. 4937, NORTH 35° 25' 38" EAST 181.50 FEET; THENCE, CONTINUING ALONG SAID BOUNDARY OF TRACT NO. 4937, NORTH 42° 06' 08" EAST 56.24 FEET TO A 2-INCH IRON PIPE TAGGED R.C.E. 8793, MARKING THE MOST EASTERLY CORNER OF LOT 1 OF SAID TRACT NO. 4937; THENCE, LEAVING THE BOUNDARY OF SAID TRACT NO. 4937, NORTH 72° 26' 32" EAST 134.26 FEET; THENCE SOUTH 68° 17' 24" EAST 88.07 FEET; THENCE SOUTH 49° 34' 53" EAST 214.89

FEET; THENCE SOUTH 16° 28' 30" WEST 63.74 FEET; THENCE SOUTH 38° 33' 22" WEST 275.18 FEET; THENCE SOUTH 38° 40' 21" WEST 383.67 FEET; THENCE SOUTH 39° 19' 15" WEST 120.49 FEET; THENCE SOUTH 41° 51' 12" WEST 58.51 FEET; THENCE SOUTH 43° 31' 25" WEST 495.55 FEET; THENCE NORTH 46° 28' 35," WEST 96.58 FEET; THENCE NORTH 83° 26' 35" WEST 131.26 FEET; THENCE SOUTH 50° 02' 33" WEST 96.54 FEET; THENCE NORTH 82° 57' 29" WEST 171.29 FEET; THENCE SOUTH 56° 02' 47" WEST 90.42 FEET; THENCE SOUTH 19° 03' 46" WEST 193.98 FEET; THENCE NORTH 55° 08' 51" WEST 418.00 FEET; THENCE SOUTH 34° 51' 09" WEST 100.00 FEET; THENCE NORTH 55° 08' 51" WEST 40.84 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 725.00 FEET; THENCE NORTHWESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 6° 07' 54", A DISTANCE OF 77.59 FEET; THENCE, TANGENT TO SAID CURVE, NORTH 49° 00' 57" WEST 10.45 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 390.43 FEET; THENCE NORTHWESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 23° 16' 22", A DISTANCE OF 158.59 FEET TO A POINT OF REVERSE CURVATURE WITH A CURVE CONCAVE EASTERLY AND HAVING A RADIUS OF 20.00 FEET; THENCE NORTHERLY ALONG THE LAST MENTIONED CURVE, THROUGH A CENTRAL ANGLE OF 96° 47' 59", A DISTANCE OF 33.79 FEET TO A POINT OF COMPOUND CURVATURE WITH A CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 176.36 FEET; THENCE NORTHEASTERLY ALONG THE LAST MENTIONED CURVE, THROUGH A CENTRAL ANGLE OF 10° 51' 59", A DISTANCE OF 33.60 FEET TO A POINT IN THE BOUNDARY OF SAID TRACT NO. 4628 AND A POINT IN THE SOUTHEASTERLY RIGHT OF WAY LINE OF VIA MONTEGO; THENCE SOUTH 54° 34' 21" EAST 160.00 FEET ALONG SAID BOUNDARY OF TRACT NO, 4628 TO THE POINT OF BEGINNING.

Currently used as the 5<sup>th</sup> and 6<sup>th</sup> Holes of the Shorecliffs Golf Course

## **Exhibit “B”**

### **Legal Description of “Owner’s Property”**

Lot [ADD LOT NUMBER] of Tract No. 4940, in the City of San Clemente, County of Orange, State of California, as per map recorded in Book 200, Pages 44 to 47, Inclusive, of Miscellaneous Maps in the Office of the County Recorder of Orange County.



**EXHIBIT “E”**

**INDEPENDENT CONTRACTOR AGREEMENT  
FOR CONSTRUCTION MANAGEMENT**

THIS AGREEMENT is made and entered into this \_\_\_\_\_, in the City of San Clemente, County of Orange, State of California, by and between George Zeber hereafter referred to as the Construction Management Contractor (“CMC”) and OC Re-Hab 1, LLC hereafter referred to as the Owner (“OWNER”)

**II. RECITALS**

- (CMC) is a certified General Contractor Qualifier in the State of California.
- (Owner) wishes to engage the services of (CMC) for the purposes of managing the Design, Engineering, Permitting, Construction and the day to day operation of the Project.
- The Project hereafter referred to as the (PR) is being undertaken pursuant to the terms of a Settlement Agreement (“Settlement Agreement”) in the case of *Joseph A. Arriola, et al. v. LHC Investments, Inc., et al.*, Orange County Superior Court Case No. 30-2011-00450299-CU-CD-CXC. The terms of this Independent Contractor Agreement for Construction Management is intended to be consistent with the terms of that Settlement Agreement. The (PR) referred to in this agreement consists of hillside remediation and related work including certain residential lot restorations in accordance with the Conceptual Plans.
- (CMC) has the specific experience and resources to manage the (PR)

**NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

1. Hiring and Acceptance Representations: (Owner) hereby retains (CMC) as its Independent Contractor to perform the overall day to day management of the (PR) under the following terms:
  - a. (CMC) is experienced in Design, Engineering, Construction Management and Construction Supervision, will exercise the skill and knowledge normally possessed by members of the construction management profession/trade in good standing in similar communities, and will at all times devote his best efforts to the project.
  - b. (CMC) is willing to exert his best efforts to discharge the duties assigned to him by (Owner) in relation to his primary responsibility, which shall be as defined on Exhibit “A” for the management of the (PR).

- c. (CMC) shall perform his duties as are more particularly set forth in Exhibit "A" attached hereto and made a part hereof.
2. Status of Contractor: (CMC) enters into this agreement, and will remain throughout the term of the agreement, as an independent contractor. It is acknowledged by the Parties to this Agreement that (CMC) is the principal of OC Re-Hab 1, LLC, but (CMC) is not and will not become an employee, partner or agent of (Owner) while this agreement is in effect, and shall always remain as an Independent Contractor. (CMC) agrees he is not entitled to the rights or benefits afforded to (Owner) employees, including disability or unemployment insurance, workers' compensation, medical insurance, sick leave, or any other employment benefit. (CMC) is responsible for providing, at his own expense, disability, unemployment, and other insurance, workers' compensation, training, permits, and licenses for himself and for his employees and subcontractors.
  3. Method of Performing Services: (CMC) will determine the method, details, and means of performing the above-described services to include the selection of all Consultants, Engineers, Contractors and Material Suppliers. In the event the (Owner) requires that certain methods, means and selection of Consultants, Engineers, Contractors or Material Suppliers be used that are not selected by the (CMC) then the (CMC) will not be liable for those selections, and the (Owner) will hold (CMC) harmless from any and all liability associated with those selections.
  4. Payment of Income Taxes: (CMC) is responsible for paying when due all income taxes, including estimated taxes, incurred as a result of the compensation paid by (Owner) to (CMC) for services under this agreement. On request, (CMC) will provide (Owner) with proof of timely payment. (CMC) agrees to indemnify (Owner) for any claims, costs, losses, fees, penalties, interest or damages suffered by (Owner) resulting from (CMC) failure to comply with this provision.
  5. Use of Employees or Subcontractors: (CMC) may, at (CMC) own expense, use any employees or subcontractors as (CMC) deems necessary to perform the services required of him by this agreement. (Owner) may not control, direct, or supervise the (CMC) employees or subcontractors in the performance of those services.
  6. Non-Exclusive Relationship: (CMC) may represent, perform services for, and contract with as many additional clients, persons, or companies as the (CMC), in his sole discretion, sees fit. Nevertheless, any such services and/or contracts shall not interfere with or otherwise obstruct (CMC) from the performance of his duties under this agreement.
  7. Time and Place of Performing Work: The (CMC) may perform the services under this agreement at any suitable time and location he chooses.
  8. Limited Liability: (CMC) will not be liable to (Owner), or to anyone who may claim any right due to a relationship with (Owner), for any acts or omissions in the selection

of any Contractor, Consultant or Engineer that is not selected and approved by (CMC), but rather is the choice of the (Owner) or has been pre-selected by the (Owner) prior to the engagement of (CMC). (Owner) will indemnify and hold (CMC) free and harmless from any obligations, costs, claims, judgments, attorneys' fees, and attachments arising from, growing out of the performance of those Contractors, Consultants or Engineers.

9. Term: The term of this agreement shall commence on execution of this agreement and shall continue until the agreement is terminated per the terms set forth below.
10. Compensation/Payment: In consideration for the services rendered hereunder, (Owner) agrees to pay (CMC) for its services as follows:
  - a. An amount not to exceed \$306,000.00.
  - b. Payment will be made in the amount not to exceed \$120,000.00 prior to the issuance of a Building Permit, with monthly payments of \$12,000.00 every 30 days beginning on the first day of the month after the execution of this agreement for a period not to exceed 10 billing periods. In the event the Building Permit is issued prior to the expiration of the 12th billing period, (CMC) will receive the balance of its compensation (\$120,000.00) in one lump sum payment. After the issuance of the Building Permit the balance of the fee in the amount of \$186,000.00 will be paid with monthly payments in the amount of \$18,600.00 every 30 days beginning on first day after the issuance of the Building Permit for a period not to exceed 10 billing periods or until the issuance of a Notice of Completion. In the event that the Notice of Completion is recorded prior to the expiration of the 10th billing period, (CMC) will receive the balance of its compensation in one lump sum. In the event that the (PR) is suspended or terminated in accordance with Section II.G. of the Settlement Agreement, all payments to (CMC) under this agreement will be suspended and (CMC) will only be entitled to compensation under this agreement through the month that the (PR) is either suspended or terminated.
  - c. (CMC) will provide (Owner) and members of the LLC Management Committee with monthly invoices to include a current Lien Release.
11. Reimbursements: (CMC) will not be reimbursed for any personal business expenses to include travel, lodging or food. (CMC) will be reimbursed for all project expenses that may incur from time to time and as identified in the Approved (PR) Budget. (Owner) agrees to immediately reimburse the (CMC) for all project expenses upon presentation of bills, receipts and itemization of costs.
12. Payment of Project Expenses: (Owner) agrees to pay all project expenses in a timely manner in order to avoid any disruption in the processing of the project in accordance with the schedule determined by the owner.
13. Termination: This agreement will terminate upon the filing of the Notice of Completion (NOC), but, the (Owner) and/or the LLC Management Committee may

terminate this agreement with or without cause upon written notice to (CMC). Unless otherwise terminated as provided in this agreement, this agreement will continue in force until the services provided for in this agreement have been fully and completely performed as evidenced by the filing of the (NOC)

14. Meetings: (CMC) agrees to attend all meetings as may be reasonably scheduled from time to time and as identified in Exhibit A.
15. No Partnership or Joint Venture: The parties agree that nothing contained herein constitutes a partnership or Joint Venture between the parties, nor does (CMC) assume any ownership or liability to the property or for expenses incurred for the ownership, development, operation or sale of the Property.
16. Authority: (CMC) shall not, in discharging its obligations hereunder, have authority to bind or act on behalf (Owner), and to make any contracts or commitments on behalf of (Owner), unless specifically agreed upon in Exhibit A.
17. Assignment: Neither this agreement nor any duties or obligations under this agreement may be assigned without the prior written consent of the other party.
18. Cooperation: (Owner) agrees to comply with all reasonable requests of (CMC) and provide access to all documents reasonably necessary to the performance of his duties under this agreement.
19. New Developments: (CMC) agrees that all designs, plans, reports, specifications, drawings, inventions, processes, and other information or items produced by (CMC) while performing services under this agreement will be assigned to (Owner) as the sole and exclusive property of (Owner) and assignees, nominees, and successors, as well as any copyrights, patents, or trademarks obtained by (CMC) while performing services under this agreement. On request and at the expense of (Owner), (CMC) agrees to help (Owner) obtain patents and copyrights for any new developments. This includes providing data, plans, specifications, descriptions, documents, and other information, as well as assisting (Owner) in completing any required application or registration.

**General Provisions:**

- A. Notices: Any notices required to be given under this agreement by either party to the other may be effected by personal delivery in writing or by mail, registered or certified, postage prepaid with return receipt requested. Mailed notices must be addressed to the parties at the addresses appearing in the introductory paragraph of this agreement, but each party may change the address by giving written notice in accordance with this paragraph. Notices delivered personally will be deemed communicated as of actual receipt; mailed notices will be deemed communicated as of the date of receipt or the fifth day after mailing, whichever occurs first.
- B. Entire Agreement of the Parties: This agreement supersedes any and all agreements, either oral or written, between the parties with respect to the rendering of services by (CMC) for (Owner) and contains all of the representations, covenants and agreements between the parties with respect to the rendering of those services. Each party to this agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party which are not contained in this agreement, and that no other agreement, statement, or promise not contained in this agreement will be valid or binding. Any modification of this agreement will be effective only if it is in writing, signed by the party to be charged.
- C. Partial Invalidity: If any provision of this agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.
- D. Attorney's Fees: If any legal action based in contract law, including an action for declaratory relief, is brought to enforce or interpret the provisions of this agreement, the prevailing party will be entitled to reasonable attorneys' fees, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which that party may be entitled.
- E. Governing Law: This agreement will be governed by and construed in accordance with the laws of the State of California with exclusive venue in the Central Justice Center of the Superior Court of the County of Orange.

**Construction Management Contractor (CMC)**

\_\_\_\_\_  
George Zeber

\_\_\_\_\_  
Date

**Owner**

\_\_\_\_\_  
OC Re-Hab 1, LLC

\_\_\_\_\_  
Date

## **EXHIBIT “A”**

### **CONSTRUCTION MANAGEMENT CONTRACTOR**

#### **DUTIES AND RESPONSIBILITIES:**

(CMC) will provide Design and Construction Management services to the (Owner), as more specifically provided in the Sections below hereof, in connection with the development of the (PR) and (CMC) hereby agrees to provide such services to the (Owner) provided in the Sections below hereof, and otherwise on the other terms and conditions provided in this agreement, to include but not limited to the following:

1. Supervise the scheduling and design criteria for all engineers, consultants and subcontractors to insure timely submittals and processing of entitlements.
2. Meet and confer with any and all City, County and or State agencies for processing of the (PR).
3. Preparation and maintenance of detailed Budget for the (PR)
4. The analysis, preparation and award of all contracts. (CMC) will solicit a minimum of three bids for every scope of work that a contract is awarded.
5. Review and maintain Commercial General Liability Insurance for each contractor or subcontractors in an amount required by Owner.
6. Insure the issuance of a Payment and Performance for each contractor in an amount not less their respective contract amount.
7. Prepare progress reports for the review of Owner.
8. Schedule and supervise all on-site construction activities.
9. Review project billing invoices and secure valid Lien Releases for each payment made to contactors for Labor, Material and Services.
10. Submit Payment requests to the Fund Control Manager for payments to contractors in accordance with the Fund Control guidelines.
11. Meet with Owner on regular scheduled basis.

**Feasibility of Budget:** (CMC) has completed an analysis of the Budget and pricing recommendations for the completion of the referenced project in accordance with the total costs as requested by the (Owner). (Owner), and each of its shareholders, have independently reviewed and approved such analysis and are not relying upon (CMCs) opinions or conclusions. During the term of this agreement, (CMC) shall continue to monitor the Budget and shall provide (Owner) with a periodic report on the status of the continued feasibility of the Budget. (Owner) acknowledges that the (CMC) does not represent or warrant, and hereby specifically disclaims any representation or warranty, express or implied, that the Project will achieve the financial results projected in any budget or pro forma prepared by the (CMC), (Attached as Exhibit B), or that the costs of construction of the (PR) will conform to the Budget. The (Owner) is acknowledging that there are many factors which can affect the ultimate feasibility of the Project and which are not within the control of the (CMC). Without limiting the foregoing, (Owner) acknowledges that the (CMC) is undertaking this agreement strictly on a cost basis plus a Construction Management fee, and that under no circumstances shall the (CMC) be responsible for the financial results of construction and completion of the (PR) or for any direct or indirect costs incurred in excess of that projected in the Budget.

**Construction Management.** Subject to timely payment of all sums due (CMC), (CMC) agrees to use its best commercially reasonable efforts to provide such construction management services as are necessary or desirable in order to provide for the timely completion of the Project in a good and workmanlike manner in accordance with the plans and specifications and approved Budget. (CMC) agrees to devote such time and efforts as reasonably required by (Owner) or as otherwise reasonably necessary or desirable for the timely and proper completion of the Project. (CMC) will provide project supervision and management from the beginning of Engineering and Entitlements through the completion of construction. (CMC) agrees to provide such services as are necessary for the proper and timely management and supervision of the Design, Engineering, Entitlements and Construction of the improvements comprising the (PR), including, without limiting the generality of the foregoing:

- a. Procure bids for subcontracts, labor and materials necessary to construct the Project;
- b. negotiate the terms and conditions of any and all subcontracts and materials, orders or contracts
- c. enter into such subcontracts for labor and materials ("**Subcontracts**"), as the (CMC) deems necessary and appropriate for the completion of the (PR); provided that the (CMC) shall not enter into any such subcontract which exceeds by more than five percent (5%) the amount thereof allocated in the Approved Budget (Exhibit B)
- d. enter into contracts for utilities, insurance (including comprehensive general liability insurance, on which (CMC) shall be a named additional insured, course of construction and other property insurance as requested by (Owner) and all other matters necessary or appropriate in connection with the (PR);



- e. prepare, submit and process any and all draw requests to (Owner) for advances on any construction financing available to the (PR), and otherwise prepare and maintain any and all books and records necessary to properly account for all costs and expenses incurred in connection with the (PR);
- f. process and submit for payment to (Owner) any and all invoices or claims submitted by any subcontractors, material men, laborers or suppliers, or consultants (collectively "**Subcontractors**") from funds made available from construction financing or otherwise directly by (Owner)
- g. supervise and coordinate all Subcontractors supplying labor, material, equipment or services to the (PR) in order to provide for the orderly progress of construction in accordance with time schedules submitted by (CMC) to (Owner)
- h. provide necessary manpower to oversee any customer service for a period of six (6) months following the completion of construction of the (PR);
- i. provide for Subcontractors to provide standard industry warranties; and
- j. use all reasonable efforts to have Subcontractors provide any and all necessary warranty work for the terms of the various warranties.

**Payment of Direct Expenses.** Subject to approval of the LLC Management Committee, (Owner) shall pay, promptly upon presentation of invoices therefore, or when due under applicable contracts therefore, the following costs associated with the (PR):

- a. The total compensation, including full labor burden, payable to the job superintendent engaged by (CMC) to provide full time on site supervision;
- b. The total compensation, including full labor burden, of all field labor engaged by (CMC) to provide general cleanup and maintenance of the (PR) site;
- c. All sums payable to the Subcontractors in accordance with their contracts for material, labor and/or services provided to the Project;
- d. All outstanding sums owing to Subcontractors for material, labor, equipment and/or services provided to the (PR) prior to the date of this agreement;
- e. All costs of insurance obtained by (CMC) for the risks associated with the (PR) as the (CMC) in its good faith judgment determines to be necessary and appropriate for the protection of the (PR) and the Property or is otherwise required by the (Owner);
- f. All costs of utilities and other services provided to the (Owner) in connection therewith;

- g. All direct and indirect costs associated with staffing and maintaining a field office at the (PR) site;
- h. All costs of warranty service and corrective work, to the extent not provided under warranty from Subcontractors;
- i. All other costs generally considered a job cost in the construction industry, including by way of example only, permit fees, plan check fees, costs of removal of debris and clean up, costs incurred in connection with emergencies, and costs for equipment and machinery rentals, if any.

**Warranty Service** (CMC) shall strive to have all warranty service work performed by the Subcontractor who originally performed the work or the material supplier who supplied the materials as part of their warranty without cost to the (PR). In the event that (CMC) is unable to obtain cooperation from said party, the costs of such warranty service shall be a direct expense payable by the (PR) in accordance with the specific line item allocated to Warranty Service in the approved Budget. (CMC) shall not be entitled to any additional compensation with respect to any warranty service provided to the (PR).

#### **END OF DUTIES AND RESPONSIBILITIES**

**EXHIBIT B**

**CONCEPTUAL PLANS**

**EXHIBIT C**

**APPROVED BUDGET**

**EXHIBIT "F"**

**SERVICE LIST FOR NOTICES**

<b>Party</b>	<b>Notice Shall Be Given To:</b>
City of San Clemente	City of San Clemente 100 Avenida Presidio San Clemente, CA 92672  (with a copy to Kutak & Rock LLP, 5 Park Plaza, suite 1500, Irvine, CA 92614)
California Joint Powers Insurance Authority	8081 Moody Street La Palma, CA 90623  (with a copy to Kutak & Rock LLP, 5 Park Plaza, suite 1500, Irvine, CA 92614)
L.H.C. Investments LLC,	P.O. Box 3190 South Pasadena, CA 91031-6190  (with a copy to Baker & Baker APC, 1970 Old Tustin Ave., 2 <sup>nd</sup> Floor, Santa Ana, CA 92705)
GC8, a joint venture of L.H.C. Investments LLC and James and Suzan Wu	P.O. Box 3190 South Pasadena, CA 91031-6190  (with a copy to Baker & Baker APC, 1970 Old Tustin Ave., 2 <sup>nd</sup> Floor, Santa Ana, CA 92705)
James and Suzan Wu	P.O. Box 7593 Capistrano Beach, CA 92624  (with a copy to Baker & Baker APC, 1970 Old Tustin Ave., 2 <sup>nd</sup> Floor, Santa Ana, CA 92705)
Jorge and Christina Ortiz	257 Via Ballena San Clemente, CA 92672  (with a copy to Tomassian, Throckmorton & Inouye LLP, 2 Corporate Park, Suite 210, Irvine, CA 92606)
Frances R. Beier	253 Via Ballena San Clemente, CA 92672

**Party**

**Notice Shall Be Given To:**

Joseph A. Arriola

(with a copy to Tomassian,  
Throckmorton & Inouye LLP, 2  
Corporate Park, Suite 210, Irvine, CA  
92606)

251 Via Ballena

Richard Krumwied

(with a copy to Tomassian,  
Throckmorton & Inouye LLP, 2  
Corporate Park, Suite 210, Irvine, CA  
92606)San Clemente, CA 92672

Post Office Box 1188  
Downey, CA 90241

Margaret Partovy Dilamy

(with a copy to Tomassian,  
Throckmorton & Inouye LLP, 2  
Corporate Park, Suite 210, Irvine, CA  
92606)

247 Via Ballena  
San Clemente, CA 92672

Timothy Cole

(with a copy to Tomassian,  
Throckmorton & Inouye LLP, 2  
Corporate Park, Suite 210, Irvine, CA  
92606)

15711 Toway Lane  
Huntington Beach, CA 92647

Danny Y. Chan

(with a copy to Tomassian,  
Throckmorton & Inouye LLP, 2  
Corporate Park, Suite 210, Irvine, CA  
92606)

2836 Calle Guadalajara  
San Clemente, CA 92673

Thomas Ojeda

(with a copy to Tomassian,  
Throckmorton & Inouye LLP, 2  
Corporate Park, Suite 210, Irvine, CA  
92606)

241 Via Ballena  
San Clemente, CA 92672

(with a copy to Tomassian,  
Throckmorton & Inouye LLP, 2  
Corporate Park, Suite 210, Irvine, CA

**Party**

Lynn J. Bartlett

**Notice Shall Be Given To:**

92606)

239 Via Ballena  
San Clemente, CA 92672

(with a copy to Tomassian,  
Throckmorton & Inouye LLP, 2  
Corporate Park, Suite 210, Irvine, CA  
92606)

Frank and Terry Kling

237 Via Ballena  
San Clemente, CA 92672

(with a copy to Tomassian,  
Throckmorton & Inouye LLP, 2  
Corporate Park, Suite 210, Irvine, CA  
92606)

Jann L. Kempton

235 Via Ballena  
San Clemente, CA 92672

(with a copy to Tomassian,  
Throckmorton & Inouye LLP, 2  
Corporate Park, Suite 210, Irvine, CA  
92606)

Gregory and Christine Booth

213 Calle Tinaja  
San Clemente, CA 92672

(with a copy to Tomassian,  
Throckmorton & Inouye LLP, 2  
Corporate Park, Suite 210, Irvine, CA  
92606)

Andrew Whittlesey

249 Via Ballena  
San Clemente, CA 92672

(with a copy to Tomassian,  
Throckmorton & Inouye LLP, 2  
Corporate Park, Suite 210, Irvine, CA  
92606)

**EXHIBIT "G"**

**LEGAL DESCRIPTION**

PARCEL 8:

THAT PORTION OF PARCELS DESIGNATED AS "HUGO FORSTER 63.48 ACRES", "HUGO FORSTER 376.60 ACRES", AND "JOHN M. LYLE 35.101 ACRES", AS SHOWN ON A MAP FILED IN BOOK 11, PAGE 29 OF RECORD OF SURVEYS IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY, CALIFORNIA, ALSO BEING A PORTION OF RANCHO BOCA DE LA PLAYA, AS SHOWN ON A MAP RECORDED IN BOOK 4, PAGES 118 AND 119 OF PATENTS, RECORDS OF LOS ANGELES COUNTY, CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT A 1-1/2 INCH IRON PIPE TAGGED R.C.E. 10301, BEING THE MOST SOUTHERLY CORNER OF TRACT NO. 4628 AS SHOWN ON A MAP RECORDED IN BOOK 161, PAGE 28 OF MISCELLANEOUS MAPS IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY; THENCE, ALONG THE SOUTHEASTERLY BOUNDARY OF SAID TRACT NO. 4628 AND THE SOUTHEASTERLY BOUNDARY OF THAT PORTION SHOWN AS "NOT A PART OF THIS TRACT" ON SAID MAP, NORTH 68° 30' 00" EAST 987.00 FEET; THENCE, ALONG SAID TRACT NO. 4628 BOUNDARY, NORTH 47° 30' 00" EAST 264.79 FEET TO A 1-1/2 INCH IRON PIPE TAGGED R.C.E. 10301, MARKING A COMMON CORNER OF SAID TRACT NO. 4628 AND TRACT NO. 4804 AS SHOWN ON A MAP RECORDED IN BOOK 168, PAGE 20 OF MISCELLANEOUS MAPS IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY; THENCE, LEAVING THE BOUNDARY OF SAID TRACT NO. 4628, ALONG THE BOUNDARY OF SAID TRACT NO. 4804, NORTH 47° 30' 00" EAST 256.71 FEET; THENCE, CONTINUING ALONG SAID BOUNDARY OF TRACT NO. 4804, NORTH 35° 25' 39" EAST 266.93 FEET TO A 1-1/2 INCH IRON PIPE TAGGED R.C.E. 10301, MARKING A COMMON CORNER OF SAID TRACT NO. 4804 AND TRACT NO. 4937 AS SHOWN ON A MAP RECORDED IN BOOK 176, PAGES 20 AND 21 OF MISCELLANEOUS MAPS IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY; THENCE, LEAVING THE BOUNDARY OF SAID TRACT NO. 4804, ALONG THE BOUNDARY OF SAID TRACT NO. 4937, NORTH 35° 25' 38" EAST 181.50 FEET; THENCE, CONTINUING ALONG SAID BOUNDARY OF TRACT NO. 4937, NORTH 42° 06' 08" EAST 56.24 FEET TO A 2-INCH IRON PIPE TAGGED R.C.E. 8793, MARKING THE MOST EASTERLY CORNER OF LOT 1 OF SAID TRACT NO. 4937; THENCE, LEAVING THE BOUNDARY OF SAID TRACT NO. 4937, NORTH 72° 26' 32" EAST 134.26 FEET; THENCE SOUTH 68° 17' 24" EAST 88.07 FEET; THENCE SOUTH 49° 34' 53" EAST 214.89 FEET; THENCE SOUTH 16° 28' 30" WEST 63.74 FEET; THENCE SOUTH 38° 33' 22" WEST 275.18 FEET; THENCE SOUTH 38° 40' 21" WEST 383.67 FEET; THENCE SOUTH 39° 19' 15" WEST 120.49 FEET; THENCE SOUTH 41° 51' 12" WEST 58.51 FEET; THENCE SOUTH 43° 31' 25" WEST 495.55 FEET; THENCE NORTH 46° 28' 35," WEST 96.58 FEET; THENCE NORTH 83° 26' 35" WEST 131.26 FEET; THENCE SOUTH 50° 02' 33" WEST 96.54 FEET; THENCE NORTH 82° 57' 29" WEST 171.29 FEET; THENCE SOUTH 56° 02' 47" WEST 90.42 FEET; THENCE SOUTH



19° 03' 46" WEST 193.98 FEET; THENCE NORTH 55° 08' 51" WEST 418.00 FEET; THENCE SOUTH 34° 51' 09" WEST 100.00 FEET; THENCE NORTH 55° 08' 51" WEST 40.84 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 725.00 FEET; THENCE NORTHWESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 6° 07' 54", A DISTANCE OF 77.59 FEET; THENCE, TANGENT TO SAID CURVE, NORTH 49° 00' 57" WEST 10.45 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 390.43 FEET; THENCE NORTHWESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 23° 16' 22", A DISTANCE OF 158.59 FEET TO A POINT OF REVERSE CURVATURE WITH A CURVE CONCAVE EASTERLY AND HAVING A RADIUS OF 20.00 FEET; THENCE NORTHERLY ALONG THE LAST MENTIONED CURVE, THROUGH A CENTRAL ANGLE OF 96° 47' 59", A DISTANCE OF 33.79 FEET TO A POINT OF COMPOUND CURVATURE WITH A CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 176.36 FEET; THENCE NORTHEASTERLY ALONG THE LAST MENTIONED CURVE, THROUGH A CENTRAL ANGLE OF 10° 51' 59", A DISTANCE OF 33.60 FEET TO A POINT IN THE BOUNDARY OF SAID TRACT NO. 4628 AND A POINT IN THE SOUTHEASTERLY RIGHT OF WAY LINE OF VIA MONTEGO; THENCE SOUTH 54° 34' 21" EAST 160.00 FEET ALONG SAID BOUNDARY OF TRACT NO, 4628 TO THE POINT OF BEGINNING.