

**SETTLEMENT AGREEMENT CONCERNING
THE MONTEREY BAY SHORES PROJECT**

This Settlement Agreement (“Agreement”) is entered into by Security National Guaranty, Inc. (“SNG”), a California corporation, and the California Coastal Commission (the “Commission”). The parties desire to resolve *Security National Guaranty, Inc. v. State of California*, San Francisco County Superior Court, Case No. CGC-10-496496, and *Security National Guaranty, Inc. v. State of California*, San Francisco County Superior Court, Case No. CGC-01-320574 (and the appeals pending in the Court of Appeal, First Appellate District, Case Nos. A139290 and A139797 all suits together are referred to as the “Litigation”), as set forth below.

RECITALS

A. SNG has sought to develop a mixed-use resort on the subject property, a parcel fronting Monterey Bay located within the City of Sand City, California. In 1998, Sand City approved a 495-unit project and granted a coastal development permit (“CDP”).

B. On administrative appeal to the Coastal Commission, the Commission denied a CDP in 2000.

C. SNG sought judicial review. The trial court denied a writ of mandamus. SNG appealed, which resulted in the published decision of *Security National Guaranty, Inc. v. California Coastal Commission* (2008) 159 Cal.App.4th 402, which affirmed in part and reversed in part. The Court of Appeal set aside the Commission’s permit denial, and remanded the case to the trial court with instructions to remand the permit application to the Commission. The trial court issued a writ remanding the matter to the Commission.

D. On remand to the Commission, SNG redesigned the project and the Commission denied a CDP for the revised project in December 2009.

E. In February 2010, SNG filed a supplemental petition for a writ of mandate in *Security National Guaranty, Inc. v. State of California*, San Francisco County Superior Court, Case No. CGC-01-320574, to challenge the second denial. SNG simultaneously filed an action for inverse condemnation, *Security National Guaranty, Inc. v. State of California*, San Francisco County Superior Court, Case No. CGC-10-496496. SNG subsequently amended its complaint to seek damages for a temporary taking.

F. On May 24, 2013, the San Francisco County Superior Court in Case No. CGC-01-320574 granted SNG’s petition for a second peremptory writ of mandate. The Superior Court entered final judgment and issued the second writ on June 10, 2013. (Case No. A139290.) The Commission filed a notice of appeal to the First Appellate District on July 17, 2013. On August 10, 2013, the Court awarded SNG \$38,102.44 in costs as the prevailing party in the mandate case, which the Commission separately appealed (Case No. A139797).

G. In order to resolve 15 years of administrative appeals and litigation, the parties have negotiated a settlement, as reflected in this Agreement. The Commission Executive

Director has agreed, as reflected in this Agreement, to prepare a staff report recommending approval of a further modified project consistent with SNG's proposed conceptual site plan (V4.3) and - revised plans (Vesting Tentative Map (VTM) dated October 21, 2013, sheets TM-01 through TM-05), included as Exhibit A hereto, and subject to conditions consistent with the Sand City LCP and the public access and recreation policies of the Coastal Act, including those conditions in Exhibit B hereto to which Commission staff and SNG agree (referred to herein, together with any modifications agreed to by SNG in writing or on the record at the Commission meeting, as the "Modified Project"). The Commission and SNG agree that the Commission will consider the Modified Project at its February 2014 meeting and that Commission staff will recommend approval of the Modified Project, as further detailed below.

AGREEMENT

THEREFORE, in consideration of the mutual promises and covenants made in this Agreement and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. *Conditions Precedent to Final Settlement.* This settlement is conditioned on, and this Agreement shall have no force or effect, unless the Commission approves, no later than February 14, 2014, a CDP for the Modified Project or a CDP for the Modified Project with conditions to which SNG has agreed in writing or on the record at the Commission meeting and SNG does not exercise its right to terminate the Agreement in accordance with its terms. The Commission agrees to transmit the Notice of the Intent to Issue the CDP ("NOI") to SNG and the City of Sand City no later than ten (10) days after the Commission vote approving the CDP unless the conditions require submittal of materials for the Executive Director's review and approval prior to issuance of the NOI, which issuance may not be unreasonably delayed, in which case only the notice identifying the need to submit the materials shall be transmitted within 10 days, and the actual NOI shall be transmitted within 10 days of the Executive Director's approval of the materials. The Commission shall further give the Modified Project priority in review of compliance with conditions and shall expeditiously complete the review of prior-to-issuance conditions in order to timely issue the CDP. SNG acknowledges that the timing of issuance of the CDP depends in part on how quickly SNG complies with prior-to-issuance conditions, and therefore, SNG shall expeditiously submit information to the Commission demonstrating compliance with prior-to-issuance CDP conditions. The CDP shall expire five years after approval. This provision relating to the time for commencement of development supersedes any CDP condition language to the contrary.

2. *SNG Submittals and Resolution of Disputes Regarding Submittals.* SNG shall provide information as requested by Commission staff on a timely basis. If Commission staff provides written notice to SNG via email and U.S. mail that the information is incomplete (as detailed above), and SNG disagrees with that assessment, then either party shall have the right to terminate this Agreement by written notice within 10 days and resume the Litigation. The parties have been working to reach a consensus on the conditions of approval for the Modified Project, but have not yet reached such a consensus on all conditions. SNG has proposed conditions of approval, attached to this Agreement as Exhibit B, which it has discussed with Commission staff and which it would accept, including conditions which have been drafted in terms requested by Commission staff. Commission staff is in agreement with, and would accept

most of those conditions of approval, and the Executive Director will recommend adoption of those conditions of approval, including any condition proposed by SNG to which the Executive Director, subsequent to the execution of this Agreement, agrees. After publication of the staff report, Commission staff and SNG shall expeditiously meet and confer regarding any recommended modifications to the Modified Project or conditions of approval that remain in dispute, the resolution of which shall be reflected in an addendum to the staff report. Nothing in this Agreement is intended to limit the discretion of the Commission in acting on the Modified Project..

3. *Remand for Further Commission Proceedings and Stay of Appeals.* Within 10 days after this Agreement is fully executed, the Commission and SNG shall jointly move or file a stipulation and proposed order in the Court of Appeal in Case Nos. A139290 and A139797 to:

- a. Stay the appeals, and remand the actions to the Commission for administrative proceedings and a public hearing consistent with this Agreement;
- b. Indicate that the Court of Appeal will retain jurisdiction sufficient to carry out (c) and (d) of this Paragraph.
- c. Vacate the Superior Court judgment and dismiss the appeals once a certificate of occupancy has been issued for the project; and
- d. If this Agreement is terminated as provided herein, return the matter of Case Nos. A139290 and A139797 to the Court of Appeal for further proceedings.

If the Court of Appeal does not issue an order with the elements described above, the parties will meet and confer immediately, and will work in good faith and expeditiously to accomplish similar results by alternate means and in a timely manner. The trial court decision in Case No. CGC-01-320574 does not apply to the interpretation or implementation of this Agreement or the Modified Project, although it may be cited to the extent permitted by California law in any action brought by a third-party to challenge Commission approval of a CDP for the Modified Project.

4. *Stay of Takings Litigation.* Within ten (10) court days after all parties have signed this Agreement, SNG and the Commission shall jointly file a request for stay of the litigation in Security National Guaranty, Inc. v. State of California, San Francisco County Superior Court, Case No. CGC-10-496496, in order to allow for the Commission to hold a public hearing in February 2014 and vote on whether to grant or deny the CDP for the Modified Project, within the time frame set herein. The stay of all Litigation shall automatically lift on March 15, 2014 in the event that the Commission denies the Modified Project, or otherwise fails to consider and act on the project at a public hearing on or before February 14, 2014. Otherwise, the stay shall continue until such time as SNG dismisses that action, or terminates this Agreement in accordance with its terms.

5. *Fulfillment of Conditions and Dismissal of the Litigation, and Return to Status Quo If Agreement Terminated or Not Fulfilled.* If the Commission approves the Modified Project, and all conditions of approval are conditions to which SNG has agreed in writing and/or on the record, then SNG shall be fully obligated to proceed with this Agreement unconditionally,

including dismissal of all Litigation and release of all claims, as described in this Agreement. In the event of approval of the Modified Project in any other manner, SNG in its sole discretion may elect to terminate this Agreement in writing within 30 days of the Commission approval, unless SNG notifies the Commission in writing of its acceptance. If SNG elects not to terminate the Agreement within 30 days, then the Agreement shall remain in effect, including all dismissal and release obligations. If this Agreement is terminated in accordance with its terms for any reason (other than a partial termination under Paragraph 16), this Agreement will thereafter terminate and be of no further force or effect. Further, if SNG terminates this Agreement in accordance with its terms, then the parties shall return to the status quo as if this Agreement had never occurred, and neither party may introduce evidence in any court proceeding of this Agreement or any decision, vote, approval, staff report or other document or transcript related to this Agreement or consideration of the Modified Project. If the Commission approves a CDP for the Modified Project or a CDP for the Modified Project with conditions to which SNG has agreed in writing or on the record at the Commission meeting, and SNG does not terminate the Agreement within 30 days in accordance with the terms of this Agreement, SNG shall within 120 days of approval file a request for dismissal with prejudice of San Francisco County Superior Court Case No. CGC-10-496496. Commission staff's obligations to review compliance with prior to issuance conditions shall commence when SNG gives notice that it is not terminating the Agreement, or the time for termination has elapsed.

6. *Mutual Cooperation Commitment.* The parties commit to exercise their respective best efforts in a timely manner to cooperatively implement this Agreement. In determining compliance with prior to issuance permit conditions, Commission staff will respond to all submissions by SNG within 30 days. The Commission will not undertake any direct or indirect action for the purpose of interfering with, delaying, undermining, or opposing obtaining timely third party agency approvals, concurrences, or permits for the Modified Project. No provision of this Agreement shall be interpreted to require Commission staff to mislead or withhold non-privileged information from other agencies or members of the public. Each party shall timely and fully execute and deliver to the other such further instruments and documents as may be necessary to carry out fully this Agreement, and will act expeditiously on any matter, submission, filing or application relating to the Modified Project. If any other governmental agency imposes conditions on its approval of the Modified Project requiring the concurrence of the Commission, the Commission agrees to expeditiously, reasonably, in good faith consider granting such concurrence. If (1) the Commission fails to expeditiously, reasonably, in good faith consider granting such concurrence, or (2) a dispute arises between SNG and Commission staff regarding compliance with prior to issuance conditions that cannot be resolved informally between the parties in an expedited manner, SNG may request that the Commission hold a dispute resolution hearing at the next regularly scheduled hearing of the Commission that is at least 49 days after the request, allowing for 10 day public notice and 10 additional days for preparation of any staff report and recommendation. If the dispute resolution hearing does not resolve the matter to SNG's satisfaction, SNG and the Commission shall submit the matter immediately to a mutually acceptable retired judge (see next sentence below), whom they will ask to resolve the issue on an expedited basis. The parties shall meet and confer regarding three mutually acceptable retired judges, and within 30 days after Commission approval of the CDP, the parties shall select a list of three mutually acceptable retired judges that the parties may use to select one judge to resolve disputes as described above. The neutral shall apply the same standard of review that would have applied if SNG had challenged the Commission decision in

Superior Court under Code of Civil Procedure section 1094.5. The decision of the selected neutral shall be binding on SNG and the Commission, and shall not be subject to judicial review. SNG shall be solely responsible for any fees charged by the private adjudicator.

7. *Obligations in the Event of Subsequent Third Party Litigation Challenging this Agreement, Implementing Actions or the Commission's Approval of a CDP for the Modified Project.* In the event that any legal challenge is filed against the Commission contesting this Agreement, implementing actions, or the Commission's approval of a CDP for the Modified Project, SNG and the Commission shall, in good faith, defend against any such challenge, unless they both agree not to defend the action. The Commission and SNG shall confer throughout the litigation regarding strategy, tactics, and filings. Except as noted below, each party shall bear its own defense at no cost to the other party, and no party shall be required to defend or indemnify the other with respect to the actions undertaken pursuant to this Agreement, except as provided in the conditions of approval of the CDP. With respect to any such legal challenges, the Commission shall prepare any required administrative record on a priority and expedited basis. In addition, the Commission shall expedite its certification of the administrative record and shall cooperate with SNG in seeking expedited briefing and hearing of any such action, and shall not settle any such action without SNG's written consent. In the event that any legal challenge to any of the actions undertaken pursuant to or in implementation of this Agreement is successful, and any such challenged action is held unlawful or void, the parties agree to consult with each other in good faith for a period of no less than 14 days following the finality of any such judgment about other actions that may be agreed to between the parties that may substitute for the action(s) held unlawful or void. The Commission further agrees not to support any party in seeking to halt the Modified Project through litigation, although the Commission may provide any non-litigation, non-privileged information and documents contained in its public file for the project. If SNG appeals the trial court decision, then the Commission will cooperate in such an appeal, and the parties shall confer throughout the litigation regarding strategy, tactics, and filings.

SNG shall indemnify the Commission the full amount of any costs and attorney fees that the Commission may be required to pay to a third party in such litigation, but not for any fees that the Commission's counsel charges the Commission. This provision supersedes any CDP condition language, and if the Agreement is not terminated, the Commission waives any rights to indemnification of attorney fees based on condition language inconsistent with this paragraph. If SNG is required to pay costs and/or fees to a third party, SNG shall not seek indemnification from the Commission.

8. *Binding on Successors and Assigns.* The parties agree that the terms, conditions and provisions of this Agreement are binding upon, and shall inure to the benefit of, all successors-in-interest and assigns of each of the parties.

9. *Entire Agreement.* Except as otherwise provided for herein, this Agreement constitutes the entire and only agreement between the parties with reference to the subject matter hereof and supersedes any prior representation or agreement, oral or written, with respect thereto. The parties further agree that no representation, warranty, agreement or covenant has been made with regard to this Agreement, except as expressly recited herein and that in entering into this

Agreement, no party is relying upon any representation, warranty, agreement or covenant not expressly set forth herein.

10. *Costs and Attorneys Fees.* The Parties shall each bear their own attorneys' fees and costs incurred in connection with all pending litigation between the parties, and all Commission administrative proceedings.

11. *Notice.* All notices, requests, and other communications must be in writing and shall be deemed to have been duly given if sent by an overnight service or hand delivered courier, or via email if the recipient acknowledges receipt, to the respective parties at the following addresses (which each party shall update and keep current by written notice):

If to SNG: Ed Ghandour, President
Security National Guaranty, Inc.
505 Montgomery Street, 11th Floor
San Francisco, CA 94111

With a copy to:

Thomas D. Roth
Law Offices of Thomas D. Roth
One Market, Spear Tower,
Suite 3600
San Francisco, California 94105

Steven H. Kaufmann
Richards, Watson & Gershon
355 S. Grand Avenue, 40th Floor
Los Angeles, California 90071-3101

If to Coastal Commission:

Charles Lester, Executive Director
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, California 94105

With a copy to:

Hope Schmeltzer, Chief Counsel
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, California 94105

Joel Jacobs
California Attorney General's Office
1515 Clay Street, 20th Floor
Oakland California 94612

12. *Amendment.* This Agreement may be amended in writing by persons with sufficient authority to act on behalf of the parties.

13. *Counterparts.* This Agreement may be signed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute the same agreement. Facsimile or PDF signatures will have the same force and effect as original signatures.

14. *Authority.* The parties represent and warrant that they have full and complete authority to execute this Agreement and that they have not assigned or transferred (voluntarily, involuntarily or by operation of law), to any person or entity, any right, title or interest in any claim released and discharged herein.

15. *Governing Law.* This Agreement shall be construed, enforced and governed by the laws of the State of California, and shall constitute a binding settlement by the parties which may be enforced under the provisions of the California Code of Civil Procedure.

16. *Partial Invalidity.* If any portion of this Agreement shall be held by a court of competent jurisdiction to be invalid, void, or otherwise unenforceable, either party may elect either (1) to terminate the remaining obligations under this Agreement by communicating its election in writing to the other party's litigation counsel in which case such obligations will be of no further force or effect, or (2) to enforce the remaining provisions.

17. *No Restriction on Exercise of Legislative or Quasi-Judicial Discretion.* Notwithstanding anything else in this Agreement, by entering into this Agreement, the Commission is not contracting away or otherwise limiting its legislative or quasi-judicial discretion, or committing to exercise its legislative or quasi-judicial discretion in any particular manner or to achieve any predetermined result. In particular, the parties recognize that the commitments made in this Agreement to consider the Modified Project, or to consider undertaking any other actions that might be characterized as legislative or quasi-judicial, are only commitments to consider such actions in good faith and are not commitments to actually undertake any of them in a particular manner or to achieve a predetermined result. The parties recognize, however, that Commission approval of a CDP for the Modified Project is a condition to the full implementation and effectiveness of this Agreement, including the dismissal of the litigation.

18. *No Permit Application Fees.* No permit application fees shall be assessed or due to the Commission for the Modified Project.

19. *Time of the Essence.* Time is of the essence of this Agreement and all of the terms, provisions, covenants and conditions hereof.

20. *Calculation of Dates.* If any due date or cutoff date falls on a weekend or Holiday, the due date or cutoff date shall be extended to the next business day.

21. *Release of Claims.* If the Commission approves a CDP for the Modified Project, or a CDP as otherwise specified without SNG exercising its right to terminate the Agreement within 30 days, then SNG immediately and irrevocably releases all existing claims, demands, liens, and/or causes of action against the Commission, its members, its staff and its counsel, specifically including the award of costs in Case No. CGC-01-320574.

The parties intend that, in executing this Agreement and receiving the consideration specified in this Agreement, this Agreement shall be and is effective as a full and final accord and satisfaction and general release of all existing disputes between the parties. In furtherance of this intention, the Parties, and each of them, acknowledge that they are familiar with California

Civil Code section 1542 and that they waive the protection of that section, which provides 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.

SO AGREED.

Dated: December 23, 2013



Dr. Edmond Ghandour, President
Security National Guaranty, Inc.

Dated: December 24, 2013

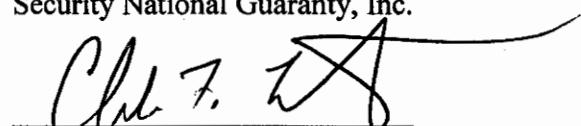
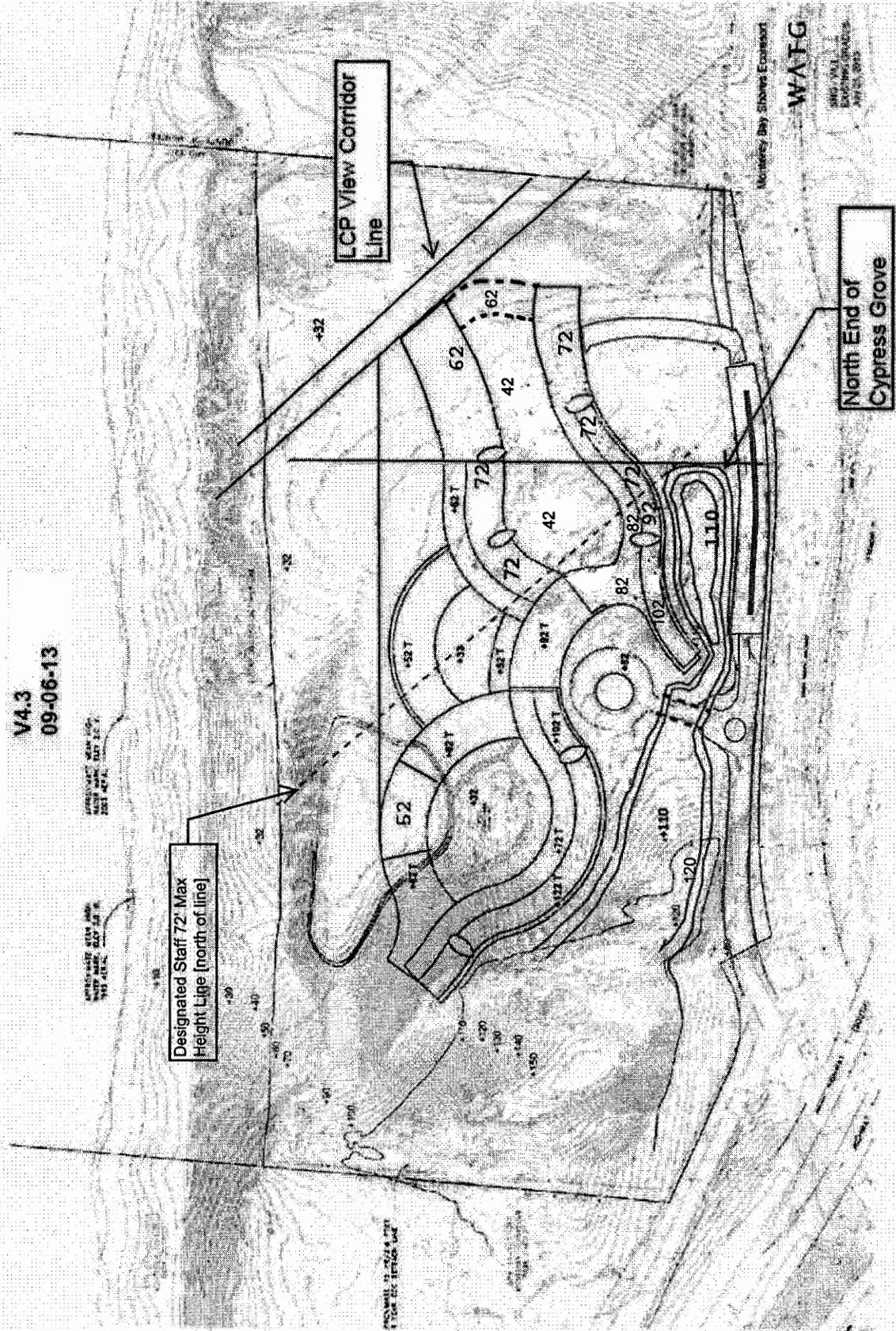

Dr. Charles Lester, Executive Director
California Coastal Commission

EXHIBIT A – SNG's Conceptual Plans

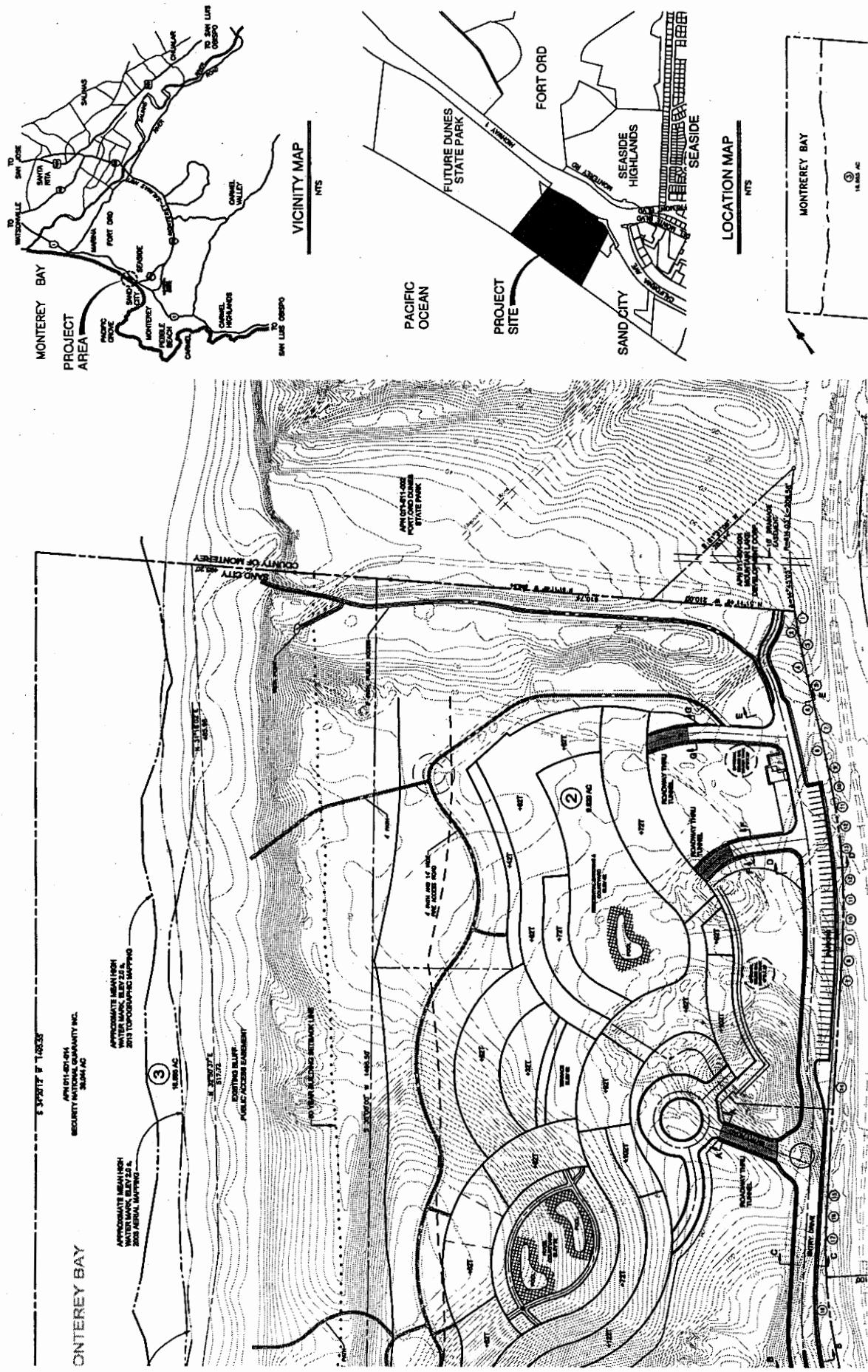
Monterey Bay Shores
The Settlement Project

V4.3
09-06-13



GREY BAY SHORES REPRESENTATIVE MAP

OCTOBER 21, 2013



SWIMMING POOL AND SPA USE INTENDED PRIMARY FOR GUESTS AND RESIDENTS.

PROJECT COMPONENT	NUMBER (UNITS, ROOMS OR SEATS)	OCCUPANCY FACTOR	TOTAL PERSONS	DAILY DEMAND PER PERSON (GALLONS)		ANNUAL DEMAND (ACRE-FEET/yr)
				DAILY DEMAND (GALLONS)	DEMAND (GALLONS)	
HOTEL ¹	184	1.76	324	55 ¹	151.10	18,96
VSR (RENTAL POOL)	92	1.76	224 ³	60 ¹	16,516	18,50
BAR/RESTAURANT	60/140	SEATS	200	18 ¹	3,040	3,43
RESIDENTIAL CONDOMINIUMS	92	2.1	193	65 ²	10,674	11,96
POOL	2/4000	—	—	—	—	4,48
LAUNDROMAT	6	—	—	—	—	—
BEAUTY SALON	4	—	—	—	—	—
HEALTHNESS SPA	50	SEATS	50	25 ¹	1,083	1,19
DOMESTIC CONSUMPTION AT HOTEL OCCUPANCY ¹				85%	46,492	56,44
INDUSTRIAL CONSUMPTION ⁴				—	—	1,20
PROJECT ANNUAL WATER CONSUMPTION (AT 85% HOTEL OCCUPANCY)				—	—	57,66
CONTINGENCY RESERVE				10%	5,77	6,34
TOTAL PROJECT ANNUAL WATER CONSUMPTION (AT 85% HOTEL OCCUPANCY)				100	100	100
RESERVE FOR ADJACENT PROPERTY ⁵				—	—	—
ANNUAL WATER CONSUMPTION				64,44	64,44	60,00
MEMO: WATER DISTRIBUTOR PERMIT				—	—	22,55
RESERVE AND DEDUCTION				—	—	—

WE ARE USING BASE OCCUPANCY LEVEL IN EXCESS OF 85% AVERAGE ANNUAL OCCUPANCY WHICH IS SPECIFIED IN THE SAND CITY LCP AS THE NORMAL FOR HOTEL WATER DEMAND PLANNING. AT 100% ANNUAL MAXIMUM OCCUPANCY, ANNUAL WATER DEMAND WOULD INCREASE 9.16 ACRE-FEET/YEAR (AF/YR) TO 73.65 AF/YR (EXCLUDING 10% CONTINGENCY RESERVE).

2 OCCUPANCY LEVEL OF 100% WAS APPLIED, NOT 85%.

3 PERSONS BASED ON NUMBER OF VFR UNITS TIMES 2 TIMES OCCUPANCY FACTOR OF 1.76

4 NO POTABLE WATER WILL BE USED FOR ANNUAL IRIGATION DEMAND, BUT A 1 AC/FT SAFETY FACTOR IS SHOWN. 12.46 AC/FT WILL BE USED TO ESTABLISH PLANTS AFTER GROWING AND PRIOR TO CONSTRUCTION.

5 A RESERVE OF 1.00 AF IS PROVIDED TO ALLOW FUTURE SERVICE TO THE 0.45 ACRE PARCEL ADOPTING THE PROJECT SITE TO THE NORTH AND OWNED BY THE APPLICANT. A SINGLE FAMILY HOME IS PLANNED FOR THE PARCEL.

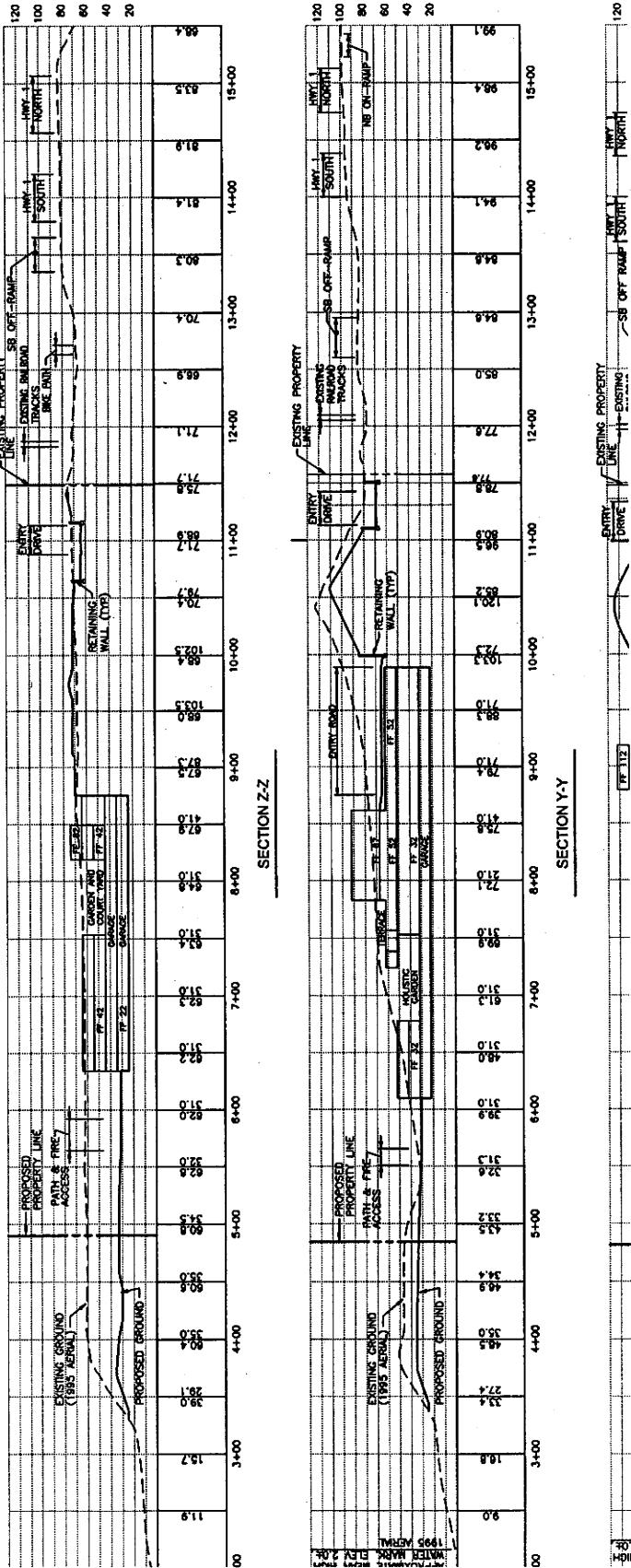
6 7 PRODUCTION CAPACITY OF THE EXISTING POA WELL WITHOUT INCREASING SPANNING INTERTHINING IS 300 TO 400 ACRE-FEET (STAN. INVESTIGATION REPORT, 2004). THE POA WELL IS 1.73 AF/MIN.

7 WATER DISTRIBUTION PERMIT WILL RESERVE 90 ACRE-FEET OF OWNER'S ADJUDICATED WATER RIGHTS FOR THE RESORT AND APR 011-301-004.

9701 BELLE LAKESIDE LANE, MONTREUX, CALIFORNIA 93940
CIVIL ENGINEERING - SURVEYING - LAND PLANNING
BESI OR ENGINEERS, INC.



VIA



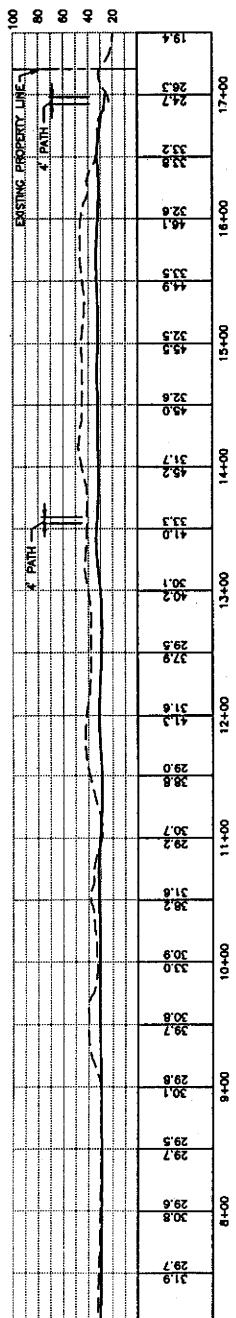
DESIGNED BY	STAFF
DRAWN BY	STAFF
DATE:	PRELIMINARY
NAME	
FIRM	
RECEIVED	



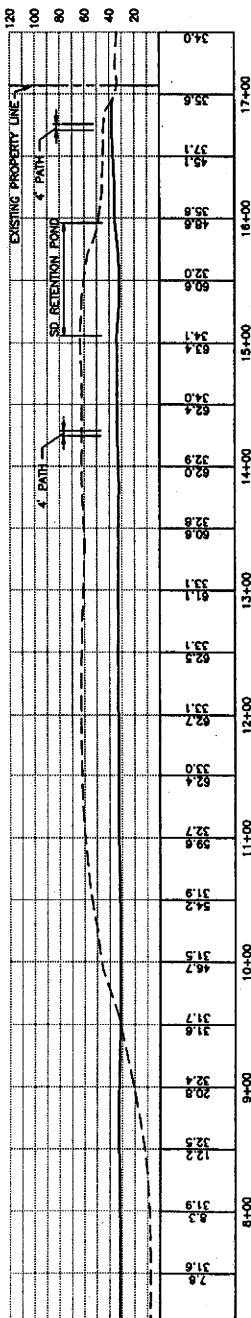
Ecoresort, Wellness Spas, and Residences

9701 SLIDE LARKSPUR LANE, MONTEREY, CALIFORNIA 93940

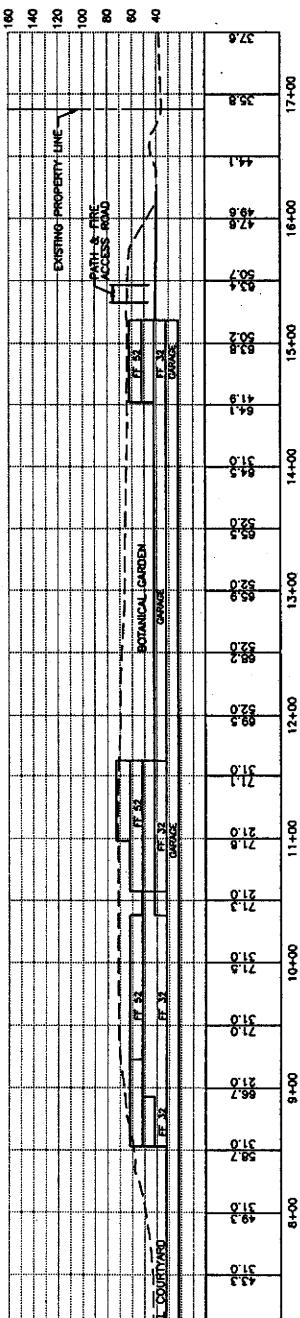
BESTOR ENGINEERS, INC.



SECTION P-P



SECTION 88



SECTION R-R

DESIGNED BY	STAFF
DRAWN BY	STAFF
DATE:	PRELIMINARY
	NAME
	CHANGER
	RECI

NOTES:

1. UNITS MAY BE INTERMINDED PER LCP AMENDMENT NO. 2-97.
2. SEE ARCHITECTS CONCEPT DESIGN DRAWINGS FOR ADDITIONAL INFORMATION.

APN 011-501-014
SECURITY NATIONAL GUARANTY INC.
38,944 AG

3

N 32°50'37"E

EXISTING BLUFF

SAND CITY COUNTY OF MONTREAL

31°18'02"E

RESTAURANT & BAR
VEL 821
CONFERENCE & MEETING ROOMS
VEL 822

5355 W 149th St - Bronx - NY

WET DECK & CAFE
- PASS THROUGH

— SPA & WELLNESS
CENTER

RESIDENTIAL CONDOMINIUMS 2 UNITS

PLAZA

EMPLOYEE IS
UNDER
DELIVERY

**RESIDENTIAL ACCESS
TO UNDERGROUND
WALKING (THRU) TUNNEL**

**FIRE ACCESS
ROAD**

— 4 —
drawing out the name of the author.

The logo for SII (Sociedad de Ingenieros e Investigadores) is a stylized lowercase 's' composed of horizontal lines.

9701 BLUE LAKESPUR LANE, MONTEREY, CALIFORNIA 93940
CIVIL ENGINEERING - SURVEYING - LAND PLANNING

 Ecoresort Wellness Spa and Residences

סאטורן מרכז מסחרי

SEARCHING FOR THE WISDOM

Montreal Bay shores

EXHIBIT B – SNG's Proposed Conditions of Approval

Conditions of Approval DRAFT 12/15/13 (SNG) Exhibit "B"

Page 1

STANDARD CONDITIONS

- 1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
- 5. Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

SPECIAL CONDITIONS

- 1. Revised Plans.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit two full size sets of Revised Plans to the Executive Director for review and approval. The Revised Plans shall identify all components of the approved development (including the land division of the 39.04-acre parcel into three parcels; construction of a mixed-use residential and visitor-serving project, including 184 hotel rooms, 92 visitor-serving condominium units, and 92 residential condominium units, restaurant, conference center, spa, retail, swimming pools, surface and underground parking, grading; related utility extensions and infrastructure; and open space, public access and parking, trails, overlook, and habitat and dune restoration). The Revised Plans shall show building heights, building footprint and the dune view line consistent with the conceptual site plan (V4.3), and shall be substantially in conformance with the conceptual site plan (V4.3) and Vesting Tentative Map (VTM) plans submitted to the Coastal Commission (dated October 21, 2013, sheets TM-01 through TM-05 and dated received in the Coastal Commission's Central Coast District Office____), but shall show the following:
 - (a) Blue Water Views Above Existing Grade Preserved.** Public views of any portion of Monterey Bay waters (i.e., blue water views) above existing grade and seaward of the dune view line shown on VTM TM-02 (dated October 21, 2013 and dated received in the Coastal Commission's Central Coast District Office____), other than the dune extension element (see below) shall be preserved to the maximum extent feasible.

Conditions of Approval DRAFT 12/15/13 (SNG) Exhibit "B"

Page 2

- (b) **Southbound Highway One Dune View Above Existing Grade Preserved.** Development seaward of the dune view line (see V4.3 & VTM, TM-02 Dune View Line) shall be consistent with the conceptual site plan V4.3 and VTM (dated October 21, 2013 and dated received in the Coastal Commission's Central Coast District Office ____), including dune restoration development and dune screening (see below).
- (c) **Dune Extension.** The dune extension to the north shall appear as a "saddle" (with a lower elevation in the middle near the tunnel) as much as possible, and shall extend no higher than 110 feet above mean sea level (msl) except for the upcoast end of the dune extension that shall be required to mimic the existing upcoast end of the dune (i.e., with a semi-rounded appearance extending to no higher than 122 feet above msl at its peak).
- (d) **Dune Screening for Buildings and Related Development.** All building and related development that is visible in the Highway One view seaward and north of the dune view line (at a height of 5 feet above the roadway) shall be designed with green roofs which shall be vegetated with non-invasive native dune species integrated and blend with the native dune area in the surrounding area and foreground of the Highway One view, consistent with the Landscape Plan (dated October 2013 and dated received in the Coastal Commission's Central Coast District Office ____), MBS Plans (dated October 2013 and dated received in the Coastal Commission's Central Coast District Office ____), and Habitat Protection Plan (dated October 2013 and dated received in the Coastal Commission's Central Coast District Office ____).
- (e) **Dune Screening for Other Development.** All other development located inland of buildings and related development (i.e., road access, tunnel access, parking areas, paths, etc.) shall be at or below grade and sited, designed, and screened in such a way as to minimize visibility in the Highway One view, except for tunnel access, service and condo access, gateway and retaining walls where such visibility shall be minimized and be consistent with the VTM (dated October 21, 2013 and dated received in the Coastal Commission's Central Coast District Office ____).
- (f) **Road Development Minimized.** All road development (providing access to the project through the tunnel as well as secondary access to the project to the north) shall be minimized to the extent feasible. The existing road that extends to the upcoast property (that is located in unincorporated Monterey County) shall be shown as "existing" on the VTM ((dated October 21, 2013 and dated received in the Coastal Commission's Central Coast District Office ____), and shall not be paved beyond the well and the public trail as it turns west (as shown on the Landscape Plan). This CDP is not intended either to authorize or prohibit the road or any development of it.

Conditions of Approval DRAFT 12/15/13 (SNG) Exhibit "B"

Page 3

- (g) **Height Limits.** Development height shall be limited as necessary to meet the requirements of this condition, and development shall not exceed 45 feet above existing grade for hotel, its amenities/facilities and common areas and the visitor-serving hotel condominium components (those project elements predominantly (i.e., 75% or more) associated with the standard operating hotel component of the project), as controlled by Special Condition 11, and shall not exceed 36 feet above existing grade for the residential development. The Revised Plans shall be submitted with documentation demonstrating compliance with this requirement, including site plans (and elevations as necessary) that identify all hotel and visitor-serving hotel condominium components versus non-hotel portions of the project, and evidence demonstrating why components fall into the hotel and visitor-serving hotel condominium or non-hotel categories.
- (h) **Dune Integration.** In addition to the dune screening requirements (above), all development shall be sited and designed to integrate into the existing dune landforms and be consistent with V4.3 & the VTM (dated October 21, 2013 and dated received in the Coastal Commission's Central Coast District Office ____).
- (i) **Foredune Grading.** Foredune grading shall be allowed as low as 32 feet above msl only in areas directly seaward of buildings, as shown on the VTM (dated October 21, 2013 and dated received in the Coastal Commission's Central Coast District Office ____). Other foredune grading, other than for approved dune restoration, public access purposes and/or for fire road access, shall be prohibited.
- (j) **Public Access Amenities.** The Revised Plans shall clearly identify all public access amenities to be provided as part of the approved development, including but not limited to:
 - 1. **Parking Lot.** A public parking lot providing 46-full-size parking spaces. The parking lot shall be surfaced (including curbs and gutters) with permeable pavement or permeable concrete colored to blend with the surrounding dune environment as much as possible. At least: ten bicycle parking stands; three recycling bins; three trash bins; one water fountain; three ADA parking spaces (as part of the 46 parking spaces); and one doggie mitt station, shall be provided in the parking lot in locations that maximize their public utility and minimize their impact on public views. The parking lot shall be ADA compatible.
 - 2. **Pathway System.** A public pathway system that extends from the inland public recreational trail to and along the public parking lot and then to an overlook atop the bluff and then to the beach via a stairway/path . The portion of the pathway system that extends from the public recreational

Conditions of Approval DRAFT 12/15/13 (SNG) Exhibit "B"

Page 4

trail to and along the public parking lot (to the upcoast edge of the parking lot) shall be a similar width as the inland public recreational trail, but shall be surfaced with permeable pavement or permeable concrete colored to blend with the surrounding dune environment as much as possible from at least the point where it enters onto the subject property. The portion of the pathway system that extends from the upcoast edge of the parking lot to the overlook shall be a wooden boardwalk approximately 5 feet in width. All portions of the pathway system, other than the beach stairway/path, shall be ADA compatible.

3. **Overlook.** A public overlook near the blufftop edge of approximately 300 square feet. The overlook shall be a wooden boardwalk surface, and shall be sited and designed to eliminate the need for railings (e.g., setback a sufficient distance from the blufftop edge so as to not necessitate such features), and be consistent with the VTM (dated October 21, 2013 and dated received in the Coastal Commission's Central Coast District Office____) and Access, Signage and Lighting Plan (dated October 2013 and dated received in the Coastal Commission's Central Coast District Office____). At least: three benches; one interpretive panel/installation; one recycling bin; one trash bin; and one doggie mitt station, shall be provided at the overlook in locations that maximize their public utility and minimize their impact on public views. The overlook shall be ADA compatible.
4. **Beach Stairway/Path.** A public beach stairway/path providing access down the bluff and to the beach from the overlook location. The stairway/path shall be sited and designed to minimize landform alteration and to conform to the bluffs and be consistent with the VTM (dated October 21, 2013 and dated received in the Coastal Commission's Central Coast District Office____) and Access, Signage and Lighting Plan (dated October 2013 and dated received in the Coastal Commission's Central Coast District Office____), to eliminate or minimize (if elimination is not possible) railings; and to maximize public utility and minimize impacts on public views.
5. **Signs.** Public access identification, interpretation, and direction signs shall be consistent with the Access, Signage and Lighting Plan (October 2013 and dated received in the Coastal Commission's Central Coast District Office____) and with the following requirements. At a minimum, public access identification and direction signs shall be placed where the pathway system connects with the inland public recreational trail, at the base of each Fremont Street off-ramp, at the entrance to the approved project (where it meets the public street), at or near the point where the tunnel entrance diverges from the parking lot entrance, at the entrance to the parking lot, at the beginning of the boardwalk section of the pathway system (at the parking lot), at the base of the beach stairway/path, and at

Conditions of Approval DRAFT 12/15/13 (SNG) Exhibit "B"

Page 5

other locations where identification and direction is appropriate. The Permittee shall also make reasonable efforts to work with Caltrans to install a Coastal Commission Public Access ("Feet") sign on both southbound and northbound Highway One, provided that the Permittee shall not be responsible for any decision made by Caltrans regarding such signage or for the installation or maintenance of such signs. The Permittee shall pay for such signage, including installation costs, upon Caltrans consent for such signs. At least one interpretive panel/installation that provides interpretation of the site, dunes, erosion and coastal hazards, the Monterey Bay, or other related and/or similar subjects shall be provided at the overlook. Signs shall include the California Coastal Trail and California Coastal Commission emblems and recognition of the Coastal Commission's role in providing public access at this location. All signs shall be sited and designed to maximize their utility and minimize their impacts on public views.

The public access amenities shall utilize a similar design theme that is subordinate to and reflective of the surrounding dune environment to the maximum extent feasible. Natural and curvilinear forms (e.g., curving pathway segments, rounded overlook areas, etc.) shall be used, and amenities shall also be consistent with the VTM (dated October 21, 2013 and dated received in the Coastal Commission's Central Coast District Office____) and Access, Signage and Lighting Plan (dated October 2013 and dated received in the Coastal Commission's Central Coast District Office____). The public access amenities portion of the Revised Plans shall be in conformance with all parameters of the Public Access Management Plan (see Special Condition 5). Minor adjustments to the above requirements may be allowed by the Executive Director if such adjustments enhance public access and public view protection and do not legally require an amendment to this permit.

- (k) **Setbacks.** All development, other than public access trails, resort trails, overlooks, and stairways, as shown on the VTM (dated October 2013, and dated received in the Coastal Commission's Central Coast District Office____), shall be located inland of the 75 year at 2.6 feet per year setback line as shown on the VTM and identified as the 2088 bluff crest recession line at elevation 32.
- (l) **Landscaping.** All non-native and invasive plants on the site, including iceplant, shall be removed and the site kept free of such plants for as long as any portion of the approved development exists at this site. All landscaping, other than decorative landscaping within interior courtyards and similar areas, the entry plaza and otherwise the transition landscaping located in in front of the development (seaward) and on its rear (inland) and the main entry area, as shown on the Landscape Plan (dated October 2013 and dated received in the Coastal Commission's Central Coast District Office____), shall consist of only non-invasive dune species native to the Sand City and southern Monterey Bay dune systems (see also Special Condition ____ below), and be consistent with the Landscaping Plan submitted to the Commission (dated October 21, 2013 and

Conditions of Approval DRAFT 12/15/13 (SNG) Exhibit "B"

Page 6

received in the Coastal Commission's Central Coast District Office xxx). All landscaped areas on the project site shall be maintained in a litter-free, weed-free, and healthy growing condition. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be so identified from time to time by the State of California, and no plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be planted or allowed to naturalize or persist on the site. The Revised Plans shall include certification from a licensed landscape professional experienced with native dune species indicating that all plant species to be used are non-invasive native dune species native to the Sand City and southern Monterey Bay dune systems.

- (m) **Lighting Minimized.** Exterior lighting shall be limited to the minimum lighting necessary for pedestrian and vehicular safety purposes. All exterior lighting shall be sited and designed so that it limits the amount of light or glares visible from public viewing areas (including but not limited to views from Highway One, Fort Ord Dunes State Park, the recreational trail, the beach, and areas across Monterey Bay such as Cannery Row) including through uses of lowest luminosity possible, directing lighting downward, directing lighting away from windows, etc. The Revised Plans shall be submitted consistent with the Access, Signage and Lighting Plan (dated October 2013 dated received in the Coastal Commission's Central Coast District Office) to demonstrate compliance with this requirement.
- (n) **Windows and Other Surfaces.** All windows shall be non-glare glass, and all other surfaces shall be similarly treated to avoid reflecting light.
- (o) **Utilities.** The Revised Plans shall clearly identify all utilities (i.e., sewer, water, gas, electrical, telephone, data, etc.), the way in which they are connected to inland distribution networks, and "will-serve" or equivalent documentation demonstrating that each utility provider can and will serve the approved development. All utilities shall be located underground, including that the Revised Plans shall provide for removal or undergrounding of all existing overhead utilities on the site and in areas between the site and Highway One, except for the existing well.
- (p) **Stormwater and Drainage.** The Revised Plans shall clearly identify all stormwater and drainage infrastructure and related water quality measures (e.g., pervious pavements, etc.), with preference given to natural BMPs (e.g., bioswales, vegetated filter strips, etc.). Such infrastructure and water quality measures shall provide that all project area stormwater and drainage is: filtered and treated to remove expected pollutants prior to discharge, and directed to inland stormwater and drainage facilities (and is not allowed to be directed to the beach or the Pacific Ocean). Infrastructure and water quality measures shall retain runoff from the project onsite to the maximum extent feasible, including through the use of pervious areas, percolation pits and engineered storm drain systems. Infrastructure

Conditions of Approval DRAFT 12/15/13 (SNG) Exhibit "B"

Page 7

and water quality measures shall be sized and designed to accommodate runoff from the site produced from each and every storm event up to and including the 85th percentile 24-hour runoff event. In extreme storm situations (>85% storm), all excess runoff shall be retained on-site. Stormwater and drainage apparatus shall be coordinated in conjunction with the Dune Restoration Plans (see Special Condition 3) to determine the best suited locations to avoid any adverse impacts on dune restoration activities.

- (q) **Landform Alteration Minimized.** Development shall be sited and designed so as to minimize landform alteration, including minimizing impacts to existing dunes and vegetation, and be consistent with the Habitat Protection Plan submitted to the Commission (dated October 25, 2013 and received in the Coastal Commission's Central Coast District Office), the Landscaping Plan (dated October 2013 and dated received in the Coastal Commission's Central Coast District Office____) and VTM (dated October 21, 2013 and dated received in the Coastal Commission's Central Coast District Office____).
- (r) **Signage.** The Revised Plans shall clearly identify all signs associated with the project and the site, and all signs shall be sited and designed to minimize their visibility in public views and to seamlessly integrate into the dune landform (including using natural materials, earth tone colors and graphics, , directing lighting downward, etc.), consistent with the Access, Signage and Lighting Plan (dated October 2013 and received in the Coastal Commission's Central Coast District Office____). Gateway signage and retaining wall at the entry of the resort, as well as tunnel signage, shall be consistent with the Access, Signage and Lighting Plan and subordinate to the dune landscape. The Revised Plans shall also be consistent with the Access, Signage and Lighting Plan.
- (s) **Foundations and Retaining Walls.** Foundations and retaining walls shall be sited and designed consistent with typical and normal engineering and construction practices and standards for such a project[complying with California Building Codes] as recommended by the project's geotechnical, civil and structural engineers in order to minimize static and dynamic settlement of the dune sands during seismic, liquefaction, flooding tsunami or other such events or interactions of the same and maximize stability and ensure public safety over the life of the project.
- (t) **Subsurface Elements.** The Revised Plans shall clearly identify all subsurface elements associated with the project (e.g., parking, back of house, etc.).
- (u) **Geotechnical Signoff.** The Revised Plans shall be submitted with evidence that they have been reviewed and approved by a licensed geotechnical engineer (or engineers, as appropriate) as meeting all applicable regulations for site stability (including but not limited to addressing seismic, liquefaction, flooding, tsunami, and other such issues applicable to the site).

Conditions of Approval DRAFT 12/15/13 (SNG) Exhibit "B"

Page 8

- (v) **Excess Sand.** The Revised Plans shall clearly identify the Permittee's preferred manner in which excavated sand not necessary for the project (e.g., not necessary for dune extension, restoration, screening, etc.) is to be disposed, and alternatives proposed for disposal if the preferred manner of disposal is not feasible. If any disposal location outside of the project site or Sand City is within the coastal zone, the Permittee shall, prior to commencement of construction, obtain a separate CDP authorizing placement at that location. This CDP shall cover any disposal within Sand City, the project site, including an approved Beach Nourishment Program and the adjacent parcel to the north.
- (w) **Fencing.** All existing site fencing shall be removed and replaced with the minimum amount of fencing necessary to meet project objectives, including security concerns, and where such replacement fencing is minimized, sited and designed to be compatible with the dune landscape (e.g., rough-hewn wooden split rail, low rope and pole barriers for restoration areas as needed, etc.) and to minimize public view impacts, consistent with the Landscape Plan (dated October 2013 and dated received in the Coastal Commission's Central Coast District Office____) and the Access, Signage and Lighting Plan (dated October 2013 and dated received in the Coastal Commission's Central Coast District Office____).
- (x) **Ecoresort Design and Key Features Retained.** Development shall be sited and designed substantially in conformance with the curvilinear style of the conceptual site plan V4.3 for the development and the VTM (dated October 21, 2013 and dated received in the Coastal Commission's Central Coast District Office____), and shall include all of the environmentally beneficial features of that project (i.e., living roofs; "green" walls; "smart" lighting; gray water recycling; and geothermal energy sources), all as modified to meet the requirements of these conditions. The Revised Plans shall clearly identify all measures that will be applied to ensure such design aesthetic is achieved, and, at a minimum, shall clearly identify all structural elements, materials, and finishes (including through site plans and elevations, materials palettes and representative photos, product brochures, etc.).
- (y) **Views.** All development shall be sited, designed, colored, screened, and camouflaged (including making maximum use of integrated dune screening and natural landscaping and screening elements) and be consistent with the Landscaping Plan, the Access, Signage and Lighting Plan (dated October 2013 and dated received in the Coastal Commission's Central Coast District Office____), and the VTM (dated October 21, 2013 and dated received in the Coastal Commission's Central Coast District Office____) to minimize visual incompatibility with the existing dune landscape and public views.

All requirements above and all requirements of the approved Revised Plans shall be enforceable components of this CDP. The Permittee shall undertake development in accordance with the approved Revised Plans.

Conditions of Approval DRAFT 12/15/13 (SNG) Exhibit "B"

Page 9

2. **Construction Plan.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit two copies of a Construction Plan to the Executive Director for review and approval. The Construction Plan shall, at a minimum, include the following:
 - (a) **Construction Areas.** The Construction Plan shall identify the specific location of all construction areas, all staging areas, and all construction access corridors in site plan view. All such areas within which construction activities and/or staging are to take place shall be minimized to the maximum extent feasible in order to have the least impact on dunes, public access, and public views, as well as to maintain best management practices (BMPs) to protect dune resources on-site and in the surrounding area, including by using inland areas for staging and storing construction equipment and materials, as feasible. Construction (including but not limited to construction activities, and materials and/or equipment storage) is prohibited outside of the defined construction, staging, and storage areas.
 - (b) **Construction Methods and Timing.** The Construction Plan shall specify the construction methods to be used, including all methods to be used to keep the construction areas separated from dune resources and public recreational use areas (including using unobtrusive fencing (or equivalent measures) to delineate construction areas). All work other than building and interior work shall take place during daylight hours. Exterior building work and disposal of excess sand, if done at night, shall be screened to minimize lighting impacts. Lighting of the exterior work area is prohibited.
 - (c) **Property Owner Consent.** The Construction Plan shall be submitted with evidence indicating that the owners of any properties on which construction activities are to take place, including properties to be crossed in accessing the site, consent to such use of their properties.
 - (d) **Biological Monitor.** The Construction Plan shall provide that a qualified biological monitor, selected by the Permittee and approved by the Executive Director, shall be present during all construction activities to ensure that dune areas and sensitive species are protected. The biological monitor shall prepare weekly reports, and shall submit such reports monthly to the Executive Director, consistent with the Habitat Protection Plan (dated October 2013 and dated received in the Coastal Commission's Central Coast District Office ____). If the reports indicate that development is not in conformance with the terms and conditions of this CDP and the Habitat Protection Plan, including with respect to protecting dune and sensitive species habitats, then the Permittee shall modify construction activities to ensure conformance, including as directed by the Executive Director.
 - (e) **Pre-construction Surveys.** The Construction Plan shall include pre-construction surveys for sensitive species including western snowy plover, and Smith's blue butterfly, consistent with the Habitat Protection Plan (dated October 2013 and dated received in the Coastal Commission's Central Coast District Office ____). If

Conditions of Approval DRAFT 12/15/13 (SNG) Exhibit "B"

Page 10

any of these species is identified in the project impact area, the Permittee shall consult with the biological monitor and the Executive Director, and shall implement mitigations as directed by the biological monitor and the Executive Director, including measures consistent with the Habitat Protection Plan.

- (f) **BMPs.** The Construction Plan shall clearly identify all BMPs to be implemented during construction and their location. Such plans shall contain provisions for specifically identifying and protecting all natural drainage swales (with sand bag barriers, filter fabric fences, straw bale filters, etc.) to prevent construction-related runoff and sediment from entering into these natural drainage areas which ultimately deposit runoff into the Pacific Ocean. Silt fences, straw wattles, or equivalent measures shall be installed at the perimeter of all construction areas. At a minimum, such plans shall also include provisions for stockpiling and covering of graded materials, temporary stormwater detention facilities, revegetation as necessary, and restricting grading and earthmoving during the rainy weather. The plan shall indicate that: (a) dry cleanup methods are preferred whenever possible and that if water cleanup is necessary, all runoff shall be collected to settle out sediments prior to discharge from the site; all de-watering operations shall include filtration mechanisms; (b) off-site equipment wash areas are preferred whenever possible; if equipment must be washed on-site, the use of soaps, solvents, degreasers, or steam cleaning equipment shall not be allowed; in any event, such wash water shall not be allowed to enter any natural drainage; (c) concrete rinsates shall be collected and they shall not be allowed to enter any natural drainage areas; (d) good construction housekeeping shall be required (e.g., clean up all leaks, drips, and other spills immediately; refuel vehicles and heavy equipment off-site and/or in one designated location; keep materials covered and out of the rain (including covering exposed piles of soil and wastes); all wastes shall be disposed of properly, trash receptacles shall be placed on site for that purpose, and open trash receptacles shall be covered during wet weather); and (e) all erosion and sediment controls shall be in place prior to the commencement of grading and/or construction as well as at the end of each day. Particular care shall be exercised to prevent foreign materials from making their way to the beach or Pacific Ocean. Contractors shall insure that work crews are carefully briefed on the importance of observing the appropriate precautions and reporting any accidental spills. Construction contracts shall contain appropriate penalty provisions, sufficient to offset the cost of retrieving or cleaning up improperly contained foreign materials.
- (g) **Construction Site Documents.** The plan shall provide that a copy of the signed CDP be maintained in a conspicuous location at the construction job site at all times, and that such copy is available for public review on request. The signed CDP and approved Construction Plans shall also be retained in the project file and available for review by the public on request. All persons involved with the construction shall be briefed on the content and meaning of the CDP and the approved Construction Plan, and the public review requirements applicable to them, prior to commencement of construction.

Conditions of Approval DRAFT 12/15/13 (SNG) Exhibit "B"

Page 11

- (h) **Construction Coordinator.** The Construction Plan shall provide that a construction coordinator be designated to be contacted during construction should questions arise regarding the construction (in case of both regular inquiries and emergencies), and that their contact information (i.e., address, phone numbers, etc.) including, at a minimum, a telephone number that will be made available 24 hours a day for the duration of construction, is conspicuously posted at the job site where such contact information is readily visible from public viewing areas, along with indication that the construction coordinator should be contacted in the case of questions regarding the construction (in case of both regular inquiries and emergencies). The construction coordinator shall record the name, phone number, and nature of all complaints received regarding the construction, and shall investigate complaints and take remedial action, if necessary, within 24 hours of receipt of the complaint or inquiry.
- (i) **Notification.** The Permittee shall notify planning staff of the Coastal Commission's Central Coast District Office at least 3 working days in advance of commencement of construction, and immediately upon completion of construction.

Minor adjustments to the above construction requirements may be allowed by the Executive Director in the approved Construction Plan if such adjustments: (1) are deemed reasonable and necessary; (2) do not adversely impact coastal resources; and (3) do not cause delays in construction. All requirements above and all requirements of the approved Construction Plan shall be enforceable components of this CDP. The Permittee shall undertake construction in accordance with the approved Construction Plan.

- 3. **Dune Restoration Plans.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit two full size sets of Dune Restoration Plans to the Executive Director for review and approval. The Dune Restoration Plans shall provide for dune habitat restoration and stabilization for all dune areas of the site outside of development areas (as well as for all dune extension and screening areas), and be consistent with all recommendations of the Habitat Protection Plan and the Access, Signage and Lighting Plan (dated October 2013 and dated received in the Coastal Commission's Central Coast District Office) and the VTM (dated October 21, 2013 and dated received in the Coastal Commission's Central Coast District Office). The Dune Restoration Plans shall include, at a minimum, the following components:

- (a) **Objective.** Restoration shall be premised on enhancing dune habitat so that it is self-functioning, high quality habitat in perpetuity.
- (b) **Non-Native and Invasive Removal.** All non-native and/or invasive species shall be removed, and continued removal shall occur on an as-needed basis to ensure complete removal over time.
- (c) **Native Dune Plants.** All vegetation planted outside of interior courtyard areas and the transition developed landscape areas seaward of the building and inland of

Conditions of Approval DRAFT 12/15/13 (SNG) Exhibit "B"

Page 12

the buildings as shown on the Landscape Plan shall consist of dune plants native to the Sand City and southern Monterey Bay dune systems, including explicitly providing for a program to enhance Monterey spineflower and dune buckwheat populations, and be consistent with the Landscape Plan and the Habitat Protection Plan.

- (d) **Sensitive Species.** Special provisions shall be applied to explicitly enhance snowy plover and Smith's blue butterfly habitats as part of dune restoration activities, and be consistent with the Habitat Protection Plan and Landscaping Plan.
- (e) **Plant Maintenance.** All required plantings shall be maintained in good growing conditions for as long as any portion of the approved development exists at this site, and whenever necessary shall be replaced with new plant materials to ensure continued compliance with the plan.
- (f) **Dune Contours.** Final contours of the restoration shall mimic and seamlessly integrate with natural dune contours present and/or generally historically present in this area, consistent with the Habitat Protection Plan (dated October 2013 and dated received in the Coastal Commission's Central Coast District Office) and the VTM (dated October 21, 2013).
- (g) **Implementation.** A map shall be provided showing the type, size, and location of all plant materials that would be planted, the irrigation system (if any), topography and finish contours, and all other landscape features. Fencing to protect restored habitat shall be limited to temporary rope and pole barriers or equivalent, and sited and designed to limit visual impacts as much as possible. A schedule for all restoration activities shall be included.
- (h) **Monitoring and Maintenance.** A plan for monitoring and maintenance of habitat areas for the duration of any development approved pursuant to this CDP shall be included, consistent with the Habitat Protection Plan, and shall include:
 - 1. **Schedule.** A schedule out to 5 years.
 - 2. **Field Activities.** A description of field activities, including monitoring studies.
 - 3. **Monitoring.** Monitoring study design, including: goals and objectives of the study; field sampling design; study sites, including experimental/revegetation sites and reference sites; field methods, including specific field sampling techniques to be employed (photo monitoring of experimental/re-vegetation sites and reference sites shall be included); data analysis methods; presentation of results; assessment of progress toward meeting success criteria; recommendations; and monitoring study report content and schedule.

Conditions of Approval DRAFT 12/15/13 (SNG) Exhibit "B"

Page 13

4. **Adaptation.** Adaptive management procedures, including provisions to allow for modifications designed to better restore, enhance, manage, and protect habitat areas.

- (i) **Reporting and Contingency.** Five years from occupancy of the approved development, and every ten years thereafter, the Permittee shall submit, for the review and approval of the Executive Director, a restoration monitoring report prepared by a qualified specialist that certifies the restoration is in conformance with the approved Dune Restoration Plans, along with photographic documentation of plant species and plant coverage beginning the first year after initiation of implementation of the plan, annually for the first five years, and then every ten years after that. If the restoration monitoring report or biologist's inspections indicate the restoration is not in conformance with or has failed to meet the performance standards specified in the Dune Restoration Plans approved pursuant to this CDP, the Permittee shall submit a revised or supplemental restoration plan for the review and approval of the Executive Director. The revised restoration plan must be prepared by a qualified specialist, and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan. These measures, and any subsequent measures necessary to carry out the approved plan, shall be carried out in coordination with the direction of the Executive Director until the approved plan is established to the Executive Director's satisfaction.
- (j) **Dune Restoration Implemented Prior to Occupancy.** Initial dune restoration activities, including at a minimum non-native and invasive removal and initial site planting, shall be implemented prior to occupancy of the approved development.
- (k) **Dune Restoration Maintained.** All dune restoration activities pursuant to the approved Dune Restoration Plans shall be the Permittee's responsibility for as long as any portion of the approved development exists at this site.

All requirements above and all requirements of the approved Dune Restoration Plans shall be enforceable components of this CDP. The Permittee shall undertake development in accordance with the approved Dune Restoration Plans, which shall be initiated within 90 days of Executive Director approval of such plans, or within such additional time as the Executive Director allows if there are extenuating circumstances.

4. **Dune Area Conservation Easement.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall execute and record a document, in a form and content acceptable to the Executive Director, granting or irrevocably offering to dedicate to a political subdivision, public agency or private association approved by the Executive Director a dune area conservation easement (Dune Easement). The Dune Easement shall apply to the Dune Restoration Area described in Special Condition _____ and depicted in Exhibit _____. Consistent with the Access, Signage and Lighting Plan (dated October 2013 and dated received in the Coastal Commission's Central Coast District Office_____), development, as defined in Section 30106 of the Coastal Act, shall be prohibited in this area other than:

Conditions of Approval DRAFT 12/15/13 (SNG) Exhibit "B"

Page 14

(a) dune restoration, monitoring, and maintenance activities conducted in accordance with the approved Dune Restoration Plans (Special Condition xxx) consistent with the Habitat Restoration Plan; and (b) public access development and activities conducted in accordance with the approved Public Access Management Plan (Special Condition 5) consistent with the Access, Signage and Lighting Plan. The Dune Easement shall be recorded free of all prior liens and encumbrances that the Executive Director determines may affect the interest being conveyed. The Dune Easement shall include a legal description and graphic depiction of the legal parcels subject to the CDP and a metes and bounds legal description and graphic depiction of the Dune Easement area prepared by a licensed surveyor based on an on-site inspection, drawn to scale, and approved by the Executive Director.

5. **Public Access Management Plan.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit two copies of a public access management plan (Public Access Plan) to the Executive Director for review and approval,. The Public Access Plan shall clearly describe the manner in which general public access associated with the approved project is to be provided and managed, with the objective of maximizing public access and recreational use of all public access areas associated with the approved project (including but not limited to the public parking lot, pathway system, overlook, beach stairway/path, and the beach) and all related areas and public access amenities (i.e., bench seating, bike parking, signs, etc.) as described in this special condition, and be consistent with the VTM (dated October 2013 and dated received in the Coastal Commission's Central Coast District Office____) and the Access, Signage and Lighting Plan (dated October 2013 dated received in the Coastal Commission's Central Coast District Office____). The Public Access Plan shall be consistent with the Revised Plans (see Special Condition 1), and shall at a minimum include the following:

- (a) **Clear Depiction of Public Access Areas and Amenities.** All public access areas and amenities, including all of the areas and amenities described above, shall be clearly identified as such on the Public Access Plan (including with hatching and closed polygons so that it is clear what areas are available for public access use).
- (b) **Public Access Areas.** All parameters for use of the public access areas of the site, including but not limited to the following areas, shall be clearly identified. All access areas and amenities shall be sited and designed to integrate with the surrounding dune environment; shall be made up of natural materials (e.g., wood) when feasible; shall be natural and curvilinear forms (e.g., curving pathway segments, rounded overlook areas, etc.) when feasible and shall utilize the same design theme throughout. In addition:
 1. **Parking Lot.** The parking lot shall be publicly available for general public vehicle parking, bicycle parking, pedestrian access, and bicycle access during public access use hours (see below). At least: ten bicycle parking stands; three recycling bins; three trash bins; one water fountain; three ADA parking spaces; and one doggie mitt station, shall be provided in the public parking area in locations that maximize their public utility

Conditions of Approval DRAFT 12/15/13 (SNG) Exhibit "B"

Page 15

and minimize their impact on public views. The parking lot shall be ADA compatible. Use of the parking lot for other than general public access purposes shall be prohibited during public access use hours. The Public Access Plan shall include a description of the manner in which the Permittee will ensure that other site users and/or employees will not park in the parking lot.

2. **Pathway System.** The pathway system shall be publicly available for general public pedestrian access during public use hours. The portion of the pathway system that extends from the public recreational trail to and along the public parking lot (to the upcoast edge of the parking lot) shall be a similar width as the inland public recreational trail, but shall be surfaced with permeable pavement or permeable concrete colored to blend with the surrounding dune environment to the maximum extent feasible from at least the point where it enters onto the subject property. The portion of the pathway system that extends from the upcoast edge of the parking lot to the overlook shall be a wooden boardwalk approximately 5 feet in width. All portions of the pathway system shall be ADA compatible.
3. **Overlook.** The overlook shall be publicly available for general public pedestrian access during public access use hours. The overlook shall be approximately 300 square feet, shall be made up of a wooden boardwalk surface, and shall be sited and designed to eliminate the need for railings to the maximum extent feasible (e.g., setback a sufficient distance from the blufftop edge so as to not necessitate such features). At least: three benches; one interpretive panel/installation; one recycling bin; one trash bin; and one doggie mitt station, shall be provided at the overlook in locations that maximize their public utility and minimize their impact on public views. The overlook shall be ADA compatible.
4. **Beach Stairway/Path.** The beach stairway/path shall be publicly available for general public pedestrian access during public access use hours. The stairway/path shall be sited and designed to minimize landform alteration and to conform to the bluffs, to eliminate or minimize (if elimination is not possible) railings; and to maximize public utility and minimize impacts on public views.
5. **Beach.** The beach and offshore area (i.e., extending from the property line in the Monterey Bay to the toe of the dune bluffs (20' msl), including as the toe migrates inland) shall be publicly available for general public pedestrian and beach access, and all activities typically associated with same (e.g., walking, swimming, surfing, sunbathing, picnicking, stargazing, etc.).

Conditions of Approval DRAFT 12/15/13 (SNG) Exhibit "B"

Page 16

- (c) **Public Access Signs/Materials.** The plan shall identify all signs and any other project elements that will be used to facilitate, manage, and provide public access to the approved project, including identification of all public education/interpretation features that will be provided on the site (e.g., educational displays, interpretive signage, etc.), and be consistent with the Access, Signage and Lighting Plan. Sign details showing the location, materials, design, and text of all public access signs shall be provided. The signs shall be designed so as to provide clear information without impacting public views and site character. At a minimum, public access identification and direction signs shall be placed where the pathway system connects with the inland public recreational trail, at the base of each Fremont Street off ramp, at the entrance to the approved project (where it meets the public street), at or near the point where the tunnel entrance diverges from the parking lot entrance, at the entrance to the parking lot, at the beginning of the boardwalk section of the pathway system (at the parking lot), at the base of the beach stairway/path, and at other locations where identification and direction is appropriate. The Permittee shall also make reasonable efforts to work with Caltrans to install a Coastal Commission Public Access ("Feet") sign on both southbound and northbound Highway One; provided that the Permittee shall not be responsible for any decision made by Caltrans regarding such signage or for the installation or maintenance of such signs. The Permittee shall pay for such signage, including installation costs, upon Caltrans consent for such signs. At least one interpretive panel/installation that provides interpretation of the site, dunes, erosion and coastal hazards, the Monterey Bay, or other related and/or similar subjects shall be provided at the overlook. Signs shall include the California Coastal Trail and California Coastal Commission emblems and recognition of the Coastal Commission's role in providing public access at this location. All signs shall be sited and designed to maximize their utility and minimize their impacts on public views.
- (d) **No Disruption of Public Access.** No development or use of the property governed by this CDP may disrupt and/or degrade public access or recreational use of any public access areas associated with the approved project such as by setting aside areas for private uses or installing barriers to public access (furniture, planters, temporary structures, private use signs, fences, barriers, ropes, etc.), except that temporary low rope and pole barriers or similar measures may be used if approved by the biological monitor and Executive Director to protect sensitive species. Except with respect to temporary low rope and pole barriers or similar measures as set forth above, any development, as defined in Section 30106 of the Coastal Act, that diminishes public access and recreational use of the access areas and amenities required by this CDP shall be prohibited.
- (e) **Reconstruction/Relocation Required.** In the event that the approved public access amenities (including but not limited to the pathway system, overlook, and beach stairway/path) are threatened to a degree that they are in danger of being damaged or destroyed, or are a hazard, or are damaged or destroyed by coastal hazards, such amenities shall be reconstructed (and relocated inland as necessary

Conditions of Approval DRAFT 12/15/13 (SNG) Exhibit "B"

Page 17

to provide long term stability). Prior to reconstruction, the Permittee shall submit two copies of a Reconstruction Plan to the Executive Director for review and approval. If the Executive Director determines that an amendment to this CDP or a separate CDP is legally required, the Permittee shall immediately submit the required application. The Reconstruction Plan shall clearly describe the manner in which such amenities are to be reconstructed (and relocated as applicable), and shall be implemented immediately upon Executive Director approval or approval of the CDP or CDP amendment application, unless such CDP or CDP amendment identifies a different timeframe for implementation.

- (f) **Public Access Use Hours.** Public access areas and amenities shall be available to the general public from 5 a.m. until one hour after sunset, except that the beach (seaward of 20' msl at the toe of the bluff) shall be available to the general public 5 a.m. to midnight, and all public access areas shall be free of charge.
- (g) **Public Access Required Prior to Occupancy.** All public access amenities of the approved project shall be constructed and available for public use prior to occupancy of the approved development.
- (h) **Public Access Areas and Amenities Maintained.** All public access areas and amenities of the approved project shall be maintained in their approved state in perpetuity.

The Public Access Plan shall be approved and attached as an exhibit to the easement required by Special Condition 6 prior to recordation of the easement. All requirements above and all requirements of the approved Public Access Plan shall be enforceable components of this CDP. The Permittee shall undertake development in accordance with the approved Public Access Plan, which together with the public access easement required by Special Condition 6, shall govern all general public access to the site pursuant to this CDP.

- 6. **Public Access Easement.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall execute and record a document, in a form and content acceptable to the Executive Director, granting or irrevocably offering to dedicate to a political subdivision, public agency or private association approved by the Executive Director an easement for public access (Public Access Dedication). The Public Access Dedication shall apply to all public access areas described in Special Condition 5(b) and depicted in Exhibit _____ and shall restrict these areas in the same ways identified in Special Condition _____. The Public Access Dedication area shall be ambulatory, including that (a) the beach portion of the easement area shall move inland if the toe of the dune bluff moves inland; and (b) the pathway system, overlook, and beach stairway/path portion of the easement area shall move inland if the toe of the dune bluff moves inland and/or if, as a result of coastal hazards, relocation and/or reconstruction of access amenities in these areas is necessary to retain their utility. The Public Access Dedication shall be recorded free of all prior liens and encumbrances that the Executive Director determines may affect the interest being conveyed. The Public Access Dedication shall include a legal description and

Conditions of Approval DRAFT 12/15/13 (SNG) Exhibit "B"

Page 18

graphic depiction of the legal parcels subject to the CDP and a metes and bounds legal description and graphic depiction of the Public Access Dedication area prepared by a licensed surveyor based on an on-site inspection, drawn to scale, and approved by the Executive Director.

7. **Public Rights.** By acceptance of this CDP, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns, that the Coastal Commission's approval of this CDP shall not constitute a waiver of any public rights, if any, that may exist on the property, and that the Permittee shall not use this CDP as evidence of a waiver of any public rights that may exist on the property.
8. **Coastal Hazards Risk.** By acceptance of this CDP, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns:
 - (a) **Coastal Hazards.** That the site is subject to coastal hazards including but not limited to episodic and long-term shoreline retreat and coastal erosion, high seas, ocean waves, storms, tsunami, tidal scour, coastal flooding, liquefaction and the interaction of same;
 - (b) **Assume Risks.** To assume the risks to the Permittee and the property that is the subject of this CDP of injury and damage from such coastal hazards in connection with this permitted development;
 - (c) **Waive Liability.** To unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such coastal hazards;
 - (d) **Indemnification.** To indemnify and hold harmless the Coastal Commission, its officers, agents, and employees with respect to the Commission's approval of the development against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such coastal hazards; and
 - (e) **Property Owner Responsible.** That any adverse effects to property caused by the permitted development shall be fully the responsibility of the property owner.
9. **Coastal Hazards Response.** By acceptance of this CDP, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns, that:
 - (a) **CDP Intent.** The intent of this CDP is to allow for the approved development to be constructed and used consistent with the terms and conditions of this CDP for only as long as it remains safe for occupancy and use without additional substantive measures beyond ordinary repair and/or maintenance (including sealing and waterproofing repair and/or maintenance that does not involve extraordinary measures) to protect it from coastal hazards; provided however, that the Permittee may apply for a CDP amendment to relocate threatened

Conditions of Approval DRAFT 12/15/13 (SNG) Exhibit "B"

Page 19

development elsewhere on the site within then existing building areas (and not outside of such areas);

- (b) **Protective Measures Prohibited.** In the event that the approved development is threatened with damage or destruction from coastal hazards, or is damaged or destroyed by coastal hazards, protective shoreline structures (including but not limited to seawalls, revetments, groins shall be prohibited;
- (c) **Section 30235 Waiver.** Any rights to construct such protective structures, including rights that may exist under Public Resources Code Section 30235 and LCP Section 4.3.1 are waived;
- (d) **Public Access Amenities.** In the event that the approved public access amenities (including but not limited to the path system, overlook, and stairway) are threatened with damage or destruction from coastal hazards, or are a hazard, or are damaged or destroyed by coastal hazards, such amenities shall be reconstructed (and relocated inland as necessary to provide long term stability). Prior to reconstruction, the Permittee shall submit two copies of a Reconstruction Plan to the Executive Director for review and approval. If the Executive Director determines that an amendment to this CDP or a separate CDP is legally required, the Permittee shall immediately submit the required application. The Reconstruction Plan shall clearly describe the manner in which such amenities are to be reconstructed (and relocated as applicable), and shall be implemented immediately upon Executive Director approval or approval of the CDP or CDP amendment application, unless such CDP or CDP amendment identifies a different timeframe for implementation; and
- (e) **Removal.** If a government agency has ordered that the approved development or portions of the approved development are not to be occupied or used due to one or more coastal hazards, and such safety concerns cannot be abated by ordinary repair and/or maintenance, then the Permittee shall remove or relocate such development or portions of such development. Prior to removal, the Permittee shall submit two copies of a Removal Plan to the Executive Director for review and approval. If the Executive Director determines that an amendment to this CDP or a separate CDP is legally required, the Permittee shall immediately submit the required application. The Removal Plan shall clearly describe the manner in which such development is to be removed and the affected area restored so as to best protect coastal resources, and shall be implemented immediately upon Executive Director approval or approval of the CDP or CDP amendment application, unless such CDP or CDP amendment identify a different timeframe for implementation.

10. Hotel Overnight Units and Use Areas. By acceptance of this CDP, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns, that:

Conditions of Approval DRAFT 12/15/13 (SNG) Exhibit "B"

Page 20

- (a) **Hotel Length of Stay Provisions.** All 184 hotel overnight units shall be open and available to the general public. Rooms shall not be rented to any individual, family, or group for more than 29 consecutive days per year or for more than 29 days between the Saturday of the Memorial Day weekend through the Monday of the Labor Day weekend.
- (b) **Conversion Prohibited.** The conversion of any of the hotel overnight units to limited use overnight visitor accommodation units (e.g., timeshare, fractional ownership, etc.) or to full-time occupancy condominium units or to any other units with use arrangements that differ from the approved project shall be prohibited. The conversion of any hotel use areas to non-hotel use areas shall be prohibited without an amendment to this CDP.

11. **Condominium Hotel Visitor-Serving Overnight Units.** By acceptance of this CDP, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns, that:

- (a) **Hotel and Condominium Hotel Overnight Units.** The approved development includes a standard operating hotel with 184 overnight units and a condominium hotel component with 92 visitor-serving overnight hotel condominium units.
- (b) **Condominium Hotel Component.** PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit for Executive Director review and approval two copies of plans and documentation materials (condominium hotel plans) that clearly identify: all elements of the condominium hotel visitor-serving component of the project; the manner in which ownership will be applied to each element of the condominium hotel visitor-serving component (including common areas and individual units); an operator or designee responsible for managing the condominium hotel visitor-serving units (operator), including the booking of reservations for all units; the condominium hotel lobby area configuration and operational parameters; and the mechanism by which the individual units are to be booked, including at a minimum provisions for a reservation data base to be managed by operator. As used in this condition, the terms "book", "booked", and "booking" shall mean the confirmation of a reservation request for use of an individual unit by either the owner of the unit, the owner's permitted user, or by a member of the public, and the entry of such confirmation in the operator's reservation data base. The condominium hotel visitor-serving (CHVS) component of the project shall be maintained in its approved state, and shall be managed and operated consistent with the approved condominium hotel plans.
- (c) **Unit Owner Occupancy Limitations.** Each owner of a CHVS unit, including any individual, family, group, or partnership of owners for a given unit (no matter how many owners there are) may use their unit for no more than 84 days in any calendar year, with no stay exceeding 29 consecutive days of use during any 60 day period. Such occupancy limitations shall be unaffected by multiple owners of an individually owned unit or the sale of a unit to a new owner or new owners

Conditions of Approval DRAFT 12/15/13 (SNG) Exhibit "B"

Page 21

during the calendar year, meaning that all such owners of any given unit shall be collectively subject to the occupancy restrictions as if they were a single, continuous owner. Whenever any unit is not occupied by its owner(s), that unit shall be available for use by the general public on the same basis as a traditional hotel room.

(d) **Rental Agent Not Allowed.** The operator of the hotel or its designee reservation system shall be each owner's exclusive rental agent, and the operator or its designee shall manage the booking and the reservation of all units in the condominium hotel. The operator shall have the right and obligation to offer any unit for general public use during all time periods not reserved by a unit owner for his or her personal use, or for the use of an owner's permitted user. As more fully described herein, the operator or its designee shall book all unit reservations in the operator's reservation database, a service for which the operator may charge the unit owner a reasonable fee.

The operator shall have the right, working through the unit owners, to book any unoccupied room to fulfill public demand. The owner may not withhold units from use unless they have already been reserved for use by the owner, consistent with the length of occupancy limitations identified above. In all circumstances, the operator shall have full access to the unit's reservation and booking schedule so that the operator or its designee can fulfill its booking and management obligations hereunder.

(e) **CHVS Unit Marketing.** The operator shall market all CHVS units to the general public for rent. Unit owners shall not discourage rental of their units nor create disincentives meant to discourage rental of their units.

(f) **CHVS Units Management.** The operator or its designee shall manage all aspects of the condominium hotel component of the project, including all CHVS units, including but not limited to reservation booking, mandatory front desk check-in and check-out, maintenance, and cleaning services (including preparing units for use by guests/owners, a service for which the operator may charge unit owners a reasonable fee). All unit keys shall be electronic and shall be newly created by the operator upon each change in user occupancy for any unit. All units shall be rented at a rate similar on a square foot basis to that charged for traditional hotel rooms of a similar class or amenity level in the California coastal zone.

(g) **Marketing and Sale of Condominium Hotel Interests.** All documents related to the marketing and sale of condominium interests in CHVS units (including marketing materials, sales contracts, deeds, CC&Rs and similar documents, etc.) shall notify potential buyers of the following:

1. **Liability.** Each owner of any unit is jointly and severally liable with the property owner(s) and the operator for any violations of the terms and conditions of CDP xxx with respect to the use of that owner's unit; and

Conditions of Approval DRAFT 12/15/13 (SNG) Exhibit "B"

Page 22

2. **Occupancy Limits.** The occupancy of a unit by its owner(s) and their guests is restricted to a maximum of 29 consecutive days of use and a maximum of 84 days per calendar year and a maximum of 29 consecutive days of use during any 60 day period. When not in use by the owner, the unit shall be made available for rental by the operator to the general public pursuant to the terms of CDP xxx, which permit and the CC&Rs applicable to the unit contain additional restrictions on use and occupancy; and
3. **Individual Owners as Operators.** Each owner of a unit shall be obligated by the governing documents of the facility to truthfully report to the operator (and to certify each such report) each effort, if any, he or she has made to market his or her unit to a member of the public.

Prior to the sale of an individual unit, the unit's seller and the operator (and any successors-in-interest) shall obtain a written acknowledgement from the buyer indicating that they understand, acknowledge, and accept each of the above marketing and sale restrictions. Owners may select their own agents or those offered by the operator to sell (transfer ownership) their condo unit.

- (h) **Conversion Prohibited.** The conversion of the approved CHVS units to other types of limited use overnight visitor accommodation units (e.g., timeshare, fractional ownership, etc.) or to full-time occupancy condominium units or to any other units with use arrangements that differ from the approved project, other than standard operating hotel units, shall be prohibited. Conversion to hotel overnight units of the approved CHVS units or any portion or number of units is permitted under this CDP at any time.
- (i) **Occupancy and Use Monitoring and Recording.** The operator or designee shall monitor and record occupancy and use by the general public and the owners of individual CHVS units throughout each year. Such monitoring and record keeping shall include specific accounting of owner usage for each individual unit; rates paid for occupancy and for advertising and marketing efforts; and transient occupancy taxes (TOT) for all units, services for which the operator may charge unit owners a reasonable fee. The records shall be sufficient to demonstrate compliance with the restrictions set forth in Sections xxx(a) through xxx(g) above. All such records shall be maintained for ten years and shall be made available to the Executive Director upon request and to any auditor required by Section xxx(i) below. Within 30 days of commencing operations, the operator shall submit notice to the Executive Director of commencement of operations.
- (j) **Audit.** WITHIN 120 DAYS OF THE END OF THE FIRST CALENDAR YEAR OF OPERATIONS, the operator shall retain an independent auditing company approved by the Executive Director, to perform an audit to evaluate compliance with this special condition regarding occupancy restrictions, marketing and sale restrictions, management requirements, recordkeeping, and monitoring by the

Conditions of Approval DRAFT 12/15/13 (SNG) Exhibit "B"

Page 23

hotel owner(s), the owners of individual CHVS units, and the operator. The operator shall instruct the auditor to prepare a report identifying the auditor's findings, conclusions and the evidence relied upon, and such report shall be submitted to the Executive Director, upon request, within six months after the conclusion of the first full year of operations.

Within 120 days of the end of each succeeding calendar year, the operator shall submit a report identifying compliance with this special condition regarding occupancy restrictions, marketing and sale restrictions, management requirements, recordkeeping, and monitoring by the hotel owner(s), the individual unit owners, and the operator to the Executive Director. The audit required after the first year of operations and all subsequent reports shall evaluate compliance by the operator and owners of individual CHVS units during the prior one-year period. After the first five calendar years of operations, the one-year reporting period may be extended to every five years upon written approval of the Executive Director if each of the previous reports reveal compliance with all restrictions imposed by this special condition. The Executive Director may, by written notice to the operator, require a third party audit regarding the subject matter of the reports required in this section for the prior three or fewer calendar years if he or she reasonably believes that the foregoing submitted reports are materially inaccurate. The property owner(s), each individual unit owner, and the operator shall fully cooperate with and shall promptly produce any existing documents and records which the auditor may reasonably request. The expense of any such audit shall be borne by the property owner(s) and/or the operator.

- (k) **Compliance Required.** The property owner(s) and operator or any successors-in-interest shall maintain the legal ability to ensure compliance with the terms and conditions stated above at all times in perpetuity, and shall be responsible in all respects for ensuring that all parties subject to these restrictions comply with the restrictions. The property owner(s) and the operator shall be jointly and severally responsible for ensuring compliance with the requirements described in this condition and/or recorded against the property, as well as jointly and severally liable for violations of said requirements. Each owner of an individual CHVS unit is also jointly and severally liable with the property owner(s) and operator for all violations of said requirements and for any and all violations of the terms and conditions of CDP xxx with respect to the use of that owner's unit. Violations of this CDP can result in penalties pursuant to Public Resources Code Section 30820.
- (l) **CC&R Declaration of Restrictions.** PRIOR TO OCCUPANCY OF THE APPROVED DEVELOPMENT, the Permittee shall submit for the review and approval of the Executive Director text a declaration of restrictions in a recordable covenants, conditions, and restrictions (CC&R) form (CC&R Declaration of Restrictions of the CHVS) which shall include: (1) all the specific restrictions listed in Sections xxx(a) through xxx(j) above; (2) acknowledgement that these same restrictions are independently imposed as condition requirements of CDP xxx; and (3) a statement that the provisions of the CC&R Declaration of

Conditions of Approval DRAFT 12/15/13 (SNG) Exhibit "B"

Page 24

Restrictions that reflect the requirements of Sections xxx(a) through xxx(j) above, cannot be changed without approval of a CDP amendment, unless it is determined by the Executive Director that such an amendment is not legally required (if there is a section of the CC&Rs related to amendments, and the statement provided pursuant to this paragraph is not in that section, then the section on amendments shall cross-reference this statement and clearly indicate that it controls over any contradictory statements in the section of the CC&Rs related to amendments). The approved CC&R Declaration of Restrictions of the CHVS described above shall be recorded against all individual property titles simultaneously with the recordation of the subdivision map for the approved project.

I. Implementation Plan. PRIOR TO OCCUPANCY OF THE APPROVED DEVELOPMENT, the Permittee shall submit for Executive Director review and approval a plan specifying how the requirements of this condition will be implemented. The plan must include, at a minimum, the form of the sale, deed and CC&R terms and restrictions that will be used to satisfy these special condition requirements and the form of the rental program agreement to be entered into between the individual unit owners, the property owner(s), and the operator. The plan shall demonstrate that the Permittee will establish mechanisms that provide the property owner(s) and operator and any successor-in-interest property owner(s) and operator adequate legal authority to implement the requirements of this condition. Any proposed changes to the approved plan and subsequent documents pertaining to compliance with and enforcement of the terms and conditions required by this condition, including deed restrictions and CC&Rs, shall be prohibited without an amendment to CDP xxx, unless it is determined by the Executive Director that an amendment is not legally required.

12. Lower Cost Visitor Accommodations. PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit to the Executive Director for review and approval a plan to establish a Lower Cost Overnight Accommodations Fund (Fund). Subsequent to Executive Director approval of the plan and upon issuance of the Certificate of Occupancy, a sum equal to \$25,700 per unit for 25% of the total hotel and visitor-serving condominium hotel units as defined in Special Condition 1(g) (excluding the residential condominium units) shall be deposited into an interest bearing account, to be established and managed by one of the following entities as approved by the Executive Director: the City of Sand City, Monterey County, the California Department of Parks and Recreation, Hostelling International, or similar entity. The purpose of the account shall be to establish new in lieu lower cost overnight visitor serving accommodations, such as new hostel or tent campground units, at appropriate locations within the coastal zone of Monterey County. The entire fee and any accrued interest shall be used for the above-stated purpose, in consultation with the Executive Director, within ten years of the fee being deposited into the account. Any portion of the fee that remains after ten years shall be donated to one or more of the State Parks units located along the Monterey County shoreline, or other organization acceptable to the Executive Director, for the

Conditions of Approval DRAFT 12/15/13 (SNG) Exhibit "B"

Page 25

purpose of providing lower cost public access and recreation improvements to and along the shoreline, including improvements to the California Coastal Trail.

PRIOR TO EXPENDITURE OF ANY FUNDS CONTAINED IN THIS ACCOUNT, the Executive Director must review and approve the proposed use of the funds as being consistent with the intent and purpose of this condition. In addition, the entity accepting the funds required by this condition shall enter into a memorandum of understanding (MOU) with the Commission, which shall include, but not be limited to, the following: (1) a description of how the funds will be used to create or enhance lower cost accommodations in the coastal zone; (2) a requirement that the entity accepting the funds must preserve these newly created lower cost accommodations in perpetuity; and (3) an agreement that the entity accepting the funds will obtain all necessary regulatory permits and approvals, including but not limited to, a CDP for development of the lower cost accommodations required by this condition.

13. **Other Agency Approval.** **PRIOR TO CONSTRUCTION**, the Permittee shall submit to the Executive Director written evidence that all necessary permits, permissions, approvals, and/or authorizations for the approved project have been granted by the City of Sand City and the Monterey Peninsula Water Management District. Any changes to the approved project required by these agencies shall be reported to the Executive Director. No changes to the approved project shall occur without a Commission amendment to this CDP unless the Executive Director determines that no amendment is legally necessary.
14. **Traffic.** The Permittee shall submit to the Executive Director evidence that all of the following have occurred:
 - (a) **Payment of Impact Fees.** **PRIOR TO CONSTRUCTION**, the Permittee shall provide a fee, surety bond(s) or other appropriate security to the Transportation Agency for Monterey County (TAMC), as appropriate, guaranteeing payment of the impact fees assessed on the project by the Regional Impact Fee Nexus study adopted by TAMC in May 2008 as amended. The Permittee shall submit to the Executive Director written evidence that the fee, surety bond(s) or other appropriate security has been provided to TAMC.
 - (b) **Fremont Boulevard/SR 1 SB Off-Ramp/NB On-Ramp Intersection.** **PRIOR TO ISSUANCE OF BUILDING PERMITS**, the Permittee shall pay a fee to insure improvements to the Fremont Boulevard/SR 1SB Off-Ramp/NB On-Ramp Intersection, as outlined in the project EIR, are completed. The amount that the project shall contribute shall be determined at the time building permits are issued for the project. The Permittee shall submit to the Executive Director written evidence that the fee, surety bond(s) or other appropriate security has been provided to the City of Sand City.
 - (c) **TDM Program.** **PRIOR TO ISSUANCE OF THE Certificate of Occupancy (COO)**, The Permittee shall submit to the Executive Director for review and to AMBAG for review a TDM program designed to offset traffic and parking impacts

Conditions of Approval DRAFT 12/15/13 (SNG) Exhibit "B"

Page 26

on the general public from project guests and employees and measures consistent with the AMBAG guidelines.

15. Future Development Restrictions. By acceptance of this CDP, the Permittee acknowledges and agrees, on behalf of itself and all successors and assigns that this CDP is only for the development described in CDP xxx. Pursuant to Title 14 California Code of Regulations (CCR) Section 13253(b)(6), the exemptions otherwise provided in Coastal Act Section 30610(b) shall not apply to the development governed by CDP xxx.

Accordingly, any future improvements to the development authorized by this CDP, including but not limited to repair and maintenance identified as requiring a CDP in Coastal Act 30610(d) and CCR Sections 13252(a)-(b), shall require an amendment to CDP xxx from the Commission.

15. Indemnification by Permittee/Liability for Costs and Attorneys Fees. By acceptance of this CDP, the Permittee agrees to reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys fees – including (1) those charged by the Office of the Attorney General, and (2) any court costs and attorneys fees that the Coastal Commission may be required by a court to pay – that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the Permittee against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or issuance of this permit. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.

16. Deed Restriction. PRIOR TO ISSUANCE OF THE CDP, the Permittee shall submit to the Executive Director for review and approval documentation demonstrating that the Permittee has executed and recorded against the property governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the special conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the property. The deed restriction shall include a legal description of the legal parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the property.

17. Expiration. Notwithstanding standard condition no. 2, if development has not commenced, the permit will expire five years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.