

msl
TO: MICHAEL LEBRUN
INTERIM GENERAL MANAGER
FROM: PETER SEVCIK
DISTRICT ENGINEER
DATE: JANUARY 21, 2011



TRANSFER OF TRACT 2650 OUTSIDE USER AGREEMENT

ITEM

Approve Consent to the Transfer of Tract 2650 Outside User Agreement from Vintage Homes, LLC to Margarita Valley Ranch, LLC [RECOMMEND APPROVAL].

BACKGROUND

Tract 2650 is a proposed 16 lot residential subdivision on the corner of Willow Road and Via Concha Road that is within the District's Sphere of Influence but outside of the District's current boundary. The project was being developed by Vintage Homes, LLC. and has since been sold/transferred to Margarita Valley Ranch, LLC, the applicant.

The District entered into an Outside User Agreement with Vintage Homes for the subdivision that became effective on March 20, 2008, the date the agreement was recorded. The agreement required Vintage Homes to commence construction of water system improvements by March 20, 2010. Subsequently, Vintage Homes requested and the Board approved Amendment #1 to the Outside User Agreement that allowed Vintage Homes until March 20, 2012 to begin construction of the water system improvements.

Ownership of the project was transferred to Margarita Valley Ranch, LLC in December 2010. The applicant submitted the attached letter dated December 9, 2010 requesting the transfer of all agreements to the new ownership entity and provided a copy of the grant deed transferring title of the property to the applicant. In accordance with the District's standard procedures, the applicant has executed a new Plan Check and Inspection Agreement for the project and has provided a \$4000 deposit. The applicant has also submitted the water system improvement plans for the project. Staff has begun to perform the plan check at the Applicant's request even though the Outside User Agreement has not yet been transferred to the applicant.

In accordance with Paragraph 14 of the Outside User Agreement, the transfer of the Outside User Agreement to a new owner is subject to District approval. District Legal Counsel prepared the attached Consent to the Transfer of the Outside User Agreement that transfers the Outside User Agreement to the applicant. The applicant is bound by the terms and conditions of the agreement. The applicant has complied with the District's requirements and staff recommends that the Board approve transferring the Outside User Agreement to the applicant.

FISCAL IMPACT

The Outside User Agreement requires the applicant to pay the District's current Water System Capacity Charges and meter fees. The fee deposit is \$17,267 per 1 inch meter for each lot for a total of \$276,272 based on the District fee schedule.

RECOMMENDATION

Staff recommends that the Board adopt the attached Resolution approving the Consent to the Transfer of Outside User Agreement Providing Water and Solid Waste Service to Tract 2650.

AGENDA ITEM E-4
January 26, 2011

ATTACHMENTS

- Margarita Valley Ranch, LLC letter dated December 9, 2010
- Outside User Agreement effective March 20, 2008 9 (Recording Date)
- Outside User Agreement Amendment #1 dated March 1, 2010 (Recording Date)
- Resolution 2011-XXXX with Exhibit A – Consent to the Transfer of Outside User Agreement for Providing Water and Solid Waste Service to Tract 2650

T:\BOARD MATTERS\BOARD MEETINGS\BOARD LETTER\2011\110126 TRACT 2650 OUTSIDE USER AGREEMENT TRANSFER.doc

Margarita Valley Ranch, LLC

December 9, 2010

Peter Sevcik
District Engineer
Nipomo Community Services District
P.O. Box 326
Nipomo, CA 93444

via e-mail: psevcik@ncsd.ca.gov

Subject: Tract 2650 – Nipomo, CA

Dear Peter,

As discussed, Margarita Valley Ranch, LLC has purchased Tract 2650 from the Craig Family Trust. Enclosed is a copy of the recorded Grant Deed transferring title. Please recognize this request to transfer any and all agreements to the new ownership entity, to include the plan check and inspection agreement (PCIA). Please note that the current engineer of record will remain the same.

Please e-mail the amended PCIA to susan@gregnesterhomes.com and we will sign and return promptly. Thank you.

Sincerely,



Greg Nester
Managing Member of Margarita Valley Ranch, LLC

Att: Grant Deed

~~~~~  
Ph: 805.481.5182 ~ fx: 805.481.2790  
[www.gregnesterhomes.com](http://www.gregnesterhomes.com) / General Contractor Lic. No. 812904  
Mailing Address: P.O. Box 219 – Arroyo Grande, CA 93421  
Office Location: 139 W. Branch St. – Arroyo Grande, CA 93420

**JULIE RODEWALD**  
San Luis Obispo County – Clerk/Recorder

AZ  
12/03/2010  
2:31 PM

RECORDING REQUESTED BY: and

WHEN RECORDED MAIL TO:  
Margarita Valley Ranch, LLC  
PO Box 219  
Arroyo Grande, CA 93421

 **COPY**

Recorded at the request of  
**Public**

DOC#: 2010061740



Titles: 1 Pages: 5  
Fees 26.00  
Taxes 3,190.00  
Others 10.00  
PAID \$3,226.00

DOCUMENTARY TRANSFER \$ 3,190.00 /  
() Computed on the consideration or value of property conveyed; OR  
( ) Computed on the consideration or value less liens or encumbrances  
( ) remaining at time of sale.

SPACE ABOVE THIS LINE FOR RECORDER'S USE

  
Greg Nester, Margarita Valley Ranch, LLC

APN: 091-181-052,053

**GRANT DEED**

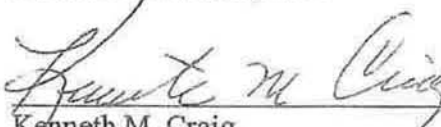
FOR A VALUABLE CONSIDERATION, Kenneth M. Craig and Rosemarie Craig, Trustees of the Craig Family Trust dated September 8, 1987 receipt of which is hereby acknowledged,

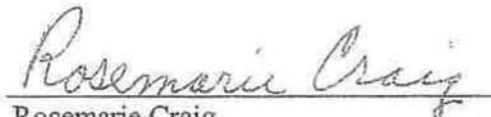
Hereby GRANT (S) to Margarita Valley Ranch, LLC



The real property in the County of San Luis Obispo, State of California as per Exhibit "A"

Dated: December 3, 2010

  
Kenneth M. Craig

  
Rosemarie Craig

State of California  
County of San Luis Obispo

SURVEY MONUMENT FEE \$10.00

On 12/3/10 before me, K. Lemay, a notary public, personally appeared Kenneth M. Craig and Rosemarie Craig who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing is true and correct.

Witness my hand and official seal.

Signature K. Lemay (Seal)



ABOVE RESERVED FOR OFFICIAL NOTARY SEAL

Mail Tax Statements to above

EXHIBIT A

PARCEL 1:

LOT 45 OF DIVISION "A" OF POMEROY'S RESUBDIVISION OF A PART OF THE LOS BERROS TRACT, IN THE COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, ACCORDING TO MAP RECORDED SEPTEMBER 26, 1903 IN BOOK A, PAGE 109 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM THAT PORTION OF SAID LAND CONVEYED TO THE LUCIA MAR UNIFIED SCHOOL DISTRICT IN DEED RECORDED DECEMBER 19, 2003 AS INSTRUMENT NO. 2003-143010, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTERLINE MONUMENT SET TO MARK THE CENTERLINE INTERSECTION OF WILLOW ROAD AND VIA CONCHA ROAD, AS SHOWN ON THE MAP RECORDED IN BOOK 11, PAGE 85 OF MAPS IN THE ABOVE SAID RECORDER'S OFFICE, SAID POINT BEING THE POINT OF BEGINNING; THENCE

1. NORTH 90°00'00" WEST, A DISTANCE OF 723.77 FEET, ALONG SAID CENTERLINE OF WILLOW ROAD, TO A POINT OPPOSITE THE SOUTHWEST CORNER OF THE WELL SITE EASEMENT, PREVIOUSLY CONVEYED TO THE LUCIA MAR SCHOOL DISTRICT AND THE TRUE POINT OF BEGINNING; THENCE
2. NORTH 0°00'00" WEST, A DISTANCE OF 30.00 FEET TO THE SOUTHWEST CORNER OF SAID WELL SITE AND CONTINUING, NORTH 0°00'00" WEST; A DISTANCE OF 75.00 FEET, TO THE NORTHWEST CORNER OF SAID WELL SITE; THENCE
3. NORTH 90°00'00" EAST, ALONG THE NORTH LINE OF SAID WELL SITE, A DISTANCE OF 55.00 FEET; THENCE
4. NORTH 0°02'01" EAST, PARALLEL TO THE CENTERLINE OF VIA CONCHA ROAD, A DISTANCE OF 1215.37 FEET, TO A POINT ON THE NORTH LINE OF ABOVE SAID LOT 45, SAID POINT BEARS SOUTH 89°59'23" W, 668.84 FEET FROM THE NORTHEAST CORNER OF SAID LOT; THENCE
5. SOUTH 89°59'23" WEST, ALONG THE NORTH LINE OF SAID LOT 45, TO A 3" I.P. TAGGED RE 11398, SET TO MARK THE NORTHWEST CORNER OF SAID LOT 45 ON A PARCEL MAP RECORDED IN BOOK 11 OF PARCEL MAPS AT PAGE 76 IN THE ABOVE SAID RECORDER'S OFFICE, A DISTANCE OF 649.72 FEET; THENCE
6. SOUTH 0°06'45" WEST, ALONG THE WEST LINE OF LOT 45, A DISTANCE OF 1290.26 FEET, TO THE NORTH RIGHT OF WAY LINE FOR THE ABOVE SAID

WILLOW ROAD AND CONTINUING ALONG THE WEST LINE OF SAID LOT 45, SOUTH 0°06'45" WEST, A DISTANCE OF 30.00 FEET TO THE CENTERLINE OF ABOVE SAID WILLOW ROAD; THENCE  
7. NORTH 90°00'00" EAST, ALONG SAID CENTERLINE, A DISTANCE OF 596.60 FEET TO THE TRUE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM ALL OIL AND GAS IN OR UNDER THE SURFACE OF SAID LAND BELOW A DEPTH OF 200 FEET WITHOUT RIGHT OF SURFACE ENTRY AS RESERVED BY THE FLINTKOTE COMPANY RECORDED APRIL 5, 1977 IN BOOK 1968, PAGE 775 OF OFFICIAL RECORDS.

PARCEL 2:

AN EASEMENT FOR PROHIBITION OF LEACH FIELD DISCHARGE AND INCIDENTAL PURPOSES OVER THAT PORTION OF LOT 45 OF DIVISION "A" OF POMEROY'S RESUBDIVISION OF A PART OF THE LOS BERROS TRACT, IN THE COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, ACCORDING TO MAP RECORDED IN BOOK A, PAGE 109 OF MAPS, AS RESERVED BY KENNETH M. CRAIG AND ROSEMARIE CRIAG, TRUSTEES OF THE CRAIG FAMILY TRUST DATED SEPTEMBER 8, 1987 IN DEED RECORDED DECEMBER 19, 2003 AS INSTRUMENT NO. 2003-143010 OF OFFICIAL RECORDS.

**JULIE RODEWALD**  
San Luis Obispo County – Clerk/Recorder  
Recorded at the request of  
**Public**

NB  
3/20/2008  
4:02 PM

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

NIPOMO COMMUNITY SERVICES DISTRICT  
P.O. Box 326  
Nipomo, CA 93444

DOC#: 2008013985



Titles: 1 Pages: 35

|        |          |
|--------|----------|
| Fees   | 109.00   |
| Taxes  | 0.00     |
| Others | 0.00     |
| PAID   | \$109.00 |

APN# 091-181-052  
091-181-053

Exhibits:

- "A" – Legal Description
- "B" – Plan Check & Inspection Agreement
- "C" – Resolution of District

**AGREEMENT AFFECTING REAL PROPERTY  
NIPOMO COMMUNITY SERVICES DISTRICT  
AND VINTAGE HOMES, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY  
AGREEMENT FOR PROVIDING WATER AND  
SOLID WASTE SERVICES TO TRACT 2650**

This Agreement, made this 23 day of May, 2007, by and between the Nipomo Community Services District (herein referred to as "District") and Vintage Homes, LLC, a California Limited Liability Company (hereinafter referred to as the "Owner(s)") with reference to the following Recitals:

**RECITALS**

A. Owner is the legal fees simple owner of certain real property located in San Luis Obispo County, California, referred to as Tract 2650 (herein "Property" or "Tract 2650"), which is located at the corner of Willow Road and Via Concha Road, Nipomo, California, and is more particularly described on Exhibit "A", attached hereto and incorporated herein by this reference.

B. The Property consists of approximately nineteen (19) acres, to be developed into sixteen (16) separate residential parcels. The Property is subject to an Annexation Agreement executed by Owner and District on July 1, 2006.

C. On or about September 15, 2006, Owner's predecessor, Kenneth M. Craig and Rosemarie Craig, Trustees of the Craig Family Trust submitted an application to the Local Agency Formation Commission ("LAFCO") for annexation of the Property to District.

D. The Property is within the District's Sphere of Influence and is immediately adjacent to the District's boundaries and is subject to the above referenced LAFCO application regarding annexation. Therefore, LAFCO, pursuant to Government Code §56133, must approve this Agreement.

E. Pending completion of Annexation Owner has requested District provide the Property with water service and solid waste services, (collectively "District Services") whereby Owner will:

1. At its sole cost and expense apply to LAFCO for approval of this Agreement.
2. Promptly construct water improvements in accordance with District requirements and Plan Check and Inspection Agreement attached hereto as Exhibit "B".
3. Diligently complete and not oppose further action taken by LAFCO in approving Annexation.
4. Upon LAFCO approval of this Agreement, Owner agrees not to form a mutual water company to provide water service to the Property and individual parcels therein.

F. District is willing to provide water and solid waste service to Tract 2650 on the terms and conditions hereinafter provided.

NOW, THEREFORE, for valuable consideration receipt of which is hereby acknowledged the parties agree as follows:

1. **Service Limitations.**

A. The District's obligation to provide water service to the Property and parcels therein is limited to setting sixteen (16) water meters to serve sixteen (16) single-family residential units within Tract 2650.

B. Except as provided in subparagraph A, above, Owner shall not connect, or allow to be connected, any other lot or premises or building or structure for the delivery of water and sewer services.

2. **Deposit for District Costs.**

Owner shall deposit the sum of two thousand dollars (\$2,000) (receipt of which is hereby acknowledged) for legal, engineering and administrative services in preparing this Agreement and LAFCO processing of this Agreement. Owner authorizes District to withdraw from the deposit as these costs are incurred by District. pursuant to this Agreement.

District will notify Owner whenever the deposit is reduced to five hundred dollars (\$500) or less. Within fifteen (15) days after such notification is mailed, Owner shall make an additional deposit in the same amount as the initial deposit.

Upon LAFCO's final consideration of this Agreement, , any funds so advanced by the Owner in excess of the District's actual costs shall be returned to Owner. Conversely, any costs incurred by the District over and above the amount advanced by the Owner shall be paid by the Owner upon demand.

3. **Water Treatment and Water Quality.**

The water provided to the Property pursuant to this Agreement shall be treated to District drinking water standards, and shall be treated to no greater extent than that provided to other District water users.



4. **Payment of Annexation Fees.**

Prior to the completion of annexation, or the recording of the final map, or setting the first water meter, whichever occurs first, Owner shall make a non-refundable deposit to the District in the amount of nine thousand four hundred dollars (\$9,400) representing the District's Annexation fees of \$500 per acre.

5. **Payment of Capacity Charges/Will Serve Letter.**

A. Prior to District issuing a Will Serve Letter, for District Services, Owner shall deposit with District, the 100% estimate of District's then established connection and capacity charges, including supplemental water capacity charges, for District Services. Said fees, for sixteen (16) single-family units, is currently calculated at two hundred thirty-one thousand forty dollars (\$231,040).

B. The District's connection and capacity charges, including supplemental water capacity charges, shall be calculated and owing as of the date the District sets water meters to serve the affected property/parcels from which the amount of the deposit shall be deducted.

6. **District Service.**

A. The District Services to be provided to the Property and individual parcels include water service and solid waste service. The District shall not set water meters or otherwise provide service to the Property, or individual parcels therein, until the following have occurred:

1. The LAFCO has adopted a Resolution approving the annexation.
2. The District has adopted a Resolution of Acceptance of the Improvements as provided by District rules, regulations, ordinances and the Plan Check and Inspection Agreement (Exhibit "B"); and
3. Owner has paid the District all applicable fees and charges of the District, including connection fees and capacity charges, all in accordance with the Ordinances, Rules and Regulations of the District.
4. Building permits have been issued by the County of San Luis Obispo for residential units.

B. The Owner agrees that it will comply with all District rules, regulations and ordinances (including regulations and ordinances related to water conservation) that regulate or otherwise affect the delivery of District Services to District customers.

C. Until such time as the Annexation is deemed complete by LAFCO the monthly (or bi-monthly) rates and charges for water service and solid waste service shall be set by Resolution of the Board of Directors as attached hereto as Exhibit "C".

7. **Secondary Units.**

The District is not obligated to provide water service to secondary units located on the Property or individual parcels contained therein.

**8. Term of Agreement.**

Except for Owner's obligations referenced in paragraph 2 of this Agreement, and unless otherwise terminated as provided herein, shall become effective on the date LAFCO approves the Annexation and this Agreement. Subject to paragraph 9, below, this Agreement shall remain in effect until the Annexation is deemed complete.

**9. District's Right to Terminate.**

Owner shall be in default, and District shall have the right to terminate this Agreement, if Owner fails:

- A. To make payments as required by this Agreement;
- B. To promptly design and construct the water improvements in accordance with District's rules, regulations, ordinances and the Plan Check and Inspection Agreement (Exhibit "B");
- C. To commence construction of water improvements within twenty-four (24) months of LAFCO's approval of this Agreement. Owner, upon showing due diligence, shall be entitled to one twelve (12) month extension; and/or
- D. To comply with any other terms or conditions of this Agreement.

District shall provide Owner with Notice of Termination and Owner shall have fifteen (15) days from the date of such Notice to cure the default. After the fifteen (15) day period to cure, the District may immediately terminate this Agreement and terminate District services to the Property.

**10. Owner Not An Agent of District.**

Neither Owner or any of Owner's agents or contractors are or shall be considered to be agents of the District in connection of the performance of Owner's obligations under this Agreement.

**11. Covenants and Conditions.**

The obligations of Owner pursuant to this Agreement are both covenants and conditions.

**12. Attorney's Fees.**

In the event that any arbitration, litigation, or other proceeding of any nature between the District and Owner becomes necessary to enforce or interpret all or any portion of this Agreement, it is mutually agreed that the prevailing party therein shall receive from the other, in addition to such sums as may be awarded, an amount sufficient to reimburse such prevailing party for reasonable attorney's fees and costs paid or owing as a result of such proceeding.

**13. Notices.**

All notices, statements, reports, approvals, requests, bills or other communications that are required either expressly or by implication to be given by either party to the other under this Agreement shall be in writing and signed for each party by such officers as each may, from time

to time, be authorized in writing to so act. All such notices shall be deemed to have been received on the date of delivery if delivered personally or three (3) days after mailing if enclosed in a properly addressed and stamped envelope and deposited in a United States Post Office for delivery. Unless and until formally notified otherwise, all notices shall be addressed to the parties at their addresses as shown below:

|                                                                                                         |                                                                                                              |
|---------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------|
| Nipomo Community Services District<br>P.O. Box 326<br>Nipomo, California 93444<br>Attn: General Manager | Vintage Homes, LLC<br>A California Limited Liability Company<br>2364 Brant Street<br>Arroyo Grande, CA 93420 |
|---------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------|

**14. Sale of Property.**

No transfer of this Agreement, by assignment or otherwise, by Owner shall be valid until and unless approved by the District in writing. Said approval shall not be unreasonably withheld or delayed. Such approval shall be conditioned on the agreement of the successor or transferee to be bound by the terms and conditions of this Agreement and the payment of District's administrative and legal costs in approving the transfer.

**15. Indemnity.**

Owner shall indemnify, defend and hold harmless District and its officers, officials, employees and agents from and against any and all liability, loss, damage, expense, costs (including costs and fees of litigation) of every nature arising out of this Agreement, except such loss or damage which was caused by the proven sole negligence or willful misconduct of District.

**16. Other Agreements.**

This Agreement, along with any Exhibits and attachments, is in addition to other agreements such as the Annexation Agreement entered into by the Parties. This Agreement shall not be construed as a waiver, novation of the Annexation Agreement entered into by District and Owner.

**17. Headings.**

The paragraph headings used in this Agreement are for reference only, and shall not in any way limit or amplify the terms and provisions hereof, nor shall they enter into the interpretation of this Agreement.

**18. Cooperation.**

Each party to this Agreement agrees to do all things that may be necessary, including, without limitation, the execution of all documents which may be required hereunder, in order to implement and effectuate this Agreement.

**19. Interpretation of this Agreement.**

The parties acknowledge that each party and its attorney have reviewed, negotiated and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this

Agreement or any document executed and delivered by any party in connection with the transactions contemplated by this Agreement.

**20. Successors and Assigns.**

The District and Owner agree that Owner's Obligations, Agreements and Covenants contained in this Agreement shall run with the land and shall be binding upon Owner, its heirs, successors, executors, administrators, and assigns and shall inure to the benefit of District and its successors and assigns.

**21. Venue**

This Agreement has been executed and delivered in the State of California and the validity, enforceability and interpretation of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. The duties and obligations of the parties created hereunder are performable in San Luis Obispo County and such County shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

**22. Agreement to be Recorded.**

Owner and District intend and consent to the recordation of this Agreement in the office of the County Recorder of the County of San Luis Obispo.

**23. Incorporation of Recitals.**

The parties agree that the Recitals constitute the factual basis upon which the District and the Owner have entered into this Agreement. The District and the Owner each acknowledge the accuracy of the Recitals and agree that the Recitals are incorporated into this Agreement as though fully set forth at length.

**24. Severability.**

If any term or provision of this Agreement is, to any extent, held invalid or unenforceable, the remainder of this Agreement shall not be affected.

**25. Authority to Execute Agreement.**

A. Owner represents and warrants that: (a) this Agreement will constitute legal, valid, and binding obligations of Owner enforceable in accordance with its terms; and (b) the execution and delivery of this Agreement is within Owner's power and authority without the joinder or consent of any other party.

B. Indemnity. Owner and the undersigned jointly and severally agree to defend, indemnify and hold the District harmless against any loss, claim, damage, liability or expense (including, without limitation, reasonable attorneys' fees) arising out of the representations and warranties of Subsection A. above.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the day and year first above written.

Nipomo Community Services District

By: Michael Winn  
Michael Winn, President  
Board of Directors

Owner: Vintage Homes, LLC, by:  
Coaster Co., a California Company

Jeffrey W. Greer  
Jeffrey W. Greer, President  
[Signature must be notarized]

Osler Construction Co., a California Company

R. Stephen Osler  
R. Stephen Osler, President  
[Signature must be notarized]

See next page  
Dennis Law, Attorney for  
Vintage Homes, LLC

Attest:

See next page  
Donna K. Johnson, Secretary  
Nipomo Community Services District

Approved as to Form:

Jon S. Seitz  
Jon S. Seitz, District Legal Counsel  
Nipomo Community Services District

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

Nipomo Community Services District

By: Michael Winn  
Michael Winn, President  
Board of Directors

Owner: Vintage Homes, LLC, by:  
Coaster Co., a California Company

Jeffrey W. Greer  
Jeffrey W. Greer, President  
[Signature must be notarized]

Osler Construction Co., a California Company

R. Stephen Osler  
R. Stephen Osler, President  
[Signature must be notarized]

see Att.

Dennis Law  
Dennis Law, Attorney for  
Vintage Homes, LLC

Attest:

Approved as to Form:

Donna K. Johnson  
Donna K. Johnson, Secretary  
Nipomo Community Services District

Jon S. Seitz  
Jon S. Seitz, District Legal Counsel  
Nipomo Community Services District

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of SAN LUIS OBISPO

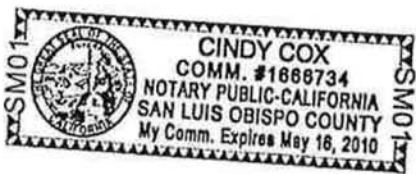
} ss.

On *25 of January 2008* before me, CINDY COX, Notary Public, personally appeared

*R. Stephen Oster*

, who

proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) *(is)* are subscribed to the within instrument and acknowledged to me that *(he)*/she/they executed the same in *(his)*/her/their authorized capacity(ies), and that by *(his)*/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Seal)

*Cindy Cox*

*Signature of Notary Public*

### OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

**CAPACITY CLAIMED BY SIGNER (PRINCIPAL)**

- Individual
- Corporate Officer

Title

- Partner(s)
- Limited
- General

- Attorney-in-Fact
- Trustee(s)
- Guardian/Conservator
- Other:

**DESCRIPTION OF ATTACHED DOCUMENT**

*Agreement reflecting  
each party's  
Title or Type of Document*

*7*

*Number of Pages*

*Date of Document*

**Absent Signer (Principal) is Representing:**

*Signer(s) Other Than Name(s) Above*

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of San Luis Obispo }

On 2-11-08 before me, Lisa Souza Bogmuda  
Date Here Insert Name and Title of the Officer

personally appeared Michael Winn  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal,

Signature Lisa Souza Bogmuda  
Signature of Notary Public



Place Notary Seal Above

**OPTIONAL**

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

**Description of Attached Document**

Title or Type of Document: Agreement affecting Real Property

Document Date: 5-23-07 Number of Pages: 7

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_



ACKNOWLEDGMENT

State of California  
County of Ventura } ss.

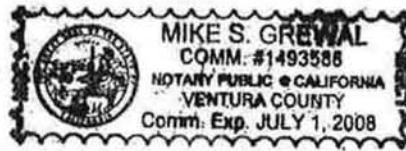
On January 29, 2008 before me, Mike S. Grewal  
Notary Public, personally appeared Jeffrey W. Grewal

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

[Signature]  
Signature



(seal)

OPTIONAL INFORMATION

Date of Document 1/29/08 Thumbprint of Signer

Type or Title of Document Agreement for prop. w/with  
Southwestern

Number of Pages in Document 7

Document in a Foreign Language \_\_\_\_\_

Type of Satisfactory Evidence:  
 \_\_\_\_\_ Personally Known with Paper Identification  
 \_\_\_\_\_ Paper Identification  
 \_\_\_\_\_ Credible Witness(es)

Capacity of Signer:  
 \_\_\_\_\_ Trustee  
 \_\_\_\_\_ Power of Attorney  
 \_\_\_\_\_ CEO / CFO / COO  
 \_\_\_\_\_ President / Vice-President / Secretary / Treasurer  
 \_\_\_\_\_ Other: \_\_\_\_\_

Other Information: \_\_\_\_\_

Check here if no thumbprint or fingerprint is available.

10/25/06 CF/DH

**LEGAL DESCRIPTION**  
**for**  
**Proposed Nipomo Community Services District**  
**Annexation No. 28**  
**San Luis Obispo County, California**

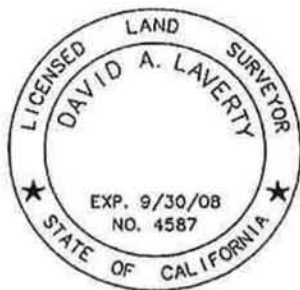
This property in question lies within the Rancho Nipomo (and may be contained in the Township 11 North/Range 35 West, San Bernardino B. & M., if it existed).

That portion of Division A of Pomeroy's Resubdivision of a Part of the Los Berros Tract as shown in Map Book A, Page 109, on file in the Recorder's Office of the County of San Luis Obispo, State of California, which County Recorder's Office contains the Official Records, Map Books and Parcel Map Books hereinafter referenced, more particularly described as follows:

Beginning at the intersection of the westerly line of a 60 foot road (Via Concha Road) with the southerly line of a 60 foot road (Willow Road) as shown in said Division A, being a point in Lot 58 of said Division A, said point also being the southwest corner of Annexation No. 7 of the Nipomo Community Services District boundary; thence leaving said Nipomo Community Services District boundary, WEST 693.77 feet, along the southerly line of said Willow Road to a point opposite the southwest corner of the well site easement as conveyed to the Lucia Mar School District per Grant of Easement Agreement recorded March 7, 2001 as Document No. 2001-014076 of said Official Records; thence crossing said Willow Road, NORTH 60.00 feet to said southwest corner of said well site, being a point on the north line of said Willow Road; thence NORTH 75.00 feet to the northwest corner of said well site; thence EAST 55.00 feet along the north line of said well site; thence North 0°02'01" East 1215.37 feet along the east line of that property described in Resolution No. A-0304-14 by Lucia Mar Unified School District per Doc. # 2003-143010 recorded 12-19-2003 to the north line of Lot 45 of said Division A; thence North 89°59'23" East 638.84 feet to a point on the west line of said Nipomo Community Services District boundary, said point also being on the west line of said Via Concha Road; thence South 00°02'01" West 1,350.48 feet along said west line and crossing said Willow Road to the point of beginning.

Containing: 19.98 acres more or less

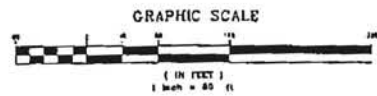
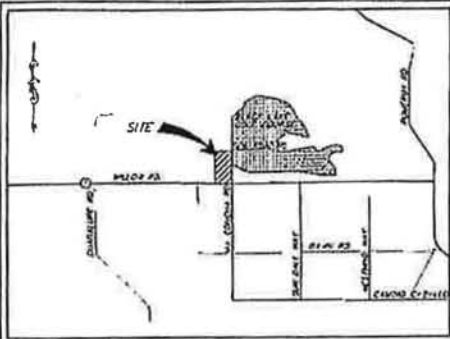
Legal Description prepared by or under the Supervision of:



David A. Lavery  
L.S. 4587 Lic. Exp. 9/30/08

APPROVED COUNTY SURVEYOR  
By: *Ranil J. Martin*  
Date: *Nov 3 2006*  
San Luis Obispo County Dept. of Public Works

# NIPOMO CSD SAN LUIS OBISPO COUNTY, CALIF. ANNEXATION NO. \_\_\_\_\_



NOTES:  
- BOUNDARY INFORMATION SHOWN HEREIN IS RECORD PER A MAPS 109 AND DOC # 2003-143010  
- RESERVATION OF OIL AND GAS RIGHTS BY FLYNNKRE COMPANY PER 1959 G.R. 775

DDC # 2003-143010  
POR. LOT 45  
APN 091-181-055

POR. LOT 45  
19.98± ACRES  
APN 091-181-052 & 053

DIVISION A  
MAPS 109

AREA RESERVED FOR PROMOTION  
OF LEACH WOOD SIGNATURE PER  
DOC # 2003-143010

71' x 21'  
EASEMENT AGREEMENT FOR  
WATER PRODUCTION WITH TOWN  
OF SAN LUIS OBISPO TO LINDA BAR  
SCHOOL DISTRICT FOR WELL BORE  
PER DOC # 2003-04108

60' ROAD PER  
A MAPS 109

triod/holmes associates  
civil engineering  
1000 S. ...  
SEPTEMBER 2008  
JOB # 11.00314.1

LOT 5B  
DIV. A  
A MAPS 109

SEA PINES PL.  
EXISTING SERVICE AREA AND SPHERE OF INFLUENCE BOUNDARY  
NIPOMO CSD ANNEXATION NO. 7  
TRACT #1542 - BLACK LAKE GOLF COURSE  
LOT 174  
15 MAPS 10

LOT 3  
APN 091-181-061

LOT 2  
APN 091-181-062

61 PM 54

LOT 1  
APN 091-181-063 & 064

PROPOSED SERVICE  
AREA AND SPHERE OF  
INFLUENCE BOUNDARY

EXISTING SERVICE  
AREA AND SPHERE OF  
INFLUENCE BOUNDARY

100.00± FT  
100.00± FT  
100.00± FT

1250.48'

1250.48'

307.00± FT

80' R/W PER  
2579 O.R. 357

WILLOW ROAD

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

NIPOMO COMMUNITY SERVICES DISTRICT  
P.O. Box 326  
Nipomo, CA 93444

APN NO. \_\_\_\_\_

PLAN CHECK AND INSPECTION AGREEMENT BETWEEN  
THE NIPOMO COMMUNITY SERVICES DISTRICT  
AND  
VINTAGE HOMES, LLC, A LIMITED LIABILITY COMPANY

Exhibits:

- A. Property Description

Incorporated by reference:

1. The District Codes
2. The District Standard Specifications for Water & Sewer Improvements
3. District approved Plans
4. Owner's performance securities
5. Local, County and California State Standards and Requirements

THIS AGREEMENT ("Agreement") is made this 10<sup>th</sup> day of October, 2007, in San Luis Obispo County, California, by and between the Nipomo Community Services District, State of California, hereinafter referred to as "District," and Vintage Homes, LLC, a Limited Liability Company, hereinafter referred to as collectively as "Owner" with reference to the following Recitals.

RECITALS

A. Owner represents and warrants that Owner is the fee title owner to certain real property in San Luis Obispo County, California, located at the corner of Willow Road and Via Concha Road, Nipomo, California and more particularly described in Exhibit A attached hereto and incorporated herein by this reference ("Property"); and

B. Owner and District have entered into an Outside User Agreement ("OUA") that has been approved by the Local Agency Formation Commission ("LAFCO"); and

C. Pursuant to the OUA Owner is required to design and construct the following water improvements (herein "Improvements" or the "Project") to serve the Property and to be dedicated to the District :

- Water System Up Grades in Via Concha and Willow Roads.
- On Site Subdivision Water Improvements.
- Loop On Site Water System from Via Concha Rd. to Willow Rd. and Interconnect.

D. The District is willing to accept the transfer, operation and maintenance of the Improvements and provide service to the Property on the terms and conditions of the OUA and the conditions hereinafter provided.

**NOW, THEREFORE,** the parties hereto mutually agree as follows:

**1. Deposit for District Services.**

At the time of execution of this Agreement, Owner shall advance to the District the sum of (\$4,000.) for engineering, inspection, legal and administrative services in connection with plan checking, inspection of construction, document preparation, and other costs incurred by the District in accepting the Improvements. Owner authorizes District to withdraw from the deposit to pay for services pursuant to this Agreement as they are incurred by District.

District will notify Owner whenever the deposit is reduced to one thousand dollars (\$1,000.) or less. Within fifteen (15) days after such notification is mailed, Owner shall make an additional deposit in the same amount as the initial deposit.

Upon completion of construction and acceptance of the Improvements by the District, any funds so advanced by the Owner in excess of the District's actual costs shall be refunded to the Owner. Conversely, any costs incurred by the District over and above the amount advanced by the Owner shall be paid by the Owner upon demand and before Notice of Acceptance of the Improvements.

**2. Owner's Engineer of Record.**

Owner hereby designates the following firm as Owner's Engineer of Record:

Triad/Holmes Associates  
Firm's Name

Cristi Fry 57970  
Engineer to Contract RE No.

555 Chorro St., Suite A  
Street Address

San Luis Obispo, CA 93405  
City, State, and Zip Code

(805) 544-8908  
Phone Number

District shall be notified immediately in writing if the Engineer of Record is replaced during the course of design or construction of the Improvements. Unless otherwise agreed to in writing by the District at the time of replacement, the replacement Engineer of Record shall certify the Improvements as required herein.

**3. District Specifications.**

The District's "Standard Specifications for Water and Sewer Improvements", hereinafter called District Specifications, are made a part of this Agreement by reference as though set forth at length in this Agreement. Receipt of District Specifications is hereby acknowledged by Owner. (District Specifications are found at the District's homepage at, [www.nipomocsd.com](http://www.nipomocsd.com)).

**4. Conflicts with District Specifications.**

In the event of a conflict between any of the requirements in the District's Specifications and the terms and conditions of this Agreement, the terms and conditions of this Agreement shall control.

**5. Plans and Specifications.**

Owner's Engineer of Record, shall design and prepare engineering plans for the construction of the Improvements ("Plans"). Said Plans, shall meet all District Specifications and District Code requirements, as well as all other local, County and State standards and requirements, whichever are most stringent. The Plans shall be approved in writing by the District, and the District shall have reviewed and adopted CEQA findings, if required, prior to District issuing the Notice to Proceed. Both the approved Plans and CEQA findings, if required, shall become a part of this Agreement.

**6. Easements, Permits and Licenses.**

Owner shall:

A. Obtain all necessary local, County and State permits and approvals, for the construction of the Improvements.

B. To the satisfaction of District, obtain all encroachment permits, real property deeds, permanent and temporary easements, offers of dedication, and/or right of ways (herein collectively "Right of Ways") for the construction, installation, operation, maintenance, repair, removal and replacement of the Improvements. Said Right of Ways shall be approved by the District prior to the District's final approval of the Plans..

C. Give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the construction of the Improvements.

**7. Plan Check Procedures.**

**A. Preliminary Plan Check.**

The Owner shall provide to the District three (3) copies of the proposed Plans for the construction of the Improvements.

The District will return one set of the proposed Plans to Owner with comments or corrections noted on the documents within approximately twenty (20) working days after the date of receipt of the proposed Plans .

**B. Second Submittal of Plans**

After making the changes and corrections noted on the returned set of the proposed Plans, the Owner will deliver three (3) copies of the proposed final Plans to the District for review.

**C. Final Review and Approval of the Plans and Delivery of Right of Ways .**

Within approximately twenty (20) working days after the date of delivery of the proposed final Plans and delivery of Right of Ways, if any, District will review the documents and notify the Owner of any additional changes or corrections that may be required.

**8. Estimated Cost of Improvements.**

Prior to District issuing its Notice to Proceed, Owner's Engineer of Record shall provide a written estimate of the cost for construction of the Improvements in accordance with the approved Plan, for approval by the District Engineer. The estimated amounts will be used to calculate faithful performance securities.

**9. Licensed Contractor.**

A. The person or entity constructing the Improvements ("Contractor") shall be licensed under the provisions of the Business and Professions Code of the State of California to do the type of work called for in the approved Plans..

B. No construction may be made except by a Contractor approved by the District. Each such Contractor shall indemnify, protect, defend and hold the District harmless as required by Indemnity Clause, herein. The District may request evidence that the Contractor has satisfactorily installed other Improvements of like magnitude or comparable difficulty. It is the intent of the District that the construction of Improvements be performed by a Contractor who furnishes satisfactory evidence of qualification.

## **10. Prevailing Wages.**

To the extent required by applicable law, the Owner and the Contractor shall comply with the California Labor Code provisions concerning payment of prevailing wages, wage rates, employment of apprentices, hours of work and overtime, keeping and retention of payroll records, and other requirements applicable to public works projects within the meaning of the Labor Code. (See California Labor Code, Division 2, Part 7, Chapter 1 (Sections 1720-1861).) Copies of the prevailing rate of per diem wages as established and published by the California Department of Industrial Relations are available for inspection at the office of the District or at the following website [www.cslb.ca.gov](http://www.cslb.ca.gov).

## **11. Faithful Performance Securities.**

Prior to District issuing the Notice to Proceed, Owner shall, if required by District, provide a Payment Bond, Performance bond, and/or Guarantee bond, secured from a surety company or companies, satisfactory to the Nipomo Community Services District and whose name is on file with the County Clerk of San Luis Obispo County as an approved and financially sound surety company, authorized to transact business in the state.

The bond(s) shall continue in full force and effect through the end of the guarantee period.

The bonds shall also warrant all work performed under this Agreement to be free from defects in material and/or workmanship for a period of one year from the date of Final Acceptance by the District.

A. **Performance Bond.** The Owner shall furnish a performance bond in the amount of one hundred percent (100%) of the estimated Improvement construction cost to the benefit of the District, as security for the faithful performance of the Work in compliance with the District ordinances, Rules and Regulations, the Plans, and District Specifications

B. **Payment Bond.** The Owner shall furnish a separate bond in an amount at least equal to one hundred percent (100%) of the estimated Improvement construction cost to the benefit of the District, as security for the payment of all persons performing labor and furnishing materials in connection with the Improvement.

The securities required by this Section shall be kept on file with the District. The terms of the security documents are incorporated into this Agreement by this reference. If any security is replaced by another approved security, the replacement shall be filed with the District and, upon filing, shall be deemed to have been made part of and incorporated into this Agreement. Upon filing of a replacement security with the District, the former security may be released.



**12. Notice to Proceed.**

After the District's final approval of the Plans , Right of Ways and upon receipt from Owner of two (2) sets of all required construction securities and insurance forms, and a copy of the Contractor's license, the District will issue its Notice to Proceed.

**13. Construction of Improvements.**

Owner shall, at its sole cost and expense, and after the District issues the Notice to Proceed, construct the Improvements in accordance with this Agreement the approved Plans and the District Specifications. During construction, a complete set of approved Plans shall remain at the job-site at all times.

If Owner proposes to change the approved Plans for the Improvements, Owner shall first obtain the written approval of the District for such change. Requests for change may be denied at the District's discretion or approved on such terms and conditions as required by the District

**14. Inspections.**

A. Owner's Engineer of Record : The Owner shall employ an Engineer of Record to perform regular inspections of the construction and installation of Improvements to insure that the Improvements are constructed in accordance with the approved Plans and District Specifications. Records of such inspections shall be promptly delivered to the District upon request.

B. The District and its employees and agents are hereby granted a Right of Entry onto the Property for the purposes of performing inspections. The District's inspections are for administrative purposes only. The inspection of the Improvements by District shall not relieve the Owner of Owner's obligation and/or the Owner's Engineer of Record's obligation to insure that the Improvements are constructed in accordance with this Agreement, the approved Plans and District Specifications. Defective work shall be made good and substandard materials may be rejected, notwithstanding that such work and materials have been previously overlooked or inspected by the District.

**15. Maintenance of Improvements.**

The District assumes no obligation as to maintenance operation , and repair of the Improvements until such time as the Resolution of Acceptance is approved by the District Board of Directors.

**16. Construction Manager.**

A. Owner shall employ a Construction Manager. The Construction Manager shall :

1. Be the person to contact on behalf of the Owner during construction of the Improvements.

2. Perform shop drawing review of all materials and equipment for the Improvements, as necessary;
3. Maintain and insure completion of the record drawings for the Improvements;
4. Obtain District approval prior to the release of any revised Plans or Specifications; and
5. Insure that the Contractor incorporates the District's comments on all submittals, plans and specifications.

B. Owner hereby designates the following firm as Owner's Construction Manager:

OSLER CONSTRUCTION  
Firm's Name

STEVE OSLER  
Person to Contract RE No.

2364 Brent St.  
Street Address

ARROYO GRANDE CA. 93420  
City, State, and Zip Code

805-474-6686 805-440-5558  
Phone Number

District shall be notified immediately, in writing, if the construction manager is replaced during the course of construction.

**17. Damage to Property.**

Owner shall replace or have replaced, or repair or have repaired, as the case may be, all public and private improvements, public utilities facilities and surveying or subdivision monuments which are destroyed or damaged as a result of any work under this Agreement. Owner shall bear the entire cost of replacement or repairs of any and all public or private property damaged or destroyed by reason of any work performed or constructed under this Agreement, whether such property is owned by the United States or any agency thereof, or the State of California, or any agency or political subdivision thereof, or by a private owner, District or any public or private utility corporation or by any combination of such owners. Any repair or replacement shall be to the satisfaction, and subject to the approval, of the District Engineer.

**18. Construction Safety.**

Owner shall be responsible for site safety during the construction of the Improvements. Until final acceptance of the Improvements, Owner shall give good and adequate warning to the public of each and every dangerous condition existent in the construction of said Improvements, and will take all reasonable actions to protect the public from such dangerous condition.

**19. District's Acceptance of Improvements.**

The District Board of Directors shall accept the Improvements ("Notice of Acceptance") by Resolution. The Directors shall not consider the Resolution of Acceptance until the Owner has satisfied all of the following conditions:

**A. Final Inspection and Testing.**

Upon completion of construction of the Improvements, Owner shall notify the District thereof and request a final inspection of the Improvements. All Improvements shall be tested to meet District requirements as required by District Specifications and the approved Plans. Owner shall supply and pay for the necessary equipment, services and devices to inspect and test the Improvements installed. This shall include TV inspection of sewer lines, pressure testing equipment, cleaning devices, etc.

**B. Submittals.**

Owner shall provide to the District, as a condition precedent to the District's acceptance of the Improvements:

(1) Reproducible mylar of "as-built drawings" of the completed Improvements, satisfactory to the District, and any contract documents used for the construction of the Improvements;

(2) Certification from the Owner's Engineer of Record, on a form approved by the District, that the Improvements have been regularly inspected by Owner's Engineer of Record during construction and are constructed in compliance with the approved Plans and District's Specifications and this Agreement.

(3) A detailed accounting, satisfactory to the District, of the amounts expended for the construction and installation of the Improvements, with values applicable to the various components thereof, together with a list of any other materials and equipment, and their values, being transferred;

(4) Operating manuals and other operating instructions, and warranties received by Owner or its Contractor for the operation and maintenance of the Improvements and/or facilities included in the Improvements; and

(5) Provide in electronic format, acceptable to District, as-built drawings of the completed Improvements.

C. Maintenance Guarantee.

Owner shall provide the District with a maintenance bond, letter of credit or other financial security satisfactory to the District ("Maintenance Guarantee") in a sum equal to ten percent (10%) of the cost of the Improvements, or such agreement satisfactory to the District whereby the Owner's one-year warranty for all material and workmanship in the Improvements is assigned to the District and fully binding between the Owner and the District, for the purpose of warranting all materials and workmanship furnished pursuant to this Agreement for one (1) year from the date of the District Notice of Acceptance of the Improvements. This Maintenance Guarantee does not excuse the Owner from breaches of contract causing defects that occur or are discovered more than one year after the Notice of Acceptance.

The Owner and/or its surety under the Maintenance Guarantee shall repair or replace to the satisfaction of the District any or all such work that may prove defective in workmanship or materials, ordinary wear and tear excepted, together with any other work which may be damaged or displaced in so doing.

In the event of failure to comply with the above-stated conditions within a reasonable time, the District is authorized to have the defect repaired and made good. The Owner and its surety under the Maintenance Guarantee shall be jointly and severally liable to the District for such costs of repair, including, but not limited to, management and administrative costs, and engineering, legal and other costs incurred relating to the repair. The District shall bill the Owner and the surety for such costs, which bill shall be paid within thirty (30) days of its date. Interest shall accrue on any late payment at the legal rate then prevailing.

D. Payment of Inspection Fees.

All funds to be advanced and paid to the District by Owner have been so advanced and paid;

E. Offer of Dedication.

Submittal of Owner's Offer of Dedication of the Improvements to the District, on a form acceptable to the District transferring absolute and unencumbered ownership of the completed Improvements to the District. The District may require any other information as part of the Offer of Dedication such as current title reports.

20. **Ownership.**

After final inspection and acceptance by the District, the Improvements shall become the property of the District on the date that Notice of Acceptance is mailed to the Owner. The District shall own and be free in every respect to operate, manage, and improve the Improvements as it deems appropriate.

**21. District Approvals and Acceptance.**

The District's review or approval of the Plans and subsequent inspections and review of record drawings are for administrative purposes only. It is Owner's sole responsibility to properly plan, design, and construct the Improvements.

**22. Owner Assistance.**

Owner shall both before and after the Notice of Acceptance secure and provide any information or data reasonably needed by the District to accept ownership, operation and maintenance of the Improvements, and obtain, execute and provide any and all documents needed to expeditiously complete or implement the transfer of the Improvements.

**23. District Service.**

The District shall not set water meters or otherwise provide service to the Property until the following have occurred:

- A. The District has adopted a Resolution of Acceptance of the Improvements as provided herein; and
- B. Owner has paid the District all applicable fees and charges of the District, including connection fees and capacity charges, all in accordance with the Ordinances, Rules and Regulations of the District.
- C. Building permits have been issued by the County of San Luis Obispo for residential and commercial units.

**24. Construction Water**

Prior to acceptance the District may provide construction water for construction of related improvements pursuant to a separate agreement.

**25. Indemnification and Hold Harmless.**

A. To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the District, the District's Engineer, the District's Inspectors and their consultants, and each of their directors, officers, agents and employees from and against all claims, damages, losses, expenses and other costs, including costs of defense and attorney's fees, arising out of or resulting from or in connection with the performance of the work, both on and off the jobsite, provided that any of the foregoing (1) is attributable to personal injury, bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself), including the loss of use resulting therefrom and (2) is caused in whole or in part by any act or omission of the Owner, Contractor, any subcontractor, any supplier, anyone directly or indirectly employed by any of them or anyone for whose acts or omissions any of them may be

liable, regardless of whether or not it is caused in part by any act or omission (active, passive or comparative negligence included), or a party indemnified hereunder.

B. Without limiting the generality of the foregoing indemnity, such indemnity obligation expressly extends to and includes any and all claims, demands, damages, costs, expenses, fines, penalties, or liability occasioned as a result of:

1. Damages to adjacent property related to the construction of the Improvements;
2. The violation by the Owner, the Owner's agents, employees, or independent contractors or subcontractors, of any provisions of this Agreement, and/or federal, state, or local law, including applicable administrative regulations;
3. Injury to or death of any person, or any damage to property owned by any person, while on or about the Property or as a result of the construction of the Improvements, whether such persons are on or about the Property by right or not, whenever the construction of the Improvements is alleged to have been a contributing cause in any degree whatsoever.
4. The design or construction of the Improvements pursuant to the approved Plans..

C. After acceptance of the Improvements, Owner shall remain obligated to eliminate any defect in design, construction defects or dangerous condition caused by the design. The provisions of this paragraph shall remain in full force and effect for ten (10) years following the acceptance by District of the Improvements. It is the intent of this paragraph that Owner shall be responsible for all liability for design and construction of the Improvements installed or work done pursuant to this Agreement.

D. The Owner shall reimburse the District and the District's Engineer for all costs and expenses, (including but not limited to fees and charges of engineers, architects, attorneys, and other professionals and court costs including all costs of appeals) incurred by District and District's Engineer in enforcing the provisions of this Section 25.

E. The indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of insurance carried by Owner or by the amount or type of damages, compensation, or benefits payable by or for the Owner or any Subcontractor or other person or organization under workers' compensation acts, disability benefit acts, or other employee benefit acts.

F. The Owner shall also indemnify and hold harmless the District, the District's Engineer and their consultants, and each of their directors, officers, employees and agents from and against all losses, expenses, damages (including damages to the Improvements itself), attorney's fees and other costs, including all costs of defense, which any of them may incur with respect to the failure, neglect, or refusal

of Owner to faithfully complete the construction of the Improvements and all of the Owner's obligations under the Agreement. Such costs, expenses and damages shall include all cost, including attorney's fees, incurred by the indemnified parties in any lawsuit to which they are a party.

G. Nothing contained in the foregoing indemnity provisions shall be construed to require Owner to indemnify NCSD, against any responsibility or liability in contravention of Civil Code §2782.

H. Neither termination of this Agreement or District's Acceptance of the Improvements shall release Owner from its obligations to indemnify as provided herein, as to any claim so long as the event upon which such claims is predicated shall have occurred prior to the effective of any such termination or Acceptance and arose out of or was in any way connected with performance or operations under this Agreement by Owner, its employees, agents or consultants, or the employees, agents or consultants of any one of them.

## 26. Insurance Requirements

### A. General.

Construction shall not commence or continue until or unless there is in full force and effect all required insurance. The Owner shall not permit any Contractor or subcontractor to perform work on this project unless the worker's compensation, performance and payment bond and liability insurance requirements have been complied with.

The types of insurance the Owner and Contractor shall obtain and maintain are Workers' Compensation Insurance and Liability Insurance, all as set for herein.

Workers' Compensation Insurance and Liability Insurance shall be maintained in effect for the full guarantee period.

Insurers must be authorized to do business and have an agent for service of process in California and have at least an "A" policyholder's rating and a financial rating of at least Class XI in accordance with the most current Best's rating.

As evidence of specified insurance coverage, the Owner shall provide certificates of insurance and endorsements to the District on the forms approved by the District for District's approval.

### B. Worker's Compensation Insurance.

The Owner shall provide a certificate(s) of insurance certifying that his Contractor has obtained for the period of the Contract full Workers' Compensation Insurance coverage for all persons whom he employs or may employ in carrying out the work under the Agreement. This insurance shall be in strict accordance with the

requirements of the most current and applicable State Workers' Compensation Insurance Laws.

C. Liability Insurance.

The Owner or any Contractor carrying out the construction of the Improvements shall carry commercial general liability and automobile liability insurance. The insurance shall include but shall not be limited to protection against claims arising from death, bodily or personal injury, or damage to property resulting from operations, equipment or products of Owner or its Contractor or by their employees, agents, consultants, or anyone directly or indirectly employed by any of the foregoing. The amount of insurance shall not be less than two million dollars (\$2,000,000.00) single limit coverage applying to bodily and personal injury and property damage, or a combination of both.

Such insurance shall be primary insurance as respects the interest of the District, and any other insurance maintained by the District is excess and not contributing insurance with the insurance required hereunder. The insurance shall specifically name the District, its directors, officers, employees and District Engineer as additional insureds, and shall contain an endorsement providing that written notice shall be given to the District at least thirty (30) days prior to termination, cancellation, or reduction of coverage in the policies. The commercial general liability and automobile liability insurance coverage shall also include the following:

- (1) "Cross Liability" or "Severability of Interest" clause.
- (2) Commercial General Liability coverage (Insurance Services Office Commercial General Liability coverage - occurrence form CG 0001) shall include:
  - (a) Comprehensive Form
  - (b) Premises-Operations
  - (c) Explosion and Collapse Hazard
  - (d) Underground Hazard
  - (e) Products/Completed Operations Hazard
  - (f) Contractual Insurance
  - (g) Broad Form Property Damage Including Completed Operations
  - (h) Independent Contractors
  - (i) Personal Injury
- (3) Automobile Liability coverage (Insurance Services Office form number CA 0001 (Ed. 1/87) covering automobile liability, Code 1) shall include:
  - (a) Comprehensive Form Coverage Including Loading and Unloading
  - (b) Owned
  - (c) Hired
  - (d) Non-owned



Included in such insurance shall be contractual coverage sufficiently broad to insure the matter set forth in the Indemnity provisions of this Agreement.

**27. Term of Agreement and Termination.**

A. This Agreement shall become effective on the date first above written and shall remain in effect until terminated by the mutual consent of the parties or as provided in subsections (B and C) below.

B. Owner agrees to promptly design and construct the Improvements and to transfer the same to the District in accordance with the terms hereof within twenty-four (24) months of the District's Notice to Proceed.

C. If the Owner refuses or fails to construct the Project/Improvements or any separable part thereof with such diligence as will insure its completion within the time specified in this subsection B, above, or any extension thereof, or fails to complete the Project/Improvements within such time, or if the Owner should be adjudged bankrupt, or if Owner should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of Owner's insolvency, or if Owner or any of its subcontractors should violate any of the provisions of the Agreement, the District may serve written notice upon the Owner and its Surety of its intention to terminate the Agreement, and said notice to contain the reasons for such intention to terminate the Agreement, and unless within ten (10) days after the service of such notice such violations shall cease and satisfactory arrangements for the corrections thereof be made, the Agreement shall, upon the expiration of said ten (10) days, be terminated.

In the event of any such termination, the District shall immediately serve written notice thereof upon the Surety, and the Owner. The Surety shall have the right to take over and perform the Agreement, providing, however, that if the Surety within fifteen (15) days after the serving upon it of a notice of termination does not give the District written notice of its intention to take over and perform the work, or does not commence performance thereof within thirty (30) days from the date of serving said notice, the District may take over the Project/Improvements and prosecute the same to completion by contract or by any other method it may deem advisable for the account of and at the expense of the Owner, and its Surety shall be liable to the District for any excess cost or other damage occasioned the District hereby, and in such event the District may, without liability for so doing, take possession of and utilize in completing the Project /Improvements such materials, appliances, plants and other property belonging to the Owner that may be on the site of the Project/Improvements and be necessary therefor.

The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to the District.

**28. Non Discrimination.**

A. Owner and/or Owner's Contractor shall not discriminate in any way against any person on the basis of race, color, religious creed, national origin, ancestry, sex, age, physical handicap, medical condition or marital status in connection with, or related to construction of the Improvements.

B. Owner and/or Owner's Contractor shall comply with all provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§1101, et seq., as amended, and in connection with therewith, shall not employ unauthorized aliens as defined therein with regards to the construction of the Improvements. Should Owner's and/or Owner's Contractor so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any liability or sanctions be imposed against District for such use of unauthorized aliens, Applicant hereby agrees that it shall reimburse District for the cost of such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees incurred by District. Owner shall comply with all provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101 et seq. as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein.

**29. Ineligible Contractors**

Owner shall not employ a contractor who is ineligible pursuant to California Labor Code §§1777.1 or 1777.7. The California Division of Labor Standards Enforcement publishes a list of debarred contractors and sub-contractors on the Internet at [www.dir.ca.gov/DLSE/debar.html](http://www.dir.ca.gov/DLSE/debar.html).

**30. Assignment.**

The provisions of this Agreement shall apply to and bind the successors, grantees, and assigns of the respective parties, but no assignment or transfer of this Agreement, or any part hereof, or interest herein by the Owner shall be valid until and unless approved by the District in writing. Such approval shall be conditioned on the agreement by the assignee, grantee, successor or transferee to be bound by the terms and conditions of this Agreement.

**31. Owner Not An Agent of District.**

Neither Owner or any of Owner's agents or contractors are or shall be considered to be agents of the District in connection of the performance of Owner's obligations under this Agreement.

**32. Sale or Disposition of the Property.**

Sale or other disposition of the Property will not relieve Owner from its obligations set forth herein. Owner agrees to notify District in writing at least thirty (30) days in advance of any actual or pending sale or other disposition of the Property. If Owner sells the Property or any portion of the Property to any other person, Owner may request an

novation of this Agreement and a substitution of security. Nothing in the novation shall relieve Owner of the obligations in the indemnification clauses contained in this Agreement for work or Improvements constructed by Owner. All District's costs in processing a novation pursuant to this Agreement shall be borne by Owner.

**33. No Vesting of Rights.**

Performance by Owner of this Agreement shall not be construed to vest Owner's rights with respect to the approved Plans, any changes to the District's Specifications during construction and/or the request of District to alter or modify the construction of Improvements prior to District acceptance.

**34. Covenants and Conditions.**

The obligations of Owner pursuant to this Agreement are both covenants and conditions.

**35. Risk of Loss.**

Until the date of the Resolution of Acceptance of the Improvements, all risk of loss or injury or destruction to the Improvements shall be upon the Owner. On or after the date of the Notice of Acceptance, all risk of loss or injury or destruction to the Improvements shall be upon the District.

**36. Attorney's Fees.**

In the event that any arbitration, litigation, or other proceeding of any nature between the District and Owner becomes necessary to enforce or interpret all or any portion of this Agreement, it is mutually agreed that the prevailing party therein shall receive from the other, in addition to such sums as may be awarded, an amount sufficient to reimburse such prevailing party for reasonable attorney's fees and costs paid or owing as a result of such proceeding.

**37. Waiver of Rights.**

Any waiver at any time by either party hereto of its rights with respect to a breach or default, or any other matter arising in connection with this Agreement, shall not be deemed to be a waiver with respect to any other breach, default or matter.

**38. Remedies Not Exclusive.**

The use by either party of any remedy specified herein for the enforcement of this Agreement is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.

**39. Entire Agreement.**

This Agreement is freely and voluntarily entered into by the parties after having the opportunity to consult with their respective attorneys. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect. The parties, in entering into this Agreement, do not rely on any inducements, promises, or representations made by each other, their representatives, or any other person, other than those inducements, promises, and representations contained in this Agreement. Any amendment to this Agreement shall be of no force and effect unless it is in writing and signed by the Owner and the District.

**40. Notices.** All notices, statements, reports, approvals, requests, bills or other communications that are required either expressly or by implication to be given by either party to the other under this Agreement shall be in writing and signed for each party by such officers as each may, from time to time, be authorized in writing to so act. All such notices shall be deemed to have been received on the date of delivery if delivered personally or three (3) days after mailing if enclosed in a properly addressed and stamped envelope and deposited in a United States Post Office for delivery. Unless and until formally notified otherwise, all notices shall be addressed to the parties at their addresses as shown below:

District:

Nipomo Community Services District  
P.O. Box 6064  
Nipomo, California 93412  
Attn: General Manager

Owner:

Vintage Homes LLC  
2354 Brant Street  
Arroyo Grande, CA 93420  
Attn: Mr. Steve Osler

**41. Headings.**

The paragraph headings used in this Agreement are for reference only, and shall not in any way limit or amplify the terms and provisions hereof, nor shall they enter into the interpretation of this Agreement.

**42. Cooperation.**

Each party to this Agreement agrees to do all things that may be necessary, including, without limitation, the execution of all documents which may be required hereunder, in order to implement and effectuate this Agreement.

**43. Interpretation of this Agreement.**

The parties acknowledge that each party and its attorney have reviewed, negotiated and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any document executed and delivered by any party in connection with the transactions contemplated by this Agreement.

**44. Successors and Assigns.**

It is understood and agreed that between the parties hereto that this Agreement shall bind on the heirs, executors, administrators, successors and assigns of the respective parties to this Agreement.

**45. Recitals.**

The Recitals of this Agreement are incorporated herein by reference and made a part hereof.

**46. Time of the Essence.**

Time is of the essence in this Agreement.

**47. Survival.**

The obligations, representations, and warranties, and the remedies for breach of obligations, representations, and warranties, in this Agreement shall survive District's acceptance of the Improvements.

**48. Counterparts.**

This Agreement may be executed in one or more counterparts. Each shall be deemed an original and all, taken together, shall constitute one and the same instrument.

**49. Severability.**

If any term or provision of this Agreement is, to any extent, held invalid or unenforceable, the remainder of this Agreement shall not be affected.

**50. Representations and Warranties of Owner.**

A. Owner represents and warrants that: (a) it is duly organized and legally existing under the laws of the State of California and is duly qualified to do business in the State of California; (b) this Agreement will constitute, legal, valid and binding obligations of Owner enforceable in accordance with its terms; and (c) the execution and delivery of this Agreement is within Owner's power and authority without the

joinder or consent of any other party and have been duly authorized by all requisite action and are not in contravention of Owner's contracts, charter, bylaws and/or other organizational documents.

B. Owner and the undersigned jointly and severally shall defend, indemnify and hold the District harmless against any loss, claim, damage, liability or expense (including, without limitation, reasonable attorneys' fees) arising out of the representations and warranties of Subsection A, above.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the day and year first above written.

Nipomo Community Services District

By: Michael Winn  
Michael Winn, President  
Board of Directors

Owner: Vintage Homes, LLC, by:

Coaster Co. , a California Company

Jeffrey W. Greer  
Jeffrey W. Greer, President  
[Signature must be notarized]

Osler Construction Co., a California Company

R. Stephen Osler  
R. Stephen Osler, President  
[Signature must be notarized]

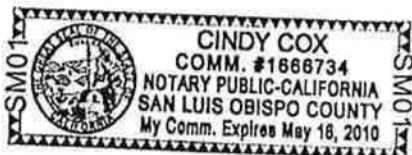
Attest:

Donna K. Johnson  
Donna K. Johnson, Secretary  
Nipomo Community Services District

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }  
 County of SAN LUIS OBISPO } ss.

On 9-27-07 before me, CINDY COX, Notary Public, personally appeared R. Stephen Osber, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is are subscribed to the within instrument and acknowledged to me that he she/they executed the same in his her/their authorized capacity(ies), and that by his her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Seal)

Signature of Notary Public

### OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

**CAPACITY CLAIMED BY SIGNER (PRINCIPAL)**

- Individual
- Corporate Officer

Title

- Partner(s)
- Attorney-in-Fact
- Trustee(s)
- Guardian/Conservator
- Other:
- Limited
- General

**DESCRIPTION OF ATTACHED DOCUMENT**

Plan Check & Inspection  
 Title or Type of Document

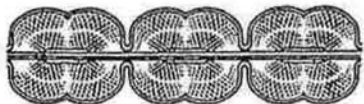
Number of Pages 19

Date of Document

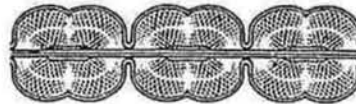
**Absent Signer (Principal) is Representing:**

Signer(s) Other Than Name(s) Above

CALIFORNIA



ALL-PURPOSE



ACKNOWLEDGEMENT

STATE OF CALIFORNIA )

COUNTY OF Ventura )

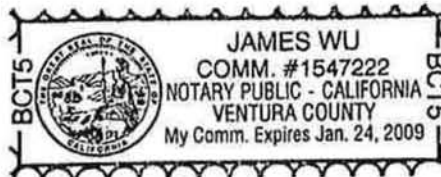
On 10-2-2007 before me, JAMES WU, NOTARY  
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared, JEFFREY W. GREER

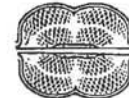
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

[Signature] (SEAL)  
NOTARY PUBLIC SIGNATURE



OPTIONAL INFORMATION



TITLE OR TYPE OF DOCUMENT plan check and inspection agreement

DATE OF DOCUMENT \_\_\_\_\_ NUMBER OF PAGES \_\_\_\_\_

SIGNER(S) OTHER THAN NAMED ABOVE \_\_\_\_\_



**RESOLUTION NO. 2007-1017**

**A RESOLUTION OF THE BOARD OF DIRECTORS  
OF THE NIPOMO COMMUNITY SERVICES DISTRICT  
APPROVING AN OUTSIDE USER AGREEMENT  
FOR WATER AND SOLID WASTE SERVICES TO TRACT 2560**

**WHEREAS**, Vintage Homes, LLC, a California Limited Liability Company ("Owners"), (successors to the Craig Family Trust), have requested an Outside User Agreement ("Agreement") for water and solid waste services to Tract 2560 ("Property"); and

**WHEREAS**, based on the Staff Report, Staff presentation and public comment, the Board of Directors finds that there is a benefit to the District in approving an outside user agreement pending the property's annexation to the District. The findings and conclusions of the Staff Report are incorporated herein by reference.

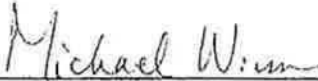
**NOW, THEREFORE, BE IT RESOLVED, DETERMINED AND ORDERED BY THE BOARD OF DIRECTORS OF THE NIPOMO COMMUNITY SERVICES DISTRICT THAT:**

1. The Agreement, attached hereto as Exhibit "A", is hereby approved.
2. The Agreement shall become effective upon:
  - a. The Local Agency Formation Commission ("LAFCO") approval of the annexation (with or without conditions); and
  - b. The LAFCO approval of the Agreement (Exhibit "A").
3. The District's bi-monthly rates and charges for water services shall be 1.5 times the charges established by District ordinance and resolutions (as amended from time to time) for District residential customers.
4. The above Recitals are true and correct and incorporated herein by reference.

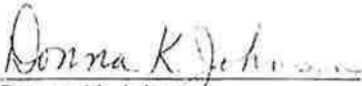
Upon the motion of Director Vierheilig, seconded by Director Harrison and on the following roll call vote, to wit:

AYES: Directors Vierheilig, Harrison, Trotter and Winn  
 NOES: Director Eby  
 ABSENT: None  
 CONFLICTS: None


the foregoing resolution is hereby adopted this 23<sup>rd</sup> day of May 2007.

  
 Michael Winn, President, Board of Directors  
 Nipomo Community Services District

ATTEST:

  
 Donna K. Johnson  
 Secretary to the Board

APPROVED AS TO FORM

  
 Jon S. Seitz  
 District Legal Counsel

**JULIE RODEWALD**  
San Luis Obispo County – Clerk/Recorder

SC  
3/01/2010  
2:58 PM

Recording Requested By and  
When Recorded Return to:

Nipomo Community Services District  
P.O. Box 326  
Nipomo, California 93444

Recorded at the request of  
**Public**

DOC#: 2010009598

Titles: 1 Pages: 27



|        |         |
|--------|---------|
| Fees   | 92.00   |
| Taxes  | 0.00    |
| Others | 0.00    |
| PAID   | \$92.00 |

APN# 091-181-052  
091-181-053

**AMENDMENT NO. 1 TO  
AGREEMENT FOR PROVIDING WATER AND SOLID WASTE SERVICE  
TO TRACT 2650**

Exhibit "A": Legal Description  
Exhibit "B": Plan Check and Inspection Agreement

**THIS AMENDMENT TO AGREEMENT** (herein "Amendment") is made this 15 day of JANUARY, 2010 in San Luis Obispo County, California, by and between the Nipomo Community Services District, duly existing and operating pursuant to the provisions of Government Code Sections 61000, *et seq.*, (hereinafter "District") and Vintage Homes, LLC, a California Limited Liability Company, (hereinafter referred to as "Owners"), with reference to the following Recitals:

**RECITALS**

- A. Owner is the legal fees simple owner of certain real property located in San Luis Obispo County, California, referred to as Tract 2650 (herein "Property" or "Tract 2650"), which is located at the corner of Willow Road and Via Concha Road, Nipomo, California, and is more particularly described on Exhibit "A", attached hereto and incorporated herein by this reference.
- B. On May 23, 2007, the District and Owners entered into an Agreement titled "Agreement For Providing Water and Solid Waste Service to Tract 2650 (herein "Agreement").
- C. The Agreement was recorded on March 20, 2008, in the Official Records of San Luis Obispo County as Document #2008013985.
- D. District and Owners desire to amend Paragraph 9 of the Agreement to allow Owners a longer period of time for the construction of water improvements.

**AMENDMENT NO. 1 TO  
AGREEMENT FOR PROVIDING WATER AND SOLID WASTE SERVICE  
TO TRACT 2650**

**NOW, THEREFORE** in consideration of the mutual covenants and conditions contained herein, the parties agree to the First Amendment of the Agreement as follows:

**Section 1**

Except as amended by Section 2 below, the Terms and Conditions of the Agreement shall remain in full force and effect and such terms and conditions, including Exhibits, are incorporated herein by reference.

**Section 2**

Paragraph 9 of the Agreement is amended and restated as follows:

**9. District's Right to Terminate.**

Owner shall be in default, and District shall have the right to terminate this Agreement, if Owner fails:

- A. To make payments as required by this Agreement;
- B. To promptly design and construct the water improvements in accordance with District's rules, regulations, ordinances and the Plan Check and Inspection Agreement (Exhibit "B");
- C. To commence construction and installation of water improvements on or before March 20, 2012; or
- D. To comply with any other terms or conditions of this Agreement.

District shall provide Owner with Notice of Termination and Owner shall have fifteen (15) days from the date of such Notice to cure the default. After the fifteen (15) day period to cure, the District may immediately terminate this Agreement and terminate District services to the Property.

**Section 3**

Owner and District consent to the recordation of this Amendment in the official records of the County Recorder of the County of San Luis Obispo.

**AMENDMENT NO. 1 TO  
AGREEMENT FOR PROVIDING WATER AND SOLID WASTE SERVICE  
TO TRACT 2650**

**Section 4**

Recitals A, B, C and D to this Amendment are incorporated herein by reference.

**IN WITNESS WHEREOF**, the parties have executed this Amendment to the Agreement to be effective upon the date executed by District.

OWNER:  
VINTAGE HOMES LLC  
*CONDOR CO, A CALIFORNIA COMPANY*

By: *[Signature]*  
[Signature must be notarized]  
*Jeffrey Greer*  
NIPOMO COMMUNITY SERVICES DISTRICT

OWNER:  
*OSLER CONSTRUCTION CO.*  
*a CALIFORNIA COMPANY*

By: *[Signature]*  
[Signature must be notarized]  
*R. Stephen OSLER*

By: *[Signature]*  
JAMES HARRISON, PRESIDENT  
Nipomo Community Services District  
Board of Directors

Date: *2/1/10*

ATTEST:

By: *[Signature]*  
DONNA K. JOHNSON, Secretary to  
the Board of Directors,  
Nipomo Community Services District

Date: *2/1/10*

# CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of VENTURA

On 11/15/2010 before me, SANDRA M. MCCARTHY  
(Here insert name and title of the officer)

personally appeared ROBERT STEPHEN OSLER AND JEFFREY W. GREEK

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Sandra M. McCarthy  
Signature of Notary Public

(Notary Seal)



## ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT  
AMENDMENT NO 1, TO AGREEMENT FOR PROVIDING WATERS SOLID WASTE SERVICE TO TRACT 2650  
(Title or description of attached document)

26 Document Date 11/15/10  
(27 INCL. THIS NOTARIZATION)  
(Title or description of attached document continued)

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

Individual(s)  
 Corporate Officer

(Title)

Partner(s)  
 Attorney-in-Fact  
 Trustee(s)  
 Other

### INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/she/they- is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
  - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
  - ❖ Indicate title or type of attached document, number of pages and date.
  - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of San Luis Obispo

On 2-1-10 before me,

Date

Lisa Souza Boguuda  
Here Insert Name and Title of the Office

personally appeared

James Harrison  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Lisa Souza Boguuda  
Signature of Notary Public



Place Notary Seal Above

**OPTIONAL**

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

**Description of Attached Document**

Title or Type of Document: Amendment No 1 to Agreement for Providing Water

Document Date: 1-15-10 and Solid Waste Service to Tract 26503 Number of Pages: 3

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

10/25/06 CF/DH

**LEGAL DESCRIPTION**  
for  
**Proposed Nipomo Community Services District**  
**Annexation No. 28**  
**San Luis Obispo County, California**

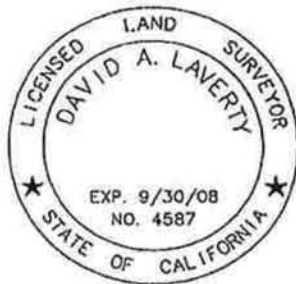
This property in question lies within the Rancho Nipomo (and may be contained in the Township 11 North/Range 35 West, San Bernardino B. & M., if it existed).

That portion of Division A of Pomeroy's Resubdivision of a Part of the Los Berros Tract as shown in Map Book A, Page 109, on file in the Recorder's Office of the County of San Luis Obispo, State of California, which County Recorder's Office contains the Official Records, Map Books and Parcel Map Books hereinafter referenced, more particularly described as follows:

Beginning at the intersection of the westerly line of a 60 foot road (Via Concha Road) with the southerly line of a 60 foot road (Willow Road) as shown in said Division A, being a point in Lot 58 of said Division A, said point also being the southwest corner of Annexation No. 7 of the Nipomo Community Services District boundary; thence leaving said Nipomo Community Services District boundary, WEST 693.77 feet, along the southerly line of said Willow Road to a point opposite the southwest corner of the well site easement as conveyed to the Lucia Mar School District per Grant of Easement Agreement recorded March 7, 2001 as Document No. 2001-014076 of said Official Records; thence crossing said Willow Road, NORTH 60.00 feet to said southwest corner of said well site, being a point on the north line of said Willow Road; thence NORTH 75.00 feet to the northwest corner of said well site; thence EAST 55.00 feet along the north line of said well site; thence North 0°02'01" East 1215.37 feet along the east line of that property described in Resolution No. A-0304-14 by Lucia Mar Unified School District per Doc. # 2003-143010 recorded 12-19-2003 to the north line of Lot 45 of said Division A; thence North 89°59'23" East 638.84 feet to a point on the west line of said Nipomo Community Services District boundary, said point also being on the west line of said Via Concha Road; thence South 00°02'01" West 1,350.48 feet along said west line and crossing said Willow Road to the point of beginning.

Containing: 19.98 acres more or less

Legal Description prepared by or under the Supervision of:



David A. Lavery  
L.S. 4587 Lic. Exp. 9/30/08

APPROVED COUNTY SURVEYOR  
By: *Daniel J. Martin*  
Date: *Nov 3 2006*  
San Luis Obispo County Dept. of Public Works

EXHIBIT "B"

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

NIPOMO COMMUNITY SERVICES DISTRICT  
P.O. Box 326  
Nipomo, CA 93444

APN NO. \_\_\_\_\_

PLAN CHECK AND INSPECTION AGREEMENT BETWEEN  
THE NIPOMO COMMUNITY SERVICES DISTRICT  
AND  
VINTAGE HOMES, LLC, A LIMITED LIABILITY COMPANY

Exhibits:

- A. Property Description

Incorporated by reference:

1. The District Codes
2. The District Standard Specifications for Water & Sewer Improvements
3. District approved Plans
4. Owner's performance securities
5. Local, County and California State Standards and Requirements

THIS AGREEMENT ("Agreement") is made this 10<sup>th</sup> day of October, 2007, in San Luis Obispo County, California, by and between the Nipomo Community Services District, State of California, hereinafter referred to as "District," and Vintage Homes, LLC, a Limited Liability Company, hereinafter referred to as collectively as "Owner" with reference to the following Recitals.

RECITALS

A. Owner represents and warrants that Owner is the fee title owner to certain real property in San Luis Obispo County, California, located at the corner of Willow Road and Via Concha Road, Nipomo, California and more particularly described in Exhibit A attached hereto and incorporated herein by this reference ("Property"); and

B. Owner and District have entered into an Outside User Agreement ("OUA") that has been approved by the Local Agency Formation Commission ("LAFCO"); and

C. Pursuant to the OUA Owner is required to design and construct the following water improvements (herein "Improvements" or the "Project") to serve the Property and to be dedicated to the District :



- Water System Up Grades in Via Concha and Willow Roads.
- On Site Subdivision Water Improvements.
- Loop On Site Water System from Via Concha Rd. to Willow Rd. and Interconnect.

D. The District is willing to accept the transfer, operation and maintenance of the Improvements and provide service to the Property on the terms and conditions of the OUA and the conditions hereinafter provided.

**NOW, THEREFORE,** the parties hereto mutually agree as follows:

**1. Deposit for District Services.**

At the time of execution of this Agreement, Owner shall advance to the District the sum of (\$4,000.) for engineering, inspection, legal and administrative services in connection with plan checking, inspection of construction, document preparation, and other costs incurred by the District in accepting the Improvements. Owner authorizes District to withdraw from the deposit to pay for services pursuant to this Agreement as they are incurred by District.

District will notify Owner whenever the deposit is reduced to one thousand dollars (\$1,000.) or less. Within fifteen (15) days after such notification is mailed, Owner shall make an additional deposit in the same amount as the initial deposit.

Upon completion of construction and acceptance of the Improvements by the District, any funds so advanced by the Owner in excess of the District's actual costs shall be refunded to the Owner. Conversely, any costs incurred by the District over and above the amount advanced by the Owner shall be paid by the Owner upon demand and before Notice of Acceptance of the Improvements.

**2. Owner's Engineer of Record.**

Owner hereby designates the following firm as Owner's Engineer of Record:

Triad/Holmes Associates  
Firm's Name

Cristi Fry 57970  
Engineer to Contract RE No.

555 Chorro St., Suite A  
Street Address

San Luis Obispo, CA 93405  
City, State, and Zip Code

(805) 544-8908  
Phone Number

District shall be notified immediately in writing if the Engineer of Record is replaced during the course of design or construction of the Improvements. Unless otherwise agreed to in writing by the District at the time of replacement, the replacement Engineer of Record shall certify the Improvements as required herein.

**3. District Specifications.**

The District's "Standard Specifications for Water and Sewer Improvements", hereinafter called District Specifications, are made a part of this Agreement by reference as though set forth at length in this Agreement. Receipt of District Specifications is hereby acknowledged by Owner. (District Specifications are found at the District's homepage at, [www.nipomocsd.com](http://www.nipomocsd.com)).

**4. Conflicts with District Specifications.**

In the event of a conflict between any of the requirements in the District's Specifications and the terms and conditions of this Agreement, the terms and conditions of this Agreement shall control.

**5. Plans and Specifications.**

Owner's Engineer of Record, shall design and prepare engineering plans for the construction of the Improvements ("Plans"). Said Plans, shall meet all District Specifications and District Code requirements, as well as all other local, County and State standards and requirements, whichever are most stringent. The Plans shall be approved in writing by the District, and the District shall have reviewed and adopted CEQA findings, if required, prior to District issuing the Notice to Proceed. Both the approved Plans and CEQA findings, if required, shall become a part of this Agreement.

**6. Easements, Permits and Licenses.**

Owner shall:

A. Obtain all necessary local, County and State permits and approvals, for the construction of the Improvements.

B. To the satisfaction of District, obtain all encroachment permits, real property deeds, permanent and temporary easements, offers of dedication, and/or right of ways (herein collectively "Right of Ways") for the construction, installation, operation, maintenance, repair, removal and replacement of the Improvements. Said Right of Ways shall be approved by the District prior to the District's final approval of the Plans..

C. Give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the construction of the Improvements.

**7. Plan Check Procedures.**

**A. Preliminary Plan Check.**

The Owner shall provide to the District three (3) copies of the proposed Plans for the construction of the Improvements.

The District will return one set of the proposed Plans to Owner with comments or corrections noted on the documents within approximately twenty (20) working days after the date of receipt of the proposed Plans .

**B. Second Submittal of Plans**

After making the changes and corrections noted on the returned set of the proposed Plans, the Owner will deliver three (3) copies of the proposed final Plans to the District for review.

**C. Final Review and Approval of the Plans and Delivery of Right of Ways .**

Within approximately twenty (20) working days after the date of delivery of the proposed final Plans and delivery of Right of Ways, if any, District will review the documents and notify the Owner of any additional changes or corrections that may be required.

**8. Estimated Cost of Improvements.**

Prior to District issuing its Notice to Proceed, Owner's Engineer of Record shall provide a written estimate of the cost for construction of the Improvements in accordance with the approved Plan, for approval by the District Engineer. The estimated amounts will be used to calculate faithful performance securities.

**9. Licensed Contractor.**

A. The person or entity constructing the Improvements ("Contractor") shall be licensed under the provisions of the Business and Professions Code of the State of California to do the type of work called for in the approved Plans..

B. No construction may be made except by a Contractor approved by the District. Each such Contractor shall indemnify, protect, defend and hold the District harmless as required by Indemnity Clause, herein. The District may request evidence that the Contractor has satisfactorily installed other Improvements of like magnitude or comparable difficulty. It is the intent of the District that the construction of Improvements be performed by a Contractor who furnishes satisfactory evidence of qualification.

## **10. Prevailing Wages.**

To the extent required by applicable law, the Owner and the Contractor shall comply with the California Labor Code provisions concerning payment of prevailing wages, wage rates, employment of apprentices, hours of work and overtime, keeping and retention of payroll records, and other requirements applicable to public works projects within the meaning of the Labor Code. (See California Labor Code, Division 2, Part 7, Chapter 1 (Sections 1720-1861).) Copies of the prevailing rate of per diem wages as established and published by the California Department of Industrial Relations are available for inspection at the office of the District or at the following website [www.cslb.ca.gov](http://www.cslb.ca.gov).

## **11. Faithful Performance Securities.**

Prior to District issuing the Notice to Proceed, Owner shall, if required by District, provide a Payment Bond, Performance bond, and/or Guarantee bond, secured from a surety company or companies, satisfactory to the Nipomo Community Services District and whose name is on file with the County Clerk of San Luis Obispo County as an approved and financially sound surety company, authorized to transact business in the state.

The bond(s) shall continue in full force and effect through the end of the guarantee period.

The bonds shall also warrant all work performed under this Agreement to be free from defects in material and/or workmanship for a period of one year from the date of Final Acceptance by the District.

A. **Performance Bond.** The Owner shall furnish a performance bond in the amount of one hundred percent (100%) of the estimated Improvement construction cost to the benefit of the District, as security for the faithful performance of the Work in compliance with the District ordinances, Rules and Regulations, the Plans, and District Specifications

B. **Payment Bond.** The Owner shall furnish a separate bond in an amount at least equal to one hundred percent (100%) of the estimated Improvement construction cost to the benefit of the District, as security for the payment of all persons performing labor and furnishing materials in connection with the Improvement.

The securities required by this Section shall be kept on file with the District. The terms of the security documents are incorporated into this Agreement by this reference.

If any security is replaced by another approved security, the replacement shall be filed with the District and, upon filing, shall be deemed to have been made part of and incorporated into this Agreement. Upon filing of a replacement security with the District, the former security may be released.

**12. Notice to Proceed.**

After the District's final approval of the Plans , Right of Ways and upon receipt from Owner of two (2) sets of all required construction securities and insurance forms, and a copy of the Contractor's license, the District will issue its Notice to Proceed.

**13. Construction of Improvements.**

Owner shall, at its sole cost and expense, and after the District issues the Notice to Proceed, construct the Improvements in accordance with this Agreement the approved Plans and the District Specifications. During construction, a complete set of approved Plans shall remain at the job-site at all times.

If Owner proposes to change the approved Plans for the Improvements, Owner shall first obtain the written approval of the District for such change. Requests for change may be denied at the District's discretion or approved on such terms and conditions as required by the District

**14. Inspections.**

A. Owner's Engineer of Record : The Owner shall employ an Engineer of Record to perform regular inspections of the construction and installation of Improvements to insure that the Improvements are constructed in accordance with the approved Plans and District Specifications. Records of such inspections shall be promptly delivered to the District upon request.

B. The District and its employees and agents are hereby granted a Right of Entry onto the Property for the purposes of performing inspections. The District's inspections are for administrative purposes only. The inspection of the Improvements by District shall not relieve the Owner of Owner's obligation and/or the Owner's Engineer of Record's obligation to insure that the Improvements are constructed in accordance with this Agreement, the approved Plans and District Specifications. Defective work shall be made good and substandard materials may be rejected, notwithstanding that such work and materials have been previously overlooked or inspected by the District.

**15. Maintenance of Improvements.**

The District assumes no obligation as to maintenance operation , and repair of the Improvements until such time as the Resolution of Acceptance is approved by the District Board of Directors.

**16. Construction Manager.**

A. Owner shall employ a Construction Manager. The Construction Manager shall :

1. Be the person to contact on behalf of the Owner during construction of the Improvements.

2. Perform shop drawing review of all materials and equipment for the Improvements, as necessary;
3. Maintain and insure completion of the record drawings for the Improvements;
4. Obtain District approval prior to the release of any revised Plans or Specifications; and
5. Insure that the Contractor incorporates the District's comments on all submittals, plans and specifications.

B. Owner hereby designates the following firm as Owner's Construction Manager:

OSLER CONSTRUCTION  
 Firm's Name

Steve OSLER  
 Person to Contract RE No.

2364 Brent St.  
 Street Address

Arroyo GRANDE CA. 93420  
 City, State, and Zip Code

805-474-6686 805-440-5558  
 Phone Number

District shall be notified immediately, in writing, if the construction manager is replaced during the course of construction.

**17. Damage to Property.**

Owner shall replace or have replaced, or repair or have repaired, as the case may be, all public and private improvements, public utilities facilities and surveying or subdivision monuments which are destroyed or damaged as a result of any work under this Agreement. Owner shall bear the entire cost of replacement or repairs of any and all public or private property damaged or destroyed by reason of any work performed or constructed under this Agreement, whether such property is owned by the United States or any agency thereof, or the State of California, or any agency or political subdivision thereof, or by a private owner, District or any public or private utility corporation or by any combination of such owners. Any repair or replacement shall be to the satisfaction, and subject to the approval, of the District Engineer.

**18. Construction Safety.**

Owner shall be responsible for site safety during the construction of the Improvements. Until final acceptance of the Improvements, Owner shall give good and adequate warning to the public of each and every dangerous condition existent in the construction of said Improvements, and will take all reasonable actions to protect the public from such dangerous condition.

**19. District's Acceptance of Improvements.**

The District Board of Directors shall accept the Improvements ("Notice of Acceptance") by Resolution. The Directors shall not consider the Resolution of Acceptance until the Owner has satisfied all of the following conditions:

**A. Final Inspection and Testing.**

Upon completion of construction of the Improvements, Owner shall notify the District thereof and request a final inspection of the Improvements. All Improvements shall be tested to meet District requirements as required by District Specifications and the approved Plans. Owner shall supply and pay for the necessary equipment, services and devices to inspect and test the Improvements installed. This shall include TV inspection of sewer lines, pressure testing equipment, cleaning devices, etc.

**B. Submittals.**

Owner shall provide to the District, as a condition precedent to the District's acceptance of the Improvements:

(1) Reproducible mylar of "as-built drawings" of the completed Improvements, satisfactory to the District, and any contract documents used for the construction of the Improvements;

(2) Certification from the Owner's Engineer of Record, on a form approved by the District, that the Improvements have been regularly inspected by Owner's Engineer of Record during construction and are constructed in compliance with the approved Plans and District's Specifications and this Agreement.

(3) A detailed accounting, satisfactory to the District, of the amounts expended for the construction and installation of the Improvements, with values applicable to the various components thereof, together with a list of any other materials and equipment, and their values, being transferred;

(4) Operating manuals and other operating instructions, and warranties received by Owner or its Contractor for the operation and maintenance of the Improvements and/or facilities included in the Improvements; and

(5) Provide in electronic format, acceptable to District, as-built drawings of the completed Improvements.

C. Maintenance Guarantee.

Owner shall provide the District with a maintenance bond, letter of credit or other financial security satisfactory to the District ("Maintenance Guarantee") in a sum equal to ten percent (10%) of the cost of the Improvements, or such agreement satisfactory to the District whereby the Owner's one-year warranty for all material and workmanship in the Improvements is assigned to the District and fully binding between the Owner and the District, for the purpose of warranting all materials and workmanship furnished pursuant to this Agreement for one (1) year from the date of the District Notice of Acceptance of the Improvements. This Maintenance Guarantee does not excuse the Owner from breaches of contract causing defects that occur or are discovered more than one year after the Notice of Acceptance.

The Owner and/or its surety under the Maintenance Guarantee shall repair or replace to the satisfaction of the District any or all such work that may prove defective in workmanship or materials, ordinary wear and tear excepted, together with any other work which may be damaged or displaced in so doing.

In the event of failure to comply with the above-stated conditions within a reasonable time, the District is authorized to have the defect repaired and made good. The Owner and its surety under the Maintenance Guarantee shall be jointly and severally liable to the District for such costs of repair, including, but not limited to, management and administrative costs, and engineering, legal and other costs incurred relating to the repair. The District shall bill the Owner and the surety for such costs, which bill shall be paid within thirty (30) days of its date. Interest shall accrue on any late payment at the legal rate then prevailing.

D. Payment of Inspection Fees.

All funds to be advanced and paid to the District by Owner have been so advanced and paid;

E. Offer of Dedication.

Submittal of Owner's Offer of Dedication of the Improvements to the District, on a form acceptable to the District transferring absolute and unencumbered ownership of the completed Improvements to the District. The District may require any other information as part of the Offer of Dedication such as current title reports.

20. **Ownership.**

After final inspection and acceptance by the District, the Improvements shall become the property of the District on the date that Notice of Acceptance is mailed to the Owner. The District shall own and be free in every respect to operate, manage, and improve the Improvements as it deems appropriate.



**21. District Approvals and Acceptance.**

The District's review or approval of the Plans and subsequent inspections and review of record drawings are for administrative purposes only. It is Owner's sole responsibility to properly plan, design, and construct the Improvements.

**22. Owner Assistance.**

Owner shall both before and after the Notice of Acceptance secure and provide any information or data reasonably needed by the District to accept ownership, operation and maintenance of the Improvements, and obtain, execute and provide any and all documents needed to expeditiously complete or implement the transfer of the Improvements.

**23. District Service.**

The District shall not set water meters or otherwise provide service to the Property until the following have occurred:

- A. The District has adopted a Resolution of Acceptance of the Improvements as provided herein; and
- B. Owner has paid the District all applicable fees and charges of the District, including connection fees and capacity charges, all in accordance with the Ordinances, Rules and Regulations of the District.
- C. Building permits have been issued by the County of San Luis Obispo for residential and commercial units.

**24. Construction Water**

Prior to acceptance the District may provide construction water for construction of related improvements pursuant to a separate agreement.

**25. Indemnification and Hold Harmless.**

A. To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the District, the District's Engineer, the District's Inspectors and their consultants, and each of their directors, officers, agents and employees from and against all claims, damages, losses, expenses and other costs, including costs of defense and attorney's fees, arising out of or resulting from or in connection with the performance of the work, both on and off the jobsite, provided that any of the foregoing (1) is attributable to personal injury, bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself), including the loss of use resulting therefrom and (2) is caused in whole or in part by any act or omission of the Owner, Contractor, any subcontractor, any supplier, anyone directly or indirectly employed by any of them or anyone for whose acts or omissions any of them may be

liable, regardless of whether or not it is caused in part by any act or omission (active, passive or comparative negligence included), or a party indemnified hereunder.

B, Without limiting the generality of the foregoing indemnity, such indemnity obligation expressly extends to and includes any and all claims, demands, damages, costs, expenses, fines, penalties, or liability occasioned as a result of:

1. Damages to adjacent property related to the construction of the Improvements;
2. The violation by the Owner, the Owner's agents, employees, or independent contractors or subcontractors, of any provisions of this Agreement, and/or federal, state, or local law, including applicable administrative regulations;
3. Injury to or death of any person, or any damage to property owned by any person, while on or about the Property or as a result of the construction of the Improvements, whether such persons are on or about the Property by right or not, whenever the construction of the Improvements is alleged to have been a contributing cause in any degree whatsoever.
4. The design or construction of the Improvements pursuant to the approved Plans..

C. After acceptance of the Improvements, Owner shall remain obligated to eliminate any defect in design, construction defects or dangerous condition caused by the design. The provisions of this paragraph shall remain in full force and effect for ten (10) years following the acceptance by District of the Improvements. It is the intent of this paragraph that Owner shall be responsible for all liability for design and construction of the Improvements installed or work done pursuant to this Agreement.

D. The Owner shall reimburse the District and the District's Engineer for all costs and expenses, (including but not limited to fees and charges of engineers, architects, attorneys, and other professionals and court costs including all costs of appeals) incurred by District and District's Engineer in enforcing the provisions of this Section 25.

E. The indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of insurance carried by Owner or by the amount or type of damages, compensation, or benefits payable by or for the Owner or any Subcontractor or other person or organization under workers' compensation acts, disability benefit acts, or other employee benefit acts.

F. The Owner shall also indemnify and hold harmless the District, the District's Engineer and their consultants, and each of their directors, officers, employees and agents from and against all losses, expenses, damages (including damages to the Improvements itself), attorney's fees and other costs, including all costs of defense, which any of them may incur with respect to the failure, neglect, or refusal

of Owner to faithfully complete the construction of the Improvements and all of the Owner's obligations under the Agreement. Such costs, expenses and damages shall include all cost, including attorney's fees, incurred by the indemnified parties in any lawsuit to which they are a party.

G. Nothing contained in the foregoing indemnity provisions shall be construed to require Owner to indemnify NCSD, against any responsibility or liability in contravention of Civil Code §2782.

H. Neither termination of this Agreement or District's Acceptance of the Improvements shall release Owner from its obligations to indemnify as provided herein, as to any claim so long as the event upon which such claims is predicated shall have occurred prior to the effective of any such termination or Acceptance and arose out of or was in any way connected with performance or operations under this Agreement by Owner, its employees, agents or consultants, or the employees, agents or consultants of any one of them.

## 26. Insurance Requirements

### A. General.

Construction shall not commence or continue until or unless there is in full force and effect all required insurance. The Owner shall not permit any Contractor or subcontractor to perform work on this project unless the worker's compensation, performance and payment bond and liability insurance requirements have been complied with.

The types of insurance the Owner and Contractor shall obtain and maintain are Workers' Compensation Insurance and Liability Insurance, all as set for herein.

Workers' Compensation Insurance and Liability Insurance shall be maintained in effect for the full guarantee period.

Insurers must be authorized to do business and have an agent for service of process in California and have at least an "A" policyholder's rating and a financial rating of at least Class XI in accordance with the most current Best's rating.

As evidence of specified insurance coverage, the Owner shall provide certificates of insurance and endorsements to the District on the forms approved by the District for District's approval.

### B. Worker's Compensation Insurance.

The Owner shall provide a certificate(s) of insurance certifying that his Contractor has obtained for the period of the Contract full Workers' Compensation Insurance coverage for all persons whom he employs or may employ in carrying out the work under the Agreement. This insurance shall be in strict accordance with the

requirements of the most current and applicable State Workers' Compensation Insurance Laws.

C. Liability Insurance.

The Owner or any Contractor carrying out the construction of the Improvements shall carry commercial general liability and automobile liability insurance. The insurance shall include but shall not be limited to protection against claims arising from death, bodily or personal injury, or damage to property resulting from operations, equipment or products of Owner or its Contractor or by their employees, agents, consultants, or anyone directly or indirectly employed by any of the foregoing. The amount of insurance shall not be less than two million dollars (\$2,000,000.00) single limit coverage applying to bodily and personal injury and property damage, or a combination of both.

Such insurance shall be primary insurance as respects the interest of the District, and any other insurance maintained by the District is excess and not contributing insurance with the insurance required hereunder. The insurance shall specifically name the District, its directors, officers, employees and District Engineer as additional insureds, and shall contain an endorsement providing that written notice shall be given to the District at least thirty (30) days prior to termination, cancellation, or reduction of coverage in the policies. The commercial general liability and automobile liability insurance coverage shall also include the following:

- (1) "Cross Liability" or "Severability of Interest" clause.
- (2) Commercial General Liability coverage (Insurance Services Office Commercial General Liability coverage - occurrence form CG 0001) shall include:
  - (a) Comprehensive Form
  - (b) Premises-Operations
  - (c) Explosion and Collapse Hazard
  - (d) Underground Hazard
  - (e) Products/Completed Operations Hazard
  - (f) Contractual Insurance
  - (g) Broad Form Property Damage Including Completed Operations
  - (h) Independent Contractors
  - (i) Personal Injury
- (3) Automobile Liability coverage (Insurance Services Office form number CA 0001 (Ed. 1/87) covering automobile liability, Code 1) shall include:
  - (a) Comprehensive Form Coverage Including Loading and Unloading
  - (b) Owned
  - (c) Hired
  - (d) Non-owned

Included in such insurance shall be contractual coverage sufficiently broad to insure the matter set forth in the Indemnity provisions of this Agreement.

**27. Term of Agreement and Termination.**

A. This Agreement shall become effective on the date first above written and shall remain in effect until terminated by the mutual consent of the parties or as provided in subsections (B and C) below.

B. Owner agrees to promptly design and construct the Improvements and to transfer the same to the District in accordance with the terms hereof within twenty-four (24) months of the District's Notice to Proceed.

C. If the Owner refuses or fails to construct the Project/Improvements or any separable part thereof with such diligence as will insure its completion within the time specified in this subsection B, above, or any extension thereof, or fails to complete the Project/Improvements within such time, or if the Owner should be adjudged bankrupt, or if Owner should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of Owner's insolvency, or if Owner or any of its subcontractors should violate any of the provisions of the Agreement, the District may serve written notice upon the Owner and its Surety of its intention to terminate the Agreement, and said notice to contain the reasons for such intention to terminate the Agreement, and unless within ten (10) days after the service of such notice such violations shall cease and satisfactory arrangements for the corrections thereof be made, the Agreement shall, upon the expiration of said ten (10) days, be terminated.

In the event of any such termination, the District shall immediately serve written notice thereof upon the Surety, and the Owner. The Surety shall have the right to take over and perform the Agreement, providing, however, that if the Surety within fifteen (15) days after the serving upon it of a notice of termination does not give the District written notice of its intention to take over and perform the work, or does not commence performance thereof within thirty (30) days from the date of serving said notice, the District may take over the Project/Improvements and prosecute the same to completion by contract or by any other method it may deem advisable for the account of and at the expense of the Owner, and its Surety shall be liable to the District for any excess cost or other damage occasioned the District hereby, and in such event the District may, without liability for so doing, take possession of and utilize in completing the Project /Improvements such materials, appliances, plants and other property belonging to the Owner that may be on the site of the Project/Improvements and be necessary therefor.

The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to the District.

**28. Non Discrimination.**

A. Owner and/or Owner's Contractor shall not discriminate in any way against any person on the basis of race, color, religious creed, national origin, ancestry, sex, age, physical handicap, medical condition or marital status in connection with, or related to construction of the Improvements.

B. Owner and/or Owner's Contractor shall comply with all provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§1101, et seq., as amended, and in connection with therewith, shall not employ unauthorized aliens as defined therein with regards to the construction of the Improvements. Should Owner's and/or Owner's Contractor so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any liability or sanctions be imposed against District for such use of unauthorized aliens, Applicant hereby agrees that it shall reimburse District for the cost of such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees incurred by District. Owner shall comply with all provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101 et seq. as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein.

**29. Ineligible Contractors**

Owner shall not employ a contractor who is ineligible pursuant to California Labor Code §§1777.1 or 1777.7. The California Division of Labor Standards Enforcement publishes a list of debarred contractors and sub-contractors on the Internet at [www.dir.ca.gov/DLSE/debar.html](http://www.dir.ca.gov/DLSE/debar.html).

**30. Assignment.**

The provisions of this Agreement shall apply to and bind the successors, grantees, and assigns of the respective parties, but no assignment or transfer of this Agreement, or any part hereof, or interest herein by the Owner shall be valid until and unless approved by the District in writing. Such approval shall be conditioned on the agreement by the assignee, grantee, successor or transferee to be bound by the terms and conditions of this Agreement.

**31. Owner Not An Agent of District.**

Neither Owner or any of Owner's agents or contractors are or shall be considered to be agents of the District in connection of the performance of Owner's obligations under this Agreement.

**32. Sale or Disposition of the Property.**

Sale or other disposition of the Property will not relieve Owner from its obligations set forth herein. Owner agrees to notify District in writing at least thirty (30) days in advance of any actual or pending sale or other disposition of the Property. If Owner sells the Property or any portion of the Property to any other person, Owner may request an

novation of this Agreement and a substitution of security. Nothing in the novation shall relieve Owner of the obligations in the indemnification clauses contained in this Agreement for work or Improvements constructed by Owner. All District's costs in processing a novation pursuant to this Agreement shall be borne by Owner.

**33. No Vesting of Rights.**

Performance by Owner of this Agreement shall not be construed to vest Owner's rights with respect to the approved Plans, any changes to the District's Specifications during construction and/or the request of District to alter or modify the construction of Improvements prior to District acceptance.

**34. Covenants and Conditions.**

The obligations of Owner pursuant to this Agreement are both covenants and conditions.

**35. Risk of Loss.**

Until the date of the Resolution of Acceptance of the Improvements, all risk of loss or injury or destruction to the Improvements shall be upon the Owner. On or after the date of the Notice of Acceptance, all risk of loss or injury or destruction to the Improvements shall be upon the District.

**36. Attorney's Fees.**

In the event that any arbitration, litigation, or other proceeding of any nature between the District and Owner becomes necessary to enforce or interpret all or any portion of this Agreement, it is mutually agreed that the prevailing party therein shall receive from the other, in addition to such sums as may be awarded, an amount sufficient to reimburse such prevailing party for reasonable attorney's fees and costs paid or owing as a result of such proceeding.

**37. Waiver of Rights.**

Any waiver at any time by either party hereto of its rights with respect to a breach or default, or any other matter arising in connection with this Agreement, shall not be deemed to be a waiver with respect to any other breach, default or matter.

**38. Remedies Not Exclusive.**

The use by either party of any remedy specified herein for the enforcement of this Agreement is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.

**39. Entire Agreement.**

This Agreement is freely and voluntarily entered into by the parties after having the opportunity to consult with their respective attorneys. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect. The parties, in entering into this Agreement, do not rely on any inducements, promises, or representations made by each other, their representatives, or any other person, other than those inducements, promises, and representations contained in this Agreement. Any amendment to this Agreement shall be of no force and effect unless it is in writing and signed by the Owner and the District.

**40. Notices.** All notices, statements, reports, approvals, requests, bills or other communications that are required either expressly or by implication to be given by either party to the other under this Agreement shall be in writing and signed for each party by such officers as each may, from time to time, be authorized in writing to so act. All such notices shall be deemed to have been received on the date of delivery if delivered personally or three (3) days after mailing if enclosed in a properly addressed and stamped envelope and deposited in a United States Post Office for delivery. Unless and until formally notified otherwise, all notices shall be addressed to the parties at their addresses as shown below:

District:

Nipomo Community Services District  
P.O. Box 6064  
Nipomo, California 93412  
Attn: General Manager

Owner:

Vintage Homes LLC  
2354 Brant Street  
Arroyo Grande, CA 93420  
Attn: Mr. Steve Osler

**41. Headings.**

The paragraph headings used in this Agreement are for reference only, and shall not in any way limit or amplify the terms and provisions hereof, nor shall they enter into the interpretation of this Agreement.

**42. Cooperation.**

Each party to this Agreement agrees to do all things that may be necessary, including, without limitation, the execution of all documents which may be required hereunder, in order to implement and effectuate this Agreement.



**43. Interpretation of this Agreement.**

The parties acknowledge that each party and its attorney have reviewed, negotiated and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any document executed and delivered by any party in connection with the transactions contemplated by this Agreement.

**44. Successors and Assigns.**

It is understood and agreed that between the parties hereto that this Agreement shall bind on the heirs, executors, administrators, successors and assigns of the respective parties to this Agreement.

**45. Recitals.**

The Recitals of this Agreement are incorporated herein by reference and made a part hereof.

**46. Time of the Essence.**

Time is of the essence in this Agreement.

**47. Survival.**

The obligations, representations, and warranties, and the remedies for breach of obligations, representations, and warranties, in this Agreement shall survive District's acceptance of the Improvements.

**48. Counterparts.**

This Agreement may be executed in one or more counterparts. Each shall be deemed an original and all, taken together, shall constitute one and the same instrument.

**49. Severability.**

If any term or provision of this Agreement is, to any extent, held invalid or unenforceable, the remainder of this Agreement shall not be affected.

**50. Representations and Warranties of Owner.**

A. Owner represents and warrants that: (a) it is duly organized and legally existing under the laws of the State of California and is duly qualified to do business in the State of California; (b) this Agreement will constitute, legal, valid and binding obligations of Owner enforceable in accordance with its terms; and (c) the execution and delivery of this Agreement is within Owner's power and authority without the

joinder or consent of any other party and have been duly authorized by all requisite action and are not in contravention of Owner's contracts, charter, bylaws and/or other organizational documents.

B. Owner and the undersigned jointly and severally shall defend, indemnify and hold the District harmless against any loss, claim, damage, liability or expense (including, without limitation, reasonable attorneys' fees) arising out of the representations and warranties of Subsection A, above.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the day and year first above written.

Nipomo Community Services District

By: Michael Winn  
Michael Winn, President  
Board of Directors

Owner: Vintage Homes, LLC, by:

Coaster Co. , a California Company

Jeffrey W. Greer  
Jeffrey W. Greer, President  
[Signature must be notarized]

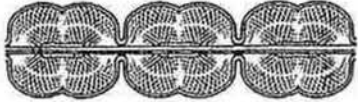
Osler Construction Co., a California Company

R. Stephen Osler  
R. Stephen Osler, President  
[Signature must be notarized]

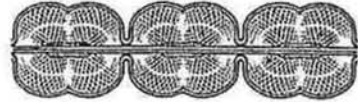
Attest:

Donna K. Johnson  
Donna K. Johnson, Secretary  
Nipomo Community Services District

CALIFORNIA



ALL-PURPOSE



ACKNOWLEDGEMENT

STATE OF CALIFORNIA )

COUNTY OF Ventura )

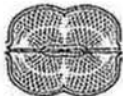
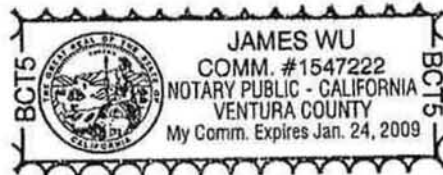
On 10-2-2007 before me, JAMES WU, NOTARY,  
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared, JEFFREY W. GREER

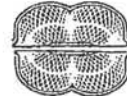
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

[Signature] (SEAL)  
NOTARY PUBLIC SIGNATURE



OPTIONAL INFORMATION



TITLE OR TYPE OF DOCUMENT plan check and inspection agreement

DATE OF DOCUMENT \_\_\_\_\_ NUMBER OF PAGES \_\_\_\_\_

SIGNER(S) OTHER THAN NAMED ABOVE \_\_\_\_\_



CALIFORNIA JURAT WITH AFFIANT STATEMENT

State of California }
County of San Luis Obispo } ss.

- See Attached Document (Notary to cross out lines 1-6 below)
See Statement Below (Lines 1-5 to be completed only by document signer[s], not Notary)

1.
2.
3.
4.
5.
6.
Signature of Document Signer No. 1
Signature of Document Signer No. 2 (if any)

Subscribed and sworn to (or affirmed) before me on this
27 day of September, 2007, by
(1) Stephen Oster
Name of Signer



- Personally known to me
Proved to me on the basis of satisfactory evidence to be the person who appeared before me. (and)
(2)
Name of Signer

- Personally known to me
Proved to me on the basis of satisfactory evidence to be the person who appeared before me.)

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Further Description of Any Attached Document

Title or Type of Document: Plan Check and Inspection
Document Date:
Number of Pages: 19
Signer(s) Other Than Named Above:

RIGHT THUMBPRINT OF SIGNER #1

Top of thumb here

RIGHT THUMBPRINT OF SIGNER #2

Top of thumb here

**NIPOMO COMMUNITY SERVICES DISTRICT  
RESOLUTION NO. 2011-XXXX**

**A RESOLUTION OF THE BOARD OF DIRECTORS  
OF THE NIPOMO COMMUNITY SERVICES DISTRICT  
APPROVING CONSENT TO THE TRANSFER OF THE OUTSIDE USER AGREEMENT  
FOR WATER AND SOLID WASTE SERVICE TO TRACT 2650**

**WHEREAS**, the Nipomo Community Services District ("District") entered into an Agreement for Providing Water and Solid Waste Service to Tract 2650 ("Agreement") on May 23, 2007, with Vintage Homes, LLC ("Previous Owners"); and

**WHEREAS**, the Agreement was recorded on March 20, 2008 in the Official Records of San Luis Obispo County as Document #2008013985; and

**WHEREAS**, the District and Previous Owners entered into Amendment No. 1 to the Agreement that amended Paragraph 9 of the Agreement to allow Previous Owners a longer period of time for the construction of water improvements; and

**WHEREAS**, Amendment No. 1 was recorded on March 1, 2010 in the Official Records of San Luis Obispo County as Document #2010009598; and

**WHEREAS**, Margarita Valley Ranch, LLC ("Owner") acquired the property on December 3, 2010 via Grant Deed that was recorded on December 3, 2010 in the Official Records of San Luis Obispo County as Document #2010061740; and

**WHEREAS**, Owner desires that Agreement including all amendments be transferred from the Previous Owner to the Owner; and

**WHEREAS**, Owner agrees to be bound by the terms and conditions of the Agreement including all amendments.

**NOW, THEREFORE, BE IT RESOLVED, DETERMINED AND ORDERED BY THE BOARD OF DIRECTORS OF THE NIPOMO COMMUNITY SERVICES DISTRICT THAT:**

1. Consent to the Transfer of Outside User Agreement for Providing Water and Solid Waste Service for Tract 2650 to Margarita Valley Ranch, LLC, attached hereto as Exhibit "A", as amended, is hereby approved.
2. The above Recitals are true and correct and incorporated herein by reference.

Upon the motion of Director \_\_\_\_\_, seconded by Director \_\_\_\_\_, and on the following roll call vote, to wit:

AYES:  
NOES:  
ABSENT:  
CONFLICTS:

the foregoing resolution is hereby adopted this 26<sup>th</sup> day of January, 2011.

Resolution 2010-XXXX  
TRACT 2650 Outside User Agreement Transfer

---

James Harrison  
President, Board of Directors  
Nipomo Community Services District

ATTEST:

APPROVED AS TO FORM

---

Michael LeBrun  
Interim General Manager  
and Secretary to the Board

---

Jon S. Seitz  
District Legal Counsel

T:\BOARD MATTERS\RESOLUTIONS\RESOLUTIONS 2011\2011-XXXX TRACT 2650 OUTSIDE USER AGREEMENT TRANSFER.DOC

EXHIBIT "A" TO RESOLUTION

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

NIPOMO COMMUNITY SERVICES DISTRICT  
P.O. Box 326  
Nipomo, CA 93444

---

APN# 091-181-052  
091-181-053

Exhibits:  
"A" – Legal Description

**AGREEMENT AFFECTING REAL PROPERTY  
CONSENT TO TRANSFER  
OUTSIDE USER AGREEMENT TO  
MARGARITA VALLEY RANCH, LLC**

This Consent to Transfer Outside User Agreement ("Consent") is made as of January \_\_\_\_\_, 2011, by and between the Nipomo Community Services District ("District") and Margarita Valley Ranch, LLC ("Margarita") is made with reference to the following Recitals:

**RECITALS**

A. On May 23, 2007, the Nipomo Community Services District ("District") approved an Outside User Agreement titled "Agreement Affecting Real Property Nipomo Community Services District and Vintage Homes, LLC, a California Limited Liability Company, Agreement for Providing Water and Solid Waste Services to Tract 2560 (the "Agreement").

B. The Agreement was recorded on March 20, 2008 as document number 2008013985 in the official records of the San Luis Obispo County Clerk-Recorder. The Agreement is incorporated herein by this reference.

C. The District and Vintage Homes entered into Amendment No. 1 to the Agreement that amended Paragraph 9 of the Agreement to allow Vintage Homes a longer period of time for the construction of water improvements.

D. Amendment No. 1 was recorded on March 1, 2010 in the Official Records of San Luis Obispo County as Document #2010009598.

E. The Agreement as referenced herein includes Amendment No. 1.

F The real property (the "Real Property") that is the subject of the Agreement is more particularly described in Exhibit "A", attached hereto and incorporated herein by this reference.

G Paragraph 14 of the Agreement states:

**"Sale of Property.**

No transfer of this Agreement, by assignment or otherwise, by Owner shall be valid until and unless approved by the District in writing. Said approval shall not be unreasonably withheld or delayed. Such approval shall be conditioned on the agreement of the successor or transferee to be bound by the terms and conditions of this Agreement and the payment of District's administrative and legal costs in approving the transfer."

H By deed recorded on December 3, 2010, Margarita Valley Ranch, LLC is the owner of the Real Property.

I Pursuant to Paragraph 14 of the Agreement, Margarita has requested District's approval/consent to the transfer of the Agreement to Margarita Valley Ranch, LLC.

Therefore, for good and valuable consideration receipt and adequacy of which are hereby acknowledged, District and Margarita agree as follows:

**1. Consent/approval of District**

Pursuant to Paragraph 14 of the Agreement and the payment of cost, referenced below, the transfer of the Agreement to Margarita Valley Ranch, LLC is hereby approved.

**2. Incorporation of Agreement**

The terms, conditions, obligations and covenants of the Agreement are incorporated herein by this reference.

**3. Assumption of Agreement Obligations**

Margarita LLC and the undersigned represent that Margarita has thoroughly investigated and considered the terms, covenants, conditions, and obligations of the Agreement and hereby assumes and agrees to perform and fulfill all terms, covenants, conditions, and obligations required to be performed and fulfilled by Owner pursuant to the Agreement, including the making of all payments due to or payable to the District.

**4. Real Property**

District and Margarita agree that the legal description attached hereto as Exhibit "A" shall supersede the legal description referenced in the Agreement.



**5. Payment of District Cost**

As provided in Section 14 of the Agreement, this Consent is conditioned on Margarita's payment of District's administrative and legal costs in approving this Consent/Transfer.

**6. Warranty of Title**

Margarita Valley Ranch, LLC represents and warrants that it is the fee simple owner of the Real Property.

**7. Attorney's Fees.**

In the event that any arbitration, litigation, or other proceeding of any nature between District and Margarita becomes necessary to enforce or interpret all or any portion of this Consent, it is mutually agreed that the prevailing party therein shall receive from the other, in addition to such sums as may be awarded, an amount sufficient to reimburse such prevailing party for reasonable attorney's fees and costs paid or owing as a result of such proceeding.

**8. Notices.**

All notices, statements, reports, approvals, requests, bills or other communications that are required either expressly or by implication to be given by either party to the other under this Consent and/or the Agreement shall be in writing and signed for each party by such officers as each may, from time to time, be authorized in writing to so act. All such notices shall be deemed to have been received on the date of delivery if delivered personally or three (3) days after mailing if enclosed in a properly addressed and stamped envelope and deposited in a United States Post Office for delivery. Unless and until formally notified otherwise, all notices shall be addressed to the parties at their addresses as shown below:

|                                                                                                          |                                                                                             |
|----------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------|
| Nipomo Community Services District<br>P.O. Box 6064<br>Nipomo, California 93412<br>Attn: General Manager | Margarita Valley Ranch, LLC<br>P.O. Box 219<br>Arroyo Grande, CA 93421<br>Attn: Greg Nester |
|----------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------|

**9. Indemnity.**

Margarita Valley Ranch, LLC and the undersigned on behalf of Margarita, jointly and severally agree to defend, indemnify and hold harmless District from and against any, loss, damage, expense, costs (including attorneys' fees and court cost) related to any litigation or other legal actions challenging the District's approval/consent or the transfer of the Agreement to Margarita Valley Ranch, LLC including, but not limited, to litigation or other legal actions initiated by Vintage Homes, LLC, Coaster Company, a California Company, and Osler Construction Company, a California Company, or any of their successors and/or assigns.

**10. Other Agreements.**

This Consent, along with any Exhibits and attachments, is in addition to other agreements such as the Annexation Agreement and/or the Plan Check and Inspection Agreement entered into by the Parties or their predecessors. This Consent shall not be construed as a waiver, novation of the Annexation Agreement and/or the Plan Check and Inspection Agreement entered into by the parties or their predecessors.

**11. Headings.**

The paragraph headings used in this Consent are for reference only, and shall not in any way limit or amplify the terms and provisions hereof, nor shall they enter into the interpretation of this Consent.

**12. Cooperation.**

Each party to this Consent agrees to do all things that may be necessary, including, without limitation, the execution of all documents which may be required hereunder, in order to implement and effectuate this Agreement.

**13. Interpretation of this Consent.**

The parties acknowledge that each party and its attorney have reviewed, negotiated and revised this Consent and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Consent or any document executed and delivered by any party in connection with the transactions contemplated by this Agreement.

**14. Venue**

This Consent has been executed and delivered in the State of California and the validity, enforceability and interpretation of any of the clauses of this Consent shall be determined and governed by the laws of the State of California. The duties and obligations of the parties created hereunder are performable in San Luis Obispo County and such County shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Consent.

**15. Document to be Recorded.**

The parties intend and consent to the recordation of this Consent in the office of the County Recorder of the County of San Luis Obispo.

**16. Incorporation of Recitals.**

The parties agree that the Recitals constitute the factual basis upon which the District and the Owner have entered into this Consent. The District and the Owner each acknowledge the accuracy of the Recitals and agree that the Recitals are incorporated into this Consent as though fully set forth at length.

**17. Severability.**

If any term or provision of this Consent is, to any extent, held invalid or unenforceable, the remainder of this Consent shall not be affected.

18. **Authority to Execute.**

A. Margarita represents and warrants that: (a) the terms, conditions, obligations and covenants of this Consent and the Agreement will constitute legal, valid, and binding obligations of Margarita enforceable in accordance with their terms; and (b) the execution and delivery of this Consent is within Margarita's power and authority without the joinder or consent of any other party.

B. Indemnity. Margarita and the undersigned jointly and severally agree to defend, indemnify and hold the District harmless against any loss, claim, damage, liability or expense (including, without limitation, reasonable attorneys' fees) arising out of the representations and warranties of Subsection A. above.

**IN WITNESS WHEREOF**, the parties hereto have executed this document on the day and year first above written.

**Margarita Valley Ranch, LLC**

By: \_\_\_\_\_

Greg Nester

Managing Member of Margarita Valley Ranch, LLC

Date: \_\_\_\_\_

(Signatures must be Notarized)

**Nipomo Community Services District**

By: \_\_\_\_\_

James Harrison, President

Board of Directors

Date: \_\_\_\_\_

(Signatures must be Notarized)

Attest:

\_\_\_\_\_  
Michael LeBrun, General Manager  
And Secretary to the Board

Approved as to Form:

\_\_\_\_\_  
Jon S. Seitz, District Legal Counsel  
Nipomo Community Services District

EXHIBIT A

PARCEL 1:

LOT 45 OF DIVISION "A" OF POMEROY'S RESUBDIVISION OF A PART OF THE LOS BERROS TRACT, IN THE COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, ACCORDING TO MAP RECORDED SEPTEMBER 26, 1903 IN BOOK A, PAGE 109 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM THAT PORTION OF SAID LAND CONVEYED TO THE LUCIA MAR UNIFIED SCHOOL DISTRICT IN DEED RECORDED DECEMBER 19, 2003 AS INSTRUMENT NO. 2003-143010, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTERLINE MONUMENT SET TO MARK THE CENTERLINE INTERSECTION OF WILLOW ROAD AND VIA CONCHA ROAD, AS SHOWN ON THE MAP RECORDED IN BOOK 11, PAGE 85 OF MAPS IN THE ABOVE SAID RECORDER'S OFFICE, SAID POINT BEING THE POINT OF BEGINNING; THENCE

1. NORTH 90°00'00" WEST, A DISTANCE OF 723.77 FEET, ALONG SAID CENTERLINE OF WILLOW ROAD, TO A POINT OPPOSITE THE SOUTHWEST CORNER OF THE WELL SITE EASEMENT, PREVIOUSLY CONVEYED TO THE LUCIA MAR SCHOOL DISTRICT AND THE TRUE POINT OF BEGINNING; THENCE
2. NORTH 0°00'00" WEST, A DISTANCE OF 30.00 FEET TO THE SOUTHWEST CORNER OF SAID WELL SITE AND CONTINUING, NORTH 0°00'00" WEST; A DISTANCE OF 75.00 FEET, TO THE NORTHWEST CORNER OF SAID WELL SITE; THENCE
3. NORTH 90°00'00" EAST, ALONG THE NORTH LINE OF SAID WELL SITE, A DISTANCE OF 55.00 FEET; THENCE
4. NORTH 0°02'01" EAST, PARALLEL TO THE CENTERLINE OF VIA CONCHA ROAD, A DISTANCE OF 1215.37 FEET, TO A POINT ON THE NORTH LINE OF ABOVE SAID LOT 45, SAID POINT BEARS SOUTH 89°59'23" W, 668.84 FEET FROM THE NORTHEAST CORNER OF SAID LOT; THENCE
5. SOUTH 89°59'23" WEST, ALONG THE NORTH LINE OF SAID LOT 45, TO A 3" I.P. TAGGED RE 11398, SET TO MARK THE NORTHWEST CORNER OF SAID LOT 45 ON A PARCEL MAP RECORDED IN BOOK 11 OF PARCEL MAPS AT PAGE 76 IN THE ABOVE SAID RECORDER'S OFFICE, A DISTANCE OF 649.72 FEET; THENCE
6. SOUTH 0°06'45" WEST, ALONG THE WEST LINE OF LOT 45, A DISTANCE OF 1290.26 FEET, TO THE NORTH RIGHT OF WAY LINE FOR THE ABOVE SAID

WILLOW ROAD AND CONTINUING ALONG THE WEST LINE OF SAID LOT 45,  
SOUTH 0°06'45" WEST, A DISTANCE OF 30.00 FEET TO THE CENTERLINE OF ABOVE  
SAID WILLOW ROAD; THENCE  
7. NORTH 90°00'00" EAST, ALONG SAID CENTERLINE, A DISTANCE OF 596.60 FEET  
TO THE TRUE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM ALL OIL AND GAS IN OR UNDER THE SURFACE OF  
SAID LAND BELOW A DEPTH OF 200 FEET WITHOUT RIGHT OF SURFACE ENTRY  
AS RESERVED BY THE FLINTKOTE COMPANY RECORDED APRIL 5, 1977 IN BOOK  
1968, PAGE 775 OF OFFICIAL RECORDS.

PARCEL 2:

AN EASEMENT FOR PROHIBITION OF LEACH FIELD DISCHARGE AND  
INCIDENTAL PURPOSES OVER THAT PORTION OF LOT 45 OF DIVISION "A" OF  
POMEROY'S RESUBDIVISION OF A PART OF THE LOS BERROS TRACT, IN THE  
COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, ACCORDING TO MAP  
RECORDED IN BOOK A, PAGE 109 OF MAPS, AS RESERVED BY KENNETH M.  
CRAIG AND ROSEMARIE CRIAG, TRUSTEES OF THE CRAIG FAMILY TRUST DATED  
SEPTEMBER 8, 1987 IN DEED RECORDED DECEMBER 19, 2003 AS INSTRUMENT NO.  
2003-143010 OF OFFICIAL RECORDS.