MARINA COAST WATER DISTRICT

Water, Sewer and Recycled Water Infrastructure Agreement

for

SEASIDE SENIOR LIVING, LLC

550 Monterey Road and Coe Avenue Seaside, California 93955

March 6, 2018

WATER, SEWER AND RECYCLED WATER INFRASTRUCTURE AGREEMENT

TABLE OF CONTENTS

Exhibits

EXHIBIT A – WATER ALLOCATION DOCUMENTATION

EXHIBIT B-1 -- LEGAL DESCRIPTION

EXHIBIT B-2 -- SURVEY MAP

EXHIBIT C-1 -- PROJECT LOCATION MAP

EXHIBIT C-2 -- MAP OF DEVELOPMENT

EXHIBIT D -- INDEMINIFCATION and INSURANCE REQUIREMENTS

WATER, SEWER AND RECYCLED WATER INFRASTRUCTURE AGREEMENT

This Agreement made and entered into this date of _____, 2018 ("Effective Date"), between **Marina Coast Water District**, 11 Reservation Road, Marina, CA, 93933, hereinafter called "District", and **Seaside Senior Living, LLC**, an Oregon Company, with its principal offices at 560 First Street, Suite 104, Lake Oswego, OR 97034, hereinafter called the "Developer" (collectively, the "parties") The name of the Developer's project that is the subject of this Agreement, is the "Seaside Senior Living Facility", hereinafter called the "Project", and located at 550 Monterey Road and Coe Avenue Seaside, California 93955 (APN 031-014-141).

1. Definitions; District's Role; Term of this Agreement.

1.1 Definitions, whenever used in this Agreement, the following terms shall have the following respective meanings:

a. "Agreement" means this Water, Sewer and Recycled Water Infrastructure Agreement as it may be amended from time to time in accordance with the terms and conditions hereof.

b. "City" means the City of Seaside, California ~~and/or the appropriate Agency of Land Use Jurisdiction.~~

c. "Contractor" means any contractor with which the Developer has a direct contractual relationship to perform any work under this Agreement.

d. "Development" means that certain property located at 550 Monterey Road Seaside, California 93955 (APN 031-014-141) and legally described in Exhibit "B" and shown on the map in Exhibit "C."

e. "Facilities" shall mean those certain infrastructure improvements and system provided for in this Agreement and as approved by District as part of its review of the Development plans, Facilities shall include, but not be limited to, pipes, pumps, electrical and instrumentation and controls.

f. "Procedures" means the District's *Procedure Guidelines and Design Requirements*.

g. 'Standards" means the District's *Standard Plans and Specifications for Construction of Domestic Water, Sewer, and Recycled Water Facilities*.

h. "Water Allocation" means the total water allocated by the City ~~/Land Use Jurisdiction~~ for the Development as documented in Exhibit "A" and described in Exhibits "B" and "C".

i. "FORA" means Fort Ord Reuse Authority.

1.2 Allocation of Water Capacity for the Development. The water allocation for this project is 40-AF per the City of Seaside Board Resolution which can be found in Exhibit A. The parties

hereto expressly agree that as a condition precedent for the performance of the District's obligations hereunder, Developer must provide proof to the satisfaction of the District that the City has approved the allocation of water capacity for the Development from the water and recycled water capacity allocated to the City by the Fort Ord Reuse Authority (FORA). Notwithstanding, neither the City nor the District may approve water allocations that exceed the allocations set by FORA or other appropriate agency of land use jurisdiction.

1.3 Sewer Capacity. The District provides sewer collection from customers and conveyance of those sewer flows to the Monterey Regional Water Pollution Control Agency's (MRWPCA) Regional Interceptor System which discharges to the MRWPCA Wastewater Treatment Plant (WWTP). Capacity within the WWTP for the Development must be coordinated with MRWPCA. To the extent possible, the District will allocate its existing pre-paid WWTP Capacity to the Development. If additional WWTP Capacity is required for the Development, the Developer shall purchase the capacity from the MRWPCA at the Developer's sole expense, and shall provide proof of payment for that capacity right to the District at the time the sewer infrastructure is conveyed. Furthermore, the Developer understands and agrees that nothing herein shall be construed as a representation of future sewer capacity by either City or District other than as currently established by the type and density of development as included in the FORA Consistency Determinations or other appropriate agency of land use jurisdiction.

1.4 District's Role. The District's role in the Development is to approve the plans for facilities, inspect the construction of the facilities, accept the transfer of the title to the facilities, to maintain and operate the systems, and to bill customers for water and sewer service at rates set for the District's Ord Service Area from time to time.

1.5 Term. This Agreement commences upon the above Effective Date and shall expire (a) two (2) years thereafter or (b) upon completion by the Developer and acceptance by the District of all facilities required by this Agreement and the required warranty period, whichever occurs first, unless terminated sooner as provided in section 17 of this Agreement.

2. Design and Construction Requirements

2.1 The facilities shall be designed, constructed and be operable in strict accordance with the District's requirements, which shall be a condition of the District's acceptance of the system facilities under this Agreement. The District's requirements include, but are not limited to the following:

2.1.1 Developer shall design and construct the facilities in strict accordance with the District's most recent Procedures and Standards in effect at the time of construction, (contained in updated Procedures) and any other applicable State Regulatory Agency requirements, whichever are most stringent. Any conflict in Development requirements shall be addressed during the plan review process or at such other times as any such conflict is discovered. A licensed civil engineer registered in the State of California shall prepare all plans and specifications for the Developer.

2.1.2 The Developer shall comply with the District's most recent Procedures and the District's most recent Standards in effect at the time of construction when submitting

project plans and specifications to the District for review and consideration for approval. District's review shall commence after the District determines compliance with District's Procedures regarding the submittals and any other applicable State Regulatory Agency requirements, whichever are most stringent. District review of the Development's plans and specifications shall commence after receipt of the initial deposit (see Paragraph 2.1.7). District may approve plans concurrent with the City's approval.

2.1.3 The Developer shall comply with most recent District Code in effect at the time of construction including, but not limited to, section 4.28 *Recycled Water*. More specifically, section 4.28.010 *Applicability* states that "[T]his chapter applies to publicly owned properties, to commercial, industrial and business properties, and to other such properties as may be specified from time to time by Marina Coast Water District … " Section 4.28 does not require the use of recycled water for irrigation to privately owned residential lots. Improvement plans for the Development must contain recycled water lines to serve common areas and other non-residential lot irrigation within the Development. The Developer and the District will cooperatively identify recycled water turnout location(s). The Developer will also install the lateral lines from each turnout. The Developer, or its successors or assignees (such as an owners association), will assist MCWD to obtain all required permits for the on-site use of recycled water. This shall include but is not limited to, complying with the California Department of Health Services, the State of California Regional Water Quality Control Board and other regulatory agency requirements prior to constructing any recycled water facilities.

2.1.4 The District shall have the right to inspect the construction of the facilities and verify that construction conforms to the Development plans and specifications. District's right to inspect extends to five (5) feet from the building exterior at the point where the utility enters the structure. The District shall also have the right to inspect special fixtures including, zero water use urinals, hot water recirculation systems, etc. The District's right to inspect does not in any way eliminate or supersede any inspection obligations by the City. The District will inform the Developer of required field changes. The Developer shall be responsible for obtaining all easements outside publicly dedicated rights of way. Upon receipt of recorded private easements to serve the Development in accordance with the plans and specifications approved by the District, the District will quitclaim any easements not required to serve the Development and not required by the District.

2.1.5 All facilities shall be tested to meet District requirements. No facilities or portion thereof will be accepted without meeting all District test requirements. The District shall have the right to inspect work in progress in the construction of either in-tract or out-of-tract water, recycled water and sewer infrastructure facilities or special fixtures, as described above.

2.1.6 Plan Review Fees. The Developer, on a phased basis, agrees to pay all fees and charges, including additional plan check fees and construction inspection fees as required by the District for the Development. These fees will be determined by the District at the time the fees are due and payable. The District may also require a prepaid fee to cover staff time before preliminary level or concept level plan check begins. (See *Procedures* section 100.6.2) If the District Engineer determines consultant assistance is required for

plan check review or portion thereof, the Developer agrees to prepay the additional plan check fees if that cost exceeds the balance on the initial deposit. The District shall obtain the Developer's written approval for any costs in excess of this amount, for which approval shall not be unreasonably withheld. Upon the execution of this Agreement by both parties, the Developer shall deposit with the District the applicable administration and plan check fees. Any surplus fees shall be returned to the Developer, or at Developer's request, held by the District and used to pay subsequent fees, e.g., construction inspection fees.

2.1.7 Construction Inspection Fees. On a phased basis, the District shall require the construction inspection fee before undertaking a construction inspection review of the proposed facilities. As a condition precedent to the District's obligation to undertake a construction inspection review of the proposed facilities, the Developer shall provide to the District the construction inspection fee, which is currently five hundred dollars ($500.00) per unit plus three percent (3%) of facilities construction costs, pursuant to Developer's Engineer's estimate. (See *Procedures* section 200.3.2) Any surplus inspection fees shall be returned to Developer.

3. Existing Water and Sewer Infrastructure

3.1 The Developer will comply with the District's *In-Tract Policy* regarding any water, recycled water and sewer mains or appurtenances within the Development. Developer, or its successors or assignees, shall assume all responsibility, and will hold District harmless, for all water/sewer infrastructures within the Development boundaries that will be removed or abandoned by Developer. Abandonment-in-place requires written approval by the District. The Developer shall be solely responsible for repair, replacement and maintenance of existing water and sewer facilities to remain within the Development boundaries during the construction of the Development, regardless of whether the facilities are for the benefit of the Development.

4. District to Serve Development

4.1 District will deliver water, recycled water and provide sewer service to the Development after final Board Acceptance of the conveyance of the facilities and final Board Acceptance of the facilities (see *Procedures* section 300.25). Thereafter, the District will bill and serve the end-user(s) directly. The Developer shall pay the prepayment of applicable meter fees and Capacity Charges, cross connection charges, and all other applicable fees and charges for service on the former Fort Ord (or City, as the case may be). Once the applicable fees and charges are determined and paid in full, the District will immediately begin water service with the installation of the water meter(s). The District shall provide sewer service upon installation of water meters and payment of all applicable fees. The District's obligations in this section are subject to District's rules, regulations, policies and ordinances, which may be updated from time to time.

5. Capacity Charge

5.1 The current capacity charges as of 1/14/2016 for water and sewer services are $8,010.00 per EDU and $3,322.00 per EDU, respectively. These charges are due prior the installation of water meters. The District Board of Directors reserves its right to review and revise these

charges from time to time subject to applicable law and the District's approval procedures for such charges. Developer agrees to pay the capacity charge in effect at the time of providing services.

6. Provision for Non-Potable Water Use

6.1 Based upon existing studies, the District does not have sufficient existing firm water supplies to meet the water demands of projected developments within the District's service area. The District has investigated a recycled water project, a desalination project, and a combination of those projects to meet future water demands within the District. Therefore, improvement plans must be compatible with and anticipate the availability of a non-potable water supply to serve common area open spaces within the Development, as permitted by applicable laws and regulations.

6.2 Developer, and its successors or assignees (such as an owners association), agrees to take recycled water for non-potable use if and when it becomes available. The District shall establish a separate cost for recycled water in the same manner that it establishes the cost of potable water. Developer, or its successors or assignees agree that the District-established cost will be paid by the recycled water customers.

7. Licensed Contractor

7.1 The Developer, or his authorized representative (contractor, or subcontractors as the case may be) performing the work, shall be licensed under the provisions of the Business and Professions Code of the State of California to perform the specified work required for the Development. District reserves the right to waive this requirement at its sole discretion where permitted under state statute.

7.2 The Developer, or its contractor, shall be skilled and regularly engaged in the installation of water, recycled and sewer systems. The District may request evidence that the constructing party has satisfactorily installed other projects of like magnitude or comparable difficulty. Upon request, contractors must furnish evidence of their qualifications to do the work in a form suitable to the District prior to the commencement of any work on the facilities.

8. Permits, Easements, and Related Costs

8.1 Except as otherwise provided in this Agreement, the Developer shall obtain all necessary local, county and state permits (including encroachment permits) and conform to requirements thereof. Developer shall obtain all easements (excluding easements within existing public rights of way) necessary for ingress and egress to and from the facilities for the purpose of installation, operation, maintenance, replacement and removal of said facilities and for the location of the facilities. Pipeline easements shall be 20 feet in width or as otherwise agreed by the District Engineer and Developer. Easements shall be in a form approved by the District and it shall be the Developer's responsibility to have the approved easements recorded. Developer shall provide proof of recordation of the easements, in a form satisfactory to the District, prior to the District's obligation to provide any of the services contemplated by this Agreement.

9. Final Inspection and Reimbursement of District Costs

9.1 The District's Engineer must inspect completed facilities, or portion thereof. The District

will not accept any facility until its Engineer has given written approval that it satisfies the District's requirements. Developer shall be responsible for all costs incurred by the District that are associated with interim and final inspection, completion, additional construction, and testing of the facilities, subject to the limitations set forth in Paragraph 2 *Design and Construction* Requirements. Developer shall reimburse District for costs to correct any damages to facilities related to the construction of the Development caused by the Developer or any authorized representative (developer's contractor). This reimbursement obligation is limited to the warranty period described in paragraph 15 *Warranties*. Developer shall remit to District prior to the conveyance of the facilities to the District, payment of all costs due and unpaid under this Agreement over and above deposits previously paid to the District. If there are surplus deposit funds or any refunds due Developer, then District shall return to Developer the amount of such surplus or refunds upon acceptance by the District of all facilities required to be constructed under this Agreement.

10. District's Non-responsibility for Acts or Omissions of Developer, etc.; Developer Responsible for Verifying Underground Utility Lines and Surface Obstructions

10.1 The District is not responsible for, and does not assume any responsibility or liability whatsoever for, acts and omissions of the Developer, Developer's contractors or any contractor's subcontractors or suppliers at any tier during the design and construction of the facilities. Any location of underground utility lines or surface obstructions given to the Developer or placed on the project drawing by District are for the Developer's convenience, and must be verified by Developer in the field. The District assumes no responsibility for the sufficiency or accuracy of such information, lines, or obstructions.

11. As-Built Plans, Specifications, Values, Etc.

11.1 Developer shall, as a condition of District's acceptance of the facilities, provide to the District in accordance with Section 400.13 of the *Procedures* the following:

11.1.1 One set each of Mylar drawing prints and AutoCAD digitized files of the improvement plans, which show all of the facilities, and one hardcopy and one electronic copy of the specifications, and one hardcopy and one electronic copy of any contract documents used for the construction of the water, sewer and recycled water system facilities. Scanned and signed copies in Adobe Acrobat format are also required.

11.1.2 One hardcopy and one electronic copy of a complete, detailed statement of account, the form and content to be provided by the District at the time of conveyance, of the amounts expended for the installation and construction of the facilities, with values applicable to the various components thereof, together with a list of any other materials and equipment (and their values) being transferred.

11.1.3 Any other documents required by Section 400.13 of the *Procedures*.

12. Indemnity, Insurance, and Sureties

12.1 Indemnity and Insurance - The Developer agrees to have every Contractor performing

work on the Facilities fully comply with the all of the requirements in Exhibit D. To the extent that any indemnity or insurance coverage provided by any such Contractor does not fully indemnify the District for any and all claims as defined in Exhibit D, Developer agrees to indemnify, hold harmless, and defend the District, its directors, officers, employees, representatives, and authorized volunteers. Coverages required by Exhibit D shall be maintained throughout the term of this Agreement. Every Contractor shall file with the District prior to the commencement of any work under this Agreement, and as policy renewals occur, Certificates of Insurance evidencing that the insurance coverages required herein have been obtained and are currently in full force and effect.

12.2 Performance and Payment Surety - Developer or its Contractor, as the case may be, shall furnish the District with a surety to secure the completion of and payment for the facilities. The amount of the performance surety shall not be less than 100% of the District's estimate of the total cost to construct all of the facilities required under this Agreement. The amount of the payment surety shall not be less than 100% of the District's estimate of the total cost to construct all of the facilities required under this Agreement. The surety instrument shall be in a form satisfactory to the District such as a performance and payment bond, irrevocable letter of credit, cash deposit, or irrevocable construction "set-aside" letter. Such surety may include evidence that it was submitted to another public agency of an equivalent or greater amount covering the work to be done under this Agreement. Each surety must be authorized in the State of California to issue the surety instrument provided. All surety instruments signed by an agent must be accompanied by a certified copy of the agent's authority to act.

12.3 Developer shall furnish the District with a Warranty bond or other surety instrument satisfactory to the District in the amount equal to twenty percent (20%) of the actual construction costs to secure the Developer's performance under Section 15, Warranties.

12.4 Submittal of Insurance Certificates and Surety - The required insurance certificates shall be delivered prior to commencement of construction. The required performance and payment surety shall be delivered to the District prior to District approval of plans and specifications. No work may be commenced under this Agreement unless and until all required insurance certificates and performance and payment sureties are submitted to and approved by the District. The Warranty surety shall be provided prior to the District's acceptance of the facilities, and shall remain in effect for the duration specified in Section 15.1.

12.5 The performance surety shall remain in effect until final acceptance of the facilities by the District in accordance with Section 13.1. The payment surety shall remain in effect until the last of the following occur: (i) the statutory time has expired to commence a legal action on the payment surety and no legal action was filed, (ii) satisfaction of all judgments against the payment surety, and (iii) as otherwise provided by law. The warranty surety shall remain in effect until all warranties under this Agreement have expired.

13. Transfer of System Facilities to District after Completion

13.1 Developer shall execute and obtain all signatures of all other parties having any interest (including any Deed of Trust), and deliver a conveyance satisfactory in form and content to District. This conveyance shall transfer unencumbered ownership of all facilities required by this Agreement to the District together with all real property, interests in real property, easements and rights-of-ways (including any off-site easements or real property) other than those contained

in public rights of way, and all overlying and other underground water rights that are a part of, appurtenant to, or belonging to the Development now or hereafter served by the water, sewer and recycled water system facilities that are necessary or appropriate in the opinion of the District for the ownership and operation of the facilities. Provided all conditions set forth in this Agreement are satisfied, the District shall accept the conveyance. All costs of construction of the facilities, for which the Developer is responsible, shall have been paid for by Developer, the time for release of the payment surety under Section 12.5 shall have expired (or Developer shall provide other security acceptable to the District), and the title to all of the facilities and the interests in real property transferred shall be good, clear and marketable title, free and clear of all encumbrances, liens or charges. Developer shall pay costs of any title insurance deemed necessary by the District and is reasonable and customary for the insured transaction type. All construction, including final inspection punch list items must be completed prior to transfer, and the transfer shall not be completed until the conveyance transferring the water, sewer and recycled water system facilities has been formally accepted by the District. After transfer, the District shall own and be free in every respect to operate and manage the facilities and to expand or improve, or interconnect the facilities with other adjacent facilities, as the District deems appropriate in its sole discretion.

14. Developer Assistance

14.1 Developer shall, both before and after the transfer, secure and provide any information or data reasonably needed by District to take over the ownership, operation and maintenance of the facilities.

15. Warranties

15.1 Developer hereby warrants that as of the time of the District's acceptance of the conveyance of the facilities (or when Developer thereafter completes the installation of any works or components subsequently installed, repaired, or replaced) the facilities and all components thereof, will be in satisfactory working order and quality and free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier; and that the facilities and all components thereof have been constructed and installed in compliance with all approved specifications and as-built plans being provided to the District, and in accordance with applicable requirements of the District and any other governmental agency having jurisdiction. Developer also warrants that as of the time of the District's acceptance of the conveyance of the facilities (or when Developer thereafter completes the installation of any works or components subsequently installed, repaired, or replaced) the facilities will operate in good and sufficient manner for the purposes intended for (a) one (1) year after the latter of (i) the date of acceptance, (ii) the expiration of all lien enforcement periods, or (iii) proof of conveyance of facilities, or (b) 180-days from the date new facilities are subsequently re-installed, repaired, or replaced and inspected and accepted by the District (hereafter *replacement facilities*), whichever of (a) or (b) occurs last. The Developer shall remedy at the Developer's expense any failure to conform with any applicable requirement of the District, by any Contractor or any subcontractor or supplier at any tier, or any defect. If the Developer fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice by the District or any other person or entity, the District shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Developer's expense

and the Developer shall indemnify District for all such costs (including District's own labor costs) incurred.

15.2 With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this Agreement, the Contractor shall:

(1) Obtain all warranties that would be given in normal commercial practice;

(2) Require all warranties to be executed, in writing, for the benefit of the District, if directed by the District; and

(3) Enforce all warranties for the benefit of the District, if directed by the District.

In the event any warranty under this section has expired, the District may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.

15.3 This Section 15 shall not limit the District's rights under the law with respect to latent defects, gross mistakes, or fraud.

16. No Water, Recycled Water and Sewer Service Prior to Completion and Transfer

16.1 The Developer shall not allow any occupant or person to commence operations or use of any part of the facilities without the express written consent of the District. Such consent may not be unreasonably withheld. District may impose conditions or restrictions upon any consent to such prior service, such as posting a surety bond. District recognizes that the Development, and hence the facilities, may be built, accepted and transferred in multiple phases. Notwithstanding any of the foregoing, Developer may use the facilities before they are accepted for fire protection and construction purposes in all phases, subject to satisfaction of applicable testing.

17. Performance

17.1 Developer agrees to promptly design and construct the facilities and, transfer the same to the District in accordance with the terms of this Agreement. If construction of the facilities have not been completed and accepted by District within ~~twenty four (24)~~ thirty six (36) months from the date of execution of this Agreement (such date may be extended for delays beyond Developer's control and without the fault or negligence or of the Developer or any Contractor or subcontractor or supplier at any tier, but in no event shall such delay exceed ~~twelve (12)~~ eighteen (18) additional months), the District shall have the option to terminate this Agreement. If construction on any phase is not complete within twenty-four months or as extended as provided above, then an Amendment to this Agreement will be necessary to address each such phase, which shall incorporate the policies, fees and charges of the District then in effect as of the effective date of said Amendment. Subsequent phases also may at District's discretion be addressed by Amendment(s) to this Agreement.

17.2 Responsibility for Work - Until the completion and final acceptance by the District of all the work under and implied by this Agreement, the Developer will require the work to be under the Contractor's responsible care and charge. The Contractor shall rebuild, repair, restore and make good all injuries, damages, re-erections, and repairs occasioned or rendered necessary by causes of any nature whatsoever.

18. Assignment

18.1 Neither party may assign their rights or obligations under this Agreement within its term without the written consent of the other party.

18.2 Provisions of water delivery, recycled water delivery, and sewer service will be deemed assigned to each property owner upon acquisition of his/her commercial and/or residential unit in the Development. Upon assignment, the Developer's responsibilities relating to recycled water facilities, use and approvals will become the assignee's responsibility. This provision will cease to have any effect when the District accepts title to the water facilities or the Agreement is terminated.

19. Dispute Resolution Procedure

19.1 Disputes arising under this Agreement shall be resolved as provided in this section.

19.2 Prevention of Disputes/Meet and confer - The parties agree that they share an interest in preventing misunderstandings that could become claims against one another under this agreement. The parties agree to attempt to identify and discuss in advance any areas of potential misunderstanding that could lead to a dispute. If either party identifies an issue of disagreement, the parties agree to engage in a face-to-face discussion of the matter within three (3) calendar days of the initial request. If the dispute cannot be negotiated between the parties, the matter shall first be brought to the attention of the District's Board of Directors at the first available regularly scheduled Board Meeting. As a contract dispute, the matter shall be considered by the District Board of Directors in closed session under the Brown Act without the Developer or Contractor in attendance. If any disagreement remains unresolved for ten (10) days after consideration by the District Board of Directors, the parties agree to submit it to mediation as provided in Section 19.3 below.

19.3 Mediation - Either party may demand, and shall be entitled to, mediation of any dispute arising under this agreement at any time after completing the meet and confer process described in subsection 19.2 Mediation shall commence not more than ten (10) days after the initial mediation demand and must be concluded not more than thirty (30) days after the date of the first mediation demand. If mediation is not concluded within that time, then either party may demand arbitration as set forth in Section 19.4.

Mediation shall be submitted first to a mediator with at least ten years experience with the issues in dispute. The mediator shall be selected by mutual agreement of the parties. Failing such mutual agreement, a mediator shall be selected by the presiding judge of the Monterey County Superior Court. In the interest of promoting resolution of the dispute, nothing said, done or produced by either party at the mediation may be discussed or repeated outside of the mediation or offered as evidence in any subsequent proceeding. The parties acknowledge the confidentiality of mediation as required by Evidence Code 1152.5.

No mediator shall submit, and no arbitrator or court shall consider, any mediator recommendations, declarations, or findings unless the parties give their written consent to the proposed mediator statement.

19.4 Arbitration - If mediation fails to resolve the dispute, the parties shall select an arbitrator by mutual agreement. Failing such agreement, the arbitrator shall be selected by the Presiding Judge of the Superior Court. The decision of the arbitrator shall be final and not subject to judicial litigation.

Arbitration shall be commenced within thirty (30) days of the arbitration demand and concluded within 60 days of arbitration demand.

Arbitration shall follow the so-called "baseball arbitration" rule in which the arbitrator is required to select an award from among the final offers presented by the contending parties. The arbitrator may not render an award that compromises between the final offers.

Unless the arbitrator selects another set of rules, the arbitration shall be conducted under the J.A.M.S. Endispute Streamlined Arbitration Rules and Procedures, but not necessarily under the auspices of J.A.M.S. Upon mutual agreement, the parties may agree to arbitrate under an alternative scheme or statute. The Arbitrator may award damages according to proof. Judgment may be entered on the arbitrator's award in any court of competent jurisdiction.

NOTICE: IN AGREEING TO THE FOREGOING PROVISION, YOU ARE WAIVING YOUR RIGHT TO HAVE YOUR RIGHTS UNDER THIS AGREEMENT TRIED IN A COURT OF LAW OR EQUITY. THAT MEANS YOU ARE GIVING UP YOUR RIGHT TO TRIAL BY JUDGE OR JURY. YOU ARE ALSO GIVING UP YOUR RIGHT TO DISCOVERY AND APPEAL EXCEPT AS PROVIDED IN THE ARBITRATION RULES. IF YOU REFUSE TO ARBITRATE YOUR DISPUTE AFTER A PROPER DEMAND FOR ARBITRATION HAS BEEN MADE, YOU CAN BE FORCED TO ARBITRATE OR HAVE AN AWARD ENTERED AGAINST YOU BY DEFAULT. YOUR AGREEMENT TO ARBITRATE IS VOLUNTARY.

BY INITIALING THIS PROVISION BELOW, THE PARTIES AFFIRM THAT THEY HAVE READ AND UNDERSTOOD THE FOREGOING ARBITRATION PROVISIONS AND AGREE TO SUBMIT ANY DISPUTES UNDER THIS AGREEMENT TO NEUTRAL BINDING ARBITRATION AS PROVIDED IN THIS AGREEMENT.

MCWD s' INITIALS_____ SSL, LLC'S: INITIALS_____

20. Waiver of Rights

20.1 Waiver. No waiver of any breach or default by either party shall be considered to be a waiver of any other breach or default. The waiver by any party for the time for performing any act shall not constitute a waiver of the time for performing any other act or an identical act to be performed at a later time. None of the covenants or other provisions in this Agreement can be waived except by written consent of the waiving party.

21. Notices

21.1 All notices, demands, or other communications, which this Agreement contemplates or

authorizes, shall be in writing and shall be personally delivered, or mailed by certified mail, return receipt requested, or delivered by reliable overnight courier, to the respective party as follows:

To District: Marina Coast Water District
Attn: General Manager
11 Reservation Road
Marina, California 93933

To Developer: Seaside Senior Living, LLC
Attn: Eric Jacobsen, Managing Member
560 First Street, Suite 104,
Lake Oswego, OR 97034,

21.2 The address to which notice may be sent may be changed by written notification of each party to the other as above provided.

22. Severability

22.1 If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such illegal, unenforceable, or invalid provisions or part thereof shall be stricken from this Agreement. Stricken provisions shall not affect the legality, enforceability, or validity of the remainder of this Agreement so long as the stricken provision is replaced with a legal, enforceable and valid provision that conforms with the allocation of benefits and burdens to the respective parties and intent of the parties as expressed herein.

23. Paragraph Headings

23.1 Paragraph headings are for convenience only and are not to be construed as limiting or amplifying the terms of this Agreement in any way.

24. Successors and Assignees

24.1 This Agreement shall be binding on and benefit the assignees or successors to this Agreement in the same manner as the original parties hereto.

25. Integrated Agreement

25.1 This Agreement integrates and supersedes all prior and contemporaneous Agreements and understandings concerning the subject matter herein. This Agreement constitutes the sole agreement of the parties and correctly sets forth the rights, duties and obligations of each to the others. Future amendments must be in writing signed by the parties. Any prior agreements, promises, negotiations or representations not expressly set forth in this Agreement are of no force and effect.

26. Negotiated Agreement

26.1 This Agreement has been arrived at through negotiation between the parties. Neither

party is deemed the party that prepared the Agreement within the meaning of Civil Code Section 1654.

27. Attorneys Fees

27.1 If arbitration or suit is brought to enforce or interpret any part of this Agreement, the prevailing party shall be entitled to recover as an element of costs of suit, and not as damages, a reasonable attorneys' fee to be fixed by the arbitrator or Court, in addition to any other relief granted. The "prevailing party" shall be the party entitled to recover costs of suit, whether or not the suit proceeds to arbitrator's award or judgment. A party not entitled to recover costs shall not recover attorneys' fees. No sum for attorneys' fees shall be counted in calculating the amount of an award or judgment for purposes of determining whether a party is entitled to recover costs or attorneys' fees.

27.2 If either party initiates litigation without first participating in good faith in the alternative forms of dispute resolution specified in this Agreement, that party shall not be entitled to recover any amount as attorneys' fees or costs of suit even if such entitlement is established by statute.

28. Exhibits

28.1 All exhibits referred to in this Agreement and attached to this Agreement are incorporated in this Agreement by reference.

29. Disclaimer/Indemnity Regarding Public Works

29.1 District has not determined whether the project would be considered a "Public Works" project for the purposes of California law, and makes no warranties or representations to Developer about whether the project would be considered a "Public Works" project. Developer is aware that if the project is considered a "Public Works" project, then Developer would have to pay "prevailing wages" under California Labor Code section 1771. If Developer fails to pay such prevailing wages, Developer acknowledges that it will be liable to, among other things, pay any shortfall owed as well as any penalties that might be assessed for failure to comply with the law. If Developer does not pay prevailing wages, and an action or proceeding of any kind or nature is brought against the District based on such failure, Developer will defend and indemnify District in the action or proceeding. District agrees to reasonably cooperate and assist Developer in any the defense of any such action.

30. No Third Party Beneficiaries

30.1 There are no intended third party beneficiaries to this Agreement.

31. Compliance with Laws

31.1 Developer will comply with all laws, rules and regulations in carrying out its obligations under this Agreement.

32. Counterparts

32.1 This Agreement may be executed in counterparts, and each fully executed counterpart shall be deemed an original document.

By: Seaside Senior Living, LLC

_____

Eric W. Jacobsen, Managing Member
Seaside Senior Living, LLC

By MARINA COAST WATER DISTRICT

_____

General Manager
Marina Coast Water District

EXHIBIT-A

WATER ALLOCATION DOCUMENTATION

RESOLUTION NO. 18-07

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEASIDE

AUTHORIZING ALLOCATION OF FORT ORD WATER TO THE SEASIDE SENIOR LIVING PROJECT

WHEREAS, the City of Seaside has a total water allocation of 1,012 acre-feet from the former Fort Ord; and

WHEREAS, the City has issued 289.64 acre-feet of water for residential, commercial and institutional development on the former Fort Ord properties; and

WHEREAS, the City has entered into a Development and Disposition Agreement requiring the allocation of 40 acre-feet of the former Fort Ord water supply to the Seaside Senior Living, LLC project; and

WHEREAS, the City desires a "Memory Care" and Assisted Living Project on the property subject to the aforementioned Development and Disposition Agreement; and

NOW THEREFORE BE IT RESOLVED, by the City Council of the City of Seaside allocate forty (40) acre-feet of water from the former Fort Ord water supply to the Seaside Senior Living, LLC project.

PASSED AND ADOPTED at the regular meeting of the City Council of the City of Seaside, State of California, duly held on the 15th day of February, 2018, by the following votes:

AYES:	5	COUNCIL MEMBERS: Alexander, Campbell, Jones, Pacheco, Rubio
NOES:	0	COUNCIL MEMBERS: None
ABSENT:	0	COUNCIL MEMBERS: None
ABSTAIN:	0	COUNCIL MEMBERS: None

Ralph Rubio, Mayor

ATTEST:

Lesley Milton-Rerig, City Clerk

EXHIBIT B-1

LEGAL DESCRIPTION

EXHIBIT B-1

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SEASIDE, OF COUNTY OF MONTEREY, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS (SEE EXHIBIT B.2):

Beginning at the most southerly corner of that certain Parcel 2 (199.016 AC.), said corner is shown and so designated as boundary corner No. 12, as said corner and parcel are shown on that certain Record of Survey showing Boundary of 11 Parcels...etc., filed in Volume 21 of Surveys, at Page 83, Records of Monterey County, California; thence along the southerly boundary of said parcel,

(1) N. 50° 59' 14" W., 491.14 feet to boundary corner No. 13, said corner and designation is shown on said map; thence leaving said boundary and continuing along the easterly right-of-way line of State Highway No. 1,

(2) S. 39° 00' 45" W., 665.41 feet; thence

(3) S. 45° 32' 23" W., 88.00 feet; thence

(4) S. 39° 02' 05" W., 120.00 feet; thence leaving said right-of-way line and running tangentially,

(5) Northeasterly, 336.66 feet along the arc of a tangent curve to the right having a radius of 605.00 feet; through a central angle of 31° 52' 59"; thence tangentially,

(6) N. 83° 50' 50" E., 173.72 feet; thence tangentially

(7) Northeasterly, 257.28 feet along the arc of a tangent curve to the left having a radius of 570.00 feet, through a central angle of 35° 51' 43",

(8) N. 57° 59' 07" E., 256.24 feet to the Point of Beginning.

Excepting therefrom mineral rights that Grantor owns presently or may at a future date be determined to own, below 500 feet below the surface, with the right of surface entry in a manner that does not unreasonably interfere with Grantee's, its successors, assigns, permittees, or lessees, development and quiet enjoyment of the Properties, as set forth in the "Quitclaim Deed" executed by United States of America, recorded July 25, 2002, Instrument No. 2002068591, Official Records.

APN: 031-141-004

(Title No. 11-52506017 • Locate Number CACTI7727-7727-4525-0052506017)

EXHIBIT B-2

SURVEY MAP

EXHIBIT B-2
SURVEY MAP

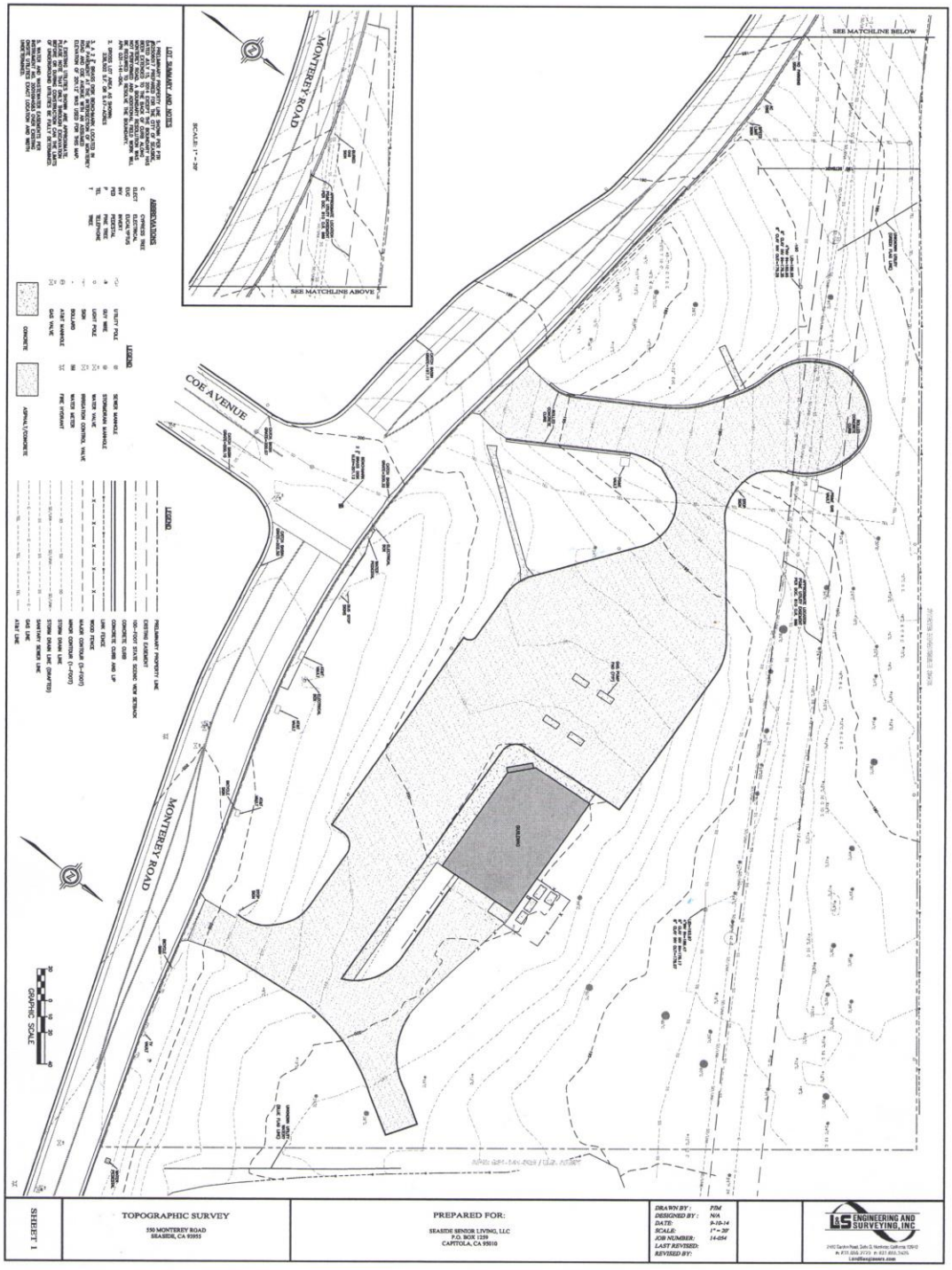


EXHIBIT C-1

PROJECT LOCATION MAP

EXHIBIT C-1

PROJECT LOCATION MAP

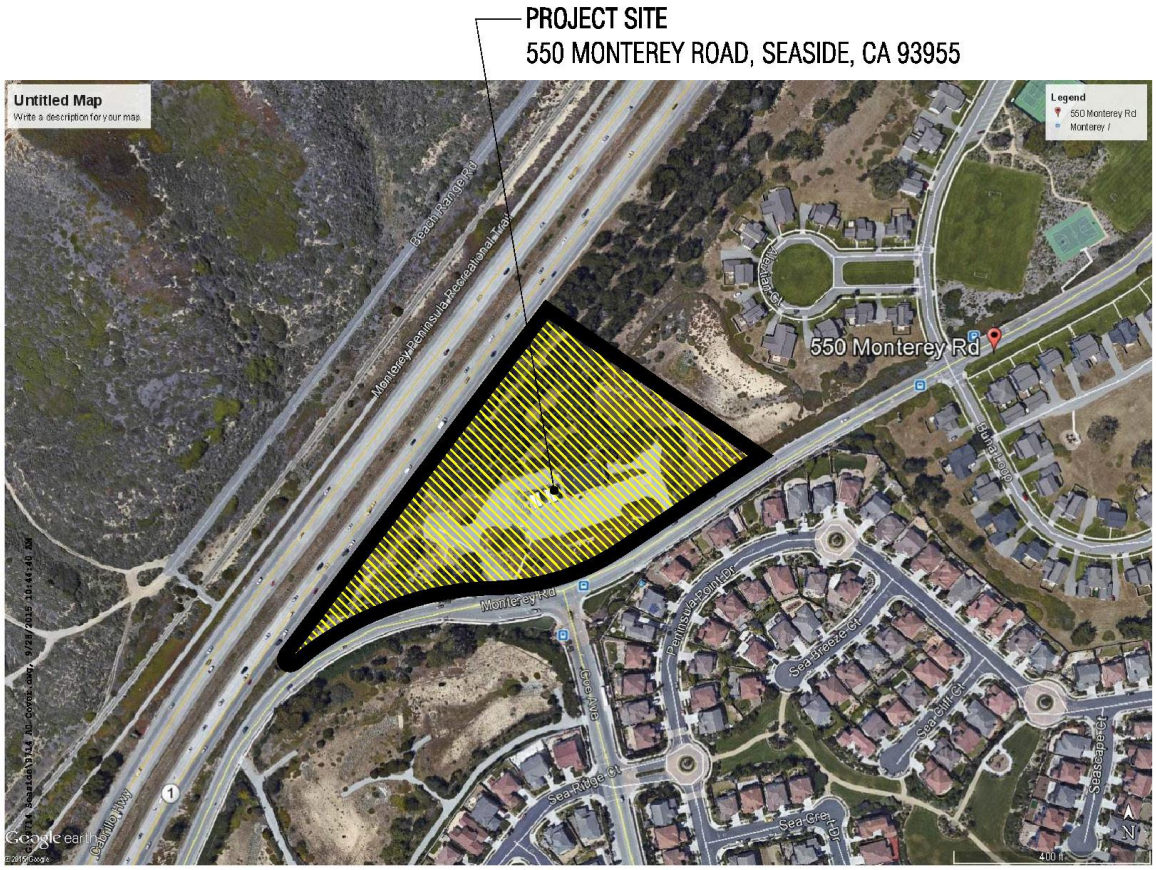
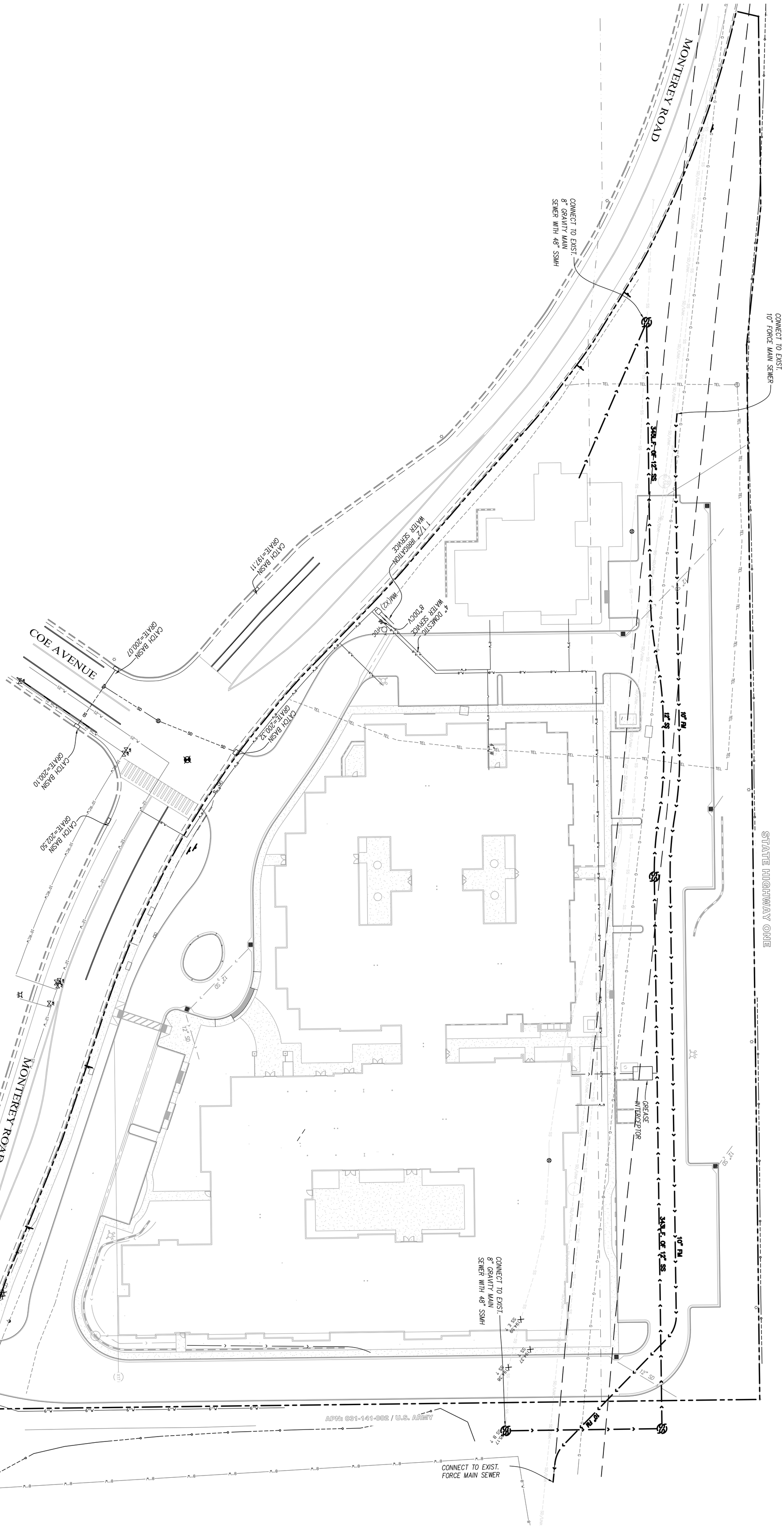


EXHIBIT C-2

MAP OF DEVELOPMENT



SHEET OF C8 SHEETS

PLAN PREPARED BY:

SEASIDE SENIOR LIVING, LLC

560 First Street, Suite 104
Lake Oswego, Oregon 97034
503-675-3925

DATE:	REVISION
11/28/14	REVISED SUBMISSION
06/25/15	REVISED SUBMISSION
01/04/16	REVISED SUBMISSION
03/25/16	REVISED SUBMISSION

APN: 031-141-004

USE PERMIT # 14-05
BAR PERMIT # 14-20

SEASIDE SENIOR LIVING

550 MONTEREY ROAD, SEASIDE, CA 93955

PROPOSED UTILITIES

JOE L. AKERS
CIVIL ENGINEER
830-E BAY AVE. CAPITOLA, CA 95010 (831) 475-6557

REGISTERED PROFESSIONAL ENGINEER
JOE L. AKERS
No. 20372
CIVIL
STATE OF CALIFORNIA

EXHIBIT D

INDEMNIFICATION AND INSURANCE REQUIREMENTS
For Infrastructure Agreements

EXHIBIT D

INDEMNIFICATION AND INSURANCE REQUIREMENTS
For Infrastructure Agreements

1. Workers' Compensation and Employer's Liability Insurance -

a. The Developer shall require every Contractor to certify that it and all of its subcontractors are aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing the performance of any work under this Agreement.

b. The Developer shall require every Contractor and all sub-contractors to insure (or be a qualified self-insured) under the applicable laws relating to workers' compensation insurance, all of their employees working on or about the construction site, in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any Acts amendatory thereof.

c. The Contractor shall provide employer's liability insurance in the amount of at least $1,000,000 per accident for bodily injury and disease.

2. Definitions – For purposes of this Exhibit, the following terms shall have the following respective meanings:
"Claim" - shall be used collectively to refer to and include any and all claims, demands, causes of action, damages, costs, attorneys' fees, expert fees, court costs, expenses, penalties, losses or liabilities, in law or in equity, of every kind and nature whatsoever.

3. Indemnification - To the fullest extent permitted by law, the Developer will require every Contractor to indemnify, hold harmless, and defend District, its directors, officers, employees, representatives, and authorized volunteers (collectively, the "indemnitees"), and each of them from and against:

a. Any claim, including, but not limited to, injury to or death of any person including District and/or Contractor, or any directors, officers, employees, or authorized volunteers of District or Contractor, and damages to or destruction of property of any person, including but not limited to, District and/or Contractor or their directors, officers, employees, or authorized volunteers, arising out of or in any manner directly or indirectly connected with the work to be performed under this agreement, however caused, regardless of any negligence of District or its directors, officers, employees, or authorized volunteers, except to the extent caused by the sole negligence or willful misconduct or active negligence of District or its directors, officers, employees, or authorized volunteers;

b. Any claim arising out of, resulting from, or relating in any way to a violation of any governmental law or regulation, compliance with which is the responsibility of the

Contractor;

c. Any claims (including damages to the work itself), attorneys' fees, and other costs, including all costs of defense, which any indemnitee may incur with respect to the failure, neglect, or refusal of Contractor to faithfully perform the work and all of the Contractor's obligations to the Developer for work to be performed under this Agreement. Such costs, expenses, and damages shall include all costs, including attorneys' fees, expert fees, and court costs, incurred by an indemnitee in any lawsuit to which the indemnitee is a party.

d. Contractor acknowledges and understands that the area in and around which the work will be performed has been identified as a possible location of munitions and explosives of concern ("MEC"). All indemnification obligations of Contractor under this Agreement shall specifically include any claim involving, arising out of or related to MEC.

The Developer will require their Contractor to pay and satisfy any judgment, award or decree that may be rendered against District or its directors, officers, employees, or authorized volunteers, relating to any claim.

The Developer will require their Contractor to reimburse District or its directors, officers, employees, or authorized volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.

Contractor's indemnification obligation shall not be limited to the proceeds, if any, received by the District, or its directors, officers, employees or authorized volunteers from any insurance required to be provided under this Agreement.

4. Commercial General Liability and Automobile Liability Insurance - The Developer will require their Contractor to provide and maintain the following commercial general liability and automobile liability insurance:

Coverage - Coverage for commercial general liability and automobile liability insurance shall be at least as broad as the following:

1. Insurance Services Office Commercial ***General Liability*** Coverage (Occurrence Form CG 0001)

2. Insurance Services Office ***Automobile Liability*** Coverage (Form CA 0001), covering Symbol 1 (any auto) (owned, non-owned and hired automobiles)

Limits - The Consultant shall maintain limits no less than the following:

1. ***General Liability*** - Two million dollars ($2,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit or products-completed operations aggregate limit is used, either the general aggregate limit shall apply separately to the project/location (with the ISO

CG 2503, or ISO CG 2504, or insurer's equivalent endorsement provided to the District) or the general aggregate limit and products-completed operations aggregate limit shall be twice the required occurrence limit.

2. ***Automobile Liability*** - One million dollars ($1,000,000) for bodily injury and property damage each accident limit.

Required Provisions - The general liability and automobile liability policies are to contain, or be endorsed to contain the following provisions:

1. The District, its directors, officers, employees, or authorized volunteers are to be given insured status (via ISO endorsement CG 2010, CG 2033, or insurer's equivalent for general liability coverage) as respects: liability arising out of activities performed by or on behalf of the Contractors; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the District, its directors, officers, employees, or authorized volunteers.

2. For any claims related to this project, the Contractor's insurance shall be primary insurance as respects the District, its directors, officers, employees, or authorized volunteers. Any insurance, self-insurance, or other coverage maintained by the District, its directors, officers, employees, or authorized volunteers shall not contribute to it.

3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the District, its directors, officers, employees, or authorized volunteers.

4. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5. Each insurance policy required by this clause shall state or be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days (10 days for non-payment of premium) prior written notice by U.S. mail has been given to the District.

Such liability insurance shall indemnify the Contractor and his/her sub-contractors against loss from liability imposed by law upon, or assumed under contract by, the Contractor or his/her sub-contractors for damages on account of such bodily injury (including death), property damage, personal injury and completed operations and products liability.

The general liability policy shall cover bodily injury and property damage liability, owned and non-owned equipment, blanket contractual liability, completed operations liability, explosion, collapse, underground excavation and removal of lateral support.

The automobile liability policy shall cover all owned, non-owned, and hired automobiles.

All of the insurance shall be provided on policy forms and through companies satisfactory to the District.

5. Deductibles and Self-Insured Retentions - Any deductible or self-insured retention must be disclosed in writing to and approved by the District.

6. Acceptability of Insurers - Insurance is to be placed with insurers having a current A.M. Best rating of no less than A-:VII or equivalent or as otherwise approved by the District.

7. Munitions and Explosives Coverage (MEC) - The Developer will require their Contractor to maintain insurance that includes coverage for services and work in or around MEC, or claims, damage or injury related in any way to this Agreement which arise from MEC. The Marina Coast Water District, its officers, directors and employees and any of its authorized representatives and volunteers shall be named as additional insureds under all insurance maintained by Contractor related in any way to work performed by it on behalf of the Marina Coast Water District.

8. Builder's Risk Insurance - The Developer or the Developer's Contractor will provide and maintain builder's risk insurance (or installation floater) covering all risks of direct physical loss, damage or destruction to the work in the amount specified by the District, to insure against such losses until final acceptance of the work by the District. Such insurance shall include[1] explosion, collapse, underground excavation and removal of lateral support. The District shall be a named insured on any such policy. The making of progress payments to the Contractor by the Developer shall not be construed as creating an insurable interest by or for the District or be construed as relieving the Contractor or his/her subcontractors of responsibility for loss from any direct physical loss, damage or destruction occurring prior to final acceptance of the work by the District.

9. Waiver of Rights of Subrogation - The Developer will require their Contractor's insurer to waive all rights of subrogation against the District, its directors, officers, employees, or authorized volunteers.

10. Evidences of Insurance - Prior to the commencement of construction activities under this Agreement, the Developer will require their Contractor to file with the District a certificate of insurance (Accord Form 25-S or equivalent) signed by the insurer's representative. Such evidence shall include an original copy of the additional insured endorsement signed by the insurer's representative. Such evidence shall also include confirmation that coverage includes or has been modified to include Required Provisions 1-5.

The Developer will require their Contractor, upon demand of the District, to deliver to the District such policy or policies of insurance and the receipts for payment of premiums thereon.

All insurance correspondence, certificates, binders, etc., shall be mailed to:

Marina Coast Water District
11 Reservation Road
Marina, CA 93933
Attn: Management Services Administrator

11. Sub-Contractors' Required Insurance Requirements - In the event that the Contractor employs sub-contractors as part of the work to be performed under this Agreement, it shall be the Developer's responsibility to require and confirm that every Contractor requires each of its sub-contractor to meet the same minimum insurance requirements specified in this Exhibit for every Contractor.