



**TOWN OF DISCOVERY BAY  
COMMUNITY SERVICES DISTRICT  
ORDINANCE NO. 19**

**AN ORDINANCE OF THE TOWN OF DISCOVERY BAY  
COMMUNITY SERVICES DISTRICT (CSD)  
ESTABLISHING A REIMBURSEMENT AGREEMENT  
FOR DISCOVERY BAY WEST AND  
ESTABLISHING REIMBURSEMENT CHARGES  
FOR USERS OF EXCESS CAPACITY**

**BE IT ORDAINED** by the Board of Directors of the Town of Discovery Bay CSD as follows:

**WHEREAS**, Hofmann Land Development Company, a California Corporation, and Fallman Land Investment Co., a California Corporation (collectively "Developer"), pursuant to the Discovery Bay West Service Agreement, dated November 18, 1998 ("Service Agreement"), between Developer's predecessor-in-interest and the Town of Discovery Bay CSD ("Town"), are constructing and will construct sewer and water facilities to serve the development known as Discovery Bay West; and

**WHEREAS**, pursuant to the Service Agreement, Discovery Bay West shall comprise 2,000 equivalent dwelling units ("EDU"); and

**WHEREAS**, pursuant to the Service Agreement, Developer is constructing facilities sufficient in size to service not only the 2,000 EDU of Discovery Bay West, but 322 EDU, in addition (such 322 EDU being hereafter called "excess capacity"); and

**WHEREAS**, the users of such excess capacity receive the benefit of Developer's construction and creation of excess capacity; and

**WHEREAS**, Developer is entitled to be reimbursed for such excess capacity;

**THEREFORE:**

1. The REIMBURSEMENT AGREEMENT DISCOVERY BAY WEST attached hereto is incorporated in, and made a part of, this Ordinance.
2. All Other Properties, as a condition to connecting to the Town's water and/or sewer service, shall pay the reimbursement charge established in the REIMBURSEMENT AGREEMENT DISCOVERY BAY WEST, attached hereto, incorporated in, and make a part of this Ordinance, in the amount, and in the manner, and at the times, specified.
3. This Ordinance shall become effective thirty (30) days after adoption.

4. This Ordinance shall cease to be effective, whenever full reimbursement for excess capacity shall have been made, or twenty (20) years from the effective date of this Ordinance, whichever shall be earlier.

Passed and adopted at a regular meeting of the Board of Directors of the Town of Discovery Bay CSD on July 19, 2006, by the following vote:

AYES: 4  
NOES: 0  
ABSENT: 1  
ABSTAIN: 0

ATTEST:

By: Virgil Koehne  
VIRGIL KOEHNE, Board Secretary  
Town of Discovery Bay CSD

By: Robert Doran  
ROBERT DORAN, Board President  
Town of Discovery Bay CSD

**COPY**

**REIMBURSEMENT AGREEMENT**  
**DISCOVERY BAY WEST SERVICE**

**(Gravity Sewer Lines, Water Lines, Sewer Force Mains, Lift Stations and  
Sewer Treatment Facilities)**

**Between**

**THE TOWN OF DISCOVERY BAY, a community services  
district, and its successors in interest ("District")**

**and**

**HOFMANN LAND DEVELOPMENT COMPANY, a  
California corporation ("Developer")**

**REIMBURSEMENT AGREEMENT**  
**DISCOVERY BAY WEST SERVICE**

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**REIMBURSEMENT AGREEMENT**  
**DISCOVERY BAY WEST SERVICE**  
**[Gravity Sewer Lines, Water Lines,**  
**Sewer Force Mains, Lift Stations and**  
**Sewer Treatment Facilities]**

This Reimbursement Agreement ("Reimbursement Agreement") is made and entered into this 5<sup>th</sup> day of July, 2006, by the **TOWN OF DISCOVERY BAY, a community services district, and its successors in interest** ("District") in favor of **HOFMANN LAND DEVELOPMENT COMPANY, a California corporation** ("Developer").

**RECITALS:**

This Reimbursement Agreement is entered into based upon the following facts:

A. District and Developer's predecessor entered into that certain agreement entitled Discovery Bay West Service Agreement, dated November 18, 1998 (the "Master Service Agreement"), providing for, among other things, the construction, oversizing, expansion and/or upgrading by Developer of certain public Facilities (as defined herein and in the Master Service Agreement) serving the property known as Discovery Bay West, as more particularly described in Exhibit "A", attached ("Discovery Bay West"). The said Facilities are designed and shall be constructed to serve certain Other Property (as defined herein and in the Master Service Agreement).

B. The Facilities described herein are comprised of two categories of public improvements: (i) gravity sewer lines and water lines, as described in Exhibit "B-1", attached hereto (collectively "Gravity Sewer and Water Lines"); and (ii) sewer force mains, sewer lift stations, water treatment facilities, water supply facilities, and other sewer treatment facilities, all as described in Exhibit "B-2", attached hereto (collectively "Sewer Force Mains, Lift Stations and Treatment Facilities").

C. The Master Service Agreement provides that Developer shall be entitled to reimbursement by the District for: (i) the incremental cost and expense incurred by Developer in oversizing the Gravity Sewer and Water Lines as necessary to serve the Other Property, and (ii) a percentage of the cost and expense incurred by Developer in connection with, among other things, the design, construction, augmentation, expansion and upgrading of the Sewer Force Mains, Lift Stations and Treatment Facilities among other things. The Master Service Agreement further provides for general guidelines for the collection and funding of the District's reimbursement obligations to Developer.

D. A sufficient percentage of the Facilities has been completed by Developer as of the date of this Reimbursement Agreement such that a reasonable estimate can be made of the total Completed Cost of the Facilities, subject to the District's agreement to the scope of the remaining work.

E. It is Developer's and the District's intention by this Reimbursement Agreement to establish a system whereby the Completed Cost of the Facilities, initially funded by Developer, shall be charged to and allocated equitably among the properties ultimately served or benefited by the Facilities.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, District and Developer agrees as follows:

**1. Authority For Agreement.**

This Reimbursement Agreement is entered into pursuant to the Master Service Agreement.

**2. Agreement as to Capacity.**

District may enter into commitments to assign Excess Capacity subject to the provisions for reimbursement specified in this Reimbursement Agreement. District shall not enter into commitments to assign all or any portion of the Fixed Capacity to any party other than Developer except upon prior written agreement with Developer. This Reimbursement Agreement shall not apply to new capacity which may be generated in any manner other than by construction of the Facilities.

**3. Definitions.**

Capitalized terms used in this Reimbursement Agreement, unless otherwise specifically defined herein, shall have the meaning ascribed to them in the Master Service Agreement. Other capitalized terms used herein shall have the following meanings:

**3.1. Affected Subdivision..** The term "Affected Subdivision" shall mean any Subdivision for which Facilities Reimbursement Charges have been established by the District pursuant hereto.

**3.2. Completed Cost..** The term "Completed Cost" shall mean the documented actual Cost, as defined below, of the completed Facilities, plus interest on Costs then expended by Developer at the rate of seven percent (7%) per annum from the date so expended. Completed Cost as of January 1, 2006 is set forth in **Exhibit "C,"** attached. Completed Cost shall be re-calculated as of the (i) end of each Review Period, for purposes of calculating a Facilities Reimbursement Charge pursuant to Section 6.3, below, to account for interest accrued at 7% per annum. Such amount shall remain in effect for the remainder of the following Review Period year for purposes of calculating the Facilities Reimbursement Charges.

**3.3. Cost.** The term "Cost" or "Costs" shall mean: (a) the difference in the costs (as specified below) between the cost to install Gravity Sewer and Water Lines of a size necessary to serve Discovery Bay West and the cost to install larger Gravity Sewer and Water Lines if required by the District to serve the Other Property; and (b) the cost to the Developer of the design, development, construction, augmentation, expansion and/or upgrading of the Sewer Force Mains, Lift Stations and Treatment Facilities, as applicable. The term "Costs" in both (a) and (b) includes "Capital Costs" and "Upgrade Costs" as defined in Section 2.05 and Exhibit F of the Master Service Agreement, and shall include, without limitation:

- (i) hard costs, which includes costs of material, supplies and labor;
- (ii) actual, verified costs of design, studies, review, inspection and related costs;
- (iii) actual, verified costs of engineering;
- (iv) land costs, calculated on fair market value of the land, except as provided in the Master Service Agreement;
- (v) environmental compliance; and
- (vi) ten percent (10%) for Developer's project and management overhead.

**3.4. EDU.** The term "EDU" shall mean one "equivalent dwelling unit." An EDU may include a property or properties zoned or used for non-residential purposes. For purposes hereof:

- (i) An approved detached single family residence shall constitute one (1) EDU.
- (ii) An approved multi-family residence (including rental apartment, condominium, or attached duplex, triplex or other townhouse) shall constitute seven tenths (0.70) of an EDU.
- (iii) An approved non-residential property, building or unit shall constitute the number or percentage of EDUs established by the methodology adopted and applied under the California and local building codes in the context of water and wastewater usage allocations.

**3.5. Entitled EDUs.** The term "Entitled EDUs" shall mean all EDUs or planned EDUs which, as of the date of calculation of a Facilities Reimbursement Charge for a particular Subdivision, property or group of properties in the Other Property:

- (i) are contained within a Subdivisions for which (A) an application has been made and approved for connection to the Facilities, and (B) a final subdivision map has been recorded; or



(ii) if not contained within a Subdivision, constitute all or a portion of any property for which (A) an application has been made and approved for connection to the Facilities, and (B) governmental approvals for the development of the property have been issued; or

(iii) are, by reason of any other governmental directive or entitlement, authorized to connect to or otherwise make use of the Facilities or any portion thereof.

The foregoing notwithstanding, all planned EDUs contained within Discovery Bay West shall be considered "Entitled EDUs" for purposes of calculating Facilities Reimbursement Charges under Section 6.1(i), whether or not all final maps for such property have been recorded. As of January 1, 2006, total Entitled EDUs numbered 2322, as set forth in Exhibit "D", attached.

**3.6. Excess Capacity..** The term "Excess Capacity" shall mean the capacity of the Sewer Facilities and the Water Facilities, respectively to serve EDUs in excess of the Fixed Capacity.

**3.7. Facilities..** The term "Facilities" shall have the meaning given to it in Recital B, above, and as described in more detail in Exhibits "B-1" and "B-2", attached hereto and incorporated herein by this reference, and shall include both Water Facilities and Sewer Facilities.

**3.8. Facilities Reimbursement Charge..** The term "Facilities Reimbursement Charge" shall mean the charge imposed by the District upon each EDU within the Other Property as a condition to connection to or use of the Facilities in accordance with Section 6.1 hereof, which charge is earmarked specifically for reimbursement of Developer in accordance with this Reimbursement Agreement.

**3.9. Fixed Capacity..** The term "Fixed Capacity" shall mean the capacity in the Facilities to serve 1,999 EDUs.

**3.10. Objection Notice..** The term "Objection Notice" shall have the meaning ascribed to it in Section 6.2, below.

**3.11. Other Property..** The term "Other Property" shall mean any real property other than Discovery Bay West, as defined herein, which may now or hereafter benefit from the connection to, use of, or access to the Facilities. Other Property may include property outside of the District or property now or hereafter annexed to the District.

**3.12. Reconciliation..** The term "Reconciliation" shall mean the recalculation of Developer's reimbursement rights, performed from time to time by the District pursuant to Section 7, below.

**3.13. Reconciliation Notice..** The term "Reconciliation Notice" shall have the meaning ascribed to it in Section 7.1, below.

**3.14. Review Period.** The term "Review Period" shall mean the calendar year, or if Reconciliations are performed by the District on a quarterly or semi-annual basis, then each calendar quarter or semi-year, as applicable.

**3.15. Sewer Facilities.** The term "Sewer Facilities" shall mean all Facilities other than Water Facilities.

**3.16. Subdivision.** The term "Subdivision" shall mean the real property shown on any pending or approved final subdivision map, including Subdivisions not within the District, all or any portion of which can be anticipated to connect to or benefit from the use of or access to the Facilities.

**3.17. Total Capacity.** The term "Total Capacity" shall mean Fixed Capacity plus Excess Capacity. Total Capacity of Sewer Facilities shall be deemed to be 2,322 EDUs. Total Capacity of Water Facilities shall be deemed to be 2,495 EDUs.

**3.18. Water Facilities.** The term "Water Facilities" shall mean those Facilities itemized and identified as Water Treatment Facilities on Exhibit C hereto.

#### **4. Establishment of Facilities Reimbursement Charges**

The District shall establish for each proposed Subdivision in the Other Property, and for any other EDU or group of EDUs proposing connection to or use of the Facilities (including, but not limited to, annexed property and property located outside of District), a standard Facilities Reimbursement Charge calculated in accordance with Section 6 below. The Facilities Reimbursement Charge shall be charged to each EDU in any such Subdivision (or, if not a Subdivision, then to each EDU within the property or group of properties applying for connection to or use of the Facilities) and shall be imposed and charged as a condition precedent to use of or connection to the Facilities. All such Facilities Reimbursement Charges collected by the District shall be earmarked and applied to the reimbursement of Developer pursuant to the terms of the Master Service Agreement and Section 7 of this Reimbursement Agreement.

#### **5. Facility Fees Not Exclusive**

Facilities Reimbursement Charges imposed by the District pursuant to this Reimbursement Agreement shall be in addition to, and not in lieu of, any other connection fees, services fees and other charges established or imposed by the District.

#### **6. Calculation of Facilities Reimbursement Charges**

Facilities Reimbursement Charges shall be calculated and charged in accordance with this Section 6.

**6.1. Formula for Calculation.** The Facilities Reimbursement Charge imposed upon each EDU within the Other Property shall be equal to the sum of the following:

(i) a fraction, the numerator of which is the Completed Cost of Sewer Force Mains, Lift Stations and Treatment Facilities intended to serve the EDU, and the

denominator of which is the total number of Entitled EDUs served or to be served by such Sewer Force Mains, Lift Stations and Treatment Facilities; and

(ii) a fraction, the numerator of which is the incremental Completed Cost of oversized the Gravity Sewer and Water Lines which will serve the EDU, and the denominator of which the total number of Entitled EDUs within the Other Property served by such Gravity Sewer and Water Lines.

Notwithstanding the foregoing, once Total Capacity for the Sewer Facilities has been reached, the numerators of each of the fractions described in subsections (i) and (ii) above shall include only the Completed Cost of the Water Facilities.

**6.2. Initial Calculation.** The initial calculation of Facilities Reimbursement Charges for Entitled EDUs in the Other Property, as of January 1, 2006, is set forth in Exhibit "D", attached hereto.

**6.3. Timing of Calculation of Facilities Reimbursement Charges.** For purposes of calculating, pursuant to Section 6.1, above, the Facilities Reimbursement Charge per EDU for a Subdivision (or for properties or groups of properties not within a Subdivision) in the Other Property, Completed Cost shall be calculated and Entitled EDUs counted as of the following dates:

(i) in the case of the Ravenswood Subdivision (Tract 8710, 485 Book of Maps, Page 1), and in the case of the Pacific Development property (176 Parcel Maps, Page 14), January 1, 2006, identified in Exhibit D, January 1, 2006.

(ii) in the case of any other Subdivision seeking hookup to the Facilities, the date of governmental approval of the final subdivision map for the Subdivision.

(iii) in the case of any other property seeking hookup into the Facilities but not contained within a Subdivision, the date final permits or other entitlements are issued for development of the property, or for hookup to the Facilities, whichever is earlier.

(iv) in the case of previously developed and existing EDUs added by means of District expansion, the date of final administrative approval (with all appeal periods having expired) for the District expansion.

Once a Facilities Reimbursement Charge is established for a new Subdivision or property or group of properties, the Facilities Reimbursement Charge for such Subdivision, property or group of properties shall remain fixed; provided, however, that refunds may be made to the owner/developer of such Subdivision, property or group of properties, as set forth in Section 7 below.

**6.4. District Acknowledgement Re Complete Cost.** In establishing this amount for Completed Cost, District hereby acknowledges and agrees that the scope of remaining work anticipated in Exhibit "C" and the plans and specifications for such remaining work will not be modified or expanded in any material respect.

**6.5. Separate Reimbursement Agreements.** The District may enter into separate reimbursement agreements with the owners/developers of such Subdivisions for the purpose of refunding or reimbursing to such owners/developers amounts to which they may be entitled by reason of any subsequent Reconciliation, as defined herein; provided, however, that any such reimbursement agreement must be consistent with and may not conflict with the purpose and intent of the Master Service Agreement or this Reimbursement Agreement and may not treat other owners or developers more favorably than Developer.

**6.6. Developer Credit.** Property within Discovery Bay West, including but not limited to Village V shall be exempt from the imposition of Facilities Reimbursement Charges established hereunder. Nothing herein shall preclude the District from applying credits in favor of Developer against Connection Fees, Service Fees, Inspection and Plan Review Fees and other fees and charges, as provided in Section 4.02 of the Master Service Agreement, as an additional means of reimbursement.

## **7. Reconciliation and Reimbursement to Developer.**

**7.1. Reconciliation Notice.** In accordance with the Master Service Agreement, the District shall, within thirty (30) days following the end of each Review Period, provide to Developer and to all other owners/developers of Affected Subdivisions a notice of the District's reconciliation of Facilities Reimbursement Charges and reimbursements ("Reimbursement Notice"), which Reimbursement Notice shall specify, at a minimum:

- (i) the Completed Cost of the Facilities as of the end of the Review Period, including interest accrued;
- (ii) the percentage of and amount of the Completed Cost of the Facilities to which Developer is entitled to reimbursement, based upon a recalculation of the Completed Costs and Entitled EDUs as of the end of the Review Period;
- (iii) the percentage and amount of the Completed Cost of the Facilities allocable to each Subdivision and to each EDU therein, or to each EDU in Other Property which is not within a Subdivision and which is connecting to the Facilities, based upon a recalculation of the Completed Cost and Entitled EDUs as of the end of the Review Period (this shall be called the Reconciled Facilities Reimbursement Charge);
- (iv) the total Facilities Reimbursement Charges previously paid to District for connections within each Subdivision pursuant hereto; and
- (v) the total reimbursements previously paid to Developer by District hereunder.

**7.2. Objection Notice.** Developer and each owner of an Affected Subdivision shall have ten (10) days-following the date of the Reconciliation Notice to file with the District a notice of objection to the Reconciliation Notice, specifying with particularity the legal or factual objection to the District's reconciliation ("Objection Notice"). The District shall, within twenty (20) days following its receipt of any Objection Notice, give written notice to Developer and all owners/developers of Affected Subdivisions of, at the District's option, (A) the District's rejection of the Objection Notice; (B) the District's issuance of an amended Reconciliation Notice, modifying and correcting the objectionable aspect of the Reconciliation, or (C) the District's election to submit the dispute in the Objection Notice to binding arbitration under Section 8.1, below. Failure of the District to provide written notice of (A), (B) or (C), above, shall be deemed a rejection of the Objection Notice, effective as of the expiration of such twenty (20) day response period. In the event the District issues a modified Reconciliation Notice, the same time periods shall apply for filing Objection Notices and the District's responses. In the event of a rejection by the District of an Objection Notice, Developer or any owner/developer of an Affection Subdivision may, by written notice to the District, given within ten (10) days following the effective date of the rejection, submit the matter to binding arbitration pursuant to Section 10.1, below.

**7.3. Reimbursement.** If no Objection Notice is timely filed, then within fifteen (30) days following the District's issuance of the Reconciliation Notice-or, if an Objection Notice is filed, then within twenty (20) days following resolution of the objection by means of a modified Reconciliation Notice or binding arbitration under Section 9.1, below-the District shall pay to Developer all funds collected as Facilities Reimbursement Charges to which Developer is entitled to reimbursement as of the end of the Review Period in accordance with the Master Service Agreement and this Reimbursement Agreement. To the extent of any available funds remaining from previously collected Facilities Reimbursement Charges, District shall pay to the owners/developers of the Affected Subdivisions refunds of previously levied Facilities Reimbursement Charges to the extent such owners/developers have paid Facilities Reimbursement Charge in excess of the Reconciled Facilities Reimbursement Charge. Available funds shall first be disbursed to Developer to the extent of the reimbursement to which Developer is entitled under the Master Service Agreement and this Reimbursement Agreement; thereupon any remainder shall be disbursed to such owners/developers of the other Subdivision.

## **8. Ordinance**

This Reimbursement Agreement, and any and all subsequent reimbursement agreements for specific Facilities implementing the Master Service Agreement and/or this Reimbursement Agreement, shall be adopted as an ordinance within the District. Further, the District shall by ordinance of the District require each owner/developer of a proposed Subdivision, other development, Entitled EDU or group of EDUs, within the Other Property, to pay Facilities Reimbursement Charges as established hereby and in accordance herewith.

## **9. Alternate Methods**

**9.1. Alternate Methods of Collection.** Notwithstanding any other portions of this Reimbursement Agreement, it is recognized and agreed that District may, in its sole discretion, establish a capital improvement fee program, or an assessment district, or any

other method of collection of facilities reimbursement charges, in lieu of separate reimbursement agreements with developers of Other Properties, or in lieu of direct collection from such developers of Other Properties. In such event, District shall within thirty (30) days of actual collection of fees, assessments, or monies collected pursuant to such other program or programs, pay to Developer an amount equal to the amount which would have been collected for the equivalent development had Facilities Reimbursement Charges been collected pursuant to the procedures otherwise established in this Reimbursement Agreement.

**9.2. Alternate Method of Payment.** Notwithstanding any other portions of this Reimbursement Agreement, it is recognized and agreed that District may, in its sole discretion, accept other forms of payment, such as, but not limited to, dedications of land, in lieu of cash, for Facilities Reimbursement Charges. In such event, District shall pay to Developer an amount equal to the amount which would have been collected for the equivalent development had Facilities Reimbursement Charges been collected pursuant to the procedures otherwise established in this Reimbursement Agreement.

**9.3. Waiver of Payment.** Notwithstanding any other portion of this Reimbursement Agreement, District may waive payment of Facilities Reimbursement Charges, provided that Developer shall agree in writing to such waiver, and provided that such writing shall contain a release by Developer of any obligation of District to reimburse Developer for such waived Facilities Reimbursement Charges.

## **10. Miscellaneous**

**10.1. Arbitration.** At the option of the District, Developer or the owner of the Affected Subdivision, any claim or controversy arising with respect to any timely filed Objection Notice shall be submitted to binding arbitration in accordance with the J-A-M-S/Endispute Arbitration Rules and Procedures. Judgment on any award rendered by the arbitrator may be entered in any court having jurisdiction over the matters so arbitrated. The parties further agree that in the event such an arbitration is held, there shall be no discovery allowed and each party shall bear their own respective attorneys' fees and related costs. Furthermore, each party shall share equally the costs of the arbitration, including but not limited to, the costs of a court reporter for the hearing.

**10.2. Binding Effect.** This Reimbursement Agreement shall be binding upon and inure to the benefit of the District and the Developer and each of their present and future boards of directors, officers, representatives, successors and assigns.

**10.3. Rights Personal to Developer.** Any and all rights of reimbursement hereunder shall be personal to Developer and shall not be deemed assigned to any future or subsequent owner of property within Discovery Bay West except by means of express written assignment thereof in connection with the sale or conveyance of such property by Developer. No sale, grant, conveyance, or hypothecation of all or any portion of the real property within Discovery Bay West by Developer, including any grant deed or deed of trust therefor, shall be deemed an assignment, grant, conveyance or hypothecation of any or all of Developer's rights to reimbursement of a portion of the Cost of the Facilities hereunder.

**10.4. Assignment.** No sale or assignment of this Reimbursement Agreement shall be made by any party hereto except in connection with and subject to the limitations on assignment, if any, set forth in the Master Service Agreement.

**10.5. Entire Agreement; Modification.** This Reimbursement Agreement, along with the Master Service Agreement and the exhibits attached hereto, constitutes the entire agreement and understanding between the District and the Developer relating to the matters set forth herein. This Reimbursement Agreement supersedes all prior and contemporaneous agreements, representations or understandings, if any, whether oral or written, concerning the matters set forth herein. This Reimbursement Agreement may be amended or modified only by a writing executed by Developer and District which is (i) consistent with the Master Service Agreement.

**10.6. Other Reimbursement Agreements.** The parties recognize that other reimbursement agreements may be made between the District and other property owners and other developers. District agrees that such other agreements shall not treat such other owners or developers more favorably than Developer in this Reimbursement Agreement. Further, District acknowledges that Developer shall have priority on all reimbursements relating to the Cost of the Facilities.

**10.7. Governing Law.** This Reimbursement Agreement shall be governed by the laws of the State of California, and any actual or threatened breach of this Reimbursement Agreement may be prohibited or restrained, and any duty hereunder enforced by specific performance or other equitable remedy, by a court of competent jurisdiction.

**10.8. Termination. Sewer Facilities.** This Reimbursement Agreement shall terminate with respect to the Sewer Facilities upon the earlier of :

(A) the first date on which Total Capacity of the Sewer Facilities has been reached and Facilities Reimbursement Charges have been imposed and collected from all Other Property EDUs connected to or approved for connection to the Sewer Facilities; or

(B) twenty (20) years from the date of this Reimbursement Agreement.

(ii) Water Facilities. This Reimbursement Agreement shall terminate with respect to the Water Facilities upon the earlier of :

(A) the first date on which Total Capacity of the Water Facilities has been reached and Facilities Reimbursement Charges have been imposed and collected from all Other Property EDUs connected to or approved for connection to the Water Facilities; or

(B) twenty (20) years from the date of this Reimbursement Agreement.

There shall be no obligation to pay any unreimbursed Facilities Reimbursement Charges which have not been paid to Developer upon termination; provided, however, that the District shall be obligated to pay to Developer its share of Facilities Reimbursement Charges which (i) have been collected by the District from Other Property developers but not paid to Developer at or prior to termination, or (ii) are due but unpaid from Other Property developers at or prior to termination. In the case of (ii), above, the District shall make commercially reasonable efforts to collect unpaid Facilities Reimbursement Charges and shall reimburse Developer for its share thereof in accordance with this Reimbursement Agreement if and when such sums are collected by the District.

**10.9. Further Actions.** From time to time, Developer and District shall execute such instruments and other documents and take such other actions, upon the request of the other, as may be reasonably necessary to carry out the terms of this Reimbursement Agreement.

[SIGNATURES ON FOLLOWING PAGE]



**10.10. Attorneys Fees.** In the event that any legal action or arbitration is commenced for the purpose of enforcing or interpreting this Reimbursement Agreement (other than arbitration of a Reimbursement Notice under Section 9.1, above) the prevailing party in such legal action or arbitration shall be entitled to receive, in addition to any other remedy granted, its reasonable attorneys' and experts' fees and costs, as may be awarded in the discretion of the court or arbitrator(s).

IN WITNESS WHEREOF, this Reimbursement Agreement is entered into by the parties and adopted by the District as of the date first above set forth.

**HOFMANN LAND DEVELOPMENT  
COMPANY, a California corporation**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**TOWN OF DISCOVERY BAY COMMUNITY  
SERVICES DISTRICT**

By: Robert Doman  
Name: Robert Doman  
Title: Board President

EXHIBIT A

All deed and map reference hereinafter referred to are as recorded in the Office of the Recorder of Contra Costa County, State of California.

PARCEL ONE

Being a portion of the southwest one-quarter of Section 23 and a portion of the northwest one-quarter of Section 26, Township 1 North, Range 3 East, Mount Diablo Base and Meridian, more particularly described as follows:

Beginning at the northwestern corner of Parcel B, as said Parcel B is shown and so designated on that certain parcel map recorded October 13, 1981, in Book 97 of Parcel Maps at Page 50 in the Office of the County Recorder of Contra Costa County; thence from said point of beginning, along the northern line of said Parcel B, South 88°57'01" East 1,841.54 feet to the northeastern corner of said Parcel B; thence, from said northeastern corner, South 88°57'01" East 778.88 feet to a point on the eastern line of said southwest one quarter of Section 23; thence, along said eastern line, South 01°01'45" West 2,344.00 feet to a point on the northern line of said Section 26; thence, along said northern line, North 88°59'27" West 990.00 feet; thence, leaving said northern line, South 01°01'09" West 2,643.83 feet to a point on the southern line of said northwest one-quarter of Section 26; thence, along said southern line, North 89°08'09" West 1,649.96 feet, to the center line of Bixler Road; thence northerly along said center line to a point that bears North 88°57'01" West, 20.00 feet from the point of beginning; thence leaving said center line South 88°57'01" East, 20.00 feet to the point of beginning.

Excepting therefrom the following described parcel of land Parcel A, as said Parcel A is shown and so designated on that certain parcel map recorded in Book 97 of Parcel Maps at Page 50.

as

**EXHIBIT A**PARCEL TWO

Being all that certain parcel of land shown and so designated on that certain map entitled "Survey for Leo F. Fallman, Brentwood, California, Portion of Sections 14 and 23 of Township 1 North, Range 3 East," filed December 18, 1945, in Book 10 of Licensed Surveyors' Maps at Page 13 in the Office of the County Recorder of Contra Costa County, more particularly described as follows:

Beginning at the northwestern corner of said parcel of land; thence from said point of beginning, along the northern line of said parcel of land, South 89°00'21" East 2,647.68 feet; thence, continuing along said northern line and its extension South 88°09'22" East, to the center line of a dredger cut; thence southerly along said line to its intersection with the easterly extension of the south line of said parcel of land; thence along said extension and said south line, westerly to the center line of Bixler Road and northerly along said center line to the point of beginning.

*as*

## **Exhibit 'B-1'**

### GRAVITY SEWER AND WATER LINES

"Facilities" are those facilities paid for or constructed by Developer, as more specifically described below, including, but not limited to, the associated design, engineering, construction, property acquisition and grading.

#### Gravity Sewer

The gravity sewer facilities include, but are not limited to, the gravity portion of those facilities shown in the "Sewer Conveyance Master Plan Report" prepared by Carollo Engineers, dated April 1998, and includes clean-outs, connections, manholes, and other gravity main appurtenances.

#### Water Lines

The water distribution facilities include, but are not limited to, pipelines, valves, and their appurtenances necessary to provide and distribute the domestic water from the water supply facilities to the service connections. Examples of water distribution facilities, without being all-inclusive, are shown in the "WATER MASTER PLAN DISCOVERY BAY" prepared by Luhdorff & Scalmanini Consulting Engineers, dated April 1999.

## Exhibit B-2

### SEWER FORCE MAINS, LIFT STATIONS AND TREATMENT FACILITIES

"Facilities" are those facilities paid for or constructed by Developer, as more specifically described below, including, but not limited to, the associated design, engineering, construction, property acquisition and grading.

#### Sewer Force Mains:

The sewer force main facilities include, but are not limited to, those facilities shown in the "Sewer Conveyance Master Plan Report" prepared by Carollo Engineers, dated April 1998, and include pump stations, force mains, valves, connections, manholes, and related system appurtenances.

#### Lift Stations:

The sewer lift stations include the Newport Sewage Lift Station located in Village 1, the Lakeshore Sewage Lift Station located in Village 2, the Lakes' Village 3 and Village 4 Sewage Lift Stations located in Village 3 and 4.

#### Sewage Treatment Facilities:

The sewage treatment facilities include, but are not limited to, those facilities shown in the "CONTRACT DOCUMENTS FOR DISCOVERY BAY SEWAGE TREATMENT PLANT 2.0 MGD EXPANSION Volume 1 of 3" labeled "INSPECTION SET September 17, 2000", and "CONTRACT DOCUMENTS FOR DISCOVERY BAY SEWAGE TREATMENT PLANT 2.0 MGD EXPANSION Volume 2 of 3" labeled "INSPECTION SET September 17, 2000", and "DISCOVERY BAY CONTRA COSTA COUNTY, CALIFORNIA SEWAGE TREATMENT PLANT 2.0 MGD EXPANSION... VOLUME 3 OF 3 CONTRACT DRAWINGS" labeled "INSPECTION SET", and as such may be thereafter amended, modified, or altered by change order or by mutual written consent of District and Developer. Sewage treatment facilities also include those sewage treatment facilities proposed to be constructed as Phase 2 improvements as outlined in the Carollo engineers report entitled "" and such Change Orders, amendments, modifications and updates as may occur and which otherwise accrue costs and expenses to Developer

#### Water Treatment and Storage Facilities:

The water treatment and storage facilities include, but are not limited to, those facilities shown in the plans labeled "TOWN OF DISCOVERY BAY NEWPORT DRIVE WATER TREATMENT AND STORAGE FACILITY FEBRUARY, 2001", and the plans labeled "TOWN OF DISCOVERY BAY WILLOW LAKE WATER TREATMENT AND STORAGE FACILITY" prepared by Luhdorff & Scalmanini Consulting Engineers", and the specifications labeled "Specifications and Contract Documents for procurement of Treated and Backwash Water Storage Tanks to be installed at the Willow Lake Water Treatment Plant, Newport Drive water Treatment Plant, Town of Discovery Bay", dated August 2000, and as such may be thereafter amended, modified, or altered by mutual written consent of District and Developer.

**EXHIBIT 'C'**  
**Completed Costs**

HLD Job Description	Job No.	Spent to Date	Anticipated Remaining Cost	Subtotal	10% Overhead	Completed Costs	Notes
<b>SEWAGE TREATMENT FACILITY</b>							
Phase 1 Sewage Plant Expansion	455	\$ 12,115,140	\$ 109,456	\$ 12,224,596	\$ 1,222,460	\$ 13,447,056	
Phase 2 Sewage Plant Expansion	456	\$ 1,335,761	\$ 678,200	\$ 2,014,961	\$ 201,496	\$ 2,216,457	
Treatment Plant Land		\$ 364,000		\$ 364,000		\$ 364,000	70 acres @ \$5200/ac
Sewage Treatment Facility Budgeted Cost		\$ 13,815,901		\$ 14,803,557		\$ 16,027,513	
<b>SEWAGE FORCE MAINS &amp; LIFT STATIONS</b>							
Newport Sewage Lift Station	460	\$ 925,177	\$ 799	\$ 925,976	\$ 92,598	\$ 1,018,574	Numbers exclude 490-50-11 for phase 1 SFM(See below)
Newport Lift Station Upgrade	407-50-46	\$ 11,979	\$ 876,021	\$ 888,000	\$ 88,800	\$ 976,800	
Phase 1 Force Main - Vll 1	460-50-11	\$ 289,584	\$ -	\$ 289,584	\$ 28,958	\$ 318,542	Phase 1 = 460-50-11
Phase 2 Force Main - to Hwy 4	404	\$ 865,114	\$ 73,731	\$ 938,845	\$ 93,885	\$ 1,032,730	Village 1 to Hwy 4 SFM (excludes wetline 404-50-13)
Phase 3 Force Main - in Hwy 4	407	\$ 974,781	\$ 502,036	\$ 1,476,817	\$ 147,682	\$ 1,624,499	Numbers include 407-50-11(Change 18" to 12" in Hwy 4), but excludes 407-50-46 (Newport Upgrades)
Allowance for Original 18" SFM in Hwy 4		\$ 685,425	\$ -	\$ 685,425	\$ 68,543	\$ 753,968	Equivalent cost/LF minus slip lining cost/LF = \$91,397/LF
Lift Station Land		\$ 1,755	\$ -	\$ 1,755	\$ 176	\$ 1,931	4617 SF of land @ \$0.38/SF (value based on Carvalho)
SFM & Lift Station Budgeted Cost		\$ 3,673,815		\$ 5,126,402		\$ 5,638,867	
<b>Water Treatment Facilities</b>							
Water Treatment Phase 1 & 2	450	\$ 3,104,159	\$ 110,652	\$ 3,214,811	\$ 321,481	\$ 3,536,292	Excludes intertie allowance - see below (450-50-59)
Water Intertie	404-50-13	\$ 355,985	\$ 8,015	\$ 364,000	\$ 36,500	\$ 400,500	404-50-13 only
Water Treatment Facility Land		\$ 15,334	\$ -	\$ 15,334	\$ -	\$ 15,334	40,368SF @ \$0.38/SF (Carvalho)
Water Treatment Facility Budgeted Cost		\$ 3,475,478		\$ 3,586,145		\$ 3,953,126	
<b>TOTAL COMPLETED COSTS PLUS OVERHEAD</b>						\$ 21,666,380	

Note 1: Village 2, 3 & 4 lift stations not included in above totals

Note 2: Data from 12/31/05 cost reports

**EXHIBIT "D"**  
**INITIAL FACILITIES REIMBURSEMENT CHARGE CALCULATION**  
**BASED UPON COMPLETED COST as of 1/1/06**

	Costs as of 1/1/06 (\$)	Total Capacity	Cost Calculation as of 1/1/06 (\$/Total Capacity)
<b>SEWAGE TREATMENT FACILITY</b>			
Total Budget	\$ 14,603,557		
10% Overhead	\$ 1,460,356		
Subtotal (Completed Costs)	\$ 16,063,913		
Interest (2 yrs @ 7% simple Interest/yr)	\$ 2,248,948		
<b>TOTAL</b>	\$ 18,312,860	2322	\$ 7,886.68
(Total capacity of WWTP is 2322 EDU's)			

<b>SEWAGE FORCE MAINS &amp; LIFT STATIONS</b>			
Total Budget	\$ 5,126,402		
10% Overhead	\$ 512,640		
Subtotal (Completed Costs)	\$ 5,639,043		
Interest (3.2 yrs @ 7% simple Interest/yr)	\$ 1,263,146		
<b>TOTAL</b>	\$ 6,902,188	2292	\$ 3,011.43
(Total Capacity of SFM System is assumed to be 1999 EDU's for DBW + 203 EDU's for Ravenswood + 90 EDU's for Pantages)			

<b>WATER TREATMENT FACILITIES</b>			
Total Budget	\$ 3,595,145		
10% Overhead	\$ 359,515		
Subtotal (Completed Costs)	\$ 3,954,660		
Interest (2.5 yrs @ 7% simple Interest/yr)	\$ 692,065		
<b>TOTAL</b>	\$ 4,646,725	2495	\$ 1,862.41
(Total capacity of Water Treatment Facilities is 2495 EDU's)			

<b>FACILITIES REIMBURSEMENT CHARGES PER EDU AS OF 1/1/06</b>	
RAVENSWOOD Tract 8710	\$7,886.68 + \$3,011.43 + \$1,862.41 = \$12,760.52
PACIFIC DEVELOPMENT	\$7,886.68 + \$1,862.41 = \$9,749.09

**Entitled EDU Totals for DBW Fixed Capacity and Other Properties as of 1/1/06**  
**Project**

	Units	Factor	Units
<b>FLOWS TO NEWPORT LIFT STATION:</b>			
Discovery Bay West:			
completed project based upon VTM	1999	1.0	1999
Subtotal			1999
Ravenswood, Tract 8710	203	1.0	203
Pantages (Not Mapped Yet)	0	1.0	0
Subtotal			203
<b>Units that Flow to Newport Lift Station:</b>			<b>2202</b>
<b>FLOWS TO CENTEX LIFT STATION:</b>			
Ujder Subdivision, 176 PM 14:			
Parcel A & B Pacific Development	30	1.0	30
<b>Units that Flow to Centex Lift Station:</b>			<b>30</b>
<b>Grand Total</b>			<b>2232</b>