

**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

540



**FROM:** Transportation & Land Management Agency

**SUBMITTAL DATE:**  
March 4, 2014

**SUBJECT:** Approval of First Amendment to and Partial Assignment of The French Valley Creek Improvement and Disbursement Agreement. 3<sup>rd</sup>/3<sup>rd</sup> [\$350,000]

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Approve the First Amendment to and Partial Assignment of The French Valley Creek improvement and Disbursement Agreement; and,
2. Authorize the Chairman of the Board to execute the same; and,
3. Direct the Director of Transportation and Land Management to implement the agreements.

**BACKGROUND:**

**Summary**

On January 31, 2012 the County and Bellacap, LLC entered into the French Valley Creek Improvement and Disbursement Agreement. This agreement set forth the responsibilities of Bellacap, LLC to construct certain road and flood control improvements associated with Tracts 29114 and 32049. These improvements were also, in whole or in part, obligations of an adjacent tract owned by Ryland Homes, and the subject of a subdivision improvement agreement and bond security provided by a bonding company.

Juan C. Perez, Director  
Transportation and Land  
Management

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
<b>COST</b>	\$	\$ 350,000	\$ 350,000	\$ 0	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
<b>NET COUNTY COST</b>	\$ 0	\$ 0	\$ 0	\$ 0	
<b>SOURCE OF FUNDS:</b> Development Bond Settlement Funds				<b>Budget Adjustment:</b> N/A	
				<b>For Fiscal Year:</b> 13/14-18/19	

**C.E.O. RECOMMENDATION:**

APPROVE

BY: *Alex Gann*

County Executive Office Signature

Alex Gann

**MINUTES OF THE BOARD OF SUPERVISORS**

FORM APPROVED COUNTY COUNSEL  
BY: MICHELLE CLACK  
DATE: 3/4/14

Accounting Concurrence

- A-30
- 4/5 Vote
- Positions Added
- Change Order

Prev. Agn. Ref.: 01/31/12/ - 3.28;  
03/27/12 - 3.39; & 11/5/13 - 3.51

District: 3/3

Agenda Number:

3-26

**SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA  
FORM 11: Approval of First Amendment to and Partial Assignment of The French Valley Creek Improvement  
and Disbursement Agreement. 3<sup>rd</sup>/3<sup>rd</sup> [\$350,000]**

**DATE:** March 4, 2014

**PAGE:** 2 of 2

**BACKGROUND:**

**Summary (Continued)**

On January 31, 2012 the County and Bellacap, LLC entered into the French Valley Creek Improvement and Disbursement Agreement. This agreement set forth the responsibilities of Bellacap, LLC to construct certain road and flood control improvements associated with Tracts 29114 and 32049. These improvements were also, in whole or in part, obligations of an adjacent tract owned by Ryland Homes, and the subject of a subdivision improvement agreement and bond security provided by a bonding company.

The Transportation Department worked with the parties (Bellacap, Ryland, and the bonding company) to accomplish the construction of the needed work through a combination of work done by Bellacap and funding contributed by Ryland and the bonding company, including a funding deposit for a project that the County will construct as such time as it is needed in the future, the Skyview Bridge over the flood control channel east of Winchester Road.

The time frame to implement the original agreement between the parties was extended through a Letter of Understanding entered into on June 13, 2013 between Bellacap, LLC. and TLMA, while final negotiations were being conducted with the bonding company. On November 5, 2013 the County entered into an agreement with the bonding company for them to provide \$2 Million in funding towards the future construction of the Skyview Bridge and the associated channel erosion protection measures.

This First Amendment accomplishes two goals: 1) Transfers a portion of the obligations under the original agreement from Bellacap, LLC. to Meritage Homes, which has purchased a portion of the Bellacap, LLC. Development; and 2) Provides a mechanism for the County to exercise its rights under the original agreement to cause Bellacap, LLC. to complete construction of the channel improvements on the western bank of the channel, upstream of Tract 29114. This will provide rock slope protection to protect against erosion of the adjacent property, which the County has transferred to the Boys and Girls Club, and will facilitate the future construction of the Skyview Bridge. The County's funding contribution towards these improvements is provided from the settlement proceeds from the bonding company.

**Impact on Citizens and Businesses**

This amendment will facilitate the future construction of an adjacent Boys and Girls Club facility and the Skyview Bridge, and protect the western bank of French Valley Creek from further erosion.

**SUPPLEMENTAL:**

**Additional Fiscal Information**

The County's funding contribution towards these improvements is provided from the settlement proceeds from the bonding company.

**Contract History and Price Reasonableness**

Transportation Department staff has reviewed and concurs with the \$350,000 costs as being reasonable for the rock slope projection costs. The County would incur additional costs to bid, award, and administer the contract on our own, rather than having the Developer build the improvements. Postponing the construction of these improvements until the bridge is built in the future could very likely increase the cost as further erosion would occur resulting in an increase in construction costs.

**FIRST AMENDMENT TO  
AND PARTIAL ASSIGNMENT OF FRENCH VALLEY CREEK  
IMPROVEMENT AND DISBURSEMENT AGREEMENT**

This FIRST AMENDMENT TO FRENCH VALLEY CREEK IMPROVEMENT AND DISBURSEMENT AGREEMENT (this "First Amendment") is made to be effective as of \_\_\_\_\_, 2014 (the "Effective Date") between the COUNTY OF RIVERSIDE, a political subdivision of the State of California ("County"), BELLACAP, LLC, a California limited liability company ("Bellacap") and MERITAGE HOMES OF CALIFORNIA, INC., a California corporation ("Meritage") which Meritage has joined in the execution of this First Amendment in order to acknowledge and consent to the assumption of certain obligations as more fully set forth herein. County, Bellacap and Meritage are sometimes hereinafter referred to collectively as the "Parties".

**RECITALS:**

A. On January 31, 2012, Bellacap and County executed that certain French Valley Creek Improvement And Disbursement Agreement (the "Improvement Agreement"), which provided for, among other things, the County's requirements for Bellacap to construct certain off-site and on-site improvements (the "Improvements"), and for Bellacap to make certain financial assurances in connection with the construction of the Improvements (the "Assurances"), as conditions to the approval of (i) Tract Map Nos. 29114 and 29114-1, and the real property described on Exhibit "A" attached hereto (the "Capistrano Property"), and (ii) Tract Map No. 32049 and the real property described on Exhibit "B" attached hereto (the "Bella Sol Property"). An executed copy of the Improvement Agreement is attached hereto as Exhibit "C".

B. Pursuant to the Improvement Agreement, Bellacap is required to (i) complete the in-tract finished grading of the Capistrano Property pursuant to Section 2.e. thereof, and (ii) complete the in-tract repairs, installations and associated work to the Capistrano Property pursuant to Section 2.f. thereof (collectively, the "Capistrano In-Tract Improvements").

C. Pursuant to Section 2.i. of the Improvement Agreement, Bellacap is responsible to pay all costs associated with the design, County review and approval and construction management to complete, among other things, the Capistrano In-Tract Improvements (the "Capistrano Design and Review Costs").

D. On June 13, 2013, Bellacap and County executed that certain Letter of Understanding Regarding Implementation of the French Valley Creek Improvement and Disbursement Agreement (the "Letter of Understanding"). An executed copy of the Letter of Understanding is attached hereto as Exhibit "D".

E. Bellacap, as Seller, and Meritage, as Buyer, have entered into that certain Agreement for Purchase and Sale of Real Property and Escrow Instructions, dated August 30, 2013, as amended, (the "Purchase Agreement"), wherein Bellacap has agreed to sell, and Meritage has agreed to purchase, the Capistrano Property, subject to the terms and conditions set forth in the Purchase Agreement.

F. Bellacap and County acknowledge that on December 30, 2013, County notified Bellacap that County desired to have Bellacap construct the BGC Levee.

G. Bellacap and the County desire to amend the Improvement Agreement to reflect and formalize the modifications set forth in the Letter of Understanding.

H. Bellacap desires to assign and Meritage desires to assume the rights and obligations pertaining to the Capistrano Property as provided herein.

I. Section 8 of the Improvement Agreement requires the County's written consent to such partial assignment to Meritage.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants set forth herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Section 3.e. of the Improvement Agreement is deleted in its entirety and replaced with the following:

"In accordance with section 12 herein, the County shall notify Developer no later than December 31, 2013, of County's intent to require Developer to comply with Section 2.n. and construct the BGC Levee. If no such notice is given by the County, then the obligation to construct the BGC Levee shall be waived by County. If County provides such notice, then the following shall occur:

- a. The Developer's additional \$100,000 contribution required in Section 2.k. herein will be a credit to the County and reduce the not to exceed amount set forth in Section 3.c. from Four Hundred Thousand Dollars to Three Hundred Fifty Thousand Dollars (\$350,000); and
- b. Within thirty (30) days of construction starting and continuing on the BGC Levee, County shall advance One Hundred Twenty-Five Thousand Dollars (\$125,000) of the not to exceed amount of Three Hundred Fifty Thousand Dollars (\$350,000) to the Developer; and
- c. Within thirty (30) days of the County's certification of actual costs and determination that the BGC Levee is constructed, in accordance with Section 3.c. herein County shall provide the remaining amount of the not to exceed Two Hundred Twenty-Five Thousand Dollars (\$225,000) to the Developer."

2. The Recitals are incorporated in this First Amendment as true and correct statements of fact. All capitalized terms used in this First Amendment shall have the meanings set forth in the Improvement Agreement and Letter of Understanding, unless expressly defined otherwise herein.

3. Partial Assignment: Upon the consummation of the purchase of the Capistrano Property by Meritage (the "Meritage Closing"), Bellacap assigns to Meritage Bellacap's rights

and obligations in the Improvement Agreement and First Amendment solely with respect to the Capistrano In-Tract Improvements and the Capistrano Design and Review Costs as set forth in Recitals B and C above (the "Assumed Obligations").

4. Partial Assumption: Upon the Meritage Closing, Meritage accepts and assumes the Assumed Obligations. Such work shall be completed on or before July 1, 2014. Except as assigned and accepted, Meritage assumes no further obligations. The County and Bellacap mutually acknowledge and agree that Meritage is not assuming and shall in no way be held responsible for, nor held liable for, any obligations of Bellacap set forth in the Improvement Agreement and Letter of Understanding, except for the Assumed Obligations.

5. County Consent: Pursuant to Section 8 of the Improvement Agreement, the County hereby consents to the assignment of the Assumed Obligations to Meritage. It is further agreed that upon Meritage's completion and/or payment required in connection with the Assumed Obligations, there are no other requirements or obligations necessary for Meritage to pull building permits and construct single family dwellings on the lots within the Capistrano Property.

6. Assurances: The County shall not require further deposits for inspections or any further securities or bonds required for the construction of the improvements as identified in Section 2 herein.

7. Bellacap Liability: Except as provided herein, nothing contained in this First Amendment shall relieve Bellacap or the County of their respective obligations to perform any or all of their obligations, or pay any sums due, under the Improvement Agreement or Letter of Understanding.

8. Conflicts: In the event of any conflict or inconsistency between the terms of the First Amendment and the terms of the Improvement Agreement and Letter of Understanding the terms of this First Amendment shall govern and control.

9. Except as provided herein, all other terms and conditions of the Improvement Agreement remain unmodified and in full force and effect. The First Amendment and Improvement Agreement set forth and contain the entire understanding and agreement of the Parties hereto.

10. Counterparts: This First Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same First Amendment.

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment as of the Effective Date.

**DEVELOPER:**  
**BELLACAP, LLC**, a California limited liability company

By Joseph [Signature]  
Its MANAGER

ATTEST:

Kecia Harper-Ihem  
Clerk of the Board

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

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

**COUNTY:**  
**COUNTY OF RIVERSIDE**

By \_\_\_\_\_  
Chairman, Board of Supervisors

Meritage hereby consents and acknowledges its assumption of rights and obligations as set forth herein:

**MERITAGE:**  
**MERITAGE HOMES OF CALIFORNIA, INC.**,  
a California corporation

By \_\_\_\_\_

Its \_\_\_\_\_

10. Counterparts: This First Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same First Amendment.

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment as of the Effective Date.

**DEVELOPER:**  
**BELLACAP, LLC**, a California limited liability company

By \_\_\_\_\_

Its \_\_\_\_\_

**COUNTY:**  
**COUNTY OF RIVERSIDE**

By \_\_\_\_\_  
Chairman, Board of Supervisors

ATTEST:

Kecia Harper-Ihem  
Clerk of the Board

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

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

Meritage hereby consents and acknowledges its assumption of rights and obligations as set forth herein:

**MERITAGE:**  
**MERITAGE HOMES OF CALIFORNIA, INC.**,  
a California corporation

By \_\_\_\_\_

Its \_\_\_\_\_  
DANIELSON PRESIDENT

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# Exhibit “A”



**Description of the Property**

**Real property in the unincorporated areas of the County of Riverside, State of California,  
described as follows:**

**CAPISTRANO PROPERTY.**

**PARCEL 1: (APN'S: 480-260-3 THROUGH 480-260-016-7, 480-550-001-9 THROUGH 480-550-039-4 AND 480-551-001-2 THROUGH 480-551-013-3)**

**LOTS 11 THROUGH 64, INCLUSIVE OF TRACT NO. 29114, AS SHOWN BY MAP ON FILE IN BOOK 418, PAGES 30 THROUGH 36 OF MAPS, RECORDS OF RIVERSIDE COUNTY.**

**PARCEL 2: (APN'S: 480-281-012-8, 480-281-013-9 AND 480-281-019-5 THROUGH 480-281-022-7)**

**LOTS 13, 14 AND 20 THROUGH 23, INCLUSIVE OF TRACT NO. 29114-1, AS SHOWN BY MAP ON FILE IN BOOK 346, PAGES 36 THROUGH 43 OF MAPS, RECORDS OF RIVERSIDE COUNTY.**

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# Exhibit “B”

Order Number: NHSC-4333696 (06)  
Page Number: 23

**LEGAL DESCRIPTION**

Real property in the unincorporated area of the County of Riverside, State of California, described as follows:

PARCEL 1: (480-620-002)

LOT 2 OF TRACT NO. 32049, AS SHOWN BY MAP ON FILE IN BOOK 424, PAGES 6 THROUGH 9 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

PARCEL 2: (480-621-077 THROUGH 480-621-084)

RESIDENTIAL UNITS 101 THROUGH 108 (THE "RESIDENTIAL UNITS") OF MODULE "G" AS SHOWN AND DESCRIBED IN THE CONDOMINIUM PLAN FOR BELLASOL (TOGETHER WITH ANY AMENDMENTS THERETO, COLLECTIVELY, THE "PLAN"), WHICH ENCUMBERS LOT 1 OF MAP NO. 32049, AS SHOWN ON THE MAP ("MAP") FILED IN BOOK 424, AT PAGES 6 THROUGH 9, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE RIVERSIDE COUNTY RECORDER, WHICH PLAN WAS RECORDED ON JANUARY 23, 2008 AS DOCUMENT NO. 2008-0033858, IN OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA ("OFFICIAL RECORDS").

PARCEL 2A:

AN UNDIVIDED 8/147TH FEE SIMPLE INTEREST AS A TENANT IN COMMON IN AND TO THE COMMON AREA DESCRIBED IN THE PLAN AND AS DEFINED IN THE FIRST AMENDMENT TO THE CONDOMINIUM PLAN FOR BELLASOL, RECORDED ON MAY 13, 2011, AS DOCUMENT NO. 2011-0213279 IN THE OFFICIAL RECORDS.

PARCEL 2B:

NONEXCLUSIVE EASEMENTS FOR ACCESS, DRAINAGE, ENCROACHMENT, MAINTENANCE, REPAIR, AND FOR OTHER PURPOSES, ALL AS MAY BE SHOWN ON THE PLAN AND THE MAP, AND AS DESCRIBED IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF BELLASOL (TOGETHER WITH ANY AMENDMENTS THERETO, COLLECTIVELY THE "DECLARATION"), RECORDED ON JULY 23, 2007 AS DOCUMENT NO. 2007-0475537 OF OFFICIAL RECORDS.

PARCEL 2C:

AN EXCLUSIVE EASEMENT OVER THE EXCLUSIVE USE AREAS AND/OR SIDEYARD EASEMENT AREAS, IF ANY, AS APPROXIMATELY SHOWN AND ASSIGNED IN THE PLAN, AND THE DECLARATION, AS APPLICABLE, AND IDENTIFIED AS APPURTENANT TO THE RESIDENTIAL UNITS.

PARCEL 3: (480-621-001 THROUGH 480-621-69, 480-622-001 THROUGH 480-622-46, 480-623-001 THROUGH 480-623-012, 480-623-015 THROUGH 480-623-017)

LOTS 1, 3, 4, "C" AND "D" OF TRACT NO. 32049, AS SHOWN BY MAP ON FILE IN BOOK 424, PAGES 6 THROUGH 9 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

EXCEPTING THEREFROM MODULES "G" AND "H" OF CONDOMINIUM PLAN FOR BELLASOL RECORDED JANUARY 23, 2008 AS INSTRUMENT NO. 2008-0033858 AND THE FIRST

*First American Title*

Order Number: NHSC-4333696 (06)  
Page Number: 24

AMENDMENT TO THE CONDOMINIUM PLAN FOR BELLASOL RECORDED MAY 13, 2011 AS INSTRUMENT NO. 2011-0213279, IN OFFICIAL RECORDS.

PARCEL 4: (480-623-015 THROUGH 480-623-017)

RESIDENTIAL UNITS 145 THROUGH 147 (THE "RESIDENTIAL UNITS") OF MODULE "H" AS SHOWN AND DESCRIBED IN THE CONDOMINIUM PLAN FOR BELLASOL (TOGETHER WITH ANY AMENDMENTS THERETO, COLLECTIVELY, THE "PLAN"), WHICH ENCUMBERS LOT 1 OF MAP NO. 32049, AS SHOWN ON THE MAP ("MAP") FILED IN BOOK 424, AT PAGES 6 THROUGH 9, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE RIVERSIDE COUNTY RECORDER, WHICH PLAN WAS RECORDED ON JANUARY 23, 2008 AS DOCUMENT NO. 2008-0033858, IN OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA ("OFFICIAL RECORDS").

PARCEL 4A:

AN UNDIVIDED 3/147TH FEE SIMPLE INTEREST AS A TENANT IN COMMON IN AND TO THE COMMON AREA DESCRIBED IN THE PLAN AND AS DEFINED IN THE FIRST AMENDMENT TO THE CONDOMINIUM PLAN FOR BELLASOL, RECORDED ON MAY 13, 2011, AS DOCUMENT NO. 2011-0213279 IN THE OFFICIAL RECORDS.

PARCEL 4B:

NONEXCLUSIVE EASEMENTS FOR ACCESS, DRAINAGE, ENCROACHMENT, MAINTENANCE, REPAIR, AND FOR OTHER PURPOSES, ALL AS MAY BE SHOWN ON THE PLAN AND THE MAP, AND AS DESCRIBED IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF BELLASOL (TOGETHER WITH ANY AMENDMENTS THERETO, COLLECTIVELY THE "DECLARATION"), RECORDED ON JULY 23, 2007 AS DOCUMENT NO. 2007-0475537 OF OFFICIAL RECORDS.

PARCEL 4C:

AN EXCLUSIVE EASEMENT OVER THE EXCLUSIVE USE AREAS AND/OR SIDYARD EASEMENT AREAS, IF ANY, AS APPROXIMATELY SHOWN AND ASSIGNED IN THE PLAN, AND THE DECLARATION, AS APPLICABLE, AND IDENTIFIED AS APPURTENANT TO THE RESIDENTIAL UNITS.

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# Exhibit “C”

**FRENCH VALLEY CREEK IMPROVEMENT  
AND DISBURSEMENT AGREEMENT**

This French Valley Creek Improvement and Disbursement Agreement ("Agreement") is entered into this day 31st of January, 2012, by and between BELLACAP, LLC, a California Limited Liability Company ("Developer") and the COUNTY OF RIVERSIDE, a political subdivision of the State of California ("County"). Developer and County are sometimes hereinafter referred to collectively as the "Parties" and individually as a "Party".

**RECITALS**

**WHEREAS**, the Developer is the fee owner of that certain real property located in the County of Riverside, State of California, consisting of approximately 74.12 acres as more particularly described in "Exhibit A" ("Property" or "Capistrano"); and,

**WHEREAS**, the Developer is also the fee owner of certain real property located in the County of Riverside identified as Tract Map No. 32049 ("Bella Sol"); and,

**WHEREAS**, the Property is subject to Tract Map No. 29114, a recorded final map permitting the development of 259 single-family residential units on the Property; and,

**WHEREAS**, Condition of Approval 90. Trans 1. for Tract Map No. 29114 requires, among other things, the Developer to construct certain roadways, drainage culverts, slope protection, water lines and grading improvements prior to the issuance of any occupancy releases by the County's Department of Building and Safety for any lot over 80% of the total recorded residential lots ("French Valley Creek Improvements"); and,

**WHEREAS**, Condition of Approval 50.TRANS.027 Tract Map No. 29114, required certain improvements now modified; and

**WHEREAS**, Condition of Approval 50.TRANS.006 Tract Map No. 32049, required certain improvements now modified; and

**WHEREAS**, at or around November, 2009, Global Investment and Development, LLC. acquired Tract No. 29114; and,

1           **WHEREAS**, Global Investment and Development LLC. is the managing partner of Developer;  
2 and,

3           **WHEREAS**, on or about November 10, 2009, the County and Developer reached an  
4 understanding for the basis of an agreement to allow the continued development of lots within Tract No.  
5 29114 that are over 80% of the total recorded residential lots; and,

6           **WHEREAS**, in lieu of a bond to secure the completion of the French Valley Creek  
7 Improvements, Developer agreed to pay County Thirty-Five Thousand Dollars (\$35,000) per residential  
8 lot prior to requesting a Certificate of Occupancy for the undeveloped lots remaining within Tract No.  
9 29114 ("Improvement Security"), more particularly described in "Exhibit B"; and,

10           **WHEREAS**, the Improvement Security was to be placed in an account to be formed and managed  
11 by the County and disbursed to the Developer pursuant to the terms of this Agreement ("Improvement  
12 Account"); and,

13           **WHEREAS**, in 2009 there were 77 undeveloped lots and as of the Effective Date there are 60  
14 undeveloped lots remaining in Tract No. 29114; and,

15           **WHEREAS**, as of the date of this Agreement, Developer has paid Five Hundred Ninety-Five  
16 Thousand Dollars (\$595,000) into the Improvement Account; and,

17           **WHEREAS**, on December 8, 2010, the Riverside County Board of Supervisors took certain  
18 action to modify and substitute certain works of improvement for the originally described works of  
19 improvement as more particularly described in "Exhibit C"; and,

20           **WHEREAS**, the French Valley Creek Improvements, in whole or in part, are also the subject of a  
21 certain agreement originally entered into by and between Barratt and Ryland Homes of California  
22 ("Ryland") dated October 20, 2005 ("Barratt-Ryland Agreement"); and,

23           **WHEREAS**, the estimated aggregate value of all the improvements and support costs included in  
24 this Agreement is approximately \$2 million; and,

25           **WHEREAS**, the Barratt-Ryland Agreement provides for the construction of the Skyview Bridge,  
26 more particularly described in "Exhibit D"; and,

1           **WHEREAS**, in June 2010, the Developer and Ryland entered into a certain Assignment and  
2 Assumption Agreement whereby Developer assumed Barratt's obligations under the Barratt-Ryland  
3 Agreement; and,

4           **WHEREAS**, The French Valley Creek Improvements, in whole or in part, and the Skyview  
5 Bridge are also secured through bonds issued by securities companies.

6  
7           **NOW, THEREFORE**, for the mutual promises contained herein, the County and Developer  
8 mutually agree as follows:

- 9           1.    **PURPOSE.**    The purpose of this Agreement is to set forth the terms for the Developer's  
10 completion of the French Valley Creek Improvements as depicted in "Exhibit E" and the  
11 County's disbursement of the Improvement Security for such completion.
- 12           2.    **DEVELOPER'S OBLIGATIONS.** The Developer hereby agrees to perform the  
13 following:
- 14           a.    Bella Sol Slope Protection. Complete rock slope protection from the existing  
15 terminus adjacent to Tract No. 32049 to a point north of Skyview Road and connect  
16 with the Boys and Girls Club Levee ("BGC Levee"), or a mutually agreed to  
17 terminus by Developer and the County Director of Transportation. This project is  
18 approximately 230 feet long.
- 19           b.    Capistrano Flood Protection. Construct concrete slope protection to connect  
20 existing concrete slope improvements for Tract No. 29114 and Tract No. 28298.  
21 This project is approximately 120 feet long.
- 22           c.    In-tract Improvements. Complete cul-de-sac, final asphalt cap, landscaping, and  
23 other associated improvements for the Property in accordance with the conditions  
24 of approval for Tract Map No. 29114 ("Skyview Road Improvement").
- 25           d.    Water Line – Complete installation of an 18" water line for the Eastern Municipal  
26 Water District ("EMWD"), approximately 620 feet long, more particularly  
27 described in "Exhibit F".  
28



- 1 e. Capistrano Rough Grading – On or before the issuance of building permits,  
2 complete finished grading for Tract Map Nos 29114F and 29114-1, as set forth in  
3 "Exhibit G".
- 4 f. Capistrano Improvements – On or before the final inspection, repair street, install  
5 sidewalk, driveways, and associated work in accordance with the conditions of  
6 approval for Tract Map No. 29114.
- 7 g. Bella Sol On-Site Improvements – Prior to the eighty percent (80%) occupancy  
8 permit, complete remaining on-site work for Tract Map No. 32049, including a  
9 paved emergency access, as approved by the Riverside County Fire Department.
- 10 h. Capistrano and Bella Sol Off-Site Costs – Complete all off-site improvements in  
11 accordance with conditions of approval for Tract Map Nos. 32049 and 29114.
- 12 i. Consulting and Engineering Costs – Pay all costs associated with design, County  
13 review and approval and construction management to complete all improvements  
14 identified under Developer's obligations.
- 15 j. Document Submittals. Prior to starting construction on the Bella Sol Slope  
16 Protection and Capistrano Flood Protection projects ("Protection Projects") set  
17 forth above in Section 2 subsection a. and b., submit the following to the Riverside  
18 County Flood Control & Water Conservation District ("District"):
- 19 1. preliminary title reports, plats and legal descriptions for all right-of- way to  
20 be conveyed to the District and secure such right-of- way to the satisfaction  
21 of the District; and
  - 22 2. a cooperative agreement to be entered into with the District and any  
23 maintenance partners that establishes the terms and conditions for  
24 inspection, operation and maintenance of the Protection Projects; and
  - 25 3. plans for the Protection Projects to the District's General Manager-Chief  
26 Engineer for signature.
- 27  
28

1 k. Contribution. Within forty-five (45) calendar days after the Effective Date,  
2 contribute One Hundred Thousand Dollars (\$100,000) to the County to be used for  
3 planning or transportation projects within the community. The Parties further agree  
4 the Developer shall contribute an additional One Hundred Thousand Dollars  
5 (\$100,000) to be paid within nine (9) months after the Effective Date or within  
6 thirty (30) days of a grading permit issued for the BGC Levee, more specifically  
7 referred to in Paragraph 2(n) below, whichever occurs first. The Parties further  
8 acknowledge that the Developer has previously paid the County One Hundred  
9 Thousand Dollars (\$100,000) pursuant to an agreement as set forth in "Exhibit H",  
10 which is in addition to the Developer's Two Hundred Thousand Dollars (\$200,000)  
11 obligation referenced in this section.

12 l. Project Construction. In the event that the Protection Projects are not constructed  
13 by Developer, need correction or fail in any manner, as reasonably determined by  
14 the County, Developer agrees that the Improvement Security, as found in the  
15 Improvement Account, may be provided to the District to finish the Protection  
16 Projects and/or correct any workmanship deficiency. Provided further that in the  
17 event a correction or failure is the issue the County shall give fourteen (14) days  
18 written notice to Developer and Developer shall have fourteen (14) days to  
19 commence any such correction or begin to correct any such failure.

20 m. Notification. In accordance with section 12 herein, notify the County in writing at  
21 least sixty (60) days prior to start of construction of items 2a and 2b.

22 n. BGC Levee. In the event that the County requires Developer to construct the BGC  
23 Levee in accordance with Section 3e., Developer shall commence construction  
24 within thirty (30) days of County notification. This project will terminate north of  
25 the Skyview Road right-of-way and is approximately 500 feet long as shown on  
26 "Exhibit I".  
27  
28

- 1           o.     Within thirty (30) calendar days of receiving a written request from County, at the  
2                     County's sole option, Developer shall release Ryland, in a form acceptable to  
3                     Ryland, from any obligation to perform under the Barratt-Ryland Agreement.
- 4           p.     Developer and County acknowledge that County and Ryland are negotiating a  
5                     separate agreement that will contain similar language to mutually release Developer  
6                     from obligations under the Ryland Agreement.
- 7           q.     Within thirty (30) calendar days of receiving a written request from the County, at  
8                     the County's sole option, Developer shall release any other security interests in a  
9                     form acceptable to the securities from any obligation that those parties may have to  
10                    Developer or Developer's Capistrano and Bella Sol properties.
- 11          r.     Developer shall submit written evidence to the satisfaction of County that each  
12                     improvement described herein has been completed by Developer.

13          3.     **COUNTY'S OBLIGATIONS.** The County hereby agrees to perform the  
14                     following:

- 15          a.     Upon the County's sole determination that the Bella Sol Slope Protection is  
16                     constructed, refund One Hundred Sixty Thousand Dollars (\$160,000) from the  
17                     Improvement Account to the Developer. County shall inform Developer within  
18                     thirty (30) calendar days of receiving the written evidence set forth in Section 2.r  
19                     whether the County determines it is constructed. If determined to be constructed,  
20                     County shall refund Developer within thirty (30) calendar days of such  
21                     determination. If determined to be not constructed, County shall set forth the  
22                     reasons why and what work needs to be done by Developer.
- 23          b.     Upon the County's sole determination that the Capistrano Slope Protection is  
24                     constructed, refund Two Hundred Forty-five Thousand (\$245,000) from the  
25                     Improvement Account to the Developer. County shall inform Developer within  
26                     thirty (30) calendar days of receiving the written evidence set forth in Section 2.r  
27                     whether the County determines it is constructed. If determined to be constructed,  
28

1 County shall refund Developer within thirty (30) calendar days of such  
2 determination. If determined to be not constructed, County shall set forth the  
3 reasons why and what work needs to be done by Developer.

4 c. As conditioned by Paragraph 2(n) herein and upon the County's election and sole  
5 determination that the BGC Levee is constructed and verification of Developer's  
6 cost to construct the BGC Levee, refund actual costs to complete said  
7 improvements not to exceed Four Hundred Fifty Thousand Dollars (\$450,000).  
8 County shall inform Developer within thirty (30) calendar days of receiving the  
9 written evidence set forth in Section 2.r whether the County determines it is  
10 constructed. If determined to be constructed, County shall refund Developer within  
11 thirty (30) calendar days of such determination. If determined to be not  
12 constructed, County shall set forth the reasons why and what work needs to be done  
13 by Developer.

14 d. Upon the County's sole determination that the remaining Developer's obligations  
15 described herein are met, refund One Hundred Ninety Thousand and (\$190,000) to  
16 the Developer. County shall inform Developer within thirty (30) calendar days of  
17 receiving the written evidence set forth in Section 2.r whether such obligations are  
18 met. If determined to be met, County shall refund Developer within thirty (30)  
19 calendar days of such determination. If determined not met, County shall set forth  
20 the reasons why and what work needs to be done by Developer.

21 e. In accordance with section 12 herein, County shall notify Developer within thirty  
22 (30) calendar days after the earliest event listed below of County's intent to require  
23 Developer to comply with Section 2.n. and construct the BGC Levee:

- 24 1. Six (6) months from the Effective Date; or,
- 25 2. Receiving written notice from Developer that Developer is proceeding with  
26 construction of the channel rock slope protection as referenced in 2.a. and 2.b.  
27 herein; or,
- 28

1                   3. Grading commencing at the Boys and Girls Club site.

2                   4. If no such notice is given by the County, then the obligation to construct the  
3                   BGC Levee shall be waived by County.

4                   f. County shall provide a separate written document to Developer releasing Developer  
5                   from any future obligation to construct the Skyview Bridge upon all of the  
6                   following: 1) approval of this Agreement by all parties, (2) execution of this  
7                   Agreement by all parties, and (3) fulfillment of Developer's obligations described  
8                   herein.

9                   g. Except as provided for in this Agreement, County shall not require any additional  
10                  deposits from Developer for further inspections on the Property.

11                  h. Except as provided in this Agreement, County agrees that no additional securities  
12                  will be required from Developer for the construction to complete the improvements  
13                  identified under Developer's obligations set forth in this Agreement.

14                  4. **DEVELOPER'S REPRESENTATIONS.** Notwithstanding Section 2 subsection f.,  
15                  Developer represents and warrants to County that Developer alone is entitled to the  
16                  disbursement of the Improvement Security.

17                  5. **COMPLIANCE WITH LAWS AND REGULATIONS.** By executing this Agreement,  
18                  Developer agrees to comply with all applicable federal, state and local laws, regulations  
19                  and ordinances.

20                  6. **TERMINATION.** The Parties shall have the right to terminate this Agreement in the  
21                  event that the other Party fails to perform, keep or observe any of its duties or obligations  
22                  hereunder. Provided however, the non-terminating Party shall have thirty (30) calendar  
23                  days in which to correct such breach or default after written notice thereof has been served  
24                  on it by the terminating Party. In the event this Agreement is terminated, the Parties shall  
25                  retain all rights to seek any and all remedies available at law or in equity.

26                  7. **INDEMNIFICATION.** Developer shall defend, indemnify and hold harmless the  
27                  County and its Agencies, Districts, Special Districts and Departments, their respective  
28

1 directors, officers, Board of Supervisors, elected and appointed officials, employees,  
2 agents and representatives agents, officers and employees ("Indemnities") from any claim,  
3 action, or proceeding brought or asserted by a third person or entity against the Indemnities  
4 to attack, set aside, void, or annul this Agreement or any other action in connection with  
5 this Agreement, including but not limited to, the approval of Tract Map No. 29114 and  
6 Tract Map 32049, conditions of approval imposed on Tract Map No. 29114 and Tract Map  
7 32049 or the disbursement of the Improvement Security to Developer by the County or any  
8 of its agencies, departments, commissions, agents, officers or employees or to impose  
9 personal liability against such agents, officers or employees resulting from their  
10 involvement in this Agreement, which claim, action, or proceeding is brought within the  
11 time period provided by law, including any claim for private attorney general fees claimed  
12 by or awarded to any party from the County.

13 Developer shall defend, at its sole expense, all costs and fees including, but not limited to,  
14 attorney fees, cost of investigation, defense, and settlements or awards, the County, its  
15 Agencies, Districts, Special Districts and Departments, their respective directors, officers,  
16 Board of Supervisors, elected and appointed officials, employees, agents and  
17 representatives in any claim or action based upon such alleged acts or omissions. To the  
18 extent that the County uses any of its resources responding to such claims, action, or  
19 proceeding, Developer will reimburse the County within thirty (30) calendar days of the  
20 submission of an itemized statement for these resources. Such resources include, but are  
21 not limited to the reasonable expenses and charges related to staff time, court costs, County  
22 Counsel's time at their regular rate for external or non-County agencies, or any other  
23 reasonable direct or indirect costs associated with responding to the claim, action or  
24 proceeding.

25 Developer's obligation hereunder shall be satisfied when Developer has provided to  
26 County the appropriate form of dismissal relieving County from any liability for the action  
27 or claim involved.  
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- 1           8.     **ASSIGNMENT.** Neither this Agreement nor any of the rights, interests, or obligations  
2           hereunder may be assigned by any Party without the other Party's prior written consent,  
3           which shall not be unreasonably withheld, and any assignment of this Agreement or any of  
4           the rights, interests, or obligations hereunder shall be of no force or effect until the  
5           proposed assignee agrees in writing to be bound by all of the terms and conditions of this  
6           Agreement and such signed writing is delivered to the non-assigning Party. Subject to the  
7           foregoing restrictions, the provisions of this Agreement shall be binding upon and inure to  
8           the benefit of all affiliates, parent corporations, subsidiaries, assigns, successors-in-interest,  
9           personal representatives, administrators, heirs, devisees and legatees of the Parties.
- 10          9.     **AMENDMENT.** Except as otherwise provided in this Agreement, neither this Agreement  
11          nor any provision hereof may be waived, modified, amended, discharged, or terminated  
12          except by an instrument in writing signed by the Party against which the enforcement of  
13          such waiver, modification, amendment, discharge or termination is sought, and then only  
14          to the extent set forth in such writing.
- 15          10.    **EXHIBITS.** Each of the exhibits attached hereto is incorporated herein by this reference
- 16          11.    **ENTIRE AGREEMENT.** This Agreement constitutes the entire understanding between  
17          the Parties with respect to the matters set forth herein, and supersedes all prior or  
18          contemporaneous understandings or agreements between the Parties with respect to the  
19          subject matter hereof, whether oral or written.
- 20          12.    **NOTICES.** Any notice, approval, consent, waiver or other communication required or  
21          permitted to be given or to be served upon either Party in connection with this Agreement  
22          shall be in writing. Such notice shall be personally served, sent by facsimile, or sent  
23          prepaid by registered or certified mail with return receipt requested, or sent by reputable  
24          overnight delivery service, such as Federal Express, and shall be deemed given: (1) if  
25          personally served, when delivered to the Party to whom such notice is addressed; (2) if  
26          given by facsimile when sent; (3) if given by prepaid or certified mail with return receipt  
27          requested, on the date of execution of the return receipt; or (4) if sent by a reputable  
28

1 overnight delivery service, such as Federal Express, when received. Any notice given by  
2 facsimile shall be confirmed in writing, and such confirmation shall be sent or delivered by  
3 any of the other means of delivery set forth in this Section, within forty-eight (48) hours  
4 after notice was sent by facsimile. Such notices shall be addressed to the Party to whom  
5 such notice is to be given at the Party's address set forth below or as such Party shall  
6 otherwise direct in writing to the other Party delivered or sent in accordance with this  
7 Section.

8 If to Bellacap: Bellacap, LLC  
9 Attn: Joseph Rivani  
10 3470 Wilshire Boulevard, Suite 1020  
11 Los Angeles, CA 90010  
12 Tel: (213) 365-0005  
13 Fax: (213) 365-0405

14 With a copy to: Buchanan Ingersoll & Rooney LLP  
15 Attn: Samuel C. Alhadeff  
16 41607 Margarita Road, Suite 103  
17 Temecula, CA 92591  
18 Tel: (951) 719-3640  
19 Fax: (951) 719-3650

20 If to County: County of Riverside Transportation Department  
21 Attn: Juan C. Perez, P.E., Director of Transportation  
22 4080 Lemon Street  
23 Riverside, California 92501  
24 Tel: (951) 955-6740  
25 Fax: (951) 955-3198

26 With a copy to: Office of County Counsel  
27 Attn: Shellie Clack, Deputy County Counsel  
28 3960 Orange Street, Suite 500  
Riverside, CA 92501  
Tel: (951) 955-6300  
Fax: (951) 955-6322

13. **GOVERNING LAW.** This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of California, without giving effect to



1 any choice-of-law or conflicts-of-laws rule or principle that would result in the application  
2 of any other laws.

3 14. **HEADINGS.** Headings, titles and captions are for convenience only and shall not  
4 constitute a portion of this Agreement or be used for the interpretation thereof.

5 15. **WAIVER.** The rights created under this Agreement, or by law or equity, shall be  
6 cumulative and may be exercised at any time and from time to time. No failure by either  
7 Party to exercise, and no delay in exercising any rights, shall be construed or deemed to be  
8 a waiver thereof, nor shall any single or partial exercise by any Party preclude any other or  
9 future exercise thereof or the exercise of any other right. Any waiver of any provision or  
10 of any breach of any provision of this Agreement must be in writing, and any waiver by  
11 any Party of any breach of any provision of this Agreement shall not operate as or be  
12 construed to be a waiver of any other breach of that provision or of any breach of any other  
13 provision of this Agreement. The failure of any Party to insist upon strict adherence to any  
14 term of the Agreement on one or more occasions shall not be considered or construed or  
15 deemed a waiver of any provision or any breach of any provision of this Agreement or  
16 deprive that Party of the right thereafter to insist upon strict adherence to that term or  
17 provision or any other term or provision of this Agreement. No delay or omission on the  
18 part of any Party in exercising any right under this Agreement shall operate as a waiver of  
19 any such right or any other right under this Agreement.

20 16. **LIBERAL CONSTRUCTION.** This Agreement constitutes a fully-negotiated agreement  
21 among commercially sophisticated Parties, each assisted by legal counsel, and the terms of  
22 this Agreement shall not be construed or interpreted for or against any Party hereto because  
23 that Party or its legal representative drafted or prepared such provision.

24 17. **SEVERABILITY.** If any provision of this Agreement is invalid, illegal or unenforceable,  
25 such provision shall be deemed to be severed or deleted from this Agreement and the  
26 balance of this Agreement shall remain in full force and effect notwithstanding such  
27 invalidity, illegality or unenforceability.

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18. **GOOD FAITH AND FAIR DEALING.** The Parties hereto acknowledge and agree that the performances required by the provisions of this Agreement shall be undertaken in good faith, and with each of the Parties dealing fairly with each other.

19. **NO THIRD PARTY BENEFICIERS.** This Agreement does not create, and shall not be construed to create, any rights enforceable by any person, partnership, corporation, joint venture, limited liability company or other form of organization or association of any kind that is not a Party to this Agreement.

20. **TIME OF THE ESSENCE.** Time is of the essence of each and every provision of this Agreement. Unless business days are expressly provided for, all references to "days" herein shall refer to consecutive calendar days. If any date or time period provided for in this Agreement is or ends on a Saturday, Sunday or federal, state or legal holiday, then such date automatically shall be extended to the next day which is not a Saturday, Sunday or federal, state or legal holiday.

21. **NUMBER AND GENDER.** As used herein, and as the circumstances require, the plural term shall include the singular, the singular shall include the plural, the neuter term shall include the masculine and feminine genders, the masculine term shall include the neuter and the feminine genders, and the feminine term shall include the neuter and the masculine genders.

22. **ATTORNEYS' FEES.** Each Party shall bear its own attorneys' fees and cost if any action or proceeding is instituted for the purpose of enforcing any provision of this Agreement, or to recover damages if otherwise available hereunder, or to obtain injunctive or other relief by reason of any alleged breach of any provision of this Agreement, or for a declaration based on a demonstrated necessity of such Party's rights or obligations under this Agreement, or for any other judicial or equitable remedy.

23. **FORCE MAJEURE.** If any performance of this Agreement is prevented, delayed, or made impracticable due to extended drought, flood, fire, earthquake, or other natural disaster, strike, unavailability of necessary materials, electrical power or fuel, civil rioting,

1 war or military conflict, inability to obtain all necessary permits or approvals (including  
2 any and all environmental approvals) or if the cost of complying with environmental  
3 requirements renders this transaction economically impractical (collectively a "Force  
4 Majeure Event"), then such performance of this Agreement shall be excused for the  
5 period of prevention, delay or impracticability resulting from the Force Majeure Event.

6 24. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which  
7 shall be deemed an original, but all of which together shall constitute one and the same  
8 instrument. The signature page of any counterpart may be detached therefrom without  
9 impairing the legal effect of the signature(s) thereon, provided such signature page is  
10 attached to any other counterpart identical thereto except for having an additional signature  
11 page executed by any other Party. Each Party agrees that each other Party may rely upon  
12 the facsimile signature of any Party on this Agreement as constituting a duly authorized,  
13 irrevocable, actual, current delivery of this Agreement as fully as if this Agreement  
14 contained the original ink signature of the Party supplying a facsimile signature.

15 25. **AUTHORITY TO EXECUTE.** The persons executing this Agreement or exhibits  
16 attached hereto on behalf of the parties to this Agreement hereby warrant and represent  
17 that they have the authority to execute this Agreement and warrant and represent that they  
18 have the authority to bind the respective parties to this Agreement to the performance of  
19 its obligations hereunder.

20 26. **DELEGATION OF AUTHORITY.** The County's Director of Transportation is  
21 delegated the authority to implement the terms of this Agreement.

22 27. **RENEGOTIATION OF TERMS.** In the event that County causes the improvements  
23 described in Section 2, in whole or in part, to be constructed by another party, as  
24 determined by the Director of Transportation, the Parties agree to renegotiate the terms of  
25 this Agreement and amend it in accordance with Section 9 herein.

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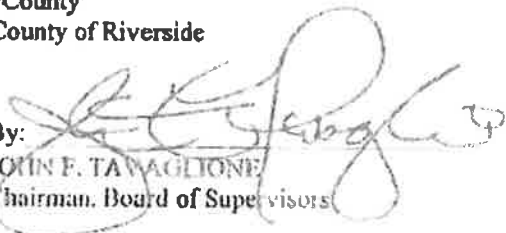
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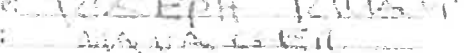
1           28.   **EFFECTIVE DATE.** The effective date of this Agreement is the date the parties execute  
2                           the Agreement. If the parties execute the Agreement on more than one date, then the last  
3                           date the Agreement is executed by a party shall be the effective date.  
4

5   **IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed as of the day  
6                           and year first above written.

7   "County"  
8   County of Riverside

9   By:   
10    JOHN F. TAWAGLIONE  
11    Chairman, Board of Supervisors

12    "Developer"  
13    Bellacap, LLC, a California limited liability company

14    By:   
15    Name: JOSEPH ALWAN  
16    Title: 

17   **APPROVED AS TO FORM:**  
18   **PAMELA J. WALLS**  
19   County Counsel

20   By:   
21   Deputy

22  
23   **ATTEST:**  
24   **KECIA HARPER-IHEM**  
25   Clerk of the Board

26  
27   By:   
28   Deputy

---

# Exhibit “D”



**COUNTY OF RIVERSIDE**  
**TRANSPORTATION AND LAND MANAGEMENT AGENCY**

*Juan C. Perez*  
*Agency Director*



June 13, 2013

Joseph Rivani  
Bellacap LLC  
3470 Wilshire Blvd. Ste. 1020  
Los Angeles CA 90010

**RE: Letter of Understanding Regarding Implementation of the French Valley Creek Improvement and Disbursement Agreement between Bellacap, LLC and County of Riverside Agreement.**

Mr. Rivani,

I am following up on our recent communications to memorialize our implementation of the subject agreement approved on January 31, 2012. The County still has an interest in having Bellacap complete the construction of the Boys and Girls Club levee, should our funding materialize. This letter shall serve to memorialize what has transpired to date and how the parties would move forward to accomplish that goal.

1. It appears that Bellacap has satisfied the requirement under Section 2.k. (Contribution), to pay within 45 days of approval, the first installment of \$100,000 to the County, as evidenced by the attached check.
2. Bellacap has substantially completed the Bella Sol Slope Protection in accordance with Sec. 3.a. which entitles them to a \$160,000 refund from the County.
3. Bellacap has not paid the second installment of \$100,000 required by Sec.2.k., which was due within 9 months of the agreement or on or about November 1, 2012.
4. County did not notify Bellacap to begin construction of the Boys and Girls Club Levee (BGC Levee) within the six months of the effective date (on or about August 2012) or within 30 days of receiving notice from Bellacap that the work was proceeding on the Bella Sol portion of the levee as required under Sec. 3.e.. However, County is still interested in having Bella Sol complete this work, subject to receipt of funding from the other parties.

Therefore I am proposing the following under the authority delegated to the Director of Transportation under Section 26 to implement the terms of the agreement:

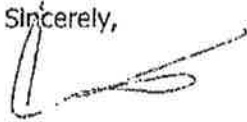
- A. County and Bellacap will agree to extend the time frame of the second \$100,000 payment due County under Sec.2.k. until January 31, 2014.
- B. County and Bellacap will agree to extend the notice period under which County can cause Bellacap to construct the BGC Levee until December 31, 2013, replacing the noticing requirements of Sec. 3.e. 1,2 and 3.
- C. Should County not provide notice to Bellacap by December 31, 2013 of our intent to have Bellacap construct the BGC Levee as stated in B. above, Bellacap shall remit remaining payment due County as stated in A. above.

- D. Should County provide notice to Bellacap to proceed with construction of the BGC Levee by the time frame stated in B. above, the \$100,000 payment which would have been otherwise required by A. above will count as a credit and reduction against the not-to-exceed \$450,000 that Bellacap would receive under Sec.3.c. upon the construction of the BGC Levee being deemed complete. Note that this is a not-to-exceed and the amount that Bellacap would be entitled to would be based on actual costs as stated in the agreement. The total not-to-exceed amount that Bellacap would be entitled to be reimbursed upon completion of the BGC Levee would be revised to be \$350,000, given the \$100,000 applied credit.
- E. Should County provide notice under B. and D. above, County will advance \$125,000 of the not-to-exceed amount of \$350,000 within 30 days of construction starting and continuing on the BCG Levee. The remaining total amount of not-to-exceed \$225,000 would be due Bellacap upon completion of the BCG Levee and certification of costs as stated in the agreement.
- F. All other terms of the approved agreement would stay the same.

If these terms are acceptable to Bellacap, we will release the \$160,000 owed upon our mutual signatures of this Letter of Understanding and check processing timeframe. We may need to do a formal amendment to the agreement to capture these changes, if so your signature below will also constitute a commitment from Bellacap to process the amendment to reflect this Letter of Understanding (County will prepare amendment).

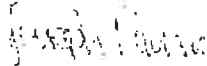
By signing this Letter of Understanding you are warranting that you have the authority to represent and bind Bellacap, LLC on this matter.

Sincerely,



Juan C. Perez  
Director of Transportation and Land Management

I accept and agree to the terms of this Letter of Understanding and to commit Bellacap, LLC to the performance of these terms.



\_\_\_\_\_  
Bellacap, LLC

Name: Joseph Rivani

Title: Manager

CC: Patricia Romo, Assistant Director of Transportation  
Hugh Smith, Engineering Division Manager