

# **CONSENT AGENDA**

**C-3**

**Settlement Agreement Extension**  
***Monterrey Park***

DATE SUBMITTED           04/10/15            
 SUBMITTED BY           PLANNING            
                             DIRECTOR            
 DATE ACTION REQUIRED           04/15/15          

COUNCIL ACTION (X)  
 PUBLIC HEARING REQUIRED ( )  
 RESOLUTION ( )  
 ORDINANCE 1<sup>ST</sup> READING ( )  
 ORDINANCE 2<sup>ND</sup> READING ( )  
 CITY CLERK'S INITIALS ( )

**IMPERIAL CITY COUNCIL  
 AGENDA ITEM**

<b>SUBJECT:</b>	<b>CONSENT AGENDA: EXTENSION OF SETTLEMENT AGREEMENT RELATED TO THE CITY'S BOND CLAIM FOR MONTERREY PARK</b>		
<b>DEPARTMENT INVOLVED:</b>			
<b>BACKGROUND/SUMMARY:</b>	<p>The Bond Company is requesting a time extension to complete improvements on Monterrey Park. The Settlement Agreement stated that all work must be completed prior to December 31, 2014. Since there are no residential structures are currently planned for this portion of Monterrey Park, a one-year extension is acceptable.</p>		
<b>FISCAL IMPACT:</b>	F.O. INITIALS: _____		
<b>STAFF RECOMMENDATION:</b>	Staff recommends approval of the time extension.		
<b>MANAGER'S RECOMMENDATION:</b>	MANAGER'S INITIALS		
<b>MOTION:</b>			
SECONDED:	APPROVED ( )	REJECTED ( )	
AYES:	DISAPPROVED ( )	DEFERRED ( )	
NAYES:			
ABSENT:	REFERRED TO:		

**SECOND AMENDMENT TO SETTLEMENT AGREEMENT RE: *City of Imperial***  
**v. *The Continental Insurance Company San Diego Superior Court Case No. 37-2011-00083091***

1. This Second Amendment to Settlement Agreement Re: *City of Imperial v. The Continental Insurance Company San Diego Superior Court Case No. 37-2011-00083091* (“Amendment”) is entered into on December 31, 2014 (“Effective Date”), in San Diego, California by the City of Imperial (“City”).
  
2. A true and correct copy of the Amendment to Settlement Agreement Re: *City of Imperial v. The Continental Insurance Company San Diego Superior Court Case No. 37-2011-00083091* is attached as Exhibit “1” and incorporated by reference as though set forth in full at this point.
  
3. The City hereby amends and changes the date of “December 31, 2014” to “May 31, 2015” in section 3 of the Amendment to Settlement Agreement Re: *City of Imperial v. The Continental Insurance Company San Diego Superior Court Case No. 37-2011-00083091* dated March 21, 2014.
  
4. All other terms of the Amendment to Settlement Agreement Re: *City of Imperial v. The Continental Insurance Company San Diego Superior Court Case No. 37-2011-00083091* dated March 21, 2014, remain in full force.

**CITY OF IMPERIAL**

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

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



2. Replacement Bond

Upon KB's compliance with section 3, below, the City agrees to allow KB to replace the Reduced Bond with a bond in the amount of \$1,598,008.00 obtained by, or on behalf of, Cross-Defendants and/or their contractor, or another on behalf of someone other than KB, in a form acceptable to the City ("Replacement Bond"). The Replacement Bond shall secure completion of the Work in satisfaction of KB's obligations under the Subdivision Agreement (recorded as Imperial County Document No. 2006-013706) and the Agreement and have a penal sum of \$1,598,008.00.

Upon Cross-Defendants submission of the Replacement Bond to City attorney Dennis Morita: (1) the City releases and exonerates the Reduced Bond in the form provided in the bond release letter attached as Exhibit "2" to this Amendment and incorporated by reference as though set forth in full at this point in addition to any other releases and discharges contained in the Agreement and this Amendment; (2) the City authorizes Jupiter Ventures I, LP or its contractors to complete the Work on behalf of KB in satisfaction of the terms of the Agreement; (3) Jupiter Ventures I, LP is assigned KB's rights and obligations pursuant to the Agreement to perform the Work (other than KB's obligation to pay money to the City which has already been satisfied by KB) and the City accepts such assignment where Jupiter Ventures I, LP will replace KB with respect to rights and obligations to perform the Work pursuant to the Agreement; (4) upon the City's approval and acceptance of the Work pursuant to section 2.10 of the Agreement, the City shall partially release and exonerate the Replacement Bond in the form provided in the bond release letter attached as Exhibit "3" to this Amendment and incorporated by reference as though set forth in full at this point; (5) upon the City's final approval and acceptance of the Work pursuant to section 2.11 of the Agreement, the City shall fully release and exonerate the Replacement Bond in the form provided in the bond release letter attached as Exhibit "4" to this Amendment and incorporated by reference as though set forth in full at this point; (6) KB and its surety, Continental, are released by the City from any and all claims by the City for purposes of the Work, Scope of Work, the Action, the Bond, the Replacement Bond, any other bonds of any kind relating to the Property and the project that is the subject of the Agreement; and (7) the City will file a dismissal with prejudice of the Action.

3. Agreement For Completion Of The Work By Cross-Defendants

Concurrent with execution of this Agreement, KB shall enter into a separate written agreement with Cross-Defendants whereby Cross-Defendants and KB settle the Action in its entirety and one or more Cross-Defendants agree to complete the Work and provide the Replacement Bond ("New Agreement").

The New Agreement will provide the Work shall be completed no later than December 31, 2014 by Jupiter Ventures I, LP or its contractors, provided the City complies with the terms of the Agreement, including but not limited to inspection and approval procedures and timelines for the Work. In addition to the inspection and approval requirements provided in the Agreement, the City agrees: (1) Jupiter Ventures I, LP will contact the City at {PHONE NUMBER} to request progressive and final inspections of the Work; (2) the City shall perform all inspections of the Work requested by Jupiter Ventures I, LP within two (2) business days of such request; and (3) within two (2) business days of inspection of the Work, the City will provide Jupiter Ventures I, LP with either written approval and

Initials: MSB / \_\_\_\_\_ / \_\_\_\_\_  
City Continental KB

acceptance of the inspected improvements or written notification of any corrections required to obtain approval and acceptance.

4. Survival

Except as amended by this Amendment, the Agreement remains in full force and effect.

The Parties have executed and delivered this Amendment consisting of four (4) pages and four (4) Exhibits.

**CITY OF IMPERIAL**

Signature: Marlene D. Best

DATED: May 8, 2014

Printed Name: Marlene D. Best

Title: City Manager

**THE CONTINENTAL INSURANCE COMPANY**

DATED: \_\_\_\_\_, 2014

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**KB HOME COASTAL, INC.**

Signature: \_\_\_\_\_

DATED: \_\_\_\_\_, 2014

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to Form and Content:

**WINGERT GREBING BRUBAKER & JUSKIE LLP**

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

DATED: \_\_\_\_\_, 2014

Stephen C. Grebing  
Attorneys for Plaintiff City of Imperial

Initials: MDB / \_\_\_\_\_ / \_\_\_\_\_  
City Continental KB

acceptance of the inspected improvements or written notification of any corrections required to obtain approval and acceptance.

4. Survival

Except as amended by this Amendment, the Agreement remains in full force and effect.

The Parties have executed and delivered this Amendment consisting of four (4) pages and four (4) Exhibits.

**CITY OF IMPERIAL**

Signature: \_\_\_\_\_

DATED: \_\_\_\_\_, 2014

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**THE CONTINENTAL INSURANCE COMPANY**

DATED: \_\_\_\_\_, 2014

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**KB HOME COASTAL, INC.**

Signature: \_\_\_\_\_

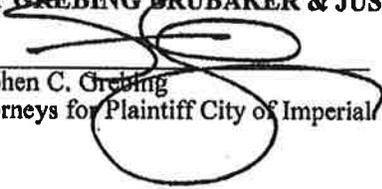
DATED: \_\_\_\_\_, 2014

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Approved as to Form and Content:**

**WINGERT GREBING BRUBAKER & JUSKIE LLP**

By:   
Stephen C. Grebing  
Attorneys for Plaintiff City of Imperial

DATED: 5/13/ \_\_\_\_\_, 2014

Initials: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
City Continental KB

By: \_\_\_\_\_  
Dennis H. Morita  
City Attorney

DATED: \_\_\_\_\_, 2014

**CORFIELD FELD LLP**

By: \_\_\_\_\_  
Michael A. Corfield  
Attorneys for The Continental Insurance  
Company

DATED: \_\_\_\_\_, 2014

**NEWMAYER & DILLION LLP**

By: \_\_\_\_\_  
John E. Bowerbank  
Attorneys for Defendant and Cross-Complainant  
KB Home Coastal, Inc.

DATED: \_\_\_\_\_, 2014

1595.002/36H0280.est

Initials: MOB / \_\_\_\_\_ / \_\_\_\_\_  
City Continental KB

**AMENDMENT TO SETTLEMENT AGREEMENT RE *City of Imperial v. The Continental Insurance Company San Diego Superior Court Case No. 37-2011-00083091***

This Amendment to Binding Settlement Agreement Re *City of Imperial v. The Continental Insurance Company*, San Diego Superior Court Case No. 37-2011-00083091 ("Amendment") is entered into in San Diego, California on March 21, 2014, ("Effective Date") by and among the City of Imperial ("City"), The Continental Insurance Company ("Continental") and KB Home Coastal, Inc. ("KB"). In this Amendment, City, Continental and KB are sometimes referred to collectively as the "Parties" and singularly as a "Party."

**RECITALS**

- A. On December 6, 2012, the Parties entered a written settlement agreement (the "Agreement") to settle *City of Imperial v. The Continental Insurance Company*, San Diego Superior Court Case No. 37-2011-00083091 ("the Action"). A true and correct copy of the Agreement is attached as Exhibit "1" and incorporated by reference as though set forth in full at this point.
- B. All capitalized terms not defined in this Amendment have the meaning given to them in the Agreement.
- C. Pursuant to the Agreement, KB is required, among other things, to complete the Work, reviewed and approved by the City as the scope of work attached as Exhibit "1" to the Agreement; including repairs and improvements to the Previously Completed Improvements as provided in section 2.5, subdivision (b), of the Agreement. The total estimated value of the Work remaining to be completed under the Agreement is \$1,598,008.00.
- D. Following execution of the Agreement, KB maintained its Cross-Complaint against Jupiter Ventures I, LP, Pacific West Development, Inc., Pacific West Development, LP, Surmount Ventures, LLC, CRV Imperial-Worthington, LP and Innovative Communities, Inc. (collectively "Cross-Defendants") in the Action relating to contribution for the Work. KB and Cross-Defendants are in the process of resolving the disputes set forth in the Cross-Complaint.
- E. The Parties enter into this Amendment in furtherance of completing their respective obligations under the Agreement.

**TERMS AND CONDITIONS**

For good and valuable consideration, the receipt of which is acknowledged, the Parties agree as follows:

1. **Bond Reduction**

Upon KB's compliance with section 3, below, the City agrees to partially release the Bond, reducing the Bond amount to \$1,598,008.00 ("Reduced Bond"). Upon such occurrence, the City acknowledges that any work performed that was performed pursuant to the Bond except the Work that is remaining under the Reduced Bond, is finally accepted.

Initials: \_\_\_\_\_ /  / \_\_\_\_\_  
City Continental KB

2. Replacement Bond

Upon KB's compliance with section 3, below, the City agrees to allow KB to replace the Reduced Bond with a bond in the amount of \$1,598,008.00 obtained by, or on behalf of, Cross-Defendants and/or their contractor, or another on behalf of someone other than KB, in a form acceptable to the City ("Replacement Bond"). The Replacement Bond shall secure completion of the Work in satisfaction of KB's obligations under the Subdivision Agreement (recorded as Imperial County Document No. 2006-013706) and the Agreement and have a penal sum of \$1,598,008.00.

Upon Cross-Defendants submission of the Replacement Bond to City attorney Dennis Morita: (1) the City releases and exonerates the Reduced Bond in the form provided in the bond release letter attached as Exhibit "2" to this Amendment and incorporated by reference as though set forth in full at this point in addition to any other releases and discharges contained in the Agreement and this Amendment; (2) the City authorizes Jupiter Ventures I, LP or its contractors to complete the Work on behalf of KB in satisfaction of the terms of the Agreement; (3) Jupiter Ventures I, LP is assigned KB's rights and obligations pursuant to the Agreement to perform the Work (other than KB's obligation to pay money to the City which has already been satisfied by KB) and the City accepts such assignment where Jupiter Ventures I, LP will replace KB with respect to rights and obligations to perform the Work pursuant to the Agreement; (4) upon the City's approval and acceptance of the Work pursuant to section 2.10 of the Agreement, the City shall partially release and exonerate the Replacement Bond in the form provided in the bond release letter attached as Exhibit "3" to this Amendment and incorporated by reference as though set forth in full at this point; (5) upon the City's final approval and acceptance of the Work pursuant to section 2.11 of the Agreement, the City shall fully release and exonerate the Replacement Bond in the form provided in the bond release letter attached as Exhibit "4" to this Amendment and incorporated by reference as though set forth in full at this point; (6) KB and its surety, Continental, are released by the City from any and all claims by the City for purposes of the Work, Scope of Work, the Action, the Bond, the Replacement Bond, any other bonds of any kind relating to the Property and the project that is the subject of the Agreement; and (7) the City will file a dismissal with prejudice of the Action.

3. Agreement For Completion Of The Work By Cross-Defendants

Concurrent with execution of this Agreement, KB shall enter into a separate written agreement with Cross-Defendants whereby Cross-Defendants and KB settle the Action in its entirety and one or more Cross-Defendants agree to complete the Work and provide the Replacement Bond ("New Agreement").

The New Agreement will provide the Work shall be completed no later than December 31, 2014 by Jupiter Ventures I, LP or its contractors, provided the City complies with the terms of the Agreement, including but not limited to inspection and approval procedures and timelines for the Work. In addition to the inspection and approval requirements provided in the Agreement, the City agrees: (1) Jupiter Ventures I, LP will contact the City at {PHONE NUMBER} to request progressive and final inspections of the Work; (2) the City shall perform all inspections of the Work requested by Jupiter Ventures I, LP within two (2) business days of such request; and (3) within two (2) business days of inspection of the Work, the City will provide Jupiter Ventures I, LP with either written approval and

Initials: \_\_\_\_\_ / JK / \_\_\_\_\_  
City Continental KB

acceptance of the inspected improvements or written notification of any corrections required to obtain approval and acceptance.

4. Survival

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The Parties have executed and delivered this Amendment consisting of four (4) pages and four (4) Exhibits.

**CITY OF IMPERIAL**

Signature: \_\_\_\_\_

DATED: \_\_\_\_\_, 2014

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**THE CONTINENTAL INSURANCE COMPANY**

DATED: April 30, 2014

Signature: Isiah Cline

Printed Name: Isiah Cline

Title: Authorized Representative

**KB HOME COASTAL, INC.**

Signature: \_\_\_\_\_

DATED: \_\_\_\_\_, 2014

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Approved as to Form and Content:**

**WINGERT GREBING BRUBAKER & JUSKIE LLP**

By: \_\_\_\_\_  
Stephen C. Grebing  
Attorneys for Plaintiff City of Imperial

DATED: \_\_\_\_\_, 2014

Initials: \_\_\_\_\_ / SCG / \_\_\_\_\_  
City Continental KB

By: \_\_\_\_\_  
Dennis H. Morita  
City Attorney

DATED: \_\_\_\_\_, 2014

**CORFIELD FELD LLP**

By:   
Michael A. Corfield  
Attorneys for The Continental Insurance  
Company

DATED: 5-8-, 2014

**NEWMAYER & DILLION LLP**

By: \_\_\_\_\_  
John E. Bowerbank  
Attorneys for Defendant and Cross-Complainant  
KB Home Coastal, Inc.

DATED: \_\_\_\_\_, 2014

1595.002/36HB260.ast

Initials: \_\_\_\_\_ /  / \_\_\_\_\_  
City Continental KB

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**RECITALS**

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C. Pursuant to the Agreement, KB is required, among other things, to complete the Work, reviewed and approved by the City as the scope of work attached as Exhibit "1" to the Agreement; including repairs and improvements to the Previously Completed Improvements as provided in section 2.5, subdivision (b), of the Agreement. The total estimated value of the Work remaining to be completed under the Agreement is \$1,598,008.00.

D. Following execution of the Agreement, KB maintained its Cross-Complaint against Jupiter Ventures I, LP, Pacific West Development, Inc., Pacific West Development, LP, Surmount Ventures, LLC, CRV Imperial-Worthington, LP and Innovative Communities, Inc. (collectively "Cross-Defendants") in the Action relating to contribution for the Work. KB and Cross-Defendants are in the process of resolving the disputes set forth in the Cross-Complaint.

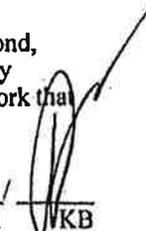
E. The Parties enter into this Amendment in furtherance of completing their respective obligations under the Agreement.

**TERMS AND CONDITIONS**

For good and valuable consideration, the receipt of which is acknowledged, the Parties agree as follows:

1. **Bond Reduction**

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Initials: \_\_\_\_\_ / \_\_\_\_\_ /   
City Continental KB

2. Replacement Bond

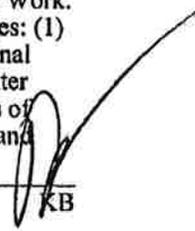
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Initials: \_\_\_\_\_ / \_\_\_\_\_ /  KB  
City Continental

acceptance of the inspected improvements or written notification of any corrections required to obtain approval and acceptance.

4. Survival

Except as amended by this Amendment, the Agreement remains in full force and effect.

The Parties have executed and delivered this Amendment consisting of four (4) pages and four (4) Exhibits.

**CITY OF IMPERIAL**

Signature: \_\_\_\_\_

DATED: \_\_\_\_\_, 2014

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**THE CONTINENTAL INSURANCE COMPANY**

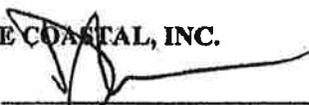
DATED: \_\_\_\_\_, 2014

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**KB HOME COASTAL, INC.**

Signature:  \_\_\_\_\_

DATED: May 9, 2014

Printed Name: David B. Simmons

Title: Assistant Secretary

Approved as to Form and Content:

**WINGERT GREBING BRUBAKER & JUSKIE LLP**

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

DATED: \_\_\_\_\_, 2014

Stephen C. Grebing  
Attorneys for Plaintiff City of Imperial

Initials: \_\_\_\_\_ / \_\_\_\_\_ /  \_\_\_\_\_  
City Continental KB

By: \_\_\_\_\_  
Dennis H. Morita  
City Attorney

DATED: \_\_\_\_\_, 2014

**CORFIELD FELD LLP**

By: \_\_\_\_\_  
Michael A. Corfield  
Attorneys for The Continental Insurance  
Company

DATED: \_\_\_\_\_, 2014

**NEWMAYER & DILLION LLP**

By: \_\_\_\_\_  
John E. Bowerbank  
Attorneys for Defendant and Cross-Complainant  
KB Home Coastal, Inc.

DATED: \_\_\_\_\_, 2014

1598.002/38H8280.aaf

Initials: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
City Continental KB

**EXHIBIT 1**

**Mediated Admissible and Binding Settlement Agreement  
Re *City of Imperial v. The Continental Insurance Company*  
San Diego Superior Court Case No. 37-2011-00083091(the "Action")**

1. The parties have settled the Action effective with the execution of this agreement, subject only to the conditions subsequent set forth in paragraph 4 below. This document constitutes a mutual general release among the parties (except for the executory provisions hereof), including a waiver of the provisions of Civil Code Section 1542, between/among them as to the matters released.

2. This agreement memorializes a mediated settlement between/among the parties to the Action. Pursuant to the provisions of Evidence Code Section 1123, the parties understand and agree that this settlement agreement, however skeletal, is admissible, enforceable and subject to disclosure for the purposes of its enforcement.

3. The parties also agree that, subject to fulfillment of the conditions subsequent set forth in paragraph 4 below, this agreement may be enforced pursuant to California Code of Civil Procedure section CCP 664.6.

4. The terms of this Mediated Settlement Agreement are as set forth in the attached Settlement Agreement and Mutual Release and Waiver. The only condition subsequent to the enforcement of this agreement or the attached Settlement Agreement and Mutual Release and Waiver is subject to the approval of the City Council of the City of Imperial, which shall be presented by counsel for the City to the City Council at the next regularly scheduled City Council meeting scheduled for December 19, 2012.

5. The parties intend to, but for purposes of enforceability need not, execute the attached Settlement Agreement and Mutual Release and Waiver.

6. Not as a condition of the settlement, but as an additional obligation of the parties, in the event of any dispute as to the terms or conditions of the attached Settlement Agreement and Mutual Release and Waiver, each party unconditionally agrees to submit any such dispute first to mediation before Ross Hart and then, if necessary to arbitration before him. The determination of Mr. Hart as the arbitrator shall be final, without right of appeal.

7. The parties shall keep the terms of this settlement confidential except as necessary to enforce its terms or as required in the party's regular course of business or as required by law or mutual consent. No party shall disclose the terms of the settlement or the facts, allegations, or other details of the litigation to any other persons or entities except those who have a legitimate need to know and then only to the extent of such need.

8. All parties hereby obligate themselves to cooperate in effectuating the terms of this agreement and to the preparation of any documents necessary to its enforcement.

9. Each party as between/among them, shall bear their own costs, attorney's fees and consultant fees, except as paid as set forth in the attached Settlement Agreement and Mutual Release and Waiver. Notwithstanding the foregoing, in the event of an action to enforce the

terms of this agreement, the prevailing party shall be entitled to its attorneys' fees, costs, and expert's fees.

10. Each of the undersigned represents that he or she has the advice of counsel, has authority to sign on behalf of his or her principal.

Dated: December 6, 2012

KB Home Coastal, Inc.

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

*Greg Dillion*  
Greg Dillion, Esq.

Its: \_\_\_\_\_

*Counsel of record*

Dated: December 6, 2012

City of Imperial

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

*Mark D Best*

Its: \_\_\_\_\_

*City Manager*

**EXHIBIT "1"**

## SETTLEMENT AGREEMENT

### City of Imperial v. The Continental Insurance Company, et al. San Diego Superior Court Case No. 37-2011-0083091-CU-CO-CTL

This Settlement Agreement, including its exhibits ("Agreement"), is made this \_\_\_ day of December, 2012, by and between the City of Imperial ("City"), The Continental Insurance Company ("Continental"), and KB Home Coastal, Inc. ("KB") (collectively the "Parties" and individually, each a "Party") pursuant to the following terms and conditions:

#### I.

#### RECITALS

- 1.1 WHEREAS, on January 3, 2011, the City initiated a legal action against KB and Continental in San Diego County Superior Court (*City of Imperial v. The Continental Insurance Company, et al.*, Case No. 37-2011-0083091-CU-CO-CTL) alleging a breach of a Subdivision Agreement against KB and recovery on bond claim against Continental with respect to bond, No. 929 388 519 ("Bond") (the "Action"). The Subdivision and Bond are attached to the City's Complaint in the Action as Exhibits A and B respectively. KB and Continental denied the assertion of the City's claims against them in the Action. Further, KB filed a Cross-Complaint against Jupiter Ventures I, LP, Pacific West Development, Inc., Pacific West Development, LP, Summit Ventures, LLC, CRV Imperial-Worthington, LP, and Innovative Communities, Inc. (collectively "Cross-Defendants") to complete all of the improvements alleged in the City's Complaint in this Action.
- 1.2 WHEREAS, KB and CRV Imperial-Worthington, LP ("CRV") are each obligated under the Subdivision Agreement to complete the infrastructure improvements required by the Subdivision Agreement, including the performance of repairs and work remaining to be completed under the Subdivision Agreement at the real property located in the City of Imperial, County of Imperial, California, commonly described as "Monterrey Park Subdivision No. 2, Unit 2" (the "Property").
- 1.3 WHEREAS, the Parties are entering into this Agreement to resolve pending litigation and to provide certainty as to the remaining scope of work at issue. KB reserves any and all claims against the Cross-Defendants and by entering into this Agreement, KB in no way admits that Jupiter is the equitable or legal owner of the Property.

**NOW, THEREFORE**, in order to avoid future litigation without admitting fault or liability, the parties to this Agreement hereby agree as follows:

## II.

### TERMS OF THE AGREEMENT

**The Recitals as set forth above are deemed to be a material part of this Agreement.**

- 2.1** The City has reviewed and approved the scope of work and list of items to be completed as set forth in the scope of work (attached as Exhibit 1 to this Agreement and incorporated herein ("Scope of Work")). In doing so, the City understands, acknowledges and agrees the Scope of Work is to be construed as and considered by the parties to this Agreement to be the City's complete and final claim under as against KB and Continental under the Subdivision Agreement and Bond, and that once this Agreement is executed by the parties, the Scope of Work will not be subject to further increase or expansion.
- 2.2** Upon execution of this Agreement, KB will agree to perform the work at the Property set forth in the Scope of Work (the "Work") based upon the terms, conditions and timelines set forth below.
- 2.3** Jupiter or the current owner or owners of the Property must execute a license in favor of KB or its designee to enter upon the Property and complete the Work for such time as it takes to do so, and to obtain the City's final approval and acceptance of the Work and for the period of any warranty thereafter (the "License"). The License shall be a condition precedent to any obligations of KB and Continental under the Agreement (except for Section 2.21 of the Agreement) and any further obligations under the Subdivision Agreement and Bond.
- 2.4** KB shall complete the Work no later than **June 30, 2015, or 29 months from the date that KB obtains a license referred to in Section 2.3 above if the delay in obtaining such license is caused by the owner or owners of the Property, in providing a License to KB as required in Section 2.3 above, the time periods set forth in Sections 2.5(a) and 2.5(b) below shall be extended.**
- 2.5** It is the Work shall be performed as follows:
- (a)** Within ten (10) calendar days from the full execution of this Agreement or the execution by the Property owner of the License, whichever is later, KB shall grub and clear the Property of all debris and vegetation, removing same entirely from the Property;
  - (b)** Within sixty (60) days from the full execution of this Agreement or the execution by the Property owner of the License, whichever is later, KB shall undertake to make repairs to the improvements at the Property that already have been completed and built out by KB (the "Previously Completed Improvements") the cost of such repairs is estimated to be \$55,756 by the City. Such repairs and Previously Completed

Improvements shall meet the standards set forth in the American Public Works Association "Green Book." If the cost to complete such repairs exceeds the estimate, as set forth in 2.5(b) above, KB shall bear the burden of any additional expense incurred in completing the repairs; and

(c) By June 30, 2015, KB shall complete the remaining Work to the standards set forth in the American Public Works Association "Green Book."

- 2.6 At KB's request, the City shall inspect and initially approve the Work. The request for the inspection and initial acceptance/approval by the City shall be made on two occasions: (a) after completion of the repairs set forth in Section 2.5(b) above, and (b) after completion of the remaining Work to be performed pursuant to Section 2.5(c) above. The Previously Completed Improvements and repairs to same shall be inspected and initially approved first. The remaining Work shall be constructed, completed, inspected and initially approved second. Within ten (10) days of each request by KB to inspect, the City shall initially inspect those items of the Work completed in accordance with the City's previously adopted standards and specifications associated with the performance of construction of such improvements within the jurisdiction of the City. Thereafter, the City's approval of the Work shall be provided in accordance with the City's normal process for the same, and the City shall not unreasonably withhold its initial approval and acceptance of any completed improvements.
- 2.7 Upon the City's initial acceptance of any of the Work or the Previously Completed Improvements, the City will not require KB or Continental to perform any additional work or repairs at the Property as a result of damage caused or exacerbated by any other person or entity and agrees not to withhold final acceptance and approval of the infrastructure and improvements as a result of failure of such others, to repair, replace or correct such damage.
- 2.8 Upon the City's initial approval and acceptance (not final approval and final acceptance) of the Previously Completed Improvements, the City within ten (10) days thereafter, shall issue a separate letter to KB confirming (1) the City's initial inspection of the improvements with confirmation that no further work is needed, (2) the commencement of the one (1) year warranty associated with such improvements after approval of the same by City through its normal process, and (3) a partial release and reduction of the penal sum of the Bond from \$3,324,072.01 to \$1,542,252, which is the amount the City has estimated is necessary to complete the remaining Work.
- 2.9 Upon the expiration of the one (1) year warranty period after the City's initial acceptance and approval of the Previously Completed Improvements, KB shall apply to the City for its final acceptance and final approval of and request the City inspect same. Within ten (10) days thereafter, the City shall again inspect those

items of the Work which meet the City's previously adopted standards and qualifications associated with such improvements, and thereafter, so long as no further work is needed, approve and accept the work in accordance with the City's normal process. The City shall not unreasonably withhold its final approval and final acceptance of such improvements.

- 2.10 Upon the City's initial approval and acceptance (not final approval and final acceptance) of the remaining Work, the City, within ten (10) days thereafter, shall issue a separate letter to KB confirming (1) the City's initial inspection of the improvements with confirmation no further work is necessary, (2) the commencement of the one (1) year warranty associated with such improvements after approval by the City through its normal process, and (3) the release and reduction of the penal sum of the Bond to ten percent (10%) of \$1,542,252, which equals \$154,225.
- 2.11 Upon the expiration of the one (1) year warranty period after the City's initial acceptance and approval of the remaining Work, KB shall apply to the City for its final acceptance and final approval of same and request the City inspect same. Within ten (10) days thereafter, the City shall finally inspect those items of the Work which meet the City's previously adopted standards and qualifications associated with such improvements, and thereafter, shall approve and accept the Work in accordance with its normal process. The City shall not unreasonably withhold its final approval and final acceptance of such improvements. Upon the City's final acceptance and final approval, the Bond shall be fully and completely released and exonerated, and the City shall, as set forth in Section 3.1 below, have released and waived any and all claims it may have against KB and Continental (and all others identified in Section 3.1) under or arising out of or related to the Subdivision Agreement and Bond.
- 2.12 Until the City's final approval and final acceptance of the Work and the release and waivers set forth in Section 3.1 below is effective, the Subdivision Agreement and the Bond (in its released and reduced penal sum as set forth in this Agreement) shall remain in full force and effect, and the City shall have reserved in its favor all rights and remedies it may have against KB, Continental (and all others identified in Section 3.1) under the Subdivision Agreement and the Bond.
- 2.13 Within ten (10) days of the full execution of this Agreement, the City shall file in the Action a dismissal, without prejudice, as to all claims and causes of action against KB and Continental.
- 2.14 As a material inducement to and condition of the obligations of KB and Continental under the Agreement and the Subdivision Agreement and Bond and of KB's agreement to advance and expend sums which KB contends are the responsibility of Jupiter Ventures I, LP, Pacific West Development, Inc., Pacific West Development, LP, Summit Ventures, LLC, CRV Imperial-Worthington, LP, and Innovative Communities, Inc., Tom Dobron, Dan Dobron, Andrew

Dixon, Infinity Enterprises, and any other person or entity that KB believes the City may have rights or claims against under the Subdivision Agreement (collectively the "New Defendants"). The City shall prosecute all rights, claims and remedies the City may have under or relating to the Subdivision Agreement as against the New Defendants, including, but not limited to, the recoupment of any funds KB has expended or agreed to expend pursuant to this Agreement, which KB contends are the responsibility of the New Defendants.

- 2.15 Within ten (10) days from the full execution of this Agreement, the City shall execute a disclosure and waiver of conflicts of interest in the form attached as Exhibit 2 to this Agreement. substitute out as counsel of record in the Action Stephen Grebing, and the law firm of Wingert, Grebing, Brubaker & Juskie LLP and substitute in as such counsel the law firm of Newmeyer & Dillion LLP, Greg Dillion and John Bowerbank (the "Substitute Counsel") in the Action. The City and such legal counsel shall execute the Judicial Council of California form MC-050, Substitution of Attorney, or its equivalent.
- 2.16 Substitute Counsel are authorized and directed immediately to seek leave of the Court to file an Amended Complaint against the New Defendants so as to enforce any and all rights, claims and remedies the City may have against them under or relating to the Subdivision Agreement and to pursue such amended complaint to judgment or to a settlement authorized and approved by KB in its sole and absolute discretion.
- 2.17 As a further material inducement to and condition of the obligations of KB and Continental under this Agreement and the Subdivision Agreement and Bond, the City shall use any and all recoveries it obtains against New Defendants by way of settlement or judgment to pay for or reimburse KB for the Work. Any and all recoveries above that amount shall go to pay or reimburse KB for any attorneys' and experts' fees, costs and expenses and any other costs and expenses, including without limitation court costs, incurred by KB in or arising out of or related to the Action, whether incurred on KB's own behalf or on behalf of the City. Subject to and based on the Disclosure and Waiver of Conflicts of Interest attached as Exhibit 2 to this Agreement and incorporated herein, the City acknowledges and agrees that Substitute Counsel shall continue to represent KB in any and all matters in which it has been or shall be retained by KB to serve as counsel, including this Action. The City understands that it will be a joint client of Substitute Counsel, along with KB.
- 2.18 The City will cooperate in any manner reasonable necessary to assist the Substitute Counsel in prosecuting the Action. The City agrees to be truthful with the Substitute Counsel and to provide Substitute Counsel with such information, assistance, and documents in the City's possession and to cooperate as necessary for Substitute Counsel to effectively prosecute the Action. KB shall bear all fees, costs and expense as to the City's prosecution of its rights, claims and remedies under the Subdivision Agreement against the New Defendants.

- 2.19** The City acknowledges and Agrees that KB would not have entered into and agreed to its obligations in this Agreement but for the City's agreements in Section 2.14 and 2.17 above to prosecute its claims, rights and remedies against the New Defendants and to use any recoveries from same to pay on KB's behalf or to reimburse it for any sums owed, incurred or paid by it under this Agreement. By using such proceeds to obviate KB's obligations under the Agreement, the Parties acknowledge and agree that the City is not seeking and will not obtain any double recovery.
- 2.20** KB shall indemnify, defend (through counsel selected by KB) and hold harmless the City from and against any and all claims, demands, complaints, litigation or the like which may be asserted by the Cross-Defendants and/or the New Defendants in this Action or any action arising from or relating to KB's prosecution of claims on behalf of the City as set forth in Sections 2.14 through 2.19 above. Further, KB agrees to fully reimburse the City for any and costs and/or expenses it may incur as a result of KB's prosecution of any action or claims against the Cross-Defendants and/or New Defendants as provided in Sections 2.14 through 2.19 above or in its agreement to cooperate with KB's efforts as set forth in Section 2.18 specifically.
- 2.21** In the event and as of the date that KB enters into a binding settlement agreement, mutual release and waiver with all of the Cross-Defendants, Sections 2.14 through 2.20, inclusive, shall no longer be of any force or effect.
- 2.22** Within thirty (30) days of the full execution of this Agreement, KB shall reimburse the City \$300,000 for attorneys' fees and costs, and all other fees, costs and expenses, including without limitation consultants' and experts' fees and costs, and court costs arising out of or related to the Action. KB and the City shall otherwise and as between them bear their own attorneys', consultants' and experts' fees and costs and all other fees, costs and expenses, including without limitation, court costs, through the date of the full execution of this Agreement.

### III.

#### MUTUAL RELEASES

- 3.1** **City's Release of KB and Continental.** Concurrently with the City's final acceptance of the Previously Completed Improvements and the Work and the expiration of any one (1) year warranty period applicable to same, the City does hereby fully and finally settle, release, acquit and forever discharge, in the broadest possible manner, KB and Continental, and any and all past, present and

future parent companies, divisions, subsidiaries, affiliates, related corporations and entities, members, owners, stockholders, directors, officers, employees, attorneys, consultants and insurers, as to any and all claims, demands, liabilities, losses, damages, complaints, causes of action, compensation, property damage, loss of use, loss of services, personal injury, late payment penalties, bodily injury, emotional distress, and any other actionable omissions, conduct or damage of every kind and nature whatsoever, whether in tort, contract or extra-contractual, actual or contingent, foreseen or unforeseen, known or unknown, past, present or future, to the extent that any claims could have been or are based upon in any way related to or arising out of the Action, Bond, Subdivision Agreement, or any work performed or that should have been performed at the Property (collectively "Claims").

- 3.2 City's Waiver of Civil Code Section 1542.** The City acknowledges and understands that there is a risk that, subsequent to the execution of this Agreement, it may accrue, obtain, incur, suffer or sustain Claims which in some conceivable way arise out of, are caused by, are connected with, or relate to KB and/or Continental which are unknown and unanticipated at the time this Agreement is signed or which are not presently capable of being ascertained. The City further acknowledges that there is a risk that any Claims as are known or should be known with respect to the released matters may become more serious than they now expect or anticipate. Nevertheless, the City hereby expressly waives all rights it may have in such unknown and unexpected consequences or results as to the released matters. The City acknowledges that it has had the benefit of or opportunity to consult with counsel, understand the provision of California Civil Code section 1542, and expressly waives the provisions of Civil Code section 1542, which provides as follows:

*A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.*

The City hereby specifically waives any and all rights and benefits under said section and under any similar legal or equitable right, statute or rule, as they relate to the matters released under this Agreement and acknowledge that this settlement would not be made without such a waiver. However, the City and KB and Continental specifically reserve all rights and claims against the Cross-Defendants as named in KB's Cross-Complaint in the Action.

- 3.3 KB and Continental's Release of the City.** Concurrently with the City's final acceptance of the Previously Completed Improvements and the Work and the expiration of any one (1) year warranty applicable to same, and the full and complete release and exhaustion of the Bond, KB and Continental do hereby fully and finally settle, release, acquit and forever discharge, in the broadest possible

manner, the City and its officers, employees, attorneys, consultants, and insurers, as to any and all Claims.

- 3.4 **KB and Continental's Waiver of Civil Code Section 1542.** KB and Continental jointly acknowledge and understand that there is a risk that, subsequent to the execution of this Agreement, they may accrue, obtain, incur, suffer or sustain Claims which in some conceivable way arise out of, are caused by, are connected with, or relate to the City which are unknown and unanticipated at the time this Agreement is signed or which are not presently capable of being ascertained. KB and Continental further acknowledge that there is a risk that any Claims as are known or should be known with respect to the released matters may become more serious than they now expect or anticipate. Nevertheless, KB and Continental hereby expressly waive all rights they may have in such unknown and unexpected consequences or results as to the released matters. KB and Continental acknowledge that they each have had the benefit of or opportunity to consult with counsel, understands the provision of California Civil Code section 1542, and expressly waive the provisions of Civil Code section 1542, which provides as follows:

*A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.*

KB and Continental hereby specifically waive any and all rights and benefits under said section and under any similar legal or equitable right, statute or rule, as they relate to the matters released herein and acknowledge that this settlement would not be made without such a waiver. However, the City and KB and Continental specifically reserve all rights and claims against the Cross-Defendants as named in KB's Cross-Complaint in the Action.

#### IV.

#### MISCELLANEOUS REPRESENTATIONS AND WARRANTIES

- 4.1 **No Admission.** This Agreement is the result of a settlement and compromise of the Action and the disputed matters as set forth therein. Nothing contained herein nor is the consummation of this Agreement to be construed or deemed an admission of breach, liability, culpability, negligence or wrongdoing on the part of any of the parties. The parties agree that the terms of this Agreement shall never be used, referred to, or considered as an admission of liability of the claims or shall ever be offered into evidence except for the purpose of enforcing this Agreement. The parties have entered into this Agreement with the intention to avoid protracted disputes, uncertainties, and litigation with their attendant inconveniences and expenses.

- 4.2 **Advice of Counsel.** Each Party has received independent legal advice from its attorneys with respect to the advisability of the making of this Agreement as provided for herein, and with respect to the advisability of this Agreement and its terms. Each party represents and warrants that it has performed that investigation of the subject matter of this Agreement which it deems necessary and prudent, that it has had the right and opportunity to consult legal counsel of its own choosing in this matter and that it fully understands the nature and effect of each and every term of this Agreement.
- 4.3 **No Representations/Warranties.** No Party, nor any officer, agent, partner, employee, representative, trustee, consultant or attorney of or for such Party has made any statement, representation or promise outside the express terms of this Agreement to any other Party regarding any fact relied upon in entering into this Agreement; and no Party is relying upon any such statement, representation or promise in executing this Agreement. Further, each party agrees that by entering into this Agreement, each Party assumes the risk of any misrepresentation or mistake. This Agreement is intended to be, and the parties do agree, that this Agreement is, in conjunction with the Bond and the Subdivision Agreement, final and binding between the Parties, regardless of any claims of misrepresentation, promise made without intent to perform, concealment of fact, mistake of fact or law, or of any other circumstance whatsoever.
- 4.4 **Authority to be Bound.** Each Party agrees that it has read this Agreement in its entirety and understands the contents thereof and is empowered to do so and thereby bind such respective governmental entity, corporation, partnership, trust, sole proprietorship or other entity.
- 4.5 **CCP Section 664.6/Attorney's Fees in Event of Enforcement.** This Agreement shall be governed by and subject to the provisions of Code of Civil Procedure Section 664.4. In the event of an action to enforce the terms of this Agreement, this Agreement shall be deemed admissible. Further, in the event of such an action, the prevailing party shall be entitled to its attorneys' and experts' fees and costs incurred in enforcing this Agreement, including any dispute arising out of the terms and conditions of this Agreement.
- 4.6 **Governing Law.** This Agreement shall be deemed to have been executed and delivered within the State of California, and the rights and obligations of the parties hereto shall be construed and enforced in accordance with and governed by the laws of the State of California.
- 4.7 **No Modification Without Mutual Assent.** Any modification or amendment to this Agreement requires the mutual assent of the parties to such modification or amendment, and may only be completed through a fully executed writing.
- 4.8 **Execution in Counterparts.** This Agreement may be executed in counterparts, such that when the executed signature pages are taken together they shall

constitute the entire Agreement. True copies or facsimile signatures shall be considered as effective as original signatures.

- 4.9 Severability.** If any provision or any part of any provision of this Agreement is for any reason held to be invalid, unenforceable or contrary to any public policy, law, statute and/or ordinance, then the remainder of this Agreement shall not be affected thereby and shall remain valid and fully enforceable.
- 4.10 Integration.** This Agreement sets forth the entire agreement between the Parties with regard to the subject matter hereof. All agreements, covenants, representations and warranties of the parties, express and implied, oral and written, with regard to any subject matter are contained herein and in the documents referred to herein or implementing the provisions hereof. No other agreement, covenants, representations or warranties, express or implied, oral or written, have been made by any party to the other with respect to the subject matter of the Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements and representations, covenants and warranties with respect to the subject matter hereof are waived, merged and/or superseded by this Agreement. This is an integrated Agreement.
- 4.11 Duplicate Originals.** This Agreement may be executed in one or more duplicate originals, each of which when fully executed by each of the Parties hereto shall be deemed an original.
- 4.12 Further Documents and Acts.** The Parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions and intent of this Agreement.
- 4.13 Benefits and Burdens.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective officers, directors, employees, agents, attorneys, consultants, representatives, predecessors, successors, assigns, heirs, partners, joint venturers, executors and administrators. Other than same, there are no third party beneficiaries to this Agreement. Under no circumstance shall this Agreement in any way benefit or affect the claims, rights and remedies of the City and KB against the New Defendants or their respective officers, directors, employees, agents, attorneys, consultants, representatives, predecessors, successors, assigns, heirs, partners, joint venturers, executors and administrators.
- 4.14 Ownership of Claims.** The Parties each represent and warrant that it owns all rights, title and interest released, or waived, transferred or assigned in this Agreement or have the express authority to release and waive same and that they have not sold, transferred, conveyed, assigned, hypothecated and/or subrogated anything released or waived by it in this Agreement.

**EACH PARTY HEREBY CERTIFIES THAT IT HAS READ THIS ENTIRE AGREEMENT, HAD BEEN ADVISED AS TO ITS TERMS BY**

SOPHISTICATED AND COMPETENT LEGAL COUNSEL OF ITS OWN CHOOSING AND FULLY UNDERSTANDS THE SAME, AND IN WITNESS THEREOF, EACH PARTY HAS EXECUTED THIS AGREEMENT IN THE PLACES AND ON THE DATES SET FORTH OPPOSITE THEIR RESPECTIVE SIGNATURES BELOW.

DATED: December 6, 2012

CITY OF IMPERIAL

By: Marlene Best  
(Marlene Best  
City Manager

DATED: \_\_\_\_\_, 2012

CONTINENTAL INSURANCE COMPANY

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

DATED: January 7, 2013

KB HOME COASTAL, INC.

By: David B. Ginn  
Title: Asst Secretary

APPROVED AS TO FORM AND CONTENT AS TO THEIR RESPECTIVE CLIENTS AS OF THE SIGNED BELOW:

SOPHISTICATED AND COMPETENT LEGAL COUNSEL OF ITS OWN CHOOSING AND FULLY UNDERSTANDS THE SAME, AND IN WITNESS THEREOF, EACH PARTY HAS EXECUTED THIS AGREEMENT IN THE PLACES AND ON THE DATES SET FORTH OPPOSITE THEIR RESPECTIVE SIGNATURES BELOW.

DATED: December 6, 2012

CITY OF IMPERIAL.

By: Marlene Best  
(Marlene Best  
City Manager

DATED: January 15, 2012

CONTINENTAL INSURANCE COMPANY

By: Paul B. Brien  
Title: Authorized Representative

DATED: January 7, 2012

KB HOME COASTAL, INC.

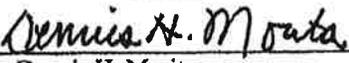
By: David B. Ginn  
Title: Assistant Secretary

APPROVED AS TO FORM AND CONTENT AS TO THEIR RESPECTIVE CLIENTS AS OF THE SIGNED BELOW:

Dated: December 6 2012

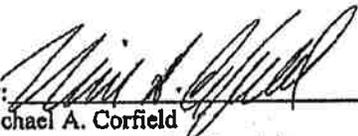
WINGERT GREBING BRUBAKER & JUSKIE LLP

By:   
Stephen C. Grebing  
Attorneys for Plaintiff City of Imperial

By:   
Dennis H. Morita  
City Attorney

Dated: 8 \_\_\_\_\_, 2012

CORFIELD FELD LLP

By:   
Michael A. Corfield  
Attorneys for The Continental Insurance Company  
Dated: 1-8 - \_\_\_\_\_, 2012

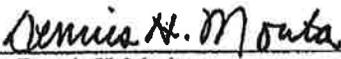
NEWMAYER & DILLION LLP

By: \_\_\_\_\_  
John E. Bowerbank  
Attorneys for Defendant and Cross-Complainant  
KB HOME COASTAL INC.

Dated: December 6 2012

WINGERT GREBING BRUBAKER & JUSKIE LLP

By:   
\_\_\_\_\_  
Stephen C. Grebing  
Attorneys for Plaintiff City of Imperial

By:   
\_\_\_\_\_  
Dennis H. Morita  
City Attorney

Dated: 0 \_\_\_\_\_, 2012

CORFIELD FELD LLP

By: \_\_\_\_\_  
Michael A. Corfield  
Attorneys for The Continental Insurance Company  
Dated: \_\_\_\_\_, 2012

NEWMAYER & DILLON LLP

By:   
\_\_\_\_\_  
John E. Bowerbank  
Attorneys for Defendant and Cross-Complainant  
KB HOME COASTAL INC.

**EXHIBIT "1"**

**SCOPE OF WORK AND ESTIMATED WORK**  
**Prepared by David B. Dale on 11/29/12**

**PROJECT: City of Imperial - Monterrey Park Subdivision No. 2 Unit 2**

**Engineer's Opinion of Probable Cost**  
**Remaining Scope of Work to Complete City Improvements**

11/29/2012

Item	Quantity	Unit	Description	Unit Cost	Amount
1	1	LS	Mobilization, General Liability Insurance, Workman's Compensation Insurance, Vehicle Insurance, Taxes, Permits, and Miscellaneous Fees	\$ 10,500.00	\$ 10,500

**Repairs**

2	10	LF	R&R curb and gutter @ 654 Horizonte	\$ 55.00	\$ 550
3	1	EA	Remove and replace concrete collar for water valves	\$ 1,300.00	\$ 1,300
4	250	SF	Header grind 0.10' and overlay between manholes @ Bahia Street and Vista Del Mar Street	\$ 13.60	\$ 3,400
5	250	SF	Header grind 0.10' and overlay around manhole @ Bahia Street and Mirador Street	\$ 13.60	\$ 3,400
6	1	EA	R&R damaged sidewalk panel @ 623 Bahia Street	\$ 1,370.00	\$ 1,370
7	1	EA	Replace water valve lid @ Bahia Street and Mirador Street	\$ 65.00	\$ 65
8	40	LF	R&R curb and gutter @ 2574 & 2578 Mirador St.	\$ 55.00	\$ 2,200
9	2	EA	Replace stop and street signs and paint limit line	\$ 2,138.00	\$ 4,276
10	150	SF	Grind & overlay along crack @ 635/637 Costa Azul Street	\$ 15.00	\$ 2,250
11	1	EA	Lower manhole @ 651 Costa Azul Street	\$ 1,395.00	\$ 1,395
12	150	SF	Grind & overlay @ low spot on 641/643 Bahia Street	\$ 15.00	\$ 2,250
13	1	LS	Drain & test 420 LF of storm drain and repair 3 areas	\$ 10,600.00	\$ 10,600
14	13	EA	Repair sewer manhole leak and sewer pipe leaks and sags	\$ 1,400.00	\$ 18,200
15	1	LS	Make existing street lights functional	\$ 4,500.00	\$ 4,500
<b>Subtotal Repairs:</b>				\$	\$ 55,756

**Utilities**

16	160	LF	8-inch water pipeline and appurtenances	\$ 30.00	\$ 4,800
17	3	EA	8-inch valve	\$ 1,500.00	\$ 4,500
18	507	LF	12-inch water pipeline and appurtenances	\$ 40.00	\$ 20,280
19	2	EA	12-inch valve	\$ 2,500.00	\$ 5,000
20	1,179	LF	8-inch sewer pipeline	\$ 45.00	\$ 53,055
21	2	EA	Sewer manhole	\$ 4,500.00	\$ 9,000
22	58	EA	Repair/Replace 1" Water service lateral and corp stop	\$ 950.00	\$ 55,100
23	6	EA	Install Fire Hydrant on existing breakaway stub	\$ 3,560.00	\$ 21,360
24	2	EA	Install Fire Hydrant, 6-inch lateral and valve	\$ 5,000.00	\$ 10,000
25	1	LS	Hydrostatic test/flush/disinfect water pipelines	\$ 2,500.00	\$ 2,500
25	12	EA	Adjust M.H. to grade	\$ 700.00	\$ 8,400
26	11	EA	Clean/Adjust Valve to Grade	\$ 800.00	\$ 8,800
27	80	Lot	Complete Electrical Service	\$ 1,050.00	\$ 84,000
28	80	Lot	Complete Gas	\$ 1,050.00	\$ 84,000
29	80	Lot	Complete Communications (Telephone, cable)	\$ 1,000.00	\$ 80,000

**Subtotal Mobilization/Utilities: \$ 450,795**

Streets				Unit Cost	Amount
Item	Quan	Unit	Description		
30	1	LS	Clear and Grub	\$ 6,800.00	\$ 6,800
31	4,333	CY	Scarify, moisture condition subgrade preparation/final grading for subgrade	\$ 5.50	\$ 23,833
32	3,250	CY	Agg Base Class II	\$ 25.00	\$ 81,250
33	4,390	L.F.	Curb and Gutter	\$ 18.00	\$ 79,020
34	2,165	TON	Asphalt Concrete	\$ 80.00	\$ 173,160
35	10	EA.	ADA Access Ramp	\$ 2,550.00	\$ 25,500
36	27,350	S.F.	P.C.C. Sidewalk	\$ 3.00	\$ 82,050
37	23,200	S.F.	P.C.C. Driveway	\$ 4.80	\$ 111,360
38	5	EA.	Traffic/street name/ stop bar	\$ 550.00	\$ 2,750
39	10	EA.	Street Lights (including conduit and wiring)	\$ 4,500.00	\$ 45,000
40	120	L.F.	Sawcut and Construct Pavement Extension Joint	\$ 18.00	\$ 2,160
41	3	EA.	Barracades per Sheet 17	\$ 1,200.00	\$ 3,600
42	1	LS	Complete Construction of all walls and repair/Install caps missing from walls on Valle Verde Lane, Monterrey Park Lane (west side), pedestrian connector and the boundary walls bordering Unit 2	\$ 23,000.00	\$ 23,000
43	1	LS	Paint Curbs Red in Front of Fire Hydrants	\$ 1,000.00	\$ 1,000
44	1	LS	Complete streetscape landscaping on all side yards bordering Mirador Street and Vista Del Mar Lane	\$ 25,000.00	\$ 25,000
45	1	LS	Install Pocket Park at Parcel "E"	\$ 125,000.00	\$ 125,000
				Subtotal Streets:	\$ 810,488

Hard Costs:	
46	Engineer's Estimate of Probable Construction Costs: \$ 1,327,534
47	Contingencies: \$ 132,753
48	Total Engineer's Estimate of Probable Construction Costs: \$ 1,460,287
Soft Costs:	
49	Construction Inspection (7%): \$ 102,220
50	Geotechnical Inspection: \$ 35,500
	Total Soft Costs: \$ 137,720

Total Project Estimated Cost: \$ 1,598,008

*David Dale*  
11/29/2012



City of Imperial - Monterrey Park Subdivision No. 2, Unit No. 2  
 Sewer and Storm Drain Repair Areas 5/23/2012  
 (Maximum allowable sag is 5/8")

Las Lomas Street

Sewer

From Station	To Station	Length	Diameter	Description
10+58.63	10+43.63	15'	8"	Sag
19+47.48	19+37.48	10'	8"	Sag
18+14.58			8"	Joint problem
16+48.75	16+38.75	10'	8"	Sag
22+65.00	22+55.00	10'	8"	Sag

Storm Drain

18+10.00		18"	Hole in 18-inch Lateral 21.6 feet from MH
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Las Dunas Street

Sewer Repairs

From Station	To Station	Length	Sewer	Description
20+35.76	20+45.76	10'	8"	Sag
20+56.08	20+66.08	10'	8"	Sag
22+02.88	22+27.88	25'	8"	Sag
22+63.88	22+73.88	10'	8"	Sag
19+25.28	19+15.28	10'	8"	Sag
13+40.63	13+30.63	10'	8"	Sag

Storm Drain Repairs

13+37.80		24"	Root Intrusion in SD Pipe
17+01.90		24"	Hole in 24" SD Pipe

**EXHIBIT "2"**  
**DISCLOSURE AND WAIVER OF CONFLICTS**

**EXHIBIT 2**

## **BOND EXONERATION AND RELEASE**

This confirms payment and performance bond number 929-388-519 issued by The Continental Insurance Company, formerly in the penal sum of \$3,324,072.01, is hereby fully released, discharged, and exonerated by the City of Imperial.

**CITY OF IMPERIAL**

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

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

Its: \_\_\_\_\_

**EXHIBIT 3**

## **BOND EXONERATION AND RELEASE**

This confirms payment and performance bond number \_\_\_\_\_ issued by \_\_\_\_\_, in the penal sum of \$1,598,008.00 (the "Bond"), is hereby partially released, discharged, and exonerated by the City of Imperial in the amount of \$1,438,207.20. The remaining penal sum of the Bond is \$159,800.80.

### **CITY OF IMPERIAL**

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

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

Its: \_\_\_\_\_

**EXHIBIT 4**

## BOND EXONERATION AND RELEASE

This confirms payment and performance bond number \_\_\_\_\_ issued by \_\_\_\_\_, is hereby fully released, discharged, and exonerated by the City of Imperial.

### CITY OF IMPERIAL

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

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

Its: \_\_\_\_\_