

Attachment G

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Recording Requested By and
When Recorded Return To:
Fenton & Keller
Attn: Alex J. Lorca, Esq.
2801 Monterey-Salinas Hwy.
Monterey, CA 93942-3350

SPACE ABOVE FOR RECORDS' USE

**REVISED AND RESTATED
WATER AGREEMENT**

This Revised and Restated Water Agreement (“Agreement”) is made and is effective this _____ day of _____, 2019, by and between Timothy and Constance Glass (collectively, “Party A”), and Guillermo Andres Czerwiak and Krista Czerwiak (collectively, “Party B”), collectively “the Parties.”

RECITALS

A. Party A owns the real property situate in the unincorporated area of Monterey County, California, known generally as 124 Fern Canyon Road, (APN 241-131-005) consisting of ±0.625 acres, and more particularly described in Exhibit “A” attached hereto (“Parcel A”). Party A are the successors of the persons described as “Party A” in that certain “WATER AGREEMENT” dated February 22, 2008 and recorded on February 25, 2008 in the Office of the Monterey County Recorder as Document 2008011059.

B. Party B owns the real property situate in the unincorporated area of Monterey County, California, known generally as 125 Cypress Way, (APN 241-131-019) consisting of ±0.442 acres, and more particularly described in Exhibit “B” attached hereto (“Parcel B”). Party B are the persons described as “Party B” in the WATER AGREEMENT.

C. Parcel A and Parcel B (the “Parcels”) are referred to in the WATER AGREEMENT as “the Subject Property.”

D. The Parties intend hereby to amend and restate the WATER AGREEMENT.

E. There presently exists on Parcel A one (1) test well (the “Well”). As of the date of this Agreement, the County of Monterey has recognized and credited the Well with demonstrated, reliable, long-term sustained yield of 4.98 gallons per minute in accordance with drinking water standards under applicable law.

F. Subparts g and j of Section 15.04.020, and Section 15.04.140 of the Monterey County Code, together provide that a system for the provision of piped water for human consumption to two service connections as called for in the WATER AGREEMENT for domestic and not agricultural purposes, other than to the same family on one parcel, shall supply 3 gallons per minute for each service connection.

G. Because the sustainable yield of the Well is insufficient to provide a domestic service connection to both Parcels in accordance with the WATER AGREEMENT the Parties desire and intend to amend and restate the WATER AGREEMENT to provide that the Well will provide water for human consumption, domestic use, fire suppression, landscape irrigation, and gardening purposes on Parcel A, and solely for landscape irrigation, gardening purposes, and emergency fire suppression, but not for human consumption or domestic use, on Parcel B.

H. The Parties intend this Agreement to be a complete expression of their mutual and respective rights and obligations to and for the Well and appurtenant facilities to supply water from the Well to Parcel A and Parcel B for the uses described in Recital G of this Agreement. The Parties intend to cooperate and use this Agreement as evidence of their intent to obtain all permits and approvals required for the uses described in Recital G, including in proceedings for Monterey County PLN170624.

NOW, THEREFORE, the owners of the Parcels agree as follows:

AGREEMENT

1. Water System.

1.1. Subject to other requirements by agencies having jurisdiction, the Parties agree a common water system shall be constructed on Parcel A to serve Parcel A and Parcel B, as set forth herein (“Water System”) with Well water. The Water System shall consist of the following elements: the Well on Parcel A and the associated pump; two 119-gallon bladder tanks; a 5,000-gallon aboveground polyurethane water storage tank; a water filtration system, water lines, a water meter for Parcel A and a water meter for Parcel B, all associated electric services, panels, pipes, controls and wiring and pumps, and any other required components to provide water for human consumption, domestic use, fire suppression, landscaping irrigation, and gardening purposes on Parcel A, and solely for landscape irrigation, gardening purposes, and emergency fire suppression, but not for human consumption or domestic use, on Parcel B in accordance with the terms hereof.

1.2. The Water System design and specifications and all permits and compliance with same shall be the responsibility of Party A, subject to review only for consistency with this Agreement and confirmation of such consistency by Party B (whose confirmation shall not be unreasonably withheld) prior to further proceedings in Monterey County PLN170624 and prior to the submission of any other applications to the County of Monterey, the Monterey Peninsula Water Management District, or any other entity with jurisdiction, for the approval of the Water System.

1.3. The Water System is more particularly described in Exhibit “C,” attached hereto and incorporated herein by this reference.

2. Water Use and Limitations. The limitations on the water use from the Water System are as follows:

2.1. Water from the Water System may be used on Parcel A for human consumption, domestic use, and fire suppression. Parcel A shall have the priority right to such uses.

2.2. Parcel A and Parcel B shall have the equal right to reasonable use of water sustainably produced from the Well in excess of that required for human consumption, domestic use, and fire suppression on Parcel A, as set forth in Section 2.1 above.. Water from the Water System may be used on Parcel B for landscape irrigation, gardening purposes, and emergency fire suppression only, but not for human consumption or domestic use.

2.3. Should the Water System fail to produce sufficient water for the defined uses on both Parcels, human consumption, domestic use, and fire suppression on Parcel A, as set forth in Section 2.1 above, shall have priority over all other uses. The right to the use of water for landscape irrigation and gardening purposes on Parcel A and for landscaping irrigation, gardening purposes, and emergency fire suppression purposes on Parcel B, shall be equal as to all water sustainably produced from the Well in excess of that required for human consumption, domestic use, and fire suppression on Parcel A.

2.4. Neither of the Parties shall install any equipment or device that would compromise the water supply, water quality, or water pressure to or for the other Party.

2.5. Water used on each parcel shall be measured by separate and individual water meters. The water meters for each parcel shall be located at the property line between Parcel A and Parcel B or at such other location mutually agreed upon and mutually accessible to readable by both Parties.

3. Operation and Maintenance. The owner of Parcel A shall be responsible for the operation and maintenance of the Water System, and shall perform all preventative maintenance in accordance with the Water System's manufacturer recommendations to ensure the full operation of the Water System, minimizing the amount of down time. Maintenance service shall be provided as often as necessary.

4. Repair, Replacement, and Relocation.

4.1. The owner of Parcel A shall be responsible for all necessary repair, replacement, and relocation of the Water System subject to reimbursement from the owner of Parcel B as set forth in Section 5.2. Should the owner of Parcel A fail to do so, the owner of Parcel B may perform as much and shall have the right to access Parcel A to do so pursuant to Section 6, below, upon 72 hours' notice to the owner of Parcel A. In such case, the owner of Parcel A shall fully reimburse the owner of Parcel B subject to a credit for the amount due from the owner of Parcel B as set forth in Section 5.2, within 30 days of presentation of costs and expenses related to, the necessary repairs, replacement, or relocation of the Water System.

4.2. The Well shall not be replaced or relocated in a manner inconsistent with this Agreement, except with the approval of both parties, which shall not be unreasonably withheld. Party A shall provide reasonable notice to Party B regarding any replacement or relocation of the well.

4.3. Any replacement well or well pump shall have the capacity to produce at least five (5) gallons of water per minute, and have the same or similar design and performance characteristics as the existing well or well pump.

5. Financial Responsibility.

5.1. **Capital Costs.** The cost of initial designing, permitting, constructing, installing, inspecting, or relocating the Water System and facilities shall be paid by Party A. Party B shall convey to Party A, at no cost to Party A, the Water System components listed on Exhibit “D.” If the bladder tanks, electric motor, or water pump listed on Exhibit “D” cannot be used in the Water System, Party B shall purchase components of a similar nature and cost that can be used in the Water System.

5.2. **Operation and Maintenance Costs.** All costs of routine operation and maintenance of the Water System shall be paid by Party A. Within 30 days of presentation of costs, Party B shall reimburse Party A for such operation and maintenance costs to the extent of Party B’s proportionate (as determined by water meter readings) use of Water System water. All capital costs of non-routine repair and replacement of the Water System or any of its components shall be paid equally by Party A and Party B. Notwithstanding the foregoing, if the need for non-routine maintenance of the Water System is caused primarily by the negligent or willful action of one of the parties, the Party whose negligent or willful action is the primary cause for the need for said maintenance shall be solely responsible for the cost of said maintenance.

5.3. Each Party shall be solely liable for any personal injury or property damage to any person employed by that Party to perform work on the Water System, or to any third person, provided the injury or damage results from or arises out of work on the Water System.

6. **Creation and Maintenance of Easements.** Party A hereby creates, grants, and conveys to Party B an easement over, under, and across that portion of Parcel A on which the actual Water System facilities are located (currently in the general location shown on Exhibit C, but subject to relocation in the future consistent with this Agreement) along with access to said Water System facilities, solely for the purposes of using, operating, maintaining, inspecting, meter reading, repairing (including emergency repairs), replacing, or relocating the Water System as provided herein. Said easement is perpetual and appurtenant to Parcel B. Party B shall make use of the easement and enter upon Parcel A only after prior reasonable notice to Party A, except that prior notice shall not be required in case of an emergency posing an imminent risk of harm to persons or property and requiring immediate corrective action.

7. **No Appeal to the California Coastal Commission.** Upon final and effective approval of the application for PLN170624 in substantial compliance with the project application, which shall include approval of this Agreement, by the Monterey County Board of Supervisors, neither of the Parties shall appeal said approval to the California Coast Commission.

8. **Permits.** This Agreement is subject to final, effective approval of all necessary permits and approvals for the Well and appurtenant facilities to supply water from the Well to Parcel A and Parcel B for the uses described in Section 1.1 of this Agreement. The Parties intend to use this Agreement as evidence of their intent to obtain all permits and approvals required for the uses described in Section 1.1, including in proceedings for Monterey County PLN170624. The Parties agree the pending application for PLN170624, and all other required applications, shall: 1) incorporate by reference and attach a copy of this Agreement to make it a part of the permit; 2) include a condition and findings that the Well shall be used to supply water in accordance and consistent with the terms of this Agreement, without the

requirement for any other permits, and; 3) include a condition requiring the consent of both Parties to amend PLN170624 or any other permit issued with regard to the Water System, or for any applications made with regard to the Water System in the future.

9. Indemnification. Each Party shall indemnify, defend and hold harmless the other Party from and against any and all claims, causes of action, liabilities, damages, judgements, losses, cost and expenses including, without limitation, reasonable attorneys' fees and costs, arising out of or resulting from any damage to the Water System or other persons or property caused by any act or omission of such owner or his or her agents, contractors, invitees or licensees.

10. Covenants to Run with the Land. The covenants, conditions, and restrictions in this Agreement are for the express benefit of Parcel A and Parcel B, are to run with the land, are specifically enforceable, and benefit and bind each owner and their successors in interest as owners of the Parcels. The Parties hereby declare and covenant that their respective Parcels are and shall each be held, transferred, conveyed, sold, encumbered, leased, rented, used, occupied, and improved subject to the terms, covenants, conditions and restrictions, set forth in this Agreement, all of which are hereby declared, agreed, and established in accordance with and in furtherance of the Water System and the benefit of the Parcels. All the terms, covenants, conditions, and restrictions contained in this Agreement shall be perpetual, shall be binding upon and shall inure to the benefit of the Parcels, the Parties, and all parties having or requiring any right, title, or interest, in the Parcels and their respective heirs, executors, administrators, successors, grantees, assigns, devisees, representatives, lessees, and all other persons acquiring any ownership interest in the Parcels or any portions thereof, whether by voluntary transfer, by operation of law, or otherwise (collectively "Successors"). Each such Successor or other grantee of a conveyance or purchaser under a contract or agreement of sale covering any right, title, or interest in any parcel or part of the Parcels, by accepting a deed, a contract of sale, agreement of purchase, or other conveyance document, accepts the document subject to, and agrees to be bound by, all of the terms, covenants, conditions, and restrictions set forth in this Agreement. All of the provisions of this Agreement relate to the design, permitting, construction, installation, inspection, operation, maintenance, repair, replacement, or relocation of the Water System and shall be covenants running with the land pursuant to applicable laws, including, but not limited to, section 1468 of the California Civil Code. The terms, covenants, conditions, and restrictions set forth herein may be enforced by any of the Parties or Successors against any other Party or Successor. Enforcement may be by any proceeding at law or in equity against any person or entity violating or attempting to violate any of the terms of this Agreement to restrain such violation and/or to recover damages. Any failure to enforce shall not be construed as a waiver of the right to do so thereafter.

11. Attorney's Fees. If any legal action, arbitration or other proceeding is brought to interpret and/or enforce this Agreement, the Party or parties prevailing shall be entitled to reasonable attorney's fees, court costs in that action or proceeding to which the prevailing Party or parties may be entitled.

12. Waiver. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any other breach of such provision. Failure of any Party to enforce at any time, or from time to time, any provision of this Agreement shall not be construed as a waiver thereof. The specific rights and remedies set forth in this Agreement shall

not be exclusive and are in addition to any other rights and remedies provided by law.

13. Entire Agreement/Amendment. This Agreement sets forth the entire agreement between the Parties with respect to the subject matter hereof. Understandings, agreements, representations or warranties not contained in this Agreement, or as written amendment hereto, shall not be binding on either Party, including, without limitation, the 2008 WATER AGREEMENT. Except as provided herein, no alteration of any terms, conditions, quality or specifications of this Agreement shall be binding on either Party without the written consent of both Parties.

14. Mutuality. This Agreement is the product of negotiation and preparation by and among the Parties represented by counsel. All sides and their counsel have reviewed and have had the opportunity to revise this Agreement. The Parties waive the provisions of Section 1654 of the Civil Code of California and any other rule of construction to the effect that ambiguities are to be resolved against the drafting Party, and the Parties warrant and agree that the language of this Agreement shall neither be construed against or in favor of any Party.

15. Severability. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid, unenforceable, or contrary to public policy, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.

16. Authorization. Each Party represents and warrants to the other Party that the individuals executing this Agreement are authorized to do so, and that this Agreement is binding on them in accord with its terms and shall be and is superior in right to all other title encumbrances.

17. Notice. Any notice, demand, request or other instrument which may be or is required to be given under this Agreement shall be in writing and sent by (i) United States certified mail, return receipt requested, postage prepaid, (ii) telegram, mailgram, or other electronic medium using a third party carrier, (iii) United States express mail, (iv) air courier (such as Federal Express), (v) personal delivery or (vi) any other method creating a receipt, waybill or other indication of delivery, and shall be addressed (a) if to Party A, at the address set forth under Party A's signature herein, or such other address or addresses as Party A may designate by written notice, together with copies thereof to such other parties designated by Party A and, (b) if to Party B, at the address set forth under Party B's signature herein, or such other address or addresses as Party B shall designate by written notice.

18. Recordation. The Parties agree this Agreement shall be recorded in the Official Records of the County of Monterey upon issuance of the final and effective approval of PLN170624 in accordance with this Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement effective as of the date first written above.

PARTY A

Timothy Glass – Party A

Date

Constance Glass – Party A

Date

Address: _____

Attention: _____

Email: _____

PARTY B

Guillermo Andres Czerwiak – Party B

Date

Krista Czerwiak – Party B

Date

Address: _____

Attention: _____

Email: _____

Exhibit A

Exhibit B

Exhibit C

Exhibit D

- Two bladder tanks
- One electric motor
- One water pump
- Miscellaneous valves, gages, electrical and plumbing connections



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