

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Public Works		(2) MEETING DATE January 24, 2006		(3) CONTACT/PHONE Douglas Bird, Hydraulic Operations Administrator (805) 781-5116	
(4) SUBJECT Request to Approve the Attached "Agreement to Assign Contract for Reservation of Water Supply for Heritage Ranch" (B.U. 0647, Nacimiento Water Contract)					
(5) SUMMARY OF REQUEST It is requested that you approve of an assumption agreement for an existing water supply contract for 138 acre-feet per year by the new owners of property at Heritage Ranch (B.U. 0647, Nacimiento Water Contract)					
(6) RECOMMENDED ACTION It is our recommendation that: 1. The attached Agreement be approved. 2. The Chairperson be directed to execute the Agreement. 3. The Clerk be instructed to return an executed original to the Director of Public Works for transmittal to the purchaser.					
(7) FUNDING SOURCE(S) N/A		(8) CURRENT YEAR COST N/A		(9) ANNUAL COST N/A	
(10) BUDGETED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> N/A <input type="checkbox"/> NO					
(11) OTHER AGENCY/ADVISORY GROUP INVOLVEMENT (LIST): Heritage Ranch Community Services District and County Counsel					
(12) WILL REQUEST REQUIRE ADDITIONAL STAFF? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes, How Many? _____ <input type="checkbox"/> Permanent _____ <input type="checkbox"/> Limited Term _____ <input type="checkbox"/> Contract _____ <input type="checkbox"/> Temporary Help _____					
(13) SUPERVISOR DISTRICT(S) 1st			(14) LOCATION MAP <input checked="" type="checkbox"/> Attached <input type="checkbox"/> N/A		
(15) AGENDA PLACEMENT <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Hearing (Time Est. _____) <input type="checkbox"/> Presentation <input type="checkbox"/> Board Business (Time Est. _____)			(16) EXECUTED DOCUMENTS <input type="checkbox"/> Resolutions (Orig + 4 copies) <input checked="" type="checkbox"/> Contracts (Orig + 4 copies) <input type="checkbox"/> Ordinances (Orig + 4 copies) <input type="checkbox"/> N/A		
(17) NEED EXTRA EXECUTED COPIES? <input type="checkbox"/> Number: _____ <input type="checkbox"/> Attached <input checked="" type="checkbox"/> N/A			(18) APPROPRIATION TRANSFER REQUIRED? <input type="checkbox"/> Submitted <input type="checkbox"/> 4/5th's Vote Required <input checked="" type="checkbox"/> N/A		

Reference: 06JAN24-C-13

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(19) ADMINISTRATIVE OFFICE REVIEW	<p><i>Ok Leslie Bon</i></p> <p><i>B-14 (1/24/06)</i></p>
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SAN LUIS OBISPO COUNTY DEPARTMENT OF PUBLIC WORKS

Noel King, Director

County Government Center, Room 207 • San Luis Obispo CA 93408 • (805) 781-5252

Fax (805) 781-1229

email address: pwd@co.slo.ca.us

TO: Board of Supervisors of the San Luis Obispo County Flood Control and Water Conservation District

FROM: Douglas C. Bird, Hydraulic Operations Administrator *DCB*

VIA: Paavo A. Ogren, Deputy Director of Public Works *PAO*

DATE: January 24, 2006

SUBJECT: Request to Approve the Attached "Agreement to Assign Contract for Reservation of Water Supply for "Heritage Ranch" (B.U. 0647, Nacimiento Water Contract)

Recommendation

It is our recommendation that:

1. The attached Agreement be approved.
2. The Chairperson be directed to execute the Agreement.
3. The Clerk be instructed to return an executed original to the Director of Public Works for transmittal to the purchaser.

Discussion

The policy adopted by your Board on February 24, 2004, indicates that 1,750 acre-feet of the County's 17,500 acre-feet per year entitlement to Lake Nacimiento Water is reserved for use in the vicinity of Lake Nacimiento. Of the 1,750 acre-feet per year, 1,100 acre-feet per year has been contracted for use within the community of Heritage Ranch. The Heritage Ranch Community Services District (HRCSD) has entitlements for 785 acre-feet per year. A portion (138 acre-feet) of the remaining 315 acre-feet per year is the subject of this discussion.

On August 27, 2002, your Board approved a Contract re-assigning 413 acre-feet per year from American Universal Insurance Company and Diamond Benefits Life Insurance Company to H.R. Holdings LLC ("H.R. Holdings") and John E. King and Carole D. King ("King") (collectively "Holders").

*B-14
R-2*

On February 24, 2004, your Board approved a transfer of 98 acre-feet of Holder's 413 acre-feet allocation to HRCSD as a condition of approval for John King's Tract 1910, a 150 lot subdivision in Heritage Ranch.

Your Board's approval of today's request will authorize the transfer of 138 acre-feet per year of Holder's remaining 315 acre-feet allocation to HRCSD as a condition of approval for the following developments:

Tract 1990	100 AFY	for 250 residential lots
Cappy Culver	5 AFY	for school site
Tract 1666	23 AFY	for 75 condominium units
Tract 1990 retail	10 AFY	for 5 acre commercial site

This transfer will leave HR Holdings and John E. King and Carole D. King with 177 AFY and HRCSD will increase to 923 AFY.

Other Agency Involvement/Impact

Upon execution of the attached Agreement, HRCSD will receive the 138 acre-foot allocation from Holders. County Counsel has reviewed and approved the attached Agreement.

Financial Considerations

This agreement for 138 AF at \$26 per AF, will result in annual revenue to the Nacimiento Water Contract Fund (BU 0647) of \$3,588. This is the same amount and rate previously received from Holders. This amount is also subject to change under your Board's rate setting authority.

Results

By taking the recommended action, your Board will re-assign to HRCSD an entitlement of 138 acre-feet per year of Lake Nacimiento Water, to be used within the community of Heritage Ranch. This water entitlement will ensure that the future residents of the subject tracts will have access to the basic necessities of life including a drinking water supply.

Attachments: Vicinity Map
Agreement to Assign Contract for Reservation of Water Supply

File: CF 230.100.01 Dams/Nacimiento WSC H.R. Holdings, LLC/John and Carole King

Reference: 06JAN24-C-13

B-14
3

**ASSIGNMENT OF
RESERVATION OF WATER SUPPLY
FOR HERITAGE RANCH**

This Assignment is entered into by and between the San Luis Obispo County Flood Control and Water Conservation District, established by Chapter 1294 of the 1945 Statutes of the State of California, ("Flood Control District"), H.R. Holdings LLC, A California limited liability company ("H.R. Holdings"), John E. King and Carole D. King ("King"), and the Heritage Ranch Community Services District ("HRCSD").

WITNESSETH

WHEREAS, on August 27, 2002, the Board approved an Agreement to Assign Contract for Reservation of Water Supply for Heritage Ranch ("2002 Agreement", attached hereto as Attachment A) re-assigning rights under a July 7, 1992 Contract for Reservation of Water Supply for Heritage Ranch ("1992 Contract") from American Universal Insurance Company and Diamond Benefits Life Insurance Company to H.R. Holdings LLC and John E. King and Carole D. King ("King"); and

WHEREAS, the 1992 contract is attached as Exhibit A to the 2002 Agreement (Attachment A); and

WHEREAS, the Parties to this Assignment have agreed to assign 104 acre-feet per year (AFY) of H.R. Holdings' and King's allocation to HRCSD as a condition of approval for John King's Tract 1990, a 225 residential and 5 acre commercial site in Heritage Ranch; and

WHEREAS, development of Tract 1990 is progressing and it is now necessary to transfer the 104 AFY allocation to HRCSD.

NOW, THEREFORE, it is hereby mutually agreed by the parties hereto as follows:

1. H.R. Holdings and King hereby assign to the Heritage Ranch Community Services District, 104 AFY of the 413 AFY referenced in the 1992 Contract.
2. The HRCSD assumes all obligations under the 1992 Contract with respect to the 104 AFY being assigned to the HRCSD pursuant to this Assignment.
3. It is expressly understood by all parties herein that all water, which is the subject of this Agreement shall be put to beneficial use within the boundaries of the service area of the Community Services District of Heritage Ranch.
4. All notices that are required either expressly or by implication shall be deemed given and delivered if delivered personally or if enclosed in a property addressed envelope and deposited in a United States Post Office for delivery by registered or certified

B-14
4

mail. Unless and until formally notified otherwise, all notices shall be addressed to the parties at the following addresses:

COUNTY:

San Luis Obispo County Flood
Control District
c/o Department of Public Works
County Government Center, Rm. 207
San Luis Obispo, CA 93408

H.R. Holdings LLC
Robert Schiebelhut, Managing Member
PO Box 31
San Luis Obispo CA 93406

c: John E. King
Carole D. King
290 Pismo Street
San Luis Obispo, CA 93401

John D'Ornellas
General Manager
Heritage Ranch Community Services District
4870 Heritage Road
Paso Robles, CA 93446

B-14
5

IN WITNESS WHEREOF, the parties have executed this Agreement this _____ day of _____, 2006.

ATTEST:

SAN LUIS OBISPO COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

County Clerk and ex-officio Clerk of the Board

Chairman of the Board of Supervisors

DEPARTMENT OF PUBLIC WORKS

HERITAGE RANCH COMMUNITY SERVICES DISTRICT



NOEL KING
Director of Public Works

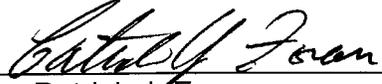


JOHN D'ORNELLAS
General Manager

APPROVED AS TO FORM AND LEGAL EFFECT:

JAMES B. LINDHOLM, JR.
County Counsel

H.R. HOLDINGS LLC

By: 

Patrick J. Foran
Deputy County Counsel



Robert K. Schiebelhut
Managing Member



John E. King



Carole D. King

B-14
6

"Attachment A"



SAN LUIS OBISPO COUNTY
DEPARTMENT OF PUBLIC WORKS

Noel King, Director

County Government Center, Room 207 • San Luis Obispo CA 93408 • (805) 781-5252

Fax (805) 781-1229

email address: pwd@co.slo.ca.us

TO: Board of Supervisors of the San Luis Obispo County Flood Control and Water Conservation District

FROM: John Waddell, Staff Engineer *JW*

VIA: Paavo A. Ogren, Deputy Director of Public Works - Administration *PAO*

DATE: August 27, 2002

SUBJECT: Request to Approve the Attached "Agreement to Assign Contract for Reservation of Water Supply for Heritage Ranch" (B.U. 0647, Nacimiento Water Contract)

Recommendation

It is our recommendation that:

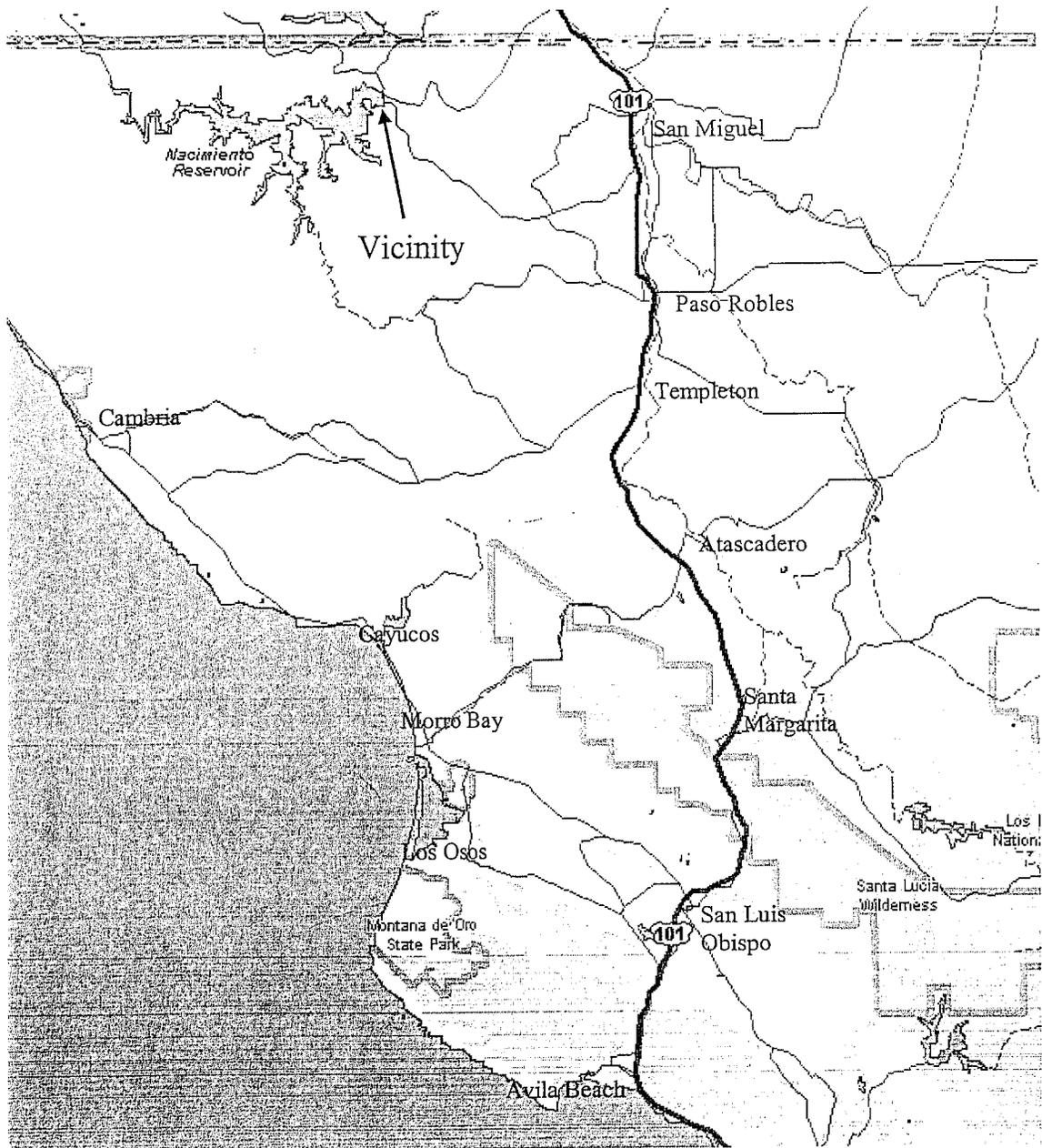
1. The attached Agreement be approved.
2. The Chairperson be directed to execute the Agreement.
3. The Clerk be instructed to return an executed original to the Director of Public Works for transmittal to the purchaser.

Discussion

The 1986 Master Water Plan Update, adopted by your Board, indicates that 1,300 acre-feet of the County's 17,500 acre-feet per year entitlement to Lake Nacimiento Water is reserved for use in the vicinity of Lake Nacimiento. Of the 1,300 acre-feet per year, 1,100 acre-feet per year has been contracted for use within the community of Heritage Ranch. The Heritage Ranch Community Services District (HRCSD) has entitlements for 687 acre-feet per year. The remaining 413 acre-feet per year is the subject of this discussion.

On July 21, 1992, your Board approved a Contract with American Universal Insurance Company (AUIC) to reserve a water entitlement of 413 acre-feet per year to be used within HRCSD. The Contract requires that the water entitlement be transferred to HRCSD upon development of the property owned by AUIC. Since the approval of this Contract, Diamond

B-14
7



Source: DeLorme 3D TopoQuads

Vicinity Map

B-14
9

**AGREEMENT TO ASSIGN CONTRACT FOR
RESERVATION OF WATER SUPPLY
FOR HERITAGE RANCH**

This Agreement is entered into by and between the San Luis Obispo County Flood Control and Water Conservation District, established by Chapter 1294 of the 1945 Statutes of the State of California, ("Flood Control District"), Charles R. Cohen, Director, State of Arizona, Department of Insurance, as Receiver for Diamond Benefits Life Insurance Company ("DBLIC"), H.R. Holdings LLC, A California limited liability company ("H.R. Holdings"), and John E. King and Carole D. King ("King").

Witnesseth

WHEREAS, the Flood Control District entered into a "Contract for Reservation of Water Supply for Heritage Ranch" with American Universal Insurance Company, a Rhode Island corporation in Receivership, by and through Nancy J. Mayer, its Receiver ("AUIC") on July 21, 1992 (the "Contract," a copy of which is attached as Exhibit "A");

WHEREAS, DBLIC succeeded to all of AUIC's interest in and to the real property which was the subject of the Contract on or about September 1, 1998;

WHEREAS, all of DBLIC's interest in and to the real property was purchased by H.R. Holdings LLC on April 2, 2002;

WHEREAS, John E. King and Carol D. King ("King") purchased all of the real property from H.R. Holdings LLC, except for the "Excluded Property" set forth in Exhibit "B";

WHEREAS, King and H.R. Holdings LLC desire to use the reserved water on their property as specified in Exhibit "C" attached hereto, all of which is located within the service area of the Community Services District of Heritage Ranch;

WHEREAS, H.R. Holdings and King have read the Contract, fully understand its terms, and wish to have the Contract rights assigned to them and the Contract obligations assumed by them.

NOW, THEREFORE, it is hereby mutually agreed by the parties hereto as follows:

1. All rights of AUIC and DBLIC under the Contract are hereby assigned to H.R. Holdings and King (hereafter, also "Assignees"), without any recourse by Assignees against DBLIC, as their rights may appear as owners of the subject real property. All obligations under the Contract are jointly and severally assumed by H.R. Holdings and King, without condition or reservation.

2. It is expressly understood by all parties herein that all water, which is the subject of said Contract, shall be put to beneficial use within the boundaries of the service area of the Community Services District of Heritage Ranch.

B-14
10

3. Any and all sums which one or more Assignees are obliged to pay under the Contract shall be joint and several obligations of the Assignees. Assignees request that any and all bills delivered to the Assignees be in the name of H.R. Holdings LLC and King, with an original and copy served as follows:

H.R. Holdings LLC (copy)
Attn: Robert Schiebelhut
Managing Member
PO Box 31
San Luis Obispo, CA 93406

John E. King and Carole D. King (original)
290 Pismo Street
San Luis Obispo, CA 93401

4. All notices that are required either expressly or by implication shall be deemed given and delivered if delivered personally or if enclosed in a property addressed envelope and deposited in a United States Post Office for delivery by registered or certified mail. Unless and until formally notified otherwise, all notices shall be addressed to the parties at the following addresses:

COUNTY:

San Luis Obispo County Flood
Control District
c/o Department of Public Works
County Government Center, Rm. 207
San Luis Obispo, CA 93408

Diamond Benefits Life Ins. Co.
c/o Mark D. Tharp
Special Deputy Receiver
300 West Osborn, Fifth Floor
Phoenix, AZ 85013

c: Patrick J. Foran
Deputy County Counsel
County of San Luis Obispo
County Government Center, Rm. 386
San Luis Obispo, CA 93408

c: Sharon J. Oscar, Esq.
Law Office of Sharon J. Oscar
3116 E. Shea Blvd., PMB #231
Phoenix AZ 85028

H.R. Holdings LLC
Robert Schiebelhut, Managing Member
PO Box 31
San Luis Obispo CA 93406

John E. King
Carole D. King
290 Pismo Street
San Luis Obispo, CA 93401

B-14
11

IN WITNESS WHEREOF, the parties have executed this Agreement this _____ day of _____, 2002.

ATTEST:

SAN LUIS OBISPO COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

County Clerk and ex-officio Clerk of the Board

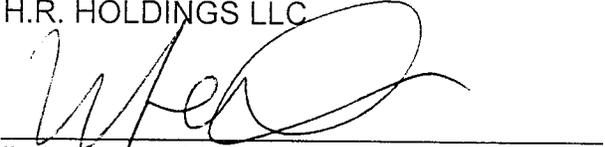
Chairman of the Board of Supervisors

DEPARTMENT OF PUBLIC WORKS

H.R. HOLDINGS LLC



NOEL KING
Director of Public Works



Robert K. Schiebelhut
Managing Member

APPROVED AS TO FORM AND LEGAL EFFECT:

JAMES B. LINDHOLM, JR.
County Counsel



John E. King

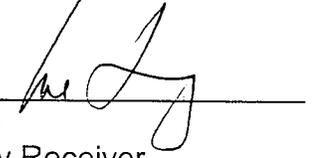
By: 

Patrick J. Foran
Deputy County Counsel



Carole D. King

CHARLES R. COHEN, DIRECTOR
STATE OF ARIZONA
DEPARTMENT OF INSURANCE,
as Receiver for Diamond Benefits Life
Insurance Company



By: Mark D. Tharp
Special Deputy Receiver

B-14
12

CONTRACT FOR RESERVATION
OF WATER SUPPLY FOR HERITAGE RANCH

This contract is entered into by and between the San Luis Obispo County Flood Control and Water Conservation District, established by Chapter 1294 of the 1945 Statutes of the State of California, hereinafter referred to as "Flood Control District", and American Universal Insurance Company, a Rhode Island corporation in receivership, by and through Nancy J. Mayer, its Receiver, hereinafter referred to as "AUIC".

WITNESSETH

WHEREAS, the Flood Control District and the Monterey County Flood Control and Water Conservation District, hereinafter referred to as "Monterey District", made and entered into an agreement dated October 19, 1959, which agreement assures the Flood Control District a perpetual supply of water from the Nacimiento Reservoir; and

WHEREAS, Six Corporation, a California corporation, previously contracted for and received a water supply entitlement of four hundred seventy-five acre feet per year to serve developments in the area known as Heritage Ranch in accordance with an agreement executed March 20, 1972, and subsequently amended by agreements executed June 18, 1974 and July 15, 1974; and

WHEREAS, Six Corporation subsequently assigned this water entitlement to San Luis Obispo County Service Area Number 19, which Service Area has been succeeded by the Heritage Ranch Community Services District, hereinafter referred to as "Community Services District"; and

WHEREAS, Six Corporation also previously contracted with Flood Control District for six hundred twenty-five acre feet of water per year in addition to the amount set forth above in accordance with an agreement executed on January 30, 1981, hereinafter referred to as "Water Service Agreement;" and

WHEREAS, Six Corporation has filed for protection under the Federal Bankruptcy Laws, Chapter 11, in Action Number LA 91-71029-AA; and

WHEREAS, Six Corporation has failed to make its semi-annual installments due, pursuant to the Water Service Agreement, on July 1, 1991 and January 1, 1992; and

WHEREAS, AUIC is the beneficiary of deeds of trust on substantially all of Six Corporation's real property available for development in the area known as Heritage Ranch,

B-14
13

including property on which tentative tract maps 1666, 1910 and 1990 have been approved by the County of San Luis Obispo, hereinafter referred to as "County"; and

WHEREAS, Six Corporation is in default on its obligations to AUIC secured by the foregoing deeds of trust, and AUIC has initiated judicial and non-judicial foreclosure proceedings; and

WHEREAS, AUIC is considering entering into a contract with the Community Services District to increase the capacity of a proposed water treatment plant (which is required by State mandate), which additional capacity would allow for completion of the lots currently approved by the County, which, in turn, would preserve the value of the security held by AUIC; and

WHEREAS, AUIC desires to reserve water supplies to it to justify its expenditure of funds for a water treatment plant with a two million gallon per day capacity; and

WHEREAS, AUIC understands that it is contracting with the Flood Control District for a water entitlement and must provide payment for this entitlement whether or not the water provided for by this entitlement is actually used by AUIC, or its successors, or assignees; and

WHEREAS, Flood Control District desires to make water available from its Nacimiento supply to inhabitants of San Luis Obispo County, within the areas designated as areas of use as set forth in the agreement between San Luis Obispo and Monterey Districts, and such areas of use as may from time to time be amended, which use of water, insofar as practical, shall be under terms and conditions fair and equitable to all the residents of these districts; and

WHEREAS, Flood Control District now desires to contract with AUIC upon the terms and conditions hereinafter set forth:

NOW, THEREFORE, it is hereby mutually agreed by the parties hereto as follows:

1. This contract shall become effective immediately upon execution by both parties and shall remain in effect at all times thereafter. After obtaining the written approval of Flood Control District, AUIC, or its successors, may assign its rights under this Agreement, provided such assignee is the owner of property within the boundaries of the service area established by the Community Services District. Any such assignment shall contain an assumption agreement by Assignee to assume without condition or reservation, and provided that all water which is the subject of said Contract shall be put to beneficial use within the boundaries of the Community Services District, all of the terms, conditions, and obligations under this Agreement, and such assignment shall not be effective unless and until the said assumption agreement is duly and completely executed.

2. For purposes of this contract, a water year is determined to be the period commencing October 1st and ending September 30th of the succeeding year. Commencing

B-14
14

on July 1, 1992 and then on each succeeding January 1st and July 1st thereafter, AUIC, or its successors, shall pay the Flood Control District in advance for water entitlement a sum of money equal to \$26.00 per acre foot subject to this reservation, multiplied by one-half. The number of acre feet may vary, and in fact, the parties anticipate that the amount of water subject to this reservation shall decrease as water entitlements are transferred to the Community Services District pursuant to paragraph 21, below.

3. Beginning with the water year commencing October 1, 1992 and ending September 30, 1993, and during each successive water year thereafter, Flood Control District shall make available to AUIC four hundred thirteen (413) acre feet of water from the Flood Control District's Nacimiento entitlement, except as provided in paragraph 4.

4. In any water year in which a water shortage may occur for any cause so that the total quantity of water available to Flood Control District for distribution to AUIC and other agencies is less than the total of all quantities contracted for by AUIC and other agencies, Flood Control District shall apportion to AUIC a pro rata share of the available water. In the event that such a water shortage occurs, no liability shall accrue against Flood Control District or any of its officers, or its successors or assignees and agents or employees, for any damage, direct or indirect, suffered by AUIC, arising from such water shortage.

Further, if during such a water shortage, in the opinion of the County of San Luis Obispo County Engineer, the reasonable water needs of AUIC, taking into consideration the implementation of water conservation measures prescribed by said County Engineer, are less than the four hundred thirteen acre feet of entitlement granted herein, then the District shall have the right to use for any beneficial purpose that portion of the water entitlement that said County Engineer determines to be excess to AUIC's reasonable water needs. AUIC shall be relieved from any obligation to pay for that portion of the water entitlement determined by said County Engineer to be excess to its reasonable water needs during the water year.

Flood Control District shall give AUIC written notice as far in advance as possible of any such reduction in water to be made available to it.

5. The water made available under this contract shall be used on Tracts 1666, 1910 and 1990, and for any other future tracts and developments that may be approved by the County of San Luis Obispo Board of Supervisors on properties acquired by AUIC or its successors from the foreclosure action specified above or otherwise, provided such properties are within the boundaries of the service area of the Community Services District. The water needs of the owners of parcels of the aforementioned tracts shall be met with respect to those parcels before any water is made available to areas of common use. If, during the water year in which there is no water shortage, and after providing for the full needs and demands of the land and uses hereinabove described, there remains any unallocated water from the entitlement granted hereunder, then such unallocated water may be used on land belonging to AUIC, or its successors, within the boundaries of the service area of the Community Service District, provided the land of the hereinabove described tracts and common areas shall have a continuing, superior right to such unallocated water. Nothing

B-14
15

in this Agreement shall be construed as conferring any rights upon AUIC to any further development or approvals for development or permits of any real property in the Heritage Ranch area now owned by or which may in the future be acquired by AUIC or its successors.

6. It is the understanding of the parties that water reserved under this Agreement shall be made available to AUIC or its lawful successor by the Community Services District at location(s) mutually agreeable between AUIC and the Community Services District. Costs of metering and metering equipment shall be borne by AUIC in accordance with the policies of the Community Services District then in effect.

7. Water made available to AUIC by Flood Control District shall be delivered to the Community Services District, or any lawful successor of the Community Services District, in accordance with such policies and procedures as may exist between Flood Control District and Community Services District at the time of the actual transfer of said water. It is expressly understood and agreed by the parties that the intent of this Agreement is to permit AUIC to reserve water for the purposes of development of AUIC property, but no physical transfer of water to AUIC will result from this Agreement. Rather, all transfers of water as anticipated herein will only be made directly to Community Services District, or a lawful successor of said district, for the benefit of AUIC, at such time or times as AUIC and Community Services District may determine.

8. All water made available to AUIC by Flood Control District hereunder is to be considered surface water of the Nacimiento Reservoir. It is hereby agreed that no more than four hundred and thirteen (413) acre feet, as measured by metering equipment installed in accordance with this Agreement shall be extracted from said outlet works or Diversion Wells during any given water year pursuant to this Agreement. Any water extracted from said outlet works or Diversion Wells pursuant to this Agreement shall be considered as having originated in and from the Flood Control District's Nacimiento entitlement.

9. It is mutually understood that the charges set forth above are an estimate of the cost thereof to Flood Control District in making water available to AUIC. Since Flood Control District intends to market the remainder of its Nacimiento Water Entitlement to others in the future, without preferential pricing, the parties agree that Flood Control District shall have the right to, from time to time, increase or decrease the present rate of charge to AUIC of Twenty-Six Dollars (\$26.00) per acre foot for cost of water to AUIC so that the rates and charges to AUIC or its Assignee shall be comparable to what other entities may be paying for such water. AUIC shall maintain complete records for twelve months of each year indicating the amount of water used. These records shall be transmitted monthly to the Flood Control District and Monterey District.

10. AUIC shall establish and cause to be collected all fees, charges and other sums necessary to enable it to make in full all payments to be made pursuant to this contract on or before the date such payments become due and it will use all of its authority and resources to meet its obligations under this contract. In the event of any default by AUIC or its successor in the payment of any money required to be paid to Flood Control District

B-14
16

hereunder, the Flood Control District in its discretion may suspend delivery of water during the period when AUIC is delinquent in its payment for or obligations due to Flood Control District under the terms of this contract. In the event that AUIC has failed to pay, in full, two said payments, then this contract may be declared null and void by Flood Control District at Flood Control District's option, and the entitlement of 413 acre feet per year granted hereunder shall revert to Flood Control District. Action taken pursuant to this paragraph shall not deprive Flood Control District of or limit any remedy provided by this contract or by law for the recovery of money due or which may become due under this contract.

11. AUIC agrees to make all payments promptly when due. The failure of AUIC or its Assignee to utilize or accept water shall not relieve AUIC or its successor of its obligation to make payments to County as provided above.

In the event of failure to pay any financial obligation to Flood Control District when due, interest shall accrue at the rate of one (1) percent per month for such overdue payments.

12. Flood Control District acknowledges that Six Corporation has furnished to it maps showing the exterior limits of service area or areas of its water distribution systems, and any proposed additions thereto. In the event Community Services District alters, modifies or amends its service area, Flood Control District will be notified in writing.

13. The parties acknowledge that the Community Services District is currently revising its plan for installation of a second gallery well and improvement of the booster pump system to integrate those elements with the construction of a water treatment plant. AUIC agrees to assume the obligation of its predecessor, Six Corporation, to complete the gallery well required in accordance with the agreement between Six Corporation and San Luis Obispo County dated April 8, 1981. Provided, however, that in view of the fact that Community Services District is currently revising the plan for the second gallery well which would have been constructed by Six Corporation, and in view of the fact that the gallery well will only need to be constructed in connection with the construction of the proposed water treatment plant, AUIC agrees to negotiate in good faith with the Community Services District an equitable sharing of the costs of the proposed gallery well and booster pump to be designed. The parties anticipate that AUIC will share costs to the extent of its obligation to County of San Luis Obispo with regard to the original gallery well. In addition, AUIC agrees to comply with any and all duly adopted County of San Luis Obispo and Community Services District ordinances and resolutions in connection with said gallery well and booster pump.

14. The use by either party of any remedy specified herein for the enforcement or termination of this contract is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.

15. This contract may be amended by written amendment mutually agreed upon by the parties; but there shall be no amendment without such written amendment executed

B-14
17

by the proper officers of Flood Control District and of AUIC or its Assignee. Any increase or decrease of the rate of charge to AUIC for the water entitlement pursuant to paragraph 10 hereof shall not be construed as an amendment.

16. Any waiver at any time by either party hereto of its rights with respect to a breach or default, or any other matter arising in connection with this contract, shall not be deemed to be a waiver with respect to any other breach, default or matter.

17. All notices that are required either expressly or by implication to be given by any party to the other under this contract shall be signed for Flood Control District and for AUIC by such officers as they may, from time to time, authorize in writing to so act. All such notices shall be deemed to have been given and delivered if delivered personally or if enclosed in a properly addressed envelope and deposited in a United States Post Office for delivery by registered or certified mail. Unless and until formally notified otherwise, all notices shall be addressed to the parties at following addresses:

COUNTY:

San Luis Obispo County
Flood Control District
c/o Engineering Department
County Government Center
1050 Monterey Street
San Luis Obispo, CA 93408

Raymond A. Biering
Deputy County Counsel
County of San Luis Obispo
County Gov't. Center, Room 386
1050 Monterey Street
San Luis Obispo, CA 93408
(receive duplicate copy)

AUIC:

Nancy J. Mayer, Receiver
Chief Legal Counsel
Dept. of Business Regulation
State of Rhode Island
233 Richmond St., #235
Providence, RI 02903-4235

James C. Buttery, Esq.
Andre, Morris & Buttery
P. O. Box 730
San Luis Obispo, CA 93406-0730

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Winograd, Shine & Zacks
123 Dyer Street
Providence, RI 02903
(receive duplicate copy)

18. Flood Control District makes no guarantee, expressed or implied, as to the quality of water to be delivered under the terms of this Agreement. AUIC agrees to defend, indemnify and hold County and its officers, agents and employees harmless from any and all claims demands, liability, costs, expenses, causes of action and judgments which might arise against Flood Control District because of the quality and quantity of water made available to AUIC under the terms of this Agreement, or which might arise out of this contract or occasioned by the performance or attempted performance of the provisions

B-14
18

hereof, including but not limited to any act or omission to act on the part of AUIC or its agents or employees or independent contractors who are directly responsible to AUIC.

19. This contract shall be binding on the transferees, assigns, successors, trustees and executors of the parties hereto.

20. This Agreement is specifically conditioned upon AUIC receiving the consent of the Rhode Island Superior Court to enter into this contract and this Agreement shall be of no force or effect unless and until approval and consent of the Rhode Island Superior Court is duly obtained. Further, the effectiveness of this Agreement is also expressly conditioned upon AUIC entering into a funding agreement with the Heritage Ranch Community Services District for construction of a water treatment plant with a capacity of two million (2,000,000) gallons per day.

21. In order to provide for the orderly distribution of water to individual lots which may be constructed on property now encumbered by deeds of trust in favor of AUIC, and as the result of the fact that the Community Services District now acts as the water provider for all property within the boundaries of its service area, upon written notice by the Community Services District, it may duly demand that AUIC or its successor assign to it all or a portion of any water rights reserved to AUIC under this Agreement and in order to accommodate the final approval and division of property owned by AUIC or its successor within the Heritage Ranch Service area. Said assignment shall be in accordance with paragraph 1 of this Agreement. Upon transfer by AUIC or its successor, the Community Services District shall thereafter be responsible for any obligation to the Flood Control District in connection with such water entitlement which is transferred to it.

22. Upon execution of this Agreement, AUIC shall pay to the San Luis Obispo County Counsel, on behalf of the Flood Control District and the County of San Luis Obispo, the sum of thirty-five thousand dollars (\$35,000). The Flood Control District represents that this sum is cost incurred and to be incurred by Flood Control District, by and through its County Counsel, to remedy the breaches by Six Corporation referenced above. AUIC shall not and does not hereby indemnify Flood Control District in regard to its previous contractual relationship with Six Corporation.

23. Except as otherwise provided herein, the term of this Agreement shall be for a period of twenty (20) years dating from the date of execution of this Agreement by the parties. Although this Agreement may be terminated earlier by AUIC's default pursuant to paragraph 10, above, it may also be extended by AUIC for an additional term not to exceed ten (10) years, if AUIC or its successor is proceeding with development of property within the boundaries of the Community Service District's service area.

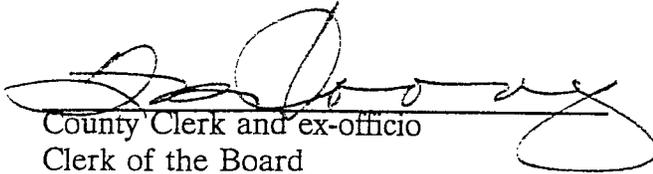
24. In the event of a default by AUIC under this contract, then the Flood Control District shall offer the water supply reserved to AUIC under this contract to the Community Services District upon the same terms and conditions. A default under this section shall mean any one of the following:

B-14
19

- a. Failure of AUIC to make timely payments, including all duly approved extensions, to the Flood Control District as required under this contract;
- b. Failure of AUIC to timely assign and transfer to the Community Services District the water supply reservation under this contract when needed to provide water service to undeveloped property within the boundaries of the Community Services District in which AUIC now has a beneficial interest; and
- c. Any other material breach of this contract by AUIC.

IN WITNESS WHEREOF, the parties have executed this Agreement this 21st day of July, 1992.

ATTEST:


 County Clerk and ex-officio
 Clerk of the Board

SAN LUIS OBISPO COUNTY FLOOD
 CONTROL AND WATER
 CONSERVATION DISTRICT


 Chairman of the Board of Supervisors

APPROVED AS TO CONTENT:


 Clinton Milne
 County Engineer

APPROVED AS TO FORM AND
 LEGAL EFFECT:

AMERICAN UNIVERSAL
 INSURANCE COMPANY,
 In Receivership


 Raymond A. Biering
 Deputy County Counsel


 Nancy J. Mayer, Receiver

B-14
 20

EXHIBIT "B"
Excluded Property

- (1) 70 lots in Tract 1094 (Mobile home lots)
- (2) Lot 5 of 1094 (RV Storage)
- (3) Lot 29 of Tract 1063 (80 acre parcel)
- (4) Lot 84, Tract 693, (3 acre parcel near entrance gate)

B-14
21

EXHIBIT "C"

JOHN KING PARCELS			
<u>Legal Description</u>	<u>APN</u>	<u>Acres</u>	<u>Served by CSD</u>
Lot 7, Tract 1094, Unit 1 (includes Tract 1990, future 4.8 acre commercial and open space)	12-181-74 12-181-56	734.4 + -	Yes
Lot 6, Tract 720 (includes Tract 1503, Tract 1666, plus remainder excess land)	12-191-65 12-191-62 12-191-63 12-919-64	736 + -	Yes
Units 13-28 and Units 33-34 (Condominium Plan), book 2432, page 122	12-192-13 to 28 12-192-33 to 44		Yes
Lot 28, Tract 1063 Portion of lot 28 (includes Tract 1910)	12-361-03 12-361-10	1434.16	Yes

H.R. HOLDINGS LLC PARCELS			
<u>Legal Description</u>	<u>APN</u>	<u>Acres</u>	<u>Served by CSD</u>
Lot 5, Tract 1094, Unit 1 (RV Storage)	12-181-71	13.59	Yes
Lot 29, Tract 1063	12-361-07	89.02	Yes

B-14
22