

**AGREEMENT FOR CONSTRUCTION AND USE OF SEWER  
FACILITIES (BERLIN BUY-BACK AGREEMENT)**

**THIS AGREEMENT**, entered into this \_\_\_\_\_ day of \_\_\_\_\_, **2009**, by and between Claus J. and Kimberly A. Berlin, hereinafter called “Developers” and EMERALD LAKE HEIGHTS SEWER MAINTENANCE DISTRICT of the County of San Mateo, State of California, hereinafter called “District”.

**W I T N E S S E T H:**

**WHEREAS**, the County of San Mateo Board of Supervisors acts as the governing board of the EMERALD LAKE HEIGHTS SEWER MAINTENANCE DISTRICT, and

**WHEREAS**, Section 20793 of the California Public Contract Code authorizes said District to contract with any person, firm or corporation for the joint use of sewer facilities, and for the construction, maintenance and payment for said facilities as stipulated by terms and conditions which may be agreed upon by the parties; and

**WHEREAS**, Developers have constructed the sewer facilities in the vicinity of 593 California Way, Redwood City, CA at their own expense and thereafter conveyed said facilities to said District for the joint use by the Developers and the District; and

**WHEREAS**, in consideration of Developers’ construction of said sewer facilities and the conveyance of the facilities to the District, District shall attempt to cause reimbursement to be made to Developers by future users of said system as a condition for granting permission to connect to the new sewer facilities pursuant to the terms and conditions set forth herein:

**NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO** as follows:

**1. Construction of Sewer Facilities by Developers**

Developers have furnished, at their own expense, all labor, materials, tools, and equipment and all incidental work and services required for the construction of a sanitary sewer system consisting of approximately 175 L.F. of 6" diameter PVC sewer line, manholes and appurtenances within the public right-of-way between the intersection of California Way and West California Way and 593 California Way in accordance with “Water Main and Sanitary Sewer Main Extension Plan – 593 California Way, Redwood City, CA” prepared by MacLeod and Associates, Inc., 930 Tanklage Road, San Carlos, CA dated on January 12, 1998, on file in the office of the Director of Public Works. The construction of said sanitary sewer facilities has been done under the supervision of, and to the complete satisfaction of the District.

**2. Conveyance of Sewer Facilities to District by Developers**

Developers have conveyed to the District all rights, title and interest in said sanitary sewer facilities free and clear of all costs, liens, encumbrances, or liabilities in connection therewith, except for reimbursement from future connection charges to said sanitary sewer as hereinafter provided. The "Offer of Dedication of Sewer Main Extension", executed on January 10, 2000 has been accepted by the Director of Public Works and the Board of Supervisors, on behalf of the District, by Resolution No. 63402, adopted on February 8, 2000 (Exhibit "A").

**3. Reimbursement to Developers**

As a condition of granting permission to future users to connect to the system, District shall require that such future users reimburse Developers a portion of the total construction cost, to include engineering, by each property owner desiring to connect their property to the portion of sewer main constructed by the Developers.

The property owners of properties desiring connection shall pay all Buy-in fees in accordance with the schedule in Exhibit "B" attached hereto and incorporated herein.

Construction costs indicated in Exhibit "C" attached hereto, shall be calculated annually based on the Construction Cost Index (CCI) as determined for the San Francisco Bay Area and listed in the Engineering News-Record based on 6816.70, published for January 2000. Upon receipt of said payment of fees from the property owners, the District shall attempt to refund the Developers within sixty (60) days.

Developers shall transmit annually to the District their current mailing address in order that funds collected on their behalf may be dispersed properly. Failure on the part of the Developers to provide a current and complete address may result in delay for the delivery of any refund. The District shall not be held financially liable or responsible for the failure of the Developers to receive said refunds once transmitted by the District or for failure on the part of the District to collect all sums which may be due the Developers.

It is understood that any funds collected on behalf of Developers by the District shall be in addition to the District connection fees in effect at the time application is made by the property owner. It is further understood that the District has no obligation to collect reimbursement monies under this Agreement.

**4. Termination**

This Agreement shall terminate on February 8, 2010.

**5. Hold Harmless**

Developers shall indemnify and save harmless the County of San Mateo, District, their officers, agents, employees and servants from all claims, suits or actions of every name, kind and description including those to which injunctive or declaratory relief is sought based whole or in part on the District's entering into this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the date first hereinabove written.

**"DISTRICT"**

**EMERALD LAKE HEIGHTS  
SEWER MAINTENANCE DISTRICT**

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**Mark Church  
President, Board of Supervisors  
County of San Mateo  
Governing Board of said District**

**ATTEST:**

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**David S. Boesch  
County Manager/Clerk of the Board**

**"DEVELOPERS"**

BY \_\_\_\_\_  
**Claus J. Berlin**

\_\_\_\_\_  
**Date**

BY \_\_\_\_\_  
**Kimberly A. Berlin**

\_\_\_\_\_  
**Date**