

C 89-16

CONSENT CALENDAR

4-S. **Reduction in Required Security - Extension of Camino Vera Cruz in Laing Forster Ranch**

MOTION BY MAYOR PRO TEM DAHL, SECOND BY COUNCILMEMBER EGGLESTON, CARRIED 5-0, to approve the release of the \$3.4 million Irrevocable Letter of Credit that was required by the Amended and Restated Development Agreement for Forster Ranch by and between the City of San Clemente and Laing Forster Ranch LLC, dated March 4, 1998, Section 7.4.1 Developer's Obligation to Provide Security to City.



**AGENDA REPORT**  
**SAN CLEMENTE CITY COUNCIL MEETING**  
 Meeting Date: June 20, 2001

Agenda Item 4-5  
 Approvals:  
 City Manager [Signature]  
 Dept. Head [Signature]  
 Attorney \_\_\_\_\_  
 Accounting \_\_\_\_\_  
 Other \_\_\_\_\_

**Department:** Engineering Division  
**Prepared By:** William E. Cameron, City Engineer WEC

**Subject:** **REDUCTION OF REQUIRED SECURITY FOR THE EXTENSION OF CAMINO VERA CRUZ IN LAING FORSTER RANCH**

**Summary:** Ken Nishikawa, Vice President of Laing Forster Ranch LLC (Laing), has requested in the attached May 3, 2001 letter that the City consider reducing the amount of security required for the extension of Camino Vera Cruz from its terminus in Forster Ranch to Vista Hermosa. The Development Agreement (Agreement) entered into with Laing in 1998 required the developer to initially provide \$5.4M in security for the estimated cost to complete the Vera Cruz Extension. That security was in the form of an Irrevocable Letter of Credit in the amount of \$3.4M and a Performance Bond in the amount of \$2M. The Agreement allowed the City Engineer to increase the amount of security if the estimated cost of constructing the Vera Cruz Extension increased above the amount of security provided. Over time, Laing has provided an additional \$10,842,353 in bonds as security for the Vera Cruz Extension, increasing the total security to \$16,242,353.

As is stated in Mr. Nishikawa's letter, the project's current total estimated construction cost is \$15,965,870. Through early May 2001, Laing has made \$6,027,586 in payments, leaving the amount of work remaining to be performed at \$9,938,284. The \$12.8M in bonds held by the City exceeds 125% of the estimated work to be completed.

Section 7.4.3 Partial Release of Security of the Agreement states that the City Engineer may reduce the amount of security required "upon completion of the grading of the Vera Cruz Extension". The paragraph goes on to state "upon a conclusion that the work has been satisfactorily completed, the City Engineer will permit a reduction of the Vera Cruz security, provided that the remaining balance of the reduced Faithful Performance Security shall not be less than 125% of the value of the work remaining to be performed...". With the Vera Cruz Extension grading not yet completed, only the City Council would have the discretion as to whether it would allow Mr. Nishikawa's request to release the \$3.4M Irrevocable Letter of Credit. Based upon Laing's satisfactory performance and continuing work on the Vera Cruz Extension Project and with bonds totaling \$12.84M in place, staff recommends that the City Council release the \$3.4M Irrevocable Letter of Credit.

**Recommended**

**Action:** STAFF RECOMMENDS THAT the City Council approve the release of the \$3.4M Irrevocable Letter of Credit that was required by the Amended and Restated Development Agreement for Forster Ranch by and between City of San Clemente and Laing Forster Ranch LLC, dated March 4, 1998, Section 7.4.1 Developer's Obligation to Provide Security to City.

**Fiscal Impact:** No

**Attachments:** Laing Forster Ranch LLC Letter dated May 3, 2001  
Location Map

RECEIVED

MAY 02 '01

San Clemente  
California, CA 92673

# LAING FORSTER RANCH LLC

May 3, 2001

Via Delivery

Mr. Bill Cameron  
City Engineer  
City of San Clemente  
910 Calle Negocio, Suite 100  
San Clemente, CA 92673

Re: *A.D. No. 98-1, Camino Vera Cruz Security*

Dear Bill:

Thank you for expeditiously processing our initial reimbursement request for the Camino Vera Cruz work. Now that the rains have seemingly abated we are making great headway on the grading. Keyway #1 (at the bottom) and #4 (at the top) have now been completed and we will be working on the middle two keyways through the summer.

As you may recall from our development agreement, we had initially posted two types of securities to guarantee this work; a letter of credit in the amount of \$3,400,000 and a performance bond in the amount of \$2,000,000. (See section 7.4.1 of the development agreement attached). Obviously the cost of this roadway work has increased but so has our posted security. Our total security for this work is currently as follows:

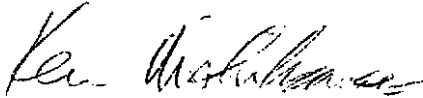
<u>Letter of Credit No.</u>	<u>Amount</u>	<u>Description</u>
SLCMMSP113	\$ 3,400,000	General
<u>Bond No.</u>	<u>Amount</u>	<u>Description</u>
361642	\$ 2,000,000	General
403339	\$ 44,190	Grading – Power Pole Relocation
409213	\$ 8,806,382	Grading – Roadway
410336	\$ 325,066	20" W-3 Water
410451	\$ 126,269	Phase 1A, Line "E" Storm Drain
410467	\$ 1,540,446	Street, Sewer, Water, Storm Drain
Subtotal:	\$12,842,353	
Security Total:	\$16,242,353	

453

Mr. Bill Cameron  
May 3, 2001  
Page two

The total estimated construction cost is \$15,965,870 (see attached Assessment District 98-1 Cost Summary and Reimbursement Request form). With the recent confirmed reimbursement draw, we have paid to-date through May 3, 2001 \$6,027,586. This would leave an estimated cost of the work remaining to be performed at \$9,938,284. The total amount of just our bonded faithful performance security of \$12.8 mil. would thus exceed 125% of this estimated work remaining to be performed. We would therefore like to request the release of the letter of credit. This request is highlighted by the fact that this letter of credit has been renewed yearly since first being issued on June 9, 1998 at a substantial cost of \$51,000 per annum or \$153,000 to-date. Obviously time is of the essence as its next annual renewal date is fast approaching and we would like to avoid paying this high premium for what we hope you would agree is expensive security not now required. I have also attached a copy of the letter of credit to which is attached a termination form as Exhibit C. Please call should you have any questions or need more information regarding this request.

Sincerely,



Ken Nishikawa  
Vice President

KN:bh

encl.

c: Mr. Jim Holloway, City of San Clemente, (w/encl.)  
Mr. Dave Lund, City of San Clemente, (w/encl.)  
Mr. Paul Gudgeirsson, City of San Clemente, (w/encl.)

prior to Developer's planned date for commencement of construction of the Related Improvements.

7.3 Commencement and Completion of Construction. Subject to Section 13.3 (regarding force majeure) of this Agreement, Developer shall commence grading of the Vera Cruz Extension upon the earlier of issuance of the building permit for the 250th residential unit in the Development Area or April 15, 2000. Once grading is commenced, it shall be diligently pursued to final completion. Subject to Section 13.3, Developer shall substantially complete construction of the Vera Cruz Extension upon the earlier of issuance of the building permit for the 500th residential unit in the Development Area, or October 15, 2001. As used herein, the term "substantially complete" shall mean that the Vera Cruz Extension is in a condition that the City Engineer has determined is sufficient for the roadway to be opened for traffic.

7.4 Security.

7.4.1 Developer's Obligation to Provide Security to City. As of the Effective Date, the Parties estimate Developer's cost to complete the Vera Cruz Extension to be Five Million Four Hundred Thousand Dollars (\$5,400,000.00). Within sixty (60) days of the Effective Date, Developer shall furnish to City security instruments in favor of City securing Developer's obligation to construct the Vera Cruz Extension (collectively, the "Vera Cruz Security") as follows: (i) faithful performance security in the form of an irrevocable unconditional letter of credit in the amount of Three Million Four Hundred Thousand Dollars (\$3,400,000.00) and a performance bond in the amount of Two Million Dollars (\$2,000,000.00), and (ii) corresponding payment security in the cumulative amount of Two Million Seven Hundred Thousand Dollars (\$2,700,000.00) which may be included in the letter of credit described in clause (i) hereinabove by permitting City to draw upon such letter of credit for reasons relating to labor and materials in addition to reasons relating to performance. The Vera Cruz Security shall be in a form acceptable to the City Attorney and shall be issued by financial institution(s) acceptable to City. Within ten (10) days after receipt of the Vera Cruz Security, City shall return to Developer its Two Million Dollar (\$2,000,000.00) security instrument which was submitted to City pursuant to the Traffic Improvement Agreement and its One Million Four Hundred Ten Thousand Two Hundred Seventy-Six Dollar (\$1,410,276.00) letter of credit submitted to City pursuant to the Vista Hermosa Agreement.

7.4.2 Increases in Security. In the event the City Engineer reasonably determines that the estimated costs of constructing the Vera Cruz Extension have increased above the amounts of the Vera Cruz Security, City shall have the right, but not the obligation, to so notify Developer, in writing. Within fifteen (15) days of receipt of such written notice, Developer shall provide to City additional faithful performance security in an amount equal to one hundred percent (100%) of the estimated

increased cost and additional payment security in an amount equal to fifty percent (50%) of the estimated increased cost.

7.4.3 Partial Release of Security. Upon completion of the grading of the Vera Cruz Extension, Developer shall be permitted to request a reduction in the amount of security required pursuant to Sections 7.4.1 and 7.4.2 (if applicable) for work already completed. Such a request shall be made by filing with the City Engineer a request to reduce security along with a certified statement signed by Developer verifying the value of the completed work and the estimated cost of the work remaining to be performed. The City Engineer shall independently investigate the facts and determine if the work declared to have been adequately performed has in fact been completed. Upon a conclusion that the work has been satisfactorily completed, the City Engineer shall permit a reduction of the Vera Cruz Security, provided that the remaining balance of the reduced faithful performance security shall not be less than one hundred twenty-five percent (125%) of the value of the work remaining to be performed and the remaining balance of the reduced payment security shall not be less than fifty percent (50%) of the work remaining to be performed. No approval of such a reduction in security shall be deemed a waiver by City of any rights or claims City may have against Developer if it is later discovered that work has not been adequately or completely performed in a workmanlike manner or payments to Developer's contractor or subcontractors has not been made.

7.4.4 Release of Security. City shall release the balance of the Vera Cruz Security upon the last to occur of the following: (i) City's acceptance of the work performed in connection with the Vera Cruz Extension; (ii) expiration of the time within which lien claims are required to be made pursuant to Article 3 (commencing with Section 3114) of Chapter 2 of Title 15 of Part IV of Division 3 of the California Civil Code; or (iii) if lien claims have been timely filed, after all such claims have been resolved or Developer has provided a statutory lien release bond.

## 8. DEDICATION OF RIGHTS-OF-WAY; CONSTRUCTION EASEMENTS.

8.1 Dedication. Within thirty (30) days after written request by City, Developer shall make an irrevocable offer of dedication to City of the rights-of-way to accommodate (i) the proposed extension of Avenida Vista Hermosa from its existing terminus to the easterly boundary of the Property, (ii) Avenida La Pata from the southeasterly boundary of the Property to the northeasterly boundary of the Property, (iii) Camino del Rio from its existing terminus to the northerly boundary of the Property, and (iv) the Vera Cruz Extension, with such offers of dedication to be in the locations generally depicted in the Specific Plan and of a width, size, and specific location reasonably acceptable to the City Engineer. Each offer of dedication shall include a non-exclusive irrevocable license in favor of City and its authorized agents to enter onto the Property adjacent to the right-of-way for

## Assessment District 98-1 (Laing Forster Ranch)

### Cost Summary & Reimbursement Request

Reimbursement Request Date: 03/23/01

Description	Total Cost	Developer Portion	Confirmed Reimb Budget	Adj	Revised Reimb Budget	Amount Paid To Date	Reimbursement Draw Summary				
							Prior Draws	Current Draw	Total Draws	Percent Drawn	Remaining Balance
<b>Camino Vera Cruz</b>						5/3/01					
Grading (50% reimbursable)	11,388,378.00	5,671,710.00	5,716,668.00		5,716,668.00	4,193,228.13	1,799,978.01	291,205.91	2,091,183.92	37%	3,625,484.09
Roadway (50% reimbursable)	594,440.00	(297,220.00)	361,360.00		361,360.00		-	-	-	0%	361,360.00
Sewer/Water/Storm Drain	637,871.00	197,168.00	440,703.00		440,703.00	102,324.62	60,679.75	-	60,679.75	14%	380,023.25
Engineering & Consultants(portion)	2,918,513.00	1,429,659.00	1,488,854.00		1,488,854.00	1,460,893.57	718,143.44	59,621.10	777,764.54	52%	711,089.47
Permits, Fees & Bonds(portion)	426,668.00	198,911.00	213,334.00		213,334.00	271,140.05	115,866.57	25,500.00	141,366.57	66%	71,967.43
<b>TOTAL CONSTRUCTION COSTS</b>	<b>15,965,870.00</b>	<b>7,200,228.00</b>	<b>8,220,919.00</b>		<b>8,220,919.00</b>	<b>6,027,586.37</b>	<b>2,694,667.76</b>	<b>376,327.00</b>	<b>3,070,994.76</b>	<b>37%</b>	<b>5,149,924.24</b>
<b>Total Current Request</b>							<b>2,417,274.00</b>	*			

Approved by:

*Ken Westlake*  
Laing Forster Ranch

City of San Clemente Assessment District 98-1

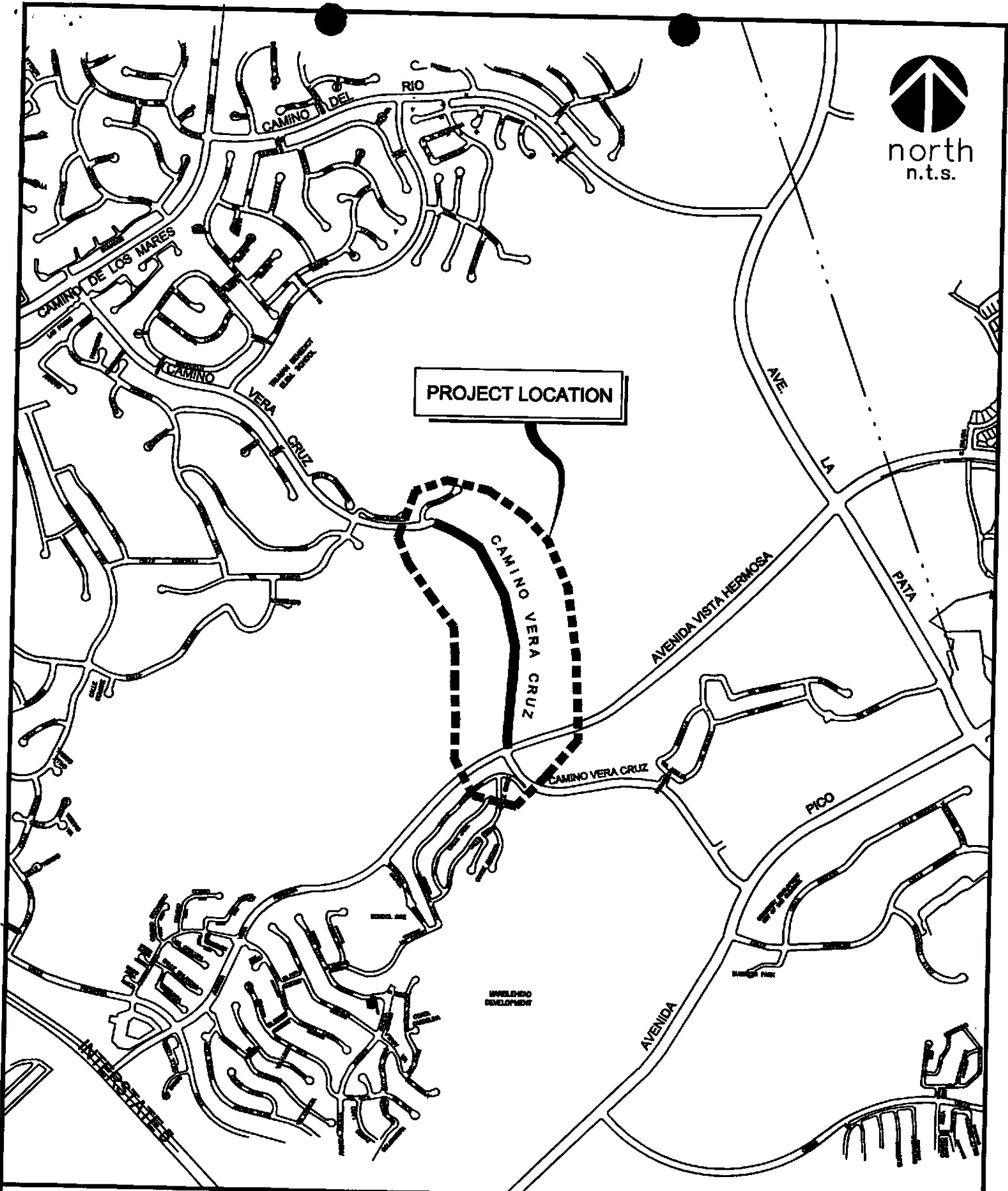
\* Funds available in the Improvement Fund account with the City of San Clemente Wire Transferred 04/30/01

457





PROJECT LOCATION



*City of San Clemente*

Engineering Division 910 Calle Negocio  
Suite 100  
San Clemente, CA 92073  
Tel (949) 361-8100  
Fax (949) 361-8316

LOCATION MAP

**CAMINO VERA CRUZ  
EXTENSION**

458

C89-16

LAING FORSTER RANCH LLC

June 2, 1998

Via Delivery

Mr. Jim Holloway  
Director of Community Development  
City of San Clemente  
910 Calle Negocio  
San Clemente, CA 92653

Re: Camino Vera Cruz Extension Security

Dear Jim:

Per Section 7.4 of the Amended and Restated Development Agreement for Forster Ranch, enclosed please find bond no. 361642 in the amount of \$2 million from Seaboard Surety Company. As you probably know, the form of the letter of credit for the \$3.4 million also required per this section of the agreement was just approved last week by Mr. Oderman, and I should have that security instrument to you within the next couple of weeks.

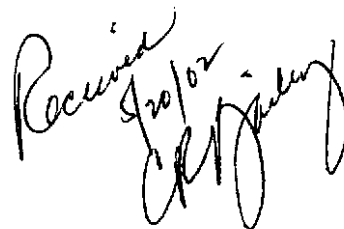
Sincerely,



Ken Nishikawa  
Vice President

KN:bh

Encl.



- c: Mr. Dave Lund, City of San Clemente
- Mr. Bill Cameron, City of San Clemente
- Mr. Ted Simon, City of San Clemente
- Mr. Akram Hindiye, City of San Clemente
- Jon Curtis, Esq., Paul, Hastings, Janofsky & Walker

# SEABOARD SURETY COMPANY®

BOND NO. 361642  
PREMIUM: \$12,000

## PERFORMANCE BOND

Whereas, The City of San Clemente, State of California and Laing Forster Ranch LLC (hereinafter designated as "principal") have entered into an agreement whereby "Principal" agrees to install and complete certain designated public improvements, which said agreement dated March 4, 1998, and identified as Forster Ranch Camino Vera Cruz Extension is hereby referred to and made a part hereof; and

Whereas, said principal is required under the terms of said agreement to furnish a bond for the faithful performance of said agreement.

Now therefore, we, the principal and Seaboard Surety Company, as surety, are held and firmly bound unto the City of San Clemente (hereinafter called "Obligee"), in the penal sum of Two Million & No/100 dollars, (\$2,000,000) well and truly to be made, we bind our ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the above bounded principal, his or its heirs, executors, administrators, successors, or assigns, shall in all things stand to abide by, and well and truly keep and perform the covenants, conditions and provisions in the said agreement and any alteration thereof made as therein provided, on his or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the City of San Clemente, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

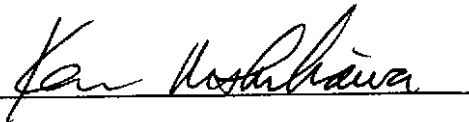
As a part of the obligation secured hereby and in addition to the face amount specified thereof, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by the city in successfully enforcing such obligation, and all to be taxed as costs and included in any judgment rendered.

The Surety hereby stipulated and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder of the specifications accompanying the same shall in anywise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications.

BOND NO. 361642

In witness whereof, this instrument has been duly executed by the principal and surety above named on June 1, 1998.

**LAING FORSTER RANCH LLC,  
A DELAWARE LIMITED LIABILITY COMPANY**

By: 

**SEABOARD SURETY COMPANY**

By:   
D.J. Picard, Attorney-in-Fact

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

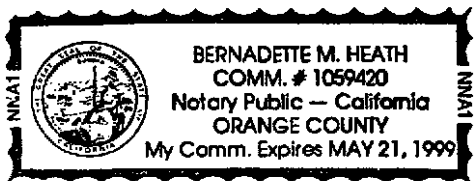
State of California

County of Orange

On 06-02-98 before me Bernadette M. Heath, Notary Public  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Ken Nishikawa  
Name(s) of Signer(s)

personally known to me – OR  proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Bernadette M. Heath  
Signature of Notary Public

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: Performance Bond

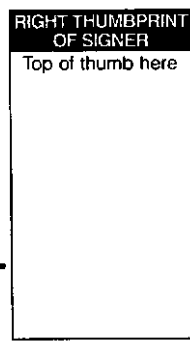
Document Date: 06-01-98 Number of Pages: 02

Signer(s) Other Than Named Above: No other signers

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: Ken Nishikawa

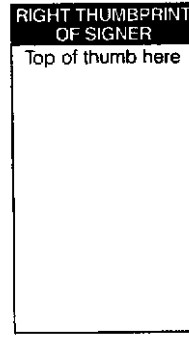
- Individual
- Corporate Officer  
Title(s): Vice President
- Partner —  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing:  
Laing Forster Ranch LLC

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer  
Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing:  
\_\_\_\_\_  
\_\_\_\_\_

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

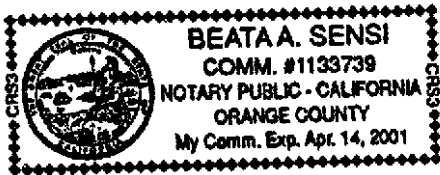
State of CALIFORNIA

County of ORANGE

On 6/1/98 before me, BEATA A. SENSI, NOTARY PUBLIC, Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared D.J. PICARD Name(s) of Signer(s)

personally known to me - OR - proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Signature of Notary Public (Handwritten signature: Beata A. Sensi)

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: PERFORMANCE BOND

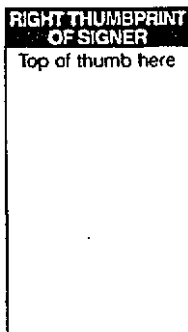
Document Date: 6/1/98 Number of Pages: 2

Signer(s) Other Than Named Above: N/A

Capacity(ies) Claimed by Signer(s)

Signer's Name: D.J. PICARD

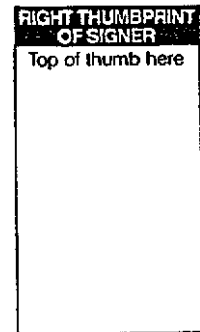
- Individual
Corporate Officer
Partner - Limited General
Attorney-in-Fact
Trustee
Guardian or Conservator
Other:



Signer Is Representing: SEABOARD SURETY COMPANY

Signer's Name:

- Individual
Corporate Officer
Partner - Limited General
Attorney-in-Fact
Trustee
Guardian or Conservator
Other:



Signer Is Representing:

# SEABOARD SURETY COMPANY®

BOND NO. 361642

## LABOR AND MATERIAL BOND

Whereas, The City of San Clemente, State of California and Laing Forster Ranch LLC (hereinafter designated as "principal") have entered into an agreement whereby "Principal" agrees to install and complete certain designated public improvements, which said agreement dated March 4, 1998, and identified as Forster Ranch Camino Vera Cruz Extension is hereby referred to and made a part hereof; and

Whereas, under the terms of said agreement, principal is required before entering upon the performance of the work, to file a good and sufficient payment bond with the City of San Clemente to secure the claims to which reference is made in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code of the State of California.

Now therefore, said principal and Seaboard Surety Company, as surety, are held and firmly bound unto the City of San Clemente and all contractors, subcontractors, laborers, materialmen and other persons employed in the performance of the aforesaid agreement and referred to in the aforesaid Code of Civil Procedure in the sum of Two Million & No/100 dollars, (\$2,000,000), for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, that said surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount specified thereof, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by the city in successfully enforcing such obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies and corporations entitled to file claims under Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise is shall be and remain in full force and effect.

BOND NO. 361642

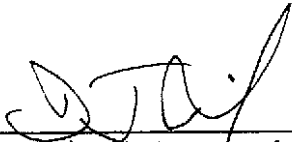
The Surety hereby stipulated and agrees that no change, extension of time, alteration or addition to the terms of the said agreement or to the work to be performed thereunder of the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition.

In witness whereof, this instrument has been duly executed by the principal and surety above named on June 1, 1998.

**LAING FORSTER RANCH LLC,  
A DELAWARE LIMITED LIABILITY COMPANY**

By: 

**SEABOARD SURETY COMPANY**

By:   
D.J. Picard, Attorney-in-Fact



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

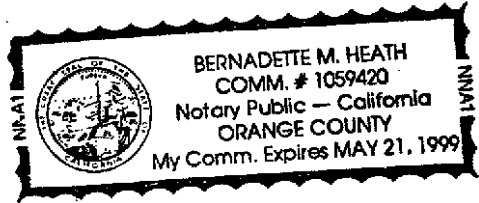
State of California

County of Orange

On 06-02-98 before me, Bernadette M. Heath, Notary Public

personally appeared Ken Nishikawa

personally known to me - OR -  proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.  
Bernadette M. Heath  
Signature of Notary Public

**OPTIONAL**

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

**Description of Attached Document**

Title or Type of Document: Labor + Material Bond

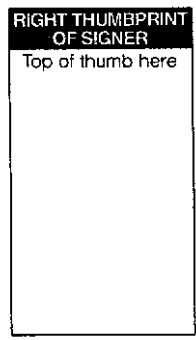
Document Date: 06-01-98 Number of Pages: 2

Signer(s) Other Than Named Above: No other signers

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: Ken Nishikawa

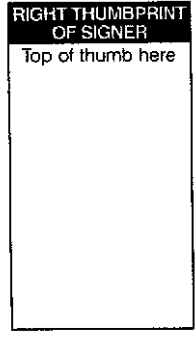
- Individual
- Corporate Officer  
Title(s): Vice President
- Partner —  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing:  
Loring Foster Ranch LLC

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer  
Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

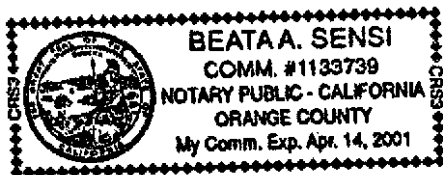
State of CALIFORNIA

County of ORANGE

On 6/1/98 before me, BEATA A. SENSI, NOTARY PUBLIC

personally appeared D.J. PICARD

personally known to me - OR - proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: LABOR AND MATERIAL BOND

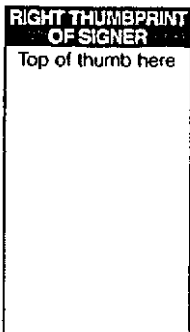
Document Date: 6/1/98 Number of Pages: 2

Signer(s) Other Than Named Above: N/A

Capacity(ies) Claimed by Signer(s)

Signer's Name: D.J. PICARD

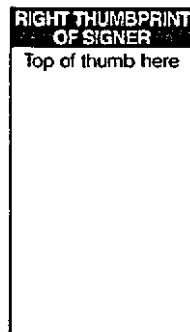
- Individual
Corporate Officer
Partner - Limited General
Attorney-in-Fact
Trustee
Guardian or Conservator
Other:



Signer Is Representing: SEABOARD SURETY COMPANY

Signer's Name:

- Individual
Corporate Officer
Partner - Limited General
Attorney-in-Fact
Trustee
Guardian or Conservator
Other:



Signer Is Representing:

Certified Copy

# SEABOARD SURETY COMPANY

3E-7335

No. 15438

ADMINISTRATIVE OFFICES, BEDMINSTER, NEW JERSEY

## POWER OF ATTORNEY

**KNOW ALL MEN BY THESE PRESENTS:** That SEABOARD SURETY COMPANY, a corporation of the State of New York, has made, constituted and appointed and by these presents does make, constitute and appoint **Todd M. Rohm or D. J. Picard**

of **Orange, California**

its true and lawful Attorney-in-Fact, to make, execute and deliver on its behalf insurance policies, surety bonds, undertakings and other instruments of similar nature as follows:

Without Limitations

Such insurance policies, surety bonds, undertakings and instruments for said purposes, when duly executed by the aforesaid Attorney-in-Fact, shall be binding upon the said Company as fully and to the same extent as if signed by the duly authorized officers of the Company and sealed with its corporate seal; and all the acts of said Attorney-in-Fact, pursuant to the authority hereby given, are hereby ratified and confirmed.

This appointment is made pursuant to the following By-Laws which were duly adopted by the Board of Directors of the said Company on December 8th, 1927, with Amendments to and including January 15, 1982 and are still in full force and effect:

### ARTICLE VII. SECTION 1:

"Policies, bonds, recognizances, stipulations, consents of surety, underwriting undertakings and instruments relating thereto, Insurance policies, bonds, recognizances, stipulations, consents of surety and underwriting undertakings of the Company, and releases, agreements and other writings relating in any way thereto or to any claim or loss thereunder, shall be signed in the name and on behalf of the Company

(a) by the Chairman of the Board, the President, a Vice-President or a Resident Vice-President and by the Secretary, an Assistant Secretary, a Resident Secretary or a Resident Assistant Secretary; or (b) by an Attorney-in-Fact for the Company appointed and authorized by the Chairman of the Board, the President or a Vice-President to make such signature; or (c) by such other officers or representatives as the Board may from time to time determine. The seal of the Company shall if appropriate be affixed thereto by any such officer, Attorney-in-Fact or representative."

**IN WITNESS WHEREOF**, SEABOARD SURETY COMPANY has caused these presents to be signed by one of its Vice-Presidents, and its corporate seal to be hereunto affixed and duly attested by one of its Assistant Secretaries, this 21st day of January, 1998



Attest

(Seal)

*[Signature]*  
Assistant Secretary

SEABOARD SURETY COMPANY,

By

*[Signature]*  
Brian P. Curry  
Vice-President

STATE OF NEW JERSEY  
COUNTY OF SOMERSET

On this 21st day of January, 1998, before me personally appeared Brian P. Curry, a Vice-President of SEABOARD SURETY COMPANY, with whom I am personally acquainted, who, being by me duly sworn, said that he resides in the State of New Jersey, that he is a Vice-President of SEABOARD SURETY COMPANY, the corporation described in and which executed the foregoing instrument, that he knows the corporate seal of the said Company; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Company; and that he signed his name thereto as Vice-President of said Company by like authority

(Seal)



**BELINDA FAYE LEE**  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires Sept. 9, 1998

*[Signature]*  
Notary Public

### CERTIFICATE

I, the undersigned Assistant Secretary of SEABOARD SURETY COMPANY do hereby certify that the original Power of Attorney of which the foregoing is a full, true and correct copy, is in full force and effect on the date of this Certificate and I do further certify that the Vice-President who executed the said Power of Attorney was one of the Officers authorized by the Board of Directors to appoint an attorney-in-fact as provided in Article VII, Section 1, of the By-Laws of SEABOARD SURETY COMPANY.

This Certificate may be signed and sealed by facsimile under and by authority of the following resolution of the Executive Committee of the Board of Directors of SEABOARD SURETY COMPANY at a meeting duly called and held on the 25th day of March 1970:

"RESOLVED: (2) That the use of a printed facsimile of the corporate seal of the Company and of the signature of an Assistant Secretary on any certification of the correctness of a copy of an instrument executed by the President or a Vice-President pursuant to Article VII, Section 1, of the By-Laws appointing and authorizing an attorney-in-fact to sign in the name and on behalf of the Company surety bonds, underwriting undertakings or other instruments described in said Article VII, Section 1, with like effect as if such seal and such signature had been manually affixed and made, hereby is authorized and approved."

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the corporate seal of the Company to these presents this 1st day of JUNE, 1998



*[Signature]*  
Assistant Secretary

Form 957 (Rev. 7/84)

MAY 24 2001

HOUSING CAPITAL COMPANY City Clerk Department

VIA OVERNIGHT MAIL (PRIORITY)

May 23, 2001

City of San Clemente
City Hall
100 Avenida Presidio
San Clemente, California 92672

Attention: City Manager

Re: Letter of Credit from U.S. Bank National Association - No. SLCMMSP113

Ladies and Gentlemen:

I am pleased to present the extension of the Letter of Credit No. SLCMMSP113 regarding the Laing Forster Ranch LLC obligations to the City of San Clemente, extending the term of the Letter of Credit from June 2, 2001 to September 2, 2001.

Very truly yours,

Handwritten signature of Jan M. Jewell

Jan M. Jewell
Sr. Vice President

cc: Mr. Bill Wells
Mr. Mark Kawanami

Original on file (vault)
in Accty. 5-24-01
Released to Bill Cameron
7-23-01



REC'D MAY 23 2001

U.S. Bank National Association  
Standby Letters of Credit  
601 Second Avenue South MPFP2222  
Minneapolis, Minnesota 55402-4302

SWIFT: USBKUS44  
TELEX: 192179 USB INTL MPS  
Phone: 612-973-0736  
612-973-0710  
Fax : 612-973-0838

MAY 22, 2001

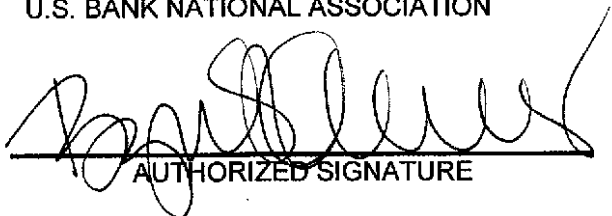
LETTER OF CREDIT NUMBER: SLCMMSP113

AMENDMENT NUMBER: 1

APPLICANT: HOUSING CAPITAL COMPANY AND  
LANG FORSTER RANCH LLC,  
A DELAWARE LIMITED LIABILITY COMPANY  
19600 FAIRCHILD, SUITE 150  
IRVINE, CALIFORNIA 92615

BENEFICIARY: CITY OF SAN CLEMENTE  
CITY HALL  
100 AVENIDA PRESIDIO  
SAN CLEMENTE, CALIFORNIA 92672  
ATTENTION: CITY MANAGER

U.S. BANK NATIONAL ASSOCIATION



AUTHORIZED SIGNATURE

ORIGINAL AMENDMENT SENT TO:  
HOUSING CAPITAL COMPANY  
3200 BRISTOL STREET, SUITE 500  
COSTA MESA, CALIFORNIA 92626  
ATTN: JAN JEWELL



U.S. Bank National Association  
Standby Letters of Credit  
601 Second Avenue South MPFP2222  
Minneapolis, Minnesota 55402-4302

SWIFT: USBKUS44  
TELEX: 192179 USB INTL MPS  
Phone: 612-973-0736  
612-973-0710  
Fax : 612-973-0838

MAY 22, 2001

LETTER OF CREDIT NUMBER: SLCMMSP113

AMENDMENT NUMBER: 1

APPLICANT: HOUSING CAPITAL COMPANY,  
A MINNESOTA PARTNERSHIP AND  
LAING FORSTER RANCH LLC,  
A DELAWARE LIMITED LIABILITY COMPANY ("LAING")

BENEFICIARY: CITY OF SAN CLEMENTE  
CITY HALL  
100 AVENIDA PRESIDIO  
SAN CLEMENTE, CALIFORNIA 92672  
ATTENTION: CITY MANAGER

THE ABOVE MENTIONED CREDIT IS AMENDED AS FOLLOWS:

DELETE TEXT FROM PARAGRAPH 5, ITEM C. OF LETTER OF CREDIT:  
C. JUNE 2, 2001.

AND INSERT:  
C. SEPTEMBER 2, 2001.

THIS CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS PUBLISHED BY THE INTERNATIONAL CHAMBER OF COMMERCE, OR ANY SUBSEQUENT REVISION THERETO.

THIS AMENDMENT IS TO BE CONSIDERED AS PART OF THE ABOVE CREDIT AND MUST BE ATTACHED THERETO.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

U.S. BANK NATIONAL ASSOCIATION

  
\_\_\_\_\_  
AUTHORIZED SIGNATURE

MAY 24 2001

**HOUSING CAPITAL COMPANY** City Clerk Department

---

VIA OVERNIGHT MAIL (PRIORITY)

May 23, 2001

City of San Clemente  
City Hall  
100 Avenida Presidio  
San Clemente, California 92672

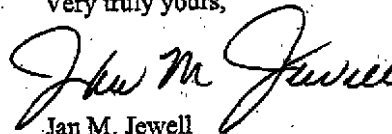
Attention: City Manager

Re: Letter of Credit from U.S. Bank National Association - No. SLCMMSP113

Ladies and Gentlemen:

I am pleased to present the extension of the Letter of Credit No. SLCMMSP113 regarding the Laing Forster Ranch LLC obligations to the City of San Clemente, extending the term of the Letter of Credit from June 2, 2001 to September 2, 2001.

Very truly yours,

  
Jan M. Jewell  
Sr. Vice President

cc: Mr. Bill Wells  
Mr. Mark Kawanami

