A G E N D A

CITY OF SEASIDE	JOINT SPECIAL MEETING
CITY COUNCIL/SUCCESSOR	Council Chamber
AGENCY TO REDEVELOPMENT	440 Harcourt Avenue
AGENCY OF THE CITY OF SEASIDE	Thursday, December 7, 2017
PARKING AUTHORITY	5:00 PM

PLEASE TURN OFF YOUR CELL PHONES UPON ENTERING THE MEETING

1. CALL TO ORDER

Ralph Rubio	Mayor/Chair
Dennis Alexander	Mayor Pro Tem/Vice Chair
Jason Campbell	Council/Agency Member
David R. Pacheco	Council/Agency Member
Kayla Jones	Council/Agency Member

2. PLEDGE OF ALLEGIANCE

3. PUBLIC COMMENT

Members of the public wishing to address the City Council on matters within the jurisdiction of the City of Seaside, but not on this agenda, may do so during the Public Comment period for up to three minutes. Public Comments on specific agenda items are heard under that item. For the public record, please state your name.

4. CLOSED SESSION

A. CLOSED SESSION PURSUANT TO GOVERNMENT CODE SECTION 54956.9 (2) (d) - ANTICIPATED LITIGATION

Conference with legal counsel regarding significant exposure to litigation (eight potential cases).

B. CONFERENCE WITH REAL PROPERTY NEGOTIATORS PURSUANT TO GOVERNMENT CODE SECTION 54956.8:

Properties Under Discussion: Seaside Resort Development: 1 McClure Way
Negotiator for the City: Craig Malin, City Manager.
Under Negotiation: Price, Terms of Payment or both.

C. PURSUANT TO GOVERNMENT CODE 54957.7 -PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Position Title: City Attorney

D. CLOSED SESSION PURSUANT TO GOVERNMENT CODE SECTION 54956.9 (2) (d) - ANTICIPATED LITIGATION

Conference with legal counsel regarding significant exposure to litigation (one potential cases).

E. CLOSED SESSION CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION PURSUANT TO GOVERNMENT CODE SECTION 54956.9

1. Keep Fort Ord Wild VS. City of Seaside Case Number 16Cv003795
2. LandWatch Monterey County VS. City of Seaside (Real Party: Monterey Downs, LLC) Case Number 16CV003793

5. CONSENT AGENDA

A. APPROVE MINUTES OF NOVEMBER 16, 2017

PURPOSE: To review and approve the minutes from the November 16, 2017 meeting.

RECOMMENDATION: That the minutes be reviewed and approved.

B. ACCEPT AND FILE THE CASH AND INVESTMENT REPORT FOR THE CITY OF SEASIDE AND THE SUCCESSOR AGENCY OF THE REDEVELOPMENT AGENCY OF THE CITY OF SEASIDE FOR THE QUARTER ENDING SEPTEMBER 30, 2017

PURPOSE: Accept and file the City of Seaside and the Successor Agency of the Redevelopment Agency of the City of Seaside Cash and Investment Report for the quarter ending September 30, 2017.

RECOMMENDATION: Accept and file report.

C. APPROVE AND FILE SUCCESSOR AGENCY CHECKS

PURPOSE: It is requested that the Agency Board approve and file the accounts payable and wired payments made during the period of November 4, 2017 through November 24, 2017. In addition, approval of the payroll and benefits checks, direct deposits and wired payments related to the periods of November 9 and November 23, 2017 is requested. Total Accounts Payable and Payroll for the above referenced period is $9,456.50.

RECOMMENDATION: It is recommended that the Agency Board approve and file the attached checks.

D. AUTHORIZATION FOR THE RETAIL SALE OF CHRISTMAS TREES BY HOME DEPOT ON A PORTION OF THE LAGUNA GRANDE SHOPPING CENTER PARKING LOT OWNED BY THE PARKING AUTHORITY.

PURPOSE: Approval of a request from Home Depot to use a portion of the Parking Authority-owned parking lot adjacent to the Home Depot Garden Center for its seasonal sales of Christmas Trees during the month of November and December 2017.

RECOMMENDATION: It is recommended that the City Council and Parking Authority Board approve this request and authorize the Executive Director of the Parking Authority to execute a License Agreement (Attachment 1) with Home Depot to authorize the use of Parking Authority-owned property for a "Christmas Tree" seasonal sales lot.

6. PUBLIC HEARING

A. CITY AND SUCCESSOR AGENCY ACTIONS TO IMPLEMENT THE SEASIDE RESORT PROJECT

PURPOSE: The purpose of this item is to consider authorizing a series of Successor Agency and City actions that are required to implement the provisions of the Long Range Property Management Plan ("LRPMP") with respect to LRPMP Project #12 -- the Seaside Resort Development Properties ("SRD Properties"). These actions include City Council consideration of a Second Amended and Restated Disposition and Development Agreement with Monterey Bay Resort, LLC, a Nevada limited liability company ("Developer") (with the same purchase prices as the First Restated DDA) and a Second Amended and Restated Ground Lease for the Bayonet and Black Horse golf courses ("Golf Courses") also with Monterey Bay Resort, LLC (or an affiliate) ("Tenant"). Collectively, these actions are intended to implement the Seaside Resort Project.

RECOMMENDATION:
It is recommended that the City Council hold a public hearing on providing an economic subsidy to the Developer, and that the City Council and Successor Agency Board then approve the following resolutions authorizing actions to facilitate implementation of the Seaside Resort Project as follows: (in the sequence shown)
1. A Resolution of the Board of Directors of the Successor Agency to the Redevelopment Agency of the City of Seaside requesting the Oversight Board to make findings to provide for the repayment to the City of Seaside of the loan made by the City pursuant to the 2005 Conveyance Agreement between the City and the Redevelopment Agency of the City of Seaside, and taking certain related actions.

2. A Resolution of the Board of Directors of the Successor Agency to the Redevelopment Agency of the City of Seaside (I) authorizing the conveyance of an approximately 70-acre site located at the northwest corner of General Jim Moore Boulevard and Coe Avenue in the City of Seaside to the City pursuant to the Successor Agency's Long Range Property Management Plan, (II) authorizing the Successor Agency to enter into an Assignment, Assumption and Administration Agreement with the City in connection with an Amended and restated Disposition and Development Agreement with respect to the site, (III) approving Addendum No. 4 to the Final Environmental Impact Report prepared for the underlying project, and alternatively, finding the actions exempt from the California Environmental Quality Act, and (IV) taking certain related actions.

3. A Resolution of the City Council of the City of Seaside (I) authorizing the acceptance of an approximately 70-acre site located at the northwest corner of General Jim Moore Boulevard and Coe Avenue in the City of Seaside from the Successor Agency to the

Redevelopment Agency of the City of Seaside Pursuant to the Successor Agency's Long-Range Property Management Plan, (II) authorizing the City to enter into a Master Taxing Entity Agreement with respect to the site, (III) authorizing the City to enter into an Assignment, Assumption and Administration Agreement in connection with an Amended and Restated Disposition and Development Agreement with respect to the site, (IV) authorizing the City to enter into a Second Amended and Restated Disposition and Development Agreement with respect to the site, which agreement includes provisions for the sharing of Transient Occupancy Tax revenues generated by development on the site, (V) authorizing the City to enter into a Second Amended and Restated Ground Lease with respect to the Black Horse and Bayonet Golf Courses, (VI) approving an Addendum pursuant to the California Environmental Quality Act, and (VII) taking certain related actions.

7. STUDY SESSION

A. WATER STUDY SESSION

PURPOSE: The purpose of this item is to provide an overview of the current status of our three water suppliers and their ability to continue to provide water for the City of Seaside.

RECOMMENDATION: Receive an update on the status of our three water suppliers.

8. ADJOURNMENT

Next Regularly Scheduled Meeting:
December 21, 2017
Seaside City Hall
5:30 PM

CITY OF SEASIDE
STAFF REPORT

Item No.: 5.B.

TO: Successor Agency to the Redevelopment Agency of the City of Seaside

FROM: Craig Malin, City Manager

BY: Daphne Hodgson, Deputy City Manager Administrative Services

DATE: December 7, 2017

SUBJECT: **ACCEPT AND FILE THE CASH AND INVESTMENT REPORT FOR THE CITY OF SEASIDE AND THE SUCCESSOR AGENCY OF THE REDEVELOPMENT AGENCY OF THE CITY OF SEASIDE FOR THE QUARTER ENDING SEPTEMBER 30, 2017**

PURPOSE

Accept and file the City of Seaside and the Successor Agency of the Redevelopment Agency of the City of Seaside Cash and Investment Report for the quarter ending September 30, 2017.

RECOMMENDATION

Accept and file report.

BACKGROUND

Section 53646 of the California State Government code requires the fiscal officer to prepare a quarterly report detailing the City's and the Agency's cash and investments. The City of Seaside's and the Successor Agency's Investment Policy requires a quarterly report.

The September 30, 2017 report shows that approximately 89% of the portfolio is City of Seaside funds and 11% is Successor Agency funds. 57% of the funds are invested the Local Agency Investment Fund with the State of California.

FISCAL IMPACT

No fiscal impact

ATTACHMENTS

1. EXHIBIT A
2. EXHIBIT B
3. EXHIBIT C
4. LAIF PROGRAM DESCRIPTION
5. LAIF PERFORMANCE REPORT 9-30-17
6. LAIF HISTORICAL INTEREST RATES

Reviewed for Submission to the
City Council by:

____
Craig Malin, City Manager

ATTACHMENT A

CITY OF SEASIDE and THE SUCCESSOR AGENCY
SUMMARY OF POOLED CASH AND INVESTMENTS
AS OF SEPTEMBER 30, 2017

DESCRIPTION	INSTITUTION	VALUATION	AMOUNT
LAIF - City Funds	State Treasurer	Market	$ 9,695,662.48
General Checking	Rabobank	Market	$ 1,231,957.91
Money Market	Rabobank	Market	$ 3,213,835.94
PARS Retirement Account	US Bank	Market	$ 10,130.70
York Tail Claims	Bank of America	Market	$ 40,003.69
Bond 2014 Reserve account	US Bank	Market	$ 729,497.07
Bond 2006 Reserve & Installment accounts	US Bank	Market	$ 340,069.60
US Bank - PNC Equipment Lease Escrow Account	US Bank	Market	$ 1,136,829.51
Pension Obligation Bond Program Reserve account	Wells Fargo Bank	Market	$ 677,005.82
		Total	**$ 17,074,992.72**

I hereby certify that sufficient investment liquidity and anitcipated revenues are available to meet the City's and the Agency's aniticipated expenditure requirements for the next six months. (California Code Section 53646)

Investments in this report meet the requirements of the City of Seaside's and the Successor Agency's Investment Policy.

Respectfully submitted,

Craig Malin
City Manager

Exhibit A

Seaside County Sanitation Distrcit

SUMMARY OF POOLED CASH AND INVESTMENTS

AS OF SEPTEMBER 30, 2016

DESCRIPTION	INSTITUTION	VALUATION	AMOUNT
General Checking	Rabobank	Market	$ 593,372.85
Money Market	Rabobank	Market	$ 5,812,466.62
		Total	**$ 6,405,839.47**

I hereby certify that sufficient investment liquidity and anitcipated revenues are available to meet the City's and the Agency's aniticipated expenditure requirements for the next six months. (California Code Section 53646)

Investments in this report meet the requirements of the City of Seaside's Investment Policy.

Respectfully submitted,

Craig Malin
City Manager

Exhibit B

CITY OF SEASIDE and THE SUCCESSOR AGENCY
CASH AND INVESTMENT REPORT - DETAIL AS OF SEPTEMBER 30, 2017

	Yield	Book Value	% of Total	Market Value
Investments				
State Treasurer LAIF - City Account	**1.08%**	**9,695,662.48**	**56.78%**	**9,695,662.48**
Checking Account				
Rabobank - General Checking	**0.00%**	**1,231,957.91**	**7.21%**	**1,231,957.91**
Rabobank - Money Market	**0.20%**	**3,213,835.94**	**18.82%**	**3,213,835.94**
PARS Retirement Account	**0.00%**	**10,130.70**	**0.06%**	**10,130.70**
Bank of America-York Checking	**0.00%**	**40,003.69**	**0.23%**	**40,003.69**
US Bank - Redevelopment Agency Merged Area Refunding 2014 Bonds				
Installment Payment, Reserve	**0.00%**	**729,497.07**	**4.27%**	**729,497.07**
US Bank - Golf Course 2006 Bonds				
Installment Payment, Reserve	**0.03%**	**340,069.60**	**1.99%**	**340,069.60**
US Bank - PNC Equipment Lease Escrow Account	**0.03%**	**1,136,829.51**	**6.66%**	**1,136,829.51**
Wells Fargo Bank				
Pension Obligation Bond Program Reserve Account	**0.00%**	**677,005.82**	**3.96%**	**677,005.82**
Total Cash and Investments		17,074,992.72	100.00%	17,074,992.72

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CITY OF SEASIDE and THE SUCCESSOR AGENCY
CASH AND INVESTMENT ACTIVITY REPORT FOR THE PERIOD
JULY 1, 2017 THROUGH SEPTEMBER 30, 2017

INSTITUTION	ACCOUNT STATUS	BEGINNING BALANCE	DEPOSITED	EXPENDED or TRANSFERRED	INTEREST EARNED	ENDING BALANCE
INVESTMENTS						
LAIF - City	OPEN	$ 13,667,325.64	-	4,000,000.00	28,336.84	$ 9,695,662.48
CHECKING ACCOUNT						
Rabobank - General Checking	OPEN	$ 1,611,098.26	20,024,737.77	20,403,878.12	-	$ 1,231,957.91
Rabobank - Payroll Checking	OPEN	$ -	6,650,840.46	6,650,840.46	-	$ -
Rabobank, Money Market	OPEN	$ 5,711,805.00	5,500,000.00	8,000,000.00	2,030.94	$ 3,213,835.94
PARS Retirement Account	OPEN	$ 9,898.11	9,300.00	9,084.76	17.35	$ 10,130.70
York Tail Claims	OPEN	$ 39,775.31	20,294.62	20,066.24	-	$ 40,003.69
BOND RESERVE ACCOUNT - HELD BY TRUSTEES						
Bond 2014 Accounts - Reserve, Interest	OPEN	$ 729,259.00	1,786,631.25	1,786,631.25	238.07	$ 729,497.07
Bond 2006 Accounts - Reserve, Installment	OPEN	$ 550,634.03	293.17	211,099.42	241.82	$ 340,069.60
PNC Equipment Lease Escrow Account	OPEN	$ 475,581.99	661,484.71	500.00	262.81	$ 1,136,829.51
Wells F Pension Obligation Bond Prog-Reserve Acct.	OPEN	$ 572.23	678,168.47	2,119.75	384.87	$ 677,005.82
		$ 19,036,893.70	**35,331,750.45**	**41,084,220.00**	**31,512.70**	**$ 17,074,992.72**

	BEGINNING BALANCE	DEPOSITED	EXPENDED or TRANSFERRED	INTEREST EARNED
2006-1	210,846.72	293.17		34.66
	211,174.55		210,806.25	35.84
	404.14			0.07
q1	210,846.72	293.17	210,806.25	70.57
2006-2	339,787.31		293.17	55.86
	339,550.00			57.70
	339,607.70			57.69
q1	339,787.31	-	293.17	171.25
2006-Total	550,634.03	293.17	211,099.42	241.82
wf	0.64			
	1.26			
	570.33	1,413.25	1,413.25	0.74
	-	676,755.22	706.50	384.13
	-	-	-	-
	572.23	678,168.47	2,119.75	384.87

ENDING BALANCE
211,174.55
404.14
404.21
404.21
339,550.00
339,607.70
339,665.39
339,665.39
340,069.60
0.64
1.26
571.07
676,432.85
-
677,005.82

THE
LOCAL AGENCY INVESTMENT FUND
INFORMATION DIGEST

A VOLUNTARY INVESTMENT PROGRAM FOR CALIFORNIA LOCAL GOVERNMENTS
ADMINISTERED BY THE CALIFORNIA STATE TREASURER

JOHN CHIANG

September 30, 2017

Table of Contents

Overview of the Investment Division

Mission, Purpose and History

The mission of the Investment Division is to prudently manage the Pooled Money Investment Account (PMIA) Portfolio, the Time Deposit Program (TDP), and the Local Agency Investment Fund (LAIF) Program under the statutory authority granted by state law and consistent with the investment objectives of Safety, Liquidity, and Yield.

The State Treasurer invests taxpayer's money safely, while minimizing service costs and maximizing investment yields. The investments help manage cash flow and enhance local governments' financial security. These duties are carried out through the PMIA.

The LAIF program allows cities, counties and special districts to place money in a major portfolio at no additional costs to taxpayers, using the expertise of the Investment Division staff. Participating agencies can withdraw their funds from LAIF at any time.

Under the TDP, the PMIA deposits money with community banks at competitive rates. Eligible institutions are commercial banks, savings banks and credit unions that are federally insured and licensed to accept deposits in the State of California. Banks which receive time deposit funds can use the money to expand economic opportunities and create jobs in the communities they serve.

The Investment Division staff invests PMIA funds in a wide range of securities, using more than 75 brokers, dealers, banks and direct issuers. The PMIA is governed by the Pooled Money Investment Board (PMIB) created by the Legislature in 1955, while LAIF, created in 1977, receives oversight and guidance from the Local Investment Advisory Board (LIAB). The State Treasurer chairs both the PMIB and LIAB.

Investment Division Goals

Goal 1: Continuously monitor the credit quality of a diversified list of approved issuers of eligible securities, provide for the liquidity needs of PMIA participants, while obtaining a competitive yield from our investments.

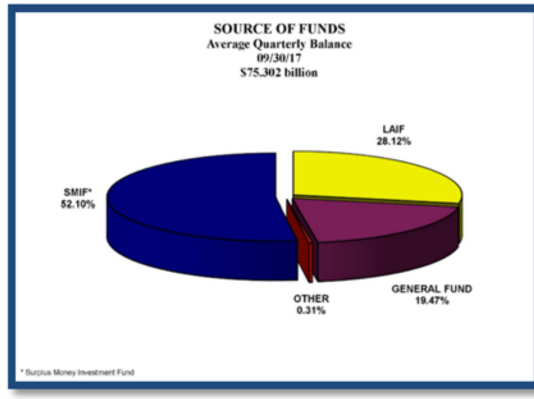
Goal 2: Maintain a highly skilled, knowledgeable, and resourceful staff that is fully cross-trained to increase operational flexibility, to ensure organizational continuity, and to ensure the Division's ability to respond to new or unexpected market changes.

Goal 3: Utilize technological innovations to enable staff to more efficiently manage their workload and to provide new and useful services to our local government partners.

Goal 4: Increase training opportunities and other efforts to prepare for generational change in staffing and management.

Division Programs

Pooled Money Investment Account (PMIA)



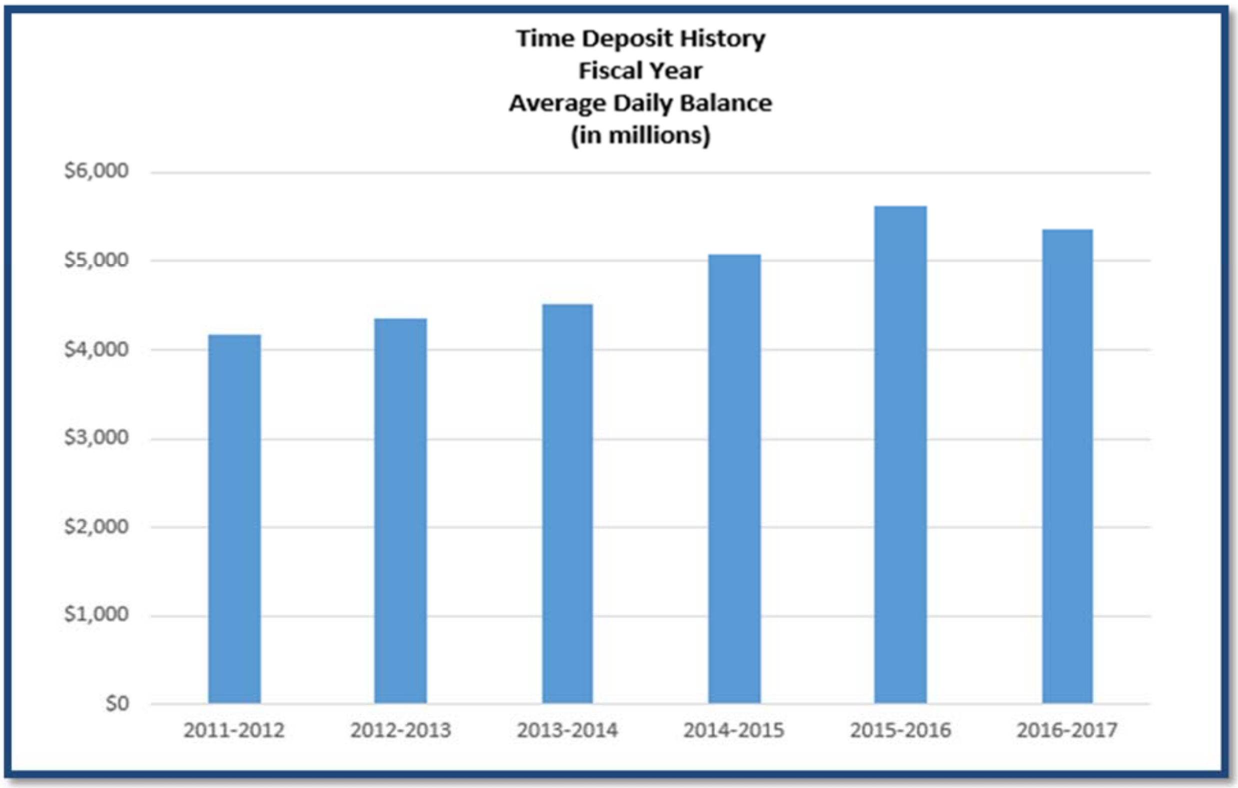
The Investment Division is responsible for managing the PMIA Portfolio. The State Treasurer, through the Investment Division, invests state and local agency money deposited in the PMIA consistent with prudent management, while it minimizes service costs and maximizes investment returns. The PMIA consists of the Surplus Money Investment Fund (SMIF), LAIF, and the General Fund. The Investment Division is responsible for the administration of the PMIA investment program on a day-to-day basis. The Centralized Treasury and Securities Management Division (CTSMD) determine the amounts available for investment while maintaining the approved compensating balance position. Therefore, there is continual adjustment of the estimates for receipts and disbursements to reflect current and available information. Subsequently, the Investment Division purchases authorized securities in accordance with the market conditions to ensure the State's daily cash needs are met. The Investment Division also acts as the agent for purchase or sale of securities on behalf of various state agencies and programs and provides support to the State Treasurer for his investment-related Board responsibilities on the California Public Employee's Retirement System (CalPERS) and the California State Teachers' Retirement System (CalSTRS).

Additionally, the PMIA has Policies, Goals and Objectives for the portfolio, included on page 12 of this document, to make certain that our goals of Safety, Liquidity and Yield are not jeopardized and that prudent management prevails. These policies are formulated by the Investment Division staff and reviewed by both the PMIB and the LIAB.

Time Deposit Program (TDP)

The TDP was created in 1945 under Government Code Section 16500 et seq. (see Appendix C). The program allows the State Treasurer to place deposits with eligible California financial institutions. The program assures a yield to the PMIA above the Treasury Bill yield and makes money available to community banks at generally better rates than they can get from other sources. All time deposits are collateralized by at least 110% of the funds on deposit. Eligible institutions include federally-insured commercial banks, savings banks and credit unions licensed to accept deposits in the State of California. Participants also must have a Community Reinvestment Act rating of not less than satisfactory. This rating is based on the institution's lending and investment practices and the services it offers to the community. The lending evaluation examines the institution's activities with respect to home mortgage loans, as well as loans for small businesses, small farms, and community development, including affordable housing and not-for-profit organizations that meet low-to-moderate-income housing needs.

The State Treasurer places a high priority on community investment. Every effort is made to ensure access to the TDP for institutions that rely more on public and private deposits to lend and invest within their neighborhoods. By accessing funds through the TDP, financial institutions can re-invest in the California communities they serve.



The Local Agency Investment Fund

The Local Agency Investment Fund (LAIF) is a voluntary program created by statute in 1977 as an investment alternative for California's local governments and special districts and continues today under Treasurer John Chiang's administration (see Appendix A). The enabling legislation for LAIF is codified in Section 16429.1 et seq. of the California Government Code.

This program offers local agencies the opportunity to participate in a major portfolio, which invests hundreds of millions of dollars, using the investment expertise of the State Treasurer's Office investment staff. This in-house management team is comprised of civil servants who have worked for the State Treasurer's Office for decades.

The LAIF is approximately 31% of the PMIA. The PMIA began in 1953 and oversight is provided by the Pooled Money Investment Board (PMIB) and an in-house Investment Committee. The PMIB members are the State Treasurer, Director of Finance, and State Controller.

The Local Investment Advisory Board (LIAB) provides oversight for LAIF. The Board consists of five members. The chairman is the State Treasurer or his/her designated representative. Two members who are qualified by training and experience in the field of investment or finance, and two members who are treasurers, finance or fiscal officers or business managers employed by any county, city or local district or municipal corporation of this state, are appointed by the State Treasurer. The term of each appointment is two years or at the pleasure of the appointing authority.

All securities purchased for the PMIA are authorized under Government Code Sections 16430 and 16480.4 (see Appendix B). The State Treasurer's Office takes delivery of all securities purchased on a delivery versus payment basis using a third party custodian. All investments are purchased at market, and a market valuation is conducted monthly.

Additionally, the PMIA has Policies, Goals and Objectives for the portfolio to make certain that our goals of Safety, Liquidity and Yield are not jeopardized and that prudent management prevails. These policies are formulated by investment staff and reviewed by both the PMIB and the LIAB on an annual basis.

LAIF administrative costs are minimal and are assessed quarterly. The Government Code states that administrative costs are not to exceed 5% of quarterly earnings of the fund. However, if the 13-week Daily Treasury Bill Rate on the last day of the fiscal year is below 1%, then administrative costs shall not exceed 8% of quarterly earnings of the fund for the subsequent fiscal year (Government Code Section 16429.1). These fees cover actual costs to administer the LAIF program. A history of administrative costs can be found at www.treasurer.ca.gov/pmia-laif/historical/admin_costs.asp.

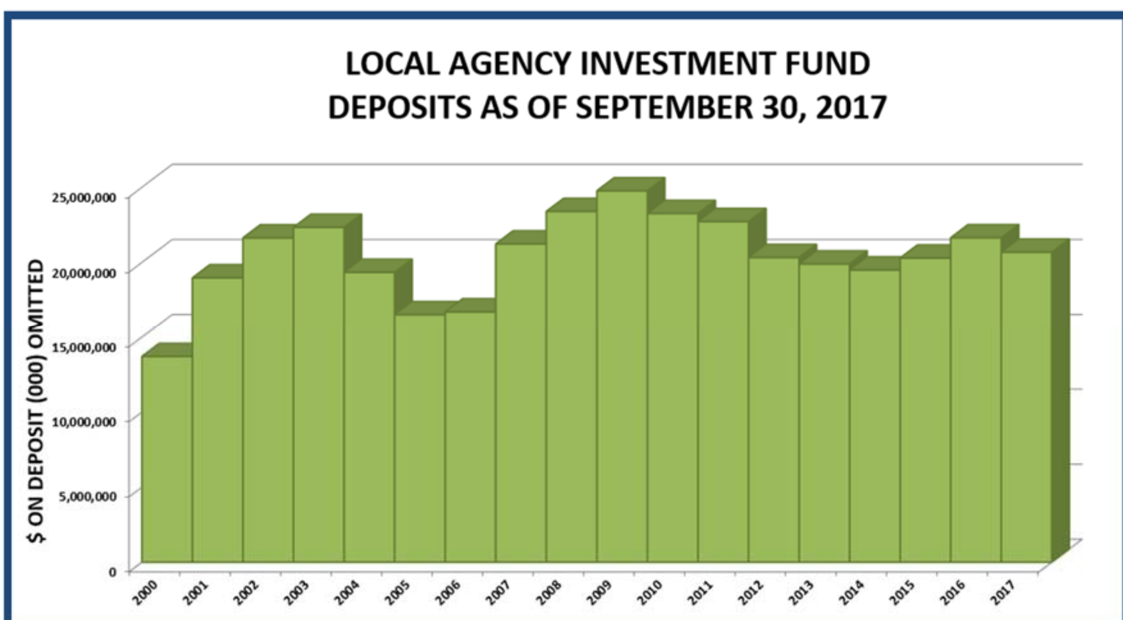
Interest is calculated on a dollar-day basis to guarantee equitable distribution among all member funds and is paid quarterly.

The State Treasurer's Office is audited by the Bureau of State Audits on an annual basis and the resulting audit report is posted to the State Treasurer's Office website following its publication. The Bureau of State Audits also has a continuing audit process throughout the year. All investment and LAIF claims are audited on a daily basis by the State Controller's Office as well as through an in-house audit process.

Moneys deposited in LAIF are afforded certain statutory protection. Government Code Section 16429.3 states that "moneys placed with the Treasurer for deposit in the Local Agency Investment Fund by cities, counties, special districts, nonprofit corporations, or qualified quasi-governmental agencies shall not be subject to either of the following: (a) transfer or loan pursuant to Sections 16310, 16312, or 16313, or (b) impoundment or seizure by any state official or state agency."

During the 2002 legislative session, Government Code Section 16429.4 was added to provide further protection. This section states that "the right of a city, county, city and county, special district, nonprofit corporation, or qualified quasi-governmental agency to withdraw its deposited moneys from the Local Agency Investment Fund, upon demand, may not be altered, impaired, or denied, in any way, by any state official or state agency based upon the state's failure to adopt a State Budget by July 1 of each new fiscal year."

The LAIF has grown from 293 participants and $468 million in 1977 to 2,436 participants and $20.6 billion as of September 30, 2017.



Board Members

Local Investment Advisory Board

Chairman:

JOHN CHIANG, State Treasurer

Members:

MARTIN KRIEGER
Finance Director
Desert Water Agency

BETH RENGE
President
Frontline Financial Group, LLC

DOUGLAS C. ROBINSON
Principal
RCM Robinson Capital Management, LLC

LAURA PARISI
City Treasurer
City of Laguna Beach

http://www.treasurer.ca.gov/pmia-laif/liab-members.asp

Pooled Money Investment Board

Chairman:

JOHN CHIANG, State Treasurer

Members:

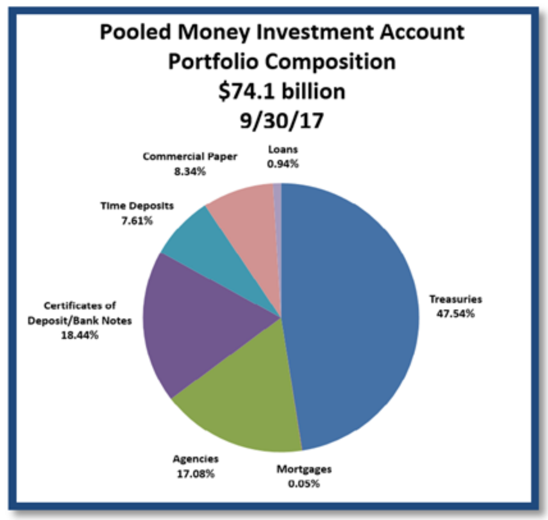
BETTY T. YEE
State Controller

MICHAEL COHEN
Director of Finance

Safety, Liquidity and Yield

LAIF provides local agencies a way to invest cash held in the treasury pool that may be withdrawn as needed on a same-day basis to meet an agency's cash flow needs, while realizing interest generated by the PMIA. The Investment Division places the goals of Safety, Liquidity, and Yield above all others, and in this order. These goals are stated in the Investment Policy, which can be found on page 12.

Safety



Due to the portfolio's characteristics, credit risk is minimal. The pool is managed to ensure the safety of the portfolio by investing in high quality securities and by maintaining a mix of securities that provide reasonable assurance that no single investment or class of investments will have a disproportionate impact on the total portfolio. Additionally, LAIF funds are protected by statute and are not borrowable.

Furthermore, LAIF funds are not affected by a budget impasse. (Government Code Section 16429.4) The Court of Appeal issued a decision on the *Jarvis Taxpayers Association v. Connell* case on May 29, 2002, where the court held that the Controller may disburse funds during a budget impasse when the state and federal law properly authorize or require their payment, despite the absence of a budget act or emergency appropriation.

Liquidity

The pool is managed to ensure that normal cash needs, as well as unscheduled cash needs, can be met. Adequate liquidity shall be maintained to ensure the unforeseen cash needs, whether ordinary or extraordinary. The pool will maintain a "cash flow generated" portfolio balance sufficient to cover the one-month prepared cash forecast, as well as the six-month prepared cash forecast. Further, sufficient marketable treasuries will be maintained to cover unforeseen withdrawals or delayed deposits. The following chart demonstrates the liquidity of the PMIA.

Pooled Money Investment Account

Portfolio as of 09-30-17

PAR VALUES MATURING BY DATE AND TYPE

Maturities in Millions of Dollars

ITEM	1 day to 30 days	31 days to 60 days	61 days to 90 days	91 days to 120 days	121 days to 150 days	151 days to 180 days	181 days to 210 days	211 days to 270 days	271 days to 1 year	1 year to 2 years	2 years to 3 years	3 years to 4 years	4 years to 5 year/out
TREASURY	$ 900	$ 1,300	$ 900	$ 1,900	$ 2,300	$ 8,000	$ 1,000	$ 2,500	$ 5,750	$ 7,300	$ 1,800		
REPO													
TDs	$ 1,615	$ 1,286	$ 1,297	$ 837	$ 291	$ 312							
AGENCY	$ 4,582	$ 1,350	$ 1,200	$ 650	$ 100	$ 330	$ 700	$ 1,300	$ 1,075	$ 1,760	$ 623	$ 150	
CP	$ 3,650	$ 800	$ 650	$ 250	$ 450	$ 300		$ 100					
CDs + BNs	$ 5,850	$ 1,850	$ 2,750	$ 1,000	$ 400	$ 200	$ 900	$ 275	$ 100	$ 325			
CORP BND													
TOTAL $ 72,957	$ 16,597	$ 6,586	$ 6,797	$ 4,637	$ 3,541	$ 9,142	$ 2,600	$ 4,175	$ 6,925	$ 9,385	$ 2,423	$ 150	$ -
PERCENT	22.7%	9.0%	9.3%	6.4%	4.9%	12.5%	3.6%	5.7%	9.5%	12.9%	3.3%	0.2%	0.0%

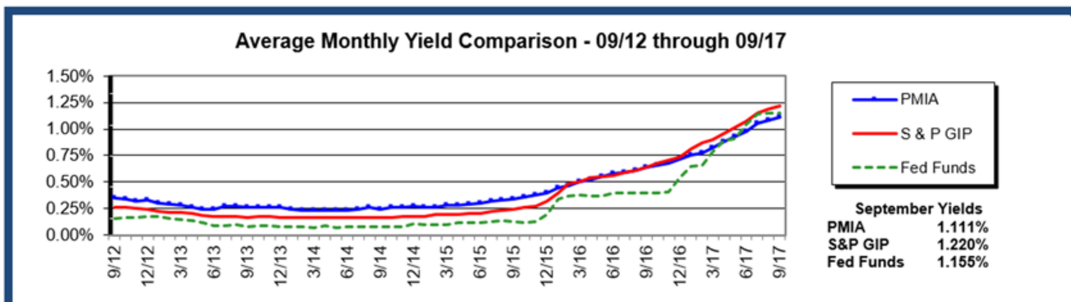
Notes:
1. SBA Floating Rate Securities are represented at coupon change date.
2. Mortgages are represented at current book value.
3. Figures are rounded to the nearest million.
4. Does not include AB55 and General Fund loans.

Yield

PMIA investments and deposits are made in such a way as to realize the maximum return consistent with safe and prudent treasury management. The rate of return is maintained on a consistent level representative of current market yield direction.

Sales gains and losses will not be incurred as to radically alter the final quarterly apportionment rate. Significant sales gains will be offset for restructuring purposes to maintain consistent current return as well as to maximize future portfolio performance. Significant sales losses shall be incurred only by consent of the Treasurer, or when sufficient profits negate the alteration of the apportionment rate.

The chart below illustrates the PMIA yield compared to the Fed Funds rate and other local government investment pools.



All of the PMIA goals, objectives and policies are observed by the Director of Investments or his/her designee, monitored by the Treasurer's Investment Committee, and reviewed continually by the Treasurer or his/her designee.

State Treasurer's Office
Pooled Money Investment Account (PMIA)

Statement of Portfolio Management Goals, Objectives and Policies

All state money held by the State Treasurer in Treasury trust accounts, and all money in the State Treasury is appropriated for the purpose of investment and deposit as provided in Section 16480 et seq. of the Government Code.

Goal I. Portfolio Safety/Diversification

The pool will be managed to insure the safety of the portfolio by investing in high quality securities and by maintaining a mix of securities that will provide reasonable assurance that no single investment or class of investments will have a disproportionate impact on the total portfolio.

Objective: In addition to the safety provided by investing in high quality securities, the safety of the portfolio is enhanced three ways by maintaining a prudent mix (i.e., diversity) of investments: 1) Spreading investments over different investment types minimizes the impact any one industry/investment class can have on the portfolio; 2) Spreading investments over multiple credits/issuers within an investment type minimizes the credit exposure of the portfolio to any single firm/institution; and 3) Spreading investments over various maturities minimizes the risk of portfolio depreciation due to a rise in interest rates. An unforeseen liquidity need allows no options if "all your eggs are in one basket."

Policy: The portfolio shall contain a sufficient number and diversity of marketable securities so that a reasonable portion of the portfolio can be readily converted to cash without causing a material change in the value of the portfolio. Limitation and eligibility as to specific investments are to be determined by the Pooled Money Investment Board in the case of Commercial Paper, the Treasurer's Office Investment Committee in cases of new dealer authorizations and approval of new corporate investments, and the Treasury Investment Division in all other matters.

Goal II. Liquidity

The pool will be managed to ensure that normal cash needs, as well as scheduled extraordinary cash needs can be met. Further, adequate liquidity shall be maintained to ensure the unforeseen cash needs, whether ordinary or extraordinary.

Objective: The pool will maintain a "cash flow generated" portfolio balance sufficient to cover specifically the one-month prepared cash forecast, as well as generally the six month prepared cash forecast. Further, sufficient marketable treasuries will be maintained to cover unforeseen withdrawals or delayed deposits.

Policy: First priority is given to maintaining specific calendar liquidity, as dictated by the most recent cash forecast. Second priority is the maintenance of Treasury Bill positions adequate to meet unscheduled needs. Final consideration would be given to "*other*" investments deemed appropriate to portfolio maintenance, enhancement, or restructuring.

Goal III. Rate of Return

Pooled investments and deposits shall be made in such a way as to realize the maximum return consistent with safe and prudent treasury management.

Objective: The rate of return will be maintained on a consistent level representative of current market yield direction.

Policy: Sales gains/losses will not be incurred to the point of radically altering the final quarterly apportionment rate. Significant sales gains will be offset for restructuring purposes to maintain consistent current return, as well as maximizing future portfolio performance. Significant sales losses shall be incurred only by consent of the Treasurer, or when sufficient profits negate the alteration of the apportionment rate. Range bonds and inverse yielding securities are examples of the types of investments which are precluded by the above stated objective.

Conformance

All of the foregoing goals, objectives and policies shall be observed by the Director of Investments or his/her designee, monitored by the Treasurer's Investment Committee, and reviewed continually by the Treasurer or his/her designee.

State Treasurer's Office
Pooled Money Investment Account (PMIA)

Statement of Portfolio Management Guidelines

The State Treasurer's Investment Division has set forth a general declaration of portfolio goals, objectives and policies. Following are various guidelines necessary to the good faith observance of these policies.

I. Guidelines for Maintaining Safety/Diversification

There are few statutory limitations placed on individual categories of authorized investments. However, this does not entitle the investment staff to "carte blanche" participation in these security types. In the absence of direct statutory limitations, the "prudent person rule" shall be utilized by the investment staff. As market conditions change, altering credit risk, marketability, yield spreads, and securities availability, application of this rule shall govern any investment decision. This application shall be discussed as soon as time permits with the Director of Investments. At the Director of Investments determination, the situation may be discussed with the full investment committee or brought directly to the attention of the Treasurer.

Following are various considerations/limitations as they pertain to specific investment types:

A. U.S. Treasury Securities

1)	Maximum maturity:	Statutory:	30 years.
		Policy:	5 years.
2)	Maximum par value, total portfolio:		None.
3)	Maximum par value per name:		None.
4)	Maximum par value per maturity:		None.
5)	Credit: Full faith and credit of the Federal Government.		

Treasury Bills are maintained for liquidity, trading, and yield enhancement as the underlying security in a Reverse Repurchase transaction. Treasury strips and full coupon securities are purchased for average maturity preservation, liquidity, and trading.

B. Agencies (Federal and Supranational)

1)	Maximum maturity:	Statutory: Policy:	30 years. 5 years.
2)	Maximum par value, total portfolio:		None.
3)	Maximum par value per name:		None.
4)	Maximum par value per maturity:		None.

5) Credit: Despite there being no statutory limitations concerning this category, prudent investment practice necessitates constant credit analysis of certain issuing entities. Although there exists an implicit or explicit government guarantee of the various issues, market perception may limit the liquidity of these securities.

C. Bankers Acceptances-Domestic/Foreign

1)	Maximum maturity:	Statutory: Policy:	None. 180 days.
2)	Maximum par value, total portfolio:		None.
3)	Maximum par value per name:		None.
4)	Maximum par value per maturity:		None.

5) Credit:

a) The history of the acceptance market is spotless on “Failures to redeem.”

b) Geopolitical location is of prime concern when considering potential candidates. Internal, as well as border political and economic stability of the host country are of prime concern.

c) Liquidity as far as both credit risk and marketability in the secondary level are addressed.

d) Although statutory authority does not limit eligibility according to ranking or rating, previously listed general criteria eliminate lesser credits.

The list of approved investments will be posted to the STO website.

D. Certificates of Deposits

1) Maximum maturity: Statutory: None.
Policy: 5 years.

2) Maximum par value, total portfolio: None.

3) Maximum par value per name: None.

4) Maximum par value per maturity: None.

5) Credit:

a) Criteria concerning loan make-up, geographic location, market perceptions, and financial condition all serve to eliminate lesser names.

b) Liquidity as far as both credit risk and marketability in the secondary level are addressed. There must be a market for the name in which at least three major dealers will bid or offer at a given moment.

The list of approved investments will be posted to the STO website.

E. *Collateralized Time Deposits*

1) Maximum maturity: Statutory: None.
Policy: 5 years.

2) Maximum par value, total portfolio: None.

3) Maximum par value per name: Statutory: Shall not exceed the net worth of the institution.
Policy: Same.

4) Maximum par value per maturity: None.

5) Credit: Institutions must be rated average or better, or above a ***"D"***, by a recognized rating service utilized by the State Treasurer's Office (STO) Investment Division and must pass a credit evaluation by the STO Staff. This evaluation may include a review of such criteria as geographic location, market perception, loan diversity, management factors, overall fiscal soundness and the Community Reinvestment Act Rating of the institution. If, while holding a pool deposit, an institution is downgraded below acceptable levels by the rating agencies, the following steps shall be taken:

a) Notify the Deposits Section to monitor collateral closely.

b) Review financials and update credit report.

c) Determine the appropriate plan of action which may include early termination of the time deposit, or allow the time deposit to mature.

6) Collateral must comply with Government Code, Sections 16500 et seq. (bank deposits) and 16600 et seq. (savings and loan association and credit union deposits).

F. *Commercial Paper*

1) Maximum maturity:		Statutory:	270 days.
		Policy:	270 days.
2) Maximum par value, total portfolio:		Statutory:	30% of the current portfolio.
		Policy:	Same.
3) Maximum par value per name:		Statutory:	10% of outstanding.
		Policy:	Same.
4) Maximum par value per maturity:			None.

5) Credit: Commercial paper eligible for investment under this subdivision must be rated ***"Prime"*** quality as defined by a nationally recognized organization which rates such securities and must be issued by a federally or state-chartered bank or a state-licensed branch of a foreign bank, corporation, trust, special purpose corporation, or limited liability company approved by the Pooled Money Investment Board. Furthermore, these entities must be either (1) organized and operating within the United States and have total assets in excess of five hundred million dollars ($500,000,000) or (2) must be organized within the United States and have programwide credit enhancements including, but not limited to, overcollateralization, letters of credit or surety bonds.

The list of approved investments will be posted to the STO website.

G. *Corporate Bonds/Notes*

1)	Maximum maturity:	Statutory:	None.
		Policy:	5 years.
2)	Maximum par value, total portfolio:		None.
3)	Maximum par value per name:		None.
4)	Maximum par value per maturity:		None.

5) Credit: Securities eligible for investment under this subdivision must be issued by corporations (including banks) organized and operating within the United States and shall be within the top three ratings of a nationally recognized rating service.

The list of approved investments will be posted to the STO website.

H. *Repurchases (RP) and Reverse Repurchase (RRP)*

1)	Maximum maturity:	Statutory:	None.
		Policy:	1 year.
2)	Maximum par value, total portfolio:	Statutory:	None.
		Policy:	RRP is limited to 10% of the current portfolio.
3)	Maximum par value per name:		None.
4)	Maximum par value per maturity:		None.

5) Credit:

a) Must have on file, a signed Security Loan Agreement and/or General Repurchase Agreement. Repurchase Agreement may be either STO General Agreement or Bond Market Association Standard Agreement

b) Reverses and reverse repurchases are only done with long established and/or well capitalized broker-dealers.

The Reverse Repurchase Program is designed to augment the overall portfolio yield in a safe and prudent manner. It is not viewed as a tool with which to effect specific portfolio moves or plan major market strategy. The portfolio carries reversed securities at negative book and the re-investment at positive book. As a result, the reported size of the portfolio represents the true cash participation of its members. All reverses are cash matched either to the maturity of the re-investment or an adequately positive cash flow date which is approximate to the maturity of the re-investment. For example, if cash flow is positive on January 27 and negative on January 31, then the reverse may mature on the 27th, and the re-investment may be taken to the 31st. Cash flow is evened out, and a positive spread is achieved. Only securities already held in the portfolio and unencumbered may be reversed. No item purchased against reverse will be used as a reversible security while the original reverse is outstanding (i.e., the STO does not leverage one liability with another). The against reverse re-investment will be limited to maturities under one year, effectively limiting the appropriate securities to generic money market issues. Because of the role played by the Reverse Program in this office, customized or structured products are not considered appropriate re-investment candidates. All costs, earnings, and spreads are fixed at the beginning of each transaction.

I. *Negotiable Order of Withdrawal (NOW)*

1)	Maximum maturity:	Statutory:	None.
		Policy:	Open ended.
2)	Maximum par value, total portfolio:	Statutory:	None.
		Policy:	5%.
3)	Maximum par value per name:	Statutory:	Shall not exceed the net worth of the institution.
		Policy:	Same.
4)	Maximum par value per maturity:	Statutory:	None.
		Policy:	None.

5) Credit: Institutions must be rated average or better, or above a "***D***", by a recognized rating service utilized by the State Treasurer's Office (STO) Investment Division, and must pass a credit evaluation by the STO staff. All other conditions, regulations, or requirements associated with demand and time deposits will also apply.

6) Purpose: The Negotiable Order of Withdrawal (NOW) will act as an intra-day cushion to accommodate unexpected cash flow irregularities. In lieu of late sales to cover unexpected increases in disbursements, or in lieu of late investment limitations to cover unexpected increases in revenues, the NOW account will provide pre-market and post-market liquidity and investment flexibility.

II. Guidelines for Maintaining Liquidity

First priority will be the cash flow needs as reported on both the monthly and six-month cash forecasts. These forecasts will be updated daily using the current investment input, as well as adjustment information provided by Centralized Treasury and Securities Management personnel.

Sufficient Treasury securities will be maintained for unscheduled cash needs. It has been determined that Treasury Bills having maximum maturity of 1 year will be used for this purpose. Because of their federal government guarantee, as well as the short maturity, the exposure to market risk is minimal.

Due to the make-up of the portfolio participants, an average maturity of 120 days to eighteen months will be maintained.

III. Guidelines for Maintaining Rate of Return

Always keep in mind the need to provide a consistent rate of return not only to the quarterly participants of the pool, but the longer-term depositors as well. It is often the case that investments made with long-term deposits create the base rate to the portfolio. Since sales gains/losses impact the portfolio on a quarterly basis, large gains/losses are to be avoided. Failure to offset either gains or losses proportionately would result in a saw-toothed apportionment rate history. For this reason, extreme positions or styles of trading are prohibited.

An informal weekly meeting, with the Director of Investments, Assistant Director, and Investment Manager, will be held to discuss current investment philosophies and upcoming economic releases. Decisions of value and direction are made to accommodate the occurrence of all those events which might be considered reasonable and probable.

Although securities trading is allowed for purposes of enhancing portfolio return, specific limitations have been established to protect the portfolio rate of return:

1) Prior to taking a position, apparent value and size will be discussed between the Director and Treasury Trader involved.

2) During a “when issued” (W.I.) period our long position shall never exceed the amount we are willing to purchase.

3) Short positions will not be taken at any time.

4) Trading positions are to be reported daily to the Director of Investments.

Description of Authorized Securities

U.S. Treasury Bills

Short term direct debt obligations issued by the United States Treasury and backed by the full faith and credit of the United States. Maturities are three-months and six-months auctioned weekly on Mondays, with payment due the following Thursday. 52-week Bills are auctioned every four weeks. Cash Management Bills are issued at irregular intervals with maturities ranging from a few days to about six months. Bills offer the Investment Division (referred herein as "Investor") extreme safety and liquidity. Because of this, the Treasury Bill market is often a haven for cash when national and international nervousness occurs. This may be anything from rumored strains in the banking industry to the political situation in the Middle East. Independence of action and constant economic monitoring and geopolitical evaluation are necessary to avoid market risks resulting in unwanted losing Bill positions.

U.S. Treasury Strips

Originally issued by the United States Treasury in complete form as principal and interest obligations. Strips, or Zero's as they are often referred, are the result of separating the interest obligation from the principal and trading the body of the bond and the individual coupon obligations as separate securities. It is the investor's responsibility to recognize the corpus or the coupon, the availability of book-entry or definitive form (physical), and the spreads that result from these characteristics. An uninformed investor may end up buying a physical corpus at a rate reflecting a book-entry coupon, since these securities appear to be generic in description. Not only is the investor buying a Volkswagen at Cadillac prices, but he will also create a failed transaction when and if he decides to trade the item in the open market.

Treasury Securities

Direct obligations of the United States Government issued by the Treasury by auction process. The issues include, but are not limited to, two-year notes, three-year notes, five-year notes, ten-year notes, and thirty-year bonds. These auctions occur monthly, mid-quarterly, and quarterly. It is the investor's responsibility to monitor auction announcements, size of the auction, new money, amount of paydowns, domestic interest, foreign interest, domestic retail interest, and potential trading range of the issue in the post-auction market. Lack of attention and improper evaluation can result in the loss of optimum investment return.

Securities of Government-Sponsored Enterprises, Federal and Other Agencies, and International Institutions

Like Treasury obligations, these securities generally are issued under the authority of an act of Congress. A few are backed by the full faith and credit of the United States, many are guaranteed by the Treasury or supported by the issuing agency's right to borrow from the Treasury, but some lack any formal governmental backing. Some of the issuing entities are privately owned; others are wholly governmental. Following is a list of various obligations authorized by statute; Farm Credit System, including Banks for Coops, Federal Intermediate Credit Banks, Federal Land Banks, Farm Credit Consolidated Systemwide Discount Notes, Federal Farm Credit Banks Consolidated Systemwide Bonds, Federal Home Loan Banks, Federal Home Loan Mortgage Corporation, Discount Notes and Debentures, Federal National Mortgage Association, Student Loan Marketing Association, United States Postal Services, FHA Debenture obligations, Government National Mortgage Association, Export-Import Bank of the United States, Farmers Home Administration, Maritime Administration, Small Business Administration, Tennessee Valley Authority, Asian Development Bank, Commodity Credit Corporation (CCC), Inter-American Development Bank, and International Bank for Reconstruction and Development (World Bank). It is the investor's responsibility to monitor value for spreading these agencies one to the other, to evaluate the credit worthiness of those non-government guaranteed programs, and to be informed of the financing calendar of all agency issues. The extensive list of eligible agencies herein mentioned is testimony to the research and analysis necessary to maintain a risk-free agency portfolio reflecting the optimum return.

Certificates Of Deposit

Negotiable certificates in denominations of $100,000.00 or more. They are issued by commercial banks and thrift institutions against funds deposited for specified periods of seven days or longer and earn specific rates of interest. Major banks and thrifts also issue variable rate CD's with maturities of up to five years. The rate, which is adjusted every 30, 90, or 180 days, usually includes a fixed premium over the composite secondary market rate for major bank CD's, as compiled and published by the Federal Reserve Bank of New York. Also included in this authority is the Yankee CD. Yankee CD's are U.S. dollar-denominated CD's issued by foreign banks domiciled in the United States. Canadian, French, British, German, Japanese, Swiss, and Australian, Dutch banks are active participants. It is the investor's responsibility to maintain a credit watch on global, as well as a domestic level. Considerations such as political stability, governmental control of the industry (energy loans, agricultural loans, commercial real estate loans, etc.), loan exposure to troubled countries (LDC's), and net worth and capitalization. In addition to assessing the relative value of one bank to another, the relative value to CD's in general against the value of other investment items must be considered. When considering variable or floating rate CD's, the investor must determine the coupon reset duration as well as the original spread from the posted composite based on his expectation of future rate direction. If the investor assumes that interest rates will fall shortly, he would opt for a long rate reset period. If this assumption is incorrect, the Pool is invested at a present rate for an extended period of time, while other comparable rates rise. The security then is not earning an optimum return, and indeed could result in a loss, if the need to liquidate should arise. It should be noted that the domestic banks and thrift institutions are able to guarantee $250,000.00 on each deposit through the Federal Depositor Insurance Corporation and the Savings Association Insurance Fund, and that there is no such guarantee on Yankee CD's. This is a minimal guarantee, considering that many millions are invested in these instruments. Although banks and thrifts have either closed or been directed to merge for credit purposes in the past, the Pool has not experienced any lost revenues due to default or delayed payments of maturing items. This is directly attributed to the investor's research, analysis, evaluation, and forecasting abilities when reviewing the stability of the banking and thrift industries.

Banker's Acceptances

A unique credit instrument used to finance both domestic and international self-liquidating transactions. By definition, it is a draft or bill of exchange, whether payable in the United States or abroad and whether payable in dollars or some other currency, accepted by a bank or trust company, or corporation engaged generally in the business of granting bankers' acceptance credits. Consider a coffee processor in the United States who wishes to finance the importation of Colombian coffee on an acceptance basis. The American importer, after negotiating with the Colombian exporter, arranges for his American commercial bank to issue an irrevocable letter of credit in favor of the exporter. The letter of credit specifies the details of the shipment and states that the Colombian exporter may draw a time draft for a certain amount on the American bank. The Colombian exporter draws a draft on the American bank and negotiates the draft with his local bank, receiving immediate payment. The Columbian bank then forwards the draft to the United States for presentation to the bank that issued the letter of credit. This bank stamps the draft "Accepted", thus incurring an obligation to pay the draft at maturity. The importer is then able to process and sell the coffee. The importer is obligated to deposit the proceeds of the coffee sales at the accepting bank in time to honor the acceptance. At maturity, the acceptance is presented for payment by its owner, and the transaction is completed. The investor currently has legislated authority to deal in both domestic and foreign acceptances. In addition to domestic banks, Japanese, French, English, Mexican, German, Dutch, Swiss, Australian, and Canadian banks are now active, to varying degrees, in the foreign acceptance market. The investor's responsibilities concerning bankers' acceptances, both foreign and domestic, are parallel to those responsibilities involved with trading CD's. However, one major difference concerning default should be considered. The risk of CD default jeopardizes the principal invested. In the case of an acceptance default, not only is the principal at risk, but also the investor must be prepared to take possession, process, and sell the shipment involved in the import-export transaction.

Repurchase Agreements

A Repurchase Agreement consists of two simultaneous transactions. One is the purchase of securities by an investor from a bank or dealer. The other is the commitment by the bank or dealer to repurchase the securities at the same price at some mutually agreed future date. The investor's responsibilities are compounded in this type of transaction. Not only must the investor evaluate and analyze the collateral used for credit-worthiness and marketability, he must also evaluate and analyze the bank or dealer with whom the agreement was made. A default by the bank or dealer to complete the dual transaction will result in the forfeiture of the collateral. It is imperative to accept quality securities and to monitor their value to avoid under collateralization in the event of default. Knowledge of the dealer community in general and the stability of the participating bank or dealer in particular are major responsibilities of the investor.

Agency Discount Notes

Unsecured general obligations of the issuing agency with maturities ranging from 1 day to 360 days. This portfolio serves as a tandem or alternative trading portfolio to the Treasury Bill portfolio. As with the agencies mentioned earlier, credit worthiness, amount outstanding, and new issues available are to be considered when evaluating a trade in Discount Notes, as well as understanding the relative value of one issue to the other. A determination also must be made based on market monitoring and spread analysis as to the optimum moment to swap between the Bill and Discount Note portfolios.

Time Deposits

Time Deposits are interest-bearing deposits with specific maturities negotiated with California banks, savings and loans and credit unions. These deposits are secured by collateral pledged by the financial institution and in compliance with the Government Code. Appropriate collateralization levels are monitored on a regular basis. In addition, financial institutions are evaluated for credit criteria.

Mortgages

FHLMC PC, FHLMC GMC, GNMA PC are mortgage participation certificates representing undivided interests in conventional or FHA/VA mortgages underwritten and previously purchased by FHLMC. FHLMC passes through to each certificate holder every month a pro rata share of the principal and interest payments collected on the mortgages in the underlying pool, including pre-payments. FHLMC GMCs represent undivided interest in conventional residential mortgages previously underwritten and purchased by FHLMC. GMCs pay principal annually in guaranteed minimum amounts and interest semi-annually. There are many considerations when dealing in the mortgage markets. Since paydowns may vary, resulting in maturities that are hard to determine, portfolio accountability must be analyzed. Fast-paying premium bonds would result in a lower return, since the principal would pay down at a rate faster than the amortization of premium. Fast-paying discount bonds, in contrast, would enhance the return. The rate of paydown has a direct relationship with the prevailing interest rate environment. It is the duty of the investor to evaluate the economy and form a sound and correct scenario to avoid detrimental returns. Apart from portfolio impact, there are a variety of concerns to address when dealing in the mortgage market. Geographic location of the Mortgages included in the pool also serves to determine the paydown rate. It has been established that certain areas of the country are more transitory, resulting in more frequent sales and resales of single family housing. This information, when used in tandem with coupon rate information will not only avoid a detrimental portfolio impact, but will enhance the performance of the mortgage holdings.

Corporate Bonds

Secured and unsecured medium term debt issued by privately or publicly held banks, holding companies, corporations, or institutions for the purpose of increasing capital, plant and equipment purchase, re- tooling, or other related expenditures. Currently, there are more than thirty authorized names available for investment consideration. It is the investor's responsibility to direct the research and analysis essential to corporate trading. Since most issues purchased are unsecured debt, expert credit analysis is of utmost importance. Also necessary is the ability to customize, or "create from scratch", a note or bond with unique characteristics whose sole purpose is portfolio yield enhancement. This custom debt instrument, generally a corporate issue, is known as a private placement, and often involves the Investor in negotiations with Chief Executive Officers, Chief Financial Officers, and General Counsel. Often these negotiations cover several weeks, and require a specific knowledge of legal requirements and securities regulations. Past trades have been announced nationally in the Wall Street Journal. Since most corporate issues are medium to long term, five years to fifteen years, the weighted impact on a portfolio with an average life of less than two years can be significant. It is essential for the investor to make a complete credit analysis, to conduct earnest negotiations, and to tie them all to a pre-formulated economic scenario compatible with current portfolio needs and cash availability.

Commercial Paper

The market name for the short-term unsecured promissory notes issued by various economic entities in the open market to finance certain short-term credit needs. In addition to providing a source of seasonal working capital, commercial paper is increasingly being used as a means of interim financing of major construction projects such as bank buildings, ships, pipelines, nuclear fuel cores, and plant expansion. Presently, approximately 100 entities are eligible investments for the Pooled portfolio. These represent a variety of industrial companies, utilities, commercial bank holding companies, finance companies, insurance companies, and savings and loan associations.

The investor's responsibility is basically the same as that of corporate bonds, since commercial paper is essentially a short-term corporate bond with a maturity of 1 day to 270 days. However, commercial paper is the only authorized investment with restrictions pertaining to the amount eligible for investments. Since no more than 10% of any one issuer's outstanding may be held by the Pool, the investor must maintain a working knowledge of the issuing status of all eligible entities. He must also keep in mind the ratings of each issuer and how each issuer trades in relation to another, as well as the relative value spread to other investment vehicles.

Reverse Repurchases

Reverse Repurchase Agreements, technically called matched sales-purchase agreements, are essentially the mirror image of RPs. In this instance, the investor is the owner of the collateral, and the bank or dealer is the lender of money. All other aspects remain identical. Again, the investor's responsibilities are two-fold, as the creditworthiness of the bank or dealer is still an essential consideration. Additionally, the investor now must arbitrage or re-invest the money received on the transaction into another security for a positive return. The new investment must be secure from default, yet of lesser quality to create a spread. Furthermore, the new investment must mature coincidentally with the Reverse Transaction, or a cash shortage may occur. If the maturity is staggered from the Reverse transaction, the investor must now address the mismatch as it applies to the now- altered cash forecast.

Security Loans

Portfolio issues are loaned to authorized banks or dealers for a pre-arranged fee. In turn, securities representing at least 102% of the market value of the issues loaned are received as collateral for the loan. As long as maintenance is continued on the collateral side, the risk is minimal. A similar program is put out on contract by the Retirement system, but this office organizes, negotiates, and maintains the loan program exclusively.

Bank Notes

Bank Notes are senior, unsecured promissory notes issued in the United States on either an underwritten or continuously-offered basis by domestic commercial banks. The Notes represent senior debt of the bank which ranks pari passu with all other senior obligations of the bank, except deposit liabilities or obligations that are secured or subject to any priorities or preferences.

Bank Notes should not be confused with Medium-Term Notes ("MTNs") or other securities issued by domestic bank holding companies ("BHCs"). Bank Notes are exempt from SEC registration under Section 3(a)(2) of the Securities Act of 1933. They are classified as "Other Borrowings" on the bank's balance sheet, while Deposit Notes and CDs are classified a "Deposits," Bank Notes are not deposits and are not insured by the Federal Deposit Insurance Corporation ("FDIC") or any other insurer.

Negotiable Order of Withdrawal

A Negotiable Order of Withdrawal account (NOW account) is a deposit account that pays interest on which checks may be written. NOW accounts are offered by commercial banks, mutual savings banks, and savings and loan associations. They may be owned only by individuals, some nonprofit organizations, and government agencies or bodies. NOW Accounts are structured to comply with Regulation Q, which prohibits interest on checking accounts: NOW accounts are interest-bearing and checks may be written on them, but legally they are not interest-bearing checking accounts. NOW accounts are considered checkable deposits, and are counted in the Fed's M1 definition of the money supply. As such, they are considered liabilities from the bank's perspective. For purposes of the PMIA, NOW Accounts are subject to the same requirements and restrictions followed by demand balances and time deposits.

Reverse Repurchase

The temporary sale of owned securities, with the simultaneous agreement to repurchase the same securities at a predetermined cost and rate on a specified future date.

The Pooled Money Investment Account from time to time enters into Reverse Repurchase Agreements with major pre-approved securities dealers. The intent is to earn incremental interest for pool participants. Because it is viewed as incremental, earnings derived from reverses are never projected or anticipated.

All reverses are in compliance with Government Code Section 16480.4, and are further discussed in the Treasurer's Statement of Investment Policies, Goals and Objectives.

AB 55 Loans

Named for Assembly Bill 55, these loans are made from the Pool to state agencies which have pre-approved authority to issue bonds for specific projects. The AB 55 loan program allows an agency to borrow money for up-front and progress expenses when funding a specific project. Toward the end of the project construction, the already approved bond issue is brought to market, the proceeds of which are used to pay off principal and interest due on the AB 55 loan. This method eliminates the need for an arbitrage tracking system, had the bonds been sold "up front." The maximum term for AB 55 loans is 364 days, with many retired earlier.

General Fund Loans

Loans made by the Pool to the General Fund in anticipation of evening out cash flow. The average life of these loans is well below 30 days. Unlike the on-going AB 55 loan program, General Fund loans are much more infrequently requested.

Both AB 55 and General Fund Loans have the following characteristics:

1. Amount available for loans is determined by the State Controller and EXCLUDES certain trust monies, such as LAIF balances;
2. LAIF participants do share in the interest income paid to the Pool on each loan balance;
3. The decision to approve these loans rests in the authority of the Pooled Money Investment Board;
4. A predetermined maximum total loan balance is capped as a specific percentage of identified borrowable resources as determined by the State Controller.
5. No surplus monies may be loaned if such a loan would inhibit carrying out the purpose for which the monies were originally designated.
6. Since the granting of these loans is not an investment function, the loans (AB 55, General Fund) are not included in records of daily investment activity.
7. Since interest is commingled with other investment revenue, both AB 55 and General Fund loans are included in Selected Data Reports and portfolio accountability.

8. The total monies in AB 55 and General Fund loans are figured into the Portfolio book value when reporting portfolio size and yield.

Frequently Asked Questions

LAIF Account

What entities are permitted to invest in LAIF?

Local governmental units, nonprofit corporations whose membership is confined to public agencies or public officials, and qualified quasi-governmental agencies can invest in LAIF. (Government Code Section 16429.1)

Does LAIF allow multiple accounts and subaccounts for each participating agency?

No. However, agencies are permitted to open separate bond proceeds accounts.

What documents are required to open a LAIF account?

A Certified Board Resolution (adopted by the entity's governing body) and a New LAIF Account form (available online at http://www.treasurer.ca.gov/pmia-laif/forms/new.pdf) are required to open a regular LAIF account. In addition to these documents, a Bond Application and Official Statement are required to open a LAIF bond proceed account. Please see "How to Participate" at http://www.treasurer.ca.gov/pmia-laif/answer/howto.asp and contact LAIF staff at 916-653-3001 for more information.

What are the LAIF procedures for depositing and withdrawing funds?

See "Procedures for LAIF Transactions" at www.treasurer.ca.gov/pmia-laif/answer/procedures.asp.

How do I obtain a copy of the wiring instructions for my LAIF transactions?

Contact LAIF staff at 916-653-3001 for the wiring instructions for your bank.

Are there minimum and/or maximum LAIF account balance restrictions?

Yes. Regular LAIF account balances are capped at $65 million. There is no minimum account balance requirement. Bond proceeds accounts have no minimum or maximum balance restrictions.

How many transactions are permitted each month?

Each regular LAIF account is permitted 15 transactions per month.

Is there a minimum and/or maximum transaction amount for deposits and withdrawals?

Yes. For regular LAIF accounts, the minimum transaction amount is $5,000 and the maximum transaction amount is $65 million. Bond proceeds accounts have a one-time deposit with no cap and are set-up with a monthly drawdown schedule.

Does LAIF require advance notice for deposits and/or withdrawals?

No. However, for cash flow purposes, we request at least 24 hours advance notice for withdrawals of $10 million or more.

Is there a cutoff time for deposits and withdrawals?

Yes. LAIF transactions completed by 10:00 a.m. Monday – Friday will receive same day credit. Also, transactions may be requested 10 calendar days in advance of the effective date.

Can a LAIF account remain open with a zero balance?

Yes. LAIF accounts will remain open with a zero balance unless a request is made to close the account.

Are confirmation numbers provided for each transaction?

Yes. Confirmation numbers are given at the time of the transaction and are also included in the monthly statements.

How do I request changes to my LAIF account?

Address, authorization and banking information change forms are available online at www.treasurer.ca.gov/pmia-laif/laif.asp under "Forms." Change forms must be signed by two (2) persons authorized by the agency's resolution and then returned to LAIF. A sample resolution is also available if the authorized signers change. Please contact LAIF staff at 916-653-3001 for further assistance.

How do I request a copy of a statement?

Monthly statements are available online for one year under "Reporting Documents" at www.treasurer.ca.gov/pmia-laif/laif.asp. For requests beyond one year, please contact LAIF staff at 916-653-3001 for assistance.

Are LAIF funds borrowable?

No. “Moneys placed with the Treasurer for deposit in the Local Agency Investment Fund by cities, counties, special districts, nonprofit corporations, or qualified quasi-governmental agencies shall not be subject to either of the following:

a) Transfer or loan pursuant to Sections 16310, 16312, or 16313.

b) Impoundment or seizure by any state official or state agency.” (Government Code Section 16429.3)

Will LAIF funds still be available if there is a State budget impasse?

Yes. The Court of Appeal issued a decision on the Jarvis Taxpayers Association v. Connell case on May 29, 2002 where the court held that the Controller may disburse funds during a budget impasse when the state and federal law properly authorizes or requires their payment, despite the absence of a budget act or emergency appropriation. “The right of a city, county, city and county, special district, nonprofit corporation, or quasi-governmental agency to withdraw its deposited moneys from the Local Agency Investment Fund, upon demand, may not be altered, impaired, or denied, in any way, by any state official or state agency based upon the state’s failure to adopt a State Budget by July 1 of each new fiscal year.” (Government Code section 16429.4)

Administration

How much are LAIF’s administrative costs?

Administrative costs are not to exceed 5% of quarterly earnings of the fund. However, if the 13-week Daily Treasury Bill Rate on the last day of the fiscal year is below 1%, then administrative costs shall not exceed 8% of quarterly earnings of the fund for the subsequent fiscal year. (Government Code Section 16429.1) These fees cover actual costs to administer the LAIF program. A history of administrative costs can be found at www.treasurer.ca.gov/pmia-laif/historical/admin_costs.asp.

How often are administrative fees assessed and how are they paid?

Administrative fees are assessed quarterly. For each LAIF account, these fees are deducted from quarterly earnings prior to interest posting.

Are there additional fees for wiring funds?

No. LAIF does not charge a fee for wires or book transfers. However, your financial institution may charge a fee for LAIF transfers.

Interest

What's the current interest rate on the Pool?

For current interest rates on the Pool, go to www.treasurer.ca.gov/pmia-laif/performance/PMIA- LAIF_perform.pdf.

What methodology is used to calculate interest (simple maturity, yield to maturity, etc.)?

Interest is calculated on a dollar-day basis to guarantee equitable distribution among all member funds.

How frequently is interest paid?

Interest is paid quarterly and is posted to the LAIF accounts on the 15th of the month, or previous business day if the 15th is a non-working day, after the quarter end (i.e., January 15, April 15, July 15 and October 15).

How are gains and/or losses reported (factored monthly or only when realized)?

Gains and/or losses are reported when realized.

Reporting

How often is the portfolio yield reported to participants?

The portfolio yield is updated weekly. See "PMIA/LAIF Performance" at http://www.treasurer.ca.gov/pmia-laif/performance/pmia-laif_perform.pdf. To receive weekly electronic performance updates, please contact LAIF staff at 916-653-3001 to be added to the subscriber list.

Are administrative fees of the Pool deducted before quoting the yield?

No. The yield is quoted prior to deduction of administrative fees.

Where can I find reporting documents for the Pool?

The following reports can be found at www.treasurer.ca.gov/pmia-laif/laif.asp under "Reporting Documents": Disclosure Statements, Market Valuation, Maturity Schedule, Monthly Reports, Quarterly Reports, Annual Reports, and Independent Auditor's Report by Bureau of State Audits**.**

Is the Pool insured?

No. However, due to the portfolio's characteristics, credit risk is minimal.

Securities

Does the Pool provide a written statement of the PMIA Investment Policy?

Yes. A written statement of the PMIA Investment Policy can be found at www.treasurer.ca.gov/pmia-laif/answer/policy.pdf. The policy includes a description of authorized securities, credit standards of investments, allowable maturity range of investments, the maximum allowable dollar weighted average portfolio maturity, the limits of portfolio concentration permitted for each type of security, and the policy on reverse repos.

Is the Pool rated?

No. The Pool is not rated.

Security

What are the safekeeping practices of the Pool?

The Treasurer may place and maintain for safekeeping as a trust deposit with any qualified trust company, other than the depositor bank, or with the federal reserve bank or any branch thereof any securities that have been received by the Treasurer. (Government Code Section 16551) The Treasurer utilizes a custodian bank.

Is the Pool subject to audit by an independent auditor?

Yes. The Pool is audited annually by the Bureau of State Audits and the resulting report is posted to the website at www.treasurer.ca.gov/pmia-laif/reports/bsa.pdf.

Who makes the portfolio decisions?

Investment decisions are made by the State Treasurer and the Investment Division staff of the State Treasurer's Office.

How do the investment managers monitor the credit risk of the securities in the Pool?

A written statement of portfolio management goals, objectives and policies, along with independent market valuations, are used to monitor the credit risk of the securities in the Pool.

How is the Pool monitored?

The Pool is monitored by the Pooled Money Investment Board, Local Investment Advisory Board and the Bureau of State Audits to ensure compliance with written policies.

How often are the portfolio's market and securities value reported?

These values are reported quarterly and can be found at www.treasurer.ca.gov/pmia-laif/reports/quarterly.asp.

What method is used to value the portfolio?

The amortized cost and current value methods are used to value the portfolio.

Does the pool distribute detailed reports of its holdings?

Yes. These reports are distributed on a monthly basis and can be found at www.treasurer.ca.gov/pmia-laif/reports/monthly.asp.

Appendix A

Local Agency Investment Fund Statutes

Government Code

16429.1 Creation, maintenance, and operation of Local Agency Investment Fund

a. There is in trust in the custody of the Treasurer the Local Agency Investment Fund, which fund is hereby created. The Controller shall maintain a separate account for each governmental unit having deposits in this fund.
b. Notwithstanding any other provisions of law, a local governmental official, with the consent of the governing body of that agency, having money in its treasury not required for immediate needs, may remit the money to the Treasurer for deposit in the Local Agency Investment Fund for the purpose of investment.
c. Notwithstanding any other provisions of law, an officer of any nonprofit corporation whose membership is confined to public agencies or public officials, or an officer of a qualified quasi-governmental agency, with the consent of the governing body of that agency, having money in its treasury not required for immediate needs, may remit the money to the Treasurer for deposit in the Local Agency Investment Fund for the purpose of investment.
d. Notwithstanding any other provision of law or of this section, a local agency, with the approval of its governing body, may deposit in the Local Agency Investment Fund proceeds of the issuance of bonds, notes, certificates of participation, or other evidences of indebtedness of the agency pending expenditure of the proceeds for the authorized purpose of their issuance. In connection with these deposits of proceeds, the Local Agency Investment Fund is authorized to receive and disburse moneys, and to provide information, directly with or to an authorized officer of a trustee or fiscal agent engaged by the local agency, the Local Agency Investment Fund is authorized to hold investments in the name and for the account of that trustee or fiscal agent, and the Controller shall maintain a separate account for each deposit of proceeds.
e. The local governmental unit, the nonprofit corporation, or the quasi-governmental agency has the exclusive determination of the length of time its money will be on deposit with the Treasurer.
f. The trustee or fiscal agent of the local governmental unit has the exclusive determination of the length of time proceeds from the issuance of bonds will be on deposit with the Treasurer.
g. The Local Investment Advisory Board shall determine those quasi-governmental agencies which qualify to participate in the Local Agency Investment Fund.
h. The Treasurer may refuse to accept deposits into the fund if, in the judgment of the Treasurer, the deposit would adversely affect the state's portfolio.

i. The Treasurer may invest the money of the fund in securities prescribed in Section 16430. The Treasurer may elect to have the money of the fund invested through the Surplus Money Investment Fund as provided in Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2.
j. Money in the fund shall be invested to achieve the objective of the fund which is to realize the maximum return consistent with safe and prudent treasury management.
k. All instruments of title of all investments of the fund shall remain in the Treasurer's vault or be held in safekeeping under control of the Treasurer in any federal reserve bank, or any branch thereof, or the Federal Home Loan Bank of San Francisco, with any trust company, or the trust department of any state or national bank.
l. Immediately at the conclusion of each calendar quarter, all interest earned and other increment derived from investments shall be distributed by the Controller to the contributing governmental units or trustees or fiscal agents, nonprofit corporations, and quasi-governmental agencies in amounts directly proportionate to the respective amounts deposited in the Local Agency Investment Fund and the length of time the amounts remained therein. An amount equal to the reasonable costs incurred in carrying out the provisions of this section, not to exceed a maximum of 5 percent of the earnings of this fund and not to exceed the amount appropriated in the annual Budget Act for this function, shall be deducted from the earnings prior to distribution. However, if the 13-week Daily Treasury Bill Rate, as published by the United States Department of the Treasury on the last day of the state's fiscal year is below 1 percent, then the above-noted reasonable costs shall not exceed a maximum of 8 percent of the earnings of this fund for the subsequent fiscal year, shall not exceed the amount appropriated in the annual Budget Act for this function, and shall be deducted from the earnings prior to distribution. The amount of the deduction shall be credited as reimbursements to the state agencies, including the Treasurer, the Controller, and the Department of Finance, having incurred costs in carrying out the provisions of this section.
m. The Treasurer shall prepare for distribution a monthly report of investments made during the preceding month.
n. As used in this section, "local agency," "local governmental unit," and "local governmental official" includes a campus or other unit and an official, respectively, of the California State University who deposits moneys in funds described in Sections 89721, 89722, and 89725 of the Education Code.

16429.2 Local Investment Advisory Board

There is created the Local Investment Advisory Board consisting of five members. The chairman shall be the State Treasurer or his or her designated representative. Two members who are qualified by training and experience in the field of investment or finance, shall be appointed by the State Treasurer. Two members who are treasurers, finance or fiscal officers or business managers, employed by any county, city or local district or municipal corporation of this state, shall be appointed by the Treasurer.

The term of office of each appointed member of the board is two years, but each appointed member serves at the pleasure of the appointing authority. A vacancy in the appointed membership, occurring other than by expiration of term, shall be filled in the same manner as the original appointment, but for the unexpired term only.

Members of the board who are not state officers or employees shall not receive a salary, but shall be entitled to a per diem allowance of one hundred dollars ($100) for each day's attendance at a meeting of the board, not to exceed three hundred dollars ($300) in any month. All members shall be entitled to reimbursement for expenses incurred in the performance of their duties under this part, including travel and other necessary expenses.

The board's primary purpose shall be to advise and assist the State Treasurer in formulating the investment and reinvestment of moneys in the Local Agency Investment Fund, and the acquisition, retention, management, and disposition of investments of the fund. The board, from time to time, shall review those policies and advise therein as it considers necessary or desirable. The board shall advise the State Treasurer in the management of the fund and consult the State Treasurer on any matter relating to the investment and reinvestment of moneys in the fund.

16429.3 Deposits; Prohibited Transfers and Loans; Impoundment or Seizure

Moneys placed with the Treasurer for deposit in the Local Agency Investment Fund by cities, counties, special districts, nonprofit corporations, or qualified quasi-governmental agencies shall not be subject to either of the following:

a. Transfer or loan pursuant to Sections 16310, 16312, or 16313.
b. Impoundment or seizure by any state official or state agency.

16429.4 Right of Withdrawal

The right of a city, county, city and county, special district, nonprofit corporation, or qualified quasi-governmental agency to withdraw its deposited moneys from the Local Agency Investment Fund, upon demand, may not be altered, impaired, or denied, in any way, by any state official or state agency based upon the state's failure to adopt a State Budget by July 1 of each new fiscal year.

Appendix B

Pooled Money Investment Account Statutes

Government Code

16430 Eligible Securities for Investment of Surplus Moneys

Eligible securities for the investment of surplus moneys shall be any of the following:

a. Bonds or interest-bearing notes or obligations of the United States, or those for which the faith and credit of the United States are pledged for the payment of principal and interest.
b. Bonds or interest-bearing notes on obligations that are guaranteed as to principal and interest by a federal agency of the United States.
c. Bonds and notes of this state, or those for which the faith and credit of this state are pledged for the payment of principal and interest.
d. Bonds or warrants, including, but not limited to, revenue warrants, of any county, city, metropolitan water district, California water district, California water storage district, irrigation district in the state, municipal utility district, or school district of this state.
e. Bonds, consolidated bonds, collateral trust debentures, consolidated debentures, or other obligations issued by federal land banks or federal intermediate credit banks established under the Federal Farm Loan Act, as amended, in debentures and consolidated debentures issued by the Central Bank for Cooperatives and banks for cooperatives established under the Farm Credit Act of 1933, as amended, in bonds or debentures of the Federal Home Loan Bank Board established under the Federal Home Loan Bank Act, in stock, bonds, debentures and other obligations of the Federal National Mortgage Association established under the National Housing Act as amended, and in the bonds of any federal home loan bank established under that act, obligations of the Federal Home Loan Mortgage Corporation, in bonds, notes, and other obligations issued by the Tennessee Valley Authority under the Tennessee Valley Authority Act as amended, and other obligations guaranteed by the Commodity Credit Corporation for the export of California agricultural products under the Commodity Credit Corporation Charter Act as amended.
f.
    1. Commercial paper of “prime” quality as defined by a nationally recognized organization that rates these securities, if the commercial paper is issued by a federally or state-chartered bank or a state-licensed branch of a foreign bank, corporation, trust, or limited liability company that is approved by the Pooled Money Investment Board as meeting the conditions specified in either subparagraph (A) or subparagraph (B):
        A. Both of the following conditions:
            i. Organized and operating within the United States.

ii. Having total assets in excess of five hundred million dollars ($500,000,000).

B. Both of the following conditions:

i. Organized within the United States as a federally or state-chartered bank or a state-licensed branch of a foreign bank, special purpose corporation, trust, or limited liability company.

ii. Having programwide credit enhancements including, but not limited to, overcollateralization, letters of credit, or surety bond.

2. Purchases of eligible commercial paper may not do any of the following:

A. Exceed 270 days maturity.

B. Represent more than 10 percent of the outstanding paper of an issuing federally or state-chartered bank or a state-licensed branch of a foreign bank, corporation, trust, or limited liability company.

C. Exceed 30 percent of the resources of an investment program.

3. At the request of the Pooled Money Investment Board, an investment made pursuant to this subdivision shall be secured by the issuer by depositing with the Treasurer securities authorized by Section 53651 of a market value at least 10 percent in excess of the amount of the state's investment.

g. Bills of exchange or time drafts drawn on and accepted by a commercial bank, otherwise known as bankers acceptances, that are eligible for purchase by the Federal Reserve System.

h. Negotiable certificates of deposits issued by a federally or state-chartered bank or savings and loan association, a state-licensed branch of a foreign bank, or a federally or state-chartered credit union. For the purposes of this section, negotiable certificates of deposits are not subject to Chapter 4 (commencing with Section 16500) and Chapter 4.5 (commencing with Section 16600).

i. The portion of bank loans and obligations guaranteed by the United States Small Business Administration, or the United States Farmers Home Administration.

j. Bank loans and obligations guaranteed by the Export-Import Bank of the United States.

k. Student loan notes insured under the Guaranteed Student Loan Program established pursuant to the Higher Education Act of 1965, as amended (20 U.S.C. Sec.1001 et seq.) and eligible for resale to the Student Loan Marketing Association established pursuant to Section 133 of the Education Amendments of 1972, as amended (20 U.S.C. Sec. 1087-2).

l. Obligations issued, assumed, or guaranteed by the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the International Finance Corporation, or the Government Development Bank of Puerto Rico.

m. Bonds, debentures, and notes issued by corporations organized and operating within the United States. Securities eligible for investment under this subdivision shall be within the top three ratings of a nationally recognized rating service.

n. Negotiable Order of Withdrawal Accounts (NOW Accounts), invested in accordance with Chapter 4 (commencing with Section 16500).

16480.4 Securities Eligible for Investment; Sale, Exchange Or Repurchase

a. Amounts available for investment under this article may be invested and reinvested by the State Treasurer in any securities described in Sections 16430, of this code or in loans to the General Fund as provided in Section 16310 of this code. Such securities may be sold by the State Treasury or exchanged by him for other securities of the kind authorized to be purchased hereunder, if, in his discretion, such sale or exchange appears to be in the best interests of the state. The State Treasurer may enter into repurchase agreements or reverse repurchase agreements of any securities described in Section 16430.
b. The State Treasurer may hire or engage the services of an investment analyst to assist in such investment decisions.
c. For purposes of this section, the term “repurchase agreement” means a purchase of securities by the State Treasurer pursuant to an agreement by which the seller will repurchase such securities on or before a specified date and for a specified amount.
d. For purposes of this section, the term “reverse repurchase agreement” means a sale of securities by the State Treasurer pursuant to an agreement by which the State Treasurer will repurchase such securities on or before a specified date and for a specified amount.

Appendix C

Government Code

Title 2, Division 4, Part 2, Chapter 4. Bank Deposits

Article 1. General

16500. As used in this chapter, "eligible bank" means a state or national bank located in this state, selected by the Treasurer for the safekeeping of money belonging to or in the custody of the state, that has received an overall rating of not less than "satisfactory" in its most recent evaluation by the appropriate federal financial supervisory agency of the bank's record of meeting the credit needs of the state's communities, including low- and moderate-income neighborhoods, pursuant to Section 2906 of Title 12 of the United States Code. An eligible bank is eligible to receive deposits only to the extent that it furnishes the security required by this chapter.

16500.5. (a) The definitions in Section 1700 of, and Chapter 1 (commencing with Section 99) of Division 1 of, the Financial Code apply to this section.

(b) In this chapter, for purposes of being an eligible bank for the safekeeping of moneys belonging to, or in the custody of, the state, the phrases "state or national bank located in this state," "state or national bank," "state or national bank in this state," and "state or national banks in the state" shall include, without limitation, any of the following:

(1) Any California branch office of a foreign (other state) state bank that the bank is authorized to maintain under the law of its domicile and federal law.

(2) Any California branch office of a foreign (other state) national bank that the bank is authorized to maintain under federal law.

(3) Any California branch office of a foreign (other nation) bank that the bank is licensed to maintain under Article 3 (commencing with Section 1750) of Chapter 13.5 of Division 1 of the Financial Code.

(4) Any California federal branch of a foreign (other nation) bank that the bank is authorized to maintain under federal law.

16501. Under the conditions as the Treasurer with the approval of the Director of Finance may establish, the Treasurer may deposit money in banks outside this state when the banks are fiscal agents of the state or custodians of securities owned by the state, if the banks have an overall rating of not less than "satisfactory" in their most recent evaluation by the appropriate federal financial supervisory agency of the banks' record of meeting the credit needs of the communities in which the bank is located, including low- and moderate-income neighborhoods, pursuant to Section 2906 of Title 12 of the United States Code.

16502. All other money in the State Treasury or under the control of the Treasurer belonging to or in the custody of the State, shall, so far as possible, be deposited by the Treasurer to the credit of the State in eligible banks. Any sum in the State Treasury so deposited is deemed to be in the State Treasury. Any other amount so deposited is deemed to be held in trust by the Treasurer.

16503. Subject to the limitations of Article 4.5 (commencing with Section 16480) of Chapter 3, the Treasurer shall determine what amounts of money shall be deposited:

(a) As time deposits, and the rates of interest to be received.

(b) As demand deposits, and the rates of interest to be received, if any.

16504. Subject to the applicable contract, the Treasurer may call in money from time deposits and place it in demand deposits, when necessary to meet current requirements; and time money in his possession for which there is no demand may be placed as demand deposits.

16505. Deposits in any bank shall not exceed the total of its net worth.

16506. All money belonging to or in the custody of the state under the control of any state officer or employee, other than the Treasurer, except petty cash funds authorized by the Department of Finance, shall be deposited in such state or national banks in this state and under such conditions as the Director of Finance prescribes. Banks receiving such deposits shall be required to deposit with the Treasurer the same security as is required by this chapter for deposits made by the Treasurer. Banks receiving deposits of money from a county advanced or apportioned to it pursuant to Section 4481 of the Food and Agricultural Code shall be required to secure such deposits in accordance with Article 2 (commencing with Section 53630) of Chapter 4, Part 1, Division 2 of Title 5.

16507. A State officer is not liable on his official bond for losses caused by the failure of a bank in which is made a deposit of money belonging to an inmate of a State institution, if the officer was required or permitted by law to act as a trustee or fiduciary with respect to the money and if he made the deposit in good faith and in accordance with law.

16508. The Treasurer is not responsible for any money deposited in a bank pursuant to this chapter, and while it remains so deposited.

16509. The Treasurer is responsible for the safekeeping, management and disbursement of the certificates of deposit received and the securities deposited with him, the interest received on deposits, and the proceeds of any sale under this chapter. The State is responsible for the custody and safe return of any securities so deposited.

16510. Any State officer or employee who deposits any money belonging to or in the custody of the State in any manner other than as prescribed in this chapter is subject to forfeiture of his office or employment.

Article 2. Security for Deposits

16520. Security shall not be required for that portion of any deposit that is insured under any law of the United States.

16521. To be eligible to receive and retain demand or time deposits, a bank shall deposit with the Treasurer as security for such deposits, securities specified in Section 16522, and approved by the Treasurer, in an amount in value at least 10 percent in excess of the amount deposited with the bank. Uncollected funds shall be excluded from the amount deposited in a demand account with a bank when determining the security requirements for such deposits.

16522. The following securities may be received as security for demand and time deposits:

(a) Bonds, notes, or other obligations of the United States, or those for which the faith and credit of the United States are pledged for the payment of principal and interest, including the guaranteed portions of small business administration loans, so long as those loans are obligations for which the faith and credit of the United States are pledged for the payment of principal and interest.

(b) Notes or bonds or any obligations of a local public agency (as defined in the United States Housing Act of 1949) or any obligations of a public housing agency (as defined in the United States Housing Act of 1937) for which the faith and credit of the United States are pledged for the payment of principal and interest.

(c) Bonds of this state or of any county, city, town, metropolitan water district, municipal utility district, municipal water district, bridge and highway district, flood control district, school district, water district, water conservation district or irrigation district within this state, and, in addition, revenue or tax anticipation notes, and revenue bonds payable solely out of the revenues from a revenue-producing property owned, controlled or operated by this state, or such local agency or district, or by a department, board, agency, or authority thereof.

(d) Registered warrants of this state.

(e) Bonds, consolidated bonds, collateral trust debentures, consolidated debentures, or other obligations issued by the United States Postal Service, federal land banks or federal intermediate credit banks established under the Federal Farm Loan Act, as amended, debentures and consolidated debentures issued by the Central Bank for Cooperatives and banks for cooperatives established under the Farm Credit Act of 1933, as amended, consolidated obligations of the Federal Home Loan Banks established under the Federal Home Loan Bank Act, bonds, debentures and other obligations of the Federal National Mortgage Association and of the Government National Mortgage Association established under the National Housing Act as amended, in the bonds of any federal home loan bank established under said act, bonds, debentures, and other obligations of the Federal Home Loan Mortgage Corporation established under the Emergency Home Finance Act of 1970, and in bonds, notes, and other obligations issued by the Tennessee Valley Authority under the Tennessee Valley Authority Act, as amended.

(f) Bonds and notes of the California Housing Finance Agency issued pursuant to Chapter 7 (commencing with Section 41700) of Part 3 of Division 31 of the Health and Safety Code.

(g) Promissory notes secured by first mortgages and first trust deeds upon residential real property located in California, provided that:

> (1) Notwithstanding Section 16521, the promissory notes shall at all times be in an amount in value at least 50 percent in excess of the amount deposited with the bank;
>
> (2) The Treasurer issues regulations, establishes procedures for determining the value of the promissory notes and develops standards necessary to protect the security of the deposits so collateralized;
>
> (3) The depository may exercise, enforce, or waive any right or power granted to it by promissory note, mortgage, or deed of trust; and
>
> (4) The following may not be used as security for deposits:
>
>> (i) Any promissory note on which any payment is more than 90 days past due,
>>
>> (ii) Any promissory note secured by a mortgage or deed of trust as to which there is a lien prior to the mortgage or deed of trust, or
>>
>> (iii) Any promissory note secured by a mortgage or deed of trust as to which a notice of default has been recorded pursuant to Section 2924 of the Civil Code or an action has been commenced pursuant to Section 725a of the Code of Civil Procedure.

(h) Bonds issued by the State of Israel.

(i) Obligations issued, assumed, or guaranteed by the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the International Finance Corporation, or the Government Development Bank of Puerto Rico.

(j) Any municipal securities, as defined by Section 3(a)(29) of the Securities Exchange Act of June 6, 1934, (15 U.S.C. 78, as amended), which are issued by this state or any local agency thereof.

(k) Letters of credit issued by the Federal Home Loan Bank of San Francisco, which shall be in the form and shall contain provisions as the Treasurer may prescribe, and shall include the following terms:

> (1) The Treasurer shall be the beneficiary of the letter of credit.
>
> (2) The letter of credit shall be clean and irrevocable, and shall provide that the Treasurer may draw upon it up to the total amount in the event of the failure of

the bank or if the bank refuses to permit the withdrawal of funds by the Treasurer or any other authorized state officer or employee.

(l) An eligible bank that has been selected by the Treasurer for the safekeeping of money belonging to, or in the custody of, the state, and that has its headquarters located outside of the state, may submit letters of credit that are drawn on its regional federal home loan bank as security, solely for deposits maintained in the Treasurer's demand accounts, and subject to the terms set forth in paragraphs (1) and (2) of subdivision (k).

16523. If it appears to him necessary for the security of the State, the Treasurer shall require as a condition of eligibility that a bank furnish an indemnity bond approved by the Treasurer, conditioned against loss by any depreciation in value that may occur in securities deposited as security for the safekeeping and prompt payment of deposits. The sureties shall not be stockholders of the principal.

16525. In lieu of deposits of securities, any otherwise eligible bank may deposit with the Treasurer bonds of admitted surety insurers as security for demand and time deposits.

16526. An admitted surety insurer is not eligible as surety for demand or time deposits in any one bank in amounts in excess of 10 percent of the capital and surplus of the surety as shown in the preceding report issued by the United States Treasury Department.

16527. On demand of the Treasurer, the Insurance Commissioner shall issue a certificate showing the qualifications of any admitted surety insurer as surety for demand or time deposits.

16528. The bond of an admitted surety insurer shall not be accepted as security for demand or time deposits unless it has been certified by the Insurance Commissioner as meeting the requirements of this chapter and unless it also holds a certificate of authority from the United States Treasury Department under which it is eligible as surety on federal bonds.

16529. The form of bonds required under this chapter shall be prescribed by the Attorney General.

16530. A surety upon any bond to secure demand or time deposits may terminate the bond as to future liability by giving 10 days' written notice of termination to the Treasurer. Such notice of termination shall not affect any liability accruing prior to the expiration of the 10-day period. Within 10 days after receipt of such a notice of termination, the Treasurer shall require other acceptable security or withdraw the deposits secured by the bond to be terminated.

16531. That portion of any security for deposit that is in excess of the requirements of this article may be withdrawn or released on the written consent of the Treasurer.

16532. If any bank fails to pay all or any part of such deposits on demand of the Treasurer, pursuant to the terms and conditions of the contract relating to the deposit that is to be withdrawn in whole or in part, the Treasurer shall forthwith recover upon or convert the security therefor into money and disburse it according to law.

16533. If at any time the security deposited with the Treasurer is not deemed satisfactory by the Treasurer, he may require such additional security as is satisfactory to him.

Article 3. Custody of Securities

16550. As used in this article, "qualified trust company" means the trust department of any State or National bank in this State or a trust company authorized to act as such in this State.

16551. With the consent of the bank owning securities deposited or to be deposited with him or her as security, the Treasurer may:

(a) Authorize any qualified trust company, other than the depositor bank, or any federal reserve bank or any branch thereof or any state or national bank located in any city designated as a reserve or central reserve city by the Board of Governors of the Federal Reserve System to receive as his or her agent deposits of any securities approved under this chapter.

(b) Place and maintain for safekeeping as a trust deposit with any qualified trust company, other than the depositor bank, or with any federal reserve bank or any branch thereof any securities that have been received by him or her under this chapter.

(c) Whenever any qualified trust company accepts such securities under paragraph (a) or (b) such trust company, with the prior approval of the Treasurer, may keep such securities for safekeeping with any state or national bank located in a city designated as a reserve or central reserve city by the Board of Governors of the Federal Reserve System.

16552. The Treasurer shall take from the qualified trust company or from any federal reserve bank or any branch thereof a receipt for any securities received by it under this article. Neither the Treasurer nor the State is responsible for the custody and safe return of such securities until they are withdrawn from the qualified trust company or from any federal reserve bank or any branch thereof by the Treasurer.

16553. Any qualified trust company or any federal reserve bank or any branch thereof to which securities are delivered, either as agent or depositary for the Treasury, shall make such disposition of the securities as the Treasurer directs and is responsible only for strict compliance with written instructions given to it by the Treasurer. All such securities are at all times subject to the order of the Treasurer.

16554. The charges of any qualified trust company or of any federal reserve bank or any branch thereof for the handling and safekeeping of such securities are not a charge against the Treasurer but shall be paid by the owner.

16560. The Treasurer shall enter into such contracts with such depositaries as in his judgment will be to the public advantage so to do. The contracts shall fix the duration of deposits and the rates of interest to be received, if any, the interest payment dates, and provide conditions for their withdrawal, repayment, and security.

16561. In order to obtain as high rates of interest as possible, the contracts may contain any conditions necessary to conform with Section 19 of the Federal Reserve Act, as amended, and with regulations established pursuant thereto by the Board of Governors of the Federal Reserve System, and demand deposits shall be subject to withdrawal at any time upon demand of the Treasurer.

16562. The contracts covering demand state deposits shall provide that each depositary shall render daily to the Treasurer a statement of the account showing the date of deposits, payments or withdrawals there from made during the day and the balance or amount of money of the state held by it at the close of the day. In the event that such demand deposits are interest bearing, the contract also shall provide that on the interest payment dates the depositary shall also furnish a statement showing the amount of interest due thereon together with the payment of the interest due. The contracts covering time or interest-bearing term deposits shall provide that the interest to be paid by the depositary bank shall be paid upon the expiration of the certificate or certificates of deposit issued as a part of the contract. The contract may also provide for periodic interest payments during the term of the deposit. The contract governing time deposits shall also provide that the amounts of interest shall be reported by the depositary bank at the time of payment of the interest, by statement showing the balances or amounts of money of the state held by it during the period and the amount of accrued interest thereon.

16563. The contracts shall be executed by the depositaries in triplicate. The Treasurer shall file one copy of each contract with the Controller.

16564. At the time of depositing State money in any bank, designated as a depositary, the Treasurer shall take and preserve a receipt, certificate of deposit, or such other evidence of the deposit as the Treasurer may require, stating the amount deposited and referring to the contract made between the depositary bank and the Treasurer.

16565. On the order of the Treasurer, depositary banks shall handle, collect and pay all checks, drafts and other exchange in the same manner and under the same conditions as checks, drafts, and other exchange of other depositors are handled, collected and paid.

Title 2, Division 4, Part 2, Chapter 4.5. Savings and Loan Association Deposits

Article 1. General

16600. (a) As used in this chapter, the following definitions shall apply:

(1) "Eligible savings and loan association" means a state or federal savings association, as defined in Section 5102 of the Financial Code, located in this state, insured by the Federal Savings and Loan Insurance Corporation, and selected by the Treasurer for the safekeeping of money belonging to or in the custody of the state. An "eligible savings and loan association" must have received an overall rating of not less than "satisfactory" in its most recent evaluation by the appropriate federal financial supervisory agency of the association's record of meeting the credit needs of the state's communities, including low- and moderate-income neighborhoods, pursuant to Section 2906 of Title 12 of the United States Code.

(2) "Eligible credit union" means a state or federal credit union located in this state, insured by the National Credit Union Administration, and selected by the Treasurer for the safekeeping of money belonging to or in the custody of the state.

(b) An eligible savings and loan association or credit union is eligible to receive deposits only to the extent it furnishes the security required by this chapter.

16601. Notwithstanding Section 16502, all other money in the State Treasury or under the control of the Treasurer belonging to or in the custody of the state, shall, so far as possible, be deposited by the Treasurer to the credit of the state in eligible banks as defined in Section 16500, eligible savings and loan associations, and eligible credit unions. Any sum in the State Treasury so deposited is deemed to be in the State Treasury. Any other amount so deposited is deemed to be held in trust by the Treasurer.

16602. Subject to the limitations of Article 4.5 (commencing with Section 16480) of Chapter 3, the Treasurer shall determine what amounts of money shall be deposited as deposits in savings and loan associations, and credit unions, and the rates of interest to be received.

16603. Subject to the applicable contract, the Treasurer may call in money from deposits in savings and loan associations and credit unions and place it in demand deposits in banks when necessary to meet current requirements.

16604. Deposits in any savings and loan association or credit union shall not exceed the total of its net worth.

16605. Notwithstanding Section 16506, all money belonging to or in the custody of the state under the control of any state officer or employee, other than the Treasurer, except petty cash funds authorized by the Department of Finance, shall be deposited in state or national banks in this state, state and federal savings associations in this state, as defined in Section 5102 of the Financial Code, and credit unions in this state, and under conditions as the Director of Finance prescribes. Savings and loan associations or credit unions receiving deposits shall be required to deposit with the Treasurer the same security as is required by this chapter for deposits made by the Treasurer. Savings and loan associations or credit unions receiving deposits of money from a county advanced or apportioned to it pursuant to Section 4481 of the Food and Agricultural Code shall be required to secure deposits in accordance with Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of Title 5.

16606. A state officer is not liable on his or her official bond for losses caused by the failure of a savings and loan association or credit union in which a deposit is made of money belonging to an inmate of a state institution, if the officer was required or permitted by law to act as a trustee or fiduciary with respect to the money and if he or she made the deposit in good faith and in accordance with law.

16607. The Treasurer is not responsible for any money deposited in a savings and loan association or credit union pursuant to this chapter, and while it remains so deposited.

16608. The Treasurer is responsible for the safekeeping, management and disbursement of the certificates of deposit received and the securities deposited with him, the interest received on deposits, and the proceeds of any sale under this chapter. The state is responsible for the custody and safe return of any securities so deposited.

16609. Any state officer or employee who deposits any money belonging to or in the custody of the state in any manner other than as prescribed in this chapter or Chapter 4 (commencing with Section 16500) is subject to forfeiture of his office or employment.

Article 2. Security for Deposits

16610. Security shall not be required for that portion of any deposit that is insured under any law of the United States.

16611. To be eligible to receive and retain deposits, a savings and loan association and credit union shall deposit with the Treasurer as security for deposits, securities specified in Section 16612, and approved by the Treasurer, in an amount in value at least 10 percent in excess of the amount deposited with the savings and loan association or credit union.

16612. The following securities may be received as security for deposits:

(a) Bonds, notes, or other obligations of the United States, or those for which the faith and credit of the United States are pledged for the payment of principal and interest, including the guaranteed portions of small business administration loans, so long as such loans are obligations for which the faith and credit of the United States are pledged for the payment of principal and interest.

(b) Notes or bonds or any obligations of a local public agency (as defined in the United States Housing Act of 1949 (42 U.S.C. Sec. 1452 et seq.)) or any obligations of a public housing agency (as defined in the United States Housing Act of 1937) for which the faith and credit of the United States are pledged for the payment of principal and interest.

(c) Bonds of this state or of any county, city, town, metropolitan water district, municipal utility district, municipal water district, bridge and highway district, flood control district, school district, water district, water conservation district or irrigation district within this state, and, in addition, revenue on tax anticipation notes, and revenue bonds payable solely out of the revenues from a revenue-producing property owned, controlled or operated by this state, or such local agency or district, or by a department, board, agency, or authority thereof.

(d) Registered warrants of this state.

(e) Bonds, consolidated bonds, collateral trust debentures, consolidated debentures, or other obligations issued by the United States Postal Service, federal land banks or federal intermediate credit banks established under the Federal Farm Loan Act, as amended, debentures and consolidated debentures issued by the Central Bank for Cooperatives and banks for cooperatives established under the Farm Credit Act of 1933, as amended, consolidated obligations of the Federal Home Loan Banks established under the Federal Home Loan Bank Act, bonds, debentures and other obligations of the Federal National Mortgage Association and of the Government National Mortgage Association established under the National Housing Act as amended, in the bonds of any federal home loan bank established under said act, bonds, debentures, and other obligations of the Federal Home Loan Mortgage Corporation established under the Emergency Home Finance Act of 1970, and in bonds, notes, and other obligations issued by the Tennessee Valley Authority under the Tennessee Valley Authority Act, as amended.

(f) Bonds and notes of the California Housing Finance Agency issued pursuant to Chapter 7 (commencing with Section 41700) of Part 3 of Division 31 of the Health and Safety Code.

(g) Promissory notes secured by first mortgages and first trust deeds upon residential real property located in California, provided that:

(1) Notwithstanding Section 16611, the promissory notes shall at all times be in an amount in value at least 50 percent in excess of the amount deposited with the savings and loan association;

(2) The State Treasurer issues regulations, establishes procedures for determining the value of the promissory notes and develops standards necessary to protect the security of the deposits so collateralized;

(3) The depository may exercise, enforce, or waive any right or power granted to it by promissory note, mortgage, or deed of trust; and

(4) The following may not be used as security for deposits:

(i) Any promissory note on which any payment is more than 90 days past due,

(ii) Any promissory note secured by a mortgage or deed of trust as to which there is a lien prior to the mortgage or deed of trust, or

(iii) Any promissory note secured by a mortgage or deed of trust as to which a notice of default has been recorded pursuant to Section 2924 of the Civil Code or an action has been commenced pursuant to Section 725a of the Code of Civil Procedure.

(h) Bonds issued by the State of Israel.

(i) Letters of credit issued by the Federal Home Loan Bank of San Francisco, which shall be in the form and shall contain provisions as the Treasurer may prescribe, and shall include the following terms:

(1) The Treasurer shall be the beneficiary of the letter of credit.

(2) The letter of credit shall be clean and irrevocable, and shall provide that the Treasurer may draw upon it up to the total amount in the event of the failure of the savings and loan association or credit union or if the savings and loan association or credit union refuses to permit the withdrawal of funds by the Treasurer or any other authorized state officer or employee.

16613. If it appears to him or her necessary for the security of the state, the Treasurer shall require as a condition of eligibility that a savings and loan association or credit union furnish an indemnity bond approved by the Treasurer, conditioned against loss by any depreciation in value that may occur in securities deposited as security for the safekeeping and prompt payment of deposits. The sureties shall not be stockholders of the principal.

16614. In lieu of deposits of securities, any otherwise eligible savings and loan association or credit union may deposit with the Treasurer bonds of admitted surety insurers as security for demand and time deposits.

16615. An admitted surety insurer is not eligible as surety for deposits in any one savings and loan association or credit union in amounts in excess of 10 percent of the capital and surplus of the surety as shown in the preceding report issued by the United States Treasury Department.

16616. On demand of the Treasurer, the Insurance Commissioner shall issue a certificate showing the qualifications of any admitted surety insurer as surety for deposits.

16617. The bond of an admitted surety insurer shall not be accepted as security for deposits unless it has been certified by the Insurance Commissioner as meeting the requirements of this chapter and unless it also holds a certificate of authority from the United States Treasury Department under which it is eligible as surety on federal bonds.

16618. The form of bonds required under this chapter shall be prescribed by the Attorney General.

16619. A surety upon any bond to secure deposits may terminate the bond as to future liability by giving 10 days' written notice of termination to the Treasurer. Such notice of termination shall not affect any liability accruing prior to the expiration of the 10-day period. Within 10 days after receipt of such a notice of termination, the Treasurer shall require other acceptable security or withdraw the deposits secured by the bond to be terminated.

16620. That portion of any security for deposit that is in excess of the requirements of this article may be withdrawn or released on the written consent of the Treasurer.

16621. If any savings and loan association or credit union fails to pay all or any part of deposits on demand of the Treasurer, pursuant to the terms and conditions of the contract relating to the deposit that is to be withdrawn in whole or in part, the Treasurer shall forthwith recover upon or convert the security therefor into money and disburse it according to law.

16622. If at any time the security deposited with the Treasurer is not deemed satisfactory by the Treasurer, he may require such additional security as is satisfactory to him.

Article 3. Custody of Securities

16625. As used in this article, "qualified trust company" means the trust department of any state or national bank in this state or a trust company authorized to act as such in this state.

16626. With the consent of the savings and loan association or credit union owning securities deposited or to be deposited with him or her as security, the Treasurer may:

(a) Authorize any qualified trust company or any federal reserve bank or any branch thereof or any state or national bank located in any city designated as a reserve or central reserve city by the Board of Governors of the Federal Reserve System or the

Federal Home Loan Bank of San Francisco to receive as his or her agent deposits of any securities approved under this chapter.

(b) Place and maintain for safekeeping as a trust deposit with any qualified trust company, or with any federal reserve bank or any branch thereof or the Federal Home Loan Bank of San Francisco any securities that have been received by him or her under this chapter.

(c) Whenever any qualified trust company accepts securities under paragraph (a) or (b) the trust company, with the prior approval of the Treasurer, may keep the securities for safekeeping with any state or national bank located in a city designated as a reserve or central reserve city by the Board of Governors of the Federal Reserve System.

16627. The Treasurer shall take from the qualified trust company or from any federal reserve bank or any branch thereof or the Federal Home Loan Bank of San Francisco a receipt for any securities received by it under this article. Neither the Treasurer nor the state is responsible for the custody and safe return of such securities until they are withdrawn from the qualified trust company or from any federal reserve bank or any branch thereof or from the Federal Home Loan Bank of San Francisco by the Treasurer.

16628. Any qualified trust company or any federal reserve bank or any branch thereof or the Federal Home Loan Bank of San Francisco to which securities are delivered, either as agent or depositary for the Treasury, shall make such disposition of the securities as the Treasurer directs and is responsible only for strict compliance with written instructions given to it by the Treasurer. All such securities are at all times subject to the order of the Treasurer.

16629. The charges of any qualified trust company or of any federal reserve bank or any branch thereof or the Federal Home Loan Bank of San Francisco for the handling and safekeeping of such securities are not a charge against the Treasurer but shall be paid by the owner.

16630. The Treasurer shall enter into contracts with savings and loan associations as in his or her judgment will be to the public advantage so to do. The contracts shall fix the duration of deposits and the rates of interest to be received, if any, the interest payment date, and provide conditions for their withdrawal, repayment, and security.

16631. In order to obtain as high rates of interest as possible, the contracts may contain any conditions necessary to conform with Section 5B of the Federal Home Loan Bank Act, as amended (12 USC Sec. 1425 (b)), and with regulations established pursuant thereto by the Federal Home Loan Bank Board.

16632. The contracts covering deposits shall provide that the interest to be paid by the savings and loan association or credit union shall be paid upon the expiration of the certificate or certificates of deposit issued as a part of the contract. The contract may also provide for periodic interest payments during the term of the deposit. The contract governing deposits shall also provide that the amounts of interest shall be reported by the savings and loan association or credit union at the time of payment of the interest, by statement showing the balances or amounts of money of the state held by the association or credit union during the period and the amount of accrued interest thereon.

16633. The contracts shall be executed by the savings and loan associations and credit unions in triplicate. The Treasurer shall file one copy of each contract with the Controller.

16634. At the time of depositing state money in any savings and loan association or credit union, designated as a depository, the Treasurer shall take and preserve a receipt, certificate of deposit, or any other evidence of the deposit as the Treasurer may require, stating the amount deposited and referring to the contract made between the depository savings and loan association or credit union and the Treasurer.

JOHN CHIANG
TREASURER
STATE OF CALIFORNIA

PMIA Performance Report

Date	Daily Yield*	Quarter to Date Yield	Average Maturity (in days)
10/16/17	1.15	1.14	195
10/17/17	1.15	1.14	193
10/18/17	1.15	1.14	193
10/19/17	1.15	1.14	192
10/20/17	1.15	1.14	192
10/21/17	1.15	1.14	192
10/22/17	1.15	1.14	192
10/23/17	1.15	1.14	189
10/24/17	1.15	1.14	187
10/25/17	1.15	1.14	186
10/26/17	1.16	1.14	187
10/27/17	1.16	1.14	195
10/28/17	1.16	1.14	195
10/29/17	1.16	1.14	195
10/30/17	1.16	1.14	190
10/31/17	1.16	1.14	184
11/01/17	1.16	1.14	191
11/02/17	1.16	1.14	195
11/03/17	1.16	1.14	195
11/04/17	1.16	1.15	195
11/05/17	1.16	1.15	195
11/06/17	1.16	1.15	194
11/07/17	1.16	1.15	196
11/08/17	1.16	1.15	197
11/09/17	1.17	1.15	198
11/10/17	1.17	1.15	197
11/11/17	1.17	1.15	197
11/12/17	1.17	1.15	197
11/13/17	1.17	1.15	194
11/14/17	1.17	1.15	193
11/15/17	1.17	1.15	196

*Daily yield does not reflect capital gains or losses

View Prior Month Daily Rates

LAIF Performance Report

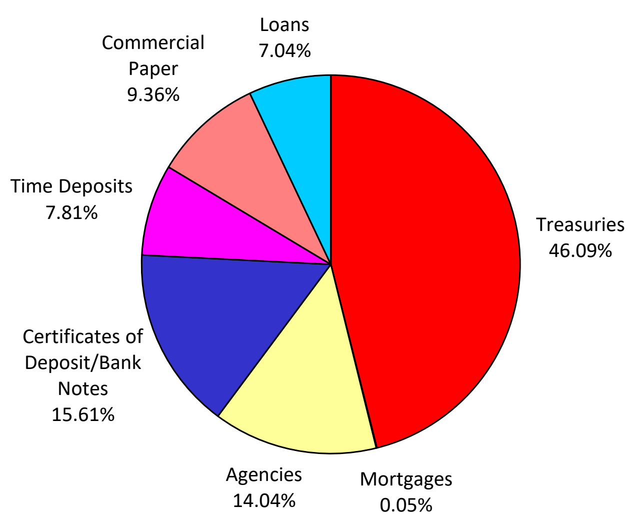
Quarter Ending 09/30/17

Apportionment Rate:	1.07%
Earnings Ratio:	.00002942867511750
Fair Value Factor:	.999042071
Daily:	1.11%
Quarter to Date:	1.08%
Average Life:	190

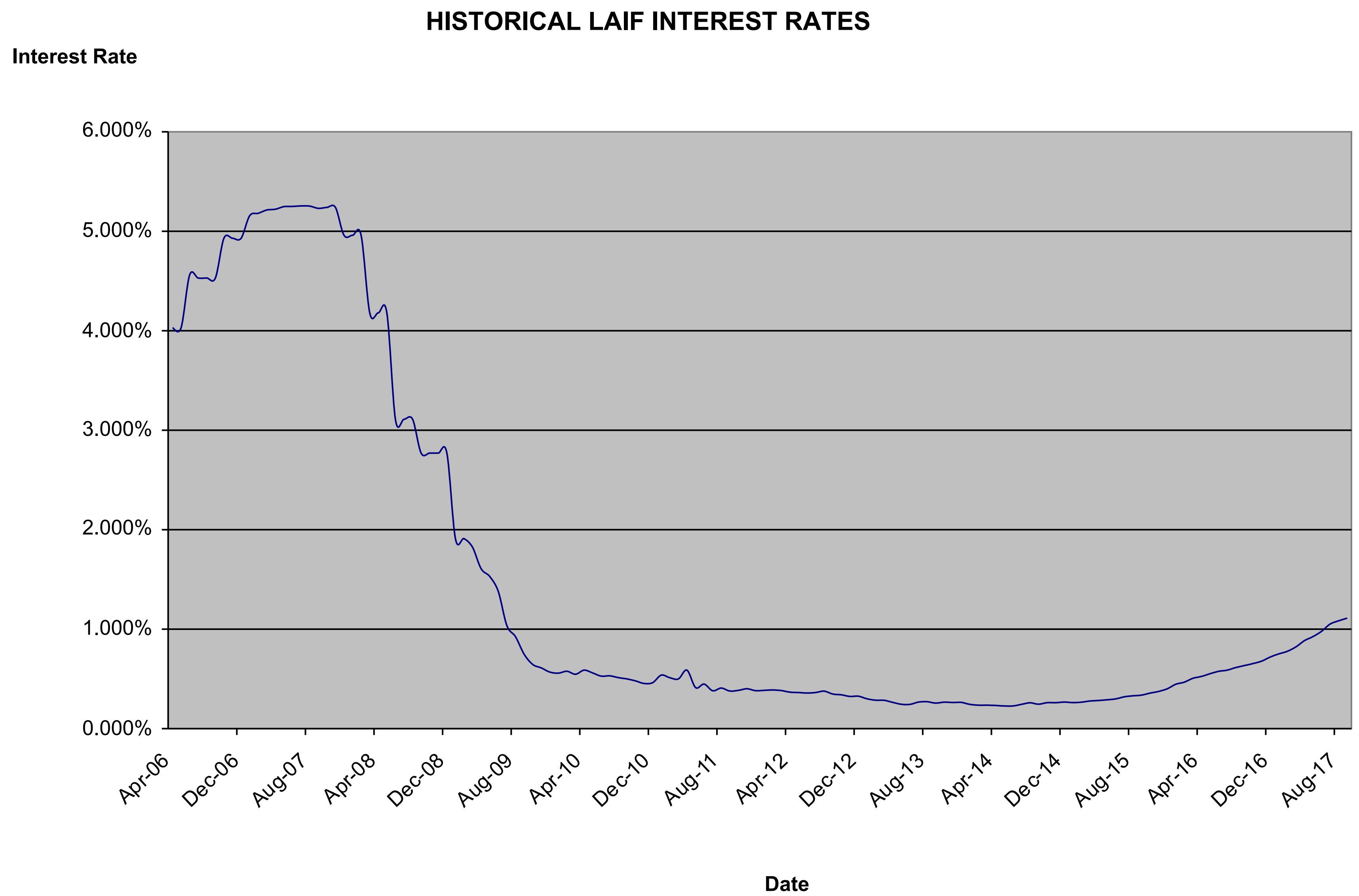
PMIA Average Monthly Effective Yields

Oct 2017	**1.143**
Sept 2017	1.111
Aug 2017	1.084

Pooled Money Investment Account Portfolio Composition 10/31/17 $72.4 billion



Based on data available as of 11/15/2017


HISTORICAL LAIF INTEREST RATES
Interest Rate
6.000%
5.000%
4.000%
3.000%
2.000%
1.000%
0.000%
Apr-06
Dec-06
Aug-07
Apr-08
Dec-08
Aug-09
Apr-10
Dec-10
Aug-11
Apr-12
Dec-12
Aug-13
Apr-14
Dec-14
Aug-15
Apr-16
Dec-16
Aug-17
Date

Jan-06	3.640%
Feb-06	3.640%
Mar-06	3.640%
Apr-06	4.030%
May-06	4.030%
Jun-06	4.560%
Jul-06	4.530%
Aug-06	4.530%
Sep-06	4.530%
Oct-06	4.930%
Nov-06	4.930%
Dec-06	4.930%
Jan-07	5.156%
Feb-07	5.181%
Mar-07	5.214%
Apr-07	5.222%
May-07	5.248%
Jun-07	5.250%
Jul-07	5.255%
Aug-07	5.253%
Sep-07	5.231%
Oct-07	5.240%
Nov-07	5.240%
Dec-07	4.960%
Jan-08	4.960%
Feb-08	4.960%
Mar-08	4.180%
Apr-08	4.180%
May-08	4.180%
Jun-08	3.110%
Jul-08	3.110%
Aug-08	3.110%
Sep-08	2.770%
Oct-08	2.770%
Nov-08	2.770%
Dec-08	2.770%
Jan-09	1.910%
Feb-09	1.910%
Mar-09	1.822%
Apr-09	1.607%
May-09	1.530%
Jun-09	1.377%
Jul-09	1.035%
Aug-09	0.925%
Sep-09	0.750%
Oct-09	0.646%
Nov-09	0.611%
Dec-09	0.569%
Jan-10	0.558%
Feb-10	0.577%
Mar-10	0.547%
Apr-10	0.588%
May-10	0.560%
Jun-10	0.528%
Jul-10	0.531%
Aug-10	0.513%

Sep-10	0.500%
Oct-10	0.480%
Nov-10	0.454%
Dec-10	0.462%
Jan-11	0.538%
Feb-11	0.512%
Mar-11	0.500%
Apr-11	0.588%
May-11	0.413%
Jun-11	0.448%
Jul-11	0.381%
Aug-11	0.408%
Sep-11	0.378%
Oct-11	0.385%
Nov-11	0.401%
Dec-11	0.382%
Jan-12	0.385%
Feb-12	0.389%
Mar-12	0.383%
Apr-12	0.367%
May-12	0.363%
Jun-12	0.358%
Jul-12	0.363%
Aug-12	0.377%
Sep-12	0.348%
Oct-12	0.340%
Nov-12	0.324%
Dec-12	0.326%
Jan-13	0.300%
Feb-13	0.286%
Mar-13	0.285%
Apr-13	0.264%
May-13	0.245%
Jun-13	0.244%
Jul-13	0.267%
Aug-13	0.271%
Sep-13	0.257%
Oct-13	0.266%
Nov-13	0.263%
Dec-13	0.264%
Jan-14	0.244%
Feb-14	0.236%
Mar-14	0.236%
Apr-14	0.233%
May-14	0.228%
Jun-14	0.228%
Jul-14	0.244%
Aug-14	0.260%
Sep-14	0.246%
Oct-14	0.261%
Nov-14	0.261%
Dec-14	0.267%
Jan-15	0.262%
Feb-15	0.266%
Mar-15	0.278%
Apr-15	0.283%

May-15	0.290%
Jun-15	0.299%
Jul-15	0.320%
Aug-15	0.330%
Sep-15	0.337%
Oct-15	0.357%
Nov-15	0.374%
Dec-15	0.400%
Jan-16	0.446%
Feb-16	0.467%
Mar-16	0.506%
Apr-16	0.525%
May-16	0.552%
Jun-16	0.576%
Jul-16	0.588%
Aug-16	0.614%
Sep-16	0.634%
Oct-16	0.654%
Nov-16	0.678%
Dec-16	0.719%
Jan-17	0.751%
Feb-17	0.777%
Mar-17	0.821%
Apr-17	0.884%
May-17	0.925%
Jun-17	0.978%
Jul-17	1.051%
Aug-17	1.084%
Sep-17	1.111%

CITY OF SEASIDE
STAFF REPORT

Item No.: 5.C.

TO: Successor Agency to the Redevelopment Agency of the City of Seaside

FROM: Craig Malin, City Manager

BY: Daphne Hodgson, Deputy City Manager Administrative Services

DATE: December 7, 2017

SUBJECT: **APPROVE AND FILE SUCCESSOR AGENCY CHECKS**

PURPOSE

It is requested that the Agency Board approve and file the accounts payable and wired payments made during the period of November 4, 2017 through November 24, 2017. In addition, approval of the payroll and benefits checks, direct deposits and wired payments related to the periods of November 9 and November 23, 2017 is requested. Total Accounts Payable and Payroll for the above referenced period is $9,456.50.

RECOMMENDATION

It is recommended that the Agency Board approve and file the attached checks.

BACKGROUND

In accordance with Government Code Section 37208, at each Agency Board meeting the Board is provided a listing of the payroll and general checks issued since the last report so that it can inspect and confirm these checks. Each purchase has been reviewed and approved by the department making the purchase at the time of procurement. The invoice has been reviewed by the Finance Department prior to payment to ensure that it conforms to the approved budget.

Therefore, in accordance with Government Code Section 37208, the above referenced, and linked list of checks conforms to the approved budget and has been paid. These checks are submitted to the Agency Board for inspection and confirmation.

A description of the checks and wires exceeding $10,000.00 is as follows:

There were no checks or wires exceeding $10,000.00 for the period covering November 4, 2017 through November 24, 2017.

The Checks report is available on the City's website here:
http://www.ci.seaside.ca.us/194/Check-Draft-Register

FISCAL IMPACT

The checks were budgeted and paid from the appropriate funds.

ATTACHMENTS

Reviewed for Submission to the
City Council by:

____
Craig Malin, City Manager

CITY OF SEASIDE
STAFF REPORT

Item No.: 5.D.

TO: City Council

FROM: Craig Malin, City Manager

BY: Rick Medina, Senior Planner

DATE: December 7, 2017

SUBJECT: **AUTHORIZATION FOR THE RETAIL SALE OF CHRISTMAS TREES BY HOME DEPOT ON A PORTION OF THE LAGUNA GRANDE SHOPPING CENTER PARKING LOT OWNED BY THE PARKING AUTHORITY.**

PURPOSE

Approval of a request from Home Depot to use a portion of the Parking Authority-owned parking lot adjacent to the Home Depot Garden Center for its seasonal sales of Christmas Trees during the month of November and December 2017.

RECOMMENDATION

It is recommended that the City Council and Parking Authority Board approve this request and authorize the Executive Director of the Parking Authority to execute a License Agreement (Attachment 1) with Home Depot to authorize the use of Parking Authority-owned property for a “Christmas Tree” seasonal sales lot.

BACKGROUND

Home Depot requests approval for a seasonal sales lot for the retail sale of Christmas trees from November 21, 2017 through December 29, 2017 on a portion of the parking lot; a portion of which is owned by the Parking Authority as shown on Attachment 2. Site plan of the Christmas tree sales area is provided as Attachment 3. Set-up and breakdown of the event would occur between November 21 and November 23, 2017 and December 26 and December 29, 2017, respectively. The sales lot will be closed and re-established as a parking lot upon sale of all trees but in no event later than January 2, 2018. Any remaining unsold trees will be recycled and all ancillary equipment and trash will be disposed of by the operators of the sales lot.

Annually, since 2002, the Parking Authority has authorized Home Depot to sell Christmas trees at this location. The City has not received any complaints regarding this activity at the proposed location in past years. In total, sixteen (16) parking spaces adjacent to the Garden Center would be used for the sales and storage of Christmas trees.

Additionally, three existing standard parking spaces would used for interim accessible parking stalls to replace the three existing accessible parking stalls that are located within the proposed Christmas Tree sales area.

The sale hours are consistent with Home Depot's hours of operation: 6 AM to 10 PM daily. Prior to receiving a Certificate of Occupancy to begin selling Christmas trees, Home Depot would be responsible for providing the required Certificate of Insurance naming the City of Seaside as additional insured for $2,000,000.00 per occurrence and $4,000,000.00 as an aggregate minimum.

FISCAL IMPACT

There is no anticipated fiscal impact to the Parking Authority associated with this License Agreement.

ATTACHMENTS

1. Attachment 1 - Lincese Agreement 1
2. Attachment 2 - Location Map
3. Attachment 3 - Site Plan
4. Attachment 4 - Site Photographs

Reviewed for Submission to the
City Council by:

Craig Malin, City Manager

LICENSE AGREEMENT

THIS AGREEMENT is entered into this 7th day of December, 2017, by and between the **PARKING AUTHORITY OF THE CITY OF SEASIDE**, a municipal corporation, hereinafter referred to as "Parking Authority," and CITY OF SEASIDE, hereinafter referred to as "City," and **HOME DEPOT,** hereinafter referred to as "Tenant."

1. PREMISES

The Parking Authority and City authorizes the Tenant to use the land known as Assessor's Parcel Number 011-561-013, shown on the attached site plan and located within the Laguna Grande Shopping Center adjacent to the Home Depot property at 1590 Canyon Del Rey Boulevard.

2. TERM OF AGREEMENT

The parties hereto agree that the Tenant shall have exclusive use of the premises herein described from November 21, 2017 to December 29, 2017 with retail sales activity limited to the period from November 24, 2017 to December 25, 2017.

3. INSURANCE

The Tenant shall procure and maintain, at its own cost and expense, an insurance policy acceptable to the Parking Authority and City, naming Parking Authority and the City as insured thereunder, in the minimum amount of two million dollars ($2,000,000.00) per occurrence and four million dollars ($4,000,000.00) as an aggregate, insuring the Tenant and Parking Authority and the City against any and all liabilities arising from the use of the premises as set forth in this Agreement. The Tenant shall provide the Parking Authority and City with a certificate of insurance reflecting the terms of this Paragraph. The Tenant shall maintain said insurance in full force and effect throughout the entire term of this Agreement.

4. INDEMNITY

In consideration of the License Agreement issued by the Parking Authority and the City to allow the tenant to use a portion of the Laguna Grand Shopping Center Parking Lot owned by the Parking Authority for the sales of Christmas Trees, the tenant hereby agrees to defend, indemnify, and hold harmless the Parking Authority, the City, its agents, officers, and employees from and against all claims, damages, losses, judgments, liabilities, expenses, and other costs including litigation costs and attorney's fees from every cause, including but not limited to injury to person(s) or property or wrongful death arising directly or indirectly out of any act or omission of the tenant or its agents, officers, and employees or volunteers resulting or alleged to have resulted, directly or indirectly, wholly or partially, from the tenant's aforementioned use of the property. In addition, the tenant agrees to waive subrogation rights for any Workers' Compensation related injuries. The Parking Authority and the City make no warranty as to the suitability of the property for the aforementioned use of the property. Therefore, the tenant has a duty to inspect the site for potential hazards; correct any hazards discovered and warn participants of any potential for hazards.

5. CONDITIONS OF RENTAL

Rental of said premise is subject to the following terms and conditions:

(a) Approval of a Limited Term Permit by the Zoning Administrator is required prior to the set-up, delivery and/or sale of Christmas trees.

(b) Christmas tree delivery and sales shall be set-up and occur in a manner consistent with the site plan received by the City of Seaside Resource Management Department – Planning Division on November 8, 2017.

(c) All temporary signs, banners, fencing and other materials used in connection with the Christmas tree sales are required to comply with City regulations. All temporary signs shall first receive approval by the Seaside Planning Division for the installation of a temporary sign.

(d) Any and all tents used in conjunction with this use shall be fire-rated to the satisfaction of the City's Fire Department.

(e) The existing fire exit on the east side of the Home Depot building shall be labeled as "Fire Exit, Do Not Block" and shall provide unimpeded access from the fire exit to beyond the designated sales area.

(f) All main travel lanes as shown on the approved site plan must be clear to allow through traffic through the parking lot.

(g) The subject property shall be cleared of all litter and Christmas tree refuse materials at least once a day throughout the approved event. The subject property shall be completely cleared of litter and ancillary equipment at the end of the event.

(h) The applicant shall be responsible for preventing any debris associated with pine needles and sawdust from tree trimming and the loading and unloading of Christmas trees into vehicles from entering the City's storm drain system.

(i) In the event the site is not cleared of litter and debris as required, the City Public Works staff will notify the applicant of noncompliance; if the applicant fails to remove the litter and debris in accordance with the deadlines specified in the notice of noncompliance, the City will complete the required maintenance and the Tenant will be responsible for all costs that would include City staff time and materials required for abatement.

(j) The tenant shall provide temporary fencing to protect the existing planter islands from damage. The fencing is required to be installed prior to delivery or sales activities; temporary fencing is required to be removed upon cessation of tree sales, or no later than January 2, 2018, which ever occurs first.

(k) The tenant shall schedule inspection with the City of Seaside Resource Management Services Department showing the placement of the proposed temporary fencing prior to installing the fence.

(l) The temporary fencing shall not damage any City facilities or paving. The tenant shall obtain a City Encroachment Permit from the Public Works Department - Engineering Division prior to installation of any fencing that encroaches into the public right-of-way.

(m) The tenant shall install reflectors on 5-foot centers, 3 feet above the pavement, on the temporary fencing facing vehicles on the westerly and southerly sides of the tree lot for traffic visibility

(n) Prior to beginning Christmas tree sales, the tenant must receive approval of a final inspection with both the City Chief Building Official and Fire Marshall; and, relocate the three (3) accessible parking stalls to location designated sales on the project site plan, with appropriate temporary accessible parking signage put in place

(o) Prior to installation of any temporary lights, the tenant shall obtain approval of any and all required building permits, including electrical permits, prior to installation.

(p) This permit may be revoked by the Parking Authority or the City at any time for violation of any of the terms or conditions of this permit by the tenant, its agents, or representatives.

(q) For purposes of compliance, the tenant, its agents or representatives agree not to deny or impede access to the subject property by Parking Authority or City employees in the performance of their duties.

(r) No sale of Christmas trees shall occur until the tenant has provided proof of the insurance policy and the indemnification agreement as required in this License Agreement.

6. UTILITIES

The Tenant shall be solely responsible for all utilities furnished to said premises.

7. RESPONSIBILITY FOR PREMISES

The tenant shall quit and surrender the premises following termination of use under this Agreement in as good a state and condition as they were at the commencement of such use, reasonable wear and tear thereof and damages by the elements accepted. The tenant also agrees that if said premises are damaged during the terms of this Agreement, by the act, default, or negligence of the tenant, its officers, agents, employees, guests, patrons, or any person or persons permitted onto said premises by the tenant, the tenant shall pay to the Parking Authority upon demand such sum as shall be necessary to restore said premises to the condition they were in at the commencement of use pursuant to this Agreement.

8. COMPLIANCE WITH LAWS

The tenant shall comply with all laws, statutes, ordinances, rules or regulations of the United States, the State of California, the City of Seaside and the Parking Authority of the City of Seaside and any department or agency thereof, including such regulations now in force or to be established pertaining to the use of the premises.

9. SUBLETTING, ASSIGNMENT

The tenant shall not sublease the whole or any part of the premises, not assign, hypothecate, or mortgage any or all of its rights hereunder.

10. TERMINATION

The Parking Authority and the tenant specifically agree that any default by the tenant shall be an immediate breach and the Parking Authority shall have an immediate right to terminate this Agreement upon twenty-four (24) hours written notice to the tenant.

11. NOTICE

All notice herein provided to be given, or which may be given by either party to the other, shall be deemed to have been fully given and fully received when made in writing and deposited in the United States mail, certified postage prepaid, and addressed to the respective parties as follows, or personally served on:

Parking Authority of
The City of Seaside
Attn: Executive Director
440 Harcourt Avenue
Seaside, CA 93955

Home Depot
Attn: Store Manager
1590 Canyon Del Rey Boulevard
Seaside, CA 93955

12. LEGAL ACTION

Should either party to this Agreement bring legal action against the other, the case shall be handled in Monterey County, California, and the party prevailing in such action shall be entitled to a reasonable attorney's fees which shall be fixed by the judge hearing the case and such fee shall be included in the judgment, together with all costs.

13. ENTIRE AGREEMENT

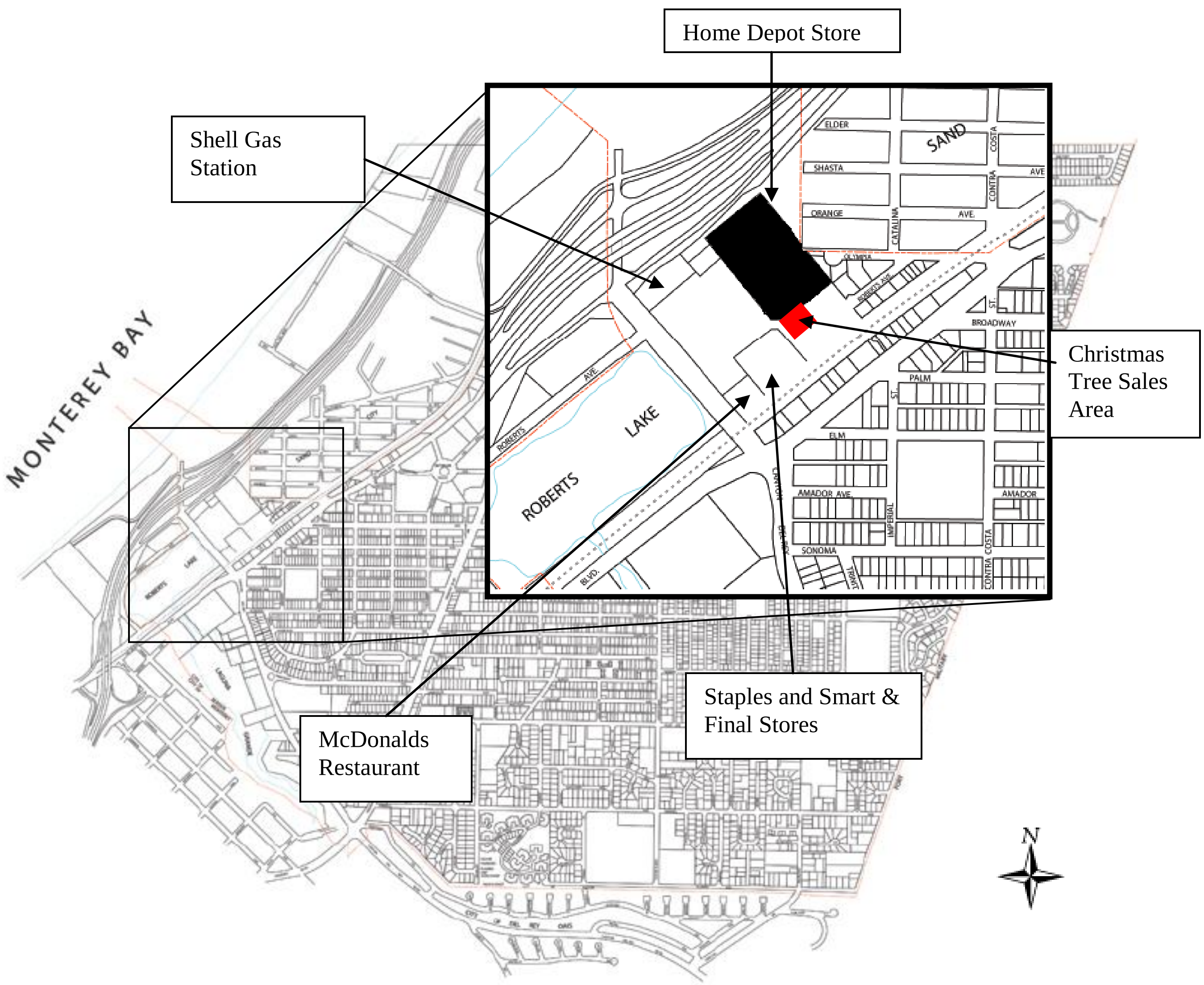
This Agreement constitutes the entire Agreement between the tenant and the Parking Authority and the City. No term, provision or condition of this Agreement may be altered or amended, nor may any term, provision or condition be added to this Agreement, except by a written amendment be executed by both the tenant and Parking Authority.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the 7th day of December, 2017.

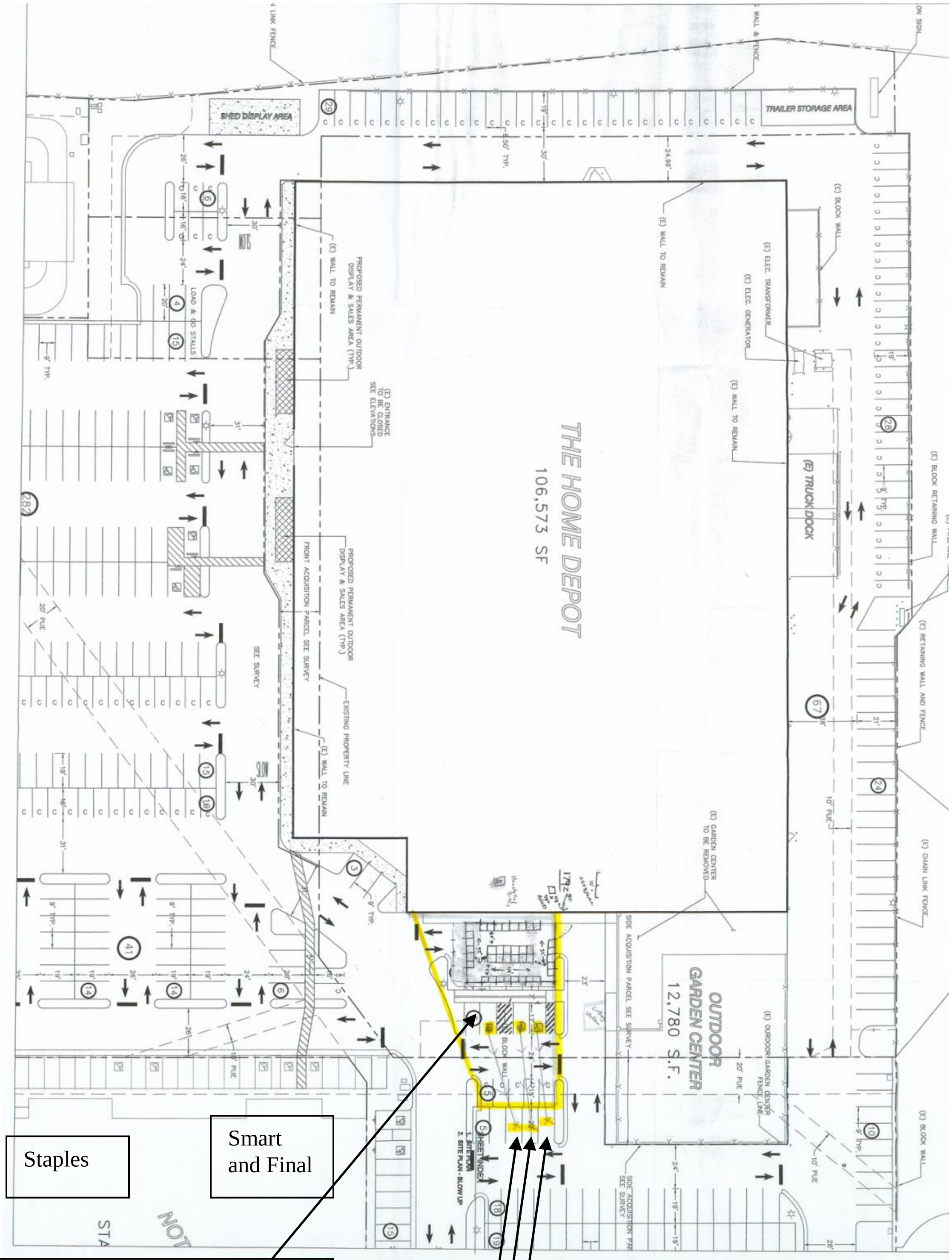
PARKING AUTHORITY OF THE CITY OF SEASIDE ("Parking Authority")	**HOME DEPOT ("Tenant")**
______________________________	______________________________
Craig Malin, Executive Director	**Home Depot Representative**

Attachment 2

LOCATION MAP



SITE PLAN



Christmas Tree Sales Area -

Interim Accessible Parking Stalls

Attachment 4

SITE PHOTOS

View of “Christmas Tree” Sales Area from Main Parking Lot Looking North

View of “Christmas Tree” Sales Area from Rear Parking Lot Looking West

CITY OF SEASIDE
STAFF REPORT

Item No.: 6.A.

TO: Successor Agency to the Redevelopment Agency of the City of Seaside

FROM: Craig Malin, Executive Director

BY: Craig Malin, City Manager

DATE: December 7, 2017

SUBJECT: **CITY AND SUCCESSOR AGENCY ACTIONS TO IMPLEMENT THE SEASIDE RESORT PROJECT**

PURPOSE

The purpose of this item is to consider authorizing a series of Successor Agency and City actions that are required to implement the provisions of the Long Range Property Management Plan ("LRPMP") with respect to LRPMP Project #12 -- the Seaside Resort Development Properties ("SRD Properties"). These actions include City Council consideration of a Second Amended and Restated Disposition and Development Agreement with Monterey Bay Resort, LLC, a Nevada limited liability company ("Developer") (with the same purchase prices as the First Restated DDA) and a Second Amended and Restated Ground Lease for the Bayonet and Black Horse golf courses ("Golf Courses") also with Monterey Bay Resort, LLC (or an affiliate) ("Tenant"). Collectively, these actions are intended to implement the Seaside Resort Project.

RECOMMENDATION

It is recommended that the City Council hold a public hearing on providing an economic subsidy to the Developer, and that the City Council and Successor Agency Board then approve the following resolutions authorizing actions to facilitate implementation of the Seaside Resort Project as follows: (in the sequence shown)
1. A Resolution of the Board of Directors of the Successor Agency to the Redevelopment Agency of the City of Seaside requesting the Oversight Board to make findings to provide for the repayment to the City of Seaside of the loan made by the City pursuant to the 2005 Conveyance Agreement between the City and the Redevelopment Agency of the City of Seaside, and taking certain related actions.

2. A Resolution of the Board of Directors of the Successor Agency to the Redevelopment Agency of the City of Seaside (I) authorizing the conveyance of an approximately 70-acre site

located at the northwest corner of General Jim Moore Boulevard and Coe Avenue in the City of Seaside to the City pursuant to the Successor Agency's Long Range Property Management Plan, (II) authorizing the Successor Agency to enter into an Assignment, Assumption and Administration Agreement with the City in connection with an Amended and restated Disposition and Development Agreement with respect to the site, (III) approving Addendum No. 4 to the Final Environmental Impact Report prepared for the underlying project, and alternatively, finding the actions exempt from the California Environmental Quality Act, and (IV) taking certain related actions.

3. A Resolution of the City Council of the City of Seaside (I) authorizing the acceptance of an approximately 70-acre site located at the northwest corner of General Jim Moore Boulevard and Coe Avenue in the City of Seaside from the Successor Agency to the Redevelopment Agency of the City of Seaside Pursuant to the Successor Agency's Long-Range Property Management Plan, (II) authorizing the City to enter into a Master Taxing Entity Agreement with respect to the site, (III) authorizing the City to enter into an Assignment, Assumption and Administration Agreement in connection with an Amended and Restated Disposition and Development Agreement with respect to the site, (IV) authorizing the City to enter into a Second Amended and Restated Disposition and Development Agreement with respect to the site, which agreement includes provisions for the sharing of Transient Occupancy Tax revenues generated by development on the site, (V) authorizing the City to enter into a Second Amended and Restated Ground Lease with respect to the Black Horse and Bayonet Golf Courses, (VI) approving an Addendum pursuant to the California Environmental Quality Act, and (VII) taking certain related actions.

BACKGROUND

In 1996, the City purchased the approximately 400-acre Bayonet and Black Horse golf courses ("Golf Courses") from the US Army. The City purchased the property with City funds. Redevelopment tax increment funds were not used. On January 15, 1997, the City and BSL Golf of California, Inc. ("BSL") entered into a 75-year ground lease ("Original Lease") for the operation and maintenance of the Golf Courses.

In 2005, the City Council and the Redevelopment Agency of the City of Seaside ("Former Agency") entered into a Conveyance Agreement ("2005 Conveyance Agreement") (City Council Resolution No. 05-45 and Former Agency Resolution No. 05-06 Ft. Ord-06) whereby approximately 80 acres of the SRD Properties were transferred to the Former Agency. The Former Agency concurrently entered into a Disposition and Development Agreement ("Original DDA") with Seaside Resort Development, LLC ("SRD") to develop resort and related facilities within the 80-acre SRD Properties, certified the Seaside Resort Final EIR ("FEIR"), approved land use entitlements and adopted Project Conditions authorizing the development of resort and related facilities on the 80 acres. The SRD Properties were conveyed by the City to the Former Agency to facilitate redevelopment of the SRD Properties and to take advantage of provisions of Community Redevelopment Law that would benefit the City and Former Agency and would strengthen the City's legal positions in developer negotiations. The 2005 Conveyance Agreement essentially functioned as a loan, by providing that as the Former Agency received revenues from SRD Properties sales under the Original DDA, that revenue would be forwarded to the City.

In 2005, concurrent with the Former Agency's approval of the Original DDA, BSL sold and assigned its interest in the Original Lease to B&B Golf Course Properties, LLC ("B&B"), an affiliate of SRD. The Original Lease was amended and restated at that time ("First Restated Ground Lease") to, among other things, terminate the Original Lease with respect to the SRD Properties portion of the leased premises and extend the lease term for the remaining Golf Course property to its original 75 years.

In 2007, the Former Agency approved a final subdivision map for, and sold an approximately 10 acre portion of the original SRD Properties to SRD for the purpose of creating 30 residential lots. This sale reduced the original 80-acre SRD Properties to approximately 70 acres.

Development of the SRD Properties was scheduled to continue through 2024, but did not proceed to completion because of the unavailability of resort financing as a result of the so-called 2008 "great recession" and subsequent enactment of AB X1 26 in June 2011 that, in conjunction with the California Supreme Court's decision in California Redevelopment Association, et al., v. Ana Matosantos et al., 53 Cal.4th 231(2011), led to the dissolution of the Former Agency on February 1, 2012, and creation of a Successor Agency and Oversight Board of the Former Agency ("Successor Agency" and "Oversight Board").

On February 5, 2014, the Successor Agency, and subsequently, the Oversight Board and California Department of Finance ("DOF"), approved an Amended and Restated Disposition and Development Agreement with respect to the SRD Properties ("First Restated DDA") that, among other things, eliminated future cash obligations of the Former Agency, authorized SRD to pay off a Former Agency loan, granted SRD "credits" in return for eliminating certain future cash obligations of the Former Agency and for funds advanced by SRD to pay off a Former Agency loan (which credits can be applied to future purchases of the SRD Properties), extended certain dates for performance, authorized for-sale residential uses in the Timeshare Component and authorized staged development of the Hotel as an alternative to full development of the Hotel Component as a single project.

The Successor Agency then prepared the Long Range Property Management Plan ("LRPMP") to guide the management and disposition of Former Agency property, which is now held by the Successor Agency, including the SRD Properties. By letter dated May 29, 2015, the DOF approved the LRPMP, as revised. The LRPMP authorizes transfer of the SRD Properties to the City, subject to the City entering into a compensation agreement with each of the Affected Taxing Entities to compensate them for the Property. The DOF also provided direction to the Successor Agency to expeditiously wind down the affairs of the Former Agency, including assigning administration of the Project to the City.

On May 16, 2016, City and Successor Agency staff briefed the Oversight Board regarding proposed future actions to enable the transfer of the SRD Properties from the Successor Agency to the City pursuant to the LRPMP.

In mid-2016, the City staff prepared a form of compensation agreement, entitled the Master

Taxing Entity Agreement ("Tax Agreement") in accordance with the provisions of Health and Safety Code 34188 ("HSC 34188"). Execution of the Tax Agreement by all of the Affected Taxing Entities is a condition to the Successor Agency conveying the SRD Properties and assigning the First Restated DDA to the City. The Tax Agreement provides that the Affected Taxing Entities will receive the sales proceeds of the SRD Properties based on their share of the basic 1% property tax levied on SRD Properties. Subsequent to the May 16, 2016 Oversight Board briefing, City staff met with representatives of the Affected Taxing Entities to explain the terms of the Tax Agreement. Several have already executed the Tax Agreement.

The actions described in this staff report are, collectively, intended to effect the transfer of the SRD Properties to the City, assign administration of the Project to the City, compensate the Affected Taxing Entities, repay the City for the SRD Properties in accordance with the formula in the Dissolution Law, and enable the Seaside Resort Project to proceed, pursuant to a Second Amended and Restated Disposition and Development Agreement ("Second Restated DDA") and a Second Amended and Restated Ground Lease ("Second Restated Ground Lease") that will supersede the First Restated DDA and First Restated Ground Lease, respectively, which the City would enter into with Developer and Tenant, respectively, which will thereafter be obligated to complete development of the Project.

STAFF ANALYSIS

Compensation Agreement With Affected Taxing Entities. As described above, the LRPMP requires that revenue received from the sale of SRD Properties be shared among the Affected Taxing Entities to compensate them for the SRD Properties in proportion to each Taxing Entity's share of the base property tax pursuant to HSC 34188. The Tax Agreement is a condition to the Successor Agency conveying the SRD Properties to the City and assigning the First Restated DDA to the City. The Tax Agreement provides that the Affected Taxing Entities will receive the sales proceeds of the SRD Properties to which they are entitled.

The Tax Agreement is included as Exhibit B to Council Resolution No. ______. Exhibit A to the Tax Agreement includes an estimate of sales proceeds to be received by the Affected Taxing Entities based on the current applicable tax distribution formula.

Council Resolution No. ____ authorizes the Mayor to execute the Tax Agreement on behalf of the City.

Property Conveyance. Successor Agency staff has prepared a Quitclaim Deed ("Deed") that will convey the SRD Properties from the Successor Agency to the City (Exhibit A to Successor Agency Resolution No. ______). Exhibit A to the Deed describes the SRD Properties to be conveyed, being the remaining approximately 70 acres of the SRD Properties not previously sold to SRD.

Successor Agency Resolution No ______ authorizes the Chair to execute the Deed and is subject to the effectiveness of the resolution of the Oversight Board approving the foregoing. The City must execute a Certificate of Acceptance (attached to the Deed) to accept the conveyance of the SRD Properties from the Successor Agency.

Assignment, Assumption and Administration Agreement. The Successor Agency staff has prepared an Assignment, Assumption and Administration Agreement between the Successor Agency and City, pursuant to which the Successor Agency assigns its rights and obligations in and under the First Restated DDA to the City and the City accepts and assumes such rights and obligations, and the City agrees to administer the First Restated DDA (Exhibit B to Successor Agency Resolution No. ______ and Exhibit C to City Council Resolution No. _____________).

The Successor Agency Resolution No. ______ authorizes the Chair to execute an Assignment, Assumption and Administration Agreement the City subject to the effectiveness of the resolution of the Oversight Board approving the foregoing.

2005 Conveyance Agreement. The City purchased the Golf Courses and the SRD Properties from the US Army in 1996 using City funds. Redevelopment tax increment funds were not used. The City transferred the SRD Properties to the Former Agency in 2005 pursuant to the 2005 Conveyance Agreement, which provided that the Former Agency repay the City as the SRD Properties were sold, as though the City had made a loan to the Former Agency.

Pursuant to the Dissolution Law, with narrow exceptions, agreements between the City and the Former Agency, including the 2005 Conveyance Agreement, became unenforceable as of February 1, 2012. However, the Dissolution Law was amended to provide that a "loan agreement" between the Former Agency and the City shall be deemed to be an enforceable obligation if the Successor Agency has received a finding of completion from the Department of Finance ("DOF") (it was received on March 28, 2014) and the Oversight Board makes a finding that the subject loan was made for legitimate redevelopment purposes. The Dissolution Law defines a "loan agreement" to include an agreement whereby the City transferred real property to the Former Agency to use for a lawful purpose and the Former Agency was obligated to pay the City for the real property. With appropriate Oversight Board findings and DOF approval, under the Dissolution Law, the City will be repaid for the SRD Properties out of surplus property tax revenues via the Recognized Obligations Payment Schedule ("ROPS").

Successor Agency Resolution No. _________ requests the Oversight Board to make findings that the City's loan pursuant to the 2005 Conveyance Agreement was made for legitimate redevelopment purposes. The Oversight Board resolution making findings is subject to DOF review and approval.

Ownership Transfer ("Assignment") of First Restated DDA and First Restated Ground Lease. In mid-2015, SRD entered into informal discussions to update and obtain feedback from staff concerning SRD's renewed efforts to secure financing for the Hotel Component of the Resort Project. Discussions between SRD and several prospective financing partners ultimately led to SRD discussions with the Developer and Tenant during which they expressed interest in assignment of 100% of SRD's interest in the First Restated DDA and 100% of B&B's interest in the First Restated Ground Lease. SRD's interest in assignment to the Developer and Tenant was formally expressed to the City in a meeting with the City Manager in mid-August, 2017.

Staff engaged Coldwell Banker Real Estate Hotels ("CBRE Hotels") (formerly PKF Consulting

USA), to review Developer's and Tenant's experience and qualifications to assume SRD's & B&B's interest in the First Restated DDA and First Restated Ground Lease, and to assume responsibility for completion of the Project. CBRE Hotels was provided resumes for Mr. Michael Lutton and Mr. Michael Biller, managing members of Developer and Tenant, that indicate they have participated in development of complicated mixed-use projects that include hotel/resort, whole or shared ownership and/or golf similar to the Seaside Resort Project. CBRE Hotels concluded that Developer's and Tenant's managing members possess the necessary qualifications and experience to develop, operate (or bring in a qualified operating partner) and ultimately finance the Seaside Resort Project.

Council Resolution No. ______ (i) consents to the assignment by SRD of all of the existing First Restated DDA to Developer, as provided for in the Second Restated DDA; (ii) consents to the assignment by B&B of all of the existing First Restated Ground Lease to Developer as provided for in the Second Restated Ground Lease and (iii) authorizes the Mayor to execute the Second Restated DDA and the Second Restated Ground Lease with Tenant.

Second Restated Ground Lease Term Modifications. Tenant has also requested, in addition to ownership transfer, that the City extend the term of the First Restated Ground Lease to its original 75-year term, which currently has about 63 years remaining. The requested extension is consistent with the City's long-term goal of integrating Golf Course operations with overall resort operation. The lease term extension would become effective on the date the City grants a Certificate of Occupancy (temporary or final) for the Final Hotel Stage, whichever is issued first. Additional modifications to the ground lease include a provision allowing the City to conduct the 2018 4th of July fireworks displays at the Golf Courses without charge, and a provision reducing the maximum amount of water that can be used to irrigate the Golf Courses from 540 afy to 500 afy. A number of additional technical and/or editorial modifications have been made by City's Special Counsel, with Tenant's concurrence, to clarify lease terms or to conform to current law. The Second Restated Ground Lease is Attachment 1 to this Report.

Second Restated DDA Term Modifications. Developer has also requested, in addition to the ownership assignment, several modifications to the First Restated DDA provisions including: (i) an economic development subsidy in the form of a sharing of Transient Occupancy Tax ("TOT") with Developer, (ii) allowing Developer to purchase the 2.09 acre Golf Clubhouse site (currently a part of the Golf Courses) and annex it to the Hotel Component land, and (iii) changes to start and completion dates for the Hotel Phases in the Schedule of Performance (Second Restated DDA Attachment 2). These proposed changes are discussed in detail in subsequent sections of this Report. City Special Counsel, with Developer's concurrence, has made additional technical and/or editorial modifications to clarify City and Developer responsibilities. Most are intended to clarify existing language and streamline the permitting, development and construction process while retaining the legal protections needed to assure orderly development and that the City's ultimate objectives are achieved. The Second Restated DDA is Attachment 2 to this Report.

Transient Occupancy Tax ("TOT") Revenue Sharing. As noted above, Developer has requested that the City authorize an economic development subsidy, consisting of sharing of Transient Occupancy Tax ("TOT") revenue produced by the Resort Project (project-wide) with

Developer, at a ratio of 20% City/80% Developer for the first 5 years and 35% City/65% Developer, for subsequent years 6 through 20. CBRE Hotels, which has advised the City on financial aspects of the Seaside Resort Project from Project inception in 2005, was asked to review Developer's proposed TOT sharing request and to advise if it is warranted. CBRE Hotels advises that Developer's request for the aforementioned TOT economic development subsidy is supportable based on the needs for financing a 275 room (or more) upper upscale to luxury hotel in the current hotel financing marketplace, and the return requirements of Developer and their capital investors. Article 4 of the proposed Second Restated DDA incorporates the following language:

> ARTICLE 4. TOT BASED PAYMENTS BY AND TO CITY. In addition to rooms of the Hotel Component, Developer may develop units in the Timeshare Component or residences in the Residential Component that generate transient occupancy taxes and such units or residences may be developed in phases or stages. Upon the completion of any such Hotel phase or stage, Timeshare phase or stage, or Residential phase or stage that generates transient occupancy tax. City shall pay to the Developer affiliates that own(s) the land on which the various components of the Project are located, periodic payments of an amount equal to eighty percent (80%) of the transient occupancy taxes actually received by City from the applicable owner (or its operator) from operations of said rooms of the Hotel Phase or stage, units of the Timeshare Phase or stage, or residences of the Residential Phase or stage that are subject to transient occupancy taxes which are actually paid under Seaside Municipal Code Chapter 3.24, for the first five (5) years that transient occupancy taxes are first generated for said rooms of the Hotel Phase or stage, units of the Timeshare Phase or stage, or residences of the Residential Phase or stage and sixty-five percent (65%) of transient occupancy taxes for years six (6) through twenty (20) that said transient occupancy taxes are generated. City shall make such payments from time to time within fifteen (15) days after receipt of any such transient occupancy tax being used hereunder to determine and measure the amount of the periodic City payments. City shall make such payments by check to such owner mailed to the address of such owner provided to City in writing (and referring to this Article 4). If City changes its transient occupancy tax rate after the date of this Agreement, then the percentage shares described above shall be reasonably adjusted by City in writing to preserve the intended economic benefits to City and Developer of the percentage shares described above.
> In consideration of City entering into this Restated DDA, commencing on December 7, 2017 and continuing until the material commencement of Improvements by Developer to the land of the First Hotel Stage, Developer shall pay to City the sum of Fifteen Thousand One Hundred and Twenty and No/100 Dollars ($15,120.00) per calendar month, in advance, prorated for any partial month within such period, without prior demand and without offset or deduction

Economic Development Subsidy Notice and Report. Government Code Section 53083 ("GC Sec. 53083") requires that the City make available to the public in written form prior to a noticed public hearing and through the City's website, information regarding the City Council's consideration of any proposed economic development subsidy prior to the authorization of such subsidy. The TOT sharing authorized by Article 4 of the Second Restated DDA is such a subsidy. The requirements of GC Sec. 53085 that apply prior to such consideration have been satisfied. The "Notice of Hearing and Report Pursuant to Government Code Section 53083 (Attachment 3 to this Report) have been posted on the City's website prior to City Council consideration.

Based on analysis by CBRE Hotels, the cumulative subsidy over the 20-year subsidy period is estimated to total approximately $72,068,608. The cumulative impact of the completed project on City revenues, taking the subsidy into account, is addressed below in the Fiscal Impacts section.

Council Resolution No. ____, approves and authorizes execution of the Second Restated DDA with Developer, including the economic development subsidy described in Article 4 above.

Golf Clubhouse Property. As summarized above, Developer has requested that City authorize establishment of the existing Golf Clubhouse property, currently part of the larger City-owned Golf Courses, as a separate legal lot to facilitate Developer's ability to obtain financing for reconstruction of the Golf Clubhouse and to allow Developer to more fully integrate the operation of the Hotel amenities with the amenities of the reconstructed Golf Clubhouse. The Second Restated DDA authorizes Developer to purchase the Golf Clubhouse lot for $311,262 per acre or portion thereof (the per acre value of the adjoining Hotel Component land), provided that a Certificate of Compliance has been approved and recorded for the Golf Clubhouse property (i.e. the City has determined it is exempt from mapping). Because the Golf Clubhouse property is currently part of the City-owned Golf Courses and not part of the SRD Properties, the sale proceeds are retained by the City and are not subject to sharing with the Affected Taxing Entities pursuant to the Tax Agreement. Upon completion of the purchase, which must occur concurrently with Developer's purchase of the Hotel Stages land not later than February 28, 2018, the Golf Clubhouse property will become the Golf/Resort Clubhouse Phase of the Hotel Component and will be subject to the applicable Entitlements. A description of the 2.09 acre Golf/Resort Clubhouse Phase is included in Second Restated DDA Attachment 1-A. The Second Restated DDA also provides flexibility for the City to convey other parcels to the Developer without processing a parcel map and it is anticipated that the City would find that there is no evidence to suggest that public policy necessitates a parcel map to effectuate the contemplated property transfers.

Developer's purchase of the Golf/Resort Clubhouse Phase is also subject to execution and recording of a reciprocal easement agreement between the City and Developer granting the City as owner of the Golf Courses reasonable rights to the use of the Golf Clubhouse for users of the Golf Courses and addressing the coordination of the closure of the existing clubhouse and construction of the new one in order to minimize disruption of public use, and which is otherwise reasonably acceptable to the City.

Changes to Schedule of Performance. Dates in the Schedule of Performance (Second Restated DDA Attachment 2) for the Hotel Stages and Golf Clubhouse have been changed to accommodate Developer's need to complete Hotel design and construction as follows: (i) February 28, 2018 – Close of Escrow for purchase of Hotel Stages & Golf/Resort Clubhouse Phase and (ii) 12 months after execution of Second Restated DDA – Commencement of

Construction of Hotel Stage 1, Hotel Stage 2, Final Hotel Stage and Golf/Resort Clubhouse Phase.

Project Condition No. 90. Developer has also requested that the City modify Seaside Resort Project Condition No. 90 to increase the number of final maps that can be recorded within the SRD Properties approved Vesting Tentative Map area from eight (8) to ten (10). The proposed change is included for reference as Attachment 4 to this Report. This change provides more flexibility to both the City and Developer in subsequent Project administration. Although Municipal Code Section 16.16.110 authorizes staff to approve this change administratively, because the proposed change is a part of a comprehensive set of actions being considered by the City Council, staff has included the condition change, along with the other proposed actions, to be considered by the Council.

The actions in Council Resolution No. ______ authorize the modification of Project Condition No. 90 to allow the recording of ten (10) final maps within the SRD Properties.

ENVIRONMENTAL REVIEW

A Final Environmental Impact Report ("FEIR") was prepared and certified for the Seaside Resort Project Original DDA. Addendum No. 1 addressed the approval of the First Restated Ground Lease. Addendum No. 2 addressed approval of the First Restated DDA. Addendum No. 3 addressed the approval of UP 14-07 that modified UP 01-20 conforming Timeshare Component uses with uses allowed in the First Restated DDA. The certified FEIR and Addenda 1 thru 3 are available for review on the City's web site.

Addendum No. 4 to the certified FEIR (Exhibit A to City Council Resolution No. ___) has been prepared to review the proposed changes incorporated in the Second Restated DDA, the Second Restated Ground Lease, establishment of the Golf Clubhouse as a legal lot, modification of Project Condition No. 90 and the related administrative actions described in this Staff Report. Addendum No. 4 concludes that the proposed changes do not result in physical changes or new or increased environmental impacts not considered in the certified FEIR.

The actions in Council Resolution No. ______ approve Addendum No. 4 to the certified FEIR, and direct staff to prepare and file a Notice of Determination with the Monterey County Clerk within (5) business days of the date on which Resolution No. ______ is adopted. Further, Successor Agency Resolution No. ___ also approves Addendum No. 4.

FISCAL IMPACT

SRD and B&B, in a letter dated September 5, 2017, have agreed to reimburse the Successor Agency and City for all applicable costs associated with completion of this Item; therefore, there is no direct fiscal impact associated with the processing of this Item.

Sale of the SRD Properties to Developer over time will produce a total of $13.175 Million in revenue (Attachment 5 to this Report), which, pursuant to the Tax Agreement, must be shared with the Affected Taxing Entities. The City's share is approximately $2.760 million, the Monterey Peninsula Unified School District's share is approximately $6.816 million and the other Affected Taxing Entities' shares total approximately $3.499 million.

Sale of the Golf Clubhouse property will produce a total of approximately $650,537 in revenue to the City, which is not subject to sharing with the Affected Taxing Entities.

When the Final Stage Hotel is in operation and the related Timeshare and Residential components are completed, the project will produce several sources of tax revenue ("Tax Streams") to the City -- TOT, sales tax, transaction tax and property tax. During the 20 year TOT subsidy period, CBRE Hotels projects the Tax Streams to total approximately $61.4 million or an average of $3.7 million annually. After the TOT subsidy period ends, CBRE Hotels projects the Tax Streams to the City to be approximately $8.9 million annually.

SUBSEQUENT ACTIONS.

Subsequent to adoption of Council Resolution No. ______and Successor Agency Resolutions No. ______ and ______, staff will present to the Oversight Board for its consideration a resolution: (i) authorizing the Successor Agency to execute the Deed to convey the SRD Properties to the City pursuant to the Successor Agency's LRPMP and (ii) authorizing the Successor Agency to execute the Assignment, Assumption and Administration Agreement with the City. Notice of the meeting must be provided at least 10 days prior to the meeting. Concurrently, staff will present to the Oversight Board for its consideration a resolution to make findings that: (i) the 2005 Conveyance Agreement between the City and Former Agency constitutes a loan agreement; (ii) the loan was made for legitimate redevelopment purposes; (iii) the loan is an enforceable obligation; and (iv) the principal amount of the loan is equal to the purchase prices to be received by the City for the SRD Properties less the costs of sale to be borne by the City, and less the amounts the City receives pursuant to the Tax Agreement. Oversight Board approval of the 2005 Conveyance Agreement is subject to DOF review and approval.

Subsequent to the effectiveness of the Oversight Board resolutions approving the forgoing, SRD and B&B are authorized to assign their interests in the First Restated DDA and First Restated Ground Lease to Developer and Tenant, respectively, which assignment must occur on or before February 28, 2018. Concurrent with such assignments, the City will execute the Second Restated DDA and Second Restated Ground Lease with Developer and Tenant, respectively, after which SRD's and B&B's responsibilities will terminate and Developer and Tenant will be obligated to complete development of the SRD Properties, the Golf/Resort Clubhouse and operate the Golf Courses.

ATTACHMENTS

1.

1. Attachment 1: Second Amended and Restated Ground Lease
2. Attachment 2: Second Amended and Restated Disposition and Development Agreement
3. Attachment 3: Notice of Hearing and Report Pursuant To Government Code Sec. 53083
4. Attachment 4: Project Condition #90 Proposed Text Change
5. Attachment 5: Projected SRD Properties Land Sale Proceeds to Affected Taxing Entities
6. Successor Agency Resolution No. __________
7. Successor Agency Resolution No. __________
8. City Council Resolution No. ______________

<u>SECOND AMENDED AND RESTATED GROUND LEASE</u>

by and between the

CITY OF SEASIDE

and

MONTEREY BAY RESORTS, LLC

for the

BLACK HORSE AND BAYONET GOLF COURSES

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SECOND AMENDED AND RESTATED GROUND LEASE

by and between the

CITY OF SEASIDE

and

SEASIDE RESORT AT MONTEREY BAY

for the

BLACK HORSE AND BAYONET GOLF COURSES

This SECOND AMENDED AND RESTATED GROUND LEASE ("Restated Lease") is dated as of December 7, 2017 and is entered into by and between the CITY OF SEASIDE, a municipal corporation ("City"), and MONTEREY BAY RESORTS, LLC, a Nevada limited liability company ("Tenant") (collectively the "Parties" or individually "Party")) and is effective on the Assignment Date (defined in Section 1(c) below).

RECITALS

WHEREAS, the City and B&B Golf Course Properties, LLC ("B&B") entered into an Amended and Restated Ground Lease dated in 2005 ("Initial Lease") for the operation and maintenance of the Black Horse and Bayonet Golf Courses, Seaside, California (the "Golf Courses") in furtherance of the City's policy to make available to the public high quality park and recreation facilities.

WHEREAS, the City has selected a developer to develop a resort hotel, condominium, timeshare or interval ownership units, and residential housing (collectively "Hotel Project") adjacent to the Golf Courses.

WHEREAS, the Parties desire to amend, modify and restate the Original Lease in order to, among other things: (i) provide for the City's consent to the assignment of the Initial Lease by B&B to Tenant; (ii) amend and restate the Initial Lease to, among other things, extend the term of the Initial Lease. The Initial Lease shall be superseded by this Restated Lease.

AGREEMENTS

NOW, THEREFORE, in consideration of the foregoing premises and the respective representations, agreements, covenants and conditions herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Tenant agree to amend, modify, and restate the Initial Lease as follows:

Article 1. Definitions

For the purpose of this Restated Lease, the terms set forth below shall have the meanings set forth below as follows:

1(a) "Army Deed" means the Quitclaim Deed for the Transfer of Bayonet and Black Horse Golf Courses to the City of Seaside, California, dated January 6, 1997 and recorded on January 15, 1997 in the Office of the Recorder, Monterey County, California Reel 3468 Pages 1515-1574.

1(b) "Army Purchase Agreement" means the Offer of Purchase Agreement Between the United States of America and the City of Seaside, California, dated October 29, 1996, for the purchase of the Bayonet and Black Horse Golf Courses located on the former Fort Ord, California.

1(c) "Assignment Date" means the effective date of the assignment of the Initial Lease from B&B to Tenant (the "Lease Assignment"), which assignment (under the governing agreement between B&B and Tenant) is conditioned upon: (a) the approval, execution and delivery of this Restated Lease by Landlord and Tenant; (b) the approval, execution and delivery of a Second Amended and Restated DDA between the City and Tenant (or an affiliate of Tenant approved by the City) ("Restated DDA");(c) the execution and delivery by B&B and Tenant of the instrument assigning the Initial Lease and delivery of reasonable evidence thereof to City; such as an estoppel executed by B&B and Tenant (or affiliate of Tenant) certifying that such instrument has been executed and is effective (all of which are to occur on or before February 28, 2018), and (d) satisfaction of the conditions to the effectiveness of the Restated DDA; provided, however, that the City Manager may, in writing, reasonably extend such deadline if Tenant delivers reasonable evidence to the City Manager that items (c) and (d) are reasonably likely to occur within the requested extension period.

1(d) "CPI" means the Consumer Price Index for All Urban Consumers - All Items - San Francisco-Oakland-San Jose, CA Area (Series ID: CURRA422SA0)(1982-84=100). For purposes of identification, the CPI for December 2015 was 260.289.

1(e) "Default Interest Rate" means the rate of ten percent (10%) per annum during the relevant period over which the Default Interest Rate is to be applied under this Restated Lease, but in no event greater than the maximum rate permitted by law.

1(f) "Golf Course Name" means the "Bayonet and Black Horse Golf Courses, Seaside, California" or as the City and Tenant may otherwise mutually agree in writing from time to time.

1(g) "Improvements" means all improvements on the land underlying the Leased Premises from time to time, including without limitation buildings, landscaping, and appurtenant improvements, regardless of the date of construction.

1(h) "Lease Term" means the term of this Restated Lease as described in Article 4 of this Restated Lease.

1(i) "Lease Year" means a period of twelve (12) full calendar months (excepting the first Lease Year, which shall be less than twelve (12) months). The first Lease Year under this Restated Lease shall begin on the Assignment Date of this Restated Lease and end on September 30th following the execution of this Restated Lease. Each succeeding Lease Year shall commence on October 1st and end on September 30th.

1(j) "Permitted Exceptions" means the exceptions to title in the land underlying the Leased Premises.

1(k) "Personal Property" means the personal property described in the attached Exhibit "B" of this Restated Lease and such other personal property used by Tenant from time to time in connection with the Leased Premises whether in addition to or in replacement of the personal property described in the attached Exhibit "B". However, Personal Property does not include merchandise for retail sale to the general public.

1(l) "Resort Complex" means a destination resort complex consisting of the Golf Courses and the Hotel Project.

1(m) "Special Events" means (a) any event which, under the City's municipal code, a special events permit is required, or (b) any event which is projected to generate a level of traffic that, in the opinion of a qualified professional traffic engineer (which may be employed by City), traffic control would be recommended in or about the Leased Premises.

Article 2. Leased Premises; Consent to Assignment of Initial Lease

2(a) Leased Premises. The City leases to Tenant and Tenant accepts the full responsibility and obligation to develop, manage, operate, and maintain in accordance with the terms and conditions of this Restated Lease the premises described on Exhibit "A" together with all Improvements and all City-owned personal property thereon (collectively, "Leased Premises").

2(b) "As Is. Where Is." By executing this Restated Lease, Tenant agrees to accept the Leased Premises "as is, where is" in its present condition. The City makes no representation or warranty, express or implied, as to the suitability of the Leased Premises generally or its fitness for any particular purposes. By executing this Restated Lease, Tenant assumes all risks associated with the suitability of the Leased Premises for the operation of the Golf Courses. No promise of the City to alter, remodel, repair or improve the Leased Premises and no representation respecting the condition of the Leased Premises have been made by City (as landlord) to Tenant, other than as expressly stated in this Restated Lease. Subject to the provisions of Article 14(a)(xvi) of this Restated Lease, Tenant shall he responsible for correction, at Tenant's sole expense, of any safety or health hazards on the Leased Premises existing on the Assignment Date or arising during Tenant's use and occupancy of the Leased Premises.

2(c) Army Purchase Agreement and Army Deeds. Tenant acknowledges and agrees that it is accepting this Restated Lease and the Leased Premises subject to all notices, conditions, restrictions and covenants contained in and referenced in the Army Purchase Agreement and the Army Deed (and related documents) conveying the Leased Premises to the City and shall comply with all such notices, conditions, restrictions and covenants in the performance of this Restated Lease. A copy of the Army Purchase Agreement has been delivered to Tenant.

2(d) Intellectual Property Rights. Tenant acknowledges and agrees that the City is the owner of the Leased Premises and owns and retains all intellectual property rights in all parts of the Golf Course Name and all such rights in connection with the City's ownership of the Leased Premises or arising from or appurtenant to the Leased Premises and the Golf Courses. Any use of the Golf Course Name, or a part thereof, or of any part of the Leased Premises and the Golf Courses in connection with the promotion and publicity of the Golf Courses, sponsorship of events, or the sale of merchandise, goods, and services by Tenant shall be in accordance with the terms of this Restated Lease or require the prior approval of the City. Subject to the foregoing and the requirements for payment of Gross Revenue (defined below), the City grants Tenant the right to use the Golf Course Name during the Lease Term in accordance with the terms and conditions of this Restated Lease.

2(e) Consent to Assignment of Initial Lease. City hereby consents to the assignment of the Initial Lease by B&B to Tenant pursuant and subject to the terms and conditions in the Lease Assignment Agreement (described in Section 1(c) above); however, this Restated Lease supersedes and replaces the Initial Lease.

2(f) Conditions Precedent; Termination for DDA Default/Termination. The effectiveness of this Lease is conditioned upon the occurrence of the Assignment Date on or before February 28, 2018, and Tenant submitting a certified inventory of personal property to City for attachment as in Exhibit "B" hereto by such date; provided, however, that the City Manager may in writing reasonably extend such deadline if Tenant delivers reasonable evidence to the City Manager that the Assignment Date is reasonably likely to occur within the requested extension period . City may terminate this Lease by written notice to Tenant upon any default by Tenant (or Tenant affiliate) under the Restated DDA with respect to Stage One, Stage Two, the Final Hotel Stage or the Golf/Resort Clubhouse Phase (as defined/described in the Restated DDA) which is not cured within the express cure period, if any, in the Restated DDA for such default, and upon any termination of the Restated DDA in accordance with its terms prior to the sale of all of Stage One, Stage Two, the Final Hotel Stage or Golf/Resort Clubhouse Phase land.

Article 3. Easements

3(a) Easements to Tenant. Through this Restated Lease, the City hereby grants to Tenant the following appurtenant easements ("Easements") effective as of the Assignment Date:

3(a)(i) for a duration equal to the entire Lease Term, a non-exclusive easement for ingress to and egress from the Leased Premises, for piping of water, and for other uses necessary or appropriate for operating the Golf Courses in accordance with this Restated Lease and for pedestrian and vehicular access in connection therewith, as set forth in and to the extent permitted by the Army Deed and the Army Purchase Agreement ("Easement for Groundwater Basin").

3(a)(ii) until completion of all relocations of golf course improvements currently located on the Hotel Project Property, a temporary easement over, under, and across the Hotel Project Property described on Exhibit "J" attached hereto, including all improvements thereon, for the operation of the Golf Courses in accordance with this Restated Lease ("Hotel Project Easement"). Tenant acknowledges and agrees that the City may revoke portions of the Hotel Project Easement from time to time upon a determination by the City that such portions are no longer reasonably necessary for Tenant's operation of the Golf Courses.

3(b) Reservation of City Rights. The City reserves the right to use the Easements (including the right to grant other easements and licenses in the Easements) for any use that does not unreasonably interfere with the Tenant's use of the Easements. Tenant acknowledges and agrees that Tenant's leasehold interest under this Restated Lease is subject to the City's right to grant such easements and other interests in the Leased Premises as are necessary to facilitate the completion and operation of the Hotel Project and Resort Complex, including easements for utilities and access by the developers, operators, and users of the Hotel Project.

3(c) Maintenance of Easements. Tenant shall maintain the Easements at the Tenant's expense, and shall make all repairs reasonably necessary to preserve the condition of the Easements, except as follows: The City, or the third parties to whom the City grants a new easement or license, which easement or license shall not unreasonably interfere with Tenant's use of the Easements, shall undertake and pay for maintenance and repairs associated with use of the Easements by the City or such third parties as permitted by subparagraph (b). Any easements reserved to the Army under the Army Purchase Agreement are not "new" easements for the purposes of this subparagraph (c). If the Parties cannot agree on an allocation of maintenance or repair responsibility under this subparagraph (c) after thirty (30) days of good faith discussions, then the matter shall be determined by arbitration pursuant to Article 22(k) below.

Article 4. Lease Term

Unless earlier terminated pursuant to the provisions of this Restated Lease, the lease term ("Lease Term") shall commence on the date this Restated Lease becomes effective, and shall terminate at midnight on December 31, 2080; provided, however, that if the Final Hotel Stage (as defined in the Restated DDA) is timely completed in accordance with the Restated DDA, Tenant (or an affiliate, as applicable) is not in default under the Restated DDA, the Restated DDA shall not have been terminated, and Tenant complies with Section 10.7 of the Restated DDA (regarding establishment of a scholarship fund for children of employees of the hotel operator) and continues to maintain said scholarship program ("Scholarship Program"), then the Lease Term shall expire on the date that is seventy-five (75) years after the date of the issuance of a Certificate of Occupancy for the Hotel (temporary or final, whichever is issued first).

Article 5. Rent

5(a) Annual Percentage Rent. Tenant shall pay the City the Annual Percentage Rent (as defined below) for each Lease Year as provided in this Article 5. On the fifteenth (15th) day of each calendar month beginning with the second calendar month following the Assignment Date, Tenant shall deliver to the City a statement of Gross Revenue (as defined below) for the previous month. Within sixty (60) days from the end of each Lease Year, Tenant shall deliver to the City a statement, certified by Tenant's chief financial officer, setting forth the amount of Gross Revenue received by the Tenant for the preceding Lease Year, which statement shall be accompanied by the Tenant's payment of Annual Percentage Rent for the preceding Lease Year.

5(b) Special Definitions. The following definitions shall apply in the application of this Article 5:

5(b)(i) "Affiliate" means any person (including both natural and legally created persons) that has an ownership interest in Tenant of at least five percent (5%) or in which the Tenant has an ownership of at least five percent (5%),

5(b)(ii) "Annual Percentage Rent" means (i) until the first day of the first lease year following the first anniversary of the date of issuance of the permanent certificate of occupancy for the hotel component of the Hotel Project ("Escalation Date"), the Initial Percentage Rent, (ii) commencing on the Escalation Date, the Stabilized Percentage Rent, and (iii) commencing at the beginning of the first Lease Year that begins after the first anniversary of the retirement of the revenue bonds described in Article 13(c)(ii), or the thirty-third (33rd) Lease Year, whichever comes last, the Final Percentage Rent.

5(b)(iii) "Final Percentage Rent" means for a given Lease Year the greater of (i) the product of six percent (6%) times the amount of Gross Revenue for that Lease Year, or (ii) One Hundred Thousand Dollars ($100,000).

5(b)(iv) "Gross Revenue" means, for a given Lease Year, all money (or the money value of other consideration) paid to Tenant, any Affiliate, subtenants, franchises, concessionaires, tournament concessionaires, restaurants, pro shops, or others on the Leased Premises, from all sources in connection with the Leased Premises during the Lease Year, including without limitation any proceeds from the sale of all goods (including goods using any part of the Golf Course Name that are sold over the Internet or at any off-site locations), services, exchanges, accommodations and use of the Golf Courses or any portion of the Leased Premises, by Tenant, its Affiliates, subtenants, franchisees, concessionaires, tournament concessionaires, restaurants, pro shops, or other sources, whether permanently or temporarily associated or located on the Leased Premises, and any payments received for business disruption losses, minus the following:

5(b)(iv)(1) Cash refunds of the price paid for returned goods purchased on or in connection with the Leased Premises or the Golf Course Name.

5(b)(iv)(2) Sales taxes (and other similar pass-through taxes on goods and services, if any).

5(b)(iv)(3) Sales or trade-ins of machinery, vehicles, trade fixtures, or other Tenant-owned personal property used in connection with Tenant's operation of the Golf Courses, unless such property is the type of property ordinarily acquired for resale in connection with golf course facilities.

5(b)(iv)(4) Refunds of the price paid by Tenant for merchandise, supplies, or equipment purchased for or in connection with the Leased Premises and returned to shippers, suppliers, or manufacturers.

5(b)(iv)(5) The amount of gratuities in the form of tips paid or given by customers to employees of Tenant working on the Golf Courses.

5(b)(iv)(6) Receipts from the sale of uniforms or clothing required to be worn by Tenant's employees on the Golf Courses where such sales are at or below the cost paid by Tenant for such uniforms or clothing.

5(b)(iv)(7) Amounts attributed to meals served or provided to Tenant's employees at or below the cost paid by Tenant for such meals.

5(b)(iv)(8) Condemnation or insurance proceeds paid to Tenant for losses or damage to Tenant's leasehold interest or personal property used on the Leased Premises.

5(b)(iv)(9) The amount of any taxes paid by Tenant in connection with the Leased Premises during the Lease Year, where such taxes are levied by the City (or by any taxing agency governed by a body the majority of which are members of the City Council of the City or have been selected by the City) solely on the Tenant, the Tenant's activities, and/or the Leased Premises.

5(b)(iv)(10) All money or the money value of other consideration received by Tenant from any Affiliate, subtenants, franchisees, concessionaires, tournament concessionaires, restaurants, pro shops, or others on the Leased Premises where the amount of their Gross Revenues is included already in the calculation of Gross Revenue.

5(b)(iv)(11) All money or the money value of other consideration received by operators of Special Events approved in accordance with Article 14(a)(i)(2) or operators of golf events or concessionaires operating on the Leased Premises for no longer than fourteen (14) consecutive days (which operators or concessionaires do not include Affiliates of Tenant, subtenants, franchisees, concessionaires, restaurants, pro shops, or others operating on the Leased Premises longer than fourteen (14) days), unless a longer period than fourteen (14) consecutive days is approved by the City with respect to a particular event (but in no event shall such period be longer than the period of the particular event). Such money or the money value of other consideration referred to in this subsection 5(b)(iv)(11) does not include money or other consideration received by Tenant from such operators and concessionaires.

5(b)(v) "Initial Percentage Rent" means, for a given Lease Year, the greater of (i) the product of five percent (5%) times the amount of Gross Revenue for that Lease Year in excess of Five Million Five Hundred Thousand Dollars ($5,500,000) or (ii) One Hundred Thousand Dollars ($100,000).

5(b)(vi) "Stabilized Percentage Rent" means, for a given Lease Year, the greater of (i) the product of five percent (5%) times the amount of Gross Revenue for that Lease Year, or (ii) One Hundred Thousand Dollars ($100,000).

Article 6. Records

Tenant shall keep and maintain full, complete and appropriate books, records, and accounts relating to the Leased Premises, including all such books, records and accounts necessary or prudent to evidence and substantiate in full detail calculations of Gross Revenue and Annual Percentage Rent. Tenant shall cause to be issued a written receipt for each sale or rental transaction at the Golf Courses or relating to Golf Course merchandise, services, or use, where such receipts are customarily provided on golf courses or were provided on the Golf Courses under the Original Lease. Tenant's failure to issue a written receipt for a sale or rental on the Golf Courses, whether or not required under this Article 6, does not relieve Tenant of the obligation to report the revenues from such sales or rentals and Tenant shall use all commercially reasonable efforts to account for all revenues not evidenced by a receipt or other document. Books, records and accounts relating to Tenant's compliance with the terms, provisions, covenants and conditions of this Restated Lease shall be kept and maintained in accordance with generally accepted accounting principles consistently applied, and shall be consistent with the requirements of this Restated Lease. All such books, records and accounts (including computer databases and files) shall be open to and available for inspection by the City, its auditors and other authorized representatives at reasonable intervals during normal business hours upon at least two (2) business days' prior written notice. Copies of all sales and other excise tax reports and other reports that Tenant may be required to furnish any governmental agency shall at all reasonable times be open for inspection by the City at the place that the books, records and accounts are kept. Tenant shall preserve records (including computer databases and files) relating to Gross Revenue and Annual Percentage Rent for a period of not less than five (5) years after such records are prepared.

Article 7. Audits

The receipt by the City of any statement pursuant to Article 5 or any payment by Tenant or acceptance by the City of any rent shall not bind the City as to the correctness of such statement or payment. The City shall have the right to inspect Tenant's books, records, and accounts at any time during business hours upon reasonable notice to Tenant and shall have the right to audit Tenant's books, records, and accounts from all or any of the preceding five (5) Lease Years on a quarterly basis upon reasonable notice to Tenant. The City shall conduct its audits using either a certified public accountant or an experienced and reputable auditor regularly engaged in performing such audits (and who, if not a certified public accountant, is reasonably acceptable to Tenant). If the City wishes to audit Tenant's records for any Lease Year, the City shall notify Tenant and proceed with such audit within three (3) years after the Tenant provides the City with its statement of Gross Revenue for the Lease Year in question. Should the City fail to exercise the right to audit the records of the Tenant within such three- (3) year period, then the City shall have no further right to audit the records of Tenant for such Lease Year, and the Tenant's statement of Gross Revenue for such Lease Year shall conclusively be deemed to be correct. Any such audit by the City shall be at the City's own expense, except that if such audit discloses that Tenant has understated the Gross Revenue for such Lease Year by more than five percent (5%) and the City is entitled to any additional Annual Percentage Rent as a result of such understatement, then the Tenant shall promptly pay to the City the reasonable cost of such audit. Tenant shall, in any event, pay the City the amount of any deficiency in the Annual Percentage Rent, together with interest thereon at the rate of five percent (5%) such interest to accrue beginning fifteen (15) days following the end of the applicable Lease Year for which such payment was due. The City agrees that any auditor conducting audits for the City under this Article 7 will not be compensated based on a percentage of understatement of Gross Revenue by Tenant or on the amount of Tenant's Gross Revenue.

Article 8. Maximization of Gross Revenue

The Tenant shall at all times, in a commercially reasonable manner, operate and maintain the Leased Premises to maximize Gross Revenue and assure to the City a payment of the greatest possible amount of Annual Percentage Rent to the fullest extent commercially reasonable, consistent with a commercial golf course operator exercising prudent business judgment, taking into account among other things, profitable operation of the Golf Courses, good practice, and the requirements of this Restated Lease. A reduction in Gross Revenues resulting from business decisions made by Tenant that are consistent with this Article 8, shall not, by itself, constitute a violation of this Article 8. Disputes arising over whether Tenant is complying with the requirements of this Article 8 shall be resolved through arbitration in accordance with Article 22(k) of this Restated Lease and Tenant shall not be in default under this Restated Lease so long as Tenant abides by the decision of the arbitrator. Notwithstanding the foregoing, Tenant may provide complimentary or discounted golf rounds or services intended (in Tenant's reasonable business judgment) to result in increased occupancy at the Resort Complex or in conjunction with attracting one or more golf tournaments which will increase public awareness of the Golf Course or Hotel Project or any other legitimate business purpose which Tenant reasonably believes is in the best interest of the long-term profitability of the Golf Course.

Article 9. Advances for Lease Obligations

In addition to and not by way of limitation of the City's rights under specific provisions of this Restated Lease, the City shall at all times have the right (in its sole and absolute discretion and without any obligation whatsoever so to do) to advance on behalf of the Tenant any delinquent amount payable under this Restated Lease by Tenant, or to otherwise satisfy any of the Tenant's delinquent Obligations under this Restated Lease, provided that (except in case of emergency calling for immediate payment) the City shall first have given the Tenant no less than ten (10) business days' advance written notice of the City's intention to advance such amounts on behalf of the Tenant. No advance by the City shall operate as a waiver of any of the City's rights under this Restated Lease and the Tenant shall remain fully responsible for the performance of its obligations under this Restated Lease. All amounts advanced by the City shall he separate from and in addition to rent due under Article 5 of this Restated Lease and shall be immediately due and payable by Tenant to the City and shall bear interest from the date of advance at the Default Interest Rate. All amounts advanced by the City pursuant to this Article 9 or similar provisions of this Restated Lease are referred to in this Restated Lease as "Advances."

Article 10. Interest

Except as otherwise provided in this Restated Lease, if rent due from the Tenant to the City remains unpaid ten (10) days after the payment is due, then such unpaid rent shall bear interest at the Default Interest Rate from the date which is eleven (11) days following the date such payment was due until paid. The provisions of this Article 10 in no way relieves the Tenant of the obligation to pay rent on or before the date it is due, nor do the terms of this Article 10 in any way affect the City's remedies under this Restated Lease in the event any rent is unpaid after the due date.

Article 11. Net-Net-Net Lease

Except as otherwise provided in this Restated Lease, this Restated Lease is a net-net-net lease, and rent and other payments payable to or on behalf of the City shall: (a) be paid without notice or demand and without offset, counterclaim, abatement, suspension, deferment, deduction, or defense; and (h) be an absolute net return to the City, free and clear of any expenses, charges or offsets whatsoever. Nothing in the previous sentence or elsewhere in this Restated Lease is intended to prevent Tenant from raising a defense, counterclaim or other challenge regarding rent or any other payment after having made such payment to or on behalf of the City. Except as may be otherwise expressly provided in this Restated Lease, the Tenant shall be responsible for all costs of (a) operation and maintenance of and repairs to the Leased Premises except as set forth in this Restated Lease and (b) compliance with this Restated Lease.

Article 12. No Termination

Except as otherwise expressly provided in this Restated Lease, including, but not limited to Section 17(e) and Article 20, this Restated Lease shall not terminate nor shall the Tenant be entitled to the abatement of any rent or other payment due or any reduction or allocation thereof, nor shall the obligations of the Tenant under this Restated Lease be otherwise affected by reason of any damage to or destruction of all or any part of the Leased Premises from any cause, or a taking of some or all of the Leased Premises by condemnation, requisition or otherwise for any reason, or the prohibition, limitation or restriction of the Tenant's use of all or any part of the Leased Premises, or the interference with such use by any person, or by reason of the termination or foreclosure of any leasehold mortgage, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the Parties that the obligations of the Tenant will be separate and independent covenants and agreements, that subject to the terms of this Restated Lease, the rent and all other payments payable by the Tenant under this Restated Lease will continue to be payable in all events, and that the obligations of the Tenant under this Restated Lease will continue unaffected, unless the requirement to pay or perform the same has been terminated pursuant to an express provision of this Restated Lease. However, during the continuance of any such damage, destruction, taking, prohibition, limitation, interference, eviction or foreclosure, to the extent permitted by this Restated Lease, the Tenant shall not be obligated to perform any obligations that are no longer capable of being performed as a result of such event.

Article 13. Construction and Rehabilitation of Improvements

13(a) General Standards. In addition to the more specific construction and rehabilitation standards set forth in Article 13(b), all construction, alteration, rehabilitation, relocation, or repair work permitted by this Restated Lease shall be accomplished expeditiously and diligently by reputable contractors meeting the standards set forth in Article 13(a)(ix), provided that Tenant's employees or the employees of a Qualified Operator may perform work of the type ordinarily performed by employees working on a golf course. The Tenant shall take all reasonably necessary measures to minimize any damage, disruption, or inconvenience caused by such work and make adequate provision for the safety and convenience of all persons affected by such work. The Tenant shall repair, at the Tenant's own expense, any damage caused by such work and shall restore the area upon which such work is performed to a condition that is equal to or better than the condition that existed prior to the beginning of such work. In addition, the Tenant shall pay (or cause to be paid) all costs associated with such work, and shall indemnify, defend, and hold the City and its officers, agents, and employees harmless from all damages, losses, or claims attributable to the performance of such work, except to the extent that such damage, loss, or claim is attributable to the negligence or willful misconduct of the indemnified Party (in instances where an indemnified Party is shown to have been negligent and where the indemnified Party's negligence accounts for only a percentage of the liability involved, the obligation of the Tenant will be for that entire portion or percentage of liability not attributable to the negligence of the indemnified Party). This indemnification duty shall survive termination of this Restated Lease.

13(a)(i) Compliance with Laws: Issuance of Permits. All construction and rehabilitation activity that the Tenant seeks to undertake on the Leased Premises shall be undertaken in compliance with all applicable local, state, and federal laws and regulations, including (without limitation) laws regarding accessibility for persons with disabilities. The Tenant shall have the sole responsibility for obtaining all necessary permits and shall make application for such permits directly to the person or governmental agency having jurisdiction. The Tenant shall not undertake any construction or rehabilitation activity on the Leased Premises that is not described under the exemptions in 14 California Code of Regulations Sections 15300 et seq., unless the potential environmental impacts of such construction or rehabilitation activity have been studied by the City and all requirements of the California Environmental Quality Act have been satisfied. Nothing in this Restated Lease limits the City's discretion in considering the adoption of such environmental documents and findings as may be required for a proposed activity under the California Environmental Quality Act.

13(a)(ii) Construction and Rehabilitation Safeguards. The Tenant shall erect and properly maintain at all times, as required by the conditions and the progress of work performed by the Tenant, all necessary safeguards for the protection of workers and the public.

13(a)(iii) Rights of Access. Representatives of the City shall have, upon at least two (2) business days' prior written notice, a reasonable right of access to the Leased Premises, without charges or fees, at normal construction hours during the period of construction or rehabilitation, for the purposes of ascertaining compliance with the terms of this Restated Lease, including, but not limited to, the inspection of the construction or rehabilitation work being performed.

13(a)(iv) Notice of Completion. Upon completion of any construction or rehabilitation, the Tenant shall file or cause to be filed in the Official Records of the County of Monterey a notice of completion with respect to the applicable Improvements, and the Tenant shall deliver to the City, at no cost to the City, two (2) sets the final plans (and of any as-built plans prepared by or for Tenant), and specifications for the applicable Improvements.

13(a)(v) Discharge of Liens. Except as permitted in this Restated Lease (such as under Article 18 regarding Permitted Mortgages), the Tenant shall not create or permit or suffer to be created or to remain, and, unless reasonably disputed by Tenant and bonded to cause the lien to be removed, will discharge, or cause to be discharged, any lien (including, but not limited to, the liens of mechanics, laborers, materialmen, suppliers or vendors for work or materials alleged to be done or furnished in connection with the Leased Premises), encumbrance, or other charge upon the Leased Premises or Tenant's interest therein. If the same shall not be promptly discharged by the Tenant, or should the Tenant be declared bankrupt or make an assignment on behalf of creditors, or should the Leased Premises or Tenant's interest therein be taken by execution, the City reserves the right to take immediate possession without any liability to the City. If the Tenant breaches the foregoing, Tenant shall be responsible for any costs incurred by the City in securing clear title to its property. However, the Tenant shall not be required to discharge any such liens, encumbrances or other charges in favor of the City and shall not be required to discharge any liens, encumbrances or charges on the Leased Premises resulting from the acts of the City.

13(a)(vi) Protection of the City. Nothing in this Restated Lease shall be construed as constituting the consent of the City, expressed or implied, to the performance of any labor or the furnishing of any materials or any specific Improvements, or alterations of or repairs to the Leased Premises, by any contractor, subcontractor, laborer or materialman, nor as giving the Tenant or any other person any right, power, or authority to act as agent of or to contract for, or permit the rendering of; any services or the furnishing of any materials in such manner as would give rise to the filing of mechanics' liens or other claims against the Leased Premises. The City shall have the right at all reasonable times to post and keep posted on the Leased Premises any notices which the City may deem necessary for the protection of the City and of the Leased Premises from mechanics' liens or other claims. In addition, the Tenant shall make, or cause to be made, prompt payment of all amounts due and legally owing (except to the extent reasonably disputed by Tenant and bonded so as to cause removal of the lien) to all persons doing any work or furnishing any materials or supplies to the Tenant or any of its contractors or subcontractors in connection with the Leased Premises. Tenant shall indemnify, defend, and hold the City and its officers, agents, and employees harmless from all damages, losses, or claims associated with all liens (including damages, losses, or claims attributable to Tenant's failure to pay all amounts due and owing for work, materials, or supplies provided on the Leased Premises), encumbrances, or other charges created upon the Leased Premises during the Lease Term, except to the extent that such damage, loss, or claim is attributable to the negligence or willful misconduct of the indemnified Party (in instances where an indemnified Party is shown to have been negligent and where the indemnified Party's negligence accounts for only a percentage of the liability involved, the obligation of the Tenant will be for that entire portion or percentage of liability not attributable to the negligence of the indemnified Party). This indemnification duty shall survive termination of this Restated Lease.

13(a)(vii) Tenant to Furnish and Equip Golf Courses. The Tenant shall furnish and equip the Golf Courses with all fixtures, furnishings, equipment, and other personal property (all of which shall be part of the Personal Property) as necessary to operate and maintain the Golf Courses in accordance with the standards set forth in Article 14(a)(ii) of this Restated Lease. The Tenant shall take good care of the Personal Property, shall keep the same in good order and condition, and shall promptly make, at its own expense, all necessary repairs, replacements and renewals of the Personal Property. On the first day of the fifth Lease Year and on the first day of each fifth Lease Year thereafter, and in addition within thirty (30) days after a written request by the City, the Tenant shall provide the City with a current written inventory of the Personal Property.

13(a)(viii) Prevailing Wages. The Tenant shall pay, or cause to be paid, prevailing rates of wages for all construction work done in connection with construction or rehabilitation of the Improvements, whether or not required by Sections 1770 et seq. of the California Labor Code and corresponding regulations.

13(a)(ix) Contractors. All construction, alteration, rehabilitation, relocation, or repair work on the Leased Premises shall be performed by reputable, licensed contractors with skills and experience necessary to perform such work to the quality standard set forth in this Article 13; provided, however, that Tenant's employees and employees of a Qualified Operator may perform work of the type ordinarily performed by employees working on a golf course.

13(b) Construction or Rehabilitation. Any construction or rehabilitation activity on any portion of the Land, whether or not constituting a Major Additional Improvement (as defined below), shall be diligently prosecuted and completed without cost to the City and in good and workmanlike manner. In addition, if such construction or rehabilitation activity constitutes a Major Additional Improvement as defined in Article l3(b)(iii) below, then it shall also be undertaken in accordance with any plans and specifications approved by the City pursuant to subsection (b)(ii) below.

13(b)(i) Conditions to Commencement of Construction or Rehabilitation. In no event shall the Tenant commence any material construction or rehabilitation on the Leased Premises until the following conditions have been satisfied or waived in writing by the City with respect to the construction or rehabilitation, in addition to other conditions and requirements imposed by this Restated Lease. Should the construction or rehabilitation not be significant, Tenant shall comply with those conditions set forth below required by law or administrative regulation.

13(b)(i)(1) the requirements of the California Environmental Quality Act have been satisfied (if applicable);

13(b)(i)(2) the Tenant has obtained financing and equity capital necessary for the full payment of construction or rehabilitation of the Improvements, together with any required operating capital, and if the construction or rehabilitation is significant, has delivered evidence of such capital to the City;

13(b)(i)(3) the Tenant has obtained building permits (if applicable) and all other governmental approvals necessary for the construction or rehabilitation of the Improvements, and the City has approved construction plans to the extent required by Article l 3(b)(ii) below;

13(b)(i)(4) the Tenant has entered into complete and binding contracts with its contractor or contractors for the construction or rehabilitation of the Improvements; and

13(b)(i)(5) if required by the City, for a construction or rehabilitation contract costing in excess of Two Million Dollars ($2,000,000) (as adjusted from time to time by the percentage increase in the CPI since the date of this Lease), the Tenant has delivered to the City copies of payment and performance bonds issued by a reputable insurance company licensed to do business in California, each in a penal sum of not less than one hundred percent (100%) of the scheduled cost of construction or rehabilitation of the applicable Improvements, and naming the City as a co-obligee. Such payment and performance bonds may be required only for construction of the following Improvements: (A) construction of a new clubhouse, (B) construction of a new golf maintenance building, and (C) upgrading of the Golf Course irrigation system with respect to each contract that exceeds $2,000,000. The City shall consider alternate forms of reasonable financial assurances that the applicable Improvements will be constructed or rehabilitated to completion without cost to the City.

13(b)(ii) Approval of Plans. Prior to commencing construction of any Major Additional Improvement (as defined in Article 13(b)(iii) below), the Tenant shall submit to the City, for the City's approval as landlord, plans and specifications for the Major Additional Improvement. The City (as landlord) will not approve of any plans and specifications for a Major Additional Improvement unless such Major Additional Improvement is architecturally and functionally compatible with the Hotel Project and has at least the same quality, value, and utility as other similar golf course improvements then being constructed at golf courses described in Article 14(a)(ii). This Article 13(h)(ii) shall not be construed as permitting the Tenant to use the Leased Premises for a use not permitted under this Restated Lease, or as precluding the need for the Tenant to obtain all approvals required from the City (in the exercise of its municipal functions and not as landlord) and other governmental agencies having jurisdiction over construction of a Major Additional Improvement. If the Tenant desires to make any material change in the design of a Major Additional Improvement from that contemplated in the approved plans and specifications, then the Tenant shall, prior to making such change, submit to the City for approval the plans or other information documenting the desired change. If a proposed material change is disapproved, the previously approved plans and specifications shall remain in effect.

13(b)(iii) "Major Additional Improvement" means any of the following: (1) any new buildings, substantial structures, or substantial outdoor facilities, including wells and reservoirs; (2) any substantial alterations, remodeling, or rehabilitation of existing buildings, structures, or outdoor facilities; (3) construction of substantial additional parking spaces or facilities; (4) any improvement the City's approval of which must be studied under the California Environmental Quality Act before the City can lawfully give its approval; or (5) any other alteration, construction, remodeling, or reconstruction with an aggregate cost in excess of Two Hundred Fifty Thousand Dollars ($250,000) as adjusted from time to time by the percentage increase in CPI since the date of this Restated Lease.

13(c) Certain Golf Course Improvements. Except as otherwise provided in this subsection (c), Tenant shall be responsible for all costs and performance of all repairs, replacements, relocations, or Improvements of any kind, nature, or description to the Leased Premises including (1) any business interruption related to the establishment of the Resort Complex, (2) hole relocations, (3) driving range relocation, (4) cart barn relocation, and (5) maintenance yard relocation.

13(d) Capital Expenditures. During the period beginning fifteen (15) years after the Assignment Date and continuing until ten (10) years prior to the end of the Lease Term, capital expenditures may be desirable to maintain or enhance the quality of the Golf Courses. During such period, the City or Tenant may propose capital expenditures for such purposes and consider such proposals in the context of the particular proposal and the circumstances extant at the time of the particular proposal. During such period, Tenant may request that the City share the cost of, or assist in financing, such capital expenditures and the City agrees to consider such requests. The City shall review such request, provided the City's cooperation or approval of such request shall be at the sole and absolute discretion of the City, and nothing in this Article 13(d) shall be construed to create any responsibility or obligation of the City to act in good faith or to approve of any proposals for capital expenditures, or share in any cost, or assist or participate in any financing of capital expenditures regardless of the context of the particular proposal or the circumstances extant at the time of the particular proposal, including the condition and quality of the Golf Courses at the time of the particular proposal. Further, nothing in this Article 13(d) shall be construed to diminish Tenant's responsibility to maintain the Golf Courses to the quality and character of use required by Article 14(a)(ii) of this Restated Lease. Tenant, at its election, may at any time make capital expenditures subject to the requirements of this Restated Lease.

13(e) Governmental Rights/Powers. Nothing in this Lease affects City's rights or powers in its governmental capacity, or Tenant's obligation to comply with all applicable laws (including obtaining all required governmental approvals and permits).

13(f) FORA CFD. If the FORA Community Facilities District (which is the primary funding source for the FORA Capital Improvement Program and related obligations), ceases to collect the authorized special taxes, Tenant shall cooperate with and support: (i) the creation of a new Community Facilities District ("CFD") or other funding/financing entity or program, by itself or with other property owners, including without limitation submitting a petition to City or other appropriate public entity for the creation of a CFD or other funding/financing entity or program, and (ii) the issuance of bonds, in each case for the financing of public infrastructure improvements associated with the FORA Capital Improvement Program, Base Reuse Plan, CEQA mitigations, or any combination thereof. The parties acknowledge that the creation of a CFD (and possibly other funding/financing entity) is a legislative act subject to a hearing and certain specified notices and legislative considerations; nevertheless, the parties will work diligently to structure the formation of such a CFD or similar funding/financing entity or program and the issuance of bonded indebtedness in an amount as determined in good faith by the City or other responsible public agency to fund the construction of eligible improvements/facilities. Any CFD or similar financing/funding entity or program formed to fund the FORA Capital Improvement Program, Base Reuse Plan, CEQA mitigations, or combination thereof, may be in addition to other CFDs or funding/financing programs necessary to fund improvements associated with the Hotel Project.

Article 14. Operation and Maintenance of Leased Premises.

14(a) Operation and Maintenance.

14(a)(i) Uses.

14(a)(i)(1) Limitation of Uses. The Tenant's use and operation of the Leased Premises shall be limited to the following uses: (A) the sale to golfers of licenses to use the Golf Courses; (B) the incidental retail sale of food, beverages, and refreshments (sale of beverages may including the sale of alcoholic beverages on the Leased Premises so long as Tenant complies with applicable state and local laws and obtains all required permits/licenses prior to such sale); (C) the incidental sale or rental of golfing equipment, golfing instruction, golfing clothing, video cassettes, books, magazines, toys, novelties, merchandise and souvenirs of a type customarily sold or rented at or in conjunction with golf courses; and weddings, car shows, exhibitions and other recreational uses intended (in Tenant's reasonable business judgment) to support the Hotel Operator's efforts to increase occupancy at the Resort Complex enhance the stature of the Golf Courses, or improve the profitability of the Golf Courses while not diluting the stature of the Golf Courses. The Golf clubhouse will be purchased and replaced by Tenant or an affiliate of Tenant approved by the City in accordance with the Restated DDA ("Golf/Resort Clubhouse"). Areas of the Golf/Resort Clubhouse will be public and will serve the Golf Courses. Limited areas of the Golf/Resort Clubhouse approved by the City in writing (not to be unreasonably withheld) need not be solely dedicated to the service of the Golf Courses, and are referred to herein as "Clubhouse Private Areas." The foregoing restrictions of this Section 14(a)(i)(1) do not apply to Clubhouse Private Areas.

14(a)(i)(2) Special Events. Tenant shall submit requests for approval of Special Events to the City (acting through the City Manager) no later than sixty days (60) days prior to the proposed date for the Special Event (or a shorter period as reasonably approved by the City for Special Event requests received by the Tenant within such 60-day period). The City's approval of any Special Event is subject to the City's reasonable determination that the Special Event is consistent with all applicable regulatory requirements, and, at the option of the City, any reasonable assessment against the operator of the Special Event or the Tenant as a fee for such Special Event and/or to compensate the City or reimburse the City or other public service providers (e.g., police, fire, medical, etc.) for actual, direct costs incurred by the City and/or such providers associated with the Special Event, which estimated fees must be set forth at the time of approval. The foregoing restrictions of this Section 14(a)(i)(2) do not apply to the Clubhouse Private Areas.

14(a)(i)(3) The Leased Premises may be used only for the uses set forth in this Article 14(a)(i), unless the City provides its prior written approval of such other uses, which approval shall not be unreasonably withheld taking into consideration all applicable regulatory restrictions on the use, the City's image and reputation, and other appropriate considerations. The foregoing restrictions of this Section 14(a)(i)(3) do not apply to the Clubhouse Private Areas, but use of the Clubhouse Private Areas must comply with all applicable laws.

14(a)(i)(4) City shall have the right to use the Leased Premises on July 4, 2018 for the purpose of a public fireworks event, at City's sole cost, and on terms reasonably acceptable to Tenant, but with no reduction of any payments to be made by Tenant under this Lease.

14(a)(ii) Quality of Operations. At all times during the Lease Term, the Tenant will establish and maintain a quality and character of use and operation of the Golf Courses to a level : (1) such that the Golf Courses could be a suitable site for one of the following: a PGA Qualifying School event, Nationwide Tour event, Senior Tour event, LPGA event, a PGA Tour event, or any other PGA event; and (2) that is at least comparable to the quality and character of use and operation of similar golf courses in the Monterey region that are available for use by the public with published greens fees between ninety-percent (90%) and one hundred ten percent (110%) of the published greens fees for the Golf Courses (without counting any discounts required under the Restated Lease).

14(a)(iii) Maintaining Quality. In order to maintain the quality of operation set forth in subsection (ii) above, the Tenant shall periodically repair and replace the furniture, fixtures, equipment, and facilities at the Golf Courses as necessary to maintain such quality. Upon request of the City, the Tenant shall confer with the City regarding actions necessary to meet the requirements of subsection (ii) and this subsection (iii).

14(a)(iv) Greens Fees. Within thirty (30) days from the execution of this Restated Lease, and thereafter annually within thirty (30) days from the end of the Lease Year and within thirty (30) days after any revision by Tenant, Tenant shall provide to the City a schedule of greens fees. The schedule of greens fees shall meet the following criteria (and the City may disapprove any schedule of greens fees only to the extent it does not meet the following criteria):

14(a)(iv)(1) A discount is provided to residents of the City of Seaside in accordance with the Residency Discount Statement attached as Exhibit C, and no charges other than greens fees are required of such persons unless such charges are required of substantially all players at the Golf Courses. Commencing one (1) year after the date the hotel component of the Hotel Project is ready for occupancy and use by the public, the discount provided to residents of the City of Seaside under Section 2 of Exhibit F shall increase from ten percent (10%) to fifteen percent (15%). Except to the extent inconsistent with the rights of military-related individuals pursuant to subsection (2) below and the rights of the Hotel Project established in the Operating Agreement (defined below), in addition to such discount, residents of the City of Seaside shall enjoy a one-day advance priority access to all Golf Course tee times otherwise available to the general public.

14(a)(iv)(2) A discount is provided to current and former military personnel and associated persons in accordance with the military discount statement attached as Exhibit D, and no charges other than greens fees are required of such persons unless such charges are required of substantially all players at the Golf Courses.

14(a)(v) Coordination of Operations with Hotel Project. Tenant shall coordinate operations of the Golf Courses with the operators of the Hotel Project in accordance with the terms and conditions of an operating agreement ("Operating Agreement"). The Operating Agreement shall be between Tenant and the developers, operators or owners of the Hotel Project, and the City shall be named as a third-party beneficiary of the Operating Agreement for the purpose of enforcing the Operating Agreement in the event of non-compliance by the parties thereto. Tenant shall not enter into an Operating Agreement, and no Operating Agreement shall be effective, without first obtaining the written approval of the City, which approval shall not unreasonably be withheld. Further, no amendments to the Operating Agreement relating to any of the subjects listed in Exhibit "E", and no other agreements or amendments thereto relating to any of the subjects listed in Exhibit "E", shall be effective without the prior approval of the City, which approval shall not unreasonably be withheld. The Operating Agreement shall run with the land, shall bind the Parties thereto and their respective successors and assigns, and the term of the Operating Agreement shall expire on the seventy-fifth (75th) anniversary of the Assignment Date. All business matters between Tenant and the owners or operators of the Hotel Project shall be conducted in a commercially reasonable manner. The City and the parties to the Operating Agreement shall meet to discuss Operating Agreement issues, and issues under other agreements relating to the subjects listed in Exhibit "E," at least every ten (10) years. The forgoing provisions of this subsection 14(a)(v), as appropriately modified, shall be included as a term in the Operating Agreement. Tenant's implementation of an Operating Agreement, or any other agreement relating to the subjects listed in Exhibit "E" between Tenant and the owners or operator of the Hotel Project, prior to approval by the City shall constitute an Event of Material Default. Tenant agrees to diligently negotiate in good faith and in a timely manner the terms and conditions of the Operating Agreement and other agreements supporting the creation of a Resort Complex through cooperation between the Golf Courses and Hotel Project, and the failure to promptly do so within ten (10) days after written notice from the City of such failure shall also constitute an Event of Material Default.

14(a)(vi) Qualified Operator. Successful operation and management of the Golf Courses is critical to the overall success of the Golf Courses and the Resort Complex, and the qualifications and identity of the operator of the Golf Courses are of particular concern to the community and the City. Therefore, the Golf Courses shall be managed and operated only by the 'Tenant or by a third-party operator approved by the City ("Qualified Operator"). The Qualified Operator shall have the necessary financial capability to manage the Golf Courses and the reputation, experience, and qualifications for managing Golf Courses of the quality required under this Restated Lease. The Tenant shall submit for the City's approval the identity of any proposed Qualified Operator and any proposed management agreement between Tenant and such Qualified Operator. The Tenant shall also submit such additional information about the background, experience, and financial condition of any proposed Qualified Operator as is reasonably necessary for the City to determine whether the proposed Qualified Operator meets the standard set forth in this subsection (vi). The City has agreed that Meadowbrook Golf, Inc., located at 8390 Champions Gate Blvd., Champions Gate, FL 33896-8312 ("Meadowbrook") would be a Qualified Operator upon the City's approval of the management agreement between Tenant and Meadowbrook.

14(a)(vii) Prohibited Uses. In connection with the use and operation of the land and the Improvements, the Tenant shall not do any of the following:

14(a)(vii)(1) Create, cause, maintain or permit any nuisance in, on or about the Leased Premises; or

14(a)(vii)(2) Commit or suffer to be committed any waste in, on or about the Leased Premises; or

14(a)(vii)(3) Use or allow the Leased Premises to be used for any unlawful purpose; or

14(a)(vii)(4) Cause or permit obnoxious odors to emanate or be dispelled from the Leased Premises unless on a temporary basis as may be reasonably necessary -for the operation of the Golf Course (for example, odors that emanate during the fertilization of the Golf Courses); or

14(a)(vii)(5) Permit undue accumulations of garbage, trash, rubbish or any other refuse on the Leased Premises; or

14(a)(vii)(6) Suspend operation of all or a part of the Golf Courses, except to the extent reasonably necessary (1) to undertake any construction or rehabilitation activities in accordance with this Restated Lease, including such construction and rehabilitation associated with the development of the Resort Complex, (2) in light of inclement weather conditions, natural disasters, or emergencies or (3) as otherwise permitted in this Restated Lease, including, but not limited, preparing the Golf Courses for tournaments.

14(a)(viii) Maintenance of the Leased Premises.

14(a)(viii)(1) The Tenant shall operate and maintain the Leased Premises to meet or surpass the quality requirements of Article 14(a)(ii) of this Restated Lease. All Improvements repaired or replaced shall be repaired or replaced with materials, apparatus, and facilities of a quality at least equal to the quality of the materials, apparatus, and facilities then being used at golf courses described in Article 14(a)(ii) and shall be architecturally and functionally compatible with the Hotel Project.

14(a)(viii)(2) Without limiting the foregoing subsection 14(a)(viii)(1), the Tenant shall operate and maintain the Leased Premises in the manner set forth in the Maintenance Policy attached to this Restated Lease as Exhibit "F", as revised from time to time in accordance with this subsection 14(a)(viii)(2).

14(a)(vii)(2)(A) The Tenant or City shall periodically propose revisions to the Maintenance Policy in order to ensure that the maintenance standards for the Golf Courses are the maintenance standards then in effect for the type of golf courses described in Article 14(a)(ii). The Party to whom the proposed revisions are delivered shall either approve the proposed revisions or notify the other Party that the proposed revisions must be reviewed by an independent expert. If the Party to whom the proposed revisions are delivered does not respond within thirty (30) days after delivery of the proposed revisions, then the proposed revisions shall be deemed approved (subject to compliance with Section 22(d)(ii) below).

14(a)(viii)(2)(B) If the Party to whom revisions are delivered the proposed revisions notifies the other Party that the proposed revisions must he reviewed by an independent expert, then the Party to whom revisions are delivered the revisions shall select an independent expert (subject to the other Party's reasonable approval) who will be instructed to review the Maintenance Policy, any previously approved revisions, and the proposed revisions in order to confirm whether the Maintenance Policy for the Golf Courses, if the proposed revisions became effective, would be substantially the maintenance standards then in effect for the type of golf course described in Article 14(a)(ii). The decision of the independent expert shall be conclusive on the Parties. The Party shall equally bear any costs charged by independent experts.

14(a)(ix) Non-Discrimination.

14(a)(ix)(1) There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, age, handicap, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Leased Premises, and the Tenant or any person claiming under or through the Tenant shall not establish or permit any such practice or practices, of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Leased Premises.

14(a)(ix)(2) All deeds, leases, and contracts signed by the Tenant in carrying out this Restated Lease shall contain or be subject to substantially the following nondiscrimination clauses:

14(a)(ix)(2)(A) In deeds: "The grantee herein covenants by and for the grantee, the grantee's heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, age, handicap, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises herein conveyed, nor shall the grantee, or any person claiming under or through the grantee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

14(a)(ix)(2)(B) In leases: "The lessee herein covenants by and for the lessee, the lessee's heirs, executors, administrators and assigns, and all persons claiming under or through the lessee, and this lease is made and accepted upon and subject to the following conditions:

'That there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, age, handicap, marital status, ancestry or national origin in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased, nor shall the lessee, or any person claiming under or through the lessee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the premises herein leased.'"

14(a)(ix)(2)(C) In contracts: "There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, age, handicap, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee, or any person claiming under or through the transferee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the premises."

14(a)(x) <u>First Source Recruitment: Existing Employees</u>.

14(a)(x)(1) The Tenant shall comply with the requirements of the local first-source recruitment program described in the attached Exhibit G(except that where such program description refers to the Redevelopment Agency of the City of Seaside, it shall be deemed to refer to the City). The Tenant shall insert a provision in (A) each construction contract for the construction or rehabilitation of any improvements and (B) every contract with subtenants and operators that obligates the contractor, subtenant, or operator (as applicable) to comply with the requirements of the local first source recruitment program. Nothing in this subsection (x)(1) obligates the Tenant to monitor the compliance of a contractor, subtenant, or operator with the local first source recruitment program. However, noncompliance by a contractor, subtenant, or operator shall become a Material Event of Default after notice by the City to the Tenant of such noncompliance, unless the noncompliance is cured within the period set forth in Article 21 of this Restated Lease or Tenant diligently pursues commercially reasonable enforcement efforts to ensure compliance, including contract termination or specific performance.

14(a)(x)(2) Upon a request from the Tenant, the City shall provide reasonable assistance in interpreting the applicability and/or meaning of requirements of the first source recruitment program and/or the affirmative action program. In addition, the City shall in. good faith consider requests made by the Tenant from time to time to revise the requirements of the first source recruitment program and/or the affirmative action program.

14(a)(xi) <u>Cost of Operation and Maintenance of Leased Premises</u>.

As between the City and the Tenant, ail costs incurred in the operation and maintenance of the Leased Premises shall be paid by the Tenant.

14(a)(xii) <u>City Not Obligated to Repair, Replace or Improve the Leased Premises</u>.

The City shall not be obligated to make any repairs, replacements, relocations, or improvements, or contribute to the cost of any repairs, replacements, relocations, or Improvements of any kind, nature, or description to the Leased Premises. Tenant waives all right to make repairs at the City's expense under Sections 1941 and 1942 of the California Civil Code, as either or both may from time to time be amended, replaced, or restated.

14(a)(xiii) <u>Compliance with Laws</u>.

The Tenant shall, at the Tenant's sole cost and expense, comply with all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations and ordinances affecting the Leased Premises, the use thereof, or construction thereon, including the Americans with Disabilities Act and any others that may require the making of any structural, unforeseen, or extraordinary changes to the improvements, whether or not any such statutes, laws, rules, orders, regulations, or ordinances which may be hereafter enacted were within the contemplation of the Parties on the Assignment Date, or involve a change of policy on the part of the governmental body enacting the same. Tenant shall include the provisions of this subsection (xiii) (as appropriately modified) in all agreements with any third-party operator, contractors, subcontractors, sublessees, concessionaires, and other users of the Leased Premises during the Lease Term, and shall use all commercially reasonable efforts to cause such third parties to comply with the requirements of such provisions, including enforcement of such provisions through contract termination or specific performance. In addition, the Tenant shall not commit any act or permit any omission that would adversely affect coverage otherwise available under any policies of public liability, fire, and other insurance which at any time may be in force with respect to the Leased Premises.

14(a)(xiv) Taxes.

The Tenant understands that this Restated Lease may create a possessory interest subject to property taxation. Subject to the Tenant's rights of contest as provided in subsection 1 4(a)(xiv)(7), the Tenant shall pay and discharge, during the term of this Restated Lease, before the delinquency, all taxes (including, without limitation, possessory interest taxes associated with the Leased Premises, this Restated Lease, and any so-called value added tax), assessments (including, without limitation, all assessments for public improvements or benefits, whether or not to be completed prior to the date of this Restated Lease and whether or not to be completed within the Restated Lease Term), fees, levies, water and sewer rates, and charges, license and permit fees and other governmental charges of any kind or nature whatsoever, general and special, ordinary and extraordinary, foreseen and unforeseen, currently or hereafter levied or assessed in lieu of or in substitution of any of the foregoing (all of the foregoing collectively called "taxes") which are or may be at any time or from time to time during the Restated Lease Term levied, charged, assessed or imposed upon or against the Leased Premises, or which may be levied, charged, assessed or imposed upon or against the leasehold estate created hereby or which may be imposed upon any taxable interest of the Tenant acquired pursuant to this Restated Lease. The Tenant shall pay (or reimburse the City for its payment of) any fines, penalties, interest or costs which may he added by the collecting authority for the late payment or nonpayment of any taxes required to be paid by the Tenant under this Restated Lease. The taxes paid by Tenant under this subsection (xiv) shall not be excluded from Gross Revenues, except as provided in subsection 5(b)(iv)(9) of this Restated Lease.

14(a)(xiv)(1)(A) Limits of Tax Liability.

The provisions of this Restated Lease shall not he deemed to require the Tenant to pay municipal, county, state or federal income or gross receipts taxes (except as provided below) or excess profits taxes assessed against the City, or municipal, county, state or federal capital levy, estate, succession, inheritance, gift or transfer taxes of the City, or corporation franchise taxes imposed upon the owner of the fee of the Leased Premises. However, the Tenant shall pay all taxes assessed upon Tenant by any governmental authority by virtue of any operations by the Tenant conducted on or out of the Leased Premises.

14(a)(xiv)(2) Apportionment of Taxes.

All taxes for the fiscal or tax years in which the Restated Lease Term begins and ends shall be apportioned so that the Tenant shall pay only those portions thereof which correspond to the portion of such years as are within the Restated Lease Term.

14(a)(xiv)(3) Tax Receipts

The Tenant, upon the request of the City, shall furnish to the City or, if requested by the City, to any fee mortgagee, within thirty (30) days after the date when any such taxes would become delinquent, official receipts of the appropriate taxing authority or other evidence reasonably satisfactory to the City or such mortgagee evidencing the payment of such taxes.

14(a)(xiv)(4) Evidence of Nonpayment

The receipt by the City of a certificate, advice, receipt or bill of the appropriate official designated by law to make or issue the same or to receive payment of any such taxes, stating the nonpayment of such taxes, shall be prima facie evidence that such taxes are delinquent or have not been paid at the time of the making or issuance of such certificate, advice, receipt or bill.

14(a)(xiv)(5) Assistance in Making Payments

If any person or entity to whom any sum is directly payable by the Tenant under any of the provisions of this Restated Lease (such as a tax collector or utility company) refuses to accept payment of such sum from the Tenant due to the fact that the Tenant is not the fee owner of the land or for any other reason, then the Tenant shall give written notice of such fact to the City and shall pay such sum directly to the City at the address specified in Article 22(d) and the City shall pay the sum received from the Tenant to the applicable payee.

14(a)(xiv)(6) City's Right to Cure

If the Tenant, in violation of the provisions of this Restated Lease, fails to pay and to discharge any taxes, and Tenant's failure continues for ten (10) business days following notice from the City, then the City may (but shall not be obligated to) pay or discharge such taxes, and the amount paid by the City and the amount of all costs, expenses, interest and penalties connected therewith, including attorneys' fees, together with interest at the Default Interest Rate, shall be deemed to be and shall, upon demand of the City, be payable by the Tenant as repayment of an Advance.

14(a)(xiv)(7) Permitted Contests

14(a)(xiv)(7)(A) The Tenant shall not be required to pay, discharge or remove any taxes (including penalties and interest) upon or against the Leased Premises so long as the Tenant (a) in good faith contests the same or the validity thereof by appropriate legal proceedings, (b) gives to the City prompt notice in writing of such contest at least ten (10) days before any delinquency occurs and such legal proceedings operate to prevent the collection of the taxes so contested, or the sale of the Leased Premises to satisfy the same, and (c) prior to the date such taxes are delinquent, the Tenant meets all requirements for contest imposed by the taxing entity whose tax is being contested (including, without limitation, depositing any sums required by such taxing entity), and if the taxing entity does not otherwise require such a deposit, then the Tenant must deposit with the City, in a form reasonably acceptable to the City, that portion of the tax which the Tenant in good faith does not propose to contest. In the event the final determination of any such contest is adverse to the Tenant, then the Tenant shall, before any fine, interest, penalty or cost may be added thereto for nonpayment thereof, pay fully and discharge the amounts involved in or affected by such contest, together with any penalties, fines, interest, costs and expenses that may have accrued thereon or that may result from any such contest by the Tenant, and after such payment and discharge by the Tenant, the City will promptly return to the Tenant any deposit that Tenant has placed with the City. Any proceedings to contest the validity or amount of taxes or to recover any taxes paid by the Tenant shall be brought by the Tenant, at the Tenant's sole expense, in the name of the Tenant. If any such proceedings are brought by the Tenant, then the Tenant shall indemnify, defend, and hold harmless the City against any and all loss, cost or expense of any kind (including, but not limited to, reasonable attorneys' fees and expenses) which may be imposed upon or incurred by the City in connection with those proceedings. This indemnification obligation shall survive termination of this Restated Lease.

14(a)(xiv)(7)(B) The City shall cooperate with the Tenant. In providing the Tenant information in connection with contests permitted under this subsection 14(a)(xiv)(7).

14(a)(xv) <u>Services and Utilities</u>.

14(a)(xv)(1) Except as set forth in subsection (xv)(2) below; the Tenant shall obtain all utility services necessary to operate the Golf Courses and shall pay promptly as the same become due and payable all charges, costs, bills and expenses of and for water, gas, electricity, sewer, air-conditioning, telephone and all other public or private services and utilities of whatever kind furnished or supplied to or used by the Tenant or any other party in connection with the use, occupancy, maintenance or operation of the Leased Premises, and shall comply with all contracts relating to such services and shall do all other things necessary and required for the maintenance and continuance of such services.

14(a)(xv)(2) <u>Satisfaction of City Irrigation Water Obligation</u>.

The Golf Courses have historically been irrigated with groundwater from the Seaside Groundwater Basin, which underlies the Leased Premises ("Basin"). Rights to extract groundwater from the Basin were adjudicated by the Monterey County Superior Court, as set forth in the amended decision, dated February 9, 2007, entered in the case, California-American Water Company v. City of Seaside, Monterey County Superior Court, Case No. M66343 ("Seaside Basin Decision"). The Seaside Basin Decision grants to the City an "Alternative Production Allocation," which, among other matters, affords the City the right to extract up to 540 acre-feet per year for the purpose of irrigating the Golf Courses. The Seaside Basin Decision prohibits the City from extracting more than 540 acre-feet per year pursuant to its Alternative

Production Allocation for irrigation of the Golf Courses. Tenant acknowledges and agrees that this Restated Lease does not include the right to extract groundwater from the Basin (except as specifically authorized by the City, as provided for herein) and that all water rights associated with the Leased Premises, including, without limitation, the Alternative Production Allocation granted to the City pursuant to the Seaside Basin Decision, are the property of the City. Upon execution of this Restated Lease, the City is not obligated to deliver or to provide access to any water on or off the Leased Premises, except that the City shall ensure that Tenant receives water deliveries, or has the right to extract groundwater from the Basin, for the exclusive purpose of irrigating the Golf Courses, pursuant to the terms specified in this Article 14 (hereafter, the City's "Irrigation Water Obligation").

14(a)(xv)(2)(A) The quantity of the City's Irrigation Water Obligation will be limited to five hundred (500) acre-feet of water per Lease Year, which shall be divided into two portions as follows: (1) the first four hundred (400) acre-feet of the City's Irrigation Water Obligation shall be delivered or made available to Tenant without any charge to Tenant by the City except as provided in Section 14(a)(xv)(2)(E) below; and (2) the final one hundred (100) acre-feet of the City's Irrigation Water Obligation (hereafter, "Excess Water") shall be delivered or made available to Tenant provided that Tenant in its reasonable discretion deems it necessary to irrigate the Golf Courses in excess of four hundred (400) acre-feet of water during the Lease Year in order to maintain the quality standards required by Section 14(a)(ii) of this Restated Lease and Tenant is employing all water conservation actions required of it pursuant to Section 14(a)(xv)(2)(F) below. For each acre-foot of Excess Water extracted or received by Tenant, Tenant shall pay to the City "Excess Water Cost Rate" which shall be the lowest of i.) the same rate as paid by the City for such water; ii.) if drawn from the Basin, the then current rate charged by the Marina Coast Water District to customers using water in quantities comparable to that used by the Golf or iii.) replenishment assessment rate then effective, as determined annually by the Seaside Basin Watermaster pursuant to the terms of the Seaside Basin Decision. Commencing with the third Lease Year and during each Lease Year thereafter, Tenant may not produce groundwater from the Basin nor demand delivery of water in a combined total in excess of the City's Irrigation Water Obligation of five hundred 500 acre-feet.

14(a)(xv)(2)(B) The City may satisfy its Irrigation Water Obligation through any of the following three options, which it may elect in its sole discretion: (1) the City may allow Tenant to extract irrigation water from the Basin pursuant to the City's Alternative Production Allocation under the Seaside Basin Decision; (2) the City may arrange for the delivery of "Alternate Water," which may be recycled water or any other source of irrigation water derived from sources other than the Basin; or (3) combine deliveries of Alternate Water with allowed use of the City's Alternative Production Allocation under the Seaside Basin Decision. The City may utilize its Alternative Production Allocation, draw water from the Basin, and exercise all rights and opportunities afforded by the Seaside Basin Decision provided that the City is satisfying its Irrigation Water Obligation. If the irrigation water source is changed in whole or in part to Alternate Water, City agrees to pay cost of physical changes, if any, to the existing golf course irrigation system that may be necessary to ensure delivery to the Golf Course Alternate Water. However, City shall not be responsible for any costs relating to any business disruption that results from such changes or the change over to the use of Alternate Water on the Golf Courses.

14(a)(xv)(2)(C) If the City elects to satisfy its Irrigation Water Obligation, in whole or in part, by allowing Tenant to extract irrigation water from the Basin pursuant to the City's Alternative Production Allocation, Tenant shall exclusively bear the costs of operating, maintaining, repairing, and replacing when necessary, all wells and other pumping, storage, processing, and conveyance infrastructure located on the Leased Premises, together with a meter to record the amount of groundwater extracted from the Basin by Tenant pursuant to the City's Alternative Production Allocation. Tenant shall have the meter tested and calibrated at least every other year. The City may inspect, test, and calibrate the meter upon reasonable advance notice and the City shall bear its own cost for any testing or calibration of the meter so long as Tenant has maintained the meter and had it tested and calibrated on at least a two-year cycle. Tenant is afforded the exclusive right to use all wells and other pumping, storage, processing, and conveyance infrastructure located on the Leased Premises, and neither the City nor any third party shall be afforded a right to share in the use of such infrastructure unless authorized by Tenant in writing to do so and then only pursuant to the terms of use authorized by Tenant. The City shall not be liable to Tenant for any injury occasioned by Tenant's failure to maintain repair or replace such infrastructure, and the City may satisfy its Irrigation Water Obligation, in whole or in part, by authorizing Tenant to extract irrigation water from the Basin pursuant to the City's Alternative Production Allocation, whether or not such infrastructure is sufficiently operational.

14(a)(xv)(2)(D) If the City elects to satisfy its Irrigation Water Obligation, in whole or in part, by arranging for the delivery of Alternate Water, the City shall bear all costs, if any, associated with operating, maintaining, repairing, and replacing when necessary, all water, storage, processing, and conveyance infrastructure required to convey the water to the Leased Premises located upstream of a water meter located on the Leased Premises, which shall be deemed the delivery point, together with the all costs of maintaining, repairing, and replacing when necessary, the water meter, if any costs are incurred. Tenant shall exclusively bear the costs of operating, maintaining, repairing, and replacing when necessary, all water, storage, processing, and conveyance infrastructure located on the Leased Premises downstream of the water meter. The City shall not be liable to Tenant for any injury occasioned by Tenant's failure to maintain, repair, or replace such infrastructure, and the City may satisfy its Irrigation Water Obligation, in whole or in part, by arranging for the delivery of Alternate Water to the water meter.

14(a)(xv)(2)(E) If the City elects to satisfy its Irrigation Water Obligation, in whole or in part, by arranging for the delivery of Alternate Water, the Alternate Water shall be of sufficient quality to irrigate the Golf Courses. This quality requirement shall be deemed satisfied if the Alternate Water is equal to or better than the quality of recycled water delivered for use on comparable quality golf courses in Monterey County and may reflect a strategy of intermittent use of either potable water supplies or Basin groundwater (in tandem with recycled water) for purposes of flushing salts and dissolved solids from the tees and greens to maintain the quality standards required by Section 4(a)(ii) of this Restated Lease.

(1) Notwithstanding the provisions for the payment of Annual Percentage Rent set forth in Article 5 of this Restated Lease, commencing with the first Lease Year in which Alternate Water is provided to the Golf Courses, and for each Lease Year thereafter pursuant to this Restated Lease, if the City arranges for Alternate Water to

be delivered to the Golf Courses to satisfy the City's Irrigation Water Obligation, then for the Lease Year in which Alternate Water is delivered to the Golf Courses, Tenant shall pay an additional amount (over and above the Annual Percentage Rent due for the applicable Lease Year) as follows:

i. Where the Annual Percentage Rent after subtracting the cost paid by the City for Alternate Water provided to the Golf Courses, which costs shall not be based on a rate that exceeds the Excess Water Cost Rate, leaves the City with an annual amount that is equal to or less than zero, Tenant shall pay the City an additional amount of Two Hundred Thousand Dollars ($200,000)), with such sum escalated from the effective date of this Restated Lease by the San Francisco Area Consumer Price Index for All Urban Consumers ("CPI") (hereafter, all references to dollar figures in this subsection shall be calculated to include an escalation from the effective date of this Restated Lease by the CPI);

ii. Where the Annual Percentage Rent after subtracting the cost paid by the City for Alternate Water provided to the Golf Courses, which Costs shall not be based on a rate that exceeds the Excess Water Cost Rate, leaves the City with an annual amount that is equal to or greater than zero but less than Two Hundred Thousand Dollars ($200,000), Tenant shall pay an additional amount equal to the difference between such annual amount in question and Two Hundred Thousand Dollars ($200,000); and

iii. Where the Annual Percentage Rent after subtracting the cost paid by the City for Alternate Water provided to the Golf Courses, which costs shall not be based on a rate that exceeds the Excess Water Cost Rate, leaves the City with an annual amount that is equal to or greater than Two Hundred Thousand Dollars ($200,000), no such additional amount is required to be paid by Tenant.

iv. Commencing with the first Lease Year in which the City arranges for Alternate Water to be delivered to the Golf Courses to satisfy the City's Irrigation Water Obligation and for each Lease Year thereafter, within thirty (30) days from the end of each such Lease Year, the City shall deliver to Tenant a written statement of the City's total costs for Alternate Water provided to the Golf Courses in the preceding year, which costs shall not be based on a rate that exceeds the Excess Water Cost Rate, and Tenant shall pay the City the Annual Percentage Rent and the additional amount, if any, required under this subsection (6) within the sixty (60) day period for payment of Annual Percentage Rent set forth in Section 5(a) this Restated Lease.

The following examples illustrate the payment requirements under this subsection (6): (i) if Annual Percentage Rent is $500,000 and the City's cost for Alternate Water is $800,000, Tenant will pay an additional $200,000, leaving the City with a net loss of $100,000; (ii) if Annual Percentage Rent is $100,000 and the City's cost for Alternate Water is $50,000, Tenant will pay an additional $150,000, leaving the City with a net minimum of $200,000; (iii) if Annual Percentage Rent is $500,000 and the City's cost for Alternate Water is $300,000, Tenant will not owe any additional amount, as the City has received a net minimum of $200,000.

14(a)(xv)(2)(F) Tenant shall operate the Golf Courses consistent with good water conversation practices to the extent commercially reasonable in light of the cost involved and the quality standards required under Section 14(a)(ii) of this Restated Lease. Disputes arising over whether Tenant is complying with the requirements of this Section 14(a)(xv)(2)(F) shall be resolved through arbitration in accordance with Section 22(k) of this Restate Lease and Tenant shall not be in default under this Restated Lease so long as Tenant abides by the decision of the arbitrator.

14(a)(xv)(2)(G) Throughout the term of this Restated Lease, to the extent and while any laws, court orders, or other governmental mandates (other than City laws or mandates) limit the quantity of water (whether from the Basin or Alternate Water) that may be used to irrigate the Golf Courses (each, a "Use Restriction" or "Supply Restriction"), then Excess Water shall be made available to the Golf Courses consistent with the Use Restriction or Supply Restriction and the remainder of the City's Irrigation Water Obligation, shall be reduced to the extent such laws or other governmental mandates make it impermissible or commercially unreasonable for the City to fulfill the City's Irrigation Water Obligation from either Basin groundwater pursuant to the City's Alternative Production Allocation or delivery of Alternate Water source, from any other source available to the City, or from any combination thereof. The amount of the reduction in the City's Irrigation Water Obligation shall be the minimum amount practicable under the circumstances and shall he determined through good faith negotiations between the Parties using a commercially reasonable standard taking into consideration the specific requirements of the particular law or mandate, the water supply conditions and restrictions placed on other golf courses in the Monterey Bay area, the City's obligations to provide water to residents of the City, the impact of the City's obligation to furnish water on the financial solvency of the City, and other appropriate considerations. If the Parties cannot agree on the precise amount of such reduction within thirty (30) days following the commencement of negotiations, then the Parties shall submit the issue to arbitration in accordance with Section 22(k).

14(a)(xv)(2)(H) In the event of and while any Use Restriction or Supply Restriction remains in effect:

(I) The water-related features necessary to maintain the quality standards set forth in Section 14(a)(ii) shall automatically be adjusted to the extent reasonably necessary to accommodate any reduced supply of water;

(II) In determining the commercial reasonableness of any reduction of the City's Irrigation Water Obligation permitted under this Section 14(a)(xv)(2), the Golf Course water requirements shall take priority over all other City water obligations to water users in the City of Seaside, except the water requirements of residential housing units in the City of Seaside, the municipal buildings and functions of the City, including City Hall operations, police, fire and rescue, and other administrative and emergency response functions, and hospitals and other similarly critical services;

(III) Tenant shall have the right to offset against any amounts payable or becoming payable to the City in connection with this Restated Lease until Tenant is compensated for demonstrable losses, damages, and costs associated with the operation of the Golf Courses resulting from the reduction in water available to the Golf Courses, including loss of business on the Golf Courses and the cost to restore any resulting damage to the Golf Courses;

(IV) Subject to any approval of the Army that may be required, Tenant shall have the right to reduce the number of holes available for play on the Golf Courses to the extent commercially reasonable; and

(V) Wherever and whenever pertinent, the City shall use all reasonable efforts to ensure that any mandatory reductions in water use as a result of such Use Restriction or Supply Restriction are calculated based on the greater of historical patterns or 500 acre-feet per year.

14(a)(xv)(2)(I) Alternate Water provided to the Golf Course from City shall meet a water quality standard necessary to maintain the condition of the Golf Courses to the quality standard set forth in Section 14(a)(ii). If, at any time, the water fails to meet such quality standard: (i) City shall use reasonable diligence to achieve such quality standard (at City's cost and expense) and shall reimburse Tenant for reasonable costs incurred for treatment of the Alternate Water to meet the aforementioned quality standard; and (ii) (without relieving City of its obligation to provide water to the applicable standard) the quality standards set forth in Section 14(a)(ii)) shall automatically be adjusted to the extent reasonably necessary to reflect the lesser water quality.

14(a)(xv)(2)(J) Tenant shall deliver to the City on a quarterly basis following the Assignment Date a summary of the Tenant's water bills and water extraction and usage records for the Leased Premises (including records for water used for the clubhouse and other facilities on the Leased Premises). Upon a City request for reasonable substantiation of the summary, the Tenant shall also deliver to the City the substantiating documentation.

14(a)(xv)(2)(K) In the event that one of the two golf courses is converted for a use other than golf pursuant to Article 23 below, partially or entirely, the following adjustments to the City's Irrigation Water Obligation shall apply:

(1) The acres of the golf course(s) remaining to be irrigated in the future shall be calculated as a percentage of the amount of acreage of golf courses irrigated prior to the conversion (hereafter, the "Remaining Irrigation Percentage"); and

(2) All figures pertaining to the City's Irrigation Water Obligation shall be adjusted proportionately by the Remaining Irrigation Percentage. Thus, as an example, if the Remaining Irrigation Percentage were seventy-five (75) percent, the City's Irrigation Water Obligation pursuant to Section 14(a)(xv)(2)(A) would be reduced to three hundred and seventy-five (375) acre-feet per year with the first three hundred (300) acre-feet of the City's Irrigation Water Obligation delivered or made available to Tenant without any charge to Tenant by the City and seventy-five (75) acre-feet of the City's Irrigation Water Obligation, i.e., the Excess Water, delivered or made available to Tenant subject to Tenant's obligation to pay the City an amount equal to the quantity of Excess Water received multiplied by the Excess Water Cost Rate then effective.

14(a)(xv)(3) In addition to the provisions of Section 14(a) XV(2)(K), in the event that one of the two golf courses is converted for a use other than golf pursuant to Article 23, partially or entirely, then a portion of the water previously delivered to the Golf Courses pursuant to the City's Irrigation Water Obligation will be made available to Tenant ("New Development Water") to service the water demands of the new use on the lands converted from the Golf Courses to the new use. The amount of New Development Water made available to Tenant will be capped at the reasonable water demands of the new use. The City will have the option of satisfying its obligation to make available New Development Water by allowing Tenant to produce groundwater from the Basin pursuant to the City's Alternative Production Allocation under the Seaside Basin Decision, by delivering Alternate Water, or by a combination of groundwater and Alternate Water, as the City may decide in its sole and exclusive discretion. The New Development Water made available by the City to Tenant will be provided to Tenant without charge for the water supply, but Tenant will be responsible for all costs relating to the production, conveyance, storage, and treatment of groundwater from the Basin or the conveyance, storage, and treatment of Alternate Water after receipt of the Alternate Water at the meter (i.e., the delivery point), as the case may be.

14(a)(xvi) Hazardous Materials.

14(a)(xvi)(1) Purpose. This section establishes requirements and procedures to prevent contamination of the Leased Premises and surrounding properties by Hazardous Materials (defined below); to remediate any Hazardous Materials contamination that may occur; and to provide for the allocation of costs and liabilities related to Hazardous Materials contamination.

14(a)(xvi)(2) Definitions. The following definitions shall apply in the application of this subsection (xvi):

14(a)(xvi)(2)(A) "Hazardous Materials" means any substances," or words to that effect under any applicable current or future federal or state laws or regulations, including petroleum and asbestos.

14(a)(xvi)(2)(B) "Hazardous Materials Claim" means any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including but not limited to attorneys' fees and expenses), arising directly or indirectly, in whole or in part, out of (a) the presence on or under the Leased Premises of any Hazardous Materials, or any releases or discharges of any Hazardous Materials on, under or from the Leased Premises, or (b) any activity carried on or undertaken on or off the Leased Premises in connection with the handling, treatment, removal, storage, decontamination, clean up, transport or disposal of any Hazardous Materials at any time located or present on or under the Leased Premises.

14(a)(xvi)(2)(C) "Hazardous Materials Laws" means all federal, state and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials.

14(a)(xvi)(3) Tenant Responsibility.

14(a)(xvi)(3)(A) The Tenant shall bear all costs and responsibility related to Hazardous Materials contamination arising on the Leased Premises after execution of this Restated Lease and during the term of this Restated Lease, except for Hazardous Materials contamination arising from actions or omissions of the City or previous owners or occupiers of the Leased Premises (which shall be the responsibility of the party responsible for such contamination). The Tenant shall also bear all costs and responsibility related to Hazardous Materials contamination arising from the acts or omissions of the Tenant or any subtenant, operator, or user of the Leased Premises, beginning on the Assignment Date.

14(a)(xvi)(3)(B) In the event Tenant encounters any Hazardous Materials contamination on the Leased Premises. Tenant shall promptly provide notice of such discovery to the City, the Army and applicable regulators and insurance carriers providing coverage for the Leased Premises. In addition, Tenant shall not undertake any activity or self-help that may endanger recovery from the responsible party or carrier without proper authorization from the appropriate approving entity.

14(a)(xvi)(3)(C)

i. In the event of the discovery of any Hazardous Materials contamination for which Tenant is not responsible, but which Tenant desires to remedy (because of operational or safety considerations) prior to final determination of or recovery from the person(s) or entity(ies) legally responsible, then (without implying any responsibility or liability) the Tenant and the City Shall meet and decide jointly whether to proceed with such self-help, after first providing required notice to the Army, appropriate regulators and insurance carriers. The City, in its sole discretion, shall decide whether to proceed with such self-help, after determining the risk, cost and financial return of such effort.

ii. To the extent the City and the Tenant jointly decide to proceed with Hazardous Materials contamination remediation under this Article 14(a)(xvi)(3)(C), City and the Tenant shall each bear fifty percent (50%) of the reasonable and necessary costs incurred in remediating such Hazardous Materials pending determination, recovery and apportionment of applicable insurance proceeds, indemnity proceeds or third party contributions.

14(a)(xvi)(4) Covenants. Throughout the Restated Lease Term:

14(a)(xvi)(4)(A) The Tenant shall not use or permit the Leased Premises to be used for the use, generation, manufacture, storage, disposal or transportation of Hazardous Materials, except for those hazardous substances which may he lawfully used in the ordinary course of business and operation of the Golf Courses;

14(a)(xvi)(4)(B) Subject to subsection l4(a)(xvi)(3) above, the Tenant shall keep and maintain the Leased Premises and the Improvements in compliance with, and shall not cause or permit the Leased Premises or the Improvements to be in violation of, any Hazardous Materials Laws;

14(a)(xvi)(4)(C) Every sublease or other occupancy arrangement for space on the Leased Premises or improvements shall impose the requirements set forth in subparagraphs (A) and (B) above on each subtenant, operator or user of the Leased Premises or improvements.

14(a)(xvi)(4)(D) The Tenant shall immediately advise the City in writing of any of the following:

i. The Tenant's receipt of notice of any enforcement, cleanup, removal or government or regulatory actions instituted, completed or threatened pursuant to any applicable Hazardous Materials Laws;

ii. The Tenant's receipt of notice of any Hazardous Materials Claims made or threatened by any third party against the Tenant, the City, or the Leased Premises; and

iii. The Tenant's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Leased Premises that could cause the Leased Premises or any part thereof to be classified as "border-zone property" under the provisions of California Health and Safety Code Sections 25220 et seq., or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Leased Premised under any Hazardous Materials Laws.

14(a)(xvi)(4)(E) Without the City's prior written consent, the Tenant shall not take any remedial action in response to the presence of any Hazardous Materials on, under, or about the Leased Premises, nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Materials Claim. However, the Tenant may take remedial action without the City's prior written consent to the extent reasonably necessary to address an emergency situation.

14(a)(xvi)(5) <u>Response Actions Required</u>. Upon a Hazardous Materials Claim being made for which Tenant is responsible, the Tenant shall promptly prepare a plan for remediation or settlement of the asserted Hazardous Materials Claim or potential Hazardous Materials problem and shall submit such plan for the City's approval, which approval shall not he unreasonably withheld, The Tenant shall thereafter diligently prosecute to completion, at its sole cost (to the extent Tenant is responsible under subsection 14(a)(xvi)(3) above), such approved plan. The Tenant shall indemnify and hold the City and its officers, agents and employees harmless against any and all Hazardous Materials Claims and the costs of remediation of any potential Hazardous Materials problem (to the extent Tenant is responsible for the same under subsection 14(a)(xvi)(3)). The foregoing indemnification is intended as an amplification of, and in no way limits, Tenant's indemnification obligation under the provisions of Article 17(e) of this Restated Lease, and the provisions of such Article 17(c) shall apply to the foregoing indemnification. This indemnification obligation shall survive termination of this Lease.

14(a)(xvi)(6) Other Actions. Nothing herein is intended to limit or prohibit the right of either Party to recover compensation from or to take other actions against any responsible third party with respect to Hazardous Materials remediation (including, without limitation, the United States of America, by and through the U.S. Army ("Army")). The City and/or Tenant shall act diligently to enforce its rights against the Army in connection with Hazardous Materials. If the City consequently obtains money damages from the Army, then the City shall reimburse Tenant for its costs to remediate Hazardous Materials to the extent possible out of the funds obtained from the Army after deducting the City's costs in obtaining such funds (including reasonable attorneys' fees). Moreover, as set forth in the Original Lease, Tenant has all transferable rights that the Army grants to the City under the Army Purchase Agreement in connection with Hazardous Materials (subject to the reserved right of the City itself to enforce such rights and receive and retain money damages as set forth in the previous sentence). However, the obligations of the Tenant shall not be subject to or dependent upon recovery or non-recovery of compensation from or performance or non-performance of other actions by any responsible third party. To the extent the City receives proceeds from Fort Ord-wide environmental insurance for a hazardous materials condition that is the responsibility of the Tenant under this Restated Lease, and the Tenant has acknowledged such responsibility and agreed to remediate the hazardous materials condition, the City agrees to use commercially reasonable efforts to recover such proceeds and make such proceeds available to Tenant to help fund such remediation by Tenant.

14(a)(xvi)(7) To the extent a party other than Tenant is responsible for the remediation of Hazardous Materials on the Leased Premises, the City agrees to coordinate and cooperate with Tenant so as to minimize interference with the operation of the Golf Courses to the maximum extent practicable.

Article 15. Ownership of Leased Premises.

15(a) Ownership of Improvements.

During the Lease Term, all newly constructed Improvements shall be and remain the property of the Tenant subject to the terms and limitations of this Restated Lease; provided, however, that Tenant, subject to approval by the City within its sole discretion, may quitclaim fee title to Improvements to the City (which Improvements shall remain part of the Leased Premises and subject to the obligations of Tenant under this Restated Lease), except that any Improvements financed in whole or in part by the City shall become the property of the City (in fee title) upon completion of such Improvements and any Improvements which were financed by the Redevelopment Agency of the City of Seaside and which became the Property of the City under the terms of the Initial Lease shall remain the property of the City. (The provisions of the previous sentence of this Section15(a) do not apply to the Golf/Resort Clubhouse, which will be owned by an affiliate of Tenant.) Tenant (and such affiliate, as applicable) shall have no right to waste, destroy, demolish or remove the Improvements or renovated/replaced Golf/Course Clubhouse except as specifically provided for in this Restated Lease, or the Restated DDA or otherwise approved in writing by the City. Upon the expiration of the Lease Term or upon the earlier termination of this Restated Lease pursuant to the provisions hereof, all Improvements shall become the property of the City. The Tenant shall have the exclusive right to claim all depreciation, amortization, cost recovery allowances, credits, and other tax benefits arising from all Improvements during the Lease Term.

15(b) Ownership of Personal Property.

Upon termination of this Restated Lease, the City shall have the immediate right of possession of all Personal Property and the tight to assume any ownership or leasehold interest of the Tenant in any Personal Property, subject to the rights of third-party lenders and equipment lessors. The City may, at the City's election, demand the removal from the Leased Premises within sixty (60) days, at the Tenant's sole expense, of all or certain items of the Personal Property.

Article 16. Assignment, Subletting, Partial Termination

16(a) Transfer.

For purposes of this Article 16, the term "Transfer" means:

16(a)(i) Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode or form, of or with respect to this Restated Lease or of the leasehold or fee estate in the Leased Premises;

16(a)(ii) Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode or form, of or with respect to any ownership interest in the Tenant or in any stockholder, at any level, in the Tenant, or any contract or agreement to do any of the same;

16(a)(iii) Any merger, consolidation, sale, lease, assignment or conveyance of all or substantially all of the assets of the Tenant or a stockholder in the Tenant; or

16(a)(iv) The subletting of part or all of the Leased Premises.

16(a)(v) A Transfer shall not include the entry into a management agreement or other similar arrangement with a Qualified Operator in accordance with the provisions of Article 14(a)(vi) of this Restated Lease.

16(b) Purpose of Restrictions on Transfer; Applicability.

Tenant acknowledges and agrees that this Restated Lease is made solely for the purpose of operation of the Golf Courses and not for speculation in landholding. The Tenant recognizes that in view of the following factors, the qualifications and identity of the Tenant and the Tenant's owners are of particular concern to the community and the City:

16(b)(i) The importance of the continued operation of the Golf Courses to the general welfare of the community;

16(b)(ii) The fact that a Transfer as defined in subsection (a) above is for practical purposes a transfer or disposition of the leasehold interest in the Leased Premises then owned by the Tenant;

16(b)(iii) The fact that the Leased Premises are not to be acquired, developed or used for speculation, but only for operation by the Tenant in accordance with this Restated Lease; and

16(b)(iv) The importance to the general welfare of the community that the party with responsibility for the ownership and operation of the Golf Courses views the Golf Courses as an important component of such party's portfolio of golf courses.

The Tenant further recognizes that it is because of such qualifications and identity that the City is entering into this Restated Lease with the Tenant and that Transfers are permitted only as provided in this Restated Lease.

16(c) Prohibited Transfers.

Except as expressly permitted in this Restated Lease, the Tenant shall not make or permit any Transfer, either voluntarily or by operation of law. Any Transfer made in contravention of this Article 16(c) shall he void and shall he deemed to be a default under Article 21(a)(0(2) of this Restated Lease, whether or not the Tenant. knew of or participated in such Transfer.

16(d) Permitted Transfers.

Notwithstanding the provisions of subsection 16(c) above, a Transfer described in any one of the following subsections shall be permitted and approved by the City:

16(d)(i) Any Transfer to a Permitted Lender pursuant to a Permitted Mortgage (as set forth in Article 18(b));

16(d)(ii) Any Transfer directly resulting from the foreclosure of a Permitted Mortgage, the granting of a deed in lieu of foreclosure of a Permitted Mortgage, or as otherwise permitted in this subsection 16(d) below;

16(d)(iii) Any Transfer solely and directly resulting from the death or incapacity of an individual; or

16(d)(iv) Any Transfer by an individual of an ownership interest in the Tenant to a trust or to an investment vehicle solely for estate planning purposes so long as management and control of the interest remains with the original owner of the interest.

16(d)(v) So long as Tenant or another tenant that has been expressly approved by the City continues to be the Tenant, any transfer of a direct or indirect ownership interest in such Tenant so long as (1) the original owners (i.e., the owners at the time such Tenant acquired its interest in this Restated Lease) of such Tenant (whether in one or a series of transactions) continue to own at least twenty percent (20%) of the beneficial ownership interest in such Tenant, and (2) following such transfer one or more of such original owners continue to retain the power of management and control of such Tenant (as shown by reasonable evidence delivered to the City Manager).

16(d)(vi) An assignment of all of the Tenant's rights under this Restated Lease to an entity owned and controlled by the Tenant, but only so long as (1) the assignee first assumes the Tenant's obligations as required by Article 16(1) of this Restated Lease, and (2) the City reasonably determines that the assignee has the financial capacity to undertake the obligations of the Tenant under this Restated Lease after receiving information demonstrating such capacity from Tenant.

16(d)(vii) Any other Transfer that has been approved in writing by the City after a determination by the City that the Transfer is reasonable and will not adversely affect the operation of the Golf Courses based on the factors set forth in Article 16(b), applicable regulatory requirements, the City's and transferee's image and reputation, and other appropriate considerations. The City has no obligation to approve a Transfer unless and until the City determines that the Transfer is commercially reasonable and will not adversely affect the operation of the Golf Course based on such considerations and no Transfer shall be effective without the City's written approval.

16(e) Procedure for Approval of Transfers.

16(e)(i) In the event the Tenant desires to effect a Transfer pursuant to subsections (d)(i) through (vii) above, then the Tenant shall first submit to the City information regarding such proposed Transfer, including sufficient information to enable the City to determine whether the City is obligated to approve the Transfer.

16(e)(ii) if the Tenant desires to effect a Transfer pursuant to Article 16(d)(viii) above, then the Tenant shall first submit to the City a request for approval accompanied by reasonable information concerning the identity, experience, and financial resources of the proposed transferee. The City shall diligently review the request and, if the City reasonably desires additional information concerning the proposed transferee in light of the considerations set forth in Article 16(d)(vii), the City shall diligently request the same from Tenant or the proposed transferee or conduct its own investigation. The City shall provide its approval or disapproval (and if disapproval, then accompanied by a reasonably detailed explanation of the reasons therefor) within thirty (30) days following the Tenant's request; provided, however, that the City's failure to approve or disapprove the Tenant's request within such time period shall be deemed a disapproval. Any disapproval or deemed disapproval by the City under this section 16(e)(ii) may be submitted immediately for arbitration under Article 22(k) of this Restated Lease and the City shall (but only if the City has not previously provided the reasons for its disapproval) provide a reasonably detailed explanation of its reasons for disapproval within seven (7) days following the demand for arbitration.

16(f) Effectuation of Certain Permitted Transfers.

16(f)(i) No Transfer of the Tenant's leasehold interest in this Restated Lease otherwise permitted under subsections 16(d) and (e) above shall be permitted unless and until the person to whom the Transfer is made assumes all of the obligations of the Tenant under this Restated Lease and agrees to be subject to all conditions and restrictions to which the Tenant is subject arising during such person's ownership of this Restated Lease. Such assumption must be memorialized in an instrument in writing reasonably satisfactory to the City and in form recordable among the land records. Upon the effective date of the assumption, the Tenant or the transferor party shall be released from all liability under this Restated Lease arising subsequent to the effective date of such Transfer.

16(f)(ii) A Transfer of a security interest through a Permitted Mortgage shall he permitted without the assumption described in subsection 16(f)(i) above. However, upon acquiring the Leased Premises (or becoming entitled to possession of the Leased Premises), the holder of a Permitted Mortgage or any owner of the estate created by this Restated Lease whose interest shall have been acquired by, through or under a Permitted Mortgage, or shall have been derived immediately from any holder of a Permitted Mortgage, must immediately make the assumption described in subsection 16(f)(i) above in order for the Transfer to be permitted.

16(g) <u>Transfer by the City</u>.

16(g)(i) Subject to Article 23 below, the City may encumber or otherwise transfer all or any portion of its fee interest in the Leased Premises and its rights under this Restated Lease at any time without the prior approval of the Tenant; provided that the transferee assumes in writing all of the City's obligations under this Restated Lease arising after the acquisition of title by transferee.

16(g)(ii) In the event of a sale, assignment, transfer or conveyance by the City of the fee interest in the Leased Premises or of the City's rights under this Restated Lease pursuant to this subsection (g), the City shall be released from all obligations arising under this Restated Lease, expressed or implied, arising after the sale, assignment, transfer or conveyance, and in such event the Tenant shall look solely to the successor in interest of the City; provided, however, that no sale, assignment, transfer or conveyance by the City shall relieve the City of its obligation to provide water as set forth in subsection (a)(xv)(2) of Article 14 of this Restated Lease. This Restated Lease shall not be affected by any such sale, transfer, or encumbrance, and the Tenant shall attorn to any such purchaser or assignee.

16(g)(iii) Any transfer of the City's fee interest in the Leased Premises shall be made expressly subject to this Restated Lease and require that transferee recognize the Restated Lease and the Tenant.

Article 17. Insurance, Indemnification, Damage and Destruction

17(a) <u>Required Insurance Policies</u>.

The Tenant shall keep the following insurance in force during the Lease Term, at the Tenant's sole cost:

17(a)(i) Comprehensive General Liability insurance with limits of not less than Five Million Dollars ($5,000,000) each occurrence combined single-limit bodily injury and property damage. Coverages thereunder shall include contractual liability, personal injury, owners' and contractors' protection (only during the course of any substantial construction or reconstruction), and products and completed operations coverage.

17(a)(ii) Property Insurance of the types and nature and in the respective amounts as follows:

17(a)(ii)(1) During the course of any substantial construction or reconstruction, builders' risk insurance for the amount of the completed value of the Improvements under construction on an all-risk form (including earthquake, but only to the extent required by any Permitted Lender and available on terms and for premiums that are commercially reasonable in light of the golf course operation as a whole), but subject to standard policy exclusions, insuring the respective interests of the City, the Tenant and any contractors and subcontractors in and to the Leased Premises.

17(a)(ii)(2) At all other times, property insurance in an amount not less than one hundred percent (100°%) of the actual replacement cost of the Improvements (without any deduction being made for depreciation), excluding uninsurable portions of the Improvements such as foundations and footings, and one hundred percent (100%) of the actual replacement cost of each item of Personal Property with a replacement cost of at least Three Thousand Dollars ($3,000), as adjusted from time to time by the percentage increase in the CPI since the date of this Restated Lease, against the perils of fire, lightning, earthquake, debris removal, vandalism, malicious mischief, windstorm, flood, theft, mysterious disappearance and such other hazards and perils as are embraced and covered by all-risk endorsements approved for use in the State of California, but subject to standard policy exclusions. Unless insurance is carried on a full "replacement cost" basis, regardless of the value stated in the policy, such replacement cost shall be redetermined from time to time, but not less frequently than once every three (3) years, by an insurance company, appraiser, architect or contractor reasonably acceptable to the City and the Tenant; provided, however, that no omission on the part of the City to request any such determination shall relieve the Tenant of Tenant's obligation to redetermine replacement cost. If the Parties are unable to agree upon the designation of such person within thirty (30) days after written demand thereof or by one Party to the other, then each Party shall designate a person, and each designated person shall jointly designate the person who will make the redetermination. Annual adjustments to insurance policies shall adequately increase the level of insurance coverage prospectively to include reasonably anticipated trends in the annual increase in construction costs prevailing in the Monterey County area at the time of the adjustment. These adjustment provisions are intended to ensure that available insurance proceeds for loss or damage to the Improvements and key items of Personal Property shall at all times he sufficient to fully replace or fully restore such items,

17(a)(ii)(3) To the extent not provided by policies described in subsections 17(a)(ii)(1) and (a)(ii)(2) above, insurance coverage against damage to or destruction of major component parts of machinery and equipment insured under a standard form of insurance commonly known as Boiler and Machinery insurance, in an amount not less than one hundred percent (100%) of the actual replacement cost of such parts.

17(a)(ii)(4) At no time shall the amounts of any deductibles under any policy of insurance required by this subsection (ii) exceed the prevailing amount from time to time for property similar to the Leased Premises with like insurance coverage. Such deductibles shall be determined at the times and in the manner set forth in subsection 17(a)(ii)(2) above for determining replacement cost.

17(a)(iii) Business Interruption Insurance under the gross receipts form for a period of twelve (12) months for loss caused by any of the perils or hazards set forth in and insured pursuant to subsection 17(a)(ii)(2) above, in an amount not less than the aggregate of all gross receipts from time to time due and payable to the Tenant during a twelve (12) month period from all operations in, on, or about the Leased Premises. The amount of such insurance shall be initially calculated from the first (1st) anniversary of this Restated Lease, and shall be adjusted from time to time thereafter. At no time shall the amount of any deductible under any such policy or policies exceed an amount equal to five percent (5%) of the amount of the gross receipts during a twelve (12) month period used to calculate the amount of insurance.

17(b) General Insurance Policy Requirements.

17(b)(i) Form of Policies. All insurance provided for in this Article 17 shall be effected under valid and enforceable policies issued by responsible insurers authorized to do business in the State of California and to issue policies of the nature and in the liability amounts required above. The policies required pursuant to subsection (a) shall name the City as an additional insured. The proceeds of all property insurance required pursuant to subsection (a) shall be payable to the Tenant and the holders of Permitted Mortgages, as their interests may appear, and all loss shall be adjusted by the Tenant. A certificate of each insurance policy shall be provided to the City on or before the Assignment Date and upon the renewal of each policy. The Tenant may provide any insurance by a blanket insurance policy covering the Leased Premises and any other properties. All policies shall contain an agreement by the insurers that such policies shall not be cancelled or modified to reduce or eliminate coverage or insured risks without at least thirty (30) days prior written notice to the City.

17(b)(ii) Waiver of Subrogation. Each Party hereby waives on behalf of its property insurers any right of subrogation against the other Party which such insurer may have against the other Party by reason of any claim, liability, loss or expense arising under this Restated Lease, to the extent permitted by the applicable insurance policies.

17(b)(iii) Review of Liability Insurance. The liability insurance requirements required hereunder shall be reviewed by the Parties each five (5) years for the purpose of increasing (in consultation with their respective insurance advisors) the minimum limits of such insurance from time to time to limits which shall be reasonable and customary for similar facilities of like size and operation. if the Parties are unable to agree upon such new limits within thirty (30) days of the written demand by one Party upon the other, the Parties shall agree upon an independent insurance advisor with experience in securing or writing policies of insurance for similar facilities of like size and nature, who shall thereupon establish the new limits for the insurance policies hereunder. If the Parties are unable to agree upon such independent insurance advisor within a 30-day period following a Party's written demand therefor, then each Party shall designate an insurance advisor, and each designated insurance advisor shall jointly designate the insurance advisor who will establish the new limits.

17(b)(iv) Assignment of Policies. Upon the termination or expiration of the Lease Term, the City may require the Tenant to assign to it any policies of insurance affecting the Leased Premises, if such policies are assignable and except for insurance carried under a blanket policy or policies covering other properties. In the event of an assignment of any such policy, the premium shall be prorated between the Parties as of the date of such termination or expiration.

17(c) Hold Harmless and Indemnification.

17(c)(i) To the fullest extent permitted by law, the Tenant shall indemnify, defend, and hold the City and its officers, agents and employees harmless from and against all liabilities, obligations, damages, penalties, claims, costs, charges and expenses, including reasonable attorneys' fees, arising out of or in connection with the Leased Premises and/or the Personal Property, except (i) to the extent attributable to the negligence or willful misconduct of the indemnified Party (in instances where an indemnified Party is shown to have been negligent and where the indemnified _Party's negligence accounts for only a percentage of the liability involved, the obligation of the Tenant will be for that entire portion or percentage of liability not attributable to the negligence of the indemnified Party), (ii) as a result of the acts of third parties on or about the Hotel Project Property (except as may be agreed by the Parties in a license agreement or other similar agreement), and (iii) as otherwise specifically set forth in this Restated Lease. If any action or proceeding is brought against an indemnified Party by reason of any such claim, then upon written notice from the City the Tenant shall, at its own expense, resist or defend such action or proceeding by counsel selected by the Tenant or its insurance carrier and reasonably acceptable to the City. The provisions of this subsection 17(c)(i) shall survive the expiration or other termination of this Restated Lease.

17(c)(ii) To the fullest extent permitted by law, the City, as landlord, shall indemnify, defend, and hold the Tenant and its owners, officers, agents and employees harmless from and against all liabilities, obligations, damages, penalties, claims, costs, charges and expenses, including reasonable attorneys' fees, resulting from the City's negligent acts and omissions or intentional misconduct in connection with the Leased Premises and/or Personal Property, except (i) to the extent attributable to the negligence or willful misconduct of the indemnified Party (in instances where an indemnified Party is shown to have been negligent and where the indemnified party's negligence accounts for only a percentage of the liability involved, the obligation of the Tenant will be for that entire portion or percentage of liability not attributable to the negligence of the indemnified Party), (ii) as a result of the acts of third parties on the Hotel Project Property (except as may be agreed by the Parties in a license agreement or other similar agreement), and (iii) as otherwise specifically set forth in this Restated Lease. If any action or proceeding is brought against an indemnified Party by reason of any such claim, then upon written notice from the Tenant the City shall, at its own expense, resist or defend such action or proceeding by counsel selected by the City or its insurance carrier and reasonably acceptable to the Tenant. The provisions of this subsection 17(c)(ii) shall survive the expiration or other termination of this Restated Lease.

17(d) No Termination of Lease: Obligation to Restore.

Except as otherwise provided in subsections 17(e) and (f) below, no loss or damage by fire or any other cause resulting in either partial or total destruction of any Improvements shall operate to terminate this Restated Lease, or to relieve or discharge the Tenant from the payment of any rent or other amounts payable under this Restated Lease, as rent or otherwise, as and when they become due and payable, or from the performance and observance of any of the agreements, covenants and conditions herein contained to be performed and observed by the Tenant. Tenant hereby waives the provisions of Section 1932, subsection 2, and of Section 1933, subsection 4, of the California Civil Code, as either or both may from time to time be amended, replaced or restated. Except as provided in subsections 17(e) and (f) below, the Tenant shall promptly repair any damage or destruction caused to the Improvements and restore the Improvements to at least as good a condition as existed prior to the damage or destruction, as more specifically provided in subsection 17(g) below. The Tenant's failure to make such full repair and restoration under any conditions in which it has elected or is required so to do shall constitute an Event of Material Default.

17(e) Damage or Destruction Occurring Prior to Final Years of Lease Term.

The following provisions shall apply in cases of damage or destruction not described in subsection 17(f) below:

17(e)(i) If the Improvements are damaged or destroyed by any casualty where (1) the casualty causing such damage or destruction is required to be insured against under the terms of this Restated Lease, and (2) the insurance proceeds available are in an amount of not less than ninety percent (00%) of the amount necessary to repair and restore such Improvements, then the Tenant shall make full repair of such damage and shall restore the Improvements in accordance with the provisions of subsections (d) and (g) of this Article 17.

17(e)(ii) 17(e)(ii) If the Improvements are damaged or destroyed by any casualty where (1) the casualty causing such damage or destruction is required to be insured against under the terms of this Restated Lease, (2) the Tenant is not in default with respect to its obligation under this Restated Lease to maintain insurance against the casualty causing such damage or destruction, and (3) the insurance proceeds available are in an amount that is less than ninety percent (90%) of the amount necessary to repair and restore such Improvements, then the Tenant shall have the right, at the Tenant's election, to (1) terminate this Restated Lease in accordance with the provisions of subsection 17(h), or (2) make full repair of such damage and to restore the Improvements in accordance with the provisions of subsections (d) and (g) of this Article 17, or (3) repair such damage or restore the Improvements to the extent necessary to preserve them and make them safe, and in addition, to the extent of the insurance proceeds available.

17(e)(iii) If the Improvements are damaged or destroyed by any casualty where (1) the casualty causing such damage or destruction is required to be insured against under the terms of this Restated Lease, and (2) the Tenant is in default with respect to its obligation under this Restated Lease to maintain insurance against the casualty causing such damage or destruction, then Tenant shall make full repair of such damage and shall restore the Improvements in accordance with the provisions of subsections (d) and (g) of this Article 17.

17(e)(iv) If the Improvements on the Leased Premises are damaged or destroyed by any casualty where the casualty causing such damage or destruction is not required to be insured against under the terms of this Restated Lease, then the Tenant shall have the right, at the Tenant's election, to (1) terminate this Restated Lease in accordance with the provisions of subsection (h) below, or (2) make full repair of such damage and to restore the Improvements in accordance with the provisions of subsections (d) and (g) of this Article 17, or (3) repair such damage or restore the Improvements to the extent necessary to preserve them and make them safe, and in addition, to the extent of the insurance proceeds available.

17(f) Damage or Destruction During Final Years of Lease Term.

In the event of major damage or destruction to the Improvements during the last five (5) years of the Lease Term, the Tenant shall have the right, at the Tenant's election, to either make full repair of such damage and fully restore the Improvements in accordance with the provisions of subsections (d) and (g) of this Article 17 or to terminate this Restated Lease, but subject to the further rights of Permitted Lenders, and provided that if the Tenant elects to terminate this Restated Lease, the Tenant shall comply with all of the following conditions:

17(f)(i) The Tenant shall give the City written notice of the damage or destruction within ten (10) days after the event causing such damage or destruction;

17(f)(ii) There shall not then exist an Event of Material Default (or an event which, after notice and the passage of time as required by this Restated Lease without cure of such event, would constitute an Event of Material Default);

17(f)(iii) As promptly as is feasible, the Tenant shall repair or restore the damaged Improvements to the extent necessary to preserve them and make them safe from immediate danger to the public; and

17(f)(iv) The Tenant shall deliver possession of the Leased Premises and the Personal Property to the City and shall, at the City's option with respect to the Leased Premises and each item of Personal Property, quitclaim to the City all right, title and interest in the Leased Premises and the Personal Property, subject to the rights of third-party lenders and equipment lessors.

Major damage or destruction to the Improvements (as used in this subsection (f) means damage or destruction where the cost to make full repair of such damage and restore the Improvements in accordance with the provisions of subsections (d) and (g) of this Article 17 would be twenty-five percent (25%) or more of the replacement cost of all of the Improvements in their entirety. The calculation of such percentage shall be based upon the replacement cost of the Improvements as of the date of the damage or destruction. The determination of whether any particular damage or destruction constitutes major damage or destruction within the meaning of this paragraph shall be determined and certified by a professional cost estimator experienced in such matters and mutually designated by the Parties within ten (10) days of the occurrence of such damage or destruction. If the Parties are unable to designate a mutually acceptable cost estimator within such period, then each Party shall designate a cost estimator, and each designated cost estimator shall jointly designate the cost estimator who will establish the new limits.

17(g) Procedures for Repair and Restoration.

The provisions of this subsection (g) shall apply whenever the Improvements are to be repaired or restored under the provisions of this Article 17.

17(g)(i) In the event of any damage or destruction to the land or the improvements, the Tenant shall promptly give the City written notice of such damage or destruction, setting forth the cause (if known), the date on which such damage or destruction occurred, and the estimated cost of repair and restoration as certified by a professional cost estimator experienced in such matters. Whenever any part of the Leased Premises shall have been damaged or destroyed, the Tenant shall promptly make proof of loss and shall proceed promptly to collect (or cause to be collected) all valid claims which the Tenant may have against insurers or others based upon any such damage or destruction. Except as otherwise provided below, sums of money received as payments for any losses pursuant to insurance policies shall be used and expended for the purpose of fully repairing or reconstructing the portions of the Leased Premises which have been destroyed or damaged in accordance with one of the following procedures:

17(g)(i)(1) In accordance with the procedures for use and expenditure of insurance proceeds established by a Permitted Lender if there is a Permitted Lender and such Permitted Lender has established such procedures as of the time of receipt of the insurance proceeds (and in such case the procedures in subsections (ii) and (iii) below shall not apply); or

17(g)(i)(2) Otherwise, in accordance with the procedures of subsections (ii) and (iii) below, unless the Tenant has established alternate procedures that, in the City's reasonable judgment, will accomplish the use and expenditure of the insurance proceeds to effectuate full repair or reconstruction of the portions of the Leased Premises which have been destroyed or damaged in a more effective manner than the procedures set forth in subsections (ii) and (iii).

The provisions of subsection (iv) below shall apply regardless of the procedure employed for the use and expenditure of insurance proceeds.

17(g)(ii) Within one hundred eighty (180) days after the event of damage or destruction, the Tenant shall make available to the insurance trustee described in subsection (iii) below, the difference, if any, between the certified estimated cost of repair and restoration and the amount of insurance proceeds anticipated to be received for such repair and restoration (such amount is hereinafter referred to as the "Tenant Contribution").

17(g)(iii) All proceeds of insurance together with the Tenant Contribution, if any, shall be paid by Tenant to the insurance trustee, which insurance trustee shall be a commercial bank or trust company experienced in such matters and designated by the City. The insurance trustee shall hold such proceeds in trust and shall disburse them to the

Tenant as follows: from time to time as the work of restoration progresses, the Tenant shall submit to the insurance trustee a certificate of the Tenant, signed by an authorized officer or representative of the Tenant, and approved by an architect selected by the Tenant and approved by the City (the "architect"), (1) accurately describing the work for which the Tenant is requesting payment and the cost incurred by the Tenant in connection therewith, (2) certifying that the Tenant has not theretofore received payment for such work, and (3) containing or accompanied by a statement by the Tenant that the work for which the Tenant is requesting payment has been performed substantially in accordance with plans and specifications approved by the City. Within five (5) days after receipt of any such certificate, the insurance trustee shall pay to the Tenant, from the funds on hand, an amount equal to ninety percent (90%) of the amount of the cost of the work for which the Tenant is requesting payment, as shown on such certificate. Upon completion of such work, the remainder of such cost (to the extent of the balance of the funds held by the insurance trustee) and all other insurance proceeds and Tenant Contribution held by the insurance trustee shall be paid to the Tenant within five (5) days after the delivery to the insurance trustee of a certificate of the Tenant, signed by an authorized officer or representative thereof and approved by the architect for the work, (1) stating that the work has been completed and setting forth the total cost thereof, (2) containing or accompanied by a statement by the Tenant that the work has been completed substantially in accordance with plans and specifications approved by the City, and (3) accompanied by either (A) an unconditional waiver or release of mechanics' and materialmen's liens executed by all persons or entities supplying labor or materials in connection with such work or (B) other evidence reasonably satisfactory to the City that the period for filing any such lien has expired and no such lien has been filed, or, if filed, has been bonded by Tenant to the reasonable satisfaction of the City and the insurance trustee. The insurance trustee shall not be required to invest or pay interest on any funds held by such trustee, except in accordance with any agreement between the Tenant and the insurance trustee.

17(g)(iv) The Tenant shall promptly commence and complete, in a good and workmanlike manner and in accordance with Article 13 of this Restated Lease, the reconstruction or repair of any part of the Leased Premises damaged or destroyed after (1) the City has approved the Tenant's plans, drawings, specifications and construction schedule for such reconstruction or repair as such approval may be required under Article 13, and (2) the proceeds of insurance, if any, applicable to such reconstruction or repair have been made available for such purpose.

17(h) <u>Procedures Upon Permitted Termination</u>.

17(h)(i) <u>Permitted Terminations</u>. Upon termination of this Restated Lease pursuant to subsections (e) or (f) of this Article 17, insurance proceeds for the Improvements not used in repair or restoration shall be distributed as follows:

17(h)(i)(1) First, to the Permitted Lenders, the amount required by such Permitted Lenders.

17(h)(i)(2) Second, at the option of the City, to the City in the amount necessary to raze damaged Improvements, clear the land, make it safe, and return the site of damaged Improvements to the condition of developable pads.

17(h)(i)(3) Third, any balance shall be divided between the Parties on the following basis: Proceeds for Improvements and Personal Property having a remaining useful life less than the remaining Lease Term as of the termination date shall be paid to the Tenant. A proportionate share of proceeds for Improvements and Personal Property having a remaining useful life greater than the remaining Lease Term as of the termination date, calculated by the ratio that the remaining Lease Term bears to the remaining useful life, shall be paid to the Tenant, and the balance of such proceeds for such Improvements and Personal Property shall be paid to the City.

All other insurance proceeds shall be paid to and become the sole property of the Tenant. The Tenant shall be responsible for paying all indebtedness owed to Permitted Lenders from the Tenant's share of insurance proceeds allocated pursuant to this subsection (h) or from other sources available to Tenant.

17(h)(ii) Prosecution of Claims. In connection with and as a condition of any termination pursuant to subsections (c) and (f) of this Article 17, the Tenant shall make proof of loss and proceed to collect or commence collection of all valid claims which the Tenant may have against insurers or others based upon such damage or destruction, and shall transfer to the City all rights under insurance policies and against others and proceeds of insurance and other claims resulting from the casualty.

17(h)(iii) Title upon Termination. Subject to the rights of third-party lenders and equipment lessors, upon termination of this Restated Lease, the Tenant shall deliver to the City possession of the Leased Premises and the Personal Property and, at the City's option with respect to the Leased Premises and each item of Personal Property, quitclaim to the City all right, title and interest in the Leased Premises and Personal Property.

Article 18. Mortgage of Leasehold

18(a) Prohibited Encumbrances.

18(a)(i) Except as permitted in subsection (b) below, the Tenant shall not:

18(a)(i)(1) Place or create any mortgage or deed of trust upon the Leased Premises or upon the Tenant's interest in the Leased Premises; or

18(a)(i)(2) Place or suffer to be placed upon the Leased Premises or the Tenant's interest in the Leased Premises any lien or other encumbrance (other than a lien upon the leasehold estate for taxes levied but not delinquent or payable with penalty), except that the Tenant shall have the right to contest or appeal the amount or validity of any such levy, lien, encumbrance or attachment in accordance with Article 14(xiv)(7); or

18(a)(i)(3) Suffer any levy or attachment to be made on the Leased Premises or the Tenant's interest in the Leased Premises, except that the Tenant shall have the right to contest or appeal the amount or validity of any such levy, lien, encumbrance or attachment in accordance with Article 14(xiv)(7).

18(a)(i)(4) Any mortgage, encumbrance or lien prohibited by this subsection (a) shall he deemed to be a violation of this covenant and a default under this Restated Lease on the date of its execution or filing of record, regardless of whether or when it is foreclosed or otherwise enforced, unless the Tenant shall, within sixty (60) days of such date of execution or filing of record, remove any such mortgage, encumbrance or lien or provide adequate security to the reasonable satisfaction of the City to protect the Leased Premises from such mortgage, encumbrance or lien.

18(b) Permitted Mortgages.

The Tenant shall have the right, subject to the requirements of subsections (c) and (d) below, to grant, convey, assign or cucumber the leasehold estate created by this Restated Lease (including Tenant's interest in the Improvements) by Permitted Mortgages (as defined below in subsection (c)) provided that the requirements of this Article 18 are met. The Tenant shall not cause more than three (3) Permitted Mortgages to exist at the same time.

18(c) Requirements for Permitted Mortgages.

18(c)(i) As used in this Restated Lease, "Permitted Mortgage" shall mean a mortgage, deed' of trust or other security instrument, including, without limitation, an assignment of the rents, issues and profits from the Leased Premises, which constitutes a lien on the leasehold estate created by this Restated Lease (including Tenant's interest in the Improvements) and which meets the requirements set forth below. "Permitted Lender" means the owner and holder of a Permitted Mortgage and, in the context of a transfer in connection with a foreclosure or deed in lieu of foreclosure, a real estate holding affiliate established or used for the purpose of implementing the Permitted Lender's rights and obligations under this Article 18. References in this Restated Lease to Permitted Mortgage or Permitted Lender in the singular shall include the plural.

18(c)(ii) Every Permitted Mortgage shall:

18(c)(ii)(1) Contain provisions permitting the disposition and application of insurance proceeds and condemnation awards in the manner provided for in this Restated Lease.

18(c)(ii)(2) Secure financing (including loans and credit facilities) the proceeds from which are used exclusively to finance costs in connection with the acquisition of the Tenant's interest under this Lease and/or the operation, improvement, maintenance, repair and replacement of the Leased Premises.

18(c)(ii)(3) Be subject and subordinate to the provisions of this Restated Lease and all rights of the City under this Restated Lease, but entitled to the benefits of this Restated Lease relating to Permitted Mortgages and the protection of Permitted Lenders.

18(c)(ii)(4) Require the Permitted Lender under the Permitted Mortgage to provide the City with the Permitted Lender's address for the purpose of the City's sending notices to the Permitted Lender pursuant to this Restated Lease.

18(c)(ii)(5) Be given only to (A) Tenant, to permit, at Tenant's election, a seller carry-hack by Tenant, or (B) a responsible bona fide institutional lender, meaning any one of the following lending institutions: a commercial or savings bank; a trust company; an insurance company; a savings and loan association; a building and loan association; an educational institution; a pension, retirement or welfare fund; a charity; an endowment fund or foundation authorized to make loans in the State of California; a real estate mortgage investment conduit; a real estate investment trust; an investment bank; a foreign bank; or any similar party that makes loans as a part of its regular business and may lawfully do so in the State of California.

18(c)(ii)(6) Contain or incorporate by reference the other provisions required by this Article 18, to the extent deemed necessary by the City.

18(d) Approval of Permitted Mortgage.

Prior to entering into a proposed Permitted Mortgage, the Tenant shall first submit to the City a certificate, signed by the Tenant's chief financial or executive officer, certifying that the Tenant intends to enter into a Transfer that is a Permitted Mortgage because each of the requirements set forth in subsection (c) of Article 18 of this Restated Lease is satisfied together with a copy of the pertinent loan and mortgage documents. No mortgage shall be a Permitted Mortgage unless and until the City receives the certificate described in this subsection (d). A Transfer that is not permitted solely because of Tenant's failure to deliver the certificate required by this subsection (d) can be cured by delivery of such certificate within the applicable cure period set forth in Article 21(a) of this Restated Lease.

18(e) Limitation on Encumbrances.

Any Permitted Mortgage shall not encumber the title of the City in and to the Leased Premises. Any Permitted Mortgage shall be of no further effect at the expiration or sooner termination of this Restated Lease, except as provided in this Article 18.

18(f) Continuing Terms and Covenants.

Notwithstanding any foreclosure of any Permitted Mortgage, the Tenant shall remain liable for the payment of rent, Advances, and all other payments due and payable pursuant to this Restated Lease and the performance of all of the terms, covenants and conditions of this Restated Lease which by the terms of this Restated Lease are to be carried out and performed by the Tenant.

18(g) Rights and Obligations of Holders of Permitted Mortgages.

If the Tenant creates a Permitted Mortgage, then as long as such Permitted Mortgage remains in existence and until the lien of such Permitted Mortgage has been extinguished, the following provisions shall apply to the Permitted Lender holding the Permitted Mortgage:

18(g)(i) The City shall not accept any surrender of this Restated Lease, nor shall the City consent to any amendment or modification of this Restated Lease, without the prior written consent of the Permitted Lender. The Tenant shall have no right to terminate this Restated Lease, and no purported exercise of any such right shall be effective, unless the Permitted Lender also exercises such right in accordance with this Restated Lease.

18(g)(ii) The City shall have no right to terminate this Restated Lease unless an Event of Material Default has occurred and is continuing, the City has given Tenant and such Permitted Lender written notice of such Event of Material Default, and the Tenant or Permitted Lender has failed to cure such Event of Material Default or to acquire the Tenant's leasehold estate created by this Restated Lease or to commence foreclosure or other appropriate proceedings in the nature thereof; all as set forth in, and within the time specified by, this subsection (g).

18(g)(iii) The Permitted Lender shall have the right, but not the obligation, at any time prior to termination of this Restated Lease and whether or not an Event of Material Default then exists (subject to the applicable cure period), to pay any of the rent due hereunder, to effect any insurance, to pay any taxes or assessments, to make repairs or improvements, and to do any other act or thing which may be necessary or proper to prevent termination of this Restated Lease. All payments so made and all things so done by the Permitted Lender shall be effective to prevent a termination of this Restated Lease as the same would have been if made or done by the Tenant instead of by the Permitted Lender.

18(g)(iv) Should any Event of Material Default under this Restated Lease occur, the Permitted Lender shall have ninety (90) days after the expiration of Tenant's cure period under Article 21(a) to cure the default. In addition, if the default is such that possession of the Leased Premises may be necessary to cure the default, then the Permitted Lender shall have ninety (90) days after taking possession of the Leased Premises to cure such default, so long as (1) the Permitted Lender has fully cured any default in the payment of any monetary obligations of the Tenant under this Restated Lease at the time of taking possession and shall continue to pay currently such monetary obligations as and when the same are due, and (2) the Permitted Lender has acquired the Tenant's leasehold estate created by this Restated Lease or commenced foreclosure or other appropriate proceedings in the nature thereof within such period, and is diligently prosecuting such proceedings. The Permitted Lender is not obligated to continue to seek possession of the Leased Premises if the default has been fully cured during the Permitted Lender's prosecution of such proceedings. All right of the City to terminate this Restated Lease as the result of the occurrence of any Event of Material Default shall he conditioned upon the City having first given Tenant and each Permitted Lender written notice of such Event of Material Default and the Permitted Lender having failed to cure such default or to acquire Tenant's leasehold estate created by this Restated Lease or to commence foreclosure or other appropriate proceedings in the nature thereof as set forth in and within the time specified by this subsection (g).

18(g)(v) Should any Event of Material Default under this Restated Lease occur, which in the nature thereof cannot practicably be cured by the Permitted Lender within the Permitted Lender's cure period pursuant to subsection (iv) above, the Permitted Lender shall, nevertheless, have the right to cure the default so long as (1) the Permitted Lender has fully cured any default in the payment of any monetary obligations of the Tenant under this Restated Lease within such period and shall continue to pay currently such monetary obligations as and when the same are due, (2) the Permitted Lender commences the cure as soon as practicable within such ninety (90) day period and diligently prosecutes the cure to completion. In such event, the Permitted Lender shall apprise the City on a monthly basis of the proposed cure and the progress of and estimated time to complete the cure.

18(g)(vi) Any Event of Material Default under this Restated Lease which in the nature thereof cannot be cured by the Permitted Lender shall be deemed to be cured if (1) within the Permitted Lender's cure period pursuant to subsection (iv) above the Permitted Lender shall have acquired the Tenant's leasehold estate created by this Restated Lease or shall have commenced foreclosure or other appropriate proceedings in the nature thereof, (2) the Permitted Lender shall diligently prosecute such proceedings to completion; (3) the Permitted Lender shall have fully cured any default in the payment of any monetary obligations of the Tenant hereunder which do not require possession of the Leased Premises, and (4) upon obtaining possession of the Leased Premises, the Permitted Lender shall fully perform and observe all of the agreements, covenants and conditions on the part of the Tenant to be performed and observed hereunder as and when performance and observance is due.

18(g)(vii) If the Permitted Lender is prohibited by any order or stay or injunction issued by any court, or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving the Tenant, from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, then the times specified in this subsection (g) for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition, provided that the Permitted Lender or Tenant shall have (1) ensured the continued operation and maintenance of the Leased Premises in accordance with this Restated Lease, (2) fully cured any default in the payment of any monetary obligations of the Tenant under this Restated Lease, and (3) continued to pay currently such monetary obligations as and when the same are due.

18(g)(viii) Subject to the Permitted Lender, or any other foreclosure sale purchaser, meeting the qualifications and requirements of a Tenant or Qualified Operator under this Restated Lease, foreclosure of the Permitted Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Permitted Mortgage, or any conveyance of the leasehold estate created by this Restated Lease from the Tenant to the Permitted Lender through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of the City or constitute a default under this Restated Lease, and upon such foreclosure, sale or conveyance, and the Permitted Lender, or foreclosure sale purchaser assuming all obligations of the Tenant under the Restated Lease, the City shall recognize the Permitted Lender, or any other foreclosure sale purchaser, as Tenant hereunder. In the event the Permitted Lender becomes Tenant under this Restate Lease, the Permitted Lender shall be liable for all obligations of the Tenant under this Restated Lease only for the period of time that the Permitted Lender remains Tenant. Any default existing at the time the Permitted Lender becomes Tenant will not be the basis for a default against the Permitted Lender.

18(g)(ix) If the Permitted Lender, its nominee, or any other foreclosure sale purchaser acquires title to the Tenant's leasehold estate, assumes all obligations of the Tenant under this Restated Lease, and becomes the Tenant pursuant to subsection (vii) above, such Tenant shall be entitled to assign its interest in the Restated Lease so long as (1) the assignee assumes all obligations of the Tenant under the Restated Lease, and (ii) is approved by the City as a Qualified Operator under Article 14(a)(vi) of this Restated Lease. Upon an assignment pursuant to this subsection (ix) the assignor of the Restated Lease shall be relieved of all liability under the Restated Lease except with respect to any liability arising from the assignor's actions or omissions during its time as Tenant under the Restated Lease.

18(g)(x) At any time during the Lease Term and upon request by the Tenant, the City shall execute and deliver to the Tenant any suitable amendment to this Restated Lease or other document from time to time which may reasonably be necessary to implement the provisions of this subsection (g). However, such amendment or other document shall not in any way affect the Lease Term or be reasonably determined by the City to affect adversely in any material respect any rights of the City under this Restated Lease.

18(g)(xi) Any notice or other communication which the City shall desire to give to or serve upon a Permitted Lender under this Lease shall be in writing and shall be served by certified mail, return receipt requested, or express delivery service. Any notice or other communication which a Permitted Lender under this Lease shall desire or is required to give to or serve upon the City shall be in writing and shall be served by certified mail, return receipt requested, or express delivery service.

18(g)(xii) Nothing in this Restated Lease permits or authorizes any Permitted Lender to devote the Leased Premises to any uses, or to construct any Improvements, other than those uses or Improvements provided for or authorized by this Restated Lease.

18(g)(xiii) Nothing contained in this Restated Lease permits or authorizes a Permitted Lender to undertake or continue the construction or completion of the Improvements (beyond the extent necessary to conserve or protect such Improvements or construction already made) without first having submitted evidence satisfactory to the City that it has the qualifications and financial responsibility necessary to perform such obligations. Any Permitted Lender properly completing such Improvements shall be entitled, upon written request made to the City, to a Certificate of Completion from the City as provided for in Article 13 of this Restated Lease.

18(g)(xiv) In any case where, six (6) months after default by the Tenant in completing the construction of Improvements under this Restated Lease, a Permitted Lender has not proceeded diligently with construction, the City shall be afforded the following rights against the Permitted Lender: (1) terminating this Restated Lease as it then relates to the Permitted Lender; (2) prosecuting an action against the Permitted Lender for damages; or (3) prosecuting an action for specific performance and equitable relief compelling the Permitted Lender to commence and diligently complete the construction.

18(g)(xv) If this Restated Lease terminates for any reason, the Permitted Lender (or a nominee approved by the City) has the right to a new lease ("New Lease") for the remainder of the Lease Term only with the same terms and conditions, unless the City, in its sole discretion, elects to negotiate different terms and conditions (except the Lease Term), in which case the Parties shall negotiate such different terms and conditions in good faith. However, the Permitted Lender's right to a New Lease under this subsection (xv) and the effectiveness of such New Lease is subject to the following conditions:

A. The Permitted Lender pays all Annual Percentage Rent, all other rent, and other amounts owing under the original Restated Lease within thirty (30) days following the termination of the original Restated Lease or at the time of the execution of the New Lease, whichever comes first;

B. The Permitted Lender cures all defaults under the original Restated Lease within sixty (60) days following the termination of the original Restated Lease unless by their nature they cannot be cured by the Permitted Lender or a Qualified Operator, in which case an appropriate remedy to the City for the default shall be negotiated as part of the New Lease; and

C. If the Permitted Lender is not approved as a Qualified Operator pursuant to Article 14(a)(vi) of this Restated Lease (such provisions remaining effective after termination of the Restated Lease for purposes of such determination), the Permitted Lender shall assign the New Lease to a Qualified Operator, which operator shall assume all of the Permitted Lender's obligations under the New Lease, or otherwise enter into a management agreement with a Qualified Operator for the management and operation of the Golf Courses, within sixty (60) days following the execution of the New Lease.

18(g)(xvi) The Permitted Lender's leasehold interest in the New Lease shall have the same position and priority as the leasehold interest under the original Restated Lease.

18(h) No Merger.

In the absence of a lease termination following a Material Event of Default, no union of interest of the Parties shall result in a merger of this Restated Lease or the leasehold estate created hereby in the fee estate, so long as any Permitted Mortgage shall be unsatisfied.

18(i) Notice to the City.

Except when the City's prior approval or consent shall be required, the Tenant shall notify the City within twenty (20) days of the time of creation of any lien or encumbrance which has been created on or attached to the Leased Premises or to the Tenant's interest in the Leased premises, whether by act of the Tenant or otherwise. If such lien or encumbrance is not created by act of the Tenant, then the Tenant shall notify the City of such creation as of the time Tenant first knows, or should in the exercise of reasonable diligence have known, of such creation or attachment.

Article 19. Surrender; Holding Over

19(a) Surrender of Property.

19(a)(i) At least ninety (90) days before the last day of the Lease Term, the Tenant shall give to the City a written notice of the Tenant's intention to surrender the Leased Premises on that date, but nothing contained in this subsection (a) shall be construed as an extension of the Lease Term or as consent of the City to any holding over by the Tenant.

19(a)(ii) At the end of the Lease Term or other sooner termination of this Restated Lease, the Tenant shall surrender and deliver to the City the Leased Premises and the possession of the Leased Premises, including all Improvements and Personal Property, in a condition required for the Leased Premises to he maintained under this Restated Lease, free and clear of all occupancies and all liens and encumbrances other than those, if any, existing as of the Commencement Date of the Original Lease or created by the City (but, with respect to Personal Property, subject to the rights of third party lenders and equipment lessors), without payment or allowance whatever by the City on account of any Improvements or Personal Property.

19(b) Holding Over.

If the Tenant shall retain possession of the Leased Premises or Personal Property without the City's prior written consent following the expiration or sooner termination of this Restated Lease for any reason, then the Tenant shall pay to the City an amount equal to one hundred fifty percent (150%) of the rent and other payments that would have been due had this Restated Lease not expired or been terminated and had the rent and other payment terms in effect at the time of the expiration or sooner termination of this Restated Lease remained in effect. However, if the Tenant prevails in an action determining that this Restated Lease has not in fact expired or been sooner terminated in accordance with the terms hereof, then the City shall promptly return to the Tenant the portion of the amount set forth in the previous sentence that is in excess of the rent and other payments due under this Restated Lease absent the previous sentence. These payments shall be applicable to a holding over of any kind by the Tenant. The Tenant shall also indemnify and hold the City harmless from any loss or liability resulting from delay by the Tenant in surrendering the Leased Premises and Personal Property, including (without limitation) any claims made by any succeeding tenant founded on such delay (and this indemnification obligation shall survive termination of this Restated Lease). Acceptance of rent by the City following expiration or termination shall not constitute a renewal of this Restated Lease and nothing contained in this subsection (b) shall waive the City's right of reentry or any other right. The Tenant shall be only a tenant at sufferance, whether or not the City accepts any rent from the Tenant while the Tenant is holding over without the City's written consent.

19(c) Concurrently with the surrender of the Leased Premises and if requested by the City and for the benefit of the City, the Tenant shall execute, acknowledge and deliver to the City a quitclaim deed to the Leased Premises, including all Improvements and Personal Property, and such other instruments as may be reasonably requested by the City to evidence or otherwise effect such passage and vesting of title to the Leased Premises and all Improvements and Personal Property (but, with respect to Personal Property, subject to the rights of third-party lenders and equipment lessors).

Article 20. Eminent Domain

20(a) Total Taking.

If during the Lease Term there is a taking under the power of eminent domain of either the entire Leased Premises or a substantial or essential portion of the Leased Premises, and the taking materially impairs the use of the Leased Premises then being made by the Tenant and renders the remainder of the Leased Premises unsuitable or economically not feasible for such use, then this Restated Lease shall terminate as of the date of such taking. Any award due under such taking shall be paid to and divided between the City and Tenant in priority as follows:

20(a)(i) If the condemning entity is neither the City nor an independent governmental entity governed by the same individuals as those who govern the City (or under the control of or selected solely by the City), then:

20(a)(i)(1) All compensation and damages payable for or on account of the taking shall be payable first to repay outstanding loans secured by Permitted Mortgages (in order of their lien priority), and any remaining funds shall be paid as follows:

A. All compensation and damages payable for or on account of the underlying fee title to the Leased Premises (taking into account the City's loss of rent and other payments under this Restated Lease), assuming that the Leased Premises were unimproved but encumbered by this Restated. Lease, shall be paid to the City;

B. All compensation and damages payable for or on account of Tenant's leasehold interest, including without limitation the bonus value under California law, Tenant's loss of business, and Tenant's loss of goodwill (if any), shall be paid to the Tenant; and

C. All compensation and damages payable for or on account of the Improvements shall be divided between the City and the Tenant in the manner specified in Article 17(h)(i) of this Restated Lease.

20(a)(ii) If the condemning entity is the City or an independent governmental entity governed by the same individuals as those who govern the City (or under the control of or selected solely by the City), then all compensation and damages shall be payable to the Tenant, and in furtherance of the foregoing the City hereby irrevocably assigns and transfers to Tenant all rights to and interest in the award (subject to the rights of Permitted Lenders).

20(b) Partial Taking.

20(b)(i) If less than the whole or a substantial and essential portion of the Leased Premises is taken under the power of eminent domain during the Lease Term and this Restated Lease is not terminated as provided in Article 21(a) of this Restated Lease, then this Restated Lease shall terminate only with respect to the portion of the Leased Premises taken and this Restated Lease shall continue in full force and effect with respect to the portion of the Leased Premises not taken and the Annual Percentage Rent shall be decreased to reflect the diminution in utility of the Leased Premises and resulting value to Tenant caused by such taking, which diminution in utility and value and resulting decrease in Annual Percentage Rent shall be determined by a third-party appraiser mutually selected by the Parties who may consider in the appraisal process awards received as referenced herein. The Tenant shall, but only to the extent of the amount of the award received, promptly reconstruct and restore the portion of the Leased Premises not taken as an integral unit of the same general quality and character as existed prior to such taking, the Parties acknowledging that it may not be feasible to reconstruct golf course hole(s) affected by the taking. Such reconstruction and restoration shall be performed in a good and workmanlike manner and undertaken in accordance with plans and specifications submitted to and approved by the City in accordance with Article 13, and otherwise in accordance with the applicable provisions of this Lease.

20(b)(ii) All awards or other payments received on account of a partial taking as described in this subsection (b) shall be paid to the insurance trustee referred to in Article 17(g) of this Restated Lease to be held and disbursed in the same manner as insurance proceeds, except that any portion of such award remaining after completion of any restoration shall be divided between the City and Tenant and disbursed by the insurance trustee as follows:

20(b)(ii)(1) If the condemning entity is neither the City nor an independent governmental entity governed by the same individuals as those who govern the City (nor under the control of or selected solely by the City), then such funds shall be disbursed as follows:

A. First to repay outstanding loans secured by Permitted Mortgages (in order of their lien priority) to the extent necessary to keep the debt service coverage ratio for such loans equal to the debt service coverage ratio in existence as of the taking.

B. All remaining funds shall be divided between the City and the Tenant in the manner specified in Article 17(h)(i) of this Lease, except that any funds remaining after disbursement pursuant to Article 17(h)(i)(3) shall be divided evenly between the Parties.

20(b)(ii)(2) If the condemning entity is the City or an independent governmental entity governed by the same individuals as those who govern the City (or under the control of or selected solely by the City), then such funds shall by payable to the Tenant, and in furtherance of the foregoing the City hereby irrevocably assigns and transfers to Tenant all rights to and interest in the award (subject to the rights of ‘Permitted Lenders).

20(c) <u>Temporary Taking</u>.

If the use of all or any part of the Leased Premises is taken under the power of eminent domain during the Lease Term on a temporary basis for a period less than the time remaining after the date of such taking to the end of the Lease Term, then this Restated Lease shall continue in full force and effect and the Tenant shall continue to be obligated to perform and observe all of the agreements, covenants and conditions on the part of the Tenant to be performed and observed as and when performance and observance is due to the full extent that such agreements, covenants and conditions are physically capable of performance and observance by the Tenant after such taking. Notwithstanding the previous sentence of this Section 20(c), the Annual Percentage Rent shall be decreased to reflect the diminution in utility of the Leased Premises and resulting value to Tenant caused by such taking, which diminution in utility and value and resulting decrease in Annual Percentage Rent shall be determined by a third-party appraiser mutually selected by the Parties who may consider in the appraisal process awards received as referenced herein. The award payable for or on account of such taking shall be paid to the Tenant and constitute Gross Revenue as defined under Article 5(b)(iv).

20(d) <u>Notice of Taking; Single Proceeding; Personal Property</u>.

20(d)(i) In case of a taking of all or any part of the Leased Premises or the commencement of any proceeding or negotiations which might result in such taking, the Party having notice of such taking or of the commencement of any such proceeding or negotiations shall promptly give written notice thereof to the other Party. The City and Tenant shall jointly prosecute their claims for an award in a single proceeding, in which any Permitted Lender may join. In any eminent domain proceeding affecting the Leased Premises, both the City and Tenant shall have the right to appear in the proceeding and to defend against the eminent domain action as they deem proper in accordance with their own interests. To the extent possible, the City and Tenant shall cooperate with each other to maximize the amount of the award payable by reason of the eminent domain. Issues between the City and Tenant that arise under this Article 20 shall be joined in any such eminent domain proceeding to the extent permissible under then applicable rules governing such joinder.

20(d)(ii) As used in this Restated Lease: (I) a "taking" means the acquisition of all or any part of the Leased Premises by exercise of the power of eminent domain; (2) the taking shall be considered to occur as of the earlier of the date on which possession of the Leased Premises by the entity exercising the power of eminent domain is authorized as stated in an order for possession, or the date on which title to the Leased Premises vests in the person exercising the power of eminent domain; and (3) "award" means the compensation paid for the taking.

20(d)(iii) That portion of just compensation, damages, reimbursements or other benefits specifically allocated by the condemning authority or under applicable law for or in connection with any of Tenant's relocation costs, displacement, or inability to relocate, resulting from any taking covered by this Article 20 shall be payable to and be the sole property of Tenant. In addition to the above rights granted to Tenant, Tenant shall have the right to pursue a separate action for relocation costs independent of this Restated Lease in accordance with California Government Code Section 7262.

20(d)(iv) Tenant shall be entitled to receive all compensation and damages arising from such taking and specifically allocated by the condemning authority or under applicable law for or on account of the personal property, trade fixtures and equipment of Tenant at any time located on the portion of the Premises so taken, except for those trade fixtures that pursuant to this Lease are to remain with the Premises on surrender, for which Landlord shall receive all compensation and damages.

Article 21. Default

21(a) Material Default by Tenant.

21(a)(i) Any of the following occurrences or acts shall constitute an "Event of Material Default" by Tenant under this Restated Lease:

21(a)(i)(1) If the Tenant at any time during the Lease Term (and regardless of the pendency of any bankruptcy, reorganization, receivership, insolvency or other proceedings in law, in equity or before any administrative tribunal which have or might have the effect of preventing the Tenant from complying with the terms of this Restated Lease) shall fail to make payment, when such payment is due, of any rent or of any other payment the Tenant is required to pay pursuant to this Restated Lease and such failure continues for thirty (30) days following receipt of written notice thereof by the Tenant such failure shall immediately become an Event of Material Default without any notice or cure period.

21(a)(i)(2) If the Tenant fails to observe or perform any of the material covenants, agreements or obligations of the Tenant under this Restated Lease, other than those set forth in subsection (a)(i)(1) above, and such material default continues for thirty (30) days after receipt of written notice thereof by the Tenant, such failure shall immediately become an Event of Material Default, unless the nature of Tenant's failure is such that it cannot practicably be cured within such thirty (30) day period and Tenant (i) commences the cure as soon as reasonably practicable upon receipt of such written notice and diligently prosecutes the cure to completion. In such event, Tenant shall apprise the City on a monthly basis of the proposed cure and the progress of and estimated time to complete the cure.

21(a)(i)(3) If the Tenant shall file a petition in bankruptcy or for reorganization or for any arrangement pursuant to any present or future federal bankruptcy act or under any similar federal or state law, or shall be adjudicated a bankrupt or insolvent or shall make an assignment for the benefit of its creditors such filing shall immediately become an Event of Material Default, without any notice or cure period.

21(a)(i)(4) If a receiver, trustee or liquidator of the Tenant or of all or substantially all of the property of the Tenant, including the Leased Premises, shall be appointed in any proceeding brought by the Tenant, or if any such receiver, trustee or liquidator shall be appointed in any proceeding brought by a third party (other than a Permitted Lender pursuing remedies under a Permitted Mortgage) against the Tenant, such appointment shall immediately become an Event of Material Default, without any notice or cure period.

21(a)(ii) Subject to the rights of Permitted Lenders under Article 18 of this Restated Lease, upon the occurrence of any Event of Material Default and as long as the Event of Material Default continues, in addition to any other rights or remedies of the City under this Restated Lease or by law or in equity, the City shall have the right to exercise the following rights and remedies:

21(a)(ii)(1) The right of the City to declare the Lease Term ended and to terminate this Restated Lease, in which event the Tenant shall promptly surrender possession of the Leased Premises and the Personal Property to the City, and pay to the City all rent to the date of such termination and all other payments, including Advances, due the City under this Restated Lease. If the Tenant does not so promptly surrender the Leased Premises and the Personal Property, then the City shall have the immediate right to reenter the Leased Premises and take possession of the Leased Premises and the Personal Property, and remove all persons from the Leased Premises.

21(a)(ii)(2) The right of the City, without terminating this Restated Lease, to enter the Leased Premises and occupy the whole or any part thereof for and on account of the Tenant and to collect rent and any other rent that may thereafter become payable, to refuse (notwithstanding any other term or provision of this Restated Lease) to permit the removal of any Personal Property, and to use and take exclusive possession of same without payment to the Tenant or cost to the City for so long as the City occupies the Leased Premises or until this Restated Lease is terminated pursuant to subsection (ii)(3) below. However, if the City continues to occupy the Leased Premises pursuant to this subsection (ii)(2) for six (6) months, then the City shall, in its sole discretion, either (A) terminate this Restated Lease pursuant to subsection (ii)(3), or (B) affirm this Restated Lease and waive the Tenant's default.

21(a)(ii)(3) The right of the City, even though it may have reentered the Leased Premises pursuant to subsection (ii)(2) above, to thereafter elect to terminate this Restated Lease.

21(a)(iii) Prior to exercising the remedies set forth in subsection (ii) above the City shall give the Tenant not less than thirty (30) days prior written notice (which may be given concurrently with giving the Tenant notice of an event that, if uncured. will become an Event of Material Default) of the City's intent to exercise its remedies under this Article 21(a).

21(a)(iv) In the event the City reenters the Leased Premises pursuant to the provisions of subsection (ii)(2) above, the City shall not be deemed to have terminated this Restated Lease, and the liability of the Tenant thereafter to pay rent, Advances and other sums payable under this Restated Lease shall continue unless the City notifies the Tenant in writing that the City has so elected to terminate this Restated Lease pursuant to subsection (ii)(3) above. The Tenant further acknowledges and agrees that the service by the City of any notice pursuant to the unlawful detainer or similar statute of the State of California and the surrender of possession pursuant to such notice shall not be deemed to be a termination of this Restated Lease.

21(a)(v) Should the City elect to terminate this Restated Lease pursuant to the provisions of subsection (i)(1) or (i)(3) above, the City may recover from the Tenant, as damages:

21(a)(v)(1) The worth at the time of award of any unpaid rent which had been earned at the time of such termination; plus

21(a)(v)(2) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Tenant proves could have been reasonably avoided through the re-lease of the Leased Premises; plus

21(a)(v)(3) The worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Tenant proves could be reasonably avoided through re-lease of the Leased Premises; plus

21(a)(v)(4) Any other amount necessary to compensate the City for all the detriment proximately caused by the Tenant's failure to perform its obligations under this Restated Lease or which in the ordinary course of things would be likely to result therefrom, including, without limitation, all costs associated with the City's entry on the Leased Premises pursuant to subsection (10(2) above, capital expenditures made in connection with re-leasing the property, operation and maintenance expenses prior to re-leasing, brokerage fees and commissions in connection with such re-leasing, and legal fees and expenses in connection with exercising remedies.

As used in subsections (v)(1) and (v)(2) above, the term "worth at the time of award" is computed by allowing interest from the date such amount becomes due and payable at the Default Interest Rate.

21(b) Remedies Not Exclusive.

No right or remedy herein conferred upon or reserved to the City or the Tenant is intended to be exclusive of any other right or remedy, except as expressly stated herein, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder or now or hereafter existing at law or in equity or by statute, except such rights or remedies as are expressly limited herein.

21(c) Default by the City.

In the event the City shall fail to perform or observe any of the material covenants or provisions contained in this Restated Lease on the part of the City to be performed or observed within thirty (30) days after written notice from the Tenant to the City specifying the particulars of such material default or breach of performance, or if more than thirty (30) days shall be reasonably required because of the nature of the material default, if the City shall fail to proceed diligently to cure such material default after such notice, then in that event the City shall be responsible to the Tenant for any and all actual damages sustained by the Tenant as a direct result of the City's material default, and in addition the Tenant shall be entitled to terminate this Restated Lease upon giving the City not less than ninety (90) days prior notice of the Tenant's intention to terminate this Restated Lease for such material default.

21(d) Limitations on Liability.

The Tenant shall have no recourse with respect to the breach of any obligation of the City under this Restated Lease, or for any claim based upon this Restated Lease, or otherwise, against any incorporator, shareholder, member, officer, director, employee, attorney or agent, past, present or future, of the City, or against any person other than the City.

Article 22. General Provisions

22(a) Enforced Delay.

In addition to specific provisions of this Restated Lease, performance by any Party shall not be deemed to be in default where delays or defaults arise from unforeseeable causes beyond the control and without the fault or negligence of the Party claiming an extension of time to perform. Examples of such causes include war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; quarantine restrictions; casualties; acts of God; acts of the public enemy; epidemics; freight embargoes, shortage of labor or materials; unusually inclement weather; lack of transportation; government restrictions or priorities (but not including acts of the City as landlord under this Restated Lease); court order; or any other similar causes (other than lack of funds of the Tenant or the Tenant's inability to finance the rehabilitation of the Improvements or to pay rent under this Restated Lease). An extension of time for any such cause will be deemed granted if notice by the Party claiming such extension is sent to the other Party within thirty (30) days from the commencement of the cause and such extension of time is not rejected in writing by the other Party within thirty (30) days of receipt of the notice. Any disputes regarding a rejection of an extension of time under this subsection (a) that are not resolved by the Parties within thirty (30) from the date of such rejection shall be resolved through arbitration under subsection (k) of this Article 22. An extension of time for any such causes shall be only for so long as such cause is preventing timely performance under this Restated Lease. Times of performance under this Restated Lease may also be extended by written agreement of the City and the Tenant.

22(b) Estoppel Certificates.

Within ten (10) calendars days after receiving a request of a Party, the other Party shall execute, acknowledge and deliver to or for the benefit of the requesting Party or to or for the benefit of any actual or prospective Permitted Lender, at the expense of the requesting Party, a certificate as described below.

The certificate shall certify (i) that this Restated Lease is unmodified and in full force and effect (or if there have been modifications, that this Restated Lease is in full force and effect, as modified, and stating the modifications), (ii) the dates, if any, to which all amounts due hereunder have been paid, (iii) whether there are then existing any charges, offsets or defenses against the enforcement of any agreement, covenant or condition hereof on the part of the Party requesting the certificate known to the Party delivering the certificate in the performance or observance of any agreement, covenant or condition hereof to be performed or observed and whether any notice has been given of any default which has not been cured (and, if so, specifying the same), and (iv) such other reasonable matters concerning this Restated Lease or the Leased Premises as either Party may request. Any such certificate may be relied upon by a prospective purchaser or Permitted Lender.

22(c) Waiver.

No waiver of any default under this Restated Lease shall constitute or operate as a waiver of any subsequent default hereunder, and no delay, failure or omission in exercising or enforcing any right, privilege or option under this Restated Lease shall constitute a waiver, abandonment or relinquishment thereof or prohibit or prevent any election under or enforcement or exercise of any right, privilege or option hereunder. No waiver of any provision hereof by the City or the Tenant shall be deemed to have been made unless and. until such waiver shall have been reduced to writing and signed by the City or the Tenant, as the case may be. The receipt and acceptance by the City of any amount owing under this Restated Lease with knowledge of any default under this Restated Lease shall not constitute or operate as a waiver of such default. Failure by the City or the Tenant, as the case may be, to enforce any of the terms, covenants or conditions of this Restated Lease for any length of time or from time to time shall not be deemed to waive or decrease the right of the City to insist thereafter upon strict performance by the Tenant.

22(d) Notices; Deemed Approvals.

22(d)(i) If at any time after the execution of this Restated Lease it shall become necessary or convenient for one of the Parties to this Restated Lease to serve. any notice, demand or communication upon the other Party, such notice, demand or communication shall be in writing and shall be served personally, or dispatched by certified United States mail, return receipt requested, postage prepaid, or by or reputable overnight service and if intended for the City shall be addressed to:

City of Seaside
440 Harcourt Avenue
Seaside, California 93455
Attention: City Manager

and if intended for the Tenant shall be addressed to:

Monterey Bay Resorts, LLC
c/o Tieback Holdings, LLC
901 Dove Street, Suite 230
Newport Beach, CA 92660
Attn: Michael Lutton

or to such other address as either Party may have furnished to the other in writing as a place for the service of notice. Any notice so served or dispatched shall be deemed to have been given on the delivery date or the date delivery is refused by the addressee, as shown on the return receipt.

22(d)(ii) Whenever the approval of a Party will be deemed to be given as a result of a Party's failure to respond within a period of time pursuant to a provision of this Restated Lease, the approval shall be deemed to be given only if the item submitted for approval is accompanied by a written request for approval containing the following message (with the blank filled in as appropriate) at the top of the written request:

THIS IS A REQUEST FOR AN IMPORTANT CITY/TENANT APPROVAL. UNDER THE SECOND AMENDED AND RESTATED GROUND LEASE BETWEEN THE CITY AND SEASIDE RESORT AT MONTEREY BAY, LLC, THE APPROVAL WILL AUTOMATICALLY BE DEEMED GIVEN UNLESS THE CITY/TENANT DELIVERS ITS WRITTEN DISAPPROVAL WITHIN _____ DAYS PURSUANT TO SECTION _____ OF SAID RESTATED LEASE.

22(e) Attorneys' Fees.

22(e)(i) If any legal action (including a mediation or arbitration proceeding) is commenced to interpret or to enforce the terms of this Restated Lease or to collect damages as a result of any breach of this Restated Lease, then the Party prevailing in any such action shall be entitled to recover against the Party not prevailing all reasonable attorneys' fees and costs incurred in such action (and any subsequent action or proceeding to enforce any judgment entered pursuant to an action on this Restated Lease).

22(e)(ii) Judicial actions to interpret or enforce the terms of this Restated Lease shall he filed only in the state or federal court venue applicable to the City of Seaside, California.

22(f) City's Covenant of Quiet Enjoyment.

Upon the Tenant paying the rent, Advances and other amounts payable hereunder and observing and performing all of the covenants, conditions and provisions on the Tenant's part to be observed and performed hereunder, the Tenant shall peaceably hold and quietly enjoy the Leased Premises for the entire Lease Term without hindrance, molestation or interruption by the City or any party claiming through or under the City, provided that Tenant will comply with all recorded documents affecting the Leased Premises as of the date of this Restated Lease.

22(g) Entry by the City.

The City and its authorized representatives, upon reasonable notice, shall at all reasonable times have the right to enter upon the Leased Premises to determine compliance with the terms of this Restated Lease, to show the Leased Premises to prospective purchasers, mortgagees, lenders or tenants, or to post notices, including (without limitation) notices of nonresponsibility, all without abatement of rent. In the event of an emergency, the City shall have the right to use any and all means which the City may deem necessary or proper to open any doors in order to obtain entry to any portion of the Leased Premises, and any entry to the Leased Premises obtained by the City by any of such means or otherwise shall not under any circumstances be construed or deemed to be forcible or unlawful entry into, or a detainer of; the Leased Premises or an eviction, actual or constructive, of the Tenant from the Leased Premises. The City shall indemnify and hold harmless the Tenant, any Qualified Operator, and their respective subtenants, officers, employees, contractors and agents from and against all liabilities, damages, claims and expenses (including reasonable attorneys' fees) to third parties arising out of the City's entry upon the Leased Premises pursuant to this subsection (g).

22(h) No Joint Venture.

It is agreed that nothing contained in this Restated Lease shall be deemed or construed as creating a partnership or joint venture between the City and the Tenant or between the City and any other party or cause the City to be responsible in any way for the debts or obligations of the Tenant or any other party.

22(i) Severability.

If any term of this Restated Lease is held in a final disposition by a court of competent jurisdiction to be invalid, then the remaining terms shall continue in full force:

22(j) Approvals.

22(j)(i) Whenever this Restated Lease calls for City approval, consent, or waiver, the written approval, consent, or waiver of the City Manager of the City or his/her designee shall constitute the approval, consent, or waiver of the City, without further approval or authorization required from the City Council, unless the City Manager or the City

Council, in his/her or its sole discretion, requires such approval or authorization in any particular matter. Subject to the City Manager or the City Council requiring the approval or authorization of the City Council, the City Council hereby authorizes the City Manager to deliver such approvals or consents as are required by this Restated Lease, or to waive requirements under this Restated Lease, on behalf of the City.

22(j)(ii) Except where a standard of sole discretion is expressly provided for in this Restated Lease, approvals, determinations “to the satisfaction of a party or whether a matter is “acceptable” to a party, consents and other similar exercises of discretion shall not be unreasonably made or withheld taking into consideration the factors applicable to the particular approvals, determinations or consents as set forth in this Restated Lease, and shall in any event be accompanied with an explanation for the reasons for any disapproval, refusal to consent or other determination adverse to the other party, and a response shall be given within the time expressly set forth in this Restated Lease. If no time is stated for response, the time period for approval, consent or other determination shall be thirty (30) days and a failure to respond within such time period shall be deemed approval., except that no such time limit or deemed approval shall apply to a matter left to the sole discretion of a party or an approval required under Article I 6(e)(ii) of this Restated Lease. Except with respect to decisions or approvals subject to a sole discretion standard, any dispute concerning the granting or withholding of an approval under this Restated Lease or the reasonableness thereof shall be subject to arbitration under Article 22(k).

22(j)(iii) Nothing in this Restated Lease limits the City’s discretion in its role as the municipal regulatory authority whose approval may be needed from time to time in connection with activities that the Tenant may seek to undertake. Even where the approval of the City (acting as landlord) may not be unreasonably withheld under this Restated Lease, the City (in its role as municipal regulatory authority) will retain full discretion to grant or withhold any approvals required of the City in its role as municipal regulatory authority.

22(k) Arbitration of Disputes.

Any controversy, dispute or claim arising under, out of or with respect to this Restated Lease (including any dispute regarding an approval or disapproval), except with respect to decisions or approvals subject to a sole discretion standard, shall be resolved by binding arbitration (except as provided below) before a single arbitrator and shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the “Rules”), including any and all “expedited procedures” provisions thereof; provided, however, that in the event of any conflict between the Rules and this subsection (k) the provisions of this subsection (k) shall govern.

The arbitration shall be conducted in Monterey County, California and shall include discovery, which shall be permitted but shall be subject to rules and procedures imposed by the arbitrator to expedite the hearing of the dispute. If the Parties do not agree upon an arbitrator within ten (10) business days after a Party notifies the other in writing of its election to arbitrate, then the arbitrator shall be appointed by the Presiding Civil Judge of the Monterey County Superior Court (or such comparable successor court) upon application by either Party.

The Parties shall endeavor to cause the matter to be heard by the arbitrator within thirty (30) days after it is submitted to the arbitrator. The arbitrator shall render a written decision stating reasons therefor in reasonable detail within fifteen (15) days after the arbitration is concluded.

The arbitrator shall determine, in addition to the matter in question, which Party fails to prevail in the arbitration (and, if Tenant fails to prevail, whether there was a reasonable basis for Tenant's position in the arbitration). All reasonable costs and expenses reasonably incurred in connection with such arbitration, including reasonable costs and expenses of the arbitrators, and the reasonable attorneys and expert charges of the Parties shall be borne by the Party which fails to prevail. In addition, if Tenant prevails, or if Tenant does not prevail but the arbitrator determines that there was a reasonable basis for Tenant's position in the arbitration and it was reasonable under the circumstances for the Tenant to delay its performance under this Restated Lease, then all time periods for Tenant's performance under this Restated Lease that it would be reasonable to extend shall be extended by the number of days from the demand for arbitration through the date of the arbitration award.

When resolving any dispute, the arbitrator shall apply the pertinent provisions of this Restated Lease without departure therefrom in any respect. The arbitrator shall not have the power to change any of the provisions of this Restated Lease, but this sentence shall not prevent in any appropriate case the interpretation, construction and determination by the arbitrator of the applicable provisions of this Restated Lease to the extent necessary in applying the same to the matters to be determined by arbitration.

Judgment on the arbitration award may be entered in any court having jurisdiction.

Notwithstanding the provisions of this Article 22(k), following arbitration, either Party may seek de novo review of any of the following matters by filing a complaint in a court with jurisdiction within sixty (60) days following the date the arbitration award is issued:

i. The existence of an Event of Material Default (or the cure thereof) that could result in termination of this Restated Lease or Tenant's loss of possession of the Leased Premises hereunder.

ii. The satisfaction by the City of its obligations under Article 14(a)(XV)(2).

iii. Obligations under Article 14(a)(vi).

iv. The division and application of condemnation proceeds under Article 20 or insurance proceeds following a casualty under Article 17.

v. Any indemnity obligation under this Restated Lease.

In addition, this Article 22(k) shall not obligate a Permitted Mortgagee to arbitrate matters arising under Article 18(g) unless so provided in a subordination, non-disturbance and attornment agreement or otherwise agreed to by such Permitted Mortgagee.

TO THE EXTENT PERMITTED BY LAW, TENANT AND CITY EACH HEREBY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT BY EITHER PARTY AGAINST THE OTHER REGARDING ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS RESTATED LEASE.

NOTICE: BY INITIALING IN THE SPACE BELOW, YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THIS "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE ARBITRATION OF DISPUTES PROVISION TO NEUTRAL ARBITRATION.

____________________ ____________________

Tenant's Initials City's Initials

22(l) Police Power.

Nothing contained in this Restated Lease shall be deemed to limit, restrict, amend. or modify, nor to constitute a waiver or release of, any Laws of the City, its departments, commissions, agencies, and boards and the officers thereof; including, without limitation, any redevelopment or general plan or any zoning ordinances, or any of the City's duties, obligations, rights or remedies thereunder or pursuant thereto or the general police powers, rights, privileges and discretion of the City in the furtherance of the public health, welfare, and safety of the inhabitants of the City of Seaside, including, without limitation, the right under law to make and implement independent judgments, decisions, and acts regarding planning, development, and redevelopment matters (including, without limitation, approval or disapproval of plans and issuance or withholding of building permits) whether or not consistent with the provisions of this Restated Lease, or any other documents contemplated hereby (collectively, "City Rules and Powers"). In the event of any conflict, inconsistency or contradiction between any terms, conditions, or provisions of this Restated Lease or such other documents, on the one hand, and any such City Rules and Powers, on the other hand, the latter shall prevail and govern in each case. This subsection (I) shall be interpreted for the benefit of the City.

22(m) Brokers.

Each Party shall indemnify the other Party from and against any real estate brokerage commissions or similar obligations that may be claimed through the indemnifying Party as the result of the negotiation or execution of this Restated Lease. This indemnification obligation shall survive termination of this Restated Lease.

22(n) Title of Parts and Sections.

Any titles of the Articles or subsections of this Restated Lease are inserted for convenience of reference only and shall be disregarded in interpreting any part of the provisions of this Restated Lease.

22(o) Time of the Essence.

Time is of the essence of each and all of the agreements, covenants and conditions of this Restated Lease.

22(p) Applicable Law.

This Restated Lease shall be interpreted under and pursuant to the laws of the State of California.

22(q) Entire Agreement.

This Restated Lease constitutes the entire understanding and agreement of the Parties with respect to the Leased Premises and the Personal Property.

22(r) Multiple Originals: Counterparts.

This Restated Lease may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

22(s) Modifications.

This Restated Lease shall not be modified except by written instrument executed by and between the Parties.

22(t) Successors and Assigns.

The terms, covenants and conditions contained in this Restated Lease shall be binding upon and inure to the benefit of the heirs, successors, executors, administrators and assigns of the Parties. Nothing in this subsection (t) authorizes a Transfer not otherwise permitted under this Restated Lease.

22(u) Memorandum of Lease.

Promptly after this Restated Lease becomes effective, the Parties shall execute, and cause to be duly acknowledged and recorded, a Memorandum of Lease in the form attached hereto as Exhibit "I".

Article 23. Right of First Negotiation

Tenant shall have a right of first negotiation to purchase the Leased Premises and any portion thereof. If City desires to sell the Leased Premises, or any portion thereof, City shall so notify Tenant in writing. If Tenant notifies City in writing, within ten (10) business days after City's notice is delivered to Tenant, that Tenant is interested in negotiating a purchase, then City staff shall negotiate the terms thereof in good faith with Tenant for a period of sixty (60) days, and during such period City shall not negotiate the terms of a sale with any other person or entity.

The foregoing shall not, however, bind the City to any sale, it being understood that the terms of any sale are subject to the approval by the City Council, in its sole and absolute discretion, of a purchase and sale agreement for the transaction. City acknowledges that the terms to be negotiated could include conversion of the land containing 9 or 18 golf course holes to other development; water rights; and additional offsite affordable housing to be provided by Tenant.

AS OF THE DATE FIRST WRITTEN ABOVE, the Parties evidence their agreement to the terms of this Restated Lease by signing below:

CITY:

CITY OF SEASIDE

By:_________________________
Craig Malin, City Manager

ATTEST:

____
Lesley Milton, City Clerk

APPROVED AS TO FORM:

Richards, Watson & Gershon
Special Counsel to City

____
Bruce Galloway

TENANT:

MONTEREY BAY RESORTS, LLC

By:__________________________
Print Name: __________________
Title:_________________________

EXHIBIT "A"

DESCRIPTION OF LEASED PREMISES

(Attached.)

EXHIBIT A

LEGAL DESCRIPTION

Order No.: 52104544-B

The land referred to herein is situated in the State of California, County of Monterey, City of Seaside described as follows:

PARCEL 1:

CERTAIN REAL PROPERTY SITUATE IN RANCHO NOCHE BUENA, COUNTY OF MONTEREY, STATE OF CALIFORNIA, PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT AN ANGLE POINT ON THE NORTHWESTERLY BOUNDARY OF THAT CERTAIN 375.134 ACRE PARCEL (FORT ORD GOLF COURSES), AS SAID BOUNDARY AND PARCEL ARE SHOWN ON THAT CERTAIN RECORD OF SURVEY MAP FILED NOVEMBER 16, 1994 IN VOLUME 19 OF SURVEY MAPS, AT PAGE 21, RECORDS OF MONTEREY COUNTY, CALIFORNIA, SAID POINT ALSO BEING SHOWN AND DESIGNATED AS CORNER NUMBERED TWENTY-TWO (22) ON SAID MAP (HAVING COORDINATES: NORTHING = 2125520.43 AND EASTING = 5731464.95); THENCE ALONG SAID BOUNDARY

(1) N. 44° 39' 19" E. 1733.18 FEET; THENCE

(2) EASTERLY, 414.10 FEET ALONG THE ARC OF A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 470.00 FEET, THROUGH A CENTRAL ANGLE OF 50° 28' 54"; THENCE TANGENTIALLY

(3) S. 84° 51' 47" E., 1476.58 FEET; THENCE

(4) NORTHEASTERLY, 468.31 FEET ALONG THE ARC OF A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 530.00 FEET, THROUGH A CENTRAL ANGLE OF 50° 37' 37"; THENCE TANGENTIALLY

(5) N. 44° 30' 36" E., 436.91 FEET TO THE MOST NORTHERLY CORNER OF SAID PARCEL; THENCE ALONG THE NORTHEASTERLY BOUNDARY OF SAID PARCEL

(6) S. 45° 29' 24" E., 82.00 FEET; THENCE

(7) S. 61° 45' 31" E., 311.38 FEET; THENCE

(8) S. 20° 21' 57" E., 41.35 FEET; THENCE

(9) S. 28° 46' 07" E., 98.84 FEET; THENCE

(10) S. 32° 16' 38" E., 220.10 FEET; THENCE

(11) S. 56° 17' 20" E., 103.07 FEET; THENCE

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LEGAL DESCRIPTION - continued
Order No.:52104544-B

(12) S. 52° 37' 09" E., 174.13 FEET; THENCE

(13) S. 50° 36' 52" E., 376.85 FEET; THENCE

(14) S. 41° 44' 54" E., 311.38 FEET TO THE NORTHEASTERLY CORNER OF SAID PARCEL; THENCE ALONG THE EASTERLY BOUNDARY OF SAID PARCEL

(15) S. 23° 22' 44" W., 855.21 FEET; THENCE

(16) S. 09° 09' 39" E., 430.68 FEET; THENCE LEAVING SAID EASTERLY BOUNDARY

(17) S. 66° 45' 05" E., 79.92 FEET; THENCE

(18) S. 23° 14' 55" W., 1707.26 FEET TO THE NORTHEASTERLY CORNER OF THAT CERTAIN 40.092 ACRE PARCEL SHOWN AND DESIGNATED AS "PARCEL 3" ON THAT CERTAIN RECORD OF SURVEY MAP FILED NOVEMBER 18, 1994 IN VOLUME 19 OF SURVEYS, AT PAGE 22, RECORDS OF MONTEREY COUNTY, CALIFORNIA; THENCE ALONG THE NORTHERLY BOUNDARY THEREOF

(19) N. 79° 34' 35" W., (AT 77.60 FEET, A POINT ON SAID EASTERLY BOUNDARY OF SAID 375.134 ACRE PARCEL), 1025.59 FEET TO THE NORTHWESTERLY CORNER OF SAID PARCEL 3; THENCE ALONG THE COMMON BOUNDARY OF BOTH SAID PARCELS

(20) S. 23° 14' 55" W., (AT 1852.03 FEET, THE SOUTHEASTERLY CORNER OF SAID 375.134 ACRE PARCEL), 1897.43 FEET TO THE SOUTHWESTERLY CORNER OF SAID PARCEL 3; THENCE LEAVING THE BOUNDARY OF SAID PARCEL 3

(21) S. 23° 14' 55" W., 77.69 FEET; THENCE

(22) N. 87° 38' 15" W., 417.95 FEET; THENCE

(23) N. 02° 10' 44" W., 293.61 FEET; THENCE

(24) N. 41° 23' 40" W., 33.31 FEET TO AN ANGLE POINT ON THE SOUTHWESTERLY BOUNDARY OF SAID 375.13 ACRE PARCEL; THENCE ALONG SAID SOUTHWESTERLY BOUNDARY

(25) N. 41° 23' 40" W., 225.85 FEET; THENCE

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LEGAL DESCRIPTION - continued
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(26) N. 54° 48' 21" W., 116.12 FEET; THENCE

(27) N. 70° 30' 41" W., 79.18 FEET; THENCE

(28) N. 52° 56' 22" W., 364.27 FEET; THENCE

(29) N. 48° 34' 36" W., 301.92 FEET; THENCE

(30) N. 01° 05' 39" W., 245.40 FEET; THENCE

(31) N. 00° 02' 24" W., 238.08 FEET; THENCE

(32) N. 08° 39' 13" W., 196.46 FEET; THENCE

(33) N. 10° 58' 04" W., 239.05 FEET; THENCE

(34) N. 14° 02' 58" W., 479.24 FEET; THENCE

(35) N. 25° 14' 13" W., 188.26 FEET; THENCE

(36) N. 45° 42' 30" W., 230.28 FEET; THENCE

(37) N. 57° 01' 36" W., 147.39 FEET; THENCE

(38) N. 74° 45' 09" W., 263.40 FEET; THENCE

(39) N. 08° 25' 05" W., 475.89 FEET; THENCE

(40) N. 12° 55' 30" E., 35.88 FEET; THENCE

(41) N. 22° 53' 19" W., 544.56 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION OF SAID LAND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

CERTAIN REAL PROPERTY SITUATE IN RANCHO NOCHE BUENA, COUNTY OF MONTEREY, STATE OF CALIFORNIA, PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST NORTHERLY CORNER OF THAT CERTAIN 375.134 ACRE PARCEL, AS SAID CORNER AND PARCEL ARE SHOWN ON THAT CERTAIN RECORD OF SURVEY MAP FILED NOVEMBER 16, 1994 IN VOLUME 19 OF SURVEYS, AT PAGE 21, RECORDS OF MONTEREY COUNTY, CALIFORNIA,

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SAID CORNER ALSO BEING DESIGNATED AS CORNER NUMBERED TWENTY-SEVEN (27) AND BEARS N. 44° 30′ 36″ E., 436.91 FEET; DISTANT FROM CORNER NUMBERED TWENTY-SIX (26), AS SHOWN ON SAID MAP; THENCE

(A) S. 24° 11′ 58″ W., 1410.85 FEET TO THE TRUE POINT OF BEGINNING; THENCE

(1) S. 59° 00′ 00″ E., 270.00 FEET; THENCE

(2) S. 31° 00′ 00″ W., 350.00 FEET; THENCE

(3) N. 59° 00′ 00″ W., 270.00 FEET; THENCE

(4) N. 31° 00′ 00″ E., 350.00 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL WATER RIGHTS TO POTABLE WATER DERIVED FROM THE SALINAS AQUIFER, AS SET FORTH IN THE DEED RECORDED JANUARY 15, 1997 IN REEL 3468, PAGE 1515, OFFICIAL RECORDS.

PARCEL 2:

CERTAIN REAL PROPERTY SITUATE IN RANCHO NOCHE BUENA, COUNTY OF MONTEREY, STATE OF CALIFORNIA, PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A GRANITE MONUMENT MARKED "NB4A", BEING AN ANGLE POINT ON THE SOUTHWESTERLY BOUNDARY OF THAT CERTAIN PARCEL 1 OF THE FORT ORD MILITARY RESERVATION AS SAID PARCEL 1 IS SHOWN ON THAT CERTAIN RECORD OF SURVEY MAP FILED SEPTEMBER 7, 1994 IN VOLUME 19 OF SURVEY MAPS, AT PAGE 1, RECORDS OF MONTEREY COUNTY, CALIFORNIA (HAVING COORDINATES: NORTHING = 2121541.64 AND EASTING = 5734939.34); THENCE

(A) N. 66° 43′46′ W., 3957.11 FEET TO THE TRUE POINT OF BEGINNING (HAVING COORDINATES: NORTHING = 2123104.99 AND EASTING (= 5731304.14); THENCE

(1) S. 77° 49′ 37″ W., 11.76 FEET; THENCE

(2) SOUTHWESTERLY, 145.91 FEET ALONG THE ARC OF A TANGENT CURVE

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LEGAL DESCRIPTION - continued
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TO THE LEFT HAVING A RADIUS OF 85.00 FEET, THROUGH A CENTRAL ANGLE OF 98° 21' 00"; THENCE TANGENTIALLY

(3) S. 20° 31' 23" E., 32.81 FEET; THENCE

(4) S. 55° 53' 55" W., 57.43; THENCE

(5) NORTHWESTERLY 174.74 FEET ALONG THE ARC OF A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 220.00 FEET, THROUGH A CENTRAL ANGLE OF 45° 30' 32"; THENCE TANGENTIALLY

(6) N. 78° 35' 33" W., 90.16 FEET; THENCE

(7) N. 11° 46' 00" E., 271.23 FEET; THENCE

(8) NORTHEASTERLY , 48.21 FEET ALONG THE ARC OF A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 30.00 FEET, THROUGH A CENTRAL ANGLE OF 92° 04' 19"; THENCE TANGENTIALLY

(9) S. 76° 09' 41" E., 182.36 FEET; THENCE

(10) SOUTHEASTERLY, 109.41 FEET ALONG THE ARC OF A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 220.00 FEET, THROUGH A CENTRAL ANGLE OF 28° 29' 38" TO THE CURVE POINT OF BEGINNING. AND BEING A PORTION OF SAID PARCEL 1.

EXCEPTING THEREFROM ALL WATER RIGHTS TO POTABLE WATER DERIVED FROM THE SALINAS AQUIFER, AS SET FORTH IN THE DEED RECORDED JANUARY 15, 1997 IN REEL 3468, PAGE 1515, OFFICIAL RECORDS.

PARCEL 3:

CERTAIN REAL PROPERTY SITUATE IN MONTEREY CITY LANDS TRACT NO. 1, COUNTY OF MONTEREY, STATE OF CALIFORNIA, PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A GRANITE MONUMENT MARKED "NB4A", BEING AN ANGLE POINT ON THE SOUTHWESTERLY BOUNDARY OF THAT CERTAIN PARCEL 1 OF THE FORT ORD MILITARY RESERVATION AS SAID PARCEL 1 IS SHOWN ON THAT CERTAIN RECORD OF SURVEY MAP FILED SEPTEMBER 7, 1994 IN VOLUME 19 OF SURVEY MAPS, AT PAGE 1, RECORDS OF MONTEREY COUNTY,

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CALIFORNIA (HAVING COORDINATES: NORTHING = 2121541.64 AND EASTING = 5734939.34); THENCE

(A) N. 65° 14' 42" E., 1172.01 FEET TO THE TRUE POINT OF BEGINNING (HAVING COORDINATES: NORTHING = 2122032.41 AND EASTING (= 5736003.65); THENCE

(1) N. 23° 20' 00" E., (AT 207.55 FEET, A POINT HEREINAFTER REFERRED TO AS "POINT A"; AT 293.18 FEET, A POINT HEREINAFTER REFERRED TO AS "POINT B") 300 FEET; THENCE

(2) S. 66° 40' 00" E., (AT 118.91 FEET, A POINT HEREINAFTER REFERRED TO AS "POINT C"; AT 149.02 FEET, A POINT HEREINAFTER REFERRED TO AS "POINT D"), 300.00 FEET; THENCE

(3) S. 23° 20' 00" W., (AT 24.05 FEET, A POINT HEREINAFTER REFERRED TO AS "POINT D", AT 55.75 FEET, A POINT HEREINAFTER REFERRED TO AS "POINT E"), 300.00 FEET; THENCE

(4) N. 66° 40' 00" 300.00 FEET TO THE TRUE POINT OF BEGINNING AND BEING A PORTION OF SAID PARCEL 1.

EXCEPTING THEREFROM ALL WATER RIGHTS TO POTABLE WATER DERIVED FROM THE SALINAS AQUIFER, AS SET FORTH IN THE DEED RECORDED JANUARY 15, 1997 IN REEL 3468, PAGE 1515, OFFICIAL RECORDS.

PARCEL 3A:

TOGETHER WITH A 70 FOOT-WIDE EASEMENT FOR WATER LINE PURPOSES OVER THE FOLLOWING DESCRIBED PARCEL.

BEGINNING AT HEREINABOVE DESCRIBED "POINT A"; THENCE

(1) N. 31° 30' 00" W., 874.03 FEET; THENCE

(2) N. 70° 00' 00" W., 120.92 FEET TO A POINT ON THE SOUTHEASTERLY BOUNDARY OF THAT CERTAIN 40.092 ACRE PARCEL SHOWN AND DESIGNATED AS "PARCEL 3 (FITCH SCHOOL)" ON THAT CERTAIN RECORD OF SURVEY MAP FILED NOVEMBER 14, 1994 IN VOLUME 19 OF SURVEY MAPS, AT PAGE 22, RECORDS OF MONTEREY COUNTY, CALIFORNIA, AS SAID POINT BEARS (ALONG SAID BOUNDARY) S. 23° 14' 55" W.,

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278.82 FEET DISTANT FROM THE MOST EASTERLY CORNER OF SAID PARCEL 3; THENCE ALONG SAID BOUNDARY

(3) N. 23° 14′ 55" E., 70.11 FEET; THENCE LEAVING SAID BOUNDARY

(4) S. 70° 00′ 00" E., 141.39 FEET; THENCE

(5) S. 31° 30′ 00" E., 849.15 FEET TO HEREINABOVE DESCRIBED "POINT B"; THENCE

(6) S. 23° 20′ 00" W., 85.63 FEET TO THE POINT OF BEGINNING.

PARCEL 3B:

AND TOGETHER WITH A 30 FOOT-WIDE EASEMENT FOR OVERFLOW PIPE PURPOSES OVER THE FOLLOWING DESCRIBED PARCEL:

BEGINNING AT HEREINABOVE DESCRIBED "POINT C"; THENCE

(1) N. 28° 11′ 00" E., 112.29 FEET; THENCE

(2) S. 61° 49′ 00" E., 30.00 FEET; THENCE

(3) S. 28° 11′ 00" W., 109.74 FEET TO A POINT HEREINABOVE DESCRIBED AS "POINT D"; THENCE

(4) N. 66° 40′ 00" W., 30.11 FEET TO THE POINT OF BEGINNING.

PARCEL 3C:

TOGETHER WITH A 30 FOOT-WIDE EASEMENT FOR ROAD PURPOSES OVER THE FOLLOWING DESCRIBED PARCEL:

BEGINNING AT HEREINABOVE DESCRIBED "POINT E"; THENCE

(1) S. 47° 45′ 00" E., 85.80 FEET; THENCE

(2) S. 43° 45′ 00" E., 219.42 FEET; THENCE

(3) S. 56° 00′ 00" W., 30.44 FEET; THENCE

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LEGAL DESCRIPTION - continued
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(4) N. 43° 45' 00" W., 213.22 FEET; THENCE

(5) N. 47° 45' 00" W., 74.47 FEET TO HEREINABOVE DESCRIBED "POINT F"; THENCE

(6) N. 23° 20' 00" E., 31.71 FEET TO THE POINT OF BEGINNING.

PARCEL 4:

AN EASEMENT FOR ROAD AND UTILITY PURPOSES BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A GRANITE MONUMENT MARKER "NB4A", BEING AN ANGLE POINT ON THE SOUTHWESTERLY BOUNDARY OF THAT CERTAIN PARCEL 1 OF THE FORT ORD MILITARY RESERVATION AS SAID PARCEL 1 IS SHOWN ON THAT CERTAIN RECORD OF SURVEY MAP FILED SEPTEMBER 7, 1994 IN VOLUME 19 OF SURVEY MAPS, AT PAGE 1, RECORDS OF MONTEREY COUNTY, CALIFORNIA (HAVING COORDINATES: NORTHING EQUALS 2121541.64 AND EASTING EQUALS 5734939.34); THENCE

(1) N. 87° 38' 15" W., 2620.44 FEET; THENCE LEAVING SAID BOUNDARY,

(2) N. 34° 09' 07" W., 1118.93 FEET; THENCE

(3) N. 55° 50' 53" E., 62.65 FEET; THENCE

(4) S. 33° 54' 04" E., 759.29 FEET; THENCE

(5) S. 40° 09' 33" E., 114.92 FEET; THENCE

(6) S. 48° 11' 17" E., 206.18 FEET; THENCE

(7) SOUTHEASTERLY, 179.02 FEET ALONG THE ARC OF A TANGENT CURVE TO THE LEFT HAVE A RADIUS OF 260.00 FEET, THROUGH A CENTRAL ANGLE OF 39° 26' 58" THENCE TANGENTIALLY

(8) S. 87° 38' 15" E., 1279.68 FEET; THENCE

(9) N. 23° 14' 55" E., 77.69 FEET TO THE MOST WESTERLY CORNER OF THAT CERTAIN 40.092 ACRE PARCEL SHOWN AND DESIGNATED AS

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LEGAL DESCRIPTION - continued
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PARCEL 3 (FITCH SCHOOL) ON THAT CERTAIN RECORD OF SURVEY MAP FILED NOVEMBER 16, 1994 IN VOLUME 19 OF SURVEY MAPS, AT PAGE 22, RECORDS OF MONTEREY COUNTY, CALIFORNIA; THENCE ALONG THE SOUTHERLY AND EASTERLY BOUNDARY OF SAID 40.092 ACRE PARCEL,

(10) S. 87° 38' 15" E., 429.80 FEET; THENCE

(11) NORTHEASTERLY 1121.83 FEET ALONG THE ARC OF A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 930.00 FEET, THROUGH A CENTRAL ANGLE OF 69° 06' 50"; THENCE LEAVING LAST SAID BOUNDARY,

(12) S. 19° 26' 42" W., 753.69 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL WATER RIGHT TO POTABLE WATER DERIVED FROM THE SALINAS AQUIFER, AS SET FORTH IN THE DEED RECORDED JANUARY 15, 1997 IN REEL 3468, PAGE 1515, OFFICIAL RECORDS.

PARCEL 5:

AN EASEMENT FOR ROAD AND UTILITY PURPOSES BEGIN MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT AN ANGLE POINT ON THE NORTHWESTERLY BOUNDARY OF THAT CERTAIN 375.134 ACRE PARCEL (FORT ORD GOLF COURSES), AS SAID BOUNDARY AND PARCEL ARE SHOWN ON THAT CERTAIN RECORD OF SURVEY MAP FILED NOVEMBER 16, 1994 IN VOLUME 19 OF SURVEY MAPS, AT PAGE 22, RECORDS OF MONTEREY COUNTY, CALIFORNIA, SAID POINT ALSO BEING SHOWN AND DESIGNATED AS CORNER NUMBERED TWENTY-TWO (22) ON SAID MAP (HAVING COORDINATES: NORTHING EQUALS 2125520.43 AND EASTING EQUALS 5731464.95); THENCE ALONG SAID BOUNDARY,

(1) N. 44° 39' 19" E., 1733.18 FEET; THENCE

(2) EASTERLY, 414.10 FEET ALONG THE ARC OF A TANGENT CURVE TO THE RIGHT HAVE A RADIUS OF 470.00 FEET, THROUGH A CENTRAL ANGLE OF 50° 28' 54"; THENCE TANGENTIALLY

(3) S. 84° 51' 47" E., 1476.58 FEET; THENCE

(4) NORTHEASTERLY, 468.31 FEET ALONG THE ARC OF A TANGENT CURVE

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LEGAL DESCRIPTION - continued
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TO THE LEFT HAVING A RADIUS OF 530.00 FEET, THROUGH A CENTRAL ANGLE OF 50° 37' 37"; THENCE TANGENTIALLY

(5) N. 44° 30' 36" E., (AT 436.91 FEET, LEAVING SAID BOUNDARY) 1214.31 FEET; THENCE

(6) N. 52° 45' 18" W., 60.49 FEET; THENCE

(7) S. 44° 30' 36" W., 1206.66 FEET; THENCE

(8) WESTERLY, 415.30 FEET ALONG THE ARC OF A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 470.00 FEET, THROUGH A CENTRAL ANGLE OF 50° 37' 37"; THENCE TANGENTIALLY

(9) N. 84° 51' 47" W., 1476.58 FEET; THENCE

(10) SOUTHWESTERLY, 466.97 FEET ALONG THE ARC OF A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 530.00 FEET, THROUGH A CENTAL ANGLE OF 50° 28' 54"' THENCE TANGENTIALLY

(11) S. 44° 39' 19" W., 2088.27 FEET; THENCE

(12) SOUTHWESTERLY, 153.84 FEET ALONG THE ARC OF A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 4770.00 FEET, THROUGH A CENTRAL ANGLE OF 18° 45' 16"; THENCE TANGENTIALLY

(13) S. 63° 24' 35" W., 649.45 FEET; THENCE

(14) SOUTHWESTERLY, 167.68 FEET ALONG THE ARC OF A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 1830.00 FEET, THROUGH A CENTRAL ANGLE OF 05° 15' 00"; THENCE TANGENTIALLY

(15) S. 58° 09' 35" W., 39.73 FEET; THENCE

(16) S. 57° 59' 07" W., 255.83 FEET; THENCE

(17) SOUTHWESTERLY, 257.69 FEET ALONG THE ARC OF A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 570.00 FEET WHOSE CENTER BEARS N. 32° 03' 19" W., THROUGH A CENTRAL ANGLE OF 25° 54' 09"; THENCE TANGENTIALLY

(18) S. 83° 50' 50" W., 173.72 FEET; THENCE

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LEGAL DESCRIPTION - continued
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(19) SOUTHWESTERLY, 336.66 FEET ALONG THE ARC OF A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 605.00 FEET, THROUGH A CENTRAL ANGLE OF 31° 52' 59"; THENCE NON-TANGENTIALLY

(20) S. 39° 02' 05" W., 48.88 FEET; THENCE

(21) SOUTHWESTERLY, 235.98 FEET ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 620.04 FEET WHOSE CENTER BEARS S. 42° 02' 56" E., THROUGH A CENTRAL ANGLE OF 21° 48' 23"; THENCE NON-TANGENTIALLY

(22) S. 48° 10' 09" W., 16.00 FEET; THENCE

(23) S. 04° 07' 13" W., 16.00 FEET; THENCE

(24) S. 26° 08' 41" W., 1035.15 FEET; THENCE

(25) SOUTHWESTERLY, 213.21 FEET ALONG THE ARC OF A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 680.04 FEET, THROUGH A CENTRAL ANGLE OF 17° 57' 48"; THENCE TANGENTIALLY

(26) S. 44° 06' 29" W., 255.19 FEET; THENCE

(27) SOUTHWESTERLY 255.41 FEET ALONG THE ARC OF A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 820.05 FEET, THROUGH A CENTRAL ANGLE OF 17° 50' 43"; THENCE TANGENTIALLY

(28) S. 26° 15' 46" W., 187.90 FEET; THENCE

(29) S. 03° 01' 44" W., 367.64 FEET TO AN ANGLE POINT ON THE SOUTHWESTERLY BOUNDARY OF THAT CERTAIN PARCEL 1, AS SAID BOUNDARY AND PARCEL ARE SHOWN ON THAT CERTAIN RECORD OF SURVEY MAP FILED SEPTEMBER 7, 1994 IN VOLUME 19 OF SURVEYS, AT PAGE 1, RECORDS OF MONTEREY COUNTY, CALIFORNIA, SAID POINT ALSO BEING SHOWN AND DESIGNATED AS CORNER NUMBERED THREE HUNDRED TWENTY-SIX (326) ON SAID MAP; THENCE ALONG SAID BOUNDARY,

(30) N. 31° 41' 48" E., 182.78 FEET; THENCE

(31) N. 08° 14' 06" E., 113.99 FEET; THENCE

(32) S. 88° 09' 44" E., 49.74 FEET; THENCE

Continued on next page

LEGAL DESCRIPTION - continued
Order No.:52104544-B

(33) N. 01° 50' 16" E., 60.00 FEET; THENCE

(34) N. 69° 37' 11" W., 47.18 FEET; THENCE

(35) N. 04° 32' 55" E., 45.01 FEET; THENCE

(36) N. 18° 23' 45" E., 133.46 FEET; THENCE

(37) N. 39° 37' 46" E., 233.97 FEET; THENCE

(38) N. 32° 49' 26" E., 152.97 FEET; THENCE

(39) N. 48° 49' 46" E., 154.06 FEET; THENCE

(40) N. 35° 27' 17" E., 106.34 FEET; THENCE

(41) N. 28° 43' 45" E., 404.39 FEET; THENCE

(42) N. 23° 49' 01" E., 35.65 FEET; THENCE LEAVING LAST SAID BOUNDARY,

(43) N. 63° 51' 19" W., 19.64 FEET; THENCE

(44) N. 26° 08' 41" E., 693.51 FEET; THENCE

(45) NORTHEASTERLY, 217.71 FEET ALONG THE ARC OF A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 560.04 FEET, THROUGH A CENTRAL ANGLE OF 22° 16' 23"; THENCE NON-TANGENTIALLY

(45) N. 39° 02' 05" E., 46.70 FEET; THENCE

(47) NORTHEASTERLY, 296.65 FEET ALONG THE ARC OF A NON-TANGENT CURVE TO THE RIGHT HAVE A RADIUS OF 545.00 FEET WHOSE CENTER BEARS S. 37° 20' 22" E., THROUGH A CENTRAL ANGLE OF 31° 11' 12"; THENCE TANGENTIALLY

(48) N. 83° 50' 50" E., 173.72 FEET; THENCE

(49) NORTHEASTERLY, 284.81 FEET ALONG THE ARC OF A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 530.00 FEET; THROUGH A CENTRAL ANGLE OF 25° 54' 09"; THENCE NON-TANGENTIALLY

Continued on next page

LEGAL DESCRIPTION - continued
Order No.:52104544-B

(50) N. 57° 59' 07" E., 255.69 FEET; THENCE

(51) N. 58° 09' 35" E., 39.64 FEET; THENCE

(52) NORTHEASTERLY, 162.16 FEET ALONG THE ARC OF A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 1770.00 FEET THROUGH A CENTRAL ANGLE OF 05° 15' 00"; THENCE TANGENTIALLY

(53) N. 63° 24' 35" E., 649.45 FEET; THENCE

(54) NORTHEASTERLY, 173.48 FEET ALONG THE ARC OF A TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 530.00 FEET, THROUGH A CENTRAL ANGLE OF 18° 45' 16"; THENCE TANGENTIALLY

(55) N. 44° 39' 19" E., 355.09 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL WATER RIGHTS TO POTABLE WATER DERIVED FROM THE SALINAS AQUIFER, AS SET FORTH IN THE DEED RECORDED JANUARY 15, 1997 IN REEL 3468, PAGE 1515, OFFICIAL RECORDS.

PARCEL 6:

A NON-EXCLUSIVE EASEMENT VARIOUSLY 12 AND 10 FEET IN WIDTH FOR THE OPERATION, MAINTENANCE, REPAIR AND REPLACEMENT OF INFRASTRUCTURE PERTAINING TO NON-POTABLE IRRIGATION SYSTEM AS CREATED BY AND UNDER THE TERMS OF THE QUITCLAIM DEED FOR TRANSFER OF BAYONET AND BLACK HORSE GOLF COURSES TO THE CITY OF SEASIDE, CALIFORNIA, RECORDED JANUARY 15, 1997 IN REEL 3468, PAGE 1515, OFFICIAL RECORDS OVER THROUGH OR UNDER "HAYES PARK", AS DEPICTED BY DASHED LINES ON THE FINAL PAGE OF EXHIBIT A OF SAID DEED AND AS REFERENCED IN THE SECOND PARAGRAPH OF THAT CERTAIN DOCUMENT ENTITLED NOTICE RECORDED JANUARY 15, 1997 IN REEL 3468, PAGE 1507, OFFICIAL RECORDS.

EXCEPTING AND EXCLUDING THEREFROM

(i) ALL THAT CERTAIN REAL PROPERTY ATTACHED HERETO AS EXHIBIT "H" AND MADE A PART HEREOF; AND (ii) THE FOLLOWING PROPERTY:

That certain real property, situated in that portion of The Former Fort Ord Military Reservation in Rancho Noche Buena, Monterey City Lands Tract No. 1 in the County of Monterey, State of California described as follows:

Beginning at the most southwesterly corner of that 380.305-acre parcel, designated as Parcel 1, as shown on that certain Record of Survey filed in Volume 26, Page 28 of surveys, filed in the Office of the County Recorder of said county; thence

1) North 01°05’39” West, 70.00 feet along the westerly boundary of said Parcel 1; thence leaving said westerly line

2) South 90°00’00” East, 110.95 feet; thence

3) South 41°02’06” East, 161.14 feet; thence

4) South 50°53’20” East, 540.14 feet; thence

5) South 16°02’23” West, 72.32 feet to a point on the southwesterly boundary of said Parcel 1 and the northeasterly line of the Sunbay apartments Parcel as shown in Volume 21, Page 55 of Parcel Maps, filed in the office of the County Recorder of said County; thence

6) Northwesterly along the boundary in common with said parcels the following (4) four courses and distances;

7) North 54°48’21” West, 27.93 feet; thence

8) North 70°30’41” West, 79.18 feet; thence

9) North 52°56’22” West, 364.27 feet; thence

10) North 48°34’36” West, 308.64 feet to the Point of Beginning.

EXHIBIT "B"

PERSONAL PROPERTY

(Attached.)

EXHIBIT "C"

SEASIDE RESIDENT DISCOUNT STATEMENT

This Seaside Resident Discount Statement (this "Statement") is Exhibit "C" to that certain Second Amended and Restated Ground Lease between the City of Seaside and Monterey Bay Resorts, LLC for the Blackhorse and Bayonet golf courses ("Restated Lease"). Capitalized words used but not defined in this Statement have the meaning given in the body of the Restated Lease.

Section I. Definitions

The following capitalized words shall have the following meanings in this Statement:

a. "Discount Period" shall mean any period when the Golf Courses are available for use by the general public, except the Premium Periods.

b. "Greens Fee" shall mean the fee that the Tenant charges a golfer for the right to play a round of golf at the Golf Courses.

c. "Military Discount" shall mean the discount in Greens Fees provided to designated military-related beneficiaries pursuant to Exhibit D to the Lease.

d. "Premium Periods" shall mean the following periods: Fridays after 8:00 a.m.; Saturdays before 1:00 p.m.; and Sundays before 1:00 p.m.

e. "Resident" shall mean a natural person whose principal residence is located in Seaside, California, and who provides the Tenant with reasonable evidence of his or her residency in Seaside. Reasonable evidence shall include (without limitation) presenting to the Tenant a document indicating the person's current address, such as (without limitation) a driver's license, a lease agreement, a grant deed, a property tax bill, or a utility bill.

Section II. Discount For Residents

a. Except as provided in Section 2(b), for a round of eighteen (18) holes commencing during a Discount Period, the Tenant shall not charge a Resident a Greens Fee in excess of ninety percent (90%) of the Greens Fee for the same round of eighteen (18) holes charged to a person who is not a Resident.

b. The discount in Section 2(a) shall not reduce the Greens Fee of a person who claims (i) a Military Discount, (ii) a promotional discount offered to golfers on a one-time basis, or (iii) a promotional discount offered to golfers during a period not to exceed fifteen (15) days.

EXHIBIT "D"

DISCOUNTS FOR MILITARY PERSONNEL STATEMENT

This Discounts for Military Personnel Statement ("Statement") is Exhibit "D" to that certain Second Amended and Restated Ground Lease between the City of Seaside and Monterey Bay Resorts, LLC for the Blackhorse and Bayonet golf courses ("Restated Lease"). Capitalized words used but not defined in this Statement have the meaning given in the body of the Restated Lease.

A. DEFINITIONS:

1. "Active Duty": All US military personnel who are currently serving on active duty or as active reservists and their Family Members as defined in AR 215-1, Nonappropriated Fund Instrumentalities and Morale, Welfare, and Recreation Activities, Glossary Section II (with proper military I.D. card) residing or stationed within a 50 mile radius of the former Fort Ord, California. Military personnel and their Family Members shall be identified by proper military I.D. cards.

2. Retirees: all retired US military personnel and their Family Members (with proper military ID) residing within a 50 mile radius of the former Fort Ord, California (based on zip codes (Annex 1)). Retirees and their Family Members shall be identified by proper military I.D. cards.

3. Military Personnel: includes 1 and 2, as defined above.

B. DISCOUNTS FOR MILITARY PERSONNEL:*

1. Greens fees for Military Personnel shall be as follows:**

PATRON	WEEKDAY	WEEKEND & HOLIDAYS	MONTHLY*** (Active/Reserve & their Family Members)	ANNUAL*** (Retirees & their Family Members)
E1 – E6	$9.90	$13.55	$49.20	$885.05
E7 – E9 01 – 03 W0 1–W03	$14.80	$18.45	$61.50	$885.05
W04-W05	$19.70	$23.35	$73.80	$885.05

* Subject to rate increases which will not exceed the California Urban CPI. Absent an increase in greens fees to the General Public, greens fees for Military Personnel can only increase every other year.
** If in any event greens fees offered to another segment, or for a special promotion, arc less than the military rate, the lower rate shall apply to the military segment as well, as long as such Military Personnel otherwise qualify.
*** See limitations in 2 and 3 below on monthly and annual passes.

2. Monthly Passes. All Active Duty personnel will be offered the opportunity to purchase monthly non-transferrable passes. Each month, 55 passes will. be offered for sale on a first-come, first-served basis. Upon the Assignment Date, Tenant under the Restated Lease shall be responsible for printing the passes and making them available to the Presidio of Monterey (POM) (or its designee) for sale at least 30 days prior to the month for which the pass will be used. The POM will sell the monthly passes on behalf of the Tenant, and at the end of each month unsold passes will be returned, and payment for passes sold will be remitted to the Tenant.

3. Annual Passes. (a) Retirees who purchased Original Retiree Annual Passes under the Original Lease, will continue to be offered the opportunity to renew such passes within 45 days after the renewal date, unless previously terminated in accordance with the Original Lease. Annual passes which are not renewed within 45 days after the renewal date will be considered terminated and are not subject to renewal.

(b) Newly retired military personnel will be offered the opportunity to purchase annual nontransferable passes within 45 days after their retirement on a first-come, first-served basis ("New Retiree Annual Passes") if they otherwise qualify for the military discount and passes are otherwise available pursuant to the limitation set forth in paragraph (c) below. There will be a limit of 5 such annual passes sold per year, but in no event will the outstanding number of New Retiree Annual Passes exceed 10 at any one time. Retirees who purchase such annual passes will be grand-fathered the right to purchase subsequent annual passes. Annual passes which are not renewed within 45 days after the renewal date will be considered terminated and arc not subject to renewal.

(c) The total number of New Retiree Annual Passes sold under paragraph (b) above shall never exceed 10; the total number of Original Retiree Annual Passes and New Retiree Annual Passes sold under paragraph (a) and (b) above shall never exceed 200.

4. Guaranteed Military Tee-times. Twenty tee-times per day (maximum of 4 golfers per tee-time; 12 tee-times before noon and 8 tee-times after noon) will be held for Military Personnel (including daily fee, monthly and annual players).

- Military Personnel may make reservations at either Black Horse or Bayonet utilizing a military discount, except on Mondays and Tuesdays where reservations may only be made at Black Horse.

- Tee-times which are not reserved for Military Personnel within 48 hours prior to the day of play may be released for sale to the general public.

- Non-Guaranteed Military Tee-times. Tee-times outside of guaranteed military tee-times:

- Active Duty: Active duty may reserve tee-times over and above the number of guaranteed tee-times at the military monthly or daily fee rate, whichever applies, under the same reservation procedures as afforded to the general public.

- Retirees: Retirees may reserve tee-times over and above the number of guaranteed tee-times at the military annual or military daily fee rate, whichever applies, under the same reservation procedures as afforded to the general public. However, on Saturdays and Sundays, tee-times over and above the number of guaranteed tee-times (12 tee-times before noon and 8 tee-times after noon) on Bayonet will be charged at the public rate.

6. Tournaments. Tournaments may be scheduled with 2 weeks' advance notice. At no time will tournaments reduce the guaranteed military tee-times below 20 per day.

7. Advance Payment Policies. If an advance payment policy is established which requires customers to reserve tee-times with a credit card and assesses a charge for no-shows, that policy shall also apply to Military Personnel except in cases where the active duty soldier must cancel due to a mission requirement.

8. General. The foregoing policies for Military Personnel shall not apply at any time the Golf Courses are not open to the general public (i.e., construction, maintenance, weather conditions, etc.). Tenant may institute additional industry standard requirements concerning operational policies and procedures for play at the Golf Courses which, if such policies and procedures apply to the general public, and are not inconsistent with this Exhibit, will be applicable to Military Personnel.

EXHIBIT “E”

HOTEL PROJECT OPERATING AGREEMENT SUBJECTS

1. Coordinated and shared parking.

2. Allocation of tee times to the hotel for hotel guests and hotel groups (with time periods for release of allocated tee times for which no reservation has been made).

3. Advance reservations and reservation priorities for hotel guests and hotel groups (with applicable cancellation periods and cancellation policies).

4. Advance reservations and reservation priorities for timeshare occupants (with applicable cancellation periods and cancellation policies).

5. Discounts for hotel guests, hotel groups and timeshare occupants for greens fees, cart use, food, beverage, merchandise, lessons and other golf course items and services.

6. Coordination of merchandise sales and food and beverage operations.

7. Billing procedures to permit hotel and timeshare guests to charge golf course tee times and other costs to their hotel and timeshare accounts.

8. Harmonization of promotion and publicity.

9. Cooperation in relocation of existing golf course maintenance facilities, driving range and clubhouse.

10. Any golf course-related rights or discounts to be afforded to owners of single-family residential parcels at the Resort Complex.

11. Manner in which the shared occupancy and operation of the Golf/Resort Clubhouse shall work.

12. Manner in which the closing of the existing clubhouse and construction and opening of the new Golf/Resort Clubhouse will be coordinated to minimize disruption of public access and use.

EXHIBIT "F"

GOLF COURSE MAINTENANCE POLICY

The following are guidelines for the maintenance of the Bayonet and Blackhorse Golf Courses ("Golf Courses") under that certain Second Amended and Restated Ground Lease between the City of Seaside and Monterey Bay Resorts, LLC for the Blackhorse and Bayonet golf courses ("Restated Lease") to facilitate Tenant's operation and maintenance of the Golf Courses in a manner that meets or surpasses the quality requirements of Article 14(a)(ii) of the Restated Lease. The guidelines are not intended as an inflexible and precise set of rules.

The overall objective is to ensure that at all times during the term of the Restated Lease, the golf operation and maintenance is consistent with the quality requirements of Article 14(a)(ii) of the Restated Lease. At all times, there will be a sufficient number of employees and on-site supervisors to meet the overall objective.

A. PRO SHOP AND CLUBHOUSE AREA

The following minimum standards shall apply for pro-shop, food and beverage, and areas of the Golf/Resort Clubhouse committed to golf course operations:

1. CLUBHOUSE

    a. DAILY

        i. Liter removed, walkways clean and free of spills and stains.

        ii. Carpets clean, spot-free, vacuumed.

        iii. Restroom entry mat clean; entry door fingermark free; tile and painted walls clean; toilet bowls, rims, tank tops, bodies and seats clean; minors clean; soap dispenser clean and filled; towel dispenser clean and filled; counter top clean; air freshener functional; trash receptacle clean and lined; urinals clean with deodorant block.

        iv. Windows clean; accessories and display cases/clean; equipment clean and in good working order.

    b. MONTHLY

        i. Ascertain pro-shop basic equipment stock levels including gloves, hats, visors, shoes, apparel, and clubs with prices clearly marked.

        ii. Clean cobwebs; exterior walls cleaned. Carpets cleaned as needed.

    c. YEAR

        i. Exterior walls painted as needed.

ii. Interior walls painted as needed.

iii. Water blast concrete.

2. FOOD AND BEVERAGE SERVICE

Food and beverage concessionaires shall maintain a health inspection rating of "A"; concessionaire shall extend "best effort" to provide maximum revenues consistent with proper management, provide qualified on-site supervisors for each phase of operation, and be responsible for the performance of sub-leases and sub-contractors. City/Department representatives shall have reasonable access to inspect premises and facilities at any time and to order corrective measures in accordance with the specifications. In the event concessionaire fails to make repairs or keep facility in safe and sanitary condition and there is an emergency, City reserves the right to enter upon the facilities for purposes of making emergency repairs and to charge cost of said repairs to concessionaire.

a. DAILY

i. Food service staff clean, neat, receptive and helpful.

ii. Display cases clean; floor vacuumed, swept or mopped as applicable; windows, tables and counters clean; condiments fresh and in clean containers; coffee and soft drinks station clean; napkin dispensers clean and filled; sink areas clear.

iii. Snack displays clean and well stocked.

iv. Grill area and equipment clean and functional; freezers and refrigerators at correct temperature.

v. Storage areas clean, shelves organized.

vi. Trash containers clean (including lid), lined, and emptied.

vii. Light fixtures clean and functional.

viii. Dishwashing and sanitation procedures shall, at minimum, meet the Health Department standards for food service establishments.

ix. Pots, pans, and shelving clean; drains operable; hoods/filters clean; first aid kit available; fire extinguishers current; inventory organized.

x. Permits, signage, and notices properly displayed and current.

b. MONTHLY

Check operation of equipment such as dishwasher, meat slicer, etc., for defects and correct any found.

3. GOLF CART OPERATION AND MAINTENANCE

Both electric cars and pull carts are to be kept in good running condition at all times. Service operations and preventive maintenance operations shall be conducted to the following minimum standards:

a. DAILY

i. Repair and charge as needed.

ii. Remove litter, pencils, tees, etc., and wash floor of carts.

iii. Safety inspection including check of tire pressure and steering.

b. WEEKLY

i. Check water level and clean batteries (keep electrolyte level 1 /2" above plate separators).

ii. Wash.

c. MONTHLY

i. Tighten all bolts and nuts.

ii. Check electrical connections, wires and wire lugs, accelerator, and forward/reverse contacts for correct operation and corrosion damage.

iii. Check and adjust brakes as needed.

iv. Lubricate bell joints, pedal bushings, brake cable housing, brake show hinge, hill brake release, steering arm, tie rod ends.

d. SEMI-ANNUALLY

i. Check differential oil level, tire wear, motor brushes, accelerator contacts, brake cable, hill brake, front nuts.

ii. Repair dents larger than 3 inches in diameter.

iii. Replace or repair damaged plastic, fiberglass, etc., body parts.

iv. Repair or replace broken, damaged, or torn tops, seat coven, golf bag straps, and other accessories needing repair.

v. Wax.

e. ANNUALLY

i. Repack front wheel bearings.

ii. Replace batteries (if necessary).

iii. Clean and repaint battery box (if batteries replaced).

Cart staff is to keep accurate and complete records of cart maintenance and preventive maintenance procedures. Copies may be kept in the course superintendent or course manager's offices.

B. MAINTENANCE YARD

The maintenance area is to be kept in a clean and orderly state at all times. Records for fuel delivery and disbursement, preventive maintenance, sharpening or backlapping schedules, used oil pick-up, etc., shall be maintained in the course superintendent's office and available for inspection. Operator will obtain all required state and local permits, licenses and certifications.

1. DAILY

a. Check hydraulic systems for pressure, fluid level, and evidence of leaks.

b. Check blade height adjustment, bedknives, and sharpness of all reel mowers.

c. Inspect, clean, and put up all equipment at end of work day, sign daily vehicle inspection form.

2. WEEKLY

a. Backlap reels.

b. Check and adjust bedknives.

c. Check preventive maintenance schedule; perform (or submit work order for) necessary maintenance and/or repairs.

C. GOLF COURSE

1. GREENS, PRACTICE PUTTING GREENS, AND NURSERIES

a. Mowed six times per week at a height consistent with similar courses, depending on weather, conditions of greens, and time of the year. Varied mowing direction each time greens are mowed.

b. Change cup locations minimum of 4 times weekly except during periods of inclement weather. Cup locations on greens shall be moved at least fifteen feet from previous location.

c. Repair hallmarks, divots, or any other damaged turf on all greens and practice putting greens as required to maintain good putting quality.

d. Aerate all greens, practice putting greens and nurseries three times per year, to a minimum depth of four inches.

e. Topdress all greens, practice greens and nurseries after aeration and additionally as needed to maintain a smooth putting surface. Topdressing material will be a mix that is compatible with the existing putting green soil.

f. Light vertical mowing of all greens, practice putting greens and nurseries shall be per formed during growing season to control mat and thatch build up and stimulate optimum turf growth.

g. Spiking of all greens, practice greens and nurseries shall be performed as needed between aerations to maintain property water infiltration.

h. Fertilization - All greens, practice greens, and nurseries shall be fertilized as needed to maintain color, growth and turgidity of the turf. Slow release materials shall be applied on a six- to eight-week schedule and soluble quick release material shall be applied on a three to four week schedule. Light, frequent applications are preferable to heavy, occasional applications. Soil analysis shall be performed as needed (no less than annually) to maintain proper pH and fertilizer application levels.

i. Fungicide - All greens, practice greens and nurseries shall have appropriate fungicide applications to prevent and/or control fungal activity and prevent damage to the turf.

j. Pre-emergent chemicals shall be used in the appropriate amounts and appropriate times to prevent intrusion into the greens of weeds difficult to eradicate such as nutsedge, goosegrass, crabgrass, etc.

k. Weed Control - All greens, practice greens and nurseries shall be maintained 95 percent free of foreign grasses and weeds, such as goosegrass, nutsedge, and other foreign grasses.

l. Insecticide - All greens, practice greens and nurseries shall be treated as necessary to prevent or halt insect activity and prevent damage to the turf.

m. State and local requirements regarding the application of pesticides will be met.

n. Accurate and up-to-date records regarding pesticide applications and workforce training/certification shall be maintained in the Course Superintendent's office and available for inspection.

2. TEES – All Areas Used for Tee Surface

a. Mowing – All tees shall be mowed at a height consistent with similar courses no less than three times per week at an interval not to exceed three days.

b. Topdressing – All tees shall be topdressed weekly to fill divots, and level tee surface. Topdressing material should include overseeding mixture, November through April.

c. Set-up – Tee markers shall be moved daily, except during inclement weather.

d. Weed Control – Tees shall be kept weed free to an extent of at least 90 percent of the area by the proper application of approved herbicides.

e. Aeration – All tees shall be fertilized at a rate required to maintain growth, color and turgidity of the turf. Soil testing shall be performed as needed (no less than annually) to determine proper pH and fertilizer application levels.

f. Fertilization – All tees shall be fertilized at a rate required to maintain growth, color and turgidity of the turf. Soil testing shall be performed as needed (no less than annually) to determine property pH and fertilizer application levels.

3. FAIRWAYS - All Areas of Plan Except Greens, Tees, and Natural Growth Areas

a. Mowing - All fairways shall be mowed twice a week at a height consistent with similar courses during the active growing season and as needed for the balance of the year.

b. Aeration - All fairways shall be aerated a minimum of two times per year, once in the spring and once in the fall. Aeration holes shall not exceed a spacing of eight inches on center or be of a diameter of less than 1/2". Minimum penetration of two inches. Slicing or spiking shall be accomplished as needed between aerations to allow proper water infiltration and root zone culture.

c. Fertilization - All fairways shall be fertilized at a rate as required to maintain growth, color and turgidity of the turf. Fertilizer formulations can be altered after proper analysis of soil.

d. Vertical mowing - All fairways will be vertically mowed as necessary (at least annually) to control mat or thatch build up.

e. Weed Control - Fairways shall be kept weed free to an extent of at least 90 percent of the area by the proper application of approved herbicides.

4. ROUGH - All rough areas are to be maintained at a height that provides the best balance between the establishment of counter mowing patterns, speed of play, and visual harmony between fairways and rough areas. Mowing frequency will be not less than once every two weeks except areas maintained by growth regulators and during extended periods of inclement weather. Areas designated as natural will not fall into the rough classification.

5. PLANTERS - All Areas within Perimeter of the Leased Premises Planted with Ornamental Plants not intended for Golf Plan and Having a Definable Border

   a. Clean-up - All planters shall be maintained free of trash and debris such as paper, drinking cans, bottles, fallen limbs and leaves.

   b. Weed Control - All planters shall be maintained free of weeds or grass whether by mechanical or chemical means.

   c. Trimming – Plant material (trees, shrubbery and ground covering) in planters shall be trimmed as necessary for protection from wind, insect damage, and for appearance.

   d. Replacement - Plant material (trees, shrubbery, annuals and ground covering) in planters shall be replaced as necessary to maintain a pleasing display to the public.

6. TREES - All Trees within the Perimeter of the Leased Premises

   a. Staking - All trees shall be staked as necessary to protect and establish sufficient size to stand unassisted.

   b. Pruning - All trees shall be pruned as necessary for protection from wind and pests as well as for appearance.

   c. Irrigation - All trees shall be watered to provide adequate moisture for proper growth.

   d. Mowing - Mechanical removal of grass shall not be accomplished within one foot of the trunk.

   e. Removal and Replacement - All damaged trees, for whatever cause, shall be removed, subject to environmental appeal process.

7. IRRIGATION - All Equipment Required to Irrigate All Areas of the Golf Course

   a. In addition to completing the upgrade of the golf course irrigation system in accordance with the Restated Lease, repair or replace all heads, valves, controllers, wiring, and pipe as needed to maintain the proper operation of the entire golf course irrigation system (including greens, tees, fairways, planters, flower beds, etc.) on an ongoing basis.

b. All areas maintained as tees and greens shall be irrigated. Irrigation should be utilized along with natural rainfall to provide water as necessary for optimum growth conditions of grass. Fairways shall be irrigated where a system is in place. All rough areas shall be watered to the extent possible.

8. FENCES - All Fence Blocks, Chain Link, or Barbed Wire on or within the Boundaries of the Golf Course.

   a. Repair or replace all broken or damaged fencing on a monthly basis.

   b. Immediately repair or replace all fences, gates, and locking devices needed for protection of the golf course or equipment.

   c. Cart Path - Maintain all cart paths in a smooth condition and repair promptly as needed.

9. EDGING – All sidewalks, patios and cart paths must be edged on a monthly basis; clubhouse area must be edged on a bi-monthly basis. Edging of trees, sprinklers, yardage markers, valve boxes, meter boxes, etc., shall be done as needed to insure that there is no obstruction of play from growth around these items.

10. BUNKERS - All bunkers shall be edged as necessary to maintain a neat lip, raked daily and filled with fresh sand as needed to maintain a 2-inch depth on slopes and a 4-inch depth in the bottom.

11. COLOR AREA - Various planting areas throughout the course shall be regularly cultivated, weeded, and pruned with at least two replanting programs for annuals scheduled each year.

12. PEST CONTROL - In Addition to Course Insecticide and Pesticide Programs

   a. Provide level of rodent control and pest control to eliminate such pests from the clubhouse; food preparation, storage, serving, and disposal areas.

   b. State and local requirements regarding the application of pesticides will be met.

   c. Accurate and up-to-date records regarding pesticide applications and workforce training/certification will be maintained and available for inspection.

13. TRASH AND DEBRIS REMOVAL - Trash and debris removal must be made on a timely basis. California Water Commission and Environmental Protection Agency regulations regarding the storage and disposal of hazardous materials (including petroleum products) must be met.

14. OTHER - All lakes, waterways, bridges, paths, parking lots, etc., shall be maintained in a safe, aesthetic and sanitary manner, and in good appearance.

EQUIPMENT MAINTENANCE STANDARDS AND POLICIES AND PROCEDURES TO MEET OR EXCEED HEALTH DEPARTMENT CODES FOR FOOD SERVICE, STORAGE, AND PREPARATION AREAS ARE TO BE SUPPLIED BY OPERATOR.

EXHIBIT "G"

LOCAL FIRST SOURCE RECRUITMENT POLICY

Capitalized terms which appear in this Policy are as defined in Article I of this Policy below.

A. The City hereby finds and determines that, based partially on the closure of the massive military reserve once known as Fort Ord, there is a high incidence of unemployment and underemployment among the Residents of the City.

B. The City further finds and determines that this high incidence of unemployment and underemployment is due also to artificial barriers in the employment market which serve to reduce the likelihood that Residents will find employment which is commensurate with their education, skills and experience and which do not affect nonresidents of the City in a similar manner.

C. The City further finds and determines that the existence of high unemployment within the City serves as a blighting influence on the City, and the resultant reduction or elimination of the incomes of Local Businesses and Residents may serve as a blighting influence on the City, by decreasing the amount of available jobs, increasing the likelihood that Residents and Distressed Workers will engage in criminal activities, increase the incidence of under-maintenance of property within the jurisdiction leading to a decreased property tax base and other social ills within the City.

D. The City further finds and determines that Residents and Local Businesses will bear a disproportionate burden of development, which may result in the displacement of Local Businesses and a reduction in the number of Residents who are employed within the City.

E. The City further finds and determines that the burdens of development will not be borne in a similar manner by those who reside or conduct business outside the City.

F. The City further finds and determines that Residents and Local Businesses should be given an opportunity to be employed in development within the City and the ongoing uses to be created in the City, so as to mitigate the disproportionate burden of development on Residents, Distressed Workers and Local Businesses.

POLICY

I. Definitions

For the purposes of this Policy, the following terms shall have the meaning specified below:

A. "City" shall mean the City of Seaside.

B. "City Contract" shall mean any contract entered into by the City and a Developer or End User for labor or services related to development, including but not limited to construction contracts, consultant contracts or the operation of industrial, commercial, retail or office-related businesses within the Project Area.

D. "DDA" shall mean a disposition and development agreement entered into by the City and a Developer or End User for the redevelopment and/or use of property within the City.

E. "Developer" shall mean any individual, unincorporated association, partnership, joint venture group, corporation or subcontractor of same which is engaged inactivates related to development in the City. "Developer" shall not include those consultants or employees of the City who are retained to perform administrative, management, consulting or legal services for the City.

F. "Developer Contract" shall mean any contract entered into by a developer and any third party where the scope of the Developer Contract is to perform work related to development, and where the developer has entered into a City Contract or has received a Subsidy. Developer Contract shall include, but not be limited to, construction contracts, consultant contracts and any other contracts for the performance of services or labor related to development.

G. "Distressed Workers" shall mean those Residents who are unemployed, not presently employable, or underemployed based on their skills, education and experience, displaced workers, workers who are eligible for participation in programs governed by the Job Training Partnership Act, or persons who have recently encountered labor market barriers or obstacles as determined by local employment referral and training organizations.

H. "End Users" shall mean those businesses which commence operation in industrial manufacturing, commercial, retail or office space within the City after the completion of any construction or rehabilitation projects related to that space.

I. "Good Faith Effort" shall mean diligent efforts to locate and employ qualified Residents or Distressed Workers, or diligent efforts to provide funds or training opportunities to benefit Distressed Workers. Diligent efforts to located Qualified Residents shall include, at a minimum, notification by the Developer or End User to the City and all Service Organizations of the availability of employment opportunities prior to the time that those opportunities are advertised to the general public and other outreach efforts as are deemed necessary by the City. Diligent efforts to employ Qualified Residents or Distressed Workers shall include at a minimum hiring of Qualified Residents and/or Distressed Workers who are recommended to the Developer or End User by the City or Service Organizations after such notification, to the extent that the Developer or End User has existing employment opportunities available.

"Good Faith Effort" shall further mean diligent efforts to contract or subcontract a portion of contracts to Local Business. Diligent efforts to contract or subcontract to Local Businesses shall include, at a minimum, advertisement of available subcontracting opportunities by Developers and End Users to the City's Chamber of Commerce and other businesses and professional organizations serving the City, solicitation of Local Businesses who are known by the Developer or End User to provide services which are required by the Developer or End User, and solicitation of referrals to Local Businesses from the City and Service Organizations.

J. "Local Businesses" shall mean those industrial, manufacturing, commercial, retail or office-related businesses licensed by the City of Seaside whose principal place of business or headquarters is located within the City limits.

K. "Resident" shall mean any person whose primary residence is in the City of Seaside.

L. "Service Organization" shall mean a nonprofit community group, employment service, or job training organization which has Seaside as part of its service area or otherwise provides job placement or training, or other assistance to Residents, or business support services to Local Businesses.

M. "Subcontractor" shall mean any and all parties with whom the Developer and Contractor intends to enter into a contract to perform a portion of any said work regardless of tier.

N. "Subsidy" shall include, but is not limited to, any direct or indirect cash or other financial assistance to a Developer or End User through any of the following programs: federal or stated pants or other government grant or loan programs; revolving loan funds, City assistance such as write-downs of the cost of land, property tax abatement or sales tax rebate sharing agreements, tax increment financing, revenue or development bonds; and any other loans, grants bonds, or capital improvements financed in whole or in part, whether through the investment of cash or in-kind resources or the issuance of bonds, notes or indentures by the City, or any entity whose borrowing powers is underwritten in whole or in part by the City. "Subsidy" shall also include the creation of assessment districts for the benefit of a Developer or End User by the City for the purpose of improving property within the City for the Developer's or End User's use, and any other financial or nonfinancial assistance provided by the City which materially benefits a Developer or End User.

II. First Source Recruitment Policy

A. Hiring. It shall be the policy of the City that the City, developers and End Users shall recruit for the purpose of hiring, to the greatest extent feasible, qualified Residents and Local Businesses in the performance of work related to development within the City, including construction, operation and management of manufacturing, commercial, industrial, retail or office-related businesses.

B. Training. It shall be the policy of the City that the City, Developers and End Users shall provide to the greatest extent feasible, training programs or funding to support such programs, for Distressed Workers, so that those workers may qualify for employment opportunities created by this policy. The City shall work with Developers, End Users and Service Organizations to develop effective training programs as necessary to effectuate this Policy.

C. First Source. To the extent that the training programs are implemented by the City as a part of this Policy and Distressed Workers are trained for and become qualified to perform jobs for Developers and End Users within the City, it shall be the Policy of the City that the City, Developers and End Users shall make a Good Faith Effort to hire Distressed Workers in the construction, operation and management of manufacturing, commercial, industrial, retail or office-related businesses which are located within the City.

D. Scope of Policy Scope. The Policy shall be implemented by the City to the greatest extent feasible by the City in its negotiation of DDAs, City Contracts, and other agreements with Developers and End Users pertaining to the development. The Policy shall be implemented by Developers in negotiation of Developer Contracts, including the subcontracts and contracts with End Users of property.

E. Term. The Policy shall be in effect from the date of its adoption by the City until such time that it is amended or terminated by the City. The City shall annually evaluate the Policy and determine its effectiveness and may at that time make any necessary adjustments to the Policy as the City deems appropriate.

III. City Contracts

A. Contracts Under $5,000 for Grading, Clearing, Demolition and Construction. In all City Contracts for grading, clearing, demolition and construction within the City for which the value of the City Contract is less than $5,000, the City shall, prior to advertising the availability of the contract to the general public, first advertise the availability of these City Contracts to Residents and Local Businesses who are qualified to perform the work which is the subject of the City Contract. To the greatest extent feasible, the City shall give preference in awarding these City Contracts to Residents and Local Businesses who are qualified to perform the grading clearing, demolition or construction work which is the subject of the City Contract.

B. City Construction Contracts. For all City Contracts for the construction of public improvements within the City, including but not limited to contracts valued at over $5,000 for grading, clearing, demolition and construction, the City may grant a preference to those construction contractors who have made a Good Faith Effort to hire, or who agree to hire, on a craft-by-craft basis, qualified Residents to perform the City Contract. The City may further grant preference to construction contractors who have subcontracted, or made a Good Faith Effort to subcontract, a portion of the City Contract to Local Businesses.

C. Contracts Valued at Over $100,000. For all other City Contracts whose dollar value is estimated to exceed $100,000 at the time the scope of work for the City Contract is prepared, the City may specify in its bid package that preference for the City Contract shall he given to the lowest responsible bidder who, as part of the bid, demonstrates that it has made a Good Faith Effort to hire, or has hired, qualified Residents to perform a portion of the work which is the subject of the City Contract, or demonstrates that it has subcontracted or has made a Good Faith Effort to subcontract to Local Businesses a portion of the work which is the subject of the City Contract.

D. Operation of Facilities. For all City Contracts for the operation and management of public improvements or public facilities, the City shall, to the greatest extent feasible, grant a preference to those construction contractors who have made a Good Faith Effort to hire, or who have hired qualified Residents to perform some or all of labor necessary to perform the City Contract. The City may further grant preference to construction contractors who have made a

Good Faith Effort to subcontract, or have subcontracted a portion of the City Contract to Local Businesses.

E. Disposition and Development Agreements (DDA's). For all DDA's or similar agreements entered into by the City, the City shall negotiate, to the extent feasible, provisions in the DDA or agreement which require the Developer, End User or other part to make a Good Faith Effort to hire qualified Residents in employment within the City and to utilize, or make a Good Faith Effort to utilize, Local Businesses, to implement the DDA or any subcontract arising from the DDA.

F. Training Fund. For all City Contracts with Developers and End Users, including but not limited to construction contracts, DDA's and leases, the City shall negotiate, to the extent feasible, provisions in the DDA or City Contract which require the Developer, End User to contribute to a training fund to be administered by the City for the purposes of providing education and/or training to Distressed Workers.

IV. Developers

A. Scope of Section. The provisions of this Article 4 shall apply only to those Developers who receive a Subsidy or Subsidies, as defined in this Policy, from or through the efforts of the City.

B. Construction Contracts. For all construction contracts which arise as a result of a DDA entered into by the City and a Developer, the Developer shall negotiate, to the extent feasible, provisions in its construction contract which require the prime contractor to hire, or make a Good Faith Effort to hire, on a craft-by-craft basis, qualified Residents to perforrn some or all of the labor necessary to perform the Developer Contract. The Developer shall also negotiate, to the extent feasible, provisions in its construction contract with the prime contractor to subcontract, or make a Good Faith Effort to subcontract, a portion of the Developer Contract to Local Businesses.

C. Other Contracts. For all Developer Contracts other than construction contracts, the Developer shall negotiate, to the extent feasible, provisions in the Developer Contract which require the other contracting party to make a Good Faith Effort to hire qualified Residents to implement the Developer Contract.

V. End Users

A. Scope of Section. The Provisions of this Article 5 shall apply only to those End Users who have entered into a City Contract or who have, directly or indirectly, received a Subsidy or Subsidies, as defined in this Policy, from or through City efforts.

B. Operation of Facilities. In hiring its work force to operate or manage a commercial, retail or office-related business which is located within the City, an End User shall, to the greatest extent feasible, make a Good Faith Effort to employ qualified Residents or to provide ongoing training opportunities (such as part-time work, internships or classes) to Distressed Workers, within the skill areas which are utilized by the End User in the operation and management of the End User's business.

VI. Exceptions

A. Compliance with State and Federal Law. This Policy shall only be enforced to the extent that it is consistent with the laws of the City, the State of California and the United States. If any provision of this Policy is deemed to be unconstitutional or otherwise in conflict with the state or federal law, the applicable state or federal law shall prevail over the terms of this Policy, and the inconsistent provisions of this Policy shall not be enforced by the City or any other body.

B. Court Order. Notwithstanding the provisions of this Policy, a Developer shall be deemed to be in compliance with this Policy if it is bound by court or administrative order or decree, or a settlement agreement arising from a labor relations dispute, which governs the hiring of workers by the Developer and the provisions of which make it impossible for the Developer to hire Residents or Distressed Workers in accordance with the terms and conditions of this Policy.

C. Exception for Good Faith Effort. Notwithstanding the provisions of this Policy, there shall be no penalty or sanction arising as a result of the failure of the City, Developers or End Users to achieve the goals of this Policy, so long as the City, Developer or End User has made a Good Faith Effort to comply with the goals of this Policy.

VII. Administration

A. City Manager. The City Manager of the City, or his designee, shall be responsible for the implementation of this Policy and shall develop any administrative policies or procedures which are necessary to effectuate this Policy.

B. Service Organization. The City and developers shall work with Service Organizations as necessary to implement the Policy. The City may work with the Service Organizations to provide a mechanism by which the Service Organization may provide recruitment, screening, referral, placement and training services in furtherance of this Program. Such a mechanism may also include, at the discretion of the City and the Service Organizations shall provide any necessary monitoring services for the implementation of this Policy.

C. Binding Upon Successors. It is intended that the provisions of this Policy shall be applicable to all development activities to the fullest extent permitted by law for the benefit and in favor of the City; and the provisions of this Policy shall be enforceable by the City, Developers, End Users and any of their successors in interest to property in the City.

EXHIBIT “H”

DESCRIPTION OF HOTEL/RESORT PROPERTY AND GOLF CLUBHOUSE PARCEL

(Attached.)

I. HOTEL PHASE LAND (currently 2 parcels)

Hotel Parcel 1

That certain real property situate in Rancho Noche Buena, in the County of Monterey, State of California, being a portion of that certain 380.31-acre parcel of land shown as Parcel 1 as per map filed for record in Volume 26, Page 28 of Surveys in the office of the County Recorder of said county described as follows:

Beginning at a point that bears South 24°53'59" West, 2,638.33 feet from the most northerly corner of said Parcel 1; thence

15. South 36°18'25" East, 147.89 feet; thence
16. North 78°50'32" East, 237.93 feet; thence
17. North 86°25'16" East, 349.95 feet; thence
18. South 73°40'00" East, 155.99 feet; thence
19. South 68°42'42" East, 277.08 feet; thence
20. South 23°13'15" West, 367.94 feet; thence
21. South 42°48'20" West, 313.39 feet; thence
22. South 11°39'52" West, 202.98 feet; thence
23. South 83°52'52" West, 149.07 feet; thence
24. North 56°52'25" West, 646.26 feet; thence
25. North 41°03'07" West, 348.99 feet; thence
26. North 87°22'26" East, 127.50 feet; thence
27. North 02°37'34" West, 27.36 feet; thence
28. North 87°22'26" East, 192.50 feet; thence
29. North 02°37'34" West, 60.02 feet to the beginning of a non-tangent curve concave to the northeast having a radius of 217.00 feet, and to which beginning a radial bears North 13°21'09" East; thence
30. Northwesterly 71.27 feet along said curve through a central angle of 18°49'00"; thence
31. North 02°37'34" West, 232.98 feet to the Point of Beginning.

Containing 16.76 acres, more or less

Bearings cited herein are referenced to said Volume 26, Page 28 of Surveys.

Hotel Parcel 2

That certain real property situate in Rancho Noche Buena, in the County of Monterey, State of California, being a portion of that certain 380.31 acre parcel of land shown as Parcel 1 as per map filed for record in Volume 26, Page 28 of Surveys in the office of the County Recorder of said county described as follows:

Beginning at a point that bears South 08°53’45” East, 3,421.69 feet from the most northerly corner of said Parcel 1; thence

South 66°45'05" East, 77.18 feet; thence

South 23°14'55" West, 516.59 feet; thence

North 66°45'05" West, 75.91 feet; thence

North 23°06'26" East, 516.59 feet to the Point of Beginning.

Containing 0.91 acres, more or less

Bearings cited herein are referenced to said Volume 26, Page 28 of Surveys.

II. TIMESHARE PHASE LAND (3 parcels)

Timeshare Parcel 1 (VTM* Timeshare Phases I, II & III; Lots A1, A2 & A3)

That certain real property situate in Rancho Noche Buena, in the County of Monterey, State of California, being a portion of that certain 380.31 acre parcel of land shown as Parcel 1 as per map filed for record in Volume 26, Page 28 of Surveys in the office of the County Recorder of said county described as follows:

Beginning at a point that bears South 29°59'36" West, 1,214.17 feet from the most northerly corner of said Parcel 1; thence

32. South 73°20'00" East, 132.90 feet; thence
33. South 36°50'30" East, 135.13 feet; thence
34. South 05°30'00" West, 322.50 feet; thence
35. South 52°15'00" East, 282.10 feet; thence
36. South 37°45'46" West, 117.38 feet; thence
37. North 82°45'00" West, 389.94 feet; thence
38. South 26°02'40" West, 325.25 feet; thence
39. South 05°08'34" East, 50.02 feet; thence
40. North 74°11'29" West, 134.72 feet; thence
41. North 17°14'26" East, 123.27 feet; thence
42. North 18°23'25" East, 918.06 feet to the Point of Beginning.

Containing 6.51 acres, more or less

Bearings cited herein are referenced to said Volume 26, Page 28 of Surveys.

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* Vesting Tentative Map

Timeshare Parcel 2 (VTM Timeshare Phases IV, V, VI & VII; Lots B1, B2, B3 & B4)

That certain real property situate in Rancho Noche Buena, in the County of Monterey, State of California, being a portion of that certain 380.31 acre parcel of land shown as Parcel 1 as per map filed for record in Volume 26, Page 28 of Surveys in the office of the County Recorder of said county described as follows:

Beginning at a point that bears South 24°34'30" West, 2,243.73 feet from the most northerly corner of said Parcel 1; thence

43. South 74°11'29" East, 134.72 feet; thence
44. South 00°56'38" East, 32.36 feet; thence
45. South 43°45'00" East, 91.80 feet; thence
46. South 79°09'47" East, 515.81 feet; thence
47. South 69°00'05" East, 404.66 feet; thence
48. South 58°00'30" East, 297.45 feet; thence
49. South 67°24'43" East, 218.78 feet; thence
50. South 18°13'36" West, 147.74 feet; thence
51. North 70°11'29" West, 622.48 feet; thence
52. North 68°42'42" West, 277.08 feet; thence
53. North 73°40'00" West, 155.99 feet; thence
54. South 86°25'16" West, 349.95 feet; thence
55. South 78°50'32" West, 237.93 feet; thence
56. North 36°18'25" West, 147.89 feet; thence
57. North 44°00'03" East, 155.37 feet; thence
58. North 16°09'08" East, 250.73 feet to the Point of Beginning.

Containing 9.26 acres, more or less

Bearings cited herein are referenced to said Volume 26, Page 28 of Surveys.

Timeshare Parcel 3 (VTM Timeshare Phases VIII & IX; Lots C1 & C2)

That certain real property situate In Rancho Noche Buena, In the County of Monterey, State of California, being a portion of that certain 380.31 acre parcel of land shown as Parcel 1 as per map filed for record in Volume 26, Page 28 of Surveys In the office of the County Recorder of said county described as follows:

BEGINNING at a point that bears S. 24° 53' 59" W., 2638.33 feet; thence S. 36° 18' 25" E., 147.89 feet; thence N. 78° 50' 32" E., 237.93 feet; thence N. 86° 25' 16" E., 349.95 feet; thence S. 73° 40' 00" E., 155.99 feet from the most northerly corner of said Parcel 1; thence

1. S. 70° 17' 05" E., 210.01 feet; thence

2. S. 36° 06' 48" W., 428.58 feet; thence

3. S. 42° 45' 47" W., 224.86 feet; thence

4. S. 00° 28' 45" E., 265.56 feet; thence

5. S. 70° 52' 34" W., 167.49 feet; thence

6. N. 56° 52' 25" W., 219.32 feet; thence

7, N. 83° 52' 52" E., 149.07 feet; thence

8, N. 11° 39' 52" E., 202.98 feet; thence

9. N. 42° 48' 20" E., 313.39 feet; thence

10. N. 23° 13' 15" E.; 367.94 feet; to the POINT OF BEGINNING.

Containing 3.66 acres more or less.

Bearings cited herein are referenced to said Volume 26, Page 28 of Surveys.

III. RESIDENTIAL PHASE LAND (6 parcels)

Residential Parcel 1 (VTM Residential Phase I; Lots 1-29)

That certain real property situate in Rancho Noche Buena, in the County of Monterey, State of California, being a portion of that certain 380.31 acre parcel of land shown as Parcel 1 as per map filed for record in Volume 26, Page 28 of Surveys in the office of the County Recorder of said county described as follows:

Beginning at a point that bears South 30°52'49" East, 1,354.38 feet from the most northerly corner of said Parcel 1; thence

59. South 23°23'00" West, 42.93 feet; thence
60. North 86°20'00" West, 984.60 feet; thence
61. South 57°55'00" West, 111.11 feet; thence
62. North 36°50'30" West, 135.13 feet to the beginning of a curve concave to the east having a radius of 165.00 feet; thence
63. Northerly 173.39 feet along said curve through a central angle of 60°12'30" to the beginning of a compound curve having a radius of 250.00 feet; thence
64. Northeasterly 188.57 feet along said curve through a central angle of 43°12'59"; thence
65. North 66°35'00" East, 275.00 feet to the beginning of a curve concave to the northwest having a radius of 1,000.00 feet; thence
66. Northeasterly 243.95 feet along said curve through a central angle of 13°58'39" to the beginning of a reverse curve having a radius of 50.00 feet; thence
67. Easterly 39.29 feet along said curve through a central angle of 45°01'24" to the beginning of a compound curve having a radius of 145.00 feet; thence
68. Southeasterly 175.14 feet along said curve through a central angle of 69°12'16"; thence
69. South 13°10'00" East, 182.56 feet to the beginning of a curve concave to the northeast having a radius of 120.00 feet; thence
70. Southeasterly 153.24 feet along said curve through a central angle of 73°10'00"; thence
71. South 86°20'00" East, 69.59 feet; thence
72. South 03°40'00" West, 100.00 feet to the beginning of a non-tangent curve concave to the south having a radius of 795.00 feet, and to which beginning a radial bears South 03°40'00" West; thence
73. Easterly 145.74 feet along said curve through a central angle of 10°30'13" to the beginning of a compound curve having a radius of 175.00 feet; thence

74. Southeasterly 74.03 feet along said curve through a central angle of 24°14'15" to the beginning of a reverse curve having a radius of 175.00 feet; thence

75. Southeasterly 45.89 feet along said curve through a central angle of 15°01'29"; thence

76. South 23°23'00" West, 50.00 feet to the Point of Beginning.

Containing 10.17 acres, more or less

Bearings cited herein are referenced to said Volume 26, Page 28 of Surveys.

<u>Residential Parcel 2 (VTM Residential Phase II; Lots 30-41)</u>

That certain real property situate in Rancho Noche Buena, in the County of Monterey, State of California, being a portion of that certain 380.31 acre parcel of land shown as Parcel 1 as per map filed for record in Volume 26, Page 28 of Surveys in the office of the County Recorder of said county described as follows:

Beginning at a point that bears South 43°23'11" East, 1,523.80 feet from the most northerly corner of said Parcel 1; thence

77. South 66°37'00" East, 180.01 feet; thence

78. South 23°23'00" West, 229.06 feet; thence

79. South 23°22'38" West, 215.94 feet; thence

80. South 66°37'16" East, 10.00 feet; thence

81. South 23°22'44" West, 145.00 feet; thence

82. North 66°37'16" West, 55.00 feet to the beginning of a curve concave to the northeast having a radius of 145.00 feet; thence

83. Northwesterly 77.92 feet along said curve through a central angle of 30°47'16"; thence

84. North 54°10'00" East, 100.00 feet to the beginning of a non-tangent curve concave to the east having a radius of 45.00 feet, and to which beginning a radial bears North 54°10'00" East; thence

85. Northerly 61.59 feet along said curve through a central angle of 78°25'00"; thence

86. North 47°25'00" West, 100.00 feet to the beginning of a non-tangent curve concave to the south having a radius of 145.00 feet, and to which beginning a radial bears South 47°25'00" East; thence

87. Easterly 174.16 feet along said curve through a central angle of 68°49'10"; thence

88. North 23°22'44" East, 85.09 feet to the beginning of a curve concave to the west having a radius of 25.00 feet; thence

89. Northerly 39.27 feet along said curve through a central angle of 89°59'44"; thence

90. North 66°37'00" West, 105.01 feet; thence

91. North 23°23'00" East, 190.00 feet to the Point of Beginning.

Containing 1.71 acres, more or less; <u>and</u>

That certain real property situate in Rancho Noche Buena, in the County of Monterey, State of California, being a portion of that certain 380.31 acre parcel of land shown as Parcel 1 as per map filed for record in Volume 26, Page 28 of Surveys in the office of the County Recorder of said county described as follows:

Beginning at a point that bears South 75°49'17" West, 1,637.17 feet from the most northerly corner of said Parcel 1; thence

92. South 84°51'47" East, 155.00 feet; thence
93. South 05°08'13" West, 130.00 feet to the beginning of a curve concave to the west having a radius of 150.00 feet; thence
94. Southerly 78.18 feet along said curve through a central angle of 29°51'47"; thence
95. South 35°00'00" West, 110.31 feet; thence
96. North 55°00'00" West, 100.00 feet; thence
97. South 35°00'00" West, 391.69 feet to the beginning of a curve concave to the northwest having a radius of 45.00 feet; thence
98. Southwesterly 49.96 feet along said curve through a central angle of 63°36'44"; thence
99. South 35°00'00" West, 149.69 feet; thence
100. North 55°00'00" West, 125.00 feet; thence
101. North 35°00'00" East, 632.00 feet to the beginning of a curve concave to the west having a radius of 125.00 feet; thence
102. Northerly 65.15 feet along said curve through a central angle of 29°51'47"; thence
103. North 05°08'13" East, 70.00 feet; thence
104. South 84°51'47" East, 95.00 feet to the Point of Beginning.

Containing 3.37 acres, more or less.

Bearings cited herein are referenced to said Volume 26, Page 28 of Surveys.

<u>Residential Parcel 3 (VTM Residential Phase III; Lots 42-56)</u>

That certain real property situate in Rancho Noche Buena, in the County of Monterey, State of California, being a portion of that certain 380.31 acre parcel of land shown as Parcel 1 as per map filed for record in Volume 26, Page 28 of Surveys in the office of the County Recorder of said county described as follows:

Beginning at a point that bears South 63°02'08" West, 3,204.09 feet from the most northerly corner of said Parcel 1, said point being the beginning of a curve concave to the southeast having a radius of 275.00 feet; thence

105. Southwesterly 139.33 feet along said curve through a central angle of 29°01'48" to the beginning of a reverse curve having a radius of 325.00 feet; thence

106. Southwesterly 23.97 feet along said curve through a central angle of 04°13'33"; thence

107. South 60°00'00" East, 151.29 feet; thence

108. North 25°46'27" East, 35.10 feet to the beginning of a curve concave to the southeast having a radius of 125.00 feet; thence

109. Northeasterly 63.33 feet along said curve through a central angle of 29°01'48"; thence

110. North 54°48'15" East, 100.61 feet to the beginning of a curve concave to the northwest having a radius of 290.00 feet; thence

111. Northeasterly 198.41 feet along said curve through a central angle of 39°12'03" to the beginning of a reverse curve having a radius of 175.00 feet; thence

112. Northeasterly 77.86 feet along said curve through a central angle of 25°29'31" to the beginning of a reverse curve having a radius of 600.00 feet; thence

113. Northeasterly 230.35 feet along said curve through a central angle of 21°59'48" to the beginning of a reverse curve having a radius of 175.00 feet; thence

114. Northeasterly 62.82 feet along said curve through a central angle of 20°34'04"; thence

115. North 39°40'00" East, 14.26 feet to the beginning of a curve concave to the northwest having a radius of 1,475.00 feet; thence

116. Northeasterly 137.30 feet along said curve through a central angle of 05°20'00"; thence

117. North 34°20'00" East, 279.26 feet; thence

118. North 18°20'00" West, 117.79 feet to the beginning of a non-tangent curve concave to the southeast having a radius of 275.00 feet, and to which beginning a radial bears South 18°20'00" East; thence

119. Southwesterly 179.19 feet along said curve through a central angle of 37°20'00"; thence

120. South 34°20'00" West, 183.92 feet to the beginning of a curve concave to the northwest having a radius of 1,325.00 feet; thence

121. Southwesterly 123.34 feet along said curve through a central angle of 05°20'00"; thence

122. South 39°40'00" West, 14.26 feet to the beginning of a curve concave to the southeast having a radius of 325.00 feet; thence

123. Southwesterly 116.67 feet along said curve through a central angle of 20°34'04" to the beginning of a reverse curve having a radius of 450.00 feet; thence

124. Southwesterly 172.76 feet along said curve through a central angle of 21°59'48" to the beginning of a reverse curve having a radius of 325.00 feet; thence

125. Southwesterly 144.60 feet along said curve through a central angle of 25°29'31" to the beginning of a reverse curve having a radius of 140.00 feet; thence

126. Southwesterly 95.79 feet along said curve through a central angle of 39°12'03"; thence

127. South 54°48'15" West, 100.61 feet to the Point of Beginning.

Containing 4.25 acres, more or less.

Bearings cited herein are referenced to said Volume 26, Page 28 of Surveys.

Residential Parcel 4

[Note: This Phase was previously purchased by Developer and developed as Lots 1 through 22 of Seaside Resort Estates Subdivision Phase 1A and 1B according to the map recorded August 21, 2007 in the Monterey County Recorder's Office in Volume 24 of Cities & Towns at Page 11 with accompanying common area parcels.]

Residential Parcel 5A

[Note: This Phase was previously purchased by Developer and developed as Lots 23 through 30 of Seaside Resort Estates Subdivision Phase 1A and 1B according to the map recorded August 21, 2007 in the Monterey County Recorder's Office in Volume 24 of Cities & Towns at Page 11 with accompanying common area parcels.]

Residential Parcel 5B

Lots 31 through 38 of Seaside Resort Estates Subdivision Phase 1A and 1B according to the map recorded August 21, 2007 in the Monterey County Recorder's Office in Volume 24 of Cities & Towns at Page 11.

Residential Parcel 6 (VTM Residential Phase VI; Lots 95-125)

PARCEL A

All that real property situated in the City of Seaside, County of Monterey, State of California, described as follows:

Being a portion of Parcel 1, as said parcel is shown on the Record of Survey Map filed in Volume 26 of Surveys, at Page 28, Records of Monterey County, and being more particularly described as follows:

BEGINNING at a southerly corner of said Parcel 1, said point lying on the northerly line of Coe Avenue, and said point also being the southerly terminus of the course depicted as N 2° 10' 44"

W, 293.61 feet on said Record of Survey Map, thence leaving said northerly line of Coe Avenue, and running along a westerly line of said Parcel 1

13. N 2° 10' 44" W, 293.61 feet; thence leaving said westerly line the following bearings and distances

14. N.31°40’00"W., 123.67 feet; thence

15. N.7°32'00"W., 43.42 feet; thence

16. N.70°30’00"E., 85,00 feet; thence

17. S.25°30’00"E., 232.00 feet; thence

18. S.1°00'00"W., 42.00 feet; thence

19. S.69°50'00"E., 138.00 feet; thence

20. S.10°36'00"W., 126.00 feet; thence

21. S.88°25'00"E., 238.70 feet to a point on an easterly line of said Parcel 1; thence running along said easterly line

22. S 23° 14' 55" W, 63.00 feet to a point on said northerly line of Coe Avenue; thence running along said northerly line

23. S 87° 38' 15" W, 417.95 feet to the POINT OF BEGINNING. Containing 82,858 square feet or 1.902 acres, more or less.

The basis of bearings for this description is the bearing of N 2° 10' 44" W along a westerly line of Parcel 1, as said parcel is shown on the Record of Survey Map filed in Volume 26 of Surveys, at Page 28, Records of Monterey County.

<u>AND</u>

PARCEL B

All that real property situated in the City of Seaside, County of Monterey, State of California, described as follows:

Being a portion of Parcel 1, as said parcel is shown on the Record of Survey Map filed in Volume 26 of Surveys, at Page 28, Records of Monterey County, and being more particularly described as follows:

COMMENCING at a southerly corner of said Parcel 1, said point lying on the northerly line of Coe Avenue, and said point also being the southerly terminus of the course depicted as N 2° 10' 44" W, 293.61 feet on said Record of Survey Map, thence leaving said northerly line of Coe Avenue, and running along a westerly line of said Parcel 1

a. N 2°10'44"W, 293.61 feet; thence leaving said westerly line

b. N.31°40’00"W., 123.67 feet; thence

c. N.7°32'00"W., 43.42 feet to the TRUE POINT OF BEGINNING; thence

1. N.7°30’00"E., 70.00 feet; thence

2. N.13°53'00"E., 101.00 feet; thence

3. N.00°43'00"E., 37.00 feet; thence

4. N.28°42'00"W., 160.00 feet; thence

5. N.35°02'00"W., 193.00 feet; thence

6. N.16°52'00"E., 229.00 feet; thence

7. N.16°08'00"W., 193.00 feet; thence

8.) N.07°40'00"W., 345.00 feet; thence

9. N.14°09'00"W., 163,00 feet; thence

10. N.47°53'00"E., 113.63 feet; thence

11. S.79°25'00"E., 753.23 feet; thence

12. S.34°18'52"E., 72.77 feet; thence

13. S.22°43'58"W., 142.16 feet; thence

14. S.78°40'00"W., 273.99 feet; thence

15. S.23°17'44"W., 689.59 feet; thence

16. S.84°11’00"E., 168.66 feet; thence

17. S.14°53'00"W., 435.92 feet; thence

18. S.70°30’00"W., 85.00 feet to the TRUE POINT OF BEGINNING.

Containing 490,995 square feet or 11.272 acres, more or less.

The basis of bearings for this description is the bearing of N 2° 10' 44" W along a westerly line of Parcel 1, as said parcel is shown on the Record of Survey Map filed in Volume 26 of Surveys, at Page 28, Records of Monterey County.

GOLF CLUBHOUSE LAND:

That certain real property situate in Rancho Noche Buena, in the County of Monterey, State of California, being a portion of that certain 380.31 acre parcel of land shown as Parcel 1 as per map filed for record in Volume 26, Page 28 of Surveys in the office of the county recorder of said county described as follows:

Beginning at a point that bears South 29° 36' 22” West, 2,765.92 feet from the most Northerly corner of said Parcel 1; thence

1. North 87° 22' 26” East, 255.91 feet; thence

2. South 02° 37' 34” East, 232.98 feet; thence

3. Easterly, 71.27 feet along the arc of a non-tangent curve to the left having a radius of 217.00 feet whose center bears North 32°10' 09” East; through a central angle of 18° 49' 00”; thence non tangentially

4. South 02° 37' 34” East, 60.02 feet; thence

5. South 87° 22' 26” West, 192.50 feet; thence

6. South 02° 37' 34” East, 27.36 feet; thence

7. South 87° 22' 26” West, 127.50 feet; thence

8. North 02° 37' 34” West, 350.77 feet; to the Point of Beginning containing 2.09 acres, more or less.

Bearings cited herein are referenced to said Volume 26, Page 28 of Surveys.

DRAFT

EXHIBIT "I"

FORM OF MEMORANDUM OF LEASE

(Attached.)

RECORDING REQUESTED BY,
AND WHEN RECORDED MAIL TO:

City of Seaside
440 Harcourt Avenue
Seaside, CA 93955
Attn: City Clerk

APNs: 031-051-018 and 042;
031-151-058

SPACE ABOVE THIS LINE FOR RECORDER'S USE

The undersigned Lessor declares that this Memorandum of lease is exempt from Recording Fees pursuant to California Government Code Section 27383, and is exempt from Documentary Transfer Tax under Reserve and Taxation Code Section 11922.

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE (this "Memorandum") is dated as of ______ ______, 2017 and is entered into by and between the CITY OF SEASIDE, a municipal corporation ("Landlord') and MONTEREY BAY RESORTS, LLC, a Nevada limited liability company ("Tenant").

RECITALS

A. Landlord and Tenant executed that certain Second Amended and Restated Ground Lease dated December 7, 2017 (the "Lease") affecting the land in the City of Seaside, California (the "Property") described on Exhibit "A", which became effective on _________, 2018.

B. Landlord and Tenant now desire to record this Memorandum in order to, among other things, comply with law requiring that municipal leases be recorded, giving constructive notice of the existence of the Lease, and permitting the Tenant to obtain title insurance for its leasehold interest (if desired).

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, and the covenants and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

24. Ground Lease. Landlord has leased the Property to Tenant, and Tenant has leased the Property from Landlord, upon and subject to the terms and conditions set forth in the Lease, which are hereby incorporated herein by this reference.

25. Term. The term of the Lease commences on the effective date described in Recital A above, and expires on December 31, 2080; provided, however, that such term shall be automatically extended to the date that is seventy-five (75) years after the issuance of a

Certificate of Occupancy for the hotel to be constructed by Tenant on land near the Property provided the hotel is timely completed in accordance with the terms of the Second Amended and Restated Disposition and Development Agreement between Tenant and City.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Memorandum as of the date and year first above written.

LANDLORD: CITY OF SEASIDE,
a municipal corporation

By: ___________________________________
Craig Malin, City Manager

TENANT: MONTEREY BAY RESORTS, LLC

By: ___________________________________
Print Name: ____________________________
Title: _________________________________

[ALL SIGNATURES MUST BE DULY ACKNOWLEDGED]

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Monterey)

On _________________________, before me, ___________________________________,
(insert name and title of the officer)
Notary Public, personally appeared ____,
who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature________________ (Seal)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Monterey)

On _________________________, before me, ___________________________________,
(insert name and title of the officer)
Notary Public, personally appeared ____,
who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature________________ (Seal)

Exhibit "A"

Description of Land

(Attached.)

SECOND AMENDED AND RESTATED
DISPOSITION AND DEVELOPMENT AGREEMENT

by and between the

CITY OF SEASIDE

and

MONTEREY BAY RESORTS, LLC,
a Nevada limited liability company

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<u>SECOND AMENDED AND RESTATED</u>
<u>DISPOSITION AND DEVELOPMENT AGREEMENT</u>

THIS SECOND AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT ("DDA", or "Agreement" or "Restated DDA") is dated this 7th day of December, 2017 and is entered into by and between CITY OF SEASIDE, a California municipal corporation ("City"), and MONTEREY BAY RESORTS, LLC, a Nevada limited liability company ("Developer").

RECITALS

A. The Successor Agency of the Redevelopment Agency of the City of Seaside ("Successor Agency") and Seaside Resort Development, LLC previously entered into an Amended and Restated Disposition and Development Agreement dated February 5, 2014 (the "First Restated DDA").

B. Prior to the date hereof, the Successor Agency: (i) assigned the First Restated DDA to the City pursuant to an Assignment, Assumption and Administrative Agreement between the Successor Agency and the City; and (ii) conveyed the Property (as described therein and defined herein) to the City.

C. The City intends to attempt to obtain a Master Taxing Entity Agreement (i.e., "compensation agreement"), executed by the thirteen taxing entities (the "Taxing Entities") which have legal rights to a "compensation agreement", with respect to the First Restated DDA, and said Master Taxing Entity Agreement permits the City to consent to an assignment of the First Restated DDA to Developer and to amend the First Restated DDA <u>provided</u> the amendments do not reduce purchase prices or materially extend closing deadlines for sales of portions of the Property. The amendments in this Agreement qualify as such permitted amendments.

D. Developer desires to acquire from City the property that was conveyed by the Successor Agency back to the City, as described in Recital C above, which is the property that is described on <u>Attachment No. 1</u> attached hereto as well as other property described on <u>Attachment No. 1-A</u> owned by the City on which a golf clubhouse is located (collectively, the "Property"), and develop, construct and operate thereon a development that will include the following (collectively, the "Project"): (i) a hotel component (the "Hotel Component"); (ii) a timeshare (or other residential, including condominiums) component as described in Section 2.1.1 below (the "Timeshare Component"), (iii) a residential lot component (the "Residential Component") as described on <u>Attachment No. 2</u> attached hereto and demolition of the existing golf clubhouse and construction of a new clubhouse to serve the Golf Courses and the Hotel Component, Timeshare Component, and Residential Component "Golf/Resort Clubhouse Component" (the "Scope of Development"), all subject to the Entitlement Conditions (defined in Section 1.1.22 below). The Property will be conveyed to Developer in phases (each, a "Phase") as described more particularly on <u>Attachment No. 1-B.</u> As used herein, the term "Phase" means the development of Improvements on the land for the Phase, the land for the Phase, or both, as appropriate given the context in which such term is used.

E. The Developer acknowledges that the City has legitimate municipal goals in assuring appropriate development of the Property. It is the intent of the Developer and the City that these goals be achieved by conditions that were included in the approval of certain City entitlements for the Project, described more particularly in Attachment No. 1-D (as amended, replaced or supplemented from time to time, the "Entitlement Conditions"), which Developer has agreed to comply with as part of its performance of this Agreement.

F. The Developer has also agreed to provide the City rights to participate in the financial profits to be realized from portions of the Residential Component, all as described more particularly herein.

G. The Project will substantially improve the economic and physical conditions in the City in accordance with public purposes and goals of the City.

NOW THEREFORE, City and Developer agree as follows:

ARTICLE 1. DEFINITIONS

1.1 Definitions

As used hereinafter in this Agreement, including the attachments hereto, the following terms shall have the following respective meanings:

1.1.1 Affordable Units is defined in Section 10.1.3.

1.1.2 Certificate of Completion shall mean a certificate issued for a Phase pursuant to Section 6.14, in the form attached as Attachment No. 4.

1.1.3 City shall mean the City of Seaside, California, a municipal corporation, organized and existing under the laws of the State of California and having its office at 440 Harcourt Avenue, Seaside California 9395.

1.1.4 City Manager shall mean the City Manager of City, or his or her designee.

1.1.5 City Option to Repurchase shall mean City's Option to repurchase the Property pursuant to Section 9.4 of this Agreement included in the documents in the form of Attachment No. 6 that will be used to convey each Phase of the Property to the Developer.

1.1.6 City Affordable Housing Program shall mean the City's program for assisting the development of affordable housing under the City's Inclusionary Housing Ordinance, Chapter 17.32 of the Seaside Municipal Code.

1.1.7 City Representatives/City Representatives, respectively, shall mean and include all of the respective predecessors, successors, assigns, agents, officials, employees, members, independent contractors, affiliates, principals, officers, directors, attorneys, accountants, representatives, staff, council members, board members, and planning commissioners of City or City, as the case may be, and of each of them.

1.1.8 Claims means any claims, demands, causes of action, suits, judgments, debts, costs, losses, penalties, fines, encumbrances, rights, obligations, causes of action, indemnities, liens, expenses (including but not limited to any claims for attorneys' fees and costs and Remediation Costs), settlements, professionals' fees, tax claims, claims for payment, claims for contribution or indemnity (whether statutory, contractual or equitable), or claims for costs, losses, expenses, compensation, liabilities or damages, of any and every kind or nature whatsoever, whether known or unknown, and whether based on strict liability, active or passive negligence, gross negligence, contractual or statutory liability, or otherwise, and whether seeking judicial, arbitral, administrative, or equitable relief or otherwise, costs and expenses of investigation, analysis, Remediation, and defense of any claim, and whether or not any such claim is ultimately defeated.

1.1.9 Close of Escrow shall mean, with respect to a particular Phase (or portion of a Phase), the recordation of the Grant Deed executed by City for such Phase (or portion of a Phase).

1.1.10 Complete Construction Documents shall mean the documents described in subsection 6.2.5.

1.1.11 Concept Design Drawings shall mean the drawings attached to the Scope of Development or such other concept design drawing as may be developed from time to time in accordance with this Agreement.

1.1.12 Control shall mean, for purposes of this Agreement, the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a corporation, partnership, joint venture, trust, or other association (subject to customary limitations in favor of other owners).

1.1.13 Credit Property is defined in Section 3.7.

1.1.14 Deed shall mean a grant deed conveying fee title to one or more of the Phases from City to Developer, in the form attached hereto as Attachment No. 6.

1.1.15 Design Development Drawings shall mean the drawings described in subsection 6.2.4.

1.1.16 Developer shall have the meaning set forth in Section 2.3.

1.1.17 Developer Affiliate shall mean a legal entity whose finances and management are controlled, directly or indirectly, by the direct or indirect owners of Developer, as shown by reasonable evidence delivered to City.

1.1.18 Developer Title Policy shall mean each policy of title insurance described in Section 5.5.

1.1.19 Development Plans shall mean and include such preliminary and final construction drawings and specifications, grading plans, landscape plans, Property development plans, plot plans, off-site improvement plans, architectural renderings and elevations, material specifications, parking plans, and other plans and documents as are required to be submitted to City or City pursuant to this Agreement or any applicable Laws.

1.1.20 Encumbrance shall mean and include any mortgage, trust deed, encumbrance, lien or other mode of financing real estate construction and development, including a sale and leaseback.

1.1.21 Entitlements shall mean general plan amendments, zone changes, zoning code amendments, development permits, conditional use permits, site plan reviews, design review permits, vesting tentative subdivision maps, approvals of plans submitted pursuant to Section 6.2, California Environmental Quality Act compliance, demolition permits, building permits, and grading permits, requirements of the Fort Ord Reuse Authority ("FORA") and any and all other permits, licenses and entitlements of every kind required by the City in order to complete construction of the Improvements on the Property.

1.1.22 Entitlement Conditions or Project Conditions shall mean the City conditions of approval for the Project attached hereto as Attachment No. 1-D, as amended from time to time.

1.1.23 Environmental Condition means the existence of Hazardous Substances on, in or under the Property as of the date of this Agreement.

1.1.24 Environmental Documents shall mean the reports, studies and other documents relating to the Environmental Condition of the Property listed on Attachment No. 5.

1.1.25 Environmental Laws shall mean all federal, state and local laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any government authority regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance (as later defined), or pertaining to occupational health or industrial hygiene (and only to the extent that the occupational health or industrial hygiene laws, ordinances, or regulations relate to Hazardous Substances on, under, or about the Property), occupational or environmental conditions on, under, or about the Property, as now or may at any later time be in effect, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) [42 USCS § 9601 *et seq.*]; the Resource Conservation and Recovery Act of 1976 (RCRA) [42 USCS § 6901 *et seq.*]; the Clean Water Act, also known as the Federal Water Pollution Control Act (FWPCA) [33 USCS § 1251 *et seq.*]; the Toxic Substances Control Act (TSCA) [15 USCS § 2601 *et seq.*]; the Hazardous Materials Transportation Act (HMTA) [49 USCS § 1801 *et seq.*]; the Insecticide, Fungicide, Rodenticide Act [7 USCS § 136 *et seq.*]; the Superfund Amendments and Reauthorization Act [42 USCS § 6901 *et seq.*]; the Clean Air Act [42 USCS § 7401 *et seq.*]; the Safe Drinking Water Act [42 USCS § 300f *et seq.*]; the Solid Waste Disposal Act [42 USCS § 6901 *et seq.*]; the Surface Mining Control and Reclamation Act [30 USCS § 1201 *et seq.*]; the Emergency Planning and Community Right to Know Act [42 USCS § 11001 *et seq.*]; the Occupational Safety and Health Act [29 USCS § 655 and 657]; the California Underground Storage of Hazardous Substances Act [H & S C § 25280 *et seq.*]; the California Hazardous Substances Account Act [H & S C § 25300 *et seq.*]; the California Hazardous Waste Control Act [H & S C § 25100 *et seq.*]; the California Safe Drinking Water and Toxic Enforcement Act [H & S C § 24249.5 *et seq.*]; the Porter-

Cologne Water Quality Act [Wat C § 13000 *et seq.*] together with any amendments of or regulations promulgated under the statutes cited above and any other federal, state, or local law, statute, ordinance, or regulation now in effect or later enacted that pertains to occupational health or industrial hygiene (and only to the extent that the occupational health or industrial hygiene laws, ordinances, or regulations relate to Hazardous Substances on, under, or about the Property), or the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, or land use.

1.1.26 Environmental Liabilities and Obligations means any known or unknown Claim, liability, obligation (including, without limitation, any obligation to monitor, test, sample, report to governmental authorities, Remediate or clean up, or any obligation under a permit or order), expense, contribution or indemnity obligation (whether under any Environmental Law or any other statute, common law or in equity), cost, Remediation Costs or any other damage, liability or loss (including without limitation, reasonable attorneys' and consultants' fees), fine or penalty, whether incurred by a Party hereto or claimed by any third party (including, without limitation, any governmental entity), arising out of or relating to any actual, alleged or threatened discharge, release, emission, spill or migration into the environment, or any such discharge, release, disposal, emission, spill, migration, or Remediation of any Hazardous Substance, originating from the Property.

1.1.27 Escrow is defined in Section 5.7.

1.1.28 Escrow Agent means First American Title Company, Dolores 3 Southwest of 7th, P.O. Box 2177, Carmel, California 93921, or other mutually acceptable escrow agent agreed to by the Parties.

1.1.29 Final Hotel Stage is defined in Section 5.2.1.

1.1.30 First Restated DDA is defined in Recital A above.

1.1.31 Force Majeure shall mean an event creating an enforced delay which, pursuant to Section 11.3, entitles either Party to an extension of time to perform.

1.1.32 Golf/Resort Clubhouse Phase is defined in Section 5.2.6.

1.1.33 Golf Course(s) shall mean the Bayonet and Blackhorse golf courses in Seaside, California as defined in the Golf Course Lease.

1.1.34 Golf Course Lease shall mean the Second Amended and Restated Golf Course Lease dated as of December 7, 2017 between the City and Developer, concerning the Golf Courses, as amended from time to time.

1.1.35 Good Faith Deposit is defined in Section 3.3.

1.1.36 Hazardous Substances shall include, without limitation, any hazardous substance or waste, hazardous material, chemical compound or element, pollutant or contaminant, as those terms are defined in their broadest sense by any Environmental Law, petroleum or refined petroleum products, flammable explosives, radioactive materials, asbestos, polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, substances described in California Civil Code Section 2929.5(e)(2) and California Code of Civil Procedure Section 736(f)(3), as those sections may be amended from time to time, as well as, without limitation, all other substances included within the definitions of hazardous substance, hazardous waste, hazardous material, toxic substance, solid waste, or pollutant or contaminant in CERCLA, RCRA, TSCA, HMTA, or under any other Environmental Law, and any pollutants, contaminants, hazardous wastes, toxic substances or related materials.

1.1.37 Holder(s) shall mean the beneficiary of any deed of trust securing financing, provided such beneficiary is a Qualified Lender, is not affiliated with Developer, the financing and deed of trust are permitted by this Agreement and provided, further, that the name and address for notices of the beneficiary have been delivered to City in a writing that identifies the beneficiary as a Holder under this Agreement, and provided, further, that entities to which such a beneficiary assigns its lien or to which beneficiary transfers the Property or any portion thereof shall also be a Holder to the extent specified in Section 6.12.

1.1.38 Improvements shall mean and include: (i) with respect to the Hotel Phase and Golf Clubhouse Phase, all grading to be done on the Property, as well as all buildings, structures, fixtures, excavation, parking, landscaping, and other work, construction, demolition, rehabilitation, alterations and improvements of whatsoever character to be done by Developer on, around, under or over the Property pursuant to this Agreement, and (ii) with respect to the Timeshare Phase and Residential Phase, all road and utility infrastructure and other similar horizontal subdivision improvements, including for each of (i) and (ii) all on and off-Property improvements required by the Entitlement Conditions.

1.1.39 Law refers to any present or future law, statute, code, rule, regulation, ordinance, writ, injunction, order, decree, ruling, court decision, condition of approval or authorization, or other legally binding condition or requirement of any governmental authority (including but not limited to federal, state and local authorities) or quasi-governmental body having or exercising jurisdiction or control over Developer or the Property, or any portion thereof.

1.1.40 Master Resolution shall mean the Fort Ord Reuse Authority Resolution adopted March 14, 1997, as amended.

1.1.41 Memorandum of DDA shall mean the short form memorandum of this Agreement, in the form attached hereto as Attachment No. 11, to be recorded on record title to the Property upon execution of this Agreement.

1.1.42 Note is defined in Section 8.2.

1.1.43 Option Purchase Price shall have the meaning set forth in Section 9.4.4.

1.1.44 Ownership Transfer shall mean and include any voluntary or involuntary transfer, sale, assignment, contract for sale, lease, sublease, license, franchise, concession, operating agreement, gift, hypothecation, mortgage, pledge or encumbrance, or the like with respect to all or a portion of, or interest in, the Property or the Improvements to any person or entity, or any transfer (in one or a series of transactions) of more than eighty percent (80%) of the direct or indirect ownership interests in Developer or in any permitted or approved assignee of Developer's rights under this Agreement, in each case prior to the issuance of a Certificate of Completion for the applicable Phase(s); provided, however, that the agreement of Developer to sell a Phase or any portion thereof shall not constitute an "Ownership Transfer" if the actual sale is conditioned, for the benefit of the City as an express third party beneficiary, upon (i) the issuance of a Certificate of Completion by City under this Agreement with respect thereto and (ii) with respect to the Hotel Phase, the opening of the hotel to the public.

1.1.45 Party, Parties shall mean one or both of City and Developer, as applicable.

1.1.46 Person shall mean an individual, corporation, partnership, limited liability company, joint venture, association, firm, joint stock company, trust, unincorporated association, governmental authority or agency, or other entity.

1.1.47 Phase shall mean one of the portions of the Property described on Attachment No. 1-B to be conveyed to Developer hereunder.

1.1.48 Pollution and MEC Insurance shall mean the insurance in the amount of $100,000,000 obtained by the Fort Ord Reuse Authority for certain pollution and munitions and explosive risks, of which $10,000,000 is to be allocated to the City.

1.1.49 Property shall mean the entirety of the Property subject to this Agreement, as more specifically described in Attachment No. 1 and Attachment No. 1-A hereto and as depicted on the Site Plan attached as Attachment No. 1-A. The Property is located within the City, and consists of the Hotel Phase, the Timeshare Phases (consisting of Phases A1, A2, A3, B1, B2, B3, B4, C1 and C2), the Residential Phases (consisting of Phases I, II, III, IV, V-A, V-B and VI), and a Golf/Resort Clubhouse Phase, all as described on Attachment 1-B hereto.

1.1.50 Purchase Price(s) shall mean the compensation to be paid to City by Developer for the Phases, as set forth in Attachment 1-C (except that Attachment 1-C does not include the Profit Participation, if any, for the Residential Phases, which is part of the purchase prices for the Residential Phases, and which shall be paid as set forth in Section 8.1).

1.1.51 Qualified Lender shall mean a bank, savings and loan, pension fund, insurance company, REIT, or other institutional entity or private investor or trust which is duly established and capable of financing (and upon a foreclosure or appointment of a receiver, which is capable of completing or arranging for completion of) the size and type of the applicable portion of the development contemplated hereunder that it is financing and which, in the reasonable opinion of the City Manager, has a sufficient net worth and liquidity position to meet the contemplated financing commitment and completion of the applicable portion of the development.

1.1.52 REA shall mean a reciprocal easement agreement providing for rights of mutual access between the owner of one or more Phases of the Project and one or more other Phases.

1.1.53 "Remediation and Remediate mean actions taken to correct or remediate any Environmental Condition, including but not limited to the removal and disposal of any

Hazardous Substance, and to implement the terms of a remediation plan and any amendments thereof which sets forth the actions to be taken to effect any necessary remediation or removal of a single Environmental Condition or a group of related and reasonably proximate Environmental Conditions as necessary to bring a property into compliance with the Environmental Laws, or any agreement applicable to the Property, and, if appropriate, approved by any applicable governmental entity.

1.1.54 Remediation Costs means the amounts expended for Remediation or response to an Environmental Condition, and amounts expended to determine the extent of the Environmental Condition and to determine the appropriate means of Remediation or response, including any investigation, testing, sampling, monitoring or assessment expenses, attorneys' or environmental professionals' fees, and the costs of surveys, audits or analyses. "Remediation Costs" also includes the premium for environmental cost containment and environmental liability insurance ("Environmental Insurance Policy"), to the extent such insurance is obtained by Developer in form and with coverage limits acceptable to both Parties in their sole discretion.

1.1.55 Schedule of Performance shall mean the Schedule of Performance attached hereto as Attachment No. 3 and incorporated herein by reference, setting out the dates and time periods by which certain obligations set forth in this Agreement must be accomplished.

1.1.56 Schematic Design Drawings shall mean the drawings described in subsection 6.2.3.

1.1.57 Scope of Development shall mean the Scope of Development attached hereto as Attachment No. 2 and incorporated by reference herein, which describes the scope, amount and quality of development of the Improvements to be constructed by Developer pursuant to the terms and conditions of this Agreement.

1.1.58 Site Plan shall mean the Site Plan attached hereto as Attachment No. 1-A.

1.1.59 Stage One is defined in Section 5.2.1.

1.1.60 Stage Two is defined in Section 5.2.1.

1.1.61 Takedown Credit is defined in Section 3.7.1.

1.1.62 Title Company shall mean Escrow Agent, or another title company agreed to by the Parties in writing.

1.1.63 Title Documents shall have the meaning set forth in Section 5.4.

ARTICLE 2. PURPOSE OF TRANSFERS; REPRESENTATIONS; CONDITIONS PRECEDENT.

2.1 Purpose of the Agreement; Proposed Development

2.1.1 The purpose of this Agreement is to provide for the disposition of the Property to Developer, and the development thereon of a hotel project, timeshare project units and residential lots project in the following phases: The "Hotel Phase" shall consist of the development of a hotel with one or more buildings containing a minimum of 275 guest rooms and up to an aggregate of 330 guest rooms and adjacent or subterranean parking on the two parcels of land described as the Hotel Phase land on Attachment No. 1, which Hotel Phase may be acquired and developed in up to three stages as described in Section 5.2 below; the "Timeshare Phase" shall consist of the development of a project with a minimum of 170 and a maximum of 225 or as permitted by Entitlements "timeshare" or "interval" units, fractional units, residential units (which may or may not be subject to a formal condominium regime) or lots, other legal forms of ownership permitted by applicable law, or any combination thereof permitted by the Entitlements and Project Conditions on the three parcels of land described as the Timeshare Phase land on Attachment No. 1, the "Residential Phases" shall collectively consist of the development of 125 single family residential lots (30 of which residential lots have been acquired by the predecessor to Developer and are not being acquired by Developer in this Agreement) on the nine parcels of land described as the Residential Phase land on Attachment No. 1, and the "Golf/Resort Clubhouse Phase" shall consist of the demolition of the existing golf clubhouse on the Golf Course property and the development of a new Golf/Resort Clubhouse, all as more particularly described in the Scope of Development attached hereto as Attachment No. 2.

To the extent the description of the Project in the Scope of Development differs from the description otherwise contained in the text of and other attachments to this Agreement, the text of and other attachments to this Agreement shall control. The description of the Hotel and Timeshare Components in the Scope of Development is conceptual and for illustrative purposes only, and the actual configuration may change during the final design and permitting process (subject to the limitations imposed by the Entitlements and Project Conditions, as amended from time to time and applicable law), but shall in any event be subject to written approval by the City Manager acting in good faith. Without limiting the generality of the foregoing, (a) the Timeshare Component may be developed with (i) a number of buildings permitted by the Entitlements and Project Conditions, as amended from time to time, and applicable law, (ii) fewer or more than 170 units, and (iii) with a variety of unit configurations (e.g., stacked, attached, free-standing, one bedroom, two bedroom, three bedroom, with or without an additional lock-off room); and (b) the Residential Phases may contain more than 125 single family residential lots if permitted by the Entitlements and Project Conditions, as amended from time to time.

2.1.2 This Agreement is entered into for the purpose of developing the Property and not for speculation in land holding. The development of the Property pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of City, and the health, safety, and welfare of its residents, and are in accord with the public purposes and provisions of applicable state and local laws.

2.2 City

The City is a California municipal corporation. The principal office of City is located at 420 Harcourt Avenue, Seaside, California 93955. The term "City" includes any assignee or successor to City's rights, powers and responsibilities under this Agreement.

2.3 Developer

2.3.1 Developer is Monterey Bay Resorts, LLC, a California limited liability company, having its principal office at 901 Dove Street, Suite 230, Newport Beach, CA 92660; however, City acknowledges that it is the Developer's intent that the actual development of the Property may be done by Developer Affiliates that acquire portions of the Property as permitted by this Agreement, not by Developer.

2.3.2 The term "Developer" as used herein includes any assignee or successor of Monterey Bay Resorts, LLC, a Nevada limited liability company, permitted by this Agreement. All of the terms, covenants, and conditions of this Agreement applicable to the Phase or portion of the Property acquired by each such assignee or successor shall be binding on each such successor and assign of Developer; provided, however, that Developer's obligations under the Agreement shall not be binding on purchasers of lots in a Residential Phase or purchasers of residential units or lots in the Timeshare Phase except as provided in the recorded covenants described in Attachment No. 6C which are intended to survive the sale of lots or units, as applicable, to such purchasers.

2.4 Prohibitions Against Transfer; Exceptions

2.4.1 Developer represents that its undertakings pursuant to this Agreement are for the purpose of development of the Property and not for speculation in land holding. Developer further recognizes that, in view of

(a) the importance of the development of the Property to the general welfare of the community;

(b) the public assistance that has been made available by law and by City for the purpose of making such redevelopment possible; and

(c) the fact that a change in ownership or control of Developer or of a substantial part thereof, or any other act or transaction involving or resulting in a significant change in ownership or control of Developer or the degree thereof, is for practical purposes a transfer or disposition of the property then owned by Developer; the qualifications and identity of Developer and its members are of particular concern to City. It is because of those qualifications and identity that City has entered into this Agreement with Developer. No voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Agreement except as expressly set forth herein. Except where an Ownership Transfer is specifically permitted by this Agreement, Developer shall not assign all or any part of this Agreement or any interest in the Property without the prior written approval of City.

2.4.2 Prior to the recordation of the Certificate of Completion for the last Phase of the Project, Developer shall not, unless approved in advance and in writing by the City Manager under Section 3.2.2 or permitted under Section 2.4.3 below: (i) effect any change in Control of Developer or any permitted assignee or successor to Developer; (ii) assign or attempt to assign this Agreement or any rights herein except as expressly permitted by this Agreement; or (iii) make any total or partial Ownership Transfer. Each transaction described in the preceding sentence is sometimes referred to in this Agreement and the Attachments hereto as a

"Transfer." Any approval of a Transfer shall not constitute a release of Developer or its obligations hereunder. This prohibition shall not apply to a Phase subsequent to the recordation of a Certificate of Completion for that Phase.

2.4.3 Provided that the applicable transfer documents, easement documents, loan documents, organizational documents and/or modification documents are provided to the City at least ten (10) business days in advance of the applicable transfer or modification (so that the City can confirm that the transfer or occurrence in question is indeed permitted under this Section 2.4.3), Section 2.4 shall not prevent or prohibit:

(a) the granting of easements or permits to facilitate the development of the Property;

(b) granting any security interest in the Property or Improvements, or portion thereof, to any Qualified Lender;

(c) an Ownership Transfer to a Developer Affiliate, and the City Manager of the City shall have the right to determine whether the applicable transferee qualifies as a "Developer Affiliate";

(d) an Ownership Transfer to a Qualified Lender provided that if the improvements have not then been completed, within sixty (60) days after the transfer, the Qualified Lender either engages a real estate developer reasonably approved in writing by City to complete the development of the Improvements pursuant to a "development and construction management agreement" reasonably acceptable to the City, or transfer the Property to such a developer who assumes the obligations of Developer under this Agreement arising or after the applicable transfer to the Qualified Lender pursuant to an "assumption agreement" reasonably acceptable to the City;

(e) Upon Developer's request from time to time, City will confirm in writing whether a prospective Ownership Transfer would be permitted under this Agreement or approved provided City has received all of the information that it reasonably needs in order to do so.

2.4.4 (a) Any proposed transferee of Developer under Section 2.4.3(c) and any developer engaged as contemplated under Section 2.4.3(e) above who is not one of the pre-approved individuals named therein shall, at minimum, have qualifications and financial responsibility commensurate with that of Developer, as may be reasonably determined by City.

(b) If Section 2.4.2 is violated with respect to a particular Phase, City may take such action as City may deem appropriate to assure City that the Improvements will be completed, including without limiting the generality of the foregoing, exercising its rights set forth in this Agreement to repurchase the applicable Phase, and any other rights City may have under this Agreement, at law or in equity. In the absence of specific written release by City, no sale, transfer, conveyance or assignment of all or any portion of or interest in the Property, shall be deemed to relieve Developer from any obligations under this Agreement.

2.5 City Representations

City, acknowledging that each provision in this Section 2.5 is material and is being relied on by Developer, hereby represents and warrants the following to Developer for the purpose of inducing Developer to enter into this Agreement and to consummate the transactions contemplated hereby, all of which shall be true as of the date hereof and (unless City notifies Developer to the contrary prior to the Close of Escrow for each Phase and the representation or warranty in question did not cease to be true as a result of City's acts or omissions after the execution of this Agreement) as of the Close of Escrow for each Phase and which shall survive the Close of Escrow for each Phase and delivery of each Deed.

2.5.1 Subject to the satisfaction of the conditions in Section 2.7(ii) and (iii), City has the legal power, right and authority to consummate the transactions contemplated hereby, to take any steps or actions contemplated hereby, and to perform its obligations hereunder.

2.5.2 Subject to the satisfaction of the conditions in Section 2.7(ii) and (iii), all requisite action has been taken by City and all requisite consents have been obtained in connection with entering into this Agreement and the instruments and documents referenced herein to which City is a party, and the consummation of the transactions contemplated hereby, and the same are authorized by the Redevelopment Plan described in Section 2.5.4 below. There are no writs, injunctions, orders or decrees of any court or governmental body which would be violated by City's entering into or performing its obligations under this Agreement.

2.5.3 This Agreement is duly executed by City, and all agreements, instruments and documents to be executed by City pursuant to this Agreement shall, at such time as they are required to be executed hereunder, be duly executed by City, and to the actual knowledge of the City, subject to the satisfaction of the conditions in Section 2.7, each such agreement is, or shall be at such time as it is required to be executed hereunder, valid and legally binding upon City and enforceable in accordance with its terms, and the execution and delivery thereof shall not, with due notice or the passage of time, constitute a default under or violate the terms of any indenture, agreement or other instrument to which City is a Party.

2.5.4 The uses of the Property, as contemplated by this Agreement, are permitted by the Redevelopment Plan for the Redevelopment of the Former Fort Ord, adopted by Ordinance No. 901 of the City on April 18, 2001, as it may have been amended.

2.5.5 City has no actual knowledge of any pending or threatened litigation which would prevent the Property from being conveyed in the condition of title required hereunder, or which would prevent City from performing its duties and obligations hereunder.

2.5.6 City has provided to Developer a copy of the documents related to the Environmental Condition of the Property described more particularly in Attachment No. 5, hereto.

2.5.7 To the actual knowledge of City, the documents referenced in paragraph 2.5.7 above, together with information and other documents referred to or identified in such listed documents, constitute all materials, reports and information in City's possession relating to the Environmental Condition of the Property, and to the actual knowledge of City, there are no outstanding environmental remediation orders or decrees (federal or state) regarding the Property except as described in Attachment No. 5.

To the actual knowledge of the City, there are no unrecorded contracts, licenses, leases or agreements regarding a Phase or any part of it, that will survive the Close of Escrow for the applicable Phase by which Developer would become obligated or liable to any person or entity or that would permit any person or entity to possess or occupy the applicable Phase (except for the Entitlements, the Conditions of Approval, the Golf Course Lease, this Agreement and any other agreements entered into by Developer).

2.5.8 The representations and warranties of City set forth herein will survive the Close of Escrow for each Phase, and the transfers contemplated hereby, and the consummation of this Agreement shall not constitute a waiver of such representations and warranties. The warranties and representations made in this Agreement shall not merge with any transfer of any portion of the Property.

Except as otherwise expressly set forth in this Section 2.5, City makes no other representations or warranties regarding the Property, including, without limitation, any Environmental Condition, title to the Property, the fitness of the Property for any use or suitability for development, or concerning the surface or subsurface soil or ground water of the Property, and neither City nor any of its employees, agents, advisors, consultants, or representatives make any representations or warranties, express or implied, in connection with any documents or information made available hereunder, or whether any income or profits will or can be derived from the development of the Property.

From and after the execution and delivery of this Agreement, the City will not: (i) create any Environmental Condition, or (ii) unless required by applicable law, enter into any agreements or record any documents or instruments that will affect a Phase after the City's conveyance of that Phase to Developer.

As used in this Section 2.5, "the actual knowledge" of City means the present actual knowledge of Larry Seeman, consultant to the City, the current City Manager of the City and the current City staff. After its initial delivery of Environmental Documents to Developer, City shall deliver to Developer any additional materials, reports and notices relating to the Environmental Condition of a Phase which come into City's possession prior to the Close of Escrow for that Phase, and any other material information relating to the Environmental Condition of the Property of which City obtains actual knowledge, and if such additional materials, reports or notices disclose information that materially and adversely affects the development or use of the applicable Phase then Developer shall have the right to terminate this Agreement with respect to the applicable Phase prior to the Close of Escrow for that Phase, and upon such termination, the applicable Phase shall no longer be part of the Property or the Project for purposes of this Agreement; provided, however, that in no event may Developer terminate this Agreement with respect to the Hotel Phase without also terminating this Agreement as to the Timeshare Phase and Residential Phase (i.e., if the Developer terminates this Agreement with respect to the Hotel Phase, Developer must terminate this Agreement in its entirety).

2.6 Developer Representations

Developer, acknowledging that each provision in this Section 2.6 is material and is being relied upon by City, represents and warrants the following to City for the purpose of inducing City to enter into this Agreement and to consummate the transactions contemplated hereby, all of which shall be true as of the date hereof and as of the Close of Escrow for each Phase and which shall survive the Close of Escrow for that Phase and delivery of the Deed conveying title to that Phase pursuant to this Agreement:

2.6.1 Developer has the legal power, right and authority to enter into this Agreement and the instruments and documents referenced herein, to consummate the transactions contemplated hereby, to take any steps or actions contemplated hereby, and to perform its obligations hereunder.

2.6.2 All requisite action has been taken by Developer and all requisite consents have been obtained by Developer in connection with entering into this Agreement and the instruments and documents referenced herein, and the consummation of the transactions contemplated hereby.

2.6.3 To the best knowledge of Developer, the execution, delivery and performance by Developer of this Agreement will not violate any provision of law, any order of any court or other agency of government, or any indenture, agreement or other instrument to which Developer is a party or by which Developer or any of its properties is bound.

2.6.4 This Agreement is, and all agreements, instruments and documents to be executed by Developer pursuant to this Agreement shall be, duly executed by and are, or shall be, valid and legally binding upon Developer and enforceable in accordance with their respective terms, and the execution and delivery thereof shall not, with due notice or the passage of time, constitute a default under or violate the terms of any indenture, agreement or other instrument to which Developer is a party.

2.6.5 Developer understands, agrees and acknowledges that, except for the express representations and warranties of City in this Agreement, (i) it is purchasing the Property in "AS-IS/WHERE-IS" condition, and (ii) City does not make, has not made and will not make, any representations or warranties, express or implied, concerning the physical or Environmental Condition of the Property, or its fitness for any particular use or purpose. Developer represents and warrants that Developer will have had the opportunity to make (and hereby covenants to have made), prior to the first Close of Escrow, investigations and inspections of all aspects of the condition of the entire Property, as it has deemed necessary or appropriate, including, but not limited to soils and the Property's compliance or non-compliance with applicable Laws (including the Environmental Laws) and the existence or non-existence of Hazardous Substances on, in or under the Property. Developer acknowledges that under the terms of this Agreement it will have the opportunity to examine records regarding the Property and become fully familiar with the physical and Environmental Condition of the Property and will have full opportunity to conduct any additional investigations, assessments and testing as it sees fit. Developer further represents and warrants that it is relying solely upon its own inspections and investigations in proceeding with this Agreement, and that it is not relying on the accuracy or reliability of any information provided to it by City or prepared by any prior owners, operators, and tenants, and that, in making such investigation and assessment, it has been provided access to any persons, records or other sources of information which it has deemed appropriate to review.

2.6.6 Without limiting the generality of the foregoing provisions, Developer acknowledges that except as otherwise expressly set forth in Section 2.5, City has not made and will not make any representations or warranties concerning the Property's compliance or non-compliance with Environmental Laws or the existence or non-existence of Hazardous Substances in relation to the Property or otherwise. Developer understands and agrees that, except for Hazardous Substances released by the City, the sole obligation which City has concerning the condition of the Property, the existence or non-existence of Hazardous Substances on or at the Property or the Property's compliance or non-compliance with Environmental Laws is City's liability for any breach of applicable representations and warranties set forth in Section 2.5; provided, however, that (i) the City will use reasonable efforts at its own cost (including reasonable litigation, if necessary) to pursue with counsel reasonably acceptable to Developer any claims or rights it may have (and shall enforce the City's obligations under the Conveyance Agreement to pursue any rights the City may have) against the United States of America, the Department of the Army and applicable insurance carried by the City with respect to Hazardous Substances on the Property; (ii) the City will not (and shall enforce the City's obligations under the Conveyance Agreement to not) settle any such claims without the consent of the Developer; (iii) City shall use all sums recovered from the assertion of such claims and insurance toward costs and expenses incurred by the Developer toward environmental investigation, remediation and other reasonable expenditures relating to existing Hazardous Substances that are performed or made by Developer with respect to Property after the Developer has acquired such Property.

2.6.7 Developer fully understands that Hazardous Substances may have been used, transported, stored and potentially released or disposed on or in the vicinity of the Property and offsite. Developer further understands that there may be Environmental Conditions on or beneath or in the vicinity of the Property which are neither visible nor have been discovered or identified, including former sumps, oil and gas spills and leaks, debris, releases of Hazardous Substances, and similar wastes and materials.

2.6.8 Developer understands and agrees that it is hereby notified pursuant to the provisions of the California Health & Safety Code Section 25359.7, that Hazardous Substances may be located on, under or around the Property, and that it is also notified, pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65), that detectible amounts of chemicals known to the State or California to cause cancer birth defects or other reproductive harm or other Hazardous Substances may be found in, on or around the Property.

2.6.9 Developer further acknowledges and represents and warrants that it is not relying on any oral or written representation nor the non-disclosure of any facts or conclusions of law made by City, or any of its officers, officials, employees, agents, attorneys or representatives made in connection with this Agreement.

2.6.10 The representations and warranties of Developer set forth herein will survive the Closing Date for each Phase, and the transfers contemplated hereby, and the consummation of this Agreement shall not constitute a waiver of such representations and warranties. Any warranties or representations made in this Agreement shall not merge with any transfer of any portion of the Property.

2.7 Conditions Precedent

The effectiveness of this Restated DDA is conditioned upon the occurrence of the following on or before February 28, 2018: (i) reimbursement by Seaside Resort Development, LLC ("SRD") of City costs incurred in connection herewith and in connection with that certain Second Amended and Restated Golf Course Lease between City and Developer, (ii) the effectiveness of the assignment of the First Restated DDA by SRD to Developer pursuant to that certain Assignment and Assumption Agreement between Seaside Resort Development, LLC and Developer (and delivery of reasonable evidence to the City that such assignment has occurred, such as an estoppel executed by SRD and Developer to the City certifying that the assignment has occurred); (iii) the effectiveness of the assignment by B&B Golf Course of that certain Amended and Restated Ground Lease dated December 15, 2005 between B&B and the City, and the delivery of reasonable evidence thereof to City (such as an estoppel executed by B&B and Developer to the City certifying that the assignment has occurred); (iv) the execution of the Master Taxing Entity Agreement (compensation agreement) under California Health & Safety Code Section 38180(f), acceptable to the City, by all Taxing Entities; (v) approval by the Oversight Board of the Successor Agency's conveying the Property to the City and of the Successor Agency's executing an assignment, assumption and administration agreement with the City with respect to the First Restated DDA; and (vi) the approval of such Oversight Board decisions by the California Department of Finance ("DOF") or the failure of the DOF to request review (or extend the time for review) within the applicable time period required by law. City hereby consents to the assignments by SRD and the Successor Agency's described above. Upon the effectiveness of this Restated DDA, this Restated DDA shall supersede the First Restated DDA.

ARTICLE 3. SPECIAL PROVISIONS

3.1 Schedule of Performance; Extension of Time of Performance

Subject to Section 11.3 hereof, the Parties shall perform all required acts, and Developer shall begin and complete all construction and development, within the times specified in the Schedule of Performance (or such extension of those dates as may be granted by each Party to the other in writing). The Schedule of Performance is subject to revision from time to time as and if mutually agreed upon in writing between Developer and City. The Parties to this Agreement agree to consider requests for extensions with the intent that all Parties cooperate toward the implementation of the development activities encompassed by this Agreement.

3.2 Delegation to City Manager

3.2.1 The City Manager is hereby authorized to take any and all steps necessary to complete the acquisition and conveyance of the Property and to implement the provisions of this Agreement.

3.2.2 The City Manager is hereby authorized, on behalf of City, to, in his sole and absolute discretion approve in writing:(i) a reasonable limited extension of the deadline in

Section 2.7 above if the Developer delivers reasonable evidence to the City Manager that satisfaction of the conditions in Section 2.7, and closing of any financing necessary to purchase the applicable property, are reasonable likely to occur within the requested extension period; (ii) additional reasonable limited extensions of time for other deadlines in this Agreement if the Developer delivers reasonable evidence to the City Manager that the matter for which the deadline was imposed is reasonable likely to be satisfied within the requested extension period; (iii) modifying the room number requirements of the Hotel Phase in Section 2.1.1 by plus or minus 10% i.e. 10% fewer than 275 rooms and 10% greater than 330 rooms; (iv) approve, waive or make comments on behalf of the City in connection with Developer's submissions described in Article 6; (v) modify or waive any of City's conditions or requirements to any Closing; (vi) with respect to any Residential Phase, permitting on behalf of the City Developer to construct up to twenty percent (20%) fewer lots than otherwise required by this Agreement upon Developer's delivery to the City Manager of reasonable evidence that fewer lots will not reduce the City's Profit Participation under Section 8.3 below; (vii) approving reasonable changes to the Site Plan for the Timeshare Phase; (viii) adjusting the insurance requirements on Attachment 7 in light of the circumstances pertinent to the development of a particular portion of the Project; (ix) approving reasonable adjustments to parcel boundaries, including the execution and delivery of implementing instruments, necessary or appropriate to (A) accommodate recordation of final subdivision maps or parcel maps so long as such final subdivision maps or parcel maps have been found to be in substantial compliance with the approved Vesting Tentative Map for the Project and (B) convey parcels (or portions of parcels) to the Developer with legal descriptions consistent with the pertinent final subdivision maps (it being understood that the legal descriptions may vary from the legal descriptions in Attachment No. 1 and Attachment No. 1-A hereto); and (x) granting approval of a Transfer under Section 2.4.2. No action of the City Manager pursuant to this Section 3.2.2 shall be effective unless it is both express and in writing.

3.2.3 Where City approval of any Developer submissions or requests specified in Article 6 is required, the City Manager may grant, in writing, such approval or, in his or her sole discretion, refer such matters to City's Board or the City Council for its approval or disapproval. In addition, notwithstanding the time periods for such approvals set forth in Article 6 and the Schedule of Performance, if the City Manager deems it appropriate or necessary to hold a public meeting before the action specified is to be taken, the period for such action by City or City shall be extended by a reasonable amount of time, not to exceed thirty (30) days in each case, for the holding of such public meeting. In that event, the period of delay attributable to the public meeting shall extend the time(s) for Developer's performance by a commensurate period.

3.2.4 Developer may appeal decision of the City Manager to the City Council by submitting a written appeal of such decision on a form prescribed by the City under Section 17.68.030 of the Seaside Municipal Code to the City Secretary within fourteen (14) days after the City Manager gives its written decision to Developer and the Parties hereby agree that the fees and procedures for the appeal shall be as set forth in Section 17.68.030 of the Seaside Municipal Code (it being the intent that the words "Planning Commission" shall mean the City Manager), except that the matter shall be placed on the agenda for one of the two regularly scheduled public hearings of the City Council subsequent to the receipt by the City Clerk of the written appeal.

3.3 Good Faith Deposit

3.3.1 Successor Agency has delivered to City the $150,000 Good Faith Deposit (as described in the First Restated DDA) which shall be held by City in an interest bearing account (collectively, with such interest, the "Good Faith Deposit") and shall be security for the good faith and diligent performance of the obligations of Developer to be performed hereunder. The Good Faith Deposit shall not be subject to use or disbursement by City except as provided in this Agreement.

3.3.2 Upon the Close of Escrow for either the Final Hotel Stage of the Hotel Component or last Phase of the Timeshare Component scheduled to be sold to Developer under the Agreement, Developer (or any successor to Developer approved in writing by the City) shall be credited the full amount of the Good Faith Deposit as an offset against the Purchase Price for the last portion of the Property when it is sold to Developer under this Agreement (on a dollar for dollar basis).

3.3.3 Upon termination of this Agreement pursuant to any applicable provision of this Agreement, the Good Faith Deposit shall be disposed of as set forth in the Section authorizing such termination; however, if the termination is based on the Developer's default, then the City may hold the Good Faith Deposit until either a court instructs the City as to its disposition (and the court order is not appealed or is affirmed on appeal), or the Parties execute a settlement agreement that addresses the disposition of the funds.

3.3.4 Upon exercise by City of its right of termination of this Agreement pursuant to Section 9.3.1, the Good Faith Deposit shall be retained by City as liquidated damages without offset or deduction or other defense whatsoever to payment.

3.3.5 CITY AND DEVELOPER HEREBY MUTUALLY AGREE THAT DEVELOPER WOULD BE LIABLE IN DAMAGES TO AGENCY AS A RESULT OF THE FAILURE OF DEVELOPER TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT PRIOR TO THE CONVEYANCE OF A PORTION OF THE PROPERTY TO DEVELOPER AND THAT THE AMOUNT OF SUCH DAMAGES WOULD BE IMPOSSIBLE TO CALCULATE OR ASCERTAIN. IN THE EVENT THAT CITY TERMINATES THIS AGREEMENT PURSUANT TO SECTION 9.3.1 HEREOF PRIOR TO CONVEYANCE OF ANY OF THE PROPERTY TO DEVELOPER, THE GOOD FAITH DEPOSIT SPECIFIED ABOVE SHALL BE RETAINED BY AGENCY AS LIQUIDATED DAMAGES WITHOUT ANY DEDUCTION, OFFSET OR RECOUPMENT (OR ANY RIGHT THEREOF) WHATSOEVER. BY INITIALING THE SPACES WHICH IMMEDIATELY FOLLOW THIS PARAGRAPH, CITY AND DEVELOPER SPECIFICALLY AND EXPRESSLY AGREE TO ABIDE BY THE TERMS AND PROVISIONS OF THIS SUBPARAGRAPH CONCERNING LIQUIDATED DAMAGES IN THE EVENT DEVELOPER FAILS TO PERFORM ACCORDING TO THE PROVISIONS OF THIS AGREEMENT PRIOR TO THE CONVEYANCE OF ANY OF THE PROPERTY TO DEVELOPER, AND SUCH LIQUIDATED DAMAGES SHALL CONSTITUTE THE SOLE AND EXCLUSIVE REMEDY ON ACCOUNT OF DEVELOPER'S UNCURED DEFAULT PRIOR TO CONVEYANCE OF ANY OF THE PROPERTY TO DEVELOPER AND AGENCY

WAIVES ANY RIGHTS TO BRING AN ACTION FOR DAMAGES OR SPECIFIC PERFORMANCE OR ANY OTHER FOR REMEDY OF ANY BREACH OR DEFAULT BY DEVELOPER.

City's Initials: ______ Developer's Initials: _____

3.4 Submission of Evidence of Financing

As a condition precedent to City's obligation to convey each Phase or portion thereof to Developer, Developer shall submit to the City Manager evidence that Developer has obtained and committed, or will obtain and commit concurrent with the closing of the acquisition of that Phase or portion, sufficient cash equity and financing to finance the completion of the Improvements on that Phase or portion, such that the City Manager is reasonably satisfied that the Improvements can be constructed.

Such evidence shall include a copy of the final construction loan documents and a complete project budget showing all costs (and the portion thereof to be paid with Developer equity as opposed to loan funds) and the actual closing of any necessary loan. Any such agreement shall provide for notice of default to City, and the right to cure required by Section 6.13.5.

This Section 3.4 is in addition to, and not in lieu of, any other similar conditions described in this Agreement.

3.5 Construction Contract

3.5.1 As a condition precedent to City's obligation to convey any Phase or portion thereof to Developer, Developer shall provide evidence that a construction contractor(s) reasonably acceptable to the City Manager (each, a "Contractor") shall enter into one or more binding and enforceable contract(s) with Developer, in which a Contractor agrees to serve as general contractor for the construction of the Improvements on that Phase or portion (including the development of lots on the Residential Phases in preparation for the construction of houses thereon). The Construction Contract(s) shall obligate the Contractor(s) to construct the Improvements on each portion of the Hotel Phase and Timeshare Phase for a fixed price or guaranteed maximum cost. The compensation in each Construction Contract (or in the case of Residential Phases, the budget for Residential Phases that shall have been approved by the City Manager) shall be within the amount of available financing as shown by the evidence of financing provided pursuant to Section 3.5 and the Developer's equity, and each Construction Contract shall require completion of the Improvements on a schedule consistent with the Schedule of Performance.

3.5.2 Developer agrees that the Contractors it engages to construct the Project shall have valid and current California contractor licenses for the work proposed which shall not have been revoked at any time within the past five-years, shall not have been in default beyond any applicable cure period, terminated for cause, or for which surety has been required to complete a contract within the last 5-years, shall not have been cited more than twice for failure to pay prevailing wages on contracts requiring prevailing wages in the last five-years or have filed for bankruptcy within the last 10-years.

3.5.3 Developer shall cause its Contractors (acting on their own behalf and on behalf of all of their subcontractors) to meet with the Building and Construction Trades Council of Monterey and Santa Cruz Counties to consider the possibility of entering into Project Labor Agreement(s) for the Project.

3.5.4 In order to help fulfill the City's First Source Recruitment Policy with respect to support of the Monterey County Pre-Apprentice Program, the Developer shall include in its contracts with Contractors that they will accept graduates of that program for available positions, and that the Contractors will include such requirement in their subcontracts and will enforce such obligations of their subcontractors. Developer shall enforce all such contractual provisions included in its contracts with Contractors.

3.6 Performance and Payment Bonds

3.6.1 As a condition in favor of City to the closing of the conveyance of the land for the Final Hotel Stage, but if Developer obtains a construction loan from an unaffiliated lender for the Final Hotel Stage, then only if such lender requires payment and performance bonds or they are required under the laws pertaining to prevailing wages for the Project, then at the earlier of the time they are required by such lender, or the commencement of construction of Improvements for a Phase or portion thereof, the Developer shall deliver to the City payment and performance bonds issued by a reputable bank or insurance company licensed to do business in California and reasonably approved by the City Manager, each with a "penal sum" or liability limitation of not less than one hundred percent (100%) of the cost of construction of the Improvements for that Phase or portion as reflected in an overall project budget for such Improvements that has been approved by the applicable Qualified Lender and has been delivered to the City (with reasonable evidence of the Qualified Lender's approval). The bonds shall name the City as a co-obligee.

3.6.2 Upon any change order to a construction contract that increases the GMAX price or stipulated sum therein, all applicable payment and performance bonds shall be modified so that the "penal sum" or liability limitation therein is 100% of such increased GMAX price or stipulated sum.

3.7 Credit Property; Takedown Credits.

3.7.1 The developer under the Initial DDA paid to or for the benefit of City, the sums of $2,398,929.66 under Section 2.7 of the First Restated DDA, $325,000 as described in Section 3.7.3 of the First Restated DDA and $1,475,000 as described in Section 3.7.3 of the First Restated DDA. Developer has a credit ("Takedown Credit") in such amounts (which total $4,198,929.66 as of the date of this Restated DDA) toward the purchase price of any property within the Residential Phases or Timeshare Phases under this Agreement. Developer may acquire (and City shall convey to Developer or Developer's designee permitted under this Agreement) property at a date determined by Developer by notice to City (subject to the time limits contained in the Schedule of Performance, filing of a final subdivision map or parcel map as required under the California Subdivision Map Act (Government Code §§66410-66499.58) encompassing the selected property (or a larger area) in accordance with Section 3.7.3 below, and satisfaction of the provisions of this Agreement applicable to the selected property.)

Additionally, upon Developer's relocation of the Golf Course maintenance yard, Developer shall receive an additional $1,400,000 of Takedown Credit (which may only be used as a credit). Property acquired or to be acquired by Developer using Takedown Credit is sometimes referred to in this Agreement as "Credit Property." Credit Property situated in the Residential Component shall be subject to the City's Participation Interest described in Section 8.3. The maximum aggregate amount of Takedown Credit is $5,598,929.66.

3.7.2 Notwithstanding the provisions thereof, for Credit Property (Residential Phase or Timeshare Phase property) acquired in the first of the two-step process specified in subsection (1) of Section 3.7.3, the provisions of Sections 3.4 and 5.5.1(iv) (concerning evidence of financing), 3.5 (concerning construction contracts), 5.5.1(v) (concerning permits and governmental approvals), 5.5.1(vi) (concerning plans and specifications) and 5.5.4(i) (concerning a timeshare management/system agreement) are not conditions to the closing of Developer's purchase. If Residential Phase or Timeshare Phase land is acquired through a recorded parcel map in which the applicable Credit Property is defined as one parcel and which parcel is configured in such a manner as to require its subsequent subdivision into additional future lots as proposed by the Entitlements and which parcel map is not accompanied by subdivision improvement agreements and subdivision improvement bonds, then the preconditions specified above for the acquisition shall not apply. However, then the preconditions of closing specified above must be satisfied prior to Developer's commencement of construction of any improvements on that Credit Property.

However, if the Credit Property is either: (i) non-Hotel Phase land on which hotel amenities would be constructed; or (ii) Residential Phase or Timeshare Phase land that is acquired through a recorded subdivision map or parcel map that depicts lots or parcels intended for subsequent sale and development in their ultimate configuration, and that map is accompanied by improvement plans, an improvement agreement and required subdivision security, then the preconditions of closing specified above must be satisfied prior to Developer's acquisition of that Credit Property.

3.7.3 The condition of Section 5.5.1(ix) (concerning compliance with the Subdivision Map Act) may be satisfied with respect to Credit Property that is Residential Phase or Timeshare Phase property in one of the following ways: (1) by a two-step process involving first, a recorded parcel map in which the applicable Credit Property is defined as one parcel and which parcel is configured in such a manner as to require its subsequent subdivision into additional future lots as proposed by the Entitlements and which parcel map shall not require improvements, improvement agreements or subdivision improvement bonds, and then second, a subsequent parcel map or final subdivision map that divides the same parcel into separate lots or parcels for eventual development and which contains required subdivision improvements and is accompanied by a subdivision improvement agreement and subdivision bonds; or (2) a recorded subdivision map or parcel map that is accompanied by improvement plans, an improvement agreement and required subdivision bonds. The intent of this provision is to allow the creation of single parcels to convey the Credit Property from the City to the Developer but to ensure that no lot or parcel that is created for eventual development is done so without subdivision improvements, a subdivision improvement agreement and subdivision bonds.

3.8 Subdivision Improvements. To the extent permitted by law, Developer shall not be required to provide security to the City for subdivision improvements for which security is provided to the City, but in such event City shall be made a co-obligee on security provided to the City.

3.9 Acquisition of Residential Phases. Developer may acquire each Residential Phase in one or more closings (i.e., Developer need not acquire all of a Residential Phase in a single closing) provided that: (i) at each closing Developer shall acquire not less than the amount of land sufficient for the subsequent creation of not less than four (4) ultimate residential lots as depicted on the Vesting Tentative Map for the project, which lots are created in one of the two methods described in Section 3.7.3; (ii) lots acquired within a particular phase shall be contiguous and contiguous with any lots already acquired within the phase (and for the purpose hereof lots separated only by easements or rights of way are considered contiguous); and (iii) the Property within each closing shall conform to the parcel map or final subdivision map required by Section 3.7.2.

3.10 New or Modified Entitlements. Developer acknowledges and agrees that: (i) although this Agreement contemplates potential changes to components of the Project which may or may not be consistent with existing entitlements and may under certain circumstances require Developer to apply for and obtain amendments to or modifications of certain Entitlements, this Agreement is not intended to and does not constitute an amendment to or modification of any existing entitlements, and (ii) should Developer seek any amendment to or modification of any existing entitlements, Developer must pursue the same through the City's ordinary processes and procedures in accordance with applicable state and municipal laws.

ARTICLE 4. TOT BASED PAYMENTS BY AND TO CITY

In addition to rooms of the Hotel Component, Developer may develop units in the Timeshare Component or residences in the Residential Component that generate transient occupancy taxes and such units or residences may be developed in phases or stages. Upon the completion of any such Hotel phase or stage, Timeshare phase or stage, or Residential phase or stage that generates transient occupancy tax, City shall pay to the Developer affiliates that own(s) the land on which the various components of the Project are located, periodic payments of an amount equal to eighty percent (80%) of the transient occupancy taxes actually received by City from the applicable owner (or its operator) from operations of said rooms of the Hotel Phase or stage, units of the Timeshare Phase or stage, or residences of the Residential Phase or stage that are subject to transient occupancy taxes which are actually paid under Seaside Municipal Code Chapter 3.24, for the first five (5) years that transient occupancy taxes are first generated for said rooms of the Hotel Phase or stage, units of the Timeshare Phase or stage, or residences of the Residential Phase or stage and sixty-five percent (65%) of transient occupancy taxes for years six (6) through twenty (20) that said transient occupancy taxes are generated. City shall make such payments from time to time within fifteen (15) days after receipt of any such transient occupancy tax being used hereunder to determine and measure the amount of the periodic City payments. City shall make such payments by check to such owner mailed to the address of such owner provided to City in writing (and referring to this Article 4). If City changes its transient occupancy tax rate after the date of this Agreement, then the percentage shares described above shall be reasonably adjusted by City in writing to preserve the intended economic benefits to City and Developer of the percentage shares described above.

In consideration of City entering into this Restated DDA, commencing on December 7, 2017 and continuing until the material commencement of Improvements by Developer to the land of the First Hotel Stage, Developer's predecessor in interest under the First Restated DDA shall pay to City the sum of Fifteen Thousand One Hundred and Twenty and No/100 Dollars ($15,120.00) per calendar month, in advance, prorated for any partial calendar month within such period, without prior demand and without offset or deduction, until the Developer closes on the Stage One, Stage Two, Final Hotel Stage, or Golf/Resort Clubhouse land, at which time the foregoing payment and attendant obligation shall become that of the Developer until the termination date noted in this paragraph. Payments from Developer referenced in the previous paragraph are not due and liability for such payments does not accrue until all of the conditions set forth in Section 2.7 have been fully met and the Developer has acquired the Stage One, Stage Two, Final Hotel Stage, and Golf/Resort Clubhouse land.

ARTICLE 5. DISPOSITION OF THE PROPERTY; CONDITIONS TO CLOSE OF ESCROW FOR EACH PHASE

5.1 Sale of the Property by the City to the Developer. The City hereby agrees to sell the Property to Developer, and Developer hereby agrees to buy the Property, subject to the terms and conditions hereinafter set forth. The Developer shall close on and purchase all of the Property in accordance with the Schedule of Performance, provided that the applicable conditions in Section 5.5.

5.2 Timeline for Hotel Development and Golf Clubhouse; Right to Acquire Residential Phases Conditioned Upon Hotel Progress.

5.2.1 Developer is authorized, at Developers election, to construct the Hotel in stages, in which (i) Stage One consisting of at least 40 rooms, (ii) Stage Two consisting of rooms which, together with Stage One, bring the number of rooms to at least 68 rooms in the aggregate and (iii) a Final Hotel Stage of at least 275 rooms is completed. Developer may elect to build all or part of Stage One and/or Stage Two as an interim use on the Timeshare Component land, as described in Section 5.2.2.

5.2.2 Developer may elect to build all or part of Stage One and/or Stage Two on the Timeshare Component land, at a location reasonably close to the Hotel Component Land, and operate those hotel rooms as an interim use until the Final Hotel Stage of at least 275 rooms is completed on the Hotel Component land. After the Final Hotel Stage is completed, the Stage One and Stage Two hotel rooms on the Timeshare Component land may be sold and/or used for any purpose permitted under the applicable Entitlements, as amended from time to time, and not as residential lots, and if so shall be placed in a voluntary rental program to be administered by the hotel operator.

To facilitate the aforementioned interim use on the Timeshare Component land, City has approved, with accompanying environmental review, Conditional Use Permit ("CUP") UP-14-07 (PC Resolution No 14-15) amending Timeshare Component UP-01-20 (CC Resolution

No. 05-44). The amended CUP provides for the interim hotel use on the Timeshare Component land. The revised CUP is general as to the portion of the Timeshare Component which is not utilized for the interim hotel use, but is specific with regard to (x) changes necessary to substitute residential units for timeshare units and (y) siting and product types for all other residential uses in the Timeshare Component.

5.2.3 Developer shall (i) obtain building permits for and commence construction of Stage One, Stage Two, the Final Hotel Stage and the Golf/Resort Clubhouse Phase or before the date that is twelve (12) months after the date of this Agreement. Developer shall complete construction on Improvements to the land for Stage One, Stage Two, the Final Hotel Stage and the Golf/Resort Clubhouse Phase on or before December 31, 2021.

5.2.4 [INTENTIONALLY OMITTED]

5.2.5 Developer may obtain Residential Phase land only in accordance with this Section 5.2.5.

5.2.5.1 At completion of construction and the opening for business of Stage One, Developer may purchase Property in the Residential Phase. Developer may use Takedown Credits to purchase Property in the Residential Phase.

5.2.5.2 After completion of construction of Stage One and the opening for business of Stage One, Developer may purchase up to an additional $2,500,000 of Property in the Residential Phase (in addition to the Property that can be purchased by Developer using Takedown Credits).

5.2.5.3 After completion of construction of Stage Two and the opening for business of Stage Two, Developer may purchase up to an additional $2,500,000 of Property in the Residential Phase (in addition to the Property that can be purchased by Developer using Takedown Credits and the $2,500,000 of Property in the Residential Phase described in Section 5.2.5.2 above).

5.2.5.4 After material commencement of construction of the Final Hotel Stage Developer may purchase the remainder of the Residential Phase.

5.2.5.5 The last date for Developer to acquire all Timeshare Phase land is December 31, 2020. The last date for Developer to acquire all of the Residential Phase land is December 31, 2023.

5.2.6 The Developer shall purchase the property described on Attachment No. 1-A (Golf/Resort Clubhouse Phase) at the per-acre price set forth in Attachment 1-C (Purchase Price by Phase) concurrently (and subject to acquiring) the Hotel Component Phases (including any Timeshare Component land used by Developer as Hotel Stages One or Two), provided that a Certificate of Compliance has been approved and recorded for the Golf/Resort Clubhouse Phase and such other property such that the Golf/Resort Clubhouse property and such other property consists of legal parcels (i.e, the City shall have determined they are exempt from mapping) and provided, further that the reciprocal easement agreement described in Section 5.5.6 is approved, executed and recorded. However, Stage One, Stage Two and the Final Hotel Stage may not be acquired without Developer acquiring the Golf/Resort Clubhouse Phase, and City may terminate this Agreement if any or all of the property is not acquired by February 28, 2018. None of such property shall be purchased with Takedown Credits, notwithstanding anything to the contrary in this Restated DDA, and any Timeshare Component land used for Hotel Stages One and Two are part of the land that must be acquired by February 28, 2018. Upon completion of the purchase of the Golf/Resort Clubhouse Phase land, the Golf/Resort Clubhouse Phase land shall become a portion of the Hotel Component land and subject to the applicable Entitlements

5.2.7 The parcel known as "General's House Parcel" between "B" Street and Bayonet Drive is owned by the U.S. government. Should it be conveyed to the City, Developer shall have a right of first negotiation for a period of ninety (90) days to acquire this property from the City, and if not acquired by Developer, City shall record reasonable restrictive covenants on such property to prevent its development with uses that are clearly incompatible with the uses for the Hotel Phase, Timeshare Phase, and Residential Phase.

5.3 Purchase Prices. The purchase prices for each Phase (defined in Section 1.1.46) to be paid by Developer to City are set forth on Attachment No. 1-C. Once a certificate of occupancy has been issued for Stage One, Developer can utilize Takedown Credits for the acquisition of any subsequent Phase of the Timeshare Component, or Residential Component.

5.4 Closing Dates. The last date for the Close of Escrow for each Phase of the Property is described in the Schedule of Performance.

5.5 Conditions Precedent to Purchases and Sales of Phases.

(i) 5.5.1 All Sales. The following events are conditions precedent to the City's sale of land for each Phase (or portion thereof, as applicable) to the Developer: the Developer's inspection of the applicable Phase or portion, approval of the physical condition and all other aspects of the Phase or portion, and delivery to the City of copies of Developer's inspection reports and environmental studies for the applicable Phase or portion;

(ii) [INTENTIONALLY OMITTED];

(iii) compliance with Section 3.5 above with respect to the applicable Phase or portion;

(iv) except as provided in Section 3.7.2, compliance with Section 3.4;

(v) except as provided in Section 3.7.2 and except for the purchase of land for Stage One, Stage Two, the Final Hotel Stage and the Golf/Resort Clubhouse Phase, delivery to the City of evidence acceptable to the City Manager that all permits and governmental approvals for the development of the applicable Phase in accordance with this Agreement will have been issued, all development-related fees for the applicable Phase or portion will have been paid, and there would be no delinquent Entitlement Conditions to the issuance of any such approvals or permits;

(vi) except as provided in Section 3.7.2 and except for the purchase of land for Stage One, Stage Two, the Final Hotel Stage and the Golf/Resort Clubhouse Phase, final plans and specifications for the applicable Phase or portion thereof having been delivered to and approved by the City Manager (which shall not constitute approval by the City);

(vii) the absence of an uncured default by Developer under this Agreement (except that this clause (vii) shall not apply to purchases by Developer described in Section 5.2.5.1 through 5.2.5.3);

(viii) receipt and approval by the City Manager of the formation and organizational documents (and qualification documents and good standing certificates) for (a) the Developer and its constituent entities, and (b) any Developer Affiliate or other permitted or approved transferee that will acquire the applicable Phase or portion thereof and its constituent entities;

(ix) the compliance of the applicable Phase or portion with the California Subdivision Map Act (i.e., each Phase or portion thereof being acquired must constitute, a separate, legally subdivided parcel); this condition precedent is intended by the parties to comply with Section 66499.30 of the Subdivision Map Act and the decision in Black Hills Investments Inc. v. Albertson's, Inc. [2007] 146 CQA4th 883; this condition precedent cannot be waived by either party;

(x) the Title Company's agreement to issue the applicable Developer Title Policy in the form required by Section 5.5;

(xi) the absence of an uncured default by City under this Agreement;

(xii) the City's approval, execution and delivery to Developer of a Reimbursement Agreement in the form attached hereto as Attachment No. 13;

Conditions (x), (xi), and (xvii) are for the benefit of the Developer only. The other conditions are for the benefit of the City only.

5.5.2 Residential Phases. The following events are also conditions precedent to the City's sale of Residential Phase land to the Developer;

(i) the execution and delivery to the City of the Residential Phase Deed of Trust described in Section 8.3.3 below and an environmental indemnity agreement in the form of Attachment No. 9, and the recordation of such deed of trust in the Official Records of Monterey County, California; and

(ii) the issuance to the City (at Developer's cost) of an ALTA Lender's title policy (the "Title Policy") which insures the Residential Phase Deed of Trust as an encumbrance on the Residential Phase and is in form and substance and with endorsements satisfactory to the City Manager.

(iii) Amendments to the Golf Course Lease and the recorded memorandum relating thereto which add to such leased land originally included under this DDA in a Residential Phase but subsequently omitted from such Residential Phase by an amendment to this DDA, shall be executed by Developer (and in the case of the memorandum amendment, duly acknowledged) and shall be delivered to the City. The effectiveness of such amendments shall be conditioned upon the conveyance of the added land by the City to the City and the acceptance thereof by the City.

The conditions in this Section 5.5.2 are for the benefit of the City only.

5.5.3 Hotel Phase. The following events are also conditions precedent to the City's sale of any portion of the Hotel Phase to the Developer:

(i) delivery to City of a written representation from Developer that a reasonable hotel management agreement consistent with (and including any provisions required by) this DDA (including, without limitation, Section 7), has been executed by a hotel manager listed on Attachment No. 12 and the entity that is to acquire the Hotel Phase (identifying the actual hotel management company);

(ii) the execution by City and Developer, and the acknowledgment and recordation, of: (a) a Memorandum of Golf Course Use and Access Agreement reasonably acceptable to City Manager and Developer which evidences the rights in the hotel operating agreement to enter and use the golf course facilities and runs with the land with respect to, and benefits, the Hotel Phase (and as may otherwise be contemplated by the Golf Course Lease); and (b) reasonable utility and access easements across the Property and/or the premises under the Golf Course Lease that are reasonably acceptable to the City Manager and Developer and are reasonably necessary for the functioning of the Project; and

(iii) compliance with Section 3.6, if applicable.

Conditions (i) and (iii) of this Section 5.5.3 are for the benefit of the City only. Condition (ii) is for the benefit of both the Developer and the City.

5.5.4 Timeshare Phases. The following is also a condition precedent to the City's sale of each Timeshare Phase to the Developer (but only to the extent that a Timeshare Phase is to be developed as a timeshare project):

(i) delivery to City of a reasonable timeshare or condo rental management/system agreement consistent with this DDA (including, without limitation, Section 7), executed by a time share manager listed on Attachment No. 13.

The foregoing condition is for the benefit of the City only.

5.5.5 Residential Phases. The terms and conditions of Section 5.2.5 shall apply to all of the Residential Phases and portions thereof.

5.5.6 Golf/Resort Clubhouse Phase. The sale of the Golf/Resort Clubhouse Phase is conditioned upon the approval and recording of a Final Map (or functional equivalent) or the City determining that the Golf/Resort Clubhouse Phase land is exempt (in which case, City will issue a Certificate of Compliance), and the execution and recording of a reciprocal easement agreement between the City and Developer, subject to no prior liens (except liens for property taxes and assessments not then payable) granting the City as owner of the Golf Courses reasonable rights to the use of the golf clubhouse for users of the Golf Courses and addressing the coordination of the closing of the existing clubhouse and construction of the new one in order to minimize disruption of public use, and which is otherwise reasonably acceptable to the City.

5.6 Title and Physical Condition. It is a condition in favor of Developer to each Close of Escrow that the Title Company be committed to issue to Developer a CLTA Standard Coverage Policy of Title Insurance (the "Developer Title Policy") in the amount of the purchase price for the Phase being acquired, showing the title to the property vested in Developer, subject to the Memorandum of DDA, the Deed of Trust (for the Hotel Parcel only), the deed of trust securing the City's Profit Participation (for Residential Phases only), the City's repurchase option for the applicable Phase, any applicable REA or CC&R's required as a condition of the Closing of the applicable Phase, and all title exceptions acceptable to Developer, provided that if any title exceptions are not acceptable to Developer and Developer fails to terminate the Restated DDA in writing on or before February 15, 2018, then Developer shall be deemed to have approved all such title exceptions. If Developer desires, Developer shall have the right to receive ALTA coverage as a condition to the closing of each Phase, but Developer shall be responsible for the cost of all ALTA extended coverage to the extent it exceeds the cost of CLTA coverage, all endorsements, and the cost of an ALTA survey, if performed by Developer. Developer may obtain higher policy limits if Developer pays all costs relating thereto. City shall not (and shall use good faith efforts to cause City not to) voluntarily create or suffer to be created any title exceptions with respect to the Property which do not exist as of the date the City executes this Agreement. City shall deliver to Developer any additional materials, reports and notices relating to the title to a Phase which come into City's possession prior to the Close of Escrow for that Phase, and if such additional title matter(s) materially and adversely affect the development or use of the applicable Phase, then Developer shall have the right to terminate this Agreement with respect to the applicable Phase prior to the Close of Escrow for that Phase, and upon such termination, the applicable Phase shall no longer be part of the Property, for purposes of this Agreement; provided, however, that in no event may Developer terminate this Agreement with respect to the Hotel Phase without also terminating it as to the Timeshare Phase and Residential Phase (i.e., if the Developer terminates this Agreement with respect to the Hotel Phase, then the Developer must terminate this Agreement in its entirety).

Developer may also inspect and approve the condition of the Property, but if Developer fails to terminate this DDA by written notice to the City on or before February 15, 2018, describing the basis for termination, then Developer shall be deemed to have approved the condition of the Property.

5.7 Escrow And Escrow Instructions. Upon the execution of this Agreement, Developer and City shall promptly deliver a copy of this Agreement to Escrow Agent and shall open an escrow ("Escrow") for the transactions described herein within ten (10) days thereafter. This Agreement constitutes the joint escrow instructions of Developer and City to Escrow Agent in connection with the transactions described herein. Developer and City may supplement such escrow instructions and agree to execute such reasonable supplemental escrow instructions as may be required by Escrow Agent.

5.8 Deposit Of Documents And Funds In Escrow. City and Developer, as applicable, hereby covenant and agree to deliver on or prior to the day of the Close of Escrow for each Phase the following instruments, documents, and funds, the delivery of each of which shall be a condition of the Close of Escrow for that Phase.

City shall deliver to Escrow Agent:

(i) A Deed in the form of Attachment No. 6A (for the Hotel Phase and Golf Clubhouse Phase) or Attachment 6B (for the Timeshare and Residential Phases), and a repurchase option in the form of Attachment No. 6C for the Timeshare and Residential Phases, all duly executed and acknowledged by City;

(ii) Such funds as are required to pay for costs and expenses payable by City hereunder;

(iii) For the first Close of Escrow, a counterpart Memorandum of DDA duly executed and acknowledged by City;

(iv) a FIRPTA affidavit and a California form 593; and

(v) Such proof of City's authority and authorization to enter into this transaction as the Title Company may reasonably require in order to issue the Title Policy.

5.8.1 Developer shall deliver to Escrow Agent the applicable deed, the applicable deed of trust (for each Residential Phase closing only), the repurchase option in the form attached hereto as Attachment 6C (for each Residential and Timeshare Phase) and a counterpart original of the Memo of DDA (for the first Close of Escrow), all duly executed and acknowledged and in recordable form, and such funds as are required to pay: (i) the applicable purchase price for the Phase (net of the Good Faith Deposit in the case of the sale of the Last Stage of the Hotel Component or the final Phase of the Timeshare Component, and also net of the Takedown Credit and interest thereon for any Phase after the Stage One certificate of occupancy has been issued); and (ii) costs and expenses payable by Developer hereunder.

5.9 Authorization To Record Documents And Disburse Funds. Escrow Agent is hereby authorized to record the documents for a Phase, disburse the funds for a Phase and distribute the documents relating to that Phase upon the Close of Escrow for the applicable Phase, provided each of the following conditions has then been fulfilled (or waived in writing by the party benefited thereby):

5.9.1 The Title Company is irrevocably committed to issue in favor of Developer the Developer Title Policy, with a liability amount equal to the applicable purchase price for the Phase being acquired (or such higher liability amount, if elected and paid for by Developer), showing fee title to such Phase vested in Developer, subject only to the title exceptions described in Section 5.5;

5.9.2 With respect to the Residential Phase, the Title Company is irrevocably committed to issue an ALTA lender's title policy (Form B - 1970) to City in such amount as may be approved by City, subject only to the title exceptions in the Developer's title policy for that

Phase, with the same endorsements as the Developer's Title Policy and such additional endorsements as may be reasonably required by City;

5.9.3 Escrow Agent shall have received City's and Developer's authorizations to close (which may not be unreasonably withheld, conditioned or delayed); and

5.9.4 City and Developer shall have deposited in Escrow the documents and funds required to be deposited in Escrow pursuant to Section 5.8.1 and 5.8.2, and Developer shall have delivered to City the documents it is required to deliver directly to City under Section 5.8.3 above for such Phase.

Unless otherwise instructed in writing, Escrow Agent is authorized to record at the Close of Escrow any other documents or instrument delivered to Escrow Agent if necessary or proper for the issuance of title insurance.

5.10 Escrow Charges And Prorations.

5.10.1 City shall pay: (i) all transfer taxes, if any; and (ii) the cost of the premium for the CLTA Standard Coverage portion of the Developer Title Policy. If an Escrow shall fail to close for any reason other than City's or Developer's default, City shall pay one-half (1/2) of any applicable Escrow cancellation charges; City shall pay all such cancellation charges if the failure to close is caused by City's default.

5.10.2 Developer shall pay: (i) the escrow fees of Escrow Agent; (ii) the cost of the premium for the Developer Title Policy in excess of the premium for a CLTA Standard Coverage policy, if any, (iii) the cost of all endorsements to the Developer Title Policy; (iv) the cost of the premiums for City's lender's title insurance; (v) all documentary or other local transfer taxes payable upon the recordation of the applicable quitclaim deed; and (vi) the cost of an ALTA survey, if required by Developer.

5.10.3 If the Escrow shall fail to close for any reason other than Developer's or City's default, Developer shall pay one-half (1/2) of any applicable Escrow cancellation charges; Developer shall pay all such cancellation charges if the failure to close is caused by Developer's default.

5.10.4 Taxes and assessments, if any, for the applicable Phase shall be prorated with respect to a Phase as of 12:01 a.m., on the day on which the Close of Escrow occurs, as if Developer were vested to the Phase during the entire day upon which the Close of Escrow occurs. All prorations shall be determined on the basis of a 360-day year. The provisions of this Section shall survive the Close of Escrow.

5.11 Survey. Subject to Section 5.12 below, Developer, at Developer's sole cost and expense, may permit a registered land surveyor licensed by the State of California to enter the Property to prepare an ALTA survey of the Property (or any portion thereof).

5.12 Physical Condition and Document Inspections. Developer hereby acknowledges that it has received and reviewed all of the documents listed on Attachment 5 and that it has no objections to the condition of the Property disclosed by such documents.

It is understood and agreed upon and between the parties hereto that Developer's acquisition of each Phase is subject to and conditioned upon its inspection of the Property, including, without limitation, soils conditions and the absence from the Property of Hazardous Substances. Until the applicable Close of Escrow (the "Inspection Deadline"), Developer and its agents and consultants may enter upon the Property upon twenty-four (24) hours prior written notice sent to the City in order to investigate the physical condition of the Property; provided, however, that City's agent may request to be present during such inspections, and Developer shall reasonably accommodate City in arranging a mutually convenient inspection time so that City or City's agents may be present. It is understood and agreed that the right of Developer and Developer's agents to enter onto the Property is being given solely to Developer, and Developer shall be solely responsible for its agents and consultants and that such inspections and actions are being done to determine the condition of the Property and not with the intent to affect the Property's value. Such inspections shall include, but not be limited to, the condition of soils, storm drainage, utility hookups and archaeological testing. Developer shall indemnify, defend and hold City harmless from and against any claims, losses, liabilities, costs, expenses and damages, whether by Developer, Developer's agents, consultants and employees, or by third parties, resulting directly or indirectly from Developer's entry upon or the conducting of any tests on or about the Property (excluding costs and damages suffered by City as a result of conditions discovered by Developer). If this Agreement is terminated prior to the Close of Escrow for any Phase, or if escrow fails to close for any phase for any reason, Developer shall promptly restore the applicable Phase to the same condition (to the extent practicable) as existed prior to Developer's undertaking of any testing thereon (but only with respect to changes caused by, or resulting directly or indirectly from, acts or omissions of Developer and its agents and consultants). All studies and reports prepared in connection with Developer's inspection of the Property are to be done at the expense of Developer. Developer shall provide City with a copy of all of the reports without cost promptly upon receipt by Developer. Developer's obligations and duties under this Section shall survive each Close of Escrow and the termination of this Agreement for any reason.

5.13 "AS-IS" Condition of the Property

5.13.1 Developer agrees that it will purchase the Property in its "AS-IS" condition, with all faults, and without representation or warranty, express or implied, except for express representations of City set forth in this Agreement, and Developer agrees that City has no obligation to Developer to improve, alter or clean-up the Property.

5.13.2 DEVELOPER ACKNOWLEDGES AND AGREES THAT IT IS BEING GIVEN THE OPPORTUNITY TO INSPECT THE PROPERTY AND REVIEW THE ENVIRONMENTAL DOCUMENTS, AND THAT DEVELOPER WILL RELY SOLELY ON

ITS OWN INVESTIGATION OF THE PROPERTY AND (SUBJECT TO AGENCY'S DISCLAIMERS IN THIS SECTION 5.12) ITS REVIEW OF THE ENVIRONMENTAL DOCUMENTS AND SUCH ADDITIONAL INFORMATION, DOCUMENTS AND REPORTS THAT IT DEEMS NECESSARY OR DESIRABLE IN PROCEEDING WITH ITS PURCHASE AND DEVELOPMENT OF THE PROPERTY.

5.13.3 In the event Developer determines in its sole and absolute discretion that the condition of the Property is unacceptable or any material documents pertaining to the Property are unacceptable, Developer shall notify City of its determination prior to the Inspection Deadline and may terminate this Agreement (in its entirety) by written notice to City prior to the applicable Inspection Deadline. Developer's failure to timely terminate shall constitute its determination that the Property is acceptable and shall constitute its acceptance of the condition of the Property and all such documents delivered or made available to Developer.

5.13.4 Developer hereby waives and releases any and all Claims which it may have now or in the future against City and each of its past and present officers, officials, directors, employees, attorneys, agents, advisors, consultants or representatives (collectively, the Indemnitees), arising from or relating to the condition of the Property (including without limitation, the presence of Hazardous Materials), title to the Property, and any information or documents, provided to it by City or on behalf of City or prepared by any of the prior owners, operators, and tenants. IN CONNECTION WITH THE ABOVE RELEASES AND DISCHARGES, DEVELOPER SPECIFICALLY **WAIVES** ANY BENEFIT OF THE PROVISIONS OF SECTION 1542 OF THE CALIFORNIA CIVIL CODE. DEVELOPER HEREBY ACKNOWLEDGES THAT IT HAS READ AND IS FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542, WHICH IS SET FORTH BELOW:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

____
Developer's Initials

The foregoing waiver and release shall not, however, apply to the breach by City of any of City's express representations or warranties in Section 2.5 of this Agreement, or to any breach of City's covenants in Section 5.5.

5.14 Brokers' Commissions. Developer represents and warrants to City that Developer has used no broker, agent, finder or other person in connection with the transaction contemplated hereby to whom a brokerage fee, finder's fee or similar commission or fee may be payable. City represents and warrants to Developer that City has used no broker, agent, finder or other person in connection with the transaction contemplated hereby to whom a brokerage fee, finder's fee or similar commission or fee may be payable by the City. Each party indemnifies and agrees to defend and hold the other harmless from any claims, liabilities, losses, damages, costs, and expenses resulting from any breach by the indemnifying party of the warranties, representations and covenants in this Section 5.14.

ARTICLE 6. DEVELOPMENT OF THE PROPERTY

6.1 Scope of Development. Developer shall improve the Property as described in this Agreement in accordance with the Schedule of Performance attached hereto as Attachment No. 3. In addition to approvals hereunder by City, all planning and building documents shall be submitted to the City in accordance with the Entitlement Conditions attached hereto as Attachment No. 1-D and shall then be reviewed by, and subject to approval or rejection by the City pursuant to the City's codes, resolutions, rules and regulations. City shall cooperate with Developer in good faith, but at no cost to the City, in attempting to expedite the City's review and approval of documents submitted by Developer to the City for approval in connection with the Improvements.

6.2 Developer's Submittals of Design and Construction Documents

6.2.1 Development Plans. Design drawings for the Improvements shall be prepared by Developer as set forth below and, when approved by the City, shall constitute the Development Plans and shall implement the Scope of Development.

6.2.2 Concept Design Drawings. Developer's predecessor has prepared and submitted to City, and City has approved, Concept Design Drawings for the Improvements. The Concept Design Drawings are attached to the Scope of Development of Attachment No. 2. Any modifications to or replacements of the Concept Design Drawings shall be submitted to the City Manager for approval prior to development of Schematic Design Drawings based thereon.

6.2.3 Schematic Design Drawings. Developer shall prepare and submit to City Schematic Design Drawings for the Improvements in each Phase within the time established in the Schedule of Performance. The Schematic Design Drawings shall be a logical evolution of, and consistent with, the previously approved Concept Design Drawings, and shall include the following: (i) complete schematic site plan for the Phase, indicating final building placement; (ii) right-of-way improvements, including street trees, sidewalks, streetlights, street furniture, street lighting, etc.; (iii) complete schematic exterior elevations; (iv) typical building sections; and (v) complete parking layout and program.

6.2.4 Design Development Drawings. Developer shall prepare and submit final Design Development Drawings for the Improvements in each Phase to City within the time established in the Schedule of Performance, for review and written approval or disapproval by the City. The Design Development Drawings shall be a logical evolution of, and consistent with, the previously approved Schematic Design Drawings, and shall include: (i) final site plan for the Phase; (ii) final detailed architectural elevations; (iii) final building sections; (iv) structural drawings; (v) utility plans; (vi) mechanical/electrical plans, including roof top locations; (vii) outline specifications; and (viii) retail tenant signage design criteria and guidelines.

6.2.5 Complete Construction Documents. Developer shall prepare and submit a complete set of Construction Documents for the Improvements in each Phase (excluding tenant improvements) to the City staff within the time established therefore in the Schedule of

Performance, for review. The Complete Construction Documents shall incorporate any conditions for approval of the Design Development Drawings, and shall otherwise be a logical evolution of, and consistent with the Design Development Drawings. The Complete Construction Documents shall be the construction documents for which the City will issue a building permit and/or any other permits required for the development of the Phase.

The Complete Construction Documents shall include, but not be limited to: (i) final site plans; (ii) final landscape plans and specifications, including plant materials, irrigation plan, landscape details, and hard-scape; (iii) floor plans; (iv) exterior elevations; (v) graphics and signage; (vi) exterior details; (vii) material samples; (viii) final specifications; (ix) structural drawings; (x) all parking facilities improvements construction details; (xi) final right-of-way plans, including street furniture, street lighting, paving, etc.; (xii) utilities plan; (xiii) mechanical/electrical plans; (xiv) lighting plans; (xv) roof plans; (xvi) complete architectural specifications; (xvii) final color samples; (xviii) mechanical equipment plan, including locations; and (xix) electrical plans.

6.2.6 Disclaimer by City. Except as expressly provided in this Agreement, City does not undertake nor assume nor will have any responsibility or duty to Developer, or to any third party to review, inspect, supervise, pass judgment upon or inform Developer or any third party of any matter in connection with the Project, whether regarding the quality, adequacy or suitability or the plans, any labor, service, equipment or material furnished to the Project, any person furnishing the same or otherwise. Developer, and all third parties shall rely upon their own judgment regarding such matter. Any review, inspection, supervision, exercise of judgment or information supplied to Developer or to any third party by City in connection with such matter is for the public purpose of carrying out development in the City in accordance with this Agreement, and neither Developer (except for the purposes set forth in this Agreement), nor any third party is entitled to rely thereon.

6.2.7 Commencing six months following approval of this DDA, and semi-annually thereafter, Developer shall submit letter reports to, and meet with the City Manager, to discuss the letter reports and review progress on development of the Hotel Phase and Timeshare Phase. Such reports shall include information concerning progress on (i) site planning and architectural plan development for the Hotel Phase (for each Stage of the Hotel Phase and the construction of each such Stage), (ii) status of discussions with prospective hotel operators, (iii) arrangements being made to finance Hotel Phase construction and operation, (iv) site and product feasibility planning for the Timeshare Phase, (v) schedule for modifying the City's land use entitlements (if required) to implement Hotel Phase and Timeshare Phase development, consistent with the requirements of this DDA; (vi) any requests, and justifications for, extensions of time that may be requested of the City Manager pursuant to Section 3.2.2 and (vii) other topics identified by Developer or the City Manager from time-to-time to be relevant to successful completion of the Hotel and Timeshare components.

6.3 Cost of Construction

The cost of developing the Property, together with all on and off-site improvements set forth in the Scope of Development or otherwise required by the Entitlements, shall be borne by Developer except as may be otherwise provided in this Agreement. The

Parties hereby acknowledge and agree that any increase in costs above the amounts projected or assumed by Developer, or decreases in revenues below the amounts projected or assumed by Developer, shall be at the sole risk of Developer.

6.4 City and Other Governmental City Permits

Before commencement of construction or development of any buildings, structures or other work of improvement upon each Phase of the Property, Developer shall, at its own expense, secure or cause to be secured any and all permits which may be required by City or any other governmental agency affected by such construction, development or work.

6.5 Zoning and Land Use Requirements; Entitlements; Environmental Review

6.5.1 Developer shall take all necessary steps so that the development of the Property and the construction, use, operation, and maintenance of the Improvements thereon in accordance with the provisions of this Agreement shall be in conformity with applicable zoning and General Plan requirements, including the Entitlement Conditions, and that all other requirements shall have been complied with.

6.5.2 City shall cooperate with Developer in all proceedings which may be necessary so that the development of the Property and the construction, use, operation, and maintenance of the Improvements thereon in accordance with the provisions of this Agreement shall be in conformity with applicable zoning and General Plan requirements. City shall use good faith efforts to expedite all necessary approvals. An Environmental Impact Report and Addenda ("EIR") for the Project contemplated by this Agreement has been prepared and certified by the City, and adopted by the City, prior to the approval of this Agreement. Developer shall comply with all mitigation measures imposed on the Project pursuant to the EIR. In the event additional environmental studies are required, the costs of such studies shall be borne by Developer.

6.5.3 If any revisions or modifications to this Agreement, including the Scope of Development, shall be required to comply with any requirement of a governmental official, agency, department or bureau having jurisdiction over the development of the Property, City and Developer shall cooperate in making such reasonable changes, consistent with the public purposes of this Agreement, as may be necessary.

6.6 City Rights of Access During Construction

Without limiting any rights of access which City may have irrespective of this Agreement, representatives of City shall have a reasonable right of access to the Property at normal construction hours during the period of construction for the purposes of this Agreement, including but not limited to the inspection of the work being performed in constructing the Improvements, so long as they comply with all safety rules and observe any rules adopted by Developer for purposes of maintaining order on the Property, including requirements that such representatives be escorted (provided an escort is made available). Such representatives of City shall be those designated in writing by the City Manager.

City, at its sole risk and expense, reserves the right to enter the portions of the Property during ordinary business hours and with as little interference as possible for the purpose of construction, reconstruction, maintenance, repair or service of any public improvements or public facilities currently located on the Property. Any such entry shall be made only after reasonable notice to Developer, except emergency repairs, and City shall defend, indemnify and hold Developer harmless from any costs, claims, damages or liabilities pertaining to or arising from any such entry or the activities of the City on the Property. Any damage or injury to the Property or any improvement thereon resulting from any such entry shall be promptly repaired or restored at the City's expense.

6.7 Local, State and Federal Laws; Prevailing Wages

6.7.1 Developer shall carry out the construction of the Improvements in conformity with all applicable Laws.

6.7.2 The Developer shall cause the contractor and subcontractors to pay prevailing wages in the construction of the Improvements as those wages are determined pursuant to Labor Code Sections 1720 et. seq. and implementing regulations of the Department of Industrial Relations, and the Developer shall obtain and maintain (or shall cause its contractors to obtain and maintain) a payment bond in accordance with such laws naming the City as co-obligee. The Developer shall and shall cause the contractor and contractors to keep and retain such records as are necessary to determine if such prevailing wages have been paid as required pursuant to Labor Code Section 1720 et seq. Copies of the currently applicable current per diem prevailing wages are available from the City of Seaside Public Works Department, 440 Harcourt Avenue, Seaside, California. During the construction of the Improvements, Developer shall or shall cause the contractor to post at the Phase of the Property where work is being undertaken the applicable prevailing rates of per diem wages. Developer shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the City Manager) the City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Developer, its contractor and subcontractors) to pay prevailing wages as determined pursuant to Labor Code Sections 1720 et seq. and implementing regulation in connection with construction of the Improvements or any other work undertaken or in connection with the Property.

6.7.3 Pursuant to Section 3.03.090 of the Master Resolution, the Developer shall cause all workers employed in connection with the development of the Improvements to be paid not less than the general prevailing rate of pay for work of a similar character in Monterey County as determined by the Director of the Department of Industrial Relations pursuant to the provisions of the Division 2, Part &, Chapter 1 of the California Labor Code. Additionally, Developer shall employ local workers and grant local preferences in accordance with Attachment 11 hereto.

6.8 Indemnification

Developer shall indemnify, defend and hold harmless City, and any and all of its employees, officials, representatives and agents (collectively, the "Indemnitees") from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or cost of any kind, whether actual, alleged or threatened, including (but subject to the following paragraph) attorneys' fees and costs, court costs, interest or defense costs, including expert witness fees), to the extent the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, from (a) the presence or clean-up of Hazardous Substances now or hereafter located on any Property acquired by the Developer or successor to or assignee of Developer; (b) or acts or omissions of Developer or by any officers, agents, employees or contractors of Developer or other individuals or entities permitted on the Property by Developer; or (c) claims or allegations that this Agreement is invalid, illegal or otherwise unenforceable as a whole.

However, Developer shall not be required to indemnify and hold harmless Indemnitees for (i) liability attributable to the negligence or willful misconduct of Indemnitees, provided such negligence or willful misconduct is determined by agreement between the Parties or by the findings of a court of competent jurisdiction (and in instances where an Indemnitee is shown to have been negligent and where Indemnitees' negligence accounts for only a percentage of the liability involved, the obligation of Developer will be for that entire portion or percentage of liability not attributable to the negligence of Indemnitees), (ii) releases of Hazardous Substances on the Property caused by the City; or (iii) sums that are not recovered from insurance of the City or from the United States of America or the Department of the Army, for the presence of Hazardous Substances on the Property, due to a breach by City of its obligations under the last sentence of Section 2.6.6 above. Additionally, if the Developer's defense counsel is required under California law to obtain a waiver of conflict of interest from the City, and the City declines to give such conflict waiver and hires its own counsel to defend, and such counsel takes a position contrary to or in clear conflict with the position of the Developer without the consent of the Developer's counsel, then Developer shall not be obligated to pay or reimburse City for the legal fees and costs of such counsel retained by City.

Developer shall use diligent efforts to obtain executed indemnity agreements with provisions identical to those set forth herein (but excluding clauses (a) and (c) of the above indemnity provision and changing the word "Developer" to the contractor or other person or entity) from each and every contractor or any other person or entity involved by, for, with or on behalf of Developer in the performance of this Agreement.

Failure of Indemnitees to monitor compliance with these requirements imposes no additional obligations on Indemnitees and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend Indemnitees as set forth herein is binding on the successors, assigns or heirs of Developer and shall survive each Close of Escrow and the expiration or earlier termination of this Agreement.

6.9 Insurance

Prior to the date set forth in the Schedule of Performance, Developer shall obtain, furnish or shall cause to be furnished to City, appropriate evidence of insurance as provided for in Attachment No. 7, and Developer shall thereafter comply with such insurance provisions.

6.10 Non-discrimination During Construction

Developer for itself and its successors and assigns agrees that in the construction of the Improvements on the Property provided for in this Agreement:

(a) Developer will not discriminate against any employee or applicant for employment because of race, color, religion, creed, national origin, ancestry, physical handicap, medical condition, age, marital status, sex, sexual orientation, political affiliation or opinion, or pregnancy or pregnancy-related condition. Developer will take reasonable action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, creed, national origin, ancestry, physical handicap, medical condition, age, marital status, sex, sexual orientation, political affiliation or opinion, or pregnancy or pregnancy-related condition. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(b) Developer will, in all solicitations or advertisements for employees placed by or on behalf of Developer, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, creed, national origin, ancestry, physical handicap, medical condition, age, marital status, sex, sexual orientation, political affiliation or opinion, or pregnancy or pregnancy-related condition.

(c) Developer will cause the foregoing provisions to be inserted in all contracts for any work covered by this Agreement so that such provisions will be binding upon each contractor and subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

6.11 Taxes, Assessments, Encumbrances and Liens

Developer shall pay, prior to delinquency, all real estate taxes and assessments assessed and levied on the Property (or applicable portion thereof acquired by Developer) after the Developer's acquisition of fee title thereto and prorated taxes and assessments under Section 5.10.4 allocable to the Developer's period of ownership.

6.12 Security Financing, Rights of Holders

6.12.1 No Encumbrances Except as Mortgages, Deeds of Trust, Sales and Lease-backs or Other Financing for Development

Notwithstanding Section 2.4, mortgages, deeds of trust, sales and lease-backs or any other form of conveyance required for any reasonable method of financing by Developer are permitted before issuance of the final Certificate of Completion for the Project (including the granting of a security interest in Developer's rights in this Agreement), but only for the purpose of securing funds to be used for financing the acquisition of the Property and/or the construction of the Improvements on the Property and/or any take-out financing related to the development of the Property and any other expenditures necessary or appropriate to develop the Property under this Agreement, including without limitation real and personal property taxes, related off-Property improvements, insurance premiums, closing costs, attorneys' fees, loan carrying costs and costs of financing. Developer shall notify City in advance of any mortgage, deed of trust, or other form of conveyance for financing if Developer proposes to enter into the same before issuance of a Certificate of Completion for the construction of the Improvements on the portion of the Property to be subject to such financing arrangement. Developer shall not enter into any such secured financing arrangement without the prior written approval of the City Manager, which shall not be unreasonably withheld, and which approval the City Manager shall give if any such arrangement is with a Qualified Lender. In the event that any such arrangement is with Developer or a person or entity that is affiliated with Developer in any way (which shall exclude corporations whose shares are publicly traded provided Developer and affiliates of Developer own less than ten percent of the voting shares of such entity), or if Developer or a person or entity affiliated with Developer requires any lien on the Property or any portion thereof, then the first sentence of Section 6.13.2 and all of Section 6.13.3 shall not apply to Developer or such person or entity as the holder of a lien or otherwise. In any event, Developer shall promptly notify City of any mortgage, deed of trust, sale, lease-back or other financing conveyance, encumbrance or lien that has been created or attached thereto prior to issuance of a Certificate of Completion for the construction of the Improvements on the portion of the Property to be subject to such financing arrangement, whether by voluntary act of Developer or otherwise. The words "mortgage" and "deed of trust" as used herein include all other appropriate modes of financing real estate acquisition, construction of land development, and any other expenditure necessary or appropriate to develop the Property under this Agreement, which involves the granting of a security interest.

6.12.2 Holder Not Obligated to Construct Improvements

A Holder shall in no way be obligated by the provisions of this Agreement to construct or complete the Improvements or to guarantee such construction or completion; however, no Holder shall devote the Property to any uses, or to construct any improvements thereon, other than those uses or Improvements provided for or authorized by this Agreement.

6.12.3 Notice of Default to Mortgage, Deed of Trust or Other Security Interest Holders; Right to Cure

Whenever City shall deliver any notice or demand to Developer regarding any breach or default by Developer in completion of construction of the Improvements on a Phase included in a Holder's collateral, or any other alleged default under this Agreement, City shall at the same time deliver to such Holder of record authorized by this Agreement a copy of such notice or demand. Notwithstanding anything to the contrary herein, in no event shall a Holder be obligated to cure a default under this Agreement that does not relate to the collateral it holds in order to preserve the rights under this Agreement with respect to such collateral; however, the foregoing shall not affect the City's right to terminate this Agreement under Section 9.3 with respect to any Phase not yet sold by the City.

Each such Holder shall (insofar as the rights of City are concerned) have the right at its option, within ninety (90) days after the expiration of any and all cure periods available to

Developer, to cure or remedy such default and to add the cost thereof to the security interest debt and to the lien on its security interest or the obligations of Developer under any sale lease-back or of the grantor under any other conveyance for financing. If such default shall be a default which can only be remedied or cured by such Holder upon obtaining possession of the portion of the encumbered Property and such Holder seeks to obtain possession with diligence through a receiver or otherwise, such Holder shall have until ninety (90) days after obtaining possession to cure such default. Notwithstanding anything to the contrary contained herein, in the case of a default which cannot with diligence be remedied or cured, or the remedy or cure of which cannot be commenced, within ninety (90) days, such Holder (or an entity to whom a Holder assigns its lien or transfers the Property, provided City has approved in writing such person or entity as having the qualifications, experience and financial capacity that would typically be required by City for the development, construction, and sale of the applicable Improvements, and such assignees and transferees shall be included in the definition of the word "Holder" as hereafter used in this Agreement) shall have such additional time as reasonably necessary to remedy or cure such default with diligence; but shall not be required to remedy or cure any default of Developer that by its nature is not curable by such Holder.

Nothing contained in this Agreement shall be deemed to permit or authorize such Holder to undertake the construction of the Improvements (beyond the extent necessary to conserve or protect the Improvements or construction already made, including, without limitation, the ability to continue the construction or completion of Improvements already begun) without first having expressly assumed the obligations of Developer for the portion of the Property in which the Holder has an interest, by written agreement reasonably satisfactory to City. The Holder in that event shall only be liable or bound by Developer's obligations hereunder for such period as the Holder was in possession of the portion of the Property in which the Holder has an interest and, notwithstanding anything to the contrary contained in this Agreement, shall only be liable to the extent of its interest in the portion of the Property and the improvements owned by it thereon. The Holder in that event must agree to complete, in the manner provided in this Agreement, the improvements to which the lien or title of such Holder relates. Any such Holder properly completing such improvements shall be entitled, upon written request to City, to a Certificate of Completion from City for such improvements issued by City in its proprietary capacity under this Restated DDA (not in its governmental capacity).

Breach of any of the covenants, conditions, restrictions, or reservations contained in this Agreement shall not defeat or render invalid the lien of any deed of trust made in good faith and for value as to the Property or any portion of the Property or interest therein, whether or not the deed of trust is subordinated to this Agreement. In addition, the exercise of City's right to repurchase the Property or any portion or Phase thereof shall be subject to and be limited by and shall not defeat or render invalid or limit any deed of trust made in good faith and for value in favor of a Holder as to the Property or any portion of the Property or interest therein, whether or not the deed of trust of such holder is subordinate to this Agreement or to any rights provided in this Agreement for the protection of the Holder. Unless otherwise herein provided, the terms, conditions, covenants, restrictions and reservations of this Agreement shall be binding and effective against the Holder and any owner of the Property, or any portion of the Property, whose title thereto is acquired by foreclosure, trustee's sale, or otherwise.

No purported rule, regulation, modification, amendment and/or termination of this Agreement affecting the rights of a Holder expressly granted in this Agreement shall be binding upon any Holder holding a deed of trust from and after the date of recordation of such deed of trust unless and until the written consent of such Holder is obtained.

6.12.4 Failure of Holder to Complete Improvements

If in any case, within sixty (60) days after all cure periods have expired after default by Developer in completion of construction of the Improvements on a Phase under this Agreement, and the notice required by Section 9.1 was properly given, and a Holder has not exercised the option afforded in Section 6.13.3 hereof to construct the Improvements on the applicable Phase in which Holder has an interest, City may, upon thirty (30) days' written notice, either: (i) purchase the mortgage, deed of trust or other security interest by payment to the Holder of the amount of the unpaid debt plus accrued but unpaid interest and other advances and amounts secured by the security interest, or in the case of a lessor or grantee by payment to such lessor or grantee of the purchase price paid for its interest in the relevant portion of the Property and improvements and any unpaid rent and other charges and sums payable to it under its applicable agreements with its lessee or grantor; (ii) assume such mortgage, deed of trust or other security interest in accordance with the terms of such mortgage, deed of trust or other security interest upon the prior written consent of such Holder, or (iii) terminate this Agreement by notice to Developer. The City's termination of this Agreement as to a Phase shall not constitute a termination of this Agreement as to any other Phase.

6.12.5 Right of City to Cure Mortgage, Deed of Trust, Other Security Interest, Lease-back or Other Conveyance for Financing Default

In the event an uncured default or breach by Developer of a mortgage, deed of trust, other security instrument or obligations the grantee under any conveyance for financing for any portion of the Property or the Project prior to the completion of the improvements therefore, and the Holder has not unconditionally committed in writing to the City to complete the Improvements thereon in accordance with this Agreement (but subject to force majeure delays of deadlines) and Developer has not obtained a court order prohibiting the Holder from foreclosing, then City may cure the default prior to completion of any foreclosure. In such event, City shall be entitled to reimbursement of all direct and actual costs and expenses incurred by City in curing the default. Such reimbursement amount may be secured at City's option (which may be exercised by City's unilateral execution and recording of Notice of Lien) by a lien with power of sale against the relevant portion of the Property, and Developer hereby grants City such a lien (or liens) with power of sale. Any such lien shall be subordinate and subject to then-existing mortgages, deeds of trust or other security instruments for financing permitted pursuant to this Agreement.

6.13 Progress Reports

Periodically throughout the term of this Agreement until the issuance of a Certificate of Completion for the Improvements, but not less frequently than quarterly, Developer shall submit to City progress reports indicating the status of construction, the estimated date of completion of the Improvements, and the estimated opening date.

6.14 Certificates of Completion

Promptly after substantial completion of the construction of the Improvements comprising each Phase of the Project (i.e., total completion except for so-called "punch-list" items consisting of minor deviations from the approved final plans and specifications that do not adversely affect the quality or use of the applicable Improvements, and which comply with all applicable laws and Entitlements), or any portion thereof, City (acting in its proprietary capacity under this Restated DDA, not in its governmental capacity) shall furnish Developer with a Certificate of Completion upon written request therefor by Developer. The Certificate of Completion shall be and shall constitute a conclusive determination by the City under this Restated DDA of satisfactory completion of the construction required by this Restated DDA for the Phase or portion of the Project for which the Certificate is issued but shall not bind city in its governmental capacity. City shall not unreasonably withhold any such Certificate of Completion. The Certificate of Completion shall be in the form attached hereto as Attachment No. 4 and incorporated herein by this reference, and shall be recorded in the Recorder's Office of the County of Monterey.

If City refuses or fails to furnish a Certificate of Completion within ten (10) business days after written request therefor from Developer, City shall, within such period of ten (10) business days, provide Developer with a written statement of the reasons why City refuses or fails to furnish such Certificate of Completion and the City Manager's opinion of the actions Developer must take to obtain such Certificate of Completion.

No Certificate of Completion shall constitute evidence of compliance with or satisfaction of any obligation of Developer to any Holder, or any insurer of a mortgage securing money loaned to finance the Improvements, or any part thereof. No Certificate of Completion shall be a notice of completion as referred to in California Civil Code Section 3093, or shall be binding on the City in its governmental capacity.

ARTICLE 7. USES OF THE PROPERTY

7.1 Uses

Developer covenants and agrees for itself and its successors and assigns, and every successor in interest to the Property, or any portion thereof, that during construction and thereafter, Developer and such successors and assigns shall use the Property exclusively for the purposes herein stated and shall not devote the Property to any uses which are inconsistent with this Agreement or the Entitlements.

7.2 Obligation to Refrain from Discrimination; Form of Non-discrimination Clauses

7.2.1 Developer covenants by and for itself and any successors in interest that there shall be no discrimination against, or segregation of, any persons, or group of persons, on account of race, color, creed, marital status, religion, national origin or ancestry, medical condition, sex, sexual orientation, political affiliation or opinion, or pregnancy or pregnancy-related condition, in the enjoyment of the Property or any portion or component thereof, nor shall Developer itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Property. The foregoing covenants shall run with the land and shall remain in effect for the periods specified in the Grant Deeds for the Property subject thereto.

7.2.2 The Developer shall refrain from restricting the rental, sale or lease of any portion of the Property on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code. Pursuant to Sections 33337 and 33436 of the Health and Safety Code or any successor statute, all such deeds, leases or contract shall contain or be subject to substantially the following nondiscrimination or non-segregation clauses:

a. **In deeds:** (a) "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

b. **In leases:** "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

"That there shall be no discrimination against or segregation of any person or group of persons on account of as basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased, nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein leased."

c. **In contracts:** "There shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land."

7.3 Maintenance of the Property

From and after Developer's (or a Developer Affiliate's) acquisition of title to each Phase, Developer (or such Developer Affiliate, as applicable) shall reasonably maintain, or cause to be maintained, the Improvements on that Phase and shall keep that Phase (or cause that Phase to be kept) free from any accumulation of debris or waste materials prior to, during and, for a period of two (2) years after issuance of a Certificate of Completion for any Phase, but this Section 7.3 shall not apply to any Residential Phase lot after the Improvements for the applicable lot have been completed and the applicable lot shall have been sold by Developer (or by the applicable Developer Affiliate that acquires the applicable Residential Phase).

7.4 Operating Covenants

Developer shall enter into a management agreement with a manager listed on Attachment 12 for the hotel, and a timeshare operation system agreement with a timeshare entity listed on Attachment 12 for the Timeshare Phases, and such agreements shall be consistent with and shall comply with Section 10.5 below. Developer shall cause the Hotel Phase to be operated as a hotel providing a level of service and quality that is commensurate with the quality of a Mobile Travel Guide rating of "4-star" or other level of quality reasonably approved by the City, and shall at all times use as the name for the hotel and golf clubhouse, and cause its hotel operator and any clubhouse operator to use as the name for the hotel and clubhouse, the name "Seaside Resort at Monterey Bay." Developer shall include in hotel operator's contract a provision that requires the hotel operator to comply with Section 5.74 of the Seaside Municipal Code as if the hotel operator were a "contractor" thereunder.

7.5 Effect and Duration of Covenants

The covenants established in this Agreement, shall, without regard to technical classification or designation, be binding on Developer and any successor in interest to the Property or any part thereof for the benefit and in favor of City, and its successors and assigns, unless otherwise expressly provided in this Agreement. The covenants against discrimination (as described in Section 7.2) shall remain in perpetuity.

The covenants established in this Agreement shall, without regard to technical classification and designation, be for the benefit of and in favor of City, its successors and assigns, without regard to whether City has been, remains or is an owner of any land or interest therein in the Property.

City is deemed the beneficiary of the terms and provisions of this Agreement and of any covenants running with the land, both for and in its own right and for the purposes of protecting the interests of the community, as well as the interests of other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided.

ARTICLE 8. AGENCY RESIDENTIAL PHASE PROFIT PARTICIPATION

8.1 City Participation Interest in Residential Component

8.1.1 Definitions. As used in this Section 8.1, the following terms shall have the following meanings:

(a) "Development Costs" means all third party out-of-pocket costs and expenses paid by the Developer prior to or subsequent to the execution of this Agreement to acquire, own, hold, develop or sell all or any part of the Residential Component, including, but not limited to, legal fees and fees of consultants that are reasonably allocated to the Residential Component, reasonable attorney's fees and court costs necessarily incurred after the approval and execution of this Agreement in defending against any lawsuit challenging this Agreement or the Entitlements, fees and costs related to the price paid to the City for land, legal, title and escrow expenses associated with the sale of lots in the Residential Component, costs of developing the Residential Component (including, but not limited to, excavation, construction of roads, sewer, water and electricity connection costs), design, planning and engineering fees associated with the Residential Component, administrative costs (including, but not limited to, salaries and wages of accounting and administration personnel as well as general administrative costs such as insurance, telephone and supplies; provided, however, that the total amount of administrative costs shall not exceed 3% of the total costs of developing the Residential Component), a project management fee not to exceed 6% of the total costs of developing the Residential Phase, an allocation of Project-wide infrastructure and predevelopment costs to be allocated on a per unit basis acceptable to the City Manager (provided, however, that if any such costs are to be funded through an assessment district, only the assessments actually paid by the Developer or any successor developer to whom Developer conveys Property for the purpose of completing the Project, and not any paid by any other owner of property, or any timeshare operator or timeshare unit owner or any Residential Component lot owner, shall be included in Development Costs and such property shall only be included in Development Costs as and when they are paid), and the cost of any appraisals obtained by the City but paid for by the Developer for the purpose of calculating the Profit Participation as of a Profit Participation Date, and reasonable sales commissions and reasonable marketing costs, including costs of model homes, model rooms, marketing or sales facilities, advertising, promotion, and salaries of individuals engaged in marketing, sales, or promotion activities. Development Costs shall exclude (i) the repayment of the principal and interest of any loan obtained by the Developer; and, (ii) any distributions, preferred return or other capital return to direct or indirect owners of any interest in the Developer or a Developer Affiliate. For the purposes hereof, Development Costs shall be allocated among the various Components as follows: (i) costs reasonably allocable only to the Residential Component (and not to the Hotel or Timeshare Component) shall be allocated 100% to the Residential Component; (ii) costs reasonably allocable only to the Hotel and/or Timeshare Component shall not be allocated to the Residential Component; (iii) costs to be allocated among all Components shall be allocated on a pro rata basis per unit in each Component based on 330 units for the Hotel Component, 170 units for the Timeshare Component and 125 units for the Residential Component; and (iv) if allocated only among two Components, the costs shall be allocated pro rata based upon the number of units contained in each Component.

(b) "Gross Cash Receipts" means all cash revenues received by the Developer from any source whatsoever in connection with the sale, exchange or disposition of the lots in the Residential Component, which shall include any damage recoveries, insurance payments or condemnation proceeds payable to the Developer with respect to the Residential Component, but shall exclude the proceeds of any capital contributed to the Developer by its partners or members and the proceeds of any loan made to the Developer and brokerage commissions and direct marketing expenditures, and the proceeds of any good faith sale of the Residential Component or Phase or lot thereof to a Developer Affiliate who improves lot(s) for its own account provided that proceeds of any resale by such Developer Affiliate (net of actual, reasonably documented direct developement costs for such property expended by the Developer Affiliate) shall then be included in Gross Cash Receipts. In the event the Developer has received a promissory note or other financing devices as a part of a sale or other disposition of a portion of the Residential Component, the Developer shall include as cash for the purposes of determining Gross Cash Receipts, (i) all payments of principal and interest received on a Note as they are received; and (ii) the net present value of payments remaining due under the promissory note or other financing device, using an annual discount rate equal to the then-"Prime Rate" as published in the most recent issue of the Wall Street Journal, plus 200 basis points.

(c) "Profit Participation" shall mean the sums payable to City under Section 8.1.2 below (excluding any appraisal costs described therein).

(d) "Unleveraged Cash Flow" means Gross Cash Receipts received by the Developer less Development Costs paid by the Developer.

(e) "IRR" means the annualized rate of return based on Development Costs and on Gross Cash Receipts determined using the "Internal Rate of Return" function of the current version of Microsoft Excel.

(f) "Residential Component" shall mean all Residential Phases owned by Developer at the time of the applicable determination of Profit Participation.

8.1.2 If the IRR for the Residential Component as of the date that any lot is sold is greater than 20%, the Developer shall pay the City an amount equal to twenty percent (20%) of the amount by which Unleveraged Cash Flow as of such date exceeds the amount which, if such amount were paid to the Developer as additional Unleveraged Cash Flow, would result in the present value of the Development Costs for the Residential Component being equal to zero (0), using twenty percent (20%) as the "discount rate" in calculating such present value. In the event that (a) there is a sale of three (3) or more lots in the Residential Component to one buyer (or to affiliated buyers), and the purchase price for the lots is less than eighty percent (80%) of the listed, published or advertised prices for such lots, or (b) any buyer of one or more lots is affiliated in any way with Developer, then the City Manager may require that the Gross Cash Receipts shall be deemed to include, and the sums payable by Developer hereunder shall be based on, the appraised fair market value (or 80% thereof for a bulk sale) of the applicable lot(s) rather than the actual sales prices for such lots. All such appraisals shall be performed by MAI appraisers mutually acceptable to City and Developer (and if City and Developer do not agree within ten (10) business days after written notice by one party to the other of its proposed appraiser, then either party may submit the selection of the appraisal to judicial reference under

Section 8.2) and the costs of the appraisal (which shall be at the appraisers' normal and customary rates, and shall not be based on the appraised values) shall be paid or reimbursed by Developer within ten (10) days after written demand by the City. Developer may challenge an appraisal by using the judicial reference procedure in Section 8.2 below.

8.1.3 The obligation to pay Profit Participation shall constitute a "shared appreciation loan" by the City, shall be a deferred portion of the Purchase Price for the Residential Component, and shall be secured by a deed of trust substantially in the form of Attachment No. 9 (the "Residential Phase Deed of Trust"), which the City shall, at Developer's request, subordinate to a lien securing subdivision improvement financing from a lender not affiliated with Developer pursuant to a reasonable subordination agreement. Developer may obtain the reconveyance of the Residential Phase Deed of Trust from a lot within the Residential Component (each parcel being referred to as a "Release Parcel"), provided that the following conditions are met for each such partial reconveyance:

(i) not less than seven (7) business days prior to the date of the reconveyance, Developer delivers to City a notice setting forth: (A) the date of the lot sale; (B) the name, address and telephone number of the proposed transferee, unless the applicable purchase agreement expressly requires (or the proposed transferee has reasonably requested in writing to the City, with an explanation of the reasons for confidentiality) that it remain confidential; (C) the terms of the conveyance (including a copy of the applicable purchase agreement, redacted to omit any confidential information described in the preceding clause (B)); and (D) a legal description and plot plan for the Release Parcel;

(ii) Developer provides evidence satisfactory to the City Manager that it has instructed the applicable escrow agent to pay the City any Profit Participation then due, and the escrow agent is committed to make such payment as a condition to the reconveyance (which may be evidenced by the escrow agent's execution of the City's escrow instructions containing the request for partial reconveyance and such commitment);

(iii) Upon the reconveyance, one or more endorsement(s) to the City's title insurance policy for the Residential Deed of Trust shall be issued at Developer's cost that confirms no change in the effectiveness of the City's title insurance or the priority of the Residential Deed of Trust on the balance of the lots in the Residential Component (but the amount of title insurance coverage may be reduced by the amount of Profit Participation paid to the City);

(iv) Developer delivers to City evidence satisfactory to the City Manager that the Release Parcel and the balance of the Phase each separately conforms to and is in compliance with applicable law and that all Improvements to be constructed on the Release Parcel have been completed and the Release Parcel has legal access to one or more public streets;

(v) unless already adequately covered in then-existing reciprocal easement agreements or similar recorded agreements, Developer delivers to City a fully executed amendment satisfactory to the City Manager to each reciprocal easement agreement affecting the Residential Phases that joins the transferee of the Release Parcel as a party to such agreement, and that provides for any additional easements, restrictions and payment obligations that the City Manager deems reasonably necessary (or new CC&Rs/REA that accomplish the same purposes);

(vi) Developer pays all expenses relating to the reconveyance, including City's attorneys' fees and title insurance endorsement premiums;

(vii) Developer delivers to City, or causes to be delivered to the City, concurrently with the closing of the applicable transfer, copies of the executed documents evidencing the transfer of the applicable Release Parcel;

(viii) The applicable escrow agent provides to City a copy of the estimated "settlement statement" for the sale, executed or initialed by both the Developer and the lot buyer; and

(ix) The City's title insurance policy shall have been endorsed at Developer's cost to insure that the applicable lot and the other lots are legally subdivided (which may be accomplished by a subdivision endorsement for all of the lots in the entire Residential Phase or all lots in all Residential Phases);

(x) With respect to the final five (5) lots in the Residential Component to be sold, the City has received from Developer and approved a report calculating the City's Profit Participation, if any, through and including the sale of such final five (5) lots, and any Profit Participation shall be paid to City through the escrows for the sale of such final five (5) lots.

8.1.4 Once the Developer has achieved a 20% IRR for the Residential Component, and for so long as the Developer has achieved a 20% IRR for the Residential Component, the Developer shall pay the City the City's Profit Participation. (Developer and City acknowledge that because the Developer may acquire Residential Phases over time such that the "Residential Component" may change over time, payments to City of the City's Profit Participation might start, stop and start again.)

8.1.5 The process for determining when the threshold for Profit Participation is reached, the method for determining amounts then due to the City and Developer and the procedure for distribution are as follows:

(i) Commencing at beginning of the first calendar month following the first Residential Phase closing, the Developer shall prepare monthly reports that fully document calculations to determine the Profit Participation, if any, due at the date of the report. Such reports shall be prepared monthly thereafter until all of the lots have been sold. Reports shall be submitted to the City Manager not later than fifteen (15) days following the end of each month for City approval (which shall be governed by Section 11.14, subject to Subsection 8.1.5 (iv) below).

(ii) Each Profit Participation report shall incorporate all Residential Component Development Costs that have been incurred to the end of the applicable month covered in the report, Gross Cash Receipts that have been received to that date, and Profit Participation disbursements (if applicable) to that date. Supporting data shall be attached, or readily available for review by the City Manager.

(iii) When a monthly report approved by the City Manager indicates the Developer has achieved a 20% IRR on the Residential Component invested capital, then the Developer shall commence paying the Profit Participation. Profit Participation disbursements shall be made each month to the Developer (80%) and City (20%) not later than ten (10) days following the City Manager's acceptance of the report; provided, however, that if as of the business day prior to the scheduled closing of a lot sale, Developer is in default under this Agreement, a judicial reference under Section 8.2 is pending with respect to Profit Participation or any report thereof by Developer or the Developer shall not have complied with the results of any completed judicial reference proceeding regarding Profit Participation or any such report, then all sales proceeds shall be held in the applicable escrow until the Developer cures the default and/or complies with the results of the judicial reference, as applicable.

(iv) City may not dispute the accuracy of a Profit Participation report previously approved by the City Manager unless: (i) the City sends written notice of such dispute to Developer within ninety (90) days after the last residential lot is sold; or (ii) the City believes in good faith that the Developer has engaged in willful misrepresentation with respect to the Profit Participation.

8.1.6 An example of the calculation of the Profit Participation determination is attached hereto as Attachment No. 14.

8.1.7 Prior to the sale of each of the final five (5) lots in the Residential Component, the Developer shall submit a report to the City describing the Profit Participation previously paid by Developer to City and the calculation of Profit Participation for each such lot. If Developer's report for the final lot determines that, after considering the total Development Costs and the total Gross Cash Receipts (based on executed Purchase Agreements) for the Residents and Component, Developer has overpaid Profit Participation to the City, then (pending the result of any judicial reference proceedings by the City) and provided Developer is not then in default under this Agreement and has complied with the results of any completed judicial reference proceeding, City shall promptly return the overpaid sums to Developer.

8.1.8 Developer shall maintain complete records of the Profit Participation, Development Costs, Gross Cash Receipts, and Unleveraged Cash Flow described above (collectively, "Records") and shall deliver a written calculation of all such sums for each calendar year ending on an anniversary of the first sale of a Residential Phase to Developer within thirty (30) days after the end of each such calendar year. All Records shall be kept at Developer's principal place of business for not less than three (3) years after delivery of the required annual report to which such Records relate; provided that the Developer may at reasonable times remove any or all Records or permit or cause them to be removed for legal or accounting purposes or for other purposes consistent with these provisions and this Agreement.

City shall have the right, during regular business hours and from time to time after giving reasonable notice, to do any or all of the following: to audit the Records; to cause an audit of the Records to be made; to make abstracts from the Records; and to make copies of any or all of the Records. Developer shall make all Records specified in the notice available at the time specified in the notice, and at the place where the Records are to be kept. All information so obtained by City shall be treated as confidential except in any litigation or arbitration proceedings between the parties, or as otherwise required by Law.

If an audit or investigation reveals that any Profit Participation, Development Costs, Gross Cash Receipts or Unleveraged Cash Flow has been misstated for any reason, the Party, if any, benefiting from such misstatement shall, promptly after being notified of the misstatement, pay or reimburse the other Party the amount, if any, necessary to correct such misstatement, for the period at issue. If the audit discloses that the Profit Participation represented by Developer was understated by more than three percent (3%) for the period at issue, Developer shall pay the reasonable cost of the audit and investigation; otherwise, City shall bear the cost of such audit and investigation.

8.1.9 If the Developer (or other trustor under the pertinent Residential Phase Deed of Trust) obtains a partial release from the Residential Phase Deed of Trust with respect to any Lot in connection with a sale of the Lot to a third party in a transaction in which the third party has the option to sell the Lot back to the Developer or trustor, then: (i) if the Lot is repurchased, it must be repurchased by the trustor and not an Affiliate; (ii) any financing obtained for the repurchase which is secured by a mortgage or deed of trust on the Lot shall be obtained from a third-party lender that is not an Affiliate of the trustor; (iii) the trustor will provide the City at least ten (10) business days prior written notice of its repurchase of the Lot; and (iv) upon the repurchase, trustor shall execute a new Residential Phase Deed of Trust with respect to the Lot and provide the City with a lender's policy of title insurance with respect thereto reasonably acceptable to the City Manager.

8.1.10 In calculating Developer costs to determine Profit Participation under this Section 8.1. the costs of the Developer's predecessor under the First Amended and Restated Disposition and Development Agreement which were applicable to the determination of city profit participation under said prior document for the Property shall be included in Developer costs to determine City Profit Participation herein, although such costs were not incurred by Developer.

8.2 Judicial Reference

All disputes and claims arising under this Article 8, whether relating to its interpretation, application, enforcement or breach, shall be heard by a reference of the Monterey County Superior Court pursuant to California Code of Civil Procedure Section 638, *et seq.*, and no Event of Default by Developer may be based solely on a matter that is the subject of such a dispute unless the Developer fails to strictly perform any term of any resulting award or decision in favor of City within five (5) business days after written notice from City. The parties shall have the rights of discovery and appeal provided by California Code of Civil Procedure Section 638, *et seq.* For all judicial reference proceedings under this Agreement, the City Manager and the Developer shall agree upon a single referee who shall try all issues, whether of fact or law, and report a finding and judgment thereon and issue all legal and equitable relief appropriate under the circumstances before him or her. If the City and Developer are unable to agree on a referee within ten (10) days of a written request to do so by either Party hereto, either Party may seek to have one appointed pursuant to California Code of Civil Procedure Section 640. The cost of such proceeding shall initially be borne equally by the Parties, but shall ultimately be borne by the Party who does not prevail. In addition, the prevailing Party in the judicial reference and in any subsequent legal proceeding shall be entitled to have its reasonable attorneys' fees and out-of-pocket costs paid by the non-prevailing Party. Any referee selected pursuant to this section shall be considered a temporary judge appointed pursuant to Article 6, Section 21 of the California Constitution.

NOTICE: BY INITIALING IN THE SPACE BELOW, YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED WITHIN THE SCOPE OF THE JUDICIAL REFERENCE PROVISION ABOVE DECIDED BY A NEUTRAL REFEREE AS PROVIDED BY CALIFORNIA LAW, AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW, YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL WITH RESPECT TO THE MATTERS SUBJECT TO JUDICIAL REFERENCE, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE JUDICIAL REFERENCE PROVISION. IF YOU REFUSE TO SUBMIT TO JUDICIAL REFERENCE AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO SUBMIT UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS JUDICIAL REFERENCE PROVISION IS VOLUNTARY. WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT

OF THE MATTERS INCLUDED IN THE JUDICIAL REFERENCE PROVISION TO A NEUTRAL REFEREE.

________________________	________________________
Developer's Initials	City's Initials

ARTICLE 9. EVENTS OF DEFAULT AND RIGHTS OF TERMINATION AND OTHER REMEDIES

9.1 Defaults - General

Each of the following shall constitute an "Event of Default" by a Party:

9.1.1 The failure of such a Party to cure a default by that Party that consists of the failure to pay or deposit money within fifteen (15) days after written notice of the failure from the other Party.

9.1.2 The failure of a Party to cure any other default by that Party within thirty (30) days after written notice thereof from the other Party; provided, however, that if the nature of the default is such that more than thirty (30) days are reasonably required for its cure, then the defaulting Party shall not be deemed to be in default if it has commenced a cure within the 30-day period and thereafter diligently prosecutes such cure to completion, and provided further that, if the Party claiming injury determines in good faith that a delay in seeking judicial relief would cause it irreparable harm not compensable by monetary damages, then notwithstanding anything to the contrary in Section 9.2 below, the Party claiming injury need not wait for a period of thirty (30) days after written notice before seeking expedited judicial relief (including, without limitation, a temporary restraining order or permanent injunction).

9.1.3 A Party's failure to perform or comply with any term of any award or decision under Section 8.2 in favor of the other Party by the date on which it is to be performed.

9.1.4 A Party assigns or attempts to assign this Agreement or any rights therein except as expressly permitted by this Agreement.

9.1.5 The failure of Developer to comply with the Schedule of Performance, subject to delays under Section 11.3.

9.2 Remedies Generally; Cross-Default Among Phases

Subject to the rights of the Parties to submit disputes to judicial reference under Section 8.4 and to arbitration under Section 11.19, upon the occurrence of an Event of Default by a Party, the other Party shall have all of its rights and remedies at law, in equity and under this Agreement, except that neither Party shall have any rights to terminate except as expressly set forth in this Agreement. Notwithstanding Section 9.1, but subject to Section 5.2 (which is not altered by this sentence), in no event shall an Event of Default by Developer or City described in Section 9.1.1 or 9.1.2 that is clearly allocable only to the Hotel Phase, the Timeshare Phase or the Residential Phase constitute an Event of Default with respect to any Phase other than the Phase to which the Event of Default relates unless: (i) the construction financing for the phase in default and the other phases are from the same source or affiliated sources and provide for cross-defaults; (ii) the Developer has failed to provide payment and completion bonds to the entity providing financing for the Phase in default; or (iii) the Event of Default is with respect to the Hotel Phase and the City Manager has reasonably determined that the hotel financing arrangements are not reasonably acceptable to the City (in which case a default with respect to the Hotel Phase shall constitute a default with respect to other Phases).

9.3 [INTENTIONALLY OMITTED]

9.4 Termination Rights; City Options to Repurchase

9.4.1 Upon the occurrence of an Event of Default by Developer, City may by written notice to Developer terminate this Agreement as to any Phase not yet acquired by Developer (provided City's termination notice is given prior to the date, if any, on which the Event of Default is cured). Upon such termination, (i) City may in lieu of exercising its right to repurchase described in Section 9.4.2, elect to retain the Good Faith Deposit as liquidated damages; and (ii) all documents deposited by any Party into the unclosed escrow shall be returned to the Party that deposited them.

9.4.2 Upon the occurrence of an Event of Default by Developer after Developer has acquired any portion of the Property, but prior to the issuance of a Certificate of Completion for the contemplated improvement thereon, City shall also have the option, subject to the rights of Holders set forth in Section 6.13, to repurchase the applicable subdivided portion of the Property that Developer has so acquired and with respect to which Developer is in default (but not any other portion of the Property); provided that, City must exercise its option by written notice to Developer prior to the date, if any, on which the Event of Default is cured. If the default relates to a Residential Phase, City may also repurchase one or more of the other lots in the applicable Residential Phases of the Property for which a Certificate of Completion has not been issued by City, and if the default relates to a Timeshare Phase, City may also repurchase one or more of the other Phases within the Timeshare Component for which a Certificate of Completion has not been issued. The rights of City to repurchase pursuant to this Section 9.4 shall be set forth in the deed for the Hotel Phase and in a separate Memorandum of Repurchase Rights in the form attached hereto as Attachment 6C with respect to the Residential and Timeshare Phases.

9.4.3 An option to repurchase shall be exercised, if at all, by City's delivery of written notice of its election to exercise the option to Developer within one year after expiration of the last of the cure periods granted to Developer and/or the Holders, and the Developer shall execute, acknowledge and deliver a grant deed for the applicable property to the City within fifteen (15) business days after the City's election, subject only to the title exceptions described in Section 9.4.3(b) below. In the event Developer fails to do so, City shall have, in addition to any and all of its other rights and remedies at law, in equity and under this Agreement, the right to an order for specific performance.

9.4.4 (a) The purchase price (the "Option Purchase Price") shall be the Purchase Price actually paid by Developer to City for the applicable Phase of the Property, or portion thereof (on a pro-rata, per square foot basis), being acquired by City; however, the Purchase Price shall be paid to the holders of any lien(s) on the applicable Phase or portion thereof to the extent the lien secures sums used by Developer to pay the purchase price for the phase or portion thereof, and the only remainder, if any (net of transaction costs payable by the Developer) shall be payable to the Developer.

(b) City shall deliver the Option Purchase Price to Developer through escrow. Developer shall convey title subject only to exceptions that (i) existed at the time of

Developer's acquisition of the Phase of the Property, or (ii) were created with the written consent of City or approved in writing by City or expressly contemplated or permitted by this Agreement, including but not limited to the deed of trust or other lien securing construction or permanent financing.

(c) Upon the City's election to repurchase, the City and the Developer shall promptly open an escrow with Escrow Agent and shall execute and deliver all documents necessary or appropriate to complete the purchase and sale transaction in accordance with this Section 9.4 (including, without limitation, escrow instructions, a settlement statement, a FIRPTA affidavit, and a California Form 593). Developer shall pay all escrow costs and the costs of an ALTA owner's title insurance policy in favor of City that is consistent with clause (b) above.

(d) City shall have the right to enforce this Section 9.4 by specific performance.

9.5 Applicable Law

The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

9.6 Service of Process

In the event that any legal action is commenced by Developer against City, service of process on City shall be made by personal service upon the City Manager or in such other manner as may be provided by law. In the event that any legal action is commenced by City against Developer, service of process on such Party shall be made by personal service upon the Developer's registered agent for service of process or upon a partner, manager, managing member of Developer (by service on any officer of any such manager or managing member) and shall be valid whether made within or without the State of California.

9.7 Rights and Remedies are Cumulative

Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by any Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by any other Party. Upon the occurrence of an event of default which remains uncured after any default notice required by this Agreement is given and any applicable cure period under this Agreement has expired, except as to any rights and remedies expressly declared to be exclusive in this Agreement, the injured Party shall have all rights and remedies against the defaulting Party as may be available at law or in equity to cure, correct or remedy any event of default, to obtain specific performance, to recover damages, or to obtain any other remedy consistent with the purpose of this Agreement.

9.8 Inaction Not a Waiver of Default

Any failures or delays by any Party in giving a notice of default or in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive any Party of its right to send a notice of default and thereafter (subject to any applicable cure rights) institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any of its rights or remedies.

ARTICLE 10. ADDITIONAL OBLIGATIONS OF DEVELOPER

10.1 Affordable Housing and Workforce Housing

10.1.1 Pursuant to the California Redevelopment Law and the Base Reuse Plan adopted by the Fort Ord Reuse Authority, as a consequence of constructing and operating the Project, Developer is required to provide Affordable Units in conjunction with residential units developed in any Phase of the Project and Workforce Units in conjunction with development of the Hotel Phase. The Developer may provide the Affordable Units and Workforce Units on-site or off-site. With respect to the provision of Affordable Units associated with the 125-unit Residential Phase and Workforce Units associated with the Hotel Phase (irrespective of the number of Hotel rooms), the Seaside Redevelopment Agency determined, subsequent to its approval of the initial Disposition and Development Agreement on July 7, 2005 (pursuant to the Section 10.1.9 of that Agreement), that it was in the best interest of the City that the aforementioned Affordable Units and Workforce Units be provided by contracting with Sunbay Resort Associates, LLC to buy down rental rates of existing Sunbay Apartments for income-qualified tenants. The Agreement Regarding Affordable and Workforce Housing (the "Sunbay Agreement") among the Seaside Redevelopment Agency, the City and Sunbay Resort Associates, LLC approved September 1, 2005 (Agency Resolution No. 05-11 Ft. Ord-11; City Council Resolution No. 05-59), has satisfied this requirement with respect to the Affordable Unit requirement of the 125-unit Residential Phase and the Workforce Unit requirement of the Hotel Phase.

10.1.2 Additional residential units that may be authorized by the Entitlements, as amended from time to time and developed in any Phase of the Project shall remain subject to the City's Inclusionary Housing Ordinance (Section 17.31 of the Seaside Municipal Code) and applicable law.

10.1.3 Affordable Units may be either for-sale or for-rent, shall consist of units that are income-restricted for persons or households of no greater than "moderate income", "low income," and "very low income" (as such terms are defined in the California Health & Safety Code) (the "Affordable Units"), and the number of the Affordable Units, per income category, shall be twenty percent (20%) of the number of residential units permitted by the Entitlements in any Phase. If any of the Affordable Units are for-rent, Developer shall rent them for fifty-five (55) years to low/moderate income households at affordable rents under the Health and Safety Code provisions of the California Redevelopment Law. If any of the Affordable Units are to be sold, then for forty-five (45) years, they shall be sold only to low/moderate income households at an affordable housing cost as described in the Health and Safety Code provisions of the California Redevelopment Law. A declaration of conditions, covenants and restrictions shall be recorded against the property on which the Affordable Units are to be located in accordance with Section 33343.3 of the California Health and Safety Code.

10.1.4 Developer shall file an application with the City for the development of a project including any required Affordable Units not already provided by the Sunbay Agreement. Such application shall demonstrate to the City Manager's satisfaction that the proposed number of Affordable Units and the income limits for those units comply with Section 10.1.3 of this Agreement as of the date of the application. The number of Affordable Units, and the timing of providing them, shall be determined at the time of the City's approval of the tentative map or parcel map, or if such development does not require a map, prior to issuance of a building permit.

10.2 First Source Recruitment.

10.2.1 The Developer (excluding purchasers of "timeshare" or "interval" units and residential lots) shall comply with the City's First Source Recruitment Policy in constructing, maintaining and operating the Improvements on the Property, and shall use reasonable efforts to cause all tenants and operators of the Improvements to comply with the City's First Source Recruitment Policy. The City's First Source Recruitment Policy is set forth in the Attachment No. 11 attached hereto.

10.2.2 By the date(s) set forth in the Schedule of Performance, the Developer shall submit to the City, for its review and approval, a First Source Recruitment Program for the development and construction of the Improvements. Such Program shall include specific programs and activities that the Developer or its successor and assigns will perform to satisfy the City's First Source Recruitment Policy.

10.2.3 With respect to Section II.A, Training, of the City's First Source Recruitment Policy, Developer shall participate in the "Monterey County Pre-Apprentice Program" and City hereby recognizes such participation as fulfilling the training requirements of the City's First Source Recruitment Policy. City acknowledges that Developer's predecessor (under the First Amended and Restated Disposition and Development Agreement) satisfied the training funds requirements of Section III. F, Training Fund, of the City's First Source Recruitment Policy.

10.3 Implementation of City Entitlement Conditions. Developer covenants and agrees to comply at all times with the Entitlement Conditions set by the City in approving the Project as they are attached in Attachment No. 1-D hereto, or as they may be modified or supplemented by the City in accordance with applicable law.

10.4 Payment of Excess EVA Costs. In addition to any fees payable by Developer to the City pursuant to the terms of the Entitlement Conditions, in consideration for the covenants of the City under this Agreement, the Developer shall pay to the City the sum of Two Hundred Eighty-Nine Thousand Six Hundred Thirty and No/100 Dollars ($289,630.00) (the "Excess EVA Costs") in the manner described in the Entitlement Conditions. Such Excess EVA Costs constitute the portion of the "Reimbursement" by Developer (as the "first EVA Benefit Developer") under Section 7.3 of that certain Seaside Highlands Reimbursement Agreement dated as of August 21, 2003 between KB Bakewell Seaside Venture, LLC, a California limited liability company, and the City in excess of the Developer's $78,243 share of the Yosemite EVA In-Lieu and the $26,717 Paralta EVA costs required to be paid by Developer under the terms of the Entitlement Conditions. (It is contemplated that it will be the City's obligation to reimburse Developer for some of the Excess EVA Costs pursuant to a Reimbursement Agreement in the form of Attachment No. 13 that must be executed by the City as a condition to the Developer's obligations hereunder to purchase any portion of the Property and must be executed not later than concurrently with Developer's payment of the Excess EVA Costs.)

10.5 Certain Collections of and Challenges to City Transient Occupancy Tax. Developer shall include in its hotel operating agreement with the hotel operator (if the Timeshare Phase operator and the hotel operator are the same or are affiliated) or in its contract with the Timeshare Phase operator (if the hotel operator and the Timeshare Phase operator are not the same and are not affiliated) the unconditional obligation to collect and pay the City's transient occupancy tax to the City from all persons and entities who pay rent or a fee to the owner of a timeshare unit or interest in the Timeshare Phase to use the timeshare unit. The Developer shall enforce such contractual obligations (including by litigation or termination if necessary); however, the foregoing contractual obligations shall cease if, when and to the extent that a California state court rules that the City's transient occupancy tax is invalid as so applied, and such ruling is upheld on appeal, if any. Developer shall not convert the timeshare units to condominiums without complying with applicable law.

Neither Developer nor any successor-in-interest to Developer (excluding both a Timeshare unit owner/user and a purchaser of a Residential Component lot who intends to occupy future improvements on the lot as a residence) shall challenge, encourage others to challenge, or cooperate in challenging, transient occupancy tax as so applied, or cause, encourage or assist the hotel operator or the Timeshare Phase operator or any Timeshare owner or user to challenge such application of the City's transient occupancy tax, nor shall the Developer or its successors-in-interest (excluding both a Timeshare unit owner/user and a purchaser of a Residential Component lot who intends to occupy future improvements on the lot as a residence) or the hotel operator or Timeshare Phase operator assert the invalidity of the City's transient occupancy tax as a defense to liability of the City or City for the failure to collect the tax as required under this Section. Developer hereby expressly acknowledges that its obligations under this Section are contractual in nature and do not depend on the validity of the City's transient occupancy tax as so applied. The Developer shall include in the hotel operator's contract and the Timeshare Phase operator's contract provisions consistent with the foregoing regarding the collection of, challenges of and assertion of defenses to the obligation to collect the City's transient occupancy tax under this Section. The City is a third party beneficiary of this Section.

10.6 Certain Costs. As provided in clause (i) of the letter agreement between Developer and the Redevelopment Agency, of the City of Seaside dated April 15, 2009, on or before the date on which the final permit from the City of Seaside for grading or construction related to the Final Hotel Stage (whichever is first issued) is issued, Developer shall pay the sum of $100,000 to the City for reimbursable costs owed and incurred prior to March 31, 2009. Clauses (ii) through (v) of the April 15, 2009 letter have been waived or superseded and no longer have any force or effect.

10.7 College Scholarship Fund. Upon the issuance of a Certificate of Occupancy for the First Hotel Stage, and annually thereafter prior to each anniversary of such issuance, Developer shall: (i) contribute Ten Thousand Dollar ($10,000.00) for children of employees working at the resort or the Golf Courses (selected by a committee approved in writing by the City Manager), and (ii) promptly reasonable written evidence to City of each such contribution.

10.8 FORA CFD. If the FORA Community Facilities District (which is the primary funding source for the FORA Capital Improvement Program and related obligations), ceases to collect the authorized special taxes, Developer shall cooperate with and support: (i) the creation of a new Community Facilities District ("CFD") or other funding/financing entity or program, by itself or with other property owners, including without limitation submitting a petition to City or other appropriate public entity for the creation of a CFD or other funding/financing entity or program, and (ii) the issuance of bonds, in each case for the financing of public infrastructure improvements associated with the FORA Capital Improvement Program, Base Reuse Plan, CEQA mitigations, or any combination thereof. The parties acknowledge that the creation of a CFD (and possibly other funding/financing entity) is a legislative act subject to a hearing and certain specified notices and legislative considerations; nevertheless, the parties will work diligently to structure the formation of such a CFD or similar funding/financing entity or program and the issuance of bonded indebtedness in an amount as determined in good faith by the City or other responsible public agency to fund the construction of eligible improvements/facilities. Any CFD or similar financing/funding entity or program formed to fund the FORA Capital Improvement Program, Base Reuse Plan, CEQA mitigations, or combination thereof, may be in addition to other CFDs or funding/financing programs necessary to fund improvements associated with the Project.

ARTICLE 11. GENERAL PROVISIONS

11.1 Notices, Demands and Communications Between the Parties

All notices or other communications required or permitted hereunder shall be in writing, and shall be sent by registered or certified mail, postage pre-paid, return receipt requested, or by Federal Express or other courier service which provides a written receipt of delivery, to the addresses set forth in this Section 11.1. The notices or other communications shall be deemed received and effective upon: (i) if mailed, the date of delivery or refusal to accept delivery indicated in the certified or registered mail receipt; or (ii) if given by courier service, on the date of delivery evidenced by the receipt for delivery provided by the courier service.

For City:	City of Seaside 440 Harcourt Avenue Seaside, California 93955 Attention: City Manager
with a copy to :	Richards, Watson and Gershon 355 South Grand Avenue, 40th Floor Los Angeles, California 90071 Attention: Bruce Galloway

For Developer: Monterey Bay Resorts, LLC
c/o Tieback Holdings, LLC
901 Dove Street, Suite 230
Newport Beach, CA 92660
Attn: Michael Lutton
Tel: 949/632-4311

For Escrow Agent: First American Title Company
Dolores 3 Southwest of 7th
P.O. Box 2177
Carmel, CA 93921
Attention: Natalie Nickerson, Title Officer
Tel: (831) 293-5151

Such written notices, demands, correspondence and communications shall be sent in the same manner to such other persons and addresses as either Party may from time to time designate pursuant to this Section 11.1.

11.2 Nonliability of City and City Officials, Employees, and Others

No member, official, representative, employee, contractor or agent of City or City shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by City or for any amount which may become due to Developer or its successors, or on any obligations under the terms of this Agreement.

11.3 Extension of Times of Performance due to Enforced Delay (Force Majeure)

In addition to specific provisions of this Agreement, performance by any Party hereunder shall not be deemed to be in default, where delays or defaults are due to acts of God, or the elements, accident, casualty, unavailability or delays in delivery of any product, labor, fuel, service or materials, failure or break-down of equipment, strikes, lockouts, or other labor disturbances, acts of the public enemy, orders or inaction of any kind from the government of the United States, the State of California, or any other governmental, military or civil authority (other than City, to the extent that such orders or inaction affect City's obligations, performance or rights under this Agreement or are reasonable under the circumstances-such as delays in responding to incorrect, incomplete or delayed Developer submittals), war, insurrections, riots, terrorism, epidemics, landslides, lightning, court orders, droughts, floods, fires, earthquakes, arrests, civil disturbances, explosions, freight embargoes, lack of transportation, breakage or accidents to vehicles, or any other inability of any Party hereto, whether similar or dissimilar to those enumerated or otherwise, which is not within the control of the Party claiming such inability or disability, which such Party could not have avoided by exercising reasonable due diligence and care and regarding which such Party shall use all reasonable efforts that are practically available to it in order to correct such condition. Additionally, all deadlines in the Schedule of Performance applicable to a Phase (or applicable to the Improvements for a Phase, as appropriate) shall be delayed by (i) the period of time during which any governmental order precludes the execution or implementation of this Agreement or the issuance or effectiveness of the Entitlements for the applicable Phase; (ii) the period of time during which any litigation (including appeals) challenging the effectiveness of this Agreement or the issuance or effectiveness of the Entitlements for the applicable Phase; and (iii) all time periods for filing an appeal and for instituting referenda that challenge the effectiveness of this Agreement or the issuance or effectiveness of the Entitlements for the applicable Phase. However, in no event shall there be any extension of time pursuant to this Section 11.3 due to: (i) any litigation commenced or initiated by Developer, unless such litigation is reasonably instituted and is instituted in good faith for the purpose of avoiding or shortening a delay; or (ii) any event or condition caused by Developer's inherent financial condition or financial inability to pay its monetary obligations when due (as distinguished from Developer's inability to make a payment by reason of an unaffiliated bank's failure or some other external cause not associated with Developer's financial condition).

Notwithstanding anything to the contrary in this Agreement: (i) an extension of time for any such cause shall be for the period of time reasonable in light of the enforced delay, and the extension of time shall commence to run from the time that the Party claiming the extension has notified the other Party in writing of the nature of the matter constituting the enforced delay; and (ii) in the event that the deadline for the Close of Escrow on any Phase does not occur by the date that is two (2) calendar years after the applicable closing deadline in the Schedule of Performance, as extended by force majeure delays (if applicable), and the City has not terminated this Agreement (as expressly permitted by Section 5.1 above) and does not terminate this Agreement (as expressly permitted by Section 5 above) prior to the actual Close of Escrow for the applicable Phase, then the purchase price for the applicable Phase shall be increased by the amount by which (a) the fair market value of the applicable Phase as of the actual Close of Escrow for the applicable Phase, exceeds (b) the fair market value as of the date that is two (2) years after the deadline for such Close of Escrow in the Schedule of Performance, as extended by force majeure delays (if applicable), all as determined by an MAI appraisal obtained by the City (which Developer may challenge under Section 8.4). The appraiser's fees may not be based on the appraised value. All such appraisals shall be performed by an MAI appraiser mutually acceptable to the City Manager and Developer (and if the City Manager and Developer do not agree within ten (10) business days after one party notifies the other in writing of its proposed appraiser, then either party may submit the selection of the appraisal to judicial reference under Section 11.19 below) and the costs of the appraisal (which shall be at the appraisers' normal and customary rates, and shall not be based on the appraised values) shall be paid or reimbursed by Developer within ten (10) days after written demand by the City.

11.4 <u>No Real Estate Commissions</u>

City and Developer each represent and warrant to the other that it has not engaged any third-party real estate broker, salesperson, finder or agent in connection with this transaction, and if any claim for brokers' or finders' fees or similar fees for the consummation of this Agreement arise, then Developer hereby agrees to indemnify, save harmless and defend City from and against such claim(s) if it (they) shall be based upon any statement or representation or agreement made by Developer, and City hereby agrees to indemnify, save harmless and defend Developer if such claim(s) shall be based upon any statement, representation or agreement made by City.

11.5 Successors and Assigns

This Agreement shall bind and inure to the benefit of the Parties to this Agreement and their respective successors and assigns. However, this provision shall not authorize the assignment or transfer of any interest that is prohibited specifically by the other terms of this Agreement.

11.6 Relationship of the Parties

The terms and provisions of this Agreement shall not cause the Parties hereto be construed in any manner whatsoever as partners, joint venturers or agents of each other in the performance of their respective duties and obligations under this Agreement, or subject either Party to this Agreement to any obligations, loss, charge or expense of the other Party unless the Party to be held responsible has independently contracted with the claimant so as to make it directly responsible for the performance and/or payment, as appropriate, of the pertinent obligation, loss, charge or expense.

11.7 No Obligation To Third Parties

This Agreement is intended to confer rights and benefits only upon the Parties hereto and their successors and assigns and is not intended to confer any rights or benefits upon any other person or entity, except for the rights granted to Holders as provided in (but subject to the provisions of) Section 6.13 and Section 9.4. No person or entity other than the Parties and their successors and assigns shall have any legally enforceable rights hereunder. All rights of action for any breach of this Agreement are hereby reserved to the Parties and their successors and assigns.

11.8 Time of Essence

Time is of the essence of this Agreement.

11.9 Construction of Agreement

11.9.1 Context and Construction

When the context and construction so require, all words used in the singular herein shall be deemed to have been used in the plural, and the masculine shall include the feminine and neuter and vice versa. Whenever a reference is made herein to a particular Article of this Agreement, it shall mean and include all Sections, subsections and subparts thereof, and, whenever a reference is made herein to a particular Section or subsection, it shall include all subsections and subparts thereof. The headings in this Agreement are included solely for convenience, and if there shall be any conflict between such headings and the text of this Agreement, the text shall control.

11.9.2 Advice of Counsel; Interpretation

Should any provisions of this Agreement require interpretation, it is agreed that the person or persons interpreting or construing the same shall not apply a presumption that the terms of this Agreement shall be more strictly construed against one Party by reason of the rule of construction that a document is to be construed more strictly against the Party thereto who itself or through its agent or counsel prepared the same or caused the same to be prepared; it being agreed that the agents and counsel of both of the Parties hereto have participated equally in the negotiation and preparation of this Agreement.

11.9.3 Calendar days; Computation of Time

"Day" or "days" as used herein shall refer to calendar day or days, unless otherwise specifically provided herein. Unless otherwise required by a specific provision of this Agreement, time hereunder is to be computed by excluding the first day and including the last day. If the date for performance falls on a Saturday, Sunday, or legal holiday, the date for performance shall be extended to the next business day.

11.10 Litigation Costs

In the event of a dispute between the Parties arises with respect to the interpretation of this Agreement, or under this Agreement, or otherwise related to this Agreement, the prevailing Party (in a lawsuit, or under Section 8.2 of this Agreement) shall be entitled to recover its reasonable litigation expenses and costs, including reasonable attorneys' fees and costs of appeal. In the event other provisions of this Agreement or the Attachments thereto provide for the payment by one party of the other party's attorneys' fees, such payment obligation shall be limited to payment of reasonable attorneys' fees.

11.11 Police Power

Nothing contained herein (and no consent or approved given under the terms hereof) shall be deemed to limit, restrict, amend or modify, nor to constitute a waiver or release of, any Laws of the City, its departments, commissions, agencies, and boards and the officers thereof and City, including, without limitation, any general plan or any zoning ordinances, or any of City's duties, obligations, rights or remedies thereunder or pursuant thereto or the general police powers, rights, privileges and discretion of City in the furtherance of the public health, welfare, and safety of the inhabitants of the City of Seaside, including, without limitation, the right under law to make and implement independent judgments, decisions, and acts regarding planning, development, and redevelopment matters (including, without limitation, approval or disapproval of plans and issuance or withholding of building permits) whether or not consistent with the provisions of this Agreement, or any other documents contemplated hereby (collectively, "City Rules and Powers"). In the event of any conflict, inconsistency or contradiction between any terms, conditions, or provisions of this Agreement or such other documents, on the one hand, and any such City Rules and Powers, on the other hand, the latter shall prevail and govern in each case. This Section shall be interpreted for the benefit of City.

11.12 Estoppel Certificates

Any Party hereunder may, from time to time, request the other Party to execute and acknowledge an estoppel certificate verifying that this Agreement, including any Attachments hereto, is in full force and effect and that no default or defaults have occurred and are continuing as of the date of such certificate (nor any event which, with the passage of time and the giving of notice would result in a Default or breach under this Agreement), or stating the nature of the default or breach or event, if any. In the event the estoppel certificate discloses such a default, breach or event, it shall also state the manner in which such default, breach and/or event may be cured. The Party requesting such certificate shall provide the form thereof and, provided such certificate or agreement is in form and substance commercially reasonable, the requested Party shall execute and return the same within ten (10) business days after receipt of the final form thereof, and the requesting Party (and, in the case of Developer, its lenders and successors-in-interest as permitted under this Agreement) shall be entitled to rely thereon. If the requested Party believes that the certificate requested is not commercially reasonable, it shall use good faith efforts to notify the requesting Party in writing of its objections to the form of the certificate.

11.13 Further Assurances

Each of the Parties hereto shall execute and deliver any and all additional papers, documents, instruments and other assurances and shall do any and all other acts and things reasonably necessary to carry out the purposes of this Agreement and the intent of the Parties hereto.

11.14 Approvals

Except as otherwise provided in this Agreement, approvals, consents and determinations “to the satisfaction of” a party or whether a matter is “acceptable” to a party shall not be unreasonably made and shall be accompanied with an explanation for the reasons for any disapproval, refusal to consent or other determination adverse to the other party (including but not limited to requests from lenders made pursuant to Sections 6.13), and a response shall be given within the time expressly set forth in the Schedule of Performance or this Agreement. If no time period is stated for response, the time period for approval, consent or other determination shall be twenty (20) business days from receipt by the City of a written notice addressed to the City Manager expressly requesting consent, approval or other determination, referring to this Section 11.14 and stating that such time period applies, and a failure to respond within such time period shall be deemed approval.

11.15 Severability

To the best knowledge and belief of the Parties to this Agreement, this Agreement contains no provision that is contrary to any federal, state or local law or to any regulatory requirement or other ruling or regulation of a federal, state or local agency or that would be in breach of the obligations of either or both of the Parties hereto under the terms and provision of any legally binding agreement. However, if any provision of this Agreement, or any part thereof, shall at any time be held to be invalid, in whole or in part, under any applicable federal, state or local law by a court of competent jurisdiction, or by arbitrators or an administrative agency of the federal, state or local government with proper jurisdiction, then such provision or a portion thereof, as appropriate, shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law and the validity and enforceability of the remaining provisions of this Agreement shall remain in effect and shall in no way be affected, impaired or invalidated, unless the invalidated provision(s) shall uniquely, materially and adversely affect the rights and obligations of a Party to this Agreement (in which case the party whose rights and obligations are so affected may terminate this Agreement by written notice to the other provided the notice describes the invalid provisions and such unique, material and adverse effects and the other party does not promptly agree to amend this Agreement [or thereafter fails to promptly execute or deliver such amendment] to remedy the adverse effect on the other party).

11.16 Entire Agreement

This Agreement constitutes the entire agreement of the Parties hereto with respect to the subject matter hereof.

11.17 Attachments

This Agreement includes the following Attachments, each of which is incorporated herein by reference:

No. 1	Legal Description of the Property
No. 1-A	Site Plans(s)
No. 1-B	Phases
No. 1-C	Purchase Prices
No. 1-D	Entitlement Conditions
No. 2	Scope of Development and Exhibit "A" to Scope of Development (Conceptual Plans)
No. 3	Schedule of Performance
No. 4	Form of Certificate of Completion
No. 5	List of Environmental Reports
No. 6	Forms of Deeds and Repurchase Options
No. 6-A	Form of Hotel and Golf Clubhouse Deed and Option
No. 6-B	Residential/Timeshare Deed
No. 6-C	Residential/Timeshare Option
No. 7	Insurance Requirements
No. 8	Form of Residential Deed of Trust
No. 9	Form of Environmental Indemnity

No. 10	Memorandum of DDA
No. 11	First Source Hiring Policy
No. 12	List of Acceptable Hotel and Timeshare Operators
No. 13	Form of City Reimbursement Agreement
No. 14	Example of Calculation of City Profit Participation Under Article 8.

11.18 Waivers and Amendments

All modifications, extensions, additions or amendments to this Agreement shall be in writing and signed by the Parties hereto.

11.19 ARBITRATION OF DISPUTES

(1) Except for controversies, disputes and claims arising under, out of or with respect to Article 8 (which shall be governed by the judicial reference procedures described in Section 8.2), any controversy, dispute or claim arising under, out of or with respect to this Agreement (including any dispute regarding an approval or disapproval) shall be resolved by binding arbitration before a single arbitrator and shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "Rules"), including any and all "expedited procedures" provisions thereof; provided, however, that in the event of any conflict between the Rules and this Section 11.19, the provisions of this Section 11.19 shall govern.

(2) The arbitration shall be conducted in Monterey County, California and shall include discovery, which shall be permitted but shall be subject to rules and procedures imposed by the arbitrator to expedite the hearing of the dispute. If the Parties (with the City Manager acting for the City) do not agree upon an arbitrator within ten (10) business days after one Party notifies the other of its election to arbitrate, then the arbitrator shall be appointed by the Presiding Civil Judge of the Monterey County Superior Court upon application by either party.

(3) The Parties shall endeavor to cause the matter to be heard by the arbitrator within thirty (30) days after it is submitted to the arbitrator. The arbitrator shall render a written decision stating reasons therefor in reasonable detail within fifteen (15) days after the arbitration is concluded.

(4) The arbitrator shall determine, in addition to the matter in question, which Party fails to prevail in the arbitration (and, if Developer fails to prevail, whether there was a reasonable basis for Developer's position in the arbitration). All costs and expenses reasonably incurred in connection with such arbitration, including costs and expenses of the arbitrators, and the reasonable attorneys and expert charges of the Parties shall be borne by the Party which fails to prevail. In addition, if Developer prevails, or if Developer does not prevail but the arbitrator determines that there was a reasonable basis for Developer's position in the arbitration and it was

reasonable under the circumstances for the Developer to delay its performance under this Agreement, then all time periods for Developer's performance under this Agreement that it would be reasonable to extend shall be extended by the number of days from the demand for arbitration through the date of the arbitration award.

(5) When resolving any dispute, the arbitrator shall apply the pertinent provisions of this Agreement without departure therefrom in any respect. The arbitrator shall not have the power to change any of the provisions of this Agreement, but this sentence shall not prevent in any appropriate case the interpretation, construction and determination by the arbitrator of the applicable provisions of this Agreement to the extent necessary in applying the same to the matters to be determined by arbitration.

(6) Judgment on the arbitration award may be entered in any court having jurisdiction.

(7) TO THE EXTENT PERMITTED BY LAW, DEVELOPER AND CITY EACH HEREBY WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT BY EITHER PARTY AGAINST THE OTHER REGARDING ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT.

(8) **NOTICE**: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THIS "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE ARBITRATION OF DISPUTES PROVISION TO NEUTRAL ARBITRATION.

____________________	____________________
Developer's Initials	City's Initials

11.20 <u>Execution in Counterparts</u>. This Agreement may be executed in counterparts, each of which, and all of which together, shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first written above.

<u>CITY</u>:

CITY OF SEASIDE

By: ______________________________
Print Name: ________________________
Title: ______________________________

ATTEST:

____
Lesley Milton, City Clerk

APPROVED AS TO FORM:

RICHARDS, WATSON & GERSHON
Special Counsel to City

____
Bruce Galloway, Esq.

<u>DEVELOPER</u>:

MONTEREY BAY RESORTS, LLC

By: ______________________________
Print Name: ________________________
Title: ______________________________

ATTACHMENT NO. 1

DESCRIPTIONS OF THE LAND

I. HOTEL PHASE LAND (currently 2 parcels)

Hotel Parcel 1

That certain real property situate in Rancho Noche Buena, in the County of Monterey, State of California, being a portion of that certain 380.31-acre parcel of land shown as Parcel 1 as per map filed for record in Volume 26, Page 28 of Surveys in the office of the County Recorder of said county described as follows:

Beginning at a point that bears South 24°53'59" West, 2,638.33 feet from the most northerly corner of said Parcel 1; thence

1. South 36°18'25" East, 147.89 feet; thence
2. North 78°50'32" East, 237.93 feet; thence
3. North 86°25'16" East, 349.95 feet; thence
4. South 73°40'00" East, 155.99 feet; thence
5. South 68°42'42" East, 277.08 feet; thence
6. South 23°13'15" West, 367.94 feet; thence
7. South 42°48'20" West, 313.39 feet; thence
8. South 11°39'52" West, 202.98 feet; thence
9. South 83°52'52" West, 149.07 feet; thence
10. North 56°52'25" West, 646.26 feet; thence
11. North 41°03'07" West, 348.99 feet; thence
12. North 87°22'26" East, 127.50 feet; thence
13. North 02°37'34" West, 27.36 feet; thence
14. North 87°22'26" East, 192.50 feet; thence
15. North 02°37'34" West, 60.02 feet to the beginning of a non-tangent curve concave to the northeast having a radius of 217.00 feet, and to which beginning a radial bears North 13°21'09" East; thence
16. Northwesterly 71.27 feet along said curve through a central angle of 18°49'00"; thence
17. North 02°37'34" West, 232.98 feet to the Point of Beginning.

Containing 16.76 acres, more or less

Bearings cited herein are referenced to said Volume 26, Page 28 of Surveys.

Hotel Parcel 2

That certain real property situate in Rancho Noche Buena, in the County of Monterey, State of California, being a portion of that certain 380.31 acre parcel of land shown as Parcel 1 as per map filed for record in Volume 26, Page 28 of Surveys in the office of the County Recorder of said county described as follows:

Beginning at a point that bears South 08°53’45” East, 3,421.69 feet from the most northerly corner of said Parcel 1; thence

South 66°45'05" East, 77.18 feet; thence

South 23°14'55" West, 516.59 feet; thence

North 66°45'05" West, 75.91 feet; thence

North 23°06'26" East, 516.59 feet to the Point of Beginning.

Containing 0.91 acres, more or less

Bearings cited herein are referenced to said Volume 26, Page 28 of Surveys.

II. TIMESHARE PHASE LAND (3 parcels)

Timeshare Parcel 1 (VTM* Timeshare Phases I, II & III; Lots A1, A2 & A3)

That certain real property situate in Rancho Noche Buena, in the County of Monterey, State of California, being a portion of that certain 380.31 acre parcel of land shown as Parcel 1 as per map filed for record in Volume 26, Page 28 of Surveys in the office of the County Recorder of said county described as follows:

Beginning at a point that bears South 29°59'36" West, 1,214.17 feet from the most northerly corner of said Parcel 1; thence

1. South 73°20'00" East, 132.90 feet; thence
2. South 36°50'30" East, 135.13 feet; thence
3. South 05°30'00" West, 322.50 feet; thence
4. South 52°15'00" East, 282.10 feet; thence
5. South 37°45'46" West, 117.38 feet; thence
6. North 82°45'00" West, 389.94 feet; thence
7. South 26°02'40" West, 325.25 feet; thence
8. South 05°08'34" East, 50.02 feet; thence
9. North 74°11'29" West, 134.72 feet; thence
10. North 17°14'26" East, 123.27 feet; thence
11. North 18°23'25" East, 918.06 feet to the Point of Beginning.

Containing 6.51 acres, more or less

Bearings cited herein are referenced to said Volume 26, Page 28 of Surveys.

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* Vesting Tentative Map

Timeshare Parcel 2 (VTM Timeshare Phases IV, V, VI & VII; Lots B1, B2, B3 & B4)

That certain real property situate in Rancho Noche Buena, in the County of Monterey, State of California, being a portion of that certain 380.31 acre parcel of land shown as Parcel 1 as per map filed for record in Volume 26, Page 28 of Surveys in the office of the County Recorder of said county described as follows:

Beginning at a point that bears South 24°34'30" West, 2,243.73 feet from the most northerly corner of said Parcel 1; thence

12. South 74°11'29" East, 134.72 feet; thence
13. South 00°56'38" East, 32.36 feet; thence
14. South 43°45'00" East, 91.80 feet; thence
15. South 79°09'47" East, 515.81 feet; thence
16. South 69°00'05" East, 404.66 feet; thence
17. South 58°00'30" East, 297.45 feet; thence
18. South 67°24'43" East, 218.78 feet; thence
19. South 18°13'36" West, 147.74 feet; thence
20. North 70°11'29" West, 622.48 feet; thence
21. North 68°42'42" West, 277.08 feet; thence
22. North 73°40'00" West, 155.99 feet; thence
23. South 86°25'16" West, 349.95 feet; thence
24. South 78°50'32" West, 237.93 feet; thence
25. North 36°18'25" West, 147.89 feet; thence
26. North 44°00'03" East, 155.37 feet; thence
27. North 16°09'08" East, 250.73 feet to the Point of Beginning.

Containing 9.26 acres, more or less

Bearings cited herein are referenced to said Volume 26, Page 28 of Surveys.

Timeshare Parcel 3 (VTM Timeshare Phases VIII & IX; Lots C1 & C2)

That certain real property situate In Rancho Noche Buena, In the County of Monterey, State of California, being a portion of that certain 380.31 acre parcel of land shown as Parcel 1 as per map filed for record in Volume 26, Page 28 of Surveys In the office of the County Recorder of said county described as follows:

BEGINNING at a point that bears S. 24° 53' 59" W., 2638.33 feet; thence S. 36° 18' 25" E., 147.89 feet; thence N. 78° 50' 32" E., 237.93 feet; thence N. 86° 25' 16" E., 349.95 feet; thence S. 73° 40' 00" E., 155.99 feet from the most northerly corner of said Parcel 1; thence

1. S. 70° 17' 05" E., 210.01 feet; thence

2. S. 36° 06' 48" W., 428.58 feet; thence

3. S. 42° 45' 47" W., 224.86 feet; thence

4. S. 00° 28' 45" E., 265.56 feet; thence

5. S. 70° 52' 34" W., 167.49 feet; thence

6. N. 56° 52' 25" W., 219.32 feet; thence

7, N. 83° 52' 52" E., 149.07 feet; thence

8, N. 11° 39' 52" E., 202.98 feet; thence

9. N. 42° 48' 20" E., 313.39 feet; thence

10. N. 23° 13' 15" E.; 367.94 feet; to the POINT OF BEGINNING.

Containing 3.66 acres more or less.

Bearings cited herein are referenced to said Volume 26, Page 28 of Surveys.

III. RESIDENTIAL PHASE LAND (6 parcels)

Residential Parcel 1 (VTM Residential Phase I; Lots 1-29)

That certain real property situate in Rancho Noche Buena, in the County of Monterey, State of California, being a portion of that certain 380.31 acre parcel of land shown as Parcel 1 as per map filed for record in Volume 26, Page 28 of Surveys in the office of the County Recorder of said county described as follows:

Beginning at a point that bears South 30°52'49" East, 1,354.38 feet from the most northerly corner of said Parcel 1; thence

28. South 23°23'00" West, 42.93 feet; thence
29. North 86°20'00" West, 984.60 feet; thence
30. South 57°55'00" West, 111.11 feet; thence
31. North 36°50'30" West, 135.13 feet to the beginning of a curve concave to the east having a radius of 165.00 feet; thence
32. Northerly 173.39 feet along said curve through a central angle of 60°12'30" to the beginning of a compound curve having a radius of 250.00 feet; thence
33. Northeasterly 188.57 feet along said curve through a central angle of 43°12'59"; thence
34. North 66°35'00" East, 275.00 feet to the beginning of a curve concave to the northwest having a radius of 1,000.00 feet; thence
35. Northeasterly 243.95 feet along said curve through a central angle of 13°58'39" to the beginning of a reverse curve having a radius of 50.00 feet; thence
36. Easterly 39.29 feet along said curve through a central angle of 45°01'24" to the beginning of a compound curve having a radius of 145.00 feet; thence
37. Southeasterly 175.14 feet along said curve through a central angle of 69°12'16"; thence
38. South 13°10'00" East, 182.56 feet to the beginning of a curve concave to the northeast having a radius of 120.00 feet; thence
39. Southeasterly 153.24 feet along said curve through a central angle of 73°10'00"; thence
40. South 86°20'00" East, 69.59 feet; thence
41. South 03°40'00" West, 100.00 feet to the beginning of a non-tangent curve concave to the south having a radius of 795.00 feet, and to which beginning a radial bears South 03°40'00" West; thence
42. Easterly 145.74 feet along said curve through a central angle of 10°30'13" to the beginning of a compound curve having a radius of 175.00 feet; thence

43. Southeasterly 74.03 feet along said curve through a central angle of 24°14'15" to the beginning of a reverse curve having a radius of 175.00 feet; thence

44. Southeasterly 45.89 feet along said curve through a central angle of 15°01'29"; thence

45. South 23°23'00" West, 50.00 feet to the Point of Beginning.

Containing 10.17 acres, more or less

Bearings cited herein are referenced to said Volume 26, Page 28 of Surveys.

<u>Residential Parcel 2 (VTM Residential Phase II; Lots 30-41)</u>

That certain real property situate in Rancho Noche Buena, in the County of Monterey, State of California, being a portion of that certain 380.31 acre parcel of land shown as Parcel 1 as per map filed for record in Volume 26, Page 28 of Surveys in the office of the County Recorder of said county described as follows:

Beginning at a point that bears South 43°23'11" East, 1,523.80 feet from the most northerly corner of said Parcel 1; thence

46. South 66°37'00" East, 180.01 feet; thence

47. South 23°23'00" West, 229.06 feet; thence

48. South 23°22'38" West, 215.94 feet; thence

49. South 66°37'16" East, 10.00 feet; thence

50. South 23°22'44" West, 145.00 feet; thence

51. North 66°37'16" West, 55.00 feet to the beginning of a curve concave to the northeast having a radius of 145.00 feet; thence

52. Northwesterly 77.92 feet along said curve through a central angle of 30°47'16"; thence

53. North 54°10'00" East, 100.00 feet to the beginning of a non-tangent curve concave to the east having a radius of 45.00 feet, and to which beginning a radial bears North 54°10'00" East; thence

54. Northerly 61.59 feet along said curve through a central angle of 78°25'00"; thence

55. North 47°25'00" West, 100.00 feet to the beginning of a non-tangent curve concave to the south having a radius of 145.00 feet, and to which beginning a radial bears South 47°25'00" East; thence

56. Easterly 174.16 feet along said curve through a central angle of 68°49'10"; thence

57. North 23°22'44" East, 85.09 feet to the beginning of a curve concave to the west having a radius of 25.00 feet; thence

58. Northerly 39.27 feet along said curve through a central angle of 89°59'44"; thence

59. North 66°37'00" West, 105.01 feet; thence

60. North 23°23'00" East, 190.00 feet to the Point of Beginning.

Containing 1.71 acres, more or less; <u>and</u>

That certain real property situate in Rancho Noche Buena, in the County of Monterey, State of California, being a portion of that certain 380.31 acre parcel of land shown as Parcel 1 as per map filed for record in Volume 26, Page 28 of Surveys in the office of the County Recorder of said county described as follows:

Beginning at a point that bears South 75°49'17" West, 1,637.17 feet from the most northerly corner of said Parcel 1; thence

61. South 84°51'47" East, 155.00 feet; thence
62. South 05°08'13" West, 130.00 feet to the beginning of a curve concave to the west having a radius of 150.00 feet; thence
63. Southerly 78.18 feet along said curve through a central angle of 29°51'47"; thence
64. South 35°00'00" West, 110.31 feet; thence
65. North 55°00'00" West, 100.00 feet; thence
66. South 35°00'00" West, 391.69 feet to the beginning of a curve concave to the northwest having a radius of 45.00 feet; thence
67. Southwesterly 49.96 feet along said curve through a central angle of 63°36'44"; thence
68. South 35°00'00" West, 149.69 feet; thence
69. North 55°00'00" West, 125.00 feet; thence
70. North 35°00'00" East, 632.00 feet to the beginning of a curve concave to the west having a radius of 125.00 feet; thence
71. Northerly 65.15 feet along said curve through a central angle of 29°51'47"; thence
72. North 05°08'13" East, 70.00 feet; thence
73. South 84°51'47" East, 95.00 feet to the Point of Beginning.

Containing 3.37 acres, more or less.

Bearings cited herein are referenced to said Volume 26, Page 28 of Surveys.

<u>Residential Parcel 3 (VTM Residential Phase III; Lots 42-56)</u>

That certain real property situate in Rancho Noche Buena, in the County of Monterey, State of California, being a portion of that certain 380.31 acre parcel of land shown as Parcel 1 as per map filed for record in Volume 26, Page 28 of Surveys in the office of the County Recorder of said county described as follows:

Beginning at a point that bears South 63°02'08" West, 3,204.09 feet from the most northerly corner of said Parcel 1, said point being the beginning of a curve concave to the southeast having a radius of 275.00 feet; thence

74. Southwesterly 139.33 feet along said curve through a central angle of 29°01'48" to the beginning of a reverse curve having a radius of 325.00 feet; thence
75. Southwesterly 23.97 feet along said curve through a central angle of 04°13'33"; thence
76. South 60°00'00" East, 151.29 feet; thence
77. North 25°46'27" East, 35.10 feet to the beginning of a curve concave to the southeast having a radius of 125.00 feet; thence
78. Northeasterly 63.33 feet along said curve through a central angle of 29°01'48"; thence
79. North 54°48'15" East, 100.61 feet to the beginning of a curve concave to the northwest having a radius of 290.00 feet; thence
80. Northeasterly 198.41 feet along said curve through a central angle of 39°12'03" to the beginning of a reverse curve having a radius of 175.00 feet; thence
81. Northeasterly 77.86 feet along said curve through a central angle of 25°29'31" to the beginning of a reverse curve having a radius of 600.00 feet; thence
82. Northeasterly 230.35 feet along said curve through a central angle of 21°59'48" to the beginning of a reverse curve having a radius of 175.00 feet; thence
83. Northeasterly 62.82 feet along said curve through a central angle of 20°34'04"; thence
84. North 39°40'00" East, 14.26 feet to the beginning of a curve concave to the northwest having a radius of 1,475.00 feet; thence
85. Northeasterly 137.30 feet along said curve through a central angle of 05°20'00"; thence
86. North 34°20'00" East, 279.26 feet; thence
87. North 18°20'00" West, 117.79 feet to the beginning of a non-tangent curve concave to the southeast having a radius of 275.00 feet, and to which beginning a radial bears South 18°20'00" East; thence
88. Southwesterly 179.19 feet along said curve through a central angle of 37°20'00"; thence
89. South 34°20'00" West, 183.92 feet to the beginning of a curve concave to the northwest having a radius of 1,325.00 feet; thence
90. Southwesterly 123.34 feet along said curve through a central angle of 05°20'00"; thence
91. South 39°40'00" West, 14.26 feet to the beginning of a curve concave to the southeast having a radius of 325.00 feet; thence

92. Southwesterly 116.67 feet along said curve through a central angle of 20°34'04" to the beginning of a reverse curve having a radius of 450.00 feet; thence

93. Southwesterly 172.76 feet along said curve through a central angle of 21°59'48" to the beginning of a reverse curve having a radius of 325.00 feet; thence

94. Southwesterly 144.60 feet along said curve through a central angle of 25°29'31" to the beginning of a reverse curve having a radius of 140.00 feet; thence

95. Southwesterly 95.79 feet along said curve through a central angle of 39°12'03"; thence

96. South 54°48'15" West, 100.61 feet to the Point of Beginning.

Containing 4.25 acres, more or less.

Bearings cited herein are referenced to said Volume 26, Page 28 of Surveys.

Residential Parcel 4

[Note: This Phase was previously purchased by Developer and developed as Lots 1 through 22 of Seaside Resort Estates Subdivision Phase 1A and 1B according to the map recorded August 21, 2007 in the Monterey County Recorder's Office in Volume 24 of Cities & Towns at Page 11 with accompanying common area parcels.]

Residential Parcel 5A

[Note: This Phase was previously purchased by Developer and developed as Lots 23 through 30 of Seaside Resort Estates Subdivision Phase 1A and 1B according to the map recorded August 21, 2007 in the Monterey County Recorder's Office in Volume 24 of Cities & Towns at Page 11 with accompanying common area parcels.]

Residential Parcel 5B

Lots 31 through 38 of Seaside Resort Estates Subdivision Phase 1A and 1B according to the map recorded August 21, 2007 in the Monterey County Recorder's Office in Volume 24 of Cities & Towns at Page 11.

Residential Parcel 6 (VTM Residential Phase VI; Lots 95-125)

All that real property situated in the City of Seaside, County of Monterey, State of California, described as follows:

Being a portion of Parcel 1, as said parcel is shown on the Record of Survey Map filed in Volume 26 of Surveys, at Page 28, Records of Monterey County, and being more particularly described as follows:

BEGINNING at a southerly corner of said Parcel 1, said point lying on the northerly line of Coe Avenue, and said point also being the southerly terminus of the course depicted as N 2° 10' 44" W, 293.61 feet on said Record of Survey Map, thence leaving said northerly line of Coe Avenue, and running along a westerly line of said Parcel 1

1. N 2° 10' 44" W, 293.61 feet; thence leaving said westerly line the following bearings and distances

2. N.31°40’00"W., 123.67 feet; thence

3. N.7°32'00"W., 43.42 feet; thence

4. N.70°30’00"E., 85,00 feet; thence

5. S.25°30’00"E., 232.00 feet; thence

6. S.1°00'00"W., 42.00 feet; thence

7. S.69°50'00"E., 138.00 feet; thence

8. S.10°36'00"W., 126.00 feet; thence

9. S.88°25'00"E., 238.70 feet to a point on an easterly line of said Parcel 1; thence running along said easterly line

10. S 23° 14' 55" W, 63.00 feet to a point on said northerly line of Coe Avenue; thence running along said northerly line

11. S 87° 38' 15" W, 417.95 feet to the POINT OF BEGINNING. Containing 82,858 square feet or 1.902 acres, more or less.

The basis of bearings for this description is the bearing of N 2° 10' 44" W along a westerly line of Parcel 1, as said parcel is shown on the Record of Survey Map filed in Volume 26 of Surveys, at Page 28, Records of Monterey County.

AND

All that real property situated in the City of Seaside, County of Monterey, State of California, described as follows:

Being a portion of Parcel 1, as said parcel is shown on the Record of Survey Map filed in Volume 26 of Surveys, at Page 28, Records of Monterey County, and being more particularly described as follows:

COMMENCING at a southerly corner of said Parcel 1, said point lying on the northerly line of Coe Avenue, and said point also being the southerly terminus of the course depicted as N 2° 10' 44" W, 293.61 feet on said Record of Survey Map, thence leaving said northerly line of Coe Avenue, and running along a westerly line of said Parcel 1

a. N 2°10'44"W, 293.61 feet; thence leaving said westerly line

b. N.31°40’00"W., 123.67 feet; thence

c. N.7°32'00"W., 43.42 feet to the TRUE POINT OF BEGINNING; thence

1. N.7°30’00"E., 70.00 feet; thence

2. N.13°53'00"E., 101.00 feet; thence

3. N.00°43'00"E., 37.00 feet; thence

4. N.28°42'00"W., 160.00 feet; thence

5. N.35°02'00"W., 193.00 feet; thence

6. N.16°52'00"E., 229.00 feet; thence

7. N.16°08'00"W., 193.00 feet; thence

8.) N.07°40'00"W., 345.00 feet; thence

9. N.14°09'00"W., 163,00 feet; thence

10. N.47°53'00"E., 113.63 feet; thence

11. S.79°25'00"E., 753.23 feet; thence

12. S.34°18'52"E., 72.77 feet; thence

13. S.22°43'58"W., 142.16 feet; thence

14. S.78°40'00"W., 273.99 feet; thence

15. S.23°17'44"W., 689.59 feet; thence

16. S.84°11’00"E., 168.66 feet; thence

17. S.14°53'00"W., 435.92 feet; thence

11. S.70°30’00"W., 85.00 feet to the TRUE POINT OF BEGINNING.

Containing 490,995 square feet or 11.272 acres, more or less.

The basis of bearings for this description is the bearing of N 2° 10' 44" W along a westerly line of Parcel 1, as said parcel is shown on the Record of Survey Map filed in Volume 26 of Surveys, at Page 28, Records of Monterey County.

ATTACHMENT NO. 1-A

GOLF/RESORT CLUBHOUSE PHASE LAND

That certain real property situate in Rancho Noche Buena, in the County of Monterey, State of California, being a portion of that certain 380.31 acre parcel of land shown as Parcel 1 as per map filed for record in Volume 26, Page 28 of Surveys in the office of the county recorder of said county described as follows:

Beginning at a point that bears South 29° 36' 22” West, 2,765.92 feet from the most Northerly corner of said Parcel 1; thence

1. North 87° 22' 26” East, 255.91 feet; thence

2. South 02° 37' 34” East, 232.98 feet; thence

3. Easterly, 71.27 feet along the arc of a non-tangent curve to the left having a radius of 217.00 feet whose center bears North 32°10' 09” East; through a central angle of 18° 49' 00”; thence non tangentially

4. South 02° 37' 34” East, 60.02 feet; thence

5. South 87° 22' 26” West, 192.50 feet; thence

6. South 02° 37' 34” East, 27.36 feet; thence

7. South 87° 22' 26” West, 127.50 feet; thence

8. North 02° 37' 34” West, 350.77 feet; to the Point of Beginning containing 2.09 acres, more or less.

Bearings cited herein are referenced to said Volume 26, Page 28 of Surveys.

ATTACHMENT NO. 1-B

PHASES OF THE PROJECT

The Property shall be conveyed to Developer in the Phases identified on that certain Vesting Tentative Map (as modified in connection with the development of Residential Phases IV and V) prepared by Bestor Engineers, Inc. and approved by the City, and with respect to the Golf/Resort Clubhouse Phase, as identified on Attachment 1-B. If such Tentative Map is amended or replaced, or any other subdivision of the Property is approved, then the Parties shall replace this Attachment No. 1-B with a new Attachment No. 1-B that is modified accordingly.

Hotel Phase (currently two parcels)

Timeshare (or Condominium) Phases I, II, III, IV, V, VI, VII, VIII, IX

Residential Phases I, II, III, IV, V-A, V-B, VIGolf/Resort Clubhouse Phase

Golf/Resort Clubhouse Phase

ATTACHMENT NO. 1-C

PURCHASE PRICES BY PHASE

Hotel Phase Site: $5,500,000.00 in the aggregate, or $311,262 per acre or portion thereof (based on 17.67 aggregate acres)

Golf/Resort Clubhouse Phase: $311,262 per acre or portion thereof

Timeshare Phases:

The Developer shall close on Timeshare land by Timeshare Phase, in an order selected by the Developer, per the Timeshare Phasing Schedule on the Vesting Tentative Map. The Purchase Price for all the Timeshare Phases is $6,150,000 in the aggregate, or, separately, $318,158 per acre or portion thereof (based on 19.33 aggregate acres) based on Phases acquired.

Phase	Acreage
I (A1)	2.99
II (A2)	1.72
III (A3)	1.80
IV (B1)	3.38
V (B2)	2.34
VI (B3)	2.31
VII (B4)	1.23
VIII (C1)	1.92
IX (C2)	1.64

Residential Lot Component Base Purchase Price*:The purchase price shall be $75,000.00 per Residential lot. Maximum price payable for 90 lots is $7,125,000.

90 residential lots at base price of $75,000/lot** If the Entitlement and Project Conditions, as amended from time to time, permit the development by Developer of more residential lots, then the Purchase Price for the residential lots shall be adjusted as follows. For each Residential Phase in which the number of residential lots increases, the new Purchase Price for each lot shall be calculated by multiplying the original number of lots in the Phase by $75,000 and dividing by the number of new lots. For example, if a particular phase is changed from 20 to 24 lots, the purchase price per lot would be 20 times $75,000 divided by 24, or $62,500 per lot. The intention is that the City would receive the same amount, in the aggregate, as the base purchase price.

Except as otherwise provided in Sections 3.9, the Developer shall close on Residential lots (90 lots only) by Residential Phase, in an order selected by the Developer, per the Residence Phasing Schedule on the Vesting Tentative Map (as modified from time to time in connection with the submission of Final Maps):

Phase I
Phase II
Phase III
Phase IV
Phase V-A
Phase V-B
Phase VI

The Profit Participations with respect to the Residential Phase sites shall be paid in addition to the purchase prices for the Residential Phase sites calculated in accordance with this Exhibit, but shall be deemed to be a deferred portion of the purchase prices for the Residential Phase sites as provided in Section 8.3.3.) The purchase price for each Phase shall also be subject to increase, but not decrease, as provided in the last paragraph of Section 11.3 of the Agreement (which provides for increases to appraised fair market value in the event of extended delay in closing).

**In connection with the development of Residential Phases IV and V on the Vesting Tentative Map, the number of Lots was reduced by two from the number of Lots indicated on the Vesting Tentative Map. Accordingly, an additional two Lots may be included in connection with the recording of the Final Map(s) for subsequent Phases.

ATTACHMENT NO. 1-D

ENTITLEMENT CONDITIONS

PROJECT CONDITIONS[1]

APPLICABLE TO ALL COMPONENTS AND PERMITS

1. AGREEMENT TO ACCEPT CONDITIONS. These approvals shall have no force or effect unless and until the Applicant executes a certificate of acceptance of these Project Conditions in a form acceptable to the City Manager.

2. CONFORMANCE OF PLANS. Plans submitted for a Building Permit shall substantially conform to the VTM dated August 2004 and related plans and exhibits identified as "Seaside Resort", stamped "Received July 14, 2004" except as modified by the Project Conditions.

3. SUCCESSORS IN INTEREST. The approvals granted shall run with the land and shall be valid for the Applicant's successors in interest, except if a use authorized by a conditional use permit has been discontinued or modified for a period of one year, then such original use shall not be reestablished unless it is authorized by a new conditional use permit under new proceedings.

4. DEVELOPMENT STANDARDS. The uses and development of the Project site shall conform to the uses and development standards contained in applicable sections of the Seaside Municipal Code that were in effect at the time of acceptance by the City of the Project applications as complete, except that amendments to the Municipal Code amending Chapter 17.04 that add a definition of timeshare and add Chapter 17.43 establishing standards for timeshare projects shall apply to the Project site and its development.

5. INDEMNIFICATION. The Applicant agrees as a condition and in consideration of the approval of these approvals that it shall defend, indemnify and hold harmless the City of Seaside or its agents, officers and employees from any claim, action or proceeding against the City or its agents, officers or employees to attack, set aside, void or annul this approval, which action is brought within the time period provided for under law, including but not limited to, Government Code Section 66499.37, as applicable. The Applicant shall reimburse the City for any court costs and attorney's fees that the City may be required by a court to pay as a result of such action. City may, at its sole discretion, participate in the defense of such action; but such participation shall not relieve Applicant of his obligations under this condition. An agreement to

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[1] A. Cross-references between Project Conditions and Environmental Mitigation Measures contained in the Project EIR are indicated in parentheses at the end of the affected Project Conditions, e.g. (MM 38). In some cases Environmental Mitigation Measures in the Project Conditions have been edited for brevity and consistency of style. Should a difference of interpretation between the text of a Project Condition and its counterpart Environmental Mitigation Measure occur, the Environmental Mitigation Measure shall control. In the event of any further remaining ambiguity, the ambiguity shall be resolved by the Community Development Director. Conditions not marked with an "MM" notation are not CEQA mitigation measures, and do not require monitoring or reporting under the CEQA Mitigation Monitoring and Reporting Program.

B. If any changes to the entitlements are approved, then the parties shall replace this Attachment No. 1-D with a revised Attachment No. 1-D that reflects any changes to the entitlement conditions.

this effect shall be recorded upon demand of City Council concurrent with the issuance of permits or use of the property, whichever occurs first and as applicable. The City shall promptly notify the Applicant of any such claim, action or proceeding, and the City shall cooperate fully in the defense thereof. If the City fails to promptly notify the Applicant of any such claim, action, or proceeding or fails to cooperate fully in the defense thereof, the Applicant shall not thereafter be responsible to defend, indemnify, or hold the City harmless.

6. MITIGATION MONITORING AND REPORTING. The mitigation measures set forth in the EIR as necessary to mitigate or reduce significant effects on the environment shall be implemented in the manner set forth in the Mitigation Monitoring and Reporting Program established for the Project by the City pursuant to California Public Resources Code Section 21081.6 and CEQA Guidelines Section 15097. The Program is provided as Exhibit G to Planning Commission Resolutions No. 04-36 and 04-37 and is incorporated herein by this reference.

7. COMPLIANCE WITH SECOND AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT (DDA). The Applicant shall comply with the terms and conditions of the DDA by and between the City of Seaside and Applicant.

8. ACCESS. For purposes of assuring compliance, the Applicant, agents, representatives or their assignees agree not to deny or impede reasonable access to the subject property by City employees in the performance of their duties except as necessary for health and safety.

9. TIME LIMITATIONS. Except as otherwise extended by Condition 10 of these Project Conditions, the Project Approvals shall be subject to the following time limitations:

(a) The Site Plan Review Approval (SPR-01-03) and the Design Review Approval (BAR-01-27) shall become null and void with respect to those structures within the scope of those approvals for which a building or grading permit has not been issued and construction on that structure has not commenced within the time period specified in the Schedule of Performance within the DDA.

(b) The Conditional Use Permits for the Timeshare Component (UP-01-20) and the Residential Component (UP-01-21) shall become null and void with respect to those improvements within the scope of those approvals for which a building or grading permit has not been issued and construction on that improvement has not commenced within one-year of the effective date of those Permits or within such longer period of time as may be specified in the Seaside Municipal Code, except that these Conditional Use Permits shall automatically be extended for sequential one-year periods of time up to, but not to exceed, the time periods specified in the Schedule of Performance in the DDA.

(c) The Conditional Use Permit for on-sale of alcoholic beverages (UP-04-22) shall become null and void if the use has not commenced within one-year of the effective date of that Permit or within such longer period of time as may be specified in the Seaside Municipal Code, except that this Conditional Use Permits shall automatically be extended for sequential one-year periods of time up to, but not to exceed, the time periods specified for completion of the Hotel Component of the Project as provided in the Schedule of Performance in the DDA.

(d) The Vesting Tentative Map shall have an initial term of two (2) years measured from the effective date of this approval, unless extended by operation of, or pursuant to, the terms of the Subdivision Map Act or the City's Subdivision Ordinance. Within that initial period of time, a Final Map for at least one phase of the Property subject to the Vesting Tentative Map shall be timely filed and deemed complete by the City. Thereafter, a Final Map or Final Maps shall be timely filed and deemed complete for the rest of the Property before the expiration of the remaining unexpired term of the Vesting Tentative Map as provided by the Subdivision Map Act.

10. TOLLING OF TIME LIMITATIONS. Time limits for commencement of an activity or use under any Project approval set forth in state law or the Municipal Code shall be automatically tolled during the pendency of litigation, referendum, or other action seeking to invalidate or set aside any Project-related approval. Application for tolling of any requirement for any other reason shall be made by the Applicant, its successors or assigns, to the City Manager. A determination on a request for tolling shall be made by the City Manager in consultation with the City Attorney.

11. SUBSEQUENT APPLICATIONS – GENERAL. The Municipal Code requires that separate applications eventually be made by owners of residential lots on which homes would subsequently be constructed, and by the golf course operator for the relocated golf course maintenance building. Such applications shall be subject to review and consideration by the applicable body or official specified by the Municipal Code, including consideration of building elevations, fencing, and landscaping, and shall incorporate the requirements of applicable Project Conditions enumerated herein, prior to approval of those applications.

12. SUBSEQUENT APPLICATIONS - AFFORDABLE AND WORKFORCE HOUSING. The Applicant shall apply to the City for a housing project to satisfy the affordable housing requirement of the residential component and the workforce housing requirement of the hotel component of the Project. Said requirements shall be satisfied at the SunBay Apartment site adjacent to the golf course parcel and shall utilize the existing 21 acre feet per year (afy) water allocation of Southwest SunBay Land Company at that site, unless an alternate site is authorized in writing by the City Manager. Unless otherwise provided in the DDA, the Applicant shall file an application(s) with the City for the affordable housing and workforce housing development no later than the filing for the first Final Map for any portion of the Project. The application shall demonstrate to the satisfaction of the City Manager that the proposed project produces the number of deed restricted affordable units required to meet the City's 20% affordable requirement for the Residential Component of the Project plus an additional unspecified number of workforce units within FORA's flexible target range (1% - 20% in addition to the City's affordable unit requirement) as may be constructed within the assistance limit of the City, as set forth in the DDA. Developer shall construct or provide the affordable units required to satisfy the requirements of the Residential Component and make them available for leasing by no later than the earlier of: (i) the date of the close of escrow for the Residential Component phase that includes the 80th residential lot; or (ii) the date that is six (6) years after the first close of escrow

(i.e., the date of the first acquisition by Developer of any portion of any portion of the Property). Developer shall construct or provide the workforce units required to satisfy the requirements for the Hotel Component and make them available for leasing by no later than the date that the Hotel receives a Certificate of Completion under the DDA.

13. BUSINESS OPERATIONS TAX CERTIFICATE. Contractors and subcontractors involved in construction of the Project shall secure a Business Operations Tax Certificate (Business License) from the City prior to commencing work and shall maintain said Certificate in force for the duration of the contract.

14. FORT ORD REUSE AUTHORITY (FORA) REQUIREMENTS. The Applicant shall acknowledge that the City's approval of the Project is subject to the requirements of FORA and shall agree to comply with applicable FORA requirements, including but not limited to compliance with applicable reuse plan FEIR mitigation measures and monitoring plan requirements, master resolution requirements and payment of development fees. Development fees shall be paid in the amount and manner set forth in the "Notice of Special Tax Lien – Fort Ord Reuse Authority Basewide Community Facilities District" (CFD).

15. FISH AND GAME FEE. The Applicant shall pay a fee to be collected by the Clerk of the County of Monterey in the amount of $875 pursuant to State Fish and Game Code section 711.4. This fee shall be paid on or before the filing of the Notice of Determination.

16. CITY APPLICATION AND PROCESSING FEES. The Applicant shall be responsible to pay fees for City services necessary to implement the Project in accordance with: (i) the then-current "Fees and Charges" fee schedule adopted pursuant to Chapter 3.28 of the Municipal Code and updated annually as part of the City's annual budget process; and (ii) building and grading permit-related fees in the most recent version of the Uniform Building Code(s) adopted by the City. To the extent that construction inspection services are not addressed in either (i) or (ii) above, the Applicant shall pay for the cost of these services as related to the Hotel Component in accordance with City policy and past practice. City holds a Good Faith Deposit in the amount of one hundred fifty thousand ($150,000.00). The Good Faith Deposit account shall accrue interest (which will become part of the Good Faith Deposit) and will be used and applied as provided for in this Agreement.

17. FINANCING OF IMPROVEMENTS AND SERVICES THROUGH AN ASSESSMENT DISTRICT(S) AND/OR COMMUNITY FACILITY DISTRICT(S). This Project and these Project Conditions call for the construction and acquisition of certain specified public improvements and equipment, including, but not limited to, neighborhood and community parks, fire station, fire apparatus, police equipment, and emergency access and the payment of various fair share development impact fees to mitigate the impact of the project on various environmental resources, public facilities and public services (Mitigation Measures MM 32, 33, 34, 35, 36, 38, 41 and 42). As a means of financing required capital improvements, the Applicant, no later than at the time the first Final Subdivision Map is submitted to the City for approval, may request, and the City will initiate the steps required to consider the consummation, pursuant to Government Code Section 66462 (a)(2), of proceedings under an appropriate special assessment act(s) and/or the Mello-Roos Community Facilities Act of 1982 (Government Code

Sections 53311 et seq.) for the purpose of forming one or more districts, levying a special tax and/or special assessment against the properties comprising the project site, and issuing bonds to finance the eligible capital improvements. If more than one option is available, the City will consult with Applicant and discuss their preference. If the terms and conditions for the formation of the District(s) are not specified in the DDA, they shall be determined and agreed upon, if at all, prior to the approval of the first Final Map.

18. PARK FEE. The Applicant shall pay a fair share development fee in the amount of $381,001.00, as specified in Table 12 of the EMC Planning Group, Inc. Seaside Resort Fee Study dated May 23, 2005, for the purpose of providing and developing Neighborhood and Community Parkland as required in the Fort Ord Reuse Plan and the Seaside General Plan. The fee is attributable only to the Residential Component of the Project and constitutes $3,048.00 per residential lot. The fees proportionally attributable to each residential phase of the Project shall be the per lot fee ($3,048.00), multiplied by the total number of residential lots on the Final Map for that phase, which amount shall be paid prior to the City's approval of the Final Map for each residential phase of the Project. (MM 41 & 42)

19. NOT USED (combined with 18).

20. FIRE FEE. The Applicant shall pay a fair share development fee in the amount of $324,314.00, as specified in Table 12 of the EMC Planning Group, Inc. Seaside Resort Fee Study dated May 23, 2005 for the purpose of constructing a fire station, providing fire apparatus including a standard pumper engine and quint engine (or equivalent) available for use on the former Fort Ord within the City limits. The fee attributable to the Hotel Component shall be $137,006.00 and shall be paid prior to the recordation of the Final Map that contains the hotel project. The fee attributable to the Timeshare Component shall be $70,525.00, shall be paid in increments of $7,836.11 per phase based on the nine phases of the Timeshare Component, and shall be paid prior to the City's approval of the Final Map that contains the phase or phases of the timeshare component. The fees proportionally attributable to the Residential Component of the Project shall be $116,783.00, shall be paid in increments of $934.26 per residential lot, and shall be paid prior to the City's approval of the Final Map that contains the residential lot. (MM 32 & 33)

21. NOT USED (combined with 20).

22. POLICE FEE. The Applicant shall pay a fair share development fee in the amount of $47,040.00, as specified in Table 12 of the EMC Planning Group, Inc. Seaside Resort Fee Study dated May 23, 2005 for the purpose of expanding Police Department headquarters office space, expanding the wireless communications system, constructing a police substation and providing patrol vehicles and officers to serve the former Fort Ord within the City limits. The fee attributable to the Hotel Component shall be $15,384.00, which shall be paid prior to the City's approval of the Final Map that contains the hotel project. The fee attributable to the Timeshare Component shall be $7,914, shall be paid in increments of $879.33 per phase based on the nine phases of the Timeshare Component, and shall be paid prior to the City's approval of the Final Map that contains the phase or phases of the Timeshare Component. The fees proportionally attributable to the Residential Component of the Project shall be $23,742.00, shall be paid in

increments of $189.94 per residential lot, and shall be paid prior to the City's approval of the Final Map that contains the residential lot. (MM 34, 35 & 36)

23. NOT USED (combined with 22)

24. NOT USED (combined with 22)

25. EMERGENCY VEHICLE ACCESS (EVA) FEES. The Applicant shall pay a fair share fee of $26,717.00 for the Paralta Avenue EVA and $78,243.00 as an in-lieu fee for the Yosemite Avenue EVA, as specified in Table 12 of the EMC Planning Group, Inc. Seaside Resort Fee Study dated May 23, 2005. The fees attributable to the Hotel Component shall be $50,113.00 and shall be paid prior to the City's approval of the Final Map that contains the hotel project. The fees attributable to the Timeshare Component shall be $25,806.00, shall be paid in increments of $2,867.33 per phase based on the nine phases of the Timeshare Component, and shall be paid prior to the City's approval of the Final Map that contains the phase or phases of the timeshare component. The fees proportionally attributable to the Residential Component of the Project shall be $29,041.00, shall be paid in increments of $232.33 per residential lot, and shall be paid prior to the City's approval of the Final Map that contains the residential lot. (Note: In addition to the fair share fees, Section 7.3 of the Seaside Highlands Reimbursement Agreement dated August 21, 2003 identified a reimbursement for EVA fees to be paid by the next benefited development project, which amount is specified in Table 12 of the EMC Planning Group, Inc. Seaside Resort Fee Study dated May 23, 2005 as being $394,590. Taking into account the fair share fee payable by this project condition, the remaining amount to be reimbursed, as determined by the Seaside Resort Fee Study is $289,630. This reimbursement is addressed in a Reimbursement Agreement attached to the DDA and that Agreement includes a mechanism that allows the Applicant to recover some of this reimbursement from future benefited developments.) (MM 38 & 39)

26. GATEWAY IMPROVEMENTS. The Applicant shall pay a fair share fee of $579,684, as specified in Table 12 of the EMC Planning Group, Inc. Seaside Resort Fee Study dated May 23, 2005. The fees attributable to the Hotel Component shall be $307,047.00 and shall be paid prior to the City's approval of the Final Map that contains the hotel project. The fees attributable to the Timeshare Component shall be $103,231.00, shall be paid in increments of $11,470.11 per phase based on the nine phases of the Timeshare Component, and shall be paid prior to the City's approval of the Final Map that contains the phase or phases of the timeshare component. The fees proportionally attributable to the Residential Component of the Project shall be $169,406.00, shall be paid in increments of $1,355.25 per residential lot, and shall be paid prior to the City's approval of the Final Map that contains the residential lot.

27. INTEGRATED CONSTRUCTION MANAGEMENT PLAN. Applicant shall prepare an integrated Construction Management Plan that takes into account construction and timing requirements of Resort Project components and relocation requirements for existing golf course buildings and facilities (e.g. clubhouse, cart storage, driving range, maintenance building and golf hole relocations). The Plan shall minimize, to the maximum extent feasible, disruption of public access to the existing golf course operation, economic costs of construction disruption to the golf course operator and the City, and the duration of temporary closures of existing

facilities. This Plan shall be prepared in cooperation with the City and the golf course operator, reviewed by the Public Works Director, and approved by the City Manager prior to the issuance of grading or building permits for any component of the Project.

28. CONSTRUCTION TRAFFIC MANAGEMENT. The Applicant shall prepare a Construction Traffic Management Plan. The plan shall establish preferred access routes for the construction workforce and shall designate required truck routes and hours of truck travel during construction of the proposed Project. Trucks shall haul debris from the Project site to the Marina Landfill or other acceptable landfill, except materials that are not accepted at the Marina Landfill or other acceptable landfill may be brought to the nearest acceptable disposal location for that material. The plan shall minimize the use of Coe Avenue for construction workforce access and truck routing to the extent feasible. The plan shall be reviewed and approved by the Public Works Director prior to issuance of a grading or building permit. The plan shall be subject to reasonable and feasible modification by the Public Works Director as required during the course of construction.

29. CONSTRUCTION EMERGENCY ACCESS. The Applicant shall prepare a construction emergency access plan that ensures adequate access for emergency vehicles to all areas of the Project and existing golf course facilities during construction. Access roads, if not paved, shall be able to accommodate the weight of a typical fire engine (approximately 41,000 pounds). The plan shall be prepared with the input of the Fire and Police Chiefs, and shall be approved by them prior to commencement of construction.

30. CONSTRUCTION SAFETY. The Project area shall be fenced, as necessary, during construction for safety purposes and to keep out unauthorized personnel, as determined by the Public Works Director.

31. HAZARDOUS MATERIALS. Hazardous materials brought on to the site during construction shall be safely stored in accordance with the governmental agency regulating the material, and shall be removed from the site when no longer required, or upon completion of construction, whichever occurs first.

32. CONSTRUCTION HOURS. The following language shall be included on plan specifications and in any permits issued for the Project:

> Noise generating construction activities are limited to weekdays between 7:00 AM and 7:00 PM, Saturdays between 9:00 AM and 5:00 PM, Sundays and holidays between 10:00 AM and 5:00 PM. Once per week, or other time frame as approved by the Public Works Director, the lead contractor shall provide a description of the work to be performed and the construction schedule for the next two-week period to the Public Works Director, the Army Directorate of Environmental and Natural Resources Management and the Monterey Peninsula Unified School District administration during demolition, grading and construction of improvements. (MM 29)

The Public Works Director shall have the discretion to modify the time and/or location of noise generating construction activities, provided however that such discretion shall not be exercised to reduce the hours of operation in this condition or to significantly delay the completion of the Project.

33. CONSTRUCTION EQUIPMENT NOISE REDUCTION. Construction equipment shall be properly outfitted and maintained with noise reduction devices to minimize construction-generated noise in accordance with the standards presented in Table 18 on page 2-84 of the Draft EIR, or equivalent standard if no standard is presented in Table 18. Wherever feasible, noise-generating equipment shall be shielded from nearby sensitive receptors by noise attenuating buffers such as structures or trucks. Stationary construction equipment shall be centrally located on site at the greatest distance possible from nearby noise-sensitive receptors. (MM 30)

34. DUST CONTROL. Project Improvement Plans shall contain provisions for dust control acceptable to the Public Works Director prior to issuance of a building permit and shall include all or some of the following measures, as necessary to adequately control dust.

a) Water all active portions of the construction site at least twice daily using only non-potable water on an as needed basis if necessary and feasible,

b) Suspend all excavation and grading operations when wind speeds exceed 15 miles per hour averaged over one hour, if watering activities are inadequate to control airborne dust,

c) Replace ground cover or apply MBUAPCD-approved chemical soil stabilizers according to manufacturer's specifications to all inactive portions of the construction site (previously graded areas inactive for four days of more), when airborne dust conditions are visible,

d) Apply water two times daily or chemical stabilizers according to manufacturer's specifications to all inactive portions of the construction site (previously graded areas inactive for four days or more), when airborne dust conditions are visible,

e) Sufficiently water or securely cover all material transported off-site and adjust on-site loads as necessary to prevent airborne dust conditions. Haul trucks shall maintain enough freeboard to prevent airborne dust conditions,

f) Plant vegetative ground cover in, or otherwise stabilize disturbed areas as soon as grading and construction activities in those areas are completed,

g) Cover material stockpiles that remain inactive for more than 72 consecutive hours,

h) Provide dust free stabilized surfaces at the exit of construction sites for all exiting trucks,

i) Sweep adjacent public streets at the end of each day if visible soil material is carried out from the construction site,

j) Limit traffic speed on all unpaved roads to 15 miles per hour or less,

k) Post a publicly visible sign that specifies the telephone number of the on-site contractor and person to contract regarding dust complaints. This person shall respond to complaints and take corrective action by the end of the same day if the complaint is received by 12:00 noon and within 24 hours if the complaint is received later than 12:00 noon. The phone number of the MBUAPCD shall be visible to ensure compliance with Rule 402 (Nuisance),

l) The grading contractor shall appoint a qualified site monitor to ensure that the plan is implemented, or

m) Limit the area of grading to 2.2 acres per day during earthmoving efforts (grading and excavation) and 8.1 acres per day with minimal earthmoving (finish grading). The number of acres may be increased if direct emissions of PM10 do not exceed MBUAPCD's threshold of significance based on MBUAPCD approved dispersion modeling. The use of these limits is intended to relieve the applicant of the need to apply (b) through (l). (MM 8)

35. CONSTRUCTION MAINTENANCE AND RECYCLING. The construction site shall be maintained in a clean and orderly manner on a daily basis. Project materials and waste generated or removed during the construction of the Project shall be recycled in accordance with the State and City requirements.

36. ARCHAEOLOGICAL RESOURCES. Because of the possibility that significant buried cultural resources may be found during construction, the following language shall be included in construction contracts:

If historical or unique archaeological resources are accidentally discovered during construction, work shall be halted at a minimum of 200 feet from the find and the area shall be staked off. The project proponent shall notify the Director of the Archaeological Regional Research Center to arrange for an immediate evaluation of the find by a qualified archaeologist. The qualified archaeologist shall determine whether or not the site is a historical resource as defined in CEQA Guidelines section 15064.5(a). If it is determined that the site is a historical resource, the City shall refer to the provisions of CEQA Guidelines section 15064.5 and the provisions of section 15126.4 of the Public Resources Code to determine the significant environmental effects of the Project on this historical resource. If the archaeological site does not meet the criteria defined in CEQA Guidelines section 15064.5(a), but does meet the definition of a unique archaeological resource in Public Resources Code section 21083.2, the preferred project site shall be treated in accordance with the provisions of this section. If it is found that the Project will cause damage to a unique archaeological resource, the City shall require that reasonable efforts be made to permit any or all of these resources to be preserved in place or left in an undisturbed state. Some of the measures to be taken in the event of a discovery include: planning future construction to avoid the archaeological site; deeding archaeological sites into permanent conservation easements; capping or covering archaeological site with a layer of soil before building on the sites; and/or planning parks, green space or other open space to incorporate the archaeological sites in the site plan. (MM 20)

37. DISCOVERY OF HUMAN REMAINS. Because of the possibility of accidental discovery or recognition of any human remains during construction, the following language shall be included in construction contracts, in accordance with CEQA Guidelines section 15064.5(e):

> If human remains are found during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent human remains until the City Police Department is notified and contacts the coroner of Monterey County to determine that no investigation of the cause of death is required. If the coroner determines the remains to be Native American, the coroner shall contact the Native American Heritage Commission within 24 hours. The Native American Heritage Commission shall identify the person or persons it believes to be the most likely descendent from the deceased Native American. The most likely descendent may then make recommendations to the landowner or the person responsible for the excavation work, for means of treating or disposing of, with appropriate dignity, the human remains and associated grave goods as provided in Public Resources Code Section 5097.98. The landowner or his authorized representative shall rebury the Native American human remains and associated grave goods with appropriate dignity on the property in a location not subject to further disturbance if: a) the Native American Heritage Commission is unable to identify a most likely descendent or the most likely descendent failed to make a recommendation within 24 hours after being notified by the commission; b) the descendent identified fails to make a recommendation; or c) the landowner or his authorized representative rejects the recommendation of the descendent, and the mediation by the Native American Heritage Commission fails to provide measures acceptable to the landowner. (MM 21)

38. ORDNANCE AND EXPLOSIVES REVIEW. The Presidio of Monterey, Directorate of Environmental and Natural Resources Management (DENR) shall review the Project site, prior to issuance of a grading or building permit, to determine if the Project is planned within known or potential Ordnance and Explosives (OE) areas. If the DENR determines that the Project is within such an area, then as part of construction plan specifications, the project contractor shall have an U.S. Army-approved plan for OE avoidance, and a trained OE specialist shall perform the avoidance. As part of construction plan specifications and the plan for OE avoidance, the contractor, construction crews, and subcontractors shall be required to stop work and contact the Federal police when ordnance is found. (MM 24)

39. ORDNANCE AND EXPLOSIVES RECOGNITION TRAINING. Construction supervisors and crews shall attend a U.S. Army sponsored OE safety briefing prior to commencement of construction. This briefing shall identify the variety of OE that is expected to exist on the installation and the actions to be taken if a suspicious item is discovered. This requirement for briefing shall be included in construction documents. (MM 25)

40. WILDLIFE RELOCATION. Special-status wildlife species present in the Project area shall be salvaged and relocated from the Project area, in cooperation with USFWS and CDFG. Special-status wildlife species potentially located in the Project area include black legless lizard, coast horned lizard, and Monterey dusky-footed woodrat. A Memorandum of Understanding (MOU) with CDFG shall be obtained to provide for a wildlife biologist authorized to salvage and relocate special-status wildlife species from the construction zone that may be uncovered during earthmoving activities. Recovered individuals shall be placed in appropriate habitat outside of the Project area. (MM 13)

41. SPINEFLOWER SURVEYS. During the appropriate timeframe in the spring following project approval, in consultation with the Directorate of Environmental and Natural Resources Management, the Applicant shall have a survey for Monterey spineflower conducted by a qualified biologist to confirm whether Monterey spineflower occurs on the southwestern portion of the Project site. If Monterey spineflower is not observed on the Project site, no further action shall be required. If Monterey spineflower is observed on the Project site, a seed bank salvage program shall be prepared to address material retrieval, material storage, and timing and location of future use. (Final EIR MM 11a)

42. RAPTOR SURVEYS. A qualified biologist shall conduct a pre-construction survey of trees located in and within 200 feet of the construction zone to determine if active raptor nests are present if construction is scheduled during the raptor nesting and/or breeding season (generally March 1 through August 1). If active nests are found within the survey area, clearing and construction within 200 feet of the active nest(s) shall be postponed or halted until the nest(s) are vacated and juveniles have fledged and there is no evidence of a second attempt at nesting, at the discretion of the biologist. Alternatively, tree removal and other construction activities can be scheduled to avoid the nesting season. Language to this effect shall be included in construction documents. (MM 14)

43. BIOLOGICAL TRAINING. A qualified biologist shall be retained to conduct a contractor education program to inform workers of sensitive biological resources in the area, the potential presence of special-status species and their protected status, work boundaries, and measures to be implemented to avoid loss of these species during construction, prior to commencement of construction. (MM 15)

44. CONSTRUCTION FOOD TRASH. Food-related trash items shall be enclosed in sealed containers and regularly removed from the Project area to avoid attracting wildlife to the Project area during construction. Language to this effect shall be included in construction documents. (MM 17)

45. CONSTRUCTION PET RESTRICTIONS. Pets brought on site by construction workers shall be confined to vehicles or building interiors, or leashed or tethered within areas disturbed by the construction. Language to this effect shall be included in construction documents. (MM 18)

46. PREMISES IDENTIFICATION. Approved numbers or addresses shall be placed on all new and existing buildings and/or signage at the street as to be plainly visible and legible from the street or road fronting the property. Numbers shall contrast with their background and be of a minimum four inches in height.

47. TRASH ENCLOSURES. The location of outdoor trash enclosures shall be indicated on Project Improvement Plans. Enclosures shall be constructed and screened in accordance with Section 17.52.080 of the Seaside Municipal Code.

48. CONSTRUCTION PERIOD REVEGETATION PLAN. A Revegetation Plan shall be prepared that provides for revegetation of bare and disturbed ground during construction in order to minimize the spread of invasive exotic species. The Plan shall be prepared and approved by the Public Works Director prior to commencement of grading and shall specify native plants as preferred stabilization materials. (MM 10)

49. LIGHTING PLAN. The Applicant shall prepare a Lighting Plan showing the location, design and materials of all proposed exterior lights (permanent and construction period). The Plan shall demonstrate that exterior lighting will be designed, positioned, and controlled to direct light downward and minimize light or glare on adjacent properties, minimize intrusion into habitat areas and maintain consistent intensity throughout the Project area. Street and parking lot lighting shall be of low stature and of a full cutoff design or include opaque shields to reduce illumination of the surrounding landscape. The Plan shall be reviewed and approved by the Board of Architectural Review and the Community Development Director prior to issuance of the first building permit for each component identified in the lighting plan. (MM 11)

50. MASTER SIGN PLAN. The Applicant shall prepare a Master Sign Plan showing the location, design, colors and materials of all proposed signage, including off-site project identification and directional signage. Signage shall be in conformance with the City's sign ordinance (Municipal Code Chapter 15.20) and shall be reviewed and approved by the Board of Architectural Review and the Community Development Director prior to issuance of the first building permit for each project component.

51. EMERGENCY VEHICLE TURNAROUNDS. Streets and linear parking areas shown on the Final Map for any phase of the Project shall either connect at their ends to another street or approved emergency access, or include either a cul-de-sac or hammerhead termination meeting the standards of the City subject to the review and approval of the Fire Chief and Public Works Director, (MM 40)

52. FIRE FLOW. Water system improvements shall be designed to meet fire flow standards as required and approved by the Fire Chief. Evidence shall be submitted to the Community

Development Director that proposed water system improvements have been approved by the Fire Chief prior to the issuance of a building permit.

53. FIRE HYDRANTS. The placement of fire hydrants shall be subject to the review and approval by the Fire Chief and Marina Coast Water District prior to issuance of a building permit. Water for structural fire protection during the construction period shall be available by method acceptable to the Fire Chief prior to structural framing of any buildings. The minimum single flow hydrant shall be 1,500 GPM at 20-PSI residual pressure. If fire hydrants are already in place, include civil drawings showing location of these hydrants with the building permit submittal.

54. FIRE HYDRANT LOCATION IDENTIFIER: The Applicant shall ensure that approved ("Blue Dot") fire hydrant location identifiers have been placed in roadways and driveways, as directed by the Fire Department, prior to final inspection and issuance of a certificate of occupancy.

55. AUTOMATIC SPRINKLER SYSTEM REQUIRED. Buildings in excess of 5,000 square feet shall be equipped throughout with an automatic fire sprinkler system. The fire sprinkler system shall be hydraulically designed per National Fire Protection Association (NFPA) Standard #13, 1999 Edition.

56. FINAL REQUIRED FIRE FLOW. Required fire flow may be reduced up to 50 percent in buildings equipped with fire sprinkler systems but, can be no less than 1,500 GPM. Therefore, the final required fire flow is 1,500 GPM at 20-PSI residual pressure. This flow shall be taken from any two fire hydrants, on or near the site so long as they are spaced at a minimum spacing of 250 feet.

57. TIMING OF REQUIRED WATER SUPPLY INSTALLATIONS. Required Fire Hydrant and Water Supply installations shall be in place, inspected, tested, and accepted by the Fire Department prior to commencement of combustible construction unless otherwise approved in writing by the Fire Chief. Bulk combustible construction materials may not be delivered to the construction site until installations are completed as stated above. Clearance for building permits may be held until installations are completed.

58. LOCATION OF REQUIRED FIRE PROTECTION EQUIPMENT. The location of Fire Hydrants, Fire Sprinkler System(s), Control Valves (PIV/OS&Y), Fire Department Connections (FDC) and Fire Alarm Equipment shall be reviewed and approved by the Fire Department prior to issuance of building permits. Permits are required for the installation of private water supply, tank, and hydrant systems and must be issued to contractors prior to the start of installations of such systems.

59. FIRE LANE MARKING. Fire lanes shall be appropriately marked and shall conform to Local Government Standards and Fire Department Standard Details and Specifications.

60. FIRE APPARATUS ACCESS ROADWAYS/DRIVEWAYS. The Applicant shall submit plans for required fire apparatus roadways/driveways for review and approval by the Fire Chief

prior to commencement of construction. Required fire apparatus roadway/driveway installations, up through first lift of asphalt, shall be in place, inspected, and accepted by the Fire Chief unless otherwise approved in writing by the Fire Chief prior to the commencement of combustible construction. Bulk combustible construction materials shall not be delivered to the construction site until fire apparatus access installations are completed. During construction, emergency fire apparatus access roads shall be maintained clear and unimpeded. Issuance of building permits may be withheld until installations are completed.

61. STANDARDS FOR PUBLIC IMPROVEMENTS. The Applicant shall construct all public improvements in accordance with the latest City Standards and Specifications. Should the Applicant propose the use of a standard for any improvement that differs from the standards presently in the City's codes and ordinances, such alternative standard must be presented to and approved by the Public Works Director. The Applicant shall cause Standard Specifications and Standard Drawings to be prepared in a format to be approved by the Public Works Director.

62. CONSISTENCY WITH APPLICABLE AGENCY AND DEPARTMENT REQUIREMENTS. The Project shall comply with the requirements of the Monterey County Health Department and the City.

63. UNDERGROUNDING OF UTILITIES. All new public and private utilities for the Project that are located within the Project site, including utility lines, transformers, cable boxes, telephone facilities, and other such joint trench improvements shall be underground within public utility easements. Relocations, upgrades, or installations of existing utilities shall be shown on joint trench plans. Cable and telecommunications conduit shall be appropriately sized to accommodate potential future telecommunication or other information conveyance uses. Equipment or facilities that cannot feasibly be placed underground shall be appropriately screened with vegetation or attractive fencing, subject to approval by the Public Works Director. All existing overhead utility lines and poles within the Project site that provide service to the Project site shall be removed and replaced in underground facilities in a manner acceptable to the applicable utility company. No pad-mounted transformer pedestals will be allowed.

64. WATER AND SEWER SYSTEM IMPROVEMENTS. The Applicant shall enter into a "Construction and Transfer of Water, Sewer and Recycled Water Infrastructure Agreement" with MCWD. Said agreement shall set forth the general and specific terms for provision of water, sewer and reclaimed water service to the Project including design and construction of improvements, metering of use, payment of fees, permits and easements, inspection, and conditions of service. Improvement Plans for water, sewer, and reclaimed water facilities shall be prepared and signed by a registered civil engineer licensed by the State of California and reviewed and approved by Marina Coast Water District ("MCWD") and the California Department of Health Services prior to the recordation of the Final Map for that phase.

65. USE OF ALTERNATE WATER SOURCE WHEN AVAILABLE ADJACENT TO SITE. The Applicant shall design and construct landscape irrigation systems so they can be readily converted to use an alternate water source when an alternate water source becomes available adjacent to the site.

66. RECLAIMED WATER. Landscape irrigation systems shall be designed and installed by the Applicant utilizing American Water Works Association (AWWA) pipe for use in reclaimed water systems, connected with a backflow preventer to a potable water system. The system shall be designed to applicable standards and in such a way that should reclaimed water become available for irrigation, the disconnect from the potable water system to the reclaimed water system can be accomplished at minimal cost to the property owner, property owners' association, or homeowners' association. Upon conversion of the irrigation piping to a reclaimed or other non-potable water source, the irrigation system shall be completely independent of the potable system, and no connections between the two systems shall exist. This irrigation design shall be included in the Project Improvement Plans prepared prior to approval of the first building permit, subject to review and approval of the Community Development Director, the Manager of the Marina Coast Water District, and the Monterey County Department of Environmental Health. (MM 46)

67. WATER CONSERVATION AND METERING. Water connections shall be metered as required by section 3.36.030(W) of the MCWD ordinances. Water fixtures installed in structures shall be low-flow designs that comply with the requirements of the City's Water Conservation Ordinance and Chapter 3.36.030(S) of the MCWD ordinances. Water conservation devices required by the City and MCWD include shower and faucets flow restrictors (2.5 gallons per minute), ultra-low flow flush toilets (1.6 gallons per flush) and insulated recirculating hot water systems. Landscape irrigation shall use low flow irrigation devices consistent with the state of the art for landscape irrigation systems. Landscape irrigation plans shall be approved by MCWD and the Public Works Director prior to being installed. The Public Works Director shall monitor annual water reports from the MCWD indicating the amount of water consumed by the Project.

68. GRADING PLANS. Grading plans shall be prepared and signed by a registered civil engineer licensed by the State of California. Grading plans shall be prepared and implemented in conformance with the Uniform Building Code and Chapter 15.32 of the Municipal Code. Grading plans shall demonstrate that grading will complement surrounding topography, minimize habitat disturbance and utilize landform grading techniques to the greatest extent feasible and shall be reviewed and approved by the Public Works Director and the Building Official prior to commencement of grading or site preparation activities. (MM 9)

69. GRADING LIMITS. Prior to commencement of grading, grading limits shall be temporarily delineated (e.g., staked or flagged) to avoid inadvertent removal of plants or habitat degradation of areas not proposed for grading and construction. No earthmoving, dumping of spoils, storage of construction materials, staging of equipment, or disposal of construction-related spoils shall be allowed outside the delineated area. (MM 16)

70. GEOTECHNICAL REPORT. The Applicant shall have an engineering geotechnical report prepared to address site preparation measures and foundation designs appropriate to the potential dynamic densification characteristic of project site soils subject to the review and approval of the Public Works Director. The report shall include, but not be limited to clearing and site preparation, reworking sub-grade preparation, fill material, compaction, backfill, cut and fill slope drainage and percolation. (MM 22)

71. ELEVATION SURVEY. The Applicant shall provide to the Public Works Director a stamped, signed elevation and property line survey prepared by a licensed land surveyor prior to the issuance of a grading or building permit.

72. EROSION CONTROL. Prior to the issuance of a demolition, grading or building permit, Improvement Plans, including Erosion Control Plans, shall be submitted for approval to the public Works Director. The Improvement Plans shall include design of the storm water drainage system to prevent the flow of mud or dirt from the Project site onto adjacent properties, and demonstrates that measures will be taken to ensure that on-site drainage systems are designed to capture and filter out urban storm water pollutants to the extent feasible. To implement this condition, the Applicant shall, prior to the issuance of a demolition or grading permit, prepare a Storm Water Pollution Prevention Plan (SWPPP) in accordance with the Clean Water Act, and the applicable NPDES Storm Water Permit and an Erosion Control Plan. Before initiation of demolition or grading, the Applicant shall implement the provisions of the SWPPP and the Erosion Control Plan. (MM 23)

73. NPDES PERMIT. The Applicant shall file a Notice of Intent with the State Water Resources Control Board and submit proof of receipt of a National Pollution Discharge Elimination Systems (NPDES) permit, prior to the issuance of a demolition, grading or building permit, pursuant to the Federal Clean Water Act and shall prepare the associated Storm Water Pollution Prevention Plan (SWPPP) and comply with best management practices set forth in the SWPPP. (MM 28)

74. DRAINAGE PLAN. Drainage facility plans and hydraulic calculations for the Project shall be prepared and signed by a registered civil engineer licensed by the State of California and reviewed and approved by the Public Works Director prior to issuance of a grading permit. Increases in storm water runoff attributable to the Project shall be retained and percolated within the golf course parcel. Storm water retention and percolation systems shall be designed for a 100-year storm event. Storm drain inlets shall incorporate filtration devices. Percolation tests shall be required at each infiltration site. All aspects of the Drainage Plan shall be approved by the Public Works Director prior to approval of the Final Map for the affected area.

75. STORM WATER SYSTEM MAINTENANCE. The Applicant shall be responsible for maintenance of the storm water drainage improvements shown on the vesting tentative map on a regular basis, to remove pollutants, reduce high pollutant concentrations, prevent clogging of the storm water drainage system, and maintain the catch basins sediment trapping capacity and storm drain inlet filter devices. The Applicant, its successors or assigns (HOA, facility operator, and/or owner) shall perform an annual inspection and submit a certificate of compliance from a registered Civil Engineer certifying that all storm drain facilities are properly maintained. Such certificate of compliance shall be submitted to the Public Works Director on September 1st of each year. Deficiencies, if any, shall be corrected prior to October 1st, to the satisfaction of the Public Works Director.

76. SEWER COLLECTION PIPES. The Applicant shall prepare a final engineering study to determine the need for upgrades of sewer collection pipes serving the Project subject to the review and approval of the Marina Coast Water District. If the study indicates that the collection

pipes are inadequate to accommodate anticipated daily or peak flow, the Applicant shall construct new or supplemental lines in those areas where the capacity is not adequate, subject to reimbursement from other beneficiaries (MM 45).

77. PARKING RESTRICTIONS. Parking shall not be allowed in areas that would impede emergency vehicle access as determined by the Fire Chief.

78. ALTERNATIVE TRANSPORTATION MEASURES. The Applicant shall incorporate the following measures into final Project designs to promote alternative modes of transportation to, from and within the Project:

a) Prior to issuance of a certificate of occupancy for the hotel, the Applicant shall provide bicycle racks at the main hotel, providing no fewer than 15 bicycle parking spaces,

b) Prior to issuance of a certificate of occupancy of each timeshare parcel, a sidewalk or pedestrian path shall be constructed to connect the timeshare units in Timeshare Parcel A and B to the clubhouse and hotel, and the timeshare units in Timeshare Parcel C with the path along McClure Way,

c) Prior to issuance of a certificate of occupancy for the hotel, the Applicant shall construct a bus turn out and associated street and curb improvements, a covered shelter, and a bench, to be located on the west side of General Jim Moore Boulevard immediately south of McClure Way, and a path connecting the bus turn out to the entrance of the remote parking lot. The Applicant shall construct the bus turn out in conformance with designs approved by the Public Works Director and constructed in conformance with Monterey-Salinas Transit District and City of Seaside standards,

d) Concurrently with the filing of the Final Map for the Residential Component of the Project, the Applicant shall dedicate right-of way on the east side of Monterey Road along the Monterey Road frontage of said Residential Components (between percolation pond #1 and Lot 85, and on Lots 30 and 33) for the provision of a bicycle/pedestrian access. The portion to be dedicated shall be sufficient to provide a right-of-way with a full width of 120 feet with 60 feet on each side of the centerline of Monterey Road; and

e) Prior to issuance of a certificate of occupancy, the Applicant shall provide shower facilities at the hotel, available for use by employees. (MM44)

79. WORK WITHIN PUBLIC STREETS AND RIGHTS-OF-WAY. Improvements made to public streets or within public rights-of-way shall require encroachment permits and shall be designed and constructed based on City Standards as determined by the Public Works Director, and shall be subject to prevailing laws including payment of prevailing wages.

80. LEVEL OF SERVICE (LOS) MONITORING OF INTERSECTIONS. The Applicant shall cause a signal warrant analysis to be prepared for the General Jim Moore Boulevard/McClure Way, General Jim Moore Boulevard/Coe Avenue, and Fremont Boulevard/Del Monte Boulevard intersections to determine, based on the standard Caltrans analysis methodologies then in effect, whether signal lights are warranted at those intersections, or additional turn lanes are warranted at the Fremont Boulevard/Del Monte Boulevard intersection. The signal warrant analyses shall be prepared one-year after the opening of the hotel, and every three years thereafter not to exceed 4 signal warrant analyses. If at the time the determination is made that any one or all of such improvements are warranted, funding for the particular improvement has been provided by inclusion in FORA's CIP fee program or a City Assessment District, or by another established funding mechanism, no payment for that funded improvement shall be required of the Applicant or its successor(s). If funding for one or all of said improvements has not been provided by these programs at or before the time the City determines, based on the signal warrant analysis, that the improvements are warranted, the Applicant or its successor(s) shall pay a pro rata share of the cost of the improvements not to exceed the amount of $242,617.00 for all of the improvements, as set forth in Table 12 of the EMC Planning Group, Inc. Seaside Resort Fee Study dated May 23, 2005, as such fees may be adjusted by the ENR Construction Cost Index to the date of determination that the improvements are warranted. The adjusted fee shall be paid within six months of the City's determination that the improvements are warranted. If one or more but not all of the improvements specified in this condition have been funded by means other than the Applicant's fair share fee by the time the improvement is warranted, the Applicant's fair share fee for the remaining unfunded improvements shall be reduced from $242,617.00 to a lower amount based on the pro rata share for the remaining improvements based on the methodologies utilized in the Seaside Resort Fee Study. (MM48)

81. ADA COMPLIANCE AND DISABLED ACCESS. The Project shall comply with all applicable requirements of the Americans with Disabilities Act.

82. FOREST MANAGEMENT. A Tree Removal and Replacement Plan shall be prepared for each Final Map phase of construction and shall be reviewed and approved by the Community Development Director. The recommendations of the Forest Management Plan in the Project EIR shall be reflected in this Plan, as well as in construction documents. The plan shall identify specific grading limits and building footprint siting that minimizes tree removal and may be integrated into Final Landscape Plan(s) for the Project. The Applicant shall arrange for a registered forester to observe grading and foundation preparation operations, and to assist in field adjustments of building and street locations to minimize tree removal and ensure the health of remaining trees. (MM 5, 6, 7)

83. TREE REMOVAL, SALVAGE AND RELOCATION. Final landscape plan(s) shall provide for an accounting of the total number of oak trees within the Project area to be removed and/or salvaged and relocated. The accounting shall be prepared by a qualified arborist that is selected by the Applicant, which selection shall be approved by the Community Development Director and paid by the applicant. Unless otherwise approved by the Community Development Director, the applicant shall be responsible for replacement of trees removed on a 1:1 basis. If the arborist determines that in the context of the Project final landscape plan(s) it is not feasible to replace on a 1:1 basis, the Applicant shall pay to the City a fee of $150 for each tree removed

from the Project site and not replaced or salvaged and relocated. The City shall use the fee to further the goals and objectives of the City General Plan and the Fort Ord Reuse Plan. Final landscape plan(s) shall include a mix of 5-gallon, 15-gallon and 24" (minimum) boxed trees, with the size designations depicted on the Plan(s), and accounted for in a tabular form. The Applicant is hereby encouraged to salvage and relocate oak trees that would otherwise be lost to locations determined appropriate by the final landscape plan(s) to achieve a more mature appearance to the Project landscape in critical locations at the time a certificate of occupancy is issued for the hotel. Locations deemed appropriate for such relocation include, but are not limited to, the hotel site, the timeshare sites, the entries to residential neighborhoods, the employee/overflow parking area near the intersection of McClure Way and General Jim Moore Boulevard and along the McClure Way Project access driveway.

84. TREE REPLACEMENT. Replacement and/or salvaged and relocated trees shall be inspected two and five years following planting, and if not in good health and vigor in the judgment of a qualified arborist, replaced by the Applicant, its successors or assigns, in kind with new trees of the same size and type. Replacement trees shall likewise be inspected at two and five years following planting, and are subject to the same replacement requirements should they fail to survive.

85. PLANT PALETTE. Final landscape plan(s) shall utilize drought tolerant species as defined under "Xeriscape" in MCWD Ordinance 1.04.010, and as required by Municipal Code section 17.50, and non-invasive species (defined as any plant not listed on California Exotic Pest Plant Council's List A, B, or Red Alert, in their Exotic Pest Plants of Greatest Ecological Concern, October 1999). The Community Development Director shall review and approve the Final Landscape Plan(s) prior to installation of any landscaping to ensure this condition is satisfied.

86. IRRIGATION UNDER OAK TREES. To protect against root or crown rot diseases, only drought tolerant plants shall be planted within the drip line of existing oak trees. Final Landscape Plan(s) shall provide that irrigation in these areas shall only be allowed on a monthly basis until plantings are established and can survive without irrigation. No irrigation shall be allowed within ten feet of the trunk.

87. WORK AROUND OAKS. Removal and/or substantial limbing of coast live oak trees and associated duff (accumulated organic material) and removal of under story native plant species within oak woodland habitat shall be avoided, to the greatest extent feasible, to minimize disturbance to Monterey dusky-footed woodrat habitat, and removal and/or disturbance to open sandy areas shall be avoided to minimize disturbance to potential black legless lizard and coast horned lizard habitat. Language to this effect shall be included in construction documents. The Applicant shall arrange for a registered forester and/or biologist to observe grading and foundation preparations around oak trees, and to assist in field adjustments of building locations to minimize habitat removal. (MM 12)

88. PREVAILING WAGES. The Applicant, its successors and assigns shall cause the contractor(s) and subcontractor(s) to employ local workers, grant local preferences and pay not less than prevailing wages in the construction of the Project as required by Section 3.2.100 of the FORA Master Resolution, as those wages are determined pursuant to California Labor Code

Section 1720 et seq. and the implementing regulations of the California Department of Industrial Relations.

89. FIRST SOURCE HIRING. The Applicant, its successors and assigns, project tenants and operators shall comply with the City's First Source Hiring Program, as set forth more specifically in the DDA.

APPLICABLE TO VESTING TENTATIVE SUBDIVISION MAP – TM-01-03

90. FINAL SUBDIVISION MAP(S). The Applicant may file final subdivision maps ("Final Maps") for the property depicted on the Vesting Tentative Map for the Project, which upon approval by the City, shall be recorded by the Applicant with the Clerk of the County of Monterey. The number of Final Maps shall not exceed ten (10) and the specific phasing of those Final Maps shall be noted on the first sheet of the approved version of the Vesting Tentative Map. Each Final Map shall be in substantial conformity with the approved vesting tentative map, and shall be filed prior to the expiration of the Vesting Tentative Map, or any extension thereto.

91. IMPROVEMENT PLANS. Improvement Plans for each phase of the Project shall be prepared and signed by a registered civil engineer licensed by the State of California and reviewed and approved by the Public Works Director prior to the City Council approval of the first Final Map for that phase. All facilities shall be constructed in conformance with the approved Improvement Plans and with the requirements of the Subdivision Agreement. Improvement Plans and construction may be phased, subject to the review and approval of the Public Works Director.

92. SUBDIVISION IMPROVEMENT AGREEMENT. Prior to the recordation of the first Phased Final Map for subdivision of any portion of the Project site, the City and the Applicant shall, pursuant to Government Code Section 66462, prepare and execute a Subdivision Improvement Agreement covering the subdivided area within that Final Map. The Subdivision Improvement Agreement may include provisions for the initiation and consummation of proceedings under an appropriate special assessment act or the Mello-Roos Community Facilities Act of 1982 for the financing and completion of some or all of the improvements consistent with the provisions of Project Condition No. 17 above. All costs associated with preparation of the Subdivision Improvement Agreement shall be the responsibility of the Applicant, and the Applicant shall reimburse the City for the costs incurred by the City in the reviewing and approving the Subdivision Improvement Agreement. The Subdivision Improvement Agreement shall describe the obligations and responsibilities of the Applicant including the following:

> a) To construct the public facilities described in the Improvement Plan for each phase in substantial conformance with the Vesting Tentative Subdivision Map, and the conditions herein. The Applicant shall also retain a qualified registered civil engineer to observe, inspect, and review the installation and construction of all private improvements for conformance and compliance with the approved plans and specifications. Upon completion of the development, the

engineer shall complete and submit a report of compliance including certification of all test results to the Public Works Director;

b) The furnishing of security to secure the performance of the agreement (performance, labor and material bond) in the amounts of 100% of the estimated cost of the improvements and guarantee and warranty of the work the amount of 50% of the original estimated cost of improvements unless, with respect to the hotel parcel, a different percentage is specified in the DDA. The form of the security shall be one of those authorized by Government Code Section 66499, subject to the approval of the City. In addition, pursuant to Government Code Sections 66499.3 (d) and 66499.9, security shall also be provided to guarantee and warranty the work for a period of one year following the completion and acceptance thereof against any defective work or labor done, or defective materials furnished, to cover changes or alterations of the work, not to exceed 10 percent of the original estimated cost of the improvement, and to pay for costs and reasonable expenses and fees, including reasonable attorney's fees to administer and enforce the provisions of the Subdivision Improvement Agreement;

c) To establish a Homeowners Association for the residential areas of the Project and a Property Owner's Association for the Timeshare Components, and to pay all costs associated with the creation of the associations;

d) To prepare and record Covenants, Conditions, and Restrictions (CC&Rs) which obligate each homeowners association to provide for maintenance of the shared facilities, improvements, and landscaping within the boundaries of the associations in perpetuity. The CC&Rs shall describe the homeowners association and the City's responsibilities and rights, and shall be subject to the approval of the City prior to recordation. The CC&Rs for each homeowners association shall require the homeowners associations to prepare and submit to the City Manager or his or her designee every three years, a copy of a capital assessment and reserve study, comparable to that required for a condominium association under state law, showing the amount of money reserved for future anticipated maintenance and replacement expenses of the Association, so as to allow the City to monitor the financial viability of the homeowners association and its ability to properly fund and maintain the improvements owned by that homeowners association. The CC&Rs shall include provisions that if the City determines that the association has ceased to exist, has ceased to maintain the association's property at a level acceptable to the City, as determined by the City's Public Works Director, or has failed to maintain the property consistent with the terms of the CC&Rs or these Project Conditions, that the City shall have the right to fund the necessary maintenance activities through the formation of an assessment district or by the forfeiture of association funds to the City; and

e) To implement applicable provisions of the Mitigation Monitoring and Reporting Program.

93. REVISED VESTING TENTATIVE MAP. Prior to submittal of the Vesting Tentative Map application to the City Council, the Applicant shall cause to be prepared a revised Vesting Tentative Map which incorporates changes required by these Project Conditions and other technical modifications as may be required by staff. The Vesting Tentative Map for the Residential Components of the Project shall show private streets as non-exclusive easements, with abutting lot lines running to the center line of the easements, and not as separate parcels.

94. OFFERS OF DEDICATION. The Applicant shall make irrevocable offers of dedication of each area of privately held land over which a public right-of-way is required for conformance to the City's circulation plan and City Standards, as determined by the Public Works Director. Such offers of dedication shall be described in detail on the Final Map(s) and Improvement Plans. Acceptance of the dedications by the City Council shall be subject to the Applicant's adequate completion of the Project's public facilities as determined by the Public Works Director.

95. EASEMENTS. Easements for public improvements including but not limited to sanitary sewers, water mains and other public utilities shall be shown on the Final Subdivision Map. The location and width of each easement shall be subject to the approval of the applicable public agency, public utility, and the Public Works Director. Prior to issuance of any building permit, the property owner shall execute covenants, conditions, and restrictions and/or reciprocal easement agreements for access, parking, utilities, landscaping, security, safety, and maintenance as appropriate among the parcels shown on the Vesting Final Subdivision Map(s). The instruments shall be subject to review and approval by the City Attorney or designated special counsel.

96. PRIVATE STREETS EASEMENTS. Roadway easements for the creation and use as private streets shall be shown on each recorded Final Map for those roadways shown on the Vesting Tentative Map that are designed and intended as private streets and not to be dedicated as public streets. Easements shall provide the right of vehicular and pedestrian travel and ingress and egress for each property abutting the roadway easement and each property within the homeowners association to be formed to maintain the roadway easement. The roadway easements shall run with the appurtenant land and shall remain in full force and effect unless the easement is offered for dedication by the underlying property owners and accepted by the City as a public street. Each homeowners association that is formed to maintain the applicable roadway easement shall, at its own cost and expense, keep and preserve the roadway easement as a private street and at all times keep such easements in a good condition of repair and maintenance and clear of obstructions. Each homeowners association shall neither erect nor authorize others to erect any improvement of any kind within said easement, except access control gates, that might interfere in any way with the proper maintenance, use, repair, reconstruction, and patrolling of the roadway easement.

97. PRIVATE STREET DESIGN STANDARDS. The design and construction of privately owned and maintained streets within residential subdivisions may deviate from the standards for public subdivision streets with respect to right-of-way width, travel lane width, paved surface, on-street parking, curb and gutter design (e.g. vertical curb, rolled curb, vee gutter), sidewalks and street lighting, provided that the proposed streets will not be offered for dedication to the

City as public roads to be maintained by the City; resident and guest parking requirements for residences within the subdivision are met; that the design of the streets meets access (vehicular and pedestrian), travel and turnaround requirements for emergency vehicles; and that the design of the streets creates a more aesthetically or environmentally desirable subdivision design, in accordance with Seaside Municipal Code section 16.24.050(C), and the approval of the Fire Chief, Public Works Director and Community Development Director. Private streets shall have a minimum paved width of twenty-two (22) feet.

98. TREE PRESERVATION IN PRIVATE STREET DESIGN. To the extent practical, private streets shall be designed to avoid or minimize the loss of trees, through adjustments to location or width, or by splitting portions of the road into one-way couplets, or other means as feasible subject to the review and approval of the Public Works Director.

99. MAP NOTE REQUIRING UNDERGROUNDING OF UTILITIES. The Final Map and Improvement Plans shall include a note that states: "Underground utilities are required in this subdivision."

APPLICABLE TO HOSPITALITY COMPONENTS – SPR-01-03, UP-01-20, UP-04-22

100. REVOCATION. Conditional Use Permit UP-01-20 for timeshare development and Conditional Use Permit UP-04-22 for on-sale of alcoholic beverages at the hotel are subject to revocation procedures contained in Section 17.70.090 Seaside Municipal Code. The permits shall run with the land and may be revoked by the City at any time for violation of the terms or conditions of the permits by the Applicant, agents, or representatives of the Applicant, their assignees and successors in interest.

101. PLAN FOR COORDINATION OF RESORT AND GOLF COURSE OPERATIONS. The Applicant shall enter into an agreement with the City and golf course operator setting forth principles and procedures for coordination of ongoing resort and golf course operations, including a reciprocal parking agreement, prior to commencement of construction, subject to the approval of the City Manager.

102. APPROVAL OF EXTERIOR MATERIALS AND COLORS. The Applicant shall return to the Board of Architectural Review for final approval of exterior materials and colors prior to issuance of building permits for the Hotel and Timeshare Components. The exterior building materials and colors shall be installed in compliance with the materials board stamped "Received July 12, 2004 Seaside Community Development, 2004," or as modified by the Board of Architectural Review.

103. APPROVAL OF STONE. The stone to be used on the façade, chimneys and other features of the hotel, timeshare buildings, golf clubhouse building and entry and signage features associated with the Project may be either natural of cultured stone and shall be reviewed and approved by the Board of Architectural Review and the Planning Commission prior to issuance of a building permit for those buildings.

104. FINAL LANDSCAPE PLAN(S). The final landscape plan(s) for the Hotel and Timeshare Components shall be in substantial conformance with the Landscape Concept Plan sheet L 1.0 dated April 2003. The Plan shall be reviewed and approved by the Board of Architectural Review and Community Development Director prior to issuance of the first building permit for the Project. Project Conditions related to tree protection, replacement, salvage, and relocation and maintenance elsewhere in these Project Conditions may be satisfied by incorporation within the Final Landscape Plan(s).

105. FENCING PLAN. Prior to the issuance of building permits for the hotel or timeshare, the Board of Architectural Review shall review and approve a final fencing plan.

106. EMPLOYEE PARKING AREA LANDSCAPE. The final landscape plan(s) for the Hotel and Timeshare Components of the Project shall also address the employee parking area adjacent to General Jim Moore Boulevard. An earth berm no less than four feet (average) in height and/or a vegetative buffer shall be provided between the overflow parking lot and General Jim Moore Boulevard, utilizing drought tolerant plant species native to the Monterey Bay region. The plantings shall be installed prior to the use of the parking lot, and shall provide no less than fifty percent screening of the parking lot and parked cars, as viewed by passers-by on General Jim Moore Boulevard, within a five-year time frame of the date of occupancy. (MM 3)

107. PARKING DESIGN. Parking stalls and drive aisles shall be constructed in accordance with City standards, unless modified by the Public Works Director in accordance with Section 17.48.020(Q) of the Municipal Code.

108. NEW WATER LINE FOR FIRE FLOW. The Applicant shall construct a new water line to the hotel site via General Jim Moore Boulevard and McClure Way, or another route as determined by the Marina Coast Water District, from a suitable point of connection to the Marina Coast Water District system subject to the review and approval of the Marina Coast Water District, Fire Department, and Public Works Department. The water line shall be sized to provide adequate fire flow at the hotel, in accordance with Uniform Fire Code and/or California Fire Code. Refer to Life Safety Project Condition. The Applicant shall obtain encroachment permits as necessary from the Army Department of Public Works and/or City, as applicable. (MM 47)

109. LIFE SAFETY PLAN. The Applicant shall prepare a life safety plan for the hotel and timeshare buildings prior to completion of final design and issuance of building permits. The plan shall address fire flow requirements, fire control systems, design of fire apparatus and fire fighter ingress and egress, evacuation plans, applicable requirements of the California Fire Code and other related topics as may be required by the Fire Chief. The life safety plan may incorporate and modify the requirements of other Project Conditions related to fire protection of the hotel and timeshare buildings, subject to approval of the Fire Chief.

110. EMERGENCY PROCEDURES INFORMATION. Emergency procedure information shall be posted in a conspicuous place in every room available for rental in the hotel and timeshare units in accordance with California Health and Safety Code section 13220(b).

111. FIRE APPARATUS ACCESS TO BUILDINGS/LANDSCAPING REQUIREMENTS. Landscaping shall not obstruct Fire Department ladder access to buildings. Building Permit submittals shall include a Final Landscape Plan(s) that reflects the location of all landscaping within 50' of buildings. The plan shall show how Fire Department ladder access will be provided around all buildings. Provide approved walkways on all sides of the buildings leading from the fire access roadway to the exterior building entrances.

112. FIRE APPARATUS ACCESS TO BUNGALOWS. Adequate fire apparatus access shall be provided to within 150 feet of each hotel bungalow building. A paved road, pathway, paving blocks, or other suitable surface may provide fire apparatus access. The access shall provide sufficient width, turning radius, ingress, and egress, and support in a manner that is reviewed and approved by the Fire Chief.

113. EMERGENCY VEHICLE ACCESS TO MAIN HOTEL BUILDING. A fire lane or fire engine parking area, as determined by the Fire Chief, shall be provided to allow unencumbered fire-fighting access to the main hotel building.

114. BUILDING EMERGENCY ACCESS KEY BOX REQUIRED. Hotel, timeshare, and golf clubhouse buildings shall be equipped with permanently installed emergency access key lock boxes (Knox), conforming to Seaside Fire Department Standard Detail and Specifications. The key to the lock box shall match those of other boxes utilized by the City.

115. PERSONAL SECURITY REQUIREMENTS. Hotel and timeshare rooms/units, shall have locks using combinations that are interchange free from locks used in all other separate units. Re-programmable electronic keys may be used. Doorjambs shall be installed with solid backing in such a manner that no voids exist between the strike side of the jamb and the frame opening for a vertical distance of six (6) inches each side of the strike. In wood framing, horizontal blocking shall be placed between studs at door lock height for three (3) stud spaces each side of the door openings. Trimmers shall be full length from the header to the floor with solid backing against sole plates. Doorstops on wooden jambs for in-swinging doors shall be of one-piece construction with the jamb. Jambs for all doors shall be constructed or protected so as to prevent violation of the strike. The strike plate for deadbolts an all wood framed doors shall be contracted of minimum sixteen (16) U.S. gauge steel, bronze or brass and secured to the jamb by a minimum of two screws, which must penetrate at least two (2) inches into solid backing beyond the surface to which the strike is attached. Hinges for out-swinging doors shall be equipped with non-removable hinge pins or a mechanical interlock to preclude removal of the door from the exterior by removing the hinge pins.

116. ALCOHOLIC BEVERAGE SIGNS. No display of alcoholic beverage signs shall be permitted on the exterior of the building.

117. ON-SITE ALCOHOLIC BEVERAGE CONSUMPTION. Alcoholic beverages shall be sold or dispensed for consideration for consumption on the premises only in accordance with the terms and conditions of the license issued by the State of California Alcoholic Control Board.

118. ALCOHOLIC BEVERAGE EMPLOYEE TRAINING. Managers and employees involved in the serving of alcoholic beverages at the hotel or other points of sale of alcoholic beverages shall undergo an awareness training program for the service of alcoholic beverages sponsored by the State Department of Alcoholic Beverage Control prior to the opening of business. All subsequent employees must complete the training within 180 days of hire.

119. DUAL USE PEDESTRIAN/BICYCLE PATHWAYS. The Applicant shall install a pedestrian/bicycle pathway connecting the hotel with the bus stop and the regional bicycle path south of the intersection of General Jim Moore Boulevard and McClure Way, with the reconstructed golf clubhouse building, and with the timeshare units to create a pedestrian-friendly environment. Pathway routing shall be shown on the Final Subdivision Map and Project Improvement Plans and is subject to approval by the Community Development Director. (MM 44)

120. SPECIAL EVENTS TRANSPORTATION PLAN. The Applicant shall prepare a special events transportation demand management plan for the hotel to address the following, subject to the review and approval of the Community Development Director and Public Works Director, prior to issuance of a certificate of occupancy for the hotel.

> a) Strategies for reducing parking demand during special events, and strategies for accommodating excess demand for parking during special events,
>
> b) Procedures for implementing the strategies, including arrangements with off-site parking lot owners for the provision of alternative parking locations, arrangements with bus or shuttle providers, and publicizing implementation of the strategies, and
>
> c) Thresholds for implementation of the strategies, which shall be no less stringent than a projected 95 percent occupancy of the parking lots at any time during a day, and considering all expected uses and events. (MM 43)

121. SITE 33. No building or grading permit shall be issued for the construction of timeshare facilities within Site 33 until the remediation program set forth in the US Army Directorate of Environmental and Natural Resources Management letter dated December 13, 2002 is completed as certified in writing by the California Department of Toxic Substance Control (DTSC), and the covenant executed by the Army on March 10, 2004 has been removed. (MM 26 and 27)

122. GOLF MAINTENANCE BUILDING REPLACEMENT. A permit application for a replacement golf maintenance building shall be on file with the City prior to the issuance of a building permit for timeshare buildings in Timeshare Parcel A. The application shall provide for a parking lot for a minimum of 30 employees. The building shall be sited and designed to minimize visibility from Monterey Road and to maintain mature coast live oak trees to the maximum extent feasible. Exterior colors shall be selected to blend rather than contrast with the naturally occurring colors of the landscape. The light reflective value of exterior building colors shall not exceed 45. (MM 2) Board of Architectural Review approval will be required, as well as any other permits or approvals required of the project by the Municipal Code.

123. EMERGENCY VEHICLE ACCESS FROM GOLF MAINTENANCE FACILITY. A suitable emergency vehicle access shall be provided between the golf maintenance facility and Timeshare parcel A, subject to the review and approval by the Fire Chief.

124. DEPARTMENT OF REAL ESTATE DOCUMENTS FOR TIMESHARE COMPONENT. The Applicant shall submit concurrently to the City the application forms, agreements and documents that are required to be submitted to the California Department of Real Estate, as provided by Section 17.43.090 of the Municipal Code. Prior to the Applicant's submittal of the following agreements to the California Department of Real Estate, the Applicant shall submit copies of such documentation, as applicable, to the City for review and determination by the City Attorney that the documentation is consistent with the City's conditions of approval for the Timeshare Component as set forth in these Project Conditions: the declaration of covenants, conditions, and restrictions (CC&Rs), articles of incorporation, bylaws, maintenance agreements, management agreements, membership or license agreements, and reservation system affiliation agreements for the timeshare project. Upon the Applicant's receipt of "deficiency" or completeness" application letters and conditional or final subdivision public reports for the Timeshare Component from the California Department of Real Estate, the Applicant shall submit such documents to the City. No timeshare interests in a timeshare project shall be sold or offered for sale until after the earlier of the California Department of Real Estate's issuance of a conditional or final subdivision public report authorizing the sale or offering for sale of timeshare interests in the timeshare project, or such other authorization for sale or offering for sale of timeshare interests in the timeshare project as provided under California law.

APPLICABLE TO RESIDENTIAL COMPONENT – UP-01-19

125. REVOCATION. Conditional Use Permit UP-01-21 for residential lots is subject to revocation procedures contained in Section 17.70.090 of the Municipal Code. This permit shall run with the land and may be revoked at any time by the City with respect to the particular lot or lots on which or for which there is a violation of these conditions by the applicant, agents or representatives of the Applicant, their assignees, and successors in interest.

126. HOMEOWNERS' ASSOCIATION. A homeowner's association including all residential lots shall be formed to maintain the private streets, curbs, gutters, sidewalks, exterior lighting, entry improvements and other common improvements within the residential subdivision as shown on the vesting tentative map and Final Map(s). The homeowners' association shall consist of a master association, and may include separate sub-associations and shall be formed prior to the retail sale of any residential lots pursuant to the requirements of the California Department of Real Estate.

127. RESIDENTIAL CC&R'S AND DESIGN GUIDELINES. The Applicant shall prepare detailed CC&R's and design guidelines applicable to the Residential Component of the Project, and tailored to the particular residential development areas. These documents shall be prepared prior to recordation of Final Maps that create lots within any residential development area, subject to the review and approval of the Community Development Director.

128. SUPPLEMENTAL DESIGN REVIEW – HOMES ON RESIDENTIAL LOTS. Building plans for individual homes subsequently built on residential lots shall be subject to design review by the Board of Architectural Review in accordance with applicable requirements of the Municipal Code then in effect.

129. RESIDENTIAL FENCING AND LANDSCAPE CRITERIA. Fencing shall be designed to blend with the natural vegetation of the residential project sites, and to reduce opportunities for graffiti. A landscape buffer of no less than 10 feet shall be included between fences and the adjacent public street rights-of-way, utilizing drought tolerant plant species native to the Monterey Bay region. The fence and landscape designs shall have a consistent style for all residential areas. The CC&R's for the residential areas shall include provisions to require that fences and landscape buffers be maintained in accordance with the fencing and landscape plan. Buffer area landscaping and any proposed fencing shall be installed prior to initial occupancy of each dwelling. (MM 1)

130. MONTEREY ROAD AND COE AVENUE FRONTAGE IMPROVEMENTS. The applicant shall construct frontage improvements, including half street section, curb, gutter, drainage, and sidewalk, where the Project abuts Monterey Road or Coe Avenue, in accordance with City standards and plans. These improvements shall be included in the Subdivision Agreement and Subdivision Improvement Plans, subject to the review and approval of the Public Works Director.

131. U.S. ARMY EASEMENT. Prior to approval of a Final Map for the residential subdivision near General Jim Moore Boulevard, the Applicant shall submit evidence of an easement agreement with the U.S. Army to provide access to the subdivision from General Jim Moore Boulevard.

132. RESIDENTIAL STREET ENTRY GATES. Gates may be allowed at entries to private residential streets. If gates are provided, then they shall be equipped with a permanently installed emergency access key lock box (Knox), conforming to Seaside Fire Department Standard Details and Specifications. Gates shall include a by-pass capability to allow access in the event of power outage. Switches shall match the standard access keys utilized by the Fire and Police Departments for other gates in the City. (Change approved by City Council.)

133. NOISE ATTENUATION. Subject to the review and approval of the City of Seaside Community Development Director, the Applicant shall have a qualified acoustical engineer, or other qualified professional prepare a noise attenuation plan to reduce exterior noise to no more than 55 dBA Ldn at residential lots abutting Monterey Road or Coe Avenue. Such attenuation may include provision of a minimum six-foot tall solid fence or wall at the property line abutting the Monterey Road or Coe Avenue, or relocation of lots farther from Monterey Road or Coe Avenue. The noise attenuation plan shall be included in Subdivision Improvement Plans, subject to the review and approval of the Public Works Director, prior to approval of the Final Map for the affected development phases. (MM 31)

134. STATE HOUSING LAW. The Project shall comply with the applicable State Housing Law building standards as published in the California Code of Regulations, Title 24, known as the California Building Standards Code.

ATTACHMENT NO. 2

SCOPE OF DEVELOPMENT

If new or altered entitlements or entitlement conditions are approved, then the Parties shall replace this Attachment No. 2 with a revised Attachment No. 2 reflecting conforming changes to the project/development.[1]

PROJECT OBJECTIVE

The project objective is to provide a high-quality, full-service resort, with hotel, timeshare, and convention facilities that take advantage of the synergistic benefits of the existing golf courses, and to provide a high-quality housing opportunity adjacent to and integrated with the golf courses. The facilities will be developed in phases. (When used in this Scope of Development, the term “timeshare” refers more generally to timeshare units, interval units, fractional units, residential units (which may or may not be subject to a formal condominium regime) or lots, and other legal forms of ownership permitted by applicable law.)

The development of a hotel at the golf courses shall be in accordance with the objectives, goals, and policies of the Seaside General Plan and the City’s Project Conditions and the provisions of this Agreement, i.e the Second Amended and Restated Disposition and Development Agreement. (as amended from time to time, the “DDA”). The Seaside General Plan objectives include establishing a high-quality, full service resort at the golf courses, providing a facility capable of attracting major golf-related events to the City, creating new sources of revenue for the City (tax increment, transient occupancy tax and sales tax), creating short-term and permanent job opportunities, and creating a “magnet” development that will stimulate the development of the balance of the City’s Fort Ord lands. The Project Conditions establish specific requirements for project implementation to achieve General Plan objectives and other requirements of the City. The DDA establishes the business terms for the development.

The description of the project as contained in this Scope of Development is based on plans for the project and its components as of the time that this Scope of Development is being written and is intended to be illustrative. It is likely that the number and size of

This Attachment No. 2 revises and updates the original Scope of Development adopted on July 7, 2005, to reflect changes to the Project Site and the Scope of Development that subsequently resulted from: (1) Phase 1 Residential Area ~~Final Map on March 15, 2007 (CC~~ Resolution No. 07-10); (2) City Council approval of a Record of Survey Map conveying 1.82 acres of the Golf Courses parcel to Sunbay Resort Associates, LLC (an adjoining property owner) on March 15, 2007 (CC Resolution No. 07-11); (3) City Staff approval of modification of the Phase VI Residential Lots at Coe Avenue on July 17, 2007 (D. Ingersoll Letter; (4) City Staff approval of modification of Timeshare Area C adjacent to the Hotel Parcel on April 21, 2008 (D. Ingersoll Letter); (5) Planning Commission approval of UP 14-07 on December 10, 2014 (PC Resolution No. 14-15); and (6) minor adjustments in connection with the DDA.

the final buildings, the design, materials, height, building footprints, parking layout, and other features will vary from the description contained herein, but all shall be processed for approval with the City according to the requirements of the City and the DDA. .

PROJECT SITE AND LOCATION

Project Site Location. The project site is at 2 McClure Way, in the City of Seaside, Monterey County, within the former Fort Ord. The project site is located to the east of Monterey Road, west of General Jim Moore Boulevard, and to the north of the urbanized core of Seaside. The project is being developed within a 380-acre parcel that contains two golf courses and related facilities.

Surrounding Uses. Most of the land surrounding the golf course parcel contains residences constructed in the 1950s and 1960s as military housing. Some of these residences are currently occupied within the Presidio of Monterey (POM) Annex, and others have been abandoned since Fort Ord was closed in 1993. The Sun Bay Apartment complex (originally constructed by the Army and now privately owned) adjoins the south side of the golf course parcel. Fitch Middle School, a facility of the Monterey Peninsula Unified School District adjoins the southeast portion of the golf course parcel, at the corner of General Jim Moore Boulevard and Coe Avenue. A POM Annex child development center is west of the golf course parcel along Monterey Road.

Surrounding Land Use Designations. The surrounding area is within an area designated in the Seaside General Plan as Recreational Commercial and as New Golf Course Community and Visitor Serving Hotels and Golf Course in the Seaside Planning Area of the Fort Ord Reuse Plan. Most of the land surrounding the golf course parcel is designated Medium Density Residential. The Sun Bay apartments and Fitch Middle School, to the south of the golf course parcel, are designated High Density Residential and School/University respectively. Land to the east of General Jim Moore Boulevard is designated Military Enclave, within which a variety of uses are allowed.

Golf Course Parcel Historic Conditions. The U.S. Army built the first golf course on the golf course parcel in approximately 1954, and the site has been used for that purpose since then. Prior to development of the golf courses the area was undeveloped. A 1949 aerial photograph shows the project site, prior to the construction of the golf courses, crisscrossed with roads, similar to the present condition of areas of the former Fort Ord east of the project site. The U.S. Army closed Fort Ord in 1993 and the City purchased the golf course parcel from the Army.

Golf Course Parcel Existing Conditions. Two 18-hole golf courses (the Bayonet and Black Horse courses), several structures, other improvements, and open space exist on the golf course parcel. The Bayonet course is located on the northern part of the golf course parcel and the Black Horse course is located on the southern and eastern parts. The golf courses and the golf course parcel are owned by the City of Seaside. B & B Golf Course Properties, LLC (the "golf course operator") currently operates the golf courses under a long-term lease agreement with the City. Golf course facilities include a clubhouse, driving range, parking lot, and maintenance storage yard and buildings. The golf courses currently employ approximately 90 people. A 12,000 square-foot single-story golf clubhouse and adjacent parking lot and driving range are located at the end of McClure Way, near the center of the golf course parcel. Three golf cart storage buildings are located immediately north of the clubhouse. A maintenance and storage facility, consisting of two buildings and three small sheds, is located approximately 1,000 feet north of the clubhouse, and is within the project site. The golf course maintenance facility is enclosed by a wooden fence, and is used to store golf course maintenance equipment and supplies.

The topography of the golf course parcel is gently rolling, with elevation dropping generally from east to west toward Monterey Bay, which is visible from many locations on the golf course parcel. Elevations range from 120 feet above sea level at the southwestern corner of the golf course parcel, to approximately 380 feet above sea level along McClure Way near General Jim Moore Boulevard. Much of the golf course parcel has been disturbed and contains non-native plantings. Portions of the golf course parcel contain stands of planted Monterey cypress and native coast live oak.

Golf Course Parcel Changes. In 2006 the golf course operator commenced a redesign and upgrade of the golf courses that included the installation of a new irrigation system capable of utilizing reclaimed water, the relocation of the driving range, the realignment of several holes on the golf courses, and design upgrades. The construction was completed in 2009. The golf course maintenance facility is slated for relocation to the western portion of the golf course parcel adjacent to Monterey Road.

Golf Course Parcel Land Use Designations. The golf course parcel is identified in the Fort Ord Reuse Plan as Polygon 22, and is designated as the Visitor Serving Hotels and Golf Course District within the Seaside Residential Planning Area. Land use designations in the City General Plan are consistent with those of the Fort Ord Reuse Plan. Polygon 22 (The Bayonet and Blackhorse Golf Courses) is designated Visitor Serving in both plans. The Visitor Serving and Golf Course District is planned primarily for a resort hotel, focusing on the existing golf courses, while the surrounding New Golf Course Community District is planned primarily for residential uses.

The Fort Ord Reuse Plan and City General Plan encourage an indistinct line between the two districts. New Golf Course Community District Development Character and Design Objective 1 reads:

> Integrate the new residential development around the golf course in a way that optimizes the golf course frontage and views to this significant open space amenity. Consider rerouting the courses into the adjacent residential lands and find opportunities to integrate new residential development within the existing golf course area to improve the integration of the amenity into the new community.

The City zoning designation for the golf course parcel is Visitor Serving – Fort Ord (V-FO). Hotels, conference centers, restaurants and golf courses are principal permitted uses in the V-FO zoning district. Residential uses, employee housing and timeshare uses are allowed with a Use Permit.

RESORT PROJECT DESCRIPTION

The project is a resort development including hotel, timeshare, and residential components. Developable parcels are created by a Vesting Tentative Subdivision Map (VTM), and associated Site Plans and Conditional Use Permits are required to implement various included uses.[2] The VTM creates an approximately 81-acre development area within the 380-acre golf course parcel. The lots and parcels for the three primary components of the project and the reconstruction of the existing golf clubhouse are situated within this 81-acre area. The existing golf course use will continue on an approximately 292-acre remainder parcel and two approximately two-acre lots will be created for the Golf/Resort Clubhouse and the relocated golf maintenance facility.

Project Site Conditions. The approximately 81-acre project site is comprised of several separate areas within the golf course parcel. These areas are described on Table 1 and illustrated in the Project Site Plan (Figure 1). The developed uses on the golf course parcel are located near the center of the golf course parcel. These are the golf clubhouse, cart storage, parking lot, driving range, and maintenance buildings. As further described below, the first single-family residential subdivision in the project was developed in 2007-2008. This subdivision currently contains 30 developed single-family lots.

Subdivision. An 81-acre portion of the golf course parcel has been subdivided into approximately 125 residential lots (including the 30 lots already developed) and parcels for the hotel and timeshare uses. The lots (not including the referenced 30 lots which have already been sold to Developer's predecessor under the First Amended and Restated Disposition and Development Agreement) and parcels will be transferred to the Developer under the terms of the DDA.

Hotel Component. The hotel component will have a minimum of 275 and a maximum of 330 guestrooms in a main hotel building and separate buildings.

The main hotel building will include a conference center with meeting rooms, ballroom, restaurant, bar, kitchen, administrative offices, guest rooms, health spa, and

2 On July 7, 2005, the City Council approved the all of the initial land use entitlements/permits required to implement the project. The City Council approvals, their respective City file numbers and City Council Resolution numbers, include: Environmental Impact Report ER-01-01 (CC Resolutions #05-43), Vesting Tentative Subdivision Map Application TM-01-03 (CC Resolution #05-44), Design Review Application BAR-01-27 for entire Resort Project (CC Resolution #05-44); Conditional Use Permit Application for Timeshare Units UP-01-20 (CC Resolution #05-44); Conditional Use Permit Application for Residential Uses UP-01-21 (CC Resolution #05-44); Site Plan Review Application for Hotel SPR-01-03 (CC Resolution #05-44), Conditional Use Permit for On-Sale Alcoholic Beverages UP-04-22 for Hotel Complex (CC Resolution #05-44), Conveyance Agreement and Disposition and Development Agreement DA-01-01 (CC Resolution #05-45).

service areas. Several exterior terraces will be accessible from interior rooms, including the spa and the ballroom. Outdoor function areas and a swimming pool will be located to the west of the main hotel building. A porte cochere and the main entrance will be located on the eastern side of the main hotel building. A loading dock will be located on the south side of the main hotel building.

Parking for the hotel will be in surface lots and subterranean parking Some of the hotel parking will be shared with the timeshare uses and the Golf/Resort Clubhouse. Landscaping will occupy approximately 3.1 acres of the hotel parcel. It is estimated that there will be approximately one employee per hotel room. Based on an average occupancy rate of 75 percent at stabilized operations, and an average of approximately 1.5 guests per unit, approximately 310-370 guests will stay at the hotel on a typical night.

Timeshare Component. The Timeshare Component is comprised of approximately 19 acres. Acceptable uses on the Timeshare Component include hotel rooms, timeshare units, interval units, fractional units, residential units (which may or may not be subject to a formal condominium regime) or lots, other legal forms of ownership permitted by applicable law, or any combination thereof. As currently conceived, the Timeshare Component would have 170 units. The aggregate number of units constructed on the timeshare component may be fewer or more than 170 in accordance with the terms of the applicable Use Permit and the DDA. The timeshare buildings will be interspersed with open space areas and provided with parking. The architecture of the timeshare buildings will be complementary to that of the hotel.

The Timeshare Component will be located in two areas north of McClure Way and in one area south of McClure Way and east of the hotel. Parking for the timeshare units will be in parking lots, subterranean parking, and in perpendicular spaces along access streets. Some of the timeshare parking may be shared with the hotel. Approximately 20 employees are expected to be employed in the timeshare component. The average occupancy of the timeshare units is expected to be similar to that of the hotel. One or more ownership associations will be formed to maintain the timeshare units' common areas, including the surrounding grounds, the lighting, and the parking areas.

Residential Component. The proposed residential subdivision includes 125 single-family lots on 44-acres, with many lots backing on the existing golf courses. The lots will be in six clusters (or phases) anticipated to contain between 12 and 29 lots, will be served by private streets, and may have gated entries. Lots as currently conceived will average approximately 11,500 square feet.

A homeowners association has been formed for the Phase 1 Residential Area (The Enclave at Cypress Grove -- Seaside Resort Estates Phase IA & 1B), and covenants, conditions, and restrictions (CC&Rs), including architectural and landscape design guidelines, have been adopted. Additional homeowners associations will be formed as additional residential phases are developed. Streets and utility infrastructure are constructed as part of the subdivision improvements. The sites not already built upon will require vegetation removal and grading prior to construction of houses. The Developer will subdivide the land and construct the subdivision improvements. The Developer may construct individual houses. At build-out of the residential area, approximately 397 residents will be added to the population of the City. The first 30-lot phase of the residential component was developed commencing in 2007 as Seaside Resort Estates Subdivision Phase 1A and 1B.

Reconstruction of the Golf Clubhouse. The existing golf clubhouse will be demolished and a reconstructed Golf/Resort Clubhouse will be built in approximately the same location. If the Developer elects to purchase the Golf/Resort Clubhouse site (currently subject to an earlier Golf Course ground lease) an approximately 2-acre site will be created as a legal lot (unless the City determines it is exempt from mapping) to accommodate the Golf/Resort Clubhouse, which fee land shall be owned by Developer and administered as an integral part of the Hotel Component.

The reconstructed Golf/Resort Clubhouse will include a restaurant and bar, men's and women's locker rooms, golf retail shop, management office space, an employee lounge area and other facilities and amenities such as fitness, pool and spa facilities, originally planned to be included in or adjacent to the hotel, that Developer may elect to include in the reconstructed clubhouse rather than at the hotel (see Hotel Component section above).

The golf course operations will continue in a manner similar to existing conditions, subject to a reciprocal easement agreement between the City and Developer granting the City as owner of the Golf Courses reasonable rights to the use of the golf clubhouse for users of the Golf Courses, and maintaining the number of employees, hours of operation, and maintenance activities in the same manner as when the golf clubhouse was subject to the earlier golf course ground lease.

The existing cart sheds for the golf courses are located immediately north of the golf clubhouse. New cart storage will be included in the basement of the reconstructed golf clubhouse. The existing cart sheds will no longer be needed and will be removed.

Relocation of the Golf Course Maintenance Facility. The site of the existing golf course maintenance area is situated in Timeshare Parcel A which will eventually be developed with timeshare or residential uses. A new parcel of approximately 2 acres has been created by the VTM adjacent to Monterey Road east of Noumea Avenue for a new maintenance facility. The facility will be designed, permitted and constructed by the golf course operator. Specific development plans are not presently available for the maintenance facility. Parking spaces for 30 golf course employees will be provided. The maintenance facility will include uses similar to the existing facility, which includes indoor equipment and supply storage, and outdoor equipment and bulk materials storage, and a nursery area.

Site Preparation. Existing site conditions and project characteristics are variable so site preparation activities will differ from component to component. Although much of the project site is undeveloped land within the existing golf course, construction of the project will require removal of buildings, golf course improvements and vegetation.

Removal of Existing Improvements. Portions of the parking lot for the hotel, golf clubhouse, and Timeshare Parcel B are proposed at the location of the existing parking lot. Development of the new parking lot will require the removal of the existing parking lot. It is expected that a portion of the new parking lots will be constructed prior to removal of the existing lot to minimize disruption to ongoing golf course operations.

Development of the western portion of Timeshare Parcel B will require the removal of the golf cart barns. Development of the northern portion of Timeshare Parcel A will require the removal of the golf course maintenance facility. A service road connecting the golf clubhouse and the golf course maintenance facility will also be removed.

Most of the residential areas are proposed for currently undeveloped land. Trees will be removed to make room for streets and housing sites in some of the proposed residential areas. Grading will be required for streets and lots.

The proposed new Golf/Resort Clubhouse will be located approximately on the site occupied by the existing clubhouse. The existing clubhouse will be demolished, and the site will be graded and excavated for the new facility.

Grading. Total earthwork on the project site is currently estimated to be approximately 89,000 cubic yards, but will ultimately depend on final site design and engineering requirements. Cut and fill quantities are expected to balance within the golf course parcel, with no importing or exporting of fill expected.

Phasing and Construction. The project will be undertaken in phases over a period of years, as set forth in Attachment 3 – Schedule of Performance. The project phases will not necessarily be developed in order as numbered on the VTM, and the internal configuration of the lots in the phases themselves could change in response to market conditions, but the foregoing does not alter the Schedule of Performance.

The hotel may be constructed as a single phase or in stages. If constructed as a single phase, construction is estimated to be completed in 30-34 months. If constructed in stages, Stages 1 (40 rooms) and Stage 2 (29 rooms) – total of 68 rooms – will be constructed as temporary uses and managed and operated as hotel rooms on the Timeshare component land until the Final Stage is constructed on the Hotel component land. When the Final Hotel Stage is completed, the Stage 1 and 2 hotel rooms on the timeshare component land may convert to other uses allowed by the DDA and the applicable Use Permit for the Timeshare component.

Infrastructure Improvements. The following infrastructure improvements will be constructed consistent with the City's Project Conditions.

Streets. McClure Way will be improved to include two travel lanes. McClure Way will include a 10-foot wide median for approximately 300 feet near General Jim Moore Boulevard and approximately 300 feet near the approach to the hotel. A concrete V-gutter will be constructed on each side. McClure Way will be built on a slightly different alignment in several places. McClure Way will continue to be a private driveway with a public use easement.

New private streets will be constructed to provide access to the residential and timeshare areas. Most of the streets will be 24 feet wide from edge of pavement to edge of pavement, with drainage toward a concrete V-ditch on one side. The residential streets will not include sidewalks or lighting. Gates may be located at each intersection with a public street, and the streets will be privately owned and maintained. Figure 8 shows the proposed street cross sections.

Parking. Parking for the hotel, timeshare and golf courses is addressed in a comprehensive manner, recognizing that the various components will have different peak use hours of operation and that some automobile trips will be shared trips among the various components (i.e., single trips for combined hotel/golf visits), all of which reduce demand for parking spaces. Spaces for handicapped persons will be provided. Parking spaces will be provided at the new golf maintenance facility for the golf course employees. Parking for the residential lots will be provided on each site in accordance with the Seaside Zoning Ordinance. Overflow parking for special events (e.g., major golf tournaments) will be accommodated by shuttle service to off-site locations. The total number of parking spaces within the Project approaches 900 spaces. The Project may contain subterranean parking.

Utilities. New water, sewer, gas, electrical, and communications lines will be constructed to serve the project. These will be placed underground within streets or easements. The water lines serving landscape areas will utilize domestic water until reclaimed water becomes available. The water main in General Jim Moore Boulevard that serves the golf course parcel may require expansion. Developer reserves the right to make application for an on-site water treatment plant.

Lighting. The final exterior lighting plan for the hotel, bungalow landscape and parking lot areas of the resort was approved by the Board of Architecture Review on April 2,

2008. Street lighting is not proposed for the residential areas. The lighting scheme is consistent with Condition # 49 which requires a low level of lighting that does not create glare or spill into adjacent habitat areas. The landscape lighting fits into the following general categories: 1) recessed up-lights, 2) wall-mounted downlights, 3) step lights, 4) pole-mounted parking lot lights, and 5) wet niche pool lights.

TABLE 1

Proposed Subdivision

Parcel or Lot Number	Approximate Size (Acres)
Hotel Parcel	17.67
Timeshare Parcel A	6.51
Timeshare Parcel B	9.26
Timeshare Parcel C	3.56
Residential Lots	43.66
Monterey Road ROW	3.12
Golf Clubhouse Site	To be determined.
Golf Maintenance Building Site	2.09
Golf Course Remainder Parcel	292.34

Note: The Golf Course Remainder Parcel will remain in City ownership.

EXHIBIT “A” TO
SCOPE OF DEVELOPMENT
CONCEPT DESIGN DRAWINGS

(Attached.)

FIGURES 1 TO 8

SEASIDE RESORT

PROJECT CHANGES

1. CITY COUNCIL APPROVAL OF THE (38 LOTS) PHASE I RESIDENTIAL AREA FINAL MAP ON MARCH 15, 2007 (CC RESOLUTION NO. 07-10).
2. CITY COUNCIL APPROVAL OF A RECORD OF SURVEY MAP CONVEYING 1.82 ACRES OF THE GOLF COURSES PARCEL TO SUNBAY RESORT ASSOCIATES, LLC (AN ADJOINING PROPERTY OWNER) ON MARCH 15, 2007 (CC RESOLUTION NO. 07-11).
3. CITY STAFF APPROVAL OF MODIFICATION OF PHASE VI RESIDENTIAL LOTS AT COE AVENUE ON JULY 17, 2007. (D. INGERSTOLL LETTER)
4. CITY STAFF APPROVAL RELOCATION OF TIMESHARE AREA C ADJACENT TO THE HOTEL PARCEL ON APRIL 21, 2008 (D. INGERSOLL LETTER).
5. PLANNING COMMISSION APPROVAL OF UP14-07 MODIFYING UP 01-20 ON DECEMBER 10, 2014 (RESOLUTION NO. 14-15).

LEGEND

- RESIDENTIAL LOTS
- RETAIL-COMMERCIAL VILLAGE AND HOTEL SITE
- INTERVAL/CONDO
- GOLF COURSE FAIRWAYS

Figure 1
Project Site Plan
Seaside Resort
Scope of Development

60 FOOT LOT EXHIBIT
JANUARY 3, 2013

DEVELOPED BY	*CIVIL ENGINEER*	*ARCHITECT*	*ENVIRONMENTAL CONSULTANT*	*LANDSCAPE ARCHITECT*	*ATTORNEY*
SEASIDE RESORT DEVELOPMENT, L.L.C. 2 Mc CLURE WAY SEASIDE, CA 93955 TEL 831-392-1900	BESTOR ENGINEERS, INC. 9701 BLUE LARKSPUR LANE MONTEREY, CA 93940 TEL 831-373-2941	HILL GLAZIER ARCHITECTS 925 ALMA STREET PALO ALTO, CA 94301 TEL 650-617-0366	DENISE DUFFY & ASSOCIATES 947 CASS STREET, SUITE 5 MONTEREY, CA 93940 TEL 831-373-4341	BELLINGER & FOSTER 425 PACIFIC STREET, SUITE 201 MONTEREY, CA 93940 TEL 831-646-1383	BRIAN FINEGAN PC 60 WEST ALISAL STREET SALINAS, CA 93901 TEL 831-757-3641

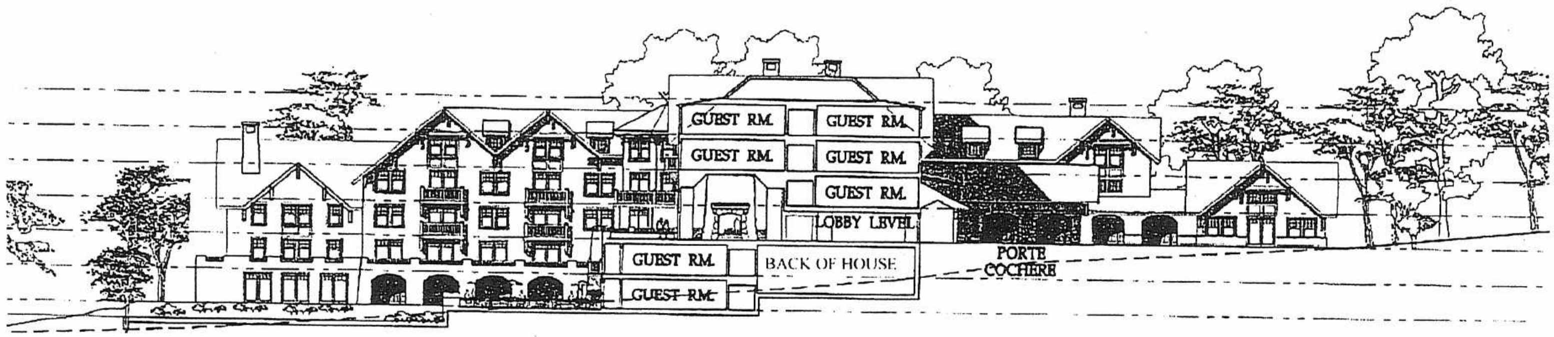
Front (East) Perspective

Figure 2

Main Hotel Building Perspective

Seaside Resort

Scope of Development



Rear (West) Section

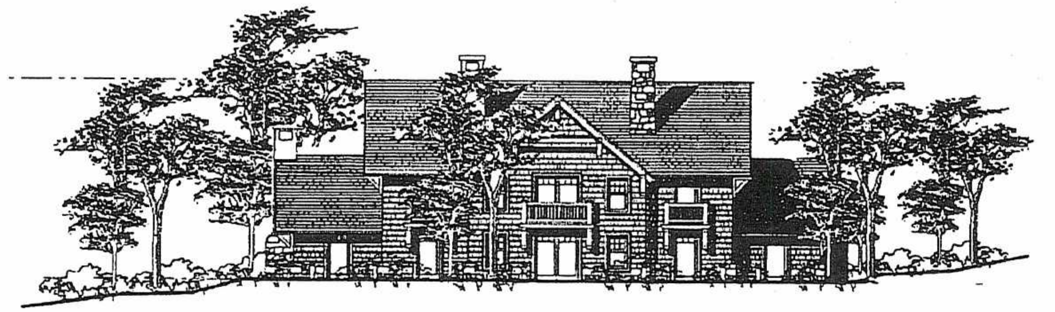
Front (East) Elevation

Figure 3

Main Hotel Building Section and Elevation

Seaside Resort

Scope of Development



Front Elevation

Side Elevation

Figure 4

Bungalow Elevations

Seaside Resort

Scope of Development

Side Elevation

Side Elevation

Front Elevation

Figure 5

Timeshare Elevations

Seaside Resort
Scope of Development

Entry (East) Elevation

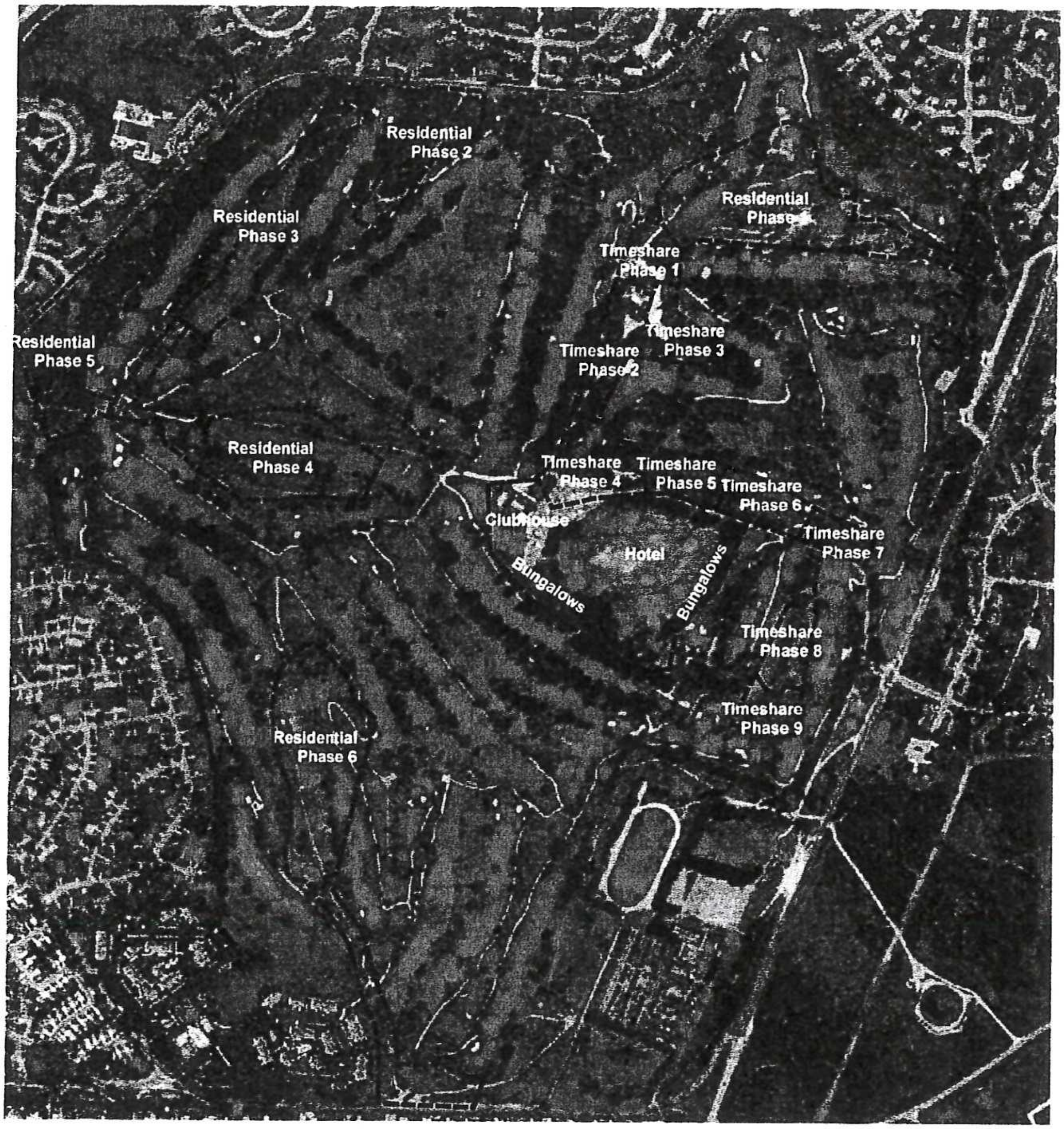
Golf Course (West) Elevation

Figure 6

Reconstructed Clubhouse Elevations

Seaside Resort

Scope of Development



--- Phase Boundary

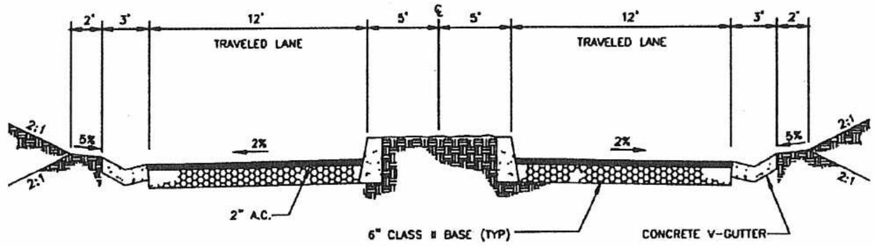
Note: Phase numbers are for reference only. Phases may be developed out of numerical sequence.

Scale: 1" = 1,200'

Figure 7

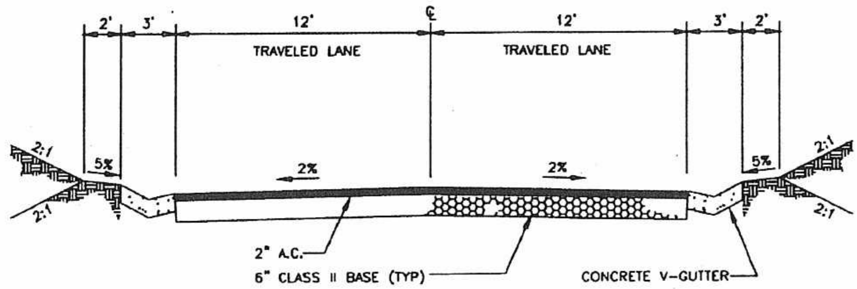
Phasing

Seaside Resort
Scope of Development



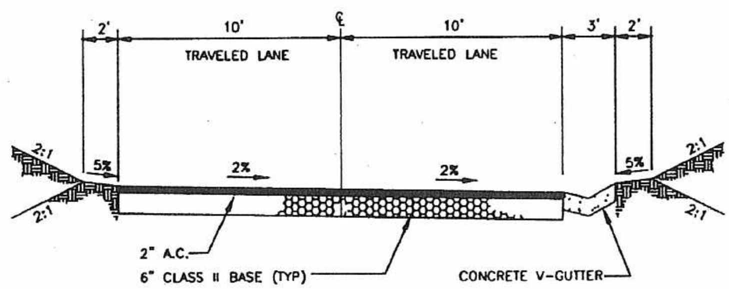
SECTION A

HOTEL ENTRANCE DRIVE OFF GENERAL JIM MOORE BLVD.
(McCLURE WAY)



SECTION B

ENTRANCE DRIVE / HOTEL / GOLF CLUBHOUSE



SECTION C

RESIDENTIAL & TIME SHARE DRIVES

Figure 8

Street Cross Sections

Seaside Resort
Scope of Development

ATTACHMENT NO. 3

SCHEDULE OF PERFORMANCE

Actions (not necessarily in chronological order)		Schedule/Deadline
1.	Delivery of ENRA Deposit.	Completed
2.	Delivery of Additional Deposit. Delivery of the Additional Deposit. [Section 3.3.1]	Completed.
3.	Affordable Housing Documentation. Execution of the Affordable and Workforce Housing Loan or Grant documentation. [Section 10]	Not later than application for building permit for the housing. Completed with respect to the 125-lot Residential Phase and the Hotel Phase. Not applicable to the Timeshare Phase (unless the Conditional Use Permit for the Timeshare Phase is modified to permit residential units).
4.	Affordable Housing Project Application. Submission of Affordable and Workforce Housing project application to City.	Not later than the closing of the sale of the first Phase sold to the Developer. Completed with respect to the 125-lot Residential Phase(s) and the Hotel Phase. Not applicable to the Timeshare Phase (unless the Conditional Use Permit for the Timeshare Phase is modified to permit residential units).
5.	Disposition Escrow. Developer and City shall open escrow. [Section 5.6.]	Upon the execution of this Agreement.
6.	Submission of Proof of Insurance. Developer shall submit proof of the insurance required by Attachment No. 7.	Prior to acquisition of land (for insurance required for the land prior to commencement of construction); prior to construction, for insurance required during construction; and prior to completion/CofO for insurance required after completion. (See Attachment 7.)
7.	Developer's Property Inspection. City shall provide Developer access to the Property. [Section 5.11]	Completed.
8.	Developer's Determination of Property Condition. Developer shall notify City if condition of Property is unacceptable. [Sections 5.11 and 5.12.3]	Completed.
9.	Deliveries to Escrow. [Section 5.7]	No later than the applicable closing date, but only upon satisfaction of all applicable

	Actions (not necessarily in chronological order)	Schedule/Deadline
		conditions precedent.
10.	Progress Reports and Meetings With City Manager. To update the City Manager concerning progress on Hotel Phase and Timeshare Phase [Section 6.3.5]	Commencing 6-months following approval of this Restated DDA and every 6 months thereafter.
11.	Submit Amended Entitlement Applications [Section 5.2.1]	Done.
12.	Approval of Amended Entitlement Applications. Developer shall obtain approval of the Amended Entitlement Applications	Done.
13.	Hotel Manager. Developer shall designate the hotel management company. (Developer shall designate the timeshare operator at least thirty (30) days before a Certificate of Occupancy is obtained for the timeshare project.) (Attachment 13)	Prior to commencement of construction of any phase of the hotel.
25.	Close of Escrow for all Hotel and Golf/Resort Clubhouse Stages.	February 28, 2018 (and record Memorandum of DDA; See Attachment 10)
26.	Commencement of Construction of Stage One, Stage Two and Final Hotel Stage and Golf/Resort Clubhouse Stage.	The date that is 12 months after the date of this Restated DDA.
27.	Certificate of Occupancy for Hotel and Golf/Resort Clubhouse Stages. Developer shall obtain a certificate of occupancy [Section 5.2.3]	December 31, 2021.
28.	Latest Final Timeshare Phase and Final Residential Phase Closing Dates. [Section 5.2.5.5]	
32.	Commencement of Construction. Developer shall commence grading on the applicable Timeshare or Residential Phase.	No later than one hundred and twenty (120) days after the receipt of building permit(s) for the applicable Improvements.
33.	Completion of Construction. Developer shall complete construction of the Timeshare or Residential Improvements.	Timeshare Improvements: twenty (20) months after the closing of Developer's acquisition of the applicable Timeshare Phase (or pertinent portion thereof); Residential Improvements: Twenty (20) months after the closing of Developer's acquisition of the applicable Residential Phase (or pertinent portion thereof). However, the above time periods that begin upon the closing of Developer's acquisition

Actions (not necessarily in chronological order)	Schedule/Deadline
	of a Phase shall not apply to Timeshare Improvements or Residential Improvements on Credit Property (described in Section 3.7.2), except that in all events construction commenced on Credit Property shall be completed diligently within a reasonable period of time.

<u>**ATTACHMENT NO. 4**</u>

<u>**FORM OF CERTIFICATE OF COMPLETION**</u>

(Attached.)

RECORDING REQUESTED BY,
AND WHEN RECORDED MAIL TO:

City of Seaside
440 Harcourt Avenue
Seaside, CA 93955
Attn: City Manager

WITH A COPY TO:
____
____
____
Attention: _____________________

APNs: ________________________

FREE RECORDING REQUESTED
(Govt. Code Section 6103)

(Space Above For Recorder's Use)

<u>CERTIFICATE OF COMPLETION</u>

THIS CERTIFICATE OF COMPLETION (this "Certificate") is made this day of__________________, 20__, by CITY OF SEASIDE, in its proprietary (not governmental) capacity ("City") in favor of __________________ ("Developer"), with reference to the following matters:

A. City, and Developer entered into that certain Second Amended and Restated Disposition and Development Agreement dated as of December 7, 2017 (the "DDA"), which is incorporated herein by reference. An Amended and Restated Memorandum of DDA was recorded on ________, 2017 as Document No. __________ in the Official Records of Monterey County. All capitalized terms not otherwise defined herein shall have the meanings assigned to them in the DDA.

B. As part of Developer's obligation under the DDA, Developer agreed to construct certain improvements defined therein as Improvements on that certain real property (the "Phase") described on <u>Exhibit "A"</u>, attached hereto and incorporated herein by reference. The DDA provides, in Section 6.14 thereof, that the City shall furnish Developer with a recordable Certificate of Completion upon satisfactory completion of the Improvements required for the Phase in accordance with the DDA.

C. City has determined that the construction of the Improvements on the Phase has been satisfactorily performed in accordance with the DDA.

NOW, THEREFORE, the City certifies under the DDA as follows:

1. The development and construction obligations of the Developer under the DDA with respect to the Phase has been satisfactorily performed and completed in accordance with the DDA. The City's option to purchase the Phase described in Section 9.4 of the DDA and contained in the instrument recorded on _____________ as document number _____________ in the Official Records of Monterey County, California, is hereby terminated with respect to the Phase.

2. This Certificate shall not affect any ongoing maintenance or nondiscrimination covenants in any recorded documents pertaining to the Phase (whether or not such covenants are also included in the DDA).

3. This Certificate shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a mortgage, or deed of trust or any insurer of a mortgage, or deed of trust securing money loaned to finance Developer Improvements or any part thereof.

4. This Certificate is not a Notice of Completion as referred to in California Civil Code Section 3093.

5. Except as stated herein, nothing contained in this instrument shall modify in any way any other provisions of the DDA or any other provisions of the documents incorporated herein.

IN WITNESS WHEREOF, City has executed this Certificate as of the day and year first above written.

CITY OF SEASIDE

By: ___________________________
City Manager

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Monterey)

On __________________________, before me, ___________________________________,
(insert name and title of the officer)
Notary Public, personally appeared ____, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature____________________________________ (Seal)

EXHIBIT "A"

LEGAL DESCRIPTION OF APPLICABLE PHASE

THE PHASE REFERRED TO HEREIN IS LAND SITUATED IN THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

ATTACHMENT NO. 5

ENVIRONMENTAL REPORTS[2]

Wainwright, Tony B. August 29, 1996. Finding of Suitability to Transfer (FOST) Golf Course Parcel, Phase 1, Former Fort Ord, CA. Assistant Deputy Chief of Staff for Base Operations Support, U. S. Army Training and Doctrine Command.

January 6, 1997. Quitclaim Deed for the Transfer of Bayonet and Black Horse Golf Courses to the City of Seaside, CA. Recorded on January 15, 1997 in the Office of the Recorder, Monterey County, CA., Reel 3468 Pages 1515-1574.

Kalus, Alisa and Mead, Christine L. H. October 26, 2000. Phase I Environmental Site Assessment, Bayonet/Blackhorse Golf Course Maintenance Facility, McClure Drive, Seaside, CA. Prepared by D&M Consulting Engineers, Inc., a URS Corporation Company, Monterey, CA.

Lederle, Thomas E. May 16, 2003. Finding of Suitability to Transfer (FOST) Track 0 Parcels, Former Fort Ord, CA. U. S. Army Director, Base Realignment and Closure, Hampton Field Office.

August 24, 2004. Quitclaim Deed to the City of Seaside for Site 33 on the former Fort Ord, Monterey, CA. Recorded November 2, 2004 in the Office of the Recorder, Monterey County, CA., Recorder's Series No. 2004116935.

[2] Some of the listed environmental reports may contain bibliographies of sources cited, which are not in the possession of the City.

ATTACHMENT NO. 6A

FORM OF DEED FOR HOTEL PHASE AND GOLF CLUBHOUSE PHASE

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Seaside
440 Harcourt Avenue
Seaside, CA 93955
Attn: City Manager

WITH A COPY TO AND
MAIL TAX STATEMENTS TO:

____
____
Attention: _____________

APNs: ________________________

FREE RECORDING REQUESTED
(Govt. Code Section 6103)

[Space above for Recorder's use pursuant to
California Government Code Section 27383]

Documentary Transfer Tax is $_________.
Property is in the City of Seaside.

GRANT DEED WITH OPTION TO REPURCHASE AND
ENVIRONMENTAL RESTRICTIONS

For a valuable consideration, receipt of which is hereby acknowledged,

THE CITY OF SEASIDE (hereinafter referred to as "Grantor" or "City"), acting to carry out the public purposes of that certain Second Amended and Restated Disposition and Development Agreement (herein called "DDA") dated December 7, 2017 and entered into by and between Grantor and hereby grants to ___________________ ("Grantee") the real property (hereinafter referred to as the "Property"), described in Exhibit "A", attached hereto and incorporated herein by this reference. Any capitalized terms used but not defined herein shall have the meaning ascribed thereto in the DDA.

1. Title to the Property is conveyed pursuant hereto subject to all recorded liens, encumbrances, covenants, encroachments, assessments, easements, leases and taxes.

2. The Property is conveyed in accordance with and subject to the DDA, which document is a public record on file in the offices of the Grantor.

3. Grantee covenants and agrees as follows:

   a. Grantee, its successors and assigns and successors-in-interest, shall use the Property and the improvements now or hereafter constructed only for the hotel development permitted and the hotel and hotel-related uses specified in the DDA.

   b. Grantee and its successors and assigns shall maintain the Property and the improvements thereon in the same aesthetic and sound condition (or better) as to the condition of the Property at the time City issues a Certificate of Completion pursuant to the DDA, reasonable wear and tear excepted. Representative items of maintenance include, but are not limited to, frequent and regular inspection for graffiti or damage or deterioration or failure, and immediate repainting or repair or replacement of all surfaces, fencing, walls, equipment, etc., as necessary; emptying of trash receptacles and removal of litter; sweeping of any public sidewalks adjacent to the Property, walks and paved areas on the Property and washing-down as necessary to maintain clean surfaces; maintenance of all landscaping in a healthy and attractive condition, including trimming, fertilizing and replacing vegetation as necessary; painting the buildings on a regular program and prior to the deterioration of the painted surfaces; conducting a roof inspection on a regular basis and maintaining the roof in a leak-free and weather-tight condition; and maintaining security devices in good working order. In the event the foregoing covenant is breached, Grantor or its designee shall have the right but not the obligation to enter the Property upon reasonable notice to the then record owner of the Property, correct any violation, and hold Grantee, or its successors or assigns responsible for the cost thereof, and such cost, until paid, shall constitute a lien with power and sale on the Property that may be foreclosed in accordance with California law. The Grantee and each successor and assign to whom this covenant applies shall be liable for maintenance of the Property pursuant to this paragraph only for the respective period of time during which such entity holds an ownership interest in the Property.

   c. Grantee, and its successors and assigns and successors-in-interest shall at all times comply with Section 7.4 of the DDA with respect to the names used for the hotel and golf clubhouse

   d. City shall have the right to reserve and use any meeting room in the portion of the clubhouse dedicated to golf operations without charge up to twelve (12) times per calendar year. Such use is limited to private staff or administrative meetings of the City to which no public access or attendance is allowed.

4. Grantee herein covenants by and for itself and its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination

against or segregation of, any person or group of persons on account of race, color, creed, religion, marital status, national origin, ancestry, sex, sexual orientation, political affiliation or opinion, or pregnancy or pregnancy-related condition, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the Grantee or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Property.

5. Grantee further covenants by and for itself and its successors and assigns, and all persons claiming under or through them, that it shall refrain from restricting the sale, lease, sublease, rental, transfer, use, occupancy, tenure, or enjoyment of the Property (or any part thereof) on the basis of race, color, religion, creed, national origin, ancestry, physical handicap, medical condition, age, marital status, sex, sexual orientation, political affiliation or opinion, or pregnancy or pregnancy-related condition of any person. All such deeds, leases, or contracts pertaining thereto shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

    a. In deeds: "The grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, religion, creed, national origin, ancestry, physical handicap, medical condition, age, marital status, sex, sexual orientation, political affiliation or opinion, or pregnancy or pregnancy-related condition in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

    b. In leases: "The lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, religion, creed, national origin, ancestry, physical handicap, medical condition, age, marital status, sex, sexual orientation, political affiliation or opinion, or pregnancy or pregnancy-related condition, in the leasing, subleasing, renting, transferring, use, occupancy, tenure or enjoyment of the land herein leased, nor shall lessee itself, or any person claiming under or through it, establish or permit such practice or practices of discrimination or segregation with reference to the selection, location, number, or occupancy of tenants, lessees, sublessees, tenants, or vendees in the land herein leased."

c. In contracts: "There shall be no discrimination against or segregation of, any person or group of persons on account of race, color, religion, creed, national origin, ancestry, physical handicap, medical condition, age, marital status, sex, sexual orientation, political affiliation or opinion, or pregnancy or pregnancy-related condition in the sale, lease, sublease, rental, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the land."

6. In amplification and not in restriction of the provisions set forth herein above, it is intended and agreed that Grantor shall be deemed a beneficiary of the covenants and agreements provided herein above both for and in its own right and also for the purposes of protecting the interests of the community and the Project Area. All covenants without regard to technical classification or designation shall be binding for the benefit of Grantor, and the City of Seaside ("City"), and such covenants shall run in favor of Grantor and the City for the entire period during which such covenants shall be in force and effect, without regard to whether Grantor or the City is or remains an owner of any land or interest therein to which such covenants relate. Grantor and City shall have the right, in the event of any breach of any such covenant or agreement, after delivery of notice and expiration of the cure period discussed in Section 9.1 of the DDA, to exercise all the rights and remedies, and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of such breach of covenant or agreement.

7. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Grant Deed or in any of the documents referred to above shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust or other security instrument permitted by the DDA and made in good faith and for value; provided, however, that any subsequent owner of the Property shall be bound by such remaining covenants, conditions, restrictions, limitations and provisions, whether such owner's title was acquired by foreclosure, trustee's sale or otherwise, and shall be entitled to all the benefits granted to Grantee and its assigns hereunder.

8. All covenants contained in this Deed shall be construed as covenants running with the land and not as conditions which might result in forfeiture of title, except as set forth in Paragraph 9.

9. In addition to its other rights and remedies under this Deed, Grantor shall have the option to repurchase the Property as follows:

(a) If Grantee defaults under the DDA, at any time prior to issuance of a Certificate of Completion for the Property pursuant to Section 6.15 of the DDA, and such default is not cured within the time periods set forth in Section 9.1 of the DDA, and subject to the rights of Holders set forth in Section 6.13 of the DDA, then Grantor may repurchase the Property and all improvements thereon, or any portion thereof for which a partial Certificate of Completion has not been issued, at any time.

(b) If a default is still continuing after expiration of the cure periods granted to Grantee and the Holders, Grantor may elect to exercise the option described herein. This option to purchase shall be exercised, if at all, by Grantor's delivery of written notice of its election to exercise the option to Grantee within one year after expiration of the last of the cure periods granted to Grantee and/or the Holders.

(c) The purchase price (the "Option Purchase Price") shall be the "Purchase Price" paid by Developer, as that term is defined in the DDA, for the Property or portion of the Property being acquired by City.

(d) The purchase and sale shall occur within fifteen (15) business days after Grantor's exercise of its option through an escrow company selected by Grantor. Grantor and Grantee shall promptly execute, acknowledge and deliver any and all documents necessary or appropriate to conduct the purchase and sale transaction (including, without limitation, escrow instructions, a settlement statement, a FIRPTA affidavit, and a California Form 593) and the Grantee (*i.e.*, Seller) shall pay all escrow costs and the cost of an ALTA title policy in favor of Grantor that is consistent with clause (e) below.

(e) Grantor shall deliver the Option Purchase Price to Grantee concurrently with delivery of title to Grantor. Grantee shall convey title subject only to exceptions that (i) existed at the time of Grantee's acquisition of the Property, or (ii) were created with the written consent of Grantor or approved in writing by Grantor.

(f) Grantor shall be entitled to specific enforcement of the terms of this instrument.

(g) Upon the issuance of the Certificate of Completion for the Property, Grantor shall execute a memorandum terminating this option to purchase. Any such memorandum shall be prepared and recorded at Grantee's sole expense.

10. The covenants and restrictions set forth in that certain "Quitclaim Deed" executed by the United States of America on January 8, 1997 in favor of the City of Seaside, recorded on January 15, 1997 in Reel 3468 at Page 1515 in the Office of the Monterey County Recorder and applicable to the grantee thereunder are

hereby incorporated herein by reference. Grantee and all successor owners of the portion of the Property conveyed by such deed shall be bound by such covenants and restrictions for the benefit of the United States of America, the City and the City.

11. City shall have the right to use the conference room(s) in the golf clubhouse on the Property for regularly scheduled City Council meetings at no charge.

IN WITNESS WHEREOF, the Grantor and the Grantee have caused this instrument to be executed on their behalf by their respective officers thereunder duly authorized, as of this _______ day of ______________, 20___.

CITY OF SEASIDE

By:____________________________
City Manager

ATTEST:

By:______________________
Secretary

The Grantee hereby accepts and approves each of the covenants, conditions and restrictions set forth, described or incorporated by reference in this Deed.

GRANTEE:

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Monterey)

On _________________________, before me, ___________________________________,
(insert name and title of the officer)
Notary Public, personally appeared ____, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature___________________________________ (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Monterey)

On _________________________, before me, __________________________________,
(insert name and title of the officer)
Notary Public, personally appeared ____,
who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature___________________________________ (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Monterey)

On _________________________, before me, _________________________________,
(insert name and title of the officer)
Notary Public, personally appeared ____,
who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature__________________________________ (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Monterey)

On _________________________, before me, _________________________________,
(insert name and title of the officer)
Notary Public, personally appeared ____, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature___________________________________ (Seal)

EXHIBIT “A”

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN IS SITUATED IN THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

ATTACHMENT NO. 6B

FORM OF DEED FOR RESIDENTIAL AND TIMESHARE PHASES

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Seaside
440 Harcourt Avenue
Seaside, CA 93955
Attn: City Manager

WITH A COPY TO AND
MAIL TAX STATEMENTS TO:

____
____
____
Attention: _____________

APNs: __________________

FREE RECORDING REQUESTED
(Govt. Code Section 6103)

[Space above for Recorder's use pursuant to California Government Code Section 27383]

Documentary Transfer Tax is $_______.
Property is in the City of Seaside.

GRANT DEED AND ENVIRONMENTAL RESTRICTIONS

For a valuable consideration, receipt of which is hereby acknowledged,

The CITY OF SEASIDE (hereinafter referred to as "Grantor" or "City"), hereby grants to _________ ("Grantee") the real property (hereinafter referred to as the "Property"), described in Exhibit "A", attached hereto and incorporated herein by this reference.

1. Title to the Property is conveyed pursuant hereto subject to all recorded liens, encumbrances, covenants, encroachments, assessments, easements, leases and taxes.

2. Grantee herein covenants by and for itself and its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, marital status, national origin, ancestry, sex, sexual orientation, political affiliation or opinion, or pregnancy or pregnancy-related

condition, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the Grantee or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Property.

3. Grantee further covenants by and for itself and its successors and assigns, and all persons claiming under or through them, that it shall refrain from restricting the sale, lease, sublease, rental, transfer, use, occupancy, tenure, or enjoyment of the Property (or any part thereof) on the basis of race, color, religion, creed, national origin, ancestry, physical handicap, medical condition, age, marital status, sex, sexual orientation, political affiliation or opinion, or pregnancy or pregnancy-related condition of any person. All such deeds, leases, or contracts pertaining thereto shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

   a. In deeds: "The grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, religion, creed, national origin, ancestry, physical handicap, medical condition, age, marital status, sex, sexual orientation, political affiliation or opinion, or pregnancy or pregnancy-related condition in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

   b. In leases: "The lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, religion, creed, national origin, ancestry, physical handicap, medical condition, age, marital status, sex, sexual orientation, political affiliation or opinion, or pregnancy or pregnancy-related condition, in the leasing, subleasing, renting, transferring, use, occupancy, tenure or enjoyment of the land herein leased, nor shall lessee itself, or any person claiming under or through it, establish or permit such practice or practices of discrimination or segregation with reference to the selection, location, number, or occupancy of tenants, lessees, sublessees, tenants, or vendees in the land herein leased."

c. In contracts: "There shall be no discrimination against or segregation of, any person or group of persons on account of race, color, religion, creed, national origin, ancestry, physical handicap, medical condition, age, marital status, sex, sexual orientation, political affiliation or opinion, or pregnancy or pregnancy-related condition in the sale, lease, sublease, rental, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the land."

4. In amplification and not in restriction of the provisions set forth herein above, it is intended and agreed that Grantor shall be deemed a beneficiary of the covenants and agreements provided herein above both for and in its own right and also for the purposes of protecting the interests of the community and the Project Area. All covenants without regard to technical classification or designation shall be binding for the benefit of Grantor, and the City of Seaside ("City") and such covenants shall run in favor of Grantor and the City for the entire period during which such covenants shall be in force and effect, without regard to whether Grantor or the City is or remains an owner of any land or interest therein to which such covenants relate.

5. **[INCLUDE THE FOLLOWING IN DEED(S) FOR RESIDENTIAL PHASE SITES AND IN DEED(S) FOR TIMESHARE PHASE SITES THAT ARE NOT LOCATED SOLELY ON "SITE 33":]** The covenants and restrictions set forth in that certain "Quitclaim Deed" executed by the United States of America on January 8, 1997 in favor of the City of Seaside, recorded on January 15, 1997 in Reel 3468 at Page 1515 in the Office of the Monterey County Recorder and applicable to the grantee thereunder are hereby incorporated herein by reference. Grantee and all successive owners of the portion of the Property conveyed by such deed shall be bound by such covenants and restrictions for the benefit of the United States of America, the City and the City.

6. **[INCLUDE IN DEEDS THAT CONVEY ANY PORTION OF SITE 33:]**

The deed from the United States of America (the "Government") conveying the Property to the GRANTOR was recorded prior to the recordation of this Deed. In its transfer of the Property to the GRANTOR, the Government provided certain information regarding the environmental condition of the Property. The GRANTOR has no knowledge regarding the accuracy or adequacy of such information.

The italicized information below is copied verbatim (except as discussed below) from the Government deed conveying the Property to the GRANTOR. The GRANTEE hereby acknowledges and assumes all responsibilities with regard to the Property placed upon the GRANTOR under the terms of the aforesaid Government deed to GRANTOR and GRANTOR grants to GRANTEE all benefits with regard to the Property under the terms of the aforesaid Government deed. Within the italicized information only, the term

"Grantor" shall mean the Government, and the term "Grantee" shall mean the City of Seaside; to avoid confusion, the words "the Government" have been added in parenthesis after the word "Grantor, and "Seaside" has been added in parenthesis after the word "Grantee".

TO HAVE AND TO HOLD the Property unto the Grantee ("Seaside") and its successors and assigns forever, provided that this Deed is made and accepted upon each of the following notices, covenants, restrictions, and conditions which shall be binding upon and enforceable against the Grantee ("Seaside"), its successors and assigns, in perpetuity, as follows:

II. "AS IS, WHERE IS"

The Property is conveyed in an "As Is, Where Is" condition without any representation, warranty or guarantee, except as otherwise stated herein, by the Grantor ("the Government") as to quantity, quality, title, character, condition, size, or kind, or that the same is in condition or fit to be used for the purpose for which intended, and no claim for allowance or deduction upon such grounds will be considered. There is no obligation on the part of the Grantor ("the Government") to make any alterations, repairs, or additions, and said Grantor ("the Government") shall not be liable for any latent or patent defects in the Property. This section shall not affect the Grantor's ("the Government") responsibility under CERCLA COVENANTS, NOTICE, AND ENVIRONMENTAL REMEDIATION or INDEMNIFICATION herein.

III. FEDERAL FACILITIES AGREEMENT (FFA)

The United States acknowledges that former Fort Ord has been identified as a National Priority List (NPL) Site under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) of 1980, as amended. The Grantee ("Seaside") acknowledges that the United States has provided it with a copy of the FFA entered into by the Environmental Protection City (EPA) Region IX, the State of California, and the Department of the Army, effective on February 1990, and will provide the Grantee ("Seaside") with a copy of any amendments thereto. The Grantee ("Seaside") agrees that should any conflict arise between the terms of the FFA as they presently exist or may be amended, and the provisions of this Deed, the terms of the FFA will take precedence. The Grantee ("Seaside") further agrees that notwithstanding any other provisions of this Deed, the United States assumes no liability to the Grantee ("Seaside"), should implementation of the FFA interfere with its use of the Property. Grantor ("the Government") shall give Grantee ("Seaside") reasonable notice of its action required by the FFA and use all reasonable means to the extent practicable to avoid and/or minimize interference with Grantee's ("Seaside"), its successors or assigns' use of the Property. Grantee ("Seaside"), or any subsequent transferee, shall have no claim on account of any such interference against the United States or any officer, agent, employee or contractor thereof.

IV. NOTICE OF HAZARDOUS SUBSTANCE STORAGE, RELEASE, OR DISPOSAL

The Grantor ("the Government") hereby notifies the Grantee ("Seaside") of the former storage, release, or disposal of hazardous substances on the Property. The items typically stored on the Property are listed in Table 4 of the Finding of Suitability to Transfer (FOST) attached hereto and made a part hereof as Exhibit "B". The information regarding this storage indicates that it was conducted in a manner that would not pose a threat to human health and the environment. This notice is given pursuant to CERCLA and no additional action is necessary under CERCLA to protect human health and the environment.

V. CERCLA COVENANTS, NOTICE, AND ENVIRONMENTAL REMEDIATION

A. Pursuant to Section 120(h) of CERCLA, 42 U.S.C. § 9601, et seq., the FOST, and an environmental baseline survey (EBS) known as Community Environmental Response Facilitation Act report, which is referenced in the FOST, set forth the environmental condition of the Property. The FOST sets forth the basis for the Grantor's ("the Government") determination that the Property is suitable for transfer. The Grantee ("Seaside") is hereby made aware of the notifications contained in the EBS and the FOST. The Grantee ("Seaside") has inspected the Property and accepts the physical condition and current level of known environmental hazards on the Property and deems the Property to be safe for the Grantee's ("Seaside") intended use. The Grantor ("the Government") represents that the Property is environmentally suitable for transfer to Grantee ("Seaside") for the purposes identified in the Final Fort Ord Base Reuse Plan dated December 12, 1994, as amended on June 13, 1997, as approved by the Fort Ord Reuse Authority. If, after conveyance of the Property to Grantee ("Seaside"), there is an actual or threatened release of a hazardous substance on the Property, or in the event that a hazardous substance is discovered on the Property after the date of this conveyance, whether or not such substance was set forth in the technical environmental reports, including the EBS and FOST. Grantee ("Seaside") or its successors or assigns shall be responsible for such release or newly discovered substance unless such release or such newly discovered substance was due to Grantor's ("the Government") activities, ownership, use, presence on, or occupation of the Property, or the activities of Grantor's ("the Government") contractors and/or agents. Grantee ("Seaside"), its successors and assigns, as consideration for this conveyance, agrees to release Grantor ("the Government") from any liability or responsibility for any claims arising out of or in any way predicated on release of any hazardous substance on the Property occurring after the conveyance, where such hazardous substance was placed on the Property by the Grantee ("Seaside"), or its agents or contractors, after this conveyance to the Grantee ("Seaside").

B. Pursuant to Section 120(h)(3) of CERCLA, the Grantor ("the Government") hereby notifies the Grantee ("Seaside"), its successors and assigns, of the storage, release, and disposal of hazardous substances on the Property.

(1) The Grantor ("the Government") hereby covenants that prior to the date of this conveyance, all corrective, remedial and response actions necessary to protect human health and the environment have been taken with respect to the Property.

(2) The Grantor ("the Government") hereby covenants that all corrective, remedial and response actions necessary to protect human health and the environment with respect to any hazardous substances remaining on the Property after the date of transfer shall be conducted by the Grantor ("the Government").

C. The CERCLA warranty in Paragraph V.B.(1) and (2) above shall not apply in any case in which the person or entity to whom the Property is transferred is a "potentially responsible party," as defined under CERCLA Section 107(a)(2)-(4) with respect to such hazardous substances.

D. Nothing in this Section is intended to, nor shall it be construed to, alter, amend, increase or diminish the parties' rights, liabilities, and duties as set forth more fully in Section 120(h) of CERCLA, 42 U.S.C. § 9620(h).

E. The Grantor ("the Government"), EPA, and the California Environmental Protection City, Department of Toxic Substances Control (DTSC), and their officers, agents, employees, contractors, and subcontractors will have the right, upon reasonable notice to the Grantee ("Seaside"), to enter upon the Property in any case in which a response or corrective action is found to be necessary, after the date of transfer of the Property, or such access is necessary to carry out a response action or corrective action on adjoining property at no cost to the Grantor ("the Government"), including, without limitation, the following activities:

(1) To conduct investigations and surveys, including where necessary, drilling, soil and water sampling, test-pitting, and other activities related to the Fort Ord Installation Restoration Program (IRP), Ordnance and Explosives (OE) program, or FFA;

(2) To inspect field activities of the Army and its contractors and subcontractors with regards to implementing the Fort Ord IRP, OE program, or FFA;

(3) To conduct any test or survey related to the implementation of the IRP by the EPA or the DTSC relating to the implementation of the FFA or

environmental conditions at Fort Ord or to verify any data submitted to the EPA or the DTSC by the Government relating to such conditions;

(4) To construct, operate, maintain or undertake any other investigation, corrective measure, response, or remedial action as required or necessary under any Fort Ord FFA, Record of Decision (ROD), IRP or OE program requirement, including, but not limited to monitoring wells, pumping wells, and treatment facilities.

F. In exercising this access easement, except in case of imminent endangerment to human health or the environment, the Grantor ("the Government") shall give the Grantee ("Seaside"), or the then record owner, reasonable prior notice and shall use all reasonable means to the extent practicable to avoid and/or minimize interference with Grantee's ("Seaside"), its successors or assigns' use of the Property. Grantee ("Seaside") agrees that, notwithstanding any other provisions of this Deed, the Grantor ("the Government") assumes no liability to the Grantee ("Seaside"), its successors or assigns, or any other person, should remediation of the Property interfere with the use of the Property. The Grantee ("Seaside") shall not, through construction or operation/maintenance activities, interfere with any remediation or response action conducted by the Grantor ("the Government") under this section. The Grantee ("Seaside"), the then record owner, and any other person shall have no claim against the Grantor ("the Government") or any of its officers, agents, employees or contractors solely on account of any such interference resulting from such remediation.

G. Without the express written consent of the Grantor ("the Government") in each case first obtained, neither the Grantee ("Seaside"), its successors or assigns, nor any other person or entity acting for or on behalf of the Grantee ("Seaside"), its successors or assigns, shall interfere with any response action being taken on the Property by or on behalf of the Grantor ("the Government"), or interrupt, relocate, or otherwise interfere with any remediation system now or in the future located, over, through, or across any portion of the Property.

VI. NOTICE OF THE PRESENCE OF ASBESTOS AND COVENANT

A. The Grantee ("Seaside") is hereby informed and does acknowledge that friable and/or non-friable asbestos or asbestos-containing material (ACM) have been found on the Property, as described in the referenced asbestos survey and summarized in the EBS.

B. Building 4110 has been determined to contain friable and/or non-friable asbestos that may pose a threat to human health. Building 4110C was not surveyed by Grantor ("the Government") but may contain friable and/or non-friable asbestos that may pose a threat to human health. Detailed information is *contained in the Asbestos Survey Report, Fort Ord Installation (April 26, 1993). The Grantor ("the Government") has agreed to transfer said buildings and structures to the Grantee ("Seaside"), prior to remediation of asbestos hazards, in reliance upon the Grantee's ("Seaside") express representation and promise that the Grantee ("Seaside") will, prior to use or occupancy of said buildings, demolish said buildings or the portions thereof containing friable asbestos, disposing of ACM in accordance with applicable laws and regulations. To the extent there is friable asbestos in said buildings, the Grantee ("Seaside") specifically agrees to undertake any and all abatement or remediation that may be required under CERCLA 120(h)(3) or any other applicable law or regulation. The Grantee ("Seaside") acknowledges that the consideration for the conveyance of the Property was negotiated based upon the Grantee's ("Seaside") agreement to the provisions contained in this section.*

C. The Grantee ("Seaside") covenants and agrees that its use and occupancy of the Property will be in compliance with all applicable laws relating to asbestos; and that the Grantor ("the Government") assumes no liability for any future remediation of asbestos or damages for personal injury, illness, disability, or death, to the Grantee ("Seaside"), its successors or assigns, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos or ACM on the Property, whether the Grantee ("Seaside"), its successors or assigns have properly warned or failed to properly warn the individual(s) injured. The Grantee ("Seaside") agrees to be responsible for any future remediation of asbestos found to be necessary on the Property as a result of the Grantee's ("Seaside") activities. The Grantee ("Seaside") assumes no liability for damages for personal injury, illness, disability, death or property damage arising from (i) any exposure or failure to comply with any legal requirements applicable to asbestos on any portion of the Property arising prior to the Grantor's ("the Government") conveyance of such portion of the Property to the Grantee ("Seaside") pursuant to this Deed, or (ii) any disposal, prior to the Grantor ("the Government")'s conveyance of the Property, of any asbestos or ACM.

D. Unprotected or unregulated exposures to asbestos in product manufacturing, shipyard, and building construction workplaces have been associated with asbestos-related diseases. Both Occupational Safety and Health Administration (OSHA) and EPA regulate asbestos because of the potential hazards associated with exposure to airborne asbestos fibers. Both OSHA and EPA have determined that such exposure increases the risk of asbestos-related diseases, which include certain cancers and which can result in disability or death.

E. The Grantee ("Seaside") acknowledges that it has inspected the Property as to their asbestos content and condition and any hazardous or environmental conditions relating thereto prior to accepting the responsibilities *imposed upon the Grantee ("Seaside") under this section. The failure of the Grantee ("Seaside") to inspect, or to be fully informed as to the asbestos condition of all or any portion of the Property offered, will not constitute grounds for any claim or demand against the United States, or any adjustment under this Deed.*

F. The Grantee ("Seaside") further agrees to indemnify and hold harmless the Army, its officers, agents and employees, from and against all suits, claims, demands or actions, liabilities, judgments, costs and attorneys' fees arising out of, or in any manner predicated upon, exposure to asbestos on any portion of the Property after this conveyance of the Property to the Grantee ("Seaside") or any future remediation or abatement of asbestos or the need therefor. The Grantee's ("Seaside") obligation hereunder shall apply whenever the United States incurs costs or liabilities for actions giving rise to liability under this section.

VII. NOTICE OF THE PRESENCE OF LEAD-BASED PAINT

A. The Grantee ("Seaside") is hereby informed and does acknowledge that all buildings on the Property, which were constructed or rehabilitated prior to 1978, are presumed to contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Every purchaser of any interest in Residential Real Property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. "Residential Real Property" means dwelling units, common areas, building exterior surfaces, and any surrounding land, including outbuildings, fences and play equipment affixed to the land, available for use by residents, and child occupied buildings visited regularly by the same child, 6 years of age or under, on at least two different days within any week, including day–care centers, preschools and kindergarten classrooms, but not including land used for agricultural, commercial, industrial, or other non-residential purposes, and not including paint on the pavement of parking lots, garages, or roadways.

B. Buildings constructed prior to 1978 are assumed to contain lead-based paint. Buildings constructed after 1977 are assumed to be free of lead-based paint. No sampling for lead within the buildings on the Property has occurred. However, limited sampling for lead-based paint was conducted in former barracks buildings located on property immediately north of Parcel L32.2.2 (Industrial Hygiene Survey No. 55-71-R25A-94). One or more of the former barracks interior and/or exterior surface components (e.g., walls, doors, window sills, door frames, etc.)

tested positive for lead-based paint. Those barracks sampled were of the same construction type and were constructed in the same year (1954) as former barracks located on Parcel L32.2.2 (Buildings 4552 and 4562) and Parcel L32.4.1.1 (Buildings 4430, 4432, 4434, 4436, 4440, 4442, 4444, and 4446). Limited sampling for lead in soil surrounding some buildings at former Fort Ord has been completed. Soil samples were collected from soil surrounding 10 buildings in Parcel L23.3.2.1 (Buildings 6, 10, 20, 14, 16, 36, 71, 75, 82, and 108). The average concentration of lead detected in soil was 263 milligrams per kilogram (mg/kg) with a maximum concentration of 2,211 mg/kg detected at Building 6 (Lead In Soil Survey For Ten Buildings At The East Garrison, Fort Ord, California, April 8, 1998). As agreed upon in an agency meeting on August 29, 1997, lead analytical results from soil samples collected adjacent to buildings on the Peninsula Outreach and the Marina Sports Center parcels can be used to represent lead concentrations in soil around the buildings on the Main Garrison parcels (E2b.1.1.1, E2b.1.1.2, E2b.1.2, E2b.1.3, E2b.1.4, E2b.2.1, E2b.2.3, E2b.2.4, E2b.3.1.1, E2c.3.1, E2c.3.2, E2c.3.3, E2c.4.2.1, E2d.1, E2d.2, L12.2.2, L12.2.3, L12.3, L23.1.2, L23.1.3, L23.1.4, and L35.1) which were constructed of similar materials and during similar time periods. Average concentrations of lead detected in soil around the buildings on the Peninsula Outreach and Marina Sports Center parcels were 99.4 and 228 mg/kg, respectively. The maximum background concentration for lead in soil at Fort Ord is 51.8 mg/kg (Draft Final Basewide Background Soil Investigation, Fort Ord, California, March 15, 1993). The Federal Preliminary Remediation Goal (PRG) for residential non-play area bare soil is 1,200 mg/kg. All purchasers must receive the Federally approved pamphlet on lead poisoning prevention. The Grantee ("Seaside") hereby acknowledges receipt of all of the information described in this subparagraph.

C. The Grantee ("Seaside") acknowledges that it has received the opportunity to conduct its own risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards prior to execution of this document.

D. The Grantee ("Seaside") covenants and agrees that it shall not permit the occupancy or use of any buildings or structures on the Property as Residential Real Property, as defined in subparagraph A, above, without complying with this section and all applicable Federal, State, and local laws and regulations pertaining to lead-based paint and/or lead-based paint hazards. Prior to permitting the occupancy of the Property where its use subsequent to sale is intended for residential habitation, the Grantee ("Seaside") specifically agrees to perform, at its sole expense, the Army's abatement requirements under Title X of the Housing and Community Development Act of 1992 (Residential Lead-Based Paint Hazard Reduction Act of 1992) (hereinafter Title X).

E. The Grantee ("Seaside") shall, after consideration of the guidelines and regulations established pursuant to Title X: (1) Perform a reevaluation of the Risk Assessment if more than 12 months have elapsed since the date of the last Risk

Assessment; (2) Comply with the joint HUD and EPA Disclosure Rule (24 CFR 35, Subpart H, 40 CFR 745, Subpart F), when applicable, by disclosing to prospective purchasers the known presence of lead-based paint and/or lead-based paint hazards as determined by previous risk assessments; (3) Abate lead dust and lead-based paint hazards in pre-1960 residential real property, as defined in subparagraph A, above, in accordance with the procedures in 24 CFR 35; (4) Abate soil-lead hazards in pre-1978 residential real property, as defined in subparagraph A, above, in accordance with the procedures in 24 CFR 35; (5) Abate lead-soil hazards following demolition and redevelopment of structures in areas that will be developed as residential real property; (6) Comply with the EPA lead-based paint work standards when conducting lead-based paint activities (40 CFR 745, Subpart L); (7) Perform the activities described in this subparagraph within 12 months of the date of the lead-based paint risk assessment and prior to occupancy or use of the residential real property; and (8) Send a copy of the clearance documentation to the Grantor ("the Government").

F. In complying with these requirements, the Grantee ("Seaside") covenants and agrees to be responsible for any abatement or remediation of lead-based paint or lead-based paint hazards on the Property found to be necessary as a result of the subsequent use of the Property for residential purposes. The Grantee ("Seaside") covenants and agrees to comply with solid or hazardous waste laws that may apply to any waste that may be generated during the course of lead-based paint abatement activities.

G. The Grantee ("Seaside") further agrees to indemnify and hold harmless the Army, its officers, agents and employees, from and against all suits, claims, demands, or actions, liabilities, judgments, costs and attorney's fees arising out of, or in a manner predicated upon personal injury, death or property damage resulting from, related to, caused by or arising out of lead-based paint or lead-based paint hazards on the Property if used for residential purposes.

H. The covenants, restrictions, and requirements of this Section shall be binding upon the Grantee ("Seaside"), its successors and assigns and all future owners and shall be deemed to run with the land. The Grantee ("Seaside") on behalf of itself, its successors and assigns covenants that it will include and make legally binding, this Section in all subsequent transfers, leases, or conveyance documents.

VIII. NOTICE OF THE POTENTIAL FOR THE PRESENCE OF POLYCHLORINATED BIPHENYLS ("PCBs")

A. PCBs have been widely used as coolants and lubricants in transformers, capacitors and other electrical equipment like fluorescent light ballasts. EPA considers PCBs to be probable cancer causing chemicals, in humans. PCB and PCB-contaminated equipment that will be disposed of must be stored in a hazardous storage facility. The Grantee ("Seaside") is hereby informed that fluorescent light ballasts containing PCBs are present on the

Property. The PCB-containing light ballasts do not currently pose a threat to human health or the environment when managed properly. All PCB containing equipment is presently in full compliance with applicable laws and regulations.

B. Upon request, the Army agrees to furnish to the Grantee ("Seaside") any and all records in its possession related to such PCB equipment necessary for the continued compliance by the Grantee ("Seaside") with applicable laws and regulations related to the use and storage of PCBs or PCB-containing equipment.

C. The Grantee ("Seaside") covenants and agrees that its continued possession, use, and management of any PCB-containing equipment will be in compliance with all applicable laws relating to PCBs and PCB-containing equipment and that the Army shall assume no liability for the future remediation of PCB contamination or damages for personal injury, illness, disability, or death to the Grantee ("Seaside"), its successors or assigns, or to any other person, including members of the general public arising from or incident to future use, handling, management, disposition, or other activity causing or leading to contact of any kind whatsoever with PCBs or PCB-containing equipment, whether the Grantee ("Seaside"), its successors or assigns have properly warned or failed to properly warn the individual(s) injured. The Grantee ("Seaside") agrees to be responsible for any future remediation of PCBs or PCB-containing equipment found to be necessary on the Property.

D. This section shall not affect the Grantor's ("the Government") responsibility under CERCLA COVENANTS, NOTICE, AND ENVIRONMENTAL REMEDIATION or INDEMNIFICATION herein.

IX. ORDNANCE AND EXPLOSIVES (OE)

A. OE investigations indicate that it is not likely that OE is located within the Property. An archival search conducted during compilation of the Fort Ord Comprehensive Environmental Response Facilitation Act (CERFA) Report found there are no potential ordnance-related training areas within or immediately adjacent to the Property. However, there is a potential for OE to be present because OE was used throughout the history of Fort Ord. In the event the Grantee ("Seaside"), its successors, and assigns, should discover any ordnance on the Property, they shall not attempt to remove or destroy it, but shall immediately complete Section A of the Ordnance and Explosives Incident Reporting Form, fax the form to the Presidio of Monterey Police Department at (831) 242-7740 and notify the Presidio of Monterey Police Department via telephone at (831) 242-7851 and competent Grantor ("the Government") or Grantor ("the Government")-designated explosive ordnance personnel will promptly be dispatched to dispose of such ordnance at no expense to the Grantee ("Seaside"). The Grantee ("Seaside") hereby acknowledges receipt of the "Ordnance and Explosives Safety Alert" pamphlet and the Ordnance and Explosives Incident Reporting Form.

B. In addition, the Army offers OE familiarization training to anyone conducting ground disturbance activities (digging holes, excavating trenches, repairing underground utilities, etc.) at the former Ford Ord. The OE Safety Specialist conducts a thirty-minute training session. This training session includes a lecture on what OE might be found, the procedure to follow if something is found and "Safety Alert" brochures are also distributed. To schedule this training, please contact the Directorate of Environmental and Natural Resources at (831) 242-7919.

C. The Grantor ("the Government") reserves the right to conduct any remedial action and/or investigation that the Army is responsible for, as required or necessary as a result of the ongoing OE Remedial Investigation/Feasibility Study.

X. RESTRICTED TO COMMERCIAL/INDUSTRIAL USE

A. The Property is limited by its environmental condition to nonresidential use (Record of Decision Basewide Remedial Investigation Sites, Fort Ord, California, January 13, 1997). In order to protect human health and the environment and further the common environmental objectives and land use plans of the United States, State of California and Grantee ("Seaside"), the covenants and restrictions shall be included to assure the use of the property is consistent with environmental condition of the property. These following restrictions and covenants benefit the lands retained by the Grantor ("the Government") and the public welfare generally and are consistent with State and Federal environmental statutes.

B. Restrictions and Conditions. The CRUP for the Property has been made by and among The United States of America acting by and through the Army (Grantor ("the Government")), the Grantee ("Seaside"), and the State of California acting by and through the Department of Toxic Substances Control (Department). The Grantee ("Seaside") covenants for itself, its successors, and assigns not to use the Property for residential purposes, the Property having been remediated only for nonresidential use. The Grantee ("Seaside"), for itself, its successors or assigns covenants that it will not undertake nor allow any activity on or use of the Property that would violate the restrictions contained in the CRUP. Nothing contained herein shall preclude the Grantee ("Seaside") from undertaking, in accordance with applicable laws and regulations and without any cost to the Grantor ("the Government"), such additional remediation necessary to allow for residential use of the Property. Upon completion of such remediation required to allow residential use of the Property and upon the Grantee's ("Seaside") obtaining the approval of the State of California Department of Environmental Quality and, if required, any other regulatory agency, the Grantor ("the Government") agrees, without cost to the United States, to release or, if appropriate, modify this restriction by recordation of an amendment hereto.

These restrictions and covenants are binding on the Grantee ("Seaside"), its successors and assigns, run with the land and are forever hereinafter enforceable.

XI. NOTICE OF THE POTENTIAL FOR THE PRESENCE OF PESTICIDES AND COVENANT

A. The Grantee ("Seaside") is hereby informed and does acknowledge that pesticides may be present on the Property. To the best of Grantor's ("the Government") knowledge, the presence of pesticides does not currently pose a threat to human health or the environment, and the use and application of any pesticide product by the Grantor ("the Government") was in accordance with its intended purpose, and in accordance with CERCLA § 107 (i), which states:

"No person (including the United States or any State or Indian tribe) may recover under the authority of this section for any response costs or damages resulting from the application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.). Nothing in this paragraph shall affect or modify in any way the obligations or liability of any person under any other provision of State or Federal law, including common law, for damages, injury, or loss resulting from a release of any hazardous substance or for removal or remedial action or the costs of removal or remedial action of such hazardous substance."

B. Upon request, the Grantor ("the Government") agrees to furnish to the Grantee ("Seaside") any and all records in its possession related to the use of the pesticides necessary for the continued compliance by the Grantee ("Seaside") with applicable laws and regulations related to the use of pesticides.

C. The Grantee ("Seaside") covenants and agrees that its continued possession, potential use and continued management of the Property, including any demolition of structures, will be in compliance with all applicable laws relating to hazardous substance/pesticides and hazardous wastes.

XII. ENDANGERED SPECIES

The Grantee ("Seaside"), its successors or assigns shall comply with the requirements, if any and if applicable, of the Fort Ord Installation-Wide Multi-species Habitat Management Plan (HMP) for former Fort Ord, California.

A. The Property is within a Habitat Management Plan (HMP) Development Area. No resource conservation requirements are associated with the HMP Development Area. However, small pockets of habitat may be preserved within and around the former Fort Ord.

B. The Biological Opinion identified sensitive biological resources that may be salvaged for use in restoration activities within reserve areas, and allows for development of the former Fort Ord.

C. The HMP does not exempt the Grantee ("Seaside") from complying with environmental regulations enforced by Federal, state, or local agencies. These regulations could include obtaining the Endangered Species Act (ESA) (16 U.S.C. § 1531-1544 et seq.) Section 7 or Section 10(a) permits from the U.S. Fish and Wildlife Service (USFWS); complying with prohibitions against taking of listed animals under ESA Section 9; complying with prohibitions against the removal of listed plants occurring on Federal land or the destruction of listed plants in violation of any State laws; complying with measures for conservation of State-listed threatened and endangered species and other special-status species recognized by California Department of Fish and Game (DFG) under the California ESA, or California Environmental Quality Act (CEQA); and, complying with local land use regulations and restrictions.

D. The HMP serves as a management plan for both listed and candidate species, and is a prelisting agreement between the USFWS and the local jurisdiction for candidate species that may need to be listed because of circumstances occurring outside the area covered by the HMP.

E. Implementation of the HMP would be considered suitable mitigation for impacts to HMP species within HMP prevalent areas and would facilitate the USFWS procedures to authorize the incidental taking of these species by participating entities as required under ESA Section 10. No further mitigation will be required to allow development on the Property unless species other than the HMP target species are proposed for listing or are listed.

F. The HMP does not authorize incidental taking of any species listed as threatened or endangered under the ESA by entities acquiring land at the former Fort Ord. The USFWS has recommended that all nonfederal entities acquiring land at former Fort Ord apply for ESA Section 10 (a)(1)(B) incidental taking permits for the species covered in the HMP. The definition of "take" under the ESA includes to harass, harm, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct. Although the USFWS will not require further mitigation from entities that are in conformance with the HMP, those entities without incidental taking authorization would be in violation of the ESA if any of their actions resulted in the taking of a listed animal species. To apply for a Section 10 (a)(1)(B) incidental taking permit, an entity must submit an application form (Form 3-200), a complete description of the activity sought to be authorized, the common and scientific names of the species sought to be covered by the permit, and a conservation plan (50 CFR 17.22 [b]).

G. The Grantee ("Seaside") acknowledges that it has read the HMP dated April 1997, and will cooperate with adjacent property owners in implementing mitigation requirements identified in the HMP for adjacent sensitive habitat areas.

XIII. AIR NAVIGATION RESTRICTION

The Monterey Airport and the former Fritzsche Airfield, now known as the Marina Municipal Airfield, are in close proximity to the Property. Accordingly, in coordination with the Federal Aviation Administration, the Grantee ("Seaside") covenants and agrees, on behalf of itself, its successors and assigns and every successor in interest to the Property herein described, or any part thereof, that, when applicable, there will be no construction or alteration unless a determination of no hazard to air navigation is issued by the Federal Aviation Administration in accordance with Title 14, Code of Federal Regulations, Part 77, entitled, "Objects Affecting Navigable Airspace", or under the authority of the Federal Aviation Act of 1968, as amended.

XIV. NON-DISCRIMINATION

The Grantee ("Seaside") covenants for itself, its successors and assigns and every successor in interest to the Property hereby conveyed, or any part thereof, that the said Grantee ("Seaside") and such successors and assigns shall not discriminate upon the basis of race, color, sex, religion, or national origin in the use, occupancy, sale or lease of the Property, or in their employment practices conducted thereon. This covenant shall not apply, however, to the lease or rental of a room or rooms within a family dwelling unit; nor shall it apply with respect to religion to premises used primarily for religions purposes. The United States of America shall be deemed a beneficiary of this covenant without regard to whether it remains the owner of any land or interest therein in the locality of the Property hereby conveyed and shall have the sole right to enforce this covenant in any court of competent jurisdiction.

XV. INDEMNIFICATION

The Grantor ("the Government") recognizes its obligation to hold harmless, defend, and indemnify the Grantee ("Seaside") and any successor, assignee, transferee, lender, or lessee of the Grantee ("Seaside") or its successors and assigns, as required and limited by Section 330 of Public Law 102-484, the Department of Defense Authorization Act of 1993, as amended, (10 U.S.C. § 2687, note).

XVI. IMMUNITIES

The Grantee ("Seaside") is not entitled to any of the immunities in which the United States may have had in using the Property while it was part of Fort Ord, California. The Grantee ("Seaside") is not exempt from acquiring the necessary permits and authorizations from, or from meeting the requirements of, the local, county, and state jurisdictions before using the Property for any purpose. The Property, immediately after conveyance to the Grantee ("Seaside") will be subject to all local, county, and state laws, regulations, and ordinances. The Grantee ("Seaside") shall comply with the applicable environmental laws and *regulations and all other Federal, state, and local laws, regulations, and standards that are or may become applicable to the Grantee's ("Seaside") proposed activity on the Property. The Grantee ("Seaside") shall be solely responsible for fulfilling, at its own cost and expense, the requirements of the new governing authorities, independent of any existing permits or United States usages.*

XVII. ANTI-DEFICIENCY ACT

The Grantor's ("the Government") obligation to pay or reimburse any money under this Deed is subject to the availability of appropriated funds to the Department of the Army, and nothing in this Deed shall be interpreted to require obligations or payments by the Grantor ("the Government") in violation of the Anti-Deficiency Act, Public Law 97-258, 31 U.S.C. § 1341.

XVIII. DISCOUNTS AND PREFERENCES FOR MILITARY PERSONNEL

The requirements of paragraph O. of the quitclaim deed transferring the Golf Courses to Grantee ("Seaside"), executed by Grantor ("the Government") on January 15, 1997 and recorded in the County of Monterey at Series No. 02740 (beginning at Reel 3468, Page 1515), shall also encumber the Property.

XIX. THE CONDITIONS, RESTRICTIONS, and COVENANTS set forth in this Deed are a binding servitude on the herein conveyed Property and will be deemed to run with the land in perpetuity. Restrictions, stipulations and covenants contained herein will be inserted by the Grantee ("Seaside") verbatim or by express reference in any deed or other legal instrument by which it divests itself or either the fee simple title or any other lesser estate in the Property or any portion thereof. The Grantee ("Seaside") and any subsequent transferee, successor or assignee shall neither transfer nor lease the Property, nor grant any interest, privilege, or license whatsoever in the Property without the inclusion of the environmental protection provisions contained herein, and shall require the inclusion of such environmental protection provisions in all further deeds, transfers, leases, or grants of any interest, privilege, or license. All rights and powers reserved to the Grantor ("the Government"), and all references in this Deed to Grantor ("the Government") shall include its successor in function and the State of California. The Grantor ("the Government") may agree to waive, eliminate, or reduce the obligations contained in the covenants.

PROVIDED, HOWEVER, that the failure of the Grantor ("the Government") or his successor to insist in any one or more instances upon complete performance of any of the said conditions shall not be construed as a waiver or a relinquishment of the future performance of any such conditions, but the obligations of the Grantee ("Seaside"), its successors and assigns, with respect to such future performance shall be continued in full force and effect.

The responsibilities and obligations placed upon, and the benefits provided to, the GRANTOR by the Government shall run with the land and be binding on and inure to the benefit of all subsequent owners of the Property unless or until such responsibilities, obligations, or benefits are released pursuant to the provisions set forth in the Offer to Purchase Agreement and the Government deed. GRANTEE and its successors and assigns, respectively, shall not be liable for any breach of such responsibilities and obligations with regard to the Property arising from any matters or events occurring after transfer of ownership of the Property by GRANTEE or its successors and assigns, respectively; provided, however, that each such party shall, notwithstanding such transfer, remain liable for any breach of such responsibilities and obligations to the extent caused by the fault or negligence of such party.

IN WITNESS WHEREOF, the Grantor and the Grantee have caused this instrument to be executed on their behalf by their respective officers thereunder duly authorized, as of this _______ day of ______________, 20___.

CITY OF SEASIDE

By:____________________________
City Manager

ATTEST:

By:______________________
Secretary

The Grantee hereby accepts and approves each of the covenants, conditions and restrictions set forth, described or incorporated by reference in this Deed.

[GRANTEE]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Monterey)

On _________________________, before me, __________________________________,
(insert name and title of the officer)
Notary Public, personally appeared ____, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature___________________________________ (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Monterey)

On __________________________, before me, ___________________________________,
(insert name and title of the officer)
Notary Public, personally appeared ____, who 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.

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WITNESS my hand and official seal.

Signature____________________________________ (Seal)

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State of California)
County of Monterey)

On _________________________, before me, _________________________________,
(insert name and title of the officer)
Notary Public, personally appeared ____, who 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.

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WITNESS my hand and official seal.

Signature__________________________________ (Seal)

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State of California)
County of Monterey)

On _________________________, before me, __________________________________,
(insert name and title of the officer)
Notary Public, personally appeared ____, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature___________________________________ (Seal)

EXHIBIT "A"

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN IS SITUATED IN THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

ATTACHMENT NO. 6C

FORM OF REPURCHASE OPTION FOR RESIDENTIAL AND TIMESHARE PHASES

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Seaside
440 Harcourt Avenue
Seaside, CA 93955
Attn: City Manager

WITH A COPY TO AND
MAIL TAX STATEMENTS TO:

____
____
____
Attention: _____________

APNs: __________________

FREE RECORDING REQUESTED
(Govt. Code Section 6103)

[Space above for Recorder's use pursuant to
California Government Code Section 27383]

MEMORANDUM CONCERNING OPTION TO REPURCHASE
REAL PROPERTY

In connection with the recordation of this instrument, the CITY OF SEASIDE (hereinafter referred to as "Grantor" or "City"), has granted to _________ ("Grantee") the real property (hereinafter referred to as the "Property"), described in Exhibit "A", attached hereto and incorporated herein by this reference. The Property was conveyed pursuant to a Second Amended and Restated Disposition and Development Agreement dated as of December 7, 2017 by and between Grantor and Grantee (the "DDA"). The DDA is a public record on file in the office of the Secretary of City. Terms used in this instrument and not defined herein shall have the meanings given in the DDA.

In consideration of the grant of the property by Grantor to Grantee, Grantee shall have the option to repurchase the Property as follows:

(a) If Grantee defaults on the DDA at any time prior to issuance of a Certificate of Completion for the Property pursuant to Section 6.15 of the DDA, and such default is not cured within the time periods set forth in Section 9.1 of the DDA, and subject to the rights of Holders set forth in

Section 6.13 of the DDA, Grantor may repurchase the Property and all improvements thereon, or any portion thereof for which a partial Certificate of Completion has not been issued, at any time.

(b) This option to purchase shall be exercised, if at all, by Grantor's delivery of written notice of its election to exercise the option to Grantee within one year after expiration of the last of the cure periods granted to Grantee and/or the Holders.

(c) The purchase price (the "Option Purchase Price") shall be the "Purchase Price" paid by Developer, as that term is defined in the DDA, for the Property or portion of the Property being acquired by City.

(d) The purchase and sale shall occur within fifteen (15) business days after Grantor's exercise of its option through an escrow company selected by Grantor. Grantor and Grantee shall promptly execute, acknowledge and deliver any and all documents necessary or appropriate to conduct the purchase and sale transaction (including, without limitation, escrow instructions, a settlement statement, a FIRPTA affidavit, and a California Form 593) and the Grantee (*i.e.*, Seller) shall pay all escrow costs and the cost of an ALTA title policy in favor of Grantor that is consistent with clause (e) below.

(e) Grantor shall deliver the Option Purchase Price to Grantee concurrently with delivery of title to Grantor. Grantee shall convey title subject only to exceptions that (i) existed at the time of Grantee's acquisition of the Property, or (ii) were created with the written consent of Grantor or approved in writing by Grantor.

(f) Grantor shall be entitled to specific enforcement of the terms of this instrument.

(g) Upon the issuance of the Certificate of Completion for a lot in a Residential Phase or a building in a Timeshare Phase, Grantor shall execute, acknowledge and deliver to Grantee a reasonable memorandum terminating this instrument with respect to such lot or building. Any such memorandum shall in the form reasonably acceptable to Grantee and prepared and recorded at Grantee's sole expense.

IN WITNESS WHEREOF, the Grantor and the Grantee have caused this instrument to be executed on their behalf by their respective officers thereunder duly authorized, as of this _______ day of ______________, 20__.

CITY OF SEASIDE

By:____________________________
City Manager

ATTEST:

By:______________________
Secretary

The Grantee hereby accepts and approves each of the covenants, conditions and restrictions set forth in this Memorandum.

[GRANTEE]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Monterey)

On __________________________, before me, ____________________________________,
(insert name and title of the officer)
Notary Public, personally appeared ____, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature____________________________________ (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Monterey)

On _________________________, before me, ____________________________________,
(insert name and title of the officer)

Notary Public, personally appeared ____, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature___________________________________ (Seal)

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State of California)
County of Monterey)

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(insert name and title of the officer)
Notary Public, personally appeared ____, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature__________________________________ (Seal)

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A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Monterey)

On _________________________, before me, _________________________________,
(insert name and title of the officer)
Notary Public, personally appeared ____, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature__________________________________ (Seal)

EXHIBIT "A"

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN IS SITUATED IN THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

ATTACHMENT NO. 7

INSURANCE REQUIREMENTS

It is understood that insurance requirements to be fulfilled by the Developer will be subject to refinement and approval by the City Manager at the time a land purchase is made and also at the time a construction project is commenced. The requirements will be in accordance with industry standards for the specific type of land to be purchased or project to be constructed, as applicable, and with the coverage that is then commercially available in the insurance marketplace. The requirements may be met by the Developer through a Contractor or a reasonable combination thereof. With respect to the construction phase of the project, the Commercial General Liability requirements may be met through the use of an Owner Controlled Insurance Program (Wrap) or similar program. Prior to the commencement of any construction project, the developer will submit the proposed construction Program of Insurance to the City Manager and its insurance consultants for approval. The minimum requirements would generally include the following.

INSURANCE DURING LAND OWNERSHIP (PRIOR TO CONSTRUCTION)

See first paragraph above.

INSURANCE DURING CONSTRUCTION

Commercial General Liability Insurance

- Limits of no less than $1,000,000 per occurrence and $2,000,000 policy aggregate.
- Additional Insured status in favor of the City and its employees, agents and the City of Seaside if appropriate given the nature of the development
- Developer's insurance shall be Primary and Non-Contributory
- Mutual Waiver of Subrogation
- No contractors' limitation or other endorsement limiting coverage for claims arising out of pollution, explosion, collapse or underground property damage
- WRAP (OCIP/CCIP) coverage to extend from commencement of the project through the Statute of Limitation for owner, general contractor, subcontractors, sub-subcontractors and Additional Insured(s) where required by contract or appropriate given the nature of the development

Umbrella / Excess Liability Insurance

- Indemnification language
- No Cross Liability Exclusion
- Limit of Liability to be determined based on project, marketplace and affordability
- Extend over the General Liability, Automobile Liability and Employer's Liability primary limits

Business Automobile Insurance

- Minimum Limit of Liability - $1,000,000 CSL for owned, non-owned and hired coverage
- Include on Umbrella / Excess Liability Schedule of Underlying policies for active construction period

Workers Compensation/Employer's Liability Insurance

- Statutory Limits as required by law
- Employer's Liability limits of $1,000,000
- Waiver of Subrogation endorsement
- Coverage should be provided by General Contractor and Subcontractors

Builders Risk Insurance

- Generally applicable to vertical construction
- Special form; Replacement Cost
- Earthquake and/or flood determined by location / zone
- Contractor or developer responsible for materials, equipment including property in their care, custody, control

INSURANCE AFTER CONSTRUCTION

Owner required to purchase appropriate and reasonable insurance coverage on completed project depending on type, size, location of improvements/project.

ATTACHMENT NO. 8

FORM OF RESIDENTIAL DEED OF TRUST

RECORDING REQUESTED BY AND)
WHEN RECORDED MAIL TO:)
)
)
City of Seaside)
440 Harcourt Avenue)
Seaside, California 93955)
Attn: _________________)

This document is recorded for the benefit of the Redevelopment City of the City of Seaside, and consequently the recording is fee-exempt under California Government Code §27383.

DEED OF TRUST
WITH ASSIGNMENT OF LEASES AND RENTS,
SECURITY AGREEMENT AND FIXTURE FILING

THIS DEED OF TRUST SECURES A SHARED APPRECIATION LOAN AS DEFINED IN CALIFORNIA CIVIL CODE SECTION 1917(b).

THIS DEED OF TRUST WITH ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (the "Deed of Trust") is dated as of ___________, 20__, by __________ ("Trustor"), to [Stewart Title Insurance Company] ("Trustee"), for the benefit of the CITY OF SEASIDE ("Beneficiary"). This Deed of Trust is executed and delivered in connection with that certain Second Amended and Restated Disposition and Development Agreement between Trustor and Beneficiary dated December 7, 2017 (the "DDA"), Section 8.3.3 of which requires that the City subordinate this Deed of Trust to a lien securing subdivision improvement financing pursuant to a reasonable subordination agreement.

THIS DEED OF TRUST is given, inter alia, for the purpose of securing obligations to Trustor to Beneficiary to pay "Profit Participation" as defined in, and in accordance with, Section 8.3 of the DDA.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness secured hereby, Trustor hereby irrevocably grants, transfers, conveys and assigns to Trustee, IN TRUST, WITH POWER OF SALE, for the benefit and security of Beneficiary, under and subject to the terms and conditions hereinafter set forth, the land in the County of Monterey, California, more particularly described in Exhibit "A" attached hereto (the "Land"), and all improvements now or hereafter located thereon (the "Improvements");

TOGETHER WITH all fixtures, machinery, equipment, mobile homes, trailers, furniture, furnishings, building materials, appliances, apparatus, communications and utility systems and facilities, landscaping and goods of every nature now or hereafter located in or on, or used or intended to be used in connection with, the Real Property (as defined below), whether or not physically affixed to the Real Property;

TOGETHER WITH all rights to minerals, oil and gas and other hydrocarbon substances, all water, irrigation and drainage rights, and all crops and timber on, under or relating to the Real Property; all shares of stock in any water company or other utility supplying water or utility services to the Real Property; and all damages, royalties and revenues of every kind, nature and description whatsoever that Trustor may be entitled to receive from any person or entity owning or hereafter acquiring a right to any oil, gas and mineral rights and reservations appurtenant or otherwise related to the Real Property;

TOGETHER WITH all privileges and other rights now or hereafter appurtenant or incidental to the Real Property, including air rights and development rights relating to the Real Property and all streets, curbs, gutters, sidewalks, sewers, storm drains, roads and public places, open or proposed; and all easements and rights of way, public or private, now or hereafter used in connection with the Real Property;

TOGETHER WITH all rents, issues, profits, income, royalties, fees, proceeds from any sale, leasing, refinancing, condemnation (temporary or permanent) or other disposition of all or any portion of or interest in the "Property" (as defined below) and other proceeds and revenues of any nature of, from or relating to the Property or any business conducted thereon, including hotel room charges and other hotel revenues, if any, now due, past due and to become due (collectively the "Rents");

TOGETHER WITH all existing and future leases (including oil and gas leases), subleases, tenancies, occupancy agreements, licenses and other agreements for the use or occupancy of all or any portion of or interest in the Real Property, whether written or oral, and any guarantees thereof, together with any and all extensions, modifications, amendments, assignments and renewals thereof, and all cash or other security deposited to secure performance by the lessees or tenants of their obligations thereunder, whether such cash or security is to be held until the expiration of the terms of such leases or applied to one or more of the installments of rent coming due prior to the expiration of the term thereof;

TOGETHER WITH all insurance and insurance policies insuring the Property or any activity thereon or part thereof or interest therein (including fire and extended coverage, public liability, worker's compensation, builder's risk, flood, and earthquake insurance policies, if any) and all proceeds of such insurance policies; all claims, awards, damages, causes of action, actions, judgments, recoveries, compensation, awards and proceeds arising on account of injury or damage to or taking of all or any part of the Property or for any loss or diminution in value of the Property; all advance payments of insurance premiums made by Trustor with respect to the Property; all deposits made with or other security given by Trustor to governmental authorities, utility companies and other third parties with respect to the Property; all claims or demands with respect to such deposits or security; and all right to refunds or rebates of any such insurance premiums or deposits, taxes or assessments on the Property;

TOGETHER WITH all Loan proceeds held by Secured Party, whether or not disbursed; all funds deposited by or at the direction of Trustor with Secured Party in connection with the secured indebtedness;

TOGETHER WITH all plans, drawings, specifications, contracts and agreements for construction of any improvements now located on, or hereafter to be constructed on, the Real Property and all studies, data and drawings relating thereto; all payment, performance or other bonds and in all deposits and other security delivered to, by or for the benefit of Trustor in connection with the construction of improvements on the Real Property; any and all construction materials, supplies and equipment used or to be used in connection with the construction of improvements on the Real Property, whether or not stored on the Real Property, and all warranties and guaranties relating thereto; any and all contracts, subcontracts, agreements, and purchase orders with architects, engineers, consultants, contractors, subcontractors, suppliers and materialmen incidental to construction of improvements on the Real Property; all reserves, deferred payment deposits, cost savings and payments of any kind relating to the construction of such improvements; and all drawings, maps, plats, surveys, studies and reports relating to the Real Property;

TOGETHER WITH to the extent assignable, all licenses (including liquor licenses, operating licenses or similar licenses), contracts, management contracts or agreements, franchise agreements, building, occupancy and other governmental and non-governmental permits, authorizations, consents and certificates acquired or used in connection with the construction, use, ownership, operation, occupancy, maintenance, repair, improvement or development of, or conduct of business on, the Real Property;

TOGETHER WITH all accounts receivable, general intangibles and contract rights relating to the construction, ownership, operation, occupancy, maintenance, repair, improvement, use, development, financing or refinancing of, or conduct of business on, the Real Property, including Trustor's leasehold interest in any equipment leased by Trustor and Trustor's rights in any commitment for bridge, interim or permanent financing and in any commitments or subscriptions to invest equity capital in Trustor;

TOGETHER WITH all names, trade names, trademarks, service marks, and logos by which the Real Property is known or operated, all rights to conduct business under any such name or any variation thereof, and all goodwill in any way relating to the Real Property;

TOGETHER WITH all right, title and interest of Trustor in and to any entity that has any interest of any nature in the Real Property or that manages, operates, deals with, or provides any services relating to the Real Property, and all share certificates, membership cards and other evidences of Trustor's interest in such entity;

TOGETHER WITH all sales agreements, deposit receipts, escrow agreements and other ancillary documents and agreements for the sale of all or any portion of the Real Property, and all deposits thereunder and proceeds thereof;

TOGETHER WITH all books, records, accounts and other documents relating to the construction, ownership, use, management, operation, occupancy, leasing, maintenance, repair, improvement, development, financing or refinancing of, or conduct of business on, the Real Property;

TOGETHER WITH all other personal property, whether tangible or intangible, wherever located and used or to be used in any way in connection with, or in any way relating to, the Real Property or the construction, ownership, use, management, operation, occupancy, leasing, maintenance, repair, improvement, or development of, or conduct of business on, the Real Property, whether now owned or hereafter acquired or created (including, equipment, inventory, goods, documents, instruments, general intangibles, chattel paper, accounts, accounts receivable, deposit accounts, and contract rights, as all such terms are used in the California Uniform Commercial Code);

TOGETHER WITH all supplements, modifications and amendments to any of the foregoing; all substitutions, replacements, additions, and accessions to any and all of the foregoing; any of the foregoing hereafter acquired by Trustor; and all proceeds of any or all of the foregoing (collectively, the "Property").

FOR THE PURPOSE OF SECURING THE FOLLOWING OBLIGATIONS ("Secured Obligations"):

(a) payment of "Profit Participation" as defined in and as payable by Trustor to Beneficiary under Section 8.3 of the DDA;

(b) performance of every obligation, covenant or agreement of Trustor contained herein;

(c) performance of every obligation, covenant and agreement of Trustor contained in any agreement now or hereafter executed by Trustor which recites that the obligations thereunder are secured by this Deed of Trust, including, without limitation payment of all other sums, with interest thereon, which may hereafter be loaned to Trustor, or its successors or assigns, by Beneficiary, or its successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust; and

(d) compliance with and performance of each and every material provision of any declaration of covenants, conditions and restrictions pertaining to the Property or any portion thereof.

The unsecured Environmental Indemnity Agreement dated substantially concurrently herewith and executed by Trustor, in favor of Beneficiary, is intended to supplement and not supersede or modify Article 5 of this Deed of Trust; Beneficiary's rights and remedies under Article 5 of this Deed of Trust and the unsecured Environmental Indemnity are intended to be cumulative.

All initially capitalized terms used herein which are defined in the DDA shall have the same meaning herein unless the context otherwise requires.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR HEREBY COVENANTS AND AGREES AS FOLLOWS:

ARTICLE 1
COVENANTS AND AGREEMENTS OF TRUSTOR

1.1 Payment of Secured Obligations. Trustor shall pay when due the Profit Participation.

1.2 Maintenance, Repair, Alterations. Trustor (a) shall keep the Land and any Improvements thereon in good condition and repair; (b) shall not remove, demolish or substantially alter (other than as contemplated in the DDA) any of the Improvements to be contracted thereon except upon the prior written consent of Beneficiary; (c) shall complete promptly and in a good and workmanlike manner any Improvement which may be now or hereafter constructed on the Land and promptly restore in like manner any portion of the Improvements which may be damaged or destroyed thereon from any cause whatsoever, and pay when due all claims for labor performed and materials furnished therefor; (d) shall comply with all laws, ordinances, regulations, covenants, conditions and restrictions now or hereafter affecting the Property or any part thereof or requiring any alterations or improvements, including without limitation, all Hazardous Materials Laws, the Americans with Disabilities Act, Public Law 101-336 (the "ADA"); (e) shall not commit or permit any waste or deterioration of the Land or any Improvements thereon; (f) shall not allow changes in the use for which all or any part of the Land or any Improvements thereon are intended; and (g) shall not initiate or acquiesce in a change in the zoning classification of the Land or any Improvements thereon without Beneficiary's prior written consent.

1.3 Required Insurance.

(a) Trustor shall at all times provide, maintain and keep in force or cause to be provided, maintained and kept in force, at no expense to the Beneficiary, policies of insurance in accordance with the terms of the DDA in form and amounts, providing for deductibles, and issued by companies, associations or organizations covering such casualties, risks, perils, liabilities and other hazards as required by the DDA.

(b) Trustor shall not obtain separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Beneficiary is included thereon under a standard, non-contributory mortgagee clause or endorsement acceptable to Beneficiary. Trustor shall immediately notify Beneficiary whenever any such separate insurance is obtained and shall promptly deliver to Beneficiary the original policy or policies of such insurance.

(c) Within ninety (90) days following the end of each fiscal year of Trustor, at the request of Beneficiary, Trustor at Trustor's expense shall furnish such evidence of replacement costs as the insurance carrier providing casualty insurance for the Improvements on the Land may require to determine, or which such carrier may provide in determining, the then replacement cost of the Improvements on the Land.

1.4 Delivery of Policies, Payment of Premiums.

(a) All policies of insurance shall either have attached thereto a lender's loss payable endorsement for the benefit of Beneficiary in form satisfactory to Beneficiary or shall name Beneficiary as an additional insured, as required under the DDA. Trustor shall furnish Beneficiary with evidence of insurance issued by the applicable insurance company for each required policy setting forth the coverage, the limits of liability, the name of the carrier, the policy number and the period of coverage, and otherwise in form and substance as provided in the DDA. At least thirty (30) days prior to the expiration of each required policy, Trustor shall deliver to Beneficiary evidence reasonably satisfactory to Beneficiary of the payment of premiums and the renewal or replacement of such policy continuing insurance in form as required by this Deed of Trust. All such policies shall contain a provision that, notwithstanding any contrary agreement between Trustor and the insurance company, such policies will not be canceled, terminated, allowed to lapse without renewal, surrendered or materially amended, which term shall include any reduction in the scope or limits of coverage, without at least thirty (30) days' prior written notice to Beneficiary.

(b) In the event Trustor fails to provide, maintain, keep in force or deliver to Beneficiary the policies of insurance required by this Deed of Trust or by the DDA, Beneficiary may (but shall have no obligation to) procure such insurance or single-interest insurance for such risks covering Beneficiary's interest. Trustor will pay all premiums thereon and reimburse Beneficiary for all amounts paid or incurred by it in connection therewith promptly upon demand by Beneficiary and, until such payment and reimbursement is made by Trustor, the amount of all such premiums and amounts paid or incurred by Beneficiary shall be added to the principal amount of the Loan. Trustor shall deposit with the Beneficiary an amount equal to the estimated aggregate annual insurance premiums on all policies of insurance required by the DDA or this Deed of Trust. In such event Trustor further agrees to cause all bills, statements or other documents relating to the foregoing insurance premiums to be sent or mailed directly to the Beneficiary. Upon receipt of such bills, statements or other documents evidencing that a premium for a required policy is then payable, and providing Trustor has deposited sufficient funds with the Beneficiary, the Beneficiary shall timely pay such amounts as may be due thereunder out of the funds so deposited with the Beneficiary. Notwithstanding the foregoing, nothing contained herein shall modify the obligation of Trustor set forth in Section 1.3 hereof to maintain and keep such insurance in force at all times.

1.5 Casualties; Insurance Proceeds. Trustor shall give prompt written notice thereof to Beneficiary after the happening of any casualty to or in connection with the Land, the Improvements, or any part thereof, whether or not covered by insurance. In the event of such casualty, all proceeds of insurance shall be payable to the Beneficiary, whether required by the Loan Documents or otherwise, and Trustor hereby authorizes and directs any affected insurance company to make payment of such proceeds directly to the Beneficiary. If Trustor receives any proceeds of insurance resulting from such casualty, whether required by the Loan Documents or otherwise, Trustor shall promptly pay over such proceeds to the Beneficiary. In the event of any damage or destruction of the Land or the Improvements, Beneficiary, at the written direction of Beneficiary, shall apply all loss proceeds remaining after deduction of all expenses of collection and settlement thereof, including, without limitation, fees and expenses of attorneys and adjusters, to the restoration of the Improvements in accordance with the requirements of the

DDA for such Improvements, but only as repairs or replacements are effected and continuing expenses become due and payable and provided all applicable conditions specified in the DDA with respect thereto have been satisfied. If any one or more of such conditions in the DDA have not been met, Beneficiary shall apply all loss proceeds, after deductions as herein provided, to the prepayment of the outstanding balance of the Note, together with all accrued interest thereon, notwithstanding that the outstanding balance may not be due and payable. Nothing herein contained shall be deemed to excuse Trustor from repairing or maintaining the Land and the Improvements as provided in Section 1.2 hereof or restoring all damage or destruction to the Land or the Improvements, regardless of whether or not there are insurance proceeds available to Trustor or whether any such proceeds are sufficient in amount, and the application or release by Beneficiary, of any insurance proceeds shall not cure or waive any Default or notice of default under this Deed of Trust or invalidate any act done pursuant to such notice.

1.6 Assignment of Policies Upon Foreclosure. In the event of foreclosure of this Deed of Trust or other transfer of title or assignment of the Property in extinguishment, in whole or in part, of the debt secured hereby, all right, title and interest of Trustor in and to all policies of insurance obtained by Trustor, whether required by the Loan Documents or otherwise, shall inure to the benefit of and pass to the successor in interest to Trustor or the purchaser or grantee of the Property.

1.7 Indemnification; Subrogation; Waiver of Offset.

(a) If Beneficiary is made a party to any litigation concerning the Note, this Deed of Trust, any of the Loan Documents, the Property or any part thereof or interest therein, or the occupancy of the Land or the Improvements by Trustor, then Trustor shall indemnify, defend and hold Beneficiary harmless from all liability by reason of that litigation, including reasonable attorneys' fees and expenses incurred by Beneficiary as a result of any such litigation, whether or not any such litigation is prosecuted to judgment. Beneficiary may employ an attorney or attorneys selected by it to protect its rights hereunder, and Trustor shall pay to Beneficiary reasonable attorneys' fees and costs incurred by Beneficiary, whether or not an action is actually commenced against Trustor by reason of its breach.

(b) Trustor waives any and all right to claim or recover against Beneficiary, and their respective officers, employees, agents and representatives, for loss of or damage to Trustor, the Property, Trustor's property or the property of others under Trustor's control from any cause insured against or required to be insured against by the provisions of this Deed of Trust.

(c) All sums payable by Trustor in accordance with the terms of this Deed of Trust or the Note shall be paid without notice, demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Trustor hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Property or any part thereof; (ii) any restriction or prevention of or interference by any third party with any use of the Property or any part thereof; (iii) any title defect or encumbrance or any eviction from the Improvements or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Beneficiary, or any action taken with respect to this Deed of Trust by any trustee or receiver of Beneficiary, or by any court, in any such proceeding; (v) any claim which Trustor has or might have against Beneficiary, which does not relate to the Loan; or (vi) any other occurrence whatsoever, whether similar or dissimilar to the foregoing; whether or not Trustor shall have notice or knowledge of any of the foregoing. Except as expressly provided herein and subject to any limitation thereon provided by law, Trustor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by Trustor.

1.8 Taxes and Impositions.

(a) As used herein, "Impositions" shall mean all real property taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever, including, without limitation, nongovernmental levies or assessments such as maintenance charges, levies or charges resulting from covenants, conditions and restrictions affecting the Property, which are assessed or imposed upon the Property or any portion of it, or become due and payable, and which create, may create or appear to create a lien upon the Property, or any part thereof, or upon any person, property, equipment or other facility used in the operation or maintenance thereof, or any tax or assessment on the Property, or any part of it, in lieu thereof or in addition thereto, or any license fee, tax or assessment imposed on Beneficiary and measured by or based in whole or in part upon the amount of the outstanding obligations secured hereby. Trustor shall pay all Impositions prior to delinquency. Trustor shall deliver to the Beneficiary proof of the payment of the Impositions within thirty (30) days after such Impositions are due.

Trustor, at its expense, may contest, by appropriate proceedings conducted in good faith and with due diligence, the amount or validity, in whole or in part, of any Impositions, provided (i) Trustor shall have notified Beneficiary prior to the commencement of such proceedings, (ii) in the case of any unpaid Impositions, such proceedings shall suspend the collection thereof from Borrower, Beneficiary and the Property, and shall not constitute a presently enforceable lien against the Property during the pendency of such contest, (iii) neither the Property nor any part thereof nor any interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost, (iv) such proceedings shall not have an adverse effect on the lien or security interest created hereby or upon the enforcement of any provisions of the Loan Documents, and (v) if Beneficiary shall so require, Borrower shall have deposited with Beneficiary such security reasonably necessary for payment of the contested Impositions, with interest and penalties and Beneficiary's expenses.

(b) In the event of the enactment after the date hereof of any law, rule, ordinance, statute or regulation by the State of California or any political subdivision thereof deducting from the value of land for the purpose of taxation any lien thereon, or imposing upon Beneficiary the obligation to pay the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Trustor, or changing in any way the laws relating to the taxation of deeds of trust or debts secured by this Deed of Trust or Beneficiary's interest in the Property, or any portion thereof, or the manner of collection of taxes, so as to adversely affect this Deed of Trust or the debt secured hereby, or the Beneficiary or its successors and assigns, then, and in any such event, Trustor, upon demand by Beneficiary, shall pay such taxes or assessments, or reimburse Beneficiary therefor; except that if, in the opinion of counsel for Beneficiary, (i) it might be unlawful to require Trustor to make such payment or (ii) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then, and in such event, Beneficiary may elect, by notice in writing given to Trustor, to declare all of the indebtedness secured hereby to be and become due and payable sixty (60) days from the giving of such notice.

(c) If, by the laws of the United States of America, or of the State of California or any political subdivision thereof having jurisdiction over Trustor, Beneficiary or the Property or any portion thereof, any tax, assessment or other payment is due or becomes due in respect of the issuance of the Note or the recording of this Deed of Trust, Trustor covenants and agrees to pay each such tax, assessment or other payment in the manner required by any such law. Trustor further covenants to defend and hold harmless and agrees to indemnify Beneficiary, its successors or assigns, against any liability incurred by reason of the imposition of any tax, assessment or other payment on the issuance of the Note or the recording of this Deed of Trust.

1.9 Utilities. Trustor shall pay or shall cause to be paid when due all utility charges which are incurred by Trustor for the benefit of the Land or the Improvements and all other assessments or charges of a similar nature, whether or not such charges are or may become liens thereon.

1.10 Actions Affecting Property. Trustor shall promptly give Beneficiary written notice of and shall appear in and contest any action or proceeding purporting to affect any portion of the Property or the security hereof or the rights or powers of Beneficiary; and shall pay all costs and expenses, including the cost of evidence of title and attorneys' fees, in any such action or proceeding in which Beneficiary may appear.

1.11 Actions By Beneficiary to Preserve Property. If Trustor fails to make any payment or to do any act as and in the manner provided in any of the Loan Documents, Beneficiary, without obligation so to do, without releasing Trustor from any obligation, and without notice to or demand upon Trustor, may make or do the same in such manner and to such extent as it may deem necessary to protect the security hereof. In connection therewith (without limiting their general powers, whether conferred herein, in any other Loan Documents or by law), Beneficiary shall have and is hereby given the right, but not the obligation, (a) to enter upon and take possession of the Land and the Improvements; (b) to make additions, alterations, repairs and improvements to the Land and the Improvements which it may consider necessary or proper to keep the Land or the Improvements in good condition and repair; (c) to appear and participate in any action or proceeding affecting or which may affect the security hereof or the rights or powers of Beneficiary; (d) to pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt which in the judgment of either may affect or appears to affect the security of this Deed of Trust or be prior or superior hereto; and (e) in exercising such powers, to pay necessary expenses, including attorneys' fees and costs or other necessary or desirable consultants. Trustor shall, immediately upon demand therefor by Beneficiary, pay to Beneficiary an amount equal to all respective costs and expenses incurred by such party in connection with the exercise of the foregoing rights, including, without limitation, costs of evidence of title, court costs, appraisals, surveys and receiver's, trustee's and attorneys' fees.

1.12 Transfer of Property by Trustor. In the event of any Transfer (as defined in the DDA) prohibited by the DDA, Beneficiary shall have the absolute right at its option, without prior demand or notice, to declare all sums secured hereby immediately due and payable, and unless and until such sums are paid, Beneficiary shall not be obligated to reconvey this Deed of Trust, in whole or in part.

1.13 Survival of Warranties. All representations, warranties and covenants of Trustor made to Beneficiary and Beneficiary in connection with the loan secured hereby or contained in the Loan Documents or incorporated by reference therein, shall survive the execution and delivery of this Deed of Trust and shall remain continuing obligations, warranties and representations of Trustor so long as any portion of the obligations secured by this Deed of Trust remains outstanding.

1.14 Eminent Domain. In the event that any proceeding or action be commenced for the taking of the Property, or any part thereof or interest therein, for public or quasi-public use under the power of eminent domain, condemnation or otherwise, or if the same be taken or damaged by reason of any public improvement or condemnation proceeding, or in any other manner, or should Trustor receive any notice or other information regarding such proceeding, action, taking or damage, Trustor shall give prompt written notice thereof to Beneficiary. Beneficiary shall be entitled at its option, without regard to the adequacy of its security, to commence, appear in and prosecute in its own name any such action or proceeding. Beneficiary shall also be entitled to make any compromise or settlement in connection with such taking or damage. All compensation, awards, damages, rights of action and proceeds awarded to Trustor by reason of any such taking or damage (the "Condemnation Proceeds") are hereby assigned to the Beneficiary, and Trustor agrees to execute such further assignments of the Condemnation Proceeds as may be required under the Loan Agreement. The Beneficiary shall apply all or any of the proceeds it receives to its expenses in settling, prosecuting or defending any claim and may apply the balance to the Secured Obligations in the order and for such purposes as provided in the Loan Agreement.

1.15 Additional Security. No other security now existing, or hereafter taken, to secure the obligations secured hereby shall be impaired or affected by the execution of this Deed of Trust and all additional security shall be taken, considered and held as cumulative. The taking of additional security, execution of partial releases of the security, or any extension of the time of payment of the indebtedness shall not diminish the force, effect or lien of this Deed of Trust and shall not affect or impair the liability of any maker, surety or endorser for the payment of the indebtedness. In the event Beneficiary at any time holds additional security for any of the obligations secured hereby, it may enforce the sale thereof or otherwise realize upon the same, at its option, either before, concurrently, or after a sale is made hereunder.

1.16 Successors and Assigns. This Deed of Trust applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term "Beneficiary" shall mean the holder of the Note, whether or not named as Beneficiary herein. In exercising any rights hereunder or taking any actions provided for herein, Beneficiary may act through its employees, agents or independent contractors authorized by Beneficiary.

1.17 Inspections. Beneficiary, or its agents, representatives or workers, are authorized to enter at any reasonable time upon or in any part of the Land and the Improvements for the purpose of inspecting the same and for the purpose of performing any of the acts it is authorized to perform hereunder or under the terms of any of the Loan Documents. Without limiting the generality of the foregoing, Trustor agrees that Beneficiary will have the same right, power and authority to enter and inspect the Land and the Improvements as is granted to a secured lender under Section 2929.5 of the California Civil Code, and that Beneficiary will have the right to appoint a receiver to enforce this right to enter and inspect the Land and the Improvements to the extent such authority is provided under California law, including the authority given to a secured lender under Section 564(c) of the California Code of Civil Procedure.

1.18 Liens. Trustor shall pay and promptly discharge, at Trustor's cost and expense, all liens, encumbrances and charges ("Liens") upon the Property, or any part thereof or interest therein which liens have not been approved in writing by Beneficiary. If Trustor shall fail to remove and discharge any such lien, encumbrance or charge, then, in addition to any other right or remedy of Beneficiary, Beneficiary may, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such lien, encumbrance or charge by depositing in a court a bond or the amount claimed or otherwise giving security for such claim, or by procuring such discharge in such manner as is or may be prescribed by law. Trustor shall, immediately upon demand therefor by Beneficiary, pay to Beneficiary an amount equal to all costs and expenses incurred by Beneficiary in connection with the exercise by Beneficiary of the foregoing right to discharge any such lien, encumbrance or charge, together with interest thereon from the date of such expenditure at the Default Interest Rate (as defined in the Note).

Trustor, at its expense, may contest, by appropriate proceedings conducted in good faith and with due diligence, the amount or validity, in whole or in part, of any Lien, provided (i) Trustor shall have notified Beneficiary and Beneficiary prior to the commencement of such proceedings, (ii) in the case of any unpaid Lien, such proceedings shall suspend the collection thereof from Trustor, Beneficiary and the Property, and shall not constitute a presently enforceable lien against the Property during the pendency of such contest, (iii) neither the Property nor any part thereof nor any interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost, (iv) such proceedings shall not have an adverse effect on the lien or security interest created hereby or upon the enforcement of any provisions of the Loan Documents, and (v) if Beneficiary or Beneficiary shall so require, Trustor shall have deposited with Beneficiary such security reasonably necessary for payment of the contested Lien, with interest and penalties and Beneficiary's and Beneficiary's expenses.

1.19 Trustee's Powers. At any time, or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and the Note secured hereby for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby or the effect of this Deed of Trust upon the remainder of the Property, Trustee may (a) reconvey any part of the Property, (b) consent in writing to the making of any map or plat thereof, (c) join in granting any easement thereon, or (d) join in any extension agreement or any agreement subordinating the lien or charge hereof.

1.20 Beneficiary's Powers. Without affecting the liability of any other person liable for the payment of any obligation herein mentioned, and without affecting the lien or charge of this Deed of Trust upon any portion of the Property not then or theretofore released as security for the full amount of all unpaid obligations, Beneficiary may, from time to time and without notice (a) release any person so liable, (b) extend the maturity or alter any of the terms of any such obligation, (c) grant other indulgences, (d) release or reconvey, or cause to be released or reconveyed at any time at Beneficiary's option any parcel, portion or all of the Property, (e) take or release any other or additional security for any obligation herein mentioned, or (f) make compositions or other arrangements with debtors in relation thereto.

1.21 Indemnity. In addition to any other indemnities to Beneficiary specifically provided for in this Deed of Trust, Trustor hereby indemnifies, and shall defend and save harmless, Beneficiary and its authorized representatives from and against any and all losses, liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including, without limitation, architects', engineers' and attorneys' fees and all disbursements which may be imposed upon, incurred by or asserted against Beneficiary and its authorized representative by reason of: (a) the construction of any improvements on the Land, (b) any capital improvements, other work or things done in, on or about the Land or any part thereof, (c) any use, nonuse, misuse, possession, occupation, alteration, operation, maintenance or management of any portion of the Property or any part thereof or any street, drive, sidewalk, curb, passageway or space comprising a part thereof or adjacent thereto, (d) any negligence or willful act or omission on the part of Trustor and its agents, contractors, servants, employees, licensees or invitees, (e) any accident, injury (including death) or damage to any person or property occurring in, on or about the Land or any part thereof, (f) any lien or claim which may be alleged to have arisen on, against, or with respect to any portion of the Property under the laws of the local or state government or any other governmental or quasi-governmental authority or any liability asserted against Beneficiary with respect thereto, (g) any tax attributable to the execution, delivery, filing or recording of this Deed of Trust, the Note or the DDA, (h) any contest due to Trustor's actions or failure to act, permitted pursuant to the provisions of this Deed of Trust, (i) any Default under the Note, this Deed of Trust or the DDA, or (j) any claim by or liability to any contractor or subcontractor performing work or any party supplying materials in connection with the Land or the Improvements.

ARTICLE 2
ASSIGNMENT OF LEASES AND RENTS

2.1 Assignment. Trustor hereby irrevocably assigns to Beneficiary all of Trustor's right, title and interest in, to and under: (a) all leases of the Land or Improvements or any portion thereof, all licenses and agreements relating to the management, leasing or operation of the Land, Improvements or any portion thereof, and all other agreements of any kind relating to the use or occupancy of the Land Improvements or any portion thereof, whether now existing or entered into after the date hereof ("Leases"); and (b) the Rents, including, without limitation, all amounts payable and all rights and benefits accruing to Trustor under the Leases. The term "Leases" shall also include all guarantees of and security for the lessees' performance thereunder, and all amendments, extensions, renewals or modifications thereto which are permitted hereunder. This is a present and absolute assignment, not an assignment for security purposes only, and Beneficiary's right to the Leases and rents therefrom is not contingent upon, and may be exercised without possession of, the Land or Improvements.

2.2 Grant Of License. Beneficiary confers upon Trustor a license ("License") to collect and retain the Rents as they become due and payable, until the occurrence of a Default (as hereinafter defined). Upon a Default, the License shall be automatically revoked and Beneficiary may collect and apply the Rents pursuant to Section 4.2, below, without notice and without taking possession of the Land or Improvements. Trustor hereby irrevocably authorizes and directs the lessees under the Leases to rely upon and comply with any notice or demand by Beneficiary for the payment to Beneficiary of any rental or other sums which may at any time become due under the Leases, or for the performance of any of the lessees' undertakings under the Leases, and the lessees shall have no right or duty to inquire as to whether any Default has actually occurred or is then existing hereunder. Trustor hereby relieves the lessees from any liability to Trustor by reason of relying upon and complying with any such notice or demand by Beneficiary.

2.3 Effect Of Assignment. The foregoing irrevocable Assignment shall not cause Beneficiary to be: (a) a mortgagee in possession; (b) responsible or liable for the control, care, management or repair of the Land or Improvements or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; or (c) responsible or liable for any waste committed on the Land or Improvements by the lessees under any of the Leases or any other parties; for any dangerous or defective condition of the Land or Improvements; or for any negligence in the management, upkeep, repair or control of the Land or Improvements resulting in loss or injury or death to any Lessee, licensee, employee, invitee or other person. Beneficiary shall not directly or indirectly be liable to Trustor or any other person as a consequence of: (i) the exercise or failure to exercise any of the rights, remedies or powers granted to Beneficiary hereunder; or (ii) the failure or refusal of Beneficiary to perform or discharge any obligation, duty or liability of Trustor arising under the Leases.

2.4 Representations And Warranties. Trustor represents and warrants that: (a) the Schedule of Leases attached hereto as Exhibit "B" attached hereto and incorporated herein by this reference is, as of the date hereof, a true, accurate and complete list of all Leases (if any); (b) all existing Leases are in full force and effect and are enforceable in accordance with their respective terms, and no breach or default, or event which would constitute a breach or default after notice or the passage of time, or both, exists under any existing Leases on the part of any party; (c) no rent or other payment under any existing Lease has been paid by any lessee for more than one (1) month in advance; and (d) none of the lessor's interests under any of the Leases has been transferred or assigned.

2.5 Covenants. Trustor covenants and agrees at Trustor's sole cost and expense to: (a) perform the obligations of lessor contained in the Leases; and (b) execute and record such additional assignments of any Lease or specific subordinations of any Lease to the Deed of Trust, in form and substance acceptable to Beneficiary, as Beneficiary may request. Trustor shall not, without consent of the Beneficiary: (i) execute any other assignment relating to any of the Leases except to the primary construction or permanent lender holding a first lien on the Land and Improvements; or (ii) subordinate or agree to subordinate any of the Leases to any other deed of trust or encumbrance without nondisturbance protection. Any such attempted action in violation of the provisions of this Section 2.5 shall be null and void.

2.6 Estoppel Certificates. Within thirty (30) days after written request by Beneficiary, Trustor shall deliver to Beneficiary and to any party designated by Beneficiary an estoppel certificate executed by Trustor, in recordable form, certifying (if such be the case): (a) that the foregoing assignment and the Leases are in full force and effect; (b) the date of each lessee's most recent payment of rent; (c) that there are no defenses or offsets outstanding, or stating those claimed by Trustor or lessees under the foregoing assignment or the Leases, as the case may be; and (d) any other information reasonably requested by Beneficiary.

ARTICLE 3
SECURITY AGREEMENT AND FIXTURE FILING

3.1 Security Interest. Trustor hereby grants and assigns to Beneficiary a security interest, to secure payment and performance of all of the Secured Obligations, in all of the following described personal property in which Trustor now or at any time hereafter has any interest (collectively, the "Collateral"):

(a) All personal property, including, without limitation, all goods, supplies, work in process, signs, equipment, furniture, furnishings, fixtures, machinery, inventory and construction materials which Trustor now or hereafter owns or in which Trustor now or hereafter acquires an interest or right, including, without limitation, those which are now or hereafter located on or affixed to the Land and/or Improvements (the Land and the Improvements shall hereafter be collectively referred to as the "Real Property") or used or useful in the operation, use or occupancy thereof or the construction of any improvements thereon, including, without limitation, any interest of Trustor in and to personal property which is leased or subject to any superior security interest, or which is being manufactured or assembled for later installation into the improvements to be located or constructed at the Real Property, wherever located, and all books, records, leases and other documents, of whatever kind or character, relating to the Real Property;

(b) All fees, income, rents, issues, profits, earnings, receipts, royalties and revenues which, after the date hereof and while any portion of the indebtedness secured hereby remains unpaid, may accrue from said goods, fixtures, furnishings, equipment and building materials or any part thereof or from the Real Property or any part thereof, or which may be received or receivable by Trustor from any hiring, using, letting, leasing, subhiring, subletting, or subleasing therefor;

(c) All of Trustor's present and future rights to receive payments of money, services or property including, without limitation, rights to all deposits from tenants of the Real Property, accounts receivable, deposit accounts, chattel paper, documents, letters of credit, hedging or similar agreement, instruments, general intangibles and principal, interest and notes, drafts, contract rights (including, without limitation, all rights under any interest rate payments due on account of goods sold, services rendered, loans made or credit extended), together with title or interest in all documents evidencing or securing the same;

(d) All other intangible property and rights relating to the Real Property or the operation thereof, or used in connection therewith, including but not limited to all governmental permits relating to construction or other activities on the Real Property, all names under or by which the Real Property may at any time be operated or known, all rights to carry on business under any such names, or any variant thereof, all trade names and trademarks relating in any way to the Real Property, good will in any way relating to the Real Property, and all licenses and permits relating in any way to, or to the operation of, the Real Property;

(e) All proceeds from sale or disposition of the aforesaid Collateral;

(f) Trustor's rights under all insurance policies covering the Real Property or any of the aforesaid Collateral (whether or not required by the Loan Documents), and all proceeds, loss payments and premium refunds payable regarding the same;

(g) All reserves, deferred payments, deposits, refunds, cost savings and payments of any kind relating to the construction of any Improvements on the Land;

(h) All water stock relating to the Real Property or any portion of it;

(i) All causes of action, claims, compensation and recoveries for any damage to or condemnation or taking of the Real Property or the aforesaid Collateral, or for any conveyance in lieu thereof, whether direct or consequential, or for any damage or injury to the Real Property or the aforesaid Collateral, or for any loss or diminution in value of the Real Property or the aforesaid Collateral;

(j) All architectural, structural, mechanical and engineering plans and specifications prepared for construction of improvements or extraction of minerals from the Real Property and all studies, data and drawings relating thereto; and also all contracts and agreements of the Trustor relating to the aforesaid plans and specifications or to the aforesaid studies, data and drawings or to the construction of improvements on or extraction of minerals or gravel from the property;

(k) All Trustor's right, title and interest in any mobile home coaches owned by Trustor and situated on the Real Property, together with all proceeds from the sale or disposition of the aforesaid mobile home coach or coaches.

All terms used herein which are defined in the California Commercial Code shall have the same meanings when used herein, unless the context requires otherwise.

As to all of the above described personal property which are goods that are or are to become "fixtures" related to the Real Property, this Deed of Trust constitutes a fixture filing under Section 9502(b) of the California Uniform Commercial Code, as amended or recodified from time to time.

3.2 <u>Representations and Warranties</u>. Trustor represents and warrants that: (a) Trustor has, or will have, good title to the Collateral; (b) Trustor has not previously assigned or encumbered the Collateral and no financing statement covering any of the Collateral has been delivered to any other person or entity, and (c) Trustor's principal place of business is located at the address shown in Section 6.5.

3.3 Rights of Beneficiary. In addition to Beneficiary's rights as a "Secured Party" under the California Uniform Commercial Code, as amended or recodified from time to time ("UCC"), Beneficiary may, but shall not be obligated to, at any time without notice and at the expense of Trustor: (a) give notice to any person of Beneficiary's rights hereunder and enforce such rights at law or in equity; (b) insure, protect, defend and preserve the Collateral or any rights or interests of Beneficiary therein; (c) inspect the Collateral; and (d) endorse, collect and receive any right to payment of money owing to Trustor under or from the Collateral. Notwithstanding the above, in no event shall Beneficiary be deemed to have accepted any property other than cash in satisfaction of any obligation of Trustor to Beneficiary unless Beneficiary shall make an express written election of said remedy under applicable law.

3.4 Rights of Beneficiary on Default. Upon the occurrence of a Default under this Deed of Trust, then in addition to all of Beneficiary's rights as a "Secured Party" under the UCC or otherwise at law:

(a) Beneficiary may (i) upon written notice, require Trustor to assemble any or all of the Collateral and make it available to Beneficiary at a place designated by Beneficiary; (ii) without prior notice, enter upon the Real Property or other place where any of the Collateral may be located and take possession of, collect, sell, and dispose of any or all of the Collateral, and store the same at locations acceptable to Beneficiary at Trustor's expense; (iii) sell, assign and deliver at any place or in any lawful manner all or any part of the Collateral and bid and become purchaser of any such sales; and

(b) Beneficiary may, for the account of Trustor and at Trustor's expense: (i) operate, use, consume, sell or dispose of the Collateral as Beneficiary deems appropriate for the purpose of performing any or all of the Secured Obligations; (ii) enter into any agreement, compromise, or settlement, including insurance claims, which Beneficiary may deem desirable or proper with respect to any of the Collateral; and (iii) endorse and deliver evidences of title for, and receive, enforce and collect by legal action or otherwise, all indebtedness and obligations now or hereafter owing to Trustor in connection with or on account of any or all of the Collateral.

Notwithstanding any other provision hereof, Beneficiary shall not be deemed to have accepted any property other than cash in satisfaction of any obligation of Trustor to Beneficiary unless Trustor shall make an express written election of said remedy under applicable law.

3.5 Power of Attorney. Trustor hereby irrevocably appoints Beneficiary as Trustor's attorney-in-fact (such agency being coupled with an interest), and as such attorney-in-fact Beneficiary may, without the obligation to do so, in Beneficiary's name, or in the name of Trustor, prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve any of Beneficiary's security interests and rights in or to any of the Collateral, and, upon a Default hereunder, take any other action required of Trustor; provided, however, that Beneficiary as such attorney-in-fact shall be accountable only for such funds as are actually received by Beneficiary.

3.6 Possession and Use of Collateral. Except as otherwise provided in this Section or other Loan Documents, so long as no Default exists under this Deed of Trust or any of the Loan Documents, Trustor may possess, use, move, transfer, dispose of or replace any of the Collateral in the ordinary course of Trustor's business.

ARTICLE 4
REMEDIES UPON DEFAULT

4.1 Events of Default. For all purposes hereof, the term "Default" shall mean the occurrence of an Event of Default under the DDA (which covers, among other things, defaults under the Loan Documents and under any deed of trust on the Real Property that is senior to this Deed of Trust).

4.2 Acceleration Upon Default, Additional Remedies. Upon the occurrence of a Default, Beneficiary may, at its option may declare all indebtedness secured hereby to be immediately due and payable without any presentment, demand, protest or notice of any kind. Thereafter Beneficiary may:

(a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Land or the Improvements or both, or any part thereof, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of any portion of the Property, including, without limitation (i) taking possession of Trustor's books and records, (ii) completing the rehabilitation of the Improvements, (iii) maintaining or repairing the Improvements or any other portion of the Property, (iv) increasing the income from the Property, with or without taking possession of the Land or the Improvements, (v) entering into, modifying, or enforcing any Leases, (vi) suing for or otherwise collecting the Rents or other amounts owing to Trustor, including those past due and unpaid, and (vii) applying the same, less costs and expenses of operation and collection including, without limitation, attorneys' fees, upon any indebtedness secured hereby, all in such order as Beneficiary may determine. The entering upon and taking possession of the Land or the Improvements, the collection of such Rents and the application thereof as provided above, shall not cure or waive any Default or notice of default hereunder;

(b) Enforce all of the rights and remedies of an assignee for turnover of rents, issues and profits under Section 2938 of the California Civil Code, as such Section may be amended from time to time;

(c) Commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof;

(d) Deliver to Trustee a written declaration of default and demand for sale and a written notice of default and election to cause Trustor's interest in the Property to be sold, which notice Trustee or Beneficiary shall cause to be duly filed of record in the Official Records of the County in which the Land is located; or

(e) Exercise all other rights and remedies provided herein, in any Loan Document or other document or agreement now or hereafter securing all or any portion of the obligations secured hereby, or by law.

4.3 Foreclosure by Power of Sale. Should Beneficiary elect to foreclose by exercise of the power of sale herein contained, Beneficiary shall notify Trustee and shall deposit with Trustee this Deed of Trust and the Note and such receipts and evidence of expenditures made and secured hereby as Trustee may require.

(a) Beneficiary or Trustee shall give such notice of default and election to sell as is then required by applicable law. Trustee shall, without demand on Trustor, after lapse of such time as may then be required by law and after recordation of such notice of default and after notice of sale having been given as required by law, sell the Property at the time and place of sale fixed by it in the notice of sale, either as a whole, or in separate lots or parcels or items as Beneficiary shall deem expedient, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to such purchaser or purchasers thereof a trustee's deed conveying the property so sold, which shall not contain any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustor, Trustee or Beneficiary, may purchase at such sale and Beneficiary shall be entitled to pay the purchase price by crediting the purchase price of the property against the obligations secured hereby. Trustor hereby covenants to warrant and defend the title of such purchaser or purchasers.

(b) After deducting all costs, fees and expenses of Trustee and of this trust, including costs of evidence of title in connection with sale, Trustee shall apply the proceeds of sale in the following priority, to payment of: (i) first, all sums expended under the terms hereof, not then repaid; (ii) second, all other sums then secured hereby; and (iii) the remainder, if any, to the person or persons legally entitled thereto.

(c) Subject to California Civil Code § 2924(g), Trustee may postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement or subsequently noticed sale, and without further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new notice of sale.

4.4 Personal Property. Pursuant to Article 3 above, Trustor has executed and delivered to Beneficiary a Security Agreement with respect to certain Collateral described therein. Upon the occurrence of a Default, Beneficiary may proceed at its election, in any sequence: (a) to dispose of any Collateral separately from the sale of real property in accordance with Division 9 of the California Commercial Code or other applicable law; and (b) to dispose of some or all of the Property and the Collateral in any combination consisting of both real and personal property together in one or more sales to be held in accordance with the provisions of the California Commercial Code.

4.5 Appointment of Receiver. Upon the occurrence of a Default hereunder, Beneficiary, as a matter of right and without notice to Trustor or anyone claiming under Trustor, and without regard to the then value of the Property or the adequacy for any security for the obligations then secured hereby, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Property, and Trustor hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of Beneficiary in case of entry as provided herein.

4.6 Remedies Not Exclusive. Trustee and Beneficiary, and each of them, shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this Deed of Trust or under any Loan Document or other agreement or any laws now or hereafter in force, notwithstanding some or all of the indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Deed of Trust nor its enforcement whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect Trustee's or Beneficiary's right to realize upon or enforce any other security now or hereafter held by Trustee or Beneficiary, it being agreed that Trustee and Beneficiary, and each of them, shall be entitled to enforce this Deed of Trust and any other security now or hereafter held by Beneficiary or Trustee in such order and manner as they or either of them may in their absolute discretion determine. No remedy herein conferred upon or reserved to Trustee or Beneficiary is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to Trustee or Beneficiary or to which either of them may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Trustee or Beneficiary and either of them may pursue inconsistent remedies.

4.7 Request for Notice. Trustor hereby requests a copy of any notice of default and that any notice of sale hereunder be mailed to it at its address set forth in Section 6.5 of this Deed of Trust.

4.8 Forbearance by Lender Not a Waiver. Any forbearance by Beneficiary in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. The acceptance by Beneficiary of payment of any sum secured by this Deed of Trust after the due date of such payment shall not be a waiver of Beneficiary's right either to require prompt payment when due of all other sums so secured or to declare a Default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other liens or charges by Beneficiary shall not be a waiver of Beneficiary's right to accelerate the maturity of the indebtedness secured by this Deed of Trust nor shall Beneficiary's receipt of any awards, proceeds or damages under this Deed of Trust operate to cure or waive any Default with respect to any payment secured by this Deed of Trust.

ARTICLE 5
HAZARDOUS MATERIALS

5.1 Hazardous Materials Covenants. Trustor agrees as follows:

(a) (i) "Hazardous Materials" shall mean oil, flammable explosives, asbestos, urea formaldehyde insulation, radioactive materials, hazardous wastes, toxic or contaminated substances or similar materials, including, without limitation, any substances which are "hazardous substances," "hazardous wastes," "hazardous materials" or "toxic substances" under the Hazardous Materials Laws, as described below, and/or other applicable environmental laws, ordinances and regulations (collectively, the "Hazardous Materials"). "Hazardous Materials" shall not include commercially reasonable amounts of such materials used in the construction of improvements on the Real Property required under the DDA or operation of the Real Property required or permitted under the DDA which are used and stored in accordance with all applicable environmental laws, ordinances and regulations.

(ii) "Hazardous Materials Laws" shall mean: the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251 et seq.; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901 et seq.; the Comprehensive Environment Response, Compensation and Liability Act of 1980, as amended (including the Superfund Amendments and Reauthorization Act of 1986, "CERCLA"), 42 U.S.C. Section 9601 et seq.; the Toxic Substances Control Act, as amended, 15 U.S.C. Section 2601 et seq.; the Occupational Safety and Health Act, as amended, 29 U.S.C. Section 651, the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. Section 11001 et seq.; the Mine Safety and Health Act of 1977, as amended, 30 U.S.C. Section 801 et seq.; the Safe Drinking Water Act, as amended, 42 U.S.C. Section 300f et seq.; and all comparable state and local laws, laws of other jurisdictions or orders and regulations.

(iii) "Hazardous Materials Claims" shall mean claims or actions pending or threatened against Trustor or the Real Property by any governmental entity or agency or by any other person or entity relating to Hazardous Materials or pursuant to the Hazardous Materials Laws.

(b) No Hazardous Activities. Trustor shall not cause or permit the Real Property to be used as a site for the use, generation, manufacture, storage, treatment, release, discharge, disposal, transportation or presence of any Hazardous Materials.

(c) Compliance. Trustor shall comply and cause the Real Property to comply with all Hazardous Materials Laws.

(d) Notices. Trustor shall immediately notify Beneficiary in writing of: (i) the discovery of any Hazardous Materials on, under or about the Real Property; (ii) any knowledge by Trustor that the Real Property does not comply with any Hazardous Materials Laws; (iii) any Hazardous Materials Claims; and (iv) the discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Real

Property that could cause the Real Property or any part thereof to be designated as Border Zone Property under the California Health & Safety Code.

(e) Remedial Action. In response to the presence of any Hazardous Materials on, under or about the Real Property, Trustor shall immediately take, at Trustor 's sole expense, all remedial action required by any Hazardous Materials Laws or any judgment, consent decree, settlement or compromise in respect to any Hazardous Materials Claims.

5.2 Inspection By Beneficiary. Upon reasonable prior notice to Trustor, Beneficiary, its employees and agents, may from time to time (whether before or after the commencement of a nonjudicial or judicial foreclosure proceeding) enter and inspect the Real Property for the purpose of determining the existence, location, nature and magnitude of any past or present release or threatened release of any Hazardous Materials into, onto, beneath or from the Real Property.

5.3 Hazardous Materials Indemnity. Trustor hereby agrees to defend, indemnify and hold harmless Beneficiary, its directors, officers, employees, agents, successors and assigns from and against any and all losses, damages, liabilities, claims, actions, judgments, court costs and legal or other expenses (including, without limitation, attorneys' fees and expenses) which Beneficiary may incur as a direct or indirect consequence of the use, generation, manufacture, storage, disposal, threatened disposal, transportation or presence of Hazardous Materials in, on, under or about the Real Property, except as otherwise provided in Section 6.9 of the DDA. Trustor shall immediately pay to Beneficiary upon demand any amounts owing under this indemnity, together with interest from the date the indebtedness arises until paid at the Default Rate. TRUSTOR'S DUTY AND OBLIGATIONS TO DEFEND, INDEMNIFY AND HOLD HARMLESS BENEFICIARY SHALL SURVIVE THE RELEASE, RECONVEYANCE OR PARTIAL RECONVEYANCE OF THIS DEED OF TRUST.

5.4 Legal Effect Of Section. Trustor and Beneficiary agree that: (a) this Article 5 is intended as Beneficiary's written request for information (and Trustor's response) concerning the environmental condition of the real property security as required by California Code of Civil Procedure §726.5; and (b) each provision in this Article (together with any indemnity applicable to a breach of any such provision) with respect to the environmental condition of the real property security is intended by Beneficiary and Trustor to be an "environmental provision" for purposes of California Code of Civil Procedure §736, and as such it is expressly understood that Trustor's duty to indemnify Beneficiary hereunder shall survive: (a) any judicial or non-judicial foreclosure under this Deed of Trust, or transfer of the Real Property in lieu thereof, and (b) the release and reconveyance or cancellation of this Deed of Trust.

ARTICLE 6
MISCELLANEOUS

6.1 Amendments. This instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

6.2 Trustor Waiver of Rights. Trustor waives to the extent permitted by law, (a) the benefit of all laws now existing or that may hereafter be enacted providing for any appraisement before sale of any portion of the Property, (b) all rights of redemption, valuation, appraisement, stay of execution, notice of election to mature or declare due the whole of the secured indebtedness and marshalling in the event of foreclosure of the liens hereby created, (c) all rights and remedies which Trustor may have or be able to assert by reason of the laws of the State of California pertaining to the rights and remedies of sureties, (d) the right to assert any statute of limitations as a bar to the enforcement of the lien of this Deed of Trust or to any action brought to enforce the Note or any other obligation secured by this Deed of Trust, and (e) any rights, legal or equitable, to require marshalling of assets or to require upon foreclosure sales in a particular order, including any rights under California Civil Code Sections 2899 and 3433. Beneficiary shall have the right to determine the order in which any or all of the Property shall be subjected to the remedies provided herein. Beneficiary shall have the right to determine the order in which any or all portions of the indebtedness secured hereby are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Nothing contained herein shall be deemed to be a waiver of Trustor's rights under Section 2924(c) of the California Civil Code.

6.3 Statements by Trustor. Trustor shall, within ten (10) days after written notice thereof from Beneficiary, deliver to Beneficiary a written statement, fully acknowledged, stating the unpaid principal of and interest on the Note and any other amounts secured by this Deed of Trust and stating whether any offset, counterclaim or defense exists against such sums and the obligations of the Deed of Trust.

6.4 Loan Statement Fees. Trustor shall pay the amount demanded by Beneficiary or its authorized loan servicing agent for any statement regarding the obligations secured hereby; provided, however, that such amount may not exceed the maximum amount allowed by law at the time request for the statement is made.

6.5 Notices. All notices and demands given under the terms hereof shall be in writing and may be effected by personal delivery, including by any commercial courier or overnight delivery service, or by United States registered or certified mail, return receipt requested, with all postage and fees fully prepaid. Notices shall be effective upon receipt by the party being given notice, as indicated by the return receipt if mailed; except that if a party has relocated without providing the other party with its new address for service of notices, or if a party refuses delivery of a notice upon its tender, the notice shall be effective upon the attempt to serve the notice at the last address given for service of notices upon that party. Alternatively, notices may be served by facsimile transmission, in which case service shall be deemed effective only upon receipt by the party serving the notice of telephonic or return facsimile transmission confirmation that the party to whom the notice is directed has received a complete and legible copy of the notice. Notices shall be addressed as follows:

If to Trustor: ______________________
____
____
____

If to Beneficiary: ____________________
____
____
Attn: ______________

Any address for service of notice on any party may be changed by that party serving a notice upon the other of the new address, except that any change of address to a post office box shall not be effective unless a street address is also specified for use in effectuating personal service.

6.6 Acceptance by Trustee. Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

6.7 Captions. The captions or headings at the beginning of each Section hereof are for the convenience of the parties and are not a part of this Deed of Trust.

6.8 Invalidity of Certain Provisions. Every provision of this Deed of Trust is intended to be severable. In the event any term or provision hereof is declared to be illegal, invalid or unenforceable for any reason whatsoever by a court of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable.

6.9 Subrogation. To the extent that proceeds of the Note are used to pay any outstanding lien, charge or prior encumbrance against the Property, such proceeds have been or will be advanced by Beneficiary at Trustor's request and Beneficiary shall be subrogated to any and all rights and liens held by any holder of such outstanding liens, charges and prior encumbrances, irrespective of whether the liens, charges or encumbrances are released.

6.10 Attorneys' Fees. If the Note is not paid when due or if any Default occurs, Trustor promises to pay all costs of enforcement and collection, including but not limited to, reasonable attorneys' fees, whether or not such enforcement and collection includes the filing of a lawsuit. As used herein, the terms "attorneys' fees" or "attorneys' fees and costs" shall mean the fees and expenses of counsel to the parties hereto (including, without limitation, in-house counsel employed by Beneficiary) which may include printing, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals and others not admitted to the bar but performing services under the supervision of an attorney. The terms "attorneys' fees" or "attorneys' fees and costs" shall also include, without limitation, all such fees and expenses incurred with respect to appeals, arbitrations and bankruptcy proceedings, and whether or not any action or proceeding is brought with respect to the matter for which said fees and expenses were incurred.

6.11 Governing Law. This Deed of Trust shall be governed by and construed in accordance with the laws of the State of California.

6.12 Interpretation. In this Deed of Trust the singular shall include the plural and the masculine shall include the feminine and neuter and vice versa, if the context so requires.

6.13 Reconveyance by Trustee. Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and the Note to Trustee for cancellation and retention and upon payment by Trustor of Trustee's fees, Trustee shall reconvey to Trustor, or to the person or persons legally entitled thereto, without warranty, any portion of the Property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in any reconveyance may be described as "the person or persons legally entitled thereto." Such grantee shall pay Trustee a reasonable fee and Trustee's costs incurred in so reconveying the Property.

6.14 Counterparts. This document may be executed and acknowledged in counterparts, all of which executed and acknowledged counterparts shall together constitute a single document. Signature and acknowledgment pages may be detached from the counterparts and attached to a single copy of this document to physically form one document, which may be recorded.

6.15 Nonforeign Entity. Section 1445 of the Internal Revenue Code of 1986, as amended (the "Code") and Sections 18805, 18815 and 26131, as applicable, of the California Revenue and Taxation Code ("CRTC") provide that a transferee of a U.S. real property interest must withhold tax, in the case of the Code, if the transferor is a foreign person, or if, in the case of the CRTC, the transferor is not a California resident. To inform Beneficiary that the withholding of tax will not be required in the event of the disposition of the Land or the Improvements, or any portion thereof or interest therein, pursuant to the terms of this Deed of Trust, Trustor hereby certifies, under penalty of perjury, that: (a) Trustor is not a foreign corporation, foreign partnership, foreign trust or foreign estate, as those terms are defined in the Code and the regulations promulgated thereunder; and (b) Trustor's U.S. employer identification number is ____________; and (c) Trustor's principal place of business is ____. It is understood that Beneficiary may disclose the contents of this certification to the Internal Revenue Service and the California Franchise Tax Board, and that any false statement contained herein could be punished by fine, imprisonment or both. Trustor covenants and agrees to execute such further certificates, which shall be signed under penalty of perjury, as Beneficiary shall reasonably require. The covenant set forth herein shall survive the foreclosure of the lien of this Deed of Trust or acceptance of a deed in lieu thereof.

6.16 Substitute Trustee. Beneficiary at any time and from time to time, by instrument in writing, may substitute and appoint a successor Trustee (either corporate or individual) to any Trustee named herein or previously substituted hereunder, which instrument when executed, acknowledged, and recorded in the Official Records of the Office of the Recorder of the County of Monterey shall be conclusive proof of the proper substitution and appointment of each successor trustee or trustees, who shall then have all the title, powers, duties and rights of the predecessor Trustee, without the necessity of any conveyance from such predecessor. Trustee shall not be obligated to notify any party hereto of pending sale under any other deed of trust, or, unless brought by Trustee, or any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party.

6.17 Waiver of Jury Trial. IF PERMITTED BY APPLICABLE LAW, TRUSTOR AND BENEFICIARY EACH HEREBY WAIVE ANY RIGHT TO A TRIAL BY JURY IN

ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS DEED OF TRUST OR ANY OTHER LOAN DOCUMENTS OR RELATING THERETO OR ARISING FROM THE LENDING RELATIONSHIP WHICH IS THE SUBJECT OF THE LOAN AGREEMENT AND AGREE THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

6.18 Nondiscrimination. The Trustor covenants by and for itself and its successors and assigns, and all persons claiming under or through it, and this Deed of Trust is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin, or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises nor shall the lessee himself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises described in this Deed of Trust.

ARTICLE 7
PARTIAL RECONVEYANCES

Subject to Section 1.12, Trustor shall be entitled to partial reconveyances of this Deed of Trust upon the terms and subject to the conditions set forth in Section 8.3.3 of the DDA.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust With Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing as of the day and year first above written.

EXHIBIT "A"

LEGAL DESCRIPTION OF LAND

(Attached.)

EXHIBIT "B"

SCHEDULE OF LEASES

[If none, state "none."]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Monterey)

On ________________________, before me, _________________________________,
(insert name and title of the officer)
Notary Public, personally appeared ____,
who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature_________________________________ (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Monterey)

On _________________________, before me, ___________________________________,
(insert name and title of the officer)
Notary Public, personally appeared ____,
who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature___________________________________ (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Monterey)

On _________________________, before me, ____________________________________,
(insert name and title of the officer)

Notary Public, personally appeared ____, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature____________________________________ (Seal)

<u>CERTIFICATE OF ACCEPTANCE</u>
(Pursuant to Govt. Code § 27281)

This is to certify that the attached Deed of Trust With Assignment of Leases and Rents, Security Agreement and Fixture Filing is hereby accepted pursuant to the authority granted by the City Council of the City of Seaside on _________, 2017 and the City of Seaside hereby consents to the recordation thereof by its duly authorized officer.

Dated: _____________, 2017

CITY OF SEASIDE

____
Craig Malin
City Manager

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Riverside)

On _________________________, before me, ___________________________________,
(insert name and title of the officer)
Notary Public, personally appeared ____, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature___________________________________ (Seal)

ATTACHMENT NO. 9

FORM OF ENVIRONMENTAL INDEMNITY

ENVIRONMENTAL INDEMNITY AGREEMENT

THIS ENVIRONMENTAL INDEMNITY AGREEMENT (this "Agreement") is dated as of ______ ___, 201__ and is entered into by __________ ("Borrower"), and the CITY OF SEASIDE ("City").

Recitals

A. Concurrently herewith, Borrower has purchased certain real property (the "Land") located in the City of Seaside, County of Monterey, State of California, as more particularly described in Exhibit "A" attached hereto. The Land, together with all improvements now or hereafter located on the Land, is herein collectively referred to as the "Property".

B. Pursuant to that certain Second Amended and Restated Disposition and Development Agreement dated as of December 7, 2017, executed by and between City and Borrower with respect to the Property (the "DDA"), Borrower owes to City the Profit Participation described in Section 8.1 of the DDA which is secured by a deed of trust made by Borrower in favor of City encumbering the Property (which together with all amendments, modifications, consolidations, increases, and supplements thereof is herein collectively called the "Deed of Trust");

C. City requires Borrower to provide certain indemnities concerning existing and future asbestos, polychlorinated biphenyls and petroleum products and any other hazardous or toxic materials, wastes and substances which are defined, determined or identified as such in any Federal, state or local laws, rules or regulations (whether now existing or hereafter enacted or promulgated) or any judicial or administrative interpretation of such laws, rules or regulations (any such asbestos, polychlorinated biphenyls and petroleum products and any such other materials, wastes and substances being herein collectively called "Hazardous Materials";

NOW THEREFORE, in consideration of the promises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Borrower hereby agree as follows:

1. Except as otherwise provided in Section 6.9 of the DDA, Borrower covenants and agrees, at its sole cost and expense, to indemnify, protect and save City harmless against and from any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind or of any nature whatsoever (including, without limitation, reasonable attorneys' and experts' fees and disbursements) which may at any time be imposed upon, incurred by or asserted or awarded against City and arising from or out of (A) any Hazardous Materials on, in, under or affecting all or any portion of the Property or any surrounding areas contaminated by Hazardous Materials emanating from and having their source at the Property ("Surrounding Areas"), or (B) the enforcement of this Agreement or the assertion by Borrower of any defense to its obligations hereunder, whether any of such matters arise before or after foreclosure of the Deed of Trust, or

other taking of title to all or any portion of the Property by City, including, without limitation: (i) the costs of removal of any and all Hazardous Materials from all or any portion of the Property or any Surrounding Areas, (ii) additional costs required to take precautions required by applicable law to protect against the release of Hazardous Materials on, in, under or affecting the Property into the air, any body of water, any other public domain or any Surrounding Areas, and (iii) costs incurred to comply, in connection with all or any portion of the Property or any Surrounding Areas, with all applicable laws, orders, judgments and regulations with respect to Hazardous Materials; provided, however, the foregoing indemnity shall not apply to any event caused by the gross negligence or willful misconduct of the City. City's rights under this Agreement shall be in addition to all rights of City under the Deed of Trust, the obligations secured by the Deed of Trust, and under any other documents securing the Profit Participation (the DDA, the Deed of Trust and such other documents or instruments, as amended or modified from time to time, being herein collectively called the "Participation Documents"), and payments by Borrower under this Agreement shall not reduce Borrower's obligations and liabilities under any of the Loan Documents.

2. The liability of Borrower under this Agreement shall in no way be limited or impaired by, and Borrower hereby consents to and agrees to be bound by, any amendment or modification of the provisions of the Loan Documents to or with City by Borrower or any person who succeeds Borrower as owner of the Property. In addition, the liability of Borrower shall terminate upon payment of the applicable Profit Participation in full, but the liability of Borrower under this Agreement shall in no way be limited or impaired by (i) any extensions of time for performance required by any of the Participation Documents, (ii) any sale, assignment or foreclosure of the Deed of Trust, or any sale or transfer of all or part of the Property, (iii) the accuracy or inaccuracy of the representations and warranties made by Borrower under any of the Participation Documents, (iv) the release of Borrower or any other person from performance or observance of any of the agreements, covenants, terms or conditions contained in any of the Participation Documents by operation of law, City's voluntary act, or otherwise, (v) the release or substitution in whole or in part of any security for the obligations secured by the Deed of Trust, or (vi) City's failure to record the Deed of Trust (or City's improper recording thereof) or to otherwise perfect, protect, secure or insure any security interest or lien given as security for such obligations; and, in any such case, whether with or without notice to Borrower and with or without consideration.

3. Nothing herein shall be deemed to apply to any condition on, in, under or affecting the Property occurring after City or any other party shall have become the owner of the Property by foreclosure, judicial or non-judicial, or deed in lieu thereof, but the provisions hereof shall be fully applicable to any condition existing prior to the City becoming the owner of the Property, even though such condition is not discovered until after City acquires title to the Property.

4. No delay on City's part in exercising any right, power or privilege under any of the Loan Documents shall operate as a waiver of any such privilege, power or right.

5. Any one or more of any other party liable upon or in respect of this Agreement, or the obligations secured by the Deed of Trust, may be released without affecting the liability of any party not so released.

6. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. The counterparts shall constitute but one and the same instrument and shall be binding upon, and shall inure to the benefit of, each of the undersigned individually as fully and completely as if all had signed but one instrument.

7. All notices hereunder shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when sent by U.S. registered or certified mail, postage prepaid, return receipt requested, if to Borrower at _______________________; and to the City at ____, or such other address of which a party shall have notified the other party by giving such notice in writing in accordance with the foregoing requirements.

8. No provision of this Agreement may be changed, waived, discharged or terminated orally, by telephone or by any other means except by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

9. Except as herein provided, this Agreement shall be binding upon and inure to the benefit of Borrower and City and their respective heirs, personal representatives, successors and assigns. Notwithstanding the foregoing, Borrower, without the prior written consent of City in each instance, may not assign, transfer or set over to another, in whole or in part, all or any part of its or their benefits, rights, duties and obligations hereunder, including, but not limited to, performance of and compliance with conditions hereof.

10. This Agreement and the rights and obligations of the parties hereunder shall in all respects be governed by, and construed and enforce in accordance with, the laws of the State of California (without giving effect to California's principles of conflicts of law). Borrower hereby irrevocably submits to the nonexclusive sitting jurisdiction of any California State or Federal court sitting in the County of Monterey over any suit, action or proceeding arising out of or relating to this Agreement.

(Signature page follows)

IN WITNESS WHEREOF, City and Borrower have caused this Agreement to be executed as of the date first written above.

"City":	**"Borrower":**
CITY OF SEASIDE	_______________________________
By: _________________________	By: _________________________
Name: _________________________	Name: _________________________
Title: _________________________	Title: _________________________

Attest:

By: ___________________________

_____________, City Clerk

EXHIBIT A

Legal Description of the Land

(Attached.)

EXHIBIT "A"

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN IS SITUATED IN THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

ATTACHMENT NO. 10

FORM OF MEMORANDUM OF DDA

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Seaside
440 Harcourt Avenue
Seaside, CA 93955
Attn: City Manager

WITH A COPY TO:

____
____
____
Attention: ________________

APNs: ___________________

FREE RECORDING REQUESTED
(Govt. Code Section 6103)

(Space Above For Recorder's Use)

AMENDED AND RESTATED MEMORANDUM OF DISPOSITION AND DEVELOPMENT AGREEMENT

THIS AMENDED AND RESTATED MEMORANDUM OF DISPOSITION AND DEVELOPMENT AGREEMENT (this "Memorandum") is made as of this ___ day of ____________, 2017, by and between the CITY OF SEASIDE ("City") and __________ (hereinafter referred to as "Grantee" or "Developer"), to amend and restate that certain Memorandum of Disposition and Development Agreement dated ________________ recorded on ________________ in the Official Records of Monterey County as Document No. __________ ______.

1. City and Developer entered into that certain Second Amended and Restated Disposition and Development Agreement dated as of December 7, 2017 (the "DDA"), which is incorporated herein by reference, which became effective as of _________, 2018. All capitalized terms not otherwise defined herein shall have the meanings assigned to them in the DDA. The DDA is a public record on file in the offices of City.

2. Pursuant to the DDA, City shall acquire and convey to Developer certain real property described as the Property and more particularly described on Exhibit "A", attached hereto and incorporated herein by reference.

3. Pursuant to the DDA, Developer agrees to construct certain improvements defined therein as Improvements in Phases on the Property consisting of a hotel, timeshare and residential development. If Developer fails to construct the Improvements in the manner and within the time set forth in the DDA, City shall have the right to repurchase the Property or the Phases that have been conveyed to Developer, within the time periods set forth in the DDA.

4. City has provided certain financial assistance to Developer to assist in the completion of the development of the Property, as is more particularly described in Article of the DDA.

5. City has certain rights to participate in the profits of the Residential Component of the Project on the Property, as is more particularly described in Article 8 of the DDA.

6. Except as stated herein, nothing contained in this instrument shall modify in any way any other provisions of the DDA or any other provisions of the documents incorporated herein.

7. Upon the satisfaction of the development and construction obligations under the DDA with respect to the Property or a Phase thereof, the City shall by a written recordable document reasonably satisfactory to Developer so indicate that such obligations have been satisfied.

IN WITNESS WHEREOF, City and Developer have executed this Memorandum as of the day and year first above written.

CITY:

CITY OF SEASIDE

By: ___________________________

____
City Manager

ATTEST:

____
City Clerk

APPROVED AS TO FORM:

____

____
Special City Counsel

<u>"DEVELOPER"</u>:

____

By: ____________________________

Print Name: _____________________

Title: __________________________

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Monterey)

On __________________________, before me, ____________________________________,
(insert name and title of the officer)
Notary Public, personally appeared ____, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature____________________________________ (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Monterey)

On __________________________, before me, _______________________________________,
(insert name and title of the officer)
Notary Public, personally appeared ____, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature____________________________________ (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Monterey)

On _________________________, before me, _________________________________,
(insert name and title of the officer)
Notary Public, personally appeared ____,
who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature___________________________________ (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Monterey)

On __________________________, before me, ____________________________________,
(insert name and title of the officer)
Notary Public, personally appeared ____, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature____________________________________ (Seal)

EXHIBIT "A"

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN IS SITUATED IN THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

ATTACHMENT NO. 11

CITY OF SEASIDE LOCAL FIRST SOURCE RECRUITMENT POLICY

Capitalized terms which appear in this Policy are as defined in Article I of this Policy below.

A. The City hereby finds and determines that, based partially on the closure of the massive military reserve once known as Fort Ord, there is a high incidence of unemployment and underemployment among the Residents of the City.

B. The City further finds and determines that this high incidence of unemployment and underemployment is due also to artificial barriers in the employment market which serve to reduce the likelihood that Residents will find employment which is commensurate with their education, skills and experience and which do not affect nonresidents of the City in a similar manner.

C. The City further finds and determines that the existence of high unemployment within the City serves as a blighting influence on the City, and the resultant reduction or elimination of the incomes of Local Businesses and Residents may serve as a blighting influence on the City, by decreasing the amount of available jobs, increasing the likelihood that Residents and Distressed Workers will engage in criminal activities, increase the incidence of under-maintenance of property within the jurisdiction leading to a decreased property tax base and other social ills within the City.

D. The City further finds and determines that Residents and Local Businesses will bear a disproportionate burden of development, which may result in the displacement of Local Businesses and a reduction in the number of Residents who are employed within the City.

E. The City further finds and determines that the burdens of development will not be borne in a similar manner by those who reside or conduct business outside the City.

F. The City further finds and determines that Residents and Local Businesses should be given an opportunity to be employed in development within the City and the ongoing uses to be created in the City, so as to mitigate the disproportionate burden of development on Residents, Distressed Workers and Local Businesses.

POLICY

I. Definitions

For the purposes of this Policy, the following terms shall have the meaning specified below:

A. "City" shall mean the City of Seaside.

B. "City Contract" shall mean any contract entered into by the City and a Developer or End User for labor or services related to development, including but not limited to construction contracts, consultant contracts or the operation of industrial, commercial, retail or office-related businesses within the Project Area.

D. “DDA” shall mean a disposition and development agreement entered into by the City and a Developer or End User for the redevelopment and/or use of property within the City.

E. “Developer” shall mean any individual, unincorporated association, partnership, joint venture group, corporation or subcontractor of same which is engaged inactivates related to development in the City. “Developer” shall not include those consultants or employees of the City who are retained to perform administrative, management, consulting or legal services for the City.

F. “Developer Contract” shall mean any contract entered into by a developer and any third party where the scope of the Developer Contract is to perform work related to development, and where the developer has entered into a City Contract or has received a Subsidy. Developer Contract shall include, but not be limited to, construction contracts, consultant contracts and any other contracts for the performance of services or labor related to development.

G. “Distressed Workers” shall mean those Residents who are unemployed, not presently employable, or underemployed based on their skills, education and experience, displaced workers, workers who are eligible for participation in programs governed by the Job Training Partnership Act, or persons who have recently encountered labor market barriers or obstacles as determined by local employment referral and training organizations.

H. “End Users” shall mean those businesses which commence operation in industrial manufacturing, commercial, retail or office space within the City after the completion of any construction or rehabilitation projects related to that space.

I. “Good Faith Effort” shall mean diligent efforts to locate and employ qualified Residents or Distressed Workers, or diligent efforts to provide funds or training opportunities to benefit Distressed Workers. Diligent efforts to located Qualified Residents shall include, at a minimum, notification by the Developer or End User to the City and all Service Organizations of the availability of employment opportunities prior to the time that those opportunities are advertised to the general public and other outreach efforts as are deemed necessary by the City. Diligent efforts to employ Qualified Residents or Distressed Workers shall include at a minimum hiring of Qualified Residents and/or Distressed Workers who are recommended to the Developer or End User by the City or Service Organizations after such notification, to the extent that the Developer or End User has existing employment opportunities available.

“Good Faith Effort” shall further mean diligent efforts to contract or subcontract a portion of contracts to Local Business. Diligent efforts to contract or subcontract to Local Businesses shall include, at a minimum, advertisement of available subcontracting opportunities by Developers and End Users to the City’s Chamber of Commerce and other businesses and professional organizations serving the City, solicitation of Local Businesses who are known by the Developer or End User to provide services which are required by the Developer or End User, and solicitation of referrals to Local Businesses from the City and Service Organizations.

J. “Local Businesses” shall mean those industrial, manufacturing, commercial, retail or office-related businesses licensed by the City of Seaside whose principal place of business or headquarters is located within the City limits.

K. “Resident” shall mean any person whose primary residence is in the City of Seaside.

L. “Service Organization” shall mean a nonprofit community group, employment service, or job training organization which has Seaside as part of its service area or otherwise provides job placement or training, or other assistance to Residents, or business support services to Local Businesses.

M. “Subcontractor” shall mean any and all parties with whom the Developer and Contractor intends to enter into a contract to perform a portion of any said work regardless of tier.

N. “Subsidy” shall include, but is not limited to, any direct or indirect cash or other financial assistance to a Developer or End User through any of the following programs: federal or stated pants or other government grant or loan programs; revolving loan funds, City assistance such as write-downs of the cost of land, property tax abatement or sales tax rebate sharing agreements, tax increment financing, revenue or development bonds; and any other loans, grants bonds, or capital improvements financed in whole or in part, whether through the investment of cash or in-kind resources or the issuance of bonds, notes or indentures by the City, or any entity whose borrowing powers is underwritten in whole or in part by the City. “Subsidy” shall also include the creation of assessment districts for the benefit of a Developer or End User by the City for the purpose of improving property within the City for the Developer’s or End User’s use, and any other financial or nonfinancial assistance provided by the City which materially benefits a Developer or End User.

II. First Source Recruitment Policy

A. Hiring. It shall be the policy of the City that the City, developers and End Users shall recruit for the purpose of hiring, to the greatest extent feasible, qualified Residents and Local Businesses in the performance of work related to development within the City, including construction, operation and management of manufacturing, commercial, industrial, retail or office-related businesses.

B. Training. It shall be the policy of the City that the City, Developers and End Users shall provide to the greatest extent feasible, training programs or funding to support such programs, for Distressed Workers, so that those workers may qualify for employment opportunities created by this policy. The City shall work with Developers, End Users and Service Organizations to develop effective training programs as necessary to effectuate this Policy.

C. First Source. To the extent that the training programs are implemented by the City as a part of this Policy and Distressed Workers are trained for and become qualified to perform jobs for Developers and End Users within the City, it shall be the Policy of the City that the City, Developers and End Users shall make a Good Faith Effort to hire Distressed Workers in the construction, operation and management of manufacturing, commercial, industrial, retail or office-related businesses which are located within the City.

D. Scope of Policy Scope. The Policy shall be implemented by the City to the greatest extent feasible by the City in its negotiation of DDAs, City Contracts, and other agreements with Developers and End Users pertaining to the development. The Policy shall be implemented by Developers in negotiation of Developer Contracts, including the subcontracts and contracts with End Users of property.

E. Term. The Policy shall be in effect from the date of its adoption by the City until such time that it is amended or terminated by the City. The City shall annually evaluate the

Policy and determine its effectiveness and may at that time make any necessary adjustments to the Policy as the City deems appropriate.

III. City Contracts

A. Contracts Under $5,000 for Grading, Clearing, Demolition and Construction. In all City Contracts for grading, clearing, demolition and construction within the City for which the value of the City Contract is less than $5,000, the City shall, prior to advertising the availability of the contract to the general public, first advertise the availability of these City Contracts to Residents and Local Businesses who are qualified to perform the work which is the subject of the City Contract. To the greatest extent feasible, the City shall give preference in awarding these City Contracts to Residents and Local Businesses who are qualified to perform the grading clearing, demolition or construction work which is the subject of the City Contract.

B. City Construction Contracts. For all City Contracts for the construction of public improvements within the City, including but not limited to contracts valued at over $5,000 for grading, clearing, demolition and construction, the City may grant a preference to those construction contractors who have made a Good Faith Effort to hire, or who agree to hire, on a craft-by-craft basis, qualified Residents to perform the City Contract. The City may further grant preference to construction contractors who have subcontracted, or made a Good Faith Effort to subcontract, a portion of the City Contract to Local Businesses.

C. Contracts Valued at Over $100,000. For all other City Contracts whose dollar value is estimated to exceed $100,000 at the time the scope of work for the City Contract is prepared, the City may specify in its bid package that preference for the City Contract shall he given to the lowest responsible bidder who, as part of the bid, demonstrates that it has made a Good Faith Effort to hire, or has hired, qualified Residents to perform a portion of the work which is the subject of the City Contract, or demonstrates that it has subcontracted or has made a Good Faith Effort to subcontract to Local Businesses a portion of the work which is the subject of the City Contract.

D. Operation of Facilities. For all City Contracts for the operation and management of public improvements or public facilities, the City shall, to the greatest extent feasible, grant a preference to those construction contractors who have made a Good Faith Effort to hire, or who have hired qualified Residents to perform some or all of labor necessary to perform the City Contract. The City may further grant preference to construction contractors who have made a Good Faith Effort to subcontract, or have subcontracted a portion of the City Contract to Local Businesses.

E. Disposition and Development Agreements (DDA's). For all DDA's or similar agreements entered into by the City, the City shall negotiate, to the extent feasible, provisions in the DDA or agreement which require the Developer, End User or other part to make a Good Faith Effort to hire qualified Residents in employment within the City and to utilize, or make a Good Faith Effort to utilize, Local Businesses, to implement the DDA or any subcontract arising from the DDA.

F. Training Fund. For all City Contracts with Developers and End Users, including but not limited to construction contracts, DDA's and leases, the City shall negotiate, to the extent feasible, provisions in the DDA or City Contract which require the Developer, End User to contribute to a training fund to be administered by the City for the purposes of providing education and/or training to Distressed Workers.

IV. Developers

A. Scope of Section. The provisions of this Article 4 shall apply only to those Developers who receive a Subsidy or Subsidies, as defined in this Policy, from or through the efforts of the City.

B. Construction Contracts. For all construction contracts which arise as a result of a DDA entered into by the City and a Developer, the Developer shall negotiate, to the extent feasible, provisions in its construction contract which require the prime contractor to hire, or make a Good Faith Effort to hire, on a craft-by-craft basis, qualified Residents to perforrn some or all of the labor necessary to perform the Developer Contract. The Developer shall also negotiate, to the extent feasible, provisions in its construction contract with the prime contractor to subcontract, or make a Good Faith Effort to subcontract, a portion of the Developer Contract to Local Businesses.

C. Other Contracts. For all Developer Contracts other than construction contracts, the Developer shall negotiate, to the extent feasible, provisions in the Developer Contract which require the other contracting party to make a Good Faith Effort to hire qualified Residents to implement the Developer Contract.

V. End Users

A. Scope of Section. The Provisions of this Article 5 shall apply only to those End Users who have entered into a City Contract or who have, directly or indirectly, received a Subsidy or Subsidies, as defined in this Policy, from or through City efforts.

B. Operation of Facilities. In hiring its work force to operate or manage a commercial, retail or office-related business which is located within the City, an End User shall, to the greatest extent feasible, make a Good Faith Effort to employ qualified Residents or to provide ongoing training opportunities (such as part-time work, internships or classes) to Distressed Workers, within the skill areas which are utilized by the End User in the operation and management of the End User's business.

VI. Exceptions

A. Compliance with State and Federal Law. This Policy shall only be enforced to the extent that it is consistent with the laws of the City, the State of California and the United States. If any provision of this Policy is deemed to be unconstitutional or otherwise in conflict with the state or federal law, the applicable state or federal law shall prevail over the terms of this Policy, and the inconsistent provisions of this Policy shall not be enforced by the City or any other body.

B. Court Order. Notwithstanding the provisions of this Policy, a Developer shall be deemed to be in compliance with this Policy if it is bound by court or administrative order or decree, or a settlement agreement arising from a labor relations dispute, which governs the hiring of workers by the Developer and the provisions of which make it impossible for the Developer to hire Residents or Distressed Workers in accordance with the terms and conditions of this Policy.

C. Exception for Good Faith Effort. Notwithstanding the provisions of this Policy, there shall be no penalty or sanction arising as a result of the failure of the City, Developers or End Users to achieve the goals of this Policy, so long as the City, Developer or End User has made a Good Faith Effort to comply with the goals of this Policy.

VII. Administration

A. City Manager. The City Manager of the City, or his designee, shall be responsible for the implementation of this Policy and shall develop any administrative policies or procedures which are necessary to effectuate this Policy.

B. Service Organization. The City and developers shall work with Service Organizations as necessary to implement the Policy. The City may work with the Service Organizations to provide a mechanism by which the Service Organization may provide recruitment, screening, referral, placement and training services in furtherance of this Program. Such a mechanism may also include, at the discretion of the City and the Service Organizations shall provide any necessary monitoring services for the implementation of this Policy.

C. Binding Upon Successors. It is intended that the provisions of this Policy shall be applicable to all development activities to the fullest extent permitted by law for the benefit and in favor of the City; and the provisions of this Policy shall be enforceable by the City, Developers, End Users and any of their successors in interest to property in the City.

ATTACHMENT NO. 12

LIST OF ACCEPTABLE HOTEL AND TIMESHARE OPERATORS

Acceptable Hotel Operators

Marriott International (including JW Marriott, and its other various brands)
Starwood Hotels and Resorts
Hilton
Hyatt
Fairmont
Four Seasons
Omni
Any other hotel entity approved by City in writing in its good faith discretion.
The owner of the hotel (or an Affiliate of the owner of the hotel) provided reasonable evidence has been submitted to and reasonably approved by City that the owner or Affiliate has adequate staff with adequate hotel management experience to operate the hotel at a level equal to the other approved operators on this list.

Acceptable Timeshare Operators

Starwood Vacation Club
Hilton Vacation Club
Hyatt Vacation Club
Any timeshare entity affiliated with an Acceptable Hotel Operator or approved by City in writing in its good faith discretion.
The owner of the timeshare project (or an Affiliate of the owner of the timeshare project) provided reasonable evidence has been submitted to and reasonably approved by City that the owner or Affiliate has adequate staff with adequate timeshare management experience to operate the timeshare project at a level equal to the other approved operators on this list.

ATTACHMENT NO. 13

FORM OF CITY
REIMBURSEMENT AGREEMENT

(Attached)

SEASIDE RESORT REIMBURSEMENT AGREEMENT FOR EMERGENCY VEHICLE ACCESS (EVA) IMPROVEMENTS AND EVA IN LIEU FEES

This REIMBURSEMENT AGREEMENT (this "Agreement") is made and entered into as of ___________, 20__, by and between __________, "Developer"), and the CITY OF SEASIDE, a municipal corporation ("City").

RECITALS

A. On January 24, 2002, the City approved the Seaside Highlands Project, also known as the Hayes Housing Subdivision and Planned Unit Development, which consists of a 380-unit residential development that includes streets, parks and open space. The applicant for the Seaside Highlands Project was KB Bakewell Seaside Venture, LLC ("KB Bakewell").

B. On August 21, 2003, the City and KB Bakewell entered into a Reimbursement Agreement (the "KB Bakewell Reimbursement Agreement,") pursuant to Government Code Section 66486, whereby KB Bakewell agreed to implement previously imposed conditions on the Seaside Highlands Project that called for the design, funding and construction of certain off-site improvements. Those off-site improvements included the gateway section of Monterey Road (the "Gateway Improvement"), emergency access road between Coe Avenue and Peralta Avenue (the "Peralta EVA,") and emergency access road between Coe Avenue and Military Avenue (the "Military EVA.") The KB Bakewell Reimbursement Agreement provided that KB Bakewell would pay an in lieu fee rather than construct the Military EVA improvements and would receive reimbursement from certain other development projects which would benefit from the construction of the Gateway Improvement, the Peralta EVA and the Military EVA.

C. The KB Bakewell Reimbursement Agreement identified several areas of the City and anticipated projects that would benefit from the Gateway Improvement, the Peralta EVA, and the Military EVA and assigned a "fair share" percentage of benefit between those areas and projects. Among those areas and projects listed as benefiting from the improvements is the "Golf Course Hotel" located in General Plan Polygon 24.

D. The KB Bakewell Reimbursement Agreement provided that: (i) the City would collect on behalf of, and pay to KB Bakewell, a reimbursement amount from each benefited area or project as those areas and projects were developed; (ii) the collection from future development projects would occur either prior to the approval of the first final subdivision map or prior to the issuance of the first building permit for that development, whichever occurs first; (iii) fifty percent (50%) of the total reimbursable costs owed to KB Bakewell for the Peralta EVA and the Military EVA would be paid by the first benefited development project to obtain a final subdivision map, use permit or building permit; and (iv) as the City collects reimbursements from other subsequent areas and developments benefited by the improvements, the City would pay half of that reimbursement to KB Bakewell and the other half to the first subsequent development project that incurred the 50% reimbursement requirement, until each had been repaid for the amount of fees incurred that exceeded their fair share of the improvement costs.

E. On July 7, 2005, the City adopted Resolutions approving various components of the Seaside Resort Project, including a 330 room hotel, 170 timeshare units, 125 single-family residential lots. As conditions of those approvals, Developer is required to pay various impacts fees for public improvements, including the Seaside Resort Project's fair share payment of Gateway Improvement, the Peralta EVA and the Military EVA in lieu fee.

F. As part of the approvals for the Seaside Resort Project, the City prepared a document entitled "Fee Study, Seaside Resort" in May 2005 in which the City concluded that the total costs incurred or paid by KB Bakewell for the reimbursable improvements was as follows: (i) Gateway Improvement -- $2,646,959.00; (ii) Peralta EVA -- $200,881.00; and (iii) Military EVA in lieu fee (referred to in the Fee Study as the Yosemite EVA in lieu fee) -- $588,300.00.

G. The City's Fee Study concluded that Developer's fair share of the costs for the reimbursable improvements under the KB Bakewell Reimbursement Agreement was as follows: (i) Gateway Improvement – 21.9% of total costs equaling $579,684.00; (ii) Peralta EVA – 13.30% of total cost equaling $26,717.00; and (iii) Military EVA in lieu fee (referred to as the Yosemite EVA in lieu fee) – 13.30% equaling $78,243.00. The total fair share amount owed by Developer to reimburse KB Bakewell for its reimbursable improvements would be $684,644.00 which constitutes the sum of $579,684.00 for the Gateway Improvements plus $26,717.00 for the Peralta EVA plus $78,243.00 for the Military EVA in lieu fee (also referred to as the Yosemite EVA in lieu fee).

H. Pursuant to the KB Bakewell Reimbursement Agreement, if the Seaside Resort Project is the first benefited development project after Seaside Highlands to obtain a final subdivision map, a use permit, or a building permit, the full amount to be collected by the City from Seaside Resort and paid to KB Bakewell would be $974,274.00, which amount constitutes the sum of $579,684.00 for the Gateway Improvements plus 50% of KB Bakewell's reimbursable costs for the Peralta EVA (50% of $200,881.00 equals $100,440.00) and the Military EVA in lieu fee (also referred to as the Yosemite EVA in lieu fee) (50% of $588,300.00 equals $294,150.00). Thus, the amount to be collected by the City from Developer and paid to KB Bakewell, if Developer is the first benefited development project to obtain a final subdivision map, a use permit or a building permit, would be $579,684.00 for the Gateway Improvements and $394,590.00 for the Peralta and Military EVA improvements. This latter amount ($394,590.00) exceeds Developer's fair share of the reimbursable improvements for the Peralta EVA and the Military EVA in lieu fee by $289,630.00 (the "Excess Amount.") In the event Developer is the first benefited development after Seaside Highlands to obtain a final subdivision map, a use permit or a building permit, and is required to pay the Excess Amount, this Excess Amount shall also constitute the amount owed to Developer from other benefited developments listed in the KB Bakewell Reimbursement Agreement and specified in Recital J below, as those other developments occur in the future.

I. This Agreement is intended to not only implement the KB Bakewell Reimbursement Agreement but to also constitute a reimbursement agreement between the City and Developer for the amounts to be paid from other subsequent development projects and owed to Developer as provided in this Agreement.

J. In addition to the Seaside Highlands Project and the Seaside Resort Project identified in the KB Bakewell Reimbursement Agreement, the following anticipated development projects are within City's Fort Ord lands which would benefit from the Peralta EVA and the Military EVA: the Stilwell "Kidney" (General Plan Polygon 20b), the Other Golf Course Community (consisting of the SunBay Apartments (part of General Plan Polygon 20g), the Brostrom Mobile Home Park (part of General Plan Polygon 20g), and Polygon 20h and 20c), the South Extension Housing (General Plan Polygon 24), University Village (General Plan Polygon 20e), and the Eucalyptus Road Commercial Area (General Plan Polygon 23). Hereafter, the foregoing development projects are referred to collectively as the "EVA Benefit Development" or individually as an "EVA Benefit Development." A map showing the location of the EVA Benefit Developments is attached as Exhibit A and incorporated herein.

NOW THEREFORE, for and in consideration of the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

AGREEMENT

1. Recitals. The Recitals are hereby incorporated and made a part of this Agreement by this reference.

2. Obligations of Seaside Resort.

2.1 Payment of Gateway Improvement Fees. Developer shall pay to City the sum of $579,684.00, which amount shall constitute Developer's fair share of the Gateway Improvement fees that are to be paid to KB Bakewell pursuant to the KB Bakewell Reimbursement Agreement. The Gateway Improvement fees attributable to the Hotel Component shall be $307,047.00 and shall be paid by Developer to the City prior to the recordation of the Final Map that contains the hotel project. The Gateway Improvement fees attributable to the Timeshare Component shall be $103,231.00, shall be paid in increments of $11,470.11 per phase based on the nine phases of the timeshare component, and shall be paid by Developer to the City prior to the recordation of the Final Map that contains the phase or phases of the timeshare component. The Gateway Improvement fees proportionally attributable to the Residential Component of the Project shall be $169,406.00, shall be paid in increments of $1,355.25 per residential lot, and shall be paid prior to the recordation of the Final Map that contains the residential lot. Any difference between the amount of fees collected from Developer and the amount of fees that are due and payable to KB Bakewell at any particular time, shall be paid by the City at the time of recording of the Final Map for the hotel site, with the fees thereafter paid by Developer used to repay the City for any upfront reimbursements paid to KB Bakewell.

2.2 Payment of Peralta EVA and Military (Yosemite) EVA In Lieu Fees. Except as otherwise provided in this Section 2.2, Developer shall pay to City the sum of $394,590.00, which amount shall constitute 50% of the total costs of the Peralta EVA and Military (Yosemite) EVA improvements pursuant to the KB Bakewell Reimbursement Agreement. Developer shall pay this fee to City in one lump sum prior to the recordation of the Final Subdivision Map for the hotel site. Of the $394,590.00 fee, $100,440.00 shall constitute the payment of Peralta EVA fees and $294,150.00 shall constitute the payment of Military (Yosemite) EVA In Lieu Fees. Notwithstanding the preceding provisions of this Section 2.2, if Developer is determined by the City Manager not to be the first EVA Benefit Development to obtain a final subdivision map, use permit or building permit after the Seaside Highlands Project, and is therefore not required to pay 50% of the costs of the Peralta EVA and Military (Yosemite) EVA pursuant to the KB Bakewell Reimbursement Agreement, then Developer shall only be required to pay its fair share of those expenses, which is $26,717.00 for the Peralta EVA and $78,243.00 for the Military (Yosemite) EVA in lieu fee for a total of $104,960.00 as full and complete payment for its fair share of the EVA improvements.

3. Obligations of City.

3.1 Forward Payments to KB Bakewell. Except as otherwise provided in this Section, City shall, within 15 days of receipt of any payments made by Developer under Section 2 of this Agreement, pay to KB Bakewell those amounts as reimbursement for improvements for which the payments have been made. Notwithstanding the preceding sentence, City shall be entitled to retain any Gateway Improvement fees paid by Developer under Section 2 of this Agreement until the full amount of any fees paid by City to KB Bakewell for Developer's fair share of the Gateway Improvements are fully reimbursed to City. City shall document: (i) the receipt of the payment from Developer; (ii) the type of fee for which the payment is made; (iii) whether the fee payment is a reimbursement to the City or whether the amount is to be transferred to KB Bakewell; (iv) the date that a payment is made to KB Bakewell; and (v) provide a copy or copies of that documentation to Developer.

3.2 Collect Reimbursements for Peralta EVA Fees. Provided that the Seaside Resort Project is determined by the City Manager to be the first EVA Benefit Development for which is granted a final subdivision map, a use permit or a building permit from the City subsequent to the Seaside Highlands Project, City shall collect, on behalf of KB Bakewell and Developer a reimbursement from each EVA Benefit Development, as defined in Recital J and specified in Section 4, for that EVA Benefit Development's fair share of the cost of the Peralta EVA. The amount of the reimbursement fees to be collected from EVA Benefited Developments to be paid to Developer shall not exceed $73,723.50, which amount shall constitute the Excess Amount and is the difference between the total amount paid by Developer for Peralta EVA Fees ($100,440.50) and the amount that represents Developer's fair share ($26,717.00) of the total cost of the Peralta EVA improvements ($200,881.00). The reimbursements paid by each EVA Benefit Development shall be paid in one-half equal amounts to KB Bakewell and to Developer as such amounts are collected by the City and until such time as Developer has been reimbursed $73,723.50. Thereafter, the full amount of any additional reimbursement paid by EVA Benefit Developments shall be paid by City to KB Bakewell in accordance with the KB Bakewell Reimbursement Agreement. Payments made by City to Seaside Developer shall be paid within 15 days after receipt by City of the reimbursement payment from an EVA Benefited Development. Notwithstanding the preceding provisions of this Section 3.2, in the event the Seaside Resort Project is determined by the City Manager not to be the first development project for which is granted a final subdivision map, a use permit or a building permit from the City subsequent to the Seaside Highlands Project, City shall not be obligated to collect on behalf of Developer a reimbursement from each EVA Benefit Development, as defined in Recital J and specified in Section 4 for that development's fair share of the cost of the Peralta EVA.

3.3 Collect Reimbursements for Military (Yosemite) EVA In Lieu Fees. Provided that the Seaside Resort Project is determined by the City Manager to be the first EVA Benefit Development for which is granted a final subdivision map, use permit or a building permit from the City subsequent to the Seaside Highlands Project, City shall collect, on behalf of KB Bakewell and Developer, a reimbursement from each EVA Benefit Development (as defined in Recital I) for that EVA Benefit Development's fair share of the cost of the Military (Yosemite) EVA In Lieu Fees. The amount to be paid Developer under this Section shall not exceed the Excess Amount ($215,907.00,) which amount is the difference between the total amount paid by Developer for Military (Yosemite) EVA Fees ($294,150.00) and the amount that represents Developer's fair share ($78,243.00) of the total cost of the Military (Yosemite) improvements ($588,300.00). The reimbursements paid by each EVA Benefit Development shall be paid in one-half equal amounts to KB Bakewell and to Developer as such amounts are collected by the City and until such time as Developer has been reimbursed $215,907.00. Thereafter, the full amount of any additional reimbursement paid by EVA Benefit Developments shall be paid by City to KB Bakewell in accordance with the KB Bakewell Reimbursement Agreement. Payments made by City to Developer shall be paid within 15 days after receipt by City of the reimbursement payment from an EVA Benefited Development, as defined in Section 7 below, by the Reimbursable Cost for the Military (Yosemite) EVA in lieu fee, as defined in Section 4 below. In the event the Seaside Resort Project is determined by the City Manager not to be the first development project for which is granted a final subdivision map, a use permit, or a building permit from the City subsequent to the Seaside Highlands Project, City shall not be obligated to collect on behalf of Developer a reimbursement from each EVA Benefit Development (as defined in Recital I) for that development's fair share of the cost of the Military (Yosemite) EVA in lieu fee.

3.4 Collect Reimbursement Upon Final Map, Use Permit or Building Permit. City shall collect the Reimbursements from an EVA Benefit Development in phases and prior to the approval of the final subdivision map for that phase of the EVA Benefit Development, or prior to the issuance of the first building permit for that phase for the EVA Benefit Development, whichever of the foregoing is first.

3.5 Relationship to other Benefit Development Agreements. Upon execution of this Agreement, its provisions shall be incorporated into other agreements with the developers and/or owners for the other EVA Benefit Developments.

3.6 Other Fees. Nothing contained herein shall be construed to obviate, cancel or annul any other requirements imposed by the City or City on Developer for the payment of development impact fees, any other fees, or for the construction of any improvements as a term or condition of the approval of the Seaside Resort Project, except for those fees specifically covered by this Agreement.

4. EVA Benefit Development's Fair Share.

4.1 EVA Benefit Developments Identified. The EVA Benefit Developments are identified in Recital J above.

4.2 Determination of EVA Benefit Development's Fair Share. An EVA Benefit Development's fair share of the Peralta EVA and the Military (Yosemite) EVA In Lieu Payment is as shown in Chart A below. The dollar amount of the fair share payment to be paid by an EVA Benefit Development for the Paralta EVA shall be derived from multiplying the fair share percentage specified in Chart A that is assigned to the EVA Benefit Development by $200,881.00 (the full costs of the Peralta EVA). The dollar amount of the fair share payment to be paid by an EVA Benefit Development for the Military (Yosemite) EVA in lieu fee shall be derived by multiplying the fair share percentage specified in Chart A that is assigned to the EVA Benefit Development by $588,300.00 (the full costs of the Military (Yosemite) in lieu fee). An EVA Benefit Development's fair share is based on that development's projected number of calls for fire service divided by the total number of projected calls for fire service from all the EVA Benefit Developments, provided, however, that the fair share shall be as shown in Chart A below, regardless of the actual number of calls for fire service generated by an EVA Benefit-Development.

CHART "A"

Property	**General Plan Polygon**	**Fire Service Calls**	**Fair Share**
Hayes Project (Seaside Highlands)	20a	58	8.0%
Stillwell "Kidney"	20b	54	7.5%
Sunbay Apartments	20g	10	1.4%
Brostrom Mobile Home Park	20g	73	10.1%
Polygon 20h or 20c (*)	20h or 20c	249	34.6%
South Extension Housing	24	40	5.6%
University Village	20e	104	14.4%
Golf Course Hotel (Seaside Resort Project)	22	96	13.3%
Eucalyptus Rd. Commercial Area	23	37	5.1%
Totals		**721**	**100.0%**

(*) The first of either Polygon 20h or 20c on which civilian housing is developed is subject to the Reimbursement.

5. Notices. All notices and demands which either Party is required or desires to give to the other shall be given in writing by certified mail, return receipt requested with appropriate postage paid, by personal delivery, by facsimile or by private overnight courier service to the address or facsimile number set forth below for the respective Party, provided that if any Party gives notice of a change of name or address or facsimile number, notices to that Party shall thereafter be given as demanded in that notice. All notices and demands so given shall be effective only upon receipt by the party to whom notice or demand is being given.

If to City:	If to Developer:
440 Harcourt Avenue	________________________________
Seaside, CA 93955	________________________________
Attention: City Manager	________________________________
Fax: (831) 899-6227	________________________________

6. Remedies. If there is a material breach of any provision of this Agreement, a non-breaching Party may serve written notice of the breach on the breaching Party. If the breach is not cured within sixty (60) days following receipt of the notice of breach (or such longer period as is reasonably necessary to remedy such breach, provided that the breaching Party shall continuously and diligently pursue such remedy at all times until such breach is cured), the non-breaching Party may bring an action for damages or an action for specific performance or injunction to compel the breaching Party to cure the breach.

7. Attorneys' Fees. In the event that any Party hereto institutes an action or proceeding, except for a declaration of the rights of the Parties under this Agreement, for an alleged breach or default of, or any other action arising out of, this Agreement, or the transactions contemplated hereby, or in the event any Party is in default of its obligations pursuant thereto, whether or not suit is filed or prosecuted to final judgment, the non-defaulting Party or prevailing Party shall be entitled to its actual attorneys' fees and to any court costs incurred, in addition to any other damages or relief awarded.

8 Entire Agreement. This Agreement, together with all Exhibits hereto, constitutes the entire agreement among the Parties hereto with respect to the subject matter hereof, and supersedes all prior understandings or agreements.

9 Binding on Successors. The Agreement shall be binding upon and inure to the benefit of the successors and assignees of the Parties hereto.

10 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall, for all purposes, be deemed an original and all such counterparts, taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date set forth above.

City of Seaside, a municipal corporation

By:________________________________
____________, Mayor

Exhibit A
(EVA Benefit Development Locations)

ATTACHMENT NO. 14

EXAMPLE OF CALCULATION OF AGENCY PROFIT PARTICIPATION UNDER ARTICLE 8 [DISCUSS]

Assumptions

Assume 25 lots	25 lots
Development cost per lot (including pre-development)	130,000.00
Average price per lot net of marketing & sales costs	400,000.00
Initial price paid to City for land (per lot)	75,000.00
Total initial price paid to City for 25 lots	1,875,000.00

IRR is calculated each month-end on the Gross Cash Receipts less Development Costs (incl. land) to date

Note the IRR is not applicable in months of cumulative cash outflows in excess of inflows and is shown as n/a below

After Developer has a 20% IRR on Gross Cash Receipts less Development Costs, the City shall receive 20% of subsequent excess of Gross Cash Receipts less Development Costs.

Calculations

Month #	Development Costs (which incl. land cost) per 25 lots	Gross Cash Receipts per 25 lots	Gross Cash Receipts less Development Costs	**IRR** on Gross Cash Receipts less Dev. Costs	Cash (from)/to Developer for IRR	Cash in Excess of IRR (Profit)	80% Profit to Developer	20 % Profit to City
1				n/a	(1,875,000.00)	0.00	0.00	0.00
2			(260,000.00)	n/a	(260,000.00)	0.00	0.00	0.00
3			(260,000.00)	n/a	(260,000.00)	0.00	0.00	0.00
4			(390,000.00)	n/a	(390,000.00)	0.00	0.00	0.00
5			(390,000.00)	n/a	(390,000.00)	0.00	0.00	0.00
6			(520,000.00)	n/a	(520,000.00)	0.00	0.00	0.00
7			(130,000.00)	n/a	(130,000.00)	0.00	0.00	0.00
8			(130,000.00)	n/a	(130,000.00)	0.00	0.00	0.00
9			(130,000.00)	n/a	(130,000.00)	0.00	0.00	0.00
10			(130,000.00)	n/a	(130,000.00)	0.00	0.00	0.00
11			(130,000.00)	n/a	(130,000.00)	0.00	0.00	0.00
12			(130,000.00)	n/a	(130,000.00)	0.00	0.00	0.00
13		400,000.00	270,000.00	n/a	270,000.00	0.00	0.00	0.00
14		400,000.00	270,000.00	n/a	270,000.00	0.00	0.00	0.00
15		400,000.00	270,000.00	n/a	270,000.00	0.00	0.00	0.00
16		400,000.00	270,000.00	n/a	270,000.00	0.00	0.00	0.00
17		400,000.00	270,000.00	n/a	270,000.00	0.00	0.00	0.00
18		400,000.00	400,000.00	n/a	400,000.00	0.00	0.00	0.00
19		400,000.00	400,000.00	n/a	400,000.00	0.00	0.00	0.00
20		400,000.00	400,000.00	-51.13%	400,000.00	0.00	0.00	0.00
21		400,000.00	400,000.00	-36.39%	400,000.00	0.00	0.00	0.00
22		400,000.00	400,000.00	-24.37%	400,000.00	0.00	0.00	0.00
23		800,000.00	800,000.00	-5.98%	800,000.00	0.00	0.00	0.00
24		800,000.00	800,000.00	7.63%	800,000.00	0.00	0.00	0.00
25		800,000.00	800,000.00	18.24%	800,000.00	0.00	0.00	0.00
26		1,200,000.00	1,200,000.00	20% achieved	153,000.00	1,047,000.00	837,600.00	209,400.00
27		1,200,000.00	1,200,000.00	20% achieved	0.00	1,200,000.00	960,000.00	240,000.00
28		1,200,000.00	1,200,000.00	20% achieved	0.00	1,200,000.00	960,000.00	240,000.00
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		10,000,000.00	4,875,000.00		1,428,000.00	3,447,000.00	2,757,600.00	

Note: In the 26th month, the Gross Cash Receipts in excess of Development Costs is divided between the amount required to achieve the 20% IRR and the cash in excess of IRR ("profit").

Note: For simplicity, this example uses 25 lots. The Residential Component is actually 125 lots.

Note: The numbers used in this example are for illustrative purposes only; the actual numbers will be different.

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NOTICE OF HEARING AND REPORT PURSUANT TO GOVERNMENT CODE SECTION 53083

ECONOMIC DEVELOPMENT SUBSIDY TO BE GIVEN UNDER A SECOND AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN CITY OF SEASIDE AND SEASIDE RESORT AT MONTEREY BAY, LLC

NOTICE IS HEREBY GIVEN that the City of Seaside will hold a public hearing in the Council Chambers at 440 Harcourt Avenue, Seaside, CA 93955 on December 7, 2017 at __ p.m., or as soon thereafter as practical, to consider a Second Amended and Restated Disposition and Development Agreement between the City of Seaside and Monterey Bay Resort, LLC ("Agreement").

All interested persons are invited to attend this hearing and express opinions upon the items listed below. The proposed Agreement is available for review at City Hall. An individual who challenges any decision regarding the proposed actions in court may be limited to raising only those issues such individual or someone else raised at the meeting described in this notice or in written correspondence delivered to the City at, or prior to, the meeting.

Pursuant to Government Code Section 53083, the City Council of the City of Seaside must hold a noticed public hearing and, prior to the public hearing, provide all of the following information in written form available to the public and through the City's website, regarding a proposed economic development subsidy to be provided by the City pursuant to Article 4 of the Agreement.

The purpose of the following report is to provide the information required pursuant to Government Code Section 53083. This report shall remain available to the public and be posted on the City's website until the end date of the economic development subsidy (described in Item 2 below).

1. **The name and address of all corporations or any other business entities, except for sole proprietorships, that are the beneficiary of the economic development subsidy.**

   The Agreement is with Monterey Bay Resort, LLC, a Nevada limited liability company, whose address is: c/o Tieback Holdings, LLC, 901 Dove Street, Suite 230, Newport Beach, CA 92660, Attn: Michael Lutton.

   The subsidy will benefit such entity, or an affiliated entity to which such initial entity may partially assign the Agreement and convey property described therein, subject to the terms of the Agreement relating to such partial assignments and conveyances.

2. **The start and end dates and schedule, if applicable, for the economic development subsidy.**

   If the Agreement is approved by the City Council, the start date of the economic development subsidy (which is described in Article 4 of the Agreement) will be upon completion of each transient operating tax ("TOT") generating portions of the development consisting of hotel and related timeshares and possibly condominiums (which shall be no later than December 21, 2021) and the end date shall be twenty (20) years thereafter.

The economic development subsidy will be paid by the City from time to time from general funds within fifteen (15) days after the City's receipt of transient occupancy taxes from the Project described in the Agreement.

3. **A description of the economic development subsidy, including the estimated total amount of the expenditure of public funds by, or of revenue lost to, the local agency as a result of the economic development subsidy.**

An amount equal to eighty percent (80%) of the TOT actually received by the City from each TOT generating portion of the Project for the first five (5) years it is generated from such portion, and then sixty-five percent (65%) of the TOT for the next fifteen (15) years for each such portion.

The amount of the total estimated expenditure of City funds (i.e., the estimated amount of the public funds to be expended) is: $72,068,608.

4. **A statement of the public purposes for the economic development subsidy.**

The purpose is to enable the Project to be constructed. The City's consultants, CBRE Hotels Consulting (formerly PKF Consulting USA), have confirmed that such a subsidy is appropriate given the projected costs and revenues of the Project. The completed Project will generate transient occupancy taxes, sales taxes, and increased property taxes, and will provide jobs, for much longer than the 20-year subsidy period.

5. **The projected tax revenue to the local agency as a result of the economic development subsidy.**

In the first 20 years (i.e., during the period of the subsidy):

$34,081,097 of transient occupancy taxes
$9,621,758 of property tax revenue
$8,845,808 of sales tax revenue

$8,845,808 of city license/transaction fee revenue

6. **The estimated number of jobs created by the economic development subsidy, broken down by full-time, part-time, and temporary positions.**

Full-time: 300

Part-time: 300

Temporary: 350 construction jobs

PROPOSED CHANGE TO PROJECT CONDITION NO. 90

90. FINAL SUBDIVISION MAP(S). The Applicant may file final subdivision maps ("Final Maps") for the property described on the Vesting Tentative Map for the Project, which upon approval by the City, shall be recorded by the Applicant with the Clerk of the County of Monterey. The number of Final Maps shall not exceed ten (10) and the specific phasing of those Final Maps shall be noted on the first sheet of the approved version of the Vesting Tentative Map. Each Final Map shall be in substantial conformity with the approved vesting tentative map, and shall be filed prior to the expiration of the Vesting Tentative Map, or any extension thereto.

Staff Report

Seaside Successor Agency
SRD Land Sales through 2029
Taxing Entity Distribution

Fund No.	Taxing Entity Name	Distribution Factors for Asset Sale Proceeds	2016-2019 Distribution of Asset Proceeds	2020 Distribution of Asset Proceeds	2021 Distribution of Asset Proceeds	2022 Distribution of Asset Proceeds	2023 Distribution of Asset Proceeds	2024 Distribution of Asset Proceeds	2025 Distribution of Asset Proceeds	2026 Distribution of Asset Proceeds	2027 Distribution of Asset Proceeds	2028 Distribution of Asset Proceeds	2029 Distribution of Asset Proceeds	TOTAL Distribution of Asset Proceeds
	LAND SALE PROCEEDS		0.00	3,200,000	1,900,000	1,900,000	1,900,000	712,500	712,500	712,500	712,500	712,500	712,500	13,175,000
19000	County General Fund	13.5471%	0.00	433,507.62	257,395.15	257,395.15	257,395.15	96,523.18	96,523.18	96,523.18	96,523.18	96,523.18	96,523.18	1,784,832
19500	County Library	1.5822%	0.00	50,630.06	30,061.60	30,061.60	30,061.60	11,273.10	11,273.10	11,273.10	11,273.10	11,273.10	11,273.10	208,453
21000	City of Seaside	20.9487%	0.00	670,357.73	398,024.90	398,024.90	398,024.90	149,259.34	149,259.34	149,259.34	149,259.34	149,259.34	149,259.34	2,759,988
37000	Monterey County Water Resources Agency	0.0883%	0.00	2,826.24	1,678.08	1,678.08	1,678.08	629.28	629.28	629.28	629.28	629.28	629.28	11,636
38000	Monterey County Water Resources Agency, Zone 11	0.0137%	0.00	439.86	261.17	261.17	261.17	97.94	97.94	97.94	97.94	97.94	97.94	1,811
43500	Monterey Peninsula Water Management Agency	0.4986%	0.00	15,956.35	9,474.08	9,474.08	9,474.08	3,552.78	3,552.78	3,552.78	3,552.78	3,552.78	3,552.78	65,695
44600	Monterey Peninsula Regional Parks	0.9004%	0.00	28,813.81	17,108.20	17,108.20	17,108.20	6,415.58	6,415.58	6,415.58	6,415.58	6,415.58	6,415.58	118,632
47300	North Salinas Valley Mosquito Abatement District	0.4746%	0.00	15,188.23	9,018.01	9,018.01	9,018.01	3,381.75	3,381.75	3,381.75	3,381.75	3,381.75	3,381.75	62,533
47400	Moss Landing Harbor District	0.0001%	0.00	2.03	1.20	1.20	1.20	0.45	0.45	0.45	0.45	0.45	0.45	8
48000	Seaside County Sanitation District	1.4717%	0.00	47,094.43	27,962.32	27,962.32	27,962.32	10,485.87	10,485.87	10,485.87	10,485.87	10,485.87	10,485.87	193,897
25300	Monterey County Office of Education	3.1497%	0.00	100,790.83	59,844.56	59,844.56	59,844.56	22,441.71	22,441.71	22,441.71	22,441.71	22,441.71	22,441.71	414,975
27400	Monterey Peninsula Unified School District	51.7375%	0.00	1,655,600.24	983,012.64	983,012.64	983,012.64	368,629.74	368,629.74	368,629.74	368,629.74	368,629.74	368,629.74	6,816,417
27800	Monterey Peninsula Community College	5.5873%	0.00	178,792.93	106,158.30	106,158.30	106,158.30	39,809.36	39,809.36	39,809.36	39,809.36	39,809.36	39,809.36	736,124
01700	ERAF	0.0000%	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
		100.0000%	0.00	3,200,000	1,900,000	1,900,000	1,900,000	712,500	712,500	712,500	712,500	712,500	712,500	13,175,001

The Schedule of Performance establishes the latest sale dates for the Hotel parcels (2020) and Timeshare parcels (2023).
No latest date is established for the Residential Component. The SOP dates were used for Hotel and Timeshare land sales,
It was assumed no more Residential Component sales would occur until the Hotel begins construction (2020).
The Residential Component sales were spread from 2020 thru 2029, and it was assumed the available credits
would be used to purchase the Hotel and Timeshare parcels before cash is paid.

Hotel Parcel Sale = $5.5 million lump sum (less $4.2 million credits applied) = $1.3 million total in 1-year (2020)

Timeshare Sale = $6.15 million (less $1.4 million Credits applied) = $4.75 Million total over 4-years (2020 thru 2023)

Residential Sale = — $7.125 million over 10-years (2020 thru 2029)

RESOLUTION NO. _____

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SEASIDE REQUESTING THE OVERSIGHT BOARD TO MAKE FINDINGS TO PROVIDE FOR THE REPAYMENT TO THE CITY OF SEASIDE OF THE LOAN MADE BY THE CITY PURSUANT TO THE 2005 CONVEYANCE AGREEMENT BETWEEN THE CITY AND THE REDEVELOPMENT AGENCY OF THE CITY OF SEASIDE AND TAKING CERTAIN RELATED ACTIONS

RECITALS:

A. The Redevelopment Agency of the City of Seaside ("Former Agency") entered into a Disposition and Development Agreement with Seaside Resort Development, LLC, dated as of July 7, 2005, with respect to an approximately 80-acre site which was located in the Fort Ord Project Area ("Project Area") at the northwest corner of General Jim Moore Boulevard and Coe Avenue in the City of Seaside ("City") and which was owned by the City.

B. Seaside Resort Development, LLC desired to acquire the 80-acre site in order to construct thereon a hotel and residential project in accordance with the above-referenced Disposition and Development Agreement ("Project").

C. In order to take advantage of the benefits provided by the California Community Redevelopment Law (Health and Safety ("HSC") Code Section 33,000 et seq.), the Former Agency and the City entered into the Conveyance Agreement with Closing Instructions, dated as of December 8, 2005 ("2005 Conveyance Agreement"). Pursuant to the 2005 Conveyance Agreement, the City conveyed the 80-acre site to the Former Agency (as permitted under applicable law) and, in consideration therefor, the Former Agency agreed to perform all of its covenants in the above-referenced Disposition and Development Agreement and to pay to the City, upon request, the consideration to thereafter be paid by Seaside Resort Development, LLC to the Former Agency pursuant to the above-referenced Disposition and Development Agreement.

D. Pursuant to the above-referenced Disposition and Development Agreement as subsequently amended by a First Amendment dated March 15, 2007, and a letter dated April 15, 2009 ("SRD DDA"), Seaside Resort Development, LLC acquired 30 "early start lots" from the Former Agency. The property subject to the SRD DDA (which no longer includes such 30 lots sold to Seaside Resort Development, LLC) is approximately 70 acres and is hereinafter referred to as the "Site."

E. Pursuant to AB X1 26 (enacted in June 2011), as modified by the California Supreme Court's decision in *California Redevelopment Association, et al. v. Ana Matosantos, et al.*, 53 Cal.4th 231(2011) *(Matosantos)*, the Former Agency was dissolved as of February 1, 2012, the Successor Agency to the Redevelopment Agency of the City of Seaside ("Successor Agency") was established, and an oversight board to the Successor Agency ("Oversight Board") was established. Pursuant to California HSC Section 34175(b) and the California Supreme Court's decision in *Matosantos,* on February 1, 2012, properties of the Former Agency transferred to the control of the Successor Agency by operation of law, including the Site.

F. The Successor Agency and Seaside Resort Development, LLC then entered into an Amended and Restated Disposition and Development Agreement, dated February 5, 2014, with respect to the Site ("DDA") which was approved by the California Department of Finance ("DOF"), and which gave Seaside Resort Development, LLC certain credits against the purchase prices for acquisition of the various portions or phases of the Site and extended deadlines for completion of the Project.

G. Pursuant to HSC Section 34191.5(b), the Successor Agency prepared a long-range property management plan which addresses the disposition and use of the properties of the Former Agency, including the Site. By letter dated May 29, 2015, the DOF approved the LRPMP, as revised ("LRPMP"). Accordingly, the properties identified in the LRPMP, including the Site, were transferred to the Community Redevelopment Property Trust Fund (the "Trust Fund") of the Successor Agency.

H. Pursuant to HSC Section 34191.3, the LRPMP shall govern and shall supersede all other provisions of the Dissolution Act (AB X1 26, as modified and amended) relating to the disposition of the real property assets of the Former Agency.

I. Although the Site is encumbered by the DDA, which is an enforceable obligation of the Former Agency, the LRPMP provides for the transfer of the Site by the Successor Agency from the Trust Fund to the City for future development of the Project, <u>subject to</u> the City entering into a compensation agreement with each of the affected taxing entities (the "Taxing Entities") to compensate them for the Site in proportion to each Taxing Entity's share of the base property tax as determined pursuant to HSC Section 34188. The Site was moved from the enforceable obligation category in the initial LRPMP to the future development category in the revised LRPMP to address the DOF's direction (given in connection with the DOF's approval of the DDA) to consider options to expeditiously wind down the affairs of the Former Agency, including assigning administration of the DDA to the City and transferring the Site to the City.

J. The Successor Agency intends to convey the Site to the City and enter into an agreement with the City in which the Successor Agency assigns its rights and obligations in and under the DDA to the City, the City accepts and assumes such rights and obligations, and the City agrees to administer the DDA, subject to the effectiveness of a resolution of the Oversight Board approving the foregoing.

K. The City intends to enter into a compensation agreement, entitled a "Master Taxing Entity Agreement," with the Taxing Entities, accept the conveyance of the Site from the Successor Agency, and enter into an agreement with the Successor Agency in which the City accepts the assignment by the Successor Agency of its rights and obligations in and under the DDA, and the City agrees to administer the DDA.

L. The City also intends to enter into a Second Amended and Restated Disposition and Development Agreement (Second Amended DDA") with respect to the Site with Monterey Bay Resort, LLC. That Second Amended DDA will include the City's consent to an assignment by Seaside Resort Development, LLC of all of the existing DDA to Monterey Bay Resort, LLC, but the consent will be conditioned upon Monterey Bay Resort, LLC entering into the Second Amended DDA (which will state that it supersedes the existing DDA). The Second Amended DDA will not alter the amounts required to be paid for the Site under the DDA.

M. Pursuant to HSC Section 34171(d), the 2005 Conveyance Agreement became an unenforceable obligation as of February 1, 2012.

N. Notwithstanding HSC Section 34171(d), HSC Section 34191.4(b) provides that upon application by the Successor Agency and approval by the Oversight Board, a "loan agreement" entered into between the Former Agency and the City shall be deemed to be an enforceable obligation provided that the Oversight Board makes a finding that the loan was for legitimate redevelopment purposes and provided that the Successor Agency has received a finding of completion from the California Department of Finance ("DOF").

O. For purposes of HSC Section 34191.4, a "loan agreement" includes an agreement between the Former Agency and the City under which the City transferred a real property interest to the Former Agency for use by the Former Agency for a lawful purpose and the Former Agency was obligated to pay the City for the real property interest.

P. The DOF issued a Finding of Completion to the Successor Agency on March 28, 2014.

Q. As of the date of this Resolution, no payments have been made by the Former Agency or Successor Agency to the City for the Site. Further, the Master Taxing Entity Agreement, which is a "compensation agreement" under the Dissolution Act, will require the City to remit to the Taxing Entities the proceeds the City receives from Monterey Bay Resort, LLC pursuant to the Second Amended and Restated Disposition and Development Agreement. Accordingly, the principal amount of the Loan is equal to total consideration to be paid for the Site to the City pursuant to the Second Amended DDA, as described in Paragraph L hereof, less the costs of sale to be borne by the City under the terms of the Second Amended DDA.

R. The Board desires to adopt this Resolution to request the Oversight Board to make findings that: (i) the 2005 Conveyance Agreement constitutes a loan agreement for purposes of HSC 34191.4, (ii) the loan made pursuant to the 2005 Conveyance Agreement ("Loan") was made for legitimate redevelopment purposes, and (iii) the Loan is an enforceable obligation for the purposes of HSC Section 34191.4, and (iv) the principal amount of the Loan is equal to the consideration to be paid for the Site to the City pursuant to the Second Amended DDA, less the costs of sale to be borne by the City under the terms of the Second Amended DDA.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SEASIDE HEREBY FINDS, DETERMINES, RESOLVES, AND ORDERS AS FOLLOWS:

<u>Section 1.</u> The above recitals are true and correct and are a substantive part of this Resolution.

<u>Section 2.</u> The Board hereby requests the Oversight Board to make findings that: (i) the 2005 Conveyance Agreement constitutes a loan agreement for purposes of HSC Section 34191.4, (ii) the Loan was made for legitimate purposes, (iii) the Loan is an enforceable obligation for the purposes of HSC Section 34191.4, and (iv) the principal amount of the Loan is equal to the total consideration to be paid for the Site to the City pursuant to the

Second Amended DDA described in Paragraph L hereof, less the costs of sale to be borne by the City under the terms of the Second Amended DDA.

Section 3. The Board acknowledges that the repayment terms of the Loan shall be modified in accordance with the requirements of HSC Section 34191.4(b), which provides that (i) the repayment amount authorized each fiscal year for all loans to be repaid by the Successor Agency to the City pursuant to HSC Section 34191.4 shall not exceed one-half of the increase between the amount distributed to the Taxing Entities pursuant to HSC Section 34183(a)(4) in that fiscal year and the amount distributed to the Taxing Entities pursuant to HSC Section 34183(a)(4) in the 2012-13 base year, and (ii) twenty percent (20%) of each loan repayment for all loans repaid pursuant to HSC Section 34191.4(b) shall be deducted and transferred to the Low and Moderate Income Housing Asset Fund established and held by the housing successor to the Former Agency pursuant to HSC Section 34176.

Section 4. The Finance Officer of the Successor Agency is hereby authorized to develop a repayment schedule for the Loan in accordance with the requirements of HSC Section 34191.4(b). Recognizing that the actual dollar amount to be repaid by the Successor Agency for each scheduled repayment is subject to the availability of funds from the Redevelopment Property Tax Trust Fund and the limitations set forth in HSC Section 34191.4(b), the Finance Officer of the Successor Agency is hereby authorized to modify the repayment schedule from time to time based on the requirements of HSC Section 34191.4(b) and the actual circumstances at the time of the modification.

Section 5. The Clerk of the Successor Agency is hereby authorized and directed to transmit a copy of this Resolution to the Oversight Board.

Section 6. The officers and staff of the Successor Agency are hereby authorized and directed, jointly and severally, to execute such instruments and do any and all things which they may deem necessary or advisable to effectuate this Resolution and any such actions previously taken by such officers and staff are hereby ratified and confirmed.

Section 7. This Resolution shall take effect immediately upon adoption.

PASSED, APPROVED AND ADOPTED by the Board of Directors at a meeting held on the ______ day of ___________, 2017

____
Ralph Rubio, Chair

ATTEST:

____
Lesley E. Milton-Rerig, Agency Clerk

RESOLUTION NO. ________

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SEASIDE (I) AUTHORIZING THE CONVEYANCE OF AN APPROXIMATELY 70-ACRE SITE LOCATED AT THE NORTHWEST CORNER OF GENERAL JIM MOORE BOULEVARD AND COE AVENUE IN THE CITY OF SEASIDE TO THE CITY PURSUANT TO THE SUCCESSOR AGENCY'S LONG-RANGE PROPERTY MANAGEMENT PLAN, (II) AUTHORIZING THE SUCCESSOR AGENCY TO ENTER INTO AN ASSIGNMENT, ASSUMPTION AND ADMINISTRATION AGREEMENT WITH THE CITY IN CONNECTION WITH AN AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT WITH RESPECT TO THE SITE, (III) APPROVING ADDENDUM NO. 4 TO THE FINAL ENVIRONMENTAL IMPACT REPORT PREPARED FOR THE UNDERLYING PROJECT, AND ALTERNATIVELY, FINDING THE ACTIONS EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AND (IV) TAKING CERTAIN RELATED ACTIONS

RECITALS:

A. The Redevelopment Agency of the City of Seaside ("Former Agency") entered into a Disposition and Development Agreement with Seaside Resort Development, LLC, dated as of July 7, 2005, with respect to an approximately 80-acre site located at the northwest corner of General Jim Moore Boulevard and Coe Avenue in the City of Seaside ("City"), and then amended it by a First Amendment dated March 15, 2007, and a letter dated April 15, 2009 ("SRD DDA").

B. Pursuant to the SRD DDA, Seaside Resort Development, LLC acquired 30 "early start lots" from the Former Agency. The property subject to the SRD DDA, less such 30 lots sold to Seaside Resort Development, LLC, is approximately 70 acres and is hereinafter referred to as the "Site."

C. Pursuant to AB X1 26 (enacted in June 2011), as modified by the California Supreme Court's decision in *California Redevelopment Association, et al. v. Ana Matosantos, et al.*, 53 Cal.4th 231(2011) *(Matosantos)*, the Former Agency was dissolved as of February 1, 2012, the Successor Agency to the Redevelopment Agency of the City of Seaside ("Successor Agency") was established, and an oversight board to the Successor Agency ("Oversight Board") was established. Pursuant to California Health and Safety Code ("HSC") Section 34175(b) and the California Supreme Court's decision in *Matosantos*, on February 1, 2012, properties of the Former Agency transferred to the control of the Successor Agency by operation of law, including the Site.

D. The Successor Agency and Seaside Resort Development, LLC then entered into an Amended and Restated Disposition and Development Agreement, dated February 5, 2014, with respect to the Site ("DDA") which was approved by the California Department of Finance

("DOF"), and which gave Seaside Resort Development, LLC certain credit against the purchase price for acquisition of the various portions or phases of the Site and extended deadlines for completion of the hotel and residential project described therein ("Project").

E. Pursuant to HSC Section 34191.5(b), the Successor Agency prepared a long-range property management plan which addresses the disposition and use of the properties of the Former Agency, including the Site. By letter dated May 29, 2015, the DOF approved the LRPMP, as revised ("LRPMP"). Accordingly, the properties identified in the LRPMP, including the Site, were transferred to the Community Redevelopment Property Trust Fund (the "Trust Fund") of the Successor Agency.

F. Pursuant to HSC Section 34191.3, the LRPMP shall govern and shall supersede all other provisions of the Dissolution Act (AB X1 26, as modified and amended) relating to the disposition of the real property assets of the Former Agency.

G. Although the Site is encumbered by the DDA, which is an enforceable obligation of the Former Agency, the LRPMP provides for the transfer of the Site by the Successor Agency from the Trust Fund to the City for future development of the Project, subject to the City entering into a compensation agreement with each of the affected taxing entities (the "Taxing Entities") to compensate them for the Site in proportion to each Taxing Entity's share of the base property tax as determined pursuant to HSC Section 34188. The Site was moved from the enforceable obligation category to the future development category in the revised LRPMP to address the DOF's direction (given in connection with the DOF's approval of the DDA) to consider options to expeditiously wind down the affairs of the Former Agency, including assigning administration of the DDA to the City and transferring the Site to the City.

H. Subject to approval of the Oversight Board, the Successor Agency intends to convey the Site to the City and enter into an agreement with the City in which the Successor Agency assigns its rights and obligations in and under the DDA to the City, the City accepts and assumes such rights and obligations, and the City agrees to administer the DDA.

I. The Board of Directors of the Successor Agency finds and determines that it can be seen with certainty that the conveyance of the Site by the Successor Agency to the City and assignment and assumption of the existing DDA have no possibility to have a significant impact on the environment, and thus are exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15061(B)(3) of the State CEQA Guidelines (14 Cal. Code Regs. Sec. 15000, *et. seq.*). Further, the environmental impacts of the underlying project were fully assessed in a Final Environmental Impact Report, which was previously certified, along with three addenda thereto. As a separate and independent basis for determining CEQA compliance, the Successor Agency Board has independently reviewed and considered the contents of the Addendum No. 4, prior to deciding whether to approve the various proposed actions. Therefore, no further environmental analysis is required for the actions contemplated in this Resolution. The documents, staff reports, technical studies, appendices, plans, specifications, and other materials that constitute the record of proceedings on which this Resolution is based are on file and available for public inspection during normal business hours in the Office of the City Clerk/Clerk of the Board, Seaside City Hall, 440 Harcourt Avenue, Seaside, CA 93955, who serves as the custodian of these records.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SEASIDE HEREBY FINDS, DETERMINES, RESOLVES, AND ORDERS AS FOLLOWS:

Section 1. The above recitals are true and correct and are a substantive part of this Resolution.

Section 2. The Board has independently reviewed and considered the contents of the Addendum No. 4 prior to deciding whether to approve the various proposed actions. The Board hereby adopts Addendum No. 4, which is incorporated herein by this reference, and hereby directs staff to prepare and file a notice of determination with the Monterey County Clerk within five (5) business days of the date on which this Resolution is adopted.

Section 3. Subject to the effectiveness of a Oversight Board resolution approving the conveyance of the Site by the Successor Agency to the City, the Chair (or, in the Chair's absence, the Vice Chair) is hereby authorized and directed to execute and deliver, for and in the name of the Successor Agency, a quitclaim deed to effect and evidence such conveyance substantially in the form attached hereto as Exhibit A, with changes therein as the Chair (or the Vice Chair, as the case may be) may approve in consultation with Richards, Watson & Gershon (such approval to be conclusively evidenced by the execution and delivery thereof).

Section 4. Subject to the effectiveness of a Oversight Board resolution approving the execution by the Successor Agency of the Assignment, Assumption and Administration Agreement by and between the Successor Agency and City substantially in the form attached hereto as Exhibit B, the Chair (or, in the Chair's absence, the Vice Chair) is hereby authorized and directed to execute and deliver, for and in the name of the Successor Agency, the Assignment, Assumption and Administration Agreement substantially in the form attached hereto as Exhibit B, with changes therein as the Chair (or the Vice Chair, as the case may be) may approve in consultation with the Richards, Watson & Gershon (such approval to be conclusively evidenced by the execution and delivery thereof).

Section 5. The Clerk of the Successor Agency is hereby authorized and directed to transmit a copy of this Resolution to the Oversight Board.

Section 6. The officers and staff of the Successor Agency are hereby authorized and directed, jointly and severally, to execute such instruments and do any and all things which they may deem necessary or advisable to effectuate this Resolution and any such actions previously taken by such officers and staff are hereby ratified and confirmed.

Section 7. This Resolution shall take effect immediately upon adoption.

PASSED, APPROVED AND ADOPTED by the Board of Directors at a meeting held on the _____ day of ________________, 2017.

____
Ralph Rubio, Chair

ATTEST:

____
Lesley E. Milton-Rerig, Agency Clerk

EXHIBIT A

FORM OF QUITCLAIM DEED

(Attached)

EXHIBIT B

FORM OF ASSIGNMENT, ASSUMPTION AND ADMINISTRATION AGREEMENT

(Attached)

RECORDING REQUESTED BY,
AND WHEN RECORDED MAIL TO:

City of Seaside
440 Harcourt Avenue
Seaside, California 93955
Attn: City Clerk

APN(s): 031-051-030 through 038; 031-051-041; 031-052-031 through 039

SPACE ABOVE THIS LINE FOR RECORDER'S USE

QUITCLAIM DEED

This transfer is exempt from Documentary Transfer Tax pursuant to Revenue & Taxation Code Section 11922, and exempt from Recording Fees pursuant to California Government Code Section 6103.

The SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SEASIDE does hereby REMISE, RELEASE AND FOREVER QUITCLAIM to the CITY OF SEASIDE, all of its right, title and interest in, under and to that certain land located in the County of Monterey, State of California, more particularly described on Exhibit "A" attached hereto, and all improvements and fixtures located thereon.

IN WITNESS WHEREOF, the undersigned has executed this Quitclaim Deed as of the date set forth below.

Dated: ____________, 2017

SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SEASIDE

By: ________________________________
Craig Malin,
Executive Director

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Monterey)

On _________________________, before me, ___________________________________,
(insert name and title of the officer)
Notary Public, personally appeared ____, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature___________________________________ (Seal)

EXHIBIT "A"

Legal Description

THAT CERTAIN REAL PROPERTY LOCATED IN THE CITY OF SEASIDE, COUNTY OF MONTEREY, STATE OF CALIFORNIA DESCRIBED AS FOLLOWS:

Hotel Parcel 1

That certain real property situate in Rancho Noche Buena, in the County of Monterey, State of California, being a portion of that certain 380.31 acre parcel of land shown as Parcel 1 as per map filed for record in Volume 26, Page 28 of Surveys in the office of the County Recorder of said county described as follows:

Beginning at a point that bears South 24°53'59" West, 2,638.33 feet from the most northerly corner of said Parcel 1; thence

1. South 36°18'25" East, 147.89 feet; thence
2. North 78°50'32" East, 237.93 feet; thence
3. North 86°25'16" East, 349.95 feet; thence
4. South 73°40'00" East, 155.99 feet; thence
5. South 68°42'42" East, 277.08 feet; thence
6. South 23°13'15" West, 367.94 feet; thence
7. South 42°48'20" West, 313.39 feet; thence
8. South 11°39'52" West, 202.98 feet; thence
9. South 83°52'52" West, 149.07 feet; thence
10. North 56°52'25" West, 646.26 feet; thence
11. North 41°03'07" West, 348.99 feet; thence
12. North 87°22'26" East, 127.50 feet; thence
13. North 02°37'34" West, 27.36 feet; thence
14. North 87°22'26" East, 192.50 feet; thence
15. North 02°37'34" West, 60.02 feet to the beginning of a non-tangent curve concave to the northeast having a radius of 217.00 feet, and to which beginning a radial bears North 13°21'09" East; thence
16. Northwesterly 71.27 feet along said curve through a central angle of 18°49'00"; thence
17. North 02°37'34" West, 232.98 feet to the Point of Beginning.

Containing 16.76 acres, more or less

Bearings cited herein are referenced to said Volume 26, Page 28 of Surveys.

<u>Hotel Parcel 2</u>

That certain real property situate in Rancho Noche Buena, in the County of Monterey, State of California, being a portion of that certain 380.31 acre parcel of land shown as Parcel 1 as per map filed for record in Volume 26, Page 28 of Surveys in the office of the County Recorder of said county described as follows:

Beginning at a point that bears South 08°53’45” East, 3,421.69 feet from the most northerly corner of said Parcel 1; thence

South 66°45'05" East, 77.18 feet; thence

South 23°14'55" West, 516.59 feet; thence

North 66°45'05" West, 75.91 feet; thence

North 23°06'26" East, 516.59 feet to the Point of Beginning.

Containing 0.91 acres, more or less

Bearings cited herein are referenced to said Volume 26, Page 28 of Surveys.

Timeshare or Condo Parcel 1 (VTM[*] Timeshare Phases I, II & III; Lots A1, A2 & A3)

That certain real property situate in Rancho Noche Buena, in the County of Monterey, State of California, being a portion of that certain 380.31 acre parcel of land shown as Parcel 1 as per map filed for record in Volume 26, Page 28 of Surveys in the office of the County Recorder of said county described as follows:

Beginning at a point that bears South 29°59'36" West, 1,214.17 feet from the most northerly corner of said Parcel 1; thence

1. South 73°20'00" East, 132.90 feet; thence
2. South 36°50'30" East, 135.13 feet; thence
3. South 05°30'00" West, 322.50 feet; thence
4. South 52°15'00" East, 282.10 feet; thence
5. South 37°45'46" West, 117.38 feet; thence
6. North 82°45'00" West, 389.94 feet; thence
7. South 26°02'40" West, 325.25 feet; thence
8. South 05°08'34" East, 50.02 feet; thence
9. North 74°11'29" West, 134.72 feet; thence
10. North 17°14'26" East, 123.27 feet; thence
11. North 18°23'25" East, 918.06 feet to the Point of Beginning.

Containing 6.51 acres, more or less

Bearings cited herein are referenced to said Volume 26, Page 28 of Surveys.

[*] Vesting Tentative Map

Timeshare or Condo Parcel 2 (VTM Timeshare Phases IV, V, VI & VII; Lots B1, B2, B3 & B4)

That certain real property situate in Rancho Noche Buena, in the County of Monterey, State of California, being a portion of that certain 380.31 acre parcel of land shown as Parcel 1 as per map filed for record in Volume 26, Page 28 of Surveys in the office of the County Recorder of said county described as follows:

Beginning at a point that bears South 24°34'30" West, 2,243.73 feet from the most northerly corner of said Parcel 1; thence

12. South 74°11'29" East, 134.72 feet; thence
13. South 00°56'38" East, 32.36 feet; thence
14. South 43°45'00" East, 91.80 feet; thence
15. South 79°09'47" East, 515.81 feet; thence
16. South 69°00'05" East, 404.66 feet; thence
17. South 58°00'30" East, 297.45 feet; thence
18. South 67°24'43" East, 218.78 feet; thence
19. South 18°13'36" West, 147.74 feet; thence
20. North 70°11'29" West, 622.48 feet; thence
21. North 68°42'42" West, 277.08 feet; thence
22. North 73°40'00" West, 155.99 feet; thence
23. South 86°25'16" West, 349.95 feet; thence
24. South 78°50'32" West, 237.93 feet; thence
25. North 36°18'25" West, 147.89 feet; thence
26. North 44°00'03" East, 155.37 feet; thence
27. North 16°09'08" East, 250.73 feet to the Point of Beginning.

Containing 9.26 acres, more or less

Bearings cited herein are referenced to said Volume 26, Page 28 of Surveys.

<u>Timeshare or Condo Parcel 3 (VTM Timeshare Phases VIII & IX; Lots C1 & C2)</u>

That certain real property situate in Rancho Noche Buena, in the County of Monterey, State of California, being a portion of that certain 380.31 acre parcel of land shown as Parcel 1 as per map filed for record in Volume 26, Page 28 of Surveys in the office of the County Recorder of said county described as follows:

Beginning at a point that bears South 03°25'35" East, 3,011.23 feet from the most northerly corner of said Parcel 1; thence

28. South 65°50'00" East, 140.11 feet; thence
29. South 09°20'00" West, 637.50 feet; thence
30. South 78°45'00" West, 122.50 feet; thence
31. North 66°40'00" West, 203.50 feet; thence
32. North 24°10'00" East, 690.20 feet to the Point of Beginning.

Containing 3.56 acres, more or less

Bearings cited herein are referenced to said Volume 26, Page 28 of Surveys.

Residential Parcel 1 (VTM Residential Phase I; Lots 1-29)

That certain real property situate in Rancho Noche Buena, in the County of Monterey, State of California, being a portion of that certain 380.31 acre parcel of land shown as Parcel 1 as per map filed for record in Volume 26, Page 28 of Surveys in the office of the County Recorder of said county described as follows:

Beginning at a point that bears South 30°52'49" East, 1,354.38 feet from the most northerly corner of said Parcel 1; thence

33. South 23°23'00" West, 42.93 feet; thence
34. North 86°20'00" West, 984.60 feet; thence
35. South 57°55'00" West, 111.11 feet; thence
36. North 36°50'30" West, 135.13 feet to the beginning of a curve concave to the east having a radius of 165.00 feet; thence
37. Northerly 173.39 feet along said curve through a central angle of 60°12'30" to the beginning of a compound curve having a radius of 250.00 feet; thence
38. Northeasterly 188.57 feet along said curve through a central angle of 43°12'59"; thence
39. North 66°35'00" East, 275.00 feet to the beginning of a curve concave to the northwest having a radius of 1,000.00 feet; thence
40. Northeasterly 243.95 feet along said curve through a central angle of 13°58'39" to the beginning of a reverse curve having a radius of 50.00 feet; thence
41. Easterly 39.29 feet along said curve through a central angle of 45°01'24" to the beginning of a compound curve having a radius of 145.00 feet; thence
42. Southeasterly 175.14 feet along said curve through a central angle of 69°12'16"; thence
43. South 13°10'00" East, 182.56 feet to the beginning of a curve concave to the northeast having a radius of 120.00 feet; thence
44. Southeasterly 153.24 feet along said curve through a central angle of 73°10'00"; thence
45. South 86°20'00" East, 69.59 feet; thence
46. South 03°40'00" West, 100.00 feet to the beginning of a non-tangent curve concave to the south having a radius of 795.00 feet, and to which beginning a radial bears South 03°40'00" West; thence
47. Easterly 145.74 feet along said curve through a central angle of 10°30'13" to the beginning of a compound curve having a radius of 175.00 feet; thence
48. Southeasterly 74.03 feet along said curve through a central angle of 24°14'15" to the beginning of a reverse curve having a radius of 175.00 feet; thence

49. Southeasterly 45.89 feet along said curve through a central angle of 15°01'29"; thence

50. South 23°23'00" West, 50.00 feet to the Point of Beginning.

Containing 10.17 acres, more or less

Bearings cited herein are referenced to said Volume 26, Page 28 of Surveys.

<u>Residential Parcel 2 (VTM Residential Phase II; Lots 30-41)</u>

That certain real property situate in Rancho Noche Buena, in the County of Monterey, State of California, being a portion of that certain 380.31 acre parcel of land shown as Parcel 1 as per map filed for record in Volume 26, Page 28 of Surveys in the office of the County Recorder of said county described as follows:

Beginning at a point that bears South 43°23'11" East, 1,523.80 feet from the most northerly corner of said Parcel 1; thence

51. South 66°37'00" East, 180.01 feet; thence

52. South 23°23'00" West, 229.06 feet; thence

53. South 23°22'38" West, 215.94 feet; thence

54. South 66°37'16" East, 10.00 feet; thence

55. South 23°22'44" West, 145.00 feet; thence

56. North 66°37'16" West, 55.00 feet to the beginning of a curve concave to the northeast having a radius of 145.00 feet; thence

57. Northwesterly 77.92 feet along said curve through a central angle of 30°47'16"; thence

58. North 54°10'00" East, 100.00 feet to the beginning of a non-tangent curve concave to the east having a radius of 45.00 feet, and to which beginning a radial bears North 54°10'00" East; thence

59. Northerly 61.59 feet along said curve through a central angle of 78°25'00"; thence

60. North 47°25'00" West, 100.00 feet to the beginning of a non-tangent curve concave to the south having a radius of 145.00 feet, and to which beginning a radial bears South 47°25'00" East; thence

61. Easterly 174.16 feet along said curve through a central angle of 68°49'10"; thence

62. North 23°22'44" East, 85.09 feet to the beginning of a curve concave to the west having a radius of 25.00 feet; thence

63. Northerly 39.27 feet along said curve through a central angle of 89°59'44"; thence

64. North 66°37'00" West, 105.01 feet; thence

65. North 23°23'00" East, 190.00 feet to the Point of Beginning.

Containing 1.71 acres, more or less; <u>and</u>

That certain real property situate in Rancho Noche Buena, in the County of Monterey, State of California, being a portion of that certain 380.31 acre parcel of land shown as Parcel 1 as per map filed for record in Volume 26, Page 28 of Surveys in the office of the County Recorder of said county described as follows:

Beginning at a point that bears South 75°49'17" West, 1,637.17 feet from the most northerly corner of said Parcel 1; thence

66. South 84°51'47" East, 155.00 feet; thence
67. South 05°08'13" West, 130.00 feet to the beginning of a curve concave to the west having a radius of 150.00 feet; thence
68. Southerly 78.18 feet along said curve through a central angle of 29°51'47"; thence
69. South 35°00'00" West, 110.31 feet; thence
70. North 55°00'00" West, 100.00 feet; thence
71. South 35°00'00" West, 391.69 feet to the beginning of a curve concave to the northwest having a radius of 45.00 feet; thence
72. Southwesterly 49.96 feet along said curve through a central angle of 63°36'44"; thence
73. South 35°00'00" West, 149.69 feet; thence
74. North 55°00'00" West, 125.00 feet; thence
75. North 35°00'00" East, 632.00 feet to the beginning of a curve concave to the west having a radius of 125.00 feet; thence
76. Northerly 65.15 feet along said curve through a central angle of 29°51'47"; thence
77. North 05°08'13" East, 70.00 feet; thence
78. South 84°51'47" East, 95.00 feet to the Point of Beginning.

Containing 3.37 acres, more or less.

Bearings cited herein are referenced to said Volume 26, Page 28 of Surveys.

<u>Residential Parcel 3 (VTM Residential Phase III; Lots 42-56)</u>

That certain real property situate in Rancho Noche Buena, in the County of Monterey, State of California, being a portion of that certain 380.31 acre parcel of land shown as Parcel 1 as per map filed for record in Volume 26, Page 28 of Surveys in the office of the County Recorder of said county described as follows:

Beginning at a point that bears South 63°02'08" West, 3,204.09 feet from the most northerly corner of said Parcel 1, said point being the beginning of a curve concave to the southeast having a radius of 275.00 feet; thence

79. Southwesterly 139.33 feet along said curve through a central angle of 29°01'48" to the beginning of a reverse curve having a radius of 325.00 feet; thence

80. Southwesterly 23.97 feet along said curve through a central angle of 04°13'33"; thence

81. South 60°00'00" East, 151.29 feet; thence

82. North 25°46'27" East, 35.10 feet to the beginning of a curve concave to the southeast having a radius of 125.00 feet; thence

83. Northeasterly 63.33 feet along said curve through a central angle of 29°01'48"; thence

84. North 54°48'15" East, 100.61 feet to the beginning of a curve concave to the northwest having a radius of 290.00 feet; thence

85. Northeasterly 198.41 feet along said curve through a central angle of 39°12'03" to the beginning of a reverse curve having a radius of 175.00 feet; thence

86. Northeasterly 77.86 feet along said curve through a central angle of 25°29'31" to the beginning of a reverse curve having a radius of 600.00 feet; thence

87. Northeasterly 230.35 feet along said curve through a central angle of 21°59'48" to the beginning of a reverse curve having a radius of 175.00 feet; thence

88. Northeasterly 62.82 feet along said curve through a central angle of 20°34'04"; thence

89. North 39°40'00" East, 14.26 feet to the beginning of a curve concave to the northwest having a radius of 1,475.00 feet; thence

90. Northeasterly 137.30 feet along said curve through a central angle of 05°20'00"; thence

91. North 34°20'00" East, 279.26 feet; thence

92. North 18°20'00" West, 117.79 feet to the beginning of a non-tangent curve concave to the southeast having a radius of 275.00 feet, and to which beginning a radial bears South 18°20'00" East; thence

93. Southwesterly 179.19 feet along said curve through a central angle of 37°20'00"; thence

94. South 34°20'00" West, 183.92 feet to the beginning of a curve concave to the northwest having a radius of 1,325.00 feet; thence

95. Southwesterly 123.34 feet along said curve through a central angle of 05°20'00"; thence

96. South 39°40'00" West, 14.26 feet to the beginning of a curve concave to the southeast having a radius of 325.00 feet; thence

97. Southwesterly 116.67 feet along said curve through a central angle of 20°34'04" to the beginning of a reverse curve having a radius of 450.00 feet; thence

98. Southwesterly 172.76 feet along said curve through a central angle of 21°59'48" to the beginning of a reverse curve having a radius of 325.00 feet; thence

99. Southwesterly 144.60 feet along said curve through a central angle of 25°29'31" to the beginning of a reverse curve having a radius of 140.00 feet; thence

100. Southwesterly 95.79 feet along said curve through a central angle of 39°12'03"; thence

101. South 54°48'15" West, 100.61 feet to the Point of Beginning.

Containing 4.25 acres, more or less.

Bearings cited herein are referenced to said Volume 26, Page 28 of Surveys.

Residential Parcel 5B

Lots 31 through 38 of Seaside Resort Estates Subdivision Phase 1A and 1B according to the map recorded August 21, 2007 in the Monterey County Recorder's Office in Volume 24 of Cities & Towns at Page 11.

Residential Parcel 6 (VTM Residential Phase VI; Lots 95-125)

That certain real property situate in Rancho Noche Buena, in the County of Monterey, State of California, being a portion of that certain 380.31 acre parcel of land shown as Parcel 1 as per map filed for record in Volume 26, Page 28 of Surveys in the office of the County Recorder of said county described as follows:

Beginning at a point that bears South 27°22'13" West, 4,415.33 feet from the most northerly corner of said Parcel 1, said point being the beginning of a non-tangent curve concave to the west having a radius of 500.00, and to which beginning a radial bears North 88°17'38" East; thence

102. Southerly 355.60 feet along said curve through a central angle of 15°27'22"; thence

103. South 66°40'00" West, 81.20 feet; thence

104. South 84°39'43" West, 51.98 feet; thence

105. North 82°10'00" West, 75.22 feet to the beginning of a non-tangent curve concave to the east having a radius of 135.00 feet, and to which beginning a radial bears North 46°46'33" East; thence

106. Northerly 120.30 feet along said curve through a central angle of 51°03'27" to the beginning of a compound curve having a radius of 330.00 feet; thence

107. Northerly 46.56 feet along said curve through a central angle of 08°05'00" to the beginning of a reverse curve having a radius of 525.00 feet; thence

108. Northerly 104.61 feet along said curve through a central angle of 11°25'00"; thence

109. North 04°30'00" East, 53.19 feet to the beginning of a curve concave to the west having a radius of 450.00 feet; thence

110. Northerly 229.73 feet along said curve through a central angle of 29°15'00" to the beginning of a reverse curve having a radius of 725.00 feet; thence

111. Northerly 487.17 feet along said curve through a central angle of 38°30'00" to the beginning of a compound curve having a radius of 145.00 feet; thence

112. Northeasterly 83.51 feet along said curve through a central angle of 33°00'00"; thence

113. North 46°45'00" East, 107.51 feet to the beginning of a curve concave to the south having a radius of 50.00 feet; thence

114. Easterly 78.54 feet along said curve through a central angle of 90°00'00"; thence

115. South 43°15'00" East, 215.02 feet; thence

116. South 12°25'00" East, 105.70 feet; thence

117. South 51°35'00" East, 124.57 feet to the beginning of a curve concave to the west having a radius of 50.00 feet; thence

118. Southerly 61.23 feet along said curve through a central angle of 70°10'00"; thence

119. South 18°35'00" West, 270.24 feet to the Point of Beginning.

Containing 8.66 acres, more or less, <u>and</u>

that certain real property situate in Rancho Noche Buena, in the County of Monterey, State of California, being a portion of that certain 380.31 acre parcel of land shown as Parcel 1 as per map filed for record in Volume 26, Page 28 of Surveys in the office of the County Recorder of said county described as follows:

Beginning at a point that bears South 18°17'58" West, 5,703.41 feet from the most northerly corner of said Parcel 1; thence

120. South 87°38'15" East, 187.09 feet to the beginning of a curve concave to the northwest having a radius of 25.00 feet; thence

121. Northeasterly 28.20 feet along said curve through a central angle of 64°37'23" to the beginning of a reverse curve having a radius of 45.00 feet; thence

122. Southeasterly 133.46 feet along said curve through a central angle of 169°55'38"; thence

123. South 72°20'00" East, 126.00 feet; thence

124. South 23°21'02" West, 106.96 feet; thence

125. North 87°38'15" West, 396.96 feet to the beginning of a non-tangent curve concave to the east having a radius of 25.00 feet, and to which beginning a radial bears North 55°29'33" East; thence

126. Northerly 16.09 feet along said curve through a central angle of 36°52'12"; thence

127. North 02°21'45" East, 160.00 feet to the beginning of a non-tangent curve concave to the northeast having a radius of 25.00 feet, and to which beginning a radial bears South 87°38'15" East; thence

128. Southeasterly 39.27 feet along said curve through a central angle of 90°00'00" to the Point of Beginning.

Containing 1.45 acres, more or less.

Bearings cited herein are referenced to said Volume 26, Page 28 of Surveys

CERTIFICATE OF ACCEPTANCE

This is to certify that interests in real property conveyed by that certain Quitclaim Deed dated _____________, 2017, from the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SEASIDE to the CITY OF SEASIDE is hereby accepted by the undersigned officer on behalf of the City of Seaside pursuant to the authority conferred by the City Council of the City of Seaside on ________________, 2017, and the grantee consents to recordation thereof by its duly authorized officer.

Dated: ___________, 2017

____
Craig Malin,
Executive Director

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Monterey)

On ________________________, before me, ________________________________,
(insert name and title of the officer)
Notary Public, personally appeared ____, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature________________________________ (Seal)

<u>ASSIGNMENT, ASSUMPTION AND ADMINISTRATION AGREEMENT</u>
(Amended and Restated DDA with Seaside Resort Development, LLC)

This ASSIGNMENT, ASSUMPTION AND ADMINISTRATION AGREEMENT (the "Agreement"), is dated as of **_____________**, 2017, and is entered into by and between the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SEASIDE (the "Successor Agency"), and the CITY OF SEASIDE, a California municipal corporation (the "City").

<u>RECITALS</u>

A. The Redevelopment Agency of the City of Seaside (the "Former Agency") entered into a Disposition and Development Agreement with Seaside Resort Development, LLC (the "Developer"), dated as of July 7, 2005, with respect to an approximately 80-acre site located at the northwest corner of General Jim Moore Boulevard and Coe Avenue in the City of Seaside (the "City"), and then amended it by a First Amendment dated March 15, 2007, and a letter dated April 15, 2009 (the "SRD DDA").

B. Pursuant to the SRD DDA, the Developer acquired 30 "early start lots" from the Former Agency. The property subject to the SRD DDA, less such 30 lots sold to the Developer, is approximately 70 acres and is hereinafter referred to as the "Site."

C. Pursuant to AB X1 26 (enacted in June 2011), as modified by the California Supreme Court's decision in *California Redevelopment Association, et al. v. Ana Matosantos, et al.*, 53 Cal.4th 231(2011) (*Matosantos*), the Former Agency was dissolved as of February 1, 2012, Successor Agency was established, and an oversight board to the Successor Agency (the "Oversight Board") was established. Pursuant to California Health and Safety Code ("HSC") Section 34175(b) and the California Supreme Court's decision in *Matosantos*, on February 1, 2012, properties of the Former Agency transferred to the control of the Successor Agency by operation of law, including the Site.

D. The Successor Agency and the Developer then entered into an Amended and Restated Disposition and Development Agreement dated February 5, 2014 with respect to the Site (the "DDA") which was approved by the California Department of Finance ("DOF"), and which gave the Developer certain credits against the purchase prices for acquisition of the various portions or phases of the Site and extended deadlines for completion of the hotel and residential project described therein ("Project").

E. Pursuant to HSC Section 34191.5(b), the Successor Agency prepared a long-range property management plan (as amended, the "LRPMP") which addresses the disposition and use of the properties of the Former Agency, including the Site. By letter dated May 29, 2015, the DOF approved the LRPMP. Accordingly, the properties identified in the LRPMP, including the Site, were transferred to the Community Redevelopment Property Trust Fund (the "Trust Fund") of the Successor Agency.

F. Pursuant to HSC Section 34191.3, the LRPMP shall govern and shall supersede all other provisions of the Dissolution Act (AB X1 26, as amended) relating to the disposition of the real property assets of the Former Agency.

G. Although the Property is encumbered by the DDA, which is an enforceable obligation of the Former Agency, the LRPMP provides for the transfer of the Property by the Successor Agency from the Trust Fund to the City for future development of the Project, subject to the City entering into a compensation agreement with each of the Taxing Entities to compensate them for the Property in proportion to each Taxing Entity's share of the base property tax as determined pursuant to HSC Section 34188. The Property was moved from the enforceable obligation category to the future development category in the revised LRPMP to address the DOF's direction (given in connection with the DOF's approval of the LPRMP to consider options to expeditiously wind down the affairs of the Former Agency, including assigning administration of the Project to the City and transferring the Property to the City.

H. As suggested by the DOF and contemplated by the LPRMP, the parties are entering into this Agreement in order to provide for the Successor Agency's assignment of its rights and obligations under the DDA to the City, conveyance of the Site to the City, and an agreement with the City for the City to administer the DDA, with the understanding that the City may thereafter enter into an amended and restated DDA or amendments of the DDA.

NOW, THEREFORE, in accordance with the LPRMP and in connection with the conveyance of the Site by the Successor Agency to City, the Successor Agency and the City hereby agree as follows:

AGREEMENT

1. Assignment. As of the date on which the deed for the conveyance of the fee title to the Site from the Successor Agency to the City is recorded in the Official Records of Monterey County (the "Effective Date"), the Successor Agency assigns to the City: (i) all of the Successor Agency's rights and interests in, under and to the DDA; and (ii) all of the Successor Agency's obligations under the DDA arising after the Effective Date.

2. Assumption. As of said Effective Date, the City accepts the assignment of the Successor Agency's rights, interests in, under and to the DDA, and assumes the obligations of Successor Agency thereunder arising after the Effective Date.

3. Administration of DDA as Enforceable Obligation. The City shall administer the Site and DDA in accordance with the terms of the DDA and the LPRMP.

4. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of California.

5. Further Assurances. The parties hereto hereby agree to execute such other documents and perform such other acts as may be necessary or desirable to carry out the purposes of this Agreement.

6. Successors and Assigns. This Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and permitted assigns.

7. Attorneys' Fees. Should any action be brought arising out of this Agreement, including, without limitation, any action for declaratory or injunctive relief, each party shall bear their own attorneys' fees and costs and expenses of investigation as may be incurred.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date first set forth above.

SUCCESSOR AGENCY:

SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SEASIDE

By: ______________________________

Craig Malin,
Executive Director

CITY:

CITY OF SEASIDE

By: ______________________________

Craig Malin,
City Manager

Attest:

____
Leslie Milton-Rerig, City Clerk

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEASIDE (I) AUTHORIZING THE ACCEPTANCE OF AN APPROXIMATELY 70-ACRE SITE LOCATED AT THE NORTHWEST CORNER OF GENERAL JIM MOORE BOULEVARD AND COE AVENUE IN THE CITY OF SEASIDE FROM THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SEASIDE PURSUANT TO THE SUCCESSOR AGENCY'S LONG-RANGE PROPERTY MANAGEMENT PLAN, (II) AUTHORIZING THE CITY TO ENTER INTO A MASTER TAXING ENTITY AGREEMENT WITH RESPECT TO THE SITE, (III) AUTHORIZING THE CITY TO ENTER INTO AN ASSIGNMENT, ASSUMPTION AND ADMINISTRATION AGREEMENT IN CONNECTION WITH AN AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT WITH RESPECT TO THE SITE, (IV) AUTHORIZING THE CITY TO ENTER INTO A SECOND AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT WITH RESPECT TO THE SITE, WHICH AGREEMENT INCLUDES PROVISIONS FOR THE SHARING OF TRANSIENT OCCUPANCY TAX REVENUES GENERATED BY DEVELOPMENT ON THE SITE, (V) AUTHORIZING THE CITY TO ENTER INTO A SECOND AMENDED AND RESTATED GROUND LEASE WITH RESPECT TO THE BLACK HORSE AND BAYONET GOLF COURSES, (VI) APPROVING AN ADDENDUM PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AND (VII) TAKING CERTAIN RELATED ACTIONS

RECITALS:

A. The Redevelopment Agency of the City of Seaside ("Former Agency") entered into a Disposition and Development Agreement with Seaside Resort Development, LLC, dated August 10, 2005, with respect to an approximately 80-acre site located at the northwest corner of General Jim Moore Boulevard and Coe Avenue in the City of Seaside ("City"), and then amended it by a First Amendment dated March 15, 2007, and a letter dated April 15, 2009 ("SRD DDA").

B. Pursuant to the SRD DDA, Seaside Resort Development, LLC acquired 30 "early start lots" from the Former Agency. The property subject to the SRD DDA, less such 30 lots sold to Seaside Resort Development, LLC, is approximately 70 acres and is hereinafter referred to as the "Site."

C. Pursuant to AB X1 26 (enacted in June 2011), as modified by the California Supreme Court's decision in *California Redevelopment Association, et al. v. Ana Matosantos, et al.*, 53 Cal.4th 231(2011) *(Matosantos)*, the Former Agency was dissolved as of February 1, 2012, the Successor Agency to the Redevelopment Agency of the City of Seaside ("Successor Agency") was established, and an oversight board to the Successor Agency ("Oversight Board") was established. Pursuant to California Health and Safety Code ("HSC") Section 34175(b) and the California Supreme Court's decision in *Matosantos*, on February 1, 2012, properties of the

Former Agency transferred to the control of the Successor Agency by operation of law, including the Site.

D. The Successor Agency and Seaside Resort Development, LLC then entered into an Amended and Restated Disposition and Development Agreement, dated February 5, 2014, with respect to the Site ("DDA") which was approved by the California Department of Finance ("DOF"), and which gave Seaside Resort Development, LLC certain credit against the purchase price for acquisition of the various portions or phases of the Site and extended deadlines for completion of the hotel and residential project described therein ("Project").

E. Pursuant to HSC Section 34191.5(b), the Successor Agency prepared a long-range property management plan which addresses the disposition and use of the properties of the Former Agency, including the Site. By letter dated May 29, 2015, the DOF approved the LRPMP, as revised ("LRPMP"). Accordingly, the properties identified in the LRPMP, including the Site, were transferred to the Community Redevelopment Property Trust Fund (the "Trust Fund") of the Successor Agency.

F. Pursuant to HSC Section 34191.3, the LRPMP shall govern and shall supersede all other provisions of the Dissolution Act (AB X1 26, as modified and amended) relating to the disposition of the real property assets of the Former Agency.

G. Although the Site is encumbered by the DDA, which is an enforceable obligation of the Former Agency, the LRPMP provides for the transfer of the Site by the Successor Agency from the Trust Fund to the City for future development of the Project, subject to the City entering into a compensation agreement with each of the affected taxing entities (the "Taxing Entities") to compensate them for the Site in proportion to each Taxing Entity's share of the base property tax as determined pursuant to HSC Section 34188. The Site was moved from the enforceable obligation category to the future development category in the revised LRPMP to address the DOF's direction (given in connection with the DOF's approval of the DDA) to consider options to expeditiously wind down the affairs of the Former Agency, including assigning administration of the DDA to the City and transferring the Site to the City.

H. The Successor Agency intends to convey the Site to the City and enter into an agreement with the City in which the Successor Agency assigns its rights and obligations in and under the DDA to the City, the City accepts and assumes such rights and obligations, and the City agrees to administer the DDA, subject to the effectiveness of a resolution of the Oversight Board approving the foregoing.

I. The City intends to enter into a compensation agreement, entitled a "Master Taxing Entity Agreement," with the Taxing Entities, accept the conveyance of the Site from the Successor Agency, and enter into an agreement with the Successor Agency in which the City accepts the assignment by the Successor Agency of its rights and obligations in and under the DDA, and the City agrees to administer the DDA.

J. The City also intends to enter into a Second Amended and Restated Disposition and Development Agreement with respect to the Site ("Second Amended DDA") with Monterey Bay Resort, LLC. That Second Amended DDA will include the City's consent to an assignment by Seaside Resort Development, LLC of all of the existing DDA to Monterey Bay Resort, LLC, but the consent will be conditioned upon Monterey Bay Resort, LLC entering into the Second Amended DDA (which will state that it supersedes the existing DDA). The Second Amended DDA will not alter the amounts required to be paid for the Site under the DDA.

K. The Second Amended DDA provides for the City to share with Monterey Bay Resort, LLC transient occupancy tax (TOT) revenues produced by the hotel, timeshare, and residential components of the Project, and in connection with such economic development subsidy, the City has made the information required by Government Code Section 53083 available to the public in written form and through the City's internet website and has provided public notice and held a hearing in accordance with Government Code Section 53083. The Second Amended DDA also provides that properties conveyed from the City to Monterey Bay Resort, LLC do not require approval of a parcel map because the City Council finds, pursuant to Government Code Section 66428(a)(2), that there is no evidence to suggest that public policy necessitates a parcel map.

L. The City and BSL Golf of California, Inc. ("BSL") entered into a ground lease for the operation and maintenance of the Black Horse and Bayonet Golf Courses ("Golf Courses"), with a commencement date of January 15, 1997 (the "Original Lease"). BSL sold and assigned its rights, title and interest in the Original Lease to B&B Golf Course Properties, LLC, an affiliate of Seaside Resort Development, LLC. The Original Lease was amended and restated to, among other things, terminate the Original Lease with respect to the portion of the leased premises to be used for the Project ("Amended and Restated Lease"). The City intends to enter into a Second Amended and Restated Lease with Monterey Bay Resort, LLC to, among other things, extend the term of the Lease with respect to the Golf Courses. In addition, the lease would be amended to remove the parcel on which the Golf Clubhouse is and will be located because that Clubhouse parcel would be sold to the Developer for redevelopment in conjunction with the Hotel Component of the project. That Second Amended and Restated Lease will include the City's consent to an assignment by B&B Golf Course Properties, LLC of all of the existing Amended and Restated Lease to Monterey Bay Resort, LLC, but the consent will be conditioned upon Monterey Bay Resort, LLC entering into the Second Amended and Restated Lease (which will state that it supersedes the existing Amended and Restated Lease).

M. The City, when approving the related Vesting Tentative Subdivision Map for the Project, imposed condition of approval No. 90, which allowed up to eight phased final maps. Amendment of that condition of approval to allow ten, rather than eight, final maps is proposed.

N. The City Council certified a Final Environmental Impact Report ("FEIR") for the Project on July 7, 2005. Thereafter, on August 17, 2005 the City adopted Addendum No. 1 in conjunction with the approval of the Amended and Restated Lease, and on February 5, 2014, the City adopted Addendum No. 2 related to approval of the DDA, and on December 10, 2014, the City adopted Addendum No. 3 in connection with the approval of UP 14-07.

O. The City Council has caused an Addendum No. 4 ("Addendum") to the FEIR to be prepared for the contemplated changes, including ownership transfer (assignment), golf course lease term extension, transfer of a parcel containing the Golf Clubhouse from the City to Monterey Bay Resort, LLC, future TOT revenue sharing, affordable housing requirements, amendment to subdivision map condition of approval No. 90, and various minor project administration clarifications, in accordance with the California Environmental Quality Act Guideline § 15164, because the proposed actions do not require the preparation of a new or supplemental EIR in accordance with CEQA Guideline § 15162, which Addendum is attached hereto as Exhibit A. An addendum need not be circulated for public review but is attached to the FEIR in accordance with CEQA Guideline § 15164. The City Council has reviewed and considered the Addendum in conjunction with the FEIR and prior addenda. The City Council has reviewed the findings made in this Resolution and finds that they are based upon substantial evidence that has been presented to the City Council in the record of the proceedings. The documents, staff reports, technical studies, appendices, plans, specifications, and other materials that constitute the record of proceedings on which this Resolution is based are on file and available for public examination during normal business hours in the office of the City Clerk, Seaside City Hall, 440 Harcourt Avenue, Seaside, CA 93955, who serves as the custodian of these records.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SEASIDE HEREBY FINDS, DETERMINES, RESOLVES, AND ORDERS AS FOLLOWS:

Section 1. The above recitals are true and correct and are a substantive part of this Resolution.

Section 2. The City Council has independently reviewed and considered the contents of the Addendum prior to deciding whether to approve the various proposed actions. The City Council hereby adopts the Addendum, attached hereto as Exhibit A and incorporated herein by this reference. The City Council hereby directs staff to prepare and file a notice of determination with the Monterey County Clerk within (5) business days of the date on which this Resolution is adopted.

Section 3. Condition of Approval No. 90 of the Vesting Tentative Subdivision Map is hereby amended to read as follows: "FINAL SUBDIVISION MAP(S) The Applicant may file final subdivision maps ("Final Maps") for the property described in the Vesting Tentative Map for the Project, which upon approval by the City, shall be recorded by the Applicant with the Clerk of the County of Monterey. The number of Final Maps shall not exceed ten (10) and the specific phasing of those Final Maps shall be noted on the first sheet of the approved version of the Vesting Tentative Map. Each Final Map shall be in substantial conformity with the approved vesting tentative map, and shall be approved prior to the expiration of the Vesting Tentative Map, or any extension thereto." All other aspects of condition of approval No. 90 remain unchanged.

Section 4. The Master Taxing Entity Agreement by and between the City and the Taxing Entities, in the form attached hereto as Exhibit B, is hereby approved. The Mayor, (or, in the Mayor's absence, the Mayor Pro Tem) is hereby authorized and directed to execute and deliver, for and in the name of the City, the Master Taxing Entity Agreement in substantially such form, with changes therein as the Mayor (or the Mayor Pro Tem, as the case may be) may approve in consultation with Richards, Watson and Gershon, the City's Special Counsel ("Special Counsel") (such approval to be conclusively evidenced by the execution and delivery thereof).

Section 5. The City accepts the conveyance of the Site from the Successor Agency. The Mayor (or, in the Mayor's absence, the Mayor Pro Tem) is hereby authorized and directed to execute a certificate of acceptance with respect to the quitclaim deed to be executed and delivered by the Successor Agency and cause the quitclaim deed, and the accompanying certificate of acceptance, to be recorded in the Official Records of the Monterey County Recorder's Office.

Section 6. The City accepts the assignment of the DDA from the Successor Agency. The Assignment, Assumption and Administration Agreement by and between the City and the Successor Agency, in the form attached hereto as Exhibit C, is hereby approved. The Mayor (or, in the Mayor's absence, the Mayor Pro Tem) is hereby authorized and directed to execute and deliver, for and in the name of the City, the Assignment, Assumption and Administration Agreement in substantially such form, with changes therein as the Mayor (or the Mayor Pro Tem, as the case may be) may approve in consultation with the City's Special Counsel (such approval to be conclusively evidenced by the execution and delivery thereof).

Section 7. The City consents to the assignment by Seaside Resort Development, LLC of all of the existing DDA to Monterey Bay Resort, LLC as provided for in the Second Amended DDA. The Second Amended DDA by and between the City and Monterey Bay Resort, LLC, in the form presented to the City Council at this meeting and on file in the office of the City Clerk, is hereby approved. From and after the effective date of the Administration, Assumption and Assignment Agreement, the Mayor, (or, in the Mayor's absence, the Mayor Pro Tem) is hereby authorized and directed to execute and deliver, for and in the name of the City, the Second Amended DDA in substantially such form, with changes therein as the Mayor (or the Mayor Pro Tem, as the case may be) may approve in consultation with the City's Special Counsel (such approval to be conclusively evidenced by the execution and delivery thereof).

Section 8. The City consents to the assignment by B&B Golf Course Properties, LLC of all of the existing Amended and Restated Lease to Monterey Bay Resort, LLC as provided for in the Second Amended and Restated Lease. The Second Amended and Restated Lease by and between the City and Monterey Bay Resort, LLC, in the form presented to the City Council at this meeting and on file in the office of the City Clerk, is hereby approved. From and after the effective date of the Administration, Assumption and Assignment Agreement, the Mayor, (or, in the Mayor's absence, the Mayor Pro Tem) is hereby authorized and directed to execute and deliver, for and in the name of the City, the Second Amended and Restated Lease in substantially such form, with changes therein as the Mayor (or the Mayor Pro Tem, as the case may be) may approve in consultation with the City's Special Counsel (such approval to be conclusively evidenced by the execution and delivery thereof).

Section 9. The officers and staff of the City are hereby authorized and directed, jointly and severally, to execute such instruments and do any and all things which they may deem necessary or advisable to effectuate this Resolution and any such actions previously taken by such officers and staff are hereby ratified and confirmed.

Section 10. This Resolution shall take effect immediately upon adoption.

PASSED, APPROVED AND ADOPTED by the City Council at a meeting held on the ______ day of ___________, 2017

____
Ralph Rubio, Mayor

ATTEST:

____
Lesley Milton-Rerig, City Clerk

EXHIBIT A

ADDENDUM

(Attached)

EXHIBIT B

FORM OF MASTER TAXING ENTITY AGREEMENT

(Attached)

<u>EXHIBIT C</u>

FORM OF ASSIGNMENT, ASSUMPTION AND ADMINISTRATION AGREEMENT

(Attached)

ADDENDUM NO. 4 TO THE
ENVIRONMENTAL IMPACT REPORT
FOR
SEASIDE RESORT

FOR THE

SECOND AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT AND THE SECOND AMENDED AND RESTATED GOLF COURSE GROUND LEASE AND RELATED ACTIONS

Prepared by: The Larry Seeman Company

City of Seaside
and
The Successor Agency of the Redevelopment Agency of
The City of Seaside
440 Harcourt Avenue
Seaside, California 93955

December 7, 2017

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**ADDENDUM NO. 4 TO THE
ENVIRONMENTAL IMPACT REPORT
FOR
SEASIDE RESORT**

FOR

THE SECOND AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT AND THE SECOND AMENDED AND RESTATED GOLF COURSE GROUND LEASE AND RELATED ACTIONS

1. Purpose

This addendum for the Second Amended and Restated Disposition and Development Agreement ("Second Restated DDA"), the Second Amended and Restated Golf Course Lease ("Second Restated Ground Lease") and related approvals (collectively the "Project") is prepared to augment the previously certified Final Environmental Impact Report ("FEIR") for the Seaside Resort that was certified by the City Council of the City of Seaside ("City Council") and by the Board of the Redevelopment Agency of the City of Seaside ("Former Agency"), now the City of Seaside as Successor to the Redevelopment Agency of the City of Seaside ("Successor Agency") on July 7, 2005 ("FEIR"). This Addendum No. 4, together with the certified FEIR and Addendums No. 1, No. 2 and No. 3, serve as the environmental review documents for the proposed Project, which is more fully described below, as required pursuant to the provisions of the California Environmental Quality Act ("CEQA"), Public Resources Code Section 21000 *et seq.* and the State and local CEQA Guidelines.

Pursuant to the provisions of CEQA and the State and local CEQA Guidelines, the City of Seaside is the lead agency and the Successor Agency is a responsible agency for the Project.

The Successor Agency is charged with the responsibility of deciding whether or not to authorize the assignment of the First Restated DDA from SRD to Monterey Bay Resort, LLC ("Developer") and to enter into a Second Restated DDA with Developer. The First Restated DDA between the Former Agency and Seaside Resort Development, LLC ("SRD") was a part of the Project considered in the certified FEIR and Addendums No. 2 and No. 3.

The City is charged with the responsibility of deciding whether or not to authorize the assignment of the First Restated Ground Lease that was a part of the Project considered in Addendum No. 1 to the certified FEIR from B&B Golf Properties, LLC ("B&B") to Monterey Bay Resort, LLC (or an affiliate) ("Tenant") and to enter into a Second Amended Ground Lease with Tenant.

As part of the decision making process for the proposed Project, the Successor Agency and City are required to review and consider the potential environmental effects that could result from the modification of the Project analyzed in the certified FEIR.

2. The Approved Project

The approved Project consists of the Seaside Resort and Bayonet and Black Horse golf courses. The Seaside Resort, as initially approved, includes a 330-room hotel component, a 170-unit timeshare component and 125 single-family residential lots integrated into the City-owned Bayonet and Black Horse golf courses in the City of Seaside. Approvals include: Vesting Tentative Map (TM 01-03), Design Review (BAR 01-27), Conditional Use Permit for the Timeshare Units UP (01-20), Conditional Use Permit for Residential Uses (UP 01-21), Site Plan Review (SPR 01-03), Conditional Use Permit (UP 04-22) for On-Sale Alcoholic Beverages, and Conveyance Agreement and Disposition and Development Agreement (DA 01-01). The Seaside Resort Project was approved by the City Council and the Former Agency Board on July 7, 2005.

The golf courses include the Bayonet and Black Horse golf courses (36-holes) ("Golf Courses"). The Golf Courses are adjacent to the Seaside Resort ("SRD Properties"). On August 17, 2007, the City Council approved the First Restated Ground Lease.

Subsequent to the initial Project approvals, a Final Subdivision Map was approved in 2007 that included the initial 30-lot "early-start" phase of the Residential Component of the Project. The subdivision improvements for the 30-lots were completed in 2008. The First Restated DDA approved in 2014 extended certain dates to complete phases of the Project, allowed the option to develop the Hotel in Stages (Stage 1, Stage 2 and Final Stage) and the option to include for-sale residential uses in the Timeshare Component. On December 10, 2014 Timeshare Use Permit UP 01-20 was updated by UP 14-07 to conform the uses allowed in the Timeshare Component with those allowed in the First Restated DDA. Further, in June 2017, an additional final map was approved by the City and subsequently recorded.

3. The Certified FEIR

The certified FEIR analyzed the potential environmental impacts of the Seaside Resort and is incorporated herein by reference. The certified FEIR indicated that the Seaside Resort would have the potential for creating a significant environmental effect on the following environmental resources; other effects would be less than significant:

Aesthetics – The proposed Project would affect visual character through the placement of residential fences and a golf course maintenance facility along Monterey Road (mitigated by landscape and fencing plans for residences and color and placement restrictions on the golf maintenance facility); placement of an over-flow parking lot along General Jim Moore Boulevard (mitigated by a landscape plan to include a berm and vegetative buffer); and tree removal at various locations within the site (mitigated by a limitation on trimming cypress trees near Timeshare Parcel C, a tree removal and replacement plan, a forest management plan, and attendance of a forester at grading and foundation stages).

Air Quality – The Project would result in short-term construction emissions (mitigated by implementing dust control measures).

Biological Resources – The Project would result in the loss or degradation of vegetation and wildlife habitat (mitigated by grading in conformance with existing terrain, a revegetation plan, lighting plan, and Monterey spineflower survey and salvage plan), and loss of special status wildlife species: Monterey dusky-footed woodrat, black legless lizard, coast horned lizard, and raptors (mitigated by avoidance of limbing coast live oak trees or disturbing duff, salvage and relocation of individuals, pre-construction raptor surveys, contractor education, delineation of construction limits, trash management, construction period pet restrictions, and homeowners' informational brochures).

Cultural Resources – The Project would potentially result in the discovery of buried cultural resources during construction (mitigated by standard procedures for discovery of buried cultural resources).

Geology and Soils – The Project site soils could be subject to dynamic densification (mitigated by preparation of a geotechnical report) and erosion could occur during construction (mitigated by an erosion control plan).

Greenhouse Gas Emissions. – The topic of greenhouse gas emissions was not required to be addressed at the time the EIR was certified. This topic is addressed in the checklist below.

Hazards and Hazardous Materials – The Project site could have unexploded ordnance from past Army training operations on the former Army base (mitigated by review of the site by the Presidio of Monterey Directorate of Environmental and Natural Resources Management and safety briefing for construction personnel), and the site includes hazardous materials and contaminated soils at a location known as Site 33 (mitigated by a remediation plan).

Hydrology – The Project could affect water quality due to soil erosion (mitigated by an erosion control plan) and could result in long-term degradation of downstream water quality (mitigated by a NPDES permit).

Noise – The Project would cause noise during construction (mitigated by limitations on construction hours and noise attenuation on construction equipment) and place new residences at locations with above standard ambient noise levels (mitigated by provision of sound walls and setbacks from streets).

Public Services – The Project would place new development in locations outside the acceptable response time from the Seaside fire station (mitigated by a new fire station, a fire apparatus development impact fee, and Automatic Aid Agreements with adjoining fire protection departments), require expanded police services and facilities (mitigated by a new police substation, payment of police development impact fees, and the equivalent of police services Automatic Aid Agreements), and have impaired emergency access from the established section of Seaside (mitigated by the provision of an emergency access route, and payment of development impact fees to cover the cost of developing emergency connections), have inadequate turn-around provisions at one of the timeshare units (mitigated by revision to street end for either a hammerhead or cul-du-sac turn-around), and would be inadequately served by parkland (mitigated by payment of neighborhood and community parks fees).

Transportation – The Project would not include enough on-site parking for special events (mitigated by a transportation plan), would impact offsite streets and intersections (mitigated by payment of fees to the City and the Fort Ord Reuse Authority) and would conflict with alternative transportation policies (mitigated by transit, bike, and pedestrian facilities improvements).

Tribal Cultural Resources -- The topic of Tribal Cultural Resources was not required to be addressed at the time the EIR was certified. This topic is addressed in the checklist below.

Utilities – The Project would pass wastewater through an existing under-sized conveyance system (mitigated by a final engineering study and off-site wastewater pipe upgrades), result in cumulative water supply shortfalls (mitigated by providing for future connections to recycled water), and have inadequate future fire water flow (mitigated by the construction of a new water line).

4. Actions Subsequent to the Certification of the FEIR

Subsequent to the certification of the FEIR and the approval of the Seaside Resort by the City and the Former Agency on July 7, 2005, the City approved Addendum No. 1 to the certified FEIR on August 17, 2005 in conjunction with the approval of the First Restated Ground Lease. On February 5, 2014, the City approved Addendum No. 2 to the certified FEIR in conjunction with the approval of the First Restated DDA. On December 10, 2014, the City approved Addendum No. 3 to the certified FEIR in conjunction with the approval of UP 14-07, which updated UP 01-20 to conform the uses allowed in the Timeshare Component with those allowed in the First Restated DDA.

Recently, SRD and B&B requested that both the First Restated DDA and the First Restated Ground Lease be further modified to allow SRD and B&B to assign 100% of their respective interests to Developer and Tenant, respectively, and for the City and the Developer and Tenant to enter into a Second Restated DDA and a Second Restated Ground Lease making Developer and Tenant, respectively, responsible for completion and ongoing operation of the Project. In response to this request, this Addendum No. 4 to the certified FEIR was prepared to consider the potential impacts associated with those proposed actions as described more fully in Section 5 below.

5. Project Changes Addressed in this Addendum

As previously stated, the changes to the Project involve the modification of the approved First Restated DDA and the First Restated Ground Lease that would result from the approval of the Second Restated DDA and the Second Restated Ground Lease, and related actions. The resulting changes to these previously approved documents are summarized as follows:

(1) Ownership Transfer (Assignment). The First Restated DDA and First Restated Ground Lease would be modified to allow SRD and B&B to assign their interests to Developer and Tenant, respectively.

(2) Golf Course Lease Term Extension and Irrigation Water Reduction. The term of the First Restated Ground Lease would be extended to 75-years from the date the City issues a temporary or permanent Certificate of Occupancy for the Final Hotel Phase of the Seaside Resort Project (whichever occurs first). The maximum amount of irrigation water used to irrigate the golf courses would be reduced from 540 afy to 500 afy.

(3) Future Transient Occupancy Tax (TOT) Revenue Sharing. The City would approve an economic development subsidy, consisting of sharing of Transient Occupancy Tax (TOT) revenue produced by the various components of the Project, in an amount equal to 80% of the applicable TOT actually received by the City from the date of completion of the applicable Phase for the first 5-years and in an amount equal to 65% for the next 15-years (20-years total).

(4) Creation of a Golf Clubhouse Legal Lot. The Golf Clubhouse Site, now a portion of the larger City-owned golf courses, would be made a separate legal lot to be purchased by Developer and incorporated as a part of the Resort Project Hotel Component. Other aspects of the golf clubhouse portion of the project, including reconstruction of the clubhouse would remain generally consistent with the project as previously analyzed in the certified EIR.

(5) Project Condition No. 90 Modification. Project Condition No. 90 would be modified to allow up to ten (10) Final Maps to subdivide land, rather than eight (8).

(6) Golf Course Irrigation Water Use Restrictions Updated. Water use provisions of the Second Restated Ground Lease would be updated to incorporate the applicable requirements of the 2006/07 Seaside Groundwater Basin by the Monterey County Superior Court and to reflect subsequent actions of the State concerning water conservation generally.

(7) Administrative Actions. Adoption of Agreements between Governmental Agencies with respect to the SRD Properties.

6. Required Findings for Use of an Addendum

Section 15164 of the State CEQA Guidelines states that an addendum to an earlier mitigated negative declaration or FEIR shall be prepared if some changes or additions are necessary to the previously adopted document, but none of the conditions described in Section 15162 calling for preparation of a subsequent mitigated negative declaration or EIR have occurred. Section 15162 of the State CEQA Guidelines identifies the conditions that require preparation of a subsequent EIR. A proposed change in a project will require preparation of a subsequent environmental document if:

A. The change in the Project is substantial.

Substantial changes in the Project are those that would require major revision of the previous environmental document due to the involvement of new significant environmental effects, or if a substantial increase in the severity of previously identified significant effects has occurred.

B. The circumstances under which the Project is undertaken have substantially changed.

Substantial changes in circumstances are defined as those that would require major revisions of the previous environmental document in order to describe and analyze new significant environmental effects, or any changes that would cause a substantial increase in the severity of the previously identified significant effects.

C. New information of substantial importance, which was not known and could not have been known, with the exercise of reasonable diligence at the time the previous environmental document was approved, shows:

(1) The Project will have one or more significant effects not discussed in the previous environmental document;

(2) The significant effects previously examined will be substantially more severe than identified in the previous environmental document;

(3) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the Project, but the Project proponent declines to adopt the mitigation measures or alternatives; or

(4) Mitigation measures or alternatives that are considerably different from those analyzed in the previous environmental document would substantially reduce one or more significant effects on the environment, but the Project proponent declines to adopt the mitigation measures or alternatives.

If none of the above conditions are met, the City may prepare an addendum in order to make minor changes to the previously certified environmental impact report and to document the City's analysis as to why no further environmental review is required.

In performing the required analysis and determining that the criteria is met for use of an addendum, this addendum relies on use of a modified environmental checklist form, as suggested in Section 15063(d)(3) of the State CEQA Guidelines. Section 8 of this document contains the modified environmental checklist form and explains the basis for each response to the questions on that form. This addendum evaluates the changes to the Project, First Restated DDA, and First Restated Ground Lease that are represented by the proposed modifications summarized in Section 5 above and analyzes the impacts of those changes against the checklist of questions presented in Section 8 of this addendum.

Based on this analysis and the information contained in this addendum, there is no evidence that the proposed Project revisions require major changes to the certified FEIR. Comparison of the approved Project with the proposed modified Project, as summarized in Section 5 of this addendum indicates that the changes are primarily changes to business terms and there are no new significant environmental impacts associated with approval of the proposed Second Restated DDA or Second Restated Ground Lease modifications. In addition, there is no substantial evidence that the circumstances under which the Project is undertaken have substantially changed and there is no evidence of new or more severe environmental impacts arising out of the proposed changes to the Project.

7. Evaluation of Environmental Impacts

As indicated above, the modified environmental checklist form included in Section 8 of this addendum was used to identify the potential environmental effects of the proposed Project changes. Each Project change was referenced against the standard environmental categories listed in Appendix G of the State CEQA Guidelines (as updated in 2017). A summary of the proposed Project changes, resulting potential impacts, and the reasons why an addendum is appropriate in this situation, are set forth below:

(1) Ownership Transfer (Assignment). The First Restated DDA and First Restated Ground Lease would be modified to allow SRD and B&B to assign their interests to Developer and Tenant, respectively.

Assignment is an administrative action that will allow the transfer of responsibility for developing and operating the project to Developer and Tenant, who have demonstrated the desire and ability to move the project forward to completion. The Assignment involves organizational and contractual considerations that will not significantly change the physical design, arrangement, or appearance of the developed Project. The changes will not result in physical changes not considered in the certified FEIR and no new or significantly increased environmental effects will occur.

(2) Golf Course Lease Term Extension and Irrigation Water Reduction. The term of the First Restated Ground Lease would be extended to 75-years from the

date the City issues a temporary or permanent Certificate of Occupancy for the Final Hotel Phase of the Seaside Resort Project (whichever occurs first). The maximum amount of irrigation water used to irrigate the golf courses would be reduced from 540 afy to 500 afy.

The remaining term of the First Restated Ground Lease is currently about 63-years. The extension of the Lease Term to 75-years would be conditioned on the Developer satisfying the City's requirements for a Certificate of Occupancy for the Final Hotel Stage of the Resort Project. The granting of the time extension is intended to act as an incentive for Developer to promptly complete the Final Hotel Stage. The reduction in the maximum amount of irrigation water that can be used to irrigate the golf courses will result in Tenant using less water for irrigation than allowed by the previous provision, and thus a reduction of impact to water use. These changes would not result in physical changes not considered in the certified FEIR and no new or significantly increased environmental effects will occur.

(3) Future Transient Occupancy Tax (TOT) Revenue Sharing. The City would approve an economic development subsidy, consisting of sharing of Transient Occupancy Tax (TOT) revenue produced by the various components of the Project, in an amount equal to 80% of the applicable TOT actually received by the City from the date of completion of the applicable Phase for the first 5-years and in an amount equal to 65% for the next 15-years (20-years total).

This modification to the First Restated DDA provides for an economic development subsidy by the City that would recognize the changed economic conditions and the changed requirements of debt and equity capital markets for high-end resort projects that have previously delayed the development of this Project. TOT revenue sharing would occur only upon completion of each Project Phase for 20-years, after which the City would retain all TOT revenue. The economic effect of the project on the City results in an initial reduction of TOT tax revenue for a 20 year period. The changes will not result in physical changes not considered in the certified FEIR and no new or significantly increased environmental effects will occur.

(4) Creation of a Golf Clubhouse Legal Lot. The Golf Clubhouse Site, now a portion of the larger City-owned golf courses, would be made a separate legal lot to be purchased by Developer and incorporated as a part of the Resort Project Hotel Component. Other aspects of the golf clubhouse portion of the project, including reconstruction of the clubhouse, would remain generally consistent with the project as previously analyzed in the certified EIR.

A separate legal lot for the Golf Clubhouse will be created by the City's approval and recording of a Certificate of Compliance (i.e. the City has determined that creation of such lot is exempt from mapping). The Golf Clubhouse lot is currently a part of the City owned Golf Courses that are subject to the golf course Ground Lease. The Golf Clubhouse lot is in the approximate location as shown on the Seaside Resort Project Vesting Tentative Map (VTM). The Second Restated DDA authorizes Developer to purchase the Golf Course lot to facilitate Developers ability to obtain financing for reconstruction of the Golf Clubhouse and more fully integrate its facilities with the amenities of the Hotel.

Purchase of the newly created Golf Course lot by the Developer is subject to the execution and recording of a reciprocal easement agreement between the City and Developer granting the City as owner of the golf courses reasonable rights to use of the Golf Clubhouse for users of the Golf Courses, maintaining the number of employees, hours of operation and maintenance activities in the same manner as when the golf clubhouse was subject to the golf course Ground Lease. Upon completion of the purchase by the Developer, the Golf Clubhouse lot will become a portion of the Hotel Component of the Resort and subject to the applicable Entitlements.

The creation of a separate legal lot for the Golf Clubhouse will not result in physical changes not considered in the certified FEIR and no new or significantly increased environmental effects will occur. Similarly, creation of lots for the Hotel Phase land and other parcels to be transferred to Developer, as contemplated by the current and Second Restated DDA, may be created through either a subdivision map or by Certificate of Compliance memorializing the governmental transfer of property. No new or different environmental impacts would occur regardless of the mechanism used to create the lots and transfer the property.

(5) Project Condition No. 90 Modification. Project Condition No. 90 would be modified to allow up to ten (10) Final Maps to convey land, rather than eight (8).

This is an insignificant change that would provide City flexibility in administering and Developer's flexibility in implementing the Project but would not result in physical changes not considered in the certified FEIR and no new or significantly increased environmental effects will occur.

(6) Golf Course Irrigation Water Use Restrictions Updated. Water use provisions of the Ground Lease would be updated to incorporate the applicable requirements of the 2006/07 adjudication of the Seaside Groundwater Basin by the Monterey County Superior Court and to reflect subsequent actions of the State concerning water conservation generally.

Subsequent to approval of the First Restated Ground Lease in 2005, rights to extract water from the Seaside Groundwater Basin ("Basin"), which underlies the golf courses, were adjudicated by the Monterey County Superior Court, as set forth in the amended decision dated February 9, 2007 (Case No. M66343) ("Decision"). In summary, the Decision, and subsequent actions by the State of California imposing conservation requirements on local water purveying agencies, impose limits on the City's ability to provide water to the golf courses. Specifically the Decision granted to the City an "Alternative Production Allocation" which, among other matters, affords the City the right to extract up to 540 acre-feet per year (and prohibits the City from extracting more than 540 acre-feet per year) for the purpose of irrigating the golf courses. The decision also allows the City to arrange for the delivery of "Alternate Water" which may be recycled water or any other source of irrigation water derived from sources other than the Basin.

The provision of the decision, and subsequent actions of the State concerning water conservation generally, have resulted in the need to update the water provisions of the Ground Lease that accelerate the time of imposition of a 400 acre-feet threshold for the City to provide water at no cost to the Tenant, and establish an incentive for Tenant to limit water use during any year to 540 acre-feet (as noted in Item No.2 above, the Second Restated Ground Lease further limits Tenant's annual irrigation use to 500 afy). Collectively, the changes to the water provisions should result in less water use for golf course irrigation over time compared to historic use patterns allowed by the former water use provisions.

These changes have been reviewed and will not result in physical changes not considered in the certified FEIR and no new or significantly increased environmental effects will occur.

(7) Administrative Actions. Adoption of Agreements between Governmental Agencies with respect to the SRD Properties.

Development of the SRD Properties was scheduled to occur between 2005 and 2024, but did not proceed to completion because of the unavailability of resort financing as a result of the so-called 2008 "great recession" and subsequent enactment of AB X1 26 in June 2011 that, in conjunction with a subsequent decision of the California Supreme Court, led to the dissolution of the Redevelopment Agency of the City of Seaside ("Former Agency") on February 2, 2012. Subsequent to dissolution of the Former Agency, the SRD properties were transferred to the control of another governmental entity pending completion of arrangements among governmental agencies that would allow development of the SRD Properties to resume, all pursuant to the requirements of the Dissolution Law.

The arrangements among the governmental agencies have now been adopted and various administrative actions required to allow the resumption of development are being considered. They include: 1) a Compensation Agreement among the Affected Taxing Entities, 2) Conveyance of the SRD Properties to the City by Deed, 3) an Assignment, Assumption and Administration Agreement and 4) approval of the 2005 Conveyance Agreement between the Former Agency and City as a loan made for legitimate redevelopment purposes.

Collectively, these administrative actions result in the transfer of the SRD Properties to the City, compensate the Affected Taxing Entities pursuant to the Dissolution Law, repay the City for the SRD Properties in accordance with the formula in the Dissolution Law, and enable the Seaside Resort Project to proceed, pursuant to a Second Restated DDA and a Second Restated Ground Lease that will supersede the First Restated DDA and First Restated Ground Lease, respectively.

Because these administrative actions are occurring simultaneously with the aforementioned changes to the First Restated DDA and First Restated Ground Lease (as described above) they are addressed in this Addendum. However, as administrative actions among governmental agencies, they have been reviewed and it has been determined that they no effect on the environment and are not subject to CEQA.

8. Modified Environmental Checklist Form

This modified environmental checklist form is used to compare the anticipated environmental effects of the Project with those disclosed in the certified FEIR and to review whether any of the conditions set forth in Section 15162 of the State CEQA Guidelines requiring preparation of a subsequent environmental document are met. The form is used to review the potential environmental effects of the proposed Project for each of the following areas:

- Aesthetics
- Agricultural and Forest Resources
- Air Quality
- Biological Resources
- Cultural Resources
- Geology/Soils
- Greenhouse Gas Emissions
- Hazards and Hazardous Materials
- Hydrology/Water Quality
- Land Use Planning
- Mineral Resources
- Noise
- Population/Housing
- Public Services
- Recreation
- Transportation/Traffic
- Tribal Cultural Resources
- Utilities/Service Systems
- Mandatory Findings of Significance

There are six possible responses to each of the questions included on the form:

A. Substantial Change in Project Requiring Major Revision of Certified FEIR.

This response is used when the Project has changed to such an extent that major revisions of the certified FEIR are required due to the involvement of new significant environmental effects or an increase in the severity of the previously identified significant effects.

B. Substantial Change in Circumstances under which Project is Undertaken Requiring Major Revision of Certified FEIR.

This response is used when the circumstances under which the Project is undertaken have changed to such an extent that major revisions of the certified FEIR are required because such changes would result in the Project having new significant environmental effects or would substantially increase the severity of the previously identified significant effects.

C. New Information of Substantial Importance Showing New or Greater Significant Effects Than Identified in Certified FEIR.

This response is used when new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the EIR was certified, shows that the Project would have a new significant environmental effect or more severe significant effect than identified in the certified EIR.

D. New Information of Substantial Importance Showing Ability to Substantially Reduce Significant Impacts Identified in Certified EIR.

This response is used when new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the FEIR was certified, shows:

(1) The significant environmental effects of the Project could be substantially reduced through imposition of mitigation measures or alternatives that although previously found to be infeasible are in fact now feasible, but the Project proponent declines to adopt them; or

(2) The significant environmental effects of the Project could be substantially reduced through imposition of mitigation measures or alternatives that are considerably different from those analyzed in the certified EIR, but the Project proponent declines to adopt them.

E. Less Than Significant Impact/No Changes or Circumstances and No New Information That Would Require the Preparation of a New EIR.

This response is used when: (1) the potential impact of the Project is determined to be below known or measurable thresholds of significance and would not require mitigation; or (2) there are no changes in the Project or circumstances and no new information that would require the preparation of a new EIR and/or EIR pursuant to Public Resources Code Section 21166 and Section 15162 of the State CEQA Guidelines.

F. No Impact.

This response is used when the proposed Project does not have any measurable environmental impact.

The form and accompanying evaluation of the responses provide the information and analysis upon which the Agency makes its determination that no subsequent environmental document is required for the Amended and Restated Disposition and Development Agreement.

Issues and Supporting Information Sources	Substantial Change in Project Requiring Major EIR Revisions	Substantial Change in Circumstances Requiring Major EIR Revisions	New Information Showing New or Greater Significant Effects than Certified EIR	New Information Showing Ability to Reduce, but not Eliminate Significant Effects in Certified EIR	Less than Significant Impact/No Changes or New Information Requiring Preparation of an EIR	No Impact
1. AESTHETICS. Would the Project:						
a) Have a substantial adverse effect on a scenic vista?						X
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?						X
c) Substantially degrade the existing visual character or quality of the site and its surroundings?						X
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?						X

The certified EIR identified several aesthetic impacts that would result from the Project, as described in Section 3 of this addendum. The modifications in the Seconded Amended DDA and Second Amended Ground Lease, and related actions including the sale of and creation of a legal lot for the golf clubhouse and reduction in golf course permitted water use, do not provide for any specific physical changes to the approved Project, nor do they provide any certainty that any changes would take place. The certified EIR contemplated reconstruction of the golf clubhouse, thus the main change is in ownership of the land on which the current and reconstructed clubhouse would be located. The prior project contemplated City ownership of the land and lease to the golf course tenant, whereas the Second Restated DDA contemplates sale of the property to the developer with reservation of rights of use for golf course patrons. The changes in ownership arrangements for the golf clubhouse will not result in new or different aesthetic impacts. Physical changes, if any are proposed in the future, would be subject to modifications to (or new) land use entitlements that, as required by law, must be accompanied by further CEQA analysis. The proposed DDA modification would not directly result in increased aesthetic impacts or create new aesthetic impacts. Mitigation measures are included in the certified EIR that would mitigate aesthetic impacts already identified for several visually sensitive locations within the Seaside Resort. Therefore, the City and Successor Agency find:

A. Substantial changes in the Project and Project circumstances resulting in new significant effects or a substantial increase in the severity of previously identified significant effects have not occurred;

B. New information of substantial importance with respect to this environmental resource/impact resulting in new significant effects or a substantial increase in the severity of previously identified effects has not been identified; and

C. None of the proposed Project changes would significantly affect this environmental resource.

2. AGRICULTURE AND FOREST RESOURCES. Would the Project:						
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?						X
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?						X

Issues and Supporting Information Sources	Substantial Change in Project Requiring Major EIR Revisions	Substantial Change in Circumstances Requiring Major EIR Revisions	New Information Showing New or Greater Significant Effects than Certified EIR	New Information Showing Ability to Reduce, but not Eliminate Significant Effects in Certified EIR	Less than Significant Impact/No Changes or New Information Requiring Preparation of an EIR	No Impact
c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))?						X
d. Result in the loss of forest land or conversion of forest land to non-forest use?						X
e. Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland to nonagricultural use or conversion of forest land to non-forest use?						X

The certified EIR did not identify any agricultural resources on the Project site, and consequently did not identify any impacts to agricultural resources. Consideration of impacts to forest resources was added to the CEQA Guidelines in February 2010. The certified EIR did consider effects on trees and oak woodland in the biological resources section. The trees on the Project site are primarily planted landscape trees that are not considered a forest resource. The modifications proposed in the Second Amended DDA and Second Amended Ground Lease, and related actions including the sale of and creation of a legal lot for the golf clubhouse and reduction in golf course permitted water use, would not result in any physical changes that would affect agricultural or forest resources on the Project site or result in new agricultural or forest resources impacts. Physical changes, if any are proposed in the future, would be subject to revised (or new) City discretionary actions that must be accompanied by additional CEQA analysis. Therefore, the City and Successor Agency find:

A. Substantial changes in the Project and Project circumstances resulting in new significant effects or a substantial increase in the severity of previously identified significant effects have not occurred;

B. New information of substantial importance with respect to this environmental resource/impact resulting in new significant effects or a substantial increase in the severity of previously identified effects has not been identified; and

C. None of the proposed Project changes would significantly affect this environmental resource.

3. AIR QUALITY. Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the Project:

a) Conflict with or obstruct implementation of the applicable air quality plan?						X
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?						X

Issues and Supporting Information Sources	Substantial Change in Project Requiring Major EIR Revisions	Substantial Change in Circumstances Requiring Major EIR Revisions	New Information Showing New or Greater Significant Effects than Certified EIR	New Information Showing Ability to Reduce, but not Eliminate Significant Effects in Certified EIR	Less than Significant Impact/No Changes or New Information Requiring Preparation of an EIR	No Impact
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the Project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?						X
d) Expose sensitive receptors to substantial pollutant concentrations?						X
e) Create objectionable odors affecting a substantial number of people?						X

The certified EIR identified impacts on air quality resulting from the Project, as described in Section 3 of this addendum. The modifications proposed in the Second Amended DDA and Second Amended Ground Lease, and related actions including the sale of and creation of a legal lot for the golf clubhouse and reduction in golf course permitted water use, would not result in new or increased air quality impacts. Physical changes, if any are proposed in the future, would be subject to modifications to (or new) land use entitlements that, as required by law, must be accompanied by further CEQA analysis. The proposed DDA modification would not directly result in increased air quality impacts or create new air quality impacts. Mitigation measures are included in the certified EIR that would mitigate short-term construction emissions. In addition, pursuant to the original Project conditions of approval water used for dust control purposes shall be non-potable on an as needed basis if necessary and feasible. Therefore, the City and Successor Agency find:

A. Substantial changes in the Project and Project circumstances resulting in new significant effects or a substantial increase in the severity of previously identified significant effects have not occurred;

B. New information of substantial importance with respect to this environmental resource/impact resulting in new significant effects or a substantial increase in the severity of previously identified effects has not been identified; and

C. None of the proposed Project changes would significantly affect this environmental resource.

4. BIOLOGICAL RESOURCES. Would the Project:

a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?						X
b) Have substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or US Fish and Wildlife Service?						X

Issues and Supporting Information Sources	Substantial Change in Project Requiring Major EIR Revisions	Substantial Change in Circumstances Requiring Major EIR Revisions	New Information Showing New or Greater Significant Effects than Certified EIR	New Information Showing Ability to Reduce, but not Eliminate Significant Effects in Certified EIR	Less than Significant Impact/No Changes or New Information Requiring Preparation of an EIR	No Impact
c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?						X
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?						X
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?						X
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?						X

The certified EIR identified several impacts to biological resources and natural habitats that would result from the Project, as described in Section 3 of this addendum. The modifications proposed in the Second Amended DDA and Second Amended Ground Lease, and related actions including the sale of and creation of a legal lot for the golf clubhouse and reduction in golf course permitted water use, do not provide for any specific physical changes to the approved Project, nor do they provide any certainty that any changes would take place. With respect to the golf clubhouse site, the current clubhouse site is fully developed, including the clubhouse structure itself and is surrounded by ornamental landscaping and turf grass. The clubhouse site was previously examined for biological resources, and mitigated, and reconstruction of the clubhouse would not disturb any sensitive species.Physical changes, if any are proposed in the future, would be subject to amended (or new) City discretionary actions that must be accompanied by additional CEQA analysis. The proposed DDA modification would not directly result in increased biological resources impacts or create new biological resources impacts. Mitigation measures are included in the certified EIR that would mitigate impacts to biological resources already identified for most locations within the Project site. Therefore, the City and Successor Agency find:

A. Substantial changes in the Project and Project circumstances resulting in new significant effects or a substantial increase in the severity of previously identified significant effects have not occurred;

B. New information of substantial importance with respect to this environmental resource/impact resulting in new significant effects or a substantial increase in the severity of previously identified effects has not been identified; and

C. None of the proposed Project changes would significantly affect this environmental resource.

5. CULTURAL RESOURCES. Would the Project:

a) Cause a substantial adverse change in the significance of a historical resource as defined in §15064.5 of the State CEQA Guidelines?						X

Issues and Supporting Information Sources	Substantial Change in Project Requiring Major EIR Revisions	Substantial Change in Circumstances Requiring Major EIR Revisions	New Information Showing New or Greater Significant Effects than Certified EIR	New Information Showing Ability to Reduce, but not Eliminate Significant Effects in Certified EIR	Less than Significant Impact/No Changes or New Information Requiring Preparation of an EIR	No Impact
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5 of the State CEQA Guidelines?						X
c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?						X
d) Disturb any human remains, including those interred outside of formal cemeteries?						X

The certified EIR identified the potential for disturbance of buried cultural resources resulting from the Project, as described in Section 3 of this addendum. The modifications proposed in the Second Amended DDA and Second Amended Ground Lease, and related actions including sale of and creation of a legal lot for the golf clubhouse and reduction in golf course permitted water use, do not provide for any specific physical changes to the approved Project, nor do they provide any certainty that any changes would take place. Physical changes, if any are proposed in the future, would be subject to amended (or new) City discretionary actions that must be accompanied by additional CEQA analysis. The proposed DDA modification would not directly result in increased cultural resources impacts or create new cultural resources impacts. Mitigation measures are included in the certified EIR that would mitigate impacts to cultural resources within the Project site. Therefore, the City and Successor Agency find:

A. Substantial changes in the Project and Project circumstances resulting in new significant effects or a substantial increase in the severity of previously identified significant effects have not occurred;

B. New information of substantial importance with respect to this environmental resource/impact resulting in new significant effects or a substantial increase in the severity of previously identified effects has not been identified; and

C. None of the proposed Project changes would significantly affect this environmental resource.

6. GEOLOGY AND SOILS. Would the Project:

a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:						X
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.						X
ii) Strong seismic ground shaking?						X
iii) Seismic-related ground failure, including liquefaction?						X
iv) Landslides?						X
b) Result in substantial soil erosion or the loss of topsoil?						X

Issues and Supporting Information Sources	Substantial Change in Project Requiring Major EIR Revisions	Substantial Change in Circumstances Requiring Major EIR Revisions	New Information Showing New or Greater Significant Effects than Certified EIR	New Information Showing Ability to Reduce, but not Eliminate Significant Effects in Certified EIR	Less than Significant Impact/No Changes or New Information Requiring Preparation of an EIR	No Impact
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the Project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?						X
d) Be located on expansive soil, as defined in Table 18-1B of the Uniform Building Code (1994), creating substantial risks to life or property?						X
e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water?						X

The certified EIR identified geology and soils impacts that could result from the Project, as described in Section 3 of this addendum. The modifications proposed in the Second Amended DDA and Second Amended Ground Lease, and related actions including the sale of and creation of a legal lot for the golf clubhouse and reduction in golf course permitted water use, do not provide for any specific physical changes to the approved Project, nor do they provide any certainty that any changes would take place. Physical changes, if any are proposed in the future, would be subject to amended (or new) City discretionary actions that must be accompanied by additional CEQA analysis. The proposed DDA modification would not directly result in increased geology or soils impacts or create new geology or soils impacts. Mitigation measures are included in the certified EIR along with Project Conditions imposed on the original Project approval that would mitigate geology and soils impacts already identified within the Project site. Therefore, the City and Successor Agency find:

A. Substantial changes in the Project and Project circumstances resulting in new significant effects or a substantial increase in the severity of previously identified significant effects have not occurred;

B. New information of substantial importance with respect to this environmental resource/impact resulting in new significant effects or a substantial increase in the severity of previously identified effects has not been identified; and

C. None of the proposed Project changes would significantly affect this environmental resource.

7. GREENHOUSE GAS EMISSIONS. Would the Project:						
a. Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?						X
b. Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?						X

Issues and Supporting Information Sources	Substantial Change in Project Requiring Major EIR Revisions	Substantial Change in Circumstances Requiring Major EIR Revisions	New Information Showing New or Greater Significant Effects than Certified EIR	New Information Showing Ability to Reduce, but not Eliminate Significant Effects in Certified EIR	Less than Significant Impact/No Changes or New Information Requiring Preparation of an EIR	No Impact

Consideration of greenhouse gas emissions was added to the CEQA Guidelines in February 2010, and is outside the scope of the certified EIR, which was certified on July 7, 2005. The Monterey County Air District has not adopted greenhouse gas emissions guidance or thresholds, but rather, refers to the CEQA Air Quality Handbook from adjacent San Luis Obispo County. Greenhouse gas emissions were addressed in EIR Addendum No. 3, in which the City screened the modifications to the changes proposed at that time against appropriate greenhouse gas emissions thresholds and analysis of the Seaside Resort traffic generation (as the largest contributor to greenhouse gas emissions) to determine that there would be no significant impact from such modifications. The modifications currently proposed by the Second Amended DDA and Second Amended Ground Lease, and related actions including the creation and sale of a legal lot for the golf clubhouse and reduction in golf course permitted water use, do not affect traffic generation from the project and do not result in any specific physical changes to the approved Project that could result in increased greenhouse gas emissions, nor do they provide any certainty that any physical changes would take place. Physical changes which could result in increased emissions of greenhouse gases, if any are proposed in the future, would be subject to amended (or new) City discretionary actions that must be accompanied by additional CEQA analysis that considers greenhouse gas effects. The proposed Second Restated DDA and Second Restated Ground Lease modifications would not result in changes to greenhouse gas emissions. Therefore, the City and Successor Agency find:

A. Substantial changes in the Project and Project circumstances resulting in new significant effects or a substantial increase in the severity of previously identified significant effects have not occurred;

B. New information of substantial importance with respect to this environmental resource/impact resulting in new significant effects or a substantial increase in the severity of previously identified effects has not been identified; and

C. None of the proposed Project changes would significantly affect this environmental resource.

8. HAZARDS AND HAZARDOUS MATERIALS. Would the Project:

a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?						X
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?						X
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one quarter mile of an existing or proposed school?						X
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?						X

Issues and Supporting Information Sources	Substantial Change in Project Requiring Major EIR Revisions	Substantial Change in Circumstances Requiring Major EIR Revisions	New Information Showing New or Greater Significant Effects than Certified EIR	New Information Showing Ability to Reduce, but not Eliminate Significant Effects in Certified EIR	Less than Significant Impact/No Changes or New Information Requiring Preparation of an EIR	No Impact
e) For a protect located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the Project result in a safety hazard for people residing or working in the Project area?						X
f) For a Project within the vicinity of a private airstrip, would the Project result in a safety hazard for people residing or working in the Project area?						X
g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?						X
h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?						X

The certified EIR identified hazards and hazardous materials impacts that would result from the Project, as described in Section 3 of this addendum. The approved Project places timeshare units in and near the location identified as a hazardous materials site (referred to in the certified EIR as “Site 33” – the existing golf course maintenance facility), and mitigation of potential effects is provided in the certified EIR and conditions of approval. The modifications proposed in the Second Amended DDA and Second Amended Ground Lease, and related actions including the sale of and creation of a legal lot for the golf clubhouse and reduction in golf course permitted water use, do not provide for any specific physical changes to the approved Project, nor do they provide any certainty that any changes would take place. Physical changes, if any are proposed in the future, would be subject to amended (or new) City discretionary actions that must be accompanied by additional CEQA analysis. The proposed modifications would not directly result in increased hazards or hazardous materials impacts or create new hazards or hazardous materials impacts. Mitigation measures are included in the certified EIR and original approval conditions of approval that would mitigate hazards and hazardous materials impacts already identified for certain locations (particularly “Site 33”) within the Project site. Therefore, the City and Successor Agency find:

A. Substantial changes in the Project and Project circumstances resulting in new significant effects or a substantial increase in the severity of previously identified significant effects have not occurred;

B. New information of substantial importance with respect to this environmental resource/impact resulting in new significant effects or a substantial increase in the severity of previously identified effects has not been identified; and

C. None of the proposed Project changes would affect this environmental resource.

9. HYDROLOGY AND WATER QUALITY. Would the Project:

a) Violate any water quality standards or waste discharge requirements?						X

Issues and Supporting Information Sources	Substantial Change in Project Requiring Major EIR Revisions	Substantial Change in Circumstances Requiring Major EIR Revisions	New Information Showing New or Greater Significant Effects than Certified EIR	New Information Showing Ability to Reduce, but not Eliminate Significant Effects in Certified EIR	Less than Significant Impact/No Changes or New Information Requiring Preparation of an EIR	No Impact
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater able level (e.g., the production rate of preexisting nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted?						X
c) Substantially alter the existing drainage pattern of the site or areas including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site?						X
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site?						X
e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?						X
f) Otherwise substantially degrade water quality?						X
g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate map or other flood hazard delineation map?						X
h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows?						X
i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?						X
j) Inundation by seiche, tsunami, or mudflow?						X

Issues and Supporting Information Sources	Substantial Change in Project Requiring Major EIR Revisions	Substantial Change in Circumstances Requiring Major EIR Revisions	New Information Showing New or Greater Significant Effects than Certified EIR	New Information Showing Ability to Reduce, but not Eliminate Significant Effects in Certified EIR	Less than Significant Impact/No Changes or New Information Requiring Preparation of an EIR	No Impact

The certified EIR identified water quality impacts that could result from the Project, as described in Section 3 of this addendum. The modifications proposed in the Second Amended DDA and Second Amended Ground Lease, and related actions including the sale of and creation of a legal lot for the golf clubhouse and reduction in permitted golf course water use, would not result in physical changes to impermeable surfaces that could increase flood flows, soils disturbance that could lead to sedimentation of downstream waters, any effects that would result in additional water pollutants, or the placement of any structures within flood zones, and there would be no new or increased hydrology or water quality impacts. Physical changes, if any are proposed in the future, would be subject to amended (or new) City discretionary actions that must be accompanied by additional CEQA analysis. Further, mitigation measures and conditions of approval designed to address hydrological issues related to potential erosion and addressing impacts through compliance with NPDES permitting requirements will remain applicable to the proposed project amendments. Therefore, the City and Successor Agency find:

A. Substantial changes in the Project and Project circumstances resulting in new significant effects or a substantial increase in the severity of previously identified significant effects have not occurred;

B. New information of substantial importance with respect to this environmental resource/impact resulting in new significant effects or a substantial increase in the severity of previously identified effects has not been identified; and

C. None of the proposed Project changes would significantly affect this environmental resource.

10. LAND USE AND PLANNING. Would the Project:						
a) Physically divide an established community?						X
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the Project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?						X
c) Conflict with any applicable habitat conservation plan or natural community conservation plan?						X

Issues and Supporting Information Sources	Substantial Change in Project Requiring Major EIR Revisions	Substantial Change in Circumstances Requiring Major EIR Revisions	New Information Showing New or Greater Significant Effects than Certified EIR	New Information Showing Ability to Reduce, but not Eliminate Significant Effects in Certified EIR	Less than Significant Impact/No Changes or New Information Requiring Preparation of an EIR	No Impact

The certified EIR did not identify any land use or planning impacts. The Project is contained within a large parcel that contains the City's existing Bayonet and Black Horse golf courses, and was found by the Fort Ord Reuse Authority to be consistent with the Fort Ord Reuse Plan. The inter-mixing of residential uses and the golf course was found to be consistent with Fort Ord Reuse Plan policies for Seaside's Golf Course Community. The modifications proposed in the Second Amended DDA and Second Amended Ground Lease, and related actions including the sale of and creation of a legal lot for the golf clubhouse and reduction in golf course permitted water use, do not provide for any specific physical changes to the approved Project, nor do they provide any certainty that any changes would take place. Physical changes, if any are proposed in the future, would be subject to amended (or new) City discretionary actions that must be accompanied by additional CEQA analysis. The proposed modifications would not divide an established community, conflict with other land use plans or impact a habitat conservation plan or a natural community conservation plan, and there would be no new land use or planning impacts as such use is consistent with the City's General Plan and Zoning designations. Therefore, the City and Successor Agency find:

A. Substantial changes in the Project and Project circumstances resulting in new significant effects or a substantial increase in the severity of previously identified significant effects have not occurred;

B. New information of substantial importance with respect to this environmental resource/impact resulting in new significant effects or a substantial increase in the severity of previously identified effects has not been identified;

C. None of the proposed Project changes would significantly affect this environmental resource.

11. MINERAL RESOURCES. Would the Project:

a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?						X
b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?						X

The certified EIR did not identify any impacts on mineral resources. No mineral resources are known to exist on the Project site. The modifications proposed in the Second Amended DDA and Second Amended Ground Lease, and related actions including the sale of and creation of a legal lot for the golf clubhouse and reduction in golf course permitted water use, would not have any impact on mineral resources. Therefore, the City and Successor Agency find:

A. Substantial changes in the Project and Project circumstances resulting in new significant effects or a substantial increase in the severity of previously identified significant effects have not occurred;

B. New information of substantial importance with respect to this environmental resource/impact resulting in new significant effects or a substantial increase in the severity of previously identified effects has not been identified; and

C. None of the proposed Project changes would significantly affect this environmental resource.

12. NOISE. Would the Project result in:

a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?						X

Issues and Supporting Information Sources	Substantial Change in Project Requiring Major EIR Revisions	Substantial Change in Circumstances Requiring Major EIR Revisions	New Information Showing New or Greater Significant Effects than Certified EIR	New Information Showing Ability to Reduce, but not Eliminate Significant Effects in Certified EIR	Less than Significant Impact/No Changes or New Information Requiring Preparation of an EIR	No Impact
b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?						X
c) A substantial permanent increase in ambient noise levels in the Project vicinity above levels existing without the Project?						X
d) A substantial temporary or periodic increase in ambient noise levels in the Project vicinity above levels existing without the Project?						X
e) For a Project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the Project expose people residing or working in the Project area to excessive noise levels?						X
f) For a Project within the vicinity of a private airstrip, would the Project expose people residing or working in the Project area to excessive noise levels?						X

The certified EIR identified temporary and long-term noise impacts that could result from the Project, as described in Section 3 of this addendum. The modifications proposed in the Second Amended DDA and Second Amended Ground Lease, and related actions including the sale of and creation of a legal lot for the golf clubhouse and reduction in golf course permitted water use, would not intensify development levels, leading to higher traffic noise generation or more intense construction noise generation. The proposed modifications do not provide for any specific physical changes to the approved Project, nor do they provide any certainty that any changes would take place. Physical changes, if any are proposed in the future, would be subject to amended (or new) City discretionary actions that must be accompanied by additional CEQA analysis. The proposed modifications would not directly result in significantly increased noise impacts or create new noise impacts. Mitigation measures are included in the certified EIR and original project conditions of approval that would mitigate noise impacts already identified for several locations within the Project site. Therefore, the City and Successor Agency find:

A. Substantial changes in the Project and Project circumstances resulting in new significant effects or a substantial increase in the severity of previously identified significant effects have not occurred;

B. New information of substantial importance with respect to this environmental resource/impact resulting in new significant effects or a substantial increase in the severity of previously identified effects has not been identified; and

C. None of the proposed Project changes would significantly affect this environmental resource.

13. POPULATION AND HOUSING. Would the Project:

a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?						X

Issues and Supporting Information Sources	Substantial Change in Project Requiring Major EIR Revisions	Substantial Change in Circumstances Requiring Major EIR Revisions	New Information Showing New or Greater Significant Effects than Certified EIR	New Information Showing Ability to Reduce, but not Eliminate Significant Effects in Certified EIR	Less than Significant Impact/No Changes or New Information Requiring Preparation of an EIR	No Impact
b) Displace substantial numbers of existing housing, necessitating the construction of the replacement housing elsewhere?						X
c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?						X

The certified EIR did not identify population or housing impacts. The Project will not remove any housing, and the new housing proposed was determined to be consistent with the Fort Ord Reuse Plan. The Project Conditions required the Developer to satisfy the City's affordable and workforce housing requirements for the 330-room Hotel and 125-unit Residential Components of the Project, which requirements have previously been satisfied. The modifications proposed in the Second Amended DDA and Second Amended Ground Lease, and related actions including the sale of and creation of a legal lot for the golf clubhouse and reduction in golf course permitted water use, would have no physical effect, and there would be no new population or housing impacts. Physical changes, if any are proposed in the future, would be subject to amended (or new) City discretionary actions that must be accompanied by additional CEQA analysis, as well as satisfaction of affordable housing requirements if the future action resulted in the approval of additional residential units. The proposed modifications would not directly result in increased population and housing impacts. Therefore, the City and Successor Agency find:

A. Substantial changes in the Project and Project circumstances resulting in new significant effects or a substantial increase in the severity of previously identified significant effects have not occurred;

B. New information of substantial importance with respect to this environmental resource/impact resulting in new significant effects or a substantial increase in the severity of previously identified effects has not been identified; and

C. None of the proposed Project changes would significantly affect this environmental resource.

14. PUBLIC SERVICES

a) Would the Project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:?						
i) Fire protection?						X
ii) Police protection?						X
iii) Schools?						X
iv) Parks?						X
v) Other public facilities?						X

Issues and Supporting Information Sources	Substantial Change in Project Requiring Major EIR Revisions	Substantial Change in Circumstances Requiring Major EIR Revisions	New Information Showing New or Greater Significant Effects than Certified EIR	New Information Showing Ability to Reduce, but not Eliminate Significant Effects in Certified EIR	Less than Significant Impact/No Changes or New Information Requiring Preparation of an EIR	No Impact

The certified EIR identified services impacts in the areas of fire protection, police protection, and parks that would result from the Project, as described in Section 3 of this addendum. Routine services impacts to fire and police services were mitigated by Project Conditions requiring payment of fees, and long term impacts to projects in the former Fort Ord area of the City (which includes the Seaside Resort and golf courses), were to be mitigated by construction of new fire station and police sub-station that would reduce response times to the site. When the EIR was certified the City also determined that assistance from other fire and police agencies was available thru Automatic Aid Agreements, and that the construction of new fire station and police sub-station within a specified timeframe was determined unnecessary to provide adequate fire and police protection to the site. Because of funding limitations, the new fire station and police sub-station have not yet been constructed. Fire and related emergency services to the project site continue to be augmented by Automatic Aid Agreements between 1) the City and the City of Monterey dated February 1, 2012, and 2) the City and The Presidio of Monterey dated October 1, 2010. Police services to the project site continue to be provided by the City and surrounding jurisdictions pursuant to Section 830.1 of the California Penal Code that provides for the equivalent of Automatic Aid by adjoining police departments, pursuant to the Notice of Consent executed by the City dated January 13, 2017. The modifications proposed in the Second Amended DDA and Second Amended Ground Lease, and related actions including the sale of and creation of a legal lot for the golf clubhouse and reduction in golf course permitted water use, would not increase the population of the Project or result in increased demands for public services, and would not result in new or increased impacts to schools or other public services (Parks are discussed below in item 15. Recreation. Physical changes, if any are proposed in the future, would be subject to amended (or new) City discretionary actions that must be accompanied by additional CEQA analysis. Previous mitigation measures and conditions of approval addressing these issues remain applicable. Therefore, the City and Successor Agency find:

A. Substantial changes in the Project and Project circumstances resulting in new significant effects or a substantial increase in the severity of previously identified significant effects have not occurred;

B. New information of substantial importance with respect to this environmental resource/impact resulting in new significant effects or a substantial increase in the severity of previously identified effects has not been identified; and

C. None of the proposed Project changes would significantly affect this environmental resource.

15. RECREATION.						
a) Would the Project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?						X
b) Does the Project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?						X

Issues and Supporting Information Sources	Substantial Change in Project Requiring Major EIR Revisions	Substantial Change in Circumstances Requiring Major EIR Revisions	New Information Showing New or Greater Significant Effects than Certified EIR	New Information Showing Ability to Reduce, but not Eliminate Significant Effects in Certified EIR	Less than Significant Impact/No Changes or New Information Requiring Preparation of an EIR	No Impact

The certified EIR did not identify recreation impacts resulting from the Project. The certified EIR did identify parks and open space impacts, as mentioned in the prior Public Services section. Project Conditions imposed with the original project approvals required the payment of fees to support the City's park programs. The modifications proposed in the Second Amended DDA and Second Amended Ground Lease, and related actions including the sale of and creation of a legal lot for the golf clubhouse and reduction in golf course permitted water use, would not increase the population of the Project or result in increased demands for recreation, and would not result in a new impact on recreation. Physical changes, if any are proposed in the future, would be subject to amended (or new) City discretionary actions that must be accompanied by additional CEQA analysis. Therefore, the City and Successor Agency find:

A. Substantial changes in the Project and Project circumstances resulting in new significant effects or a substantial increase in the severity of previously identified significant effects have not occurred;

B. New information of substantial importance with respect to this environmental resource/impact resulting in new significant effects or a substantial increase in the severity of previously identified effects has not been identified; and

C. None of the proposed Project changes would significantly affect this environmental resource.

16. TRANSPORTATION/TRAFFIC. Would the Project:

a) Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit?						X
b) Conflict with an applicable congestion management program, including, but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways?						X
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?						X
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?						X
e) Result in inadequate emergency access?						X

Issues and Supporting Information Sources	Substantial Change in Project Requiring Major EIR Revisions	Substantial Change in Circumstances Requiring Major EIR Revisions	New Information Showing New or Greater Significant Effects than Certified EIR	New Information Showing Ability to Reduce, but not Eliminate Significant Effects in Certified EIR	Less than Significant Impact/No Changes or New Information Requiring Preparation of an EIR	No Impact
f) Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decreased the performance or safety of such facilities?						X

The certified EIR identified several traffic impacts that would result from the Project, as described in Section 3 of this addendum. The modifications proposed in the Second Amended DDA and Second Amended Ground Lease, and related actions including the sale of and creation of a legal lot for the golf clubhouse and reduction in golf course water use, would not result in physical changes that increase traffic levels or changes to the design of traffic facilities (streets, sidewalks, driveways, parking lots, and emergency vehicle ways) that would result in new or increased traffic impacts, or changes to the impact fees due to either the City or the Fort Ord Reuse Authority for impacts to offsite streets or intersections. The proposed modifications would not increase the traffic impacts of the Project. Mitigation measures are included in the certified EIR, along with project conditions of approval, that would mitigate traffic impacts already identified within the Project site. Physical changes, if any are proposed in the future, would be subject to amended (or new) City discretionary actions that must be accompanied by additional CEQA analysis. Therefore, the City and Successor Agency find:

A. Substantial changes in the Project and Project circumstances resulting in new significant effects or a substantial increase in the severity of previously identified significant effects have not occurred.

B. New information of substantial importance with respect to this environmental resource/impact resulting in new significant effects or a substantial increase in the severity of previously identified effects has not been identified.

C. None of the proposed Project changes would affect this environmental resource.

17. TRIBAL CULTURAL RESOURCES.

a) Would the project cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:						
i) Listed or eligible for listing in the California Register of Historic Resources, or in a local register of historical resources as defined in Public Resources Code section 5020.1(k)						X

Issues and Supporting Information Sources	Substantial Change in Project Requiring Major EIR Revisions	Substantial Change in Circumstances Requiring Major EIR Revisions	New Information Showing New or Greater Significant Effects than Certified EIR	New Information Showing Ability to Reduce, but not Eliminate Significant Effects in Certified EIR	Less than Significant Impact/No Changes or New Information Requiring Preparation of an EIR	No Impact
ii) a resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision © of Public Resources Code Section 5024.1. In applying the criteria set forth in subdivision © of the Public Resources Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe						X

The certified EIR and prior EIR Addenda did not address Tribal Cultural Resources as a part of its Cultural Resource Analysis, because the requirement to do so was not a requirement at the time the certified EIR was adopted, although potential impacts were considered through analysis of cultural/historic resources. The Resort (DDA) project site and the golf course Ground Lease site were operated as golf courses by the US Army for approximately 50-years. In 1996 the City purchased the property and continued the golf course operation. In 2005 the City authorized development of a portion of the golf courses as a resort. The City (lead agency) has not identified the site as containing a sacred place or having objects with cultural value to a California Native American Tribe. The site is not listed in the California Register of Historic Resources. Project Condition 37, adopted concurrently with the certification of the EIR, provides for monitoring of construction to detect any human remains that may be found during disturbance of the site. The condition provides that if human remains are determined by the Coroner to be of Native American origin, the Native American Heritage Commission shall be contacted to advise on how to protect and preserve the dignity of the Native American remains. The modifications proposed in the Second Amended DDA and Second Amended Ground Lease, and related actions including the sale of and creation of a legal lot for the golf clubhouse and reduction in golf course permitted water use, do not affect Tribal Cultural Resources and do not provide for any specific physical changes to the approved Project, nor do they provide any certainty that any changes would take place. Physical changes, if any are proposed in the future, would be subject to amended (or new) City discretionary actions that must be accompanied by additional CEQA Analysis that would address potential effects on Tribal Cultural Resources. Therefore, the City and Successor Agency find:

A. Substantial changes in the Project and Project circumstances resulting in new significant effects or a substantial increase in the severity of previously identified significant effects have not occurred;

B. New information of substantial importance with respect to this environmental resource/impact resulting in new significant effects or a substantial increase in the severity of previously identified effects has not been identified; and

C. None of the proposed Project changes would significantly affect this environmental resource.

18. UTILITIES AND SERVICE SYSTEMS. Would the Project:

a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?						X
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?						X

Issues and Supporting Information Sources	Substantial Change in Project Requiring Major EIR Revisions	Substantial Change in Circumstances Requiring Major EIR Revisions	New Information Showing New or Greater Significant Effects than Certified EIR	New Information Showing Ability to Reduce, but not Eliminate Significant Effects in Certified EIR	Less than Significant Impact/No Changes or New Information Requiring Preparation of an EIR	No Impact
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?						X
d) Have sufficient water supplies available to serve the Project from existing entitlements and resources, or are new or expanded entitlements needed?						X
e) Result in a determination by the wastewater treatment provider which serves or may serve the Project that it has adequate capacity to serve the Project's projected demand in addition to the provider's existing commitments?						X
f) Be served by a landfill with sufficient permitted capacity to accommodate the Project's solid waste disposal needs?						X
g) Comply with federal, state, and local statutes and regulations related to solid waste?						X

The certified EIR identified several utility-related impacts that would result from the Project, as described in Section 3 of this addendum. The modifications proposed in the Second Amended DDA and Second Amended Ground Lease, and related actions including the sale of and creation of a legal lot for the golf clubhouse and reduction in golf course permitted water use, would not result in physical changes that increase the generation of wastewater or demand for water, and would not result in new of increased utilities impacts. Building code standards for potable water use in buildings, adopted subsequent to certification of the Project EIR, may contribute to a reduction in the consumption of potable water below that projected in the Certified EIR. Modifications to the irrigation water provisions of the Ground Lease have been made as a result of the 2006-07 adjudication of the Seaside Groundwater Basin by the Monterey County Superior Court, as set forth in the amended decision, dated February 9, 2007 (Case No. M66343). Collectively, the modifications, should lead to reduction in irrigation water use on both the golf courses and the landscape area of the DDA properties (particularly the Hotel and Timeshare Components) over time. The City licenses a solid waste company that provides periodic solid waste removal and recycling services throughout the City, including the project site. The Resort and golf course operators are required to utilize this service. Physical changes, if any are proposed in the future, would be subject to amended (or new) City discretionary actions that must be accompanied by additional CEQA analysis. Mitigation measures are included in the certified EIR that would mitigate utility-related impacts already identified with the Project. Therefore, the City and Successor Agency finds:

A. Substantial changes in the Project and Project circumstances resulting in new significant effects or a substantial increase in the severity of previously identified significant effects have not occurred;

B. New information of substantial importance with respect to this environmental resource/impact resulting in new significant effects or a substantial increase in the severity of previously identified effects has not been identified; and

C. None of the proposed Project changes would affect this environmental resource.

Issues and Supporting Information Sources	Substantial Change in Project Requiring Major EIR Revisions	Substantial Change in Circumstances Requiring Major EIR Revisions	New Information Showing New or Greater Significant Effects than Certified EIR	New Information Showing Ability to Reduce, but not Eliminate Significant Effects in Certified EIR	Less than Significant Impact/No Changes or New Information Requiring Preparation of an EIR	No Impact
19. MANDATORY FINDINGS OF SIGNIFICANCE:						
a) Does the Project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?						X
b) Does the Project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a Project are considerable when viewed in connection with the effects of past Projects, the effects of other current Projects, and the effects of probable future projects)?						X
c) Does the Project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?						X

The modifications proposed in the Second Amended DDA and Second Amended Ground Lease, and related actions including the sale of and creation of a legal lot for the golf clubhouse and reduction in golf course permitted water use, would not result in any new or increased impacts that would adversely affect the quality of the environment, biological resources, or historic or pre-historic resources. The certified EIR considered the cumulative impacts of the Project and other planned or proposed projects. The proposed modifications would not result in any new or increased cumulative impacts. Physical changes, if any are proposed in the future, would be subject to amended (or new) City discretionary actions that must be accompanied by additional CEQA analysis. The proposed modifications would not result in direct or indirect adverse effects on human beings. Therefore, the City and Successor Agency find:

A. Substantial changes in the Project and Project circumstances resulting in new significant effects or a substantial increase in the severity of previously identified significant effects have not occurred;

B. New information of substantial importance with respect to this environmental resource/impact resulting in new significant effects or a substantial increase in the severity of previously identified effects has not been identified; and

C. None of the proposed Project changes would significantly affect this environmental resource.

SOURCES

City of Seaside. *First Amended and Restated DDA by and between the Successor Agency of the Redevelopment Agency of the City of Seaside and Seaside Resort Development, LLC dated February 5, 2014.*

City of Seaside. First Amended and Restated Golf Course Lease by and between the City of Seaside and B&B Golf Properties, LLC dated August 17, 2005.

City of Seaside. *Seaside General Plan*. August 2004.

City of Seaside. Seaside General Plan Certified FEIR. January 2004.

City of Seaside. Municipal Code.
City of Seaside. *Automatic Aid Agreement with City of Monterey for Fire and Emergency Services*. February 12, 2012.
City of Seaside. *Automatic Aid Agreement with Presidio of Monterey for Fire Services*. October 1, 2010.
City of Seaside. *Notice of Consent for Police Services Assistance pursuant to Section 830.1, California Penal Code*, California Police Chiefs Association, Sacramento, CA. Executed January 13, 2017.
EMC Planning Group. *Seaside Resort Certified FEIR*. July 2005.
EMC Planning Group. *Addendum* (No. 1) to *Seaside Resort Certified FEIR.* August 2005.
EMC Planning Group. *Addendum* (No. 2) to *Seaside Resort Certified FEIR*. June, 2011.
EMC Planning Group. *Addendum* (No. 3) to *Seaside Resort Certified FEIR*. November 19, 2014.
Association of Environmental Professionals. *California Environmental Quality Act Guidelines.* 2017.
Monterey Bay Unified Air Pollution Control District. *Air Quality CEQA Guidelines*. February 2008.

MASTER TAXING ENTITY AGREEMENT

This **MASTER TAXING ENTITY AGREEMENT** (this "Agreement", which is a so-called "compensation agreement under Health and Safety Code Section 34180(f)), is dated as of ______________, 2016, and is entered into by and among the City of Seaside ("City") and the following public agencies (the City and the public agencies are each a "Taxing Entity" or "Party", and collectively the "Taxing Entities" or "Parties"):

County General Fund
County Library
Monterey County Water Resources Agency
Monterey County Water Resources Agency, Zone 11
Monterey Peninsula Water Management Agency
Monterey Peninsula Regional Parks
North Salinas Valley Mosquito Abatement District
Moss Landing Harbor District
Seaside County Sanitation District
Monterey County Office of Education
Monterey Peninsula Unified School District
Monterey Peninsula Community College
ERAF

RECITALS:

A. The Redevelopment Agency of the City of Seaside (the "Former Agency") entered into a Disposition and Development Agreement with Seaside Resort Development, LLC ("Developer"), dated as of July 7, 2005, with respect to an approximately 80-acre site located at the northwest corner of General Jim Moore Boulevard and Coe Avenue in the City of Seaside ("City"), and then amended it by a First Amendment dated March 15, 2007, and a letter dated April 15, 2009 ("SRD DDA").

B. Pursuant to the SRD DDA, the Developer acquired 30 "early start lots" from the Former Agency. The property subject to the SRD DDA, less such 30 lots sold to the Developer, is approximately 70 acres and is hereinafter referred to as the "Site".

C. Pursuant to AB X1 26 (enacted in June 2011), as modified by the California Supreme Court's decision in *California Redevelopment Association, et al. v. Ana Matosantos, et al.*, 53 Cal.4th 231(2011) *(Matosantos)*, the Former Agency was dissolved as of February 1, 2012, the Successor Agency to the Redevelopment Agency of the City of Seaside ("Successor Agency") was established, and an oversight board to the Successor Agency ("Oversight Board") was established. Pursuant to California Health and Safety Code ("HSC") Section 34175(b) and the California Supreme Court's decision in *Matosantos*, on February 1, 2012, properties of the Former Agency transferred to the control of the Successor Agency by operation of law, including the Site.

D. The Successor Agency and the Developer then entered into an Amended and Restated Disposition and Development Agreement, dated February 5, 2014, with respect to the

Site ("DDA") which was approved by the California Department of Finance ("DOF"), and which gave the Developer certain credit against the purchase price for acquisition of the various portions or phases of the Site and extended deadlines for completion of the hotel and residential project described therein ("Project").

E. Pursuant to HSC Section 34191.5(b), the Successor Agency prepared a long-range property management plan which addresses the disposition and use of the properties of the Former Agency, including the Site. By letter dated May 29, 2015, the DOF approved the LRPMP, as revised ("LRPMP"). Accordingly, the properties identified in the LRPMP, including the Site, were transferred to the Community Redevelopment Property Trust Fund (the "Trust Fund") of the Successor Agency.

F. Pursuant to HSC Section 34191.3, the LRPMP shall govern and shall supersede all other provisions of the Dissolution Act (AB X1 26, as modified and amended) relating to the disposition of the real property assets of the Former Agency.

G. Although the Site is encumbered by the DDA, which is an enforceable obligation of the Former Agency, the LRPMP provides for the transfer of the Site by the Successor Agency from the Trust Fund to the City for future development of the Project, subject to the City entering into a compensation agreement with each of the Taxing Entities to compensate them for the Site in proportion to each Taxing Entity's share of the base property tax as determined pursuant to HSC Section 34188. The Site was moved from the enforceable obligation category to the future development category in the revised LRPMP to address the DOF's direction (given in connection with the DOF's approval of the DDA) to consider options to expeditiously wind down the affairs of the Former Agency, including assigning administration of the DDA to the City and transferring the Site to the City.

H. The Successor Agency intends to assign its rights and obligations in and under the DDA to the City and convey the Site to the City and enter into an agreement with the City for the City to administer the DDA.

I. The Parties are entering into this Agreement to provide for the City to compensate the Taxing Entities for the Site in accordance with the terms of this Agreement.

NOW THEREFORE, IN CONSIDERATION OF THE COMPENSATION, BOTH MONETARY AND NONMONETARY, AND THE COVENANTS PROVIDED HEREIN, THE PARTIES HERETO AGREE AS FOLLOWS:

<u>Section 1.</u> <u>Recitals</u>. The above recitals are true and correct and are a substantive part of this Agreement.

<u>Section 2.</u> <u>Compensation</u>. The Taxing Entities agree that the City will pay compensation to the Taxing Entities for the Site as follows:

(i) The total compensation will be equal to the sales proceeds received by the City from the Developer for the periodic sales of portions or "phases" of the Site in accordance with the terms of the DDA, less the costs of sale to be borne by the City under the terms of the DDA;

(ii) The total compensation will be paid in installments which correspond (both in the amount and the timing of the payment) with the Developer's acquisition of the Site in phases, as provided for in the DDA;

(iii) The City will remit the sales proceeds received by the City in connection with each closing within ten (10) business days of the City's receipt thereof to the Monterey County Auditor-Controller for remittance by the Auditor-Controller to the Taxing Entities in proportion to their shares of the base property tax as determined pursuant to HSC Section 34188 at the time of the payment; provided that if the Monterey County Auditor-Controller notifies the City to remit payments directly to the Taxing Entities, the City will make payments to the Taxing Entities in proportion to their shares of the base property tax as determined by the Auditor-Controller pursuant to HSC Section 34188 at the time of the payment by check delivered to their addresses listed on their respective signature pages hereof within ten (10) business days of the City's receipt of sale proceeds; and

(iv) The legal description of the Site, purchase prices, credits and schedule of performance are described in the DDA. The Taxing Entities acknowledge receipt of a copy of the DDA.

Section 3. Consent to Transfer of the Site, Assignment of DDA, and Amendment of DDA. The Taxing Entities hereby irrevocably consent to (i) the Successor Agency transferring the Site to the City in accordance with the approved LRPMP; (ii) the Successor Agency assigning its rights and obligations in and under the DDA to the City in accordance with the approved LPRMP; and (iii) following such assignment, the City entering into an amended and restated DDA with a new developer (which supersedes the existing DDA and includes the City's consent to an assignment by the Developer of the DDA to the new developer); provided that the amended and restated DDA does not reduce the purchase prices to be paid for the Property under the DDA or materially extend the deadlines in the DDA for sales of phases of the Site.

Section 4. Effective Date. The effective date of this Agreement will be the date that all of the following have occurred: (i) the Parties have executed this Agreement, (ii) the Successor Agency has conveyed the Site to the City, and (iii) the Successor Agency and the City have entered into an agreement in which the Successor Agency assigns its rights and obligations in and under the DDA to the City.

Section 5. Authorization. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective Party. In addition:

(a) The County of Monterey (the "County") warrants that in addition to entering into this Agreement by and on behalf of the County, the County has the legal power, right, and authority to enter into this Agreement on behalf of, and to bind, the County General Fund (Fund No. 19000) and the County Library (Fund No. 19500);

(b) The Monterey County Office of Education (the "MCOE") warrants that in addition to entering into this Agreement by and on behalf of the MCOE, the MCOE has the legal power, right, and authority to enter into this Agreement on behalf of, and to bind, the ERAF (Fund No. 01700); and

(c) The Monterey County Water Resources Agency (the "MCWRA") warrants that in addition to entering into this Agreement by and on behalf of the MCWRA, the MCWRA has the legal power, right, and authority to enter into this Agreement on behalf of, and to bind, the Monterey County Water Resources Agency, Zone 11 (Fund No. 3800).

Section 6. No Personal Liability. No official, agent, or employee of any Party shall be individually or personally liable for any amount which may become due under this Agreement or on any obligations under the terms of this Agreement.

Section 7. Assignment. This Agreement shall not be assignable by any Party without the prior written consent of the other Parties.

Section 8. Counterparts. This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same Agreement.

Section 9. Further Assurances. The Parties agree to take all appropriate steps and execute any documents which may reasonably be necessary or convenient to implement the intent of this Agreement.

Section 10. Notices. All notices and other communications shall be given or made in writing by certified mail, postage prepaid, return receipt requested, or by nationally recognized overnight messenger service. Notices shall be considered given upon (i) one business day following timely deposit with a nationally recognized overnight courier service, charges prepaid, or (ii) three business days after deposit in the United States mail, postage prepaid, certified or registered, return receipt requested. Notices shall be addressed as specified on the signature pages of this Agreement; provided that if a Party gives notice of a change of name or address, notices to such Party shall thereafter be given as specified in that notice.

Section 11. Severability. If one or more of the covenants or agreements provided in this Agreement should be determined by a court of competent jurisdiction to be contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Agreement.

Section 12. Construction. The Parties agree that each Party and its counsel have reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply in the interpretation of this Agreement or any amendments or exhibits thereto. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the Parties.

Section 13. No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the Parties and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

Section 14. Governing Law. This Agreement is made in the State of California under the Constitution and laws of the State of California, and is to be so construed.

Section 15. Amendments. This Agreement may be amended from time to time by written instrument executed by all of the Parties, provided that if an amendment only affects a particular Taxing Entity or Taxing Entities, this Agreement may be amended by written instrument executed by the City and the particular Taxing Entity or Taxing Entities affected by the amendment.

[Signatures begin on next page]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

City of Seaside

By:_________________________________

Print Name:___________________________

Title:________________________________

Attest by:_____________________________
City Clerk

Approved as to form:

____

<u>Address for Notices</u>:

City of Seaside
440 Harcourt Avenue
Seaside, CA 93995
Attn: City Manager

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

The undersigned authorized signature hereby executes this Agreement on behalf of the County of Monterey, the County General Fund and the County General Library.

By:_________________________________

Print Name:__________________________

Title:_______________________________

Attest by:____________________________

Approved as to form:

____
County Counsel

<u>Address for Notices</u>:

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____
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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

The undersigned authorized signature hereby executes this Agreement on behalf of the Monterey County Water Resources Agency and Monterey County Water Resources Agency, Zone 11.

By:________________________________

Print Name:__________________________

Title:_______________________________

Attest by:____________________________

Approved as to form:

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Address for Notices:

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

Monterey Peninsula Water Management Agency

By:__________________________________

Print Name:___________________________

Title:_________________________________

Attest by:_____________________________

Approved as to form:

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<u>Address for Notices</u>:

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

Monterey Peninsula Regional Parks

By:__________________________________

Print Name:___________________________

Title:________________________________

Attest by:_____________________________

Approved as to form:

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Address for Notices:

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

North Salinas Valley Mosquito Abatement District

By:________________________________

Print Name:__________________________

Title:_______________________________

Attest by:___________________________

Approved as to form:

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Address for Notices:

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

Moss Landing Harbor District

By:__________________________________

Print Name:___________________________

Title:________________________________

Attest by:_____________________________

Approved as to form:

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Address for Notices:

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

Seaside County Sanitation District

By:__________________________________

Print Name:___________________________

Title:________________________________

Attest by:_____________________________

Approved as to form:

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<u>Address for Notices</u>:

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

The undersigned authorized signature hereby executes this Agreement on behalf of the Monterey County Office of Education and ERAF.

By:______________________________

Print Name:________________________

Title:_____________________________

Attest by:__________________________

Approved as to form:

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Address for Notices:

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

Monterey Peninsula Unified School District

By:_________________________________

Print Name:__________________________

Title:_______________________________

Attest by:____________________________

Approved as to form:

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Address for Notices:

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

Monterey Peninsula Community College

By:___________________________________

Print Name:____________________________

Title:_________________________________

Attest by:______________________________

Approved as to form:

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Address for Notices:

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EXHIBIT "A"

Taxing Entities and Their Existing Percentage Shares

Code	Name	Percentage of Revenues
19000	County General Fund	0.135471
19500	County Library	0.015822
21000	City of Seaside	0.209487
37000	Monterey County Water Resources Agency	0.000883
38000	Monterey County Water Resources Agency, Zone 11	0.000137
43500	Monterey Peninsula Water Management Agency	0.004986
44600	Monterey Peninsula Regional Parks	0.009004
47300	North Salinas Valley Mosquito Abatement District	0.004746
47400	Moss Landing Harbor District	0.000001
48000	Seaside County Sanitation District	0.014717
25300	Monterey County Office of Education	0.031497*
27400	Monterey Peninsula Unified School District	0.517375*
27800	Monterey Peninsula Community College	0.055873*
01700	ERAF	0.000000*
		1.000000

*For the purpose of distributing the proceeds of property sales to the Taxing Entities, the ERAF percentage share is allocated among the Monterey County Office of Education, the Monterey Peninsula Unified School District, and the Monterey Peninsula Community College.

CITY OF SEASIDE
STAFF REPORT

Item No.: 7.A.

TO: Successor Agency to the Redevelopment Agency of the City of Seaside

FROM: Craig Malin, City Manager

BY: Rick Riedl, City Engineer

DATE: December 7, 2017

SUBJECT: **WATER STUDY SESSION**

PURPOSE

The purpose of this item is to provide an overview of the current status of our three water suppliers and their ability to continue to provide water for the City of Seaside.

RECOMMENDATION

Receive an update on the status of our three water suppliers.

BACKGROUND

Depending upon the location within the City of Seaside, water is supplied by Cal Am, Seaside Municipal Water System (SMWS), or Marina Coast Water District (MCWD). Cal-Am serves about eighty percent of Seaside, primarily from water derived from the Carmel River and/or the Seaside Groundwater Basin. These two sources of water are replenished by annual rainfall. Therefore the water supply varies according to the amount of rain received within the Monterey Peninsula Area. Rainfall replenishes these sources either naturally by infiltration or artificially by dams or direct injection, such as the Monterey Peninsula Water Management District (MPWMD) Aquifer Storage and Recovery (ASR) project that has wells located within the City of Seaside.

MCWD serves about 214 AFY or ten percent of Seaside and SMWS serves 190 AFY, or the remaining ten percent of Seaside. Both of these agencies derive their water from underground aquifers which are replenished by rainfall. MCWD is in the process of developing an alternative water source it calls the Regional Urban Water Augmentation Project (RUWAP).

The Carmel River is presently Cal Am's primary source for supplying water to the City of Seaside. During the summer months, Cal Am derives water mostly from the Seaside Groundwater Basin. However, both supplies are being legally curtailed. By 2021, Cal-Am must reduce their diversions from the Carmel River from its current diversion amount of roughly 6,500 AFY to no more than 3,376 AFY (its legal water right amount) pursuant to a cease and desist order ("CDO") issued by the State Water Resources Control Board (SWRCB Order WR 2009-0060). Cal-Am's groundwater rights in the Seaside Basin are also constrained by the court judgment adjudicating the basin (Amended Decision Case No. M66343 entered Feb. 9, 2007. ("Decision")) The adjudication settled the disputed groundwater rights to the Seaside Groundwater Basin and declared that some of the basin users, including the SMWS and Cal Am, would, starting in 2009, have to decrease their water usage according to a ramp down schedule requiring a 10% reduction every three years. The final triennial rampdown will go into effect in 2021.

For areas in Seaside that were part of the former Fort Ord, water is delivered to customers by Marina Coast Water District (MCWD). MCWD derives water from Salinas Groundwater Basin and is partnering with Monterey One Water (formerly MRWPCA) to provide highly purified water for non-potable use or as replenishment to the Seaside Basin. The Bayonet & Black Horse Golf Courses, also located in the former Fort Ord, has the ability to obtain water from either MCWD or groundwater wells. Therefore, water can be delivered to the golf course property either from these wells or from MCWD.

Ability to Provide Water in the Future

The City of Seaside and Cal Am are members of the Seaside Basin Watermaster pursuant to the Decision. Seaside pays approximately 7 percent, or $10,000 per year, of its operating expenses (for the water it extracts for the SMWS) and Cal Am pays about 90 percent (others pay the rest). The City also pays about $110,000 per year in assessments to the Watermaster for using more water than is allotted according to the Decision. These assessments are expected to increase to about $250,000 in 2021 as the ramp-down schedule is fully implemented. This assessment by the Watermaster would continue to be at least this amount (in 2017 dollars) forever unless the City is able to obtain an alternative water source or curtail its water usage.

The attached graph shows SMWS past and estimated future usage. The graph shows the ramp down in water allocation from the Watermaster as blue bars and Seaside customer's usage as red bars. The future estimated water usage (red bars) for the SMWS is 190 acre-feet per year (AFY) or about 62 million gallons. The estimated water allocation from the Watermaster will decrease from 185 AFY to about 147 AFY from this year to next year and would continue to decrease tri-annually according to the prescribed ramp-down schedule in the Decision. In 2021, the ramp down will be complete and the expected water allocation at that time would be about 120 AF.

In 2006, the year that the Decision was first promulgated, the water usage was 332.0 AF. In 2016, the water usage was 195.2 AF, up slightly from the previous year of 192.5 AF, representing approximately 40 percent decrease in usage since 2006. The Decision states that the usage (red bars) are not allowed to exceed the allocation (blue bars). However, water usage for the SMWS is predicted to do so for every year into the future. In 2021, the water usage is expected to exceed the allocation by about 70 AF since it is unlikely that the water usage could decrease to 120 AF, or more than sixty percent decrease in usage from 2006.

Third-Party Evaluations

Water purveyors in California are overseen by the Division of Drinking Water (DDW) which is now under the State Water Resources Control Board. However, the regulation of water supply, water quality, and the various types of water systems that serve drinking water remains fragmented in California. There are several state agencies that have a role in regulating certain types of Water purveyors, including how they operate and the rates that they can charge their customers. For example, the California Public Utilities Commission shares regulatory responsibility for regulating water service supplied by investor-owned water utilities, like Cal-Am, subject to its jurisdiction. On the Monterey Peninsula, the Monterey Peninsula Water Management District also regulates how water purveyors operate within parts of Seaside and other neighboring communities.

In 2016, the DDW performed an assessment of the SMWS. The assessment, called a *Sanitary Survey* by the DDW, determined the following;

- The water system is in good overall condition.
- A potential cross connection was noted at the tank site (that has been remediated).
- The City's preventative maintenance and record keeping program have significantly

improved.

Regulatory & Environmental Conditions

Pumping of groundwater has resulted in depressed groundwater levels within the Seaside Basin where the City possesses pumping rights. The primary concern to decreased groundwater quality pertains to potential seawater intrusion into the Basin. The Seaside Basin Watermaster is tasked with managing the Seaside Groundwater Basin aquifers. Monitoring wells are located throughout Seaside to provide groundwater quality data for the aquifers and to help determine the occurrence of seawater intrusion. Last year, water quality samples from two of the four sentinel (monitoring) wells located near the coast exhibited anomalous chloride concentrations. In response, and consistent with Watermaster's *Seawater Intrusion Response Plan*, these wells were resampled in December 2016. The Watermaster's technical consultants (HydroMetrics, Todd Groundwater, and Martin Feeney) reviewed the results and determined that the samples do not establish that seawater intrusion is occurring. However, they did recommend a more robust monitoring protocol, which the Watermaster is implementing.

Comparison of Water Rates

The cost of water to Seaside customers varies according to the water purveyor. The attached graph shows the cost of water to an average residential customer in Seaside that uses 550 cubic feet (4,110 gallons) of water per month. The costs shown do not include taxes and surcharges as these are beyond the control of the purveyor. The cost of $53.36 per month to SMWS customers is about average for the cost of water as provided by the three water purveyors in Seaside.

Strategies for Future Water Supplies

The city continues to explore opportunities with MCWD to (a) use recycled water from the Pure Water Monterey Project on the City of Seaside's Blackhorse and Bayonet Golf Courses and (b) obtain water to offset a long-term water supply deficit in the City's SMWS.

The golf courses presently use approximately 450 to 500 AFY from the Seaside Basin pursuant to the City's Alternative Production Allocation held under the Seaside Basin Judgment. The City could substitute recycled water in lieu of potable groundwater use, and pursuant to an agreement with the Seaside Basin Watermaster, establish a stored water credit. The credit might be similar to the credits the City received for the substitution of 2,500 AFY of water obtained from Marina Coast Water District in lieu of pumping in recent years ("Prior In-Lieu Program"). The City supplies its SMWS with water pumped from the Seaside Basin pursuant to its Standard Production Allocation under the Seaside Basin Judgment. However, the water demand within the City's system exceeds the City long-term (fully ramped-down) Standard Production Allocation by approximately 70 AFY. The City has offset its past replenishment assessment ("RA") liabilities through drafts upon the bank of credits that it established through the Prior In Lieu Programs. The City should be able to continue to avoid any RA liability by drafting off its bank of credits for approximately another 10 years. However, the City desires to be proactive now to develop a supplemental supply to come online when its banked credits are exhausted. Accordingly, we are evaluating means to offset the golf courses' use of potable groundwater with advanced treated recycled water form MCWD, which could free up potable water for the SMWS. Critical issues that need to be resolved include the costs of the recycled water and the details of an arrangement with MCWD, the Watermaster, and other potentially involved parties, notably Cal-Am.

Water Status for City of Seaside within former Fort Ord

Seaside Water Allocation from FORA	1,012.0 AF
Current Water Usage	638.4 AF
Remaining Water Allocation Balance	373.6 AF
Future Development Projects Estimated Needs	1,053 AF
Future Water Needs (Deficit), former Fort Ord area	(680 AF)

Water Status for City of Seaside Proper (Cal-Am System)

Remaining Seaside Water Allocation from MPWMD	37.49 AF
Future Water Needs based upon GP build out	719.49 AF
Future Water Needs (Deficit), Seaside Proper	(682 AF)

Regional Solutions

Cal-Am's proposed solution to its future water supply deficiencies is the Monterey Peninsula Water Supply Project ("MPWSP"). Cal-Am filed an application with the California Public Utilities Commission ("CPUC") in 2012 to request a Certificate of Public Convenience and Necessity ("CPCN") to implement the MPWSP. The MPWSP is anticipated to consist of a seawater and brackish water intake system, a 6.4 MGD desalination plant and related facilities, desalinated water conveyance facilities, an expanded ASR system, and a water purchase agreement for water injected and recovered from the Seaside Basin from Monterey One Water's Pure Water Monterey Project ("PWM") (also commonly referred to as the Groundwater Replenishment Project). These projects will result in sufficient long-term water supplies for the Monterey Peninsula, when combined with Cal-Am's groundwater entitlements from the Seaside Basin and legal diversion rights from the Carmel River, to: (1) meet current and projected future demands; (2) eliminate all unauthorized diversions from the Carmel River Valley as required by the CDO; and (3) "pay-back" its extractions from the Basin in excess of the Native Safe Yield since the entry of the Decision.

On September 15, 2016, the CPUC authorized Cal-Am to enter into a water purchase agreement with the MPWMD and the MRWPCA to purchase 3,500 AFY of PWM water from the Pure Water Project at a cost of $85.5 million, and for Cal-Am to invest up to $50 million in a new pipeline (the "Monterey Pipeline") and pump station. The Monterey Pipeline will allow Cal-Am to move PWM and ASR water recovered from the Seaside Basin (and ultimately desalination water) into the Cal-Am distribution system and also allow additional ASR water to be pumped from the Carmel River to the Seaside Basin for injection during wet periods. The CPUC's approval of the water purchase agreement and Monterey Pipeline and pump station was a significant milestone for the Pure Water Project.

To maximize water supply from the ASR project, Cal-Am and the MPWMD are also developing two additional ASR wells within the City of Seaside, to add to the four existing ASR wells operated by Cal-Am. A ground lease for the new ASR wells and associated facilities is expected to be approved by the Seaside City Council soon. The ASR ground lease will foster FORA's issuance of a right-of-entry to complete the ASR facilities.

Cal-Am's application for a CPCN to construct the MPWSP is still pending before the CPUC. On January 12, 2017, the CPUC and MBNMS released a joint DEIR/DEIS for the MPWSP consistent with the California Environmental Quality Act and the National Environmental Policy Act and a final EIR/EIS for the project is anticipated in March of 2018. An additional round of hearings concerning the project was held in October/November 2017 and briefing is commencing shortly. The project is controversial and vehemently opposed by Marina Coast Water District and the City of Marina, among others. Settlement discussion are underway to seek an amicable resolution of the desalination project issues and means to satisfy the long-term demands for the Cal-Am system.

FISCAL IMPACT

There is no fiscal impact to the City in receiving this presentation.

ATTACHMENTS

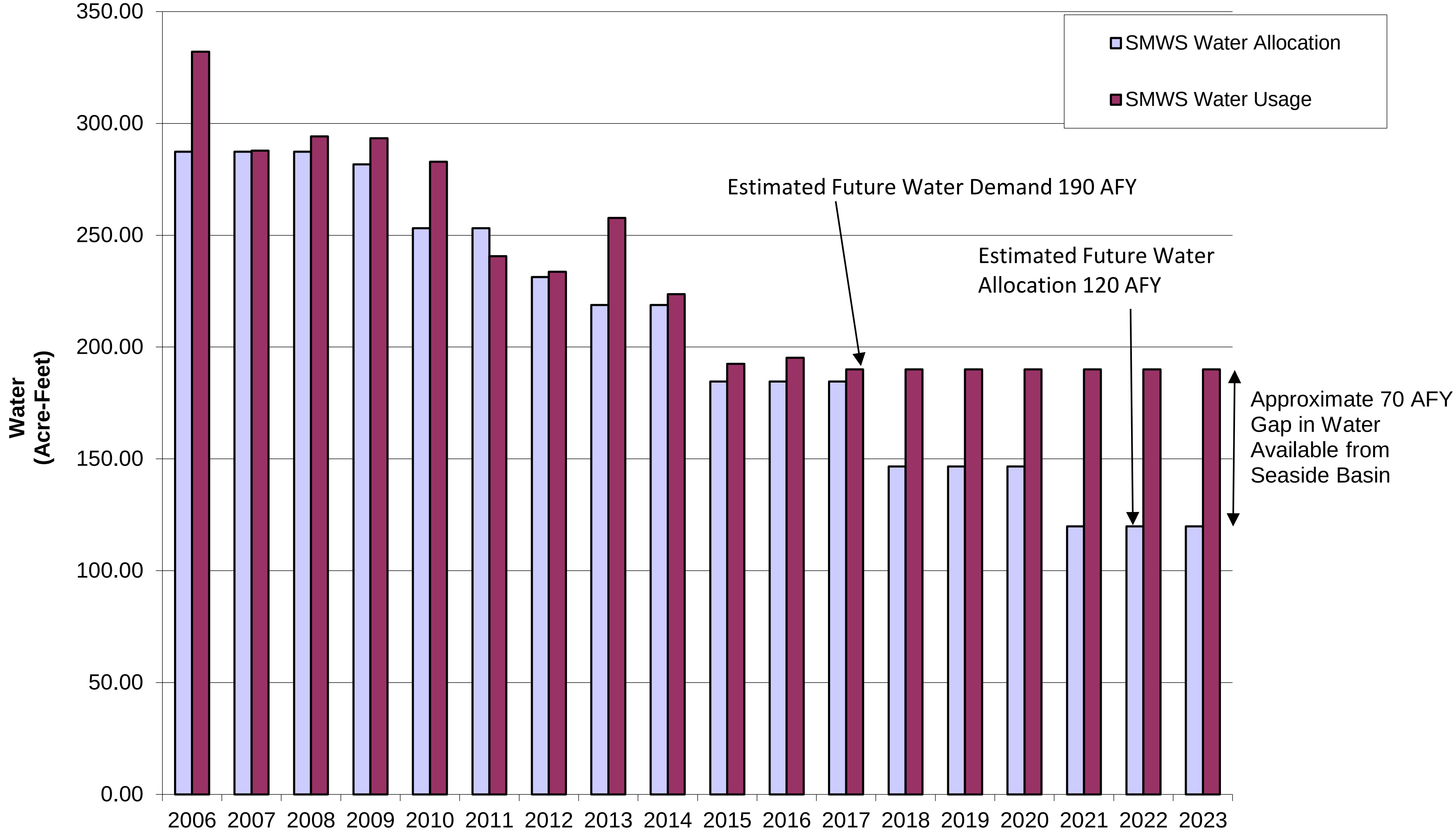
1. Estimated Water Usage Seaside Municipal Water System
2. Comparison of Residential Water Rates

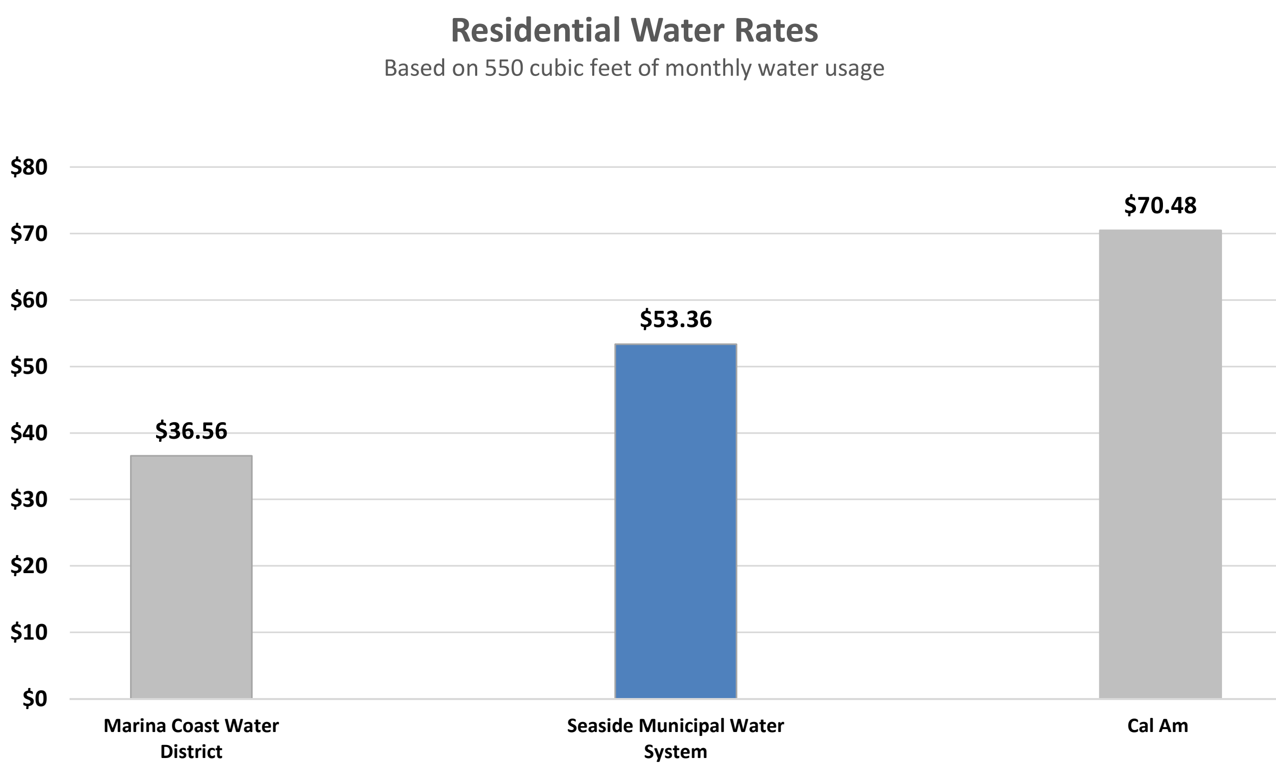
Reviewed for Submission to the
City Council by:

Craig Malin, City Manager

Seaside Municipal Water System

Estimated Water Usage




Residential Water Rates
Based on 550 cubic feet of monthly water usage
$80
$70
$60
$50
$40
$30
$20
$10
$0
$36.56
$53.36
$70.48
Marina Coast Water District
Seaside Municipal Water System
Cal Am