A G E N D A
CITY OF SEASIDE
CITY COUNCIL

SPECIAL MEETING
Council Chamber
440 Harcourt Avenue
Tuesday, June 11, 2019
5:30 PM

CALL IN LOCATION: 8 VIA DI SANT ERASMO, ROME, LAZIO COUNTRY HALY 00184

1. CALL TO ORDER

2. ROLL CALL – ESTABLISHMENT OF QUORUM

Ian N. Oglesby	Mayor
David R. Pacheco	Mayor Pro Tem
Jason Campbell	Council Member
Jon Wizard	Council Member
Alissa Kispersky	Council Member

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

1. **Seaside Resort Development**. Negotiator for the City: Craig Malin, City Manager. Under Negotiation: Instructions to negotiator will concern price, terms of payment or both.
2. **Property at the NW Corner of Contra Costa and Sonoma.** Negotiator for the City: Craig Malin, City Manager. Under Negotiation: Instructions to negotiator will concern price, terms of payment or both.

5. BUSINESS ITEMS

A. CONSIDER AND APPROVE A RESOLUTION THAT AUTHORIZES EXECUTION OF A SECOND AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT WITH CYPRESS SEASIDE LLC WITH RESPECT TO APPROXIMATELY 70-ACRES LOCATED AT THE NORTHWEST CORNER OF GENERAL JIM MOORE BLVD. AND COE AVENUE ALSO KNOWN AS "THE SEASIDE RESORT PROJECT"

RECOMMENDATION: Approve the Resolution as recommended in the staff report.

B. **CONSIDER AND APPROVE 1) BAYONET AND BLACKHORSE GOLF COURSES SECOND LEASE AMENDMENT; AND 2) PROPERTY EXCHANGE AGREEMENT TO IMPROVE OPERATION OF PUBLIC GOLF COURSE AND FURTHER IMPLEMENT THE SEASIDE RESORT PROJECT**

RECOMMENDATION: Approve Property Exchange Agreement and Second Lease Amendment

6. PRESENTATIONS

A. **UPDATE ON 4TH OF JULY FIREWORKS CELEBRATION**

7. CLOSED SESSION

A. **PURSUANT TO GOVERNMENT CODE 54957 -PUBLIC EMPLOYEE APPOINTMENT**

Position Title: City Attorney

8. ADJOURNMENT

Next Regularly Scheduled Meeting:
June 13, 2019
5:30 PM

The City of Seaside is committed to providing accessible facilities and accommodating people with disabilities in all of its services programs and activities. If special considerations are needed by any person to fully participate in this meeting, contact the City Clerk at 899-6707 no fewer than two business days prior to the meeting to allow reasonable arrangements. The City Council chamber is equipped with a portable microphone and assisted listening devices are available at all meetings. City Council Meetings that are held in the City Council Chambers are broadcast live to all Seaside residents on Comcast Channel 25 and U-verse Channel 99. Live streamed meeting videos as well as videos of past meetings are available on the City's website at: http://www.ci.seaside.ca.us/129/City-Council-Committee-Agendas

Agenda-related writings or documents provided during public meetings are available for public inspection during the meeting or from the office of the City Clerk. This agenda is posted in compliance with California Government Code Section 54954.2(a) or Section 54956.

CITY OF SEASIDE
STAFF REPORT

Item No.: 5.A.

TO: City Council

FROM: Craig Malin, City Manager

DATE: June 11, 2019

SUBJECT: **CONSIDER AND APPROVE A RESOLUTION THAT AUTHORIZES EXECUTION OF A SECOND AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT WITH CYPRESS SEASIDE LLC WITH RESPECT TO APPROXIMATELY 70-ACRES LOCATED AT THE NORTHWEST CORNER OF GENERAL JIM MOORE BLVD. AND COE AVENUE ALSO KNOWN AS "THE SEASIDE RESORT PROJECT"**

PURPOSE

The purpose of this item is to consider (I) authorizing the City to enter into a Second Amended and Restated Disposition and Development Agreement with Cypress Seaside, LLC, an Arizona limited liability company ("Developer"), with respect to the approximately 70-acre site located at the northwest corner of General Jim Moore Boulevard and Coe Avenue in the City of Seaside, and (II) taking certain related actions. These actions are intended to further implement the Seaside Resort Project ("Project").

RECOMMENDATION:

1. Adopt a Resolution (I) authorizing the City to enter into a Second Amended and Restated Disposition and Development Agreement with the Developer, with respect to the approximately 70-acre site located at the northwest corner of General Jim Moore Boulevard and Coe Avenue in the City of Seaside, and (II) taking certain related actions. These actions are intended to further implement the Seaside Resort Project ("Project").

2. Find that the extension for the closing date of the hotel/resort land, timeshare land and residential land provided for in the Second Amended and Restated Disposition and Development Agreement and the modification of the allocation of water rights to the benefit of the City as set forth therein, do not change the underlying Project, and are within the scope of the Final Environmental Impact Report prepared and certified for

the underlying Project, including Addendum Nos. 1 through 4, and that no further review under the California Environmental Quality Act is required in connection with the Second Amended and Restated Disposition and Development Agreement.

BACKGROUND

In 1996, the City of Seaside ("City") purchased the approximately 400-acre Bayonet and Black Horse Golf Courses ("Golf Courses") from the US Army with City funds. 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 whereby approximately 80 acres of the site located at the northwest corner of General Jim Moore Boulevard and Coe Avenue in the City ("SRD Properties") were transferred to the Former Agency. The Former Agency concurrently entered into a Disposition and Development Agreement (as subsequently amended in 2007 and 2009, "Original DDA") with Seaside Resort Development, LLC ("SRD") to develop resort and related facilities within the SRD Properties, certified the Seaside Resort Final EIR, 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.

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 ("Amended and Restated 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.

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, and the Successor Agency to the Former Agency ("Successor Agency") was established. Pursuant to California Health and Safety Code 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 SRD Properties.

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.

On February 5, 2014, the Successor Agency and SRD entered into an Amended and

Restated Disposition and Development Agreement ("Amended and Restated DDA") with respect to the SRD Properties that, among other things, extended certain dates for performance. In connection with approving the Amended and Restated DDA, the Department of Finance ("DOF") directed the Successor Agency to assign administration of the Project to the City. In accordance with the DOF's direction, the Successor Agency's Long Range Property Management Plan authorizes the SRD Properties to be transferred to the City, subject to the City entering into a compensation agreement with each of the Taxing Entities to compensate them for the property.

At their December 7, 2017, meeting, the City Council and Successor Agency authorized a series of actions intended to effect the transfer of the SRD Properties to the City and implement the Project. The City Council adopted Resolution No. 17-91 which authorized the City to (i) accept the SRD Properties from the Successor Agency, (ii) enter into a Master Taxing Entity Agreement with the Taxing Entities ("Original Master Taxing Entity Agreement"), (iii) enter into an Assignment, Assumption and Administration Agreement with the Successor Agency ("Assignment Agreement"), (iv) enter into a Second Amended and Restated Disposition and Development Agreement ("Second Amended and Restated DDA") with Monterey Bay Resort, LLC ("Monterey Bay"), which included the City's consent to an assignment by SRD of the Amended and Restated DDA to Monterey Bay conditioned upon Monterey Bay entering into the Second Amended and Restated DDA (which would supersede the Amended and Restated DDA without altering the amounts required to be paid for the SRD Properties under the Amended and Restated DDA), and (v) enter into a Second Amended and Restated Lease ("Second Amended and Restated Lease") with Monterey Bay with respect to the Golf Courses, which included the City's consent to an assignment by B&B of the Amended and Restated Lease to Monterey Bay conditioned upon Monterey Bay entering into the Second Amended and Restated Lease.

At its meeting on February 15, 2018, the City Council adopted Resolution No. 18-08, approving a First Amendment to the Second Amended and Restated DDA ("First Amendment"). At its meeting on November 15, 2018, the City Council adopted Resolution approving a Second Amendment to the Second Amended and Restated DDA ("Second Amendment"), to approve an extension to May 15, 2019, for the closing of the sale of the hotel/resort, timeshare, and residential land, and approving a Revised Master Taxing Entity Agreement which supersedes the Original Master Taxing Entity Agreement.

All of the Taxing Entities have executed the Revised Master Taxing Entity Agreement.

The Second Amended and Restated DDA, as amended by the First Amendment and the Second Amendment, with Monterey Bay, and the Second Amended and Restated Lease with Monterey Bay, never became effective. The City now desires to enter into a new Second Amended and Restated Disposition and Development Agreement ("Second Amended DDA") with respect to SRD Properties with Cypress Seaside, LLC ("Developer"), an affiliate of SRD.

Therefore, staff recommends that the City Council adopt the attached Resolution authorizing those actions.

The Second Amended DDA will supersede the Amended and Restated DDA without altering the amounts required to be paid for the SRD Properties under the Amended and Restated DDA.

The Second Amended DDA requires the Developer to deposit with the City the sum of $104,011 on or before the date that is three business days after delivery by the City to the Developer of the Second Amended DDA (the Developer having already executed and delivered a counterpart to the City). Pursuant to the Revised Master Taxing Entity Agreement, this sum is be split among the Taxing Entities as consideration for entering into the Revised Master Taxing Entity Agreement (with the amount for each Taxing Entity set forth in an exhibit to the Revised Master Taxing Entity Agreement).

The Second Amended DDA also requires the Developer to deposit with the City an extension fee of $1.4 million on or before the date that is three business days after delivery by the City to the Developer of the Second Amended DDA (the Developer having already executed and delivered a counterpart to the City). Pursuant to the Second Amended DDA, if the conditions precedent in the Second Amended DDA (Section 2.7) are satisfied and all of the hotel land, timeshare land and residential land are acquired by the later of May 15, 2019 or the date the DOF has approved, or is deemed to have approved, the resolution ("Resolution") of the Consolidated Oversight Board for Monterey County ("Oversight Board") approving the Successor Agency's conveyance of the SRD Properties to the City and the Successor Agency entering into the Assignment Agreement with the City, the City will apply the deposit to the purchase price for such land. If such conditions precedent are satisfied but the hotel component phases are not acquired by the Developer by the later of May 15, 2019 or the date the DOF has approved, or is deemed to have approved, the Oversight Board Resolution, for any reason other than a default by the City, then the deposit will be retained by the City and distributed to the Taxing Entities who would be entitled to proceeds of a sale, in accordance with the Revised Master Taxing Entity Agreement. If the conditions in Section 2.7 are not satisfied, the City will return the extension fee to the Developer.

The Revised Master Taxing Entity Agreement includes the Taxing Entities' consent to the City entering into an amended and restated DDA with a new developer (which supersedes the Amended and Restated DDA and includes the City's consent to an assignment by SRD of the Amended and Restated DDA to the new developer) provided that the deadline for the closing of the sale of the hotel/resort, timeshare, and residential land is not extended beyond May 15, 2019. However, since this closing date does not provide sufficient time to obtain review and approval of the Oversight Board Resolution by the Oversight Board and the DOF, the Second Amended DDA extends the closing date to the later of May 15, 2019 or the date the DOF has approved, or is deemed to have approved, the Oversight Board Resolution. City staff will send a letter to each Taxing Entity informing them of this, and also disclosing that the Developer is an affiliate of SRD.

Staff recommends that the City enter into the Second Amended DDA.

ENVIRONMENTAL REVIEW

A Final Environmental Impact Report was prepared and certified for the Original DDA on July 7, 2005. Thereafter, the Council adopted Addendum No. 1 on August 17, 2005, Addendum No. 2 on February 5, 2014, Addendum No. 3 on December 10, 2014, and Addendum No. 4 on December 7, 2017. Staff recommends that the Council find that the extension for the closing date of the hotel/resort, timeshare and residential land, as provided for in the Second Amended DDA, and the contingent reallocation of water rights to the benefit of the City therein, do not change the underlying Project, and are within the scope of the Final Environmental Impact Report prepared and certified for the underlying Project, including Addendum Nos. 1 through 4, and that no further review under the California Environmental Quality Act is required in connection with the Second Amended DDA.

FISCAL IMPACT

As described above, the Second Amended DDA requires the Developer to deposit with the City the sum of $104,011 to be divided among the Taxing Entities as consideration for entering into the Revised Master Taxing Entity Agreement and to pay the sum of $1.4 million as a conditional extension fee (applicable to the purchase price at closing, or if Developer fails to close for any reason other than a City default, delivered to the Taxing Entities).

SUBSEQUENT ACTIONS.

Staff will present to the Oversight Board for its consideration resolutions approving the matters described above and the matters in the December 7, 2017 staff report.

ATTACHMENTS

1. May 23, 2019 Staff Report
2. Draft Resolution Authorizing Second DDA Cypress Seaside
3. Cypress Seaside LLC - Second Amended and Restated Disposition and Development Agreement

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Reviewed for Submission to the
City Council by:

Craig Malin, City Manager

CITY OF SEASIDE
STAFF REPORT

Item No.: 4.A.

TO: City Council

BY: Craig Malin, City Manager

DATE: May 23, 2019

SUBJECT: **CITY ACTIONS TO IMPLEMENT THE SEASIDE RESORT PROJECT**

PURPOSE

The purpose of this item is to consider (I) authorizing the City to enter into a Second Amended and Restated Disposition and Development Agreement with Cypress Seaside LLC, a Arizona Limited Liability Corporation, with respect to the approximately 70-acre site located at the northwest corner of General Jim Moore Boulevard and Coe Avenue in the City of Seaside, (II) authorizing the City to enter into an amendment to the Ground Lease with **[**B&B Golf Course Properties, LLC**]** with respect to the Black Horse and Bayonet Golf Courses; and (III) taking certain related actions. These actions are intended to further implement the Seaside Resort Project ("Project").

RECOMMENDATION

It is recommended that the City Council:

1. Adopt A Resolution (I) authorizing the City to enter into a Second Amended and Restated Disposition and Development Agreement with Cypress Seaside, an Arizona Limited liability Corporation, with respect to the approximately 70-acre site located at the northwest corner of General Jim Moore Boulevard and Coe Avenue in the City of Seaside, (II) authorize the City to enter into an amendment to the Ground Lease with **[**B&B Golf Course Properties, LLC**]** with respect to the Black Horse and Bayonet Golf Courses, and (III) taking certain related actions. These actions are intended to further implement the Seaside Resort Project ("Project").

2. Find that the extension for the closing date of the hotel/resort land, timeshare land and residential land provided for in the Second Amended and Restated Disposition and Development Agreement with Cypress Seaside LLC and the amendment to the Golf Course Ground Lease with

[B&B Golf Course Properties, LLC] do not change the underlying Project, and are within the scope of the Final Environmental Impact Report prepared and certified for the underlying Project, including Addendum Nos. 1 through 4, and that no further review under the California Environmental Quality Act is required in connection with the Second Amended and Restated Disposition and Development Agreement or the amended Golf Course Lease.

BACKGROUND

In 1996, the City of Seaside ("City") purchased the approximately 400-acre Black Horse and Bayonet Golf Courses ("Golf Courses") from the US Army with City funds. 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 whereby approximately 80 acres of the site located at the northwest corner of General Jim Moore Boulevard and Coe Avenue in the City ("SRD Properties") were transferred to the Former Agency. The Former Agency concurrently entered into a Disposition and Development Agreement (as subsequently amended in 2007 and 2009, "Original DDA") with Seaside Resort Development, LLC ("SRD") to develop resort and related facilities within the SRD Properties, certified the Seaside Resort Final EIR, 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.

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 ("Amended and Restated 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.

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, and the Successor Agency to the Former Agency ("Successor Agency") was established. Pursuant to California Health and Safety Code 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 SRD Properties.

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.

On February 5, 2014, the Successor Agency and SRD entered into an Amended and Restated Disposition and Development Agreement ("Amended and Restated DDA") with respect to the SRD Properties that, among other things, extended certain dates for performance. In connection with approving the Amended and Restated DDA, the Department of Finance ("DOF") directed the Successor Agency to assign administration of the Project to the City. In accordance with the DOF's direction, the Successor Agency's Long Range Property Management Plan authorizes the SRD Properties to be transferred to the City, subject to the City entering into a compensation agreement with each of the Taxing Entities to compensate them for the property.

At their December 7, 2017, meeting, the City Council and Successor Agency authorized a series of actions intended to effect the transfer of the SRD Properties to the City and implement the Project. The City Council adopted Resolution No. 17-91 which authorized the City to (i) accept the SRD Properties from the Successor Agency, (ii) enter into a Master Taxing Entity Agreement with the Taxing Entities ("Original Master Taxing Entity Agreement"), (iii) enter into an Assignment, Assumption and Administration Agreement with the Successor Agency ("Assignment Agreement"), (iv) enter into a Second Amended and Restated Disposition and Development Agreement ("Second Amended and Restated DDA") with Monterey Bay Resort, LLC ("Monterey Bay"), which included the City's consent to an assignment by SRD of the Amended and Restated DDA to Monterey Bay conditioned upon Monterey Bay entering into the Second Amended and Restated DDA (which would supersede the Amended and Restated DDA without altering the amounts required to be paid for the SRD Properties under the Amended and Restated DDA), and (v) enter into a Second Amended and Restated Lease ("Second Amended and Restated Lease") with Monterey Bay with respect to the Golf Courses, which included the City's consent to an assignment by B&B of the Amended and Restated Lease to Monterey Bay conditioned upon Monterey Bay entering into the Second Amended and Restated Lease.

At its meeting on February 15, 2018, the City Council adopted Resolution No. 18-08, approving a First Amendment to the Second Amended and Restated DDA ("First Amendment"). At its meeting on November 15, 2018, the City Council adopted Resolution No. 18-130, approving a Second Amendment to the Second Amended and Restated DDA ("Second Amendment"), to approve an extension to May 15, 2019, for the closing of the sale of the hotel/resort, timeshare, and residential land, and approving a Revised Master Taxing Entity Agreement which supersedes the Original Master Taxing Entity Agreement.

All of the Taxing Entities have executed the Revised Master Taxing Entity Agreement.

The City desires to enter into a Second Amended and Restated Disposition and Development Agreement ("Second Amended DDA") with respect to SRD Properties with Cypress Seaside LLC, an Arizona limited liability corporation, ("Developer"), an affiliate of

SRD. The City also desires to enter into an amendment to the Golf Course lease with respect to Golf Courses with [B&B].

Therefore, staff recommends that the City Council adopt the attached Resolution (I) authorizing the City to enter into a Second Amended DDA with the Developer, with respect to the SRD Properties, (II) authorizing the City to enter into an amendment to the Golf Course Lease with **[**B&B**]** with respect to the Golf Courses, and (III) taking certain related actions. These actions are intended to further implement the Seaside Resort Project ("Project").

Like the Second Amended and Restated DDA with Monterey Bay, the Second Amended DDA with the Developer includes the City's consent to an assignment by SRD of the Amended and Restated DDA to the Developer conditioned upon the Developer entering into the Second Amended DDA. The Second Amended DDA will supersede the Amended and Restated DDA without altering the amounts required to be paid for the SRD Properties under the Amended and Restated DDA.

The Second Amended DDA requires the Developer to deposit with the City the sum of $104,011 prior to the City's consideration of the Second Amended DDA. Pursuant to the Revised Master Taxing Entity Agreement, this sum is be split among the Taxing Entities as consideration for entering into the Revised Master Taxing Entity Agreement (with the amount for each Taxing Entity set forth in an exhibit to the Revised Master Taxing Entity Agreement).

The Second Amended DDA also requires the Developer to deposit with the City an extension fee of $1.4 million on or before the date that is three (3) business days after the City's execution of the Second Amended DDA. Pursuant to the Second Amended DDA, if the conditions precedent in the Second Amended DDA (Section 2.7) are satisfied and all of the hotel land, timeshare land and residential land are acquired by the later of May 15, 2019 or ten (10) days after the date the DOF has approved, or is deemed to have approved, the resolution ("Resolution") of the Consolidated Oversight Board for Monterey County ("Oversight Board") approving the Successor Agency's conveyance of the SRD Properties to the City and the Successor Agency entering into the Assignment Agreement with the City, the City will apply the deposit to the purchase price for such land. If such conditions precedent are satisfied but the hotel component phases are not acquired by the Developer by the later of May 15, 2019 or ten (10) days after the date the DOF has approved, or is deemed to have approved, the Oversight Board Resolution, for any reason other than a default by the City, then the deposit will be retained by the City and distributed to the Taxing Entities who would be entitled to proceeds of a sale, in accordance with the Revised Master Taxing Entity Agreement. If the conditions in Section 2.7 are not satisfied, the City will return the extension fee to the Developer.

The Revised Master Taxing Entity Agreement includes the Taxing Entities' consent to the City entering into an amended and restated DDA with a new developer (which supersedes the Amended and Restated DDA and includes the City's consent to an assignment by SRD of the Amended and Restated DDA to the new developer) provided that the deadline for the closing of the sale of the hotel/resort, timeshare, and residential land is not extended beyond May 15, 2019. Since this closing date does not provide sufficient time to obtain review and approval of the Oversight Board Resolution by the Oversight Board and the DOF, the Second Amended DDA extends the closing date to the later of May 15, 2019 or the date the DOF has approved, or is deemed to have approved, the Oversight Board Resolution. City staff will send a letter to each Taxing Entity informing them of this, and also disclosing that the Developer is an affiliate of SRD.

The Second Amended and Restated Disposition and Development Agreement with Cypress Seaside LLC will advance the long-planned hotel and development project, consistent with the following terms:

1. A hotel/resort of at least 200 guestrooms, by a hotel operator from the upscale, upper upscale and luxury classifications of the Smith Travel Research scale (see attachment #4) shall be completed by March 31, 2023 (see schedule of performance attachment #3).

2. The developer shall purchase approximately 70 acres of land for $14,604,084, with closing to occur within 10 days following approval by the Oversight Board and Department of Finance review, if any. The developer shall pay $1,504,011 to the City within three business days of the City's approval of the DDA as a deposit and closing extension fee on the property to be purchased. $1.4 million of the deposit will be retained by the City until distribution of the total proceeds and $104,011 will be distributed immediately to taxing authorities. The distribution of funds will be as summarized on the following page:

Payments to taxing entities (illustrative)

Taxing Entity	% revenue	Non-refundable Deposit +	Extension $ =	Subtotal Subtotal +	Payment At Closing =	Total
MPUSD	0.517375	$724,325	$51,737	$776,062	$6,777,612	$7,553,674
City of Seaside	0.209487	$293,281	$20,948	$314,229	$2,744,279	$3,058,508
County General Fund	0.135471	$189,659	$13,547	$203,206	$1,774,670	$1,977,876
MPC	0.055873	$ 78,222	$ 5,587	$ 83,809	$ 731,936	$ 815,745
County Office of Education	0.031497	$ 44,095	$ 3,139	$ 47,234	$ 412,610	$ 459,844
County Library	0.015822	$ 22,150	$ 1,582	$ 23,732	$ 207,268	$ 231,000
Seaside County Sanitation Dist.	0.014717	$ 20,603	$ 1,471	$ 22,074	$ 192,792	$ 214,866
Monterey Pen. Regional Parks	0.009004	$ 12,605	$ 1,000	$ 13,605	$ 117,952	$ 131,557
Monterey Pen. Water Mgmt. Agency	0.004986	$ 6,980	$ 1,000	$ 7,980	$ 65,316	$ 73,296
N. Salinas Mosquito Abatement Dist.	0.004746	$ 6,644	$ 1,000	$ 7,644	$ 62,172	$ 69,816
Mont. County Water Resource Agency	0.000883	$ 1,236	$ 1,000	$ 2,236	$ 11,567	$ 13,903
Mont. County Water Resource Agency (z11)	0.000137	$ 191	$ 1,000	$ 1,191	$ 1,794	$ 2,985
Moss Landing Harbor District	0.000001	$ 1	$ 1,000	$ 1,001	$ 13	$ 1,014

3. Should the developer fail to meet deadlines after closing (see schedule of performance attachment #3), the City has the right to repurchase the hotel parcel back for $800,000. The hotel parcel is being sold to the developer for $5.5 million. Should the City repurchase the hotel parcel back from the developer, the City also gains rights to water sufficient to construct a 330 room hotel (see page 19 of the attached draft DDA). The right of the City to repurchase the hotel parcel for a $4.7 million discount provides exceptionally strong protection for the City, far beyond prior agreements, to take control of a future hotel project.

4. Prior agreements, including using the word “Seaside” in the name of the hotel, a required “labor peace” agreement and prevailing wage provision are retained in the DDA, as is an extension of the Fort Ord Reuse Authority Community Facilities District.

Staff recommends that the City enter into an amendment to the Golf Course lease to correct a property boundary correction caused by the realignment of one of the golf holes.

FISCAL NOTE:

Sale of the property will provide $14.5 million to regional taxing authorities, with the City receiving $3,058,508. Operation of the hotel, at its minimum size, will yield at least $1.5 million to the City in annual TOT revenue.

ENVIRONMENTAL REVIEW

A Final Environmental Impact Report was prepared and certified for the Original DDA on July 7, 2005. Thereafter, the Council adopted Addendum No. 1 on August 17, 2005, Addendum No. 2 on February 5, 2014, Addendum No. 3 on December 10, 2014, and Addendum No. 4 on December 7, 2017. Staff recommends that the Council find that the extension for the closing date of the hotel/resort, timeshare and residential land, as provided for in the Second Amended DDA, and the amendment to the Golf Course Lease, as set forth in the amendment to the Golf Course lease, do not change the underlying Project, and are within the scope of the Final Environmental Impact Report prepared and certified for the underlying Project, including Addendum Nos. 1 through 4, and that no further review under the California Environmental Quality Act is required in connection with the Second Amended DDA or the Amended Golf Course Lease.

SUBSEQUENT ACTIONS.

Staff will present to the Oversight Board for its consideration resolutions approving the matters described above and in the December 7, 2017, staff report.

ATTACHMENTS

1) Draft Resolution

2) 5.22.19 Draft Second Amended And Restated Disposition And Development Agreement

Note the attached Disposition And Development Agreement is a draft. The draft includes redline language which Cypress Seaside LLC has represented is necessary for them to approve the document. The City Council may or may not approve the document.

Reviewed for Submission to the
City Council by:

Craig Malin, City Manager

RESOLUTION NO. 19-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEASIDE (I) AUTHORIZING THE CITY TO ENTER INTO A SECOND AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT WITH CYPRESS SEASIDE, LLC ("DEVELOPER") WITH RESPECT TO THE APPROXIMATELY 70-ACRE SITE LOCATED AT THE NORTHWEST CORNER OF GENERAL JIM MOORE BOULEVARD AND COE AVENUE IN THE CITY OF SEASIDE, AND (II) TAKING CERTAIN RELATED ACTIONS

RECITALS:

A. In 1996, the City of Seaside ("City") purchased the approximately 400-acre Black Horse and Bayonet Golf Courses ("Golf Courses") from the US Army with City funds. 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.

B. In 2005, the City Council and the Redevelopment Agency of the City of Seaside ("Former Agency") entered into a Conveyance Agreement whereby approximately 80 acres of the site located at the northwest corner of General Jim Moore Boulevard and Coe Avenue in the City ("SRD Properties") were transferred to the Former Agency. The Former Agency concurrently entered into a Disposition and Development Agreement (as subsequently amended in 2007 and 2009, "Original DDA") with Seaside Resort Development, LLC ("SRD") to develop resort and related facilities within the SRD Properties, certified the Seaside Resort Final EIR, 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.

C. 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 ("Amended and Restated 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.

D. 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, and the Successor Agency to the Former Agency ("Successor Agency") was established. Pursuant to California Health and Safety Code 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 SRD Properties.

E. 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.

F. On February 5, 2014, the Successor Agency and SRD entered into an Amended and Restated Disposition and Development Agreement ("Amended and Restated DDA") with respect to the SRD Properties that, among other things, extended certain dates for performance. In connection with approving the Amended and Restated DDA, the Department of Finance ("DOF") directed the Successor Agency to assign administration of the Project to the City. In accordance with the DOF's direction, the Successor Agency's Long Range Property Management Plan authorizes the SRD Properties to be transferred to the City, subject to the City entering into a compensation agreement with each of the Taxing Entities to compensate them for the property.

G. At their December 7, 2017, meeting, the City Council and Successor Agency authorized a series of actions intended to effect the transfer of the SRD Properties to the City and implement the Project. The City Council adopted Resolution No. 17-91 which authorized the City to (i) accept the SRD Properties from the Successor Agency, (ii) enter into a Master Taxing Entity Agreement with the Taxing Entities ("Original Master Taxing Entity Agreement"), (iii) enter into an Assignment, Assumption and Administration Agreement with the Successor Agency ("Assignment Agreement"), (iv) enter into a Second Amended and Restated Disposition and Development Agreement ("Second Amended and Restated DDA") with Monterey Bay Resort, LLC ("Monterey Bay"), which included the City's consent to an assignment by SRD of the Amended and Restated DDA to Monterey Bay conditioned upon Monterey Bay entering into the Second Amended and Restated DDA (which would supersede the Amended and Restated DDA without altering the amounts required to be paid for the SRD Properties under the Amended and Restated DDA), and (v) enter into a Second Amended and Restated Lease ("Second Amended and Restated Lease") with Monterey Bay with respect to the Golf Courses, which included the City's consent to an assignment by B&B of the Amended and Restated Lease to Monterey Bay conditioned upon Monterey Bay entering into the Second Amended and Restated Ground Lease.

H. At its meeting on February 15, 2018, the City Council adopted Resolution No. 18-08, approving a First Amendment to the Second Amended and Restated DDA ("First Amendment"). At its meeting on November 15, 2018, the City Council adopted a Resolution approving a Second Amendment to the Second Amended and Restated DDA ("Second Amendment"), to approve an extension to May 15, 2019, for the closing of the sale of the hotel/resort, timeshare, and residential land, and approving a Revised Master Taxing Entity Agreement which supersedes the Original Master Taxing Entity Agreement.

I. All of the Taxing Entities have executed the Revised Master Taxing Entity Agreement.

J. The Second Amended and Restated DDA and the Second Amended and Restated Lease with Monterey Bay never became effective. The City now desires to enter into a different Second Amended and Restated Disposition and Development Agreement ("Second Amended

DDA") with respect to the SRD Properties with Cypress Seaside, LLC, an Arizona limited liability company ("Developer"), an affiliate of SRD.

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 Second Amended and Restated DDA, as amended by the First Amendment and the Second Amendment, with Monterey Bay is hereby terminated, and the Second Amended and Restated Lease with Monterey Bay is hereby terminated.

Section 3. The City Council certified a Final Environmental Impact Report for the Project on July 7, 2005, and thereafter, on August 17, 2005, adopted Addendum No. 1, on February 5, 2014, adopted Addendum No. 2, on December 10, 2014, adopted Addendum No. 3, and on December 7, 2017, adopted Addendum No. 4. The City Council hereby finds that the extension for the closing of the sale of the hotel/resort land, timeshare land and residential land, as set forth in the Second Amended DDA, allocation of water rights to the benefit of the City, as set forth in the Second Amended DDA, are within the scope of the Final Environmental Impact Report and Addendum Nos. 1 through 4, and no further review under the California Environmental Quality Act is required in connection with the Second Amended DDA.

Section 4. The City consents to the assignment by SRD of the existing Amended and Restated DDA to the Developer. The Second Amended DDA by and between the City and the Developer in the form attached hereto as Exhibit A 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 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 Attorney (such approval to be conclusively evidenced by the execution and delivery thereof).

Section 5. 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 6. This Resolution shall take effect immediately upon adoption.

PASSED, APPROVED AND ADOPTED by the City Council at a meeting held on the ______ day of June, 2019.

____
_____________, Mayor

ATTEST:

Lesley Milton-Rerig, City Clerk

EXHIBIT "A"

SECOND AMENDED AND RESTATED
DISPOSITION AND DEVELOPMENT AGREEMENT

(Attached.)

SECOND AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT

by and between the

CITY OF SEASIDE

and

CYPRESS SEASIDE, LLC,
an Arizona limited liability company

SECOND AMENDED AND RESTATED
DISPOSITION AND DEVELOPMENT AGREEMENT

THIS SECOND AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT ("DDA", or "Agreement" or "Restated DDA") is dated this ____ day of June, 2019 and is entered into by and between CITY OF SEASIDE, a California municipal corporation ("City"), and CYPRESS SEASIDE, LLC, an Arizona 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 ("SRD") previously entered into an Amended and Restated Disposition and Development Agreement dated February 5, 2014 (the "First Restated DDA"). The City, as successor-in-interest to the Successor Agency's interest in the land affected by the First Restated DDA, desire to enter into this Restated DDA with an affiliate of SRD to supersede the First Restated DDA.

B. The City and B&B Golf Course Properties, LLC, an Arizona limited liability company ("B&B"), previously entered into an Amended and Restated Ground Lease dated December 15, 2005 (the "2005 Golf Course Lease") concerning the Bayonet and Blackhorse Golf Courses.

C. The City has obtained a Revised 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 ("Master Taxing Agreement"), and said Master Taxing Entity Agreement permits the City to, among other things, amend the First Restated DDA or enter into a new disposition and development agreement with a new developer (i.e., this Restated DDA) provided they do not reduce purchase prices or materially extend closing deadlines for sales of portions of the Property.

D. Developer desires to acquire from City the property legally described on Attachment No. 1 attached hereto (collectively, the "Property"), and City and Developer desire that Developer 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"), and (iii) a residential lot component (the "Residential Component"), all subject to the Entitlement Conditions (defined below). The City (as fee owner of the Golf Courses), with the consent of B&B (as lessee of the Golf Courses), also desires to grant to Developer easements over, under and across the Golf Courses for access and utility facilities necessary and convenient for the development of the Project.

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, as they may be amended, replaced or supplemented from time to time by the City in the exercise of its ordinary municipal authority, and the conditions and requirements of this Restated DDA.

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. This Agreement will help to expedite disposition and development of the Project.

H. This Restated DDA is being entered into in lieu of the Second Amended and Restated Disposition and Development Agreement with Monterey Bay Resort, LLC (a potential assignee of Developer), as amended, which never became effective, and which is in any event hereby terminated by 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 2005 Golf Course Lease means the 2005 Golf Course Lease described in Recital B above, as previously amended by an Amendment and Partial Termination of Amended and Restated Ground Lease and Amendment to Memorandum of Amended and Restated Lease recorded in the Official Records of Monterey County on August 21, 2007 as Instrument Number 2007065672.

1.1.2 Affiliate shall mean an entity controlled by or under common control with another entity.

1.1.3 Affordable Units is defined in Section 10.1.3.

1.1.4 B&B is shall mean B&B Golf Course Properties, LLC, an Arizona limited liability company.

1.1.5 Certificate of Completion shall mean a recordable certification executed by the City Manager confirming that the Hotel has been completed in accordance with this Restated DDA.

1.1.6 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 93955.

1.1.7 City Manager shall mean the City Manager of City, or his or her designee.

1.1.8 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.

1.1.9 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.

1.1.10 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.

1.1.11 Close of Escrow shall mean the recordation of one or more Deeds executed by City to convey the Property.

1.1.12 Closing Deadline shall mean the later of (i) May 15, 2019, or (ii) ten (10) days after: (a) the approval by the consolidated oversight board for the Successor Agency for the City of Seaside, California ("Oversight Board") of the Successor Agency's conveying the Property to the City and executing an assignment, assumption and administration agreement with the City with respect to the First Restated DDA, and (b) subsequent approval by the California Department of Finance ("DOF") of such decisions by the Oversight Board, or failure of DOF to respond within the time provided by law for the DOF to request review or thereafter respond by the DOF (such that the DOF has no further right to disapprove).

1.1.13 Component means any of the Hotel Component, Timeshare Component or Residential Component as the context may require.

1.1.14 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).

1.1.15 Credit Property is defined in Section 3.5.1.

1.1.16 Deed shall mean a grant deed conveying fee title to Developer, in the form attached hereto as Attachment No. 6 applicable to the particular portion of the Property conveyed thereby. (Because of different Deed requirements for different portions of the Property, and possibly different Developer affiliated entities taking title to different portions of the Property, there will be more than one Deed recorded at Close of Escrow.)

1.1.17 Developer is defined in Section 2.3.3.

1.1.18 Developer Title Policy is defined in Section 5.3.

1.1.19 Development Costs is defined in Section 8.1.1(a).

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, California Environmental Quality Act compliance, demolition permits, building permits, and grading permits, FORA requirements and any and all other permits, licenses and entitlements of every kind required by City ordinance to improve the Property, all as in effect and amended, replaced or supplemented from time to time, including but not limited to the Entitlement Conditions.

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, replaced or supplemented 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 <u>Environmental Liabilities and Obligations</u> 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 on or originating from the Property.

1.1.27 <u>Escrow</u> is defined in Section 5.4.

1.1.28 <u>Escrow Agent</u> 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 <u>Event of Default</u> is defined in Section 9.1.

1.1.30 <u>First Restated DDA</u> is defined in Recital A above.

1.1.31 <u>FORA</u> means the Fort Ord Reuse Authority.

1.1.32 <u>Force Majeure</u> shall mean an event creating an enforced delay which, pursuant to Section 11.3, entitles either Party to an extension of time to perform.

1.1.33 <u>Golf Course(s)</u> shall mean the Bayonet and Blackhorse golf courses in Seaside, California.

1.1.34 <u>Good Faith Deposit</u> is defined in Section 3.3.

1.1.35 <u>Gross Cash Receipts</u> is defined in Section 8.1.1(b).

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 Hotel Component is defined in Section 2.1.1.

1.1.38 Hotel Phase Land means the two parcels identified as Hotel Phase land on Attachment No. 1.

1.1.39 Indemnification Liabilities is defined in Section 6.3.

1.1.40 Indemnitees is defined in Section 6.3.

1.1.41 IRR is defined in Section 8.1.1(e).

1.1.42 Improvements shall mean and include: (i) with respect to the Hotel Component, 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 Component and Residential Component, 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.

1.1.43 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.

1.1.44 Master Resolution shall mean the FORA Resolution adopted March 14, 1997, as amended.

1.1.45 Master Taxing Entity Agreement is defined in Recital C.

1.1.46 Memorandum of Second Amended and Restated 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.

1.1.47 Official Records shall mean the official records maintained by the Monterey County Recorder.

1.1.48 Ownership Transfer shall mean and include 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 Close of Escrow; provided, however, that neither of the following shall constitute an Ownership Transfer: (i) agreement of Developer to sell Property other than Hotel Property; and (ii) agreement of the Developer to sell Hotel Property conditioned upon City approval and/or recordation of a Certificate of Completion.

1.1.49 Party, Parties shall mean one or both of City and Developer, as applicable.

1.1.50 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.

1.1.51 Phase shall mean any one of the portions of the Property identified as a separate parcel on Attachment No. 1-B.

1.1.52 Profit Participation is defined in Section 8.1.1(c).

1.1.53 Project is defined in Recital D.

1.1.54 Project Conditions is defined in the definition of Entitlement Conditions.

1.1.55 Property is defined in Recital D and is legally described in Attachment No. 1 and depicted on the Site Plan. The Property is located within the City, and consists (for identification purposes) of the Hotel Phase, the so-called Timeshare Phases (consisting of Phases A1, A2, A3, B1, B2, B3, B4, C1 and C2), and the Residential Phases (consisting of Phases I, II, III, IV, V-A, V-B and VI), all as described on Attachment 1-B hereto.

1.1.56 Purchase Price shall mean the compensation to be paid to City by Developer for the Property, 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).

1.1.57 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, that is reasonably approved in writing by the City Manager.

1.1.58 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.

1.1.59 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.

1.1.60 Residential Component is defined in Section 2.1.1.

1.1.61 Residential Phase Deed of Trust is defined in Section 8.1.3.

1.1.62 Site Plan shall mean the Site Plan attached hereto as Attachment No. 1-A.

1.1.63 Sunbay Agreement is defined in Section 10.1.1.

1.1.64 Successor Agency is defined in Recital A.

1.1.65 Takedown Credit is defined in Section 3.5.1.

1.1.66 Taxing Entities is defined in Recital C.

1.1.67 Timeshare Component is defined in Section 2.1.1.

1.1.68 Timeshare Phase Land means the parcels identified as Timeshare Phase land on Attachment No. 1.

1.1.69 Title Company shall mean Escrow Agent, or another title company agreed to by the Parties in writing.

1.1.70 Transfer is defined in Section 2.4.2.

1.1.71 Unleveraged Cash Flow is defined in Section 8.1.1(d).

1.1.72 Vesting Tentative Map means the vesting tentative map approved by the City on July 7, 2005 as TM-01-03, as amended from time to time.

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 termination of this First Restated DDA (which is evidenced by the execution hereof by Seaside Resort Development, LLC and City) and to provide for the disposition of the Property to Developer and the development thereof. The Parties contemplate the development of a "Hotel Component" consisting of at least 200 hotel rooms in one or more buildings as described in Section 6.1 and adjacent or subterranean parking on the Hotel Phase Land (some of which may be located in on or more buildings on the Timeshare Phase Land); a "Timeshare Component" consisting of one or more projects with "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 (and with the number of units permitted by) the Entitlements and Project Conditions, on the three parcels of land identified as the Timeshare Phase Land; and a "Residential Component" consisting of the development of 125 single family residential lots (30 of which residential lots have previously been acquired and developed by a Developer affiliate and so are not being acquired by Developer under this Agreement) on the parcels of land identified as the Residential Phase land on Attachment No. 1.

Without limiting the generality of the foregoing, but subject to Entitlements and applicable Law: (a) the Timeshare Component may be developed with (i) a number of buildings permitted by the Entitlements and Project Conditions 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 Component may contain more than 125 single family residential lots.

2.1.2 This Agreement is in the vital and best interests of City, and the health, safety, and welfare of its residents, and is in accord with the public purposes and provisions of applicable state and local Law.

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 has its principal office at 310 South Williams Boulevard, Suite 180, in Tucson, Arizona.

2.3.2 Southwest Holdings, Ltd., an Arizona corporation, and Cornerstone Capital Management, Ltd., an Arizona corporation, are the co-managing members of Developer.

2.3.3 The term "Developer" as used herein means Cypress Seaside, LLC, an Arizona limited liability company, and any assignee or successor thereof permitted in accordance with this Agreement. All of the terms, covenants, and conditions of this Agreement applicable to any 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 notwithstanding any other provision of this Agreement, Developer's obligations under this Agreement shall not be binding on purchasers of lots in the Residential Component or purchasers of residential units or lots in the Timeshare Component 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 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 a Transfer is specifically permitted by this Agreement, Developer shall not assign all or any part of this Agreement without the prior written approval of City.

2.4.2 Prior to Close of Escrow, Developer shall not, unless approved in advance and in writing by the City or permitted under Section 2.4.3 below: (i) effect any change in Control of Developer or any transfer of the interests in Developer; (ii) assign or attempt to assign this Agreement or any rights herein; 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.

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: (i) assignment or designation of the right to receive title to all or a portion of the Property at Close of Escrow to a Developer Affiliate that is 100% beneficially owned by the beneficial owners of Developer; or (ii) a Transfer that is not an Ownership Transfer and is to a Developer Affiliate provided that any one or more of Donald Pitt, Helaine Levy, David Beckham, David Goldstein, Neal Gumbin, Robert Fortuno and/or Brad Miller remain in control of all material day-to-day development decisions and all major decisions of Developer (and if the Transfer is related to the death or incapacity of Donald Pitt, then one or more of Helaine Levy, David Beckham, David Goldstein, Neal Gumbin, Robert Fortuno and/or Brad Miller must remain in control of all such decisions). The City Manager, with the approval of the City Attorney, shall have the authority to determine whether the applicable transferee qualifies as a Developer Affiliate.

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 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 and which shall survive the Close of Escrow 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 (including, but not limited to, the power and authority of the Mayor or City Manager, with the approval of the City Attorney, to execute, acknowledge and deliver one or more Deeds to convey all or portions of the Property).

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. 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(ii) and (iii), 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 2.5.6, 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 the Property that will survive the Close of Escrow 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 any of the Property (except for the Entitlements, the Project Conditions, the 2005 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, 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.

As used in this Section 2.5, "the actual knowledge" of City means the present actual knowledge of the current City Manager and the current City staff.

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:

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 has had the opportunity to make (and hereby covenants to have made) 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 Law (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 or the City, the 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.

The representations and warranties of Developer set forth in this Section 2.6 will survive the Close of Escrow 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: (i) approval by the Oversight Board of the Successor Agency's conveying the Property to the City and executing an assignment, assumption and administration agreement with the City with respect to the First Restated DDA; and (ii) the approval by the DOF of the Oversight Board's decisions under the preceding clause (i) or failure of the DOF to request review of the Oversight Board's decision within the time period for such request provided by law or DOF's subsequent failure to respond within the review period provided by law. Upon the satisfaction of conditions (i) and (ii), this Restated DDA shall supersede the First Restated DDA, which First Restated DDA shall thereupon terminate. For clarity, if this Restated DDA does not become effective as a result of the disapproval by the Overnight Board or DOF, then the First Restated DDA shall remain in full force and effect, subject to any rights the parties thereto may have thereunder to claim a default or defaults, as the foregoing is not intended to constitute a waiver of any such rights by the parties thereto.

ARTICLE 3. SPECIAL PROVISIONS

3.1 Parcel Maps

Promptly following the effectiveness of this Restated DDA pursuant to Section 2.7, the City shall prepare and record such parcel maps as may be required to satisfy the condition described in Section 5.2(i).

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 in accordance with, and to otherwise implement the provisions of, this Agreement.

3.2.2 Subject to Entitlements, applicable law and the provisions of any applicable bond documents, the City Manager is hereby authorized on behalf of City, but subject to the approval of the City Attorney to approve in writing: (i) with respect to any Phase in the Residential Component, permitting on behalf of the City Developer to construct up to 20% more or fewer lots than contemplated by the Vesting Tentative Map upon Developer's delivery to the City Manager of reasonable, verifiable written evidence that more or fewer lots will not reduce the City's Profit Participation under Section 8.3; (ii) 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); and (iii) execute grants of easements pursuant to Section 3.4 before or after Close of Escrow. 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 Developer may appeal any 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 Clerk 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; Additional Payments Under Revised Master Taxing Entity Agreement.

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 Prior to execution of this Agreement, Developer has delivered to the City the $104,011 described in Section 4(v) of the Revised Master Taxing Entity Agreement, and within three (3) business days following the City's execution of this Agreement, Developer shall deliver to City the conditional extension fee payment of $1,400,000. The $1,400,000 shall be applied to the Purchase Price upon the Close of Escrow, or retained by City as an extension fee (and distributed to Taxing Entities) if the Close of Escrow does not timely occur because of Developer's default under this Agreement. If (i) this Agreement does not become effective under Section 2.7, or (ii) Close of Escrow does not occur for any reason other than Developer's default under this Agreement, then the $1,400,000 shall be refunded to Developer. The $104,011 shall be distributed to Taxing Entities as consideration for the Revised Master Taxing Entity Agreement.

3.3.3 The full amount of the Good Faith Deposit shall be credited against the Purchase Price at Close of Escrow.

3.3.4 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.

3.3.5 **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 AND IN ORDER TO ACCOMPLISH CLOSE OF ESCROW AND THAT THE AMOUNT OF SUCH DAMAGES WOULD BE IMPOSSIBLE TO CALCULATE OR ASCERTAIN. IN THE EVENT THAT CITY TERMINATES THIS AGREEMENT PRIOR TO CLOSE OF ESCROW BECAUSE OF DEVELOPER'S DEFAULT UNDER THIS AGREEMENT, THE GOOD FAITH DEPOSIT SPECIFIED ABOVE AND THE $1,400,000 PAYMENT SHALL BE RETAINED 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 CLOSE OF ESCROW, (INCLUDING FAILURE TO CLOSE ESCROW IN DEFAULT OF THIS AGREEMENT) AND SUCH LIQUIDATED DAMAGES SHALL CONSTITUTE THE SOLE AND EXCLUSIVE REMEDY ON ACCOUNT OF DEVELOPER'S UNCURED DEFAULT PRIOR TO CLOSE OF ESCROW AND CITY WAIVES ANY RIGHTS TO BRING AN ACTION FOR DAMAGES OR SPECIFIC PERFORMANCE OR ANY OTHER FOR REMEDY OF ANY DEFAULT BY DEVELOPER CONSISTING OF FAILURE TO CLOSE ESCROW AND PURCHASE THE PROPERTY.**

City's Initials: ______ Developer's Initials: _____

3.4 Easements

Subject to the consent of B&B (or its successors as tenant under the 2005 Golf Course Lease), the City shall grant Developer (and its successors and assigns) such easements over, under and across the Property and/or the premises under the 2005 Golf Course Lease as Developer may reasonably request from time to time (whether before or after Close of Escrow) for utility facilities and pedestrian and vehicular access easements necessary or convenient for the development and functioning of the Project in form and location reasonably acceptable to Developer and the City Manager.

3.5 Credit Property

3.5.1 The Developer 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 the property at Close of Escrow. In addition, upon relocation of the current Golf Course maintenance yard (whether before or after Close of Escrow), Developer shall receive an additional $1,400,000 of Takedown Credit; provided, however, that if the current Golf Course maintenance yard is relocated after Close of Escrow, the additional $1,400,000 in Takedown Credit shall not be refundable to Developer but may be applied by Developer as credit against any amount otherwise payable to the City in connection with the Project or the Golf Courses by Developer or B&B or their respective successors or assigns (such as, without limitation, construction permit fees). Property acquired or to be acquired by Developer using Takedown Credit is sometimes referred to in this Agreement as "Credit Property." The maximum aggregate amount of Takedown Credit is $5,598,929.66.

3.5.2 Subject to applicable State law, the condition of Section 5.2(i) (concerning compliance with the Subdivision Map Act) may be satisfied in one of the following ways: (1) by a two-step process involving first, a recorded parcel map in which the applicable 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 Property from the City to the Developer but to ensure that no lot or parcel that is created for eventual development is developed without the subdivision improvements, subdivision improvement agreement and subdivision bonds required by applicable Law.

3.6 New or Modified Entitlements. This Agreement is not intended to and does not constitute an amendment to or modification of any existing Entitlements, and 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 Law.

3.7 Schedule of Performance. Developer shall comply with the Schedule of Performance attached hereto as Attachment 3.

ARTICLE 4. WATER ALLOCATION

Background

On July 7, 2005, the City adopted Resolution 05-44, which, at paragraph 11 thereof, provides:

"The City Council approves the dedication to the Project, from the City's Fort Ord water allocation, sufficient potable water for the Project amounting to 161.4 acre feet per year ("AFY"), 16.8 AFY of which is intended for landscaping irrigation purposes. The assumptions used to develop the above water allocation amounts are described in more detail in the DEIR and RDEIR. Further, the City council hereby authorizes the Marina Coast Water District to provide water service to the Project."

The City's dedication of 161.4 acre-feet of the City's FORA allocation to the Project comes from the water allocation established for the City by FORA for water service by Marina Coast Water District ("MCWD") to new water demands within the City's jurisdiction on the former Fort Ord. The allocations stem from limits to groundwater production agreed to by the United States Army in conjunction with annexing the area of the former Fort Ord into Zones 2 and 2A of the Monterey County Water Resources Agency, pursuant to an agreement titled "Agreement between the United States of America and the Monterey County Water Resources Agency concerning Annexation of Fort Ord into Zones 2 and 2A of the Monterey County Water Resources Agency, Agreement No. A-06404," dated September 21, 1993. Under this agreement, the MCWD, as successor to the United States, may withdraw up to 6,600 acre-feet per year of groundwater from the Salinas Valley Groundwater Basin for use in the District's Ord Community service area.

The 161.4 acre-feet were originally designated 41.3 AFY for the Residential Component, 69.3 AFY for the Hotel Component, 34 AFY for the Timeshare Component, and 16.8 AFY for landscaping (of which landscaping allocation 6.2 AFY were designated for the Hotel Component).

On December 10, 2014, the City's Planning Commission approved Resolution 14-15. Among other things, the resolution provided that "the combined development on the Hotel Parcel and Timeshare Parcels shall remain within substantial conformance of the water allocation in the certified Seaside Resort EIR. Use calculations shall be based on water consumption factors of 0.17 acre-feet per year for hotel rooms, 0.17 acre-feet per year for timeshare, fractional or interval units, and 0.25 acre-feet per year for condominiums and other like uses."

Water Re-allocation to City

If Developer fails to meet any of the hotel-related deadlines in the Schedule of Performance (Attachment No. 3; Items 4 through 10) and the City exercises its right to repurchase the Hotel Phase Land under Section 6.1.2 below, in order to provide the City adequate water for a 330 room hotel, then 60.8 AFY (being 330 hotel rooms multiplied by 0.17 AFY plus 4.7 AFY) and landscaping for the Hotel site of 6.2 AFY shall be automatically re-allocated to the City and dedicated to such uses on the Hotel Phase Land or other uses within the City as the City deems appropriate in its sole and absolute discretion.

Consistent with the DEIR, Developer shall be limited to 41.3 AFY for the Residential Component (125 units) of the Project.

ARTICLE 5. DISPOSITION OF THE PROPERTY; CONDITIONS TO CLOSE OF ESCROW

5.1 Sale of the Property by the City to the Developer; Closing Deadline. 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. Unless otherwise agreed by the Parties in their respective sole discretion, Close of Escrow shall occur on or before the Closing Deadline.

5.2 Conditions Precedent to Purchase and Sale. The following are conditions precedent to the City's sale of the Property to the Developer:

(i) the sale complies 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;

(ii) the absence of an uncured default by Developer under this Agreement for which City has sent Developer a default notice; and

(iii) the execution and delivery to the City, at or prior to Close of Escrow, of the Residential Phase Deed of Trust and an environmental indemnity agreement in the form of Attachments No. 8 and 9, and the recordation of such Deed of Trust in the Official Records at Close of Escrow.

It is a condition to the Developer's obligation to purchase the Property that there be no uncured default by City under this Agreement for which Developer has sent City a default notice.

5.3 Title. It is a condition in favor of Developer to 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 Property, showing the title to the property vested in Developer, subject to the Memorandum of DDA, the Residential Phase Deed of Trust (with respect to the Residential Component only), any applicable REA or CC&R's, and all title exceptions in the existing preliminary report issued by the Title Company under Order No. 2714-271493030A. 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 premium in excess of CLTA coverage, all endorsements, and Developer shall be responsible for the cost of any survey obtained by Developer for the issuance thereof. 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. The City and Developer will cooperate in good faith after Close of Escrow (or before Close of Escrow, but not as a condition to closing) to cause the Title Company to remove from its preliminary report such title exceptions as may no longer by required or applicable such as, for example, the Department of the Army License for ingress and egress recorded January 15, 1997 in Book/Reel 3468 at Page/Image 1508 of the Official Records.

5.4 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 promptly open an escrow ("Escrow") for the transactions described herein; escrow shall be opened no later than five (5) business days after the date of this Agreement. 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.

5.5 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 the following instruments, documents, and funds.

5.5.1 City shall deliver to Escrow Agent:

(i) A Deed in the form of Attachment No. 6A (for the Hotel Phases) and a Deed in the form of Attachment 6B (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) A FIRPTA affidavit and a California form 593, if applicable and required by Title Company;

(iv) An executed and acknowledged Memorandum of DDA in substantially the form of Attachment 10; and

(v) Such proof of City's authority and authorization to enter into this transaction as the Title Company may reasonably require to issue the Title Policy.

5.5.2 Developer shall deliver to Escrow Agent:

(i) The Residential Phase Deed of Trust and environmental indemnity agreement (described in Section 5.2(iii) above), duly executed and (with respect to the deed of trust) acknowledged and in recordable form;

(ii) Such funds as are required to pay the Purchase Price (less the Deposit, the $1,400,000 thereafter paid and the credits for Credit Property) and costs and expenses payable by Developer hereunder;

(iii) An executed and acknowledged Memorandum of DDA in substantially the form of Attachment 10;

(iv) The recordable documents for the Developer's acquisition loan, which shall include a deed of trust that the City Attorney has confirmed to Escrow Agent is in acceptable form; and

(v) Such proof of Developer's authority and authorization to enter into this transaction as the Title Company may reasonably require to issue the Residential Phase Deed of Trust.

5.6 Authorization To Record Documents And Disburse Funds. Escrow Agent is authorized to record the Deeds, and then the other recordable documents, disburse the funds and distribute the documents upon Close of Escrow, provided each of the following conditions has then been fulfilled (or waived in writing by the party benefited thereby):

5.6.1 The Title Company is irrevocably committed to issue in favor of Developer the Developer Title Policy, with a liability amount equal to the purchase price for the Property (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 5.3;

5.6.2 The Title Company is irrevocably committed to issue the City an ALTA lender's title policy (Form B - 1970) to City securing the Residential Phase Deed of Trust in such amount as may be reasonably approved by City, subject only to the title exceptions in the Developer's title policy for the Residential Phases, with the same endorsements as the Developer's Title Policy with respect to the Residential Phases;

5.6.3 Escrow Agent shall have received City's and Developer's authorizations to close (which may not be unreasonably withheld, conditioned or delayed); and

5.6.4 City and Developer shall have deposited in Escrow the documents and funds required to be deposited in Escrow pursuant to Section 5.5.

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.

5.7 Escrow Charges And Prorations

5.7.1 City shall pay: (i) all documentary transfer taxes; and (ii) the cost of the premium for the CLTA Standard Coverage portion of the Developer Title Policy. Such costs shall be paid with proceeds of the Purchase Price. If the 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.

5.7.2 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; and (iv) the cost of the premiums for the City's lender's title insurance described in Section 5.6.2. 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. In addition, Developer shall pay the City an additional $100,000 in satisfaction of its reimbursement obligation under that certain letter agreement dated April 15, 2009. (Clauses (ii) through (v) of the April 15, 2009 letter have been waived or superseded and no longer have any force or effect.)

5.7.3 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 5.7.3 shall survive the Close of Escrow.

5.8 Physical Condition and Document Inspections. Developer hereby acknowledges that it has received and reviewed all of the documents listed on Attachment 5 and has inspected the Property and has no objections to the condition of the Property disclosed by such documents or inspections.

5.9 "AS-IS" Condition of the Property

5.9.1 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.

5.9.2 DEVELOPER ACKNOWLEDGES AND AGREES THAT IT HAS BEEN 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 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.

5.9.3 Developer's acquisition of the Property 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.

5.9.4 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, warranties or covenants in this Agreement.

5.11 General's House Parcel. The parcel commonly known as "General's House Parcel" between "B" Street and Bayonet Drive is currently owned by the United States, but if the City acquires it in the future, Developer shall have a right of first refusal to acquire this property from the City but such right must be exercised within thirty (30) days after the City's delivery to Developer of the proposed terms of sale.

ARTICLE 6. DEVELOPMENT OF THE PROPERTY; RIGHT OF REVERSION FOR HOTEL PROPERTY

6.1 Hotel

6.1.1 Hotel Development. Developer shall cause to be constructed one or more hotels which, in the aggregate, contain not less than 200 nor (unless a greater number is permitted by the Entitlements) more than 330 separately rentable rooms. Each hotel shall be constructed on the Hotel Phase Land, except that the portion of the Timeshare Phase Land described as "Timeshare Parcel 3" on Attachment 1 may be used for associated or ancillary improvements consistent with the Entitlements for Timeshare Parcel 3.

6.1.2 Timeline; Repurchase Option. If Developer fails to comply after Close of Escrow with any of the deadlines in the Schedule of Performance pertaining to the development and completion of the Hotel (i.e., any of Schedule of Performance items 4 through 10), then the City shall have the right to repurchase the Hotel Phase Land and all improvements thereon on the terms and conditions contained in this Section 6.1 free and clear of all deeds of trust and other liens recorded or arising after the deed from the City to Developer (except for liens for assessments not yet due or payable). If required by the secured lender making the Hotel construction loan as a condition to making such loan, the City shall execute and deliver a reasonable recordable subordination agreement approved in good faith by the City Attorney subordinating its repurchase option below to the lender's deed of trust provided such subordination agreement provides for City's payment of the repurchase price to the lender in exchange for reconveyance of the lender's deed of trust.

6.1.2.1 The City's repurchase price for the Hotel Phase Land shall be Eight Hundred Thousand and No/100 Dollars ($800,000.00).

6.1.2.2 The repurchase option shall be exercised, if at all, by the City's delivery of written notice of its election to exercise the option to Developer within eight (8) calendar months after the repurchase option arises under Section 6.1.2. If the option is exercised, the purchase and sale shall occur (and possession of the Hotel Property shall be delivered) within fifteen (15) business days after the City's exercise of its option through an escrow company selected by the City. The City and Developer shall promptly execute, acknowledge and deliver to escrow at least one (1) business day prior to closing any and all documents necessary or appropriate to conduct the purchase and sale transaction (including, without limitation, a grant deed from Developer, Certificate of Acceptance from the City, escrow instructions, preliminary settlement statements, a FIRPTA affidavit and a California Form 593 from Developer) and the Developer (i.e., seller) shall pay all escrow costs and the cost of an ALTA title policy in favor of the City (and such costs may be paid by escrow with proceeds of the repurchase price) subject only to title exceptions that (i) existed at the time of Developer's acquisition of the property, or (ii) were created with the written consent of the City or approved in writing by the City. The City shall deliver the option purchase price to Developer through escrow concurrently with issuance (or commitment to issue) of the title insurance to the City. Developer shall cause all holders of deeds of trust and other liens to reconvey their deeds of trust and liens through the escrow as part of the closing.

6.1.2.3 Developer shall cooperate with the City in assigning to the City or its designee at the closing, through escrow, all rights and future obligations it may have under designated construction contract, Entitlement documents and the like, and Developer shall include in such contracts reasonable right to assign in order to effectuate the foregoing.

6.1.2.4 Developer hereby irrevocably stipulates and agrees that if Developer fails to comply with Section 6.1.2.2 or 6.1.2.3, City then shall have the absolute right to obtain a receiver upon ex-parte motion to the Superior Court in the County of Monterey to take exclusive possession of the Hotel Phase Land.

6.2 Other Hotel Terms

6.2.1 Hotel Flag Approval; Name. The City shall have the right to approve the initial manager of any hotel unless the manager is listed on Attachment No. 4. Unless otherwise approved by the City, any hotel name must (i) include the word "Seaside"; (ii) use the word "Seaside" before or after any reference to any other name; and (iii) must not use the word "Monterey" except as part of "Monterey Bay" but not before the word "Seaside."

6.2.2 Labor Peace. 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.

6.2.3 Subdivision Improvement Agreement. The "Subdivision Improvement Agreement" referred to in Project Condition 92(b) for the Hotel Component shall not require security for the performance of the agreement or guarantee and warranty of the work.

6.3 Prevailing Wages

6.3.1 Developer shall cause the contractor and subcontractors to pay prevailing wages in the construction of Improvements on the Property, as a work of public improvement, 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 and to the extent required by such Laws. 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 claims, liabilities, damages, losses, compensation, fines, penalties, costs and expenses 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.

6.3.2 To the extent required by Section 3.03.090 of the Fort Ord Reuse Authority 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.

6.4 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 claims, liabilities (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), losses, damages, costs and expenses, including attorneys' fees and costs, court costs, interest or defense costs, including expert witness fees), all of which enumerations previously set forth in this first paragraph of Section 6.3 are referenced as "Indemnification Liabilities", 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; (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.

However, Developer shall not be required to indemnify and hold harmless Indemnitees for (i) liability attributable to the active negligence or willful misconduct of Indemnitees, provided such active 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 actively negligent and where Indemnitees' active 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 active 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. 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 clause (a) 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.

6.5 Non-Discrimination

Developer for itself and its successors and assigns agrees that in the construction of Improvements:

(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.

6.6 Certificate of Completion

The City Manager shall, upon completion of any Phase and written request by Developer execute and deliver a Certificate of Completion for that Phase (in recordable form).

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 in a manner consistent with 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 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. CITY 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 or a Developer Affiliate 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 Component or Timeshare Component) shall be allocated 100% to the Residential Component; (ii) costs reasonably allocable only to the Hotel Component 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 or the proceeds of any loan made to the Developer and brokerage commissions and direct marketing expenditures or if a Residential Component or Phase or lot thereof is sold to a Developer Affiliate, then proceeds of any resale of such property by the Developer Affiliate net of reasonable documented direct development costs. 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.

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 an MAI appraiser 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, the appraiser shall be selected by Chris Kraus of CBRE, and if he is unable, unwilling or unavailable to select the appraiser, then either party may submit the selection of the appraiser to the Presiding Civil Judge of the Monterey County Superior Court 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 appeal to the Monterey County Superior Court.

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, an unresolved dispute 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 previously completed appraisal or judicial 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 applicable proceeding.

(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 provided Developer is not then in default under this Agreement, 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 shall make them available to City for the audit purposes below at a location within the City of Seaside upon two (2) business days' prior written notice.

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.

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.

9.2 Remedies Generally

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, and shall have the right to terminate this Agreement.

9.3 Applicable Law

The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

9.4 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.

9.5 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.

9.6 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 and to the extent required by any applicable Law, the Redevelopment Plan or the Base Reuse Plan adopted by FORA, as a consequence of constructing and operating the Project, Developer is required to provide Affordable Units in conjunction with residential units developed in any Component 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 Component and Workforce Units associated with the Hotel Component (irrespective of the number of Hotel rooms), the Redevelopment Agency of the City of Seaside 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 Component.

10.1.2 Additional residential units (i.e., in excess of 125) that may be authorized by the Entitlements and developed in any Component of the Project shall remain subject to the City Affordable Housing Program and other applicable Law. The Parties acknowledge that timeshare, interval or fractional units do not constitute residential units for this purpose.

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 applicable 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 Improvements on the Property, and shall use reasonable efforts to cause all tenants and operators of such 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 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 previously satisfied the training funds requirements of Section III. F, Training Fund, of the City's First Source Recruitment Policy.

10.3 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 Component operator and the hotel operator are the same or are affiliated) or in its contract with the Timeshare Component operator (if the hotel operator and the Timeshare Component 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 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 Component 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 Component 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 10.3. 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 Component 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 10.3.

10.4 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, then subject to the terms and conditions of this Section 10.4 Developer shall support and cooperate with the creation of, and pay, all charges, assessments, taxes, fees and impositions in lieu thereof. Without limiting the foregoing, 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 (at no cost to Developer) 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. City shall not treat Developer differently than any other property owner in the CFD or similar entity or program, and in no event shall Developer's obligations (whether imposed by the City, a CFD, or any other governmental or quasi-governmental entity or regulated utility adopted for the purpose of replacing all or a portion of the FORA fee exceed in the aggregate what Developer's obligations would have been under the FORA fee schedule in effect on July 1, 2018 (subject to adjustments contemplated by such schedule), and Developer shall have no obligation to support the formation of a new CFD or other funding/financing entity or program or bond issuance that replaces the FORA fee that does not meet the requirements of this sentence.

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. A copy of notices to City shall also be emailed to SDamon@ci.seaside.ca.us. 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:	City of Seaside 440 Harcourt Avenue Seaside, California 93955 Attention: City Attorney
For Developer:	Cypress Seaside, LLC c/o Cornerstone Capital Management 310 South Williams Road, Suite 180 Tucson, Arizona 85711 Attention: Donald Pitt Tel: (510) 790 9900 Fax: (510) 790 9585

and

Cypress Seaside, LLC
c/o Southwest Holdings, Ltd.
2200 East River Road, Suite 115

Tucson, Arizona 85718
Attention: David Goldstein
Tel: (520) 577-0200
Fax: (520) 299-5602

with a copy to :

Brad Miller, P.C.
70 West Cushing Street
Tucson, AZ 85701
Tel: (520) 547-2447
Fax: (520) 882-2640

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), 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. 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.

11.4 No Real Estate Commissions

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. 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 litigation expenses, 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.

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 reasonable 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, and a response shall be given within the time expressly set forth in 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 Plan
No. 1-B	Phases
No. 1-C	Purchase Prices
No. 1-D	Entitlement Conditions
No. 2	Reserved
No. 3	Schedule of Performance
No. 4	Approved Hotel Managers/Concepts
No. 5	List of Environmental Reports
No. 6-A	Form of Hotel Deed
No. 6-B	Form of Residential/Timeshare Deed
No. 7	Reserved
No. 8	Form of Residential Phase Deed of Trust
No. 9	Form of Environmental Indemnity
No. 10	Memorandum of DDA
No. 11	First Source Hiring Policy
No. 12	Reserved
No. 13	Reserved
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 [INTENTIONALLY DELETED]

11.20 Execution in Counterparts. 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.

CITY:

CITY OF SEASIDE

By: ______________________________
Print Name: ________________________
Title: _____________________________

ATTEST:

____
Leslie Milton, City Clerk
APPROVED AS TO FORM:

RICHARDS, WATSON & GERSHON
Special Counsel to City

____
Bruce Galloway, Esq.

DEVELOPER:

CYPRESS SEASIDE, LLC,
an Arizona limited liability company

By: Southwest Holdings Ltd., an Arizona corporation, its co-managing member

By: __________________________
Print Name: ____________________
Title: _________________________

By: Cornerstone Capital Management Ltd., an Arizona corporation, its co-managing member

By: ___________________________
Print Name: ____________________
Title: __________________________

FIRST RESTATED DDA IS TERMINATED UPON SATISFACTION OF CONDITIONS 2.7(i) AND (ii):

SEASIDE RESORT DEVELOPMENT, LLC,
an Arizona limited liability company

By: Southwest Holdings Ltd., an Arizona corporation, its co-managing member

By: ___________________________
Print Name: ____________________
Title: __________________________

By: Cornerstone Capital Management Ltd., an Arizona corporation, its co-managing member

By: ___________________________
Print Name: ____________________
Title: __________________________

ATTACHMENT NO. 1

DESCRIPTIONS OF THE LAND

I. HOTEL COMPONENT LAND (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 COMPONENT 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.

* 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 South 03°25'35" East, 3,011.23 feet from the most northerly corner of said Parcel 1; thence

1. South 65°50'00" East, 140.11 feet; thence
2. South 09°20'00" West, 637.50 feet; thence
3. South 78°45'00" West, 122.50 feet; thence
4. North 66°40'00" West, 203.50 feet; thence
5. 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.

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

6. South 23°23'00" West, 42.93 feet; thence
7. North 86°20'00" West, 984.60 feet; thence
8. South 57°55'00" West, 111.11 feet; thence
9. 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
10. 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
11. Northeasterly 188.57 feet along said curve through a central angle of 43°12'59"; thence

12. 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
13. 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
14. 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
15. Southeasterly 175.14 feet along said curve through a central angle of 69°12'16"; thence
16. 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
17. Southeasterly 153.24 feet along said curve through a central angle of 73°10'00"; thence
18. South 86°20'00" East, 69.59 feet; thence
19. 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
20. 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
21. 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
22. Southeasterly 45.89 feet along said curve through a central angle of 15°01'29"; thence
23. 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

24. South 66°37'00" East, 180.01 feet; thence
25. South 23°23'00" West, 229.06 feet; thence
26. South 23°22'38" West, 215.94 feet; thence
27. South 66°37'16" East, 10.00 feet; thence

28. South 23°22'44" West, 145.00 feet; thence
29. 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
30. Northwesterly 77.92 feet along said curve through a central angle of 30°47'16"; thence
31. 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
32. Northerly 61.59 feet along said curve through a central angle of 78°25'00"; thence
33. 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
34. Easterly 174.16 feet along said curve through a central angle of 68°49'10"; thence
35. 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
36. Northerly 39.27 feet along said curve through a central angle of 89°59'44"; thence
37. North 66°37'00" West, 105.01 feet; thence
38. 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

39. South 84°51'47" East, 155.00 feet; thence
40. 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
41. Southerly 78.18 feet along said curve through a central angle of 29°51'47"; thence
42. South 35°00'00" West, 110.31 feet; thence
43. North 55°00'00" West, 100.00 feet; thence
44. 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
45. Southwesterly 49.96 feet along said curve through a central angle of 63°36'44"; thence

46. South 35°00'00" West, 149.69 feet; thence

47. North 55°00'00" West, 125.00 feet; thence

48. 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

49. Northerly 65.15 feet along said curve through a central angle of 29°51'47"; thence

50. North 05°08'13" East, 70.00 feet; thence

51. 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

52. 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

53. Southwesterly 23.97 feet along said curve through a central angle of 04°13'33"; thence

54. South 60°00'00" East, 151.29 feet; thence

55. 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

56. Northeasterly 63.33 feet along said curve through a central angle of 29°01'48"; thence

57. 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

58. 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

59. 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

60. 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

61. Northeasterly 62.82 feet along said curve through a central angle of 20°34'04"; thence

62. 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

63. Northeasterly 137.30 feet along said curve through a central angle of 05°20'00"; thence

64. North 34°20'00" East, 279.26 feet; thence

65. 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

66. Southwesterly 179.19 feet along said curve through a central angle of 37°20'00"; thence

67. 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

68. Southwesterly 123.34 feet along said curve through a central angle of 05°20'00"; thence

69. 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

70. 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

71. 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

72. 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

73. Southwesterly 95.79 feet along said curve through a central angle of 39°12'03"; thence

74. 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)

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

1. Southerly 355.60 feet along said curve through a central angle of 15°27'22"; thence
2. South 66°40'00" West, 81.20 feet; thence
3. South 84°39'43" West, 51.98 feet; thence
4. 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
5. 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
6. 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
7. Northerly 104.61 feet along said curve through a central angle of 11°25'00"; thence
8. 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
9. 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
10. 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
11. Northeasterly 83.51 feet along said curve through a central angle of 33°00'00"; thence

12. 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

13. Easterly 78.54 feet along said curve through a central angle of 90°00'00"; thence

14. South 43°15'00" East, 215.02 feet; thence

15. South 12°25'00" East, 105.70 feet; thence

16. 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

17. Southerly 61.23 feet along said curve through a central angle of 70°10'00"; thence

18. South 18°35'00" West, 270.24 feet to the Point of Beginning.

Containing 8.66 acres, more or less, and

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

19. 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

20. 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

21. Southeasterly 133.46 feet along said curve through a central angle of 169°55'38"; thence

22. South 72°20'00" East, 126.00 feet; thence

23. South 23°21'02" West, 106.96 feet; thence

24. 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

25. Northerly 16.09 feet along said curve through a central angle of 36°52'12"; thence

26. 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

27. 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.

ATTACHMENT NO. 1-A

SITE PLAN

(To be attached.)

ATTACHMENT NO. 1-B

VESTING TENTATIVE MAP PHASES

The Property shall be conveyed to Developer in the Phases identified on that certain Vesting Tentative Map prepared by Bestor Engineers, Inc. and approved by the City (as modified in connection with the development of Residential Phases IV and V, and further modified with respect to Residential Phase VI by letter dated July 17, 2007 and with respect to Timeshare Phases VIII & IX [Lots C1 & C2] by letter dated April 21, 2008). If such Vesting 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, VI

ATTACHMENT NO. 1-C

PURCHASE PRICES

Hotel Component: $5,500,000.00

Timeshare Component: $6,150,000 in the aggregate.

Phase	Acreage	Price
I (A1)	2.99	$951,292
II (A2)	1.72	$547,232
III (A3)	1.80	$572,684
IV (B1)	3.38	$1,075,374
V (B2)	2.34	$744,490
VI (B3)	2.31	$734,945
VII (B4)	1.23	$391,334
VIII (C1)	1.92	$610,864
IX (C2)	1.64	$521,785

Residential Component Base Purchase Price*: $75,000.00 per Residential lot, and $7,125,000 in the aggregate (irrespective of whether the total number of Lots increases or decreases). If all of the Lots are acquired in a single closing, the purchase price will be $7,125,000.

Phase I	29 Lots	
Phase II	12 Lots	
Phase III	15 Lots	
Phase IV*	22 Lots	Already acquired.*
Phase V-A*	8 Lots	Already acquired.*
Phase V-B*	8 Lots	
Phase VI	29 Lots	
Total	123 Lots*	(93 yet to be acquired)

*Note: In connection with the acquisition and development of Residential Phases IV [VTM Lots 57-78] and V [VTM Lots 79-94], the number of Lots was reduced by two from the number of Lots contemplated by the Vesting Tentative Map, and the Lots in Phase IV and V-A were acquired by an Affiliate of the Developer. Accordingly, an additional two Lots may be included in connection with the recording of the Final Map(s) for subsequent Phases in order to total 125 Lots.

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 Component as provided in Section 8.3.3.

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 <u>Exotic Pest Plants of Greatest Ecological Concern</u>, 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 eight (8) 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

RESERVED

ATTACHMENT NO. 3

SCHEDULE OF PERFORMANCE

Item Number	Item	Deadline
1.	Payment to City of $1,400,000	Within three business days following the City's execution of this Restated DDA
2.	Close of Escrow	Later of May 15, 2019 or ten (10) days after OB/DOF approvals (or DOF failure to timely respond)
3.	Payment of $110,000 (partial reimbursement of City costs)	Close of Escrow
4.	Execution of Hotel Management Agreement with a management company listed on Attachment No. 4 and consistent with this Restated DDA and delivery of copy to City (fees and other proprietary provisions may be redacted)	April 30, 2020*
5.	Schematic Design Drawings for the Hotel, containing the elements described below, delivered to the City	October 31, 2020
6.	Delivery of final plans and specifications for the Hotel that are reasonably acceptable to City	February 28, 2021*
7.	Closing of Hotel construction loan in amount sufficient to pay all costs not paid with committed equity funds, and consistent with the Budget (City not being obligated to subordinate its right of reversion unless it provides for City's repurchase price of $800,000 to be paid to lender in exchange for reconveyance of lender's deed of trust and other documents/interests)	March 31, 2021*
8.	Developer obtains all permits required for Hotel development/construction (and pays all fees)	May 30, 2021*
9.	Material commencement of Hotel improvements	May 31, 2021*

10.	Completion of Hotel	March 31, 2023*
11.	Issuance of grading or building permits and commencement of construction of the permitted improvement on a Residential Parcel. [PC 9(b)]	December 31, 2028
12.	Issuance of grading or building permits and commencement of construction of the permitted improvement on a Timeshare Parcel. [PC 9(b)]	December 31, 2028

The dates for items 4, 6, 7, 8, 9 and 10 shall be extended by the period of time from May 15, 2019 through approval of this Restated DDA by the Department of Finance (or failure of DOF to respond within the time provided by law for the DOF to request review or thereafter respond by the DOF (such that the DOF has no further right to disapprove)) but in no event shall item 4 be extended beyond July 31, 2020.

*These dates (excluding, for clarity, items 1 through 3, 5, 11 and 12) are subject to extension provided (and so long as) Developer pays City an extension fee of $45,360 per month on or before the first business day of each month until completion of the pertinent item; provided that the extension for item 4 may not extend beyond July 31, 2020 and the extensions for items 6, 7, 8 and 9 are limited to six months); for clarity, if multiple dates are being extended simultaneously, the same $45,630 extension payment would apply (i.e., only a single payment per month is required).

Items 9 and 10 (being construction deadlines) are subject to Force Majeure.

For the purpose of item 5, Schematic Design Drawings consistent with the DDA and Entitlements shall include schematic: (i) number of rooms; (ii) exterior elevations; (iii) building sections and floor plans; and (iv) and site plan showing building placement, parking lot layout, and right-of-way improvements, including street trees, sidewalks, streetlights, street furniture and street lighting.

ATTACHMENT NO. 4

APPROVED HOTEL MANAGERS/CONCEPTS

The following are approved for the Hotel Phase:

A. Any hotel/resort of at least 200 guestrooms and suites (in any combination) affiliated with and managed by any of the hotel brands listed below. All of these hotel brands are in the Smith Travel Research chain scales of luxury and upper upscale, plus three brands from the upscale chain scale that are appropriate.

1. Marriott brands
   - AC by Marriott
   - Autograph Collection
   - Delta
   - Edition
   - JW Marriott
   - Le Meridien
   - Luxury Collection
   - Marriott
   - Marriott Vacation Club
   - Renaissance
   - Ritz-Carlton
   - Sheraton
   - St. Regis
   - Tribute
   - W Hotels
   - Westin

2. Hyatt brands
   - Destination Hotels & Resorts
   - Grand Hyatt
   - Hyatt
   - Hyatt Regency
   - Hyatt Zilara
   - Hyatt Ziva
   - Miraval
   - Park Hyatt
   - The Unbound Collection
   - Thompson

3. Hilton brands
   - Conrad
   - Curio Collection

- Doubletree
- Hilton
- Hilton Grand Vacations
- LXR
- Waldorf

4. Intercontinental brands
   - Hotel Indigo
   - Intercontinental
   - Kimpton
   - Regent

5. Wyndham brands
   - Dolce
   - Wyndham Grand
   - Wyndham Vacation Resort

6. Sunscape brands
   - Palace
   - Paradisus

7. Valencia brands
   - Alessandra
   - Sorella
   - Valencia

8. Accor brands
   - Banyan Tree
   - Fairmont
   - Pullman
   - Raffles
   - So
   - Sofitel
   - Sofitel Legend
   - Swissotel

9. Acqua-Aston

10. Belmond

11. Canyon Ranch

12. Capella

13. Disney

14. Dorchester Collection
15. Dream
16. Four Seasons
17. Hard Rock
18. Langham
19. Live Aqua
20. Loews
21. Mandarin Oriental
22. ME
23. Millenium
24. Montage
25. Nobu
26. NOW
27. Omni (including Mokara)
28. One & Only
29. Outrigger
30. Pan Pacific
31. Pendry
32. Peninsula
33. Prestige
34. Rock Resorts
35. Rosewood
36. Shangri-La

37. Viceroy

B. Any so-called “independent” or non-branded hotel/resort of at least 200 guestrooms and suites (in any combination) that is reasonably comparable in quality to hotels that would be part of a brand described in (A) above.

C. Any hotel/resort of at least 200 guestrooms and suites (in any combination) that affiliates with Preferred Hotel Group, Leading Hotels of the World, Small Luxury Hotels or any other so-called “soft brand” representing hotels of similar quality to hotels that would be part of a brand described in (A) above.

Subject to the list in (A) above, no hotel brand shall be acceptable if it is designated by Smith Travel Research Chain Scale listing as Upscale, Upper Midscale, Midscale, or Economy.

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.

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[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

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: _____________

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 ("DEED")

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 ________, 2019 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 development of one or more hotels and hotel-related uses (which may include a golf course clubhouse).

   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 first issues Certificate of Occupancy, 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.

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. Subject to Section 10 below, 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.

9. 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 and the City.

10. Notwithstanding anything to the contrary in this Deed, in addition to its other rights and remedies under this Deed, Grantor shall have the option to repurchase the Property free of all deeds of trust and other liens recorded after this Deed (except for assessments not yet payable) as provided in Section 6.1.2 of the DDA, and Grantor shall be entitled to specific enforcement of such terms. Upon the issuance of the first Certificate of Occupancy for the hotel satisfying the requirements of Section 6.1 of the DDA, Grantor shall execute a memorandum terminating this option to purchase. Any such memorandum shall be prepared

and recorded at Grantee's sole expense. All deeds of trust and any other liens recorded after this Deed shall be subject and subordinate to the City's repurchase rights and such deeds of trust and other liens (excluding liens for assessments not yet then due or payable) shall be extinguished as to the Property upon the recordation of the deed to Grantor pursuant to the exercise of its right to repurchase, and all such deeds of trust and other liens shall so provide.

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: _____________

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 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.

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. 7

RESERVED

ATTACHMENT NO. 8

FORM OF RESIDENTIAL PHASE 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 June ___, 2019 (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 Representations and Warranties. 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)

CERTIFICATE OF ACCEPTANCE
(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 _________, 2019 and the City of Seaside hereby consents to the recordation thereof by its duly authorized officer.

Dated: _____________, 2019

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 ______ ___, 2019 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 ____ __, 2019, 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 2.6 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

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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: ________________

FREE RECORDING REQUESTED
(Govt. Code Section 6103)

(Space Above For Recorder's Use)

SECOND 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 ____________, 2019, by and between the CITY OF SEASIDE ("City") and __________ (hereinafter referred to as "Grantee" or "Developer"), to amend and restate that certain Memorandum of Amended 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 _________, 2019 (the "DDA"), which is incorporated herein by reference. 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. 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.

4. 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 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

"DEVELOPER":

____

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)

12425-0003\2304122v2.doc

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

[To be attached.]

ATTACHMENT NO. 12

RESERVED

ATTACHMENT NO. 13

RESERVED

ATTACHMENT NO. 14

EXAMPLE OF CALCULATION OF AGENCY PROFIT PARTICIPATION UNDER ARTICLE 8

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
	-------------------	-------------------	-------------------	-------------------	-------------------	-------------------	-------------------	------------------
		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.

CITY OF SEASIDE
STAFF REPORT

Item No.: 5.B.

TO: City Council

FROM: Craig Malin, City Manager

DATE: June 11, 2019

SUBJECT: **CONSIDER AND APPROVE 1) BAYONET AND BLACKHORSE GOLF COURSES SECOND LEASE AMENDMENT; AND 2) PROPERTY EXCHANGE AGREEMENT TO IMPROVE OPERATION OF PUBLIC GOLF COURSE AND FURTHER IMPLEMENT THE SEASIDE RESORT PROJECT**

PURPOSE

The purpose of this item is to consider (I) authorizing the City to enter into an Exchange Agreement to acquire a portion of the land to be sold to the Cypress Seaside, LLC ("Developer") under the Second Amended and Restated Disposition and Development Agreement between City and Developer ("Second Restated DDA") for public golf course purposes in exchange for property in the golf course not necessary for the golf courses; (II) authorizing the City to enter into a Second Amendment to Ground Lease and Second Amendment to Memorandum of Amended and Restated Lease with B&B Golf Course Properties, LLC ("B&B"; which is an affiliate of Developer) with respect to the Black Horse and Bayonet Golf Courses ("Second Lease Amendment") to add the land acquired by the City under the Exchange Agreement to the existing golf course lease between the City and B&B, and (III) taking certain related actions. These actions are intended to further implement the Seaside Resort Project ("Project") and transfer some property that will be acquired by Developer that is improved with a golf course hole to the City for addition to the existing golf course lease between the City and an affiliate of Developer in order to enhance/facilitate proper operation of the public golf courses.

RECOMMENDATION

1. Adopt a Resolution (I) authorizing the City to enter into an Exchange Agreement with the Developer to acquire a portion of the land sold to the Developer under the DDA for public golf course purposes in exchange for property within the golf courses that is not necessary for the golf courses; (II) authorizing the City to enter into a Second Amendment to Ground Lease and Second Amendment to Memorandum of Amended and Restated Lease with B&B with respect to the Bayonet and Black Horse Golf Courses

("Second Lease Amendment") to add the land acquired by the City under the Exchange Agreement to the existing golf course lease between the City and B&B, and (III) taking certain related actions. These actions are intended to enhance/facilitate the operation of the public golf courses and further implement the Seaside Resort Project ("Project").

2. Find that the exchange of land under the Exchange Agreement and addition of land to the golf course lease in the Second Lease Amendment, do not change the underlying Project, and are within the scope of the Final Environmental Impact Report prepared and certified for the underlying Project, including Addendum Nos. 1 through 4, and that no further review under the California Environmental Quality Act is required in connection with the Exchange Agreement or Second Lease Amendment.

BACKGROUND

In 1996, the City of Seaside ("City") purchased the approximately 400-acre Bayonet and Black Horse Golf Courses ("Golf Courses") from the US Army with City funds. 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 whereby approximately 80 acres of the site located at the northwest corner of General Jim Moore Boulevard and Coe Avenue in the City ("SRD Properties") were transferred to the Former Agency. The Former Agency concurrently entered into a Disposition and Development Agreement (as subsequently amended in 2007 and 2009, "Original DDA") with Seaside Resort Development, LLC ("SRD") to develop resort and related facilities within the SRD Properties, certified the Seaside Resort Final EIR, 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.

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 ("Amended and Restated 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.

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, and the Successor Agency to the Former Agency ("Successor Agency") was established. Pursuant to California Health and Safety Code 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 SRD Properties.

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.

On February 5, 2014, the Successor Agency and SRD entered into an Amended and Restated Disposition and Development Agreement ("Amended and Restated DDA") with respect to the SRD Properties that, among other things, extended certain dates for performance. In connection with approving the Amended and Restated DDA, the Department of Finance ("DOF") directed the Successor Agency to assign administration of the Project to the City. In accordance with the DOF's direction, the Successor Agency's Long Range Property Management Plan authorizes the SRD Properties to be transferred to the City, subject to the City entering into a compensation agreement with each of the Taxing Entities to compensate them for the property.

At their December 7, 2017, meeting, the City Council and Successor Agency authorized a series of actions intended to effect the transfer of the SRD Properties to the City and implement the Project. The City Council adopted Resolution No. 17-91 which authorized the City to (i) accept the SRD Properties from the Successor Agency, (ii) enter into a Master Taxing Entity Agreement with the Taxing Entities ("Original Master Taxing Entity Agreement"), (iii) enter into an Assignment, Assumption and Administration Agreement with the Successor Agency ("Assignment Agreement"), (iv) enter into a Second Amended and Restated Disposition and Development Agreement ("Second Amended and Restated DDA") with Monterey Bay Resort, LLC ("Monterey Bay"), which included the City's consent to an assignment by SRD of the Amended and Restated DDA to Monterey Bay conditioned upon Monterey Bay entering into the Second Amended and Restated DDA (which would supersede the Amended and Restated DDA without altering the amounts required to be paid for the SRD Properties under the Amended and Restated DDA), and (v) enter into a Second Amended and Restated Lease ("Second Amended and Restated Lease") with Monterey Bay with respect to the Golf Courses, which included the City's consent to an assignment by B&B of the Amended and Restated Lease to Monterey Bay conditioned upon Monterey Bay entering into the Second Amended and Restated Lease.

At its meeting on February 15, 2018, the City Council adopted Resolution No. 18-08, approving a First Amendment to the Second Amended and Restated DDA ("First Amendment"). At its meeting on November 15, 2018, the City Council adopted Resolution approving a Second Amendment to the Second Amended and Restated DDA ("Second Amendment"), to approve an extension to May 15, 2019, for the closing of the sale of the hotel/resort, timeshare, and residential land, and approving a Revised Master Taxing Entity Agreement which supersedes the Original Master Taxing Entity Agreement.

All of the Taxing Entities have executed the Revised Master Taxing Entity Agreement.

The Second Amended and Restated DDA, as amended by the First Amendment and the Second Amendment, with Monterey Bay, and the Second Amended and Restated Lease with Monterey Bay, never became effective. The City is considering, as a separate item at this meeting, entering into a new Second Amended and Restated Disposition and Development Agreement ("Second Amended DDA") with respect to SRD Properties with Cypress Seaside, LLC ("Developer"), an affiliate of SRD.

The City also desires to enter into an Exchange Agreement with Developer to acquire property being used as part of the golf course, so that it can be added to the existing golf course lease with B&B, an affiliate of the Developer, and the City also desires to enter into a Second Amendment to Ground Lease ("Second Lease Amendment") with respect to the Golf Courses with B&B in order to add the land acquired by the City under the Exchange Agreement to the existing golf course lease with B&B.

Therefore, staff recommends that the City Council adopt the attached Resolution authorizing those actions.

Staff recommends that the City enter into the Exchange Agreement and Second Lease Amendment if the City has approved the Second Restated DDA.

ENVIRONMENTAL REVIEW

A Final Environmental Impact Report was prepared and certified for the Original DDA on July 7, 2005. Thereafter, the Council adopted Addendum No. 1 on August 17, 2005, Addendum No. 2 on February 5, 2014, Addendum No. 3 on December 10, 2014, and Addendum No. 4 on December 7, 2017. Staff recommends that the Council find that the exchange of land in the Exchange Agreement and addition of land to the golf course lease, do not change the underlying Project, and are within the scope of the Final Environmental Impact Report prepared and certified for the underlying Project, including Addendum Nos. 1 through 4, and that no further review under the California Environmental Quality Act is required in connection therewith.

FISCAL IMPACT

None; the land being conveyed to the Developer under the Exchange Agreement is in exchange for land currently improved as a golf course hole, and adding such land to the golf course is for the public purposes of conforming to the existing entitlements and enhancing/facilitating the proper operation of the public golf courses under the existing golf course lease.

ATTACHMENTS

1. Second Amendment of Amended and Restated Ground lease and Second Amendment to Memo of Amended & Restated
2. Exchange Agreement

Reviewed for Submission to the
City Council by:

____
Craig Malin, City Manager

Recording Requested by
and when recorded return to:

____
____

Exempt from recording fees pursuant to G.C. §6103

[SPACE ABOVE FOR RECORDER'S USE ONLY]

SECOND AMENDMENT OF AMENDED AND RESTATED GROUND LEASE AND SECOND AMENDMENT TO MEMORANDUM OF AMENDED AND RESTATED LEASE

This Second Amendment of Amended and Restated Ground Lease and Second Amendment to Memorandum of Amended and Restated Lease (the "Second Amendment") is dated as of ____________, 2019 by and between the City of Seaside, California, a California municipal corporation (the "City"), and B&B Golf Course Properties, LLC, an Arizona limited liability company ("B&B").

RECITALS

A. The City and BSL Golf of California, Inc., a California corporation ("BSL") entered into a Ground Lease dated October 23, 1996 (the "Lease"), evidenced by a Memorandum of Commencement Date recorded on January 15, 1997 in the Office of the Monterey County Recorder (the "Recorder's Office") in Reel 3468 at Page 1575. The Lease concerns the Black Horse and Bayonet Golf Courses.

B. BSL assigned the Lease as to a portion of the leased premises to the Redevelopment Agency of the City of Seaside ("Agency") pursuant to a Partial Assignment of Lease dated December 13, 2005, recorded in the Recorder's Office on December 15, 2005 as instrument number 2005131757. Fee title to the portion of the leased premises assigned by BSL to the Agency (the "DDA Property") was conveyed by the City to the Agency by a deed recorded on December 15, 2005 in the Recorder's Office as instrument number 2005131756.

C. BSL assigned its remaining interest in the Lease to B&B pursuant to an Assignment and Assumption of Lease recorded on December 15, 2005 in the Recorder's Office as instrument number 2005131759.

D. The Agency and Seaside Resort Development, LLC, an Arizona limited liability company ("SRD") entered into a Disposition and Development Agreement dated August 10, 2005 (the "DDA"), which provided for SRD's acquisition and development of the DDA Property.

E. The City and B&B entered into an Amended and Restated Ground Lease dated as of December 15, 2005 (the "Restated Lease") for the portion of the Lease assigned to B&B ("Restated Lease Premises), and recorded a Memorandum of Amended and Restated Lease on December 15, 2005 in the Recorder's Office as instrument number 2005131760.

F. In 2007, in connection with SRD's acquisition and development of some of the DDA property, the City and the Agency made minor adjustments to the boundaries of the pertinent portion of the DDA Property by adding to the DDA Property a small portion of the Restated Lease Premises and including a small portion of the DDA Property in the Restated Lease Premises. To that end, the City and B&B executed an Amendment and Partial Termination of Amended and Restated Ground Lease and Amendment to Memorandum of Amended and Restated Lease (the "Restated Lease Amendment"), which was recorded on August 21, 2007 in the Recorder's Office as instrument number 2007065672.

G. SRD and the Agency subsequently executed an Amended and Restated Disposition and Development Agreement dated as of February 5, 2014 (the "Amended DDA"), which amended and restated the DDA.

H. The City (as Successor Agency to the Agency) and Cypress Seaside, LLC, an Arizona limited liability company ("Cypress") are entering or have entered into a Second Amended and Restated Disposition and Development ("Second Amended DDA") that amends, restates and supersedes the Amended DDA and pursuant to which Cypress Seaside is acquiring title to the DDA Property.

I. In connection with B&B's renovation and remodeling of the 17th hole of the Bayonet Golf Course, the hole was relocated from the the real property legally described on Exhibit A annexed hereto (the "Former 17th Hole Parcel") onto the real property legally described on Exhibit B annexed hereto ("Former Timeshare Parcel C"), which was part of the DDA Property). The City has concluded it is in the best interests of the City to amend the Restated Lease to exclude the Former 17th Hole Parcel from the legal description under the Restated Lease and replacing it with Former Timeshare Parcel C.

J. Similarly, in connection with B&B's renovation and remodeling of the 11th, 12th, 15th, 16th and 17th hole of the Black Horse Golf Course, portions of that Golf Course were relocated onto a portion the real property legally described on Exhibit C annexed hereto ("Former Residential Phase VI"). The City has concluded it is in the best interests of the City to amend the Restated Lease to remove Former Residential Phase VI from the exclusions to the Restated Lease legal description and excluding from the Restated Lease legal description the real property legally described on Exhibit D annexed hereto ("New Residential Phase VI").

K. To accommodate the amendments described in Recitals I and J, the City and Cypress have entered into an Exchange Agreement, pursuant to which Cypress is conveying to the City fee title to Former Timeshare Parcel C and Former Residential Phase VI, and the City is then conveying to Cypress the Former 17th Hole Parcel and New Residential phase VI. B&B are entering into this amendment in connection with these conveyances.

NOW, THEREFORE, the City and B&B hereby amend the Restated Lease by modifying the legal description of the leased premises thereunder to (i) exclude the Former 17th Hole Parcel, (ii) include Former Timeshare Parcel C, (iii) exclude New Residential Phase VI, and (iv) remove the exclusion of Former Residential Phase VI. Exhibit E annexed hereto contains the legal description of the leased premises under the Restated Lease after giving effect to the foregoing amendments. This Second Amendment may be executed in counterparts.

In witness whereof, the City and B&B have executed this Second Amendment.

"CITY"

CITY OF SEASIDE,
a municipal corporation

By:_________________________________

Name:__________________________

Title:___________________________

"TENANT"

B & B GOLF COURSE PROPERTIES, LLC

By: Seaside Golf Investors, LLC, an Arizona
limited liability company, its member

By: ________________________________
Donald Pitt, as Trustee of the
Donald Pitt Separate Property Trust
dated November 11, 1991, its
sole member

By: B & B Golf Investors, LLC, an Arizona
limited liability company, its member

By: ________________________________
David Goldstein, its 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)
County of)

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)
County of)

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)
County of)

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 Former 17th Hole Parcel

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.

Bearings cited herein are referenced to said Volume 26, Page 28 of Surveys.

EXHIBIT B

Legal Description of Former Timeshare Parcel C

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

1. South 65°50'00" East, 140.11 feet; thence
2. South 09°20'00" West, 637.50 feet; thence
3. South 78°45'00" West, 122.50 feet; thence
4. North 66°40'00" West, 203.50 feet; thence
5. North 24°10'00" East, 690.20 feet to the Point of Beginning.

Bearings cited herein are referenced to said Volume 26, Page 28 of Surveys.

EXHIBIT C

Legal Description of Former Residential Phase VI

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

11. Southerly 355.60 feet along said curve through a central angle of 15°27'22"; thence
12. South 66°40'00" West, 81.20 feet; thence
13. South 84°39'43" West, 51.98 feet; thence
14. 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
15. 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
16. 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
17. Northerly 104.61 feet along said curve through a central angle of 11°25'00"; thence
18. 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
19. 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
20. 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
21. Northeasterly 83.51 feet along said curve through a central angle of 33°00'00"; thence
22. 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
23. Easterly 78.54 feet along said curve through a central angle of 90°00'00"; thence
24. South 43°15'00" East, 215.02 feet; thence
25. South 12°25'00" East, 105.70 feet; thence
26. 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
27. Southerly 61.23 feet along said curve through a central angle of 70°10'00"; thence
28. South 18°35'00" West, 270.24 feet to the Point of Beginning.

and

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

29. 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
30. 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
31. Southeasterly 133.46 feet along said curve through a central angle of 169°55'38"; thence
32. South 72°20'00" East, 126.00 feet; thence
33. South 23°21'02" West, 106.96 feet; thence
34. 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
35. Northerly 16.09 feet along said curve through a central angle of 36°52'12"; thence
36. 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
37. Southeasterly 39.27 feet along said curve through a central angle of 90°00'00" to the Point of Beginning.

    Bearings cited herein are referenced to said Volume 26, Page 28 of Surveys.

EXHIBIT D

Legal Description of New Residential Phase VI

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.**

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:

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**.

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

EXHIBIT E

Complete Updated Legal Description of Golf Courses

<u>EXCHANGE AGREEMENT</u>

by and between the

CITY OF SEASIDE

and

CYPRESS SEASIDE, LLC,
an Arizona limited liability company

EXCHANGE AGREEMENT

THIS EXCHANGE AGREEMENT ("Agreement") is dated this ____ day of _______, 2019 and is entered into by and between CITY OF SEASIDE, a California municipal corporation ("City"), and CYPRESS SEASIDE, LLC, an Arizona limited liability company ("Developer").

RECITALS

A. The City and Developer are parties to a Second Amended and Restated Disposition and Development Agreement dated on or about the date of this Agreement (the "Second Amended DDA"). Pursuant to the Second Amended DDA, Developer is acquiring, among other property, the real property described on Attachment No. 1-A and Attachment No. 1-B and commonly referred to as "Timeshare Parcel C" and "Residential Phase VI," respectively.

B. The City owns fee title to the Golf Courses (defined below). B&B Golf Course Properties, LLC, an Arizona limited liability company ("B&B"), previously entered into an Amended and Restated Ground Lease dated December 15, 2005 (the "2005 Golf Course Lease"), pursuant to which the City leases to B&B the Golf Courses (which are legally described in the 2005 Golf Course Lease).

C. The Golf Courses include all of the real property described on Attachment No. 2-A and a portion of the real property described on Attachment No. 2-B annexed to this Agreement and commonly referred to as "New Timeshare Parcel C" and New Residential Phase VI," respectively. The parties acknowledge that Timeshare Parcel C and New Timeshare Parcel C are distinct but Residential Phase VI and New Residential Phase VI partially overlap.

D. Timeshare Parcel C is currently improved and operated as one of the holes of the Golf Courses, and Residential Phase VI contains various Golf Course improvements. The City desires to obtain fee title to Timeshare Parcel C and Residential Phase VI to facilitate and enhance the operation of the public Golf Courses, and Developer is willing to convey fee title to such parcels in exchange for New Timeshare Parcel C and New Residential Phase VI. In connection with the exchange, and pursuant to the Golf Course Lease Amendment (defined below), the City and B&B are amending the 2005 Golf Course Lease to change the legal description of the Golf Courses by removing Residential Phase VI as a exclusion, including Timeshare Parcel C, and excluding New Timeshare Parcel C and New Residential Phase VI.

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 2005 Golf Course Lease means the 2005 Golf Course Lease described in Recital B above, as previously amended by an Amendment and Partial Termination of Amended and Restated Ground Lease and Amendment to Memorandum of Amended and Restated Lease recorded in the Official Records of Monterey County on August 21, 2007 as Instrument Number 2007065672.

1.1.2 B&B means B&B Golf Course Properties, LLC, an Arizona limited liability company.

1.1.3 City means 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 93955.

1.1.4 City Manager means the City Manager of City, or his or her designee.

1.1.5 City Property means New Timeshare Parcel C and New Residential Parcel VI.

1.1.6 Close of Escrow means the recordation of the Deeds executed by the City and the Developer to consummate the exchange contemplated by this Agreement.

1.1.7 DDA Close of Escrow means the "Close of Escrow" as defined on the Second Amended DDA.

1.1.8 Deed means each grant deed conveying fee title, in the form attached hereto as Attachment No. 3-A or Attachment No. 3-B, applicable to the particular portion of the Property conveyed thereby.

1.1.9 Developer means Cypress Seaside, LLC, an Arizona limited liability company.

1.1.10 Developer Property means Timeshare Parcel C and Residential Parcel VI.

1.1.11 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.

1.1.12 Golf Course(s) means the Bayonet and Black Horse golf courses in Seaside, California.

1.1.13 Golf Course Lease Amendment means the Second Amendment of Amended and Restated Ground Lease and Second Amendment to Memorandum of Amended and Restated Lease, which amends the 2005 Golf Course Lease, to be recorded in the Official Records at Close of Escrow following recordation of the Deeds.

1.1.14 Official Records means the official records maintained by the Monterey County Recorder.

1.1.15 Property means the City Property and the Developer Property.

1.1.16 Title Company means Escrow Agent, or another title company agreed to by the parties in writing.

ARTICLE 2. PURPOSE OF EXCHANGE; PARTIES; REPRESENTATIONS.

2.1 Purpose of the Agreement; Proposed Development

2.1.1 The purpose of this Agreement is described in the Recitals.

2.1.2 This Agreement is in the vital and best interests of City, and the health, safety, and welfare of its residents, and is in accord with the public purposes and provisions of applicable state and local Law.

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

The term "Developer" as used herein means Cypress Seaside, LLC, an Arizona limited liability company. Developer has its principal office at 310 South Williams Boulevard, Suite 180, in Tucson, Arizona.

2.4 City Representations

City hereby represents and warrants the following to Developer:

2.4.1 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 (including, but not limited to, the power and authority of the Mayor or City Manager, with the approval of the City Attorney, to execute, acknowledge and deliver one or more Deeds to convey the City Property).

2.4.2 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. 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.

2.4.3 This Agreement is duly executed by City, and the execution and delivery hereof 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.

2.4.4 The City understands, agrees and acknowledges that, except for the express representations and warranties of Developer in this Agreement: (i) as the recent owner of the Developer Property, it is fully informed concerning the condition of the Developer Property; (ii) it is acquiring the Developer Property in "AS-IS/WHERE-IS" condition; and (iii) Developer 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 Developer Property, or its fitness for any particular use or purpose. The City 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 Developer 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.

2.4.5 The City 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 Developer Property.

Except as otherwise expressly set forth in this Section 2.4, City makes no other representations or warranties, express or implied, regarding the City Property.

2.5 Developer Representations

Developer represents and warrants the following to City as follows:

2.5.1 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.

2.5.2 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.

2.5.3 To the best knowledge of Developer, the execution, delivery and performance by Developer of this Agreement will not violate any provision of applicable 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.

2.5.4 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.

2.5.5 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 City Property, or its fitness for any particular use or purpose. 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.

2.5.6 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 City Property.

Except as otherwise expressly set forth in this Section 2.5, Developer makes no other representations or warranties, express or implied, regarding the City Property.

ARTICLE 3. WATER ALLOCATION

The parties acknowledge and agree that the water allocated to Timeshare Parcel C and Residential Phase VI under City Resolution 05-44, adopted on July 7, 2005, shall automatically be reallocated at Close of Escrow to New Timeshare Parcel C and New Residential Phase VI.

ARTICLE 4. DISPOSITION OF THE PROPERTY; CONDITIONS TO CLOSE OF ESCROW

4.1 Sale of the Property by the City to the Developer; Closing Deadline. The City hereby agrees to convey the City Property to Developer, and Developer hereby agrees to convey the Developer Property to the City, subject to the terms and conditions hereinafter set forth. Close of Escrow shall occur on the date of the DDA Close of Escrow.

4.2 Conditions Precedent to Exchange. The following are conditions precedent to the conveyance of the Property hereunder:

(i) The DDA Close of Escrow;

(ii) the execution, acknowledgement and delivery of the Golf Course Lease Amendment for recording in the Official Records at Close of Escrow;

(iii) the execution and delivery to the City at or prior to Close of Escrow of the Residential Phase Deed of Trust in the form of Attachment No. 4, and the recordation of such Deed of Trust in the Official Records at Close of Escrow;

(iv) the Title Company be committed to issue to Developer a policy of title insurance showing the title to the City Property vested in Developer, subject to the Residential Phase Deed of Trust (with respect to the New Residential Phase VI only). The parties acknowledge that the title insurance policy will be the same policy issued to Developer in connection with DDA Close of Escrow; and

(v) the Title Company be committed to endorse the City's existing title policy with respect to the Golf Courses to show the title to the Developer Property vested in the City.

4.3 Escrow And Escrow Instructions. Upon the execution of this Agreement, Developer and City shall promptly deliver a copy of this Agreement to Escrow Agent. 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.

4.4 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 the following instruments, documents, and funds.

5.5.1 City shall deliver to Escrow Agent:

(i) A Deed in the form of Attachment No. 3-A, duly executed and acknowledged by City, with respect to the City Property (which Deed shall be recorded at Close of Escrow prior to the recordation of the Deed described in Section 5.5.2);

(ii) A FIRPTA affidavit and a California form 593, if applicable and required by Title Company;

(iii) A counterpart of the Golf Course Lease Amendment executed by B&B;

(iv) A Certificate of Acceptance concerning the Deed described in Section 5.5.2(i); and

(v) Such proof of City's authority and authorization to enter into this transaction as the Title Company may reasonably require to issue the Developer's title policy.

5.5.2 Developer shall deliver to Escrow Agent:

(i) A Deed in the form of Attachment No. 3-B, duly executed and acknowledged by Developer, with respect to the Developer Property

(ii) The Residential Phase Deed of Trust, duly executed and acknowledged and in recordable form;

(iii) A FIRPTA affidavit and a California form 593, if applicable and required by Title Company;

(iv) Such proof of Developer's authority and authorization to enter into this transaction as the Title Company may reasonably require to issue the endorsement to the City's title policy;

(v) Such funds as are required to pay the Title Company's charges for the closing of the transactions contemplated by this Agreement;

(vi) A counterpart of the Golf Course Lease Amendment executed by B&B; and

(vii) Such proof of Developer's authority and authorization to enter into this transaction as the Title Company may reasonably require to issue the Residential Phase Deed of Trust.

4.5 Escrow Charges And Prorations

4.5.1 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 paid in connection with the DDA Close of Escrow, if any, and (iii) the cost of the premiums for the City's lender's title insurance with respect to the Residential Phase Deed of Trust.

4.5.2 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. All prorations shall be determined on the basis of a 360-day year.

4.6 "AS-IS" Condition of the Property

4.6.1 The parties agree that the Property will be acquired in its "AS-IS" condition, with all faults, and without representation or warranty, express or implied, except for express representations set forth in this Agreement.

4.6.2 The parties' acquisition of the respective portions of the Property shall constitute its determination that the Property is acceptable and shall constitute its acceptance of the condition of the Property.

4.6.3 The parties hereby waive and release any and all claims which it may have now or in the future against the other and each of their respective 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 the other or prepared by any of the prior owners, operators, and tenants. IN CONNECTION WITH THE ABOVE RELEASES AND DISCHARGES, THE PARTIES SPECIFICALLY **WAIVES**ANY BENEFIT OF THE PROVISIONS OF SECTION 1542 OF THE CALIFORNIA CIVIL CODE. THE PARTIES HEREBY ACKNOWLEDGE THAT EACH 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	City's Initials

The foregoing waiver and release shall not, however, apply to the breach by a party of its express representations, warranties or covenants in this Agreement.

ARTICLE 5. APPLICABILITY OF CERTAIN PROVISIONS OF THE RESTATED DDA

The provisions of the Second Amended DDA that are intended to be binding on the City, the developer thereunder or the property thereunder after the DDA Close of Escrow shall be binding on the parties hereunder and the City Property following Close of Escrow as though the City Property had been acquired by Developer under the Second Amended DDA, including without limitation Section 3.4 (concerning certain easements), Article 4 (concerning water re-allocation), Section 6.3 (concerning prevailing wages), Section 6.5 (concerning non-discrimination), Section 7.1 (concerning compliance with entitlements), Section 7.2 (concerning non-discrimination), Article8 (concerning City profit participation, Section 10.1 (concerning affordable housing, Section 10.2 (concerning first source recruitment), Section 10.3 (transient occupancy tax), and Section 10.4 (FORA CFD).

ARTICLE 6. GENERAL PROVISIONS

6.1 Applicable Law

The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

6.2 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.

6.3 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. A copy of notices to City shall also be emailed to SDamon@ci.seaside.ca.us. 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.

<u>For City</u>:	City of Seaside 440 Harcourt Avenue Seaside, California 93955 Attention: City Manager
With copies to:	City of Seaside 440 Harcourt Avenue Seaside, California 93955 Attention: City Attorney
<u>For Developer</u>:	Cypress Seaside, LLC c/o Cornerstone Capital Management 310 South Williams Road, Suite 180 Tucson, Arizona 85711 Attention: Donald Pitt Tel: (510) 790 9900 Fax: (510) 790 9585 and Cypress Seaside, LLC c/o Southwest Holdings, Ltd. 2200 East River Road, Suite 115 Tucson, Arizona 85718 Attention: David Goldstein Tel: (520) 577-0200 Fax: (520) 299-5602 with a copy to : Brad Miller, P.C. 70 West Cushing Street Tucson, AZ 85701 Tel: (520) 547-2447 Fax: (520) 882-2640
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.

6.4 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.

6.5 No Real Estate Commissions

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.

6.6 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.

6.7 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.

6.8 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. 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.

6.9 Time of Essence

Time is of the essence of this Agreement.

6.10 Construction of Agreement

6.10.1 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.

6.10.2 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.

6.10.3 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.

6.11 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 litigation expenses, 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.

6.12 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.

6.13 Further Assurances

Each of the Parties hereto shall execute and deliver any and all additional reasonable 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.

6.14 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).

6.15 Entire Agreement

This Agreement constitutes the entire agreement of the Parties hereto with respect to the subject matter hereof.

6.16 Attachments

This Agreement includes the following Attachments, each of which is incorporated herein by reference:

No. 1-A and 1-B Legal Description of the Developer Property

No. 2-A and 2-B Legal Description of the City Property

No. 3-A Form of Deed from City

No. 3-B Form of Deed from Developer

No. 4 Form of Residential Phase Deed of Trust

6.17 Waivers and Amendments

All modifications, extensions, additions or amendments to this Agreement shall be in writing and signed by the Parties hereto.

6.18 Execution in Counterparts. 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.

CITY:

CITY OF SEASIDE

By: ______________________________
Print Name: ______________________________
Title: ______________________________

ATTEST:

____
Leslie Milton, City Clerk
APPROVED AS TO FORM:

RICHARDS, WATSON & GERSHON
Special Counsel to City

____
Bruce Galloway, Esq.

<u>DEVELOPER</u>:

CYPRESS SEASIDE, LLC,
an Arizona limited liability company

By: Southwest Holdings Ltd., an Arizona corporation, its co-managing member

By: ___________________________
Print Name: ____________________
Title: __________________________

By: Cornerstone Capital Management Ltd., an Arizona corporation, its co-managing member

By: ___________________________
Print Name: ____________________
Title: __________________________

ATTACHMENT NO. 1-A

DESCRIPTION OF TIMESHARE PARCEL C

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

1. South 65°50'00" East, 140.11 feet; thence
2. South 09°20'00" West, 637.50 feet; thence
3. South 78°45'00" West, 122.50 feet; thence
4. North 66°40'00" West, 203.50 feet; thence
5. North 24°10'00" East, 690.20 feet to the Point of Beginning.

Bearings cited herein are referenced to said Volume 26, Page 28 of Surveys.

ATTACHMENT NO. 1-B

DESCRIPTION OF RESIDENTIAL PHASE VI

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

1. Southerly 355.60 feet along said curve through a central angle of 15°27'22"; thence
2. South 66°40'00" West, 81.20 feet; thence
3. South 84°39'43" West, 51.98 feet; thence
4. 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
5. 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
6. 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
7. Northerly 104.61 feet along said curve through a central angle of 11°25'00"; thence
8. 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
9. 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
10. 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
11. Northeasterly 83.51 feet along said curve through a central angle of 33°00'00"; thence
12. 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
13. Easterly 78.54 feet along said curve through a central angle of 90°00'00"; thence
14. South 43°15'00" East, 215.02 feet; thence
15. South 12°25'00" East, 105.70 feet; thence

16. 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
17. Southerly 61.23 feet along said curve through a central angle of 70°10'00"; thence
18. South 18°35'00" West, 270.24 feet to the Point of Beginning.

<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

19. 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
20. 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
21. Southeasterly 133.46 feet along said curve through a central angle of 169°55'38"; thence
22. South 72°20'00" East, 126.00 feet; thence
23. South 23°21'02" West, 106.96 feet; thence
24. 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
25. Northerly 16.09 feet along said curve through a central angle of 36°52'12"; thence
26. 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
27. Southeasterly 39.27 feet along said curve through a central angle of 90°00'00" to the Point of Beginning.

Bearings cited herein are referenced to said Volume 26, Page 28 of Surveys.

ATTACHMENT NO. 2-A

DESCRIPTION OF NEW TIMESHARE PHASE C

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

28. S. 70° 17’ 05” E., 210.01 feet; thence
29. S. 36° 06’ 48” W., 428.58 feet; thence
30. S. 42° 45’ 47” W., 224.86 feet; thence
31. S. 00° 28’ 45” E., 265.56 feet; thence
32. S. 70° 52’ 34” W., 167.49 feet; thence
33. N. 56° 52’ 25” W., 219.32 feet; thence
34. N. 83° 52’ 52” E., 149.07 feet; thence
35. N. 11° 39’ 52” E., 202.98 feet; thence
36. N. 42° 48’ 20” E., 313.39 feet; thence
37. N. 23° 13’ 15” E., 367.94 feet; to the POINT OF BEGINNING.

Bearings cited herein are referenced to said Volume 26, Page 28 of Surveys.

ATTACHMENT NO. 2-B

DESCRIPTION OF NEW RESIDENTIAL PHASE VI

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:

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.**

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:

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**.

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. 3-A

FORM OF DEED FROM CITY

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: ______________

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. 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 and the City.

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 ________________________)
County of ______________________)

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. 3-B

FORM OF DEED FROM DEVELOPER

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: _____________

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,

____________________ (hereinafter referred to as "Grantor"), 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. 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 and the City.

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___.

[GRANTOR]

By:____________________________

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.

CITY OF SEASIDE

By:____________________________
City Manager

ATTEST:

By:______________________
Secretary

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)

CERTIFICATE OF ACCEPTANCE
(Pursuant to Govt. Code § 27281)

This is to certify that the attached Grant Deed and Environmental Restrictions hereby accepted pursuant to the authority granted by the City Council of the City of Seaside on _________, 2019 and the City of Seaside hereby consents to the recordation thereof by its duly authorized officer.

Dated: _____________, 2019

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 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)

ATTACHMENT NO. 4

FORM OF RESIDENTIAL PHASE 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 ____________, 2016 (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)

CERTIFICATE OF ACCEPTANCE
(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)

CITY OF SEASIDE
STAFF REPORT

Item No.: 6.A.

TO: City Council

BY: Craig Malin, City Manager

DATE: June 11, 2019

SUBJECT: **UPDATE ON 4TH OF JULY FIREWORKS CELEBRATION**

PURPOSE & RECOMMENDATION

To receive an update on the 4th of July celebration.

BACKGROUND

There is no staff report for this item. A verbal presentation will be provided at the meeting.

ATTACHMENTS

1. Fourth of July Flyer

THE CITY OF SEASIDE'S

FOURTH OF JULY FAMILY

FIREWORKS CELEBRATION

JULY 4, 2019 FROM 4:30-10 PM

CITY HALL LAWN | 440 HARCOURT AVE.

5:30 PM

7:30 PM

9:30 PM

RED, WHITE & BLUES FREE CONCERTS

5:30 PM - Red Beans and Rice

7:30 PM - Steady Rollin' Bob Margolin with Jimmy Vivino (from Conan O'Brien)

FAMILY FUN ACTIVITIES

Arts & Crafts | Carnival Games & Rides
Petting Zoo | Pony Rides | Rock Wall
Bounce Houses | Zorb Balls | Prizes
Face Painting | Food & Craft Vendors
Air Jumpers | Live Entertainment & more!

NO ALCOHOL, NO DRUGS OR TOBACCO, NO DOGS, NO BBQ'S, NO FIREWORKS OF ANY KIND.

Smoking in designated areas only. Failure to abide by these rules will result in ejection from event.

SEASIDE CALIFORNIA

www.ci.seaside.ca.us

SeasideCA SeasideRecreation

Walk or Bike
Free & Secure
Bike Valet

2019 Citywide Zero Tolerance Policy:

NO ILLEGAL FIREWORKS

$2,500 FINE

Help keep Seaside safe by reporting illegal fireworks: **831-394-6811**

CIUDAD DE SEASIDE

CUATRO DE JULIO FAMILIAR

CELEBRACIÓN CON CUETES

4 DE JULIO DE 2019 DE 4:30-10 PM

CÉSPED DEL AYUNTAMIENTO | 440 HARCOURT

5:30 PM

7:30 PM

9:30 PM

RED, WHITE & BLUES CONCIERTO GRATIS

5:30 PM - Red Beans and Rice
7:30 PM - Steady Rollin' Bob Margolin con Jimmy Vivino (from Conan O'Brien)

ACTIVIDADES DIVERTIDAS PARA LA FAMILIA

Arte y artesanía | Juegos y Paseos de Carnaval
Zoológico Interactivo | Paseo en Pony | Premios
Pared de Roca | Brincolín Inflable | Bolas de Zorb
Pintura de la Cara | Vendedores de Comida y Artesanías
Brincolín | Entretenimiento en Vivo y más!

NO ALCOHOL, NO DROGAS O TABACO, NO PERROS, NO PARRILLADAS, NO CUETES DE NINGÚN TIPO.
Solo permitido fumar en áreas designadas. El incumplimiento de estas reglas resultará en expulsión del evento.

Camina o Bicicleta
Gratis y Seguro
Velet de Bicicleta

SEASIDE CALIFORNIA

www.ci.seaside.ca.us
SeasideCA SeasideRecreation

Póliza de Cero Tolerancia en Toda la Ciudad en el 2019

NO CUETES ILEGALES

Ayuda a mantener a Seaside seguro reportando cuetes ilegales: **831-394-6811**

MULTA DE $2,500