AMENDED AND RESTATED
DISPOSITION AND DEVELOPMENT AGREEMENT

by and between

THE SUCCESSOR AGENCY OF THE
REDEVELOPMENT AGENCY OF THE CITY OF SEASIDE,
a public body, corporate and politic,

and

SEASIDE RESORT DEVELOPMENT, LLC,
an Arizona limited liability company
AMENDED AND RESTATED
DISPOSITION AND DEVELOPMENT AGREEMENT

THIS AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT ("DDA", or "Agreement"), dated this $20th$ day of $February$, 2014 is entered into by and between THE SUCCESSOR AGENCY OF THE REDEVELOPMENT AGENCY OF THE CITY OF SEASIDE, CALIFORNIA, a public body, corporate and politic ("Agency"), and SEASIDE RESORT DEVELOPMENT, LLC, an Arizona limited liability company ("Developer").

RECITALS

A. The Redevelopment Agency of the City of Seaside and the Developer previously entered into a Disposition and Development Agreement dated August 10, 2005 and amended it by a First Amendment to Disposition and Development Agreement dated March 15, 2007 and letter dated April 15, 2009 (the "Initial DDA"). As contemplated by the Initial DDA, Developer (i) acquired and developed 30 "early-start" lots in the Residential Phase as allowed by former Section 5.5.6 of the Initial DDA and (ii) developed plans for a 275-room hotel in the Hotel Phase consistent with the standards specified by the Initial DDA. Developer proceeded to approximately 90% completion of architectural plans and construction drawings for the 275-room hotel and obtained substantial approval by Agency staff and City staff of the hotel size, and architectural plans and construction drawings, but stopped short of obtaining building permits as a result of changed economic conditions that made financing of the planned hotel on normally acceptable economic terms infeasible. As contemplated by Section 8.1 of the Initial DDA, the Agency obtained a loan from Rabobank, N.A. which had an extended maturity date of December 15, 2010, and which was subsequently further extended to March 15, 2014 (the "Rabobank Loan"). The purchase by Developer of land under the Initial DDA has been delayed, and the Agency has therefore not yet obtained funds from the purchase of land by Developer needed to repay the Rabobank Loan or to fulfill its other financial commitments under the Initial DDA. Developer and Agency desire to amend and restate the Initial DDA in order to, among other things, provide for payment by Developer of the Rabobank Loan for which Developer shall receive credits against future purchases of land under the DDA, and in exchange for such payments, give Developer (i) greater flexibility with respect to development of the Residential and Timeshare Phases, and (ii) an extension of time to acquire, commence construction of and complete development of the Hotel Phase.

B. THE SUCCESSOR AGENCY OF THE REDEVELOPMENT AGENCY OF THE CITY OF SEASIDE is successor agency to the Redevelopment Agency of the City of Seaside, which was organized under the Community Redevelopment Law of the State of California. The purpose of this Agreement is to effectuate the Redevelopment Plan for the Former Fort Ord, as amended, of Agency in the City of Seaside, California, by facilitating the development of real property within the area that is subject to such Redevelopment Plan (the "Project Area"). The Redevelopment Plan has been approved and adopted by Ordinance No. 901 of the City of Seaside adopted April 18, 2002.
C. Developer desires to acquire from Agency certain property that is owned by Agency and is described on Attachment No. 1 attached hereto and depicted on Attachment No. 1-A hereto (the “Property”) and develop, construct and operate thereon a development that will include three components (collectively, the “Project”): a hotel component (the “Hotel Component”), a timeshare (or other residential) component as described in Section 2.1.1 below (the “Timeshare Component”), and a residential lot component (the “Residential Component”) as described more particularly on Attachment No. 2 attached hereto (the “Scope of Development”) and subject to Entitlements. The Property will be conveyed to Developer in phases (each, a “Phase”) as described more particularly on Attachment No. 1-B. As used herein, the term “Phase” means the development of Improvements on the land for the Phase, the land for the Phase, or both, as appropriate given the context in which such term is used.

D. The Developer acknowledges that the City and Agency have legitimate municipal and redevelopment goals in assuring appropriate redevelopment of the Property. It is the intent of the Developer and the Agency that these goals be achieved by conditions that were included in the approval of certain City entitlements for the Project, described more particularly in Attachment No. 1-D (as amended, replaced or supplemented from time to time, the “Entitlement Conditions”), which Developer has agreed to comply with as part of its performance of this Agreement.

E. Developer has agreed to provide units of housing affordable to employees of the Project to the extent provided in this Agreement (the “Workforce Units”) and pursuant to the requirements of the Master Resolution (as that term is defined below). The Agency and the Developer acknowledge that requirements concerning Workforce Units were satisfied prior to the execution of this Agreement and that requirements concerning affordable units in connection with the 125-unit Residential Phase were satisfied prior to the execution of this Agreement, as described in Section 10.1.1 below.

F. The Developer has also agreed to provide the Agency rights to participate in the financial profits to be realized from portions of the Project, all as described more particularly below.

G. The Project will assist in the elimination of blight in the Project Area and will substantially improve the economic and physical conditions in the Project Area in accordance with the purposes and goals of the Redevelopment Plan.

NOW THEREFORE, Agency 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 Agency shall mean The Successor Agency of the Redevelopment Agency of the City of Seaside having its office at 440 Harcourt Avenue, Seaside California 93955.
1.1.2 Affordable Units is defined in Section 10.1.2.

1.1.3 [Intentionally Deleted]

1.1.4 Agency Option to Repurchase shall mean Agency’s Option to repurchase the Property pursuant to Section 9.4 of this Agreement included in the documents in the form of Attachment No. 6 that will be used to convey each Phase of the Property to the Developer.

1.1.5 Agency Affordable Housing Program shall mean the Agency’s and City’s program for assisting the development of affordable housing, established pursuant to California Health and Safety Code 33334.3 in order to meet the requirements of California Health and Safety Code Section 33413(b) and implemented in part through the City’s Inclusionary Housing Ordinance, Chapter 17.31 of the Seaside Municipal Code.

1.1.6 Agency 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 Agency or City, as the case may be, and of each of them.

1.1.7 BSL Closing shall mean the acquisition by B&B Golf Course Properties, LLC from BSL Golf of California, Inc. of the tenant's interest under the Golf Course Lease. (The Agency and the Developer acknowledge that the BSL Closing occurred in December 2005.)

1.1.8 [Intentionally deleted.]

1.1.9 [Intentionally deleted.]

1.1.10 Certificate of Completion shall mean a certificate issued for a Phase pursuant to Section 6.15, in the form attached hereto as Attachment No. 4.

1.1.11 City shall mean the City of Seaside, California, a municipal corporation, organized and existing under the laws of the State of California and having its office at 440 Harcourt Avenue, Seaside California 9395.

1.1.12 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.
1.1.13 **Close of Escrow** shall mean, with respect to a particular Phase (or portion of a Phase), the recordation of the Grant Deed executed by Agency for such Phase (or portion of a Phase).

1.1.14 **Complete Construction Documents** shall mean the documents described in subsection 6.2.5.

1.1.15 **Concept Design Drawings** shall mean the drawings attached to the Scope of Development as **Exhibit “A”** or such other concept design drawing as may be developed from time to time in accordance with this Agreement.

1.1.16 **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).

1.1.16-A **Credit Property** is defined in Section 3.7.

1.1.17 **Deed** shall mean a grant deed conveying fee title to one or more of the Phases from Agency to Developer, in the form attached hereto as Attachment No. 6.

1.1.18 [Intentionally Deleted]

1.1.19 **Design Development Drawings** shall mean the drawings described in subsection 6.2.4.

1.1.20 **Developer** shall have the meaning set forth in Section 2.3.

1.1.21 **Developer Affiliate** shall mean a legal entity whose finances and management are controlled, directly or indirectly, by Donald Diamond and/or Donald Pitt, as shown by reasonable evidence delivered to Agency, and (i) with respect to any legal entity acquiring all or any portion of the Hotel Phase, at least twenty percent (20%) of the ownership interests of such legal entity must be owned and held directly or indirectly by Donald Diamond and/or Donald Pitt, as shown by reasonable evidence delivered to Agency; and (ii) with respect to any legal entity acquiring any Timeshare Phase or Residential Phase, at least twenty percent (20%) of the ownership interests of such legal entity must be owned and held directly or indirectly by Donald Diamond and/or Donald Pitt, as shown by reasonable evidence delivered to Agency.

1.1.22 **Developer Title Policy** shall mean each policy of title insurance described in Section 5.5.

1.1.23 **Development Plans** shall mean and include such preliminary and final construction drawings and specifications, grading plans, landscape plans, Property development plans, plot plans, off-site improvement plans, architectural renderings and elevations, material specifications, parking plans, and other plans and documents as are required to be submitted to Agency or City pursuant to this Agreement or any applicable Laws.
1.1.24 **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.

1.1.25 **Entitlements** shall mean general plan amendments, zone changes, zoning code amendments, development permits, conditional use permits, site plan reviews, design review permits, vesting tentative subdivision maps, approvals of plans submitted pursuant to Section 6.2, California Environmental Quality Act compliance, demolition permits, building permits, and grading permits, requirements of the Fort Ord Reuse Authority (“FORA”) and any and all other permits, licenses and entitlements of every kind required by the City in order to complete construction of the Improvements on the Property.

1.1.26 **Entitlement Conditions or Project Conditions** shall mean the City conditions of approval for the Project attached hereto as Attachment No. 1-D, as amended from time to time.

1.1.27 **Environmental Condition** means the existence of Hazardous Substances on, in or under the Property as of the date of this Agreement.

1.1.28 **Environmental Documents** shall mean the reports, studies and other documents relating to the Environmental Condition of the Property listed on Attachment No. 5.

1.1.29 **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.

1.1.30 **Environmental Liabilities and Obligations** means any known or unknown Claim, liability, obligation (including, without limitation, any obligation to monitor, test, sample, report to governmental authorities, Remediate or clean up, or any obligation under a permit or order), expense, contribution or indemnity obligation (whether under any Environmental Law or any other statute, common law or in equity), cost, Remediation Costs or any other damage, liability or loss (including without limitation, reasonable attorneys’ and consultants’ fees), fine or penalty, whether incurred by a Party hereto or claimed by any third party (including, without limitation, any governmental entity), arising out of or relating to any actual, alleged or threatened discharge, release, emission, spill or migration into the environment, or any such discharge, release, disposal, emission, spill, migration, or Remediation of any Hazardous Substance, whether or not on the Property.

1.1.31 **Escrow** is defined in Section 5.7.

1.1.32 **Escrow Agent** means First American Title of Monterey, 3855 Via Nona Marie, Suite 100, Carmel, California 93923, or other mutually acceptable escrow agent agreed to by the Parties.

1.1.33 **Executive Director** shall mean the Executive Director of Agency, or his or her designee.

1.1.33A **Final Hotel Stage** is defined in Section 5.2.1.

1.1.34 **Force Majeure** shall mean an event creating an enforced delay which, pursuant to Section 11.3, entitles either Party to an extension of time to perform.

1.1.34-A **Golf Course(s)** shall mean the Bayonet and Blackhorse golf courses in Seaside, California.

1.1.34-B **Golf Course Lease** shall mean the Amended and Restated Golf Course Lease dated as of December 15, 2005 between the City and B&B Golf Course Properties, LLC, concerning the Golf Courses, as amended from time to time.

1.1.35 **Good Faith Deposit** is defined in Section 3.3.

1.1.36 **Hazardous Substances** shall include, without limitation, any hazardous substance or waste, hazardous material, chemical compound or element, pollutant or contaminant, as those terms are defined in their broadest sense by any Environmental Law, petroleum or refined petroleum products, flammable explosives, radioactive materials, asbestos, polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, substances described in California Civil Code Section 2929.5(e)(2) and California Code of Civil Procedure Section 736(f)(3), as those sections may be amended from time to time, as well as, without limitation, all other substances included within the definitions of hazardous substance, hazardous
waste, hazardous material, toxic substance, solid waste, or pollutant or contaminant in CERCLA, RCRA, TSCA, HMTA, or under any other Environmental Law, and any pollutants, contaminants, hazardous wastes, toxic substances or related materials.

1.1.37 Holder(s) shall mean the beneficiary of any deed of trust securing financing, provided such beneficiary is a Qualified Lender, is not affiliated with Developer, the financing and deed of trust are permitted by this Agreement and provided, further, that the name and address for notices of the beneficiary have been delivered to Agency in a writing that identifies the beneficiary as a Holder under this Agreement, and provided, further, that entities to which such a beneficiary assigns its lien or to which beneficiary transfers the Property or any portion thereof shall also be a Holder to the extent specified in Section 6.13.3.

1.1.38 [Intentionally Deleted]

1.1.39 Improvements shall mean and include: (i) with respect to the Hotel Phase, all grading to be done on the Property, as well as all buildings, structures, fixtures, excavation, parking, landscaping, and other work, construction, demolition, rehabilitation, alterations and improvements of whatsoever character to be done by Developer on, around, under or over the Property pursuant to this Agreement, and (ii) with respect to the Timeshare Phase and Residential Phase, all road and utility infrastructure and other similar horizontal subdivision improvements, including for each of (i) and (ii) all on and off-Property improvements required by the Entitlement Conditions.

1.1.39-A Initial DDA is defined in Recital A.

1.1.40 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.

1.1.41 Master Resolution shall mean the Fort Ord Reuse Authority Resolution adopted March 14, 1997, as amended.

1.1.42 Memorandum of DDA shall mean the short form memorandum of this Agreement, in the form attached hereto as Attachment No. 11, to be recorded on record title to the Property. (The Agency and the Developer acknowledge that the Memorandum of the Initial DDA was recorded on August 21, 2007 as Recorder's Series Number 2007065638, Official Records of Monterey County, California. A Memorandum of this Amended and Restated DDA, in substantially the form attached hereto as Attachment No. 11, shall be recorded upon execution of this Agreement.)

1.1.43 Note is defined in Section 8.2.

1.1.44 Option Purchase Price shall have the meaning set forth in Section 9.4.4.
1.1.45 Ownership Transfer shall mean and include any voluntary or involuntary transfer, sale, assignment, contract for sale, lease, sublease, license, franchise, concession, operating agreement, gift, hypothecation, mortgage, pledge or encumbrance, or the like with respect to all or a portion of, or interest in, the Property or the Improvements to any person or entity, or any transfer (in one or a series of transactions) of more than eighty percent (80%) of the direct or indirect ownership interests in Developer or in any permitted or approved assignee of Developer’s rights under this Agreement, in each case prior to the issuance of a Certificate of Completion for the applicable Phase(s); provided, however, that the agreement of Developer to sell a Phase or any portion thereof shall not constitute an “Ownership Transfer” if the actual sale is conditioned, for the benefit of the Agency as an express third party beneficiary, upon (i) the issuance of a Certificate of Completion by Agency under this Agreement with respect thereto and (ii) with respect to the Hotel Phase, the opening of the hotel to the public.

1.1.46 Party, Parties shall mean one or both of Agency and Developer, as applicable.

1.1.47 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.

1.1.48 Phase shall mean one of the portions of the Property described on Attachment No. 1-B to be conveyed to Developer hereunder.

1.1.49 Pollution and MEC Insurance shall mean the insurance in the amount of $100,000,000 obtained by the Fort Ord Reuse Authority for certain pollution and munitions and explosive risks, of which $10,000,000 is to be allocated to the City.

1.1.50 Project Area shall mean the area subject to the Redevelopment Plan. The exact boundaries of the Project Area are set forth in the Redevelopment Plan.

1.1.51 Property shall mean the entirety of the Property subject to this Agreement, approximately 84.88 acres in area, as more specifically described in Attachment No. 1 here to and as depicted on the Site Plan attached as Attachment No. 1-A. The Property is located within the Project Area, and consists of the Hotel Phase, the 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 more particularly on Attachment 1-B hereto.

1.1.52 Purchase Price(s) shall mean the compensation to be paid to Agency by Developer for the Phases, as set forth in Attachment 1-C (except that Attachment 1-C does not include the Profit Participation 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 8.3).

1.1.53 Qualified Lender shall mean a bank, savings and loan, pension fund, insurance company, REIT, or other institutional entity or private investor or trust which is duly established and capable of financing (and upon a foreclosure or appointment of a receiver, which is capable of completing or arranging for completion of) the size and type of the applicable portion of the development contemplated hereunder that it is financing and which, in the reasonable opinion of the Executive Director, has a sufficient net worth and liquidity position to
meet the contemplated financing commitment and completion of the applicable portion of the development.

1.1.53 A Rabobank Loan shall mean the loan obtained by Agency pursuant to Section 8.1 of the Initial DDA, as described in Recital A.

1.1.54 REA shall mean a reciprocal easement agreement providing for rights of mutual access between the owner of one or more Phases of the Project and one or more other Phases.

1.1.55 Redevelopment Plan shall mean the Redevelopment Plan for the Redevelopment of the Former Fort Ord, adopted by Ordinance No. 901 of the City Council of the City of Seaside on April 18, 2002, as it may from time to time be amended.

1.1.56 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.

1.1.57 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, attorney’s or environmental professional’s fees, and the costs of surveys, audits or analyses. “Remediation Costs” also includes the premium for environmental cost containment and environmental liability insurance, to the extent such insurance is obtained by Developer in form and with coverage limits acceptable to both Parties.

1.1.58 Schedule of Performance shall mean the Schedule of Performance attached hereto as Attachment No. 3 and incorporated herein by reference, setting out the dates and time periods by which certain obligations set forth in this Agreement must be accomplished.

1.1.59 Schematic Design Drawings shall mean the drawings described in subsection 6.2.3.

1.1.60 Scope of Development shall mean the Scope of Development attached hereto as Attachment No. 2 and incorporated by reference herein, which describes the scope, amount and quality of development of the Improvements to be constructed by Developer pursuant to the terms and conditions of this Agreement.

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

1.1.62 Stage One is defined in Section 5.2.1.
1.1.63 **Stage Two** is defined in Section 5.2.1.

1.1.64 **Sunbay Agreement** is defined in Section 10.1.1.

1.1.65 **Takedown Credit** is defined in Section 3.7.2.

1.1.66 **Title Company** shall mean First American Title of Monterey, 3855 Via Nona Marie, Suite 100, Carmel, California 93923, or another title company agreed to by the Parties in writing.

1.1.67 **Title Documents** shall have the meaning set forth in Section 5.4.

1.1.68 **Workforce Units** is defined in Recital E.

ARTICLE 2. PURPOSE OF AGREEMENT; PARTIES; PROHIBITION AGAINST TRANSFER; REPRESENTATIONS; CONDITIONS PRECEDENT.

2.1 **Purpose of the Agreement; Proposed Development**

2.1.1 The purpose of this Agreement is to effectuate the Redevelopment Plan by providing for the disposition of the Property to Developer, and the development thereon of a hotel project, timeshare project units and residential lots project in phases: The “Hotel Phase” shall consist of the development of a hotel with one or more buildings containing a minimum of 275 guest rooms and up to an aggregate of 330 guest rooms and adjacent parking on the two parcels of land described as the Hotel Phase land on Attachment No. 1, which Hotel Phase may be acquired and developed in up to three stages as described in Section 5.2 below; the “Timeshare Phase” shall consist of the development of a project with up to 170 “timeshare” or “interval” units, fractional units, residential units (which may or may not be subject to a formal condominium regime) or lots, other legal forms of ownership permitted by applicable law, or any combination thereof permitted by the Entitlements and Project Conditions on the three parcels of land described as the Timeshare Phase land on Attachment No. 1, and the “Residential Phases” shall collectively consist of the development of 125 single family residential lots on the nine parcels of land described as the Residential Phase land on Attachment No. 1, all as more particularly described in the Scope of Development attached hereto as Attachment No. 2.

To the extent the description of the Project in the Scope of Development differs from the description otherwise contained in the text of and other attachments to this Agreement, the text of and other attachments to this Agreement shall control. The description of the Hotel and Timeshare Components in the Scope of Development is conceptual and for illustrative purposes only, and the actual configuration may change during the final design and permitting process (subject to the limitations imposed by the Entitlements and Project Conditions, as amended from time to time and applicable law), but shall in any event be subject to written approval by the Executive Director acting in good faith. Without limiting the generality of the foregoing, (a) the Timeshare Component may be developed with (i) a number of buildings permitted by the Entitlements and Project Conditions, as amended from time to time, and applicable law, (ii) fewer or more than 170 units, and (iii) with a variety of unit configurations (e.g., stacked, attached, free-standing, one bedroom, two bedroom, three bedroom, with or without an additional lock-off room); and (b) the Residential Phases may contain more than 125
single family residential lots if permitted by the Entitlements and Project Conditions, as amended from time to time.

2.1.2 This Agreement is subject to the provisions of the Redevelopment Plan, which is on file in Agency’s office and incorporated herein by reference and made a part hereof as though fully set forth herein. This Agreement is entered into for the purpose of developing the Property and not for speculation in land holding. The redevelopment of the Property pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of City and Agency, and the health, safety, and welfare of its residents, and are in accord with the public purposes and provisions of applicable state and local laws.

2.2 Agency

The Agency is the successor entity to the Redevelopment Agency of the City of Seaside, which entered into the Initial DDA exercising governmental functions and powers and organized and existing pursuant to Part I of Division 24 of the Health and Safety Code, Section 33000 et seq. of the State of California. The principal office of Agency is located at 420 Harcourt Avenue, Seaside, California 93955. The term “Agency” includes any assignee or successor to Agency’s rights, powers and responsibilities under this Agreement.

2.3 Developer

2.3.1 Developer is Seaside Resort Development, LLC, an Arizona limited liability company, having its principal office at 310 S. Williams Boulevard, Suite 180, Tucson, Arizona 85711; however, Agency acknowledges that it is the Developer’s intent that the actual development of the Property will be done by Developer Affiliates that acquire portions of the Property as permitted by this Agreement, not by Developer.

2.3.2 Southwest Holdings, Ltd., an Arizona corporation and Cornerstone Capital Management, Ltd., an Arizona corporation, are the co-managing members of Developer (the “Co-Managing Members”).

2.3.3 The term “Developer” as used herein includes any authorized and approved assignee or successor of Seaside Resort Development, LLC, an Arizona limited liability company, as may be permitted by this Agreement. All of the terms, covenants, and conditions of this Agreement applicable to the Phase or portion of the Property acquired by each such assignee or successor shall be binding on each such successor and assign of Developer; provided, however, that Developer’s obligations under the Agreement shall not be binding on purchasers of lots in a Residential Phase or purchasers of residential units or lots in the Timeshare Phase except as provided in the recorded covenants described in Attachment No. 6C which are intended to survive the sale of lots or units, as applicable, to such purchasers.

2.4 Prohibitions Against Transfer

2.4.1 Developer represents that its undertakings pursuant to this Agreement are for the purpose of redevelopment of the Property and not for speculation in land holding. Developer further recognizes that, in view of
(a) the importance of the redevelopment of the Property to the general welfare of the community;

(b) the public assistance that has been made available by law and by Agency for the purpose of making such redevelopment possible; and

(c) the fact that a change in ownership or control of Developer or of a substantial part thereof, or any other act or transaction involving or resulting in a significant change in ownership or control of Developer or the degree thereof, is for practical purposes a transfer or disposition of the property then owned by Developer; the qualifications and identity of Developer and its members are of particular concern to Agency. It is because of those qualifications and identity that Agency has entered into this Agreement with Developer. No voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Agreement except as expressly set forth herein. Except where an Ownership Transfer is specifically permitted by this Agreement, Developer shall not assign all or any part of this Agreement or any interest in the Property without the prior written approval of Agency.

2.4.2 Prior to the recordation of the Certificate of Completion for the last Phase of the Project, Developer shall not, except as permitted by this Agreement: (i) effect any change in Control of Developer or any Co-Managing Member; (ii) assign or attempt to assign this Agreement or any rights herein; or (iii) make any total or partial Ownership Transfer, without prior written approval by Agency unless expressly permitted under Section 2.4.3 below (and then subject to any applicable terms and conditions therein). Each transaction described in the preceding clauses (i), (ii) or (iii) is sometimes referred to in this Agreement and the Attachments hereto as a prohibited “Transfer.” Any such approval shall not constitute a release of Developer or its obligations hereunder. This prohibition shall not apply to a Phase subsequent to the recordation of a Certificate of Completion for that Phase.

2.4.3 Provided that the applicable transfer documents, easement documents, loan documents, organizational documents and/or modification documents are provided to the Agency at least ten (10) business days in advance of the applicable transfer or modification (so that the Agency can confirm that the transfer or occurrence in question is indeed permitted under this Section 2.4.3), Section 2.4 shall not prevent or prohibit:

(a) the granting of easements or permits to facilitate the development of the Property;

(b) granting any security interest in the Property or Improvements, or portion thereof, to any Qualified Lender;

(c) any change in personnel of Developer or Co-Managing Members provided that any one or more of Donald Pitt, Donald Diamond, David Beckham, David Goldstein, Neal Gumbin and/or Brad Miller remain in control of all material day-to-day development decisions and all major decisions of Developer (and if the change in personnel consists of or is related to the death or incapacity of both Donald Pitt and Donald Diamond, then one or more of David Beckham, David Goldstein, Neal Gumbin and/or Brad Miller must remain in control of all such decisions);
(d) an Ownership Transfer to a Developer Affiliate, and the Executive Director of the Agency shall have the right to determine whether the applicable transferee qualifies as a “Developer Affiliate”;

(e) an Ownership Transfer to a Qualified Lender provided that within sixty (60) days after the transfer, the Qualified Lender either engages a real estate developer reasonably approved in writing by Agency to complete the development of the Improvements pursuant to a “development and construction management agreement” reasonably acceptable to the Agency, or transfer the Property to such a developer who assumes the obligations of Developer under this Agreement arising or after the applicable transfer to the Qualified Lender pursuant to an “assumption agreement” reasonably acceptable to the Agency;

(f) a transfer of direct or indirect interests in Developer by an individual by will, intestate succession or to a trust (and subsequent distributions to the trust beneficiary(ies) following such individual’s death), family corporation, family limited partnership or family limited liability company for estate planning purposes or the incapacity of both Donald Pitt and Donald Diamond provided that if both Donald Pitt and Donald Diamond are deceased (or if they are both incapacitated but there is no transfer), then within one hundred and twenty (120) days after their death and/or incapacity, a real estate developer approved in writing by the Agency must be engaged to complete the development of the Improvements pursuant to a “development and construction management agreement” approved in writing by the Agency (the Agency having already approved any one or more of Brad Miller, David Beckham, Neal Gumin and David Goldstein as successor real estate developers for the purpose hereof); and

(g) Upon Developer’s request from time to time, Agency will confirm in writing whether a prospective Ownership Transfer would be permitted under this Agreement or approved provided Agency has received all of the information that it reasonably needs in order to do so.

2.4.4 (a) Any proposed transferee of Developer under Section 2.4.3(d) and any developer engaged as contemplated under Section 2.4.3(f) above who is not one of the pre-approved individuals named therein shall, at minimum, have qualifications and financial responsibility commensurate with that of Developer, as may be reasonably determined by Agency.

(b) Any proposed transferee of Developer under Section 2.4.3(d) and any developer engaged as contemplated under Section 2.4.3(f) must by instrument in writing satisfactory to the Executive Director and in form recordable among the land records of Monterey County, for itself and its successors and assigns, and for the benefit of Agency, expressly assume all of the obligations of Developer under this Agreement and agree to be subject to all the conditions and restrictions to which Developer is subject with respect thereto, except that if a transferee under Section 2.4.3(d) is obtaining a particular Phase or particular Phases, then it shall assume only the obligations relating to the applicable Phase(s).

(c) The provisions of this subsection 2.4.4 shall not apply to any Transferee authorized by subsection 2.4.3(a), (b), (c) or (e).
(d) If Section 2.4.2 is violated with respect to a particular Phase, Agency may take such action as Agency may deem appropriate to assure Agency that the Improvements will be completed, including without limiting the generality of the foregoing, exercising its rights set forth in this Agreement to repurchase the applicable Phase, and any other rights Agency may have under this Agreement, at law or in equity. In the absence of specific written release by Agency, no sale, transfer, conveyance or assignment of all or any portion of or interest in the Property, shall be deemed to relieve Developer from any obligations under this Agreement.

2.5 Agency Representations

Agency, 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 Agency notifies Developer to the contrary prior to the Close of Escrow for each Phase and the representation or warranty in question did not cease to be true as a result of Agency’s acts or omissions after the execution of this Agreement) as of the Close of Escrow for each Phase and which shall survive the Close of Escrow for each Phase and delivery of each Deed.

2.5.1 [INTENTIONALLY OMITTED]

2.5.2 Subject to the satisfaction of the conditions in Section 2.7(iii) and (iv), Agency has the legal power, right and authority to consummate the transactions contemplated hereby, to take any steps or actions contemplated hereby, and to perform its obligations hereunder.

2.5.3 Subject to the satisfaction of the conditions in Section 2.7(iii) and (iv), all requisite action has been taken by Agency and all requisite consents have been obtained in connection with entering into this Agreement and the instruments and documents referenced herein to which Agency 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 Agency’s entering into or performing its obligations under this Agreement.

2.5.4 This Agreement is duly executed by Agency, and all agreements, instruments and documents to be executed by Agency pursuant to this Agreement shall, at such time as they are required to be executed hereunder, be duly executed by Agency, and to the actual knowledge of the Agency, subject to the satisfaction of the conditions in Section 2.7(iii) and (iv), each such agreement is, or shall be at such time as it is required to be executed hereunder, valid and legally binding upon Agency 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 Agency is a Party.

2.5.5 The uses of the Property as contemplated by this Agreement are permitted by the Redevelopment Plan.
2.5.6 Agency 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 Agency from performing its duties and obligations hereunder.

2.5.7 Agency 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.

2.5.8 To the actual knowledge of Agency, the documents referenced in paragraph 2.5.7 above, together with information and other documents referred to or identified in such listed documents, constitute all materials, reports and information in Agency’s possession relating to the Environmental Condition of the Property, and to the actual knowledge of Agency, 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 Agency, there are no unrecorded contracts, licenses, leases or agreements regarding a Phase or any part of it, that will survive the Close of Escrow for the applicable Phase by which Developer would become obligated or liable to any person or entity or that would permit any person or entity to possess or occupy the applicable Phase (except for the Entitlements, the Conditions of Approval, the Golf Course Lease, this Agreement and any other agreements entered into by Developer).

2.5.9 The representations and warranties of Agency set forth herein will survive the Close of Escrow for each Phase, and the transfers contemplated hereby, and the consummation of this Agreement shall not constitute a waiver of such representations and warranties. The warranties and representations made in this Agreement shall not merge with any transfer of any portion of the Property.

Except as otherwise expressly set forth in this Section 2.5, Agency 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 Agency nor any of its employees, agents, advisors, consultants, or representatives make any representations or warranties, express or implied, in connection with any documents or information made available hereunder, or whether any income or profits will or can be derived from the development of the Property.

From and after the execution and delivery of this Agreement, the Agency will not: (i) create any Environmental Condition, or (ii) unless required by applicable law, enter into any agreements or record any documents or instruments that will affect a Phase after the Agency’s conveyance of that Phase to Developer.

As used in this Section 2.5, “the actual knowledge” of Agency means the present actual knowledge of Larry Seeman, the current Executive Director of the Agency and the current City staff. After its initial delivery of Environmental Documents to Developer, Agency shall deliver to Developer any additional materials, reports and notices relating to the Environmental
Condition of a Phase which come into Agency’s possession prior to the Close of Escrow for that Phase, and any other material information relating to the Environmental Condition of the Property of which Agency obtains actual knowledge, and if such additional materials, reports or notices disclose information that materially and adversely affects the development or use of the applicable Phase then Developer shall have the right to terminate this Agreement with respect to the applicable Phase prior to the Close of Escrow for that Phase, and upon such termination, the applicable Phase shall no longer be part of the Property or the Project for purposes of this Agreement; provided, however, that in no event may Developer terminate this Agreement with respect to the Hotel Phase without also terminating this Agreement as to the Timeshare Phase and Residential Phase (i.e., if the Developer terminates this Agreement with respect to the Hotel Phase, Developer must terminate this Agreement in its entirety).

2.6 Developer Representations

Developer, acknowledging that each provision in this Section 2.6 is material and is being relied upon by Agency, represents and warrants the following to Agency for the purpose of inducing Agency to enter into this Agreement and to consummate the transactions contemplated hereby, all of which shall be true as of the date hereof and as of the Close of Escrow for each Phase and which shall survive the Close of Escrow for that Phase and delivery of the Deed conveying title to that Phase pursuant to this Agreement:

2.6.1 Developer has the legal power, right and authority to enter into this Agreement and the instruments and documents referenced herein, to consummate the transactions contemplated hereby, to take any steps or actions contemplated hereby, and to perform its obligations hereunder.

2.6.2 All requisite action has been taken by Developer and all requisite consents have been obtained by Developer in connection with entering into this Agreement and the instruments and documents referenced herein, and the consummation of the transactions contemplated hereby.

2.6.3 To the best knowledge of Developer, the execution, delivery and performance by Developer of this Agreement will not violate any provision of law, any order of any court or other agency of government, or any indenture, agreement or other instrument to which Developer is a party or by which Developer or any of its properties is bound.

2.6.4 This Agreement is, and all agreements, instruments and documents to be executed by Developer pursuant to this Agreement shall be, duly executed by and are, or shall be, valid and legally binding upon Developer and enforceable in accordance with their respective terms, and the execution and delivery thereof shall not, with due notice or the passage of time, constitute a default under or violate the terms of any indenture, agreement or other instrument to which Developer is a party.

2.6.5 Developer understands, agrees and acknowledges that, except for the express representations and warranties of Agency in this Agreement, (i) it is purchasing the Property in “AS-IS/WHERE-IS” condition, and (ii) Agency does not make, has not made and will not make, any representations or warranties, express or implied, concerning the physical or
Environmental Condition of the Property, or its fitness for any particular use or purpose. Developer represents and warrants that Developer will have had the opportunity to make (and hereby covenants to have made), prior to the first Close of Escrow, investigations and inspections of all aspects of the condition of the entire Property, as it has deemed necessary or appropriate, including, but not limited to soils and the Property’s compliance or non-compliance with applicable Laws (including the Environmental Laws) and the existence or non-existence of Hazardous Substances on, in or under the Property. Developer acknowledges that under the terms of this Agreement it will have the opportunity to examine records regarding the Property and become fully familiar with the physical and Environmental Condition of the Property and will have full opportunity to conduct any additional investigations, assessments and testing as it sees fit. Developer further represents and warrants that it is relying solely upon its own inspections and investigations in proceeding with this Agreement, and that it is not relying on the accuracy or reliability of any information provided to it by Agency 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, Agency 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 Agency or the City, the sole obligation which Agency 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 Agency’s liability for any breach of applicable representations and warranties set forth in Section 2.5; provided, however, that (i) the Agency 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 or Agency with respect to Hazardous Substances on the Property; (ii) the Agency 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) Agency shall use (and shall enforce the City’s obligations under the Conveyance Agreement to 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 and represents and warrants 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 Agency or the City, or any of their officers, officials, employees, agents, attorneys or representatives made in connection with this Agreement.

2.6.10 The representations and warranties of Developer set forth herein will survive the Closing Date for each Phase, and the transfers contemplated hereby, and the consummation of this Agreement shall not constitute a waiver of such representations and warranties. Any warranties or representations made in this Agreement shall not merge with any transfer of any portion of the Property.

2.7 Conditions Precedent.

The effectiveness of this Agreement is conditioned, for the benefit of the Agency and the Developer, upon (i) Developer’s payment of all sums due under the loan made by Rabobank, N.A. secured by all or a portion of the Property (which currently has an unpaid principal balance of approximately $2,500,000) within fifteen (15) days after satisfaction of conditions (iii) and (iv) below; (ii) Rabobank, N.A.’s reconveyance of its security interest(s) in the Property; (iii) the approval of this Agreement by the Oversight Board of the Agency; and (iv) approval of this Agreement by the Department of Finance of the State of California (“DOF”) or the failure of the DOF to respond, within the time prescribed by law, to a request for review/approval of this Agreement.

ARTICLE 3. SPECIAL PROVISIONS

3.1 Schedule of Performance; Extension of Time of Performance

Subject to Section 11.3 hereof, the Parties shall perform all required acts, and Developer shall begin and complete all construction and development, within the times specified in the Schedule of Performance or such reasonable extension of those dates as may be granted by each Party to the other in writing. The Schedule of Performance is subject to revision from time to time as and if mutually agreed upon in writing between Developer and Agency. The Parties to this Agreement agree to consider requests for extensions with the intent that all Parties cooperate toward the implementation of the development activities encompassed by this Agreement.

3.2 Delegation to Executive Director

3.2.1 The Executive Director is hereby authorized to take any and all steps necessary to complete the acquisition and conveyance of the Property and to implement the provisions of this Agreement.
3.2.2 The Executive Director is hereby authorized, on behalf of Agency, to, in his sole and absolute discretion approve in writing: (i) an initial set of extensions to deadlines in this Agreement considering the date on which all conditions precedent in Section 2.7 above shall have been satisfied; (ii) additional extensions of time hereunder (including deadlines in the Schedule of Performance), so long as the cumulative total of all extensions made after the date of this Agreement under this clause (ii) does not exceed three hundred and sixty five (365) days (and upon such an extension, any deadlines for the performance of obligations that depend on the performance of the obligation for which the deadline is extended shall also be reasonably extended by the Executive Director); (iii) modifying the room number requirements of the Hotel Phase in Section 2.1.1 by plus or minus 10%; (iv) approve, waive or make comments on behalf of the Agency (not the City) in connection with Developer’s submissions described in Article 6; (v) modify or waive any of Agency’s conditions or requirements to any Closing; (vi) with respect to any Residential Phase, permitting on behalf of the Agency (not the City) Developer to construct up to twenty percent (20%) fewer lots than otherwise required by this Agreement upon Developer’s delivery to the Executive Director of reasonable evidence that fewer lots will not reduce the Agency’s Profit Participation under Section 8.3 below; (vii) approving reasonable changes to the Site Plan for the Timeshare Phase; (viii) adjusting the insurance requirements on Attachment 7, in light of the circumstances pertinent to the development of a particular portion of the Project; and (ix) approving reasonable adjustments to parcel boundaries, including the execution and delivery of implementing instruments, necessary or appropriate to (A) accommodate recordation of final subdivision maps or parcel maps so long as such final subdivision maps or parcel maps have been found to be in substantial compliance with the approved Vesting Tentative Map for the Project and (B) convey parcels (or portions of parcels) to the Developer with legal descriptions consistent with the pertinent final subdivision maps (it being understood that the legal descriptions may vary from the legal descriptions in Attachment No. 1 hereto). No action of the Executive Director pursuant to this Section 3.3.2 shall be effective unless it is express and in writing.

3.2.3 Where Agency approval of any Developer submissions or requests specified in Article 6 is required, the Executive Director may grant, in writing, such approval or, in his or her sole discretion, refer such matters to Agency’s Board or the City Council for its approval or disapproval. In addition, notwithstanding the time periods for such approvals set forth in Article 6 and the Schedule of Performance, if the Executive Director deems it appropriate or necessary to hold a public meeting before the action specified is to be taken, the period for such action by Agency or City shall be extended by a reasonable amount of time, not to exceed thirty (30) days in each case, for the holding of such public meeting. In that event, the period of delay attributable to the public meeting shall extend the time(s) for Developer’s performance by a commensurate period.

3.2.4 Developer may appeal decision of the Executive Director to governing board of the Agency (i.e., City Council acting as such “governing board”) 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 Agency Secretary within fourteen (14) days after the Executive Director 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 Executive Director), except that the matter shall be placed on the agenda for one of the two regularly
scheduled public hearings of the Agency governing board (i.e., the City Council acting as such "governing board") subsequent to the receipt by the Agency Secretary of the written appeal.

3.3 Good Faith Deposit

3.3.1 Developer has previously delivered to City a deposit in the amount of Fifty Thousand Dollars ($50,000.00) (the “ENRA Deposit”) pursuant to the Third Amended and Restated Exclusive Negotiating Rights Agreement between City and Developer dated September 28, 2004. City has transferred the ENRA Deposit to the Agency. In connection with Developer’s execution and delivery of the Initial DDA, Developer previously delivered to Agency an additional deposit in the amount of One Hundred Thousand Dollars ($100,000.00) (the “Additional Deposit”). The ENRA Deposit and the Additional Deposit shall be held by Agency 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 Agency except as provided in this Agreement.

3.3.2 Upon the Close of Escrow for the last Phase scheduled to be sold to Developer under the Agreement, Developer shall be credited the full amount of the Good Faith Deposit, as an offset against the Purchase Price for the last portion of the Property when it is sold to Developer under this Agreement (on a dollar for dollar basis).

3.3.3 Upon termination of this Agreement pursuant to any applicable provision of this Agreement, the Good Faith Deposit shall be disposed of as set forth in the Section authorizing such termination; however, if the termination is based on the Developer’s default, then the Agency may hold the Good Faith Deposit until either a court instructs the Agency as to its disposition (and the court order is not appealed or is affirmed on appeal), or the parties execute a settlement agreement that addresses the disposition of the funds.

3.3.4 Upon exercise by Agency of its right of termination of this Agreement pursuant to Section 9.3.1, the Good Faith Deposit shall be retained by Agency as liquidated damages without offset or deduction or other defense whatsoever to payment.

3.3.5 AGENCY AND DEVELOPER HEREBY MUTUALLY AGREE THAT DEVELOPER WOULD BE LIABLE IN DAMAGES TO AGENCY AS A RESULT OF THE FAILURE OF DEVELOPER TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT PRIOR TO THE CONVEYANCE OF A PORTION OF THE PROPERTY TO DEVELOPER AND THAT THE AMOUNT OF SUCH DAMAGES WOULD BE IMPOSSIBLE TO CALCULATE OR ASCERTAIN. IN THE EVENT THAT AGENCY TERMINATES THIS AGREEMENT PURSUANT TO SECTION 9.3.1 HEREOF PRIOR TO CONVEYANCE OF ANY OF THE PROPERTY TO DEVELOPER, THE GOOD FAITH DEPOSIT SPECIFIED ABOVE SHALL BE RETAINED BY AGENCY AS LIQUIDATED DAMAGES WITHOUT ANY DEDUCTION, OFFSET OR RECOUPMENT (OR ANY RIGHT THEREOF) WHATSOEVER. BY INITIALING THE SPACES WHICH IMMEDIATELY FOLLOW THIS PARAGRAPH, AGENCY AND DEVELOPER SPECIFICALLY AND EXPRESSLY AGREE TO ABIDE BY THE TERMS AND PROVISIONS OF THIS
SUBPARAGRAPH CONCERNING LIQUIDATED DAMAGES IN THE EVENT DEVELOPER FAILS TO PERFORM ACCORDING TO THE PROVISIONS OF THIS AGREEMENT PRIOR TO THE CONVEYANCE OF ANY OF THE PROPERTY TO DEVELOPER, AND SUCH LIQUIDATED DAMAGES SHALL CONSTITUTE THE SOLE AND EXCLUSIVE REMEDY ON ACCOUNT OF DEVELOPER'S UNCURED DEFAULT PRIOR TO CONVEYANCE OF ANY OF THE PROPERTY TO DEVELOPER AND AGENCY WAIVES ANY RIGHTS TO BRING AN ACTION FOR DAMAGES OR SPECIFIC PERFORMANCE OR ANY OTHER FORM OF REMEDY OF ANY BREACH OR DEFAULT BY DEVELOPER.

Agency's Initials: ___  Developer's Initials: _____

3.4 Submission of Evidence of Financing

Except as provided in Section 3.7.6, in order to satisfy the conditions precedent to conveyance set forth in Section 5.5, as a condition precedent to Agency's obligation to convey each Phase or portion thereof to Developer, Developer shall submit to the Executive Director evidence that Developer has obtained and committed, or will obtain and commit concurrent with the closing of the acquisition of that Phase or portion, sufficient cash equity and financing to finance the completion of the Improvements on that Phase or portion, such that the Executive Director is reasonably satisfied that the Improvements can be constructed.

Such evidence shall include a copy of the final construction loan documents and a complete project budget showing all costs (and the portion thereof to be paid with Developer equity as opposed to loan funds). Any such agreement shall provide for notice of default to Agency, and the right to cure required by Section 6.13.5.

This Section 3.4 is in addition to, and not in lieu of, any other similar conditions described in this Agreement.

3.5 Construction Contract

3.5.1 Except as provided in Section 3.7.6, as a condition precedent to Agency's obligation to convey any Phase or portion thereof to Developer, Developer shall provide evidence that a construction contractor(s) reasonably acceptable to the Executive Director (each, a "Contractor") shall enter into one or more binding and enforceable contract(s) with Developer, in which a Contractor agrees to serve as general contractor for the construction of the Improvements on that Phase or portion (including the development of lots on the Residential Phases in preparation for the construction of houses thereon). The Construction Contract(s) shall obligate the Contractor(s) to construct the Improvements on each portion of the Hotel Phase and Timeshare Phase for a fixed price or guaranteed maximum cost. The compensation in each Construction Contract (or in the case of Residential Phases, the budget for Residential Phases that shall have been approved by the Executive Director) shall be within the amount of available financing as shown by the evidence of financing provided pursuant to Section 3.5 and the Developer's equity, and each Construction Contract shall require completion of the Improvements on a schedule consistent with the Schedule of Performance.
SUBPARAGRAPH CONCERNING LIQUIDATED DAMAGES IN THE EVENT DEVELOPER FAILS TO PERFORM ACCORDING TO THE PROVISIONS OF THIS AGREEMENT PRIOR TO THE CONVEYANCE OF ANY OF THE PROPERTY TO DEVELOPER, AND SUCH LIQUIDATED DAMAGES SHALL CONSTITUTE THE SOLE AND EXCLUSIVE REMEDY ON ACCOUNT OF DEVELOPER’S UNCURED DEFAULT PRIOR TO CONVEYANCE OF ANY OF THE PROPERTY TO DEVELOPER AND AGENCY WAIVES ANY RIGHTS TO BRING AN ACTION FOR DAMAGES OR SPECIFIC PERFORMANCE OR ANY OTHER FOR REMEDY OF ANY BREACH OR DEFAULT BY DEVELOPER.

Agency’s Initials: ___________  Developer’s Initials: ___________

3.4 Submission of Evidence of Financing

Except as provided in Section 3.7.6, in order to satisfy the conditions precedent to conveyance set forth in Section 5.5, as a condition precedent to Agency’s obligation to convey each Phase or portion thereof to Developer, Developer shall submit to the Executive Director evidence that Developer has obtained and committed, or will obtain and commit concurrent with the closing of the acquisition of that Phase or portion, sufficient cash equity and financing to finance the completion of the Improvements on that Phase or portion, such that the Executive Director is reasonably satisfied that the Improvements can be constructed.

Such evidence shall include a copy of the final construction loan documents and a complete project budget showing all costs (and the portion thereof to be paid with Developer equity as opposed to loan funds). Any such agreement shall provide for notice of default to Agency, and the right to cure required by Section 6.13.5.

This Section 3.4 is in addition to, and not in lieu of, any other similar conditions described in this Agreement.

3.5 Construction Contract

3.5.1 Except as provided in Section 3.7.6, as a condition precedent to Agency’s obligation to convey any Phase or portion thereof to Developer, Developer shall provide evidence that a construction contractor(s) reasonably acceptable to the Executive Director (each, a "Contractor") shall enter into one or more binding and enforceable contract(s) with Developer, in which a Contractor agrees to serve as general contractor for the construction of the Improvements on that Phase or portion (including the development of lots on the Residential Phases in preparation for the construction of houses thereon). The Construction Contract(s) shall obligate the Contractor(s) to construct the Improvements on each portion of the Hotel Phase and Timeshare Phase for a fixed price or guaranteed maximum cost. The compensation in each Construction Contract (or in the case of Residential Phases, the budget for Residential Phases that shall have been approved by the Executive Director) shall be within the amount of available financing as shown by the evidence of financing provided pursuant to Section 3.5 and the Developer’s equity, and each Construction Contract shall require completion of the Improvements on a schedule consistent with the Schedule of Performance.
SUBPARAGRAPH CONCERNING LIQUIDATED DAMAGES IN THE EVENT DEVELOPER FAILS TO PERFORM ACCORDING TO THE PROVISIONS OF THIS AGREEMENT PRIOR TO THE CONVEYANCE OF ANY OF THE PROPERTY TO DEVELOPER, AND SUCH LIQUIDATED DAMAGES SHALL CONSTITUTE THE SOLE AND EXCLUSIVE REMEDY ON ACCOUNT OF DEVELOPER’S UNSECURED DEFAULT PRIOR TO CONVEYANCE OF ANY OF THE PROPERTY TO DEVELOPER AND AGENCY WAIVES ANY RIGHTS TO BRING AN ACTION FOR DAMAGES OR SPECIFIC PERFORMANCE OR ANY OTHER FOR REMEDY OF ANY BREACH OR DEFAULT BY DEVELOPER.

Agency’s Initials: _______  Developer’s Initials: [Signature]

3.4 Submission of Evidence of Financing

Except as provided in Section 3.7.6, in order to satisfy the conditions precedent to conveyance set forth in Section 5.5, as a condition precedent to Agency’s obligation to convey each Phase or portion thereof to Developer, Developer shall submit to the Executive Director evidence that Developer has obtained and committed, or will obtain and commit concurrent with the closing of the acquisition of that Phase or portion, sufficient cash equity and financing to finance the completion of the Improvements on that Phase or portion, such that the Executive Director is reasonably satisfied that the Improvements can be constructed.

Such evidence shall include a copy of the final construction loan documents and a complete project budget showing all costs (and the portion thereof to be paid with Developer equity as opposed to loan funds). Any such agreement shall provide for notice of default to Agency, and the right to cure required by Section 6.13.5.

This Section 3.4 is in addition to, and not in lieu of, any other similar conditions described in this Agreement.

3.5 Construction Contract

3.5.1 Except as provided in Section 3.7.6, as a condition precedent to Agency’s obligation to convey any Phase or portion thereof to Developer, Developer shall provide evidence that a construction contractor(s) reasonably acceptable to the Executive Director (each, a “Contractor”) shall enter into one or more binding and enforceable contract(s) with Developer, in which a Contractor agrees to serve as general contractor for the construction of the Improvements on that Phase or portion (including the development of lots on the Residential Phases in preparation for the construction of houses thereon). The Construction Contract(s) shall obligate the Contractor(s) to construct the Improvements on each portion of the Hotel Phase and Timeshare Phase for a fixed price or guaranteed maximum cost. The compensation in each Construction Contract (or in the case of Residential Phases, the budget for Residential Phases that shall have been approved by the Executive Director) shall be within the amount of available financing as shown by the evidence of financing provided pursuant to Section 3.5 and the Developer’s equity, and each Construction Contract shall require completion of the Improvements on a schedule consistent with the Schedule of Performance.
3.5.2 Developer agrees that the Contractors it engages to construct the Project shall have valid and current California contractor licenses for the work proposed which shall not have been revoked at any time within the past five-years, shall not have been in default beyond any applicable cure period, terminated for cause, or for which surety has been required to complete a contract within the last 5-years, shall not have been cited more than twice for failure to pay prevailing wages on contracts requiring prevailing wages in the last five-years or have filed for bankruptcy within the last 10-years.

3.5.3 Developer shall cause its Contractors (acting on their own behalf and on behalf of all of their subcontractors) to meet with the Building and Construction Trades Council of Monterey and Santa Cruz Counties to consider the possibility of entering into Project Labor Agreement(s) for the Project.

3.5.4 In order to help fulfill the Agency’s First Source Recruitment Policy with respect to support of the Monterey County Pre-Apprentice Program, the Developer shall include in its contracts with Contractors that they will accept graduates of that program for available positions, and that the Contractors will include such requirement in their subcontracts and will enforce such obligations of their subcontractors. Developer shall enforce all such contractual provisions included in its contracts with Contractors.

3.6 Performance and Payment Bonds

3.6.1 Except as provided in Section 3.7.6, concurrently with the acquisition of a Phase or portion thereof, the Developer shall deliver to the Agency payment and performance bonds issued by a reputable bank or insurance company licensed to do business in California and reasonably approved by the Executive Director, each with a "penal sum" or liability limitation of not less than one hundred percent (100%) of the cost of construction of the Improvements for that Phase or portion as reflected in an overall project budget for such Improvements that has been approved by the applicable Qualified Lender and has been delivered to the Agency (with reasonable evidence of the Qualified Lender’s approval). The bonds shall name the Agency as a co-obligee.

3.6.2 Upon any change order to a construction contract that increases the GMAX price or stipulated sum therein, all applicable payment and performance bonds shall be modified so that the "penal sum" or liability limitation therein is 100% of such increased GMAX price or stipulated sum.

3.7 Credit Property

3.7.1 [INTENTIONALLY DELETED]

3.7.2 Upon the payment by Developer of the sums described in Section 2.7, Developer shall receive a credit (a "Takedown Credit") toward the purchase price of any property within the Hotel Phase, Residential Phases or Timeshare Phases under this Agreement. Developer may acquire (and Agency shall convey to Developer or Developer's designee permitted under this Agreement) property at a date determined by Developer by notice to Agency (subject to the time limits contained in the Schedule of Performance, filing of a final subdivision map or parcel map as required under the California Subdivision Map Act
(Government Code §§66410-66499.58) encompassing the selected property (or a larger area) in accordance with Section 3.7.7 below, and satisfaction of the provisions of this Agreement applicable to the selected property.) Property acquired or to be acquired by Developer using Takedown Credit is sometimes referred to in this Agreement as "Credit Property." Credit Property situated in the Residential Component shall be subject to the Agency’s Participation Interest described in Section 8.3. The maximum aggregate amount of Takedown Credit is $3,200,000 plus (ii) the amount that is paid by Developer under (i.e., to satisfy the condition described in) Section 2.7(i) above (which should be approximately $2,500,000); consequently, the maximum aggregate amount of Takedown Credit is approximately $5,700,000.

3.7.3 Developer and Agency acknowledge that Developer previously paid $325,000 toward the purchase price of the Hotel Phase in connection with a letter agreement dated May 19, 2006, and that Developer has $325,000 in Takedown Credit on account thereof. This credit may be applied to the purchase of land in the Hotel, Timeshare or Residential Phases.

3.7.4 In lieu of the Agency’s obligation to pay Developer $2,875,000 as described in former Section 8.1.3: (i) upon the execution by Developer and Agency of this Agreement, Developer shall receive a Credit of $1,475,000 with respect to the relocation of the Golf Course driving range and the Golf Course holes required to facilitate the Project (which relocations were completed prior to the date of this Agreement); and (ii) upon the relocation of the Golf Course maintenance yard, Developer shall receive a $1,400,000 Takedown Credit.

3.7.5 Accordingly, upon the execution by Developer and Agency of this Agreement, and satisfaction of the conditions in Section 2.7, Developer will have accrued $1,800,000 of Takedown Credit ($325,000 plus $1,475,000) under Sections 3.7.3 and 3.7.4 above (plus the Takedown Credit on account of the payment under clause (i) of Section 2.7).

3.7.6 Notwithstanding the provisions thereof, for Credit Property that is Residential Phase or Timeshare Phase property and is acquired in the first of the two-step process specified in subsection (i) of Section 3.7.7, the provisions of Sections 3.4 and 5.5.1(iv) (concerning evidence of financing), 3.5 (concerning construction contracts), 3.6 (concerning payment and performance bonds), 5.5.1(v) (concerning permits and governmental approvals), 5.5.1(vi) (concerning plans and specifications) and 5.5.4(i) (concerning a timeshare management/system agreement) are not conditions to the closing of Developer’s purchase. If Residential Phase or Timeshare Phase land is acquired through a recorded parcel map in which the applicable Credit Property is defined as one parcel and which parcel is configured in such a manner as to require its subsequent subdivision into additional future lots as proposed by the Entitlements and which parcel map is not accompanied by subdivision improvement agreements and subdivision improvement bonds, then the preconditions specified above for the acquisition shall not apply. However, then the preconditions of closing specified above must be satisfied prior to Developer’s commencement of construction of any improvements on that Credit Property.

However, if the Credit Property is either: (i) land on which the hotel or its amenities would be constructed; or (ii) Residential Phase or Timeshare Phase land that is acquired through a recorded subdivision map or parcel map that depicts lots or parcels intended for subsequent sale and development in their ultimate configuration, and that map is
accompanied by improvement plans, an improvement agreement and required subdivision security, then the preconditions of closing specified above must be satisfied prior to Developer's acquisition of that Credit Property.

3.7.7 The condition of Section 5.5.1(ix) (concerning compliance with the Subdivision Map Act) may be satisfied with respect to Credit Property that is Residential Phase or Timeshare Phase property in one of the following ways: (1) by a two-step process involving first, a recorded parcel map in which the applicable Credit Property is defined as one parcel and which parcel is configured in such a manner as to require its subsequent subdivision into additional future lots as proposed by the Entitlements and which parcel map shall not require improvements, improvement agreements or subdivision improvement bonds, and then second, a subsequent parcel map or final subdivision map that divides the same parcel into separate lots or parcels for eventual development and which contains required subdivision improvements and is accompanied by a subdivision improvement agreement and subdivision bonds; or (2) a recorded subdivision map or parcel map that is accompanied by improvement plans, an improvement agreement and required subdivision bonds. The intent of this provision is to allow the creation of single parcels to convey the Credit Property from the Agency to the Developer but to ensure that no lot or parcel that is created for eventual development is done so without subdivision improvements, a subdivision improvement agreement and subdivision bonds.

3.8 Subdivision Improvements. To the extent permitted by law, Developer shall not be required to provide security to the Agency for subdivision improvements for which security is provided to the City, but in such event Agency shall be made a co-obligee on security provided to the City.

3.9 Acquisition of Residential Phases. Developer may acquire each Residential Phase in one or more closings (i.e., Developer need not acquire all of a Residential Phase in a single closing) provided that: (i) at each closing Developer shall acquire not less than the amount of land sufficient for the subsequent creation of not less than four (4) ultimate residential lots as depicted on the Vesting Tentative Map for the project, which lots are created in one of the two methods described in Section 3.7.6; (ii) lots acquired within a particular phase shall be contiguous and contiguous with any lots already acquired within the phase (and for the purpose hereof lots separated only by easements or rights of way are considered contiguous); (iii) if Developer has acquired one or more but less than all of the lots in a particular Residential Phase, then until Developer acquires all of such Residential Phase, Developer may not acquire any lots in any other Residential Phase; and (iv) the Property within each closing shall conform to the parcel map or final subdivision map required by Section 3.7.6.
3.10 **New or Modified Entitlements.** Developer acknowledges and agrees that: (i) although this Agreement contemplates potential changes to components of the Project which may or may not be consistent with existing entitlements and may under certain circumstances require Developer to apply for and obtain amendments to or modifications of certain Entitlements, this Agreement is not intended to and does not constitute an amendment to or modification of any existing entitlements; and (ii) should Developer seek any amendment to or modification of any existing entitlements, Developer must pursue the same through the City’s ordinary processes and procedures in accordance with applicable state and municipal laws.

**ARTICLE 4. AGENCY PROPERTY ACQUISITION**

4.1 **The Property.** The Property consists of the land described in Attachment I and any existing improvements thereon.

4.2 **Acquisition of the Property.** [INTENTIONALLY OMITTED]

4.3 **No Agency Obligation to Improve or Repair the Property**

Developer shall accept the Property, in its current “as is” physical condition. Agency shall have no responsibility whatsoever to grade or prepare the Property in any way, conduct investigations with respect to the condition of the soil, its geology, the presence of known or unknown faults, its suitability for the use intended by Developer, any structural damage, any on- or off-site soils contamination, any materials, such as asbestos or lead based paint, or any similar matters, conduct any clean up activities, or construct any improvements of any kind whatsoever.

**ARTICLE 5. DISPOSITION OF THE PROPERTY; CONDITIONS TO CLOSE OF ESCROW FOR EACH PHASE**

5.1 **Sale of the Property by the Agency to the Developer.** The Agency hereby agrees to sell the Property to Developer, and Developer hereby agrees to buy the Property, subject to the terms and conditions hereinafter set forth. The Developer shall close on and purchase all of the Property in accordance with the Schedule of Performance, provided that the applicable conditions in Section 5.4 that benefit Developer have been satisfied.

5.2 **Stages and Timeline for Hotel Development; Right to Acquire Residential and Timeshare Phases Conditioned Upon Hotel Progress.**

5.2.1 On or before October 19, 2014, Developer must submit amended entitlement applications to the City. On or before April 18, 2016, Developer must obtain approval of such amended entitlement applications, which should include a revised site plan for the Hotel Phase containing (i) “Stage One” of at least 40 rooms, (ii) “Stage Two” consisting of rooms which, together with the Stage One, would bring the number of rooms to at least 68 rooms in the aggregate, (iii) general information for the remainder of the Hotel Parcel (the “Final Hotel Stage”) sufficient to demonstrate that the Hotel Parcel will accommodate at least 275 rooms (or up to 10% fewer rooms if authorized by the Executive Director pursuant to Section 3.2.2); and (iv) sufficient information with respect to the remainder of the Hotel and the
Timeshare/Residential projects for City staff to be able to make CEQA determinations for any amendments or modifications that may be required to the existing entitlements.

5.2.2 Instead of building all of Stage One and Stage Two on the Hotel Phase, Developer may elect to build all or part of Stage One and/or Stage Two on the Timeshare Phase. If Stage One is to be constructed all or in part on the Timeshare Phase, then (i) the portion of Stage One on the Timeshare Phase must be located reasonably close to the Hotel Phase, (ii) a revised Conditional Use Permit (CUP) for the portion of the Timeshare Phase where any of Stage One is to be located must be approved on or before April 18, 2016, and (iii) Stage One must be operated as part of the hotel until completion of construction of at least 275 hotel rooms on the Hotel Phase, after which Stage One may be sold and/or used for any purpose permitted under the Entitlements, as amended from time to time. If Stage Two is to be constructed all or in part on the Timeshare Phase, then (i) the portion of Stage Two on the Timeshare Phase must be located reasonably close to the Hotel Phase, (ii) a revised Conditional Use Permit (CUP) for the portion of the Timeshare Phase where any of Stage Two is to be located must be approved on or before April 18, 2016, (iii) the portion of Stage Two on the Timeshare Phase (at Developer’s discretion) may be sold as residential units (subject to the applicable entitlements) and not as residential lots, and if so shall be placed in a voluntary rental program to be administered by the hotel operator, (iv) Stage Two must contain a number of rooms (on the Hotel Phase) or individually rentable rooms within the units (on the Timeshare Phase) such that, when added to the number of Stage One rooms, would be at least 68 in the aggregate, and (v) Developer shall submit a revised CUP for all of the Timeshare Phase which may be general as to the portion of the Timeshare Phase which is not part of Stage Two, but must be specific with regard to (x) changes necessary to substitute residential units for timeshare units and (y) the siting and product types for any of Stage Two on the Timeshare Phase or rooms in excess of the aggregate of 68 rooms in Stage One and Stage Two to be constructed on the Timeshare Phase.

5.2.3 Developer shall (i) obtain building permits for and commence construction of Stage One on or before April 19, 2017, and (ii) complete Stage One and obtain a certificate of occupancy for Stage One on or before July 20, 2018. Developer shall: (i) obtain building permits for and commence construction of Stage Two on or before October 19, 2018; and (ii) complete Stage Two and obtain a certificate of occupancy for Stage Two on or before January 17, 2020.

5.2.4 Developer shall: (i) obtain building permits for and commence construction of the Final Hotel Phase on or before April 18, 2020; and (ii) complete the Final Hotel Stage and obtain a certificate of occupancy for the Final Hotel Stage on or before April 19, 2022.

5.2.5 Developer may obtain Residential Phase land and Timeshare Phase land only in accordance with this Section 5.2.5.

5.2.5.1 Until completion of construction and the opening for business of Stage One, Developer may purchase Property in the Timeshare Phase and Residential Phase, but only by using Takedown Credits.

5.2.5.2 After completion of construction of Stage One and the opening for business of Stage One, Developer may purchase up to an additional $2,500,000 of Property in
the Timeshare Phase and Residential Phase (in addition to the Property that can be purchased by Developer using Takedown Credits).

5.2.5.3 After completion of construction of Stage Two and the opening for business of Stage Two, Developer may purchase up to an additional $2,500,000 of Property in the Timeshare Phase and Residential Phase (in addition to the Property that can be purchased by Developer using Takedown Credits and the $2,500,000 of Property in the Timeshare Phase and Residential Phase described in Section 5.2.5.2 above).

5.2.5.4 After material commencement of construction of the Final Hotel Stage Developer may purchase the remainder of the Timeshare Phase and Residential Phase.

5.2.5.5 The last date for Developer to acquire all of the Residential Phase land and Timeshare Phase land is April 19, 2023.

5.3 Purchase Prices. The purchase prices for each Phase (defined in Section 1.1.46) to be paid by Developer to Agency are set forth on Attachment No. 1-C, but are subject to adjustment under Section 11.3.

5.4 Closing Dates. The last date for the Close of Escrow for each Phase of the Property is described in the Schedule of Performance.

5.5 Conditions Precedent to Purchases and Sales of Phases.

5.5.1 All Sales. The following events are conditions precedent to the Agency’s sale of each Phase (or portion thereof, as applicable) to the Developer:

(i) the Developer’s inspection of the applicable Phase or portion, approval of the physical condition and all other aspects of the Phase or portion, and delivery to the Agency of copies of Developer’s inspection reports and environmental studies for the applicable Phase or portion;

(ii) presentation to the Agency of evidence (such as insurance certificates) that the insurance required by Section 6.10 of this Agreement is in effect;

(iii) except as provided in Section 3.7.6, presentation to the Agency of evidence that the construction contract and payment and performance bonds described in Section 3.5 above with respect to the applicable Phase or portion will be in place;

(iv) except as provided in Section 3.7.6, presentation to the Agency of reasonable evidence establishing the financial feasibility of the applicable Phase or portion of the Project (including, without limitation, development budgets showing sources and uses of funds and all costs of the applicable Phase or portion and evidence of the applicable lender’s approval thereof, and evidence of the availability of loan and equity funds for the applicable Phase or portion, including funds for all infrastructure and for satisfaction of all applicable Entitlement Conditions for the applicable Phase or portion) and in the case of the Hotel Phase (and
notwithstanding anything to the contrary in Section 3.4), the actual closing of the construction
loan (if any);

(v) except as provided in Section 3.7.6, delivery to the Agency of
evidence acceptable to the Executive Director that all permits and governmental approvals for
the development of the applicable Phase in accordance with this Agreement will have been
issued, all development-related fees for the applicable Phase or portion will have been paid, and
there would be no delinquent Entitlement conditions to the issuance of any such approvals or
permits;

(vi) except as provided in Section 3.7.6, final plans and specifications
for the applicable Phase or portion thereof having been delivered to and approved by the
Executive Director (which shall not constitute approval by the City);

(vii) the absence of an uncured default by Developer under this
Agreement (except that this clause (vii) shall not apply to purchases by Developer described in
Section 5.2.5.1 through 5.2.5.3);

(viii) receipt and approval by the Executive Director of the formation
and organizational documents (and qualification documents and good standing certificates) for
(a) the Developer and its constituent entities, and (b) any Developer Affiliate or other permitted
or approved transferee that will acquire the applicable Phase or portion thereof and its constituent
entities;

(ix) the compliance of the applicable Phase or portion with the
California Subdivision Map Act (i.e., each Phase or portion thereof being acquired must
constitute, a separate, legally subdivided parcel); this condition precedent is intended by the
parties to comply with Section 66499.30 of the Subdivision Map Act and the decision in Black
Hills Investments Inc. v. Albertson’s, Inc. [2007] 146 CQA4th 883; this condition precedent
cannot be waived by either party;

(x) [Intentionally Deleted]

(xi) [Intentionally Deleted]

(xii) Unless Agency has theretofore obtained owner’s title insurance for
the applicable land to be sold by the Agency, the issuance of an endorsement to the City’s
existing title policy for the Property adding the Agency as an additional insured (at the cost of
the City or the Agency, if available, or if such an endorsement is not available, the issuance of a
new title policy in form and substance acceptable to the Executive Director insuring the Agency
as the owner of the Property; provided, however, that if neither a new title policy nor an
endorsement is available, then this condition shall not apply provided the Developer accepts
quitclaim deeds rather than grant deeds for the Property;

(xiii) the Title Company’s agreement to issue the applicable Developer
Title Policy in the form required by Section 5.5;
(xiv) the absence of an uncured default by Agency under this Agreement;

(xv) [Intentionally Deleted]

(xvi) [Intentionally Deleted]

(xvii) [Intentionally Deleted]

(xviii) the City's approval, execution and delivery to Developer of a Reimbursement Agreement in the form attached hereto as Attachment No. 15;

(xix) [Intentionally Deleted]

(xx) [Intentionally Deleted]

(xxi) [Intentionally Deleted]

Conditions (xiii), (xiv), (xvii) and (xviii) are for the benefit of the Developer only. The other conditions are for the benefit of the Agency only.

5.5.2 Residential Phases. The following events are also conditions precedent to the Agency's sale of Residential Phase land to the Developer;

(i) the execution and delivery to the Agency of the Residential Phase Deed of Trust described in Section 8.3.3 below and an environmental indemnity agreement in the form of Attachment No. 10 for the applicable Residential Phase, and the recordation of such deed of trust in the Official Records of Monterey County, California; and

(ii) the issuance to the Agency (at Developer's cost) of an ALTA Lender's title policy (the "Title Policy") which insures the Residential Phase Deed of Trust as an encumbrance on the Residential Phase and is in form and substance with endorsements satisfactory to the Executive Director.

(iii) Amendments to the Golf Course Lease and the recorded memorandum relating thereto which add to such lease land originally included under the DDA in a Residential Phase but subsequently omitted from such Residential Phase by an amendment to the DDA, shall be executed by B&B Golf Course Properties, LLC (and in the case of the memorandum amendment, duly acknowledged) and shall be delivered to the City. The effectiveness of such amendments shall be conditioned upon the conveyance of the added land by the Agency to the City and the acceptance thereof by the City.

The conditions in this Section 5.4.2 are for the benefit of the Agency only.

5.5.3 Hotel Phase. The following events are also conditions precedent to the Agency’s sale of any portion of the Hotel Phase to the Developer:

(i) [Intentionally Deleted]
(ii) delivery to Agency of a copy of a reasonable hotel management agreement consistent with this DDA (including, without limitation, Section 7), executed by a hotel manager listed on Attachment No. 13; and

(iii) [Intentionally Deleted]

(iv) the execution by City and Developer, and the acknowledgment and recordation, of: (a) a Memorandum of Hotel Operating Agreement reasonably acceptable to Executive Director, City and Developer which evidences the rights in the hotel operating agreement to enter and use the golf course facilities and runs with the land with respect to, and benefits, the Hotel Phase; and (b) reasonable utility and access easements across the Property and/or the premises under the Golf Course Lease that are reasonably acceptable to the Executive Director, City Manager and Developer and are reasonably necessary for the functioning of the Project.

Condition (ii) of this Section 5.4.3 is for the benefit of the Agency only. Condition (iv) is for the benefit of both the Developer and the Agency.

5.5.4 Timeshare Phases. The following is also a condition precedent to the Agency’s sale of each Timeshare Phase to the Developer (but only to the extent that a Timeshare Phase is to be developed as a timeshare project):

(i) delivery to Agency of a reasonable timeshare management/system agreement consistent with this DDA (including, without limitation, Section 7), executed by a time share manager listed on Attachment No. 13.

The foregoing condition is for the benefit of the Agency only.

5.5.5 Timeshare and Residential Phases. The terms of Section 5.2 shall apply to the Timeshare and Residential Phases and portions thereof.

5.6 Title. It is a condition in favor of Developer to each Close of Escrow that the Title Company be committed to issue to Developer a CLTA Standard Coverage Policy of Title Insurance (the “Developer Title Policy”) in the amount of the purchase price for the Phase being acquired, showing the title to the property vested in Developer, subject to the Memorandum of DDA, the Deed of Trust (for the Hotel Parcel only), the deed of trust securing the Agency’s Profit Participation (for Residential Phases only), the Agency’s repurchase option for the applicable Phase, any applicable REA or CC&R’s required as a condition of the Closing of the applicable Phase, and all title exceptions in that certain second amended preliminary report dated May 24, 2005 issued by the Title Company under Order No. 52104544 (the “PTR”) except for exceptions 13, 14, 15, 17 and 18. If Developer desires, Developer shall have the right to receive ALTA coverage as a condition to the closing of each Phase, but Developer shall be responsible for the cost of all ALTA extended coverage to the extent it exceeds the cost of CLTA coverage, all endorsements, and the cost of an ALTA survey, if performed by Developer. Developer may obtain higher policy limits if Developer pays all costs relating thereto. Agency 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 Agency executes this Agreement. Agency shall deliver to Developer any additional materials, reports and notices
relating to the title to a Phase which come into Agency’s possession prior to the Close of Escrow for that Phase, and if such additional title matter(s) materially and adversely affect the development or use of the applicable Phase, then Developer shall have the right to terminate this Agreement with respect to the applicable Phase prior to the Close of Escrow for that Phase, and upon such termination, the applicable Phase shall no longer be part of the Property, for purposes of this Agreement; provided, however, that in no event may Developer terminate this Agreement with respect to the Hotel Phase without also terminating it as to the Timeshare Phase and Residential Phase (i.e., if the Developer terminates this Agreement with respect to the Hotel Phase, then the Developer must terminate this Agreement in its entirety).

5.7 Escrow And Escrow Instructions. Upon the execution of this Agreement, Developer and Agency shall promptly deliver a copy of this Agreement to Escrow Agent and shall open an escrow for the transactions described herein within ten (10) days thereafter. This Agreement constitutes the joint escrow instructions of Developer and Agency to Escrow Agent in connection with the transactions described herein. Developer and Agency may supplement such escrow instructions and agree to execute such reasonable supplemental escrow instructions as may be required by Escrow Agent.

5.8 Deposit Of Documents And Funds In Escrow. Agency and Developer, as applicable, hereby covenant and agree to deliver on or prior to the day of the Close of Escrow for each Phase the following instruments, documents, and funds, the delivery of each of which shall be a condition of the Close of Escrow for that Phase.

Agency shall deliver to Escrow Agent:

(i) A Deed in the form of Attachment No. 6A (for the Hotel Phase) or Attachment 6B (for the Timeshare and Residential Phases), and a repurchase option in the form of Attachment No. 6C for the Timeshare and Residential Phases, all duly executed and acknowledged by Agency;

(ii) Such funds as are required to pay for costs and expenses payable by Agency hereunder;

(iii) For the first Close of Escrow, a counterpart Memorandum of DDA duly executed and acknowledged by Agency;

(iv) a FIRPTA affidavit and a California form 593; and

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

5.8.1 Developer shall deliver to Escrow Agent the applicable deed, the applicable deed of trust (for the Hotel Phase and each Residential Phase closing only), the repurchase option in the form attached hereto as Attachment 6C (for each Residential and Timeshare Phase) and a counterpart original of the Memo of DDA (for the first Close of Escrow), all duly executed and acknowledged and in recordable form, and such funds as are required to pay: (i) the applicable purchase price for the Phase (net of the Good Faith Deposit in
the case of the sale of the final Phase to be sold to Developer under this Agreement, and in the case of the Hotel Phase, net of the principal amount of the Hotel Acquisition Loan); and (ii) costs and expenses payable by Developer hereunder.

5.9 Authorization To Record Documents And Disburse Funds. Escrow Agent is hereby authorized to record the documents for a Phase, disburse the funds for a Phase and distribute the documents relating to that Phase upon the Close of Escrow for the applicable Phase, provided each of the following conditions has then been fulfilled (or waived in writing by the party benefited thereby):

5.9.1 The Title Company is irrevocably committed to issue in favor of Developer the Developer Title Policy, with a liability amount equal to the applicable purchase price for the Phase being acquired (or such higher liability amount, if elected and paid for by Developer), showing fee title to such Phase vested in Developer, subject only to the title exceptions described in Section 5.5;

5.9.2 With respect to the Residential Phase, the Title Company is irrevocably committed to issue an ALTA lender’s title policy (Form B - 1970) to Agency in such amount as may be approved by Agency, subject only to the title exceptions in the Developer’s title policy for that Phase, with the same endorsements as the Developer’s Title Policy and such additional endorsements as may be reasonably required by Agency;

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

5.9.4 Agency and Developer shall have deposited in Escrow the documents and funds required to be deposited in Escrow pursuant to Section 5.8.1 and 5.8.2, and Developer shall have delivered to Agency the documents it is required to deliver directly to Agency under Section 5.8.3 above for such Phase.

Unless otherwise instructed in writing, Escrow Agent is authorized to record at the Close of Escrow any other documents or instrument delivered to Escrow Agent if necessary or proper for the issuance of title insurance.

5.10 Escrow Charges And Prorations.

5.10.1 Agency shall pay: (i) all transfer taxes, if any; and (ii) the cost of the premium for the CLTA Standard Coverage portion of the Developer Title Policy. If the Escrow shall fail to close for any reason other than Agency’s or Developer’s default, Agency shall pay one-half (1/2) of any applicable Escrow cancellation charges; Agency shall pay all such cancellation charges if the failure to close is caused by Agency’s default.

5.10.2 Developer shall pay: (i) the escrow fees of Escrow Agent; (ii) the cost of the premium for the Developer Title Policy in excess of the premium for a CLTA Standard Coverage policy, if any, (iii) the cost of all endorsements to the Developer Title Policy; (iv) the cost of the premiums for Agency’s lender’s title insurance; (v) all documentary or other local transfer taxes payable upon the recordation of the applicable quitclaim deed; and (vi) the cost of an ALTA survey, if required by Developer.
5.10.3 If the Escrow shall fail to close for any reason other than Developer's or Agency's default, Developer shall pay one-half (1/2) of any applicable Escrow cancellation charges; Developer shall pay all such cancellation charges if the failure to close is caused by Developer's default.

5.10.4 Taxes and assessments, if any, for the applicable Phase shall be prorated with respect to a Phase as of 12:01 a.m., on the day on which the Close of Escrow occurs, as if Developer were vested to the Phase during the entire day upon which the Close of Escrow occurs. All prorations shall be determined on the basis of a 360-day year. The provisions of this Section shall survive the Close of Escrow.

5.11 Survey. Upon Agency's execution of this Agreement, Agency shall promptly deliver to Developer, at Developer's cost, copies of any surveys of the Property that are in Agency's possession (and Agency shall use good faith efforts to deliver copies of any such surveys in the possession of the City, at Developer's cost). Subject to Section 5.11, Developer, at Developer's sole cost and expense, may permit a registered land surveyor licensed by the State of California to enter the Property to prepare an ALTA survey of the Property (or any portion thereof).

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

It is understood and agreed upon and between the parties hereto that Developer's acquisition of each Phase is subject to and conditioned upon its inspection of the Property, including, without limitation, soils conditions and the absence from the Property of Hazardous Substances. Until the date that is four (4) calendar months after the date of this Agreement (the "Inspection Deadline"), and thereafter at any time prior to the Close of Escrow, Developer and its agents and consultants may enter upon the Property upon twenty-four (24) hours prior written notice sent to the Agency in order to investigate the physical condition of the entire Property; provided, however, that Agency's agent may request to be present during such inspections, and Developer shall reasonably accommodate Agency in arranging a mutually convenient inspection time so that Agency or Agency's agents may be present. It is understood and agreed that the right of Developer and Developer's agents to enter onto the Property is being given solely to Developer, and Developer shall be solely responsible for its agents and consultants and that such inspections and actions are being done to determine the condition of the Property and not with the intent to affect the Property's value. Such inspections shall include, but not be limited to, the condition of soils, storm drainage, utility hookups and archaeological testing. Developer shall indemnify, defend and hold Agency harmless from and against any claims, losses, liabilities, costs, expenses and damages, whether by Developer, Developer's agents, consultants and employees, or by third parties, resulting directly or indirectly from Developer's entry upon or the conducting of any tests on or about the Property (excluding costs and damages suffered by Agency as a result of conditions discovered by Developer). If this Agreement is terminated prior to the Close of Escrow for any Phase, or if escrow fails to close for any phase for any reason, Developer shall promptly restore the applicable Phase to the same condition (to the extent practicable) as existed prior to Developer's undertaking of any testing thereon (but only with respect to changes caused by, or resulting directly or indirectly from, acts or omissions of
Developer and its agents and consultants). All studies and reports prepared in connection with Developer’s inspection of the Property are to be done at the expense of Developer. Developer shall provide Agency with a copy of all of the reports without cost promptly upon receipt by Developer. Developer’s obligations and duties under this Section 5.11 shall survive each Close of Escrow and the termination of this Agreement for any reason.

5.13 “AS-IS” Condition of the Property

5.13.1 Developer agrees that it will purchase the Property in its “AS-IS” condition, with all faults, and without representation or warranty, express or implied, except for express representations of Agency set forth in this Agreement.

5.13.2 DEVELOPER ACKNOWLEDGES AND AGREES THAT IT IS BEING GIVEN THE OPPORTUNITY TO INSPECT THE PROPERTY AND REVIEW THE ENVIRONMENTAL DOCUMENTS, AND THAT DEVELOPER WILL RELY SOLELY ON ITS OWN INVESTIGATION OF THE PROPERTY AND (SUBJECT TO AGENCY’S DISCLAIMERS IN THIS SECTION 5.12) ITS REVIEW OF THE ENVIRONMENTAL DOCUMENTS AND SUCH ADDITIONAL INFORMATION, DOCUMENTS AND REPORTS THAT IT DEEMS NECESSARY OR DESIRABLE IN PROCEEDING WITH ITS PURCHASE AND DEVELOPMENT OF THE PROPERTY.

5.13.3 In the event Developer determines in its sole and absolute discretion that the condition of the Property is unacceptable or any material documents pertaining to the Property are unacceptable, Developer shall notify Agency of its determination prior to the Inspection Deadline and this Agreement shall terminate. Developer’s failure to timely notify Agency of its determination that the Property is unacceptable and shall constitute its acceptance of the condition of the Property and all such documents delivered or made available to Developer. If after the Inspection Deadline, the physical condition of the Property materially changes in a manner that would materially and adversely affect the development or use of the Property required by this Agreement (and which is not caused by Developer or any affiliate of Developer), and the Agency does not agree to reasonably reduce the purchase price for the applicable Phase(s) after written notice from Developer describing such material and adverse change(s) and effects in detail, then Developer may terminate this Agreement as to the applicable Phase(s) by written notice to Agency given prior to the Close of Escrow for such Phase(s), and such Phase(s) shall thereafter no longer be a part of the Property or the Project for purposes of this Agreement.

5.13.4 Developer hereby waives and releases any and all Claims which it may have now or in the future against Agency and the City and each of their past and present officers, officials, directors, employees, attorneys, agents, advisors, consultants or representatives (collectively, the Indemnities), 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 Agency or on behalf of Agency 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."

[Signature]
Developer’s Initials

The foregoing waiver and release shall not, however, apply to the breach by Agency of any of Agency’s express representations or warranties in Section 2.5 of this Agreement, or to any breach of Agency’s covenants in Section 5.5.

5.14 Brokers’ Commissions. Developer represents and warrants to Agency that Developer has used no broker, agent, finder or other person in connection with the transaction contemplated hereby to whom a brokerage fee, finder’s fee or similar commission or fee may be payable. Agency represents and warrants to Developer that Agency has used no broker, agent, finder or other person in connection with the transaction contemplated hereby to whom a brokerage fee, finder’s fee or similar commission or fee may be payable. Each party indemnifies and agrees to defend and hold the other harmless from any claims, liabilities, losses, damages, costs, and expenses resulting from any breach by the indemnifying party of the warranties, representations and covenants in this Section 5.13.

ARTICLE 6. DEVELOPMENT OF THE PROPERTY

6.1 Scope of Development. Developer shall improve the Property as described in this Agreement in accordance with the Schedule of Performance attached hereto as Attachment No. 3. In addition to approvals hereunder by Agency, all planning and building documents shall be submitted to the City in accordance with the Entitlement Conditions attached hereto as Attachment No. 1-D and shall then be reviewed by, and subject to approval or rejection by the City pursuant to the City’s codes, resolutions, rules and regulations. Agency shall cooperate with Developer in good faith, but at no cost to the Agency, in attempting to expedite the City’s review and approval of documents submitted by Developer to the City for approval in connection with the Improvements.

6.2 Developer’s Submittals of Design and Construction Documents

6.2.1 Development Plans. Design drawings for the Improvements shall be prepared by Developer as set forth below and, when approved by the Executive Director, shall constitute the Development Plans and shall implement the Scope of Development.

6.2.2 Concept Design Drawings. Developer has prepared and submitted to Agency, and Agency has approved, Concept Design Drawings for the Improvements. The Concept Design Drawings are attached to the Scope of Development of Attachment No. 2. Any modifications to or replacements of the Concept Design Drawings shall be submitted to the
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Developer’s Initials

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Executive Director for approval prior to development of Schematic Design Drawings based thereon.

6.2.3 Schematic Design Drawings. Developer shall prepare and submit to Agency Schematic Design Drawings for the Improvements in each Phase within the time established in the Schedule of Performance, for written approval or disapproval by the Executive Director in accordance with the provisions of Section 6.3 and the Schedule of Performance. The Schematic Design Drawings shall be a logical evolution of, and consistent with, the previously approved Concept Design Drawings, and shall include the following: (i) complete schematic site plan for the Phase, indicating final building placement; (ii) right-of-way improvements, including street trees, sidewalks, streetlights, street furniture, street lighting, etc.; (iii) complete schematic exterior elevations; (iv) typical building sections; and (v) complete parking layout and program.

6.2.4 Design Development Drawings. Developer shall prepare and submit final Design Development Drawings for the Improvements in each Phase to City and Agency within the time established in the Schedule of Performance, for review and written approval or disapproval by the Executive Director within the time established in the Schedule of Performance and in accordance with the provisions of Section 6.3. The Design Development Drawings shall be a logical evolution of, and consistent with, the previously approved Schematic Design Drawings, and shall include: (i) final site plan for the Phase; (ii) final detailed architectural elevations; (iii) final building sections; (iv) structural drawings; (v) utility plans; (vi) mechanical/electrical plans, including roof top locations; (vii) outline specifications; and (viii) retail tenant signage design criteria and guidelines.

6.2.5 Complete Construction Documents. Developer shall prepare and submit a complete set of Construction Documents for the Improvements in each Phase (excluding tenant improvements) to Agency staff within the time established therefor in the Schedule of Performance, for review and written approval or disapproval by staff within the time established therefore in the Schedule of Performance and in accordance with the provisions of Section 6.3. The Complete Construction Documents shall incorporate any conditions for approval of the Design Development Drawings, and shall otherwise be a logical evolution of, and consistent with the Design Development Drawings. The Complete Construction Documents shall be the construction documents for which the City will issue a building permit and/or any other permits required for the development of the Phase.

The Complete Construction Documents shall include, but not be limited to: (i) final site plans; (ii) final landscape plans and specifications, including plant materials, irrigation plan, landscape details, and hard-scape; (iii) floor plans; (iv) exterior elevations; (v) graphics and signage; (vi) exterior details; (vii) material samples; (viii) final specifications; (ix) structural drawings; (x) all parking facilities improvements construction details; (xi) final right-of-way plans, including street furniture, street lighting, paving, etc.; (xii) utilities plan; (xiii) mechanical/electrical plans; (xiv) lighting plans; (xv) roof plans; (xvi) complete architectural specifications; (xvii) final color samples; (xviii) mechanical equipment plan, including locations; and (xix) electrical plans.
6.3 **Executive Director Review and Approval of Plans, Drawings, and Related Documents.** Pursuant to Section 3.2.2(iii), the Executive Director is authorized to approve plans, drawings (and revisions thereto) under Section 6.2 and this Section 6.3 on behalf of Agency, and the approval of the City Council as Agency’s governing board will not be required in order for the Executive Director’s approvals to bind the Agency; however, neither the Executive Director’s approvals nor any approvals by the City Council as the Agency’s governing board (acting in that capacity) will be binding on the City.

6.3.1 The Executive Director shall have approval rights over plans, drawings and related documents described in Section 6.2, including any changes proposed to such documents or drawings, pursuant to the procedure set forth in Section 6.2 and this Section 6.3. The scope of the Executive Directors review and approval rights shall include, in addition to the items provided for in the Scope of Development, consideration of such items as architectural appearance, site planning considerations, building materials, colors and landscape design.

6.3.2 Developer shall submit for Executive Director review the plans, drawings and related documents for the development of each Phase of the Property within the times established in the Schedule of Performance. The Executive Director’s approval of subsequent drawings shall not be unreasonably withheld, so long as the subsequent drawings are a logical evolution of, and consistent with, previously approved drawings. Any disapproval of such submission shall state in writing the reasons for disapproval and the changes which the Executive Director requires to be made. Developer, upon receipt of a disapproval, shall revise such submittals, and shall resubmit it to Agency for Executive Director approval or disapproval as soon as possible after receipt of the notice of disapproval. Any plans, drawings and related documents submitted and approved by the Executive Director shall not be subject to subsequent disapproval. Upon request by Developer, Agency staff shall use reasonable efforts to consult with Developer to provide to Developer information regarding the staff’s intention to recommend approval or disapproval of any plans, drawings or related documents previously submitted for approval pursuant to this Agreement.

6.3.3 If Developer desires to make any substantial change in the approved working drawings, Developer shall submit the proposed change to the Executive Director for approval. If the drawings as modified by the proposed change conform to this Agreement, the Scope of Development, the Concept Design Drawings and the Entitlement Conditions, City staff shall review the change and shall notify Developer of its approval or disapproval in writing, or if Planning Commission or City Council action is needed, within a time frame as required of such review bodies.

The Executive Director shall have authority to determine on behalf of Agency, as necessary, if a proposed revision or change to any plans, drawings, or other documents previously approved by the Executive Director is a substantial change requiring approval. If the Executive Director determines that the proposed revision or change is not substantial, no approval by the Executive Director of such revision or change will be necessary.

6.3.4 Except as expressly provided in this Agreement, Agency does not undertake nor assume nor will have any responsibility or duty to Developer, or to any third party to review, inspect, supervise, pass judgment upon or inform Developer or any third party of any
matter in connection with the Project, whether regarding the quality, adequacy or suitability or
the plans, any labor, service, equipment or material furnished to the Project, any person
furnishing the same or otherwise. Developer, and all third parties shall rely upon their own
judgment regarding such matter. Any review, inspection, supervision, exercise of judgment or
information supplied to Developer or to any third party by Agency or City in connection with
such matter is for the public purpose of carrying out redevelopment in the Project Area in
accordance with this Agreement, and neither Developer (except for the purposes set forth in this
Agreement), nor any third party is entitled to rely thereon.

6.3.5 Commencing six months following approval of this DDA, and semi-
annually thereafter, Developer shall submit letter reports to, and meet with the Executive
Director, to discuss the letter reports and review progress on development of the Hotel Phase and
Timeshare Phase. Such reports shall include information concerning progress on (i) site
planning and architectural plan development for the Hotel Phase (for each Stage of the Hotel
Phase and the construction of each such Stage), (ii) status of discussions with prospective hotel
operators, (iii) arrangements being made to finance Hotel Phase construction and operation, (iv)
site and product feasibility planning for the Timeshare Phase, (v) schedule for modifying the
City’s land use entitlements (if required) to implement Hotel Phase and Timeshare Phase
development, consistent with the requirements of this DDA; (vi) any requests, and justifications
for, extensions of time that may be requested of the Executive Director pursuant to Section 3.2.2
and (vii) other topics identified by Developer or the Executive Director from time-to-time to be
relevant to successful completion of the Hotel and Timeshare components.

6.4 Cost of Construction

The cost of developing the Property, together with all on and off-site
improvements set forth in the Scope of Development or otherwise required by the Entitlements,
shall be borne by Developer except as may be otherwise provided in this Agreement. The
Parties hereby acknowledge and agree that any increase in costs above the amounts projected or
assumed by Developer, or decreases in revenues below the amounts projected or assumed by
Developer, shall be at the sole risk of Developer.

6.5 City and Other Governmental Agency Permits

Before commencement of construction or development of any buildings,
structures or other work of improvement upon each Phase of the Property, Developer shall, at its
own expense, secure or cause to be secured any and all permits which may be required by City or
any other governmental agency affected by such construction, development or work.

6.6 Zoning and Land Use Requirements; Entitlements; Environmental Review

6.6.1 Developer shall take all necessary steps so that the development of the
Property and the construction, use, operation, and maintenance of the Improvements thereon in
accordance with the provisions of this Agreement shall be in conformity with applicable zoning
and General Plan requirements, including the Entitlement Conditions, and that all other
requirements shall have been complied with.
6.6.2 Agency shall cooperate with Developer in all proceedings which may be necessary so that the development of the Property and the construction, use, operation, and maintenance of the Improvements thereon in accordance with the provisions of this Agreement shall be in conformity with applicable zoning and General Plan requirements. Agency shall use good faith efforts to expedite all necessary approvals. An Environmental Impact Report (“EIR”) for the Project contemplated by this Agreement has been prepared and certified by the City, and adopted by the Agency, prior to the approval of this Agreement. Developer shall comply with all mitigation measures imposed on the Project pursuant to the EIR. In the event additional environmental studies are required, the costs of such studies shall be borne by Developer.

6.6.3 If any revisions or modifications to this Agreement, including the Scope of Development, shall be required to comply with any requirement of a governmental official, agency, department or bureau having jurisdiction over the development of the Property, Agency and Developer shall cooperate in making such reasonable changes, consistent with the public purposes of this Agreement, as may be necessary.

6.7 Agency Rights of Access During Construction

Without limiting any rights of access which Agency or City may have irrespective of this Agreement, representatives of Agency shall have a reasonable right of access to the Property at normal construction hours during the period of construction for the purposes of this Agreement, including but not limited to the inspection of the work being performed in constructing the Improvements, so long as they comply with all safety rules and observe any rules adopted by Developer for purposes of maintaining order on the Property, including requirements that such representatives be escorted. Such representatives of Agency shall be those designated in writing by the Executive Director.

Prior to issuance of Agency’s Certificate of Completion for the last Phase of the Project, City and Agency, at their sole risk and expense, reserve the right to enter the portions of the Property for which no Certificate of Completion has been issued at all reasonable times during ordinary business hours and with as little interference as possible for the purpose of construction, reconstruction, maintenance, repair or service of any public improvements or public facilities currently located on the Property. Any such entry shall be made only after reasonable notice to Developer, except emergency repairs, and City and Agency shall defend, indemnify and hold Developer harmless from any costs, claims, damages or liabilities pertaining to or arising from any such entry or the activities of the City or Agency on the Property. Any damage or injury to the Property or any improvement thereon resulting from any such entry shall be promptly repaired or restored at the City’s or Agency’s expense.

6.8 Local, State and Federal Laws: Prevailing Wages

6.8.1 Developer shall carry out the construction of the Improvements in conformity with all applicable Laws.

6.8.2 The Developer shall cause the contractor and subcontractors to pay prevailing wages in the construction of the Improvements as those wages are determined pursuant to Labor Code Sections 1720 et. seq. and implementing regulations of the Department
of Industrial Relations, and the Developer shall obtain and maintain (or shall cause its contractors to obtain and maintain) a payment bond in accordance with such laws naming the Agency as co-obligee. The Developer shall and shall cause the contractor and contractors to keep and retain such records as are necessary to determine if such prevailing wages have been paid as required pursuant to Labor Code Section 1720 et seq. Copies of the currently applicable current per diem prevailing wages are available from the City of Seaside Public Works Department, 440 Harcourt Avenue, Seaside, California. During the construction of the Improvements, Developer shall or shall cause the contractor to post at the Phase of the Property where work is being undertaken the applicable prevailing rates of per diem wages. Developer shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the Executive Director) the Agency against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Developer, its contractor and subcontractors) to pay prevailing wages as determined pursuant to Labor Code Sections 1720 et seq. and implementing regulation in connection with construction of the Improvements or any other work undertaken or in connection with the Property.

6.8.3 Pursuant to Section 3.03.090 of the Master Resolution, the Developer shall cause all workers employed in connection with the development of the Improvements to be paid not less than the general prevailing rate of pay for work of a similar character in Monterey County as determined by the Director of the Department of Industrial Relations pursuant to the provisions of the Division 2, Part & Chapter I of the California Labor Code. Additionally, Developer shall employ local workers and grant local preferences in accordance with Attachment 12 hereto.

6.9 Indemnification

Developer shall indemnify, defend and hold harmless Agency and City, and any and all of their employees, officials, representatives and agents (collectively, the “Indemnitees”) from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or cost of any kind, whether actual, alleged or threatened, including (but subject to the following paragraph) attorneys’ fees and costs, court costs, interest or defense costs, including expert witness fees), to the extent the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, from (a) the presence or clean-up of Hazardous Substances now or hereafter located on any Property acquired by the Developer; (b) acts or omissions of Developer or by any officers, agents, employees or contractors of Developer or other individuals or entities permitted on the Property by Developer; or (c) claims or allegations that this Agreement is invalid, illegal or otherwise does not comply with law in any respect.

However, Developer shall not be required to indemnify and hold harmless Indemnitees for (i) liability attributable to the negligence or willful misconduct of Indemnitees, provided such negligence or willful misconduct is determined by agreement between the Parties or by the findings of a court of competent jurisdiction (and in instances where an Indemnitee is shown to have been negligent and where Indemnitees’ negligence accounts for only a percentage of the liability involved, the obligation of Developer will be for that entire portion or percentage of liability not attributable to the negligence of Indemnitees), (ii) releases of Hazardous Substances on the Property caused by the City or the Agency; or (iii) sums that are not recovered
from insurance of the City or Agency 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 Agency of its obligations under the last sentence of Section 2.6.6 above. Additionally, if the Developer’s defense counsel is required under California law to obtain a waiver of conflict of interest from the Agency or the City, and the Agency or 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 or Agency for the legal fees and costs of such counsel retained by City or Agency.

Developer shall use diligent efforts to obtain executed indemnity agreements with provisions identical to those set forth herein (but excluding clauses (a) and (c) of the above indemnity provision and changing the word “Developer” to the contractor or other person or entity) from each and every contractor or any other person or entity involved by, for, with or on behalf of Developer in the performance of this Agreement.

Failure of Indemnitees to monitor compliance with these requirements imposes no additional obligations on Indemnitees and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend Indemnitees as set forth herein is binding on the successors, assigns or heirs of Developer and shall survive each Close of Escrow and the expiration or earlier termination of this Agreement.

6.10 Insurance

Prior to the date set forth in the Schedule of Performance, Developer shall obtain, furnish or shall cause to be furnished to Agency, appropriate evidence of insurance as provided for in Attachment No. 7, and Developer shall thereafter comply with such insurance provisions.

6.11 Non-discrimination During Construction

Developer for itself and its successors and assigns agrees that in the construction of the Improvements on the Property provided for in this Agreement:

(a) Developer will not discriminate against any employee or applicant for employment because of race, color, religion, creed, national origin, ancestry, physical handicap, medical condition, age, marital status, sex, sexual orientation, political affiliation or opinion, or pregnancy or pregnancy-related condition. Developer will take reasonable action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, creed, national origin, ancestry, physical handicap, medical condition, age, marital status, sex, sexual orientation, political affiliation or opinion, or pregnancy or pregnancy-related condition. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
(b) Developer will, in all solicitations or advertisements for employees placed by or on behalf of Developer, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, creed, national origin, ancestry, physical handicap, medical condition, age, marital status, sex, sexual orientation, political affiliation or opinion, or pregnancy or pregnancy-related condition.

(c) Developer will cause the foregoing provisions to be inserted in all contracts for any work covered by this Agreement so that such provisions will be binding upon each contractor and subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

6.12 Taxes, Assessments, Encumbrances and Liens

Developer shall pay, prior to delinquency, all real estate taxes and assessments assessed and levied on the Property (or applicable portion thereof acquired by Developer) after the Developer’s acquisition of fee title thereto and prorated taxes and assessments under Section 5.9.3 allocable to the Developer’s period of ownership.

6.13 Security Financing, Rights of Holders

6.13.1 No Encumbrances Except as Mortgages, Deeds of Trust, Sales and Lease-backs or Other Financing for Development

Notwithstanding Section 2.4, mortgages, deeds of trust, sales and lease-backs or any other form of conveyance required for any reasonable method of financing by Developer are permitted before issuance of the final Certificate of Completion for the Project (including the granting of a security interest in Developer’s rights in this Agreement), but only for the purpose of securing funds to be used for financing the acquisition of the Property and/or the construction of the Improvements on the Property and/or any take-out financing related to the development of the Property and any other expenditures necessary or appropriate to develop the Property under this Agreement, including without limitation real and personal property taxes, related off-Property improvements, insurance premiums, closing costs, attorneys’ fees, loan carrying costs and costs of financing. Developer shall notify Agency in advance of any mortgage, deed of trust, or other form of conveyance for financing if Developer proposes to enter into the same before issuance of a Certificate of Completion for the construction of the Improvements on the portion of the Property to be subject to such financing arrangement. Developer shall not enter into any such secured financing arrangement without the prior written approval of the Executive Director, which shall not be unreasonably withheld, and which approval the Executive Director shall give if any such arrangement is with a Qualified Lender. In the event that any such arrangement is with Developer or a person or entity that is affiliated with Developer in any way (which shall exclude corporations whose shares are publicly traded provided Developer and affiliates of Developer own less than ten percent of the voting shares of such entity), or if Developer or a person or entity affiliated with Developer requires any lien on the Property or any portion thereof, then the first sentence of Section 6.13.2 and all of Section 6.13.3 shall not apply to Developer or such person or entity as the holder of a lien or otherwise. In any event, Developer shall promptly notify Agency of any mortgage, deed of trust, sale, lease-back or other financing conveyance, encumbrance or lien that has been created or attached thereto prior to issuance of a
Certificate of Completion for the construction of the Improvements on the portion of the Property to be subject to such financing arrangement, whether by voluntary act of Developer or otherwise. The words “mortgage” and “deed of trust” as used herein include all other appropriate modes of financing real estate acquisition, construction of land development, and any other expenditure necessary or appropriate to develop the Property under this Agreement, which involves the granting of a security interest.

6.13.2 Holder Not Obligated to Construct Improvements

A Holder shall in no way be obligated by the provisions of this Agreement to construct or complete the Improvements or to guarantee such construction or completion. Nothing in this Agreement shall be deemed or construed to permit or authorize any Holder to devote the Property to any uses, or to construct any improvements thereon, other than those uses or Improvements provided for or authorized by this Agreement.

6.13.3 Notice of Default to Mortgage, Deed of Trust or Other Security Interest Holders: Right to Cure

Whenever Agency shall deliver any notice or demand to Developer regarding any breach or default by Developer in completion of construction of the Improvements on a Phase included in a Holder’s collateral, or any other alleged default under this Agreement, Agency shall at the same time deliver to such Holder of record authorized by this Agreement a copy of such notice or demand. Notwithstanding anything to the contrary herein, in no event shall a Holder be obligated to cure a default under this Agreement that does not relate to the collateral it holds in order to preserve the rights under this Agreement with respect to such collateral; however, the foregoing shall not affect the Agency’s right to terminate this Agreement under Section 9.3 with respect to any Phase not yet sold by the Agency.

Each such Holder shall (insofar as the rights of Agency are concerned) have the right at its option, within ninety (90) days after the expiration of any and all cure periods available to Developer, to cure or remedy such default and to add the cost thereof to the security interest debt and to the lien on its security interest or the obligations of Developer under any sale lease-back or of the grantor under any other conveyance for financing. If such default shall be a default which can only be remedied or cured by such Holder upon obtaining possession of the portion of the encumbered Property and such Holder seeks to obtain possession with diligence through a receiver or otherwise, such Holder shall have until ninety (90) days after obtaining possession to cure such default. Notwithstanding anything to the contrary contained herein, in the case of a default which cannot with diligence be remedied or cured, or the remedy or cure of which cannot be commenced, within ninety (90) days, such Holder (or an entity to whom a Holder assigns its lien or transfers the Property, provided Agency has approved in writing such person or entity as having the qualifications, experience and financial capacity that would typically be required by Agency for the development, construction, and sale of the applicable Improvements, and such assignees and transferees shall be included in the definition of the word "Holder" as hereafter used in this Agreement) shall have such additional time as reasonably necessary to remedy or cure such default with diligence; but shall not be required to remedy or cure any default of Developer that by its nature is not curable by such Holder.
Nothing contained in this Agreement shall be deemed to permit or authorize such Holder to undertake the construction of the Improvements (beyond the extent necessary to conserve or protect the Improvements or construction already made, including, without limitation, the ability to continue the construction or completion of Improvements already begun) without first having expressly assumed the obligations of Developer for the portion of the Property in which the Holder has an interest, by written agreement reasonably satisfactory to Agency. The Holder in that event shall only be liable or bound by Developer's obligations hereunder for such period as the Holder was in possession of the portion of the Property in which the Holder has an interest and, notwithstanding anything to the contrary contained in this Agreement, shall only be liable to the extent of its interest in the portion of the Property and the improvements owned by it thereon. The Holder in that event must agree to complete, in the manner provided in this Agreement, the improvements to which the lien or title of such Holder relates. Any such Holder properly completing such improvements shall be entitled, upon written request made to Agency, to a Certificate of Completion from Agency for such improvements.

Breach of any of the covenants, conditions, restrictions, or reservations contained in this Agreement shall not defeat or render invalid the lien of any deed of trust made in good faith and for value as to the Property or any portion of the Property or interest therein, whether or not the deed of trust is subordinated to this Agreement. In addition, the exercise of Agency's right to repurchase the Property or any portion or Phase thereof shall be subject to and be limited by and shall not defeat or render invalid or limit any deed of trust made in good faith and for value in favor of a Holder as to the Property or any portion of the Property or interest therein, whether or not the deed of trust of such holder is subordinate to this Agreement or to any rights provided in this Agreement for the protection of the Holder. Unless otherwise herein provided, the terms, conditions, covenants, restrictions and reservations of this Agreement shall be binding and effective against the Holder and any owner of the Property, or any portion of the Property, whose title thereto is acquired by foreclosure, trustee's sale, or otherwise.

No purported rule, regulation, modification, amendment and/or termination of this Agreement affecting the rights of a Holder expressly granted in this Agreement shall be binding upon any Holder holding a deed of trust from and after the date of recordation of such deed of trust unless and until the written consent of such Holder is obtained.

6.13.4 Failure of Holder to Complete Improvements

If in any case, within sixty (60) days after all cure periods have expired after default by Developer in completion of construction of the Improvements on a Phase under this Agreement, and the notice required by Section 9.1 was properly given, and a Holder has not exercised the option afforded in Section 6.13.3 hereof to construct the Improvements on the applicable Phase in which Holder has an interest, Agency may, upon thirty (30) days' written notice, either: (i) purchase the mortgage, deed of trust or other security interest by payment to the Holder of the amount of the unpaid debt plus accrued but unpaid interest and other advances and amounts secured by the security interest, or in the case of a lessor or grantee by payment to such lessor or grantee of the purchase price paid for its interest in the relevant portion of the Property and improvements and any unpaid rent and other charges and sums payable to it under its applicable agreements with its lessee or grantor; (ii) assume such mortgage, deed of trust or other security interest in accordance with the terms of such mortgage, deed of trust or other security.
interest upon the prior written consent of such Holder, or (iii) terminate this Agreement by notice to Developer. The Agency’s termination of this Agreement as to a Phase shall not constitute a termination of this Agreement as to any other Phase.

6.13.5 Right of Agency to Cure Mortgage, Deed of Trust, Other Security Interest, Lease-back or Other Conveyance for Financing Default

In the event an uncured default or breach by Developer of a mortgage, deed of trust, other security instrument or obligations the grantee under any conveyance for financing for any portion of the Property or the Project prior to the issuance of a Certificate of Completion therefore, and the Holder has not unconditionally committed in writing to the Agency to complete the Improvements thereon in accordance with this Agreement (but subject to force majeure delays of deadlines) and Developer has not obtained a court order prohibiting the Holder from foreclosing, then Agency may cure the default prior to completion of any foreclosure. In such event, Agency shall be entitled to reimbursement of all direct and actual costs and expenses incurred by Agency in curing the default. Such reimbursement amount may be secured at Agency’s option by a lien against the relevant portion of the Property. Any such lien shall be subordinate and subject to then-existing mortgages, deeds of trust or other security instruments for financing permitted pursuant to this Agreement.

6.14 Progress Reports

Periodically throughout the term of this Agreement until the issuance of a Certificate of Completion for the Improvements, but not less frequently than quarterly, Developer shall submit to Agency progress reports indicating the status of construction, the estimated date of completion of the Improvements, and the estimated opening date.

6.15 Certificates of Completion

Promptly after substantial completion of the construction of the Improvements comprising each Phase of the Project (i.e., total completion except for so-called "punch-list" items consisting of minor deviations from the approved final plans and specifications that do not adversely affect the quality or use of the applicable Improvements, and which comply with all applicable laws and Entitlements), or any portion thereof, Agency shall furnish Developer with a Certificate of Completion upon written request therefor by Developer. The Certificate of Completion shall be and shall constitute a conclusive determination of satisfactory completion of the construction required by this Agreement for the Phase or portion of the Project for which the Certificate is issued. Agency shall not unreasonably withhold any such Certificate of Completion. The Certificate of Completion shall be in the form attached hereto as Attachment No. 4 and incorporated herein by this reference, and shall be recorded in the Recorder’s Office of the County of Monterey.

If Agency refuses or fails to furnish a Certificate of Completion within ten (10) business days after written request therefor from Developer, Agency shall, within such period of ten (10) business days, provide Developer with a written statement of the reasons why Agency refuses or fails to furnish such Certificate of Completion and the Executive Director’s opinion of the actions Developer must take to obtain such Certificate of Completion.
No Certificate of Completion shall constitute evidence of compliance with or satisfaction of any obligation of Developer to any Holder, or any insurer of a mortgage securing money loaned to finance the Improvements, or any part thereof. No Certificate of Completion shall be a notice of completion as referred to in California Civil Code Section 3093.

ARTICLE 7. USES OF THE PROPERTY

7.1 Uses

Developer covenants and agrees for itself and its successors and assigns, and every successor in interest to the Property, or any portion thereof, that during construction and thereafter, Developer and such successors and assigns shall use the Property exclusively for the purposes herein stated and shall not devote the Property to any uses which are inconsistent with this Agreement or the Entitlements.

7.2 Obligation to Refrain from Discrimination; Form of Non-discrimination Clauses

7.2.1 Developer covenants by and for itself and any successors in interest that there shall be no discrimination against, or segregation of, any persons, or group of persons, on account of race, color, creed, marital status, religion, national origin or ancestry, medical condition, sex, sexual orientation, political affiliation or opinion, or pregnancy or pregnancy-related condition, in the enjoyment of the Property or any portion or component thereof, nor shall Developer itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Property. The foregoing covenants shall run with the land and shall remain in effect for the periods specified in the Grant Deeds for the Property subject thereto.

7.2.2 The Developer shall refrain from restricting the rental, sale or lease of any portion of the Property on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code. Pursuant to Sections 33337 and 33436 of the Health and Safety Code or any successor statute, all such deeds, leases or contract shall contain or be subject to substantially the following nondiscrimination or nonsegregation 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 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 leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased, nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein leased.”

c. **In contracts:** “There shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land.”

7.3 **Maintenance of the Property**

From and after Developer’s (or a Developer Affiliate’s) acquisition of title to each Phase, Developer (or such Developer Affiliate, as applicable) shall reasonably maintain, or cause to be maintained, the Improvements on that Phase and shall keep that Phase (or cause that Phase to be kept) free from any accumulation of debris or waste materials prior to, during and, for a period of two (2) years after issuance of a Certificate of Completion for any Phase, but this Section 7.3 shall not apply to any Residential Phase lot after the Improvements for the applicable lot have been completed and the applicable lot shall have been sold by Developer (or by the applicable Developer Affiliate that acquires the applicable Residential Phase).

7.4 **Operating Covenants**

Developer shall enter into a management agreement with a manager listed on Attachment 13 for the hotel, and a timeshare operation system agreement with a timeshare entity listed on Attachment 13 for the Timeshare Phases, and such agreements shall be consistent with and shall comply with Section 10.5 below. Developer shall cause the Hotel Phase to be operated as a hotel providing a level of service and quality that is commensurate with the quality of a
Mobile Travel Guide rating of “4-star” or other level of quality reasonably approved by the Agency, and shall at all times use as the name for the hotel, and cause its hotel operator to use as the name for the hotel, a name that includes the word “Seaside.” Developer shall include in the hotel operator’s contract: (i) 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, and (ii) a provision that makes the City and the Agency third-party beneficiaries of the provision described in clause (i) of this sentence.

7.5 Effect and Duration of Covenants

The covenants established in this Agreement, shall, without regard to technical classification or designation, be binding on Developer and any successor in interest to the Property or any part thereof for the benefit and in favor of Agency, its successors and assigns, and the City, 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 Agency, its successors and assigns, without regard to whether Agency has been, remains or is an owner of any land or interest therein in the Property or in the Project Area.

Agency 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 and the Project Area, as well as the interests of other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided.

ARTICLE 8. AGENCY RESIDENTIAL PHASE PROFIT PARTICIPATION

8.1 [Intentionally Deleted].

8.2 [Intentionally Deleted].

8.3 Agency Participation Interest in Residential Component

8.3.1 Definitions. As used in this Section 8.3, the following terms shall have the following meanings:

(a) “Development Costs” means all third party out-of-pocket costs and expenses paid by the Developer prior to or subsequent to the execution of this Agreement to acquire, own, hold, develop or sell all or any part of the Residential Component, including, but not limited to, legal fees and fees of consultants that are reasonably allocated to the Residential Component, reasonable attorney’s fees and court costs necessarily incurred after the approval and execution of this Agreement in defending against any lawsuit challenging this Agreement or the Entitlements, fees and costs related to the price paid to the Agency 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 Executive Director of the Agency (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 Agency 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. Development Costs shall exclude (i) the repayment of the principal and interest of any loan obtained by the Developer; and, (ii) any distributions, preferred return or other capital return to direct or indirect owners of any interest in the Developer or a Developer Affiliate. For the purposes hereof, Development Costs shall be allocated among the various Components as follows: (i) costs reasonably allocable only to the Residential Component (and not to the Hotel or Timeshare Component) shall be allocated 100% to the Residential Component; (ii) costs reasonably allocable only to the Hotel and/or Timeshare Component shall not be allocated to the Residential Component; (iii) costs to be allocated among all Components shall be allocated on a pro rata basis per unit in each Component based on 330 units for the Hotel Component, 170 units for the Timeshare Component and 125 units for the Residential Component; and (iv) if allocated only among two Components, the costs shall be allocated pro rata based upon the number of units contained in each Component.

(b) “Gross Cash Receipts” means all cash revenues received by the Developer from any source whatsoever in connection with the sale, exchange or disposition of the lots in the Residential Component, which shall include any damage recoveries, insurance payments or condemnation proceeds payable to the Developer with respect to the Residential Component, but shall exclude the proceeds of any capital contributed to the Developer by its partners or members or the proceeds of any loan made to the Developer and brokerage commissions and direct marketing expenditures. 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 Agency under Section 8.3.2 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.
(c) "IRR" means the annualized rate of return based on Development Costs and on Gross Cash Receipts determined using the "Internal Rate of Return" function of the current version of Microsoft Excel.

(f) "Residential Component" shall mean all Residential Phases owned by Developer at the time of the applicable determination of Profit Participation.

8.3.2 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 Agency 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 Executive Director may require that the Gross Cash Receipts shall be deemed to include, and the sums payable by Developer hereunder shall be based on, the appraised fair market value (or 80% thereof for a bulk sale) of the applicable lot(s) rather than the actual sales prices for such lots. All such appraisals shall be performed by MAI appraisers mutually acceptable to Agency and Developer (and if Agency and Developer do not agree, the appraiser shall be selected by Judge Paik, and if Judge Paik is unable, unwilling or unavailable to select the appraiser, then either party may submit the selection of the appraiser to judicial reference under Section 8.4) 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 Agency. Developer may challenge an appraisal by using the judicial reference procedure in Section 8.4 below.

8.3.3 The obligation to pay Profit Participation shall constitute a "shared appreciation loan" by the Agency, 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. 9B (the "Residential Phase Deed of Trust"), which the Agency 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 Agency 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 Agency, 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 Executive Director that it has instructed the applicable escrow agent to pay the Agency 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 Agency’s escrow instructions containing the request for partial reconveyance and such commitment);

(iii) Upon the reconveyance, one or more endorsement(s) to the Agency’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 Agency’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 Agency);

(iv) Developer delivers to Agency evidence satisfactory to the Executive Director 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 Agency a fully executed amendment satisfactory to the Executive Director 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 Executive Director deems reasonably necessary (or new CC&Rs/REA that accomplish the same purposes);

(vi) Developer pays all expenses relating to the reconveyance, including Agency’s attorneys’ fees and title insurance endorsement premiums;

(vii) Developer delivers to Agency, or causes to be delivered to the Agency, 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 Agency a copy of the estimated “settlement statement” for the sale, executed or initialed by both the Developer and the lot buyer; and

(ix) The Agency’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 Agency has received from Developer and approved a report calculating the Agency’s Profit Participation, if any, through and including the sale of such final five (5) lots, and any Profit Participation shall be paid to Agency through the escrows for the sale of such final five (5) lots.

8.3.4 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 Agency the Agency’s Profit Participation. (Developer and Agency acknowledge that because the Developer may acquire Residential Phases over time such that the “Residential Component” may change over time, payments to Agency of the Agency’s Profit Participation might start, stop and start again.)

8.3.5 The process for determining when the threshold for Profit Participation is reached, the method for determining amounts then due to the Agency 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 Executive Director not later than 15 days following the end of each month for Agency approval (which shall be governed by Section 11.14, subject to Subsection 8.3.5 (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 Executive Director.

(iii) When a monthly report approved by the Executive Director 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 Agency (20%) not later than 10 days following the Executive Director’s acceptance of the report; provided, however, that if as of the business day prior to the scheduled closing of a lot sale, Developer is in default under this Agreement, a judicial reference under Section 8.4 is pending with respect to Profit Participation or any report thereof by Developer or the Developer shall not have complied with
the results of any completed judicial reference proceeding regarding Profit Participation or any such report, then all sales proceeds shall be held in the applicable escrow until the Developer cures the default and/or complies with the results of the judicial reference, as applicable.

(iv) Agency may not dispute the accuracy of a Profit Participation report previously approved by the Executive Director unless: (i) the Agency sends written notice of such dispute to Developer within ninety (90) days after the last residential lot is sold; or (ii) the Agency believes in good faith that the Developer has engaged in willful misrepresentation with respect to the Profit Participation.

8.3.6 An example of the calculation of the Profit Participation determination is attached hereto as Attachment No. 16.

8.3.7 Prior to the sale of each of the final five (5) lots in the Residential Component, the Developer shall submit a report to the Agency describing the Profit Participation previously paid by Developer to Agency 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 Agency, then (pending the result of any judicial reference proceedings by the Agency) and provided Developer is not then in default under this Agreement and has complied with the results of any completed judicial reference proceeding, Agency shall promptly return the overpaid sums to Developer.

8.3.8 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 five (5) years after delivery of the required annual report to which such Records relate; provided that the Developer may at reasonable times remove any or all Records or permit or cause them to be removed for legal or accounting purposes or for other purposes consistent with these provisions and this Agreement.

Agency 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 Agency 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 cost of the audit and investigation; otherwise, Agency shall bear the cost of such audit and investigation.

8.3.9 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 Agency at least 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 Agency with a lender’s policy of title insurance with respect thereto reasonably acceptable to the Executive Director.

8.4 Judicial Reference

All disputes and claims arising under this Article 8, whether relating to its interpretation, application, enforcement or breach, shall be heard by a reference of the Monterey County Superior Court pursuant to California Code of Civil Procedure Section 638, et seq., and no Event of Default by Developer may be based solely on a matter that is the subject of such a dispute unless the Developer fails to strictly perform any term of any resulting award or decision in favor of Agency within five (5) business days after written notice from Agency. The parties shall have the rights of discovery and appeal provided by California Code of Civil Procedure Section 638, et seq. For all judicial reference proceedings under this Agreement, the Executive Director and the Developer shall agree upon a single referee who shall try all issues, whether of fact or law, and report a finding and judgment thereon and issue all legal and equitable relief appropriate under the circumstances before him or her. If the Agency and Developer are unable to agree on a referee within ten (10) days of a written request to do so by either Party hereto, either Party may seek to have one appointed pursuant to California Code of Civil Procedure Section 640. The cost of such proceeding shall initially be borne equally by the Parties, but shall ultimately be borne by the Party who does not prevail. In addition, the prevailing Party in the judicial reference and in any subsequent legal proceeding shall be entitled to have its reasonable attorneys’ fees and out-of-pocket costs paid by the nonprevailing Party. Any referee selected pursuant to this section shall be considered a temporary judge appointed pursuant to Article 6, Section 21 of the California Constitution.

NOTICE: BY INITIALING IN THE SPACE BELOW, YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED WITHIN THE SCOPE OF THE JUDICIAL REFERENCE PROVISION ABOVE DECIDED BY A NEUTRAL REFEEER AS PROVIDED BY CALIFORNIA LAW, AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSIBLY HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW, YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL WITH RESPECT TO THE
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 8.4 in favor of the other Party by the date on which it is to be performed.

9.1.4 A Party assigns or attempts to assign this Agreement or any rights therein except as expressly permitted by this Agreement.

9.1.5 The failure to engage a real estate developer, approved in writing by the Agency, to complete the development of the Improvements pursuant to a “development and construction management agreement” approved in writing by the Agency, within one hundred twenty (120) days after the death or incapacity of both Donald Pitt and Donald Diamond.
MATTERS SUBJECT TO JUDICIAL REFERENCE, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE JUDICIAL REFERENCE PROVISION. IF YOU REFUSE TO SUBMIT TO JUDICIAL REFERENCE AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPelled TO SUBMIT UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS JUDICIAL REFERENCE PROVISION IS VOLUNTARY. WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE JUDICIAL REFERENCE PROVISION TO A NEUTRAL REFEREE.

[Signatures]

Developer’s Initials

Agency’s Initials

ARTICLE 9. EVENTS OF DEFAULT AND RIGHTS OF TERMINATION AND OTHER REMEDIES

9.1 Defaults - General

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9.1.4 A Party assigns or attempts to assign this Agreement or any rights therein except as expressly permitted by this Agreement.

9.1.5 The failure to engage a real estate developer, approved in writing by the Agency, to complete the development of the Improvements pursuant to a “development and construction management agreement” approved in writing by the Agency, within one hundred twenty (120) days after the death or incapacity of both Donald Pitt and Donald Diamond.
Matters subject to judicial reference, unless those rights are specifically included in the judicial reference provision. If you refuse to submit to judicial reference after agreeing to this provision, you may be compelled to submit under the authority of the California Code of Civil Procedure. Your agreement to this judicial reference provision is voluntary. We have read and understand the foregoing and agree to submit disputes arising out of the matters included in the judicial reference provision to a neutral referee.

Developer’s Initials

Agency’s Initials

Article 9. Events of Default and Rights of Termination and Other Remedies

9.1 Defaults - General

Each of the following shall constitute an “Event of Default” by a Party:

9.1.1 The failure of such a Party to cure a default by that Party that consists of the failure to pay or deposit money within fifteen (15) days after written notice of the failure from the other Party.

9.1.2 The failure of a Party to cure any other default by that Party within thirty (30) days after written notice thereof from the other Party; provided, however, that if the nature of the default is such that more than thirty (30) days are reasonably required for its cure, then the defaulting Party shall not be deemed to be in default if it has commenced a cure within the 30-day period and thereafter diligently prosecutes such cure to completion, and provided further that, if the Party claiming injury determines in good faith that a delay in seeking judicial relief would cause it irreparable harm not compensable by monetary damages, then notwithstanding anything to the contrary in Section 9.2 below, the Party claiming injury need not wait for a period of thirty (30) days after written notice before seeking expedited judicial relief (including, without limitation, a temporary restraining order or permanent injunction).

9.1.3 A Party’s failure to perform or comply with any term of any award or decision under Section 8.4 in favor of the other Party by the date on which it is to be performed.

9.1.4 A Party assigns or attempts to assign this Agreement or any rights therein except as expressly permitted by this Agreement.

9.1.5 The failure to engage a real estate developer, approved in writing by the Agency, to complete the development of the Improvements pursuant to a “development and construction management agreement” approved in writing by the Agency, within one hundred twenty (120) days after the death or incapacity of both Donald Pitt and Donald Diamond.
9.2 Remedies Generally; Cross-Default Among Phases

Subject to the rights of the Parties to submit disputes to judicial reference under Section 8.4 and to arbitration under Section 11.19, upon the occurrence of an Event of Default by a Party, the other Party shall have all of its rights and remedies at law, in equity and under this Agreement, except that neither Party shall have any rights to terminate except as expressly set forth in this Agreement. Notwithstanding Section 9.1, but subject to Section 5.2 (which is not altered by this sentence), in no event shall an Event of Default by Developer or Agency described in Section 9.1.1 or 9.1.2 that is clearly allocable only to the Hotel Phase, the Timeshare Phase or the Residential Phase constitute an Event of Default with respect to any Phase other than the Phase to which the Event of Default relates unless: (i) the construction financing for the phase in default and the other phases are from the same source or affiliated sources and provide for cross-defaults; (ii) the Developer has failed to provide payment and completion bonds to the entity providing financing for the Phase in default; or (iii) the Event of Default is with respect to the Hotel Phase and the Executive Director has determined that the hotel financing arrangements are not reasonably acceptable to the Agency (in which case a default with respect to the Hotel Phase shall constitute a default with respect to other Phases).

9.3 Termination Rights Prior to First Close of Escrow

9.3.1 If an Event of Default by Developer occurs prior to the first Close of Escrow, Agency may, at its option, terminate this Agreement (and Developer shall be obligated to pay all applicable escrow cancellation costs) provided Agency’s termination notice is given prior to the date (if any) on which the Event of Default is cured. In the event of any such termination, Agency shall return to Developer all funds advanced to Agency or into Escrow by Developer, less the Good Faith Deposit. Agency shall retain the Good Faith Deposit (principal and interest) as liquidated damages and to partially offset Agency’s costs in performing under this Agreement and terminating the acquisition effort. All documents deposited by any Party into escrow shall be returned to the Party that deposited them. Developer shall pay all escrow cancellation costs.

9.3.2 If an Event of Default by Agency occurs prior to the first Close of Escrow, Developer, at its option, may terminate this Agreement provided the Developer’s termination notice is given prior to the date, if any, on which such Event of Default is cured (and Agency shall be obligated to pay all applicable escrow cancellation costs) and pursue the Agency for damages, or pursue an action for specific performance against Agency. In the event of any such termination, the Developer shall be entitled to the Good Faith Deposit (principal and interest) and all documents deposited by any Party into escrow shall be returned to the Party that deposited them.

9.4 Termination Rights After First Close of Escrow; Agency Options to Repurchase

9.4.1 Upon the occurrence of an Event of Default by Developer after Developer has acquired any portion of the Property, Agency may by written notice to Developer terminate this Agreement as to any Phase not yet acquired by Developer (provided Agency’s termination notice is given prior to the date, if any, on which the Event of Default is cured). Upon such termination, (i) Agency may in lieu of exercising its right to repurchase described in
Section 9.4.2, elect to retain the Good Faith Deposit as liquidated damages; and (ii) all documents deposited by any Party into the unclosed escrow shall be returned to the Party that deposited them. Notwithstanding the foregoing and any other provision of this Agreement, but subject in all respects to Section 5.2 above (which sets forth certain conditions that must be satisfied in order for Developer to acquire Residential Phase land and Timeshare Phase land) and the satisfaction of any other condition which apply to Developer’s acquisition of such land: (x) a Developer default with respect to the Hotel Phase shall not affect Developer’s rights with respect to Credit Property; and (y) a Developer default with respect to Stage Two or the Final Hotel Stage shall not affect Developer’s rights with respect to Credit Property or property purchased or eligible for purchase under Section 5.2.5.2 and (z) a Developer default with respect to the Final Hotel Stage shall not affect Developer’s rights with respect to property purchased or eligible for purchase under Section 5.2.5.3.

9.4.2 Upon the occurrence of an Event of Default by Developer after Developer has acquired any portion of the Property (other than Credit Property or property purchased under Section 5.2.5.2) but prior to issuance of a Certificate of Completion for that portion pursuant to Section 6.15 of this Agreement, Agency shall also have the option, subject to the rights of Holders set forth in Section 6.13, to repurchase the applicable portion of the Property; provided that, Agency must exercise its option by written notice to Developer prior to the date, if any, on which the Event of Default is cured. If the default relates to a Residential Phase, Agency may also repurchase one or more of the other lots in the applicable Residential Phases of the Property for which a Certificate of Completion has not been issued by Agency, and if the default relates to a Timeshare Phase, Agency may also repurchase one or more of the other Phases within the Timeshare Component for which a Certificate of Completion has not been issued. The rights of Agency to repurchase pursuant to this Section 9.4 shall be set forth in the deed for the Hotel Phase and in a separate Memorandum of Repurchase Rights in the form attached hereto as Attachment 6C with respect to the Residential and Timeshare Phases.

9.4.3 An option to repurchase shall be exercised, if at all, by Agency’s delivery of written notice of its election to exercise the option to Developer within one year after expiration of the last of the cure periods granted to Developer and/or the Holders, and the Developer shall execute, acknowledge and deliver a grant deed for the applicable property to the Agency within fifteen (15) business days after the Agency’s election, subject only to the title exceptions described in Section 9.4.3(b) below. In the event Developer fails to do so, Agency shall have, in addition to any and all of its other rights and remedies at law, in equity and under this Agreement, the right to an order for specific performance.

9.4.4 (a) The purchase price (the “Option Purchase Price”) shall be the Purchase Price actually paid by Developer to Agency for the applicable Phase of the Property, or portion thereof (on a pro-rata, per square foot basis), being acquired by Agency; however, the Purchase Price shall be paid to the holders of any lien(s) on the applicable Phase or portion thereof to the extent the lien secures sums used by Developer to pay the purchase price for the phase or portion thereof, and the only remainder, if any (net of transaction costs payable by the Developer) shall be payable to the Developer.

(b) Agency shall deliver the Option Purchase Price to Developer through escrow. Developer shall convey title subject only to exceptions that (i) existed at the
time of Developer’s acquisition of the Phase of the Property, or (ii) were created with the written consent of Agency or approved in writing by Agency or expressly contemplated or permitted by this Agreement, including but not limited to the deed of trust or other lien securing construction or permanent financing.

(c) Upon the Agency’s election to repurchase, the Agency and the Developer shall promptly open an escrow with Escrow Agent and shall execute and deliver all documents necessary or appropriate to complete the purchase and sale transaction in accordance with this Section 9.4 (including, without limitation, escrow instructions, a settlement statement, a FIRPTA affidavit, and a California Form 593). Developer shall pay all escrow costs and the costs of an ALTA owner’s title insurance policy in favor of Agency that is consistent with clause (b) above.

(d) Agency shall have the right to enforce this Section 9.4 by specific performance.

9.5 Applicable Law

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

9.6 Service of Process

In the event that any legal action is commenced by Developer against Agency, service of process on Agency shall be made by personal service upon the Executive Director or in such other manner as may be provided by law. In the event that any legal action is commenced by Agency against Developer, service of process on such Party shall be made by personal service upon the Developer’s registered agent for service of process or upon a partner, manager, managing member of Developer (by service on any officer of any such manager or managing member) and shall be valid whether made within or without the State of California.

9.7 Rights and Remedies are Cumulative

Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by any Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by any other Party. Upon the occurrence of an event of default which remains uncured after any default notice required by this Agreement is given and any applicable cure period under this Agreement has expired, except as to any rights and remedies expressly declared to be exclusive in this Agreement, the injured Party shall have all rights and remedies against the defaulting Party as may be available at law or in equity to cure, correct or remedy any event of default, to obtain specific performance, to recover damages, or to obtain any other remedy consistent with the purpose of this Agreement.

9.8 Inaction Not a Waiver of Default

Any failures or delays by any Party in giving a notice of default or in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of
any such rights or remedies, or deprive any Party of its right to send a notice of default and thereafter (subject to any applicable cure rights) institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any of its rights or remedies.

ARTICLE 10. ADDITIONAL OBLIGATIONS OF DEVELOPER

10.1 Affordable Housing and Workforce Housing

10.1.1 Pursuant to the California Redevelopment Law and the Base Reuse Plan adopted by the Fort Ord Reuse Authority, as a consequence of constructing and operating the Project, Developer is required to provide Affordable Units in conjunction with residential units developed in any Phase of the Project and Workforce Units in conjunction with development of the Hotel Phase. The Developer may provide the Affordable Units and Workforce Units on-site or off-site. With respect to the provision of Affordable Units associated with the 125-unit Residential Phase and Workforce Units associated with the Hotel Phase, Agency determined, subsequent to its approval of the DDA on July 7, 2005 (pursuant to the Section 10.1.9 of that Agreement), that it was in the best interest of the Agency 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”) between the Agency, City and Sunbay Resort Associates, LLC approved September 1, 2005 (Agency Resolution No. 05-11 Ft. Ord-11; City Council Resolution No. 05-59), has satisfied this requirement with respect to the Affordable Unit requirement of the 125-unit Residential Phase and the Workforce Unit requirement of the Hotel Phase.

10.1.2 Additional residential units that may be authorized by the Entitlements, as amended from time to time and developed in any Phase of the Project shall remain subject to the Agency’s Affordable Housing Program, the City’s Inclusionary Housing Ordinance (Section 17.31 of the Seaside Municipal Code) and applicable law.

10.1.3 Affordable Units may be either for-sale or for-rent, shall consist of units that are income-restricted for persons or households of no greater than “moderate income”, “low income,” and “very low income” (as such terms are defined in the California Health & Safety Code) (the “Affordable Units”), and the number of the Affordable Units, per income category, shall be twenty percent (20%) of the number of residential units permitted by the Entitlements in any Phase. If any of the Affordable Units are for-rent, Developer shall rent them for fifty-five (55) years to low/moderate income households at affordable rents 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 California Redevelopment Law. A declaration of conditions, covenants and restrictions as required by the Agency Affordable Housing Program 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 [Intentionally Deleted]
10.1.5 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 Executive Director’s satisfaction that the proposed number of Affordable Units and the income limits for those units comply with Section 10.1.3 of this Agreement as of the date of the application. The number of Affordable Units, and the timing of providing them, shall be determined at the time of the City’s approval of the tentative map or parcel map, or if such development does not require a map, prior to issuance of a building permit.

10.1.6 [Intentionally Deleted]

10.1.7 [Intentionally Deleted]

10.1.8 [Intentionally Deleted]

10.1.9 [Intentionally Deleted]

10.2 First Source Recruitment.

10.2.1 The Developer (excluding purchasers of “timeshare” or “interval” units and residential lots) shall comply with the Agency’s First Source Recruitment Policy in constructing, maintaining and operating the Improvements on the Property, and shall use reasonable efforts to cause all tenants and operators of the Improvements to comply with the Agency’s First Source Recruitment Policy. The Agency’s First Source Recruitment Policy is set forth in the Attachment No. 12 attached hereto.

10.2.2 By the date(s) set forth in the Schedule of Performance, the Developer shall submit to the Agency, for its review and approval, a First Source Recruitment Program for the development and construction of the Improvements. Such Program shall include specific programs and activities that the Developer or its successor and assigns will perform to satisfy the Agency’s First Source Recruitment Policy.

10.2.3 With respect to Section II.A, Training, of the Agency’s First Source Recruitment Policy, Developer shall participate in the “Monterey County Pre-Apprentice Program” and Agency hereby recognizes such participation as fulfilling the training requirements of the Agency’s First Source Recruitment Policy. With respect to Section III. F, Training Fund, of the Agency’s First Source Recruitment Policy, the Developer shall pay (or shall cause to be paid): (i) $50,000 to Agency on the first, second and third anniversaries of the date on which Developer acquires the Hotel Phase, or (ii) $150,000 to Agency on or before July 1, 2006. Agency hereby acknowledges that such payment(s) shall fulfill the requirements of Agency’s policy with respect to training funds. The Agency acknowledges that Developer satisfied its obligation under the preceding sentence prior to the date of this Agreement.
10.3 **Implementation of City Entitlement Conditions.** Developer covenants and agrees to comply at all times with the Entitlement Conditions set by the City in approving the Project as they are attached in Attachment No. 1-D hereto, or as they may be modified or supplemented by the City in accordance with applicable law.

10.4 **Payment of Excess EVA Costs.** In addition to any fees payable by Developer to the City pursuant to the terms of the Entitlement Conditions, in consideration for the covenants of the Agency under this Agreement, the Developer shall pay to the City the sum of Two Hundred Eighty-Nine Thousand Six Hundred Thirty and No/100 Dollars ($289,630.00) (the “Excess EVA Costs”) in the manner described in the Entitlement Conditions. Such Excess EVA Costs constitute the portion of the “Reimbursement” by Developer (as the “first EVA Benefit Developer”) under Section 7.3 of that certain Seaside Highlands Reimbursement Agreement dated as of August 21, 2003 between KB Bakewell Seaside Venture, LLC, a California limited liability company, and the City in excess of the Developer’s $78,243 share of the Yosemite EVA In-Lieu and the $26,717 Pajaloch EVA costs required to be paid by Developer under the terms of the Entitlement Conditions. (It is contemplated that it will be the City’s obligation to reimburse Developer for some of the Excess EVA Costs pursuant to a Reimbursement Agreement in the form of Attachment No. 16 that must be executed by the City as a condition to the Developer’s obligations hereunder to purchase any portion of the Property and must be executed not later than concurrently with Developer’s payment of the Excess EVA Costs.)

10.5 **Certain Collections of and Challenges to City Transient Occupancy Tax.** Developer shall include in its hotel operating agreement with the hotel operator (if the Time share Phase operator and the hotel operator are the same or are affiliated) or in its contract with the Time share Phase operator (if the hotel operator and the Timeshare Phase operator are not the same and are not affiliated) the unconditional obligation to collect and pay the City’s transient occupancy tax to the City from all persons and entities who pay rent or a fee to the owner of a timeshare unit or interest in the Timeshare Phase to use the timeshare unit. The Developer shall enforce such contractual obligations (including by litigation or termination if necessary); however, the foregoing contractual obligations shall cease if, when and to the extent that a California state court rules that the City’s transient occupancy tax is invalid as so applied, and such ruling is upheld on appeal, if any. Developer shall not convert the timeshare units to condominiums without complying with applicable law.

Neither Developer nor any successor-in-interest to Developer (excluding both a Timeshare unit owner/user and a purchaser of a Residential Component lot who intends to occupy future improvements on the lot as a residence) shall challenge, encourage others to challenge, or cooperate in challenging, transient occupancy tax as so applied, or cause, encourage or assist the hotel operator or the Timeshare Phase operator or any Timeshare owner or user to challenge such application of the City’s transient occupancy tax, nor shall the Developer or its successors-in-interest (excluding both a Timeshare unit owner/user and a purchaser of a Residential Component lot who intends to occupy future improvements on the lot as a residence) or the hotel operator or Timeshare Phase operator assert the invalidity of the City’s transient occupancy tax as a defense to liability of the Agency or City for the failure to collect the tax as required under this Section. Developer hereby expressly acknowledges that its obligations under this Section are contractual in nature and do not depend on the validity of the City’s transient occupancy tax as so applied. The Developer shall include in the hotel operator’s
contract and the Timeshare Phase operator’s contract provisions consistent with the foregoing regarding the collection of, challenges of and assertion of defenses to the obligation to collect the City’s transient occupancy tax under this Section. The City is a third party beneficiary of this Section.

10.6 As provided in clause (i) of the letter agreement between Developer and the Agency dated April 15, 2009, on or before the date on which the firm permit from the City of Seaside for grading or construction related to the Hotel is issued, Developer shall pay the sum of $100,000 to the Agency as payment in full for all reimbursable costs owed to the Agency under the DDA incurred prior to March 31, 2009. Clauses (ii) through (v) of the April 15, 2009 letter have been waived or superseded and no longer have any force or effect.

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 personally delivered or 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, or telegraphed, delivered or sent by telex, teletype, or cable to the addresses set forth in this Section 11.1, with a copy to designated legal counsel. The notices or other communications shall be deemed received and effective upon: (i) if personally delivered, the date of delivery to the address of the person to receive such notice; (ii) if mailed, the date of delivery or refusal to accept delivery indicated in the certified or registered mail receipt; or (iii) if given by courier service, on the date of delivery evidenced by the receipt for delivery provided by the courier service; or (iv) if given by telex, teletypewriter, or fax, when sent. Any notice, request, demand, direction or other communication sent by cable, telex, telecopy or fax must be confirmed within forty-eight (48) hours by letter mailed or delivered in accordance with the foregoing.

For Agency/City: The Successor Agency of the
Redevelopment Agency of the City of Seaside
440 Harcourt Avenue
Seaside, California 93955
Attention: Executive Director
Tel: (831) 899-6700
Fax: (831) 899-6227

with a copy to: Richards, Watson and Gershon
355 South Grand Avenue, 40th Floor
Los Angeles, California 90071
Attention: Bruce Galloway
Tel: (213) 626-8484
Fax: (213) 626-0078
For Developer:
Seaside Resort Development, LLC
c/o Cornerstone Capital Management
310 South Williams Road
Suite 180
Tucson, AZ 85711
Attention: Donald Pitt
Tel: (510) 790-9900
Fax: (510) 790-9585

and

Seaside Resort Development, LLC
c/o Diamond Ventures
2200 East River Road
Suite 115
Tucson, AZ 85715
Attention: Donald Diamond
Tel: (510) 577-0200
Fax: (510) 299-5602

and

Seaside Resort Development LLC
2 McClure Way
Seaside, CA 93955
Attention: Richard Fitzgerald
Tel: (831) 392-1900
Fax: (831) 392-1035

with copies to:
Brian Finegan PC
60 West Alisal Street, Suite 1
Salinas, CA 93902
Tel: (831) 757-3641
Fax: (831) 757-9329

and

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

No member, official, representative, employee, contractor or agent of Agency or City shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by Agency or 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 or Agency, to the extent that such orders or inaction affect City’s or Agency’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. Additionally, all deadlines in the Schedule of Performance applicable to a Phase (or applicable to the Improvements for a Phase, as appropriate) shall be delayed by (i) the period of time during which any governmental order precludes the execution or implementation of this Agreement or the issuance or effectiveness of the Entitlements for the applicable Phase; (ii) the period of time during which any litigation (including appeals) challenging the effectiveness of this Agreement or the issuance or effectiveness of the Entitlements for the applicable Phase; and (iii) all time periods for filing an appeal and for instituting referenda that challenge the effectiveness of this Agreement or the issuance or effectiveness of the Entitlements for the applicable Phase. However, in no event shall there be any extension of time pursuant to this Section 11.3 due to: (i) any litigation commenced or initiated by Developer, unless such litigation is reasonably instituted and is instituted in good faith for the purpose of avoiding or shortening a delay; or (ii) any event or condition caused by Developer’s inherent financial condition or financial inability to pay its
monetary obligations when due (as distinguished from Developer’s inability to make a payment by reason of an unaffiliated bank’s failure or some other external cause not associated with Developer’s financial condition).

Notwithstanding anything to the contrary in this Agreement: (i) an extension of time for any such cause shall be for the period of time reasonable in light of the enforced delay, and the extension of time shall commence to run from the time that the Party claiming the extension has notified the other Party in writing of the nature of the matter constituting the enforced delay; and (ii) in the event that the deadline for the Close of Escrow on any Phase does not occur by the date that is two (2) calendar years after the applicable closing deadline in the Schedule of Performance, as extended by force majeure delays (if applicable), and the Agency has not terminated this Agreement (as expressly permitted by Section 5.1 above) and does not terminate this Agreement (as expressly permitted by Section 5 above) prior to the actual Close of Escrow for the applicable Phase, then the purchase price for the applicable Phase shall be increased by the amount by which (a) the fair market value of the applicable Phase as of the actual Close of Escrow for the applicable Phase, exceeds (b) the fair market value as of the date that is two (2) years after the deadline for such Close of Escrow in the Schedule of Performance, as extended by force majeure delays (if applicable), all as determined by an MAI appraisal obtained by the Agency (which Developer may challenge under Section 8.4). The appraisers fees may not be based on the appraised value. All such appraisals shall be performed by MAI appraisers mutually acceptable to the Executive Director and Developer (and if the Executive Director and Developer do not agree, the appraiser shall be selected by Judge Paik, and if Judge Paik is unable, unwilling or unavailable to select the appraiser, then either party may submit the selection of the appraisal to judicial reference under Section 11.19 below) and the costs of the appraisal (which shall be at the appraisers’ normal and customary rates, and shall not be based on the appraised values) shall be paid or reimbursed by Developer within ten (10) days after written demand by the Agency.

11.4 No Real Estate Commissions

Agency and Developer each represent and warrant to the other that it has not engaged any 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 Agency from and against such claim(s) if it (they) shall be based upon any statement or representation or agreement made by Developer, and Agency hereby agrees to indemnify, save harmless and defend Developer if such claim(s) shall be based upon any statement, representation or agreement made by Agency.

11.5 Successors and Assigns

This Agreement shall bind and inure to the benefit of the Parties to this Agreement and their respective successors and assigns. However, this provision shall not authorize the assignment or transfer of any interest that is prohibited specifically by the other terms of this Agreement.
11.6 **Relationship of the Parties**

The terms and provisions of this Agreement shall not cause the Parties hereto be construed in any manner whatsoever as partners, joint venturers or agents of each other in the performance of their respective duties and obligations under this Agreement, or subject either Party to this Agreement to any obligations, loss, charge or expense of the other Party unless the Party to be held responsible has independently contracted with the claimant so as to make it directly responsible for the performance and/or payment, as appropriate, of the pertinent obligation, loss, charge or expense.

11.7 **No Obligation To Third Parties**

This Agreement is intended to confer rights and benefits only upon the Parties hereto and their successors and assigns and is not intended to confer any rights or benefits upon any other person or entity, except for the rights granted to Holders as provided in (but subject to the provisions of) Section 6.13 and Section 9.4. No person or entity other than the Parties and their successors and assigns shall have any legally enforceable rights hereunder. All rights of action for any breach of this Agreement are hereby reserved to the Parties and their successors and assigns.

11.8 **Time of Essence**

Time is of the essence of this Agreement.

11.9 **Construction of Agreement**

11.9.1 **Context and Construction**

When the context and construction so require, all words used in the singular herein shall be deemed to have been used in the plural, and the masculine shall include the feminine and neuter and vice versa. Whenever a reference is made herein to a particular Article of this Agreement, it shall mean and include all Sections, subsections and subparts thereof, and, whenever a reference is made herein to a particular Section or subsection, it shall include all subsections and subparts thereof. The headings in this Agreement are included solely for convenience, and if there shall be any conflict between such headings and the text of this Agreement, the text shall control.

11.9.2 **Advice of Counsel; Interpretation**

Should any provisions of this Agreement require interpretation, it is agreed that the person or persons interpreting or construing the same shall not apply a presumption that the terms of this Agreement shall be more strictly construed against one Party by reason of the rule of construction that a document is to be construed more strictly against the Party thereto who itself or through its agent or counsel prepared the same or caused the same to be prepared; it being agreed that the agents and counsel of both of the Parties hereto have participated equally in the negotiation and preparation of this Agreement.
11.9.3 Calendar days: Computation of Time

"Day" or "days" as used herein shall refer to calendar day or days, unless otherwise specifically provided herein. Unless otherwise required by a specific provision of this Agreement, time hereunder is to be computed by excluding the first day and including the last day. If the date for performance falls on a Saturday, Sunday, or legal holiday, the date for performance shall be extended to the next business day.

11.10 Litigation Costs

In the event of a dispute between the Parties arises with respect to the interpretation of this Agreement, or under this Agreement, or otherwise related to this Agreement, the prevailing Party (in a lawsuit, or under Section 8.4 of this Agreement) shall be entitled to recover its actual litigation expenses and costs, including actual, 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 shall be deemed to limit, restrict, amend or modify, nor to constitute a waiver or release of, any Laws of the City or the Agency, their departments, commissions, agencies, and boards and the officers thereof and Agency, including, without limitation, any redevelopment or general plan or any zoning ordinances, or any of City's or Agency's duties, obligations, rights or remedies thereunder or pursuant thereto or the general police powers, rights, privileges and discretion of City or Agency 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 and Agency 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 and Agency Rules and Powers, on the other hand, the latter shall prevail and govern in each case. This Section shall be interpreted for the benefit of City and Agency.

11.12 Estoppel Certificates

Any Party hereunder may, from time to time, request the other Party to execute and acknowledge an estoppel certificate verifying that this Agreement, including any Attachments hereto, is in full force and effect and that no default or defaults have occurred and are continuing as of the date of such certificate (nor any event which, with the passage of time and the giving of notice would result in a Default or breach under this Agreement), or stating the nature of the default or breach or event, if any. In the event the estoppel certificate discloses such a default, breach or event, it shall also state the manner in which such default, breach and/or event may be cured. The Party requesting such certificate shall provide the form thereof and,
provided such certificate or agreement is in form and substance commercially reasonable, the requested Party shall execute and return the same within ten (10) business days after receipt of the final form thereof, and the requesting Party (and, in the case of Developer, its lenders and successors-in-interest as permitted under this Agreement) shall be entitled to rely thereon. If the requested Party believes that the certificate requested is not commercially reasonable, it shall use good faith efforts to notify the requesting Party in writing of its objections to the form of the certificate.

11.13 Further Assurances

Each of the Parties hereto shall execute and deliver any and all additional papers, documents, instruments and other assurances and shall do any and all other acts and things reasonably necessary to carry out the purposes of this Agreement and the intent of the Parties hereto.

11.14 Approvals

Except as otherwise provided in this Agreement, approvals, consents and determinations “to the satisfaction of” a party or whether a matter is “acceptable” to a party shall not be unreasonably made and shall be accompanied with an explanation for the reasons for any disapproval, refusal to consent or other determination adverse to the other party (including but not limited to requests from lenders made pursuant to Sections 6.13), and a response shall be given within the time expressly set forth in the Schedule of Performance or this Agreement. If no time period is stated for response, the time period for approval, consent or other determination shall be twenty (20) business days and a failure to respond within such time period shall be deemed approval.

11.15 Severability

To the best knowledge and belief of the Parties to this Agreement, this Agreement contains no provision that is contrary to any federal, state or local law or to any regulatory requirement or other ruling or regulation of a federal, state or local agency or that would be in breach of the obligations of either or both of the Parties hereto under the terms and provision of any legally binding agreement. However, if any provision of this Agreement, or any part thereof, shall at any time be held to be invalid, in whole or in part, under any applicable federal, state or local law by a court of competent jurisdiction, or by arbitrators or an administrative agency of the federal, state or local government with proper jurisdiction, then such provision or a portion thereof, as appropriate, shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law and the validity and enforceability of the remaining provisions of this Agreement shall remain in effect and shall in no way be affected, impaired or invalidated, unless the invalidated provision(s) shall uniquely, materially and adversely affect the rights and obligations of a Party to this Agreement (in which case the party whose rights and obligations are so affected may terminate this Agreement by written notice to the other provided the notice describes the invalid provisions and such unique, material and adverse effects and the other party does not promptly agree to amend this Agreement [or thereafter fails to promptly execute or deliver such amendment] to remedy the adverse effect on the other party).
11.16 *Entire Agreement*

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

11.17 *Attachments*

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

No. 1  Legal Description of the Property
No. 1-A Site Plans(s)
No. 1-B Phases
No. 1-C Purchase Prices
No. 1-D Entitlement Conditions

No. 2  Scope of Development
Exhibit “A” to Scope of Development (Conceptual Plans)

No. 3  Schedule of Performance

No. 4  Form of Certificate of Completion

No. 5  Environmental Reports

No. 6  Forms of Deeds and Repurchase Options
No. 6-A Hotel Deed and Option
No. 6-B Residential/Timeshare Deed
No. 6-C Residential/Timeshare Option

No. 7  Insurance Requirements

No. 8  [Intentionally Deleted]

No. 9  Forms of Deeds of Trust
No. 9-A [Intentionally Deleted]
No. 9-B Form of Residential Deed of Trust

No. 10  Form of Environmental Indemnity
11.18 Waivers and Amendments

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

11.19 ARBITRATION OF DISPUTES

(1) Except for controversies, disputes and claims arising under, out of or with respect to Article 8 (which shall be governed by the judicial reference procedures described in Section 8.4), any controversy, dispute or claim arising under, out of or with respect to this Agreement (including any dispute regarding an approval or disapproval) shall be resolved by binding arbitration before a single arbitrator and shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the “Rules”), including any and all “expedited procedures” provisions thereof; provided, however, that in the event of any conflict between the Rules and this Section 11.19, the provisions of this Section 11.19 shall govern.

(2) The arbitration shall be conducted in Monterey County, California before Judge Harkjoon Paik, and Judge Paik shall administer the arbitration (including discovery, which shall be permitted but shall be subject to rules and procedures imposed by the arbitrator to expedite the hearing of the dispute). If Judge Paik is unavailable or unwilling to serve as arbitrator, and the parties (with the Executive Director acting for the Agency) do not agree upon an arbitrator within three (3) business days after Judge Paik so indicates to both parties, then the arbitrator shall be appointed by the Presiding Civil Judge of the Monterey County Superior Court upon application by either party.

(3) The parties shall endeavor to cause the matter to be heard by the arbitrator within thirty (30) days after it is submitted to the arbitrator. The arbitrator shall render a written decision stating reasons therefor in reasonable detail within 15 days after the arbitration is concluded.

(4) The arbitrator shall determine, in addition to the matter in question, which party fails to prevail in the arbitration (and, if Developer fails to prevail, whether there was a reasonable basis for Developer’s position in the arbitration). All costs and expenses reasonably incurred in connection with such arbitration, including costs and expenses of the arbitrators, and
the reasonable attorneys and expert charges of the parties shall be borne by the party which fails to prevail. In addition, if Developer prevails, or if Developer does not prevail but the arbitrator determines that there was a reasonable basis for Developer’s position in the arbitration and it was reasonable under the circumstances for the Developer to delay its performance under this Agreement, then all time periods for Developer’s performance under this Agreement that it would be reasonable to extend shall be extended by the number of days from the demand for arbitration through the date of the arbitration award.

(5) When resolving any dispute, the arbitrator shall apply the pertinent provisions of this Agreement without departure therefrom in any respect. The arbitrator shall not have the power to change any of the provisions of this Agreement, but this sentence shall not prevent in any appropriate case the interpretation, construction and determination by the arbitrator of the applicable provisions of this Agreement to the extent necessary in applying the same to the matters to be determined by arbitration.

(6) Judgment on the arbitration award may be entered in any court having jurisdiction.

(7) TO THE EXTENT PERMITTED BY LAW, DEVELOPER AND AGENCY EACH HEREBY WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT BY EITHER PARTY AGAINST THE OTHER REGARDING ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT.

(8) NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THIS “ARBITRATION OF DISPUTES” PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE “ARBITRATION OF DISPUTES” PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE ARBITRATION OF DISPUTES PROVISION TO NEUTRAL ARBITRATION.

__________________________  ____________________________
Developer’s Initials  Agency’s Initials
the reasonable attorneys and expert charges of the parties shall be borne by the party which fails to prevail. In addition, if Developer prevails, or if Developer does not prevail but the arbitrator determines that there was a reasonable basis for Developer’s position in the arbitration and it was reasonable under the circumstances for the Developer to delay its performance under this Agreement, then all time periods for Developer’s performance under this Agreement that it would be reasonable to extend shall be extended by the number of days from the demand for arbitration through the date of the arbitration award.

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WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE ARBITRATION OF DISPUTES PROVISION TO NEUTRAL ARBITRATION.

[Signatures]

Developer’s Initials

Agency’s Initials
the reasonable attorneys and expert charges of the parties shall be borne by the party which fails to prevail. In addition, if Developer prevails, or if Developer does not prevail but the arbitrator determines that there was a reasonable basis for Developer’s position in the arbitration and it was reasonable under the circumstances for the Developer to delay its performance under this Agreement, then all time periods for Developer’s performance under this Agreement that it would be reasonable to extend shall be extended by the number of days from the demand for arbitration through the date of the arbitration award.

(5) When resolving any dispute, the arbitrator shall apply the pertinent provisions of this Agreement without departure therefrom in any respect. The arbitrator shall not have the power to change any of the provisions of this Agreement, but this sentence shall not prevent in any appropriate case the interpretation, construction and determination by the arbitrator of the applicable provisions of this Agreement to the extent necessary in applying the same to the matters to be determined by arbitration.

(6) Judgment on the arbitration award may be entered in any court having jurisdiction.

(7) TO THE EXTENT PERMITTED BY LAW, DEVELOPER AND AGENCY EACH HEREBY WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT BY EITHER PARTY AGAINST THE OTHER REGARDING ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT.

(8) NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THIS “ARBITRATION OF DISPUTES” PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE “ARBITRATION OF DISPUTES” PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE ARBITRATION OF DISPUTES PROVISION TO NEUTRAL ARBITRATION.

[Signature]
Developer’s Initials

[Signature]
Agency’s Initials
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.

**AGENCY:**

THE SUCCESSOR AGENCY OF THE REDEVELOPMENT AGENCY OF THE CITY OF SEASIDE, a public body, corporate and politic

By: ________________
Print Name: Ralph Rubin
Title: Board Chair

**ATTEST:**

Print Name: ________________
Title: ________________

APPROVED AS TO FORM:

RICHARDS, WATSON & GERSHON
Special Agency Counsel

Bruce Galloway, Esq.

**DEVELOPER:**

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: ________________
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.

**AGENCY:**

THE SUCCESSOR AGENCY OF THE REDEVELOPMENT AGENCY OF THE CITY OF SEASIDE, a public body, corporate and politic

By: __________________________
Print Name: ______________________
Title: __________________________

**ATTEST:**

Print Name: ______________________
Title: __________________________

APPROVED AS TO FORM:

RICHARDS, WATSON & GERSHON
Special Agency Counsel

[Signature]
Bruce Galloway, Esq.

**DEVELOPER:**

SEASIDE RESORT DEVELOPMENT, LLC, an Arizona limited liability company,

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

By: __________________________
Print Name: **Donald R. Diamond**
Title: **Director**

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

By: __________________________
Print Name: ______________________
Title: __________________________
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.

AGENCY:

THE SUCCESSOR AGENCY OF THE REDEVELOPMENT AGENCY OF THE CITY OF SEASIDE, a public body, corporate and politic

By: ____________________________
Print Name: _____________________
Title: __________________________

ATTEST:

_______________________________
Print Name: _____________________
Title: __________________________

APPROVED AS TO FORM:

RICHARDS, WATSON & GERSHON
Special Agency Counsel

_______________________________
Bruce Galloway, Esq.

DEVELOPER:

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: __________________________
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.

**AGENCY:**

THE SUCCESSOR AGENCY OF THE REDEVELOPMENT AGENCY OF THE CITY OF SEASIDE, a public body, corporate and politic

By: ______________________________
Print Name: ________________________
Title: ______________________________

**ATTEST:**

_______________________________
Print Name: ________________________
Title: ______________________________

APPROVED AS TO FORM:

RICHARDS, WATSON & GERSHON
Special Agency Counsel

_______________________________
Bruce Galloway, Esq.

**DEVELOPER:**

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 PHASE LAND (currently 2 parcels)

Hotel Parcel 1

That certain real property situate in Rancho Noche Buena, in the County of Monterey, State of California, being a portion of that certain 380.31 acre parcel of land shown as Parcel 1 as per map filed for record in Volume 26, Page 28 of Surveys in the office of the County Recorder of said county described as follows:

Beginning at a point that bears South 24°53'59" West, 2,638.33 feet from the most northerly corner of said Parcel 1; thence

1. South 36°18'25" East, 147.89 feet; thence
2. North 78°50'32" East, 237.93 feet; thence
3. North 86°25'16" East, 349.95 feet; thence
4. South 73°40'00" East, 155.99 feet; thence
5. South 68°42'42" East, 277.08 feet; thence
6. South 23°13'15" West, 367.94 feet; thence
7. South 42°48'20" West, 313.39 feet; thence
8. South 11°39'52" West, 202.98 feet; thence
9. South 83°52'52" West, 149.07 feet; thence
10. North 56°52'25" West, 646.26 feet; thence
11. North 41°03'07" West, 348.99 feet; thence
12. North 87°22'26" East, 127.50 feet; thence
13. North 02°37'34" West, 27.36 feet; thence
14. North 87°22'26" East, 192.50 feet; thence
15. North 02°37'34" West, 60.02 feet to the beginning of a non-tangent curve concave to the northeast having a radius of 217.00 feet, and to which beginning a radial bears North 13°21'09" East; thence
16. Northwesterly 71.27 feet along said curve through a central angle of 18°49'00"; thence
17. North 02°37'34" West, 232.98 feet to the Point of Beginning.

Containing 16.76 acres, more or less
Bearings cited herein are referenced to said Volume 26, Page 28 of Surveys.

**Hotel Parcel 2**

That certain real property situate in Rancho Noche Buena, in the County of Monterey, State of California, being a portion of that certain 380.31 acre parcel of land shown as Parcel 1 as per map filed for record in Volume 26, Page 28 of Surveys in the office of the County Recorder of said county described as follows:

Beginning at a point that bears South 08°53'45” East, 3,421.69 feet from the most northerly corner of said Parcel 1; thence

South 66°45'05” East, 77.18 feet; thence
South 23°14'55” West, 516.59 feet; thence
North 66°45'05” West, 75.91 feet; thence
North 23°06'26” East, 516.59 feet to the Point of Beginning.

Containing 0.91 acres, more or less

Bearings cited herein are referenced to said Volume 26, Page 28 of Surveys.
II. TIMESHARE PHASE LAND (3 parcels)

Timeshare Parcel 1 (VTM\* Timeshare Phases I, II & III; Lots A1, A2 & A3)

That certain real property situate in Rancho Noche Buena, in the County of Monterey, State of California, being a portion of that certain 380.31 acre parcel of land shown as Parcel 1 as per map filed for record in Volume 26, Page 28 of Surveys in the office of the County Recorder of said county described as follows:

Beginning at a point that bears South 29°59'36" West, 1,214.17 feet from the most northerly corner of said Parcel 1; thence

1. South 73°20'00" East, 132.90 feet; thence
2. South 36°50'30" East, 135.13 feet; thence
3. South 05°30'00" West, 322.50 feet; thence
4. South 52°15'00" East, 282.10 feet; thence
5. South 37°45'46" West, 117.38 feet; thence
6. North 82°45'00" West, 389.94 feet; thence
7. South 26°02'40" West, 325.25 feet; thence
8. South 05°08'34" East, 50.02 feet; thence
9. North 74°11'29" West, 134.72 feet; thence
10. North 17°14'26" East, 123.27 feet; thence
11. North 18°23'25" East, 918.06 feet to the Point of Beginning.

Containing 6.51 acres, more or less

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

\*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

28. South 65°50'00" East, 140.11 feet; thence
29. South 09°20'00" West, 637.50 feet; thence
30. South 78°45'00" West, 122.50 feet; thence
31. North 66°40'00" West, 203.50 feet; thence
32. North 24°10'00" East, 690.20 feet to the Point of Beginning.

Containing 3.56 acres, more or less

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

33. South 23°23'00" West, 42.93 feet; thence
34. North 86°20'00" West, 984.60 feet; thence
35. South 57°55'00" West, 111.11 feet; thence
36. North 36°50'30" West, 135.13 feet to the beginning of a curve concave to the east having a radius of 165.00 feet; thence
37. Northerly 173.39 feet along said curve through a central angle of 60°12'30" to the beginning of a compound curve having a radius of 250.00 feet; thence
38. Northeasterly 188.57 feet along said curve through a central angle of 43°12'59"; thence
39. North 66°35'00" East, 275.00 feet to the beginning of a curve concave to the northwest having a radius of 1,000.00 feet; thence
40. Northeasterly 243.95 feet along said curve through a central angle of 13°58'39" to the beginning of a reverse curve having a radius of 50.00 feet; thence
41. Easterly 39.29 feet along said curve through a central angle of 45°01'24" to the beginning of a compound curve having a radius of 145.00 feet; thence
42. Southeasterly 175.14 feet along said curve through a central angle of 69°12'16"; thence
43. South 13°10'00" East, 182.56 feet to the beginning of a curve concave to the northeast having a radius of 120.00 feet; thence
44. Southeasterly 153.24 feet along said curve through a central angle of 73°10'00"; thence
45. South 86°20'00" East, 69.59 feet; thence
46. South 03°40'00" West, 100.00 feet to the beginning of a non-tangent curve concave to the south having a radius of 795.00 feet, and to which beginning a radial bears South 03°40'00" West; thence
47. Easterly 145.74 feet along said curve through a central angle of 10°30'13" to the beginning of a compound curve having a radius of 175.00 feet; thence
48. Southeasterly 74.03 feet along said curve through a central angle of 24°14'15" to the beginning of a reverse curve having a radius of 175.00 feet; thence
49. Southeasterly 45.89 feet along said curve through a central angle of 15°01'29"; thence
50. South 23°23'00" West, 50.00 feet to the Point of Beginning.

Containing 10.17 acres, more or less

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

Residential Parcel 2 (VTM Residential Phase II; Lots 30-41)

That certain real property situate in Rancho Noche Buena, in the County of Monterey, State of California, being a portion of that certain 380.31 acre parcel of land shown as Parcel 1 as per map filed for record in Volume 26, Page 28 of Surveys in the office of the County Recorder of said county described as follows:

Beginning at a point that bears South 43°23'11" East, 1,523.80 feet from the most northerly corner of said Parcel 1; thence

51. South 66°37’00” East, 180.01 feet; thence
52. South 23°23’00” West, 229.06 feet; thence
53. South 23°22’38” West, 215.94 feet; thence
54. South 66°37’16” East, 10.00 feet; thence
55. South 23°22’44” West, 145.00 feet; thence
56. North 66°37’16” West, 55.00 feet to the beginning of a curve concave to the northeast having a radius of 145.00 feet; thence
57. Northerly 77.92 feet along said curve through a central angle of 30°47’16”; thence
58. North 54°10’00” East, 100.00 feet to the beginning of a non-tangent curve concave to the east having a radius of 45.00 feet, and to which beginning a radial bears North 54°10’00” East; thence
59. Northerly 61.59 feet along said curve through a central angle of 78°25’00”; thence
60. North 47°25’00” West, 100.00 feet to the beginning of a non-tangent curve concave to the south having a radius of 145.00 feet, and to which beginning a radial bears South 47°25’00” East; thence
61. Easterly 174.16 feet along said curve through a central angle of 68°49’10”; thence
62. North 23°22’44” East, 85.09 feet to the beginning of a curve concave to the west having a radius of 25.00 feet; thence
63. Northerly 39.27 feet along said curve through a central angle of 89°59’44”; thence
64. North 66°37’00” West, 105.01 feet; thence
65. North 23°23'00" East, 190.00 feet to the Point of Beginning.

Containing 1.71 acres, more or less; 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 75°49'17" West, 1,637.17 feet from the most northerly corner of said Parcel 1; thence

66. South 84°51'47" East, 155.00 feet; thence
67. South 05°08'13" West, 130.00 feet to the beginning of a curve concave to the west having a radius of 150.00 feet; thence
68. Southerly 78.18 feet along said curve through a central angle of 29°51'47"; thence
69. South 35°00'00" West, 110.31 feet; thence
70. North 55°00'00" West, 100.00 feet; thence
71. South 35°00'00" West, 391.69 feet to the beginning of a curve concave to the northwest having a radius of 45.00 feet; thence
72. Southwesterly 49.96 feet along said curve through a central angle of 63°36'44"; thence
73. South 35°00'00" West, 149.69 feet; thence
74. North 55°00'00" West, 125.00 feet; thence
75. North 35°00'00" East, 632.00 feet to the beginning of a curve concave to the west having a radius of 125.00 feet; thence
76. Northerly 65.15 feet along said curve through a central angle of 29°51'47"; thence
77. North 05°08'13" East, 70.00 feet; thence
78. South 84°51'47" East, 95.00 feet to the Point of Beginning.

Containing 3.37 acres, more or less.

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

Residential Parcel 3 (VTM Residential Phase III; Lots 42-56)

That certain real property situate in Rancho Noche Buena, in the County of Monterey, State of California, being a portion of that certain 380.31 acre parcel of land shown as Parcel 1 as per map filed for record in Volume 26, Page 28 of Surveys in the office of the County Recorder of said county described as follows:
Beginning at a point that bears South 63°02'08" West, 3,204.09 feet from the most northerly corner of said Parcel 1, said point being the beginning of a curve concave to the southeast having a radius of 275.00 feet; thence

79. Southwesterly 139.33 feet along said curve through a central angle of 29°01'48" to the beginning of a reverse curve having a radius of 325.00 feet; thence
80. Southwesterly 23.97 feet along said curve through a central angle of 04°13'33"; thence
81. South 60°00'00" East, 151.29 feet; thence
82. North 25°46'27" East, 35.10 feet to the beginning of a curve concave to the southeast having a radius of 125.00 feet; thence
83. Northeasterly 63.33 feet along said curve through a central angle of 29°01'48"; thence
84. North 54°48'15" East, 100.61 feet to the beginning of a curve concave to the northwest having a radius of 290.00 feet; thence
85. Northeasterly 198.41 feet along said curve through a central angle of 39°12'03" to the beginning of a reverse curve having a radius of 175.00 feet; thence
86. Northeasterly 77.86 feet along said curve through a central angle of 25°29'31" to the beginning of a reverse curve having a radius of 600.00 feet; thence
87. Northeasterly 230.35 feet along said curve through a central angle of 21°59'48" to the beginning of a reverse curve having a radius of 175.00 feet; thence
88. Northeasterly 62.82 feet along said curve through a central angle of 20°34'04"; thence
89. North 39°40'00" East, 14.26 feet to the beginning of a curve concave to the northwest having a radius of 1,475.00 feet; thence
90. Northeasterly 137.30 feet along said curve through a central angle of 05°20'00"; thence
91. North 34°20'00" East, 279.26 feet; thence
92. North 18°20'00" West, 117.79 feet to the beginning of a non-tangent curve concave to the southeast having a radius of 275.00 feet, and to which beginning a radial bears South 18°20'00" East; thence
93. Southwesterly 179.19 feet along said curve through a central angle of 37°20'00"; thence
94. South 34°20'00" West, 183.92 feet to the beginning of a curve concave to the northwest having a radius of 1,325.00 feet; thence
95. Southwesterly 123.34 feet along said curve through a central angle of 05°20'00"; thence
96. South 39°40'00" West, 14.26 feet to the beginning of a curve concave to the southeast having a radius of 325.00 feet; thence
97. Southwesterly 116.67 feet along said curve through a central angle of 20°34'04"
    to the beginning of a reverse curve having a radius of 450.00 feet; thence
98. Southwesterly 172.76 feet along said curve through a central angle of 21°59'48"
    to the beginning of a reverse curve having a radius of 325.00 feet; thence
99. Southwesterly 144.60 feet along said curve through a central angle of 25°29'31"
    to the beginning of a reverse curve having a radius of 140.00 feet; thence
100. Southwesterly 95.79 feet along said curve through a central angle of 39°12'03"
    thence
101. South 54°48'15" West, 100.61 feet to the Point of Beginning.

Containing 4.25 acres, more or less.

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

**Residential Parcel 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

102. Southerly 355.60 feet along said curve through a central angle of 15°27'22"
    thence
103. South 66°40'00" West, 81.20 feet; thence
104. South 84°39'43" West, 51.98 feet; thence
105. North 82°10'00" West, 75.22 feet to the beginning of a non-tangent curve concave to the east having a radius of 135.00 feet, and to which beginning a radial bears North 46°46'33" East; thence
106. Northerly 120.30 feet along said curve through a central angle of 51°03'27" to the beginning of a compound curve having a radius of 330.00 feet; thence
107. Northerly 46.56 feet along said curve through a central angle of 08°05'00" to the beginning of a reverse curve having a radius of 525.00 feet; thence
108. Northerly 104.61 feet along said curve through a central angle of 11°25'00"; thence
109. North 04°30'00" East, 53.19 feet to the beginning of a curve concave to the west having a radius of 450.00 feet; thence
110. Northerly 229.73 feet along said curve through a central angle of 29°15'00" to the beginning of a reverse curve having a radius of 725.00 feet; thence
111. Northerly 487.17 feet along said curve through a central angle of 38°30'00" to the beginning of a compound curve having a radius of 145.00 feet; thence
112. Northeasterly 83.51 feet along said curve through a central angle of 33°00'00"; thence
113. North 46°45'00" East, 107.51 feet to the beginning of a curve concave to the south having a radius of 50.00 feet; thence
114. Easterly 78.54 feet along said curve through a central angle of 90°00'00"; thence
115. South 43°15'00" East, 215.02 feet; thence
116. South 12°25'00" East, 105.70 feet; thence
117. South 51°35'00" East, 124.57 feet to the beginning of a curve concave to the west having a radius of 50.00 feet; thence
118. Southerly 61.23 feet along said curve through a central angle of 70°10'00"; thence
119. South 18°35'00" West, 270.24 feet to the Point of Beginning.

Containing 8.66 acres, more or less, 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
120. South 87°38'15" East, 187.09 feet to the beginning of a curve concave to the northwest having a radius of 25.00 feet; thence

121. Northeasterly 28.20 feet along said curve through a central angle of 64°37'23" to the beginning of a reverse curve having a radius of 45.00 feet; thence

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

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

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

125. North 87°38'15" West, 396.96 feet to the beginning of a non-tangent curve concave to the east having a radius of 25.00 feet, and to which beginning a radial bears North 55°29'33" East; thence

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

127. North 02°21'45" East, 160.00 feet to the beginning of a non-tangent curve concave to the northeast having a radius of 25.00 feet, and to which beginning a radial bears South 87°38'15" East; thence

128. Southeasterly 39.27 feet along said curve through a central angle of 90°00'00" to the Point of Beginning.

Containing 1.45 acres, more or less.

Bearings cited herein are referenced to said Volume 26, Page 28 of Surveys.
ATTACHMENT NO. 1-B

PHASES OF THE PROJECT

The Property shall be conveyed to Developer in the Phases identified on that certain Vesting Tentative Map (as modified in connection with the development of Residential Phases IV and V) prepared by Bestor Engineers, Inc. and approved by the City. If such Tentative Map is amended or replaced, or any other subdivision of the Property is approved, then the parties shall replace this Attachment No. 1-B with a new Attachment No. 1-B that is modified accordingly.

Hotel Phase (currently two parcels)

Timeshare 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 BY PHASE

Hotel Phase Site: $5,500,000.00 in the aggregate, or $311,262 per acre or portion thereof (based on 17.67 aggregate acres).

Timeshare Phases:

The Developer shall close on timeshare land by timeshare phase, in an order selected by the Developer, per the Timeshare Phasing Schedule on the Vesting Tentative Map. The base Purchase Price for the Timeshare Phase is $6,150,000 in the aggregate, or $318,158 per acre or portion thereof (based on 19.33 aggregate acres).

<table>
<thead>
<tr>
<th>Phase</th>
<th>Acreage</th>
</tr>
</thead>
<tbody>
<tr>
<td>I (A1)</td>
<td>2.99</td>
</tr>
<tr>
<td>II (A2)</td>
<td>1.72</td>
</tr>
<tr>
<td>III (A3)</td>
<td>1.80</td>
</tr>
<tr>
<td>IV (B1)</td>
<td>3.38</td>
</tr>
<tr>
<td>V (B2)</td>
<td>2.34</td>
</tr>
<tr>
<td>VI (B3)</td>
<td>2.31</td>
</tr>
<tr>
<td>VII (B4)</td>
<td>1.23</td>
</tr>
<tr>
<td>VIII (C1)</td>
<td>1.92</td>
</tr>
<tr>
<td>IX (C2)</td>
<td>1.64</td>
</tr>
</tbody>
</table>

Residential Lot Component Base Purchase Price*: $9,375,000

125 residential lots at base price of $75,000/lot** If the Entitlement and Project Conditions, as amended from time to time, permit the development of more than 125 residential lots, then the Purchase Price for the residential lots shall be adjusted as follows. For each Residential Phase in which the number of residential lots increases, the new Purchase Price for each lot shall be calculated by multiplying the original number of lots in the Phase by $75,000 and dividing by the number of new lots. For example, if a particular phase is changed from 20 to 24 lots, the purchase price per lot would be 20 times $75,000 divided by 24, or $62,500 per lot. The intention is that the Agency would receive the same amount, in the aggregate, as the base purchase price.

Except as otherwise provided in Sections 3.7.6 & 3.9, the Developer shall close on residential lots by residential phase, in an order selected by the Developer, per the Residence Phasing Schedule on the Vesting Tentative Map (as modified from time to time in connection with the submission of Final Maps), as follows:

<table>
<thead>
<tr>
<th>Phase</th>
<th>Lots</th>
<th>Total Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phase I</td>
<td>29</td>
<td>$2,175,000</td>
</tr>
<tr>
<td>Phase II</td>
<td>12</td>
<td>$ 900,000</td>
</tr>
<tr>
<td>Phase III</td>
<td>15</td>
<td>$1,125,000</td>
</tr>
<tr>
<td>Phase IV</td>
<td>22</td>
<td>$1,650,000</td>
</tr>
</tbody>
</table>
Phase V-A  8 Lots  $ 600,000  
Phase V-B  8 Lots  $ 600,000  
Phase VI  29 Lots  $2,175,000  

To determine the actual applicable Purchase Price for the timeshare and residential phase sites, each base purchase price listed shall be increased by five percent (5%) of such base price except that: (i) the Purchase Price for the final group of Timeshare Phase sites to be sold to the Developer shall be $6,150,000 less the Purchase Prices paid for the previous groups of Timeshare Phase sites sold to the Developer; and (ii) the Purchase Price for the final Residential Phase site shall be $9,375,000 less the Purchase Price (excluding the Profit Participations) paid for all previous Residential Phase sites sold to the Developer. (The Profit Participations with respect to the Residential Phase sites shall be paid in addition to the purchase prices for the Residential Phase sites calculated in accordance with this Exhibit, but shall be deemed to be a deferred portion of the purchase prices for the Residential Phase sites as provided in Section 8.3.3.) The purchase price for each Phase shall also be subject to increase, but not decrease, as provided in the last paragraph of Section 11.3 of the Agreement (which provides for increases to appraised fair market value in the event of extended delay in closing).

In connection with the development of Residential Phases IV and V, the number of Lots was reduced by two from the number of Lots indicated on the Vesting Tentative Map. Accordingly, an additional two Lots may be included in connection with the recording of the Final Map(s) for subsequent Phases.
ATTACHMENT NO. 1-D

ENTITLEMENT CONDITIONS

PROJECT CONDITIONS

Exhibit J to July 7, 2005 Joint City Council and Agency Board Meeting Agenda Packet, Exhibit D to City Council Resolution 05-44, and Attachment 1-D to DDA (approved by Agency Resolution 05-07-FT.ORD-07)

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

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A. Conditions 103 and 132 containing underlining or cross-out text indicate changes made by the City Council at the July 7, 2005 public hearing. 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.
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 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 DISPOSITION AND DEVELOPMENT AGREEMENT (DDA). The Applicant shall comply with the terms and conditions of the DDA by and between the Redevelopment Agency of the City of Seaside and Seaside Resort Development LLC dated July 2005.

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 Agency, 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. Upon execution of the Project Disposition and Development Agreement, the City shall transfer the existing fifty thousand ($50,000.00) ENRA Good Faith Deposit to the Agency, and the Applicant shall deliver to the Agency an additional deposit in the amount of one hundred thousand ($100,000.00), bringing the Good Faith Deposit account to a total 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 the Project Disposition and Development Agreement (DDA).

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-licu 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 to not 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 an 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. The 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. The Final Landscape Plan(s) shall utilize drought tolerant species as defined under “Xeriscape” in MCWD Ordinance 1.04.010, and as required by Municipal Code section 17.50, and non-invasive species (defined as any plant not listed on California Exotic Pest Plant Council’s List A, B, or Red Alert, in their Exotic Pest Plants of Greatest Ecological Concern, October 1999). The Community Development Director shall review and approve the Final Landscape Plan(s) prior to installation of any landscaping to ensure this condition is satisfied.

86. IRRIGATION UNDER OAK TREES. To protect against root or crown rot diseases, only drought tolerant plants shall be planted within the drip line of existing oak trees. Final Landscape Plan(s) shall provide that irrigation in these areas shall only be allowed on a monthly basis until plantings are established and can survive without irrigation. No irrigation shall be allowed within ten feet of the trunk.

87. WORK AROUND OAKS. Removal and/or substantial limbing of coast live oak trees and associated duff (accumulated organic material) and removal of under story native plant species within oak woodland habitat shall be avoided, to the greatest extent feasible, to minimize disturbance to Monterey dusky-footed woodrat habitat, and removal and/or disturbance to open sandy areas shall be avoided to minimize disturbance to potential black legless lizard and coast horned lizard habitat. Language to this effect shall be included in construction documents. The Applicant shall arrange for a registered forester and/or biologist to observe grading and
foundation preparations around oak trees, and to assist in field adjustments of building locations
to minimize habitat removal. (MM 12)

88. PREVAILING WAGES. The Applicant, its successors and assigns shall cause the
contractor(s) and subcontractor(s) to employ local workers, grant local preferences and pay not
less than prevailing wages in the construction of the Project as required by Section 3.2.100 of the
FORA Master Resolution, as those wages are determined pursuant to California Labor Code
Section 1720 et seq. and the implementing regulations of the California Department of Industrial
Relations.

89. FIRST SOURCE HIRING. The Applicant, its successors and assigns, project tenants and
operators shall comply with the City’s First Source Hiring Program, as set forth more
specifically in the DDA.

APPLICABLE TO VESTING TENTATIVE SUBDIVISION MAP – TM-01-03

90. FINAL SUBDIVISION MAP(S). The Applicant may file final subdivision maps (“Final
Maps”) for the property depicted on the Vesting Tentative Map for the Project, which upon
approval by the City, shall be recorded by the Applicant with the Clerk of the County of
Monterey. The number of Final Maps shall not exceed 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 or cultured stone shall be authentic natural 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. (Change Approved by City Council).

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 interchangeable from locks used in all other separate units. Re-programmable electronic keys may be used. Doorjams 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 jamb for in-swinging doors shall be of one-piece construction with the jamb. Jams for all doors shall be constructed or protected so as to prevent violation of the strike. The strike plate for deadbolts 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&R’s), 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 recodation 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. NO GATES AT ENTRANCES TO PRIVATE STREETS. Private streets in the residential areas shall not be gated but shall incorporate columns, entry features and signage to denote the entry to the private streets. If gates are provided, then they shall be equipped with a permanently installed emergency access key lock box (Knox), conforming to Seaside Fire Department Standard Details and Specifications. Gates shall include a by-pass capability to allow access in the event of power outage. Switches shall match the standard access keys utilized by the Fire and Police Departments for other gates in the City. (Change approved by City Council.)

133. NOISE ATTENUATION. Subject to the review and approval of the City of Seaside Community Development Director, the Applicant shall have a qualified acoustical engineer, or other qualified professional prepare a noise attenuation plan to reduce exterior noise to no more than 55 dBA Ldn at residential lots abutting Monterey Road or Coe Avenue. Such attenuation may include provision of a minimum six-foot tall solid fence or wall at the property line abutting
the Monterey Road or Coe Avenue, or relocation of lots farther from Monterey Road or Coe Avenue. The noise attenuation plan shall be included in Subdivision Improvement Plans, subject to the review and approval of the Public Works Director, prior to approval of the Final Map for the affected development phases. (MM 31)

134. STATE HOUSING LAW. The Project shall comply with the applicable State Housing Law building standards as published in the California Code of Regulations, Title 24, known as the California Building Standards Code.
ATTACHMENT NO. 2

SCOPE OF DEVELOPMENT

If new or altered entitlements or entitlement conditions are approved, then the parties shall replace this Attachment No. 2 with a revised Attachment No. 2 reflecting appropriate changes to the project/development.

PROJECT OBJECTIVE

The project objective is to provide a high-quality, full-service visitor-serving resort, with hotel, timeshare, and convention facilities that take advantage of the synergistic benefits of being located within an existing golf course facility, and to provide a high-quality housing opportunity adjacent to, and integrated with the golf courses. The facilities will be developed in phases.

The development of a hotel use at the golf courses shall be in accordance with the objectives, goals, and policies of the Seaside General Plan and the City’s Entitlement Conditions for the project (DDA Attachment 1E). The Seaside General Plan objectives include establishing a high-quality, Mobil 4-star or greater, destination-type resort at the golf courses, thereby providing a facility capable of attracting major golf-related events to the City and creating new on-going sources of revenue for the City and the Redevelopment Agency of the City of Seaside (tax increment, transient occupancy tax and sales tax), creating new job opportunities both in the short term and permanently, and creating a “magnet” development that will stimulate the development of the balance of the City’s Ft. Ord lands. The Entitlement Conditions establish specific requirements for project implementation to achieve General Plan objectives and other requirements of the City.

PROJECT SITE AND LOCATION

Project Site Location. The project site is at 2 McClure Way, in the City of Seaside, within the former Fort Ord in Monterey County. The project site is located to the east of Monterey Road, and west of General Jim Moore Boulevard (formerly North South Road), to the north of the urbanized core of Seaside. The project will be developed within an existing 380-acre parcel (APN 031-051-005) that contains two golf courses and related facilities. Figure 1, attached hereto, identifies the golf course parcel and project sites within the golf course parcel on an aerial photograph.

Surrounding Uses. Most of the land surrounding the golf course parcel contains residences constructed in the 1950s and 1960s as military housing. Some of these residences are currently occupied within the POM Annex, and others have been abandoned since Fort Ord was closed in 1993. South of the golf course parcel is the former Hayes military housing site. The City recently approved a 380-lot single-family residential redevelopment of the Hayes housing site that is nearing completion of sales. The occupied Hayes Park military housing area is located immediately west of the golf course parcel and is also being redeveloped with new military housing. The occupied Stilwell Park military housing area is adjacent to the project site to the north. The unoccupied “Kidney Area” of Stilwell Park is farther north, to the north of Normandy Road. East of General Jim Moore Boulevard is the occupied Fitch Park military...
housing area. The Sun Bay Apartment complex (originally constructed by the Army and now privately owned) is south of the golf course parcel. The Bostrum mobile home park, also former military housing, is located between Coe Avenue and the southern boundary of the former Fort Ord. Two non-residential uses exist adjacent to the golf course parcel. Fitch Middle School, a facility of the Monterey Peninsula Unified School District is to the southeast, at the corner of General Jim Moore Boulevard and Coe Avenue. A POM Annex child development center is west of the golf course parcel along Monterey Road, immediately north of the Hayes Park military housing area.

Other nearby land uses within the former Fort Ord include: an abandoned service station on Monterey Road at Coe Avenue (to the west); an abandoned store on Normandy Road (to the north); Hayes School (to the southwest); Stilwell and Marshall schools (to the northeast); and POM Annex community uses along General Jim Moore Boulevard (to the northeast). Farther to the north and northeast of the project site are the POM Annex commercial and administrative areas. The California State University at Monterey Bay (CSUMB) is located approximately one mile north of the golf course parcel. West of State Highway 1 is the proposed Fort Ord Dunes State Beach. East of the Fitch Park housing area is a large expanses of Bureau of Land Management land, formerly used as practice range for Fort Ord, and only partially open to the public. The established urban core of Seaside is within one-quarter mile to the south of the golf course parcel. The City is developed with primarily residential uses in the area immediately south of the southern boundary of the former Fort Ord. Seaside High School is adjacent to the former Fort Ord, southwest of the golf course parcel. Commercial uses are concentrated along Del Monte Boulevard and Fremont Boulevard, and in Sand City, all to the southwest of the golf course parcel.

**Surrounding Land Use Designations.** The surrounding area is within an area designated in the Seaside General Plan and the Fort Ord Reuse Plan as the Seaside Residential Planning Area. Most of the land surrounding the golf course parcel is designated Medium Density Residential. The Sun Bay apartments and Fitch Middle School, to the south of the golf course parcel, are designated High Density Residential and School/University respectively. Land to the east of General Jim Moore Boulevard is designated Military Enclave, within which a variety of uses are allowed.

**Golf Course Parcel Historic Conditions.** The U.S. Army originally built a golf course on the golf course parcel in approximately 1954, and the site has been used for that purpose since then. Prior to development of golf courses, the area was undeveloped. A 1949 aerial photograph shows the project site, prior to the construction of the golf courses, crisscrossed with roads, similar to the present condition of areas of the former Fort Ord east of the project site. The U.S. Army closed Fort Ord in 1993, and the City purchased the golf course parcel from the Army.

**Golf Course Parcel Existing Conditions.** Two 18-hole golf courses, the Bayonet and Black Horse courses, several structures, other improvements, and open space exist on the golf course parcel. The Bayonet course is located on the northern part of the golf course parcel and the Black Horse course is located on the southern and eastern part. The golf courses and the golf course parcel are owned by the City of Seaside. BSL Golf of California, Inc. (the “golf course operator”) currently operates the golf courses under a lease agreement with the City. Golf course
facilities include a clubhouse, driving range, parking lot, and maintenance storage yard and buildings. The golf courses currently employ approximately 90 people. A 12,000-square foot single-story golf clubhouse and adjacent parking lot and driving range are located at the end of McClure Way, near the center of the golf course parcel. Three golf cart storage buildings are located immediately north of the clubhouse. A maintenance and storage facility, consisting of two buildings and three small sheds, is located approximately 1,000 feet north of the clubhouse, and is within the project site. The golf course maintenance facility is enclosed by a wooden fence, and is used to store golf course maintenance equipment and supplies.

The topography of the golf course parcel is gently rolling with elevation dropping generally from east to west toward Monterey Bay, which is visible from many locations on the golf course parcel. Elevations range from 120 feet above sea level at the southwestern corner of the golf course parcel, to approximately 380 feet above sea level along McClure Way near General Jim Moore Boulevard. Much of the golf course parcel has been disturbed and contains non-native plantings. Portions of the golf course parcel contain stands of planted Monterey cypress and native coast live oak.

**Golf Course Parcel Planned Changes.** Several changes to the existing golf courses are planned to achieve championship course status. The City has already approved the relocation and/or realignment of several of the existing golf links by the golf course operator. The golf course maintenance facility requires cleanup of hazardous materials and relocation. All of the planned changes are illustrated in Figure 2, attached hereto.

**Relocation of Golf Course Links.** The City has approved modifications to several existing golf links on each golf course. These changes are summarized in Table 1. Some of the changes to the golf course have been or will be partially made by the golf course operator.

**Relocation of the Driving Range and Golf Course Maintenance Facility.** The new site for the driving range is northwest of the clubhouse, in a triangular area between three links on the Bayonet golf course. The site for the new driving range is currently vacant land with few trees and would be within the golf course remainder parcel. The vesting tentative map indicates the future location for the relocated golf course maintenance facility, and creates a parcel for it.

**Golf CourseParcel Land Use Designations.** The golf course parcel is identified in the Fort Ord Reuse Plan as Polygon 22, and is designated as the Visitor Serving Hotels and Golf Course District within the Seaside Residential Planning Area. Fort Ord Reuse Plan polygon numbers, and planning boundaries are shown in Figure 6. Land use designations in the City General Plan are consistent with those of the Fort Ord Reuse Plan. Polygon 22 is designated Visitor Serving in both plans.

The City General Plan and Fort Ord Reuse Plan land use designations for the golf course parcel and vicinity are presented in Figure 7. The Visitor-Serving and Golf Course District is planned primarily for a resort hotel, focusing on the existing golf courses, while the surrounding New Golf Course Community District is planned primarily for residential uses. The Fort Ord Reuse Plan and City General Plan encourage an indistinct line between the two districts. New Golf Course Community District Development Character and Design Objective 1 reads:
Integrate the new residential development around the golf course in a way that optimizes the golf course frontage and views to this significant open space amenity. Consider rerouting the courses into the adjacent residential lands and find opportunities to integrate new residential development within the existing golf course area to improve the integration of the amenity into the new community.

The City zoning designation for the golf course parcel is Visitor Serving – Fort Ord (V-FO). Hotels, conference centers, restaurants and golf courses are principal permitted uses in the V-FO zoning district. Residential uses, employee housing, and timeshare uses are allowed with a Conditional Use Permit. The golf course parcel is within Seaside’s Fort Ord Redevelopment Area.

RESORT PROJECT DESCRIPTION

The project is a subdivision and resort development including hotel, timeshare, and residential components. The subdivision will create an 81-acre resort development area within the 380-acre golf course parcel. The lots and parcels for the three primary components of the project, and the reconstruction of the existing golf clubhouse, will be situated within this 81-acre area. The existing golf course use will continue on a 292-acre remainder parcel and 2-acre lots will be created for the golf clubhouse site and the relocated golf maintenance building site.

Project Site Conditions. The 81-acre project site is comprised of several separate areas within the golf course parcel. These are illustrated in Figure 1. The only developed uses on the project site are located near the center of the golf course parcel. These are the golf clubhouse, adjacent parking lot, driving range, and maintenance buildings. The golf cart storage buildings straddle the boundary of the project site.

Several of the existing golf links overlap with the project site boundary. As described under Golf Course Parcel Planned Changes, the City has previously authorized the golf course operator to relocate these golf links to adjoining portions of the golf course parcel that are outside the project site. Although currently occupied by golf course links and the driving range, these areas are anticipated to be vacant and recently disturbed when the project construction begins. Native coast live oaks and planted Monterey cypress cover large areas of the project site. Other areas of the project site are open.

Subdivision. An 81-acre portion of the golf course parcel will be subdivided into 125 residential lots, and parcels for the hotel and timeshare uses, with a 292-acre remainder parcel containing the golf course. Except for the golf course remainder parcel and the 2-acre clubhouse and maintenance building parcels, the subdivided lots and parcels will be transferred to the resort developer. The proposed subdivision is superimposed on an aerial photograph in Figure 3, attached hereto. Maps showing the proposed parcels and site plans are presented in Figures 4A through 4D, attached hereto. The proposed subdivision is summarized in Table 2.
**Hotel Component.** The hotel component will have 330 guestrooms. The main hotel building will have 170 guest rooms, and 15 bungalows, separate from the main building, will have 160 rooms. A summary of proposed hotel facilities is presented in Table 3.

The main hotel building will include a conference center with meeting rooms, a ballroom, a restaurant, bar, kitchen, administrative offices, guest rooms, health spa, and service areas. Several exterior terraces will be accessible from interior rooms, including the spa and the ballroom. Outdoor function areas and a swimming pool will be located to the west of the main hotel building. A porte cochere and the main entrance will be located on the eastern side of the main hotel building. A loading dock will be located on the south side of the main hotel building.

The main hotel building will be six levels, and terraced onto the sloping site. The first two levels of the hotel will be built into the slope of the site, with access and visibility only from the north, west, and south sides. The third level of the hotel will be at grade on the east side. The highest roof of the hotel will be approximately 332 feet above sea level. A perspective drawing of the proposed main hotel building is presented in Figure 5, attached hereto. Elevation and section drawings of the main hotel and bungalow buildings are shown in Figures 6A and 6B, attached hereto.

The hotel component bungalows will include 160 individually accessible guestrooms. The bungalows will be clustered around the main hotel building, mostly fronting the golf course. The hotel and bungalows will be designed in an Arts and Crafts style, featuring shingled and clapboard siding, sandstone arcades and chimneys, and heavy timbered roof gable and porch features.

Parking for the hotel will be in surface lots wrapping around the north, east, and south sides of the main hotel building. Some of the hotel parking will be shared with the timeshare uses and clubhouse. Landscaping will occupy approximately 3.1 acres of the hotel parcel. It is estimated that there will be approximately 330 hotel employees (one employee per hotel room). Based on an average occupancy rate of 75 percent at stabilized operations, and an average of approximately 1.5 guests per unit, approximately 370 guests will stay at the hotel on a typical night.

**Timeshare Component.** The timeshare component will be comprised of 33 buildings that will accommodate 170 units in all on three separate parcels totaling 19-acres. The timeshare units will be marketed as timeshare units. Unoccupied timeshare units may be available for rent. The timeshare buildings will be interspersed with open space areas and provided with parking. The total timeshare component will consist of approximately 235,000 square feet of units. Each timeshare unit will be an approximate 1,500-square foot, two-bedroom unit, with an additional optional lock-off single room. The architecture of the timeshare buildings will match that of the hotel. Most of the timeshare buildings will be two stories tall, but some of the timeshare buildings may be three stories tall. An administration and recreation building will be located on Timeshare Parcel A. Approximately 4.9 acres of landscaped areas will be located adjacent to the timeshare units. Representative elevation drawings of the timeshare buildings are shown in Figure 7, attached hereto.
The timeshare component will be located in two areas north of McClure Way, and in one area south of McClure Way and east of the hotel. Parking for the timeshare units will be in perpendicular spaces along access streets, and in parking lots. Some of the timeshare parking will be shared with the hotel. Approximately 20 employees are expected to be employed in the timeshare component. The average occupancy of the timeshare units is expected to be similar to that of the hotel. An ownership association will be formed to maintain the timeshare units’ common areas, including the surrounding grounds, the lighting, and the parking areas.

Timeshare projects differ from other transient visitor-serving uses in type of construction, form of ownership, pattern of use and occupancy, and commercial management. A timeshare project is a project consisting, in the aggregate, of one or more timeshare interests in which a purchaser receives the right in perpetuity, for life, or for a term of years, to the recurrent, exclusive use or occupancy of one or more lots, parcels, units, or segments of real property, annually or on some other periodic basis, for a period of time that has been or will be allotted from the use or occupancy periods into which the project has been divided.

Residential Component. The proposed residential subdivision includes 125 single-family lots on 44-acres, with many lots backing on the existing golf courses. The lots will be in six clusters, or phases, of between 12 and 29 lots, served by private streets with gated entries. Lots will average approximately 11,500 square feet.

A homeowners association will be formed, and covenants, conditions, and restrictions (CC&Rs), including architectural and landscape design guidelines, will be adopted. The CC&Rs are proposed as a part of the project to control future design. Streets and utility infrastructure will be constructed as part of the subdivision improvements. The sites will require vegetation removal and grading prior to construction of houses. The developer will subdivide the land and construct the subdivision improvements. The developer is not proposing to construct the individual houses. At build-out of the residential area, approximately 397 residents will be added to the population of the City.

Reconstruction of the Golf Clubhouse. The existing golf clubhouse will be demolished, and a reconstructed clubhouse will be built in the same location on the same site. A 2-acre parcel will be created to accommodate the golf clubhouse, and will be retained by the City. The reconstructed clubhouse will include a restaurant and bar, men’s and women’s locker rooms, golf retail shop, management office space, an employee lounge area and other facilities and amenities that may be incorporated by the golf course operator. The building will be terraced into the sloping site. Elevated decks will face to the west and south. Cart storage will be located in the basement. Elevation drawings of the reconstructed clubhouse are presented in Figure 8, attached hereto.

The reconstructed clubhouse will measure approximately 16,296-square feet, approximately 4,300 square feet more area than the existing facility. However, the reconstructed clubhouse will include approximately 6,224 square feet for golf cart parking, which is currently accommodated in several freestanding sheds, so the net clubhouse area will actually decrease compared to the existing clubhouse. The footprint of the reconstructed golf clubhouse will be smaller than that of the existing golf clubhouse. The architecture of the reconstructed clubhouse
will be compatible with that of the hotel. Approximately 0.77-acres of landscaped event lawns for outdoor and tented functions will be created on the south side of the clubhouse within the approximately 2-acre clubhouse parcel.

The clubhouse and clubhouse parcel will continue to be owned by the City, and operated by the golf course operator. The golf course operations will continue in a manner similar to existing conditions, including the number of employees, hours of operation, and maintenance activities.

The existing cart sheds for the golf courses are located immediately north of the golf clubhouse. New cart storage will be included in the basement of the reconstructed golf clubhouse. The existing cart sheds will no longer be needed and will be removed.

**Relocation of the Golf Course Maintenance Facility.** The site of the existing golf course maintenance area is proposed for development of timeshare buildings. A new site of approximately 2-acres has been identified off Monterey Road east of Nounnea Avenue and will be created by the VTM. The new relocated maintenance facility will be designed, permitted and constructed by the golf course operator. Specific development plans are not presently available for the maintenance facility. As indicated on the VTM, parking spaces for 30 golf course employees will be located there. The maintenance facility will include similar uses as the existing facility, which includes indoor equipment and supply storage, and outdoor equipment and bulk materials storage, and a nursery area. The proposed site is partly covered with oak woodland cover, and is bisected by a cart path.

**Site Preparation.** Existing site conditions and project characteristics are variable, so site preparation activities will differ from component to component. Although much of the project site is undeveloped land within the existing golf course, construction of the project will require clearing of some buildings, golf course improvements, and vegetation.

**Removal of Existing Improvements.** Construction of the hotel will require the removal of the driving range. Relocation of the driving range is a condition of the City’s lease with the golf course operator. Portions of the parking lot for the hotel, golf clubhouse, and Timeshare Parcel B are proposed at the location of the existing parking lot. Development of the new parking lot will require the removal of the existing parking lot. It is expected that a portion of the new parking lots will be constructed prior to removal of the existing lot to minimize disruption to ongoing golf course operations.

Development of the western portion of Timeshare Parcel B will require the removal of the golf cart barns. Development of the northern portion of Timeshare Parcel A will require the removal of the golf course maintenance facility. A service road connecting the golf clubhouse and the golf course maintenance facility will also be removed.

Most of the residential areas are proposed for currently undeveloped land. Trees will be removed to make room for streets and housing sites in some of the proposed residential areas. Grading will be required for streets and lots.
The proposed new clubhouse will be located on the site occupied by the existing clubhouse. The existing clubhouse will be demolished, and the site will be graded and excavated for the new facility.

Several project components are proposed for areas currently occupied by golf links, but which will be vacant or occupied by disused golf links at the time resort project construction begins. The golf course operator is currently reconfiguring several of the golf course links and should be finished by the time the project is developed.

**Grading.** Total earthwork on the project site will be approximately 89,000 cubic yards. Cut and fill quantities are planned to balance within the golf course parcel, with no importing or exporting of fill material from the golf course parcel expected. Table 4 summarizes the amount of grading proposed, by project component.

**Phasing and Construction.** The hotel will be constructed over a period of approximately 21 months. Construction of certain timeshare units may commence prior to hotel construction, with approximately 20 units anticipated to be built per year. Subdivision of the certain phases of the residential lots may commence prior to the construction of the hotel and will occur in phases with about 32 lots created per year. It is anticipated that the entire project will be developed within approximately eight years from start of construction. Figure 9, attached hereto, presents preliminary phasing for the resort hotel, timeshares, and residential lots. The project phases will not necessarily be developed in order as numbered on the VTM, and the internal configuration of the lots in the phases themselves could change in response to finance and market conditions. Timing for the remaining golf course changes is not known, although timing for some of the project improvements (hotel, timeshare, and residential) will be governed by the schedule for golf course improvements.

**Infrastructure Improvements.** The following infrastructure improvements will be constructed, consistent with the final approved City Project Conditions.

**Streets.** McClure Way will be improved to include two travel lanes. McClure Way will include a 10-foot wide median for approximately 300 feet near General Jim Moore Boulevard and approximately 300 feet near the approach to the hotel. A concrete V-gutter will be constructed on each side. McClure Way will be built on a slightly different alignment in several places. McClure Way will continue to be a private driveway with a public use easement.

New private streets will be constructed to provide access to the residential and timeshare areas. The streets will be 24 feet wide, from edge of pavement to edge of pavement, with drainage toward a concrete V-ditch on one side. The residential streets will not include sidewalks or lighting. Gates will be located at each intersection with a public street, and the streets will be privately owned and maintained. Figure 10, attached hereto, shows the proposed street cross sections.

**Parking Lots.** Parking for the Hotel Component, the Timeshare Component, the Golf Clubhouse Reconstruction and the golf courses are addressed in an overall comprehensive manner, recognizing that the various components will have different peak use hours of operation,
and that some automobile trips will be shared trips among the various components (i.e., single trips for combined hotel/golf visits), all of which reduce demand for parking spaces. A hotel parking lot with 359 spaces will be built to the north, east and south of the main hotel building. Eighty parking spaces will be provided to the east of the clubhouse. Timeshare parking will be in perpendicular spaces along the streets. A remote lot near General Jim Moore Boulevard will be used for resort employees and overflow parking. Spaces for handicapped persons will be provided. Parking spaces will be provided at the new golf maintenance facility for the golf course employees. Parking for the residential lots will be provided on each site in accordance with the Seaside Zoning Ordinance. Overflow parking for special events (e.g., major golf tournaments) will be accommodated by shuttle service to off-site locations. The total number of parking spaces within the Project approaches 900 spaces.

**Utilities.** New water, sewer, gas, electrical, and communications lines will be constructed to serve the project. These will be placed underground within streets or easements. The water lines serving landscape areas will utilize domestic water until recycled water became available. The water main in General Jim Moore Boulevard that serves the golf course parcel may require expansion.

**Lighting.** Street lighting, parking lot lighting, and lighting for outdoor activity areas and walkways will be provided. Lower levels of lighting will be used in pedestrian areas and around buildings. Street lighting is not proposed for the residential areas. Lighting must be approved by the City prior to installation.

**Drainage Basins.** There will be 12 small percolation ponds located both on and off the project site, throughout the golf course parcel. The locations of the proposed percolation ponds are shown in Figure 11, attached hereto. Each pond will percolate run-off from a portion of the project site and up-slope areas. The largest pond will have a capacity of approximately 2.5 acre-feet, with the average capacity of the ponds being approximately one acre-foot. The basins will generally be unfenced, and may or may not have regular surface maintenance to maximize percolation. Basin 1 along Monterey Road may be fenced to prevent entry from Monterey Road.
### TABLE 1

Changes to Golf Links

<table>
<thead>
<tr>
<th>Golf Course</th>
<th>Hole</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bayonet</td>
<td>5th</td>
<td>Build an entirely new link to the north of the existing link</td>
</tr>
<tr>
<td></td>
<td>11th</td>
<td>Move the tee and fairway to the north</td>
</tr>
<tr>
<td></td>
<td>16th</td>
<td>Build an entirely new link to the north of the existing link</td>
</tr>
<tr>
<td>Black Horse</td>
<td>7th</td>
<td>Move the tee and fairway to the west</td>
</tr>
<tr>
<td></td>
<td>15th</td>
<td>Move second half of fairway and green to northeast</td>
</tr>
<tr>
<td></td>
<td>16th</td>
<td>Move tee and first half of fairway to east</td>
</tr>
</tbody>
</table>
**TABLE 2**

11.20.1.a.1.i.1 Subdivision

<table>
<thead>
<tr>
<th>Parcel or Lot Number</th>
<th>Size (Acres)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hotel Parcel</td>
<td>17.67</td>
</tr>
<tr>
<td>Timeshare Parcel A</td>
<td>6.51</td>
</tr>
<tr>
<td>Timeshare Parcel B</td>
<td>9.26</td>
</tr>
<tr>
<td>Timeshare Parcel C</td>
<td>3.56</td>
</tr>
<tr>
<td>Residential Lots (125)</td>
<td>43.66</td>
</tr>
<tr>
<td>Monterey Road ROW</td>
<td>3.26</td>
</tr>
<tr>
<td>Golf Clubhouse Site</td>
<td>2.09</td>
</tr>
<tr>
<td>Golf Maintenance Building Site</td>
<td>2.07</td>
</tr>
<tr>
<td>Golf Course Remainer Parcel</td>
<td>292.23</td>
</tr>
<tr>
<td><strong>Total Project Site</strong></td>
<td><strong>380.31</strong></td>
</tr>
</tbody>
</table>

Note: The Clubhouse Parcel and the Golf Course Remainer Parcel will remain in City ownership.

Note: Fewer than 125 residential lots may be constructed provided the net value of the lesser number of lots is equal to or greater than the value of 125 lots.
### Table 3: Hotel Facilities

<table>
<thead>
<tr>
<th>Facility</th>
<th>Square Feet</th>
<th>Guest Rooms</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>11.20.1.a.1.i.3</strong> Main Hotel Building (All square footages and guest room numbers are estimates; actual square footage may vary. Final plans are subject to City/Agency approval.)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Spa</td>
<td>12,958</td>
<td></td>
</tr>
<tr>
<td>Conference Center (meeting, ballroom, pre-function)</td>
<td>24,198</td>
<td></td>
</tr>
<tr>
<td>Restaurant</td>
<td>3,514</td>
<td></td>
</tr>
<tr>
<td>Bar</td>
<td>1,351</td>
<td></td>
</tr>
<tr>
<td>Kitchen</td>
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</tr>
<tr>
<td>Administration</td>
<td>4,832</td>
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</tr>
<tr>
<td>Rooms and Circulation</td>
<td>134,821</td>
<td>170</td>
</tr>
<tr>
<td>Service/Back of House</td>
<td>38,500</td>
<td></td>
</tr>
<tr>
<td><strong>Total Main Hotel Building</strong></td>
<td>219,001</td>
<td>170</td>
</tr>
</tbody>
</table>

| **11.20.1.a.1.i.4** Bungalows                       |             |             |
| Bungalows with 12 units per building (Five)        | 19,950      | 60          |
| Bungalows with 10 units per building (Ten)         | 29,616      | 100         |
| Total Bungalows                                    | 49,566      | 160         |
| **Total Hotel Component**                          | 268,567     | 330         |
### TABLE 4

<table>
<thead>
<tr>
<th>Project Component</th>
<th>Estimated Preliminary Grading Quantity (cubic yards)</th>
</tr>
</thead>
<tbody>
<tr>
<td>11.20.1.a.1.i.6 Hotel and Clubhouse</td>
<td></td>
</tr>
<tr>
<td>Hotel</td>
<td>42,000</td>
</tr>
<tr>
<td>Access Road</td>
<td>6,000</td>
</tr>
<tr>
<td>Parking Areas</td>
<td>6,000</td>
</tr>
<tr>
<td>Subtotal for Hotel and Clubhouse</td>
<td>54,000</td>
</tr>
<tr>
<td>11.20.1.a.1.i.7 Timeshare Units</td>
<td></td>
</tr>
<tr>
<td>Roads Timeshare A</td>
<td>3,000</td>
</tr>
<tr>
<td>Roads Timeshare B</td>
<td>10,000</td>
</tr>
<tr>
<td>Roads Timeshare C</td>
<td>2,000</td>
</tr>
<tr>
<td>Subtotal for Timeshare Units</td>
<td>15,000</td>
</tr>
<tr>
<td>Subdivisions</td>
<td></td>
</tr>
<tr>
<td>Roads</td>
<td>20,000</td>
</tr>
<tr>
<td>11.20.1.a.1.i.8 Total Project</td>
<td></td>
</tr>
<tr>
<td></td>
<td>89,000</td>
</tr>
</tbody>
</table>
EXHIBIT “A” TO
SCOPE OF DEVELOPMENT
CONCEPT DESIGN DRAWINGS

(Attached.)

[DOC 804375; TO BE INSERTED]
Project site areas outlined in white.

Scale: 1" = 1,500'

Figure 1
Project Site
Seaside Resort
Scope of Development
Figure 2
Conceptual Golf Course Changes
Seaside Resort
Scope of Development
Figure 3
Subdivision and Site Plan on Aerial Photo
Seaside Resort
Scope of Development
Figure 4A
Overall Site Plan
Seaside Resort
Scope of Development

Scale: 1" = 1,250'
Figure 4B
Hotel, Timeshares, and Northern Residential
Seaside Resort
Scope of Development
Scale: 1" = 650'

Figure 4C
Western Residential Area
Seaside Resort
Scope of Development
Front (East) Perspective

Figure 5
Main Hotel Building Perspective
Seaside Resort
Scope of Development
Rear (West) Section

Front (East) Elevation

Main Hotel Building Section and Elevation
Seaside Resort
Scope of Development
Figure 9
Phasing
Seaside Resort
Scope of Development
SECTION A

HOTEL ENTRANCE DRIVE OFF GENERAL JIM MOORE BLVD.
(McClure Way)

SECTION B

ENTRANCE DRIVE / HOTEL / GOLF CLUBHOUSE

SECTION C

RESIDENTIAL & TIME SHARE DRIVES

Figure 10
Street Cross Sections
Seaside Resort
Scope of Development
Note: not all ponds are numbered on the Vestaing Tentative Map

Scale: 1" = 1,200'

Figure 11
Percolation Ponds
Seaside Resort
Scope of Development
## ATTACHMENT NO. 3

### SCHEDULE OF PERFORMANCE

As amended to reflect the amount of delay from the date of Agency Board approval (3/21/13) and the receipt of approval from the California Department of Finance (1/24/14) as allowed under Section 6 of Resolution No. 13 - 09 (SA)

<table>
<thead>
<tr>
<th>Actions (not necessarily in chronological order)</th>
<th>Schedule</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Delivery of ENRA Deposit.</td>
<td>Completed</td>
</tr>
<tr>
<td>2. Delivery of Additional Deposit.</td>
<td>Completed</td>
</tr>
<tr>
<td>Delivery of the Additional Deposit. [Section 3.3.1]</td>
<td>Changed by First Amendment to DDA</td>
</tr>
<tr>
<td>3. Affordable Housing Documentation. Execution of the Affordable and Workforce Housing Loan or Grant documentation. [Section 10]</td>
<td>Not later than application for building permit for the housing. Completed with respect to the 125-lot Residential Phase and the Hotel Phase. Not applicable to the Timeshare Phase (unless the Conditional Use Permit for the Timeshare Phase is modified to permit residential units).</td>
</tr>
<tr>
<td>4. Affordable Housing Project Application. Submission of Affordable and Workforce Housing project application to City.</td>
<td>Not later than the closing of the sale of the first Phase sold to the Developer. Completed with respect to the 125-lot Residential Phase(s) and the Hotel Phase. Not applicable to the Timeshare Phase (unless the Conditional Use Permit for the Timeshare Phase is modified to permit residential units).</td>
</tr>
<tr>
<td>5. Disposition Escrow. Developer and Agency shall open escrow. [Section 5.6.]</td>
<td>Completed</td>
</tr>
<tr>
<td>6. Submission of Proof of Insurance. Developer shall submit proof of the insurance required by Section 6.10 and Attachment No. 7.</td>
<td>Completed</td>
</tr>
<tr>
<td>7. Developer’s Property Inspection. Agency shall provide Developer access to the Property. [Section 5.11]</td>
<td>Completed</td>
</tr>
<tr>
<td>8. Developer’s Determination of Property Condition. Developer shall notify Agency if condition of Property is unacceptable. [Sections 5.11 and 5.12.3]</td>
<td>Completed</td>
</tr>
<tr>
<td>Actions (not necessarily in chronological order)</td>
<td>Schedule</td>
</tr>
<tr>
<td>-------------------------------------------------</td>
<td>----------</td>
</tr>
<tr>
<td>13. Developer Applies for Entitlements. Developer shall submit all plans and information necessary to apply for the Entitlements (excluding building permits).</td>
<td>Completed.</td>
</tr>
<tr>
<td>15. Approval: Design Development Drawings. Agency shall use good faith efforts to cause Planning Agency to approve or disapprove Design Development Drawings.</td>
<td>With approval or disapproval of Development Permit.</td>
</tr>
<tr>
<td>16. Submission of: Complete Construction Documents and Application for Building Permits. Developer shall submit Complete Construction Documents for the Hotel Phase, including all information needed for building permits approval, for City and Agency Staff approval. [Section 6.2.5.]</td>
<td>Completed.</td>
</tr>
<tr>
<td>17. Response: Comments/Corrections on Complete Construction Documents. Agency Staff shall provide Developer with comments on and corrections to the Complete Construction Documents and shall use good faith efforts to cause City staff to do the same.</td>
<td>Within forty five (45) days after receipt from Developer.</td>
</tr>
<tr>
<td><strong>Actions (not necessarily in chronological order)</strong></td>
<td><strong>Schedule</strong></td>
</tr>
<tr>
<td>---------------------------------------------------</td>
<td>-------------</td>
</tr>
<tr>
<td>18. Revision: Revised Complete Construction Documents. Developer shall deliver to Agency and City Staff Complete Construction Documents revised to reflect the comments and corrections from Staff.</td>
<td>Within forty-five (45) days after receipt of comments and corrections from Agency and City Staff.</td>
</tr>
<tr>
<td>19. Approval: Complete Construction Documents. Agency Staff shall approve or disapprove Complete Construction Documents and shall use good faith efforts to cause City staff to do the same.</td>
<td>Within forty-five (45) days after receipt from Developer of a set of Complete Construction Drawings that does not require comments or corrections.</td>
</tr>
<tr>
<td>20. Deliveries to Escrow. [Section 5.7] (Changed by First Amendment to DDA)</td>
<td>No later than the applicable closing date, but only upon satisfaction of all applicable conditions precedent.</td>
</tr>
<tr>
<td>21. Progress Reports and Meetings With Executive Director. To update the Executive Director concerning progress on Hotel Phase and Timeshare Phase [Section 6.3.5]</td>
<td>Commencing 6-months following approval of Amended and Restated DDA and semi-annually thereafter.</td>
</tr>
<tr>
<td>24. Hotel Manager. Developer shall designate the hotel management company. (Developer shall designate the timeshare operator at least thirty (30) days before a Certificate of Occupancy is obtained for the timeshare project.) (Attachment 13)</td>
<td>April 19, 2017.</td>
</tr>
<tr>
<td>27. Building Permits and Close of Escrow for Hotel Stage Two. Developer shall obtain building permits for the construction of Stage Two. [Section</td>
<td>October 19, 2018.</td>
</tr>
</tbody>
</table>
Actions (not necessarily in chronological order)

28. Certificate of Occupancy for Hotel Stage Two. Developer shall obtain a Certificate of Occupancy for Stage Two. [5.2.3]

Schedule


29. Building Permits and Close of Escrow for Final Hotel Stage. [Section 5.2.4]

April 18, 2020.

30. Latest Final Timeshare Phase and Final Residential Phase Closing Dates. [Section 5.2.5.5]

April 19, 2023.

31. Certificate of Occupancy for Final Hotel Stage [Section 5.2.4].

April 19, 2022.

32. Commencement of Construction. Developer shall commence grading on the applicable Phase.

No later than one hundred and twenty (120) days after the receipt of building permit(s) for the applicable Improvements.

33. Completion of Construction. Developer shall complete construction of the Improvements.

Hotel Improvements (or the pertinent portion thereof): See Items 25-29 above. Timeshare Improvements: 30 months after the closing of Developer’s acquisition of the applicable Timeshare Phase (or pertinent portion thereof); Residential Improvements: 24 months after the closing of Developer’s acquisition of the applicable Residential Phase (or pertinent portion thereof). However, the above time periods that begin upon the closing of Developer’s acquisition of a Phase shall not apply to Timeshare Improvements or Residential Improvements on Credit Property (described in Section 3.7.2), except that in all events construction commenced on Credit Property shall be completed within a reasonable period of time.

34. Certificate of Completion. Agency shall issue Developer a Certificate of Completion for a Phase. [Section 6.15]

Upon determination by Agency that the last phase of the Improvements for that Phase have been completed in conformance with this Agreement.
ATTACHMENT NO. 4
FORM OF CERTIFICATE OF COMPLETION

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

The Successor Agency of the Redevelopment
Agency of the City of Seaside
440 Harcourt Avenue
Seaside, CA 93955
Attn: Deputy Executive Director

WITH A COPY TO:

SEASIDE RESORT DEVELOPMENT, LLC

Attention: ______________________

FREE RECORDING REQUESTED
(Govt. Code Section 6103)

(Space Above For Recorder’s Use)

CERTIFICATE OF COMPLETION

THIS CERTIFICATE OF COMPLETION (this “Certificate”) is made this day of __________, 20__, by THE SUCCESSOR AGENCY OF THE REDEVELOPMENT AGENCY OF THE CITY OF SEASIDE, a public body, corporate and politic (“Agency”) in favor of [SEASIDE RESORT DEVELOPMENT, an Arizona limited liability company] ____________________ (“Developer”), with reference to the following matters:

A. Agency, and Developer entered into that certain Amended and Restated Disposition and Development Agreement dated as of February 5, 2014 (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.

B. As part of Developer’s obligation under the DDA, Developer agreed to construct certain improvements defined therein as Improvements on that certain real property (the “Phase”) described on Exhibit "A", attached hereto and incorporated herein by reference. The DDA provides, in Section 6.15 thereof, that the City and Agency shall furnish Developer with a recordable Certificate of Completion upon satisfactory completion of the Improvements required for the Phase in accordance with the DDA.

C. Agency has determined that the construction of the Improvements on the Phase has been satisfactorily performed in accordance with the DDA.
NOW, THEREFORE, Agency certifies as follows:

1. The development and construction obligations of the Developer under the DDA with respect to the Phase has been satisfactorily performed and completed in accordance with the DDA. The Agency's option to purchase the Phase, described in Section 9.5 of the DDA and contained in the instrument recorded on __________ as document number __________ in the Official Records of Monterey County, California, is hereby terminated with respect to the Phase.

2. This Certificate shall not affect any ongoing maintenance or nondiscrimination covenants in any recorded documents pertaining to the Phase (whether or not such covenants are also included in the DDA).

3. This Certificate shall not constitute evidence of compliance with or satisfaction of any obligation of Developer to any holder of a mortgage, or deed of trust or any insurer of a mortgage, or deed of trust securing money loaned to finance Developer Improvements or any part thereof.

4. This Certificate is not a Notice of Completion as referred to in California Civil Code Section 3093.

5. Except as stated herein, nothing contained in this instrument shall modify in any way any other provisions of the DDA or any other provisions of the documents incorporated herein.

IN WITNESS WHEREOF, Agency has executed this Certificate as of the day and year first above written.

Agency:

THE SUCCESSOR AGENCY OF THE REDEVELOPMENT AGENCY OF THE CITY OF SEASIDE, a public body, corporate and politic

By: __________________________
   Executive Director
ATTEST:
Agency Secretary

APPROVED AS TO FORM:

Agency Special Counsel
STATE OF CALIFORNIA)

COUNTY OF MONTEREY)

On ____________________, before me, ____________________, a Notary Public in and for said state, personally appeared ____________________, or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

__________________________
Notary Public in and for said State

WITNESS my hand and official

(SEAL)
EXHIBIT “A”

LEGAL DESCRIPTION OF APPLICABLE PHASE

THE PHASE REFERRED TO HEREIN IS LAND SITUATED IN THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:
ATTACHMENT NO. 5

ENVIRONMENTAL REPORTS


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 Agency.
ATTACHMENT NO. 6A

FORM OF DEED FOR HOTEL PHASE

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

The Successor Agency of the Redevelopment
Agency of the City of Seaside
440 Harcourt Avenue
Seaside, CA 93955
Attn: Executive Director

WITH A COPY TO AND
MAIL TAX STATEMENTS TO:

[Seaside Resort Development, LLC]

Attention:

FREE RECORDING REQUESTED
(Govt. Code Section 6103)

[Space above for Recorder’s use pursuant to
California Government Code Section 27383]

[INCLUDE STATEMENT RE: DOCUMENTARY TRANSFER TAX]

GRANT DEED WITH OPTION TO REPURCHASE AND
ENVIRONMENTAL RESTRICTIONS

For a valuable consideration, receipt of which is hereby acknowledged,

THE SUCCESSOR AGENCY OF THE REDEVELOPMENT AGENCY OF
THE CITY OF SEASIDE, a public body, corporate and politic, of the State of California
(hereinafter referred to as “Grantor” or “Agency”), acting to carry out the public purposes of that
certain Amended and Restated Disposition and Development Agreement (herein called “DDA”) dated February 5, 2014 and entered into by and between Grantor and SEASIDE RESORT
DEVELOPMENT, LLC, an Arizona limited liability company, under the Community
Redevelopment Law of the State of California, hereby grants to ____________
(“Grantee”) the real property (hereinafter referred to as the “Property”), described in
Exhibit "A", attached hereto and incorporated herein by this reference. Any capitalized terms
used but not defined herein shall have the meaning ascribed thereto in the DDA.
1. Title to the Property is conveyed pursuant hereto subject to all recorded liens, encumbrances, covenants, encroachments, assessments, easements, leases and taxes.

2. The Property is conveyed in accordance with and subject to the DDA, which document is a public record on file in the offices of the Grantor.

3. Grantee covenants and agrees as follows:
   
a. Grantee, its successors and assigns and successors-in-interest, shall use the Property and the improvements now or hereafter constructed only for the hotel development permitted and the hotel and hotel-related uses specified in the DDA.

b. Grantee and its successors and assigns shall maintain the Property and the improvements thereon in the same aesthetic and sound condition (or better) as to the condition of the Property at the time Agency issues a Certificate of Completion pursuant to the DDA, reasonable wear and tear excepted. Representative items of maintenance include, but are not limited to, frequent and regular inspection for graffiti or damage or deterioration or failure, and immediate repainting or repair or replacement of all surfaces, fencing, walls, equipment, etc., as necessary; emptying of trash receptacles and removal of litter; sweeping of any public sidewalks adjacent to the Property, walks and paved areas on the Property and washing-down as necessary to maintain clean surfaces; maintenance of all landscaping in a healthy and attractive condition, including trimming, fertilizing and replacing vegetation as necessary; painting the buildings on a regular program and prior to the deterioration of the painted surfaces; conducting a roof inspection on a regular basis and maintaining the roof in a leak-free and weather-tight condition; and maintaining security devices in good working order. In the event the foregoing covenant is breached, Grantor or its designee shall have the right but not the obligation to enter the Property upon reasonable notice to the then record owner of the Property, correct any violation, and hold Grantee, or its successors or assigns responsible for the cost thereof, and such cost, until paid, shall constitute a lien with power and sale on the Property that may be foreclosed in accordance with California law. The Grantee and each successor and assign to whom this covenant applies shall be liable for maintenance of the Property pursuant to this paragraph only for the respective period of time during which such entity holds an ownership interest in the Property.

c. Grantee, and its successors and assigns and successors-in-interest shall at all times use as the name for the hotel on the property (and shall cause the hotel operator to use as the name for the hotel) a name that includes the word “Seaside.”
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, subtenants, sublessees, tenants, or vendees in the land herein leased."

c. In contracts: "There shall be no discrimination against or segregation of, any person or group of persons on account of race, color, religion, creed, national origin, ancestry, physical handicap, medical condition, age, marital status, sex, sexual orientation, political affiliation or opinion, or pregnancy or pregnancy-related condition in the sale, lease, sublease, rental, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the land."

6. In amplification and not in restriction of the provisions set forth herein above, it is intended and agreed that Grantor shall be deemed a beneficiary of the covenants and agreements provided herein above both for and in its own right and also for the purposes of protecting the interests of the community and the Project Area. All covenants without regard to technical classification or designation shall be binding for the benefit of Grantor, and the City of Seaside ("City"), and such covenants shall run in favor of Grantor and the City for the entire period during which such covenants shall be in force and effect, without regard to whether Grantor or the City is or remains an owner of any land or interest therein to which such covenants relate. Grantor and City shall have the right, in the event of any breach of any such covenant or agreement, after delivery of notice and expiration of the cure period discussed in Section 9.1 of the DDA, to exercise all the rights and remedies, and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of such breach of covenant or agreement.

7. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Grant Deed or in any of the documents referred to above shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust or other security instrument permitted by the DDA and made in good faith and for value; provided, however, that any subsequent owner of the Property shall be bound by such remaining covenants, conditions, restrictions, limitations and provisions, whether such owner’s title was acquired by foreclosure, trustee’s sale or otherwise, and shall be entitled to all the benefits granted to Grantee and its assigns hereunder.

8. All covenants contained in this Deed shall be construed as covenants running with the land and not as conditions which might result in forfeiture of title, except as set forth in Paragraph 9.

9. In addition to its other rights and remedies under this Deed, Grantor shall have the option to repurchase the Property as follows:
(a) If Grantee defaults under the DDA, at any time prior to issuance of a Certificate of Completion for the Property pursuant to Section 6.15 of the DDA, and such default is not cured within the time periods set forth in Section 9.1 of the DDA, and subject to the rights of Holders set forth in Section 6.13 of the DDA, then Grantor may repurchase the Property and all improvements thereon, or any portion thereof for which a partial Certificate of Completion has not been issued, at any time.

(b) If a default is still continuing after expiration of the cure periods granted to Grantee and the Holders, Grantor may elect to exercise the option described herein. This option to purchase shall be exercised, if at all, by Grantor’s delivery of written notice of its election to exercise the option to Grantee within one year after expiration of the last of the cure periods granted to Grantee and/or the Holders.

(c) The purchase price (the “Option Purchase Price”) shall be the “Purchase Price” paid by Developer, as that term is defined in the DDA, for the Property or portion of the Property being acquired by Agency.

(d) The purchase and sale shall occur within fifteen (15) business days after Grantor’s exercise of its option through an escrow company selected by Grantor. Grantor and Grantee shall promptly execute, acknowledge and deliver any and all documents necessary or appropriate to conduct the purchase and sale transaction (including, without limitation, escrow instructions, a settlement statement, a FIRPTA affidavit, and a California Form 593) and the Grantee (i.e., Seller) shall pay all escrow costs and the cost of an ALTA title policy in favor of Grantor that is consistent with clause (e) below.

(e) Grantor shall deliver the Option Purchase Price to Grantee concurrently with delivery of title to Grantee. Grantee shall convey title subject only to exceptions that (i) existed at the time of Grantee’s acquisition of the Property, or (ii) were created with the written consent of Grantor or approved in writing by Grantor.

(f) Grantor shall be entitled to specific enforcement of the terms of this instrument.

(g) Upon the issuance of the Certificate of Completion for the Property, Grantor shall execute a memorandum terminating this option to purchase. Any such memorandum shall be prepared and recorded at Grantee’s sole expense.

10. The covenants and restrictions set forth in that certain “Quitclaim Deed” executed by the United States of America on January 8, 1997 in favor of the City of Seaside, recorded on January 15, 1997 in Reel 3468 at Page 1515 in the Office of the Monterey County Recorder and applicable to the grantee thereunder are
hereby incorporated herein by reference. Grantee and all successor owners of the portion of the Property conveyed by such deed shall be bound by such covenants and restrictions for the benefit of the United States of America, the Agency 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__.

THE SUCCESSOR AGENCY OF THE REDEVELOPMENT AGENCY OF THE CITY OF SEASIDE, a public body corporate and politic

By: ________________________
    Executive Director

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:
STATE OF CALIFORNIA  
COUNTY OF MONTEREY  

On ____________________ , before me, ________________________, a Notary Public in and for said state, personally appeared ________________________, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

______________________________
Notary Public in and for said State

WITNESS my hand and official

(SEAL)

STATE OF CALIFORNIA  
COUNTY OF MONTEREY  

On ____________________ , before me, ________________________, a Notary Public in and for said state, personally appeared ________________________, or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

______________________________
Notary Public in and for said State

WITNESS my hand and official
STATE OF CALIFORNIA  )
COUNTY OF MONTEREY ) ss.

On _____________________, before me, _____________________, a Notary Public in and for said state, personally appeared _____________________, or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

___________________________
Notary Public in and for said State

WITNESS my hand and official

(SEAL)

STATE OF CALIFORNIA  )
COUNTY OF MONTEREY ) ss.

On _____________________, before me, _____________________, a Notary Public in and for said state, personally appeared _____________________, or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

___________________________
Notary Public in and for said State
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:

The Successor Agency of the Redevelopment
Agency of the City of Seaside
440 Harcourt Avenue
Seaside, CA 93955
Attn: Executive Director

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]

[INCLUDE STATEMENT RE: DOCUMENTARY TRANSFER TAX]

GRANT DEED AND ENVIRONMENTAL RESTRICTIONS

For a valuable consideration, receipt of which is hereby acknowledged,

THE SUCCESSOR AGENCY OF THE REDEVELOPMENT AGENCY
OF THE CITY OF SEASIDE, a public body, corporate and politic, of the State of
California (hereinafter referred to as “Grantor” or “Agency”), 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. The Property is conveyed in accordance with and subject to the
Redevelopment Plan for the Former Fort Ord (herein called
“Redevelopment Plan”) for the Former Fort Ord Area (herein called
“Project Area”), approved and adopted by the City Council of the City of
Seaside by Ordinance No. 901 on April 18, 2002. The Redevelopment Plan
is a public record on file in the office of the Secretary of Agency and is incorporated herein by this reference. The Property is located in the Project Area.

3. 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.

4. 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.”

5. 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.

6. [INCLUDE THE FOLLOWING IN DEED(S) FOR RESIDENTIAL PHASE SITES AND IN DEED(S) FOR TIMESHARE PHASE SITES THAT ARE NOT LOCATED SOLELY ON “SITE 33”]. The covenants and restrictions set forth in that certain “Quitclaim Deed” executed by the United States of America on January 8, 1997 in favor of the City of Seaside, recorded on January 15, 1997 in Reel 3468 at Page 1515 in the Office of the Monterey County Recorder and applicable to the grantee thereunder are hereby incorporated herein by reference. Grantee and all successive owners of the portion of the Property conveyed by such deed shall be bound by such covenants and restrictions for the benefit of the United States of America, the Agency and the City.
7. **[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

Attachment 6B

Page 4
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 Agency (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 Agency, 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, L23.3.1, 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 Grantee ("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

Attachment 6B
Page 13

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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 Fritzche 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 religious 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__.  

THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SEASIDE, a public body corporate and politic

By:________________________

Executive Director

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]
STATE OF CALIFORNIA    )  
COUNTY OF MONTEREY    ) ss.

On __________________, before me, ____________________, a Notary Public in and for said state, personally appeared ____________________, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

________________________

Notary Public in and for said State

WITNESS my hand and official (SEAL)

STATE OF CALIFORNIA    )  
COUNTY OF MONTEREY    ) ss.

On __________________, before me, ____________________, a Notary Public in and for said state, personally appeared ____________________, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

________________________

Notary Public in and for said State

WITNESS my hand and official (SEAL)
STATE OF CALIFORNIA  
 COUNTY OF MONTEREY  

On __________________, before me, ________________________, a Notary Public in and for said state, personally appeared ________________________, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

______________________________
Notary Public in and for said State

(SEAL)

WITNESS my hand and official

STATE OF CALIFORNIA  
 COUNTY OF MONTEREY  

On __________________, before me, ________________________, a Notary Public in and for said state, personally appeared ________________________, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

______________________________
Notary Public in and for said State
EXHIBIT “A”

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN IS SITUATED IN THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, AND IS DESCRIBED AS follows:
ATTACHMENT NO. 6C

FORM OF REPURCHASE OPTION FOR RESIDENTIAL AND TIMESHARE PHASES

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

The Successor Agency of the Redevelopment
Agency of the City of Seaside
440 Harcourt Avenue
Seaside, CA 93955
Attn: Executive Director

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]

[ADD STATEMENT RE: TRANSFER TAX]

MEMORANDUM CONCERNING OPTION TO REPURCHASE
REAL PROPERTY

In connection with the recordation of this instrument, THE SUCCESSOR AGENCY OF THE REDEVELOPMENT AGENCY OF THE CITY OF SEASIDE, a public body, corporate and politic, of the State of California (hereinafter referred to as "Grantor" or "Agency"), has granted to __________ ("Grantee") the real property (hereinafter referred to as the "Property"), described in Exhibit "A", attached hereto and incorporated herein by this reference. The Property was conveyed (i) pursuant to an Amended and Restated Disposition and Development Agreement dated as of February 5, 2014 by and between Grantor and Grantee (the "DDA") and (ii) in accordance with and subject to the Redevelopment Plan for the Former Fort Ord (herein called "Redevelopment Plan") for the Former Fort Ord Area approved and adopted by the City Council of the City of Seaside by Ordinance No. 901 on April 18, 2002. The DDA and the Redevelopment Plan are public record on file in the office of the Secretary of Agency. Terms used in this instrument and not defined herein shall have the meanings given in the DDA.
In consideration of the grant of the property by Grantor to Grantee, Grantee shall have the option to repurchase the Property as follows:

(a) If Grantee defaults on the DDA at any time prior to issuance of a Certificate of Completion for the Property pursuant to Section 6.15 of the DDA, and such default is not cured within the time periods set forth in Section 9.1 of the DDA, and subject to the rights of Holders set forth in Section 6.13 of the DDA, Grantor may repurchase the Property and all improvements thereon, or any portion thereof for which a partial Certificate of Completion has not been issued, at any time.

(b) This option to purchase shall be exercised, if at all, by Grantor's delivery of written notice of its election to exercise the option to Grantee within one year after expiration of the last of the cure periods granted to Grantee and/or the Holders.

(c) The purchase price (the "Option Purchase Price") shall be the "Purchase Price" paid by Developer, as that term is defined in the DDA, for the Property or portion of the Property being acquired by Agency.

(d) The purchase and sale shall occur within fifteen (15) business days after Grantor’s exercise of its option through an escrow company selected by Grantor. Grantor and Grantee shall promptly execute, acknowledge and deliver any and all documents necessary or appropriate to conduct the purchase and sale transaction (including, without limitation, escrow instructions, a settlement statement, a FIRPTA affidavit, and a California Form 593) and the Grantee (i.e., Seller) shall pay all escrow costs and the cost of an ALTA title policy in favor of Grantor that is consistent with clause (e) below.

(e) Grantor shall deliver the Option Purchase Price to Grantee concurrently with delivery of title to Grantor. Grantee shall convey title subject only to exceptions that (i) existed at the time of Grantee’s acquisition of the Property, or (ii) were created with the written consent of Grantor or approved in writing by Grantor.

(f) Grantor shall be entitled to specific enforcement of the terms of this instrument.

(g) Upon the issuance of the Certificate of Completion for a lot in a Residential Phase or a building in a Timeshare Phase, Grantor shall execute, acknowledge and deliver to Grantee a reasonable memorandum terminating this instrument with respect to such lot or building. Any such memorandum shall in the form reasonably acceptable to Grantee and prepared and recorded at Grantee’s sole expense.
IN WITNESS WHEREOF, the Grantor and the Grantee have caused this instrument to be executed on their behalf by their respective officers thereunder duly authorized, as of this _____ day of ______________, 20__.

THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF SEASIDE, a public body corporate and politic

By:________________________
   Executive Director

ATTEST:

By:________________________
   Secretary

The Grantee hereby accepts and approves each of the covenants, conditions and restrictions set forth in this Memorandum.

[GRANTEE]
STATE OF CALIFORNIA )
COUNTY OF MONTEREY )

On ________________, before me, ____________________, a Notary Public in and for said state, personally appeared ____________________, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

_________________________________________________________
Notary Public in and for said State

WITNESS my hand and official

(SEAL)

STATE OF CALIFORNIA )
COUNTY OF MONTEREY )

On ________________, before me, ____________________, a Notary Public in and for said state, personally appeared ____________________, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

_________________________________________________________
Notary Public in and for said State

WITNESS my hand and official
STATE OF CALIFORNIA

COUNTY OF MONTEREY

On _________________, before me, _____________________, a Notary
Public in and for said state, personally appeared ____________________________
proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

______________________________________________________________
Notary Public in and for said State

(S Seal)

WITNESS my hand and official

STATE OF CALIFORNIA

COUNTY OF MONTEREY

On _________________, before me, _____________________, a Notary
Public in and for said state, personally appeared ____________________________
proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

______________________________________________________________
Notary Public in and for said State
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

AGENCY INSURANCE REQUIREMENTS

It is understood that insurance requirements to be fulfilled by the Developer will be subject to refinement and approval by the Executive Director at the time a land purchase is made and a construction project is commenced. The requirements will be in accordance with industry standards for the specific type of project to be constructed and with the coverage that is then commercially available in the insurance marketplace. The requirements may be met by the Developer through a Contractor or a reasonable combination thereof. With respect to the construction phase of the project, the Commercial General Liability requirements may be met through the use of an Owner Controlled Insurance Program (Wrap) or similar program. Prior to the commencement of any construction project, the developer will submit the proposed Program of Insurance to the Executive Director and its insurance consultants for approval. The minimum requirements would generally include the following.

INSURANCE DURING CONSTRUCTION

Commercial General Liability Insurance

- Limits of no less than $1,000,000 per occurrence and $2,000,000 policy aggregate.
- Additional Insured status in favor of the Agency and its employees, agents and the City of Seaside if appropriate given the nature of the development
- Developer’s insurance shall be Primary and Non-Contributory
- Mutual Waiver of Subrogation
- No contractors’ limitation or other endorsement limiting coverage for claims arising out of pollution, explosion, collapse or underground property damage
- WRAP (OCIP/CCIP) coverage to extend from commencement of the project through the Statute of Limitation for owner, general contractor, subcontractors, sub-subcontractors and Additional Insured(s) where required by contract or appropriate given the nature of the development

Umbrella / Excess Liability Insurance

- Indemnification language
- No Cross Liability Exclusion
- Limit of Liability to be determined based on project, marketplace and affordability
- Extend over the General Liability, Automobile Liability and Employer’s Liability primary limits

Business Automobile Insurance

- Minimum Limit of Liability - $1,000,000 CSL for owned, non-owned and hired coverage
- Include on Umbrella / Excess Liability Schedule of Underlying policies for active construction period
Workers Compensation/Employer's Liability Insurance

- Statutory Limits as required by law
- Employer’s Liability limits of $1,000,000
- Waiver of Subrogation endorsement
- Coverage should be provided by General Contractor and Subcontractors

Builders Risk Insurance

- Generally applicable to vertical construction
- Special form; Replacement Cost
- Earthquake and/or flood determined by location / zone
- Contractor or developer responsible for materials, equipment including property in their care, custody, control

INSURANCE AFTER CONSTRUCTION

Owner required to purchase appropriate insurance coverage on completed project depending on type, size, location and including market conditions, etc.
ATTACHMENT NO. 8

[INTENTIONALLY OMITTED]
ATTACHMENT NO. 9-B

FORM OF RESIDENTIAL DEED OF TRUST

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

The Successor Agency to the
Redevelopment Agency of the City of Seaside
440 Harcourt Avenue
Seaside, California 93955
Attn: ________________

This document is recorded for the benefit of the Redevelopment Agency of the City of Seaside, and consequently the recording is fee-exempt under California Government Code §27383.

DEED OF TRUST
WITH ABSOLUTE 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 ABSOLUTE ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND Fixture FILING (the “Deed of Trust”) is dated as of __________, 20__, by [Seaside Resort Development, LLC, an Arizona limited liability company] (“Trustor”), to Stewart [Title Insurance Company] (“Trustee”), for the benefit of THE SUCCESSOR AGENCY OF THE REDEVELOPMENT AGENCY OF THE CITY OF SEASIDE, a public body, corporate and politic (“Beneficiary”). This Deed of Trust is executed and delivered in connection with that certain Amended and Restated Disposition and Development Agreement between Trustor and Beneficiary dated February 5, 2014 (the “DDA”), Section 8.3.3 of which requires that the Agency 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, workers’ 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 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.

(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.”]
STATE OF CALIFORNIA )
COUNTY OF __________ ) ss.

On ____________ ____, 20__, before me, ________________________, personally appeared ________________________ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

________________________________________
Signature of Notary

[SEAL]

STATE OF CALIFORNIA )
COUNTY OF __________ ) ss.

On ____________ ____, 20__, before me, ________________________, personally appeared ________________________ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

________________________________________
Signature of Notary

[SEAL]
STATE OF CALIFORNIA  )
COUNTY OF __________  ) ss.

On __________  __, 20__, before me, ____________________________, personally appeared ____________________________ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

________________________________________
Signature of Notary

[SEAL]
ATTACHMENT NO. 10

FORM OF ENVIRONMENTAL INDEMNITY

ENVIRONMENTAL INDEMNITY AGREEMENT

THIS ENVIRONMENTAL INDEMNITY AGREEMENT (this “Agreement”) is dated as of ________, 20__ and is entered into by [SEASIDE RESORT DEVELOPMENT, LLC, an Arizona limited liability company] (“Borrower”), and THE SUCCESSOR AGENCY OF THE REDEVELOPMENT AGENCY OF THE CITY OF SEASIDE, a public body, corporate and politic (“Agency”).

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 Amended and Restated Disposition and Development Agreement dated as of February 5, 2014, executed by and between Agency and Borrower with respect to the Property (the “DDA”), Borrower owes to Agency the Profit Participation described in Section 8.3 of the DDA which is secured by a deed of trust made by Borrower in favor of Agency encumbering the Property (which together with all amendments, modifications, consolidations, increases, and supplements thereof is herein collectively called the “Deed of Trust”);

C. Agency 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, Agency and Borrower hereby agree as follows:

1. Except as otherwise provided in Section 6.9 of the DDA, Borrower covenants and agrees, at its sole cost and expense, to indemnify, protect and save Agency 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 Agency 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 Agency, 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 Agency. Agency’s rights under this Agreement shall be in addition to all rights of Agency under the Deed of Trust, the obligations secured by the Deed of Trust, and under any other documents or instruments evidencing or securing the Agency Loan (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 “Loan 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 or with Agency by Borrower or any person who succeeds Borrower as owner of the Property. In addition, the liability of Borrower shall terminate upon repayment of the Agency Loan 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 Loan 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 Loan 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 Loan Documents by operation of law, Agency’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) Agency’s failure to record the Deed of Trust (or Agency’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 Agency 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 Agency becoming the owner of the Property, even though such condition is not discovered until after Agency acquires title to the Property.

4. No delay on Agency’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 Agency 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 Agency and their respective heirs, personal representatives, successors and assigns. Notwithstanding the foregoing, Borrower, without the prior written consent of Agency 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 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, Agency and Borrower have caused this Agreement to be executed as of the date first written above.

"Agency":
THE SUCCESSOR AGENCY OF THE
REDEVELOPMENT AGENCY OF THE
CITY OF SEASIDE,
a public body, corporate and politic

By: __________________________
Name: __________________________
Title: __________________________

Attest:
By: __________________________
    ________________, Agency Secretary

"Borrower":


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. 11
FORM OF MEMORANDUM OF DDA

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

The Successor Agency of the Redevelopment Agency of the City of Seaside
440 Harcourt Avenue
Seaside, CA 93955
Attn: Executive Director

WITH A COPY TO:

SEASIDE RESORT DEVELOPMENT, LLC

Attention: ________________

FREE RECORDING REQUESTED (Govt. Code Section 6103)

(Space Above For Recorder's Use)

MEMORANDUM OF DISPOSITION AND DEVELOPMENT AGREEMENT

THIS MEMORANDUM OF DISPOSITION AND DEVELOPMENT AGREEMENT (this “Memorandum”) is made as of this ___ day of __________, 2011, by and between THE SUCCESSOR AGENCY OF THE REDEVELOPMENT AGENCY OF THE CITY OF SEASIDE, a public body, corporate and politic (“Agency”) and SEASIDE RESORT DEVELOPMENT, LLC, an Arizona limited liability company (hereinafter referred to as “Grantee” or “Developer”), with reference to the following matters:

1. Agency and Developer entered into that certain Amended and Restated Disposition and Development Agreement dated as of February 5, 2014 (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 Agency.

2. Pursuant to the DDA, Agency shall acquire and convey to Developer certain real property described as the Property and more particularly described on Exhibit “A”, attached hereto and incorporated herein by reference.
3. Pursuant to the DDA, Developer agrees to construct certain improvements defined therein as Improvements in Phases on the Property consisting of a hotel, timeshare and residential development. If Developer fails to construct the Improvements in the manner and within the time set forth in the DDA, Agency shall have the right to repurchase the Property or the Phases that have been conveyed to Developer, within the time periods set forth in the DDA.

4. Agency has provided certain financial assistance to Developer to assist in the completion of the development of the Property, as is more particularly described in Article of the DDA.

5. Agency has certain rights to participate in the profits of the Residential Component of the Project on the Property, as is more particularly described in Article 8 of the DDA.

6. Except as stated herein, nothing contained in this instrument shall modify in any way any other provisions of the DDA or any other provisions of the documents incorporated herein.

7. Upon the satisfaction of the development and construction obligations under the DDA with respect to the Property or a Phase thereof, the Agency shall by a written recordable document reasonably satisfactory to Developer so indicate that such obligations have been satisfied.
IN WITNESS WHEREOF, Agency and Developer have executed this Memorandum as of the day and year first above written.

AGENCY:

THE SUCCESSOR AGENCY OF THE REDEVELOPMENT AGENCY OF THE CITY OF SEASIDE, a public body, corporate and politic

By: ______________________
    Executive Director

ATTEST:

________________________________________
Agency Secretary

APPROVED AS TO FORM:

________________________________________
Special Agency Counsel

"DEVELOPER"

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: ______________________
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)

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)
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)

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. 12

CITY OF SEASIDE LOCAL FIRST SOURCE RECRUITMENT POLICY

Capitalized terms which appear in this Policy are as defined in Article I of this Policy below.

A. The Agency hereby finds and determines that, based partially on the closure of the massive military reserve once known as Fort Ord, there is a high incidence of unemployment and underemployment among the Residents of the City and within the Agency's Project Areas.

B. The Agency further finds and determines that this high incidence of unemployment and underemployment is due also to artificial barriers in the employment market which serve to reduce the likelihood that Residents will find employment which is commensurate with their education, skills and experience and which do not affect nonresidents of the City in a similar manner.

C. The Agency further finds and determines that the existence of high unemployment within the City and Project Areas serves as a blighting influence on the City, and the resultant reduction or elimination of the incomes of Local Businesses and Residents may serve as a blighting influence on the Project Areas, by decreasing the amount of available jobs within the Project Areas, increasing the likelihood that Residents and Distressed Workers will engage in criminal activities, increase the incidence of under-maintenance of property within the jurisdiction leading to a decreased property tax base and other social ills within the Project Areas and the City.

D. The Agency further finds and determines that Residents and Local Businesses will bear a disproportionate burden of redevelopment in the Project Areas, which may result in the displacement of Local Businesses and a reduction in the number of Residents who are employed within the City and Project Areas.

E. The Agency further finds and determines that the burdens of development will not be borne in a similar manner by those who reside or conduct business outside the City and Project Areas.

F. The Agency further finds and determines that Residents and Local Businesses should be given an opportunity to be employed in development of areas within the Project Areas and the ongoing uses to be created in the Project Areas, so as to mitigate the disproportionate burden of development on Residents, Distressed Workers and Local Businesses.
POLICY

I. Definitions

For the purposes of this Policy, the following terms shall have the meaning specified below:

A. “Agency” shall mean The Successor Agency of the Redevelopment Agency of the City of Seaside and include the City of Seaside, and reference to the Executive Director includes the City Manager with regards to this Policy.

B. “Agency Contract” shall mean any contract entered into by the Agency and a Developer or End User for labor or services related to redevelopment of the Project Areas, including but not limited to construction contracts, consultant contracts or the operation of industrial, commercial, retail or office-related businesses within the Project Area.

C. “City” shall mean the City of Seaside and include the Redevelopment Agency, and reference to the City Manager includes the Executive Director of The Successor to the Seaside Redevelopment Agency with regards to this Policy.

D. “City Contract” shall mean any contract entered into by the City and a Developer or End User for labor or services related to development in the City, including but not limited to construction contracts, consultant contracts or the operation of industrial, commercial, retail or office-related businesses within the City.

E. “DDA” shall mean a disposition and development agreement entered into by the Agency and a Developer or End User for the redevelopment and/or use of property within the Project Area. “DDA” shall also include any participation agreement entered into by the Agency and the owner or owners of property within the Project Areas for the redevelopment of the property.

F. “Developer” shall mean any individual, unincorporated association, partnership, joint venture group, corporation or subcontractor of same which is engaged in activities related to the redevelopment of the Project Areas. “Developer” shall not include those consultants or employees of the Agency who are retained to perform administrative, management, consulting or legal services for the Agency.

G. “Developer Contract” shall mean any contract entered into by a developer and any third party where the scope of the Developer Contract is to perform work related to redevelopment of the Project Areas, and where the developer has entered into an Agency Contract or has received a Subsidy. Developer Contract shall include, but not be limited to, construction contracts, consultant contracts and any other contracts for the performance of services or labor related to redevelopment of the Project Areas.

H. “Distressed Workers” shall mean those Residents who are unemployed, not presently employable, or underemployed based on their skills, education and experience, displaced workers, workers who are eligible for participation in programs governed by the Job Training Partnership Act, or persons who have recently encountered labor market barriers or obstacles as determined by local employment referral and training organizations.

I. “End Users” shall mean those businesses which commence operation in industrial manufacturing, commercial, retail or office space after the completion of any construction or rehabilitation projects related to that space.

Attachment 12
Page 2
J. “Good Faith Effort” shall mean diligent efforts to locate and employ qualified Residents or Distressed Workers, or diligent efforts to provide funds or training opportunities to benefit Distressed Workers. Diligent efforts to located Qualified Residents shall include, at a minimum, notification by the Developer or End User to the Agency and all Service Organizations of the availability of employment opportunities prior to the time that those opportunities are advertised to the general public and other outreach efforts as are deemed necessary by the Agency. Diligent efforts to employ Qualified Residents or Distressed Workers shall include at a minimum hiring of Qualified Residents and/or Distressed Workers who are recommended to the Developer or End User by the Agency or Service Organizations after such notification, to the extent that the Developer or End User has existing employment opportunities available.

“Good Faith Effort” shall further mean diligent efforts to contract or subcontract a portion of contracts to Local Business. Diligent efforts to contract or subcontract to Local Businesses shall include, at a minimum, advertisement of available subcontracting opportunities by Developers and End Users to the City’s Chamber of Commerce and other businesses and professional organizations serving the City, solicitation of Local Businesses who are known by the Developer or End User to provide services which are required by the Developer or End User, and solicitation of referrals to Local Businesses from the Agency and Service Organizations.

K. “Local Businesses” shall mean those industrial, manufacturing, commercial, retail or office-related businesses licensed by the City of Seaside whose principal place of business or headquarters is located within the City limits.

L. “Project Area” shall mean the redevelopment project areas adopted by the City Council pursuant to Health and Safety Code 33000 et. seq., including but not limited to the Gateway Auto Center Project Area, the Gateway Auto Center Expansion Project Area, the Laguna Grande Project Area, the City Center Project Area, the Hannon Project Area, the Noche Buena Project Area and the Del Monte Heights Project Area.

M. “Resident” shall mean any person whose primary residence is in the City of Seaside.

N. “Service Organization” shall mean a nonprofit community group, employment service, or job training organization which has Seaside as part of its service area or otherwise provides job placement or training, or other assistance to Residents, or business support services to Local Businesses.

O. “Subcontractor” shall mean any and all parties with whom the Developer and Contractor intends to enter into a contract to perform a portion of any said work regardless of tier.

P. “Subsidy” shall include, but is not limited to, any direct or indirect cash or other financial assistance to a Developer or End User through any of the following programs: federal or state grants or other government grant or loan programs; revolving loan funds, redevelopment agency assistance such as write-downs of the cost of land in the Project Areas by the Agency, property tax abatement or sales tax rebate sharing agreements, tax increment financing, revenue or development bonds; and any other loans, grants bonds, or capital improvements financed in whole or in part, whether through the investment of cash or in-kind resources or the issuance of bonds, notes or indentures by the City or the Agency, or any entity whose borrowing powers is underwritten in whole or in part by the City and/or the Agency. “Subsidy” shall also include the creation of assessment districts for the benefit of a Developer or End User by the City and/or the Agency for the purpose of improving property within the Project Areas for the Developer’s or End User’s use, and any other financial or nonfinancial assistance provided by the City and/or the Agency which materially benefits a Developer or End User.
II. **First Source Recruitment Policy**

A. **Hiring.** It shall be the policy of the Agency that the Agency, developers and End Users shall recruit for the purpose of hiring, to the greatest extent feasible, qualified Residents and Local Businesses in the performance of work related to development within the City, including construction, operation and management of manufacturing, commercial, industrial, retail or office-related businesses which are located in the Project Areas.

B. **Training.** It shall be the policy of the Agency that the Agency, Developers and End Users shall provide to the greatest extent feasible, training programs or funding to support such programs, for Distressed Workers, so that those workers may qualify for employment opportunities created by this policy. The Agency shall work with Developers, End Users and Service Organizations to develop effective training programs as necessary to effectuate this Policy.

C. **First Source.** To the extent that the training programs are implemented by the Agency as a part of this Policy and Distressed Workers are trained for and become qualified to perform jobs for Developers and End Users within the Project Areas, it shall be the Policy of the Agency that the Agency, Developers and End Users shall make a Good Faith Effort to hire Distressed Workers in the construction, operation and management of manufacturing, commercial, industrial, retail or office-related businesses which are located in the Project Areas.

D. **Scope of Policy Scope.** The Policy shall be implemented by the Agency to the greatest extent feasible by the Agency in its negotiation of DDAs, Agency Contracts, and other agreements with Developers and End Users pertaining to the redevelopment of the Project Areas. The Policy shall be implemented by Developers in negotiation of Developer Contracts, including the subcontracts and contracts with End Users of property.

E. **Term.** The Policy shall be in effect from the date of its adoption by the Agency until such time that it is amended or terminated by the Agency. The Agency shall annually evaluate the Policy and determine its effectiveness and may at that time make any necessary adjustments to the Policy as the Agency deems appropriate.

III. **Agency Contracts**

A. **Contracts Under $5,000 for Grading, Clearing, Demolition and Construction.** In all Agency Contracts for grading, clearing, demolition and construction within the Project Areas for which the value of the Agency Contract is less than $5,000, the Agency shall, prior to advertising the availability of the contract to the general public, first advertise the availability of these Agency Contracts to Residents and Local Businesses who are qualified to perform the work which is the subject of the Agency Contract. To the greatest extent feasible, the Agency shall give preference in awarding these Agency Contracts to Residents and Local Businesses who are qualified to perform the grading, clearing, demolition or construction work which is the subject of the Agency Contract.

B. **Agency Construction Contracts.** For all Agency Contracts for the construction of public improvements, including but not limited to contracts valued at over $5,000 for grading, clearing, demolition and construction, the Agency may grant a preference to those construction contractors who have made a Good Faith Effort to hire, or who agree to hire, on a craft-by-craft basis, qualified Residents to perform the Agency Contract. The Agency may further grant preference to construction contractors who have subcontracted, or made a Good Faith Effort to subcontract, a portion of the Agency Contract to Local Businesses.
C. **Contracts Valued at Over $100,000.** For all other Agency Contracts whose dollar value is estimated to exceed $100,000 at the time the scope of work for the Agency Contract is prepared, the Agency may specify in its bid package that preference for the Agency Contract shall be given to the lowest responsible bidder who, as part of the bid, demonstrates that it has made a Good Faith Effort to hire, or has hired, qualified Residents to perform a portion of the work which is the subject of the Agency Contract, or demonstrates that it has subcontracted or has made a Good Faith Effort to subcontract to Local Businesses a portion of the work which is the subject of the Agency Contract.

D. **Operation of Facilities.** For all Agency Contracts for the operation and management of public improvements or public facilities, the Agency shall, to the greatest extent feasible, grant a preference to those construction contractors who have made a Good Faith Effort to hire, or who have hired qualified Residents to perform some or all of labor necessary to perform the Agency Contract. The Agency may further grant preference to construction contractors who have made a Good Faith Effort to subcontract, or have subcontracted a portion of the Agency Contract to Local Businesses.

E. **Disposition and Development Agreements (DDA’s).** For all DDA’s or similar agreements entered into by the Agency, the Agency shall negotiate, to the extent feasible, provisions in the DDA or agreement which require the Developer, End User or other part to make a Good Faith Effort to hire qualified Residents in employment within the Project Areas and to utilize, or make a Good Faith Effort to utilize, Local Businesses, to implement the DDA or any subcontract arising from the DDA.

F. **Training Fund.** For all Agency Contracts with Developers and End Users, including but not limited to construction contracts, DDA’s and leases, the Agency shall negotiate, to the extent feasible, provisions in the DDA or Agency Contract which require the Developer, End User to contribute to a training fund to be administered by the Agency for the purposes of providing education and/or training to Distressed Workers.

IV. **Developers**

A. **Scope of Section.** The provisions of this Article 4 shall apply only to those Developers who receive a Subsidy or Subsidies, as defined in this Policy, from or through the efforts of the Agency.

B. **Construction Contracts.** For all construction contracts which arise as a result of a DDA entered into by the Agency and a Developer, the Developer shall negotiate, to the extent feasible, provisions in its construction contract which require the prime contractor to hire, or make a Good Faith Effort to hire, on a craft-by-craft basis, qualified Residents to perform some or all of the labor necessary to perform the Developer Contract. The Developer shall also negotiate, to the extent feasible, provisions in its construction contract with the prime contractor to subcontract, or make a Good Faith Effort to subcontract, a portion of the Developer Contract to Local Businesses.

C. **Other Contracts.** For all Developer Contracts other than construction contracts, the Developer shall negotiate, to the extent feasible, provisions in the Developer Contract which require the other contracting party to make a Good Faith Effort to hire qualified Residents to implement the Developer Contract.

V. **End Users**

A. **Scope of Section.** The Provisions of this Article 5 shall apply only to those End Users who have entered into a Agency Contract or who have, directly or indirectly, received a Subsidy or Subsidies, as defined in this Policy, from or through Agency efforts.
B. **Operation of Facilities.** In hiring its work force to operate or manage a commercial, retail or office-related business which is located within the Project Areas, an End User shall, to the greatest extent feasible, make a Good Faith Effort to employ qualified Residents or to provide ongoing training opportunities (such as part-time work, internships or classes) to Distressed Workers, within the skill areas which are utilized by the End User in the operation and management of the End User’s business.

VI. **Exceptions**

A. **Compliance with State and Federal Law.** This Policy shall only be enforced to the extent that it is consistent with the laws of the City, the State of California and the United States. If any provision of this Policy is deemed to be unconstitutional or otherwise in conflict with the state or federal law, the applicable state or federal law shall prevail over the terms of this Policy, and the inconsistent provisions of this Policy shall not be enforced by the Agency or any other body.

B. **Court Order.** Notwithstanding the provisions of this Policy, a Developer shall be deemed to be in compliance with this Policy if it is bound by court or administrative order or decree, or a settlement agreement arising from a labor relations dispute, which governs the hiring of workers by the Developer and the provisions of which make it impossible for the Developer to hire Residents or Distressed Workers in accordance with the terms and conditions of this Policy.

C. **Exception for Good Faith Effort.** Notwithstanding the provisions of this Policy, there shall be no penalty or sanction arising as a result of the failure of the Agency, Developers or End Users to achieve the goals of this Policy, so long as the Agency, Developer or End User has made a Good Faith Effort to comply with the goals of this Policy.

VII. **Administration**

A. **Executive Director.** The Executive Director of the Agency, or his designee, shall be responsible for the implementation of this Policy and shall develop any administrative policies or procedures which are necessary to effectuate this Policy.

B. **Service Organization.** The Agency and developers shall work with Service Organizations as necessary to implement the Policy. The Agency may work with the Service Organizations to provide a mechanism by which the Service Organization may provide recruitment, screening, referral, placement and training services in furtherance of this Program. Such a mechanism may also include, at the discretion of the Agency and the Service Organizations shall provide any necessary monitoring services for the implementation of this Policy.

C. **Binding Upon Successors.** It is intended that the provisions of this Policy shall be applicable to all redevelopment activities to the fullest extent permitted by law for the benefit and in favor of the Agency; and the provisions of this Policy shall be enforceable by the Agency, the City, Developers, End Users and any of their successors in Interest to property in the Project Areas.
ATTACHMENT NO. 13

LIST OF ACCEPTABLE HOTEL AND TIMESHARE OPERATORS

Acceptable Hotel Operators

Marriott International (including JW Marriott, and its other various brands)
Starwood Hotels and Resorts
Hilton
Hyatt
Fairmont
Four Seasons
Omni
Any other hotel entity approved by Agency in writing in its good faith discretion.
The owner of the hotel (or an Affiliate of the owner of the hotel) provided reasonable evidence has been submitted to and reasonably approved by Agency that the owner or Affiliate has adequate staff with adequate hotel management experience to operate the hotel at a level equal to the other approved operators on this list.

Acceptable Timeshare Operators

Starwood Vacation Club
Hilton Vacation Club
Hyatt Vacation Club
Any timeshare entity affiliated with an Acceptable Hotel Operator or approved by Agency in writing in its good faith discretion.
The owner of the timeshare project (or an Affiliate of the owner of the timeshare project) provided reasonable evidence has been submitted to and reasonably approved by Agency that the owner or Affiliate has adequate staff with adequate timeshare management experience to operate the timeshare project at a level equal to the other approved operators on this list.
ATTACHMENT NO. 14

[INTENTIONALLY OMITTED]
SEASIDE RESORT REIMBURSEMENT AGREEMENT FOR
EMERGENCY VEHICLE ACCESS (EVA)
IMPROVEMENTS AND EVA IN LIEU FEES

This REIMBURSEMENT AGREEMENT (this “Agreement”) is made and entered into as of __________, 20__, by and between SEASIDE RESORT DEVELOPMENT, LLC, an Arizona limited liability company, (“Seaside Resort”), and THE CITY OF SEASIDE, a municipal corporation (“City”).

RECITALS

A. On January 24, 2002, the City approved the Seaside Highlands Project, also known as the Hayes Housing Subdivision and Planned Unit Development, which consists of a 380-unit residential development that includes streets, parks and open space. The applicant for the Seaside Highlands Project was KB Bakewell Seaside Venture, LLC (“KB Bakewell”).

B. On August 21, 2003, the City and KB Bakewell entered into a Reimbursement Agreement (the “KB Bakewell Reimbursement Agreement,”) pursuant to Government Code Section 66486, whereby KB Bakewell agreed to implement previously imposed conditions on the Seaside Highlands Project that called for the design, funding and construction of certain off-site improvements. Those off-site improvements included the gateway section of Monterey Road (the “Gateway Improvement”), emergency access road between Coe Avenue and Peralta Avenue (the “Peralta EVA,”) and emergency access road between Coe Avenue and Military Avenue (the “Military EVA.”) The KB Bakewell Reimbursement Agreement provided that KB Bakewell would pay an in lieu fee rather than construct the Military EVA improvements and would receive reimbursement from certain other development projects which would benefit from the construction of the Gateway Improvement, the Peralta EVA and the Military EVA.

C. The KB Bakewell Reimbursement Agreement identified several areas of the City and anticipated projects that would benefit from the Gateway Improvement, the Peralta EVA, and the Military EVA and assigned a “fair share” percentage of benefit between those areas and projects. Among those areas and projects listed as benefiting from the improvements is the “Golf Course Hotel” located in General Plan Polygon 24.

D. The KB Bakewell Reimbursement Agreement provided that: (i) the City would collect on behalf of, and pay to KB Bakewell, a reimbursement amount from each benefited area or project as those areas and projects were developed; (ii) the collection from future development projects would occur either prior to the approval of the first final subdivision map or prior to the issuance of the first building permit for that development, whichever occurs first; (iii) fifty percent (50%) of the total reimbursable costs owed to KB Bakewell for the Peralta EVA and the Military EVA would be paid by the first benefited development project to obtain a final subdivision map, use permit or building permit; and
(iv) as the City collects reimbursements from other subsequent areas and developments benefited by the improvements, the City would pay half of that reimbursement to KB Bakewell and the other half to the first subsequent development project that incurred the 50% reimbursement requirement, until each had been repaid for the amount of fees incurred that exceeded their fair share of the improvement costs.

E. On July 7, 2005, the City adopted Resolutions No.____ through ____, approving various components of the Seaside Resort Project, including a 330 room hotel, 170 timeshare units, 125 single-family residential lots. As conditions of those approvals, Seaside Resort is required to pay various impacts fees for public improvements, including the Seaside Resort Project’s fair share payment of Gateway Improvement, the Peralta EVA and the Military EVA in lieu fee.

F. As part of the approvals for the Seaside Resort Project, the City prepared a document entitled “Fee Study, Seaside Resort” in May 2005 in which the City concluded that the total costs incurred or paid by KB Bakewell for the reimbursable improvements was as follows: (i) Gateway Improvement -- $2,646,959.00; (ii) Peralta EVA -- $200,881.00; and (iii) Military EVA in lieu fee (referred to in the Fee Study as the Yosemite EVA in lieu fee) -- $588,300.00.

G. The City’s Fee Study concluded that Seaside Resort’s fair share of the costs for the reimbursable improvements under the KB Bakewell Reimbursement Agreement was as follows: (i) Gateway Improvement – 21.9% of total costs equaling $579,684.00; (ii) Peralta EVA – 13.30% of total cost equaling $26,717.00; and (iii) Military EVA in lieu fee (referred to as the Yosemite EVA in lieu fee) – 13.30% equaling $78,243.00. The total fair share amount owed by Seaside Resort to reimburse KB Bakewell for its reimbursable improvements would be $684,644.00 which constitutes the sum of $579,684.00 for the Gateway Improvements plus $26,717.00 for the Peralta EVA plus $78,243.00 for the Military EVA in lieu fee (also referred to as the Yosemite EVA in lieu fee).

H. Pursuant to the KB Bakewell Reimbursement Agreement, if the Seaside Resort Project is the first benefited development project after Seaside Highlands to obtain a final subdivision map, a use permit, or a building permit, the full amount to be collected by the City from Seaside Resort and paid to KB Bakewell would be $974,274.00, which amount constitutes the sum of $579,684.00 for the Gateway Improvements plus 50% of KB Bakewell’s reimbursable costs for the Peralta EVA (50% of $200,881.00 equals $100,440.00) and the Military EVA in lieu fee (also referred to as the Yosemite EVA in lieu fee) (50% of $588,300.00 equals $294,150.00). Thus, the amount to be collected by the City from Seaside Resort and paid to KB Bakewell, if Seaside Resort is the first benefited development project to obtain a final subdivision map, a use permit or a building permit, would be $579,684.00 for the Gateway Improvements and $394,590.00 for the Peralta and Military EVA improvements. This latter amount ($394,590.00) exceeds Seaside Resort’s fair share of the reimbursable improvements for the Peralta EVA and the Military EVA in lieu fee by $289,630.00 (the “Excess Amount.”) In the event Seaside

Attachment 15
Page 3

12830-00011534352v3.doc
Resort is the first benefited development after Seaside Highlands to obtain a final subdivision map, a use permit or a building permit, and is required to pay the Excess Amount, this Excess Amount shall also constitute the amount owed to Seaside Resort from other benefited developments listed in the KB Bakewell Reimbursement Agreement and specified in Recital J below, as those other developments occur in the future.

I. This Agreement is intended to not only implement the KB Bakewell Reimbursement Agreement but to also constitute a reimbursement agreement between the City and Seaside Resort for the amounts to be paid from other subsequent development projects and owed to Seaside Resort as provided in this Agreement.

J. In addition to the Seaside Highlands Project and the Seaside Resort Project identified in the KB Bakewell Reimbursement Agreement, the following anticipated development projects are within City's Fort Ord lands which would benefit from the Peralta EVA and the Military EVA: the Stilwell “Kidney” (General Plan Polygon 20b), the Other Golf Course Community (consisting of the SunBay Apartments (part of General Plan Polygon 20g), the Brostrom Mobile Home Park (part of General Plan Polygon 20g), and Polygon 20h and 20c), the South Extension Housing (General Plan Polygon 24), University Village (General Plan Polygon 20c), and the Eucalyptus Road Commercial Area (General Plan Polygon 23). Hereafter, the foregoing development projects are referred to collectively as the “EVA Benefit Development” or individually as an “EVA Benefit Development.” A map showing the location of the EVA Benefit Developments is attached as Exhibit A and incorporated herein.

NOW THEREFORE, for and in consideration of the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

AGREEMENT

1. Recitals. The Recitals are hereby incorporated and made a part of this Agreement by this reference.

2. Obligations of Seaside Resort.

   2.1 Payment of Gateway Improvement Fees. Seaside Resort shall pay to City the sum of $579,684.00, which amount shall constitute Seaside Resort's fair share of the Gateway Improvement fees that are to be paid to KB Bakewell pursuant to the KB Bakewell Reimbursement Agreement. The Gateway Improvement fees attributable to the hotel component shall be $307,047.00 and shall be paid by Seaside Resort to the City prior to the recordation of the Final Map that contains the hotel project. The Gateway Improvement fees attributable to the timeshare component shall be $103,231.00, shall be paid in increments of $11,470.11 per phase based on the nine phases of the timeshare component, and shall be paid by Seaside Resort to the City prior to the recordation of the Final Map that contains the phase or phases of the timeshare component. The Gateway
Improvement fees proportionally attributable to the residential component of the Project shall be $169,406.00, shall be paid in increments of $1,355.25 per residential lot, and shall be paid prior to the recordation of the Final Map that contains the residential lot. Any difference between the amount of fees collected from Seaside Resort and the amount of fees that are due and payable to KB Bakewell at any particular time, shall be paid by the City at the time of recording of the Final Map for the hotel site, with the fees thereafter paid by Seaside Resort used to repay the City for any upfront reimbursements paid to KB Bakewell.

2.2 Payment of Peralta EVA and Military (Yosemite) EVA In Lieu Fees. Except as otherwise provided in this Section 2.2, Seaside Resort shall pay to City the sum of $394,590.00, which amount shall constitute 50% of the total costs of the Peralta EVA and Military (Yosemite) EVA improvements pursuant to the KB Bakewell Reimbursement Agreement. Seaside Resort shall pay this fee to City in one lump sum prior to the recordation of the Final Subdivision Map for the hotel site. Of the $394,590.00 fee, $104,440.00 shall constitute the payment of Peralta EVA fees and $294,150.00 shall constitute the payment of Military (Yosemite) EVA In Lieu Fees. Notwithstanding the preceding provisions of this Section 2.2, if Seaside Resort is determined by the City Manager not to be the first EVA Benefit Development to obtain a final subdivision map, use permit or building permit after the Seaside Highlands Project, and is therefore not required to pay 50% of the costs of the Peralta EVA and Military (Yosemite) EVA pursuant to the KB Bakewell Reimbursement Agreement, then Seaside Resort shall only be required to pay its fair share of those expenses, which is $26,717.00 for the Peralta EVA and $78,243.00 for the Military (Yosemite) EVA in lieu fee for a total of $104,960.00 as full and complete payment for its fair share of the EVA improvements.

3. Obligations of City.

3.1 Forward Payments to KB Bakewell. Except as otherwise provided in this Section, City shall, within 15 days of receipt of any payments made by Seaside Resort under Section 2 of this Agreement, pay to KB Bakewell those amounts as reimbursement for improvements for which the payments have been made. Notwithstanding the preceding sentence, City shall be entitled to retain any Gateway Improvement fees paid by Seaside Resort under Section 2 of this Agreement until the full amount of any fees paid by City to KB Bakewell for Seaside Resort’s fair share of the Gateway Improvements are fully reimbursed to City. City shall document: (i) the receipt of the payment from Seaside Resort; (ii) the type of fee for which the payment is made; (iii) whether the fee payment is a reimbursement to the City or whether the amount is to be transferred to KB Bakewell; (iv) the date that a payment is made to KB Bakewell; and (v) provide a copy or copies of that documentation to Seaside Resort.

3.2 Collect Reimbursements for Peralta EVA Fees. Provided that the Seaside Resort Project is determined by the City Manager to be the first EVA Benefit Development for which is granted a final subdivision map, a use permit or a building permit from the
City subsequent to the Seaside Highlands Project, City shall collect, on behalf of KB Bakewell and Seaside Resort, a reimbursement from each EVA Benefit Development, as defined in Recital J and specified in Section 4, for that EVA Benefit Development’s fair share of the cost of the Peralta EVA. The amount of the reimbursement fees to be collected from EVA Benefited Developments to be paid to Seaside Resort shall not exceed $73,723.50, which amount shall constitute the Excess Amount and is the difference between the total amount paid by Seaside Resort for Peralta EVA Fees ($100,440.50) and the amount that represents Seaside Resort’s fair share ($26,717.00) of the total cost of the Peralta EVA improvements ($200,881.00). The reimbursements paid by each EVA Benefit Development shall be paid in one-half equal amounts to KB Bakewell and to Seaside Resort as such amounts are collected by the City and until such time as Seaside Resort has been reimbursed $73,723.50. Thereafter, the full amount of any additional reimbursement paid by EVA Benefit Developments shall be paid by City to KB Bakewell in accordance with the KB Bakewell Reimbursement Agreement. Payments made by City to Seaside Resort shall be paid within 15 days after receipt by City of the reimbursement payment from an EVA Benefited Development. Notwithstanding the preceding provisions of this Section 3.2, in the event the Seaside Resort Project is determined by the City Manager not to be the first development project for which is granted a final subdivision map, a use permit or a building permit from the City subsequent to the Seaside Highlands Project, City shall not be obligated to collect on behalf of Seaside Resort a reimbursement from each EVA Benefit Development, as defined in Recital J and specified in Section 4 for that development’s fair share of the cost of the Peralta EVA.

3.3 Collect Reimbursements for Military (Yosemite) EVA In Lieu Fees.

Provided that the Seaside Resort Project is determined by the City Manager to be the first EVA Benefit Development for which is granted a final subdivision map, use permit or a building permit from the City subsequent to the Seaside Highlands Project, City shall collect, on behalf of KB Bakewell and Seaside Resort, a reimbursement from each EVA Benefit Development (as defined in Recital I) for that EVA Benefit Development’s fair share of the cost of the Military (Yosemite) EVA In Lieu Fees. The amount to be paid Seaside Resort under this Section shall not exceed the Excess Amount ($215,907.00), which amount is the difference between the total amount paid by Seaside Resort for Military (Yosemite) EVA Fees ($294,150.00) and the amount that represents Seaside Resort’s fair share ($78,243.00) of the total cost of the Military (Yosemite) improvements ($588,300.00). The reimbursements paid by each EVA Benefit Development shall be paid in one-half equal amounts to KB Bakewell and to Seaside Resort as such amounts are collected by the City and until such time as Seaside Resort has been reimbursed $215,907.00. Thereafter, the full amount of any additional reimbursement paid by EVA Benefit Developments shall be paid by City to KB Bakewell in accordance with the KB Bakewell Reimbursement Agreement. Payments made by City to Seaside Resort shall be paid within 15 days after receipt by City of the reimbursement payment from an EVA Benefited Development, as defined in Section 7 below, by the Reimbursable Cost for the Military (Yosemite) EVA in lieu fee, as defined in Section 4 below. In the event the Seaside Resort Project is determined by the City Manager not to be the first development
project for which is granted a final subdivision map, a use permit, or a building permit from the City subsequent to the Seaside Highlands Project, City shall not be obligated to collect on behalf of Seaside Resort a reimbursement from each EVA Benefit Development (as defined in Recital I) for that development’s fair share of the cost of the Military (Yosemite) EVA in lieu fee.

3.4 Collect Reimbursement Upon Final Map, Use Permit or Building Permit. City shall collect the Reimbursements from an EVA Benefit Development in phases and prior to the approval of the final subdivision map for that phase of the EVA Benefit Development, or prior to the issuance of the first building permit for that phase for the EVA Benefit Development, whichever of the foregoing is first.

3.5 Relationship to other Benefit Development Agreements. Upon execution of this Agreement, its provisions shall be incorporated into other agreements with the developers and/or owners for the other EVA Benefit Developments.

3.6 Other Fees. Nothing contained herein shall be construed to obviate, cancel or annul any other requirements imposed by the City or Agency on Seaside Resort for the payment of development impact fees, any other fees, or for the construction of any improvements as a term or condition of the approval of the Seaside Resort Project, except for those fees specifically covered by this Agreement.

4. EVA Benefit Development’s Fair Share.

4.1 EVA Benefit Developments Identified. The EVA Benefit Developments are identified in Recital J above.

4.2 Determination of EVA Benefit Development’s Fair Share. An EVA Benefit Development’s fair share of the Peralta EVA and the Military (Yosemite) EVA In Lieu Payment is as shown in Chart A below. The dollar amount of the fair share payment to be paid by an EVA Benefit Development for the Peralta EVA shall be derived from multiplying the fair share percentage specified in Chart A that is assigned to the EVA Benefit Development by $200,881.00 (the full costs of the Peralta EVA). The dollar amount of the fair share payment to be paid by an EVA Benefit Development for the Military (Yosemite) EVA in lieu fee shall be derived by multiplying the fair share percentage specified in Chart A that is assigned to the EVA Benefit Development by $588,300.00 (the full costs of the Military (Yosemite) in lieu fee). An EVA Benefit Development’s fair share is based on that development’s projected number of calls for fire service divided by the total number of projected calls for fire service from all the EVA Benefit Developments, provided, however, that the fair share shall be as shown in Chart A below, regardless of the actual number of calls for fire service generated by an EVA Benefit-Development.
CHART "A"

<table>
<thead>
<tr>
<th>Property</th>
<th>General Polygon</th>
<th>Plan Calls</th>
<th>Fire Calls</th>
<th>Service Fair Share</th>
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<tbody>
<tr>
<td>Hayes Project (Seaside Highlands)</td>
<td>20a</td>
<td>58</td>
<td></td>
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</tr>
<tr>
<td>Stillwell “Kidney”</td>
<td>20b</td>
<td>54</td>
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<td>Sunbay Apartments</td>
<td>20g</td>
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<td>1.4%</td>
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<td>Brostrom Mobile Home Park</td>
<td>20g</td>
<td>73</td>
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<td>10.1%</td>
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<td>Polygon 20h or 20c (*)</td>
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<td>South Extension Housing</td>
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<td>5.6%</td>
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<td>University Village</td>
<td>20e</td>
<td>104</td>
<td></td>
<td>14.4%</td>
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<td>Golf Course Hotel (Seaside Resort Project)</td>
<td>22</td>
<td>96</td>
<td></td>
<td>13.3%</td>
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<tr>
<td>Eucalyptus Rd. Commercial Area</td>
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<td>37</td>
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<td><strong>Totals</strong></td>
<td><strong>721</strong></td>
<td></td>
<td></td>
<td><strong>100.0%</strong></td>
</tr>
</tbody>
</table>

(*) The first of either Polygon 20h or 20c on which civilian housing is developed is subject to the Reimbursement.

5. Notices. All notices and demands which either party is required or desires to give to the other shall be given in writing by certified mail, return receipt requested with appropriate postage paid, by personal delivery, by facsimile or by private overnight courier service to the address or facsimile number set forth below for the respective party, provided that if any party gives notice of a change of name or address or facsimile number, notices to that party shall thereafter be given as demanded in that notice. All notices and demands so given shall be effective only upon receipt by the party to whom notice or demand is being given.

   **If to City:**
   440 Harcourt Avenue
   Seaside, CA 93955
   Attention: ________, City Manager
   Fax: (831) 899-6227

   **If to Seaside Resort:**
   Seaside Resort Development, LLC
   2 McClure Way
   Seaside, CA 93955
   Attention: Richard Fitzgerald
   Fax: (831) 392-1035

6. Remedies. If there is a material breach of any provision of this Agreement, a non-breaching party may serve written notice of the breach on the breaching party. If the breach is not cured within sixty (60) days following receipt of the notice of breach (or such longer period as is reasonably necessary to remedy such breach, provided that the breaching party shall continuously and diligently pursue such remedy at all times until such breach is cured), the non-breaching party may bring an action for damages or an
action for specific performance or injunction to compel the breaching party to cure the breach.

7. **Attorneys’ Fees.** In the event that any party hereto institutes an action or proceeding, except for a declaration of the rights of the parties under this Agreement, for an alleged breach or default of, or any other action arising out of, this Agreement, or the transactions contemplated hereby, or in the event any party is in default of its obligations pursuant thereto, whether or not suit is filed or prosecuted to final judgment, the non-defaulting party or prevailing party shall be entitled to its actual attorneys’ fees and to any court costs incurred, in addition to any other damages or relief awarded.

8. **Entire Agreement.** This Agreement, together with all Exhibits hereto, constitutes the entire agreement among the parties hereto with respect to the subject matter hereof, and supersedes all prior understandings or agreements.

9. **Binding on Successors.** The Agreement shall be binding upon and inure to the benefit of the successors and assignees of the parties hereto.

10. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall, for all purposes, be deemed an original and all such counterparts, taken together, shall constitute one and the same instrument.
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

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: __________________________

City of Seaside, a municipal corporation

By: __________________________

___________, Mayor
Exhibit A
(EVA Benefit Development Locations)
**ATTACHMENT NO. 16**

**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 Agency for land (per lot) 75,000.00
- Total initial price paid to Agency for 25 lots 1,875,000.00

**Calculations**

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<tr>
<th>Month</th>
<th>Development Costs (which incl. land cost) per 25 lots</th>
<th>Gross Cash Receipts per 25 lots</th>
<th>Gross Cash Receipts less Development Costs</th>
<th>IRR on Gross Cash Receipts less Development Costs</th>
<th>Cash (from/to) Developer for IRR</th>
<th>Cash in Excess of IRR (Profit)</th>
<th>80% Profit to Developer</th>
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<td>(130,000.00)</td>
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<td>-24.37%</td>
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<tr>
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<td>-5.98%</td>
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<tr>
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<td>7.63%</td>
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<td>20% achieved</td>
<td>153,000.00</td>
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<td>20% achieved</td>
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<td>960,000.00</td>
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<td>20% achieved</td>
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<td>1,200,000.00</td>
<td>960,000.00</td>
<td>240,000.00</td>
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(5,125,000.00) 10,000,000.00 4,875,000.00 1,428,000.00 3,447,000.00 2,757,600.00 689,400.00

**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.