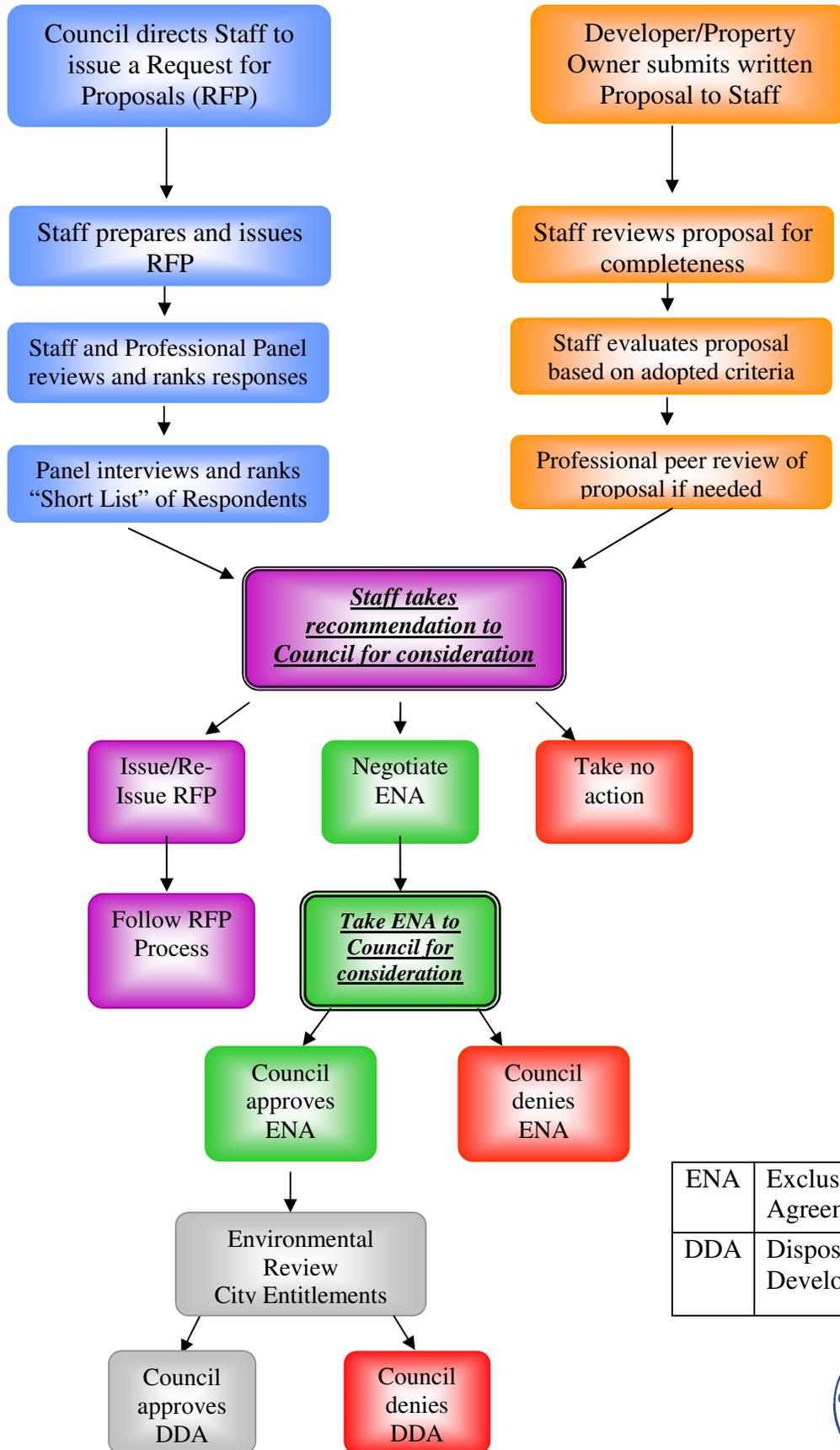


PROCESS FOR CONSIDERING PROJECT PROPOSALS

SOLICITED PROPOSALS

UNSOLICITED



ENA	Exclusive Negotiating Agreement
DDA	Disposition and Development Agreement



PROJECT PROPOSAL(SOLICITED/UNSOLICITED) REVIEW TIMELINE

Staff Receives an Unsolicited Proposal		
Staff reviews proposal for completeness	5-10 days	
Staff evaluates proposal based on adopted criteria	5-10 days	
Professional peer review of proposal if needed	5-10 days	
Staff takes recommendation to City Council for consideration	10-15 days	
Total Estimated Time	25 - 45 days	
Board Directs Staff to issue a Request for Proposals		
Staff prepares and issues RFP	25-45 days	
Proposal response time	25-45 days	
Staff and Professional Panel reviews and ranks responses	20 days	
Panel Interviews and ranks "Short List" of respondents	1 day	
Staff takes recommendation to City Council for consideration	14 days	
Total Estimated Time	90 - 125 days	
Council Directs Staff to Negotiate an Exclusive Negotiating Agreement		
Staff provides ENA boilerplate document with proposed terms and conditions	5-10 days	
Respondent review of and comment on draft ENA document and terms	5-10 days	
Negotiation of ENA terms; legal council review	10-15 days	
Staff takes ENA to Council for Consideration and Council approves ENA	10-15 days	
Total Estimated Time	30 - 50 days	
Environmental Review and Entitlement Process (1-24 months)		
Exempt		30 days
Addendum to EIR		4 months
Initial Study Negative Declaration/Mitigated Negative Declaration		6 months
Environmental Impact Report		12 - 24 months



REQUEST FOR QUALIFICATIONS/PROPOSALS BENEFITS AND EVALUATION CRITERIA

Below is a list of the benefits of following a solicited proposal process and issuing a Request for Qualifications/Proposals.

BENEFITS:

- ❖ Best Practice
- ❖ Ensures public and community are receiving options for development projects
- ❖ Enhances stewardship of public dollars
- ❖ Minimizes favoritism and politics
- ❖ Creates competition and transparency

The evaluation of solicited proposals will include, but not be limited to, the following:

CRITERIA:

- ❖ Consistency with adopted planning documents
 - Strategic Plan
 - General Plan/Specific Plan
 - FORA Base Reuse Plan
- ❖ Priority of City Council
- ❖ Jobs creation
- ❖ New investment in community
- ❖ Responds to market trends and conditions
- ❖ Community support
- ❖ Developer experience and credibility
- ❖ Financials; pro forma and return on investment
- ❖ Leverage of local assets
- ❖ Partnerships
- ❖ Local business participation



UNSOLICITED PROPOSAL SUBMITTAL CHECKLIST

Date: _____

Applicant Name/Title: _____

Contact Information: _____

Project Name: _____

Project Location: _____



All information requested including the fee, in this checklist must be received for staff to consider an unsolicited proposal request. Complete proposals will be evaluated based on the criteria outlined in the attached Unsolicited Proposal Evaluation Form.

	Received by	Date
Applicant(s) Contact Information: <ul style="list-style-type: none"> <input type="checkbox"/> Provide name, address, telephone, email and other pertinent contact information <input type="checkbox"/> Identify if sole proprietorship, partnership or corporation 		
Applicant(s) Experience: <ul style="list-style-type: none"> <input type="checkbox"/> List past relevant projects/experience 		
Project Location: <ul style="list-style-type: none"> <input type="checkbox"/> Identify project site location and list Assessor Parcel Numbers and property ownership. 		
Project Description: <ul style="list-style-type: none"> <input type="checkbox"/> Provide a one page written description of the proposed project including square footage estimate of all proposed uses <input type="checkbox"/> Provide a conceptual site plan of the project (bubble drawing) 		
Project Schedule: <ul style="list-style-type: none"> <input type="checkbox"/> Outline estimated project schedule including major milestones and any phasing of the project 		
Project Financial Structure: <ul style="list-style-type: none"> <input type="checkbox"/> State estimated project cost. <input type="checkbox"/> Identify sources of cash and structure of equity and/or debt financing <input type="checkbox"/> Submit the last three (3) years audited personal and/or corporate financial statements of the members of the team that would be expected to make an investment in the project. 		
Economic/Community Benefits: <ul style="list-style-type: none"> <input type="checkbox"/> Provide an estimated number and identify type of temporary and permanent jobs created. <input type="checkbox"/> Provide an estimate of potential revenue streams for the city. 		

UNSOLICITED PROPOSAL SUBMITTAL CHECKLIST

<input type="checkbox"/> Identify community benefits resulting from the project. (i.e.: amenities, resources or services).		
References: <input type="checkbox"/> Provide three (3) relevant business references		
Submittal: <input type="checkbox"/> Completed submittal checklist <input type="checkbox"/> Submittal fee: non-refundable deposit of \$1000.00 <input type="checkbox"/> All identified documents are submitted to Resources Management Services: Community and Economic Development Division of the City of Seaside 440 Harcourt Ave., Seaside, CA 93955		

For further assistance, please contact the Community and Economic Development Division at 831-899-6825.



UNSOLICITED PROJECT PROPOSAL EVALUATION FORM

Date: _____

Applicant: _____

Project Name: _____

Project Location: _____

Evaluator: _____



Evaluations are to be based on completeness of the project proposal, demonstrated qualifications and financial capacity of applicant, and consistency with the City's Strategic Planning Goals and Objectives and land use documents. Criteria to be considered will include, but not be limited to, the following:

- The qualifications, capacity and past experience of the applicant to execute projects of similar scale and type.
- Evidence of project team's capacity to raise sufficient equity/debt capital to carry the project to completion in a timely manner.
- Proposed project's consistency with the goals and objectives of the City's adopted plans and land use documents.

Criteria	Rating (Scale 1-5) (5 = highest)	Comments
Organization, clarity, and completeness of proposal		
Qualifications and experience of key personnel: Do the key personnel to be assigned to this project have experience with projects of a similar complexity and nature?		
Project Description: Does the proposal clearly describe the proposed project components including estimated square footage?		
Project Schedule: Does the proposed timeline meet the City's goals and objectives? Has the firm/team demonstrated its ability to achieve project delivery timelines for projects of a similar complexity and nature?		
Project Financing: Are identified sources of funds realistically obtainable and sufficient to ensure project completion?		
Consistency with City Goals and Objectives: Do the proposed project component(s) reflect(s) "highest and best use" of the site in that it is (they are) consistent with the City's Strategic		

UNSOLICITED PROJECT PROPOSAL EVALUATION FORM

Goals and objectives and land use documents?		
Public/Economic Benefit: What is overall impact on greater community and benefit to the city? What is the likely economic impact (e.g. revenue and job creation)?		
References: Do references of past experience support ability to implement and complete project?		
Total/Recommendation:		



EXCLUSIVE NEGOTIATING AGREEMENT STANDARD BUSINESS TERMS
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General Terms

- The ENA provides the development team time to define their project description, complete market and financial feasibility studies, and conduct due diligence for a proposed project. The Developer is required to provide a project description for CEQA and entitlement purposes.
- The ENA provides the City time to prepare and process all required environmental review, economic review and discretionary actions required for consideration of project approval and the conveyance of property for development.
- During the ENA Period the City or Successor Agency (Agency) shall not negotiate with any person or entity other than the Developer for the sale, lease or development of the identified site.
- Neither Party is under any obligation to enter into a Purchase and Sales Agreement (PSA), Disposition and Development Agreement (DDA) or Ground Lease.
- City or Agency may terminate the Agreement if Developer fails to comply with the ENA terms and conditions.
- All due diligence cost and expenses are born by the Developer. This includes staff time, legal fees, title search, environmental review, physical due diligence, engineering, financial, and feasibility investigations, reports and analysis.
- Land speculation is not permitted.

Developer Deposit

A base deposit of \$25,000 is required prior to execution of an ENA. This base deposit is to cover all costs incurred by the City related to the negotiation of the ENA and staff review of application submittals. These costs include fully burdened staff time, legal fees, and any other required consultant costs. This initial deposit will be increased in the range of \$5,000 to \$15,000 based on the complexity of the project. Project complexity is defined as follows.

plus \$ 5,000.00	Additional permit processing (i.e.: subdivision map, etc.)
plus \$10,000.00	Required code amendments
plus \$15,000.00	Required outside agency approval



<p>EXCLUSIVE NEGOTIATING AGREEMENT STANDARD BUSINESS TERMS</p>

Within six months of executing the ENA, the applicant must have submitted sufficient information for staff to initiate the required California Environmental Quality Act (CEQA) environmental review documents. Prior to commencing environmental review the applicant must deposit an additional amount in the range of \$5,000 to \$50,000 to cover all costs associated with the preparation and consideration of the required level of environmental documents.

\$5,000.00	Exempt
\$15,000.00	Initial Study/Negative Declaration
\$20,000.00	Initial Study/Mitigated Negative Declaration
\$50,000.00	Environmental Impact Report

Deposit amounts listed above are only the minimum initial amount and do not constitute the final total cost for project processing. Staff will not proceed or issue a notice to a consultant to proceed with a scope of work without sufficient funds deposited to cover the costs for such scope.

Current policy requiring that deposits are replenished on a monthly basis will remain unchanged. The Developer shall deposit with the City monies sufficient to replenish the deposit within ten (10) days after receipt of written invoice from the City showing the cost previously paid with deposit funds. Any remaining amount of the deposit shall be delivered to the Applicant within thirty (30) business days after the earlier of: (i) the execution of a Disposition and Development Agreement, or (ii) the termination of the ENA.

Term of ENA

Set term of one (1) year with a provision of up to one (1) five (5) months and one (1) three (3) months administrative extensions by the City Manager/Executive Director for the sole reason to allow for the completion of the required California Environmental Quality Act (CEQA) environmental review documents.

Requests for extensions for reasons other than the completion of CEQA required environmental review documents shall be taken to the City Council for consideration.



EXCLUSIVE NEGOTIATING AGREEMENT

This EXCLUSIVE NEGOTIATING AGREEMENT (this "ENA") is dated as of _____, 20__ (the "Effective Date") and is entered into by and between the CITY OF SEASIDE, a municipal corporation [as successor agency to the Redevelopment Agency of the City of Seaside] (the "City") and _____, a _____ (the "Developer"). The City and the Developer are sometimes individually referred to as a "Party" and are sometimes collectively referred to as the "Parties."

R E C I T A L S

A. The City owns the land in the City of Seaside, California that is generally depicted on the "Site Map" attached hereto as Attachment No. 1 (the "Site").

B. The City has received a proposal from Developer for the [purchase] [ground leasing] of the Site by the Developer and the development of _____ (the "Project") on the Site.

C. After considering the proposal of the Developer, the City has instructed the City's staff to proceed with this ENA between City and Developer to negotiate with each other on an exclusive basis to establish the terms and conditions of a [Ground Lease] [Disposition and Development Agreement] (the "Agreement") that would result in the Developer's [leasing] [acquisition] and development of the Site (the "Project").

D. The Developer and the City are willing to enter into this ENA setting forth, among other things, the terms pursuant to which the City will negotiate with the Developer on an exclusive basis for a specified period regarding the terms of the Agreement.

E. Through the ENA Period (as defined below), the staff, consultants and attorneys' of the City will devote substantial time and effort in meeting with the Developer and its representatives, reviewing proposals, plans and reports, and negotiating and preparing the terms of this ENA and the Agreement.

NOW, THEREFORE, the Parties hereto agree as follows:

1. The term of this ENA shall commence on the date hereof and shall end on the earlier of: (i) the date that is one (1) calendar year after the date of this ENA, as may be extended by the City Manager under this Section 1, or (ii) the date on which the City terminates this ENA as provided in Section 2 below (the "ENA Period"). Provided that the Developer is not in default under this ENA and the City has not terminated this ENA pursuant to Section 2 below, the ENA period may be extended by the mutual written agreement of Developer and the City Manager of the City (acting for the City) for five (5) calendar months and then for three (3) calendar months (*i.e.*, to _____ and then _____, respectively); provided, however, that the City Manager may only grant an extension if: (i) the Developer is not then in default under this ENA (including, without limitation, Section 7 below); (ii) there are no material issues remaining to be resolved with respect to the Agreement; and (iii) the applicable extension is necessary only to complete the CEQA Documents (as defined in Section 8 below) and then

obtain City Council approval of the Agreement (which approval may be given or withheld in the City's sole and absolute discretion).

2. The City may terminate this ENA if the Developer should fail to comply with or perform any provisions of this ENA, or if progress is not being made in negotiations hereunder, as determined by City in good faith but in its sole and absolute discretion.

3. If the Developer and the City staff have not fully negotiated and agreed upon the terms of the Agreement prior to the end of the ENA Period, then this ENA shall automatically terminate and, except as expressly provided herein, neither party hereto shall have any further rights or obligations under this ENA. In no event shall any such negotiated Agreement become effective unless duly approved by the City board after compliance with the California Environmental Quality Act and all other applicable laws.

4. During the ENA Period (as extended under Section 1, if applicable), the City shall not negotiate with any person or entity other than the Developer for the sale, lease or development of the Site.

5. The Developer shall deliver the materials and information identified on Attachment No. 2 attached hereto to the City within the times set forth on Attachment No. 2. At the beginning of each calendar month during the ENA Period (as extended under Section 1, if applicable), Developer shall provide a written report to the City describing in reasonable detail the Developer's activities with respect to the Project during the preceding calendar month.

6. During the ENA Period (as extended under Section 1, if applicable), the City shall use good faith efforts to complete (or cause to be completed) the matters set forth in Attachment No. 4 attached hereto.

7. Developer shall reimburse City for its actual out-of-pocket costs and expenses (including legal fees and costs) incurred in preparing this ENA and fulfilling its obligations under this ENA from the date hereof, including, but not limited to: (i) the cost of developing, reviewing and processing any general plan amendments and/or specific plan amendments for the Site; (ii) the cost of preparing, reviewing and processing the CEQA Documents (as defined in Section 8 below); (iii) the costs of staff review of Developer submittals and the costs of consultants retained by City in connection with the Agreement or Project (including, without limitation, attorneys' fees and costs) at the rates set forth on Attachment No. 4; and (iv) the cost of negotiation and preparing the Agreement (collectively, the "Reimbursable Costs"). Concurrently with its execution of this ENA, Developer shall deposit with the City the sum of _____ Hundred Thousand and No/100 Dollars (\$__00,000.00) **[INSERT APPROPRIATE AMOUNT BASED ON RANGE IN CITY'S "ENA STANDARD BUSINESS TERMS' POLICY]** and on or before the date that is six (6) calendar months after the date of this ENA, Developer shall deposit with City an additional _____ (\$_____) **[INSERT APPROPRIATE AMOUNT BASED ON RANGE IN CITY'S "ENA STANDARD BUSINESS TERMS" POLICY]** (the "Reimbursement Funds"). The Reimbursement Funds may be used and applied from time to time by the City to pay itself for Reimbursable Costs not otherwise paid or reimbursed by the Developer. The Developer shall deposit with the City funds sufficient to replenish the Reimbursement Funds held by City within ten (10) days after written demand by the City with a description of the costs paid from the Reimbursement Funds (unless previously described in writing to Developer). Any

remaining amount of the Reimbursement Funds shall be delivered to the Developer (along with a final accounting of the City's application of the Reimbursement Funds) within thirty (30) business days after the earlier of: (i) the execution of the Agreement by the Parties, or (ii) the termination of this ENA. The provisions of this Section shall survive the expiration or earlier termination of this ENA. Notwithstanding anything to the contrary in this ENA, express or implied, City shall have the right in its sole and absolute discretion to cease evaluation of submittals relating to the Project, stop any other staff work and/or work of its consultants and stop negotiating or discussing the Project and/or Agreement, in whole or in part, in the event that City determines that the sums then on deposit with City are not sufficient to pay for all of the projected/established Reimbursable Costs projected/estimated by City.

8. The City and Developer acknowledge that all applicable requirements of the California Environmental Quality Act ("CEQA") must be met in order to execute and deliver the Agreement and develop the Site and that this may require an environmental impact report, supplemental environmental impact report and/or other reports or analyses for CEQA purposes (collectively, the "CEQA Documents"). The Developer will, at its cost, fully cooperate with the City in the City's preparation of the CEQA Documents as the lead agency for the CEQA Documents.

9. Developer acknowledges that (a) if the Site or any portion thereof was part of the former Fort Ord, prevailing wages shall be paid in connection with the development of and construction on the Site by Developer (and any transferee of Developer) pursuant to Section 2(a) of the Implementation Agreement between City of Seaside and the Ford Ord Reuse Authority and Section 3.03.090 of the Fort Ord Reuse Authority Master Resolution described therein; and (b) prevailing wages may otherwise be required to be paid if the City provides any financial assistance to the Developer in connection with the Project.

10. Developer acknowledges that Developer shall be required to comply with (and to cause its contractors, subcontractors, tenants to comply with) the City's Local First Source Recruitment Policy, a copy of which is available from City staff, and to give preference to contractors in the City and then to contractors in the County.

11. The Developer shall bear all costs and expenses of any and all title, environmental, physical, engineering, financial, and feasibility investigations, reports and analyses and other analyses or activities performed by or for the Developer.

12. The Developer and the City understand and agree that neither Party is under any obligation whatsoever to enter into a Agreement. In the event of the expiration or earlier termination of this ENA, the City shall be free at the City's option to negotiate with any persons or entities with respect to the sale, lease and development of the Site.

13. The Developer shall indemnify, defend, and hold the City and City harmless from any and all costs, expenses, losses, claims, liabilities, damages and causes of action arising out of Developer's entering into or performing this ENA and/or Developer's failure to perform any obligation of Developer under this ENA. The Developer's obligations under the preceding sentence shall survive the expiration or earlier termination of this ENA.

14. The Developer represents and warrants that its undertakings pursuant to this ENA are for the purpose of development of the Site and not for speculation in land, and the

Developer recognizes that, in view of the importance of the redevelopment of the Site to the general welfare of the community, the qualifications and identity of the Developer and its principals are of particular concern to the City; therefore, this ENA may not be assigned by the Developer without the prior express written consent of the City in its sole and absolute discretion. However, the City acknowledges that the Developer may intend to form a new entity controlled by the parties comprising the Developer that will be the Developer entity that will be a party to the Agreement. The City shall have the right to review and approve the organizational documents of such entity and the entities comprising such entity.

15. Any notice, request, approval or other communication to be provided by one Party to the other shall be in writing and provided by certified mail, return receipt requested, or a reputable overnight delivery service (such as Federal Express) and addressed as follows:

If to the Developer:

If to the City:

City of Seaside
440 Harcourt Avenue
Seaside, CA 93955
Attn: City Manager

Notices shall be deemed delivered: (i) if sent by certified mail, then upon the date of delivery or attempted delivery shown on the return receipt; or (ii) if delivered by overnight delivery service, then one (1) business day after delivery to the service as shown by records of the service.

16. For purposes of the negotiations contemplated by this ENA, the Developer's representative shall be _____ (Phone: (____) _____; Email: _____) and the City's representative shall be _____ (Phone: (____) _____; Email: _____).

17. This ENA constitutes the entire agreement of the Parties hereto with respect to the subject matter hereof. There are no agreements or understandings between the Parties and no representations by either Party to the other as an inducement to enter into this ENA, except as expressly set forth herein. All prior negotiations between the Parties are superseded by this ENA. Neither the City nor its officers, members, staff or agents have made any representations, warranties or promises to the Developer other than as expressly set forth herein.

18. This ENA may not be altered, amended or modified except by a writing duly approved and executed by all Parties.

19. If any Party should bring any legal action or proceeding relating to this agreement or to enforce any provision hereof, or if the Parties agree to arbitration or mediation relating to this ENA, the Party in whose favor a judgment or decision is rendered shall be entitled to recover reasonable attorneys' fees and expenses from the other. The Parties agree that any legal action or proceeding or agreed-upon arbitration or mediation shall be filed in and shall occur in the County of Monterey.

20. The interpretation and enforcement of this ENA shall be governed by the laws of the State of California.

21. Time is of the essence of each and every provision hereof in which time is a factor.

22. This ENA may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same ENA.

IN WITNESS WHEREOF, the Parties hereto have executed this ENA as of the day and year first written above.

CITY:

DEVELOPER:

CITY OF SEASIDE

_____,
a _____

By: _____
_____,
Mayor

By: _____
Print Name: _____
Title: _____

Attest:

City Clerk

Approved at to Form:

ATTACHMENT NO. 1

SITE MAP

(Attached.)

Standard Form

ATTACHMENT NO. 2

SPECIFIC DEVELOPER TASKS

1. Within _____ calendar months after the date of this ENA, Developer shall deliver the following items for City staff review and approval:
 - i) Preliminary site plan and revised architectural concept drawings identifying the location, general configuration traffic circulation, and proposed design characteristics of the Project.
 - ii) Conceptual development program (“Development Program”) for the Project that include a breakdown of the proposed scope of development including a range of building square feet by land use and acreage by land use, improvements, approximate number and mix of any residential units, any affordable housing units by level of affordability, proposed public parks/amenities, circulation acreage, and other general uses.
 - iii) Detailed market analysis for the Project demonstrating the marketability of the proposed conceptual development program. If appropriate, the findings of the market study may be used to modify and refine the development concept.
2. Within _____ calendar months after the date of this ENA, Developer and City staff shall determine the likely type and schedule for obtaining entitlements necessary for construction of the Project including, but not limited to, discretionary permits.
3. Within _____ calendar months after the date of this ENA, Developer shall deliver to City for City staff review and approval, a preliminary financing plan for the proposed Project.
4. Within _____ calendar months after the date of this ENA, Developer shall submit to City a schedule of development setting forth the proposed timetable for the commencement, substantial completion and final completion of the Project (the “Development Schedule”).
5. Within _____ calendar months after the date of this ENA, Developer shall deliver to City for City staff review and approval, an organizational chart of the Developer that corresponds to the proposed Development Program.
6. Within _____ calendar months after the date of this ENA, Developer shall deliver to the City a fully completed and executed development application including all items identified on the City of Seaside Development Application Submittal Checklist.
7. Developer shall promptly provide comments to the City on the initial draft of the Agreement and subsequent drafts submitted by City.
8. Within _____ calendar months after the date of this ENA, Developer shall obtain and review a preliminary report for the Site from a title company selected by Developer and copies of the documents listed as title exceptions therein and shall deliver copies of the

reports and documents to City together with a written description of any objections Developer may have to any of the title exceptions (and the rationale for the objections), it being understood that Developer shall have the right under the Agreement to perform/obtain an ALTA survey at Developer's cost and reasonably object to items (and locations of title exceptions) disclosed by such survey.

Prior to execution of the Agreement, the Developer shall submit to the City for its review and approval all organizational documents for the entities signing the documents (and, to the extent requested by City, information, certifications and/or documents relating to the ownership, control and signing authority of the direct and indirect owners, members or partners of each such entity).

Standard Form

ATTACHMENT NO. 3**SPECIFIC CITY TASKS**

1. Within thirty (30) days after the Effective Date, City shall provide to Developer copies of all currently existing plans, studies and other written information regarding the Site in the possession of the City, to the extent not previously delivered to Developer and to the extent material to the Project. Thereafter, the City shall promptly provide to Developer within ten (10) days after receipt thereof copies of all plans, studies and other written information material to the Project which are received by the City.
2. As soon as they are available, the City shall provide the Developer with copies of contracts entered into between the City and its consultants for the Project. Developer shall have the right to review and provide input to any and all consultant contracts procured on its behalf prior to execution by the City.
3. Within _____ months after the date of this ENA, Developer and City staff shall determine the likely type and schedule for obtaining entitlements necessary for construction of the Project including, but not limited to, the Discretionary Permits.
4. City shall use good faith efforts to diligently prepare and process the required CEQA Documents. City agrees to submit a CEQA status report to the Developer monthly during the term of this ENA or as mutually determined by the Parties.
5. City and City staff will review the Developer's development application and other submissions in a timely manner.
6. On or before _____, City shall provide an initial draft of the Agreement to Developer and shall thereafter revise the draft Agreement to the extent reasonably permitted by the Agreement negotiations.
7. No consents, approvals or comments by City staff or City staff shall diminish, affect or waive either: (i) rights of the City to later impose conditions and requirements under CEQA; (ii) the rights of the City not to approve the Agreement; (iii) the City's governmental rights, powers and obligations.

ATTACHMENT NO. 4

STAFF HOURLY RATES

(Attached.)

Standard Form

DISPOSITION AND DEVELOPMENT AGREEMENT STANDARD BUSINESS TERMS

The standard business terms for the negotiation of a Disposition and Development Agreement (DDA) are outlined below.

- The DDA states the negotiated business terms for the conveyance of property and conditions for its development. Each development is unique and is site specific for the terms and conditions within the DDA.
- Business terms include, but are not limited to, the purchase price, conditions to Close of Escrow, and any negotiated revenue sharing or subsidy.
- Conditions for development include defining the project and the permitted use and operation of the property. Primary conditions include, but are not limited to, the following.
 - No land speculation
 - Compliance with prevailing wage law
 - First Source Hiring during construction
 - Anti-discrimination in construction contracts
 - Insurance/Bonding for construction
 - Schedule of Performance for development
 - Remedies in the event of default



DISPOSITION AND DEVELOPMENT AGREEMENT STANDARD BUSINESS TERMS

The standard business terms for the negotiation of a Disposition and Development Agreement (DDA) are outlined below.

- The DDA states the negotiated business terms for the conveyance of property and conditions for its development. Each development is unique and is site specific for the terms and conditions within the DDA.
- Business terms include, but are not limited to, the purchase price, conditions to Close of Escrow, and any negotiated revenue sharing or subsidy.
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 - No land speculation
 - Compliance with prevailing wage law
 - First Source Hiring during construction
 - Anti-discrimination in construction contracts
 - Insurance/Bonding for construction
 - Schedule of Performance for development
 - Remedies in the event of default



DISPOSITION AND DEVELOPMENT AGREEMENT

by and between the

CITY OF SEASIDE

and

_____ ,

a _____

Standard Form

DISPOSITION AND DEVELOPMENT AGREEMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (the “Agreement”) is dated as of _____, 20__ [TO BE DATED AS OF THE DATE OF EXECUTION BY THE CITY] and is entered into by and between the CITY OF SEASIDE, a municipal corporation [as successor agency to the Redevelopment Agency of the City of Seaside] (the “City”), and _____, a California municipal corporation (“Developer”).

RECITALS

- A. City owns the land described on Exhibit “A” [and the improvements thereon] (the “Property”).
- B. Developer desires to acquire the Property from City for the purpose of developing a _____ (the “Project”).

A material inducement to the City to enter into this Agreement is the agreement by Developer to develop the Project as provided herein.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants contained in this Agreement, the parties hereto agree as follows:

1. DEFINITIONS.

1.1 Definitions. The following capitalized terms used in this Agreement shall have the meanings set forth below:

- 1.1.1 “Agreement” means this Disposition and Development Agreement.
- 1.1.2 “Approved Title Exceptions” is defined in Section 2.4.1.
- 1.1.3 “Building Permit” means, collectively, any and all permits necessary to grade the Land and construct the Project that would be issued by the City.
- 1.1.4 “Certificate of Completion” means the certificate described in Section 3.12.
- 1.1.5 “City” means the City of Seaside, a municipal corporation.
- 1.1.6 “City Manager” means the City Manager of the City (which is currently _____).
- 1.1.7 “Close of Escrow” is defined in Section 2.3.
- 1.1.8 “Construction Contract” is defined in Section 3.3.

- 1.1.9 “Construction Loan” is defined in Section 3.4.
- 1.1.10 “Default” is defined in Section 6.1.
- 1.1.11 “Deposit” is defined in Section 2.2.
- 1.1.12 “Disapproved Title Exceptions” is defined in Section 2.4.1.
- 1.1.13 “Escrow” is defined in Section 2.3.
- 1.1.14 “Escrow Holder” means _____.
- 1.1.15 “FIRPTA Affidavit” is defined in Section 2.8.1.3.
- 1.1.16 “Force Majeure Delay” is defined in Section 6.7.
- 1.1.17 “General Contractor” is defined in Section 3.3.
- 1.1.18 “Grant Deed” is defined in Section 2.4.5.

1.1.19 “Hazardous Materials” means any chemical, material or substance now or hereafter defined as or included in the definition of hazardous substances, hazardous wastes, hazardous materials, extremely hazardous waste, restricted hazardous waste, toxic substances, pollutant or contaminant, imminently hazardous chemical substance or mixture, hazardous air pollutant, toxic pollutant, or words of similar import under any local, state or federal law or under the regulations adopted or publications promulgated pursuant thereto applicable to the Land, including, without limitation: the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601, et seq. (“CERCLA”); the Hazardous Materials Transportation Act, as amended, 49 U.S.C. 1801, et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq.; and the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901, et seq. (“RCRA”) The term Hazardous Materials shall also include any of the following: any and all toxic or hazardous substances, materials or wastes listed in the United States Department of Transportation Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR, Part 302) and in any and all amendments thereto in effect as of the Close of Escrow Date; oil, petroleum, petroleum products (including, without limitation, crude oil or any fraction thereof), natural gas, natural gas liquids, liquefied natural gas or synthetic gas usable for fuel, not otherwise designated as a hazardous substance under CERCLA; any substance which is toxic, explosive, corrosive, reactive, flammable, infectious or radioactive (including any source, special nuclear or by product material as defined at 42 U.S.C. 2011, et seq.), carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority; asbestos in any form; urea formaldehyde foam insulation; transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls; radon gas; or any other chemical, material or substance (i) which poses a hazard to the Land, to adjacent properties, or to persons on or about the Land, (ii) which causes the Land to be in violation of any of the aforementioned laws or regulations, or (iii) the presence of which on or in the Land requires investigation, reporting or remediation under any such laws or regulations.

1.1.20 “Holder” is defined in Section 4.4.

1.1.21 “Improvements” means all buildings, landscaping, infrastructure, utilities, and other improvements to be built on the Land, as described in the Scope of Development.

1.1.22 “Land” means the land described on Exhibit “A” attached hereto.

1.1.23 “Party” means any party to this Agreement, and “Parties” means all parties to this Agreement.

1.1.24 “Permitted Exceptions” is defined in Section 2.4.5.

1.1.25 “Plans and Specifications” means all drawings, landscaping and grading plans, engineering drawings, final construction drawings, and any other plans or specifications for construction of the Project.

1.1.26 “Project” means the Land and Improvements.

1.1.27 “Project Budget” is defined in Section 2.7.7.

1.1.28 “Purchase Price” is defined in Section 2.1.

1.1.29 “Released Parties” is defined in Section 2.9.4.

1.1.30 “Schedule of Performance” means the schedule on Exhibit “B” attached hereto and incorporated by reference herein.

1.1.31 “Scope of Development” means the description of the Project set forth in Exhibit “C” attached hereto and incorporated by reference herein.

1.1.32 “Site Designs” is defined in Section 6.8.

1.1.33 “Title Company” shall mean the Escrow Holder (i.e., the Title Company and the Escrow Holder are the same).

1.1.34 “Transfer” is defined in Section 4.1.1.

1.1.35 “Transferee” is defined in Section 4.1.2.

1.1.36 “Withholding Affidavit” is defined in Section 2.8.1.2.

2. PURCHASE AND SALE OF THE PROPERTY; PURCHASE PRICE; DEPOSIT.

2.1 Purchase and Sale; Purchase Price. In accordance with and subject to the terms and conditions hereinafter set forth, the City agrees to sell the Land to Developer, and Developer agrees to purchase the Land from the City. The purchase price for the Land to be paid by Developer (the “Purchase Price”) shall be _____ (\$_____). Notwithstanding

anything to the contrary contained herein, the Close of Escrow shall not occur until such time as the Closing Conditions, as defined in Section 2.7 hereof, have been satisfied.

2.2 Deposit. Within ten (10) business days after the date this Agreement is executed by the City and delivered to Developer, the Developer shall deposit the sum of \$_____ with Escrow Holder (together with all interest thereon, the "Deposit"). The Deposit shall be held by Escrow Holder in an interest bearing account. The Deposit shall be credited to the Purchase Price at the Close of Escrow. In the event the Close of Escrow does not occur due to a default by Developer, the Deposit shall be delivered to and retained by the City as liquidated damages for such default. DEVELOPER AND AGENCY AGREE THAT BASED UPON THE CIRCUMSTANCES NOW EXISTING, KNOWN AND UNKNOWN, IT WOULD BE IMPRACTICAL OR EXTREMELY DIFFICULT TO ESTABLISH AGENCY'S DAMAGES BY REASON OF A DEFAULT BY DEVELOPER PRIOR TO THE CLOSE OF ESCROW. ACCORDINGLY, DEVELOPER AND AGENCY AGREE THAT IN THE EVENT OF A DEFAULT BY DEVELOPER PRIOR TO THE CLOSE OF ESCROW, AGENCY SHALL BE ENTITLED TO RETAIN THE DEPOSIT, PLUS ANY ACCRUED INTEREST THEREON, AS LIQUIDATED DAMAGES.

2.3 Opening and Closing of Escrow. Within five (5) business days after the Date this Agreement is executed by the City and delivered to Developer, the City and the Developer shall cause an escrow (the "Escrow") to be opened with Escrow Holder for the sale of the Land by the City to Developer. The Parties shall deposit with Escrow Holder a fully executed duplicate original of this Agreement as the escrow instructions for the Escrow. The City and Developer shall provide such additional instructions as shall be necessary and consistent with this Agreement. Provided that each of the conditions to closing described in Section 2.7 have been satisfied, Escrow shall close (the "Close of Escrow") on or before _____, 20____. If the Close of Escrow does not occur by such date, any party not then in default may terminate this Agreement by written notice to the other and all the funds and documents deposited with Escrow Agent shall be promptly refunded or returned, as the case may be, by Escrow Agent to the depositing party, except that all escrow and title cancellation fees shall be paid by Developer.

2.4 Condition of Title; Title Insurance.

2.4.1 Survey; Title Exceptions. Developer acknowledges receipt of preliminary report No. _____ dated _____ (the "PTR") prepared by _____ Title Company (the "Title Company") and Developer hereby approves the title exceptions in the PTR, except for _____ which Developer desires to have plotted on an ALTA survey to be obtained by Developer at Developer's cost (the "Survey") and except for any other title exceptions revealed by the Survey. Upon the execution of this Agreement, Developer shall diligently cause the Survey to be performed as permitted by and subject to the terms of Section 2.7.2 below and shall promptly (but in no event later than _____) deliver a copy of the Survey to the City together with any reasonable written objections (if any) to items _____ in the PTR or other title exceptions shown on the Survey with a written explanation thereof. City shall then have _____ business days to notify Developer in writing that City will: (a) remove one or more of the applicable exception(s) or cause them to be removed by the end of the Due Diligence Period (as defined in Section ____ below or insured over by the Title Company);

(b) decline to remove exceptions (or to cause them to be removed). Failure by City to so notify Developer shall be deemed to be City's election not to remove or otherwise address the applicable title exception(s). If City notifies Developer that City will remove (or cause to be removed) one or more of such title exceptions, then City shall do so on or before the expiration of the Due Diligence period (unless this Agreement is terminated by Developer under this Section or Section 2.7.2 below). If City fails to so notify Developer as to any exception, or declines to remove title exceptions, then Developer may terminate this Agreement by written notice to City given on or before _____. If Developer fails to so terminate this Agreement, Developer shall be deemed to have approved and accepted the applicable title exceptions. The term "Disapproved Title Exceptions" shall mean the title exceptions specifically listed above and any title exceptions that City has agreed to remove, cause to be removed or cause to be "insured over".

2.4.2 At the Close of Escrow, the City shall convey title to the Land to Developer by grant deed substantially in the form attached hereto as Exhibit "D" (the "Grant Deed"). Title to the Land shall be conveyed subject to: (i) non delinquent current real property taxes and assessments not yet due for the tax year during which the conveyance occurs, (ii) all Approved Title Exceptions, (iii) the terms of this Disposition and Development Agreement (as referenced in the Grant Deed), and (iv) any matters which arise out of the actions of Developer, Developer's Designee's or Developer's agents and representatives (collectively, the "Permitted Exceptions").

2.5 Conditions to Close of Escrow. The obligation of the City and Developer under this Agreement to close Escrow shall be subject to the satisfaction (or express written waiver by the benefited party) of each of the following conditions (collectively, the "Closing Conditions"):

2.5.1 There shall have been no change to the physical condition of the Land and no new title exceptions after _____, 20____ [DATE OF THE LATEST TITLE EXCEPTION IN LAST TITLE REPORT DELIVERED TO DEVELOPER] that, in either case, would materially and adversely affect the development, use or operation of the Project.

2.5.2 City's removal (or Title Company's reasonably insuring over) the Disapproved Title Exceptions.

2.5.3 The representations and warranties of the City and Developer contained in this Agreement being true and correct.

2.5.4 The delivery by City and Developer of all documents and funds required to be delivered pursuant to Section 2.8 hereof.

2.5.5 The Title Company shall have committed to issue at the Close of Escrow an ALTA extended coverage Owner's Title Insurance Policy, with any endorsements reasonably requested by Developer, showing fee simple title to the Land vested in Developer (or Developer's assignee as permitted by this Agreement), subject only to the Permitted Exceptions.

2.5.6 Developer shall have submitted to the City Manager, and the City Manager shall have approved, a comprehensive Project budget, showing line items for each type of expenditure and the applicable sources of funds, together with a copy of all commitments obtained by the Developer for construction financing, permanent financing, and other financing from external sources (including proposed joint ventures and partnerships) to assist in financing the development of the Development, certified by the Developer to be true and correct, and an audited financial statement (or other evidence in a form satisfactory to the City) demonstrating that the Developer has sufficient additional capital funds available and is committing such funds to cover the difference, if any, between costs of development of the Development and the amount available to the Developer from external sources (the "Project Budget").

2.5.7 The Developer shall have delivered to the City a copy of the construction loan budget (and reasonable evidence of its approval by the Construction Lender) to City, and such construction loan budget must be consistent with the Project Budget.

2.5.8 The Construction Loan (as hereinafter defined), shall close concurrently with the Close of Escrow.

2.5.9 The City Manager shall have approved the executed Construction Contract for the Project, as provided in Section 3.3 hereof.

2.5.10 The Developer shall have submitted to the City Manager a description of the legal and ownership structure of the Developer and any assignee (and its organizational documents) and the Executive Director shall have approved such entity and documents.

2.5.11 The City shall have received evidence acceptable to the City Manager that the construction-related insurance required by Section 7.1 of this Agreement shall be in effect.

2.5.12 All conditions to the issuance of the Building Permit, the specific plan for the Land, and any and all other governmental permits, consents or authorizations required for the development, construction, operation or use of the Project (excluding certificates of occupancy and the like that cannot be issued until completion) shall have been approved/issued.

2.5.13 The Developer shall have provided evidence to the City that the obligations of Developer's general contractor to construct and complete the Project (pursuant to the Construction Contract) have been bonded, for the express benefit of Developer, Developer's construction lender and the City. To that end, Developer shall secure and deposit with the City a Performance Bond and a Labor and Material Payment Bond (in the form of AIA form A311 or A312), issued by a surety admitted to issue insurance in the State of California and otherwise acceptable to the City Manager, securing the faithful performance by the General Contractor of the completion of construction of the Improvements free of all liens and claims, within the time provided in the Schedule of Performance attached hereto. Such bond shall be in an amount equal to one hundred percent (100%) of the stipulated sum or guaranteed maximum price, as applicable. Such construction bond shall name the City as a co obligee and may also name

Developer and Developer's construction lender as co obligees. Such construction bond shall be issued by a company acceptable to the City and listed in the current United States Treasury Department circular 570 and otherwise within the underwriting limits specified for that company in such circular. All of the foregoing shall be satisfactory in form and substance to the City's Executive Director.

2.5.14 Developer and City shall have performed, observed and complied with all covenants, agreements and conditions required by this Agreement to be performed, observed and complied with on its part prior to or as of the Close of Escrow.

2.6 Costs; Escrow Holder Settlement Statement.

2.6.1 Developer shall be solely responsible for all costs and expenses related to all surveys, title policies (and endorsements thereto), escrow charges, recording fees, and transfer taxes, and shall, in addition, promptly reimburse the City after receipt of written demand therefore for all third party fees and expenses (including, but not limited to, attorneys' fees and expenses) incurred by the City in the negotiation of this Agreement.

2.6.2 Escrow Holder is authorized on the Close of Escrow to pay and charge the Developer for any fees, charges and costs payable under Section 2.6.1 as set forth on the settlement statements approved by the Parties. Before such payments are made, Escrow Holder shall notify the City and Developer of the fees, charges, and costs necessary to close under the Escrow, by delivering draft settlement statements to the Parties for their mutual approval.

2.7 Condition of the Property.

2.7.1 "As-Is" Sale. Developer acknowledges and agrees that, except as expressly set forth herein, Developer is acquiring the Land in its "AS IS" condition, WITH ALL FAULTS, IF ANY, AND, EXCEPT AS EXPRESSLY SET FORTH HEREIN, WITHOUT ANY WARRANTY, EXPRESS OR IMPLIED and neither City nor any agents, representatives, officers, or employees of City have made any representations or warranties, direct or indirect, oral or written, express or implied, to Developer or any agents, representatives, or employees of Developer with respect to the condition of the Land, its fitness for any particular purpose, or its compliance with any laws, and Developer is not aware of and does not rely upon any such representation to any other party. Except as expressly set forth herein, neither City nor any of its representatives is making or shall be deemed to have made any express or implied representation or warranty, of any kind or nature, as to (a) the physical, legal or financial status of the Land, (b) the Land's compliance with applicable laws, (c) the accuracy or completeness of any information or data provided or to be provided by City, or (d) any other matter relating to the Land.

2.7.2 Inspections by Developer. Upon the execution of this Lease until _____ (the "Due Diligence Period"), Developer and its contractors and consultants who are designated in writing to City ("Developer Designee's") shall have the right to enter onto the Property (without disturbing any occupants thereof) for the purpose of performing the Survey, hazardous materials inspections, soils inspections and other physical inspections and investigations; provided, however, that: (a) Developer shall deliver copies of all

inspection reports to City; (b) no inspections or investigations shall damage the Property or any improvements thereon or shall be “invasive” unless the City has received a plan describing the scope of the inspection or investigation and has approved such plan in writing, which approval shall not be unreasonably withheld; (c) Developer shall immediately repair all damage caused by or related to its inspections; and (d) neither Developer nor any of Developer’s Designees shall enter the Property unless Developer has provided City reasonable written evidence (such as insurance certificates and/or copies of policies) that the activities of Developer and the Developer Designees are covered by reasonable liability insurance naming City as an additional insured. Developer shall defend, indemnify and hold City harmless from and against any and all claims, liabilities, losses, damages, costs and expenses (including, without limitation, attorneys’ fees and cost) resulting from the entry onto the Property, inspections or tests by Developer or Developer’s Designees. If Developer reasonably disapproves or objects to any condition of the Property, then Developer may terminate this Agreement by written notice to City given on or prior to the end of the Due Diligence Period that describes the basis for the disapproval or objection.

2.7.3 Releases and Waivers. Developer acknowledges and agrees that in the event Developer does not approve of the condition of the Property under Section 2.7.2, Developer’s sole right and remedy shall be to terminate this Agreement under and in accordance with Section 2.7.2, and Developer hereby waives any and all objections to or complaints regarding the Land and its condition, including, but not limited to, federal, state or common law based actions and any private right of action under state and federal law to which the Land is or may be subject, including, but not limited to, CERCLA (as defined in Section 1.1.19), RCRA (as defined in Section 1.1.19), physical characteristics and existing conditions, including, without limitation, structural and geologic conditions, subsurface soil and water conditions and solid and hazardous waste and Hazardous Materials on, under, adjacent to or otherwise affecting the Land. Developer further hereby assumes the risk of changes in applicable laws and regulations relating to past, present and future environmental conditions on the Land and the risk that adverse physical characteristics and conditions, including, without limitation, the presence of Hazardous Materials or other contaminants, may not have been revealed by its investigations.

Developer and anyone claiming by, through or under Developer also hereby waives its right to recover from and fully and irrevocably releases City and its council members, board members, employees, officers, directors, representatives, agents, servants, attorneys, successors and assigns (“Released Parties”) from any and all claims, responsibility and/or liability that it may now have or hereafter acquire against any of the Released Parties for any costs, loss, liability, damage, expenses, demand, action or cause of action arising from or related to (i) the condition (including any defects, errors, omissions or other conditions, latent or otherwise, and the presence in the soil, air, structures and surface and subsurface waters of materials or substances that have been or may in the future be determined to be Hazardous Materials or otherwise toxic, hazardous, undesirable or subject to regulation and that may need to be specially treated, handled and/or removed from the Land under current or future federal, state and local laws regulations or guidelines), valuation, salability or utility of the Land, or its suitability for any purpose whatsoever, and (ii) any information furnished by the Released Parties under or in connection with this Agreement. This release includes claims of which Developer is presently unaware or which Developer does not presently suspect to exist which, if known by

Developer, would materially affect Developer's release to City. Developer specifically waives the provision of California Civil Code Section 1542, which provides as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR EXPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM MUST HAVE MATERIALLY AFFECTED THE SETTLEMENT WITH THE DEBTOR.”

In this connection and to the extent permitted by law, Developer hereby agrees, represents and warrants that Developer realizes and acknowledges that factual matters now unknown to it may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and Developer further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that Developer nevertheless hereby intends to release, discharge and acquit Released Parties from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which might in any way be included as a material portion of the consideration given to City by Developer in exchange for City's performance hereunder.

Developer hereby agrees that, if at any time after the Close of Escrow any third party or any governmental agency seeks to hold Developer responsible for the presence of, or any loss, cost or damage associated with, Hazardous Materials in, on, above or beneath the Land or emanating therefrom, then Developer waives any rights it may have against City in connection therewith, including, without limitation, under CERCLA (as defined in Section 1.1.19 and Developer agrees that it shall not (i) implead the City, (ii) bring a contribution action or similar action against City, or (iii) attempt in any way to hold City responsible with respect to any such matter. The provisions of this Section 2.7.3 shall survive the Close of Escrow.

City has given Developer material concessions regarding this transaction in exchange for Developer agreeing to the provisions of this Section 2.7.3. City and Developer have each initialed this Section 2.7.3 to further indicate their awareness and acceptance of each and every provision hereof.

AGENCY'S INITIALS

DEVELOPER'S INITIALS

2.7.4 Environmental Indemnity. From or after the Close of Escrow, Developer shall indemnify, protect, defend and hold harmless the City, and the City's and City's officials, officers, attorneys, employees, consultants, agents and representatives, from and against any and all claims, liabilities, suits, losses, costs, expenses and damages, including but not limited to attorneys' fees and costs, arising directly or indirectly out of any claim for loss or damage to any property, including the Land, injuries to or death of persons, or for the cost of cleaning up the Land and removing Hazardous Materials or toxic substances, materials and waste therefrom, by reason of contamination or adverse effects on the environment, or by reason of any statutes, ordinances, orders, rules or regulations of any governmental entity or agency requiring

the clean up of any Hazardous Materials caused by or resulting from any Hazardous Material, or toxic substances or waste existing on or under, any portion of the Land acquired by Developer.

2.8 Deposits into Escrow.

2.8.1 The City hereby covenants and agrees to deliver to Escrow Holder prior to the Close of Escrow the following instruments and documents, the delivery of each of which shall be a condition of the Close of Escrow:

2.8.1.1 A Grant Deed duly executed and acknowledged by the City, in the form attached hereto as Exhibit "D".

2.8.1.2 The affidavit as contemplated by California Revenue and Taxation Code 590 ("Withholding Affidavit");

2.8.1.3 A Certification of Non Foreign Status in accordance with I.R.C. Section 1445 (the "FIRPTA Certificate");

2.8.1.4 An executed and acknowledged Counterpart of the Memorandum of Disposition and Development Agreement in the form attached hereto as Exhibit "E"; and

2.8.1.5 Such proof of the City's authority and authorization to enter into this transaction as the Title Company may reasonably require in order to issue Developer's policy of title insurance.

2.9 Authorization to Record Documents and Disburse Funds. Escrow Holder is hereby authorized to record the documents and disburse the funds and documents called for hereunder upon the Close of Escrow, provided each of the following conditions has then been fulfilled:

(i) The Title Company can issue in favor of Developer an ALTA Extended Coverage Owner's Policy of Title Insurance, with liability equal to the Purchase Price (or such lesser amount as shall have been requested by Developer), showing the Land vested in Developer subject only to the Permitted Title Exceptions.

(ii) The City shall have deposited in Escrow the documents required pursuant to Section 2.10.1, and Developer shall have deposited in Escrow the Purchase Price and all Escrow closing costs.

(iii) The City and Developer have confirmed to Escrow Holder that all of the other closing conditions set forth in Section 2.5 have been satisfied or expressly waived in writing by the Party(s) benefited thereby.

Unless otherwise instructed in writing, Escrow Holder is authorized to record at the Close of Escrow any instrument delivered through this Escrow if necessary or proper for issuance of Developer's title insurance policy.

2.10 Escrow's Closing Actions. On the Close of Escrow, Escrow Holder shall:

2.10.1.1 Record the Grant Deed in the Official Records of Monterey County (which shall be deemed delivery of said instruments to Developer);

2.10.1.2 Issue the Title Policy (or cause the Title Company to issue the Title Policy);

2.10.1.3 Prorate taxes, assessments, rents, and other charges as of the Close of Escrow in accordance with the settlement statements approved by the Parties.

2.10.1.4 From funds deposited by Developer, pay prorated amounts and charges to be paid by or on behalf of Developer, and return any excess to Developer;

2.10.1.5 Prepare and deliver to both Developer and the City one signed copy of Escrow Holder's closing statement showing all receipts and disbursements of the Escrow; and

2.10.1.6 Deliver the FIRPTA Certificate and the Withholding Affidavit to Developer.

2.11 Additional Instructions. If required by the Escrow Holder, the Parties shall execute appropriate escrow instructions, prepared by the Escrow Holder, which are not inconsistent herewith. If there is any inconsistency between the terms hereof and the terms of the escrow instructions, the terms hereof shall control unless an intent to amend the terms hereof is expressly stated in such instructions.

3. DEVELOPMENT COVENANTS.

3.1 Development of the Project. Developer shall develop the Improvements on the Land in accordance with the Scope of Development, the Schedule of Performance, all requirements of any and all applicable federal, state and local laws, rules and regulations (including any conditions of approval required by the City in its governmental capacity), the Plans and Specifications, and all other terms, conditions and requirements of this Agreement. Developer shall comply with the Schedule of Performance in a timely manner, provided that the obligations of Developer set forth therein which are to be performed after the Close of Escrow shall be delayed by Force Majeure Delays, if applicable, and provided, further, that the Executive Director may extend any deadline therein in his sole and absolute discretion, not to exceed ninety (90) days per applicable deadline. Until a Certificate of Completion is issued, the Developer shall provide the City with periodic progress reports, as reasonably requested by the City, regarding the status of the construction of the Improvements.

If Close of Escrow occurs and thereafter Developer fails to cause the Project to qualify for a certificate of occupancy by the date which is [_____ calendar months following the date of this Agreement] subject to extensions due to delays in construction caused by reason of any Force Majeure Delay (as defined in Section 6.7), then Developer shall pay damages to the City for such failure to open by such date in the sum of _____ Dollars

(\$ _____) per day thereafter (payable from time to time within ten (10) days after written demand from City), until the Project qualifies for a certificate of occupancy which shall constitute City's liquidated damages for such failure to qualify for a certificate of occupancy by such date: provided, however, that if Developer relinquishes its right to develop the Project pursuant to this Agreement and reconveys title to the Land to the City free of any liens or encumbrances created by the Developer, such penalty shall thereupon cease to apply from and after the date of such reconveyance. Such payments shall be due from time to time within ten (10) days after receipt of demand therefor from the City given from time to time. DEVELOPER AND AGENCY AGREE THAT BASED UPON THE CIRCUMSTANCES NOW EXISTING, KNOWN AND UNKNOWN, IT WOULD BE IMPRACTICAL OR EXTREMELY DIFFICULT TO ESTABLISH AGENCY'S DAMAGES BY REASON OF A DEFAULT BY DEVELOPER CONSISTING OF THE FAILURE TO CAUSE THE PROJECT TO QUALIFY FOR A CERTIFICATE OF OCCUPANCY ON OR BEFORE THE DEADLINE DESCRIBED ABOVE. ACCORDINGLY, DEVELOPER AND AGENCY AGREE THAT IN THE EVENT OF SUCH DEFAULT BY DEVELOPER, AGENCY SHALL BE ENTITLED TO THE SUM OF \$ _____ PER DAY AFTER SUCH DEADLINE UNTIL THE PROJECT QUALIFIES FOR A CERTIFICATE OF OCCUPANCY AS LIQUIDATED DAMAGES.

3.2 City's Right to Review Plans and Specifications. In connection with construction of the Project, Developer shall comply in all respects with Plans and Specifications approved by the City and the City. The City shall have the right to review all Plans and Specifications for the Improvements prior to their submission to the City to ensure that the Improvements are constructed in accordance with the Scope of Development and the other applicable provisions of this Agreement.

3.3 Construction Contracts. Developer shall retain one or more reputable and financially responsible general contractors (each, a "General Contractor") to undertake the construction of the Project. Each General Contractor shall be acceptable to and approved in writing by the City Manager (in the exercise of his sole and absolute discretion), licensed in California, shall have any other licenses required by the City, and shall be experienced in constructing the type of improvements constituting the Improvements. On or before the date set forth in the Schedule of Performance, Developer shall enter into a written contract, in form and substance acceptable to the City Manager (the "Construction Contract"), with the General Contractor(s) for performing the work constituting the construction of all of the Project. Each such Construction Contract shall be a guaranteed maximum cost contract or stipulated sum insuring construction of the improvements for a fixed or maximum price, and shall obligate the General Contractor to commence and complete such construction in accordance with this Agreement and all applicable federal, state and local laws, rules and regulations. Each such Construction Contract shall provide for retention of at least ten percent from each progress payment (except there shall be no retention for any items excused from retention as specified in the Construction Contract) until the final payment, and said final payment shall not be paid to the General Contractor until the portion of the Project covered by such Construction Contract shall have been completed to Developer's satisfaction, and Developer shall have obtained all appropriate lien waivers from the General Contractor and its subcontractors, or bonds acceptable to Developer in form and amount, insuring against loss arising from any mechanics', laborers', materialmen's or other like liens filed against the Land.

The Developer shall include provisions within all Construction Contracts which require the construction contractors and their subcontractors to adhere to: (i) the City's Local First Source Recruitment Policy attached hereto as Exhibit "F"; and (ii) the following local preferences in selecting its contractors and hiring construction workers: (a) first preference shall be for contractors and subcontractors located in the City of Seaside, and (b) second preference should be for contractors and subcontractors located in the County of Monterey. Nothing in this Section shall prevent the Developer from selecting contractors or subcontractors (or the construction contractors from selecting subcontractors) outside of Monterey County if the Developer is unable to obtain competitive bids from the aforementioned preference groups. Competitive bids for the purpose of this Agreement shall be determined based on experience and bid price.

3.4 Construction Loan. Developer shall submit to the City, for approval by the City Manager, evidence of an executed Construction Loan commitment (or non-binding letter of intent containing all material financing terms and conditions) for the Project. As used herein, the term "Construction Loan" shall mean a loan in an aggregate amount equal to (or greater than) all hard costs of designing and constructing the Improvements of the Project and all soft costs for owning and operating the Project until maturity of the construction loan, as shown in the budget for such Construction Loan and the Project Budget, less equity funds for such purposes to be provided by Developer and shown in the Project Budget.

3.5 Costs of Entitlement, Development and Construction. The Developer agrees that all costs, expenses and fees associated with the development and construction of the Project including the costs for developing and constructing the Improvements thereon (including, but not limited to, the land acquisition costs and governmental permits and approvals) shall be borne by Developer.

3.6 Rights of Access and Inspection. In addition to those rights of access to and across the Land to which the City and the City may be entitled by law, members of the staffs of the City and the City shall have a reasonable right of access to the Land, without charge or fee, at any reasonable time, upon reasonable notice to Developer (which may be telephonic notice to _____ or the construction foreman) to inspect the work being performed at the Land in connection with the initial development of the Project but shall not be obligated to do so and City shall not be liable for any failure to disclose any information discovered by City (or that could or should have been discovered by any City inspection). The City shall also have the right at all reasonable times to inspect and copy the books, records and all other documentation of the Developer pertaining to its obligations under this Agreement.

3.7 Local, State and Federal Laws. Developer shall carry out the construction of the Improvements on the Land in conformity with all applicable federal, state and local laws, including all applicable federal and state occupation, safety and health standards. **[DISCUSS:** Developer will pay, or cause to be paid, the prevailing rates of wages for all work as described in Sections 1720 et seq. of the California Labor Code and related regulations and obtain payment and performance bonds for such work.]

3.8 City and Other Governmental City Permits and Approvals. Before commencement of construction or development of any work of improvement on the Land,

Developer shall (at Developer's expense) secure, or cause to be secured, any and all permits which may be required by the City or any other governmental agency having jurisdiction over such construction or development.

3.9 No discrimination During Construction. Developer, for itself and its successors and assigns, agrees that it shall not discriminate against any employee or applicant for employment because of age, sex, marital status, race, handicap, color, religion, creed, ancestry, or national origin in the construction of the Improvements.

3.10 Taxes, Assessments, Encumbrances and Liens. Developer shall pay when due all real property taxes and assessments assessed or levied on portions of the Land from time to time owned by Developer, commencing immediately after closing of the land acquisition.

3.11 No Agency Created. In performing this Agreement, Developer is an independent contractor and not the agent of the City. The City is not an agent of Developer. The City shall not have any responsibility whatsoever for payment to any contractor or supplier of Developer or its contractors. Developer shall not have any responsibility whatsoever for payment to any contractor or supplier of the City or the City.

3.12 Certificate of Completion. Upon Developer's completion of the construction of the Project, Developer will apply to the City for a Certificate of Completion. The City's issuance of the Certificate of Completion shall constitute the acknowledgement of the City that Developer has complied in all respects with its development obligations (and only the development obligations) set forth in this Article 3. Promptly following the City's issuance of a certificate of occupancy for the entire project, and provided that Developer is then in full compliance with all of its obligations under Article 3 of this Agreement, the City Manager shall execute, acknowledge and deliver the Certificate of Completion, which shall be recorded in the Official Records of Monterey County and shall include, in form reasonably acceptable to Developer, an express termination or reconveyance of the City's right to reversion under Section 6.2.2(ii) of this Agreement and the Grant Deed. If the City Manager believes that the Developer is not in compliance with its obligations under this Article 3, the City Manager shall promptly specify the nature of such non-compliance by written notice to Developer.

4. LIMITATIONS ON TRANSFERS AND SECURITY INTERESTS.

4.1 Restriction on Transfer of Developer's Rights and Obligations.

4.1.1 Prior to issuance of a Certificate of Completion for the Project and the opening of the Project for business, Developer shall not sell, assign, transfer, mortgage, lease (except for space leases conditioned upon Project completion), hypothecate, or convey (collectively, a "Transfer") the Land or any part thereof or any of Developer's rights or obligations hereunder, without the City's prior written consent, which consent may be granted or withheld in the City's sole and absolute discretion, except for the execution of one or more deeds of trust and related instruments securing Developer's construction loan, a conveyance of the Land resulting from the foreclosure thereof (or a deed in lieu of such a foreclosure). Developer acknowledges that the identity of Developer is of particular concern to the City, and it is because of Developer's identity that the City has entered into this Agreement with Developer. Except for

any Transferee approved by the City pursuant to this Section 4.1, and except for any Holder (defined in Section 4.2) that has taken possession of the Land, no voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Agreement. No transfer or assignment of Developer's interest hereunder without the City's prior written approval shall be deemed to release Developer from the obligations of Developer hereunder.

4.1.2 Subject to Section 4.2 below, after the issuance of a Certificate of Completion for the entire Project, and the opening of the Project for business, Developer shall have the right to Transfer the Land to any party (a "Transferee") provided that:

4.1.2.1 the Transferee (and/or its management company or affiliates, if any) has the experience, quality, character, trade record, financial ability and reputation, as determined by City in its reasonable judgment, to own the Project and to cause it to be managed and operated (whether directly or through an agreement approved by the City in accordance with this Agreement) in compliance with this Agreement; and

4.1.2.2 the Transferee assumes in writing all obligations of Developer set forth in this Agreement (except those pursuant to Articles 2 and 3, which shall be deemed satisfied upon the Close of Escrow and the issuance of the Certificate of Completion, respectively).

In the event that Developer desires to Transfer the Land pursuant to this Section 4.1.2, Developer will so notify the City, and will provide the City with all pertinent information regarding the Transferee. The City will approve or disapprove the Transferee (in its reasonable judgment) within thirty (30) days after receipt of written notice of Developer's intention to make the Transfer. Upon the completion of any Transfer to a Transferee approved by the City as provided in this Section 4.1.2, the Transferee shall assume all of Developer's rights and obligations under this Agreement, and Developer shall be released from all further liabilities and obligations under this Agreement.

4.2 Holders of Deeds of Trust. Notwithstanding any provisions of Section 4.2 to the contrary, Developer shall have the right to hypothecate its interest in the Land and the Project pursuant to one or more deeds of trust from an institutional lender approved by the City (which approval shall not unreasonably be withheld or delayed), for the purpose of securing loans of funds to be used for financing the direct and indirect costs of the Project (including land development costs, reasonable and customary developer fees, loan fees and costs, and other normal and customary project costs), or for refinancing the construction financing with permanent financing. Any institutional lender of record holding any such deed of trust, whose name and address shall have been provided by Developer to City referred to herein as a "Holder."

4.3 Rights of Holders. The City shall deliver a copy of any notice or demand to Developer concerning any breach or default by Developer under this Agreement to each Holder who has previously made a written request to the City for special notice hereunder. Any notice of breach or default by Developer shall not be effective against any such Holder unless given to such Holder. Such Holder shall have the right at its option to cure or remedy any such default and to add the cost thereof to the secured debt and the lien of its security interest. If such

breach or default can only be remedied or cured by such Holder upon obtaining possession, such Holder may remedy or cure such breach or default within a reasonable period of time after obtaining possession, provided such Holder seeks possession with diligence through a receiver or foreclosure. Such Holder shall not undertake or continue the construction or completion of the Improvements beyond the extent necessary to conserve or complete the Improvements. Any Holder completing the Improvements must assume all rights and obligations of Developer under this Agreement and shall then be entitled, upon written request made to the City, to a Certificate of Completion from the City.

4.4 Noninterference with Holders. The provisions of this Agreement do not limit the right of Holders (a) to foreclose or otherwise enforce any mortgage, deed of trust, or other security instrument encumbering all or any portion of the Land, and the Improvements thereon, (b) to pursue any remedies for the enforcement of any pledge or lien encumbering such portions of the Land, or (c) to accept, or cause its nominee to accept, a deed or other conveyance in lieu of foreclosure or other realization. In the event of (i) a foreclosure sale under any such mortgage, deed of trust or other lien or encumbrance, (ii) a sale pursuant to any power of sale contained in any such mortgage or deed of trust, or (iii) a deed or other conveyance in lieu of any such sale, the purchaser or purchasers and their successors and assigns, and such portions of the Land shall be, and shall continue to be, subject to all of the conditions, restrictions and covenants of all documents and instruments recorded pursuant to this Agreement, including, without limitation, the restrictions set forth in the grant deed on such property from the City to Developer. The City agrees to execute such further documentation regarding the rights of any Holder as is customary with respect to construction or permanent financing, as the case may be, to the extent that such documentation is reasonably requested by any Holder and is reasonably approved by the City.

4.5 Right of City to Cure. In the event of a default or breach by the Developer of a loan by a Holder prior to the completion of the Improvements, the City may, upon prior written notice to the Developer, cure the default, prior to the completion of any foreclosure. In such event the City shall be entitled to reimbursement from the Developer of all costs and expenses incurred by the City in curing the default. The City shall also be entitled to a lien upon the Land or any portion thereof to the extent of such costs and disbursements. The City agrees that such lien shall be subordinate to any lien in favor of a Holder, and the City shall execute from time to time any and all documentation reasonably requested by the Developer to effect such subordination.

4.6 Right of City to Satisfy Other Liens. After the Close of Escrow and after the Developer has had a reasonable time to challenge, cure, or satisfy any liens or encumbrances on the Land or any portion thereof, and has failed to do so, in whole or in part, the City shall, upon prior written notice to the Developer, have the right to satisfy any such lien or encumbrances; however, nothing in this Agreement shall require the Developer to pay or make provision for the payment of any tax, assessment, lien or charge so long as the Developer in good faith shall contest the validity or amount therein and so long as such delay in payment shall not subject the Land or any portion thereof to forfeiture or sale.

5. USE AND OPERATION OF THE PROPERTY.

5.1 Maintenance by Developer. For a period of _____ years after the Close of Escrow, Developer and its successors in interest with respect to the Project shall maintain the Project (including landscaping) in a manner substantially comparable to the highest level of maintenance provided to other developments of similar age and quality to the Project located in Monterey County. The Developer shall maintain the Development in good repair and working order, and in a neat, clean and orderly condition, including the walkways, driveways, and landscaping, and from time to time make all necessary and proper repairs, renewals, and replacements. In the event that there arises at any time prior to the expiration of such period a condition in contravention of the above maintenance standard, then the City shall notify the Developer in writing of such condition, giving the Developer thirty (30) days from receipt of such notice to cure said condition. In the event the Developer fails to cure or commence to cure the condition within the time allowed, the City shall have the right to perform all acts necessary to cure such a condition, or to take other recourse at law or in equity the City may then have and to receive from the Developer the City's actual and reasonable costs in taking such action. The parties hereto further mutually understand and agree that the rights conferred upon the City expressly include the right to enforce or establish a lien or other encumbrance against the Land, but such lien shall be subject to previously recorded liens and encumbrances. The foregoing provisions shall be a covenant running with the land and will be enforceable by the City, its successors and assigns.

5.2 First Source Hiring. The Developer shall comply with the City's Local First Source Recruitment Policy attached hereto as Exhibit "F" and shall cause all of its contractors and subcontractors, tenants and operators of the Improvements to comply therewith. By the date set forth in the Schedule of Performance, the Developer shall submit to the City for its review and approval, a "First Source Hiring Program" for the Development which shall include specific programs and activities that the Developer and others will perform to comply with Local First Source Recruitment Policy, the City's Local First Source Recruitment Policy.

6. DEFAULT, REMEDIES AND TERMINATION.

6.1 Defaults. Subject to the provisions of Section 6.7 hereof, the occurrence of any or all of the following shall constitute a default ("Default") under this Agreement:

6.1.1 Developer's failure to perform its obligations on a timely basis as contained in the Schedule of Performance, or any breach of this Agreement by any Party involving the payment of money, and the continuance of such breach for a period of ten (10) days after the non defaulting Party has given written notice to the defaulting Party, as specified in Section 8.1;

6.1.2 Except as otherwise provided in Section 6.1.1 hereof, a breach of any material term of this Agreement by any Party not involving the payment of money and failure of such Party to cure such breach within thirty (30) days after the non defaulting Party has given written notice to the defaulting Party; provided, however, if such breach is not reasonably curable within such thirty (30) day period, then such Party shall be deemed in Default only if

such Party does not commence to cure such breach within such thirty (30) day period and thereafter fails to diligently prosecute such breach to completion;

6.1.3 Developer's Transfer (as defined in Section 4.2), or the occurrence of any involuntary Transfer, of the Land or any part thereof or interest therein, or any rights or obligations of Developer under this Agreement, in violation of this Agreement;

6.1.4 Developer's failure or refusal to keep in force and effect any material permit or approval with respect to construction of the Project, and Developer's failure to cure such breach within thirty (30) calendar days after notice from the City of Developer's breach; provided, however, if such breach is not reasonably curable within such thirty (30) day period, then Developer shall be deemed in Default only if Developer does not commence to cure such breach within such thirty (30) day period and thereafter fails to diligently prosecute such breach to completion; or

6.1.5 Filing of a petition in bankruptcy by or against any Party or appointment of a receiver or trustee of any property of any Party, or an assignment by any Party for the benefit of creditors, or adjudication that such Party is insolvent by a court, and the failure of such Party to cause such petition, appointment, or assignment to be removed or discharged within 90 days.

6.1.6 The failure to comply with any of the requirements of Section 7 below.

6.1.7 The failure to maintain, or the cancellation of, any of the bonds described in Section 2.5.14.

6.2 Remedies.

6.2.1 Remedies Prior to the Close of Escrow. In the event of a Default by any Party prior to the Close of Escrow, the nondefaulting Party shall have the right to terminate this Agreement (provided it is not in Default of its obligation under this Agreement), by delivering written notice thereof to the defaulting Party and to Escrow Holder, subject to the rights of the defaulting Party to cure such Default as provided in Section 6.1. Subject to Section 2.2, such Party may seek against the defaulting Party any available remedies at law or equity, including but not limited to, the right to receive damages (excluding damages for lost profits) or to pursue an action for specific performance.

6.2.2 Remedies for Default After the Close of Escrow. In the event of a Default by any Party after the Close of Escrow, a non defaulting party shall be entitled to the following remedies, as applicable:

(i) A defaulting Party shall be liable to the non defaulting Party for all damages, costs and losses incurred by the non defaulting Party, and the non defaulting Party may seek against the defaulting Party any available remedies at law or equity, including but not limited to the right to receive damages or to pursue an action for specific performance; and

(ii) With respect to a default that consists of the failure of Developer to timely open the Project for business, the City shall be entitled to the liquidated damages described in Section 3.1; and

(iii) Prior to the issuance of the Certification of Completion, the City shall have the right of reversion provided for below in this Section 6.2.2 in the event that that Developer fails to complete the Improvements in the time period required by Article 3.

In such event, but subject to any agreement between the City and Developer's construction lender in accordance with the provisions of Section 2.5.15 above, the City may terminate this Agreement and reenter and take possession of the Land, with all Improvements thereon, and revert in the City title to the Land theretofore conveyed to the Developer (or its successors in interest), take any and all actions necessary to commence and complete the enforcement of its reversionary interest, and in such event the Developer agrees to promptly take all actions and to execute all documents necessary to revert title to the Land to the City free and clear of all liens and encumbrances created by or with the consent of Developer, (subject to any agreement between the City and Developer's construction lender in accordance with the provisions of Section 2.5.15 above).

(iv) Upon re-vesting in the City of title to the Land or any portion thereof as provided in this Section, the City shall, pursuant to its responsibilities under State law, use its best efforts to resell the Land or applicable portion thereof and as soon as possible, in a commercially reasonable manner and consistent with the objectives of such law and of the Redevelopment Plan to a qualified and responsible party or parties (as determined by the City) who will assume the obligation of making or completing the Development in accordance with the uses specified for such property in the Redevelopment Plan and in a manner satisfactory to the City. Upon such resale of the Land or any portion thereof, the proceeds thereof payable to the City shall be applied as follows:

1. First to reimburse the City on its own behalf for all costs and expenses incurred by the City, including but not limited to salaries of personnel and legal fees incurred in connection with the recapture, management, and resale of the Land or any portion thereof and (but less any income derived by the City from any part of the Land in connection with such management); all taxes, installments of assessments payable prior to resale, and applicable water and sewer charges with respect to the Land or any portion thereof (or, in the event the Land or any portion thereof is exempt from taxation or assessment or such charges during the period of ownership by the City, an amount equal to the taxes, assessments, or charges that would have been payable if the Land or any portion thereof was not so exempt); any payments made or necessarily to be made to discharge any encumbrances or liens existing on the Land or any portion thereof at the time of re-vesting of title in the City or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of the Developer, its successors or transferees; and expenditures made or obligations incurred with respect to the making or completion of the

Development or any part thereof on the Land; and, any amounts otherwise owing the City by the Developer and its successors or transferee.

2. Second, to reimburse the City for damages to which it is entitled under this Agreement by reason of the Developer's default.

3. Third, to reimburse the Developer, its successor or transferee, up to the amount equal to:

- (a) The lesser of the reasonable cost or fair market value of the improvements the Developer has placed on the Land or applicable portion thereof at the Developer's cost; less
- (b) The sum of (i) any gains or income withdrawn or made by the Developer from the Land or applicable portion thereof, or the improvements thereon; plus (ii) the amount of any liens on the Land.

4. Fourth, any balance remaining after such reimbursements shall be retained by the City as its property.

The rights established in this Section are to be interpreted in light of the fact that the City will convey the Land to the Developer for development and not for speculation.

6.3 No Speculation. The rights established in this Article are to be interpreted in light of the fact that the City will convey the Land to Developer for development and operation of the Project thereon and not for speculation in undeveloped land or for construction of different improvements.

6.4 No Personal Liability. No representative, agent, attorney, consultant, or employee of the City shall personally be liable to the Developer or any successor in interest of Developer, in the event of any Default or breach by the City, or for any amount which may become due to Developer or any successor in interest, on any obligation under the terms of this Agreement.

6.5 Rights and Remedies are Cumulative. The rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by the non defaulting Party; provided, however, that liquidated damages specified herein shall constitute the sole damages recoverable for the default giving rise to such liquidated damages.

6.6 Inaction Not a Waiver of Default. Any failures or delays by either Party 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 either such Party of its rights to institute and

maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies. The acceptance by a Party of less than the full amount due from the other party shall not constitute a waiver of such Party's right to demand and receive the full amount due, unless such Party executes a specific accord and satisfaction.

6.7 Force Majeure. Following the Close of Escrow, and notwithstanding anything to the contrary in this Agreement, nonperformance shall be excused when performance is prevented or delayed by reason of any of the following forces reasonably beyond the control of such party (a "Force Majeure Delay"): (i) failure to perform by Developer affecting all similar works of construction in the Seaside, California, area, attributable to any strike, lockout or other labor or industrial disturbance (whether or not on the part of the employees of either party hereto), civil disturbance, future order claiming jurisdiction, act of the public enemy, war, riot, sabotage, blockade, embargo, inability to secure customary materials, supplies or labor through ordinary sources by reason of regulation or order of any government or regulatory body; and (ii) delay attributable to severe weather, lightning, earthquake, fire, storm, hurricane, tornado, flood, washout, explosion, or any other similar industry wide cause beyond the reasonable control of the party from whom performance is required, or any of its contractors or other representatives. Any prevention, delay or stoppage due to any Force Majeure Delay shall excuse the performance of the party affected for a period of time equal to any such prevention, delay or stoppage (except the obligations of either party to pay money to the other party or to close escrow) provided that the Party claiming the Force Majeure Delay notifies the other Party of the Force Majeure Delay within a reasonable time (not to exceed ten business days) after the commencement of the Force Majeure Delay.

6.8 Plans and Data. If this Agreement is terminated for any reason, then Developer shall deliver to the City, without cost or expense to the City, copies of any and all maps, architecture, engineering, subdivision approvals, permits, entitlements, rights, contracts, plans, drawings, studies, designs, reports, surveys, and data pertaining to the Project and its development (collectively, "Site Designs") which are in the possession of Developer.

7. INSURANCE; INDEMNITY. [CITY RISK MANAGER SHOULD REVIEW]

7.1 Insurance.

7.1.1 From and after the Close of Escrow and for so long as title to the Land has not reverted to by the City, Developer shall obtain and maintain at no cost or expense to the City, with a reputable and financially responsible insurance company reasonably acceptable to the City, (i) after the opening of the Project for business, commercially reasonable casualty insurance for the Improvements in an amount not less than the replacement cost of the Improvements (subject to commercially reasonable deductibles) with a reasonable inflation rider; (ii) commercial broad form general liability insurance, insuring against claims and liability for bodily injury, death, or property damage arising from the construction, use, occupancy, condition, or operation of the Land, which liability insurance shall provide combined single limit protection of at least \$5,000,000 and shall include a reasonable inflation rider, contractual liability coverage and products and completed operations coverage, and (iii) commercial automobile liability insurance of at least \$1,000,000 combined single limit.. Such liability

insurance policies shall name the City and the City and their council members, board members, officers, agents and employees as additional insureds.

7.1.2 Before commencement of any demolition or construction work by Developer on any portion of the Land owned by Developer, Developer shall obtain and maintain in force until completion of such work (i) “all risk” builder’s risk insurance, including coverage for vandalism and malicious mischief, in a form and amount and with a company reasonably acceptable to the City, and (ii) workers’ compensation insurance covering all persons employed by Developer in connection with work on the Project, or any portion thereof. During the construction of Improvements on any portion of the Land by Developer, such builder’s risk insurance shall cover improvements in place and all material and equipment at the job site furnished under contract, but shall exclude contractors’, subcontractors’, and construction managers’ tools and equipment and property owned by contractors’ and subcontractors’ employees.

7.1.3 Each architect and each engineer engaged by Developer shall provide professional liability insurance with a limit of liability of at least One Million Dollars (\$1,000,000.00).

7.1.4 Developer shall also furnish or cause to be furnished to the City evidence satisfactory to the City that any contractor with whom it has contracted for the performance of work on the Land or otherwise pursuant to this Agreement carries workers’ compensation insurance as required by law.

7.1.5 With respect to each policy of insurance required above, Developer and each of Developer’s general contractors, engineers and architects shall furnish to the City a certificate on the insurance carrier’s form setting forth the general provisions of the insurance coverage promptly after written request by City showing the additional insureds. The certificate shall also be furnished by Developer prior to commencement of construction of any Improvements.

7.1.6 All such policies required by this Section shall contain (i) language to the effect that the policies cannot be cancelled or materially changed except after thirty (30) days’ written notice by the insurer to the City, and (ii) a waiver of the insurer of all rights of subrogation against the City and the other additional insureds. All such insurance shall have deductibility limits which shall be commercially reasonable.

7.2 Indemnity. From and after the execution of this Agreement, Developer hereby agrees to indemnify, defend, protect, and hold harmless the City and the City (as a third party beneficiary) and any and all agents, employees, representatives, council members, board members, consultants, and officers of the City, from and against all losses, liabilities, claims, damages (including foreseeable or unforeseeable consequential damages), penalties, fines, forfeitures, costs and expenses (including all reasonable out of pocket litigation costs and reasonable attorneys’ fees) and demands of any nature whatsoever, related directly or indirectly to, or arising out of or in connection with:

- (i) the validity of this Agreement;

(ii) the development and construction by Developer of the Improvements on the Land or the use, ownership, management, occupancy, or possession of the Land during Developer's period of ownership of the Land,

(iii) any breach or Default by Developer hereunder (subject to any liquidated damages provisions otherwise contained in this Agreement), or

(iv) any of Developer's activities on the Land (or the activities of Developer's agents, employees, lessees, representatives, licensees, guests, invitees, contractors, subcontractors, or independent contractors on the Land), regardless of whether such losses and liabilities shall accrue or are discovered before or after termination or expiration of this Agreement, except to the extent such losses or liabilities are caused by the gross negligence or willful misconduct of the City. The City may in its discretion, and at their own cost, participate in the defense of any legal action naming the City. The provisions of this Section 7.2 shall survive the Close of Escrow or the termination of this Agreement.

8. REPRESENTATIONS AND WARRANTIES.

8.1 Developer Representations. Developer represents and warrants to the City as of the date of this Agreement and as of the Close of Escrow that:

(i) Developer is a _____ validly existing and in good standing under the laws of the State of California.

(ii) Developer has duly authorized the execution and performance of this Agreement and the execution and performance of all of the closing documents set forth herein.

(iii) Developer's execution and performance of this Agreement and the closing documents will not violate any provision of the Developer's _____ agreement or any deed of trust, lease, contract, agreement, instrument, order, judgment or decree by which Developer is bound.

(iv) The Developer has not engaged a broker with respect to the purchase of the Land contemplated herein.

(v) The Developer has received the documents described on Exhibit "E".

8.2 City Representations. The City hereby represents and warrants to the Developer that the City has not engaged a broker with respect to the purchase of the Land as contemplated herein.

9. GENERAL PROVISIONS.

9.1 Notices. All notices and demands shall be given in writing by certified mail, postage prepaid, and return receipt requested, or by reputable overnight messenger.

Notices shall be considered given upon the earlier of (a) one business day following deposit or delivery with a nationally recognized overnight courier delivery charges prepaid, or (b) upon delivery or attempted delivery as shown on the return receipt if sent by certified mail. Notices shall be addressed as provided below for the respective Party; provided that if any Party gives notice in writing of a change of name or address, notices to such Party shall thereafter be given as demanded in that notice:

The City: City of Seaside
440 Harcourt Avenue
Seaside, California 93955
Attn: City Manager

Developer: _____

9.2 Construction. The Parties agree that each Party and its counsel have reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply in the interpretation of this Agreement or any amendments or exhibits thereto. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the Parties.

9.3 Interpretation. In this Agreement the neuter gender includes the feminine and masculine, and singular number includes the plural, and the words "person" and "party" include corporation, partnership, firm, trust, or association where ever the context so requires. 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. All references in this Agreement to a number of days in which either party shall have to consent approve or perform shall mean calendar days unless specifically stated to be business days.

9.4 Time of the Essence. Time is of the essence of this Agreement.

9.5 Warranty Against Payment of Consideration for Agreement. Developer warrants that it has not paid or given, and will not pay or give, to any third person, any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers and attorneys.

9.6 Attorneys' Fees. If any Party brings an action to enforce the terms hereof or declare its rights hereunder, the prevailing Party in any such action shall be entitled to its reasonable attorneys' fees to be paid by the losing Party as fixed by the court. If the City is made a Party to any litigation instituted by or against Developer or to any litigation attacking the validity of this Agreement, then Developer shall indemnify and defend the City against, and save them harmless from, all costs, expenses (including reasonable attorneys' fees), claims, liabilities, damages and losses incurred by the City and/or the City in connection with such litigation

provided, however, that in no event shall the Developer be obligated to pay any damages awarded to any person or entity that result from the gross negligence or willful misconduct of the City.

9.7 Entire Agreement Waivers and Amendments. This Agreement, together with all attachments and exhibits hereto, and all agreements executed pursuant hereto, constitutes the entire understanding and agreement of the Parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Parties with respect to the subject matter hereof. No subsequent agreement, representation or promise made by either Party hereto, or by or to any employee, officer, agent or representative of either Party, shall be of any effect unless it is in writing and executed by the Party to be bound thereby. No person is authorized to make, and by execution hereof Developer and the City acknowledge that no person has made, any representation, warranty, guaranty or promise except as expressly set forth herein; and no agreement, statement, representation or promise made by any such person which is not contained herein shall be valid or binding on Developer or the City.

9.8 Severability. Each and every provision of this Agreement is, and shall be construed to be, a separate and independent covenant and agreement. If any term or provision of this Agreement or the application thereof shall to any extent be held to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected hereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

9.9 Headings. All section headings and subheadings are inserted for convenience only and shall have no effect on the construction or interpretation of this Agreement.

9.10 No Third Party Beneficiaries. This Agreement is made and entered into for the sole benefit of the Parties, and there are no third party beneficiaries of this Agreement. No other person shall have any right of action based upon any provision of this Agreement.

9.11 Governing Law; Jurisdiction; Service of Process. This Agreement and the rights of the Parties shall be governed by California law. The Parties consent to the exclusive jurisdiction of the California Superior Court for the County of Monterey. If any legal action is commenced by Developer against the City, or by City against Developer, service of process on the City shall be made by personal service upon the executive director or secretary of the City, or in such other manner as may be provided by law. If any legal action is commenced by City against Developer, service of process on Developer shall be made by personal service on _____, or in such other manner as may be provided by law. Developer agrees, for the benefit of the City, that it shall designate an agent for service of process in the State of California in the manner prescribed by law.

9.12 Assignment. Except as otherwise expressly provided in Section 4.2, Developer may not assign, transfer or convey its rights and obligations under this Agreement

without the prior written consent of the City, which City may withhold in its sole and absolute discretion.

9.13 Survival. The provisions hereof shall not merge into, but rather shall survive, any conveyance hereunder (including, without limitation, the delivery and recordation of the Grant Deed) and the delivery of all consideration.

9.14 Estoppel Certificates. Upon written request of Developer, City shall within thirty (30) days of the date of such request, execute and deliver to Developer, a written statement: certifying, to the best of City's knowledge, that (a) this Agreement in full force and effect, if such is the case, and has not been modified or amended, except as shall be stated; and (b) that no default by Developer exists under this Agreement.

9.15 City Actions. In addition to any provisions of this Agreement that gives the City Manager the authority to make decisions and grant approvals, the City hereby authorizes the City Manager to deliver such approvals, consents as are contemplated by this Agreement, waive requirements under this Agreement, and modify this Agreement, on behalf of the City provided that the applicable approval, consent, waiver or modification is not substantial (*i.e.*, does not change the fundamental business transaction between the Developer and the City, as determined by the City Manager in his reasonable discretion).

9.16 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed as original but all of which together shall constitute one and the same instrument.

Standard

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement as of the day and year first above written.

DEVELOPER:

_____,
a _____

By: _____
Print Name: _____
Title: _____

CITY:

CITY OF SEASIDE

By: _____
Print Name: _____
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

By: _____

Standard Form

EXHIBIT "A"

LEGAL DESCRIPTION OF LAND

(Attached.)

Standard Form

EXHIBIT "B"**SCHEDULE OF PERFORMANCE**

This Schedule of Performance requires the submission of plans or other documents at specific times. Some of the submissions are not described in the text of the Agreement. Such plans or other documents, as submitted, must be complete and adequate for review by the City or other applicable governmental entity when submitted. Prior to the time set forth for each particular submission, the Developer shall consult with City staff informally as necessary concerning such submission in order to assure that such submission will be complete and in a proper form within the time for submission set forth herein.

<u>Action</u>	<u>Date / Deadline</u>
Items 1 – 11 Relate to Developer Actions and Requirements Prior to the Close of Escrow	
1. <u>Opening of Escrow</u> . The Parties shall open escrow with the Escrow Holder.	Within five (5) business days after the execution and delivery of the DDA.
2. <u>Developer Deposit</u> . The Developer shall deposit the Developer Deposit with Escrow Holder.	Within ten (10) business days after the Agency's execution and delivery of the DDA.
3. <u>Preliminary Project Budget</u> . The Developer shall submit a preliminary Project Budget for the Improvements.	_____
4. <u>Preliminary Plans</u> . Developer shall submit preliminary Plans and Specifications to the City.	_____
5. <u>Design Development Plans</u> . Developer shall submit interim "design development" Plans and Specifications to the City.	Not later than _____ following the City's execution and delivery of the DDA.
6. <u>Final Plans and Specifications</u> . The Developer shall submit the Final Plans and Specifications for City approval.	Within ____ days after the City's execution and delivery of the DDA.
7. <u>Building Permits</u> . The Developer shall obtain the Building Permit for the construction of the Improvements.	
8. <u>First Source Hiring Program</u> . The Developer shall submit its First Source Hiring Program for City approval.	

<u>Action</u>	<u>Date / Deadline</u>
9. <u>Construction Contract</u> . The Developer shall submit the construction contract for the construction of the Improvements to the City for approval.	Within 10 days following the satisfaction of all conditions to obtaining a Building Permit.
10. <u>Performance and Payment Bonds</u> . The Developer shall deliver to the City copies of the required performance and payment bonds.	Within 10 days following the satisfaction of all conditions to obtaining a Building Permit.
11. <u>Insurance</u> . The Developer shall submit evidence of insurance to the City.	Prior to the Close of Escrow.
12. <u>Project Budget</u> . The Developer shall submit the Project Budget to City together with reasonable evidence that the funds described in the Project Budget will be available at the Closing.	Prior to the Close of Escrow.
Items 12 – 17 Relate to the Conveyance of the Land and Developer Actions and Requirements After the Close of Escrow	
13. <u>Close of Escrow</u> . The Developer shall purchase the Land from the City and shall concurrently close the Construction Loan.	No later than _____.
14. <u>Commencement of Construction</u> . Developer shall substantially commence the Improvements.	No later than 30 days after the Close of Escrow.
15. <u>Completion of Grading</u> . Developer shall substantially complete the grading for the Project.	Not later than _____ days following the Close of Escrow.
16. <u>Commencement of Vertical Construction</u> . Developer shall commence vertical construction.	Not later than _____ days following the Close of Escrow.
17. <u>Qualification for Certificate of Completion</u> . The Project shall qualify for a Certificate of Occupancy.	No later than _____ calendar months after the date of this Agreement.
18. <u>Opening of the Project for Business</u> .	Not later than _____ after the date of the Close of Escrow.

DRAFT

EXHIBIT "C"

SCOPE OF DEVELOPMENT

[NEED]

Standard Form

EXHIBIT "D"

FORM OF GRANT DEED

Recording Requested by and when recorded return to,
and mail tax statements to:

Exempt from Recording Fees Pursuant to
Government Code Section 27383

Documentary transfer tax is \$_____ based on the full value of the property conveyed.

GRANT DEED

The undersigned grantor(s) declare(s):

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the CITY OF SEASIDE [,as successor to the Redevelopment Agency of the City of Seaside] ("Grantor") hereby GRANTS to _____, a _____ ("Grantee") the land (the "Land") located in the City of Seaside, County of Monterey, State of California described on Exhibit "A".

SUBJECT TO, all matters of record.

1. This grant of the Land is subject to the terms of a Disposition and Development Agreement entered into by and between Grantor and Grantee dated as of _____, 20____, (the "Agreement") the terms of which are incorporated herein by reference (and which include maintenance covenants, as well as the matters described in Section 2 and 3 below). A copy of the Agreement is available for public inspection at the offices of the Grantor at 440 Harcourt Avenue, Seaside, California 93955.

2. As provided in, and subject to the provisions contained in, Section 6.2 of the Agreement, the Grantor shall have the right, at its option, to reenter and take possession of the Land hereby conveyed, with all improvements thereon and to terminate and revest in Grantor the Land hereby conveyed to the Grantee (or its successors in interest).

3. The Grantee covenants, for itself and its successors and assigns, that there shall be no sale, transfer, assignment, conveyance, lease, pledge or encumbrance of the DDA, or the Land and the Improvements thereon or any part thereof, or of other ownership interest in the Grantee in violation of the DDA, which contains restrictions on the assignment of the DDA and the transfer of the Land.

4. All covenants contained in this Grant Deed shall run with the land and shall be binding for the benefit of Grantor and its successors and assigns and such covenants shall run in favor of the Grantor and for the entire period during which the covenants shall be in force and effect, without regard to whether the Grantor is or remains an owner of any land adjacent to the Land or interest in such adjacent land or any other land. The Grantor, in the event of any breach of any such covenants, shall have the right to exercise all of the rights and remedies available under the Agreement or at law or in equity. The covenants contained in this Grant Deed shall be for the benefit of and shall be enforceable only by the Grantor and its successors and assigns.

IN WITNESS WHEREOF, the undersigned has executed this Grant Deed as of the date set forth below.

Dated: _____

CITY OF SEASIDE

By: _____

Print Name: _____

Mayor

ATTEST:

City Clerk

Standard Form

State of California)
County of Monterey)
)

On _____ before me, _____
(insert name and title of the officer)

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)
Signature of Notary Public

Standard Form

EXHIBIT "E"

LIST OF DOCUMENTS
DELIVERED TO DEVELOPER

(Attached.)

Standard Form

EXHIBIT "F"

LOCAL FIRST SOURCE RECRUITMENT POLICY

(Attached.)

Standard Form

**CITY OF SEASIDE
LOCAL FIRST SOURCE RECRUITMENT POLICY**

FINDINGS

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

- A. The City hereby finds and determines that, based partially on the closure of the massive military reserve once known as Fort Ord, there is a high incidence of unemployment and underemployment among the Residents of the City and within the City.
- B. The City further finds and determines that this high incidence of unemployment and underemployment is due also to artificial barriers in the employment market which serve to reduce the likelihood that Residents will find employment which is commensurate with their education, skills and experience and which do not affect nonresidents of the City in a similar manner.
- C. The City further finds and determines that the existence of high unemployment within the City serves as a blighting influence on the City, and the resultant reduction or elimination of the incomes of Local Businesses and Residents may serve as a blighting influence, by decreasing the amount of available jobs, increasing the likelihood that Residents and Distressed Workers will engage in criminal activities, increase the incidence of under-maintenance of property within the jurisdiction leading to a decreased property tax base and other social ills within and the City.
- D. The City further finds and determines that Residents and Local Businesses will bear a disproportionate burden of development, which may result in the displacement of Local Businesses and a reduction in the number of Residents who are employed within the City.
- E. The City further finds and determines that the burdens of development will not be borne in a similar manner by those who reside or conduct business outside the City.
- F. The City further finds and determines that Residents and Local Businesses should be given an opportunity to be employed in the development of areas within the City and the ongoing uses to be created in the City, so as to mitigate the disproportionate burden of development on Residents, Distressed Workers and Local Businesses.

POLICY

I. Definitions:

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

- A. “City” shall mean the City of Seaside.
- B. “City Contract” shall mean any contract entered into by the City and a Developer or End User for labor or services related to development within 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.
- C. “DDA” shall mean a disposition and development agreement entered into by the City and a Developer or End User for the redevelopment and/or use of property within the City.
- D. “Developer” shall mean any individual, unincorporated association, partnership, joint venture group, corporation or subcontractor of same, which is engaged, inactivates related to development in the City. “Developer” shall not include those consultants or employees of the City who are retained to perform administrative, management, consulting or legal services for the City.
- E. “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 a development in the City, and where the developer has entered into a City Contract or has received a Subsidy. Developer Contract shall include, but not be limited to, construction contracts, consultant contracts and any other contracts for the performance of services or labor related to development in the City.
- F. “Distressed Workers” shall mean those Residents who are unemployed, no 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.
- G. “End Users” shall mean those businesses, which commence operation in industrial manufacturing, commercial, retail or office space within the City after the completion of any initial construction or rehabilitation projects related to that space.
- H. “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 of End User to the City and all Service Organizations of the availability of employment opportunities prior to the time that those opportunities are advertised to the general public and other outreach efforts as are deemed necessary by the City. Diligent efforts to employ Qualified Residents or Distressed Workers shall include at a minimum

hiring of Qualified Residents and/or Distressed Workers who are recommended to the Developer or End User by the City or Service Organizations after such notification, to the extent that the Developer or End User has existing employment opportunities available.

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

I. “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.

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

K. “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.

L. “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.

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

II. First Source Recruitment Policy:

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

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

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

C. Scope of Policy. The Policy shall be implemented by the City to the greatest extent feasible by the City in its negotiation of DDAs, City Contracts, and other agreements with Developers and End Users pertaining to the development in the City. The Policy shall be implemented by Developers in negotiation of Developer Contracts, including the subcontracts and contracts with End Users of property.

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

III. City Contracts:

A. Contracts Under \$5,000 for Grading, Clearing, Demolition and Construction:

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

B. City Construction Contracts

For all City Contracts for the construction of public improvements, including but not limited to contracts valued at over \$5,000 for grading, clearing, demolition and construction, the City may grant a preference to those construction contractors who have made a Good Faith Effort to hire, or who agree to hire, on a craft-by-craft basis, qualified Residents to perform the City Contract. The City may further grant preference to construction contractors who have subcontracted, or made a Good Faith Effort to subcontract, a portion of the City Contract to Local Businesses.

C. Contracts Valued at Over \$100,000

For all other City Contracts whose dollar value is estimated to exceed \$100,000 at the time the scope of work for the City Contract is prepared, the City may specify in its bid package that preference for the City Contract shall 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 City Contract, or demonstrates that it has subcontracted or has made a Good Faith Effort to subcontract to Local Businesses a portion of the work which is the subject of the City Contract.

D. Operation of Facilities

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

E. Disposition and Development Agreements (DDAs)

For all DDAs or similar agreements entered into by the City, the City shall negotiate, to the extent feasible, provisions in the DDA or agreement which require the Developer, End User or other part to make a Good Faith Effort to hire qualified Residents in employment within the City and to utilize, or make a Good Faith Effort to utilize, Local Businesses, to implement the DDA or any subcontract arising from the DDA.

F. Training Fund

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

IV. Developers

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

B. Construction Contracts

For all construction contracts which arise as a result of a DDA entered into by the City and a Developer, the Developer shall negotiate, to the extent feasible, provisions in its construction contract which require the prime contractor to hire, or make a Good Faith Effort to hire, on a craft-by-craft basis, qualified Residents to 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 an City Contract or who have, directly or indirectly, received a Subsidy or Subsidies, as defined in this policy, from or through City efforts.

B. Operation of Facilities. In hiring its work force to operate or manage a commercial, retail or office-related business which is located within the City, an end User shall, to the greatest extent feasible, make a Good Faith Effort to employ qualified Residents or to provide ongoing training opportunities (such as part-time work, internships or classes) to Distressed Workers, within the skill areas which are utilized by the End User in the operation and management of the End User's business.

VI. Exceptions

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

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

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

VII. Administration

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

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

C. Binding Upon Successors. It is intended that the provisions of this policy shall be applicable to all development activities to the fullest extent permitted by law for the benefit and in favor of the City; and the provisions of this policy shall be enforceable by the City, Developers, End Users and any of their successors in Interest to property in the City.

Standard Form

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EXHIBIT "E"	LIST OF DOCUMENTS DELIVERED TO DEVELOPER
EXHIBIT "F"	LOCAL FIRST SOURCE RECRUITMENT POLICY

ITEM NO. 9B**CITY OF SEASIDE STAFF REPORT**

TO: Honorable Mayor and Council members

FROM: John Dunn, Interim City Manager

BY: Diana Ingersoll, Deputy City Manager, Resource Management Services
Lisa Brinton, Community and Economic Development Services Manager

DATE: October 18, 2012

SUBJECT: CONSIDERATION OF A PROFESSIONAL SERVICES AGREEMENT WITH MAHONEY AND ASSOCIATES IN THE AMOUNT OF EIGHT THOUSAND TWO HUNDRED AND FIFTY DOLLARS (\$8,250) TO PREPARE A SALE VERSUS GROUND LEASE ANALYSIS

PURPOSE

The purpose of this item is for the City Council to consider entering into a professional services agreement with Mahoney and Associates to prepare a sale versus ground lease analysis of city and successor agency-owned properties.

RECOMMENDATION

It is recommended that the City Council adopt a resolution provided as Attachment 1 authorizing the Interim City Manager to execute a professional services agreement with Mahoney and Associates in an amount not to exceed eight thousand two hundred and fifty dollars (\$8,250) to prepare a sale versus ground lease analysis.

BACKGROUND

The City is currently in the process of preparing an Economic Opportunity Plan. Two study sessions were held on June 18 and July 17. The Plan is to include policies and procedures, including specific criteria for evaluating solicited and unsolicited proposals, a land sale versus ground lease analysis, the identification of key opportunity sites, and a small business support program.

At its June 2012 Six-month Strategic Objective study session, the City Council set as one of its objectives the award of a contract to prepare a sale versus ground lease analysis. Council directed staff to prepare an analysis that would provide policies and procedures, including specific criteria for determining if a property should be disposed of through a one-time land sale for development or retained and developed through a ground-lease agreement. This analysis is

**Honorable Mayor and Council Members
Mahoney and Associates Professional Service Agreement**

**October 18, 2012
page 2**

to also include recommendations regarding evaluating the interim use and the shorter term leasing of property. These recommendations regarding interim use will serve as the basis for establishing procedures and criteria for evaluating interim use proposals. The final product will be incorporated in the Economic Opportunity Plan and will also be utilized in the Property Management Plan required for Redevelopment Agency-owned properties.

On August 24, a Request for Proposals letter, Attachment 2) was sent to all consultants on the "On Call List Of Real Property Service Providers 2011-2013" approved by the City Council in February 2011 (Attachment 3). Interested parties were to submit a Scope of Work and Proposed Budget no later than September 4. Two proposals were received by the deadline: one from Mahoney and Associates and the other from Suzanne Sullivan Real Property Services, Inc.

Based on staff's review of the two proposals, Mahoney and Associates was determined to be the most qualified to prepare the sale versus ground lease analysis. This recommendation is based on Mahoney and Associates professional qualifications, knowledge of the commercial real estate market in Seaside and the Monterey Peninsula, and demonstrated understanding of the requested analysis.

FISCAL IMPACT

The contract amount is not to exceed eight thousand two hundred and fifty dollars (\$8,250). These consultant services are allowed under, and will be paid from, the Consultant Services line item of the Successor Agency Administrative Budget. There will be no impact to the General Fund.

ATTACHMENTS

1. Resolution authorizing the Interim City Manager to execute a professional services agreement with Mahoney and Associates
 - a. Exhibit A to Attachment 1: Professional Service Agreement with Scope of Work and Budget
2. Request for Proposals Letter dated August 24, 2012
3. On Call List Of Real Property Service Providers: Approved 2-17-2011

Reviewed for Submission to the City Council by:

John Dunn, Interim City Manager

RESOLUTION NO.**A RESOLUTION OF THE CITY OF SEASIDE AND THE SUCCESSOR AGENCY OF THE REDEVELOPMENT AGENCY OF THE CITY OF SEASIDE AWARDED A CONSULTANT CONTRACT TO MAHONEY AND ASSOCIATES TO PREPARE A LAND SALE VERSUS GROUND LEASE ANALYSIS AND AUTHORIZING THE INTERIM CITY MANAGER TO EXECUTE THE CONTRACT FOR AN AMOUNT NOT-TO-EXCEED \$8,250**

WHEREAS, at its June 2012 six-month Strategic Objective study session, the City Council directed staff to prepare a land sale versus ground lease analysis that would provide policies and procedures, including specific criteria for determining if a property should be disposed of through a one-time land sale for development or retained and developed through a ground-lease agreement.

WHEREAS, this analysis is to also include recommendations regarding evaluating the interim use and the shorter term leasing of property to serve as the basis for establishing procedures and criteria for evaluating interim use proposals; and

WHEREAS, the final accepted analysis will be incorporated in the Economic Opportunity Plan and will also be utilized in the Property Management Plan required for Redevelopment Agency-owned properties.

WHEREAS, two proposals were received in response to the City's Request for Proposals letter dated August 24, 2012, that was sent to all consultants on the "On Call List of Real Property Service Providers 2011-2013" approved by the City Council in February 2011; and

WHEREAS, based on staff's review of the two proposals, Mahoney and Associates was determined to be the most qualified to prepare the sale versus ground lease analysis based on their professional qualifications, knowledge of the commercial real estate market in Seaside and the Monterey Peninsula, and demonstrated understanding of the requested analysis.

NOW, THEREFORE, BE IT RESOLVED that the City of Seaside and the Successor Agency of the Redevelopment Agency hereby awards a consultant contract to Mahoney and Associates to prepare a Land Sale versus Ground Lease Analysis and authorizes the Interim City Manager to execute the contract for a maximum not to exceed amount of \$8,250 per the proposal included as Attachment 1 to Exhibit A.

PASSED AND ADOPTED at a special joint meeting of the City Council of the City of Seaside and the Successor Agency duly held on the 18th day of October, 2012 by the following vote:

AYES: COUNCIL/BOARD MEMBERS:
 NOES: COUNCIL/BOARD MEMBERS:
 ABSENT: COUNCIL/BOARD MEMBERS:
 ABSTAIN: COUNCIL/BOARD MEMBERS:

Felix H. Bachofner,
 Mayor, City of Seaside/Chair, Agency Board

ATTEST:

Dimitra M. Hubbard, City Clerk

PROFESSIONAL SERVICES AGREEMENT

Land Sale versus Ground Lease Analysis

THIS AGREEMENT is made and entered into this 18 day of October, 2012 by and between the City of Seaside, a public body, corporate and politic, hereinafter called "City", and Mahoney & Associates, hereinafter called "Consultant".

WHEREAS, the City has determined that it is in the public interest to proceed with the work, hereinafter described as "Project"; and

WHEREAS, the City has determined that the Project involves the performance of professional and technical services of a temporary nature; and

WHEREAS, the City desires to engage the Consultant, and the Consultant agrees, to render certain technical advice and professional services to the City, as necessary.

THEREFORE, City and Consultant, for the consideration hereinafter described, mutually agree as follows:

1. **Description of Project.** The project is described as follows:

Land Sale versus Ground Lease Analysis

2. **Proposal Submittal.** The parties hereto mutually agree that the following documents and any addenda thereto are herewith by reference included in this contract as attachments:

Attachment 1: ANALYSIS OF CITY OF SEASIDE PROPERTIES REGARDING RELATIVE VALUES OF SALE OR GROUND LEASE: Scope of Work and Budget for Real Property Services Dated October 5, 2012

3. **Scope of Work.** Consultant's scope of work is described in the proposal attached hereto and incorporated herein by this reference.
4. **Scope of Work--Additional.** It is understood by City and Consultant that it may be necessary, in conjunction with the Project, for Consultant to perform or secure the performance of consulting and related services other than those set forth in the proposal. If additional services are requested by City, Consultant shall advise City in writing of the need for additional services and the cost and estimated time to perform the services. Consultant shall not proceed to perform any such additional service until City has determined that such service is beyond the scope of the basic services to be provided by Consultant and has given its written authorization to proceed. Written approval for performance and compensation for additional services may be granted by the Deputy City Manager – Resource Management Services. Except as hereinabove stated, any additional service shall require a written amendment to this agreement and shall be subject to all the provisions of this agreement.

Professional Services Agreement
Land Sale versus Ground Lease Analysis

5. **Authority of the Deputy City Manager – Resource Management Services.** The Consultant shall perform all necessary services provided under the contract and outlined in the proposal and shall do, perform, and carry out said work in a satisfactory and proper manner as determined by and to the satisfaction of the Deputy City Manager – Resource Management Services. The Deputy City Manager – Resource Management Services reserves the right to make changes, additions or deletions, of the scope of work as deemed to be necessary or advisable to implement and carry out the purposes of the contract. The Deputy City Manager – Resource Management Services is authorized to execute these changes by amendment agreements.
6. **Responsibility of Consultant.** By executing this agreement, Consultant represents and states to City that he possesses or will arrange to secure from others all necessary professional capabilities, experience, resources and facilities necessary to provide to City the services contemplated under this agreement. Consultant further warrants that he will follow the current generally accepted practices of the profession to make findings, render opinions, prepare factual presentations, and provide professional advice and recommendations regarding the project for which services are rendered under this agreement.
7. **Independent Contractor.** The parties to this agreement agree that Consultant, his employees, agents and sub-consultants, shall be independent contractors with regard to the providing of services under this agreement and that Consultant's employees, agents and subcontractors shall not be considered to be employees or agents of City for any purpose and will not be entitled to any of the benefits City provides for its employees.
8. **Materials and Equipment.** Consultant shall furnish at his own expense all materials and equipment necessary to carry out the terms of this agreement.
9. **Digital Files.** Consultant shall furnish copies of all deliverables on compact disks (for example, plans, specifications and cost estimates) in digital format. Files shall be compatible with the current versions used by the City and shall be in Word, Excel, AutoCAD 2005, or appropriate software that is the industry standard for the application.
10. **Employment of Personnel.** Consultant shall provide experienced and qualified personnel to carry out the work to be performed by Consultant under this agreement and shall be responsible for and in full control of the work of such personnel.
11. **Time of Performance.** Subject to the limitation herein, the Consultant agrees to perform the work and services in accordance with the proposal. The service of the Consultant is to be undertaken and completed in such a sequence as to assure their expeditious completion in light of the purpose of the contract.
12. **Compensation.** Subject to the limitation herein, the Consultant agrees to perform the work and services specified and outlined in the proposal for the Contract Amount Maximum Not to Exceed unless specifically authorized by a written contract amendment prior to the commencement of any additional work. The total Contract Amount Maximum Not to Exceed for this contract is EIGHT THOUSAND TWO HUNDRED FIFTY DOLLARS (\$8,250.00).

Professional Services Agreement
Land Sale versus Ground Lease Analysis

13. **Prevailing Salaries.** If the Consultant hires employees, salaries for the various worker classifications to be utilized in the performance of this contract shall be paid equal to or greater than the salaries prevailing in the locality of the work.
14. **Audit Authority.** Consultant shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this agreement; the accounting and control systems shall be satisfactory to the City. The City and the City's auditor shall be afforded access to the Consultant's records, books, correspondence and other data relating to this agreement. The consultant shall preserve these records, books, correspondence and other data relating to this agreement for a period of four (4) years after final payment, or for such longer period as may be required by law. In addition, Consultant agrees to make said records, books correspondence and other data relating to this agreement available to City at City's principal place of business upon seventy-two (72) hours written notice. The Executive Director, or his or her designee, shall at all times have the right to inspect the work, services, or materials. Consultant shall furnish all reasonable aid and assistance required by City for the proper examination of the work or services and all parts thereof. Such inspection shall not relieve Consultant from any obligation to perform said work or services strictly in accordance with the specifications or any modifications thereof and in compliance with the law.
15. **Assignment.** Consultant shall not assign any duties, responsibilities or obligations without prior written consent of the City.
16. **Indemnification**
 - a) Indemnification for Professional Liability. When the law establishes a professional standard of care for Consultant's services to the fullest extent permitted by law, Consultant shall indemnify protect, defend and hold harmless City and any and all of its officials, employees and agents ("Indemnified Parties"), from and against any and all losses, liabilities, damages, costs and expenses, including attorney's fees and costs to the extent same are caused in whole or in part by any negligent or wrongful act, error or omission of Consultant its officers, agents, employees or sub-consultants (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of professional services under this agreement. With respect to the design of public improvements, the Consultant shall not be liable for any injuries or property damage resulting from the reuse of the design at a location other than that described above under "Description of the Project" without the written consent of the Consultant.
 - b) Indemnification for Other Than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulator proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorney's fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the

Professional Services Agreement
Land Sale versus Ground Lease Analysis

performance of this Agreement by Consultant or by any individual or entity for which Consultant is legally liable, including but not limited to officers, agents, employees or sub-consultants of Consultant.

- c) General Indemnification Provisions. Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every sub-consultant or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this agreement. In the event Consultant fails to obtain such indemnity obligations from others as required here, Consultant agrees to be full-responsible according to the terms of this section. Failure to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend City, is set forth here is binding on the successors, assigns or heirs of Consultant and shall survive the termination of this agreement or this section.

17. Insurance. Prior to the beginning, and throughout the duration, of the work, CONSULTANT will maintain insurance in conformance with the requirements set forth below. CONSULTANT will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth here, it will be amended to do so. CONSULTANT acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds in excess of the limits and coverage required in this agreement and which is applicable to a given loss, will be available to CITY. CONSULTANT shall provide the following types and amounts of insurance:

- 1) Commercial General Liability Insurance using Insurance Services Office "Commercial General Liability" policy form CG 00 01, with an edition date prior to 2004, or the exact equivalent. Coverage for an additional insured shall not be limited to its vicarious liability. Defense costs must be paid in addition to limits. Limits shall be no less than \$1,000,000 per occurrence for all covered losses and no less than \$2,000,000 general aggregates.
- 2) Workers' Compensation on a state-approved policy form providing statutory benefits as required by law with employers liability limits no less than \$1,000,000 per accident for all covered losses.
- 3) Business Auto Coverage on ISO Business Auto Coverage form CA 00 01 including owned, non-owned and hired autos, or the exact equivalent. Limits shall be no less than \$1,000,000 per accident, combined single limit. If CONSULTANT owns no vehicles this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If CONSULTANT or CONSULTANT'S employees use personal autos in any way on this project CONSULTANT shall obtain evidence of personal auto liability coverage for each such person.
- 4) Errors and Omissions Liability CONSULTANT shall provide evidence of professional liability insurance on a policy form appropriate to consultant's profession. Limits shall be no less than \$1,000,000 per claim.

Professional Services Agreement
Land Sale versus Ground Lease Analysis

Certificates of Insurance and Endorsements. The Consultant will file a certificate of insurance and endorsement naming the City as additional insured under General Liability and Auto Liability. Such liability insurance maintained by the contractor shall be primary and non-contributory and any coverage maintained by the City of Seaside shall not be expected to contribute to any claims arising from the work of this contract. These certificates shall be filed with the City within fifteen [15] days of execution of this agreement and prior to engaging any operation or activities set forth in this agreement. The foregoing policies shall provide that no cancellation, major change in coverage, or expiration by insurance company or insured during the term of this contract shall occur without thirty [30] days written notice to City prior to the effective date of such cancellation or change in coverage.

18. **Compliance with Laws, Rules, and Regulations.** Services performed by Consultant pursuant to this agreement shall be performed in accordance with full compliance to all applicable Federal, State, or City statutes and any rules or regulations promulgated thereunder.
19. **Inspection of Work.** The City representative or his/her designee shall at all times have the right to inspect the work, services or performance of Consultant. Consultant shall furnish all reasonable aid and assistance required by City for proper examination of the work or services. Such inspection shall not relieve Consultant of any obligation to perform said services in accordance with the law or this agreement.
20. **Waiver.** Consultant agrees that any waiver by City of any breach or violation of any term or condition of this agreement shall not be deemed to be a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance by City of the performance of any work or services by Consultant shall not be deemed to be a waiver of any term or condition of this agreement.
21. **Attorney's Fees and Court Venue.** Should either party to this Agreement bring legal action against the other, (formal judicial proceeding, mediation or arbitration), the case shall be handled in Monterey County, California, and the party prevailing in such action shall be entitled to a reasonable attorney's fee which shall be fixed by the judge, mediator or arbitrator hearing the case and such fee shall be included in the judgment, together with all costs.
22. **Notices.** All notices herein provided to be given, or which may be given by either party to the other, shall be considered fully received when made in writing and deposited in the United States mail, certified and postage prepaid, and addressed to the respective parties as follows:

City of Seaside
Diana Agar Ingersoll, P.E.
Deputy City Manager
440 Harcourt Avenue
Seaside, CA 93955

Professional Services Agreement
Land Sale versus Ground Lease Analysis

Mahoney & Associates
501 Abrego
Monterey, CA 93940
Attn: Alison Goss

23. **Non-discrimination.** During the performance of this project, Consultant will not discriminate against any employee or applicant for employment because of race, religion, creed, color, national origin, sex or age. Consultant will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, creed, color, national origin, sex, or age.
24. **Interest of Consultant.** Consultant declares that he presently has no interest and shall not acquire any interest, direct or indirect, Financial or otherwise, which would conflict in any manner or degree with the performance of the services hereunder. Consultant further declares that in the performance of this agreement no subcontractor or person having such interest shall be employed. Consultant certifies that if he hires any employees that no one who has or will have any financial interest in this agreement is an officer or employee of City. It is expressly agreed that in the performance of the services hereunder Consultant shall at all times be deemed an independent contractor and not an agent or employee of City.
25. **Termination of Contract.** This agreement may be terminated by either party upon thirty [30] days written notice to the other party. In the event of such termination, City shall pay Consultant for all services performed to the satisfaction of City to the date of receipt of notice of termination. An itemized statement of the work performed to the date of termination shall be submitted to the City. In ascertaining the services actually rendered hereunder up to the date of termination of this agreement, consideration shall be given to both completed work and work in process of completion and to complete and incomplete drawings and other documents whether delivered to the City or in the possession of the Consultant.
26. **Ownership of Documents.** Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused, or otherwise disposed of by the City without the permission of the Consultant.
27. **Jurisdiction.** This agreement shall be administered and interpreted under the laws of the State of California. Jurisdiction of litigation arising from this agreement shall be in California. If any part of this agreement is found to be in conflict with applicable laws, such part shall be inoperative, null insofar as it is in conflict with said laws, but the remainder of the agreement shall continue to be in full force and effect.
28. **Integrated Agreement.** This agreement represents the entire understanding of City and Consultant as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered in it. This agreement may not be modified or altered except by amendment in writing signed by both parties.

Professional Services Agreement
Sale vs. Ground Lease Analysis

IN WITNESS WHEREOF, the parties hereto have made and executed this agreement the day and year first above written.

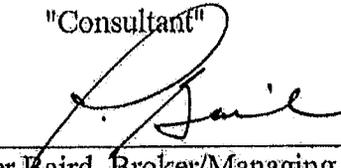
CITY OF SEASIDE

"City"

by _____
John Dunn, Interim City Manager

MAHONEY & ASSOCIATES

"Consultant"

by  _____
Peter Baird, Broker/Managing Partner

Professional Services Agreement
Sale vs. Ground Lease Analysis

ATTACHMENT I

**ANALYSIS OF CITY OF SEASIDE PROPERTIES REGARDING RELATIVE VALUES
OF SALE OR GROUND LEASE**

**Scope of Work & Budget for Real Property Services
Dated October 5, 2012**


MAHONEY & ASSOCIATES

COMMERCIAL REAL ESTATE

**ANALYSIS OF CITY OF SEASIDE PROPERTIES
REGARDING RELATIVE VALUES OF SALE OR GROUND LEASE
SCOPE OF WORK & BUDGET FOR REAL PROPERTY SERVICES**

October 5, 2012

To: Lisa Brinton, Community & Economic Services Manager
City of Seaside
440 Harcourt Avenue
Seaside, CA 93955

From: Alison Goss, Broker Associate
Mahoney & Associates
501 Abrego Street
Monterey, CA 93940

Re: Land Sale vs Ground Lease Analysis
Overview of Analysis

REVIEW OF AND COMMENT ON STAFF'S DRAFT ANALYSIS

- Understanding of City Goals (monies, beneficiaries, community benefit)
- Roles, Process of Leases, Sales (development of procedures)
- Understanding Obstacles, Limitations posed by City Ownership (vs Private Ownership)
- FOR A, Coastal Commission, County roles (pros & cons for buyers)
- General Tour of Properties by Alison Goss for presentation to Mahoney & Associates for appraising values.
- Redevelopment Funds, Benefits, Liability discussion with Lisa Brinton.
- Obligations of City ownership to public (vs private ownership) for funds redistribution if any.
- Discussion w/Staff of the EOPPVSS for a final, full understanding of all critical criteria necessary for a comprehensive valuation.

II. PROVISION OF CURRENT MARKET DATA IN SUPPORT OF ANALYSIS

- Market Analysis via Contact with Brokers, Property Owners, Appraisers (conventional opinions of value)
- Review of Expenses for valuation or disclosure.
- Summary of Seaside & Peninsula Commercial Real Estate Market (one of the criterion for sale vs. lease analysis)
- Provision of Recommendations

III. ID OF CITY & SUCCESSOR-OWNED PROPERTIES WHICH SHOULD BE SOLD, SHORT-TERM LEASED, LONG-TERM LEASED (AND ANY INTERIM USE PRIOR TO SALE OR LEASE DUE TO PROPERTY OR MARKET CONSTRAINTS)

- Best practice procedure for a thorough and efficient analysis is to employ entire Mahoney & Associates brokerage team for a tour of the properties after supplying pertinent facts, summaries, criteria for valuation of all properties, gleaned from the preceding process.
- Recommendations/Opinions Summarized for Thorough Presentation to Staff & Oversight Committee.

It should be noted that typical valuation of commercial property and recommendation for disposition is based upon the following criteria:

1. Income
2. Useful Life
3. Highest and Best Use
4. City & Neighborhood Trends
5. Expenses
6. Demand (for example, Industrial property is in demand on the Peninsula because supply is low)
7. Inventory (see #6)
8. Other Properties of Similar/Dissimilar Character or Type Sold
9. Replacement Value (often merited if improvements clearly are inferior or ill-placed, ill-suited for the land/parcel).

These considerations are in effect for this Seaside property study and will be used in conjunction with the valuable benchmarks established in Items I & II.

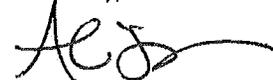
The result of this Scope, Analysis and the Process of Examination and Market Application will be written recommendations for each of the City-owned and Successor Agency-owned properties. Each recommendation will be comprehensive in substantiating data.

Approximate Timelines:

Commencement of Analysis	11 hours
Completion of Review of & Comment on Staff's Draft Analysis	2 weeks actual due to scheduling time w staff.
Provision of Current Market Data in Support of Analysis	8 hours
ID of City & Successor-owned Properties	1 week actual due to scheduling time w staff.
	36 hours
	1 week
Total	4 weeks

Thank you for the opportunity and honor to work with The City of Seaside again.

Sincerely,



Alison Goss, Broker Associate

SCOPE OF WORK AND BUDGET FOR REAL PROPERTY SERVICES

	Who	Time Per Property	
I. Review of and comment on Staff's Draft Analysis			
1. Understanding of City Goals, Long-term perspective	Goss, Staff	2.0 n/a	\$ 300.00
2. Roles, Process of Leases, Sales	Goss, Staff	1.0 n/a	\$ 150.00
3. Understanding Obstacles, Limitations posed by City Ownership	Goss, Staff, MPWMD	2.0 n/a	\$ 300.00
4. FORA role, Coastal Commission, County roles	Goss, Staff, FOR A, Parker	3.0 n/a	\$ 450.00
5. General Tour of Properties	Goss, maybe Staff	1.5 n/a	\$ 225.00
6. Redevelopment Funds, Benefits, Liability discussion		0.5 n/a	\$ 75.00
7. Obligations of City ownership to public (vs private ownership)		0.5 n/a	\$ 75.00
8. Discussion w/Staff of the EO PPVSS		0.5 n/a	<u>\$ 75.00</u>
II. Provision of Current Market Data in Support of Analysis			
1. Contact with Appraisers, Brokers, Property Owners	Goss	5.0 n/a	\$ 750.00
2. Review of Expenses on any Properties	Goss	1.0 n/a	\$ 150.00
3. Summary of Seaside & Peninsula Commercial RE Market	Goss	2.0 n/a	<u>\$ 300.00</u>
III. ID of City & Successor-owned Properties which should be Sold, Short term Leased, Long term Leased			
1. Thorough tour of all properties. Analysis, recommendation, Opinion of Value based upon public/private comm RE rules/trends			
Tour will be with all pertinent Mahoney agents/brokers to analyze properties			
2. Analysis of Each Property and Separate Recommendation based upon Tour, items I & II			
	Goss, Mahoney, Baird, Edwards, Stafford	25.0 50 min	\$ 8,750.00
		11.0 22 min	<u>\$ 1,650.00</u>
TOTAL			<u>\$ 5,400.00</u>
<i>n/a connotes work that applies to all properties in sum and which cannot be segregated per property</i>			
		55	\$ 8,250.00

CITY OF SEASIDE – RESOURCE MANAGEMENT SERVICES440 Harcourt Avenue
Seaside, CA 93955Telephone (831) 899-6825
FAX (831) 899-6211

August 24, 2012

Grub & EllisJeffery S. Ball
1732 North First Street, Suit 100
San Jose, CA 95112-4543**RE: Request for Proposals for Land Sale versus Long-term Ground Lease Analysis**

Dear Mr. Ball:

The City of Seaside is in the process of preparing an Economic Opportunities Plan which includes a long-range property management plan and the identification of priority economic opportunity sites. At its June 18, 2012 Economic Opportunity Study Session, the City Council directed staff to prepare an analysis of the “pros and cons” of a land sale versus long-term ground lease of city and successor agency-owned property.

As part of the analysis staff is to also make recommendation as to whether there are certain city/agency-owned properties which should be retained for ground leasing. Given the technical nature of the request, staff seeks limited professional commercial real estate advice in order to prepare the analysis. The proposed scope of work would include the following tasks.

- review of and comment on staff’s draft analysis
- provision of current market data in support of analysis
- identification of city and successor agency-owned properties which should be retained under a long-term ground lease (approximately 30 properties total)

This request for services is being sent to firms on the City’s approved 2011-2013 Real Property Services On-Call list. Interested parties are to submit a Scope of Work and Proposed Budget no later than September 4th at 5:00 to:

Lisa Brinton, Community and Economic Services Manager
City of Seaside
440 Harcourt Avenue
Seaside, CA 93955

For further information, contact Lisa Brinton at (831) 899-6883 or lbrinton@ci.seaside.ca.us.

Sincerely,

Diana A. Ingersoll
Deputy City Manager – Resource Management Services

**ON CALL LIST OF REAL PROPERTY SERVICE PROVIDERS
Approved 2-17-2011**

**Valid
February 2011 – February 2013**

Grub & Ellis

Chez Christian Real Estate

A.G. Davi Estate & Property Management

HMS Property Management

Keller Williams Realty Carmel

Mahoney & Associates

Suzanne Sullivan Real Property Services, Inc

Vanco Real Estate

PURCHASE AND SALE AGREEMENT

AND

ESCROW INSTRUCTIONS

by and between the

CITY OF SEASIDE

[, as successor agency to the Redevelopment Agency of the City of Seaside]
("Seller")

and

("Buyer")

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EXHIBIT A LEGAL DESCRIPTION OF THE LAND

EXHIBIT B FORM OF GRANT DEED

EXHIBIT C CERTAIN DEFINITIONS

EXHIBIT D LIST OF DOCUMENTS DELIVERED TO BUYER

PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS

This PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS (this "Agreement") is dated as of _____, 20__ ("the Effective Date") and is entered into by and between _____ ("Buyer") and the CITY OF SEASIDE, a municipal corporation [, as successor agency to the Redevelopment Agency of the City of Seaside] ("Seller").

RECITALS

A. Seller is the owner of the land in the City of Seaside, County of Monterey, State of California, more particularly described on **Exhibit A** attached hereto and made a part hereof, commonly known as _____ together with all improvements thereon (collectively, the "Property").

B. Buyer desires to purchase the Property from Seller.

NOW, THEREFORE, in consideration of the terms and conditions of this Agreement and for other valuable consideration, the receipt of which is hereby acknowledged, Buyer and Seller agree as follows:

1. Purchase and Sale. Subject to and in accordance with the terms and conditions hereinafter set forth, Seller agrees to sell Property to Buyer, and Buyer agrees to purchase the Property from Seller.

2. Opening and Closing of Escrow. Within five (5) business days after the Effective Date, the parties shall open an escrow ("Escrow") with _____ ("Escrow Holder" and "Title Company"), at _____ Attn: _____, Escrow Officer; Phone: _____ Email: _____; and shall deliver a copy of this fully executed Agreement to said Escrow Holder. "Close of Escrow" shall be the date that a grant deed for Property in favor of Buyer, is recorded in the Official Records of the Monterey County Recorder's Office. Close of Escrow shall occur on or before the date that is ten (10) days after the expiration of the Due Diligence Period, as defined in Section 5 below ("Outside Closing Date").

3. Purchase Price; Deposit.

(a) The purchase price for Property to be paid by Buyer is the sum of _____ (\$ _____) ("Purchase Price").

(b) Seller acknowledges having received the sum of _____ (\$ _____) from Buyer (the "Deposit"). On the Close of Escrow, the Deposit shall be applied toward the Purchase Price. In the event this Agreement is terminated by Buyer under Section 5.5 below or as a result of a default by Seller, then the Deposit shall be refunded to Buyer.

IF BUYER FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY AS HEREIN PROVIDED BY REASON OF DEFAULT OF BUYER, IT IS AGREED THAT THE DEPOSIT THEN HELD BY ESCROW HOLDER SHALL BE

NON-REFUNDABLE AND SELLER SHALL BE ENTITLED TO SUCH DEPOSIT, WHICH AMOUNT SHALL BE ACCEPTED BY SELLER AS LIQUIDATED DAMAGES AND NOT AS A PENALTY AND AS SELLER'S SOLE AND EXCLUSIVE REMEDY. IT IS AGREED THAT SAID AMOUNT CONSTITUTES A REASONABLE ESTIMATE OF THE DAMAGES TO SELLER PURSUANT TO CALIFORNIA CIVIL CODE SECTION 1671 ET SEQ. BUYER AND SELLER AGREE THAT IT WOULD BE IMPRACTICAL OR IMPOSSIBLE TO PRESENTLY PREDICT WHAT MONETARY DAMAGES SELLER WOULD SUFFER UPON BUYER'S FAILURE TO COMPLETE ITS PURCHASE OF THE PROPERTY. BUYER DESIRES TO LIMIT THE MONETARY DAMAGES FOR WHICH IT MIGHT BE LIABLE HEREUNDER AND BUYER AND SELLER DESIRE TO AVOID THE COSTS AND DELAYS THEY WOULD INCUR IF A LAWSUIT WERE COMMENCED TO RECOVER DAMAGES OR OTHERWISE ENFORCE SELLER'S RIGHTS. IF FURTHER INSTRUCTIONS ARE REQUIRED BY ESCROW HOLDER TO EFFECTUATE THE TERMS OF THIS SECTION, BUYER AND SELLER AGREE TO EXECUTE THE SAME. THE PARTIES ACKNOWLEDGE THIS PROVISION BY PLACING THEIR INITIALS BELOW:

SELLER'S INITIALS

BUYER'S INITIALS

3.1 Prorations. The following items are to be prorated as of close of escrow: (i) taxes; (ii) assessments (on a per square foot basis); and (iii) any utilities charges.

4. Title Insurance.

(a) Within five (5) business days after the opening of escrow, Seller and Buyer shall cause Title Company to furnish Buyer with an updated title report for the Property, together with copies of all documents referenced therein as exceptions to title (collectively, the Title Report”).

(b) Buyer shall have until the date that is _____ after receipt of the Title Report to deliver to Seller and Escrow Holder written notice (the “Preliminary Title Notice”) of Buyer’s approval, conditional approval or disapproval of the title exceptions disclosed in the Title Report (excluding the standard printed exceptions in the form of title policy and taxes and assessments which are liens not yet due and payable) [and any matters shown by a survey conducted by Buyer at Buyer’s cost]. All matters not timely disapproved by Buyer will be deemed approved. All such exceptions disapproved by Buyer are referred to herein as “Disapproved Exceptions”.

(c) Seller shall have twenty (20) days after receipt of Buyer’s Preliminary Title Notice to commit to cause any such Disapproved Exceptions to be released of record, or commit to cause the Title Company to endorse over such Disapproved Exceptions pursuant to an endorsement or endorsements reasonably acceptable to Buyer, or elect not to remove or endorse over Disapproved Exceptions. If Seller fails to deliver its response notice within said twenty (20) days, Seller shall be deemed to have elected not to eliminate or endorse over all matters disapproved or conditionally approved by Buyer.

(d) If Seller elects not to commit to remove (or is deemed not to commit to remove) and elects not to cause the Title Company to endorse over (or is deemed to elect not to cause Title Company to endorse over), a Disapproved Exception (other than a monetary lien or encumbrance, as to which Seller's obligation to remove is absolute), Buyer shall have the option, to be exercised within five (5) business days after Seller's notice to elect to terminate this Agreement, in which case the Deposit shall be returned to Buyer. If (or if no notice is given, then within five business days after the end of the 20 day period) buyer fails to timely deliver the termination notice, Buyer shall be deemed to have elected take title subject to the Disapproved Exceptions.

(e) Buyer's fee title to Property shall be insured at the Close of Escrow by an CLTA Standard Coverage Owner's Policy of Title Insurance in the amount of the Purchase Price, issued by Title Company (or, at the option of Buyer, an ALTA policy if Buyer performs an ALTA survey at Buyer's cost during the period described in Section 4(b) above and requires an ALTA Extended Coverage Owner's Policy of Title Insurance) and containing exceptions in the title report dated _____ issued by Title Company under Order No. _____ (the "Permitted Title Exceptions").

(f) Seller shall not encumber the Property during the period from Effective Date to the earlier of Close of Escrow or the date of the termination of this Agreement.

5. Due Diligence; Right Of Entry.

5.1 Buyer hereby acknowledges receipt of the documents described on Exhibit "D". Seller hereby grants Buyer and its agents, employees, contractors and subcontractors designated in writing by Buyer to Seller (collectively "Representatives") the right to enter on the Property until the date that is _____ days after the Effective Date (the "Due Diligence Period") for the purpose of inspecting the physical condition of the Property, including soils and geological matters and toxic or hazardous substances and other contamination subject to scheduling and coordination with the Seller (call _____ at ____-____-____). All such investigations shall be at Buyer's expense. All work performed by Buyer and its Representatives will be performed diligently and in a manner consistent with the standards of care, diligence and skill exercised by recognized consulting firms for similar services, and in accordance with professional standards and the requirements of any governmental agency or entity and all applicable laws, and shall not disturb, or otherwise violate the rights of tenants.

5.2 Buyer and its Representatives shall promptly notify the Seller of any discovery, spill, release, or discharge of any Hazardous Substances, as defined in Exhibit C, on, under or about the Property which is discovered, encountered, or results from or is related to the Buyer's or its Representatives' access to and/or use of the Property under this Agreement.

5.3 In connection with the inspections of the Property by Buyer and its Representatives (including, without limitation, any survey), Buyer shall, at its own cost and expense, take any necessary action to keep the Property, and any improvements and personally thereon, in good order and repair and safe condition to the extent that such Property, improvements or personality were in such condition prior to its entry, and the whole of the Property, in a clean, sanitary and orderly condition, including, without limitation, ensuring that

any holes, ditches or other indentations, as well as any mounds or other inclines created by any excavation by Buyer or its Representatives are regraded, resurfaced and compacted. If any portion of the Property or an adjacent property, including improvements and fixtures, suffers damage or alteration by reason of the access and activities of Buyer or its Representatives on the Property, Buyer shall, at its own cost and expense, promptly repair all such damage and restore the Property or adjacent property to as good a condition as before such damage or alteration occurred, or if it cannot be repaired, Buyer shall replace such damaged or altered property to the extent possible.

5.4 Prior to entering the Property, Buyer shall provide Seller with reasonable evidence that Buyer has reasonable insurance covering Buyer's activities on the Property. In any event, Buyer shall defend, protect, indemnify, and hold free and harmless Seller and its employees, agents, and representatives, and their successors, and assigns (individually as "Indemnitee" and collectively, "Indemnitees"), free and harmless from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens, and losses of any nature whatsoever (collectively, the "Claims"), including fees of accountants, attorneys, expert witnesses, or other professionals, and all costs associated therewith, arising or claimed to arise, directly or indirectly, out of, in connection with, resulting from, or related to any act, failure to act, error, or omission of Buyer or any of its Representatives arising or claimed to arise, directly or indirectly, out of, in connection with, resulting from, or related to entry upon the Property pursuant to this Section.

5.5 If Buyer determines, in its reasonable discretion, that the condition of the Property is not acceptable to Buyer, then Buyer may terminate this Agreement by written notice to Seller (specifying in detail the matters that are unacceptable) given on or before the end of the Due Diligence Period. If Buyer fails to so terminate this Agreement, Buyer shall be deemed to have approved all aspects of the condition of the Property.

6. Deposit of Documents and Funds in Escrow.

(a) Seller and Buyer, as applicable, hereby covenant and agree to deliver to Escrow Holder at least one (1) business day prior to Close of Escrow the following instruments, documents, and funds, the delivery of each of which shall be a condition of the Close of Escrow.

(b) Seller shall deliver:

(i) A Grant Deed in the form attached hereto as Exhibit "B" duly executed and acknowledged by Seller;

(ii) A Withholding Exemption Certificate Form 593-C as contemplated by California Revenue and Taxation Code §18662 (the "Withholding Affidavit") duly executed by Seller;

(iii) A Certification of Non-Foreign Status in accordance with Internal Revenue Code Section 1445 duly executed by Seller;

(iv) Such proof of Seller's authority and authorization to enter into this transaction as the Title Company may require in order to issue the Title Policy.

(c) Buyer shall deliver:

(i) The Purchase Price (less the Deposit) together with such funds as are required to pay for costs and expenses payable by Buyer hereunder;

(ii) Each of the Buyer and Seller may waive (in writing) any condition of the Close of Escrow set forth in this Section 6.

7. Authorization to Record Documents and Disburse Funds. Escrow Holder is hereby authorized to record the documents and disburse the funds and distribute the documents called for hereunder upon the Close of Escrow, provided each of the following conditions has then been fulfilled:

(a) The Title Company can issue the Title Policy, with a liability in the amount of the Purchase Price, showing fee title to the Property vested in Buyer, subject only to the Permitted Title Exceptions.

(b) Seller and Buyer shall have deposited in Escrow the documents and funds required pursuant to Section 6.

8. Prorations; Charges. Property taxes, assessments, and rents shall be prorated as of the close of Escrow. Buyer shall pay (i) fifty percent (50%) of the escrow fees and charges of Escrow Holder, (ii) the cost of all endorsements to the Title Policy and any extended coverage, and (iii) Buyer's share of the charges prorated under this Agreement. Seller shall pay: (i) fifty percent (50%) of the escrow fees and charges of Escrow Holder; (ii) the cost of the premium for CLTA coverage under the Title Policy; (iii) all recording charges, if any; and (iv) any documentary transfer taxes. **[DISCUSS]** If the Escrow shall fail to close for any reason other than Seller's default, Buyer shall pay any applicable Escrow cancellation charges.

9. Condemnation; Destruction. All risk of loss with respect to the Property shall remain with Seller until after the Close of Escrow and delivery of possession of the Property to Buyer. If at any time prior to the Close of Escrow, the Property, or any portion thereof, is damaged by fire or other casualty or taken or appropriated through eminent domain or similar proceedings, or is condemned for any public or quasi-public use, Buyer may terminate this Agreement. If Buyer terminates this Agreement, Seller shall be entitled to receive all insurance proceeds payable to Buyer or Seller or all condemnation proceeds actually paid for that portion of the property taken. If Buyer elects to maintain this Agreement in full force and effect, then upon Close of Escrow, Buyer shall be entitled to receive all insurance proceeds payable to Seller or all condemnation proceeds actually paid for that portion of the Property taken or, if such proceeds have been paid to Seller, Buyer shall receive a credit against the Purchase Price equal to the amount of proceeds actually paid to Seller. Buyer shall not be entitled to any reduction in the Purchase Price.

10. Default. In the event of a breach or default under this Agreement by either Seller or Buyer, the non-defaulting party shall have the right to terminate this Agreement and the Escrow for the purchase and sale of the Property by delivering written notice thereof to the defaulting party and to Escrow Holder, and if Buyer is the non-defaulting party, Buyer shall thereupon promptly receive a refund of the Deposit. Such right of termination of the Escrow by

the non-defaulting party shall be without prejudice to the non-defaulting party's rights and remedies against the defaulting party at law or equity, and specifically the right to specific performance of this Agreement.

11. As Is; Release. Buyer is acquiring the Property "AS IS, WHERE IS" without any representation or warranty of Seller, express, implied or statutory, as to the nature or condition of or title to the Property or its fitness for Buyer's intended use of same. Buyer is familiar with the Property. Buyer is relying solely upon its own, independent inspections, investigations and analysis of the Property as it deems necessary or appropriate in so acquiring the Property from Seller, including, without limitation, an analysis of any and all matters concerning the condition of the Property and its suitability for Buyer's intended purposes, and a review of all applicable laws, ordinances, rules and governmental regulations (including, but not limited to, those relative to building, zoning and land use) affecting the development, use, occupancy or enjoyment of the Property.

BUYER ACKNOWLEDGES AND AGREES THAT, SELLER HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO THE PROPERTY OR ANY MATTER RELATED THERETO, INCLUDING, WITHOUT LIMITATION, THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY, AND COMPLIANCE WITH ANY ENVIRONMENTAL LAWS OR THE PRESENCE, ABSENCE, CONDITION OR STATUS OF ANY HAZARDOUS MATERIALS. BUYER ACKNOWLEDGES AND AGREES THAT TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE SALE OF THE PROPERTY AS PROVIDED FOR HEREIN IS MADE ON AN "AS IS" CONDITION AND BASIS WITH ALL FAULTS, AND THAT SELLER HAS NO OBLIGATIONS TO MAKE REPAIRS, REPLACEMENTS OR IMPROVEMENTS OR REMEDIATE ANY HAZARDOUS MATERIALS.

BY INITIALING BELOW, THE BUYER ACKNOWLEDGES THAT (i) THIS SECTION 5.2 HAS BEEN READ AND FULLY UNDERSTOOD, (ii) THE BUYER HAS HAD THE CHANCE TO ASK QUESTIONS OF ITS COUNSEL ABOUT ITS MEANING AND SIGNIFICANCE, AND (iii) THE BUYER HAS ACCEPTED AND AGREED TO THE TERMS SET FORTH IN THIS SECTION 5.2.

BUYER'S INITIALS

Buyer waives and releases as of the Close of Escrow any and all claims it may have against Seller relating to the physical condition of the Property (including, without limitation, the presence or release hazardous materials or substances). To the extent of such waiver and release, Buyer expressly waives its rights, if any, under California Civil Code Section 1542 which provides:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.”

Buyer's Initials

12. Notices. All notices and demands shall be given in writing by certified mail, postage prepaid, and return receipt requested, or by recognized national courier service. Notices shall be considered given upon the earlier of (a) two (2) business days following deposit in the United States mail, postage prepaid, certified or registered, return receipt requested or (b) the following business day if sent by overnight courier. A copy of all notices shall be sent to Escrow Holder. Notices shall be addressed as provided below for the respective party; provided that any party may change its address for notices by written notice given to the other party.

Buyer: _____

Seller: City of Seaside
440 Harcourt Avenue
Seaside, California 93955
Attn.: City Manager

Escrow Holder: _____

13. Broker's Commissions. The parties hereto acknowledge that this transaction did not involve a broker, salesperson or finder ("Broker") representing either Buyer or Seller. Each party shall defend, indemnify and hold the other party harmless from and against any and all claims for any broker's commissions or similar compensation that may be payable to a Broker based on communications between the indemnifying party and such Broker. The provisions of this Section shall survive the Close of Escrow.

14. Standard Instructions. Each party agrees to execute Escrow Holder's supplemental reasonable standard instructions as may be necessary or proper in order to consummate the transactions contemplated by this Agreement; provided, however, in the event of a material conflict between the terms hereof and the terms of such standard instructions, the terms hereof shall control.

15. Time is of the Essence. The parties hereto agree that time is of the essence with respect to each term, condition and covenant hereof.

16. Successors and Assigns. The provisions of this Agreement are expressly binding upon, and shall inure to the benefit of, the parties hereto and their successors in interest and assigns.

17. Entire Agreement. This Agreement, together with all exhibits hereto, integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof. Notwithstanding the foregoing, the Temporary Construction Easement shall survive the Close of Escrow.

18. Severability. Invalidation of any of the terms, conditions, covenants, or other provisions contained herein by judgment or court order shall in no way affect any of the other terms, conditions, covenants, or provisions hereof, and the same shall remain in full force and effect.

19. Amendments. Any amendments to this Agreement shall be effective only when duly executed by Seller and Buyer and deposited with Escrow Holder.

20. Attorneys' Fees. In the event that suit is brought for the enforcement of this Agreement or as the result of any alleged breach thereof, the prevailing party or parties in such suit shall be entitled to recover their reasonable attorneys' fees, costs, and expenses from the losing party or parties, and any judgment or decree rendered in such proceedings shall include an award thereof.

21. No Third Party Beneficiary Rights. This Agreement is entered into for the sole benefit of Seller and Buyer and no other parties are intended to be direct or incidental beneficiaries of this Agreement.

22. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

23. Counterparts. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. For purposes of this Agreement, facsimile signatures shall be deemed to be original signatures, and shall be followed by the immediate overnight delivery of original signature pages.

24. Assignment of Agreement. Neither Buyer nor Seller may assign or transfer their respective rights or obligations under this Agreement without first obtaining the prior written consent of the other, which consent may be granted or withheld in its sole and absolute discretion.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first above written.

BUYER:

SELLER:

CITY OF SEASIDE

By: _____

Print Name: _____
Mayor

Attest:

Print Name: _____
City Clerk

Approved as to Form:

Standard Form

LIST OF EXHIBITS

- Exhibit A Legal Description of the Property
- Exhibit B Form of Grant Deed
- Exhibit C Certain Definitions
- Exhibit D List of Documents

Standard Form

EXHIBIT A

LEGAL DESCRIPTION OF THE LAND

Standard Form

EXHIBIT B

FORM OF GRANT DEED

RECORDING REQUESTED BY,
AND WHEN RECORDED RETURN TO
(AND SEND TAX STATEMENTS TO):

Attn: _____

[SPACE ABOVE FOR RECORDER'S USE ONLY]

This document is exempt from the
payment of a recording fee pursuant to
Government Code Section 27383

GRANT DEED

THE UNDERSIGNED GRANTOR DECLARES AS FOLLOWS:

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the
CITY OF SEASIDE, a municipal corporation [, as successor agency to the Redevelopment
Agency of the City of Seaside] (the "Grantor") hereby grants to _____
("Grantee") the land in the City of Seaside, County of Monterey, State of California, more
particularly described on **Exhibit A** attached hereto and all improvements thereon and all rights
and appurtenances relating thereto (the "Property").

IN WITNESS WHEREOF, Grantor has executed this Grant Deed as of the date set forth
below.

Dated: _____, 20__

CITY OF SEASIDE

By: _____

Print Name: _____

Mayor

ACKNOWLEDGEMENT

State of California)
County of Los Angeles)

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)

ACKNOWLEDGEMENT

State of California)
County of Los Angeles)

On _____, before me, _____,
(insert name and title of the officer)

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

I certify under PENALTY OF PERJURY under the laws of the State of California that
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A

Legal Description of the Land

(Attached.)

Standard Form

EXHIBIT C

CERTAIN DEFINITIONS

Environmental Condition means any condition of the Property that exists prior to or after the Closing Date, with respect to the air, land, soil, surface, subsurface strata, surface water, ground water, storm water or sediments.

Environmental Laws means all federal, state, local, or municipal 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.

Hazardous Substances includes without limitation:

- (a) Those 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;
- (b) Those substances listed in the United States Department of Transportation (DOT) Table [49 CFR 172.101], or by the Environmental Protection Agency (EPA), or any successor agency, as hazardous substances [40 CFR Part 302];

(c) Other substances, materials, and wastes that are or become regulated or classified as hazardous or toxic under federal, state, or local laws or regulations; and

(d) Any material, waste, or substance that is

(i) a petroleum or refined petroleum product,

(ii) asbestos,

(iii) polychlorinated biphenyl,

(iv) designated as a hazardous substance pursuant to 33 USCS § 1321 or listed pursuant to 33 USCS § 1317,

(v) a flammable explosive, or

(vi) a radioactive material.

Standard Form

EXHIBIT D

LIST OF DOCUMENTS DELIVERED TO BUYER

Standard Form

GROUND LEASE

between

CITY OF SEASIDE,
a municipal corporation
[, as successor agency to the Redevelopment Agency
of the City of Seaside]
("Landlord")

and

_____.

a _____
("Tenant")

_____, 20__

Standard Form

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EXHIBIT "C"	DESCRIPTION OF THE WORK
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EXHIBIT "E"	FORM OF MEMORANDUM OF GROUND LEASE

GROUND LEASE

THIS GROUND LEASE (the "Lease") is dated for reference purposes and entered into as of _____, 20__, by and between the CITY OF SEASIDE, a municipal corporation [, as successor agency to the Redevelopment Agency of the City of Seaside] ("Landlord"), and _____, a _____ ("Tenant").

Recitals

A. Landlord owns the land more particularly described in Exhibit "A" attached hereto.

B. On the terms and conditions set forth in this Lease, Tenant desires to lease the Property from Landlord, and complete the construction of certain improvements thereon, and Landlord requires Tenant to complete the construction of such improvements and thereafter maintain and operate them.

NOW THEREFORE, in consideration of the mutual promises contained herein, Landlord and Tenant agree as follows:

1. Tenant Due Diligence; Title Insurance; Lease of Property.

1.1 Survey; Title Insurance. Tenant acknowledges receipt of preliminary report No. _____ dated _____ (the "PTR") prepared by _____ Title Company (the "Title Company") and Tenant hereby approves the title exceptions in the PTR, except for the exceptions numbered _____ which Tenant desires to have plotted on an ALTA survey to be obtained by Tenant at Tenant's cost (the "Survey") and except for any other title exceptions revealed by such Survey. Upon the execution of this Lease, Tenant shall diligently cause the Survey to be performed as permitted by and subject to the terms of Section 1.2 below and shall promptly (but in no event later than _____) deliver a copy of the Survey to Landlord together with any reasonable written objections (if any) to items _____ in the PTR or other title exceptions shown on the Survey with a written explanation of such objections. Landlord shall then have _____ (____) business days to notify Tenant that Landlord will: (a) remove one or more of the applicable exception(s) (or cause them to be removed, or to be insured over by the Title Company) by the end of the Due Diligence Period (as defined in Section 1.2 below); or (b) decline to remove exceptions (or to cause them to be removed or insured over). Failure by Landlord to so notify Tenant shall be deemed to be Landlord's election not to remove the applicable title exception(s). If Landlord notifies Tenant that Landlord will remove (or cause to be removed) one or more of such title exceptions, then Landlord shall do so on or before the expiration of the Due Diligence period (unless this Lease is terminated by Tenant under this Section 1.1 or Section 1.2 below). If Landlord fails to so notify Tenant as to any exception, or declines to remove one of the applicable title exceptions, then Tenant may terminate this Lease by written notice to Landlord given on or before _____. If Tenant fails to so terminate this Lease, Tenant shall be deemed to have approved and accepted the applicable title exceptions that Landlord declined to remove (or to cause to be removed or insured over).

1.2 Physical Inspections by Tenant. Upon the execution of this Lease until _____ (the "Due Diligence Period"), Tenant and its contractors and consultants who are designated in writing to Landlord ("Tenant Designee's") shall have the right to enter

onto the Property (without disturbing any occupants thereof) for the purpose of performing the Survey, hazardous materials inspections, soils inspections and other physical inspections and investigations; provided, however, that: (a) Tenant shall deliver copies of all inspection reports to Landlord; (b) no inspections or investigations shall damage the Property or any improvements thereon or shall be “invasive” unless the Landlord has received a plan describing the scope of the inspection or investigation and Landlord has approved such plan in writing, which approval shall not be unreasonably withheld; (c) Tenant shall immediately repair any damage caused by or related to its inspections; and (d) neither Tenant nor any of Tenant’s Designees shall enter the Property unless and until Tenant has provided Landlord reasonable written evidence (such as insurance certificates and/or copies of policies) that the activities of Tenant and the Tenant Designees are covered by reasonable liability insurance naming Landlord as an additional insured. Tenant shall defend, indemnify and hold Landlord harmless from and against any and all claims, liabilities, losses, damages, costs and expenses (including, without limitation, attorneys’ fees and cost) resulting from the entry onto the Property, inspections or tests by Tenant or Tenant’s Designees. If Tenant reasonably disapproves or objects to any condition of the Property, then Tenant may terminate the Lease by written notice to Landlord given on or prior to the end of the Due Diligence Period that describes the basis for the disapproval or objection.

1.3 Title Insurance. Upon the expiration of the Due Diligence Period and Tenant’s failure to terminate this Lease under Sections 1.1 and 1.2, Landlord and Tenant shall execute and deliver to the Title Company a Memorandum of Lease as described in Section 14.19 below and shall cause it to be recorded in order to enable the Title Company to issue a leasehold title insurance policy to Tenant in the amount of _____ (\$_____) subject only to: (i) title exceptions _____ in the PTR; (ii) title exceptions created by Tenant or Tenant Designee’s; (iii) title exceptions based on the Survey that Landlord has declined to remove or cause to be removed or that Tenant is deemed to have approved under Section 1.1 above (the “Title Policy”). _____ shall pay for the costs of such title insurance. If through no fault of Tenant, the Title Company is unable or unwilling to issue the Title Policy on or before _____, then Tenant may terminate this Lease by written notice to Landlord given on or before _____.

1.4 Subject to Tenant’s rights to terminate in Section 1.1, 1.2 and 1.3 above, Landlord hereby leases the Property to Tenant, and Tenant hereby leases the Property from Landlord, upon and subject to the terms hereinafter set forth.

2. Term of Lease; Extension Options; Possession.

2.1 Term. **[LIMIT ON LEASE TERM: NORMALLY 55 YEARS, INCLUDING EXTENSION TERMS; EXCEPTIONS DEPEND ON USE]** The term of this Lease (the “Term”) shall commence on the date of this Lease and continue until _____, _____, subject to extension under Section 2.2 below.

2.2 Tenant’s Option to Extend the Term. Tenant shall have the option to extend the Term for _____ additional consecutive periods (“Extension Periods”) of _____ years each by giving Landlord written notice of such exercise not less than nine (9) months prior to the beginning of the applicable Extension Period.

2.3 Possession. Tenant shall be entitled to take possession of the Property upon _____ [the commencement of the Term]. Tenant acknowledges that Tenant has inspected the Property and Tenant accepts the Property in its existing condition, "AS IS", without representation or warranty (express or implied) and subject to all defects and conditions, whether patent or latent, and subject further to all legal requirements such as taxes, assessments, zoning, use permit requirements and building codes, based solely on Tenant's own inspection, analysis and evaluation and not in reliance on any information provided by or on behalf of Landlord.

3. Rent; Security Deposit.

3.1 Base Rent. As used in this Lease, the term "Lease Year" means, in the first instance, the period from the date of this Lease and to but not including _____, ____, and thereafter, each 12-month period during the Term beginning on _____, ____, or on any anniversary thereof. Tenant shall pay to Landlord, without prior notice or demand and without abatement, deduction, offset or credit, as minimum base rent for the Property ("Base Rent"), in lawful money of the United States at the time of payment, the sum of \$ _____ per month for the first Lease Year, \$ _____ per month for the second Lease Year, and the amount determined in accordance with Sections 3.2 and 3.3 for the [third] and each subsequent Lease Year. The Base Rent for the second and each subsequent Lease Year shall be payable to Landlord in advance, without the necessity of any notice or demand by Landlord, in equal installments on the first business day of each calendar month during such Lease Year.

3.2 Annual Adjustment of Base Rent. Except as otherwise provided in Section 3.3, the Base Rent for the _____ Lease Year(s) shall be the greater of the then-current Base Rent or the then-current Base Rent increased by the percentage increase in the Index (as hereinafter defined and described). In order to determine the increase, the then-current Base Rent shall be multiplied by a fraction, the numerator of which shall be the Index (as defined below) last published before the start of the Lease Year in question and the denominator of which shall be the Index last published before the first day of the previous Lease Year. The "Index" is the Consumer Price Index for All Urban Consumers, All Items, San Francisco-Oakland San Jose CMSA, utilizing a base of 1982-1984 = 100, as published by the United States Department of Labor, Bureau of Labor Statistics (the "Index"); provided, however, that if during the Term a later base year replaces the base year, then such later base year shall be used in determining the Index. If the Index is discontinued or revised during the Term, subsequent adjustments to the Base Rent shall be computed on the basis of any replacement index published by the Bureau of Labor Statistics or any successor agency, or, if no replacement index is published, on the basis of any index published by any governmental or non-governmental agency or entity that generally measures changes in the purchasing power of the U.S. dollar, as selected by Landlord in its good faith discretion.

3.3 Adjustment of Base Rent to Market. Notwithstanding the provisions of Section 3.2, the Base Rent for the _____, _____, _____ and _____ Lease Years (each, a "Market Rent Lease Year") shall be the greater of (i) the Base Rent for the Market Rent Lease Year as determined in accordance with Section 3.2 and without regard to this Section 3.3, or (ii) the fair market rent for the Property as of the start of the applicable Market Rent Lease Year (the "Fair Market Rent"), determined as provided below in this Section 3.3. If the applicable Market Rent

shall not have been determined by the start of the applicable Market Rent Lease Year, then the Base Rent for the applicable Market Rent Lease Year shall provisionally be paid in accordance with Section 3.2 and without regard to this Section 3.3, and upon the final determination of the Fair Market Rent, Tenant shall pay to Landlord the amount, if any, by which any installment or installments of Base Rent for the applicable Market Rent Lease Year shall have been underpaid. The Base Rent for each Lease Year after the applicable Market Rent Lease Year shall be the greater of the Fair Market Rent or the product obtained by multiplying the Fair Market Rent by a fraction, the numerator of which shall be the Index last published before the start of the Lease Year in question and the denominator of which shall be the Index last published before the start of the applicable Market Rent Lease Year. The Fair Market Rent shall be determined as follows:

(a) Landlord and Tenant shall attempt in good faith to agree on the Fair Market Rent before the start of the applicable Market Rent Lease Year. If Landlord and Tenant are unable to do so, then the Fair Market Rent shall be determined by appraisal in accordance with paragraphs (b) through (e) below.

(b) Within five business days after the start of the applicable Market Rent Lease Year, each party hereto shall deliver to the other a written notice appointing as such party's appraiser a disinterested person with at least ten (10) years' experience as a real estate appraiser, who shall be a member of a recognized society of real estate appraisers and shall have had experience in appraising industrial properties in the County of Monterey, California.

(c) Within ten (10) business days after the appointment of the second of the two appraisers, the two appraisers shall jointly appoint a third appraiser whose qualifications meet the standards set forth above.

(d) Within thirty (30) days after the appointment of the second appraiser, the first two appraisers shall make their respective determinations of the Fair Market Rent and shall submit their appraisal reports to Landlord and Tenant.

(e) The Fair Market Rent shall be conclusively deemed to the arithmetic average of the two fair market rental values shown in the appraisal reports submitted by the first two appraisers; provided, however, that if within thirty (30) days after the appointment of the second appraiser only one appraisal report shall have been submitted, the Fair Market Rent shall be conclusively deemed to the fair market rental value shown in such appraisal report; and provided further that if two appraisal reports are submitted within thirty (30) days after the appointment of the second appraiser and if the difference between the two appraised values is greater than five percent (5%) of the higher appraised value, then upon the written request of either Landlord or Tenant made within five (5) business days after the submission of the second appraisal report, the third appraiser shall select as the Fair Market Rent one of the appraised fair market rental values determined by the first two appraisers that it believes to be more accurate. The value so selected shall be conclusively deemed to be the Fair Market Rent.

(f) Each party shall pay for the cost of its appraiser and for one-half of the cost of the third appraiser.

(g) The Base Rent for Lease Years between Market Rent Lease years shall be adjusted as set forth in Section 3.2.

3.4 Percentage Rent.

(a) Calculation and Payment of Percentage Rent. Within one hundred and twenty (120) days after the end of each calendar year (which is Tenant's fiscal year for financial accounting and federal income tax reporting purposes), Tenant shall pay to Landlord, as additional consideration for Tenant's right to possess and occupy the Property under this Lease, additional rent ("Percentage Rent") in the amount by which _____% of [Gross Sales] [Gross Profit] (as defined below) for such calendar year exceeds the Base Rent actually paid by Tenant to Landlord for the Lease Year that ended during such calendar year.

(b) The [Gross Sales] [Gross Profit] for any calendar year shall be:

_____.

(c) Supporting Documentation; Audit. Concurrently with each payment of Percentage Rent, Tenant shall deliver to Landlord (i) Tenant's audited financial statements for the immediately preceding calendar year, prepared and certified by an independent certified public accounting firm, and (ii) a detailed written statement of the calculation of such Percentage Rent payment, and otherwise in form and substance satisfactory to Landlord. Landlord and its accountants and attorneys shall have the right to inspect, copy and audit Tenant's business and financial records for the purpose of confirming Tenant's calculation of Percentage Rent. If Landlord's audit reveals any underpayment of Percentage Rent, Tenant shall pay the underpaid amount to Landlord upon demand. Tenant shall receive a credit against the next Percentage Rent payment, without interest, in the amount of any overpayment shown by Landlord's audit. The cost of Landlord's inspection, copying and audit shall be performed at Landlord's expense unless the audit discloses Tenant's underpayment by more than 3% of the correct Percentage Rent payment, in which event Tenant shall pay or reimburse Landlord upon demand for the cost of such inspection, copying and audit, including any accountants' and attorneys' fees reasonably incurred by Landlord in connection therewith.

3.5 Place for Payment. All Base Rent, Percentage Rent, utility charges and other sums that become payable to Landlord under this Lease (collectively, "Rent") shall be paid to Landlord on or before the due date in lawful currency of the United States at Landlord's offices located at 440 Harcourt Avenue, Seaside, California 93955, Attention: _____, or at any other place or places that Landlord may designate by written notice to Tenant.

3.6 Security Deposit. Concurrently with its execution of this Lease, Tenant shall deposit with Landlord the sum of \$_____ (the "Security Deposit"). [Within five (5) business days after any increase in the Base Rent, Tenant shall deposit with Landlord an additional sum necessary to increase the Security Deposit to _____ months' Base Rent at the then-current rental rate for Base Rent and such additional deposit shall become part of the Security Deposit. Tenant hereby grants to Landlord a security interest in the Security Deposit in accordance with applicable provisions of the California Commercial Code. The Security Deposit shall be held by Landlord as security for the faithful performance by Tenant of all of the terms, covenants, and conditions of this Lease to be kept and performed by Tenant during the Term

hereof. If Tenant defaults with respect to any provisions of this Lease, including but not limited to the provisions relating to the payment of rent, landlord may (but shall not be required to) use, apply or retain all or any part of the Security Deposit for the payment of any rent or other sum in default, or for the payment of any other amount which Landlord may spend or become obligated to spend by reason of Tenant's default or to compensate Landlord for any loss or damage which Landlord may suffer by reason of Tenant's default. If any portion of the Security Deposit is so used or applied, Tenant shall, within ten (10) days after demand therefore, deposit cash with Landlord in an amount sufficient to restore the Security Deposit to the ten required amount. Landlord shall not be required to keep the Security Deposit separate from its general funds, and Tenant shall not be entitled to interest on such Security Deposit. Tenant waives any rights it may have under Section 1950.7 of the California Civil Code with respect to the Security Deposit. Within thirty (30) days following the expiration of the Term or earlier termination of this Lease and Tenant's performance of all of its obligations under this Lease, the Security Deposit or any balance thereof shall be returned to Tenant. If Landlord sells its interest in the Project during the Term hereof and deposits with the purchaser thereof the then unappropriated funds deposited by Tenant as aforesaid, Landlord shall be discharged from any further liability with respect to such Security Deposit accruing after the date Landlord delivers such Security Deposit to such purchaser or gives a credit to the purchaser based on the Security Deposit and obtains an agreement from such purchaser to assume the obligations of Landlord with respect to the Security Deposit.

4. Utilities. Tenant shall obtain, at Tenant's expense, all electricity, gas, potable water, fire suppression water, sewer, waste water services and other utilities needed to operate the Improvements during the Term.

5. Net Lease. This Lease is a "triple-net" lease; all Rent shall be paid to Landlord absolutely net of all costs and expenses, except to the extent otherwise expressly provided in this Lease. Without limiting the generality of the foregoing, Tenant shall be responsible for all aspects of maintaining and operating the Property, including the payment when and as due of all real property taxes and assessments from time to time assessed against the Property or Tenant's possessory interest therein, and of all charges for gas, electricity, telephone service, water, sewer service, trash removal and other utilities and services furnished to the Property during the Term; provided, however, that Landlord may at any time, in its discretion, pay any such taxes, assessments and charges that Tenant fails to pay when and as due, including, in Landlord's discretion, any fees, penalties and charges assessed by reason of Tenant's failure to make timely payment, in which case Tenant shall reimburse Landlord within five (5) business days after Landlord delivers written request for reimbursement. Tenant shall indemnify and hold Landlord Landlord's property, including the Property and any improvements now or hereafter on the Property, free and harmless from any liability, loss, or damage resulting from any taxes, assessments, or other charges required by this Lease to be paid by Tenant and from all interest, penalties, and other sums imposed thereon and from any sales or other proceedings to enforce collection of any such taxes, assessments, or other charges.

LANDLORD HEREBY GIVES TENANT NOTICE, AND TENANT ACKNOWLEDGES RECEIPT OF SUCH NOTICE, AS REQUIRED PURSUANT TO CALIFORNIA REVENUE AND TAXATION CODE SECTION 107.6, THAT THE LEASEHOLD INTEREST CREATED BY THIS LEASE MAY RESULT IN A POSSESSORY

INTEREST TAX BEING LEVIED AGAINST THE PROPERTY AND/OR TENANT'S LEASEHOLD INTEREST, AND THAT IN SUCH EVENT TENANT SHALL BE OBLIGATED TO PAY SUCH TAX.

6. Use; Hazardous Materials; Compliance with Laws; Inspection.

6.1 Use of Property. Tenant may use the Property for the development, construction, operation and maintenance of the Work described in Section 7.1 below and the use thereof as _____; provided, however, that: (a) Tenant shall not use or permit the Property or any portion of the Property to be improved, developed, used, or occupied in any manner or for any purpose that is in any way in violation of any federal, state or local law, ordinance, or regulation; and (b) Tenant shall not maintain, commit or permit the maintenance or commission of any unreasonable fire or health hazards, or any nuisance, as now or hereafter defined by any statutory or decisional law applicable to the Property, on the Property or any part of the Property.

6.2 Hazardous Materials.

(a) Definitions.

“Hazardous Materials” shall mean any substance that now or in the future requires investigation or remediation under, or is regulated or defined as a hazardous waste or hazardous substance, by any governmental authority or instrumentality or any law, regulation, rule or order, or any amendment thereto, including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601 et seq. and the Resource Conservation and Recovery Act, 42 U.S.C. § 9601 et seq., or that is otherwise toxic, explosive, corrosive, flammable, infectious, mutagenic, radioactive, carcinogenic, a pollutant or a contaminant, including gasoline, diesel, petroleum hydrocarbons, polychlorinated biphenyls (PCBs), asbestos, radon and urea formaldehyde foam insulation.

“Environmental Requirements” shall mean all present and future governmental laws, regulations, rules, orders, permits, licenses, approvals, authorizations and other requirements of any kind applicable to Hazardous Materials, including common law tort principles (such as public and private nuisance and strict liability for conducting abnormally dangerous activities).

“Handle,” “Handled” or “Handling” shall mean any installation, handling, generation, storing, treatment, use, disposal, discharge, release, manufacture, refinement, emission, abatement, removal, transportation, presence or migration of any Hazardous Materials brought on the Property by Tenant or Tenant's Representatives, or any other activity or any type in connection with or involving Hazardous Materials.

“Tenant's Representatives” shall mean all Tenant's officers, employees, contractors, representatives, assignees, sublessees, licensees, agents, invitees, and any trespassers on the Property.

(b) Indemnification by Tenant. In addition to, and not in derogation of any other indemnification contained in this Lease, Tenant agrees to indemnify, defend and hold harmless Landlord, its successors and assigns, and its and their directors, officers, shareholders,

employees, agents and affiliates from all costs, expenses, damages, liabilities, claims, fines, penalties, interest, judgments, and losses of any kind arising from or in any way related to Tenant's or Tenant's Representatives' Handling of Hazardous Materials during the Term or failure to comply in full with this Section 6.2 (collectively, "Environmental Losses"), including consequential damages, damages for personal or bodily injury, property damage, damage to natural resources occurring on or off the Property, encumbrances, liens, costs and expenses of investigations, monitoring, clean up, removal or remediation of Hazardous Materials, defense costs of any claims (whether or not such claim is ultimately defeated), good faith settlements, attorneys' and consultants' fees and costs, and losses attributable to the diminution of value, loss or use or adverse effects on marketability or use of any portion of the Property, whether or not such Environmental Losses are contingent or otherwise, matured or unmatured, foreseeable or unforeseeable. If Landlord is ever made a party to any action or proceeding by reason of a matter for which Tenant is obligated to indemnify Landlord, then Tenant, upon notice from Landlord, shall, at Landlord's option, either defend that action or proceeding on behalf of Landlord at Tenant's expense with counsel satisfactory to Landlord or reimburse Landlord for all defense costs Landlord actually incurs in defending against such action or proceeding, whether or not the action or proceeding is ultimately defeated. This indemnity is intended by the parties to be as broad and comprehensive as possible under law and shall apply regardless of the fault (including active or passive negligence) of either Tenant or Landlord.

(c) Landlord's Consent to Handling of Hazardous Materials. Except for those Hazardous Materials described on Exhibit "B", Tenant and Tenant's Representatives shall not Handle any Hazardous Materials at or about the Property without Landlord's prior written consent, which consent may be granted, denied, or conditioned upon compliance with Landlord's requirements, all in Landlord's absolute discretion.

(d) Delivery of Certain Documents to Landlord. Concurrently with the execution of this Lease, and again prior to the commencement of any Extension Period, and in any event upon request by Landlord, Tenant shall deliver to Landlord copies of all permits, authorizations, plans and reports, and supporting documentation therefor, including any Hazardous Materials Management Plan, which are required by law or by any governmental authority with respect to Tenant's use or proposed use of the Property, including any Handling of Hazardous Materials. The provisions of this Section 6.2 shall apply to all Hazardous Materials, whether or not Landlord has given Tenant its consent to Handle such Hazardous Materials. Tenant's and Tenant's Representatives' Handling of all Hazardous Materials shall comply at all times with all Environmental Requirements and Tenant shall, at its own expense, promptly take all actions required by any governmental authority in connection with Tenant's or Tenant's Representatives Handling of Hazardous Materials at or about the Property. Tenant shall keep Landlord fully and promptly informed of all Handling of Hazardous Materials on the Property, including notifying Landlord as soon as possible after any spill, release, discharge or emission.

(e) Additional Delivery Requirements. Tenant shall deliver to Landlord prior to delivery to, or promptly after receipt from, any governmental authority or other person or entity copies of all permits, manifests, closure or remedial action plans, notices, investigations, inquiries, claims, citations, summons, complaints, writs, orders and all other communications or documents relating to (i) the Handling of Hazardous Materials at or about the Property, (ii) the actual, alleged or threatened violation of Environmental Requirements or (iii)

the liability of Tenant for Environmental Losses. Any communications, written or oral, regarding any release, discharge, emission or any other occurrence posing an imminent threat of damage or contamination to the Property or the environment shall be delivered or, if oral, communicated, to Landlord within 24 hours after receipt. All other communications shall be delivered to Landlord within 10 days after receipt. Landlord shall have no obligation to review or evaluate any such communication and shall not be deemed to have approved, consented to or participated in any act or omission described or required by such communication.

(f) Compliance Program. Tenant shall maintain, at its own expense, a written program to ensure and monitor Tenant's continued compliance with this Section 6.2 and all Environmental Requirements. At Landlord's request, Tenant shall provide Landlord with a copy of such program, including monitoring results; provided, however, that Tenant acknowledges that such program will be supplied to Landlord solely for informational purposes, and that Landlord shall have no obligation to review the information provided, shall not be deemed to have approved or consented to any matter set forth therein, and shall have no liability for any deficiencies therein. Landlord agrees not to disclose to any third parties the contents of any such written program provided by Tenant, unless Tenant consents to such disclosure; provided, however, Landlord may disclose such information on a confidential basis to its attorneys, property managers or its other agents, or as required in connection with the procurement of insurance or financing, or as required by law.

(g) Lease Closure. Prior to the expiration or termination of this Lease, Tenant shall, at its sole expense, promptly remove from the Property, using the then best available technology, all Hazardous Materials Handled by Tenant or Tenant's Representatives during the Term (collectively, "Lease Closure"), notwithstanding any lesser standard of removal or remediation which might be allowable under applicable law or governmental policies, and perform or cause to be performed all actions necessary, as determined by Landlord in its reasonable business judgment, to ensure that Lease Closure has been completed, including inspection, testing and post-Lease Closure monitoring. Tenant, at its sole expense, shall repair any damage caused by such work and unless otherwise requested by Landlord, shall close, at the completion of all testing and monitoring, in accordance with applicable law, any and all monitoring and extraction wells and boreholes installed as a result of or in connection with Tenant's occupancy of the Property or otherwise installed by Tenant, or at Tenant's direction. All consultants or contractors performing work on behalf of Tenant pursuant to this Section 6.2 shall be qualified and licensed to undertake the applicable work and shall be selected by Tenant; provided that Landlord shall be notified of the selected consultant(s) at least 10 business days prior to the commencement of any work by such consultant(s) (except in an emergency, in which case Landlord shall be notified within one business day after the selection of the consultant(s)) and Landlord shall have the right to disapprove the use of such consultant(s) in the exercise of Landlord's reasonable business judgment. All work required to be performed under this Section 6.2, and Tenant's and Tenant's Representatives' Handling of all Hazardous Materials, shall be performed in a good, safe and workmanlike manner and in a manner that will not interfere with the use, operation, leasing or sale of the Property.

(h) Tenant shall be responsible and liable for the compliance with all of the provisions of this Section 6.2 by Tenant's Representatives.

(i) Discharge of Liens. Tenant shall discharge and remove at its own expense, by bond or otherwise, all liens or charges of any kind filed or recorded against the Property in connection with Tenant's or Tenant's Representatives' Handling of Hazardous Materials, within 10 business days after the filing or recording of such lien or charge, and if Tenant fails to do so, Landlord shall have the right, but not the obligation, to remove the lien or charge at Tenant's expense in any manner Landlord deems expedient.

(j) Landlord's Rights. Landlord and its representatives and consultants shall have the right, but not the obligation, to enter the Property at any reasonable time upon 24 hours' prior notice (except in the case of an emergency) (i) to confirm Tenant's compliance with the provisions of this Section 6.2, including the right to physically investigate the condition of the Property and review all permits, reports, plans, and other documents regarding the Handling of Hazardous Materials, and (ii) to perform Tenant's obligations under this Section 6.2 if Tenant has failed to timely do so. Tenant shall pay the costs of Landlord's consultants' fees and all other costs incurred by Landlord pursuant to clause (i) above if such investigation is undertaken because Tenant has failed to provide full and complete information regarding any release, discharge or other Handling of Hazardous Materials and shall pay, in any case, all such costs incurred pursuant to clause (ii) above. Landlord shall use reasonable efforts to minimize any interference with Tenant's sublessees caused by Landlord's entry into the Property, but Landlord shall not be responsible for any interference caused thereby.

(k) Environmental Audit. Landlord shall have the right, but not the obligation, to require, annually during the Term and again within five (5) business days after the termination or expiration of the Term, that a detailed review ("Environmental Audit") be undertaken to determine whether the Property and Tenant and Tenant's Representatives' Handling of all Hazardous Materials comply with this Section 6.2. Tenant shall pay all costs incurred in connection with any Environmental Audit required by Landlord, including without limitation, the costs and expenses of all consultants and sampling and analysis, in the event that (i) as a result of the Environmental Audit, it is determined that the Property or Tenant's or Tenant's Representatives' Handling of all Hazardous Materials do not comply with this Paragraph 6.2, or (ii) the Environmental Audit is undertaken at the termination or expiration of the Term. In all other cases, Landlord shall pay the costs of any Environmental Audit it requires pursuant to this Section 6.2. The Environmental Audit shall be conducted by independent, qualified, licensed environmental consultants selected by Tenant and acceptable to Landlord. If the consultants chosen by Tenant are unacceptable to Landlord, Landlord shall be entitled to engage its own consultants to conduct the Environmental Audit, and Tenant shall pay Landlord's consultants' fees and all costs incurred by Landlord in performing the Environmental Audit. The Environmental Audit shall include an inspection of the Property, interviews with the occupants of the Property and any other matters which the consultants believe, in the exercise of their professional judgment, are necessary to ascertain whether the Property are in compliance with this Section 6.2, including the installation of monitoring wells, and soils and water testing. Tenant shall fully cooperate with the consultants and comply with all information requests. After the completion of the Environmental Audit, a written report shall be prepared and copies shall be distributed to both Landlord and Tenant.

(l) Release of Hazardous Materials. In the event of any release, discharge or other event caused or contributed to by the acts or omissions of the Tenant or

Tenant's Representatives which poses a threat of damage or contamination to the Property or the environment, whether discovered by Landlord or Tenant, Tenant shall fully document the facts relating to the event, including the circumstances existing prior to and after the occurrence of the event, the precise nature of the release, discharge or event, including specific compounds and quantities involved, and all actions Tenant has taken and will take to remediate the release, discharge or event. Tenant shall provide such documentation to Landlord promptly after the occurrence in question. Tenant shall pay the reasonable costs and fees charged by Landlord's environmental consultants to review such documentation and provide peer review confirming the adequacy of the measures, past and future, taken by Tenant to remediate the problem.

6.3 Compliance with Applicable Requirements. Tenant, shall, at Tenant's sole expense, fully, diligently and in a timely manner, comply with all applicable laws, building codes, regulations, ordinances, rules, directives, covenants, or restrictions of record, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Landlord's engineers and/or consultants which relate in any manner to the Property (collectively, "Applicable Requirements"), without regard to whether such Applicable Requirements are now in effect or become effective hereafter. Tenant shall, within 10 days after receipt of Landlord's written request, provide Landlord with copies of all permits and other documents, and other information evidencing Tenant's compliance with any Applicable Requirements specified by Landlord, and shall immediately upon receipt, notify Landlord in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Tenant or the Property to comply with any Applicable Requirements.

6.4 Inspection. Landlord's consultants shall have the right, but not the obligation, to enter into the Property at any time, in the case of an emergency, and otherwise at reasonable times, for the purpose of (a) inspecting the condition of the Property and reviewing all permits, reports, plans and other documents regarding the Handling of Hazardous Materials, (b) verifying compliance by Tenant with this Lease and (c) performing Tenant's obligations under Section 6.2 if Tenant has failed to timely do so. The cost of any such inspections shall be paid by Landlord, unless a violation of Applicable Requirements or a contamination is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Tenant shall upon request reimburse Landlord for the reasonable cost of such inspections, so long as such inspection is reasonably related to the violation or contamination. Tenant shall pay, in any case, all such costs incurred pursuant to clause (c) above.

7. Construction and Installation of Improvements.

7.1 The Work. At no cost to Landlord, Tenant shall cause to be performed all construction, alterations, additions, installations, repairs and refurbishment required to complete the work described in Exhibit "C" (collectively, the "Work") and shall comply with the schedule set forth in Exhibit "D". Tenant's failure to meet any of the deadlines in Exhibit "D", as the same may be extended in accordance with the provisions of Section 14.4, shall constitute a non-curable "Event of Default" (as defined in Section 13.1).

7.2 Construction Contracts. All Work shall be performed only by competent and qualified contractors duly licensed under the laws of the State of California pursuant to

written contracts with such contractors. Tenant shall use its best efforts to enter into a general construction contract for the Work (the "General Construction Contract") with _____, requiring the general contractor to cause the Work to be performed in a manner and timeframe consistent with the terms of this Lease for a guaranteed maximum price not exceeding \$ _____. Tenant shall not enter into any general construction contract or any separate contract for any major component of the Work without first obtaining Landlord's written approval of the form and content of such contract (including all exhibits, schedules and attachments thereto) and, if the contractor is other than _____, of the contractor as well. Landlord shall not unreasonably withhold such consent; provided, however, that without limiting the conditions on which Landlord may grant its consent to any contractor, Landlord may require that such contractor furnish performance and payment bonds issued by a licensed corporate surety on terms and conditions and in amounts satisfactory to Landlord.

7.3 Review of Plans and Permits. Landlord shall not be deemed to have reviewed any plans, drawings or specifications from an engineering or technical standpoint, and Landlord shall have no liability whatsoever to Tenant or any third party based on or arising out of any patent or latent defect in the design or construction of the Work, whether or not such defect is actually known or apparent to Landlord.

7.4 Compliance with Law and Quality. **[ADD IF RENT IS BELOW MARKET AS SHOWN BY AN APPRAISAL, OR ANY DIRECT OR INDIRECT "ASSISTANCE" IS GIVEN BY LANDLORD FOR THE PROJECT, OR ANY PORTION OF THE PREMISES IS PART OF FORMER FORT ORD:** Tenant shall pay, or cause to be paid, the prevailing rates of wages for all work and shall comply with Section(s) 1720 et seq. of the California Labor Code and related regulations.] Tenant shall cause the Work and any other construction, alterations, additions, installations, repairs and refurbishment at any time undertaken on or in the Property to be performed (a) in a workmanlike manner with only new and high quality building materials, (b) in compliance with all applicable building codes and other applicable laws, ordinances, regulations, and orders Landlord and of all federal, state, county, and local governmental agencies or entities having jurisdiction over the Property, and (c) in compliance with all applicable insurance requirements. Without limiting the generality of the foregoing provisions, Tenant shall not permit any component of the Work to be commenced until all building permits and other governmental permits, licenses and approvals required in connection with such component of the Work have been issued.

7.5 First Source Hiring. Tenant shall comply with the City's Local First Source Recruitment Policy attached hereto as Exhibit "E" and shall cause all of its contractors, subcontractors, subtenants and operators of the improvements or the Property to comply therewith. On or before _____, Tenant shall submit to Landlord for Landlord's review and approval a "First Source Hiring Program" for the Property which shall include specific programs and activities that the Developer and others will perform to comply with the City's Local First Source Recruitment Policy.

Tenant shall include provisions within all of its construction contracts which require the construction contractors and their subcontractors to adhere to: (i) the City's Local First Source Recruitment Policy; and (ii) the following local preferences in selecting its contractors and hiring construction workers: (a) first preference shall be for contractors and

subcontractors located in the City of Seaside, and (b) second preference should be for contractors and subcontractors located in the County of Monterey. Nothing in this Section shall prevent Tenant from selecting contractors or subcontractors (or the construction contractors from selecting subcontractors) outside of Monterey County if Tenant is unable, as shown by reasonable evidence delivered to Landlord, to obtain competitive bids (based on experience and bid price) from the aforementioned preference groups.

7.6 Notices of Nonresponsibility. Landlord shall, at any and all times during the Term, have the right to post and maintain on the Property and to record as required by law any notice or notices of nonresponsibility provided for by the mechanics' lien laws of the State of California. Tenant shall give Landlord not less than thirty (30) days' written notice prior to the commencement of any Work (including site preparation work) or the delivery of building materials to the Property.

7.7 Mechanics' Liens. At all times during the Term, Tenant shall keep the Property and all building and improvements now or hereafter located on the Property free and clear of all liens and claims of liens for labor, services, materials, supplies, or equipment performed on or furnished to the Property. Should Tenant fail to pay and discharge or cause the Property to be released from any such lien or claim of lien within thirty (30) days after service on Tenant of written request from Landlord to do so, Landlord may pay, adjust, compromise and discharge any such lien or claim of lien on such terms and manner as Landlord may deem appropriate. In such event, Tenant shall, on or before the first day of the next calendar month following any such payment by Landlord, reimburse Landlord for the full amount paid by Landlord in paying, adjusting, comprising, and discharging such lien or claim of lien, including any attorneys' fees and other costs expended by Landlord, together with interest as provided in Section 14.5 from the date of payment by Landlord to the date of repayment by Tenant.

7.8 Ownership of Improvements. Any and all buildings and improvements placed or erected on the Property as well as any and all other alterations, additions, improvements and fixtures (except for improvements that are excluded from the Property and also except for Tenant's furniture and trade fixtures) made or placed in or on the Property by Tenant shall be owned by Tenant until the expiration or any earlier termination of this Lease, shall be considered part of the real property of the Property, and shall remain on the Property and, without compensation to Tenant, on the expiration or any earlier termination of this Lease shall become the sole property of Landlord or, if Landlord so elects and upon written notice to Tenant, shall be demolished and removed by Tenant from the Property at Tenant's sole expense. Tenant shall not remove any improvements from the Property, commit or permit any waste, or destroy or modify any improvements on the Property except as expressly permitted by this Lease.

8. Maintenance and Repairs.

8.1 Maintenance by Tenant. At all times during the Term, Tenant shall, at Tenant's own cost and expense, keep and maintain the Property (including all structural, non-structural, interior, exterior, landscaped areas, systems, equipment, facilities, driveways, parking lots, fences, and signs) in good order, condition and repair (whether or not the portion of the Property requiring repairs, or the means of repairing the same, are reasonably or readily

accessible to Tenant, and whether or not the need for such repairs occurs as a result of Tenant's use, any prior use, the elements or the age of such portion of the Property). Tenant's maintenance obligations shall include restorations, replacements and renewals when necessary to keep the Property and all improvements thereon in good order, condition and repair. Tenant shall, during the Term, keep the exterior appearance of the Building in a first-class condition consistent with the exterior appearance of other similar facilities of comparable age and size in the vicinity, including, when necessary, exterior repainting. In keeping the Property in good order, condition and repair, Tenant shall exercise and perform good maintenance practices, specifically including the procurement and maintenance at Tenant's expense of service contracts for HVAC equipment, any boiler and pressure vessels, fire protection systems, landscaping and irrigation systems, the roof and drains, and asphalt and parking lots, each with a contractor specializing and experienced in the maintenance of the applicable equipment or improvements. Tenant shall provide Landlord with a complete and correct copy of each such service contract and any amendments thereto. Tenant's maintenance obligations under this Section shall not be construed as limiting any right or requirement expressly provided for elsewhere in this Lease for Tenant to alter, modify, demolish, remove or replace any improvement. No deprivation, impairment or limitation of use resulting from any event or work contemplated by this Section shall entitle Tenant to any offset, abatement or reduction in rent nor to any termination or extension of the Term.

8.2 Requirements of Governmental Agencies. At all times during the Term, Tenant shall, at Tenant's own cost and expense:

(a) make all alterations, additions, or repairs to the Property (including the improvements and facilities on the Property) required by any law, ordinance, statute, order, or regulation now or hereafter made or issued by any federal, county, local, or other governmental agency or entity;

(b) observe and comply with all laws, ordinances, statutes, orders, and regulations now or hereafter made or issued respecting the Property by any federal, county, local, or other governmental agency or entity; and

(c) indemnify, defend and hold Landlord and the property of Landlord, including the Property, free and harmless from any and all liabilities, losses, damages, fines, penalties, claims, and actions resulting from Tenant's failure to comply with the requirements of this Section 8.

8.3 Tenant's Duty to Restore Property. Should, at any time during the Term, any buildings or improvements now or hereafter on the Property be destroyed in whole or in part by fire, theft, the elements, or any other cause not the fault of Landlord, Tenant, at Tenant's own cost and expense, shall repair and restore the damaged or destroyed buildings or improvements according to the original final plans and specifications therefore or according to any modified plans and specifications that provide for improvements consistent in terms of size, design and quality with the original buildings and improvements. If the work of repair and restoration does not require the issuance of any building permit or other permit from governmental authorities or the preparation of plans, then such work shall be commenced by Tenant within sixty (60) days after the damage or destruction occurs and shall be completed as soon as possible and in any

event within nine months after such work is commenced. If the work of repair and restoration requires the issuance of any building permit or other permit from governmental authorities or the preparation of plans, then such work shall commence within ninety (90) days after the last to occur of obtaining of the necessary permit or permits or the preparation of plans and shall be completed as soon as possible and in any event within one year after such work is commenced. The Parties agree that events or conditions may preclude in some instances the immediate making of permanent repairs. The Parties agree that in those instances Tenant shall make interim repairs that will protect the improvements from further deterioration and permit the continued use of the Property to the extent possible for the purposes for which they were demised. In such event Tenant, upon demand, shall provide Landlord sufficient information for Landlord to satisfy itself that the time for making permanent repairs must be extended as reasonable beyond the time limits specified hereinbefore. In all other respects, the work of repair and restoration shall be done in accordance with the requirements for the original Work set forth in Section 7. No deprivation, impairment or limitation of use resulting from any event or work contemplated by this Section shall entitle Tenant to any offset, abatement or reduction in Rent or to any termination or extension of the Term.

8.4 Application of Insurance Proceeds. Any and all fire or other insurance proceeds that become payable at any time during the Term because of damage to or destruction of any buildings or improvements on the Property shall be paid to Tenant's lender or to Landlord and shall be used toward the repair, restoration and replacement of damaged or destroyed buildings or improvements in the manner required by Section 8.3; provided, however, that any fire or other insurance proceeds remaining after the repair, restoration, reconstruction and/or replacement of the damaged or destroyed buildings or improvements has been completed to the satisfaction of Landlord (the "Remaining Insurance Proceeds") shall be allocated between Tenant and Landlord as follows:

(a) that percentage of the Remaining Insurance Proceeds which equals the percentage of the unexpired portion of the Term, at the time the repair, restoration, reconstruction and/or replacement of the damaged or destroyed buildings has been completed, shall belong to and be the sole property of Tenant; and

(b) that percentage of the Remaining Insurance Proceeds which equals the percentage of the expired portion of the Term, at the time the repair, restoration, reconstruction and/or replacement of the damaged or destroyed buildings has been completed, shall belong to and be the sole property of Landlord.

8.5 Landlord's Rights of Entry. Landlord and Landlord's agents shall have the right to enter at reasonable hours after prior notice of the time and place of entry into and upon said portions of the Property as necessary for the purpose of ascertaining that the improvements on the Property are kept and maintained in good condition and repair as provided for in this Section 8 and that the terms of this Lease are observed.

9. Indemnity and Insurance. **[LANDLORD RISK MANAGER SHOULD REVIEW]**

9.1 Exculpation of Landlord. Landlord shall not be liable to Tenant for any damage to Tenant or Tenant's property for any cause, except for any damage to Tenant or Tenant's property resulting from the gross negligence and willful misconduct of Landlord or its authorized representatives. Tenant waives all claims against Landlord for damage to person or property arising, or asserted to have arisen, for any reason, except that Landlord shall be liable to Tenant for any damage to Tenant resulting from the gross negligence or willful misconduct of Landlord, provided that under no circumstances shall Landlord be liable for any injury to Tenant's business or for any loss of income or profit. Subject to the foregoing provisions, Landlord agrees to, defend, indemnify and hold Tenant and its officers, directors, employees, agents and affiliates and their respective assets free and harmless against and from any and all liabilities, claims, losses, damages, and expenses (including attorneys' fees and court costs) resulting from or arising out of Landlord's failure to perform any of Landlord's obligations under this Lease when and as required by the terms hereof.

9.2 Indemnity. Tenant agrees to, and does hereby defend, indemnify and hold Landlord and its officers, directors, employees, agents and affiliates and their respective assets, including the Property and all improvements now or hereafter on the Property, free and harmless against and from any and all liabilities, claims, losses, damages, and expenses (including attorneys' fees and court costs) resulting from or arising out of Tenant's occupation and use of the Property, specifically including any liability, claim, loss, damage, or expense arising by reason of:

(a) The death or injury of any person, including any person who is an employee or agent of Tenant, or the damage to or destruction of any property, including property owned by Tenant or by any person who is an employee or agent of Tenant, from any cause whatsoever while such person or property is on the Property;

(b) Any work performed on the Property or materials furnished to the Property at the instance or request of Tenant or any person or entity acting for or on behalf of Tenant; or

(c) Tenant's failure to comply with any requirement of law or any requirement imposed on Tenant or the Property by any governmental agency or authority;

(d) Tenant's failure to perform any of Tenant's obligations under this Lease when and as required by the terms hereof; or

(e) The inaccuracy of any representation made by Tenant to Landlord in this Lease.

9.3 Liability Insurance. Tenant shall, at Tenant's own cost and expense, secure promptly after execution of this Lease and maintain during the entire Term a broad form comprehensive coverage policy of public liability insurance issued by an insurance company acceptable to Landlord and authorized to issue liability insurance in the State of California and having a rating of not less than "A-13" as set forth in the then current Best's Insurance Guide, insuring Tenant and Landlord against loss or liability caused by or connected with Tenant's occupation, use, disuse, or condition of the Property under this Lease in amounts not less than:

(a) \$2,000,000 for injury to or death of one person and, subject to such limitation for the injury or death of one person, of not less than \$5,000,000 for injury or death to two or more persons as a result of any one accident or incident; and

(b) \$2,000,000 for damage to or destruction of any property of others. All public liability insurance and property damage insurance shall insure performance by Tenant of the indemnity provisions of this Lease. Landlord shall be named as additional insured on each insurance policy required by this Section, and such policies shall contain cross liability endorsements.

9.4 Increase in Insurance Coverage. Not more frequently than each three years, if, in the reasonable opinion of Landlord, the amount of public liability and property insurance coverage at that time is not adequate, Tenant shall increase the insurance coverage as reasonably required by Landlord.

9.5 Fire and Casualty Insurance. Tenant shall, at Tenant's own cost and expense, at all times during the Term, keep all buildings, improvements, Tenant's personal property and other structures on the Property, as well as any and all additions thereto, insured for their actual cash, full replacement value (as defined below), by insurance companies authorized to issue such insurance in the State of California and having a rating of not less than "A-13" as set forth in the then current Best's Insurance Guide, against loss or destruction by fire and the perils commonly covered under the standard extended coverage endorsement to fire insurance policies in the geographic area in which the Property are located. Each insurance policy shall be issued in the names of Landlord, Tenant and any Mortgagee, as their interests may appear. Each insurance policy shall provide that any loss payable under such insurance shall be payable in Trust to Landlord and Mortgagee as loss payees. Any proceeds received because of a loss covered by such insurance shall be used and applied in the manner required by Section 8.4. On termination of this Lease, such insurance policy or policies, all rights thereunder and any insurance proceeds shall be assigned to Landlord at Landlord's election; provided, however, that Landlord shall reimburse Tenant for any unearned premiums that Tenant prepaid for the year in which this Lease is terminated and for years after this Lease is terminated.

9.6 Specific Perils to Be Insured. Notwithstanding anything to the contrary contained in Section 9.5, the insurance required by Section 9.5 shall, whether or not included in the standard extended coverage endorsement mentioned in Section 9.5, insure all buildings, improvements, and other structures on the Property, as well as any and all additions thereto, against loss or destruction by windstorm, typhoon, tidal wave, explosion, riot, riot attending a strike, civil commotion, acts of terrorism, sabotage or other warlike acts, malicious mischief, vandalism, aircraft, fire, smoke damage and sprinkler leakage. Furthermore, the insurance required by Section 9.5 during the performance of the Work shall have course of construction, vandalism, and malicious mischief clauses attached insuring the Work during construction and all materials delivered to the Property for their actual cash full replacement value. For purposes of this Section 9.6, the "full replacement value" of any building or other improvements to be insured shall be determined by the company issuing the insurance policy at the time the policy is initially obtained. Every two years thereafter, either party hereto shall have the right to notify the other party hereto that it elects to have the replacement value redetermined by any insurance company. The redetermination shall be made promptly in accordance with the rules and

practices of the Board of Fire Underwriters, or a like board recognized and generally accepted by the insurance company, and each party shall be promptly notified of the results by such company. The insurance policy or policies shall be adjusted accordingly to reflect the redetermined value.

9.7 Evidence of Insurance. Prior to entering the Premises for any purpose, Tenant shall deliver to Landlord insurance certificates showing that Tenant has obtained and is maintaining the insurance required by this Section 9. Upon written request of Landlord, Tenant shall deliver to Landlord a complete and correct copy of each insurance policy required by this Section 9. All insurance policies required by express provisions of this Lease shall be nonassessable and shall contain language to the effect that (a) any loss shall be payable notwithstanding any act or negligence of Landlord that might otherwise result in the forfeiture of the insurance, (b) that the insurer waives the right of subrogation against Landlord, and (c) the policies are primary and non-contributing with any insurance that may be carried by Landlord.

9.8 Notice of Cancellation of Insurance. Each insurance policy required by this Section 9 shall contain a provision that it cannot be cancelled or materially changed for any reason unless 30 days' prior written notice of such cancellation or change is given to Landlord in the manner required by this Lease for service of notices on Landlord by Tenant.

9.9 Unavailability of Coverage. Notwithstanding anything to the contrary contained in this Section 9, should insurance coverage meeting all the requirements set forth in this Section 9 be unavailable due to circumstances beyond the control of Tenant, Tenant and Landlord shall agree as to substitute coverage which shall to the greatest extent possible meet the requirements set forth in this Section 9, provided that any substitute coverage shall not be less than insurance coverage available to and actually obtained for comparable industrial facilities in the State of California.

10. Condemnation.

10.1 Total Condemnation. Should, during the Term, title to the Property be taken under the power of eminent domain by any public or quasi-public agency or entity, this Lease shall terminate as of 12:01 A.M. of, whichever first occurs, (a) the date legal title to the Property becomes vested in or (b) actual physical possession of the Property is taken by the agency or entity exercising the power of eminent domain, and both Landlord and Tenant shall thereafter be released from all future obligations under this Lease, except those specified in Sections 10.4 and 10.5.

10.2 Partial Condemnation. Should, during the Term, title of only a portion of the leased Property be taken under the power of eminent domain by any public or quasi-public agency or entity, all compensation and damages payable by reason the taking by eminent domain of any improvements (but not land) shall be available to and used, to the extent reasonably needed, by Tenant to replace the improvements so taken to the extent practicable under then existing laws and conditions with improvements of the same type on the remaining portion of the Property. Tenant shall submit to Landlord conceptual plans for the replacement improvements and shall consult with Landlord and keep Landlord informed concerning development and construction of replacement improvements; provided, however, that should the improvements

taken by eminent domain result in a net loss of one-half or more of the total area of Tenant's improvements, after taking into consideration such improvements that could be reasonably constructed on the remaining portion of the Property, Tenant may terminate this Lease in the manner prescribed by Section 10.3.

10.3 Termination for Partial Taking. Tenant may terminate this Lease for the reasons stated in Section 10.2 by serving written notice of termination on Landlord within ninety (90) days after Tenant has been deprived of actual physical possession of the portion of the Property taken by eminent domain. This Lease shall terminate as of 12:01 A.M. of the first day of the calendar month following the calendar month in which the notice of termination described in this Section is served on Landlord. Upon any termination of this Lease pursuant to this Section, all subleases and subtenancies in or on the Property or any portion or portions of the Property created by Tenant under this Lease shall also terminate and the Property shall be delivered to Landlord free and clear of all such subleases and subtenancies; provided, however, that Landlord may, at Landlord's option, by mailing written notice to a subtenant allow any subtenant to attorn to Landlord and continue the subtenant's occupancy of the Property as a tenant of Landlord. On termination of this Lease pursuant to this Section, however, both Landlord and Tenant shall be released from all future obligations under this Lease except those specified in Sections 10.4 and 10.5.

10.4 Condemnation Award. Any compensation or damages awarded or payable because of the taking of all or any portion of the Property by eminent domain shall be allocated between Landlord and Tenant as follows:

(a) All compensation or damages awarded or payable for the taking by eminent domain of any land that is part of the Property shall be paid to and be the sole property of Landlord free and clear of any claim of Tenant or any person claiming rights to the Property through or under Tenant.

(b) All compensation or damages awarded or payable for the taking by eminent domain of any improvements located on the Property where only a portion of the Property is taken by eminent domain and Tenant is not entitled to or does not terminate this Lease, shall be applied in the manner specified in Section 10.2 toward the replacement of such improvements with equivalent new improvements on the remaining portions of the Property.

(c) All compensation or damages awarded or payable for the taking by eminent domain of any improvements located on the Property where this Lease is terminated because of such taking, whether all or only a portion of the Property is taken, shall be allocated between Tenant and Landlord as follows:

(i) That portion of the compensation or damages awarded or payable for the taking of improvements in existence on the date of this Lease shall belong to and be the sole property of Landlord.

(ii) That percentage of the compensation or damages awarded or payable for the taking of improvements not in existence on the date of this Lease

which equals the percentage of the expired portion of the Term at the time of the taking shall belong to and be the sole property of Landlord.

(iii) That portion of the compensation or damages awarded or payable for the taking of improvements not in existence on the date of this Lease which equals the percentage of the unexpired portion of the Term at the time of the taking shall belong to and be the sole property of Tenant.

(iv) The term "time of taking" as used in this subparagraph shall mean 12:00 A.M. of, whichever shall first occur, the date title or the date physical possession of the portion of the Property on which the improvements are located is taken by the agency or entity exercising the eminent domain power.

(v) Any severance damages awarded or payable because only a portion of the Property is taken by eminent domain shall be the sole property of Tenant during the first fifteen (15) years of the Term and shall be the sole and separate property of Landlord thereafter.

10.5 Allocation of Award Between Land and Improvements. For purposes of this Section any compensation or damages awarded or payable because of the taking by eminent domain of all or any portion of the Property shall be allocated between the land and any improvements so taken in accordance with any allocation made by the court in any eminent domain proceeding. If the court does not make any such allocation, or if Landlord should voluntarily convey title to all or a portion of the Property pursuant to Section 10.7, then that portion of any compensation or damages awarded which is equal to the then fair market value of any land within the Property that is taken by eminent domain (the "Land Value") shall be deemed compensation or damages awarded for the taking of such land, and the remainder of any compensation or damages awarded shall be deemed to be compensation or damages awarded for the taking of any improvements constructed or located on the Property taken by eminent domain. The Land Value shall be determined as though the Property were not subject to this Lease or any other lease or encumbrance and shall be established as follows:

(a) Landlord and Tenant shall attempt in good faith to agree on the Land Value. If Landlord and Tenant do not agree on the Land Value within ten business days after such taking, the Land Value shall be determined by appraisal in accordance with paragraphs (b) through (e) below.

(b) Within ten (10) business days after any taking, each party hereto shall deliver to the other a written notice appointing as such party's appraiser a disinterested person with at least 10 years' experience as a real estate appraiser, who shall be a member of a recognized society of real estate appraisers and shall have had experience in appraising industrial properties in Sacramento, California and its environs.

(c) Within ten (10) business days after the appointment of the second of the two appraisers, the two appraisers shall jointly appoint a third appraiser whose qualifications meet the standards set forth above.

(d) Within thirty (30) days after the appointment of the second appraiser, the first two appraisers shall make their respective determinations of the Land Value and shall submit their appraisal reports to Landlord and Tenant.

(e) The Land Value shall be conclusively deemed to the arithmetic average of the two fair market values shown in the appraisal reports submitted by the first two appraisers; provided, however, that if within thirty (30) days after the appointment of the second appraiser only one appraisal report shall have been submitted, the Land Value shall be conclusively deemed to the fair market value shown in such appraisal report; and provided further that if two appraisal reports are submitted within thirty (30) days after the appointment of the second appraiser and if the difference between the two appraised values is greater than 10% of the higher appraised value, then upon the written request of either Landlord or Tenant made within five business days after the submission of the second appraisal report, the third appraiser shall be instructed to select as the Land Value one of the appraised values determined by the first two appraisers. The value so selected shall be conclusively deemed to be the Land Value.

10.6 Abatement of Base Rent for Partial Taking. Should, during the Term, title and possession of only a portion of the Property be taken under the power of eminent domain by any public or quasi-public agency or entity and Tenant does not or cannot under Section 10.2 terminate this Lease, then this Lease shall terminate as to the portion of the Property taken under eminent domain as of 12:01 A.M. of, whichever first occurs, the date title is taken or the date actual physical possession of the portion taken by eminent domain is taken by the agency or entity exercising the eminent domain power. Furthermore, the Base Rent payable under this Lease shall, as of that time, be reduced in the same proportion that the value of the portion of the Property taken by eminent domain bears to the full value of the Property at that time as reasonably determined by Landlord; provided, however, that subject to the provision of Sections 10.2 and 10.3, Tenant shall replace any improvements or facilities with equivalent new facilities on the remaining portion of the Property and do all other acts, at Tenant's own cost and expense, required by the eminent domain taking to make the remaining portion of the Property fit for the uses specified in this Lease.

10.7 Voluntary Conveyance in Lieu of Eminent Domain. Landlord reserves the right in its sole discretion to voluntarily convey title to all or a portion of the Property to a public or quasi-public agency or entity in lieu of and under threat by such agency or entity to take the same by eminent domain proceedings, provided that Landlord shall give Tenant prior notice of intent or willingness to voluntarily convey title. Such voluntary conveyance by Landlord of title to all or a portion of the Property to a public or quasi-public agency or entity in lieu of and under threat by such agency or entity to take the same by eminent domain proceedings shall be considered a taking of title to all or such portion of the Property under the power of eminent domain subject to the provisions of this Section 10.

11. Assignment and Subletting.

11.1 Landlord's Consent Required. Except as expressly provided in Section 12 [and except for space leases to subtenants,] Tenant shall not voluntarily or by operation of law assign, encumber or otherwise transfer the Leasehold Estate or any right or interest in this Lease or the Property, or permit all or any portion of the Property to be occupied by anyone other than

Tenant, or sublet all or any part of the Property, or enter into any material amendment of a sublease without the express prior written consent of Landlord, which [may be withheld in Landlord's sole and absolute discretion] [shall not be unreasonably withheld]. A change in the control of Tenant shall be deemed to constitute an assignment requiring Landlord's consent. The transfer, on a cumulative basis during the Term, of twenty-five percent (25%) or more of the voting control of Tenant shall constitute a change in control for this purpose. Any such assignment or subletting without the prior written consent of Landlord, whether voluntary or involuntary, by operation of law or otherwise, shall be void and shall constitute a non-curable Event of Default. A consent by Landlord to any one assignment or subletting shall not be deemed to be a consent to any subsequent assignment or subletting. Without limiting the matters that may be considered by Landlord in determining whether to consent to any requested assignment or subletting, Landlord may take into account the proposed assignee's or subtenant's financial strength and ability to perform all of the obligations of Tenant under this Lease. No assignment of this Lease shall be effective unless and until the proposed assignee shall have executed and delivered to Landlord a written agreement in form and content satisfactory to Landlord pursuant to which the proposed assignee shall assume and agree to perform when due all of Tenant's obligations under this Lease.

11.2 Additional Provisions Regarding Assignment and Subletting.

(a) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Landlord's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including the intended use and/or required modification of the Property, if any, together with a fee of \$_____ (as increased on each anniversary of the date of this Lease by the percentage increase in the Index over the year ending on the applicable anniversary, as determined in good faith by Landlord) to compensate Landlord for considering and processing such request. Tenant shall also reimburse Landlord for Landlord's reasonable attorneys' fees incurred in connection with any such assignment or subletting for which Landlord's consent is required. Tenant agrees to provide Landlord with such other or additional information and documentation as may be reasonably requested.

(b) Landlord may accept Rent or performance of Tenant's obligations from any person other than Tenant pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Landlord's right to exercise its remedies for Tenant's default.

(c) Landlord's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.

(d) Following any assignment of this Lease, the assigning Tenant shall remain fully liable for the full and timely performance and observance of each obligation of the "Tenant" under this Lease, as it may be amended from time to time. Such continuing liability shall be primary and concurrent with that of the successor Tenant, and shall not be affected by any amendment of this Lease entered into between Landlord and the successor Tenant after the date of the assignment. Upon any Event of Default, Landlord may proceed directly against the

assigning Tenant or anyone else responsible for the performance of Tenant's obligations under this Lease, including any assignee, without first exhausting Landlord's remedies against any other person or entity responsible therefor, or any security held by Landlord.

(e) Any assignee of this Lease shall, by reason of accepting such assignment or entering into such sublease, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Tenant during the term of said assignment, other than such obligations as are contrary to or inconsistent with provisions of an assignment to which Landlord has specifically consented to in writing.

(f) No assignee shall have a right further to assign or sublet without complying with this Section 11.

(g) Any payments and other economic consideration received by Tenant (whether before or after the date of such adjustment) as a result of any assignment shall be remitted to Landlord after Tenant has recovered from such payments and consideration the actual brokerage commissions and reasonable attorneys' fees incurred in the assignment. Such remittance shall be payable to Landlord as additional Rent under this Lease without affecting or reducing any other obligation of Tenant hereunder.

(h) The term of any sublease shall not extend beyond the Term.

(i) Each sublease shall by its own terms be expressly subject to all of the terms, covenants and conditions of this Lease, and Tenant shall remain fully liable to Landlord for the payment of rents and performance of all other obligations under this Lease.

(j) Each sublease shall contain a provision, satisfactory to Landlord, that upon the termination of this Lease for any reason, at Landlord's election either (i) the sublease shall terminate or (ii) the sublessee shall attorn to Landlord and pay rent and perform all of the other obligations of the sublessee under its sublease directly to Landlord.

(k) Each sublease shall contain a provision, satisfactory to Landlord, prohibiting the payment of rent more than three months in advance.

(l) Each sublease shall contain a provision, satisfactory to Landlord, that if Tenant defaults under this Lease and fails to deliver to Landlord any security deposit or prepaid rent paid to Tenant by a subtenant under such sublease, then (i) Landlord shall have no obligation or liability to such subtenant for the return of any security deposit or prepaid rent paid to Tenant, (ii) such subtenant shall be solely responsible to pursue its rights and remedies against Tenant for recovery of any security deposit or prepaid rent paid to Tenant, and (iii) such subtenant shall deliver to Landlord, within thirty (30) days after demand by Landlord, a security deposit in the same amount as set forth in such sublease, and notwithstanding any prepayment by such subtenant of rent to Tenant, shall be obligated to pay to Landlord rent set forth in such sublease commencing upon termination of this Lease and notice thereof to such subtenant by Landlord.

(m) Promptly after execution of any sublease or an amendment to any sublease, Tenant shall deliver to Landlord a complete and correct copy of the fully executed and effective sublease or amendment, including all exhibits and attachments.

(n) Tenant hereby assigns and transfers to Landlord all of Tenant's interest in all rent payable to Tenant under any sublease, and Landlord may collect such rent and apply same toward Tenant's obligations under this Lease; provided, however, that until an Event of Default shall have occurred under this Lease, Tenant may collect such rent, subject to Section 11.2(g). Landlord shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of any rent thereunder, be deemed liable to the sublessee for any failure of Tenant to perform and comply with any of Tenant's obligations to such sublessee. Tenant hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Landlord stating that an Event of Default exists under this Lease, to pay to Landlord all rent due and to become due under the sublease. The sublessee shall rely upon any such notice from Landlord and shall pay such rent to Landlord without any obligation or right to inquire as to whether such Event of Default exists, notwithstanding any claim from Tenant to the contrary.

(o) Upon the occurrence of any Event of Default under this Lease, Landlord may, at its option, require sublessee to attorn to Landlord, in which event Landlord shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, that Landlord shall not be liable for any prepaid rent or security deposit paid by such sublessee (except to the extent actually paid over to Landlord) or for any prior defaults of such sublessor.

12. Encumbrance of Leasehold Estate.

12.1 Tenant's Right to Encumber. Tenant may, at any time and from time to time during the Term, encumber to any bank, insurance company or other institutional lender, herein called "Mortgagee," by deed of trust (the "Security Instrument"), all of Tenant's interest under this Lease and the leasehold estate hereby created (the "Leasehold Estate") for any purpose or purposes without the consent of Landlord, provided that:

(a) the Security Instrument and all rights acquired under it shall, by its express terms, be subject to each and all of the covenants, conditions and restrictions stated in this Lease and to all rights and interests of Landlord;

(b) Tenant shall deliver to Landlord: (i) a complete and correct copy of the Security Instrument and all related promissory notes, loan agreements, security agreements, indemnity agreements, guarantees, financing statements and other loan documents executed by Tenant or for Tenant's benefit in connection therewith (the "Loan Documents"), each as fully executed and delivered, within five business days after the execution thereof, and (ii) a complete and correct copy of the recorded Security Instrument, conformed by the recorder to show the date of recordation and other recording information, within five business days after the date of recordation;

(c) the Security Instrument shall expressly provide that any proceeds from fire or extended coverage insurance shall be used to repair or rebuild the damaged or destroyed improvements on the Property;

(d) the Security Instrument shall contain a provision that all notices of default under the Loan Documents must be sent to Landlord and Tenant and that Landlord shall have ten (10) business days in which to cure any default after the time for Tenant to cure it has expired (provided that if Landlord requires possession of the Property in order to cure the default, then Landlord shall have, in addition to such ten (10) business day period, such further time as is needed to terminate Tenant's right to possession of the Property), and neither Landlord's right to cure any default nor any exercise of such right shall constitute an assumption of liability under any Loan Document;

(e) Tenant shall immediately reimburse Landlord for the cost of any default cured by Landlord with interest thereon as provided in Section 14.5; and

(f) no encumbrance incurred by Tenant pursuant to this Section or otherwise shall, and Tenant shall not have power to incur any encumbrance that will, constitute in any way a lien or encumbrance on Landlord's fee title to the Property or on any other interest of Landlord in the Property.

12.2 Notice to and Service on Mortgagee. If Tenant executes any Security Instrument in accordance with Section 12.1, Landlord shall mail to Mortgagee a duplicate copy of any and all notices Landlord may from time to time give to or serve on Tenant pursuant to or relating to this Lease. Tenant shall at all times keep Landlord informed in writing of the name and mailing address of Mortgagee and any changes in Mortgagee's mailing address. Any notices or other communications permitted by this or any other Section of this Lease or by law to be served on or given to Mortgagee by Landlord shall be deemed duly served on or given to Mortgagee when deposited in the United States certified or registered mail, first-class postage prepaid, addressed to Mortgagee at the last mailing address for Mortgagee furnished in writing to Landlord by Tenant or Mortgagee.

12.3 Rights of Mortgagee. If Tenant executes any Security Instrument in accordance with Section 12.1 and then defaults under the related Loan Documents, Mortgagee shall have the right during the Term to the extent permitted by the Loan Documents to realize on the security afforded by the Security Instrument by instituting judicial or nonjudicial foreclosure proceedings and pursuing all other remedies available at law or in equity or under the Loan Documents, subject to the following provisions:

(a) Mortgagee shall not acquire or thereafter assign to any third party less than Tenant's entire interest in this Lease;

(b) Mortgagee's acquisition of Tenant's interest under this Lease by purchase at Mortgagee's foreclosure sale or by acceptance of an assignment in lieu of foreclosure shall not be considered an assignment of this Lease and therefore shall not be subject to any of the conditions and restrictions applicable to assignments contained in Section 11, but from and

after the date of such acquisition, Mortgagee shall be bound by all of the terms and conditions of this Lease except as otherwise expressly provided in Section 12.6;

(c) The acquisition of Tenant's interest under this Lease by any person or entity other than Mortgagee by purchase at Mortgagee's foreclosure sale or by acceptance of an assignment in lieu of foreclosure shall be considered an assignment of this Lease and therefore shall be subject to all of the conditions and restrictions applicable to assignments contained in Section 11; and

(d) The acquisition of Tenant's interest under this Lease by any person or entity other than Mortgagee by purchase at Mortgagee's foreclosure sale or by acceptance of an assignment in lieu of foreclosure may be financed by such person or entity by encumbering to any new Mortgagee by a new Security Instrument Tenant's entire Leasehold Estate, provided that such encumbrance and such Mortgagee shall be subject to all of the terms and conditions of this Section 12.

12.4 Right of Mortgagee to Cure Defaults. If Tenant executes any Security Instrument in accordance with Section 12.1, then before Landlord may terminate this Lease because of any default under this Lease by Tenant, Landlord must give written notice of the default to Mortgagee and afford Mortgagee the opportunity after service of the notice to cure the default within (a) five (5) business days after date of notice where the default can be cured by the payment of money to Landlord or some other person or (b) the minimum period of time reasonably required to effect a cure (but in no event more than 60 days) where the default cannot, by its nature, be cured solely by the payment of money. Upon the full performance by Mortgagee of the obligation or obligations the nonperformance of which was the subject of the notice of default given to Mortgagee pursuant to this Section, such default shall be deemed cured and shall no longer give rise to any rights and remedies of Landlord; provided, however, that Mortgagee's cure of any default under this Lease by Tenant shall not excuse or waive any future default under this Lease by Tenant or preclude or limit the exercise of any rights or remedies afforded Landlord under this Lease as a result of such future default.

12.5 No Merger of Leasehold and Fee Estates. While any Security Instrument remains in effect, there shall be no merger without the consent of Mortgagee of the Leasehold Estate and the fee estate in the Property merely because both estates have been acquired or become vested in the same person or entity.

12.6 Mortgagee as Assignee of Lease. No Mortgagee shall be liable to Landlord as the successor to the rights and obligations of Tenant under this Lease unless and until such Mortgagee acquires the Leasehold Estate through foreclosure or other proceedings in the nature of foreclosure or as a result of an assignment in lieu of foreclosure or other action or remedy. If any Mortgagee shall acquire the Leasehold Estate, such Mortgagee may further assign the entire Leasehold Estate, provided that such Mortgagee complies fully with all of the conditions and restrictions contained in Section 11. Notwithstanding any provision to the contrary contained elsewhere in this Lease, Mortgagee shall not be liable for any Event of Default that may occur after the effective date of any such further assignment.

12.7 Mortgagee as Including Subsequent Security Holders. No transfer by Mortgagee of its lien or security interest on or in the Leasehold Estate shall be valid or effective as against Landlord until Mortgagee shall have given Landlord written notice of the name, address, telephone number and telecopier number of the transferee. The term "Mortgagee" as used in this Lease shall mean not only the initial institutional lender named as beneficiary, mortgagee, or secured party in the Security Instrument, but also any institutional lenders that may subsequently acquire the lien or security interest created by the Security Instrument.

12.8 Estoppel Certificates by Landlord. Landlord from time to time and within ten (10) days the written request of Tenant or any Mortgagee, shall furnish a written statement that this Lease is in full force and effect and that there is no default hereunder by Tenant, or if there is a default, such statement shall specify the default which Landlord claims to exist, provided that Landlord shall not be required to deliver more than three such statements during any 12-month period.

12.9 New Lease to Mortgagee. If, while any Security Instrument is in effect, this Lease shall be terminated prior to the stated expiration hereof for any reason not related to damage or condemnation (including, without limitation, termination in any bankruptcy of the Tenant), then Landlord upon request by Mortgagee will enter into a new lease with Mortgagee for the remainder of the Term, effective as of the date of such termination, at the Rent and on the terms specified in this Lease, subject to the following conditions:

(a) Mortgagee shall make written request to Landlord for such new lease within thirty (30) days after the date of such termination and such written request shall be accompanied by a payment to Landlord of all sums then due to Landlord under this Lease;

(b) Mortgagee shall pay to Landlord, at the time of the execution and delivery of such new lease, any and all sums which would at the time of the execution and delivery thereof be due under this Lease but for its termination, and in addition thereto, any reasonable expenses, including attorneys' fees and court costs, to which Landlord shall have been subject by reason of any default by Tenant;

(c) Mortgagee shall perform all other obligations required to have been performed under this Lease by Tenant to the extent that Tenant shall have failed to perform such obligations;

(d) Upon the execution and delivery of such new lease, any subleases which may have theretofore been assigned and transferred to Landlord shall thereupon be assigned and transferred by Landlord to the new Tenant, without recourse to Landlord; and

(e) The new lease shall commence and rent and all obligations shall accrue as of the date of termination of this Lease. The new lease shall be superior to and have priority over all encumbrances, liens, conveyances and interests upon and in the Property, other than those of record to which this Lease may be subject as of the date hereof.

(f) This Section 12.9 shall survive the termination of this Lease.

12.10 Surrender or Amendment. There shall not be any cancellation, mutual termination, surrender, or acceptance of surrender of this Lease, or any or amendment of this Lease that is materially adverse to Tenant, without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld and shall be deemed granted if contrary notice is not received by Landlord within five business days after Mortgagee's consent is requested.

12.11 Subordination. Landlord's rights under this Lease with respect to fire or other property insurance proceeds that become payable because of damage to or destruction of any improvements on the Property and with respect to compensation or damages awarded or payable because of the taking of any improvements on the Property by eminent domain shall be subject and subordinate to the rights of Mortgagee under the Security Instrument; provided, however, that nothing in this Section 12.11 shall be construed as a subordination of or encumbrance on Landlord's fee title to the Property.

13. Default and Remedies.

13.1 Events of Default. Any of the following events shall constitute an "Event of Default" under this Lease:

(a) Tenant fails to make any payment of money called for by any provision of this Lease (whether to Landlord or any third party) within five (5) business days after delivery of written notice by Landlord that the payment is past due; or

(b) Tenant fails to perform fully and when due any of its other covenants, conditions or obligations under this Lease and after written notice from Landlord specifying the nature of such failure of Tenant, Tenant: (i) does not promptly commence taking all necessary and appropriate actions to remedy such failure, or (ii) does not thereafter diligently and continuously pursue all such remedial actions, or (iii) does not fully cure such failure within the minimum period of time reasonably required under the circumstances to achieve a cure, but in any event within ninety (90) days after Landlord's written notice of such failure, time being strictly of the essence; provided, however, that Tenant shall not be entitled to cure the breach of any covenant that is "non-curable"; or

(c) any voluntary or involuntary assignment, transfer, encumbrance or subletting of this Lease occurs in violation of Section 11 or Section 12; or

(d) any material statement or disclosure made by Tenant to Landlord in order to induce Landlord to enter into this Lease is false or misleading; or

(e) Tenant fails or has failed to disclose any material fact which may tend to adversely affect, or which may have tended to adversely affect, Landlord's decision to enter into this Lease; or

(f) any right or interest of Tenant is subjected to attachment, execution, or other levy, or to seizure under legal process, which is not released within thirty (30) days; or

(g) a receiver is appointed to take possession or control of the Property, the Leasehold Estate, or Tenant's operations on the Property for any reason, including assignment for benefit of creditors or voluntary or involuntary bankruptcy proceedings; or

(h) Tenant makes a general assignment for the benefit of creditors or a voluntary or involuntary petition is filed by or against Tenant under any law for the purpose of adjudicating Tenant a bankrupt, or for extending time for payment, adjustment or satisfaction of Tenant's liabilities, or for reorganization, dissolution or arrangement on account of or to prevent bankruptcy or insolvency, unless such assignment or proceeding, and all consequent orders, adjudications, custodies and supervisions are dismissed, vacated or otherwise permanently stayed or terminated within sixty (60) days after such assignment, filing or other initial event.

13.2 Remedies. Upon the occurrence of any Event of Default, and without the giving of any additional notice not otherwise required hereunder or by law, Landlord may exercise the following rights and remedies in addition to all other rights and remedies provided by law or equity, either cumulatively or in the alternative:

(a) Terminate Tenant's right to possession of the Property by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Property to Landlord. In such event Landlord shall be entitled to recover from Tenant: (i) the unpaid Rent that had been earned at the time of termination; plus (ii) the worth at the time of award of the amount by which the unpaid Rent that would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus (iii) the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus (iv) any other amounts necessary to compensate Landlord for all the detriment approximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including the cost of recovering possession of the Property, expenses of reletting, including necessary renovation and alteration of the Property, reasonable attorneys' fees, and that portion of any leasing commission paid by Landlord in connection with this Lease applicable to the unexpired Term. The worth at the time of award of the amount referred to in clause (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%). If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Landlord shall have the right to recover in such proceeding any unpaid Base Rent, Percentage Rent and damages as are recoverable therein, or Landlord may reserve the right to recover all or any part thereof in a separate suit. If any notice required under Section 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Tenant under the unlawful detainer statute shall also be deemed to constitute the notice required by Section 13.1. In such case, any applicable grace period required by Section 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Tenant to cure the Event of Default within the greater of the two such grace periods shall constitute both an unlawful detainer and an Event of Default entitling Landlord to the remedies provided for in this Lease and/or by said statute.

(b) Maintain this Lease and Tenant's right to possession of the Property in effect and continue to enforce all of Landlord's rights and remedies hereunder,

including the remedy described in California Civil Code Section 1951.4 (granting the landlord the right to continue a lease in effect after a tenant's breach and abandonment and to recover all rent as it becomes due if the tenant has the right to sublet or assign, subject only to reasonable limitations) provided that upon Landlord's election of such remedy, Landlord may not unreasonably withhold its consent to any assignment or subletting. Acts of maintenance or preservation or efforts to relet the Property or the appointment of a receiver upon initiative of Landlord to protect Landlord's interest under this Lease shall not constitute a termination of this Lease or Tenant's right to possession unless written notice of termination is given by Landlord to Tenant.

(c) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the State of California. The expiration or termination of this Lease and/or the termination of Tenant's right to possession shall not relieve Tenant from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the Term or by reason of Tenant's occupancy of the Property.

13.3 Landlord's Performance of Tenant's Obligations. If Tenant fails to perform any affirmative duty or obligation under this Lease within five (5) business days after written notice (or in case of an emergency, without notice), the Landlord may, at its option, perform such duty or obligation on Tenant's behalf, including the obtaining of reasonably required bonds, insurance policies, or governmental permits, licenses and approvals. The costs and expenses of any such performance by Landlord shall be due and payable by Tenant upon Landlord's written demand. If any check given to Landlord by Tenant shall not be honored by the bank upon which it is drawn, Landlord, at its option, may require that all future payments by Tenant to Landlord be made by bank cashier's check.

13.4 Remedies Cumulative. The remedies given to Landlord in this Section shall not be exclusive but shall be cumulative with and in addition to all remedies now or hereafter allowed by law and elsewhere provided in this Lease.

13.5 Waiver of Breach. The waiver by Landlord of any breach of Tenant of any of the provisions of this Lease shall not constitute a continuing waiver or a waiver of any subsequent breach by Tenant either of the same or a different provision of this Lease. No waiver, benefit, privilege or service voluntarily given or performed by either party shall give the other any contractual right by custom, estoppel or otherwise. The subsequent acceptance of rent pursuant to this Lease shall not constitute a waiver of any preceding default by Tenant other than default in the payment of the particular rental payment so accepted, regardless of Landlord's knowledge of the preceding breach at the time of accepting the rent, nor shall acceptance of rent or any other payment after termination constitute a reinstatement, extension or renewal of the Term or revocation of any notice or other act by Landlord.

14. Miscellaneous.

14.1 Tenant's Duty to Surrender Property. At the expiration or any earlier termination of the Term, Tenant shall surrender to Landlord the possession of the Property and all improvements and fixtures installed or constructed by or for Tenant thereon free and clear of all claims to or against them by Tenant or any third person or party. Subject to the provisions of

Section 7.7, Tenant shall leave the surrendered property in good, safe and broom-clean condition. All property that Tenant is required to surrender shall become Landlord's property at termination of this Lease, or, if Landlord so elects and upon written notice to Tenant, shall be demolished and removed by Tenant at Tenant's sole expense, and all property that Tenant is not required to surrender but that Tenant does not remove shall become Landlord's property at termination of this Lease, or, if Landlord so elects and upon written notice to Tenant, shall be demolished and removed by Tenant at Tenant's sole expense. If Tenant fails to surrender the Property at the expiration or earlier termination of this Lease, Tenant shall defend and indemnify Landlord from all liability and expense resulting from the delay or failure to surrender, including claims made by any succeeding tenant or any purchaser or prospective purchaser founded on or resulting from Tenant's failure to surrender.

14.2 Holding Over. This Lease shall terminate without further notice at the expiration of the Term. Notwithstanding Landlord's acceptance of Rent after expiration or any earlier termination of the Term, any holding over by Tenant shall not constitute a renewal or extension of the Term or give Tenant any rights in or to the Property. In the event that Tenant holds over, then the Base Rent shall be increased to one hundred and fifty percent (150%) of the Base Rent applicable during the month immediately preceding the expiration or earlier termination of the Term. Nothing contained herein shall be construed as a consent by Landlord to any holding over by Tenant.

14.3 Survival. Each obligation of Tenant's obligations under this Lease that, by its nature, is to be, or may need to be, performed after the expiration or any earlier termination of this Lease shall survive such expiration or termination. Without limiting the generality of the preceding sentence, Tenant's obligation under Section 3.3 to pay Percentage Rent within 120 days after the end of each calendar year and Tenant's indemnification obligations under Section 6.2 shall survive the expiration or termination of this Lease.

14.4 Force Majeure Delays. Except as otherwise expressly provided in this Lease, should the performance of any act required by this Lease to be performed by either Landlord or Tenant be prevented or delayed by reason of any act of God, strike, war, lockout, labor trouble, or inability to secure materials (but not by reason of delay in the issuance of any required governmental permit, license or approval), the time for performance of the act will be extended for a period equivalent to the period of delay and performance of the act during the period of delay will be excused; provided, however, that nothing contained in this Section shall excuse the full payment when due of any Rent payable by Tenant or the performance of any act rendered difficult or impossible solely because of the financial condition of the party required to perform the act; and provided further that any such extension of the time for performance shall not affect the commencement or expiration of the Term or any Extension Period or the date by which any option to extend the Term must be exercised in accordance with Section 2.2.

14.5 Interest on Overdue Payments. All Rent and other sums of any nature that Tenant fails to pay to Landlord when due under any provision of this Lease or that Landlord pays to any third party on behalf of Tenant pursuant to any provision of this Lease shall bear interest from the date due to Landlord or paid by Landlord, as applicable (the "Due Date"), at the rate of 10% per annum, accruing daily but not compounded. Such interest shall be payable immediately

and without the necessity of any demand by Landlord. The fact that Landlord is entitled to interest under this Section shall not be construed to excuse or mitigate any default by Tenant.

14.6 Attorneys' Fees. In the event either party brings a suit, action or other proceeding against the other party that in any way relates to or arises out of this Lease, the prevailing party (meaning the party that obtains substantially the relief sought by it) shall be entitled to have and recover from the other party all costs and expenses of the suit, action or proceeding, including attorneys' fees, from the commencement of the suit, action or proceeding through the entry of judgment. The trial court shall determine which party is the prevailing party as well as the amount of attorneys' fees and costs to be awarded immediately following the entry of judgment (and without awaiting any appeal) in a post-trial proceeding such as is conducted when a cost bill is submitted. If an appeal is timely filed and if the awarding or amount of attorneys' fees and costs is at issue in the appeal, then the appellate court (or the trial court, acting pursuant to an order of the appellate court) shall determine such issue, and the recoverable attorneys' fees and costs shall include those incurred through the entry of final judgment following the appeal. In the event that Landlord shall be a party to any legal proceedings instituted in connection with or arising out of this Lease where Tenant is named as a defendant, Tenant agrees to pay to Landlord all sums paid or incurred by Landlord as costs and expenses in such legal proceedings, including Landlord's reasonable attorneys' fees.

14.7 Discrimination.

(a) Tenant, its employees and agents, shall not discriminate against any person because of race, age, religion, color, ancestry, sex, physical handicap or disability, marital status, sexual orientation or national origin, nor shall Tenant, its employees or agents, publicize the availability of work, contracts, accommodations or facilities in any manner that would directly or impliedly reflect upon or question that acceptability of any person because of race, religion, color, ancestry, sex, physical handicap or disability, marital status, sexual orientation or national origin.

(b) Tenant shall not discriminate against any employee or applicant for employment because of race, age, color, religion, ancestry, sex, physical handicap, or disability, marital status, sexual orientation or national origin. 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. Tenant shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this Section.

(c) Tenant shall permit access to its records of employment, employment advertisement, application forms, and other pertinent data and records by Landlord, the State Fair Employment Practices Commission, or any other agency of the State of California designated by the State of California for the purpose of investigation to ascertain compliance with this Section.

(d) Landlord may determine a violation of this Section upon receipt by Landlord of a final judgment having that effect from a court in an action to which Tenant was a

party, or upon receipt of a written notice from the Fair Employment Practices Commission that it has investigated and determined that Tenant has violated the Fair Employment Practices Act.

14.8 Estoppel Certificates by Tenant. Tenant shall within ten (10) days after written notice from Landlord execute, acknowledge and deliver to Landlord an estoppel certificate in writing, in form similar to the then most current "Tenancy Statement" form published by the American Industrial Real Estate Association, plus such additional information, confirmation and statements as may be reasonably requested by Landlord. Any such statement by Tenant may be given by Landlord to any prospective purchaser or encumbrancer of the Property. Such purchaser or encumbrancer may rely conclusively upon such statement as true and correct. If Tenant does not deliver such statement to Landlord within such 10-day period, Landlord and any prospective purchaser or encumbrancer may conclusively presume that: (a) the terms and provisions of this Lease have not been changed except as otherwise represented by Landlord; (b) this Lease has not been canceled or terminated except as otherwise represented by Landlord; (c) not more than one calendar quarter's Base Rent has been paid in advance; and (d) Landlord is not in default under this Lease. In such event, Tenant shall be estopped from denying the truth of any such presumption. If Landlord desires to finance, refinance, or sell the Property or any part thereof, Tenant shall deliver to any potential lender or purchaser designated by Landlord such financial statements as may be reasonably required by such lender or purchaser, including Tenant's financial statements for the past three years. All such financial statements shall be received by Landlord and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

14.9 Limitation on Landlord's Liability. The obligations of Landlord under this Lease shall not constitute personal obligations of Landlord or its councilmembers, officers, employees or affiliates, and Tenant shall look to the Property, and not to any other assets of Landlord, for the satisfaction of any liability of Landlord with respect to this Lease, and shall not seek recourse against Landlord or its individual directors, officers, employees or affiliates, or any of their personal assets for such satisfaction.

14.10 Subordination; Attornment; Non-Disturbance.

(a) Subordination. This Lease shall be subject and subordinate to any deed of trust or other hypothecation or security device (collectively, "Security Device"), now or hereafter placed by Landlord upon the Property, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Tenant agrees that the holders of any such Security Devices shall have no liability or obligation to perform any of the obligations of Landlord under this Lease.

(b) Attornment. Subject to the non-disturbance provisions of paragraph (c) below, Tenant agrees to attorn to any lender or any other party who acquires ownership of the Property by reason of a foreclosure of a Security Device, and in the event of such foreclosure, such new owner shall not (i) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership, (ii) be subject to any offsets or defenses that Tenant might have against any prior lessor, or (iii) be bound by any prepayment of more than one calendar quarter's Base Rent.

(c) Non-Disturbance. With respect to Security Devices entered into by Landlord after the execution of this Lease, Tenant's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement (a "Non-Disturbance Agreement") from the lender to the effect that Tenant's possession of the Property shall not be disturbed so long as Tenant is not in default hereunder and attorns to the record owner of the Property.

(d) Self-Executing. The agreements contained in this Section 14.10 shall be effective without the execution of any further documents; provided, however, that, upon the written request of Landlord or any lender in connection with a sale, financing or refinancing of the Property, Tenant and Landlord shall execute such further writings as may be reasonably required to separately document the subordination, attornment and Non-Disturbance Agreement provided for herein.

14.11 Consents. Whenever the consent, approval, judgment or determination of Landlord is required or permitted under any provision of this Lease, Landlord may exercise its good faith business judgment in granting or withholding such consent or approval or in making such judgment or determination without reference to any extrinsic standard of reasonableness, unless the provision for such consent, approval, judgment or determination specifies that Landlord's consent or approval is not to be unreasonably withheld, or that such judgment or determination is to be reasonable, or otherwise specifies the standards under which Landlord may withhold its consent. If it is determined that Landlord failed to give its consent where it was required to do so under this Lease, Tenant shall be entitled to specific performance but not to monetary damages for such failure. Landlord's actual reasonable costs and expenses (including architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Tenant for any Landlord consent, including consents to an assignment, a subletting or the presence or use of a Hazardous Materials, shall be paid by Tenant upon receipt of an invoice and supporting documentation therefor. Landlord's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Event of Default by Tenant of this Lease exists, nor shall such consent be deemed a waiver of any then existing Event of Default, except as may be otherwise specifically stated in writing by Landlord at the time of such consent. The failure to specify herein any particular condition to Landlord's consent shall not preclude the imposition by Landlord at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within ten (10) business days after such request. The review or approval by Landlord of any item to be reviewed or approved by Landlord under the terms of this Lease shall not impose upon Landlord any liability for accuracy or sufficiency of any such item or the quality or suitability of such item for its intended use. Any such review or approval is for the sole purpose of protecting Landlord's interest in the Property or under this Lease, and no third parties, including Tenant or the representatives and visitors or Tenant or any person or entity claiming by, through or under Tenant, shall have any rights hereunder.

14.12 Reservations by Landlord. Landlord reserves to itself the right, from time to time and without the consent or joinder of Tenant, to grant such easements, rights and dedications as Landlord may deem necessary, and to cause the recordation of parcel maps and

restrictions, so long as such easements, rights, dedications, maps and restrictions do not unreasonably interfere with the use of the Property by Tenant. Tenant agrees to sign any documents reasonably requested by Landlord to effectuate any such easement rights, dedication, map or restrictions.

14.13 Authority. Each individual executing this Lease on behalf of Landlord or Tenant represents and warrants that he or she is duly authorized to execute and deliver this Lease on such party's behalf. Each party shall, within thirty (30) days after written request, deliver to the other party satisfactory evidence of such authority.

14.14 Jurisdiction and Governing Law. Any action brought by Landlord against Tenant in connection with this Lease or any matter that in any way relates to the transactions contemplated by this Lease may be brought by Landlord in any court in Monterey County or in any other court of competent jurisdiction, wherever located, having personal jurisdiction over Tenant. The judgment in any such action may be enforced by any court of competent jurisdiction wherever located. Without limiting the generality of the foregoing, Tenant hereby submits to the jurisdiction and venue of any court in Monterey County, California. In connection with any action brought by either party hereto against the other party, Landlord may take depositions in the State of California or in any other locations worldwide in which Tenant maintains an office or records; Tenant shall take depositions only in the State of California. Regardless of who initiates an action or the jurisdiction and venue in which such action is brought, this Lease and all matters that in any way relate to the transactions contemplated by this Lease shall be governed by the laws of the State of California.

14.15 Quiet Enjoyment. Tenant shall and may peacefully and quietly have, hold and enjoy the Property hereby demised, for the Term, on the terms and subject to the conditions contained in this Lease. Landlord warrants and represents that it is the sole and lawful owner of the Property in fee simple, that the Property are free and clear of all liens and encumbrances (except as specifically disclosed to Tenant in writing by Landlord), and that Landlord has the right to enter into this Lease.

14.16 Notices. All notices required or permitted by this Lease shall be in writing and may be delivered by overnight courier or may be sent by certified mail, with postage prepaid, and shall be deemed sufficiently given if served in a manner specified in this Section. Until changed by a notice given in accordance with the provisions of this Section, the respective addresses of Landlord and Tenant for the purpose of receiving notices required or permitted by this Lease are as follows:

Landlord:

City of Seaside
440 Harcourt Avenue
Seaside, CA 93955
Attn: City Manager

Tenant:

Attn: _____

Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. Notices delivered by overnight courier that guarantee next day delivery shall be deemed given on the next business day after delivery of the same to the courier. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

14.17 Successors and Assigns. This Lease shall be binding on and enforceable by, and shall inure to the benefit of, Landlord and Tenant and their respective successors, and assigns, subject to the provisions of Section 11.

14.18 Time of Essence. Time is expressly declared to be the essence of this Lease.

14.19 Memorandum of Lease. As described in Section 1.3, Landlord and Tenant shall execute and acknowledge a memorandum of this Lease in the form of Exhibit "F", and shall record it in the Official Records of Monterey County. Any documentary transfer tax payable in connection thereunder shall be paid by Tenant.

14.20 Counterparts. This Lease may be executed in counterparts, all of which together shall constitute one and the same document.

14.21 Partial Invalidity. Should any provision of this Lease be held by a court of competent jurisdiction to be either invalid, void, or unenforceable, the remaining provisions of this Lease shall remain in full force and effect unimpaired by the holding.

14.22 Entire Agreement. This instrument constitutes the sole and only agreement between Landlord and Tenant respecting the Property, the leasing of the Property to Tenant, the performance of the Work, and the other subject matter of this Lease, and correctly sets forth the obligations of Landlord and Tenant to each other as of its date. Any agreements or representations respecting the Property, their leasing to Tenant by Landlord, or any other matter discussed in this Lease not expressly set forth in this instrument, including the Letter of Intent heretofore executed by the parties in contemplation of this Lease, are hereby superseded and are null and void.

14.23 Amendments. This Lease may be modified only by a written instrument signed by the parties in interest at the time of the modification. Tenant agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by a lender in connection with any financing or refinancing of the Property, provided that such modifications do not materially change Tenant's obligations hereunder.

14.24 Construction of Lease. This Lease shall be construed fairly as to all parties and not in favor of or against any party, regardless of which party prepared this Lease. Whenever the context requires, all words used in the singular will be construed to have been

used in the plural, and vice versa, and each gender will include any other gender. The captions of the sections and paragraphs of this Lease are for convenience only and do not define or limit any terms or provisions. Unless otherwise specifically provided, references in this Lease to sections, paragraphs and exhibits shall be to sections, paragraphs and exhibits of or to this Lease. All exhibits hereto are incorporated herein by the references thereto in this Lease. The use in this Lease of the word "include" or any derivative thereof shall be construed as providing examples or illustration only and shall not limited the generality of any provision in which it is used. As used in this Lease, the term "business day" means any day on which commercial banks are open for business in the State of California, and the term "day" means a calendar day when not expressly stated to be a business day. If any period or deadline specified in this Lease ends or falls on a day that is not a business day, such period or deadline shall be extended to end or fall on the next succeeding business day. Wherever used in this Lease, the symbol "\$" refers to dollars in currency of the United States of America.

14.25 Effect of Delivery. The delivery of any unexecuted draft of this Lease shall not constitute an offer by the delivering party or otherwise bind the delivering party or create any enforceable rights in favor of the other party. This Lease shall not be binding or enforceable unless and until it is executed and delivered by both Landlord and Tenant.

14.26 Landlord's Consents, Approvals and Other Acts. Although Landlord is a governmental entity, none of Landlord's consents, approvals or performance of obligations under this Lease shall constitute consents, approvals or acts in the Landlord's governmental capacity, but shall only constitute consents, approvals and acts by Landlord in its proprietary capacity as the landlord under this Lease.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the date first above written.

LANDLORD:

CITY OF SEASIDE,
a municipal corporation

By: _____
Print Name: _____
Mayor

ATTEST:

_____, City Clerk

TENANT:

_____,
a _____

By: _____
Print Name: _____
Title: _____

By: _____
Print Name: _____
Title: _____

EXHIBIT "A"

DESCRIPTION OF LAND

(Attached.)

Standard Form

EXHIBIT "B"

PERMITTED HAZARDOUS MATERIALS

1. Hazardous materials normally and customarily used in the development, construction and operation of _____ that are used, stored, transported and disposed of in accordance with all applicable laws.
2. Minor quantities of hazardous materials normally and customarily used by _____ tenants that are used, stored, transported and disposed of in accordance with all applicable laws.

Standard Form

EXHIBIT "C"

DESCRIPTION OF THE WORK

(Include narrative description; list any plans and specs – include sheet number, job number, preparer and date; or include process for submission and approval of plans by Landlord, if required in addition to Landlord approval in its governmental capacity.)

Standard Form

EXHIBIT "D"

WORK SCHEDULE/DEADLINES

(Need at least: plan submission date, commencement date, substantial completion date and completion date)

Standard Form

EXHIBIT "E"

CITY'S LOCAL FIRST SOURCE RECRUITMENT POLICY

(Attached.)

Standard Form

EXHIBIT "F"

FORM OF MEMORANDUM OF GROUND LEASE

(Attached.)

Standard Form

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Seaside
440 Harcourt Avenue
Seaside, California 93955
Attn: _____

[Space Above For Recorder's Use Only]

The undersigned Lessor declares that this Memorandum of Ground Lease is exempt from Recording Fees pursuant to California Government Code Section 27383.

[IF TERM IS 35 YEARS OR MORE:] Documentary Transfer Tax is \$_____ (City of Seaside, County of Monterey).

MEMORANDUM OF GROUND LEASE

THIS MEMORANDUM OF GROUND LEASE (this "Memorandum") is dated as of _____, 20__ and is entered into by and between the CITY OF SEASIDE, a municipal corporation [, as successor to the Redevelopment Agency of the City of Seaside] ("Landlord") and _____, a _____ ("Tenant").

RECITALS

A. Landlord and Tenant executed that certain Ground Lease dated _____, 20__ (the "Lease") affecting the land described on Exhibit "A" (the Property).

B. Landlord and Tenant now desire to record this Memorandum in order to, among other things, comply with law requiring that municipal leases be recorded, giving constructive notice of the existence of the Lease, and permitting the Tenant and its lender(s) to obtain title insurance.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, and the covenants and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. Ground Lease. Landlord has leased the Property to Tenant, and Tenant has leased the Property from Landlord, upon and subject to the terms and conditions set forth in the Lease. The Lease is hereby incorporated herein by this reference.

2. Term. The term of the Lease commences on _____ and expires on _____. [DESCRIBE ANY EXTENSION OPTIONS.]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Memorandum as of the date and year first above written.

LANDLORD:

CITY OF SEASIDE,
a municipal corporation

By: _____
_____, Mayor

ATTEST:

_____, City Clerk

TENANT:

By: _____
Print Name: _____
Title: _____

Standard Form

EXHIBIT A

DESCRIPTION OF LAND

(Attached.)

Standard Form

State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)

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

I certify under PENALTY OF PERJURY under the laws of the State of California that
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)

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

I certify under PENALTY OF PERJURY under the laws of the State of California that
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

CITY OF SEASIDE
LOCAL FIRST SOURCE RECRUITMENT POLICY

**Originally adopted February 16, 1995 by City of Seaside City Council and
Redevelopment Agency of the City of Seaside**

FINDINGS

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

- A. The City hereby finds and determines that, based partially on the closure of the massive military reserve once known as Fort Ord, there is a high incidence of unemployment and underemployment among the Residents of the City and within the City.
- B. The City further finds and determines that this high incidence of unemployment and underemployment is due also to artificial barriers in the employment market which serve to reduce the likelihood that Residents will find employment which is commensurate with their education, skills and experience and which do not affect nonresidents of the City in a similar manner.
- C. The City further finds and determines that the existence of high unemployment within the City serves as a blighting influence on the City, and the resultant reduction or elimination of the incomes of Local Businesses and Residents may serve as a blighting influence, by decreasing the amount of available jobs, increasing the likelihood that Residents and Distressed Workers will engage in criminal activities, increase the incidence of under-maintenance of property within the jurisdiction leading to a decreased property tax base and other social ills within and the City.
- D. The City further finds and determines that Residents and Local Businesses will bear a disproportionate burden of development, which may result in the displacement of Local Businesses and a reduction in the number of Residents who are employed within the City.
- E. The City further finds and determines that the burdens of development will not be borne in a similar manner by those who reside or conduct business outside the City.
- F. The City further finds and determines that Residents and Local Businesses should be given an opportunity to be employed in the development of areas within the City and the ongoing uses to be created in the City, so as to mitigate the disproportionate burden of development on Residents, Distressed Workers and Local Businesses.



**CITY OF SEASIDE
LOCAL FIRST SOURCE RECRUITMENT POLICY**

**Originally adopted February 16, 1995 by City of Seaside City Council and
Redevelopment Agency of the City of Seaside**

POLICY

I. Definitions:

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

- A. “City” shall mean the City of Seaside.
- B. “City Contract” shall mean any contract entered into by the City and a Developer or End User for labor or services related to development within 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.
- C. “DDA” shall mean a disposition and development agreement entered into by the City and a Developer or End User for the redevelopment and/or use of property within the City.
- D. “Developer” shall mean any individual, unincorporated association, partnership, joint venture group, corporation or subcontractor of same, which is engaged, inactivates related to development in the City. “Developer” shall not include those consultants or employees of the City who are retained to perform administrative, management, consulting or legal services for the City.
- E. “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 a development in the City, and where the developer has entered into a City Contract or has received a Subsidy. Developer Contract shall include, but not be limited to, construction contracts, consultant contracts and any other contracts for the performance of services or labor related to development in the City.
- F. “Distressed Workers” shall mean those Residents who are unemployed, no 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.
- G. “End Users” shall mean those businesses, which commence operation in industrial manufacturing, commercial, retail or office space within the City after the completion of any initial construction or rehabilitation projects related to that space.



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LOCAL FIRST SOURCE RECRUITMENT POLICY

**Originally adopted February 16, 1995 by City of Seaside City Council and
Redevelopment Agency of the City of Seaside**

H. “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 of End User to the City and all Service Organizations of the availability of employment opportunities prior to the time that those opportunities are advertised to the general public and other outreach efforts as are deemed necessary by the City. Diligent efforts to employ Qualified Residents or Distressed Workers shall include at a minimum hiring of Qualified Residents and/or Distressed Workers who are recommended to the Developer or End User by the City or Service Organizations after such notification, to the extent that the Developer or End User has existing employment opportunities available.

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

I. “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.

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

K. “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.

L. “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.

M. “Subsidy” shall include, but are not limited to, any direct or indirect cash or other financial assistance to a Developer or End User through any of the following programs: federal or stated grants or other government grant or loan programs; revolving loan funds; redevelopment agency assistance such as write-downs of the cost of land by the City, property tax abatement or sales tax rebate sharing agreements, tax increment



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financing, revenue or development bonds; and any other loans, grants bonds, or capital improvements financed in whole or in part, whether through the investment of cash or in-kind resources or the issuance of bonds, notes or indentures by the City, or any entity whose borrowing powers is underwritten in whole or in part by the City. "Subsidy" shall also include the creation of assessment districts for the benefit of a Developer or End User by the City and/or the City for the purpose of improving property for the Developer's or End User's use, and any other financial or nonfinancial assistance provided by the City which materially benefits a Developer or End User.

II. First Source Recruitment Policy:

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

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

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

C. Scope of Policy. The Policy shall be implemented by the City to the greatest extent feasible by the City in its negotiation of DDAs, City Contracts, and other agreements with Developers and End Users pertaining to the development in the City. The Policy shall be implemented by Developers in negotiation of Developer Contracts, including the subcontracts and contracts with End Users of property.

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



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LOCAL FIRST SOURCE RECRUITMENT POLICY

**Originally adopted February 16, 1995 by City of Seaside City Council and
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III. City Contracts:

A. Contracts Under \$5,000 for Grading, Clearing, Demolition and Construction:

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

B. City Construction Contracts

For all City Contracts for the construction of public improvements, including but not limited to contracts valued at over \$5,000 for grading, clearing, demolition and construction, the City may grant a preference to those construction contractors who have made a Good Faith Effort to hire, or who agree to hire, on a craft-by-craft basis, qualified Residents to perform the City Contract. The City may further grant preference to construction contractors who have subcontracted, or made a Good Faith Effort to subcontract, a portion of the City Contract to Local Businesses.

C. Contracts Valued at Over \$100,000

For all other City Contracts whose dollar value is estimated to exceed \$100,000 at the time the scope of work for the City Contract is prepared, the City may specify in its bid package that preference for the City Contract shall 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 City Contract, or demonstrates that it has subcontracted or has made a Good Faith Effort to subcontract to Local Businesses a portion of the work which is the subject of the City Contract.

D. Operation of Facilities

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



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contractors who have made a Good Faith Effort to subcontract, or have subcontracted a portion of the City Contract to Local Businesses.

E. Disposition and Development Agreements (DDAs)

For all DDAs or similar agreements entered into by the City, the City shall negotiate, to the extent feasible, provisions in the DDA or agreement which require the Developer, End User or other part to make a Good Faith Effort to hire qualified Residents in employment within the City and to utilize, or make a Good Faith Effort to utilize, Local Businesses, to implement the DDA or any subcontract arising from the DDA.

F. Training Fund

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

IV. Developers

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

B. Construction Contracts

For all construction contracts which arise as a result of a DDA entered into by the City and a Developer, the Developer shall negotiate, to the extent feasible, provisions in its construction contract which require the prime contractor to hire, or make a Good Faith Effort to hire, on a craft-by-craft basis, qualified Residents to 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.



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V. End Users

A. Scope of Section. The Provisions of this Article 5 shall apply only to those End Users who have entered into an City Contract or who have, directly or indirectly, received a Subsidy or Subsidies, as defined in this policy, from or through City efforts.

B. Operation of Facilities. In hiring its work force to operate or manage a commercial, retail or office-related business which is located within the City, an end User shall, to the greatest extent feasible, make a Good Faith Effort to employ qualified Residents or to provide ongoing training opportunities (such as part-time work, internships or classes) to Distressed Workers, within the skill areas which are utilized by the End User in the operation and management of the End User's business.

VI. Exceptions

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

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

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

VII. Administration

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



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

C. Binding Upon Successors. It is intended that the provisions of this policy shall be applicable to all development activities to the fullest extent permitted by law for the benefit and in favor of the City; and the provisions of this policy shall be enforceable by the City, Developers, End Users and any of their successors in Interest to property in the City.

DRAFT



Prevailing Wage Law

California Public Contract Code

1720. “Public works” defined; “paid for in whole or in part out of public funds” defined; exception for private residential projects; exclusions

(a) As used in this chapter, “public works” means:

(1) Construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds, except work done directly by any public utility company pursuant to order of the Public Utilities Commission or other public authority. For purposes of this paragraph, “construction” includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

(2) Work done for irrigation, utility, reclamation, and improvement districts, and other districts of this type. “Public work” does not include the operation of the irrigation or drainage system of any irrigation or reclamation district, except as used in Section 1778 relating to retaining wages.

(3) Street, sewer, or other improvement work done under the direction and supervision or by the authority of any officer or public body of the state, or of any political subdivision or district thereof, whether the political subdivision or district operates under a freeholder's charter or not.

(4) The laying of carpet done under a building lease-maintenance contract and paid for out of public funds.

(5) The laying of carpet in a public building done under contract and paid for in whole or in part out of public funds.

(6) Public transportation demonstration projects authorized pursuant to Section 143 of the Streets and Highways Code.

(b) For purposes of this section, “paid for in whole or in part out of public funds” means all of the following:

(1) The payment of money or the equivalent of money by the state or political subdivision directly to or on behalf of the public works contractor, subcontractor, or developer.

(2) Performance of construction work by the state or political subdivision in execution of the project.

(3) Transfer by the state or political subdivision of an asset of value for less than fair market price.



Prevailing Wage Law

(4) Fees, costs, rents, insurance or bond premiums, loans, interest rates, or other obligations that would normally be required in the execution of the contract, that are paid, reduced, charged at less than fair market value, waived, or forgiven by the state or political subdivision.

(5) Money loaned by the state or political subdivision that is to be repaid on a contingent basis.

(6) Credits that are applied by the state or political subdivision against repayment obligations to the state or political subdivision.

(c) Notwithstanding subdivision (b):

(1) Private residential projects built on private property are not subject to the requirements of this chapter unless the projects are built pursuant to an agreement with a state agency, redevelopment agency, or local public housing authority.

(2) If the state or a political subdivision requires a private developer to perform construction, alteration, demolition, installation, or repair work on a public work of improvement as a condition of regulatory approval of an otherwise private development project, and the state or political subdivision contributes no more money, or the equivalent of money, to the overall project than is required to perform this public improvement work, and the state or political subdivision maintains no proprietary interest in the overall project, then only the public improvement work shall thereby become subject to this chapter.

(3) If the state or a political subdivision reimburses a private developer for costs that would normally be borne by the public, or provides directly or indirectly a public subsidy to a private development project that is de minimis in the context of the project, an otherwise private development project shall not thereby become subject to the requirements of this chapter.

(4) The construction or rehabilitation of affordable housing units for low- or moderate-income persons pursuant to paragraph (5) or (7) of subdivision (e) of Section 33334.2 of the Health and Safety Code that are paid for solely with moneys from a Low and Moderate Income Housing Fund established pursuant to Section 33334.3 of the Health and Safety Code or that are paid for by a combination of private funds and funds available pursuant to Section 33334.2 or 33334.3 of the Health and Safety Code do not constitute a project that is paid for in whole or in part out of public funds.

(5) "Paid for in whole or in part out of public funds" does not include tax credits provided pursuant to Section 17053.49 or 23649 of the Revenue and Taxation Code.

(6) Unless otherwise required by a public funding program, the construction or rehabilitation of privately owned residential projects is not subject to the requirements of this chapter if one or more of the following conditions are met:



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(A) The project is a self-help housing project in which no fewer than 500 hours of construction work associated with the homes are to be performed by the homebuyers.

(B) The project consists of rehabilitation or expansion work associated with a facility operated on a not-for-profit basis as temporary or transitional housing for homeless persons with a total project cost of less than twenty-five thousand dollars (\$25,000).

(C) Assistance is provided to a household as either mortgage assistance, downpayment assistance, or for the rehabilitation of a single-family home.

(D) The project consists of new construction, or expansion, or rehabilitation work associated with a facility developed by a nonprofit organization to be operated on a not-for-profit basis to provide emergency or transitional shelter and ancillary services and assistance to homeless adults and children. The nonprofit organization operating the project shall provide, at no profit, not less than 50 percent of the total project cost from nonpublic sources, excluding real property that is transferred or leased. Total project cost includes the value of donated labor, materials, architectural, and engineering services.

(E) The public participation in the project that would otherwise meet the criteria of subdivision (b) is public funding in the form of below-market interest rate loans for a project in which occupancy of at least 40 percent of the units is restricted for at least 20 years, by deed or regulatory agreement, to individuals or families earning no more than 80 percent of the area median income.

(d) Notwithstanding any provision of this section to the contrary, the following projects shall not, solely by reason of this section, be subject to the requirements of this chapter:

(1) Qualified residential rental projects, as defined by Section 142 (d) of the Internal Revenue Code, financed in whole or in part through the issuance of bonds that receive allocation of a portion of the state ceiling pursuant to Chapter 11.8 of Division 1 (commencing with Section 8869.80 of the Government Code on or before December 31, 2003.

(2) Single-family residential projects financed in whole or in part through the issuance of qualified mortgage revenue bonds or qualified veterans' mortgage bonds, as defined by Section 143 of the Internal Revenue Code, or with mortgage credit certificates under a Qualified Mortgage Credit Certificate Program, as defined by Section 25 of the Internal Revenue Code, that receive allocation of a portion of the state ceiling pursuant to Chapter 11.8 of Division 1 (commencing with Section 8869.80) of the Government Code on or before December 31, 2003.

(3) Low-income housing projects that are allocated federal or state low-income housing tax credits pursuant to Section 42 of the Internal Revenue Code, Chapter 3.6 of Division 31 (commencing with Section 50199.4) of the Health and Safety Code, or Section 12206, 17058 or 23610.5 of the Revenue and Taxation Code, on or before December 31, 2003.



Prevailing Wage Law

(e) If a statute, other than this section, or a regulation, other than a regulation adopted pursuant to this section, or an ordinance or a contract applies this chapter to a project, the exclusions set forth in subdivision (d) do not apply to that project.

(f) For purposes of this section, references to the Internal Revenue Code mean the Internal Revenue Code of 1986, as amended, and include the corresponding predecessor sections of the Internal Revenue Code of 1954, as amended.

(g) The amendments made to this section by either Chapter 938 of the Statutes of 2001 or the act adding this subdivision shall not be construed to preempt local ordinances requiring the payment of prevailing wages on housing projects.

1771. Payment of general prevailing rate

Except for public works projects of one thousand dollars (\$1,000) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works.

This section is applicable only to work performed under contract, and is not applicable to work carried out by a public agency with its own forces. This section is applicable to contracts let for maintenance work.

1772. Employees of contractors and subcontractors

Workers employed by contractors or subcontractors in the execution of any contract for public work are deemed to be employed upon public work.

1722.1. Contractor; subcontractor defined

For the purposes of this chapter, “contractor” and “subcontractor” include a contractor, subcontractor, licensee, officer, agent, or representative thereof, acting in that capacity, when working on public works pursuant to this article and Article 2 (commencing with Section 1770).

Fort Ord Reuse Authority Master Resolution Adopted March 14, 1997

3.03.090. Prevailing Wages.

(a) Not less than the general prevailing rate of wages for work of a similar character in Monterey County, as determined by the Director of the Department of Industrial Relations under Division 2, Part 7, Chapter 1 of the California Labor Code, shall be paid to all workers employed on the First Generation Construction performed on parcels subject to the Fort Ord Base Reuse Plan. This subsection applies to work performed under Development Entitlements as defined in §1.01.050 of this Master Resolution and by contract with a FORA member or a FORA member agency including their transferees, agents, successors-in-interest, developers or building contractors.



Prevailing Wage Law

This policy is limited to “First Generation Construction” work, which is defined in §1.01.050 of this Master Resolution. In addition to the exceptions enumerated in the definition of Development Entitlements found in §1.01.050 of this Master Resolution, this policy does not apply to: (1) construction work performed by the Authority or a member jurisdiction with its own workforce; (2) construction work performed by paid, full-time employees of the developer, unless the developer is performing the work of a contractor as defined in California Business and Professions Code §7026; (3) construction improvements following issuance of an occupancy permit; (4) affordable housing when exempted under California state law; and (5) construction of facilities to be used for eleemosynary non-commercial purposes when owned in fee by a non-profit organization operating under §501(c)(3) of the Internal Revenue Code. (b) Member agencies shall include language in all of their contracts and deeds for the conveyance, disposition and/or development of former Fort Ord property to give notice of and assure compliance with the policy set forth above in subsection 3.03.090(a). (c) FORA shall determine compliance by member agencies with this section at the time of and as part of FORA’s consistency determination under Chapter 8 of this Master Resolution.



SEASIDE MUNICIPAL CODE OF ORDINANCES
TITLE 5 BUSINESS LICENSE AND REGULATIONS
CHAPTER 5.74 PROTECTION OF REVENUE

Sections:

[5.74.005 Findings and purposes.](#)

[5.74.010 Labor activity pledges required.](#)

[5.74.020 Definitions.](#)

5.74.005 Findings and purposes.

A. When the city has a financial or proprietary interest in a project that includes hospitality operations such as hotels, including restaurants, bars, clubs, and food and beverage operations that are located within the hotel or hotel complex, and when the revenues generated by such operations are necessary to defray the public costs incurred in the construction or maintenance of such projects, or when such revenues are necessary to fund lease, rental or license payments to the city, it is essential to the public fiscal welfare that the revenue stream to so defray or fund not be interrupted or in any manner be affected by labor disputes.

B. The city has found that the effective way to avoid such disputes is to require employers and others receiving public funding or revenue to be signatory to a collective bargaining agreements or a labor peace agreement with unions representing or seeking to represent employees who will staff the hospitality operations described hereinabove. A collective bargaining agreement generally prohibits a union and all employees covered by such an agreement from engaging in picketing, work stoppages, boycotts or other economic interference with the business of the employers, for the duration of the collective bargaining agreement and provides instead for arbitration of all employment disputes arising under the collective bargaining agreement. A labor peace agreement allows a union to organize a property through a card check with the employer taking a neutral stance toward the card check process in exchange for which the union agrees to forbear picketing, work stoppages, boycotts or other economic interference with the business of the employers for the duration of the labor peace agreement and to provide instead for arbitration only for any disputes relating to the interpretation of the labor peace agreement.

C. It is the purpose of this chapter to require a collective bargaining or labor peace agreement as described above, to ensure continuous provision of employee services and consequent assurance that the city will continue to receive agreed upon revenue to defray financial obligations and to fund public services.

(Ord. 933 §1, 2004).

5.74.010 Labor activity pledges required.

A. All contractors shall be or become signatory to a collective bargaining agreement or a labor peace agreement with any labor organization representing or seeking to represent hospitality workers employed in contractor's hospitality operations in a capital project or under a revenue producing contract as a condition precedent to its contract or subcontract with city.

B. Each collective bargaining agreement shall include a provision prohibiting the labor organization and its members from engaging in any picketing, work stoppages, boycotts or any other economic interference with the hospitality operations of contractor for the duration of the collective bargaining agreement. Each collective bargaining agreement must provide that during the term of the agreement, all disputes relating to the collective bargaining agreement shall be submitted to final and binding arbitration. A labor peace agreement shall include a provision requiring the union to forbear picketing, work stoppages, boycotts or other economic interference with the business of the employers for the duration of the labor peace agreement. This agreement shall also provide for arbitration only for any disputes relating to the interpretation of the labor peace agreement.

C. All contractors shall require that any work under contract or contracts with city to be done by contractors' contractors, subcontractors, tenants or subtenants, licensees or sublicensees shall be done under labor peace agreements or collective bargaining containing the same provisions as specified above in this section.

D. A contractor shall be relieved of the obligations of this section with respect to a labor organization if the labor organization places conditions upon its strike and/or labor activity pledge that the council finds, after notice and hearing, to be arbitrary or capricious, or for other good and sufficient reasons.
(Ord. 933 §2(part), 2004: Ord. 922 §2(part), 2004).

5.74.020 Definitions.

The following words and phrases, whenever used in this section, shall be construed as defined in this section unless from the context a different meaning is intended or unless a different meaning is specifically defined and more particularly directed to the use of such words or phrases:

"Capital project" means a project financed by debt or by other funds and which meets all of the following:

1. Is an undertaking to construct, repair, renovate, improve, equip, furnish or acquire any:
 - a. Building, structure, facility or other physical public improvement;
 - b. Land or rights in land; or
 - c. Furnishings, machinery, apparatus or equipment for a building, structure, facility or other physical public improvement.
2. Has an estimated useful life in excess of five years.
3. Has an estimated financial cost in excess of one hundred thousand dollars. This definition does not apply to original equipment or furnishings for previously authorized public improvement projects.

"Collective bargaining agreement" means a collective bargaining agreement entered into between the person contracting or subcontracting to provide services and a labor organization lawfully serving as the exclusive collective bargaining representative for the employees who provide or will provide services pursuant to such a contract.

"Contract" means (1) any contract, lease or license from city to use any city property for hospitality operations; (2) any contract, lease or license pursuant to which city is entitled to receive as rents, royalties, payments in connection with financing provided by or through city, or other income, a percentage of the revenues of an enterprise of which

hospitality operations are any part, including, but not limited to, a contract for all or part of a capital project or revenue producing contract; or (3) any subcontract, sublease, sublicense, management agreement or other transfer or assignment or any right, title or interest received from city pursuant to any of the foregoing contracts, leases or licenses. "Contract" under 29 U.S.C. 185(a), means a contract to which 29 U.S.C. 185(a) applies, as that provision has been interpreted by the courts of competent jurisdiction.

"Contractor" means any person party to a contract.

"Hospitality operations" means hotels or motels, providing lodging and other guest accommodations, including restaurants, bars, clubs, cafeterias and food and beverage operations located within the hotel or hotel complex, but does not include sport stadium operations.

"Hospitality workers" mean all full-time or part-time employees in a hospitality operation, except supervisors, managers, guards, administrative, sales, marketing, accounting, human resources, concierge, and front desk personnel, as well as any other categories of employees which the union and employer agree shall be exempted from the bargaining unit.

"Labor peace agreement" means a contract which allows a union to organize a property through a card check and with the employer taking a neutral stance toward the card check process in exchange for which the union agrees to forbear picketing, work stoppages, boycotts or other economic interference with the business of the employers for the duration of the labor peace agreement and to provide instead for arbitration only for any disputes relating to the interpretation of the labor peace agreement.

"Revenue producing contracts" means all contracts that produce revenue for city or involve payment of money or monies to city other than taxes.

(Ord. 933 §2(part), 2004: Ord. 922 §2(part), 2004).