

RECORDING REQUESTED BY:  
CITY OF SEASIDE

WHEN RECORDED MAIL TO:

City of Seaside  
Attention: City Attorney's Office  
440 Harcourt Avenue  
Seaside, California 93955

## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement") is made by and between the CITY OF SEASIDE, a California municipal corporation ("City"), and KB Bakewell Seaside Venture II, LLC, a Delaware limited liability company ("Developer"). City and Developer are individually referred to herein as a "Party" and collectively referred to as the "Parties".

### RECITALS

This Agreement is made and entered into with regard to the following facts, each of which is acknowledged as true and correct by the Parties to this Agreement.

A. The United States Army ("Army") (owned in fee approximately certain real property in Monterey County, California, commonly referred to as Fort Ord. Fort Ord closed in 1994. The Army initiated the disposal process for Fort Ord pursuant to the Defense Base Closure and Realignment Act of 1990. Among other transfers of former Fort Ord property, the Army transferred approximately 36.6 acres of the former Fort Ord located within the City (the "26 Acre Parcels") (to City and approximately 66.9 acres of the former Fort Ord located within the City (the "Surplus II Property") (to the Successor Agency to the Redevelopment Agency of the City of Seaside (the "Successor Agency") (as successor in interest to the former Redevelopment Agency of the City of Seaside). The 26 Acre Parcels are described in Exhibit A-1 and depicted in Exhibit A-2 and the Surplus II Property is described in Exhibit B-1 and depicted in Exhibit B-2, each attached hereto and incorporated herein by this reference. The 26 Acre Parcels and the Surplus II Property are referred to collectively herein as the ("Property").

B. Pursuant to the Purchase and Sale Agreement and Escrow Instructions (the "PSA") (by and between City, the Successor Agency, and KB-Bakewell Seaside Venture, LLC, a California limited liability company) ("KB-Bakewell") (dated February 6, 2017 (as evidenced by that certain Memorandum of Purchase and Sale Agreement by and between City, the Successor Agency, and KB-Bakewell dated                     , 2020, and recorded in the Official Records of Monterey County as Document No. XX), and subject to the conditions therein, (i) City is obligated to sell to Developer (as successor in interest to KB-Bakewell under the PSA) and Developer is obligated to purchase from City the 26 Acre Parcels, and (ii) the Successor Agency is obligated to sell to Developer and Developer is obligated to purchase from the Successor Agency the Surplus II Property.

C. This Agreement authorizes the development of the Property the Campus Town Specific Plan Project as approved for the Property, as further defined in this Agreement.

D. The Property that is the subject of this Agreement is approximately 103.5 acres in size, is generally bounded on the west by 1st Avenue and General Jim Moore Boulevard, on the south by Gigling Road, on the east by 7th Avenue, and on the north by Lightfighter Drive and Colonel Durham Street, and is referred to as Assessor's Parcel Nos.: 031-151-054 (Parcel I), 031-151-056 (Parcel II), 031-151-055 (Parcel III), 031-151-032 (Parcel IV) 031-151-031 (Parcel V), 031-151-029 (Parcel VI), 031-151-039 (Parcel VII), 031-151-040 (Parcel VIII), 031-261-004 (Parcel IX), 031-261-003 (Parcel X)).

E. Developer has applied to City for approval of the mutually binding Development Agreement, pursuant to the provisions of the Development Agreement Act (as hereafter defined), and the City Development Agreement Regulations (as hereinafter defined), and other applicable laws.

F. In anticipation of the development of the Project (as hereafter defined), Developer has made or will make application to City (in its governmental capacity) for certain approvals, entitlements, findings and permits required for the development and construction of the Project on the Property, including, without limitation the Project Approvals (as hereinafter defined). The City Council of the City of Seaside ("City Council") has specifically considered the advantages and impacts of this Project upon the welfare of City and believes that the Project will benefit City.

G. The complexity, magnitude, and long-range nature of the Project would be difficult for Developer to undertake if City had not determined, through this Agreement, to inject a sufficient degree of certainty in the land use regulatory process to justify the substantial financial investment associated with development of the Project. This Agreement eliminates uncertainty in planning, assuring both Parties that the Project can proceed without disruption caused by change in City planning and development policies and requirements (except as specifically set forth herein) and provides for the orderly development of the Project in a manner consistent with City's Zoning Regulations (as hereafter defined) and the Applicable Rules (as hereafter defined), including the General Plan (as hereafter defined).

H. To provide such certainty, City desires, by this Agreement, to provide Developer with assurance that Developer can proceed with development of the Project with the uses, density and other land use characteristics specified in the Project Approvals and the Applicable Rules. Neither Developer nor City would enter into this Agreement, or agree to provide the public benefits and improvements described herein, without the agreement that the Project can be developed, during the Term (as hereinafter defined) of this Agreement, with the uses, density and other land use characteristics specified in the Project Approvals and Applicable Rules. City has determined that, as a result of the development of the Project in accordance with the Project Approvals (including and this Agreement), substantial benefits will accrue to the public, including but not limited to:

(i) Developer making the Public Benefit Contribution (as hereinafter defined);

- (ii) Developer making the Replacement Payment (as hereinafter defined);
- (iii) Implementation of the vision of the Fort Ord Reuse Authority Base Reuse Plan and the City's General Plan;
- (iv) Development of a mixed-use urban village with a variety of housing (including affordable housing), commercial, and office land uses in close proximity to limit vehicle miles traveled and greenhouse gas emissions and to support the California State University, Monterey Bay ("CSUMB");
- (v) Creation of a multi-modal transportation network, including bicycle and pedestrian paths;
- (vi) Affordable housing benefitting Seaside residents and CSUMB students and employees;
- (vii) Public open space and trails; and
- (viii) New and upgraded infrastructure and utilities.

I. City has given the required notice of its intention to adopt this Agreement and has conducted public hearings thereon pursuant to Government Code Section 65867 and City Development Agreement Regulations.

J. On [Month] [Date], [Year] pursuant to the requirements of the Development Agreement Act and the City Development Agreement Regulations, the Planning Commission of the City of Seaside ("Planning Commission") conducted a hearing on Developer's application for this Agreement. The Planning Commission recommended that the City Council [summarize Planning Commission recommendation].

K. On [Month] [Date], [Year], pursuant to the requirements of the Development Agreement Act and the City Development Agreement Regulations, the City Council conducted a hearing on Developer's application for this Agreement.

L. The City Council has found and determined that this Agreement is consistent with the City's General Plan and all other plans, policies, rules and regulations applicable to the Project.

M. On [Month] [Date], [Year], the City Council adopted Ordinance No. [#####] approving this Agreement and such ordinance became effective on [Month] [Date], [Year].

N. By Resolution No. [#####] adopted by the City Council on [Month] [Date], [Year], the City Council reviewed and certified, after making appropriate findings, the Final Environmental Impact Report for the Campus Town Specific Plan Project (State Clearinghouse No. 2018021079) (the "Final EIR") that contemplates, among other things, this Agreement.

## AGREEMENT

NOW THEREFORE, pursuant to the authority contained in the Development Agreement Act and the City Development Agreement Regulations, as applied to City, and in consideration of the mutual promises and covenants herein contained and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereto agree as follows:

### 1. Definitions

. For all purposes of this Agreement, except as otherwise expressly provided herein or unless the context of this Agreement otherwise requires, the following words and phrases shall be defined as is set forth below:

(a) “Affiliate” means an entity that owns Developer, is owned by Developer, or is under common control with Developer.

(b) “Affordable Housing Agreement” means that certain Affordable Housing Agreement ("Campus Town") for the Project entered into between City and Developer on **[date]** in accordance with the City’s Affordable Housing Requirements as set forth in Seaside Municipal Code Chapter 17.32.

(c) “Affordable Housing Lot” means a lot or parcel on which one or more of the Affordable Housing Units (as defined below) required by the Affordable Housing Agreement are or will be constructed, whether within the Property or off-site.

(d) “Affordable Housing Unit” means a unit of affordable housing constructed or to be constructed on an Affordable Housing Lot pursuant to the Affordable Housing Agreement.

(e) “Applicable Rules” means the rules, regulations, ordinances, resolutions, codes, guidelines, and officially adopted procedures and official policies of City governing the use and development of real property, including, but not limited to, the City’s General Plan, Zoning Regulations, subdivision regulations, and building regulations, adopted as of the Effective Date (as hereafter defined). Among other matters, the Applicable Rules set forth and govern the permitted uses of land, the density or intensity of use, subdivision requirements, the maximum height and size of proposed buildings, parking requirements, setbacks, and development standards, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction guidelines, standards and specifications applicable to the development of the Property, the terms and conditions relating to applicant financing of necessary public facilities, and conditions, terms, restrictions and requirements for subsequent Discretionary Actions (as hereinafter defined).

(f) “Building Permit” means a permit issued by City pursuant to Title 15 of the Seaside Municipal Code to authorize construction of a building or other structure. “Building Permit” shall not include a demolition permit or excavation and shoring permit, but shall include a foundation permit.

(g) “Business Day” or “Business Days” means any day other than a Saturday, Sunday or California or federal holiday on which banks in the City are customarily closed.

(h) “CEQA” means the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.), as it now exists or may hereafter be amended.

(i) “Certificate of Occupancy” means any of the following with respect to any portion of the Project: (i) a permanent Certificate of Occupancy, (ii) a temporary Certificate of Occupancy or (iii) a Certificate of Completion, if requested by Developer and issued by City, as to an improvement in which the base, core and shell have been completed, but the improvement is not ready for occupancy due to Developer’s electing to defer the completion of tenant improvements, or the interior portions of individual condominium units (e.g., kitchens, baths or finishes which are intended to be customized at a later date).

(j) “City” means the City of Seaside, a California municipal corporation, and any assignee or successor to its rights, powers, and responsibilities.

(k) “City Development Agreement Regulations” means the rules and regulations adopted by City pursuant to Government Code Section 65865 establishing procedures and requirements for consideration of development agreements, which procedures and requirements are contained in City Municipal Code Chapter 17.66.

(l) “Conditions of Approval” shall mean the conditions of approval imposed by City upon the Project Approvals.

(m) “Developer” means KB-Bakewell Seaside Venture II, a Delaware limited liability company, and any permitted assignee or successor in interest as provided herein.

(n) “Developer Fees” shall mean those monetary fees, exactions, or impositions, other than taxes, whether established for or imposed upon the Project individually or as part of a class of projects, that are established, adopted, or imposed by City on the Project in connection with any Project Approval for the Project for any purpose, including, without limitation, defraying all or a portion of the cost of public services and/or facilities construction, improvement, operation and maintenance attributable to the burden created by the Project. Any fee, exaction or imposition imposed on the Project which is not a Processing Fee is a Developer Fee. Such fees may include impact fees, linkage fees, exactions, assessments, fair share charges, or other similar impact fees imposed by City on or in connection with new development. Developer Fees do not mean or include Processing Fees.

(o) “Development Agreement” or “Agreement” means this Agreement.

(p) “Development Agreement Act” means Article 2.5 of Chapter 4 of Division I of Title 7 (Sections 65864 through 65869.5) of the California Government Code (as the same may be amended and/or re-codified from time to time).

(q) “Discretionary Action(s)” or “Discretionary Approval(s)” means an action which requires the exercise of judgment, deliberation or discretion on the part of City, including any board, agency, commission or department and any officer or employee thereof, in the process of approving or disapproving a particular activity, as distinguished from a Ministerial Permit (as defined herein) or Ministerial Approval (as hereafter defined).

(r) “Effective Date” shall mean the date that the ordinance approving this Agreement becomes effective.

(s) “EIR” shall mean the Campus Town Specific Plan final Environmental Impact Report (State Clearinghouse No. 2018021079) that was prepared, circulated and certified in accordance with applicable law, including, without limitation, CEQA.

(t) “FORA CFD” shall have the meaning given in Section 9(i).

(u) “FORA Fee” shall have the meaning given in Section 9(i).

(v) “FORA Replacement Payment” shall have the meaning given in Section 9(i).

(w) “General Plan” means the General Plan of City, as it exists as of the Effective Date and expressly including the General Plan Amendment (as hereinafter defined) that is included as part of the Project Approvals.

(x) “Ministerial Permit(s),” or “Ministerial Approval(s)” means a permit or approval, including, but not limited to, building permits, grading permits, zone clearances, and certificates of occupancy, which requires City, including any board, agency, commission or department or any officer or employee thereof, to determine whether there has been compliance with applicable rules, statutes, ordinances, Conditions of Approval, and/or regulations, as distinguished from an activity which is included in the definition of Discretionary Action or Discretionary Approval.

(y) “Mortgage” means any mortgage, deed of trust, encumbrance, sale leaseback or other security interest encumbering all or any portion of the Property, given by Developer for the purpose of securing funds to be used for financing the acquisition of the Property or any portion thereof, the construction of improvements thereon and/or any other expenditures reasonably necessary and appropriate to develop the Project.

(z) “Mortgagee” means the holder of the beneficial interest under any Mortgage.

(aa) “New Building Regulations” shall have the meaning given in Section 9(b).

(bb) “Processing Fees” means all processing fees and charges required by City to cover the estimated reasonable costs of City review of applications for any permit that are applied uniformly to all construction or development related activity including, but not limited to, fees for review of applications for land use approvals, Building Permits, grading

permits, hauling permits, encroachment permits, demolition permits, subdivision or parcel maps, lot line adjustments, street vacations, inspections, certificates of occupancy and plan check, and any Development Agreement amendments and Operating Memoranda pursuant to Section 29(b) below. Processing Fees shall not mean or include Developer Fees. Applications for Subsequent Project Approvals (as defined below) will be charged Processing Fees pursuant to the City's adopted fee schedule, provided that any Processing Fees applied to the Project must be consistent with the provisions of applicable California law, including the provisions of Government Code Section 66014.

(cc) "Project" means the development project on the Property as described in the Final EIR (as defined herein), as modified by the Project Approvals, and which generally includes up to 1,485 housing units; 250 hotel rooms; 75 youth hostel beds; 150,000 square feet (sf) of retail, dining, and entertainment uses; 50,000 sf of office, flex, makerspace, and light industrial uses; park/recreational areas; and supporting infrastructure.

(dd) "Project Approvals" means all of the approvals, plans and agreements described in this Section 1(dd):

(i) General Plan Amendment: On [date], following Planning Commission review and recommendation, and after a duly noticed public hearing, the City Council, by Resolution No. XXXX, approved amendments to the General Plan ("General Plan Amendment").

(ii) Zoning Amendments: On [date], following Planning Commission review and recommendation, and after a duly noticed public hearing, the City Council, by Ordinance No. XXXX, approved amendments to the City Zoning Ordinance Code and City Zoning Map ("Zoning Amendments")

(iii) Specific Plan: On [date], following Planning Commission review and recommendation, and after a duly noticed public hearing, the City Council, by Ordinance No. XXXX, approved the Campus Town Specific Plan ("Specific Plan").

(iv) Vesting Tentative Map: On [date], following Planning Commission review and recommendation, and after a duly noticed public hearing, the City Council, by Resolution No. XXXX, approved a Vesting Tentative Tract Map ("Vesting Tentative Map") for the Property.

(v) Development Agreement: On [date], following Planning Commission review and recommendation, and after a duly noticed public hearing, the City Council, by Ordinance No. XXXX, approved this Agreement and authorized its execution.

(vi) Affordable Housing Agreement: On [date], following Planning Commission review and recommendation, and after a duly noticed public hearing, the City Council, by Resolution No. XXXX, approved an Affordable Housing Agreement ("Affordable Housing Agreement") for the Project.

(vii) Subsequent Project Approvals: Any Subsequent Project Approvals (as hereafter defined) at such time as City approves them.

(ee) “Property” means the real property described in Exhibit A-1 and B-1 and shown in Exhibit A-2 and B-2, and any additions to the Property pursuant to Section 3(b) herein, and subject to any mapping adjustments pursuant to Section 3(c) herein.

(ff) “Public Benefit Contribution” means the payment from Developer to City pursuant to Section 10(d) of this Agreement.

(gg) “Reserved Powers” means the power and authority of City to enact regulations and/or take Discretionary Action if the same is expressly found by City to be necessary to protect residents of City, those employed in the City, or visitors to City, from a condition that is dangerous to public health or safety or if the same is required to comply with California or federal laws (whether enacted previous or subsequent to the Effective Date of this Agreement).

(hh) “Subsequent Land Use Regulations” means any change in or addition to the Applicable Rules adopted after the Effective Date of this Agreement, including, without limitation, any change in any applicable general or specific plan, zoning, subdivision, or building regulation, including, without limitation, any such change by means of an ordinance, initiative, referendum, resolution, policy, order or moratorium, initiated or instituted for any reason whatsoever by the Mayor, City Council, Planning Commission or any other board, agency, commission or department of City, or any officer or employee thereof, or by the electorate, as the case may be, which would, absent this Agreement, otherwise be applicable to the Project.

(ii) “Subsequent Project Approvals” shall mean further Discretionary Actions or Discretionary Approvals, Ministerial Permits and Ministerial Approvals other than those listed in Section 1(dd)(i)-(vi) above that are required to carry out the Project, including, without limitation, any subdivision approvals, tree removal permits, affordable housing plan, grading permit, encroachment permit, substantial conformance review/conformance determination, minor deviation or deviation from the Specific Plan, conditional use permits, variances, street abandonments or vacations, design review approvals, demolition permits, improvement agreements, infrastructure agreements, building permits, right-of-way permits, lot line adjustments, sewer and water connection permits, certificates of occupancy, and landscaping plans. Following adoption or approval, a Subsequent Project Approval shall become a Project Approval.

(jj) “Zoning Regulations” shall mean the official Zoning Ordinance Code of City adopted as of the Effective Date of this Agreement, including the Zoning Amendments included as part of the Project Approvals.

## 2. Recitals of Premises, Purpose and Intent

(a) To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted the Development Agreement Act, which authorizes any city to enter into binding development agreements establishing certain

development rights in real property with persons having legal or equitable interests in such property. Section 65864 of the Development Agreement Act expressly provides as follows:

“The Legislature finds and declares that:

(a) The lack of certainty in the approval of development projects can result in a waste of resources, escalate the cost of housing and other development to the consumer, and discourage investment in and a commitment to comprehensive planning which would make maximum efficient utilization of resources at the least economic cost to the public.

(b) Assurance to the applicant for a development project that upon approval of the project, the applicant may proceed with the project in accordance with existing policies, rules and regulations, and subject to conditions of approval will strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic cost of development.”

(b) City has determined that by entering into this Agreement: (1) City seeks to advance the socioeconomic interests of City and its residents by promoting the productive use of underdeveloped, former military base property which will foster orderly growth and quality development in City; (2) development will proceed in accordance with the goals and policies set forth in the General Plan and Specific Plan and will implement City's stated policies; (3) City will receive substantially increased property tax revenues and its residents will receive enhanced employment opportunities; and (4) City will receive public benefits provided by the Project for the residents of City, which are in addition to those dedications, conditions, and exactions required by laws or regulations as set forth in this Agreement.

(c) Notwithstanding the foregoing, to ensure that City remains responsive and accountable to its residents while pursuing the benefits of development agreements contemplated by the Legislature and the City, City accepts restraints on its police powers contained in development agreements only to the extent and for the duration required to achieve the mutual objectives of the Parties.

### 3. Property Subject to Agreement

#### (a) Property

. This Agreement shall apply to all of the Property.

#### (b) Mapping Adjustments

. The Parties acknowledge and agree that the legal descriptions attached hereto as Exhibit A-1 and Exhibit B-1 are metes and bounds descriptions. If the Parties determine that an adjustment of the legal descriptions attached hereto as Exhibit A-1 and Exhibit B-1 is required solely as a result of any discrepancy between the metes and bounds legal description and the final maps recorded with respect to the Property, then the Parties shall execute and record an operating memorandum (in accordance with Section 29(b) herein), in substantially the form set forth in Exhibit D solely

to amend the legal description of the Property attached hereto as Exhibits A-1 and A-2 and/or Exhibits B-1 and B-2, as applicable, to conform to the applicable final map.

(c) Additions to the Property

. Upon the acquisition by Developer of a legal or equitable interest in **XXX** (“Additional Property”) shown on Exhibit C , attached hereto and incorporated herein by this reference, and included in the Specific Plan, the Additional Property shall become part of the Property automatically upon execution and recordation by City and Developer of an operating memorandum (in accordance with Section 29(b) herein), in substantially the form set forth in Exhibit D, attached hereto and incorporated herein by this reference, solely to amend the legal description of the Property attached hereto as Exhibits A-1 and A-2 and/or Exhibits B-1 and B-2, as applicable, to add the Additional Property.

4. Application of Agreement

This Agreement shall apply to the development and use of the Property. Such development shall be in accordance with the Project Approvals (including this Agreement), as the same may lawfully be amended from time to time in accordance with this Agreement.

5. Term

(a) Effective Date

. This Agreement shall become effective upon the Effective Date. Notwithstanding the foregoing or anything to the contrary in this Agreement, Developer’s obligations under this Agreement shall not become operative or effective with respect to any portion of the Property until such time as Developer acquires fee title to such portion of the Property.

(b) Term of Agreement

. The term (“Term”) of this Agreement shall commence on the Effective Date and shall continue for a period of twenty (20) years, unless extended or earlier terminated as provided in this Agreement; provided that the Term with respect to any Additional Property acquired by Developer shall commence on the date of such acquisition. In the event that Developer has not completed construction of the Project within such Term, upon Developer’s written request no fewer than 30 days prior to expiration of the Term, the City Manager of City (“City Manager”) shall grant one non-discretionary five (5) year extension of the Term, provided that the Developer is not in material default hereunder. In the event of such an extension, “Term” shall me the initial twenty (20) year term as extended.

(c) Release of Residential and Affordable Housing Lots

(i) Residential Lots. This Agreement shall terminate with respect to any for-sale residential lot (including any for-sale Affordable Housing Lot) and such lot shall be

released and no longer be subject to this Agreement, without the execution or recordation of any further document, when a Certificate of Occupancy has been issued for the building(s) on the lot.

(ii) Affordable Housing Lots. Concurrently with the transfer of any Affordable Housing Lot within the Property to an affordable housing developer and recordation of a regulatory agreement against such Affordable Housing Lot in accordance with the Affordable Housing Agreement, the Developer and such affordable housing developer shall, in accordance with Section 15(b), enter into a partial assignment and assumption and release of this Agreement in substantially the form of Exhibit E, attached hereto and incorporated herein by this reference, providing for (i) the assignment and assumption of this Agreement to and by the Affordable Housing Transferee solely with respect to the provisions of Sections 9(g)(i) and (ii), 9(i)(ii), 10(c), and 10(d) herein providing that no Processing Fees (except for plan check inspection fees), Developer Fees, FORA Replacement Payment, or Public Benefit Contribution shall be required to be paid with respect to any Affordable Housing Lot or Affordable Housing Unit; and (ii) the release of the Affordable Housing Lot from all other provisions of this Agreement, including without limitation all rights and obligations of Developer hereunder. Notwithstanding the foregoing, Developer shall remain subject to the provisions of Section 10(h) herein.

(d) Life of Project Approvals

(i) Life of Subdivision Maps. The terms of any tentative map for the Project (including without limitation the Vesting Tentative Map, any amendment or reconfiguration thereto, or any subsequent tentative map), shall be automatically extended such that such tentative maps remain in effect for a period of time at least as long as the Term of this Agreement.

(ii) Life of Other Project Approvals. The term of all other Project Approvals (with the exception of building permits) shall be automatically extended such that these Project Approvals remain in effect for a period of time at least as long as the Term of this Agreement. The term of building permits shall be the time period permitted by the provisions of the Applicable Rules or any applicable New Building Regulations (as hereinafter defined).

6. Timing of Development

(a) Pardee Finding

The Parties acknowledge that Developer cannot at this time predict when or if the Property will be developed. Such decisions depend upon numerous factors that are not within the control of Developer. Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal. 3d 465 (the "Pardee Case") that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the Parties' intent to cure that deficiency by acknowledging and providing that Developer shall have the right to develop the Property consistent with the Project Approvals (including the Conditions of Approval) in such

order and at such rate and at such times as Developer deems appropriate within the exercise of its sole and subjective business judgment during the Term of this Agreement. This provision shall be broadly construed to provide Developer the greatest amount of time and flexibility (in light of the *Pardee* Case and/or any other similar or distinguishing cases) as necessary or appropriate to permit Developer to complete the development of the Project irrespective of later adopted rules, regulations or initiatives which would otherwise restrict Developer's time to complete the Project. Nothing in this Agreement is intended to create any affirmative obligation for Developer to develop the Project at any particular time or in any particular order.

(b) Moratorium

. No City-imposed moratorium or other limitation (whether relating to the rate, timing or sequencing of the development or construction of all or any part of the Property, whether imposed by ordinance, initiative, resolution, policy, order or otherwise, and whether enacted by the City Council, an agency of City, the electorate, or otherwise) affecting parcel or subdivision maps (whether tentative, vesting tentative or final), building permits, occupancy certificates or other entitlements to use or service (including, without limitation, water and sewer) approved, issued or granted within City, or portions of City, shall apply to the Property to the extent such moratorium or other limitation is in conflict with this Agreement; provided, however, the provisions of this Section shall not affect City's compliance with moratoria or other limitations mandated by other governmental agencies or court-imposed moratoria or other limitations.

7. Permitted Uses; Density; Building Heights and Sizes; Required Dedications

. City and Developer hereby agree that the permitted uses of the Property, the density and intensity of such uses, the maximum heights and sizes of the buildings and improvements to be constructed on the Property, parking requirements, setbacks, and development standards, the provisions for reservation and dedication of land for public purposes, if any, required in connection with the development of the Property and location of public improvements, the design, improvement, construction and other guidelines, standards and specifications applicable to the development of the Property, the terms and conditions relating to applicant financing of necessary public facilities, and the conditions, terms, and restrictions for subsequent Discretionary Actions shall be as set forth in and consistent with the Project Approvals, as they may be lawfully amended from time to time with Developer's consent in accordance with this Agreement, and the Applicable Rules. In accordance with the Development Agreement Act, the Parties agree that the conditions, terms, and restrictions for subsequent Discretionary Actions shall not prevent the development of the Property for the uses and to the density or intensity of development set forth in the Project Approvals. Developer shall not cause or permit any use of the Property that is not permitted by the Project Approvals, and shall not cause or permit the construction of any building or improvement that exceeds the maximum density, building heights and/or building sizes set forth in or otherwise required by the Project Approvals, as they may be lawfully amended from time to time with Developer's consent in accordance with this Agreement.

8. Developer's Rights

. Developer shall have and is hereby vested with the rights, during the Term of this Agreement, to develop the Project on the Property in accordance with the Project Approvals

(including this Agreement), as they may be lawfully amended from time to time in accordance with this Agreement, and the Applicable Rules.

9. Changes in Applicable Rules

(a) Non-Application of Changes in Applicable Rules

. The adoption of any Subsequent Land Use Regulations after the Effective Date of this Agreement (other than changes in Processing Fees and taxes), including any regulation relating to the timing, sequencing, or phasing of the Project or construction of all or any part of the Project, and including any changes in Developer Fees (which expression “changes in Developer Fees” includes under this Agreement new or additional Developer Fees) shall not be applied to the Project during the Term of this Agreement unless such Subsequent Land Use Regulations represent an exercise of City’s Reserved Powers.

(b) Changes in Uniform Codes

. Notwithstanding any provision of this Agreement to the contrary, development of the Project shall be subject to changes occurring from time to time in the provisions of City’s building, mechanical, plumbing, electrical regulations and similar uniform construction regulations that are based on the recommendations of a multi-state professional organization, that are in effect at the time of permit application, and that are generally applicable throughout City, including, but not limited to, the California Building Code and other similar or related uniform construction codes (“New Building Regulations”), except (i) if such New Building Regulations conflict with the Project Approvals, and (ii) City fails to adopt express findings of fact based on substantial evidence that such New Building Regulations are reasonably necessary because of local climatic, geological, or topographical conditions.

(c) Changes Mandated by Federal or California Laws or Regulations

. Changes in, or additions to, the Applicable Rules adopted or made operative on or after the Effective Date shall apply to the Project if such changes or additions are specifically mandated to be applied to developments such as the Project, irrespective of vested rights, by changes in applicable California or federal laws or regulations (“New State or Federal Law”). Where City or Developer believes that such a New State or Federal Law exists, that Party shall provide the other Party hereto with a copy of such New State or Federal Law and a statement of the nature of its conflict with the provisions of the Project Approvals or Applicable Rules. In the event of the application of such a New State or Federal Law, the Parties shall meet in good faith to determine the feasibility of any modification or suspension to this Agreement that may be necessary to comply with such a New State or Federal Law and to determine the effect such modification or suspension would have on the purposes and intent of the this Agreement. Following the meeting between the Parties, the provisions of this Agreement may, to the extent feasible, and upon mutual agreement of the Parties, be modified or suspended, but only to the minimum extent necessary to comply with such a New State or Federal Law. In such an event, this Agreement together with any required modifications shall continue in full force and effect. In the event that a New State or Federal Law operates to frustrate irremediably and materially the vesting of development rights to the Project as set forth in this Agreement, Developer or City may terminate this Agreement. Nothing in this Agreement shall deprive Developer of the rights

possessed by any other property owner, absent vested rights, to challenge a New State or Federal Law or the appropriateness of its application to the Project and, in the event that such challenge is successful, this Agreement shall remain unmodified and in full force and effect, unless the Parties mutually agree otherwise.

(d) Expansion of Development Rights

. If any Subsequent Land Use Regulation or New State or Federal Law expands, extends, enlarges or broadens Developer's rights to develop the Project, then, (a) if such law is mandatory, the provisions of this Agreement shall be modified as may be necessary to comply or conform with such new law, and (b) if such law is permissive, the provisions of this Agreement shall be modified, upon the mutual agreement of Developer and City, as may be necessary to comply or conform with such new law. Immediately after enactment of any such new law, upon Developer's request, the Parties shall meet and confer in good faith for a period not exceeding sixty (60) days (unless such period is extended by mutual written consent of the Parties) to prepare such modification. Developer shall have the right to challenge City's refusal to apply any new law mandating expansion of Developer's rights under this Agreement, and in the event such challenge is successful, this Agreement shall be modified to comply with, or conform to, the new law.

(e) Changes due to U.S. Army or Cal State University at Monterey Bay Stormwater Requirements

. In the event that storm water requirements cause certain residential lots within the Project to be undevelopable, the residential units lost as a result thereof may be added into other multifamily areas of the Specific Plan after any environmental review as may be required pursuant to CEQA.

(f) Changes in Processing Fees

. The Project shall be subject to any increase in Processing Fees imposed by City, provided that such a change is applied on a Citywide basis.

(g) Changes in Developer Fees

(i) No Developer Fees. City represents and warrants that, as of the Effective Date, there are no Developer Fees applicable to the Project or the Property. No new Developer Fee or change to a Developer Fee that is adopted after the Effective Date shall apply to the Project or the Property.

(ii) No Fee Collection Agreements. City agrees to exclude the Project and the Property from any and all collection agreements regarding fees, including, but not limited to, development impact fees, which other public agencies request the City to impose at City's discretion on the Project or the Property after the Effective Date through the Term of this Agreement.

(iii) Transportation Agency of Monterey County (TAMC) and Marina Coast Water District (MCWD) Fees. Notwithstanding Section 9(g)(ii) above, the Parties acknowledge and agree that, if finally adopted, the Property is or may become subject to the following regional agency fees, or updates thereof, after the Effective Date, provided that such

fees are adopted or updated in accordance with applicable law and approved by the requisite number of Monterey County cities and Monterey County: (a) the Regional Development Impact Fee applicable to Fort Ord property adopted in accordance with applicable law by the Transportation Agency for Monterey County to fund regional transportation infrastructure needed to accommodate growth within Monterey County, as identified within the applicable nexus study (“TAMC Fee”) and (b) all applicable connection and capacity fees for sewer and water adopted by the Marina Coast Water District (“MCWD Fees”).

(iv) School Fees. The Parties acknowledge and agree that nothing in this Agreement alters Developer’s rights or obligations with respect to payment of mandatory statutory school fees applicable to the Project in accordance with applicable state law.

(h) Taxes and Assessments

(i) City Assurances. The Parties understand and agree that as of the Effective Date there are no City assessments applicable to the Property. City understands that long-term assurances by City concerning Developer Fees, taxes, and assessments were a material consideration for Developer agreeing to develop the Project, enter into this Agreement, and provide the public benefits.

(ii) New City-wide Taxes and Assessments. Subject to the provisions of Section 9(g) above, City can impose new City-wide taxes and assessments, other than Developer Fees, on the Property in accordance with the then applicable laws, but only if such taxes or assessments are adopted by or after City-wide voter or City-wide landowner approval of such taxes or assessments and are equally imposed on other land and projects of the same category (i.e., all single family residential projects or office projects or retail projects or hotel projects, in which case the tax or assessment would be applicable only to the residential or office or retail or hotel portion of the Project, respectively) within the jurisdiction of City, and, as to assessments, only if the impact thereof does not fall disproportionately on the Property vis à vis the other land and projects within City’s jurisdiction. Nothing herein shall be construed so as to limit Developer from exercising whatever rights it may otherwise have in connection with protesting or otherwise objecting to the imposition of taxes or assessments on the Property. In the event an assessment district is lawfully formed to provide funding for services, improvements, maintenance or facilities which are substantially the same as those services, improvements, maintenance or facilities being funded by Developer under the Project Approvals (including this Agreement), such obligations to fund by Developer shall be subject to reduction/credit in an amount equal to Developer’s new or increased assessment under the assessment district. Alternatively, the new assessment district shall reduce/credit Developer’s new assessment in an amount equal to such obligation to fund by Developer under the Project Approvals (including this Agreement).

(i) FORA CFD Replacement

(i) FORA CFD. As of the Effective Date, the Fort Ord Reuse Authority Community Facilities District (“FORA CFD”) imposes a tax lien against certain real

property, including the Property, for roadway improvements, transit improvements and vehicles, water and storm drain improvements, habitat management, other public facilities, and administrative fees, costs, and expenses. The Parties acknowledge and agree that the FORA CFD is the only assessment applicable to the Property as of the Effective Date, and that the FORA CFD assessment is collected in the form of a fee paid at building permit (in the amounts and subject to the escalators set forth in Exhibit F, attached hereto and incorporated herein by this reference, the “FORA Fee”), rather than a tax roll assessment on property.

(ii) FORA Replacement Payment. In the event that the FORA CFD is terminated and fully and finally removed as an encumbrance on the Property such that the Project and the Property no longer are subject to the FORA CFD and no further assessments or other payments are required to be paid thereunder, then at the time of issuance of each building permit for the Project subsequent to such final termination and removal, Developer shall make a payment (“FORA Replacement Payment”) to the City based on the percentage of the FORA Fee (including the escalator set forth in Exhibit F) as follows:

<u>Land Use</u>	<u>FORA Replacement Payment</u>
Single Family Detached Residential Units*	30% of FORA Fee for New Residential
Townhouse Units*	30% of FORA Fee for New Residential
Apartment and Condominium Units*	30% of FORA Fee for New Residential
Affordable Housing Units	0% of FORA Fee for New Residential
Office	30% of FORA Fee for Office
Industrial	30% of FORA Fee for Industrial
Retail	30% of FORA Fee for Retail
Hotel	30% of FORA Fee for Hotel
Hostel	30% of FORA Fee for Hotel
Mixed Use*	Residential portion: 30% of FORA Fee for New Residential Hotel portion: 30% of FORA Fee for Hotel Non-residential/hotel portion: 30% of FORA Fee for Office/Industrial/Retail, as applicable, based on square footage of footprint of Office/Industrial/Retail use, as applicable

\* Excluding Affordable Housing Units

Notwithstanding the foregoing, prior to the issuance of any building permit that is subject to the FORA Replacement Payment, the City Manager, in consultation with the City Attorney, shall have the authority to reduce the amount of the FORA Replacement Payment for such building permit or any use other than Single Family Detached Residential Units in order to assist in ensuring the economic viability of the development authorized by such building permit.

In the event that a habitat conservation plan (“HCP”) is approved for the area including the Property by all regulatory agencies with jurisdiction and City elects to participate in such HCP, or in the event that any other City special tax or assessment is imposed against the Property, but not including any tax of assessment resulting from any Project-specific public financing, then the

amount of the FORA Replacement Payment shall be reduced dollar for dollar by the amount of any HCP fee or other City special tax or assessment that becomes applicable to the Property or the Project.

(iii) Use of FORA Replacement Payment. City shall use the FORA Replacement Payment to fund roadway improvements; transit improvements and vehicles; water and storm drain improvements; habitat management; other public facilities; and administrative fees, costs and expenses, necessary for the Project or the Property.

(j) Future Natural Gas Limitation

. In recognition of Developer's voluntary commitment to the limitation on natural gas appliances set forth in Section 10(f), no Subsequent Land Use Regulation limiting or prohibiting the installation of natural gas fireplaces, appliances, HVAC systems or similar building mechanical equipment shall apply to the Project.

10. Developer's Obligations

(a) Conditions of Approval

. Developer shall comply with the Conditions of Approval.

(b) Reimbursement of Project Approval Costs

. In accordance with the terms of the PSA, Developer shall reimburse City for all of its actual and reasonable costs to process (i) those Project Approvals identified in Section 1(dd)(i) through (vi), including legal and environmental processing costs related to those Project Approvals (including preparation of this Agreement,) if any, no later than the Effective Date, and (ii) the FORA consistency determination for the Project pursuant to the FORA Master Resolution adopted March 14, 1997 ("FORA Master Resolution"), no later than **XX** days following FORA's final approval of any FORA consistency determination required for the Project Approvals identified in Section 1(dd)(i) through (vi) pursuant to Chapter 8 of the FORA Master Resolution.

(c) Processing Fees and Developer Fees

. Developer agrees to pay all Processing Fees applicable to the Project pursuant to this Agreement, including City plan check fees, building inspection fees, and permit fees at the rate and amount in effect at the time the fee is required to be paid, provided that the only Processing Fees applicable to Affordable Housing Units shall be plan check and inspection fees. The Project, including the Affordable Housing Units, and the Property, shall not be subject to any Developer Fees.

(d) Public Benefit Contribution

. In the event that the Phase 1 Closing (as defined in the PSA) occurs, then concurrent with the Phase 2 Closing (as defined in the PSA), as such date may be extended pursuant to Section 32 below, Developer (excluding any Developer of an Affordable Housing Lot) shall pay to City a Public Benefit Contribution of Two Million Dollars (\$2,000,000.00). In the event that the Phase 1 Closing occurs but the Phase 2 Closing does not occur, then no later than thirty (30) days after such Phase 2 Closing would otherwise have occurred pursuant to the PSA, Developer shall deliver written notice to the City of its election to do one of the following:

(i) Retain Fire Station Parcel. Retain the parcel containing the Presidio of Monterey Fire Station (the “Fire Station”), located on the east side General Jim Moore Boulevard between Lightfighter Drive and Gigling Road, as depicted on Exhibit **XX** attached hereto and incorporated herein by this reference (the “Fire Station Parcel”), in which case Developer shall pay the Public Benefit Contribution to the City within thirty (30) days after such notice, as such date may be extended pursuant to Section 32 below, and City shall remain obligated to complete the Fire Station Work (as defined in Section 11(a)) pursuant to Section 11(a) below; or

(ii) Re-convey Fire Station Parcel. Re-convey the Fire Station Parcel to City on an “as is” basis, in which case Developer shall have no obligation to pay the Public Benefit Contribution and City shall have no obligation to complete the Fire Station Work pursuant to Section 11(a) below. The Parties shall enter into a separate agreement documenting the terms of such re-conveyance in accordance with Section 11(a) below.

The provisions of this Section 10(d) (including the referenced provisions of Section 11(a) below) shall survive the expiration or earlier termination of this Agreement.

(e) FORA Replacement Payment

. Developer shall pay City the FORA Replacement Payment if and to the extent required by Section 9(i) above.

(f) Limitation on Natural Gas Fireplaces and Appliances

. Developer shall not install natural gas fireplaces in any residential unit in the Project. Developer shall not install natural gas appliances (i.e., stoves, ovens, washers, or dryers) in any for-rent residential unit in the Project. Developer shall offer all buyers of any single-family detached residential unit in the Project an all-electric option. Notwithstanding the foregoing, Developer may install natural gas appliances in for-sale residential units and commercial buildings within the Project, and may install gas building mechanical equipment (including without limitation water heaters, boilers and HVAC systems) in any buildings in the Project.

(g) Public Open Space

. Developer shall dedicate open space areas and trails within the Property pursuant to the Specific Plan and Vesting Tentative Map, which areas are shown on Exhibit G, attached hereto and incorporated herein by reference. The dedication shall be in a form and substance satisfactory to the City Attorney, provided that the Parties agree that Developer may dedicate open space and trails on the subdivision map(s) for the Project.

(h) Affordable Housing Requirements

. Developer shall comply with the City’s Affordable Housing Requirements as set forth in Seaside Municipal Code Chapter 17.32, as set forth in the Affordable Housing Agreement, including without limitation compliance with the phasing obligations therein.

(i) Prevailing Wages

. Developer agrees to pay prevailing wages with respect to the Project to the extent required by Labor Code Sections 1720 et seq. and/or recorded covenants encumbering the Property.

(j) Tier 4 Large Construction Equipment

. Developer shall require its construction contractor(s) to ensure that large construction equipment (i.e., cranes, dozers, excavators, graders, pavers, rollers, scrapers, tractors, loaders, and backhoes) used for construction of the Project is equipped with Tier 4 Final certified engines.

11. City Obligations

(a) Fire Station

(i) Relocation. The City, at no cost or expense to Developer (other than the Public Benefit Contribution), shall (i) relocate or cause to be relocated the Fire Station, and (ii) demolish or cause to be demolished the improvements on, and remediate or cause to be remediated, the Fire Station Parcel, all in accordance with the PSA (the "Fire Station Work"). The replacement fire station shall be completed and operational prior to closure of the Fire Station. The Parties acknowledge that the Fire Station Work may not be completed prior to the Phase 1 Closing (as defined in the PSA). City shall use its best efforts to secure adequate funding and all necessary approvals and to complete the Fire Station Work as soon as practicable.

(ii) Conveyance. Prior to the Phase 1 Closing, City and Developer shall enter into an agreement providing for Developer's assumption of the existing Fire Station lease subject to commercially reasonable indemnification by City, allocation of carry costs for the Fire Station Parcel after the Phase 1 Closing; criteria for the replacement fire station; timing for completion of the Fire Station Work; and terms for re-conveyance of the Fire Station Parcel on an "as is" basis if applicable pursuant to Section 10(d)(2) above.

(b) Remediation

. Prior to the Phase 1 Closing, City shall cause the Property to be free of Hazardous Materials (as defined in the PSA) or be remediated to residential standards at no cost to Developer in accordance with the PSA.

(c) Demolition

. Prior to the Phase 1 Closing, City shall deconstruct, demolish, and remove in accordance with applicable laws all buildings, structures, and improvements on Phase 1 of the Property, in accordance with the PSA; provided that City shall deconstruct, demolish, and remove in accordance with applicable laws the Hammerhead Buildings (as defined in the PSA) prior to the Phase 2 Closing, per PSA. City's demolition obligations are subject to Developer's self-help rights under the PSA.

(d) Public Benefit Contribution

. City shall use the Public Benefit Contribution toward satisfaction of its obligations pursuant to Section 11(a) above; provided that, in the event that City provides evidence reasonably satisfactory to Developer that City has secured alternative funding sufficient to satisfy in full its

obligations pursuant to Section 11(a) above, City may use the Public Benefit Contribution for other public purposes as determined by City.

(e) Cooperation

(i) Other Governmental Permits and Approvals. City shall cooperate with Developer in its endeavors to obtain permits and approvals from other governmental or quasi-governmental agencies having jurisdiction over the Project as may be required for the development of, or provision of services to, the Project, and shall, at the request of Developer, attempt with due diligence and in good faith to enter into binding agreements with any such entity to ensure the availability of such permits and approvals, or services, at each stage of the development of the Project.

(ii) Regulation by Other Public Agencies. Other public agencies not within the control of City may possess authority to regulate aspects of the development of the Property separately from or jointly with City, and this Agreement does not limit the authority of such other public agencies. Nevertheless, City shall be bound by, and shall abide by, its covenants and obligations under this Agreement in all respects when dealing with any such agency regarding the Property. In the event that any state or federal resources agency (e.g., California Department of Fish and Wildlife, U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, Regional Water Quality Control Board/State Water Resources Control Board, Bay Conservation and Development Commission, Bay Area Air Quality Management District), in connection with its final issuance of a permit or certification for all or a portion of the Project, imposes requirements that require modifications to the Project, then the Parties will work together in good faith to incorporate such changes into the Project; provided, however, that if Developer appeals or challenges any such permit requirements, then the Parties may defer such changes until the completion of such appeal or challenge.

(f) New Residential Unit Limit

Pursuant to the "Residential Development Program" of the FORA Development and Resource Management Plan (the "FORA DRMP"), FORA established a "New Residential Unit Limit" limiting the total new residential units within the former Fort Ord to 6,160 (the "New Residential Unit Limit"). City shall use its best efforts to cause the Project to (i) secure an allocation pursuant to the New Residential Unit Limit of 1,485 new residential units, and (ii) retain such allocation for the Term of this Agreement.

(g) Reliance on EIR

City agrees to rely on the Final EIR to the fullest extent legally permissible in processing any Subsequent Project Approvals, but retains full discretion in accordance with applicable law to determine whether or not it believes a course of action is legally permissible pursuant to CEQA or otherwise. In the event that any additional CEQA documentation is legally required for any discretionary Subsequent Project Approval, the scope of such documentation shall be focused, to the extent possible consistent with CEQA, on the specific subject matter of the Subsequent Project Approval, and City shall conduct such CEQA review as expeditiously as possible.

(h) Subsequent Approval Processing

(i) Diligent Processing. City will accept, make completeness determinations, and process, promptly and diligently, to completion all applications for Subsequent Project Approvals.

(ii) Scope of Review. By approving the Project Approvals, City has made a final policy decision that the Project is in the best interests of the public health, safety and general welfare. Accordingly, City shall not use its authority in considering any application for a discretionary Subsequent Project Approval to change the policy decisions reflected by the Project Approvals or otherwise to prevent or delay development of the Project as set forth in the Project Approvals. Instead, the Subsequent Project Approvals shall be deemed to be tools to implement those final policy decisions.

(iii) Processing Timelines. City represents and warrants that it will maintain adequate and qualified staff sufficient to process the Subsequent Project Approvals in a timely fashion. Without limiting the generality of the foregoing, City represents and warrants that it will comply with the following timelines for review of the initial submittal and each subsequent submittal:

<u>Submittal</u>	<u>Initial Review</u>	<u>Subsequent Review</u>
Grading Plans	30 business days	15 business days
Demolition Plans	15 business days	10 business days
Improvement Plans	30 business days	20 business days for first subsequent review, 10 business days for each subsequent review thereafter
Final Maps	30 business days	20 business days for first subsequent review, 10 business days for each subsequent review thereafter
For Single Family Homes and Townhomes:		
Building Plan Check	15 business days	15 business days
Plot Plan Check for Building Permit	5 business days	5 business days (limited to one subsequent review)

City agrees, at its sole cost and expense (subject to payment of Processing Fees in accordance with this Agreement), to retain qualified contract staff to timely process applications for Subsequent Project Approvals. City shall consult in good faith with Developer as to any additional contract staff to be hired pursuant to this Section.

(i) Infrastructure

(i) Infrastructure Phasing Flexibility. Notwithstanding the provisions of any phasing requirements in the Project Approvals, Developer and City recognize that economic and market conditions may necessitate changing the order in which the infrastructure

is constructed. Therefore, City and Developer hereby agree that should it become necessary or desirable to develop any portion of the Project's infrastructure in an order that differs from the order set forth in the Project Approvals, Developer and City shall collaborate and City shall permit any modification requested by Developer so long as the modification continues to ensure adequate infrastructure is available to serve that portion of the Project being developed.

(ii) Infrastructure Capacity. Subject to Developer's installation of infrastructure in accordance with the requirements of the Project Approvals, City hereby acknowledges and agrees that, to the extent that City renders such services or provides such utilities, it will provide, and shall reserve, sufficient capacity in its infrastructure, services and utility systems, including, without limitation, traffic circulation, storm drainage, flood control, electric service, sewer collection, sewer treatment, sanitation service and water treatment and distribution, as and when necessary to serve the Project as it is developed. To the extent that City renders such services or provides such utilities, City hereby agrees that it will serve the Project and that there shall be no restriction on hookups or service for the Project except for reasons beyond City's control. City further acknowledges and agrees that it will secure and designate the necessary allocations from all entities, including but not limited to MCWD, to ensure sufficient water supply to serve the Project.

(iii) Conveyance of Public Infrastructure. Upon completion to the City's satisfaction of any and all public infrastructure to be completed by Developer, Developer shall offer for dedication to City from time to time as such public infrastructure is completed and passes final inspection by City, and City shall promptly accept from Developer the completed public infrastructure (and release to Developer any bonds or other security posted in connection with performance thereof in accordance with the terms of such bonds), and thereafter City shall maintain the public infrastructure. Developer may offer dedication of public infrastructure in phases and the City shall not refuse to accept such phased dedications or refuse phased releases of bonds or other security so long as all other conditions for acceptance have been satisfied.

(j) Assessment Financing

. City agrees to cooperate with Developer in the formation of any assessment districts (including without limitation Mello Roos Districts and Landscaping and Lighting Districts), community facilities districts, Geologic Hazard Abatement Districts, and tax exempt financing mechanisms that Developer, in its sole discretion, may elect to request the City to initiate related to the Project as and when so requested by Developer, provided however that the formation of such districts/mechanisms shall be subject to all applicable legal requirements and the City shall retain discretion in accordance with applicable law.

(k) Coordination with Other Agencies

(i) FORA. City, without any obligation to take on additional financial obligations, shall assist Developer in coordinating with the FORA regarding any permits, approvals, easements/licenses, or other agreements from FORA needed for the Project, including but not limited to: (a) consistency determinations pursuant to the FORA Master Resolution; (b) applicability of the FORA Master Resolution, the FORA DRMP, the FORA Habitat

Management Plan, and the FORA Capital Improvement Program to the Project and the Property; and (c) the FORA CFD.

(ii) Army. City, without any obligation to take on additional financial obligations, shall assist Developer in coordinating with the Army regarding any permits, approvals, easements/licenses, or other agreements from the Army needed for the Project, including but not limited to: (a) improvements to Gigling Road, General Jim Moore Boulevard, and other right-of-way, as required, (b) off-site stormwater detention, and (c) stormwater disconnection.

(iii) CSUMB. City, without any obligation to take on additional financial obligations, shall assist Developer in coordinating with CSUMB regarding any permits, approvals, easements/licenses, or other agreements from CSUMB needed for the Project, including but not limited to: (a) the FORTAG Trail connection, (b) off-site stormwater detention, (c) stormwater and sewer disconnection, and (d) incidental encroachments.

(iv) MCWD. City, without any obligation to take on financial obligations, shall assist Developer in coordinating with MCWD regarding any permits, approvals, easements/licenses, or other agreements from MCWD needed for the Project, including but not limited to all actions contemplated by the *Updated Water Supply Assessment for the Campus Town Specific Plan with Errata from the City of Seaside* dated June 2019 with respect to water supply

## 12. Issuance of Building Permit; Expedited Permit Processing

### (a) Building Permit Issuance

. City shall be under no obligation to issue a Building Permit for the Project until all the fees and other obligations set forth in Section 10(c) through (e) and due before issuance of such Building Permit have been fully paid or otherwise fulfilled.

### (b) Expedited Processing

. Upon Developer's request, City shall accept the Project's building permit applications for expedited processing (i.e., processing on shorter timelines than set forth in Section 11(h)(3)), including but not limited to expedited plan check review, provided that Developer pays any actual costs to City plus fifteen percent (15%) of the cost of any internal or external expeditor directly employed or engaged by City at Developer's request and with Developer's approval.

### (c) Model Homes

. Prior to recordation of any final map, City agrees to issue Building Permits and temporary occupancy certificates for the construction of model homes (and related model home complex structures) that will be used by Developer for the purpose of promoting sales of single family residential units within the Project; provided, however, in no event shall Developer be permitted to sell or transfer any model home until a final map has been recorded on that portion of the Project where the model home is located.

## 13. Default; Remedies; and Termination

(a) Default

. Failure by City or Developer to perform any material term or provision of this Agreement for a period of (i) thirty (30) days from the receipt of written notice thereof from the other, where such failure is of a nature that can be cured within such thirty (30) day period, or (ii) if such failure is not of a nature that can reasonably be cured within such thirty (30) day period, the defaulting Party does not commence the cure within such thirty (30) day period and thereafter diligently prosecute to completion such cure, shall constitute a default under this Agreement, subject to extensions of time by mutual consent of the Parties in writing and subject to the provisions of Section 32 hereof regarding Permitted Delays (as hereinafter defined) and a Mortgagee's right to cure pursuant to Section 16(e) hereof. Any notice of default given hereunder shall specify in detail the nature of the alleged default and the manner in which said default may be satisfactorily cured. During the time periods herein specified for cure of a failure of performance, the Party charged therewith shall not be considered to be in default for purposes of (a) termination of this Development Agreement, (b) institution of legal proceedings with respect thereto, or (c) issuance of any Subsequent Project Approval.

(b) Remedies

(i) Remedies Cumulative. Subject to the foregoing, after notice and expiration of the applicable cure period without cure, the notifying Party, at its option, shall have all rights and remedies provided by law and equity and/or may give notice of intent to terminate this Agreement pursuant to Government Code Section 65868 (as the same section may be amended and/or re-codified from time to time) and the City Development Agreement Regulations. All remedies shall be cumulative and not exclusive of one another, and the exercise of any one or more of these remedies shall not constitute a waiver or election with respect to any other available remedy.

(ii) City Council Review. Following any notice of intent to terminate by City, the matter shall be scheduled for consideration and review by the City Council within thirty (30) calendar days in the manner set forth in Government Code Sections 65867 and 65868 (as the same sections may be amended and/or re-codified from time to time) and the provisions of the City Development Agreement Regulations related to termination. Following consideration of the evidence presented in said review before the City Council and a determination that a default exists, the City may give written notice of termination of this Agreement to Developer.

(iii) Reinstatement. In the event that this Agreement is terminated pursuant to Section 13 herein and litigation is instituted that results in a final decision that such termination was improper, then this Agreement shall immediately be reinstated as though it had never been terminated.

(c) No Damages

. In no event shall either Party, or its boards, commissions, officers, agents or employees, be liable in damages for any default under this Agreement, it being expressly understood and agreed that the sole legal remedy available to either Party for a breach or violation of this Agreement by

the other Party shall be an action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Agreement by the other Party, or to terminate this Agreement. This limitation on damages shall not preclude actions by a Party to enforce payments of monies or the performance of obligations requiring an obligation of money from the other Party under the terms of this Agreement including, but not limited to obligations to pay attorneys' fees and obligations to advance monies or reimburse monies. In connection with the foregoing provisions, each Party acknowledges, warrants and represents that it has been fully informed with respect to, and represented by counsel of such Party's choice in connection with, the rights and remedies of such Party hereunder and the waivers herein contained, and after such advice and consultation has presently and actually intended, with full knowledge of such Party's rights and remedies otherwise available at law or in equity, to waive and relinquish such rights and remedies to the extent specified herein, and to rely to the extent herein specified solely on the remedies provided for herein with respect to any breach of this Agreement by the other Party.

(d) Judicial Reference

. Pursuant to Code of Civil Procedure Section 638, et seq., all legal actions shall be heard by a referee who shall be a retired judge from either the Monterey County Superior Court, the California Court of Appeal, the United States District Court or the United States Court of Appeals, provided that the selected referee shall have experience in resolving land use and real property disputes. Developer and City shall agree upon a single referee, who shall then try all issues, whether of fact or law, and report a finding and judgment thereon and issue all legal and equitable relief appropriate under the circumstances of the controversy before such referee. If Developer and City are unable to agree on a referee within ten (10) days of a written request to do so by either Party hereto, either Party may seek to have one appointed pursuant to Code of Civil Procedure Section 640. The cost of such proceeding shall initially be borne equally by the Parties. Any referee selected pursuant to this Section shall be considered a temporary judge appointed pursuant to Article 6, Section 21 of the California Constitution. Notwithstanding the provisions of this Section, either Party shall be entitled to seek declaratory and injunctive relief in any court of competent jurisdiction to enforce the terms of this Agreement, or to enjoin the other Party from an asserted breach thereof, pending the selection of a referee as provided in this Section, on a showing that the moving party would otherwise suffer irreparable harm.

14. Termination and Expiration

(a) Effect on this Agreement

. Upon the expiration of the Term or termination of this Agreement, this Agreement shall terminate and be of no further force or effect neither Party shall have any further right or obligation with respect to the Property under this Agreement except with respect to any obligation that is specifically set forth as surviving the termination or expiration of this Agreement; provided, however, such termination shall not affect the obligation to pay any claim of any Party hereto arising out of the provisions of this Agreement prior to the effective date of such termination.

(b) Effect on Project Approvals

. The termination or expiration of this Agreement shall not terminate the Project Approvals (other than this Agreement), which shall remain in effect in accordance with their terms and applicable law (including any provisions regarding the term of such Project Approvals). Notwithstanding the foregoing, upon expiration (as opposed to earlier termination) of the Term, as it may be extended, the Project Approvals shall remain in effect only to the extent that they have not expired pursuant to otherwise applicable law.

(c) Termination by City

. Notwithstanding any other provision of this Agreement, City shall not have the right to terminate this Agreement with respect to all or any portion of the Property before the expiration of its Term unless City complies with all termination procedures set forth in the Development Agreement Law and there is a default by Developer and such default is not cured pursuant to Section 25 herein or this Section 14 and Developer has first been afforded an opportunity to be heard regarding the default before the City Council.

15. Transfers of Interests in Property or Agreement

(a) Right to Transfer

. Developer shall have the right to sell, assign or transfer (“Transfer”) in whole or in part its rights, duties and obligations under this Agreement to any person or entity (“Development Transferee”) at any time during the Term of this Agreement with the consent of City Manager, with concurrence of the City Attorney, as provided in this Section 15; provided, however, in no event shall the rights, duties and obligations conferred upon Developer pursuant to this Agreement be at any time so Transferred except through a transfer of the Property or a portion thereof.

(b) Assignment and Assumption Agreement

. In the event of a proposed transfer of the entire Property, Developer shall provide satisfactory evidence that the Development Transferee will assume in writing, through a recorded assignment and assumption agreement, all remaining obligations of Developer under this Agreement. In the event of a transfer of a portion of the Property, Developer shall have the right to Transfer its rights, duties and obligations under this Agreement that are applicable to the transferred portion, and to retain all rights, duties and obligations applicable to the retained portions of the Property. Upon Developer’s request, City shall cooperate with Developer and any proposed Development Transferee to allocate rights, duties and obligations under this Agreement and the Project Approvals among the transferred Property and the retained Property. The assignment and assumption agreement shall be in substantially the form of Exhibit H, attached here to and incorporated herein by this reference. The terms, covenants and conditions of this Agreement shall be binding upon any Development Transferee as provided in the assignment and assumption agreement.

(c) City Approval

(i) Approval Requirements. City shall not unreasonably withhold, condition or delay consent to a Transfer to a Development Transferee provided that: (a) the Development Transferee has entered into an assignment and assumption agreement in accordance with Section 15(b) with respect to the portion of the Property that is transferred; (b) the Development Transferee has substantially equivalent experience as Developer to complete the public and private improvements required by the Project Approvals (including this Agreement) and transferred to the Development Transferee with respect to the transferred Property; and (c) to the extent applicable, the Development Transferee has obtained replacement subdivision improvement performance bonds and the performance bonds required herein accepted by the City for the public and private improvements required by the Project Approvals (including this Agreement) with respect to the transferred Property (in which event, the City shall release or reduced the amount of Developer's corresponding bonds).

(ii) Notice to City; Assignment and Assumption Agreement. In the event of any Transfer to a Development Transferee pursuant to this Section, Developer shall notify the City at least sixty (60) prior to the Transfer of the name of the Development Transferee, together with the description of the portion of the Property being transferred to such Development Transferee, and a proposed assignment and assumption agreement. Developer shall also submit Development Transferee's financial information such that the City's Chief Financial Officer can determine that the Development Transferee is able to satisfactorily fulfill the Transferred obligations of this Agreement and the other Project Approvals. Developer shall also submit to the City such further information as the City may reasonably need to complete its review and consent to the Transfer. The City shall have forty-five (45) days to review the information provided and make a determination as to whether it will authorize the Transfer.

(d) Permitted Transfers  
. Notwithstanding the foregoing, Developer may Transfer its rights and obligations hereunder, without City's consent or prior notice, to (i) a partnership in which Developer is one of the general partners, (ii) a limited liability company in which Developer is a managing member or holds at least fifty percent (50%) of the voting or equity interest, (iii) a corporation in which Developer holds at least fifty percent (50%) of the voting or equity interests, (iv) a person or entity that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the Developer, (v) a successor by way or merger or consolidation or the acquisition of all or substantially all of Developer's assets, or (vi) a third party to effectuate a land banking arrangement pursuant to which Developer has the right to develop and reacquire the Property.

(e) Release upon Transfer; Annual Review; Amendments  
. Upon the Transfer of Developer's rights and interests under this Agreement in accordance with this Section 15, Developer shall automatically be released from its obligations and liabilities under this Agreement with respect to that portion of the Property transferred, and any subsequent default or breach with respect to the Transferred rights and/or obligations shall not constitute a default or breach with respect to the retained rights and/or obligations under this Agreement. Upon any transfer of any portion of the Property and the express assumption of Developer's obligations under this Agreement by such Development Transferee in accordance with this Section 15, City agrees to look solely to the Development Transferee for compliance by such Development Transferee with the provisions of this Agreement as such provisions relate to the

portion of the Property acquired by such Development Transferee. A default by any Development Transferee shall only affect that portion of the Property owned by such Development Transferee and shall not cancel or diminish in any way Developer's or any other Development Transferee's rights hereunder with respect to any portion of the Property not owned by the defaulting Development Transferee. Likewise, a default by any Developer shall only affect that portion of the Property owned by Developer and shall not cancel or diminish in any way any Development Transferee's rights hereunder with respect to any portion of the Property not owned by Developer. The transferor and the Development Transferee shall each be solely responsible for the reporting and annual review requirements relating to the portion of the Property owned by such transferor/Development Transferee. Any amendment to this Agreement between City and a transferor or a Development Transferee shall only affect the portion of the Property owned by such transferor or Development Transferee, except to the extent any other transferor or Development Transferee consents to the application of such amendment to the portion of the Property that it owns.

16. Mortgagee Protection

(a) In General

. The provisions of this Agreement shall not prevent or limit Developer's right to encumber the Property or any portion thereof or any improvement thereon by any Mortgage. City acknowledges that Mortgagees may require certain interpretations and modifications of this Agreement and agrees upon request, from time to time, to meet with Developer and representatives of such Mortgagees to negotiate in good faith any such request for interpretation or modification. City shall not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement and does not, in City's sole determination, diminish City's benefits from this Agreement. Any Mortgagee shall be entitled to the rights and privileges set forth in this Section.

(b) Mortgagee Protection

. This Agreement shall be superior and senior to any lien placed upon the Property or any portion thereof after the date of recording this Agreement, including the lien of any Mortgage; provided however, upon any foreclosure of any Mortgage, the Mortgagee or other purchaser at the foreclosure sale, and any successor in interest to the Property by deed in lieu of foreclosure, shall not have any obligation or duty under this Agreement to perform Developer's obligations or other affirmative covenants of Developer hereunder, but such party shall not be entitled to any of the benefits of this Agreement unless it performs all Developer's obligations under this Agreement. No breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value.

(c) Notice of Default to Mortgagee

. If a Mortgagee has submitted a request in writing to City in the manner specified herein for giving notices, City shall exercise its best efforts to provide to such Mortgagee written notification from City of any failure or default by Developer in the performance of Developer's

obligations under this Agreement, which notification shall be provided to such Mortgagee at such time as such notification is delivered to Developer.

(d) Right of Mortgagee to Cure

. Any Mortgagee shall have the right, but not the obligation, to cure any failure or default by Developer during the cure period allowed Developer under this Agreement, plus an additional sixty (60) days in order to cure such failure or default. Any Mortgagee that undertakes to cure or attempt to cure any such failure or default shall provide written notice to City that it is undertaking efforts of such a nature, provided that no initiation of any such efforts by a Mortgagee shall obligate such Mortgagee to complete or succeed in any such curative efforts.

(e) Liability for Past Defaults or Obligations

. Subject to the foregoing, any Mortgagee, including the successful bidder at a foreclosure sale, who comes into possession of the Project or the Property or any part thereof pursuant to foreclosure, eviction or otherwise, shall take such Property subject to the terms of this Agreement and in no event shall any such Property be released from any obligations associated with its use and development under the provisions of this Agreement. Nothing in this Section shall prevent City from exercising any remedy it may have for a default under this Agreement; provided, however, that in no event shall such Mortgagee be liable for any defaults or monetary obligations of Developer arising prior to acquisition of possession of such Property by such Mortgagee.

17. Binding Effect

. All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties and their respective heirs, successors (by merger, reorganization, consolidation or otherwise) and assigns, devisees, administrators, representatives, ground lessees, and all other persons acquiring the Property, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors and assigns. All of the provisions of this Agreement shall constitute covenants running with the land.

18. Effect of Litigation; Indemnification

(a) Effect of Litigation on Project Approvals

. The filing of any third party lawsuit(s) against City or Developer relating to the Project Approvals (including this Agreement) or other development issues affecting the Property shall not delay or stop the development, processing or construction of the Project or approval of any Subsequent Project Approvals, unless the third party obtains a court order preventing the activity.

(b) Indemnification for Challenges to Project Approvals

. City and Developer shall cooperate in the defense of any court action or proceeding instituted by a third party challenging the validity any of the Project Approvals (including this Agreement), the Final EIR, or any CEQA determination related to any Subsequent Project Approval(s),

(“Litigation Challenge”), and the Parties shall keep each other informed of all developments relating to such defense, subject only to confidentiality requirements that may prevent the communication of such information. To the extent Developer desires to contest or defend such Litigation Challenge, (i) Developer shall take the lead role defending such Litigation Challenge and may, in its sole discretion, elect to be represented by the legal counsel of its choice; (ii) City may, in its sole discretion, elect to be separately represented by the legal counsel of its choice, selected after consultation with Developer, in any action or proceeding, with the reasonable costs of such representation to be paid by Developer in an amount not to exceed Fifty Thousand Dollars (\$50,000.00) without Developer’s written approval, not to be unreasonably withheld, conditioned, or delayed; (iii) within twenty (20) days after written notification by City of its retention of counsel in accordance with this Section 18(b), Developer shall establish a Ten Thousand Dollar (\$10,000.00) reimbursement account for City’s legal expenses and Developer shall reimburse City, within forty-five (45) days following City’s written demand therefor, which may be made from time to time during the course of such litigation, all reasonable costs incurred by City in connection with the Litigation Challenge, including City’s reasonable administrative, legal, and court costs and City Attorney oversight expenses, subject to the cap set forth in the preceding clause (ii); and (iv) Developer shall indemnify, defend, and hold harmless the City and its elected and appointed officials, officers, agents, employees, contractors and representatives (the “City Parties”) from and against any damages, attorneys’ fees or cost awards, including attorneys’ fees awarded under Code of Civil Procedure section 1021.5, assessed or awarded against City by way of judgment, settlement, or stipulation subject to the cap set forth in the preceding clause (ii). Upon request by Developer, City shall enter into a joint defense agreement in a form reasonably acceptable to the City Attorney to facilitate the sharing of materials and strategies related to the defense of such Litigation Challenge without waiver of attorney client privilege. Any proposed settlement of a Litigation Challenge by a Party shall be subject to the approval of the other Party, such approval not to be unreasonably withheld, conditioned or delayed. If the terms of the proposed settlement would constitute an amendment or modification of any Project Approvals (including this Agreement), the settlement shall not become effective unless such amendment or modification is approved by City in accordance with the Applicable Rules, and City reserves its full legislative discretion, in accordance with applicable law, with respect thereto. If Developer opts not to contest or defend such Litigation Challenge, City shall have no obligation to do so, but shall have the right to do so at its own expense.

(c) Notice of Action

. City shall promptly notify Developer of any claim, action or proceeding within the scope of this Section.

(d) Labor Laws

. Developer and its contractors shall carry out the design and construction of all private and public improvements on and adjacent to the Property and all infrastructure improvements in conformity with all applicable laws, including, without limitation, all applicable federal, state and local labor, occupation, employment, safety and health laws, rules, regulations and standards (including, without limitation, if applicable, the requirement under California law to pay prevailing wages). In that regard, the City makes no representation as to the applicability or non-applicability of any such laws to the Project or any part thereof or the infrastructure improvements. Developer agrees to indemnify, defend and hold City and its respective officers, officials, members, agents, employees, and representatives, (collectively “Indemnified Parties”)

harmless from and against any cost, expense, claim, charge or liability relating to or arising directly or indirectly from any breach by or failure of Developer or its contractor(s) or agents to comply with such laws, rules or regulations including, but not limited to, any failure by Developer or its contractors to comply with applicable labor or prevailing wage laws.

(e) Survival

. Developer's indemnity obligations set forth in this Section shall survive the termination or expiration of this Agreement.

19. Relationship of the Parties

.

The Parties acknowledge and agree that neither Developer nor City is acting as an agent, joint venturer or partner of the other, but each is, in fact, an independent contractual party with respect to the terms of this Agreement.

20. Recordation

.

The City Clerk of City ("City Clerk") shall record a copy of this Agreement with the Registrar-Recorder of the County of Monterey no later than ten (10) days after the Effective Date. Thereafter, if this Agreement is terminated, modified, or amended, the City Clerk shall record notice of such action with the Registrar-Recorder of the County of Monterey. Developer shall reimburse City for all costs of such recording, if any.

21. No Third Party Beneficiaries

.

The only signatories to this Agreement are City and Developer. There are no third party beneficiaries, and this Agreement is not intended and shall not be construed to benefit or be enforceable by any other person whatsoever other than the successors in interest of the signatories.

22. Advice; Neutral Interpretation

.

Each Party has received independent legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. This Agreement has been drafted through a joint effort of the Parties and their counsel and therefore shall not be construed against either of the Parties in its capacity as draftsperson, but in accordance with its fair meaning.

23. Intentionally Omitted

24. Consideration

City and Developer acknowledge and agree that there is good, sufficient and valuable consideration flowing to City and to Developer pursuant to this Agreement as more particularly set forth in the Recitals and Sections 2, 10, and 11 of this Agreement. The Parties further acknowledge and agree that the exchanged consideration hereunder is fair, just and reasonable.

25. Periodic Reviews

(a) Annual Reviews

City shall conduct annual reviews pursuant to California Government Code Section 65865.1 and Seaside Municipal Code Section 17.66.070, as may be amended from time to time, to determine whether Developer is acting in good faith compliance with the provisions of this Agreement. The reasonable cost of each annual review conducted during the term of this Agreement shall be reimbursed to City by Developer. Such reimbursement shall include all direct and indirect expenses reasonably incurred in such annual reviews. As part of the annual review, City and Developer shall have a reasonable opportunity to assert action(s) that either Party believes have not been undertaken in accordance with this Agreement, to explain the basis for such assertion, and to receive from the other Party a justification for the other Party's position with respect to such action(s), and to take such actions as permitted by law. City and Developer agree that the annual review process shall review compliance by Developer and City with the obligations under this Agreement. City's failure to perform an annual review pursuant to the terms of the Section shall not constitute or be asserted as a default by Developer.

(b) Procedure for Review

The Community Development Director shall conduct the review contemplated by this Section to ascertain whether Developer has complied in good faith with the material terms and conditions of this Agreement during the period for which the review is conducted. The Community Development Director shall initiate the periodic review no later than sixty (60) days prior to the expiration of each twelve (12) month period after the Effective Date. The Community Development Director shall give Developer written notice that any such review has been commenced and shall give Developer at least twenty (20) days after Developer's receipt of such notice to provide to the Community Development Director such information as Developer deems relevant to such review. In addition, upon the written request of the Community Development Director, Developer shall furnish such documents or other information as reasonably requested by the Community Development Director to complete the review contemplated by this Section. The Community Development Director shall schedule the annual review for the next available meeting of the City Council and shall prepare a staff report to the City Council, which shall include, in addition to the information submitted by Developer, the Community Development Director's recommendation regarding whether the City Council should find Developer to be in

good faith compliance with the material terms and conditions of this Agreement. At least five (5) days prior to any City hearing regarding Developer's compliance with this Agreement, City shall deliver to Developer all staff reports and all other relevant documents pertaining to the hearing. At the time of the hearing, Developer shall be given an opportunity to be heard.

(c) Result of Review

(i) Compliance. If, following such a review, the City Council finds good faith compliance by Developer with the material terms and conditions of this Agreement, the Community Development Director shall issue to Developer an executed certificate of compliance, certifying Developer's good faith compliance with the terms and conditions of this Agreement through the period of such review. Such certificate shall be in recordable form and shall contain such information as may be necessary to impart constructive record notice of the finding of good faith compliance hereunder. Developer shall have the right to record such certificate of compliance in the Official Records of the County of Monterey.

(ii) Non- Compliance. If, following such a review, the City Council finds, on the basis of substantial evidence, that Developer has not complied in good faith with the material terms and conditions of this Agreement, the Council shall specify in writing the respects in which Developer has failed to so comply. The Community Development Director shall provide Developer with written notice of such noncompliance as provided in Section 13, and Developer shall have an opportunity to cure the noncompliance in accordance with the time periods set forth in Section 13(a). If Developer fails to timely cure the noncompliance, City may follow the default procedures as set forth in Section 13.

(d) Effect on Default

. Nothing in this Section shall be interpreted to prevent City or Developer from providing the other Party with a notice of default hereunder at any time, including any time other than during a periodic review under this Section, or from terminating this Agreement pursuant to the provisions of Section 13 following any event of default by the other Party.

26. Estoppel Certificates

Either Party may, at any time during the Term of this Development Agreement, and from time to time, deliver written notice to the other Party requesting such Party to certify in writing that, to the knowledge of the certifying Party, (a) this Development Agreement is in full force and effect and a binding obligation of the Parties, (b) this Development Agreement has not been amended or modified either orally or in writing, or if amended; identifying the amendments, (c) the requesting Party is not in default in the performance of its obligations under this Development Agreement, or if in default, to describe therein the nature and amount of any such defaults, and (e) any other information reasonably requested. The Party receiving a request hereunder shall execute and return such certificate or give a written, detailed response explaining why it will not do so within twenty (20) days following the receipt thereof. The failure of either Party to provide the requested certificate within such twenty (20) day period shall constitute a

confirmation that this Agreement is in full force and effect and no modification or default exists. Either the City Manager or the Community Development Director shall have the right to execute any certificate requested by Developer hereunder. City acknowledges that a certificate hereunder may be relied upon by transferees and Mortgagees.

27. Future Litigation Expenses

(a) Payment of Prevailing Party

. If City or Developer brings an action or proceeding (including, without limitation, any motion, order to show cause, cross-complaint, counterclaim, or judicial reference proceeding) against the other by reason of default arising out of this Agreement, the prevailing Party in such action or proceeding shall be entitled to its costs and expenses of suit including, but not limited to, reasonable attorneys' fees and expert witness fees.

(b) Scope of Fees

. Attorneys' fees under this Section shall include attorneys' fees on any appeal and, in addition, a Party entitled to attorneys' fees shall be entitled to all other reasonable costs and expenses incurred in connection with such action. In addition to the foregoing award of attorneys' fees to the prevailing party, the prevailing party in any lawsuit shall be entitled to its attorneys' fees incurred in any post-judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this Agreement into any judgment on this Agreement.

28. Headings

The section headings used in this Agreement are for convenient reference only and shall not be used in construing this Agreement. The words "include," "including" or other words of like import are intended as words of illustration and not limitation and shall be construed to mean "including, without limitation."

29. Amendment; Operating Memoranda

(a) Amendments of Agreement

. This Agreement may be amended from time to time, in whole or in part, by mutual written consent of the Parties or their successors in interest, as follows:

(i) Mutual Agreement. City and Developer, by mutual agreement, may terminate or amend the terms of this Agreement; and the amendment or termination shall be accomplished in the manner provided under the Development Agreement Act and the Seaside Municipal Code for the enactment of development agreement amendments.

(ii) Written Instrument. No alteration, amendment or modification of this Agreement shall be valid unless evidenced by a written instrument executed by the Parties hereto with the same formality as this Agreement, and made in the manner required by the Development Agreement Act and City Development Agreement Regulations.

(iii) Subsequent Project Approvals. Except as may be otherwise agreed to by the Parties, no amendment of this Agreement shall be required in connection with the issuance of any Subsequent Project Approval. Any Subsequent Project Approval issued after the Effective Date of this Agreement automatically shall become Project Approvals and be vested hereby, without requiring an amendment to this Agreement.

(iv) Scope of Review. Review and approval of an amendment to this Agreement shall be strictly limited to consideration of only those provisions to be added or modified.

(b) Operating Memoranda

. The provisions of this Agreement require a close degree of cooperation between City and Developer and development of the Property hereunder may demonstrate that refinements and clarifications are appropriate with respect to the details of performance of City and Developer. If and when, from time to time, during the Term of this Agreement, City and Developer agree that such clarifications are necessary or appropriate, City and Developer shall effectuate such clarifications through operating memoranda approved in writing by City and Developer, which, after execution, shall be attached hereto as addenda and become a part hereof, and may be further clarified from time to time as necessary with future approval by City and Developer. No such operating memoranda shall constitute an amendment to this Agreement requiring public notice or hearing. The City Manager, in consultation with the City Attorney, shall make the determination on behalf of City whether a requested clarification may be effectuated pursuant to this Section 29(b) or whether the requested clarification is of such a character to constitute an amendment hereof pursuant to this Section 29(a). The City Manager shall be authorized to execute any operating memoranda hereunder on behalf of City. Developer shall pay Processing Fees to cover the City's actual and reasonable costs of processing any operating memorandum.

(c) Amendments to Project Approvals

. Notwithstanding any other provision of this Agreement, Developer may seek and City may review and grant amendments or modifications to the Project Approvals subject to the following (except that the procedures for amendment of this Agreement are set forth in Section 29(a) above):

(i) Deviation Permitted by Specific Plan. City acknowledges that the Minor Deviations and Deviations (as defined in the Specific Plan) permitted by the Specific Plan are consistent with the Specific Plan and do not constitute an amendment to the Project Approvals or require an amendment to this Agreement.

(ii) Amendments to Project Approvals. Project Approvals (except for this Agreement, the amendment process for which is set forth in Section 29(a) above) may be amended or modified from time to time, but only at the written request of Developer or with the written consent of Developer (at its sole discretion) and in accordance with Sections 7, 8, and 9

of this Agreement. All amendments to the Project Approvals shall automatically become part of the Project Approvals and shall be vested hereby, without requiring an amendment to this Agreement. Amendments to the Project Approvals shall be governed by the Project Approvals and the Applicable Rules, subject to Sections 7, 8, and 9. The City shall not request, process or consent to any amendment to the Project Approvals that would affect the Property or the Project without Developer's prior written consent.

30. Waiver

The failure of either Party hereto to insist in any one or more instances upon the strict performance of any of the covenants, agreements, terms, provisions or conditions of this Agreement, or to exercise any election or option herein contained, shall not be construed as a waiver or relinquishment for the future of such covenant, agreement, term, provision, condition, election or option, but the same shall continue and remain in full force and effect. No waiver by any Party hereto of any covenant, agreement, term, provision or condition of this Agreement shall be deemed to have been made unless expressed in writing and signed by an appropriate official or officer on behalf of such Party.

31. Severability

If any article, section, subsection, term or provision of this Agreement, or the application thereof to any party or circumstance, shall, to any extent, be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the article, section, subsection, term or provision of this Agreement, or the application of the same to parties or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining article, section, subsection, term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. Notwithstanding the foregoing, if any material provision of this Agreement, or the application of such provision to a particular situation, is held to be invalid, void or unenforceable, Developer or City (in its sole and absolute discretion) may terminate this Agreement by providing written notice of such termination to the other Party.

32. Force Majeure

The Term of this Agreement and the Project Approvals and the time within which any Party shall be required to perform any act under this Agreement (other than for payment of money) shall be extended during any period of "Permitted Delay" for the period of time equal to the number of days of such Permitted Delay. Permitted Delay shall mean and include delay caused by an event beyond the reasonable control of the Party claiming the delay (and despite the good faith efforts of such Party) that prevents the Party from fulfilling the obligations for which it seeks excuse, including without limitation all of the following to the extent that they prevent the Party claiming delay from fulfilling the obligation from which it seeks to be excused: acts of

God; civil commotion; riots; strikes or lock outs; picketing or other labor disputes; inclement weather; shortages of materials or supplies or labor; damage to work in progress by reason of fire, floods, earthquake or other casualties; changes in local, state or federal laws or regulations, any development moratorium or any action of other public agencies that regulate land use, development or the provision of services prevents, prohibits or delays construction of the Project; enemy action, civil disturbances, wars, or terrorist acts; failure, delay or inability of the other Party to act; and litigation brought by a third party attacking the validity of this Agreement, the Project Approvals or the EIR.

33. Notices

All notices, disclosures, demands, acknowledgments, statements, requests, responses and other communications (each, a "Communication") to be given under this Agreement shall be in writing, signed by a signatory hereto (or an officer, agent or attorney of such party) giving such Communication, and shall be deemed effective (i) upon receipt if hand delivered or sent by nationally recognized overnight courier service; or (ii) upon delivery if sent by the United States mail, postage prepaid, certified mail, return receipt requested, in either case addressed as follows:

To Developer: KB Bakewell Seaside Venture II  
3800 Crenshaw Blvd.  
Los Angeles, California 90008  
Attn: Aline M. Bakewell, Esq.

With Copies to: KB Home South Bay  
5000 Executive Parkway, Suite 125  
San Ramon, CA 94583  
Attn: Vice President and Regional Counsel

Cox, Castle & Nicholson, LLP  
50 California Street, 32nd Floor  
San Francisco, CA 94111  
Attn: Margo Bradish

To City: City Manager  
City of Seaside  
440 Harcourt Avenue  
Seaside, California 93955

With copy to: City Attorney  
City of Seaside  
440 Harcourt Avenue  
Seaside, California 93955

Any Party may from time to time, by notice given to the other Parties at least fifteen (15) days prior to the name and/or address change, pursuant to the terms of this Section, change the address to which communications to such signatory are to be sent or designate one or more additional persons or entities to which communications are to be sent.

34. Applicable Law

.

This Agreement shall be governed in all respects by the laws of the State of California.

35. Time is of the Essence

.

Time is of the essence of this Agreement and every term or performance hereunder.

36. Exhibits

.

Exhibits A, B, C, D, E, F, G, and H constitute a part of this Agreement and are incorporated into this Agreement by this reference. If any inconsistency exists or arises between a provision of this Agreement and a provision of any exhibit, the provisions of this Agreement shall control.

37. Entire Agreement

.

This Agreement supersedes any prior understanding or written or oral agreements between the Parties hereto respecting the within subject matter and contains the entire understanding between the Parties with respect thereto.

38. Counterparts

.

This Agreement may be executed 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.

39. Compliance With Law

.

Notwithstanding any provision of this Agreement, the Parties agree to comply with all federal, State and local laws and to act in good faith and reasonably in carrying out the terms of this Agreement.

40. Authorization

.

Each person executing this Agreement on behalf of his or her Party warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of that Party and that by such execution, that Party is formally bound to the provisions of this Agreement.

41. Limitation on Liability

.

Notwithstanding anything to the contrary contained in this Agreement, in no event shall: (a) any partner, officer, director, member, shareholder, employee, affiliate, manager, representative, or agent of Developer or any general partner of Developer or its general partners be personally liable for any breach of this Agreement by Developer, or for any amount which may become due to City under the terms of this Agreement; or (b) any member, officer, agent or employee of City be personally liable for any breach of this Agreement by City or for any amount which may become due to Developer under the terms of this Agreement.

42. Further Actions and Instruments

.

Each Party to this Agreement shall cooperate with and provide reasonable assistance to the other Party and take all actions necessary to ensure that the Parties receive the benefits of this Development Agreement, subject to satisfaction of the conditions of this Agreement. Upon the request of any Party, the other Party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement as of the Effective Date.

“CITY”

CITY OF SEASIDE,  
a California municipal corporation

\_\_\_\_\_  
IAN OGLESBY  
Mayor of the City of Seaside, California

ATTEST:

\_\_\_\_\_  
LESLEY MILTON-RERIG  
Assistant City Manager/City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
SHERI L. DAMON  
City Attorney

APPROVED AS TO CONTENT:

\_\_\_\_\_  
CRAIG MALIN  
City Manager

“DEVELOPER”

KB-BAKEWELL SEASIDE JOINT  
VENTURE II, LLC  
a Delaware limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**PROOF OF AUTHORITY TO BIND  
CONTRACTING PARTY REQUIRED**

**CONSENT**

The City of Seaside, in its capacity as the fee owner of the 26 Acre Parcels, hereby consents to the entry of this Agreement and its recordation against the 26 Acre Parcels.

The Successor Agency of the City of Seaside, in its capacity as the fee owner of the Surplus II Property, hereby consents to the entry of this Agreement and its recordation against the Surplus II Property.

“CITY”

CITY OF SEASIDE,  
a California municipal corporation

\_\_\_\_\_  
IAN OGLESBY  
Mayor of the City of Seaside, California

ATTEST:

\_\_\_\_\_  
LESLEY MILTON-RERIG  
Assistant City Manager/City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
SHERI L. DAMON  
City Attorney

“SUCCESSOR AGENCY”

SUCCESSOR AGENCY TO THE FORMER  
REDEVELOPMENT AGENCY OF THE  
CITY OF SEASIDE

\_\_\_\_\_  
By:  
Its \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
By: SHERI L. DAMON  
Its: General Counsel

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF MONTEREY

On \_\_\_\_\_ before me, \_\_\_\_\_  
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, and that by his/her/their signature(s) on the instrument the  
person(s), or the entity(ies) 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.

Place Notary Seal Above

\_\_\_\_\_  
Signature of Notary Public

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF MONTEREY

On \_\_\_\_\_ before me, \_\_\_\_\_  
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, and that by his/her/their signature(s) on the instrument the  
person(s), or the entity(ies) 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.

Place Notary Seal Above

\_\_\_\_\_  
Signature of Notary Public

**EXHIBIT A**  
**DESCRIPTION OF 26 ACRE PARCELS**

DRAFT

**EXHIBIT A-1**

**LEGAL DESCRIPTION OF 26 ACRE PARCELS**

PARCEL I:

The portion of the former Fort Ord Military Reservation in Rancho Noche Buena, in the City of Seaside,

County of Monterey, State of California described as follows:

A portion of Parcel 3 as per map recorded in Volume 21, Page 83 of Surveys in the Office of the County

Recorder of said county, more particularly described as follows:

Beginning at the northwest corner of said Parcel 3 as per said map, designated and shown a point seventy-four (74) on page 4 of 9 thereon; thence along the northerly boundary of said Parcel 3 the following three (3) courses

- 1) North 88° 00' 00" East, 1,473.85 feet to the beginning of a curve, concave south, having a radius of 895.00 feet; thence
- 2) Easterly 224.55 feet along said curve, through a central angle of 14° 22' 30"; thence
- 3) South 77° 37' 30" East, 21.77 feet to the beginning of a curve, concave southwest, having a radius of 260.00 feet; thence leaving said boundary of said Parcel 3
- 4) Southeasterly 461.03 feet along said curve, through a central angle of 101° 35' 49"; thence
- 5) South 23° 58' 19" West, 195.81 feet to the beginning of a non-tangent curve, concave to the south, having a radius of 131.30 feet, and from which beginning a radial bears North 16° 47' 48"; thence
- 6) Westerly, 171.15 feet along said curve, through a central angle of 74° 40' 59" to the beginning of a reverse curve, concave northwest, having a radius of 120.00 feet; thence
- 7) Southwesterly, 123.06 feet along said curve, through a central angle of 58° 45' 31" to the beginning of a reverse curve, concave south, having a radius of 413.66 feet; thence
- 8) Westerly, 215.22 feet along said curve, through a central angle of 29° 48' 34"; thence
- 9) South 61° 03' 46" West, 142.81 feet; thence
- 10) North 02° 32' 34" East, 249.44 feet to the beginning of a curve, concave to the southwest, having a radius of 50.55 feet; thence

- 11) Northwesterly, 79.79 feet along said curve, through a central angle of  $90^{\circ} 26' 36''$ ; thence
- 12) North  $87^{\circ} 54' 02''$  West, 1,363.25 feet to a point on the westerly boundary of said Parcel 3; thence along said westerly boundary the following three (3) courses
- 13) North  $37^{\circ} 50' 06''$  East, 151.61 feet to the beginning of a curve, concave to the west, having a radius of 357.00 feet; thence
- 14) Northerly, 271.09 feet along said curve, through a central angle of  $43^{\circ} 30' 36''$ ; thence
- 15) North  $05^{\circ} 40' 29''$  West, 18.97 feet to the Point of Beginning. The bearing North  $87^{\circ} 33' 00''$  West as measured between monuments found along the westerly boundary of Parcel 3 as per Volume 21, Page 83 of Surveys, records of Monterey County, California, is the basis of bearings for this description.

Excepting therefrom mineral rights with right of surface entry in a manner that does not unreasonably interfere with Grantee's development and quiet enjoyment of the property as reserved in the "Quitclaim Deed..." executed by United States of America, recorded August 28, 2008, Instrument No. 2008057085, Official Records, Monterey County.

#### PARCEL II:

That portion of the former Fort Ord Military Reservation in Rancho Noche Buena, in the City of Seaside, County of Monterey, State of California described as follows:

A portion of Parcel 3 as per map recorded in Volume 21, Page 83 of Surveys in the Office of the County Recorder of said county, more particularly described as follows:

Beginning at the most northeasterly corner of said Parcel 3 as per said map designated and shown as point seventy-seven (77) on page 4 of 9 thereon; thence along the easterly boundary of said Parcel 3

- 1) South  $02^{\circ} 10' 30''$  West, 158.83 feet; thence leaving said easterly boundary
- 2) North  $87^{\circ} 49' 30''$  West, 248.60 feet; thence
- 3) South  $23^{\circ} 58' 19''$  West, 334.69 feet; thence
- 4) North  $66^{\circ} 01' 41''$  West, 120.00 feet; thence
- 5) North  $23^{\circ} 58' 19''$  East, 195.81 feet to the beginning of a curve, concave to the southwest, having a radius of 260.00 feet; thence
- 6) Northwesterly 461.03 feet along said curve, through a central angle of  $101^{\circ} 35' 49''$ ; thence
- 7) South  $77^{\circ} 37' 30''$  East, 616.70 feet to the Point of Beginning.

The bearing of North 87° 33' 00" West along the westerly boundary of Parcel 3 as per Volume 21, Page 83 of Surveys, records of Monterey County, California, is the basis of bearings for this description.

Excepting therefrom mineral rights with right of surface entry in a manner that does not unreasonably interfere with Grantee's development and quiet enjoyment of the property as reserved in the "Quitclaim Deed..." executed by United States of America, recorded August 28, 2008, Instrument No. 2008057085, Official Records, Monterey County.

**PARCEL III:**

That portion of the former Fort Ord Military Reservation in Rancho Noche Buena, in the City of Seaside, County of Monterey, State of California described as follows:

A portion of Parcel 3 as per map recorded in Volume 21, Page 83 of Surveys in the Office of the County Recorder of said county, more particularly described as follows:

Beginning at a point that bears South 02° 10' 30" West, 158.83 feet from the most northeasterly corner of said Parcel 3 as per said map, designated and shown as point seventy-seven (77) on page 4 of 9 thereon; thence along the easterly boundary of said Parcel 3,

(1) South 02° 10' 30" West, 1,074.09 feet to a point designated and shown as point seventy-eight (78) on page 4 of 9 thereon; thence leaving said boundary of said Parcel 3

(2) North 87° 48' 54" West, 147.32 feet; thence

(3) North 01° 36' 08" East, 8.35 feet; thence

(4) North 87° 47' 46" West, 438.71 feet to the beginning of a curve, concave northeast, having a radius of 60.00 feet; thence

(5) northwesterly 117.04 feet along said curve, through a central angle of 111° 46' 04"; thence

(6) North 23° 58' 19" East, 1,058.92 feet; thence

(7) South 87° 49' 30" East, 248.60 feet to the Point of Beginning.

The bearing of North 87° 33' 00" West along the westerly boundary of Parcel 3 as per Volume 21, Page 83 of Surveys, records of Monterey County, California, is the basis of bearings for this description.

Excepting therefrom mineral rights with right of surface entry in a manner that does not unreasonably interfere with Grantee's development and quiet enjoyment of the property as reserved in the "Quitclaim Deed..." executed by United States of America, recorded August 28, 2008, Instrument No. 2008057086, Official Records, Monterey County.

**PARCEL IV:**

All that certain real property situate in Rancho Noche Buena, Monterey City Lands, Tract No. 1, City of Seaside, County of Monterey, State of California, being a portion of Parcel 1, as said Parcel 1 is shown and so designated on map filed for record in Volume 19, "Surveys", at Page 1, Records of Monterey County, California, said portion being more particularly described as follows:

Beginning at the northerly terminus of the most westerly line of Parcel 1, as said Parcel 1 is shown and so designated on the map filed for record in Volume 23, "Surveys", at Page 96, Records of Monterey County,

California; thence from said Point of Beginning,

- (1) South 87° 46' 00" East, 334.96 feet; thence
- (2) North 2° 08' 00" East, 159.92 feet; thence
- (3) North 87° 46' 00" West, 334.84 feet; thence
- (4) South 2° 10' 30" West, 159.92 feet, to the Point of Beginning.

Excepting therefrom all mineral rights with the right of surface entry in a manner that does not unreasonably interfere with the development and quiet enjoyment of the property, as reserved in the Quitclaim Deed executed by United States of America, and recorded April 21, 2004, Instrument No. 2004038303, Official Records.

**PARCEL V:**

All that certain real property situate in Rancho Noche Buena, Monterey City Lands No. 1, City of Seaside, County of Monterey, State of California, being Parcel 12, as said Parcel 12 is shown and so designated on the map filed for record in Volume 22, "Surveys", at Page 24, Records of Monterey County, California, said parcel being more particularly described as follows:

Beginning at the northwesterly corner of Parcel 12; thence

- (1) South 87° 45' 04" East, 821.44 feet; thence
- (2) South 2° 13' 00" West, 202.37 feet; thence
- (3) North 87° 46' 00" West, 819.31 feet; thence
- (4) North 2° 09' 00" East, 171.10 feet; thence, non-tangentially
- (5) Northwesterly, along the arc of a curve to the left, concave to the southwest, the center of which bears North 87° 56' 56" West, 289.24 feet, through a central angle of 6° 15' 08", a distance of 31.56 feet, to the Point of Beginning.

Excepting therefrom all mineral rights with the right of surface entry in a manner that does not unreasonably interfere with the development and quiet enjoyment of the property, as reserved in

the Quitclaim Deed executed by United States of America, and recorded April 21, 2004, Instrument No. 2004038303, Official Records.

PARCEL VI:

All that certain real property situate in Rancho Noche Buena, Monterey City Lands Tract No. 1, City of Seaside, County of Monterey, State of California described as follows:

A portion of Parcel 1, as said Parcel 1 is shown and so designated on the map filed for record in Volume 23 of "Surveys", at Page 96, Records of Monterey County, California, said portion being more particularly described as follows:

Beginning at the northerly terminus of the westerly most line of Parcel 1, as shown on said map; thence, from said Point of Beginning,

(1) South 87° 46' 00" East, 394.96 feet to a point on the westerly line of Parcel 2, as shown on said map; thence, along the westerly and southerly lines of said Parcel 2,

(2) South 02° 08' 23" West, 200.07 feet to a 1-1/4" iron pipe tagged "RCE 15310"; thence

(3) South 87° 46' 30" East, 464.58 feet to a 1-1/4" iron pipe tagged "RCE 15310"; thence

(4) South 02° 15' 21" West, 23.02 feet to a 1-1/4" iron pipe tagged "RCE 15310"; thence

(5) South 87° 46' 00" East, 473.29 feet to a 1-1/4" iron pipe tagged "RCE 15310"; thence, leaving said boundary of said Parcel 2,

(6) South 02° 14' 00" West, 263.17 feet to a point on the southerly boundary of said Parcel 1; thence along the southerly and westerly boundary of said Parcel 1,

(7) North 87° 49' 30" West, 187.15 feet to a 1-1/4" iron pipe tagged "RCE 15310"; thence

(8) South 02° 10' 12" West, 224.79 feet to a 1-1/4" iron pipe tagged "RCE 15310"; thence

(9) North 87° 49' 37" West, 1103.28 feet to a brass tag in walk stamped "RCE 15310"; thence

(10) North 02° 14' 12" East, 12.99 feet to a 1-1/4" iron pipe tagged "RCE 15310"; thence

(11) North 87° 49' 30" West, 42.25 feet; thence

(12) North 02° 10' 30" East, 699.39 feet to the Point of Beginning.

Excepting therefrom all mineral rights with the right of surface entry in a manner that does not unreasonably interfere with the development and quiet enjoyment of the property, as reserved in the Quitclaim Deed executed by United States of America, and recorded October 17, 2002, Instrument No. 2002097675, Official Records, and amended February 23, 2011, Instrument No. 2011010801, Official Records.

PARCEL VII:

All that certain real property situate in Rancho Noche Buena, Monterey City Lands Tract No. 1, City of Seaside, County of Monterey, State of California, being a portion of Parcel 4, as said Parcel 4 is shown and so designated on map filed for record in Volume 23, "Surveys", at Page 96, Records of Monterey County, California, said portion being more particularly described as follows:

Beginning at the northeasterly corner of Parcel 4, as shown on said map; thence from said Point of Beginning,

- (1) South 2° 14' 00" West, 324.24 feet; thence
- (2) North 87° 46' 00" West, 392.97 feet; thence
- (3) South 15° 36' 00" West, 312.79 feet; thence
- (4) North 87° 23' 00" West, 197.15 feet; thence
- (5) South 60° 24' 00" West, 56.50 feet; thence
- (6) South 87° 12' 30" West, 117.57 feet; thence
- (7) North 02° 10' 21" East, 81.94 feet; thence
- (8) South 87° 49' 30" East, 184.43 feet; thence
- (9) North 10° 27' 00" West, 236.04 feet; thence
- (10) North 30° 43' 16" West, 36.81 feet; thence
- (11) North 87° 47' 21" West, 109.80 feet; thence
- (12) North 02° 14' 00" East, 205.98 feet; thence
- (13) South 87° 46' 00" East, 274.63 feet; thence
- (14) North 02° 14' 00" East, 118.10 feet; thence
- (15) South 87° 46' 00" East, 550.23 feet, to the Point of Beginning.

Excepting therefrom mineral rights with right of surface entry in a manner that does not unreasonably interfere with Grantee's development and quiet enjoyment of the property as reserved in the "Quitclaim Deed..." executed by United States of America, recorded April 21, 2004, Instrument No. 2004038303, Official Records, Monterey County.

#### PARCEL VIII:

All that certain real property situate in Rancho Noche Buena, Monterey City Lands Tract No. 1, City of Seaside, County of Monterey, State of California, being a portion of the "Seaside V" parcel, as said parcel is shown and so designated on the map filed for record in Volume 23,

“Surveys”, at Page 96, Records of Monterey, California, said portion being more particularly described as follows:

Beginning at the northeasterly corner of the “Seaside V” parcel; thence,

- (1) South 02° 12' 30” West, 60.00 feet; thence
- (2) North 87° 45' 49” West, 414.88 feet; thence
- (3) South 02° 14' 47” West, 155.03 feet; thence
- (4) South 87° 46' 07” East, 414.99 feet; thence
- (5) South 02° 12' 30” West, 653.19 feet; thence
- (6) North 87° 49' 30” West, 1025.78 feet; thence
- (7) North 02° 14' 01” East, 779.15 feet; thence, non-tangentially,
- (8) Northwesterly, along the arc of a curve to the left, concave to the southwest, the center of which bears North 87° 46' 17” West, 30.00 feet, through a central angle of 90° 00' 00”, a distance of 47.12 feet; thence
- (9) North 87° 46' 17” West, 201.00 feet; thence
- (10) South 02° 14' 00” West, 809.37 feet; thence
- (11) North 87° 49' 19” West, 855.18 feet; thence
- (12) North 02° 10' 21” East, 142.85 feet; thence
- (13) North 87° 12' 30” East, 117.57 feet; thence
- (14) North 60° 24' 00” East, 56.50 feet; thence
- (15) South 87° 23' 00” East, 197.15 feet; thence
- (16) North 15° 36' 00” East, 312.79 feet; thence
- (17) South 87° 46' 00” East, 392.97 feet; thence
- (18) North 02° 14' 00” East, 324.24 feet; thence
- (19) North 87° 46' 00” West, 550.23 feet; thence
- (20) South 02° 14' 00” West, 118.10 feet; thence
- (21) North 87° 46' 00” West, 274.63 feet; thence

- (22) South 02° 14' 00" West, 205.98 feet; thence
- (23) South 87° 47' 21" East, 109.80 feet; thence
- (24) South 30° 43' 16" East, 36.81 feet; thence
- (25) South 10° 27' 00" East, 236.04 feet; thence
- (26) North 87° 49' 42" West, 851.79 feet; thence
- (27) North 02° 13' 56" East, 556.13 feet; thence, non-tangentially,
- (28) Northwesterly, along the arc of a curve to the left, concave to the southwest, the center of which bears North 87° 46' 24" West, 30.00 feet, through a central angle of 90° 00' 22", a distance of 47.13 feet to a point of cusp; thence; thence
- (29) North 87° 45' 57" West, 878.30 feet; thence, non-tangentially
- (30) Southwesterly, along the arc of a curve to the left, concave to the southeast, the center of which bears South 02° 11' 48" West, 30.00 feet; through a central angle of 90° 09' 38", a distance of 47.21 feet to a point of cusp; thence
- (31) South 02° 08' 23" West, 69.85 feet; thence
- (32) North 87° 46' 00" West, 60.00 feet; thence
- (33) North 02° 08' 00" East, 159.92 feet; thence
- (34) South 87° 46' 00" East, 874.31 feet; thence
- (35) North 02° 15' 00" East, 202.37 feet; thence
- (36) South 87° 46' 09" East, 256.86 feet; thence
- (37) South 02° 15' 00" West, 202.38 feet; thence
- (38) South 87° 45' 59" East, 1112.75 feet; thence
- (39) South 87° 46' 17" East, 1533.74 feet, to the Point of Beginning.

Excepting Therefrom a 0.41 acre parcel of land, more particularly known as "F5.2", as designated for

Economic Development Conveyance, more particularly described as follows: All that certain real property situate in Rancho Noche Buena, Monterey City Lands Tract No. 1, City of Seaside, County of Monterey, State of California, being Parcel 2, as said Parcel 2 is shown and so designated on the map filed for record in Volume 20, "Surveys", at Page 71, Records of Monterey County, California, said portion being more particularly described as follows:

Commencing at the northeasterly corner of the "Seaside V" parcel, as said parcel is shown and so designated on the map filed for record in Volume 23, "Surveys", at Page 96, Records of Monterey County, California;

thence, westerly along the northerly line of Colonel Durham Road as shown on said map, North 87° 46' 17" West, 1533.74 feet to a 1-1/4" iron pipe with plastic plug marked "RCE 15310"; thence, North 87° 45' 59" West, 1035.84 feet; thence, South 02° 40' 54" West, 60.00 feet to the True Point of Beginning; thence from said True Point of Beginning,

- (1) South 02° 40' 54" West, 120, 15 feet; thence
- (2) North 87° 47' 08" West, 18.45 feet; thence
- (3) North 87° 45' 13" West, 130.27 feet; thence
- (4) North 02° 14' 30" East, 90.12 feet; thence, non-tangentially
- (5) Northeasterly, along the arc of a curve to the right, concave to the southeast, the center of which bears South 87° 56' 13" East, 30.00 feet, through a central angle of 90°01'46", a distance of 47.14 feet to a point of cusp; thence
- (6) South 87° 43' 34" East, 119.72 feet, to the True Point of Beginning.

Also Excepting Therefrom a 1.16 acre parcel of land, more particularly known as "L15.1", as designated for Economic Development Conveyance, more particularly described as follows:

All that certain real property situate in Rancho Noche Buena, Monterey City Lands Tract No. 1, City of Seaside, County of Monterey, State of California, being Parcel 1, as said Parcel 1 is shown and so designated on the map filed for record in Volume 21, "Surveys", at Page 96, Records of Monterey County, California, said portion being more particularly described as follows:

Commencing at the northeasterly corner of the "Seaside V" parcel, as said parcel is shown and so designated on the map filed for record in Volume 23, "Surveys", at Page 96, Records of Monterey County, California; thence westerly along the northerly line of Colonel Durham Road as shown on said map, North 87° 46' 17" West, 1533.74 feet to a 1-1/4" iron pipe with plastic plug marked "RCE 15310"; thence, North 87° 45' 59" West, 1035.38 feet; thence, South 02° 40' 54" West, 60.00 feet to the True Point of Beginning; thence from said True Point of Beginning,

- (1) South 87° 46' 19" East, 180.23 feet; thence, non-tangentially
- (2) Southeasterly, along the arc of a curve to the right, concave to the southwest, the center of which bears South 02° 13' 56" West, 30.00 feet, through a central angle of 90°00'42", a distance of 47.13 feet to a point of cusp; thence,
- (3) South 02° 12' 56" West, 299.03 feet; thence
- (4) North 87° 47' 27" West, 229.51 feet; thence

(5) North 02° 10' 34" East, 208.96 feet; thence

(6) South 87° 47' 08" East, 18.45 feet; thence

(7) North 02° 40' 54" East, 120.15 feet to the True Point of Beginning.

Also Excepting Therefrom a 1.16 acre parcel of land, more particularly known as "L36", as designated for Economic Development Conveyance, more particularly described as follows:

All that certain real property situate in Rancho Noche Buena, Monterey City Lands Tract No. 1, City of

Seaside, County of Monterey, State of California, being a portion of Parcel 4 (Exception), as said Parcel 4 is shown and so designated on the map filed for record in Volume 23, "Surveys", at Page 96, Records of

Monterey County, California, said portion being more particularly described as follows:

Commencing at the northeasterly corner of the "Seaside V" parcel, as said parcel is shown and so designated on the map filed for record in Volume 23, "Surveys", at Page 96, Records of Monterey County, California; thence, westerly along the northerly line of Colonel Durham Road as shown on said map, North 87° 46' 17" West, 1533.74 feet to a 1-1/4" iron pipe with plastic plug marked "RCE 15310"; thence, North 87° 45' 59" West, 605.36 feet; thence South 02° 14' 32" West, 60.03 feet to a 3/4" iron pipe with plastic plug marked "RCE 15310", said point being the True Point of Beginning; thence, from said True Point of Beginning,

(1) South 02° 14' 01" West, 118.08 feet; thence,

(2) South 02° 14' 50" West, 205.76 feet; thence,

(3) North 87° 47' 14" West, 156.10 feet; thence,

(4) North 02° 12' 53" East, 293.91 feet; thence, non-tangentially,

(5) Northeasterly, along the arc of a curve to the right, concave to the southeast, the center of which bears South 87° 47' 14" East, 30.00 feet, through a central angle of 90° 03' 54", a distance of 47.16 feet to a point of cusp; thence

(6) South 87° 45' 22" East, 126.23 feet to the True Point of Beginning.

Also Excepting therefrom mineral rights with right of surface entry in a manner that does not unreasonably interfere with Grantee's development and quiet enjoyment of the property as reserved in the "Quitclaim Deed..." executed by United States of America, recorded December 15, 2004, Instrument No. 2004132661, and re-recorded February 8, 2005, Instrument No. 2005012847, Official Records, Monterey County.

PARCEL IX:

Certain real property situate in the City of Seaside, County of Monterey, State of California, being a portion of the Fort Ord Military Reservation, Parcel 1, as shown on that map filed September 7, 1994, in Volume 19 Surveys, Page 1, at records of Monterey County, California, being more particularly described as follows:

Beginning at a point on the north side of a sixty foot wide road shown as Colonel Durham Road on that map filed August 25, 2003, in Volume 26 Surveys at Page 102, from which the southeast corner of Parcel "1" as shown on that map filed September 27, 1996, in Volume 20 of Surveys at Page 71, records of Monterey County, California, bears South 2° 13' 43" East, 1290.75 feet; thence leaving said road,

- (1) North 2° 13' 43" East, 87.03 feet; thence,
- (2) South 87° 46' 17" East, 168.05 feet; thence
- (3) South 2° 13' 43" West, 87.03 feet to a point on the north side of said road; thence,
- (4) along the north line of said road, South 87° 46' 17" East, 168.05 feet to the point of beginning.

Excepting therefrom mineral rights with right of surface entry in a manner that does not unreasonably interfere with Grantee's development and quiet enjoyment of the property as reserved in the "Quitclaim Deed..." executed by United States of America, recorded December 15, 2004, Instrument No. 2004132661, and re-recorded February 8, 2005, Instrument No. 2005012847, Official Records, Monterey County.

**PARCEL X:**

Certain real property situate in the City of Seaside, County of Monterey, State of California, being a portion of the Fort Ord Military Reservation, Parcel 1, as shown on that map filed September 7, 1994, in Volume 19, Surveys, at Page 1, records of Monterey County, California, being more particularly described as follows: Beginning at a point on the north side of a sixty foot wide road shown as Colonel Durham Road on that map filed August 25, 2003, in Volume 26 Surveys at Page 102, from which the southeast corner of Parcel "1" as shown on that map filed September 27, 1996, in Volume 20, of Surveys at Page 71, records of Monterey County, California, bears South 2° 13' 43" East, 672.77 feet; thence leaving said road,

- (1) North 2° 13' 43" East, 87.03 feet; thence
- (2) South 87° 46' 17" East, 168.03 feet; thence
- (3) South 2° 13' 43" West, 87.03 feet to a point on the north side of said road; thence,
- (4) along the north line of said road, South 87° 46' 17" East, 168.03 feet to the point of beginning.

Excepting therefrom mineral rights with right of surface entry in a manner that does not unreasonably interfere with Grantee's development and quiet enjoyment of the property as

reserved in the “Quitclaim Deed...” executed by United States of America, recorded December 15, 2004, Instrument No. 2004132661, and re-recorded February 8, 2005, Instrument No. 2005012847, Official Records, Monterey County. APN: 031-151-054 (Parcel I), 031-151-056 (Parcel II), 031-151-055 (Parcel III), 031-151-032 (Parcel IV) 031-151-031 (Parcel V), 031-151-029 (Parcel VI), 031-151-039 (Parcel VII), 031-151-040 (Parcel VIII), 031-261-004 (Parcel IX), 031-261-003 (Parcel X)

DRAFT

**EXHIBIT A-2**

**PLAT OF 26 ACRE PARCELS**

DRAFT

**EXHIBIT B**

**DESCRIPTION OF SURPLUS II PROPERTY**

DRAFT

**EXHIBIT B-1**

**LEGAL DESCRIPTION SURPLUS II PROPERTY**

**[To be added]**

DRAFT

**EXHIBIT B-2**

**PLAT OF SURPLUS II PROPERTY**

DRAFT

**EXHIBIT C**

**DEPICTION OF ADDITIONAL PROPERTY**

DRAFT

**EXHIBIT D**

**FORM OF DEVELOPMENT AGREEMENT OPERATING MEMORANDUM, CAMPUS  
TOWN: [MAPPING ADJUSTMENT] [ADDITIONS TO THE PROPERTY]**

See Attached.

RECORDING REQUESTED BY:  
CITY OF SEASIDE

WHEN RECORDED MAIL TO:

City of Seaside  
Attention: City Attorney's Office  
440 Harcourt Avenue  
Seaside, California 93955

**[FORM OF] DEVELOPMENT AGREEMENT OPERATING MEMORANDUM # [X],  
CAMPUS TOWN [MAPPING ADJUSTMENT] [ADDITIONS TO THE PROPERTY]**

THIS DEVELOPMENT AGREEMENT OPERATING MEMORANDUM # [X], CAMPUS TOWN [MAPPING ADJUSTMENT] [ADDITIONS TO THE PROPERTY] (“Operating Memorandum # ”) is entered into pursuant to Sections 3(b), 3(c), and 29(b) of that certain Development Agreement (the “Agreement”) dated [\_\_\_\_], 2020, by and between the CITY OF SEASIDE, a California municipal corporation (“City”), and KB Bakewell Seaside Venture II, LLC, a Delaware limited liability company (“Developer”) and recorded in the official records of Monterey County as Instrument No. [\_\_\_\_]. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the Agreement.

Section 29(b) of the Agreement authorizes the Parties to enter into operating memoranda to refine and clarify the details of performance pursuant to the Agreement. Section 3[(b)][(c)] of the Agreement provides for the use of operating memoranda to amend the legal description of the Property attached as Exhibits A and B to the Agreement in the event that [the Parties determine that there is a discrepancy between the metes and bounds legal descriptions attached to the Agreement as Exhibits A-1 and B-1 and the final maps recorded with respect to the Property] [Additional Property, as shown on Exhibit C to the Agreement, is acquired by the City or Developer].

Pursuant to Section 3[(b)][(c)] of the Agreement, the Parties have determined that the legal description of the Property attached as Exhibits A and B to the Agreement should be amended to reflect the fact that [there is a discrepancy between the metes and bounds legal descriptions attached to the Agreement as Exhibits A-1 and B-1 and the final maps recorded with respect to the Property] [Additional Property has been acquired by the City or Developer].

Pursuant to this Operating Memorandum, the Parties agree that the legal description of the Property attached as Exhibits A and B the Agreement should be amend to reflect [the final maps recorded with respect to the Property] [the addition of Additional Property] The Parties therefore hereby amend the legal description of the Property to remove the existing Exhibits [A-1][A-2]B-1[B-2] and substitute the attached Exhibits [A-1][A-2]B-1[B-2].

**Miscellaneous**

Pursuant to Section 29(b) of the Agreement, this Operating Memorandum # [ ] is deemed to be attached as an addendum to and to be a part of the Agreement.

This Operating Memorandum # [ ] is for the sole benefit of the Parties hereto and their respective successors and assigns (to the extent permitted by the Agreement), and no third party beneficiaries are intended or created hereby.

This Operating Memorandum # [ ] may be executed in multiple counterpart copies, any one of which when duly executed, with all formalities hereof, shall be fully binding and effective as the original of this Operating Memorandum # [ ].

IN WITNESS WHEREOF, the Parties hereto have entered into this Operating Memorandum # [ ] as of [XXX].

“CITY”

“DEVELOPER”

CITY OF SEASIDE,  
a California municipal corporation

KB-BAKEWELL SEASIDE JOINT  
VENTURE II, LLC  
a Delaware limited liability company

\_\_\_\_\_  
CRAIG MALIN  
City Manager

By: \_\_\_\_\_

APPROVED AS TO FORM:

Name: \_\_\_\_\_

\_\_\_\_\_  
SHERI L. DAMON  
City Attorney

Its: \_\_\_\_\_

**CONSENT TO DEVELOPMENT AGREEMENT OPERATING MEMORANDUM #[X],  
CAMPUS TOWN [MAPPING ADJUSTMENT] [ADDITIONS TO THE PROPERTY]**

[TO BE ATTACHED IF CHANGE IN LEGAL DESCRIPTION  
AFFECTS PROPERTY STILL OWNED BY CITY/SUCCESSOR AGENCY]

The City of Seaside, in its capacity as the fee owner of the 26 Acre Parcels (as defined in the Agreement), hereby consents to the entry of this Operating Memorandum # [ ] and its recordation against the 26 Acre Parcels.

The Successor Agency of the City of Seaside, in its capacity as the fee owner of the Surplus II Property (as defined in the Agreement), hereby consents to the entry of this Operating Memorandum # [ ] and its recordation against the Surplus II Property.

“CITY”

CITY OF SEASIDE,  
a California municipal corporation

\_\_\_\_\_  
IAN OGLESBY  
Mayor of the City of Seaside, California

ATTEST:

\_\_\_\_\_  
LESLEY MILTON-RERIG  
Assistant City Manager/City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
DON FREEMAN  
City Attorney

“SUCCESSOR AGENCY”

SUCCESSOR AGENCY TO THE FORMER  
REDEVELOPMENT AGENCY OF THE  
CITY OF SEASIDE

\_\_\_\_\_  
By:  
Its Executive Director

APPROVED AS TO FORM:

\_\_\_\_\_  
By:  
Its: General Counsel

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF MONTEREY

On \_\_\_\_\_ before me, \_\_\_\_\_  
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, and that by his/her/their signature(s) on the instrument the  
person(s), or the entity(ies) 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.

Place Notary Seal Above

\_\_\_\_\_  
Signature of Notary Public

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF MONTEREY

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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, and that by his/her/their signature(s) on the instrument the  
person(s), or the entity(ies) 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.

Place Notary Seal Above

\_\_\_\_\_  
Signature of Notary Public

**EXHIBIT E**

**FORM OF DEVELOPMENT AGREEMENT, CAMPUS TOWN PARTIAL  
ASSIGNMENT AND ASSUMPTION AND RELEASE AGREEMENT- AFFORDABLE  
HOUSING PARCEL**

See Attached.

DRAFT

Recording Requested by and  
When Recorded Return to:

KB BAKEWELL SEASIDE JOINT VENTURE II, LLC  
c/o KB Home  
5000 Executive Parkway, Suite 125  
San Ramon, CA 94583  
Attn: Vice President and Regional Counsel

---

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**[FORM OF] DEVELOPMENT AGREEMENT, CAMPUS TOWN  
PARTIAL ASSIGNMENT AND ASSUMPTION AND RELEASE AGREEMENT  
AFFORDABLE HOUSING PARCEL**

THIS [PARTIAL] ASSIGNMENT AND ASSUMPTION AND RELEASE AGREEMENT (“**Assignment Agreement**”) is made and entered into as of \_\_\_\_\_, 20\_\_\_, by and between KB Bakewell Seaside Venture II, LLC, a Delaware limited liability company (“**Assignor**”), and \_\_\_\_\_, a \_\_\_\_\_ (“**Assignee**”).

**RECITALS**

- A. Assignor owns certain real property located in the City of Seaside (“**City**”), County of Monterey, State of California, commonly referred to as “Campus Town” (the “**Property**”).
- B. On the date hereof, Assignee is acquiring a portion of the Property more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the “**Transferred Property**”).
- C. City and Assignor entered into that certain Development Agreement dated as of \_\_\_\_\_, 2020, and recorded against the Transferred Property (as well as other real property) on \_\_\_\_\_, 2020, as Instrument No. \_\_\_\_\_ in the Monterey County Recorder’s Office (the “**Development Agreement**”).
- D. The Transferred Property constitutes an “Affordable Housing Lot,” as defined in the Development Agreement, and, as such, is entitled to certain rights and benefits afforded to Affordable Housing Lots pursuant to the Development Agreement, specifically: protections against future changes in certain City fees (Section 9(g)), protections against imposition of potential future CFD replacement fees (Section 9(i)(ii)), protection against imposition of City processing fees (other except for plan check inspection fees) (Section 10(c)), and exclusion from the obligation to pay the City certain public benefit contributions (Section 10(d)).

E. Contemporaneous with the conveyance of the Transferred Property, in accordance with and subject to the terms of Section 5(c)(ii) of the Development Agreement, Assignor desires to assign to Assignee all of Assignor's rights and benefits under Sections 9(g) , 9(i)(ii), 10(c), and 10(d) of the Development Agreement with respect to the Transferred Property only (the "Assigned Interests"), and Assignee desires to accept and assume the Assigned Interests, such assignment and assumption to be effective on the Assignment Effective Date (as defined in Section 1.3 below).

NOW THEREFORE, in consideration of these promises, and of the agreements, covenants and conditions contained in this Agreement and other good and valuable consideration, the parties agree as follows:

**I. ASSIGNMENT AND ASSUMPTION OF THE PROPERTY RIGHTS**

(a) **Assignment**

. From and after the Assignment Effective Date, Assignor assigns to Assignee the Assigned Interests.

(b) **Assumption**

. From and after the Assignment Effective Date, Assignee accepts and assumes Assignor's assignment of Assigned Interests. From and after the Effective Date, Assignee shall be substituted for Assignor as "Developer" and "Party" under the Development Agreement solely with respect to the Assigned Interests.

(c) **Effective Date**

. For purposes of this Assignment Agreement, the "Assignment Effective Date" shall be the later to occur of (1) the date on which deed transferring the Transferred Property from Assignor to Assignee is recorded in the Monterey County Recorder's Office; or (2) the date of the execution of this Assignment Agreement by all parties; provided, however, that, except in the case of Permitted Transfers, this Assignment Agreement shall have no force and effect without the consent of the City in accordance with Section 16(c) the Development Agreement, as evidenced by City's execution of the Consent attached hereto.

**II. RIGHTS AND REMEDIES**

(a) **Assignor's Release**

. By operation of Section 15(e) of the Development Agreement, Assignor is and shall be released from the Development Agreement with respect to the Transferred Property and the Assigned Interests from and after the Assignment Effective Date.

. Pursuant to Section 5(c)(ii) of the Development Agreement, from and after the Assignment Effective Date, except for the Assigned Interests, Assignee shall be released from the Development Agreement with respect to the Transferred Property. From and after the

Assignment Effective Date, any default or breach by Assignor under the Development Agreement prior to or after the Assignment Effective Date (“**Assignor Breach**”), shall not constitute a breach or default by Assignee under the Development Agreement, and shall not result in (a) any remedies imposed against Assignee, including without limitation any remedies authorized pursuant to Sections 13(b) and 25(c) of the Development Agreement, or (b) modification or termination of the Development Agreement with respect to the Transferred Property.

**III. AMENDMENT OF THE DEVELOPMENT AGREEMENT**

(a) . **Assignor.** Assignor shall not request, process or consent to any amendment to the Development Agreement that would affect the Transferred Property or the Assigned Interests without Assignee’s prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed. The foregoing notwithstanding, Assignor may process any amendment that does not affect the Transferred Property or the Assigned Interests, and, if necessary, Assignee shall consent thereto and execute all documents necessary to accomplish said amendment, provided that said amendment does not affect the Transferred Property or the Assigned Interests.

(b) . **Assignee.** Assignee shall not request, process or consent to any amendment to the Development Agreement that would affect the Assignor Property or the Assignor’s remaining rights and obligations pursuant to the Development Agreement without Assignor’s prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed. The foregoing notwithstanding, Assignee may process any amendment that does not affect the Assignor Property, and, if necessary, Assignor shall consent thereto and execute all documents necessary to accomplish said amendment, provided that said amendment does not affect the Assignor Property or any of Assignor’s remaining rights and obligations pursuant to the Development Agreement.

**IV. GENERAL PROVISIONS**

(a) **Notices.** . All notices, invoices and other communications required or permitted under this Agreement shall be made in writing, and shall be delivered either personally (including by private courier), by certified mail, postage prepaid and return receipt requested, or by nationally recognized overnight courier service to the following addresses, or to such other addresses as the parties may designate in writing from time to time:

If to Assignee: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

with copies to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Attn: \_\_\_\_\_

If to Assignor: KB Bakewell Seaside Joint Venture II, LLC

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

With copies to: KB Home South Bay  
5000 Executive Parkway, Suite 125  
San Ramon, CA 94583  
Attn: Vice President and Regional Counsel

Cox, Castle & Nicholson LLP  
50 California Street, 32nd Floor  
San Francisco, California 94111  
Attn: Margo N. Bradish, Esq.

Notices personally delivered shall be deemed received upon delivery. Notices delivered by certified mail as provided above shall be deemed received on actual delivery. Notices delivered by courier service as provided above shall be deemed received twenty-four (24) hours after the date of deposit. From and after the Assignment Effective Date and until further written notice from Assignor and/or Assignee to the City pursuant to the terms of the Development Agreement, Assignor and Assignee hereby designates as their respective notice addresses for notices sent by the City pursuant to Section 33 of the Development Agreement, the notice addresses set forth above.

(b) **Estoppel Certificates**

(1) Within ten (10) days after receipt of a written request from time to time, Assignor shall execute and deliver to Assignee, or to an auditor or prospective lender or purchaser with respect to the Transferred Property, a written statement certifying to Assignor's actual knowledge: (i) that the Development Agreement is unmodified and in full force and effect (or, if there have been modifications, that the Development Agreement is in full force and effect, and stating the date and nature of such modifications); (ii) that there are no current defaults under the Development Agreement by the City or Assignor (or, if defaults are asserted, so describing with reasonable specificity) and that there are no conditions which, with the passage of time or the giving of notice, or both, would constitute a default (or, if conditions are asserted, so describing with reasonable specificity); (iii) that this Assignment Agreement is unmodified and in full force and effect (or, if there have been modifications, that this Assignment Agreement is

in full force and effect, and stating the date and nature of such modifications); and (iv) such other matters as may be reasonably requested.

(2) Within ten (10) days after receipt of a written request from time to time, Assignee shall execute and deliver to Assignor, or to an auditor or prospective lender or purchaser with respect to the Property or any portion thereof, a written statement certifying to Assignee's actual knowledge: (i) that this Assignment Agreement is unmodified and in full force and effect (or, if there have been modifications, that this Assignment Agreement is in full force and effect, and stating the date and nature of such modifications); and (ii) such other matters as may be reasonably requested.

(c) **Attorneys' Fees.** In the event of any legal or equitable proceeding in connection with this Assignment Agreement, the prevailing party in such proceeding shall be entitled to recover its reasonable costs and expenses, including without limitation reasonable attorneys' fees, costs and disbursements paid or incurred in good faith at the arbitration, pre-trial, trial and appellate levels, and in enforcing any award or judgment granted pursuant thereto.

(d) **No Waiver.** No delay or omission by either party in exercising any right, remedy, election or option accruing upon the noncompliance or failure of performance by the other party under the provisions of this Assignment Agreement shall constitute an impairment or waiver of any such right, remedy, election or option. No alleged waiver shall be valid or effective unless it is set forth in a writing executed by the party against whom the waiver is claimed. A waiver by either party of any of the covenants, conditions or obligations to be performed by the other party shall not be construed as a waiver of any subsequent breach of the same or any other covenants, conditions or obligations.

(e) **Amendment.** This Assignment Agreement may be amended only by a written agreement signed by both Assignor and Assignee.

(f) **Successors and Assigns**

. This Assignment Agreement runs with the land and shall be binding on and inure to the benefit of the parties and their respective successors and assigns.

(g) **No Joint Venture**

. Nothing contained herein shall be construed as creating a joint venture, agency, or any other relationship between the parties hereto other than that of assignor and assignee.

(h) **Severability**

. If any term or provision of this Assignment Agreement or the application thereof to any person or circumstance is found by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining term and provision of this Assignment Agreement shall be valid and enforceable to the full extent permitted by law; provided that, if the invalidation or unenforceability would deprive either Assignor or Assignee of material benefits

derived from this Assignment Agreement or make performance under this Assignment Agreement unreasonably difficult, then Assignor and Assignee shall meet and confer and shall make good faith efforts to modify this Assignment Agreement in a manner that is acceptable to Assignor, Assignee and the City.

(i) **Governing Law**

. This Assignment Agreement shall be governed by and construed in accordance with the internal laws of the State of California without reference to choice of law or conflict of law provisions.

(j) **Third Party Beneficiaries**

. Assignor and Assignee acknowledge that City is a third party beneficiary of the terms and conditions of this Assignment Agreement to the extent necessary for City to enforce the terms and conditions of the Development Agreement. This Agreement shall not be deemed or construed to confer any rights, title or interest, including without limitation any third party beneficiary status or right to enforce any provision of this Assignment Agreement, upon any person or entity other than Assignor, Assignee, and City.

(k) **Time of the Essence**

. Time is of the essence in the performance by each party of its obligations under this Assignment Agreement.

(l) **Authority**

. Each party to this Agreement represents and warrants that the person or person executing this Assignment Agreement on such party's behalf has the authority to bind his or her respective party to the performance of its obligations hereunder and that all necessary board of directors', shareholders', partners' and other approvals have been obtained.

(m) **Term**

. The term of this Assignment Agreement shall commence on the Assignment Effective Date and shall expire upon the expiration or earlier termination of the Development Agreement, subject to any obligations under the Development Agreement that expressly survive the expiration or termination of the Development Agreement. Upon the expiration or earlier termination of this Assignment Agreement, the parties shall have no further rights or obligations hereunder, except with respect to any obligation to have been performed prior to such expiration or termination or with respect to any default in the performance of the provisions of this Assignment Agreement which occurred prior to such expiration or termination or with respect to any obligations which are specifically set forth as surviving this Assignment Agreement or the Development Agreement.

(n) **Counterparts**

. This Assignment Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signature pages may be detached from the counterparts and attached to a single copy of this Assignment Agreement to physically form one document.

(o) **Default**

. Any failure by either party to perform any material term or provision of this Assignment Agreement shall constitute a default (a) if such defaulting party does not cure such failure within thirty (30) days following written notice of default from the other party, where such failure is of a nature that can be cured within such thirty (30) day period, or (b) if such default is not of a nature that can be cured within such thirty (30) day period, if the defaulting party does not within such thirty (30) day period commence substantial efforts to cure such failure, or thereafter does not within a reasonable time prosecute to completion with diligence the curing of such failure. Any notice of default given hereunder shall be given in the same manner as provided in Section 4.1 hereof and shall specify in detail the nature of the failures in performance that the noticing party claims and the manner in which such failure can be satisfactorily cured.

*[remainder of page left intentionally blank – signature pages follow]*

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment Agreement by proper persons thereunto duly authorized, to be effective as of the Effective Date.

**“Assignor”**

**KB BAKEWELL SEASIDE VENTURE II, LLC,**  
**a Delaware limited liability company**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**“Assignee”**

\_\_\_\_\_,  
**a** \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
**Title:** \_\_\_\_\_

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF MONTEREY

On \_\_\_\_\_ before me, \_\_\_\_\_  
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, and that by his/her/their signature(s) on the instrument the person(s), or the entity(ies) 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.

Place Notary Seal Above

\_\_\_\_\_  
Signature of Notary Public

**ACKNOWLEDGMENT**

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STATE OF CALIFORNIA

COUNTY OF MONTEREY

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subscribed to the within instrument and acknowledged to me that he/she/they executed the same  
in his/her/their authorized capacity, and that by his/her/their signature(s) on the instrument the  
person(s), or the entity(ies) 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.

Place Notary Seal Above

\_\_\_\_\_  
Signature of Notary Public

EXHIBIT A

**Description of the Transferred Property**

**(Attached)**

DRAFT

**CITY OF SEASIDE'S CONSENT TO  
DEVELOPMENT AGREEMENT, CAMPUS TOWN  
PARTIAL ASSIGNMENT, ASSUMPTION, AND RELEASE AGREEMENT**

The City of Seaside hereby consents to the assignment and assumption of the Assigned Interests as set forth in that certain DEVELOPMENT AGREEMENT, CAMPUS TOWN PARTIAL ASSIGNMENT, ASSUMPTION AND RELEASE AGREEMENT by and between KB Bakewell Seaside Venture II, LLC, as Assignor, \_\_\_\_\_, as Assignee, and agrees to the terms and conditions set forth therein.

**CITY OF SEASIDE,**  
a Municipal corporation of the State of California

By: \_\_\_\_\_  
\_\_\_\_\_, Mayor

**ATTEST:**

\_\_\_\_\_  
\_\_\_\_\_, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
\_\_\_\_\_, City Attorney

**ACKNOWLEDGMENT**

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STATE OF CALIFORNIA

COUNTY OF MONTEREY

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in his/her/their authorized capacity, and that by his/her/their signature(s) on the instrument the  
person(s), or the entity(ies) 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.

Place Notary Seal Above

\_\_\_\_\_  
Signature of Notary Public

DRAFT

**EXHIBIT F**

**FORA CFD AND FORA FEE**

DRAFT

DESCRIPTION OF FACILITIES ELIGIBLE TO BE FUNDED BY THE DISTRICT FACILITIES pursuant to FORA Tax lien dated:

FOR A FEB 2019:

- A. Roadway Improvements
- B. Transit Improvements and Vehicles:
- C. Water and Storm Drain Improvements
- D. Habitat management:
- E. Other Public Facilities
- F. Administrative fees, costs and expenses.

**NOTICE OF SPECIAL TAX LIEN**  
As of July 1, 2019

**Section IV. Maximum Special Tax Rates**

The Maximum Special Tax Rates for each classification of Taxable Property, are shown in Table 1, below.

**TABLE 1 – TAXABLE PROPERTY CLASSIFICATIONS AND  
MAXIMUM SPECIAL TAX RATES**  
(Figures as of July 1, 2019)

PROPERTY CLASSIFICATION	Maximum Special Tax Rates (One-time Special Tax Payments)
Undeveloped Property	\$ - 0 -
Developed Property	
New Residential	\$25,362 / Dwelling Unit
Existing Residential	\$7,622 / Dwelling Unit
Office	\$3,327 / Acre
Industrial	\$3,327 / Acre
Retail	\$68,555 / Acre
Hotel	\$5,655 / Room

**Increase in the Maximum Special Tax Rates**

On each July 1, commencing July 1, 2002, the Maximum Special Tax rates shown in Table 1 shall be increased by an amount equal to the lesser of (1) five percent (5%) or (2) the percentage change since the immediately preceding Fiscal Year in the Engineering News Record's Construction Cost Index (CCI) applicable to the area in which the District is located (CCI for the period 1/18-1/19 was 3.01% and was applied to Special Tax Rates for the period July 1, 2019 – June 30, 2020).

**Alteration to the Maximum Special Taxes**

On October 14, 2005, the Fort Ord Reuse Authority Board adopted the attached (Exhibit A to Maximum Special Taxes) Alteration to the Special Taxes for the Fort Ord Reuse Authority Basewide Community Facilities District.

Revised as of 6-28-19

**EXHIBIT G**  
**PUBLIC OPEN SPACE**

DRAFT

**EXHIBIT H**

**FORM OF DEVELOPMENT AGREEMENT, CAMPUS TOWN [PARTIAL]**  
**ASSIGNMENT AND ASSUMPTION AND RELEASE AGREEMENT**

DRAFT

Recording Requested by and  
When Recorded Return to:

KB BAKEWELL SEASIDE JOINT VENTURE II, LLC  
c/o KB Home  
5000 Executive Parkway, Suite 125  
San Ramon, CA 94583  
Attn: Vice President and Regional Counsel

---

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**[FORM OF] DEVELOPMENT AGREEMENT, CAMPUS TOWN**  
**[PARTIAL] ASSIGNMENT AND ASSUMPTION AND RELEASE AGREEMENT**

THIS [PARTIAL]ASSIGNMENT AND ASSUMPTION AND  
RELEASEAGREEMENT (“**Assignment Agreement**”) is made and entered into as of  
\_\_\_\_\_, 20\_\_\_, by and between KB Bakewell Seaside Venture II, LLC, a Delaware  
limited liability company (“**Assignor**”), and \_\_\_\_\_, a \_\_\_\_\_  
 (“**Assignee**”).

**RECITALS**

A. Assignor owns certain real property located in the City of Seaside (“**City**”),  
County of Monterey, State of California, commonly referred to as “Campus Town” (the  
“**Property**”).

B. On the date hereof, Assignee is acquiring a portion of the Property more  
particularly described in Exhibit A attached hereto and incorporated herein by this reference (the  
“**Transferred Property**”).

C. City and Assignor entered into that certain Development Agreement dated as of  
\_\_\_\_\_, 2020, and recorded against the Transferred Property (as well as other real  
property) on \_\_\_\_\_, 2020, as Instrument No. \_\_\_\_\_ in the Monterey County  
Recorder’s Office (the “**Development Agreement**”). All capitalized terms used herein shall  
have the meanings set forth in the Development Agreement, except as otherwise defined herein.

D. Contemporaneous with the conveyance of the Transferred Property, Assignor  
desires to assign to Assignee all of Assignor’s rights, duties and obligations under the  
Development Agreement with respect to the Transferred Property only (the “**Assigned  
Interests**”), and Assignee desires to accept and assume the Assigned Interests, such assignment  
and assumption to be effective on the Assignment Effective Date (as defined in Section 1.3  
below).

NOW THEREFORE, in consideration of these promises, and of the agreements, covenants and conditions contained in this Agreement and other good and valuable consideration, the parties agree as follows:

**I. ASSIGNMENT AND ASSUMPTION OF  
THE PROPERTY RIGHTS AND OBLIGATIONS**

From and after the Assignment Effective Date, Assignor assigns to Assignee the Assigned Interests.

From and after the Assignment Effective Date, Assignee accepts and assumes Assignor's assignment of the Assigned Interests. From and after the Assignment Effective Date, Assignee shall be substituted for Assignor as "Developer" and "Party" under the Development Agreement solely with respect to the Transferred Property and the Assigned Interests. From and after the Assignment Effective Date, Assignee shall keep and perform all covenants, conditions and provisions of the Development Agreement relating to the Transferred Property, excluding [\_\_\_\_\_].

For purposes of this Assignment Agreement, the "Assignment Effective Date" shall be the date on which deed transferring the Transferred Property from Assignor to Assignee is recorded in the Monterey County Recorder's Office; provided, however, that, except in the case of Permitted Transfers, this Assignment Agreement shall have no force and effect without the consent of City in accordance with Section 16(c) the Development Agreement, as evidenced by City's execution of the Consent attached hereto.

**II. RIGHTS AND REMEDIES**

By operation of Section 15(e) of the Development Agreement, from and after the Assignment Effective Date, Assignor is and shall be released from the Development Agreement with respect to the Transferred Property and the Assigned Interests. Any default or breach by Assignee under the Development Agreement following the Assignment Effective Date with respect to the Transferred Property or the Assigned Interests ("**Assignee Breach**") shall not constitute a breach or default by Assignor under the Development Agreement and shall not result in (a) any remedies imposed against Assignor, including without limitation any remedies authorized pursuant to Sections 13(b) and 25(c) of the Development Agreement, or (b) modification or termination of the Development Agreement with respect to that portion of the Property retained by Assignor after the conveyance of the Transferred Property (the "**Assignor Property**").

From and after the Assignment Effective Date, any default or breach by Assignor under the Development Agreement prior to or after the Assignment Effective Date ("**Assignor Breach**"), shall not constitute a breach or default by Assignee under the Development Agreement, and shall not result in (a) any remedies imposed against Assignee, including without limitation any remedies authorized pursuant to Sections 13(b) and 25(c) of the Development Agreement, or (b) modification or termination of the Development Agreement with respect to the Transferred Property.

**III. PERIODIC REVIEW OF COMPLIANCE**

Assignor shall participate in the annual review of the Development Agreement conducted pursuant to Section 65865.1 of the California Government Code with respect to the Assignor Property, and Assignee shall have no responsibility therefor.

Assignee shall participate in the annual review of the Development Agreement conducted pursuant to Section 65865.1 of the California Government Code with respect to the Transferred Property, and Assignor shall have no responsibility therefor.

**IV. AMENDMENT OF THE DEVELOPMENT AGREEMENT**

Assignor shall not request, process or consent to any amendment to the Development Agreement that would affect the Transferred Property or the Assigned Interests without Assignee’s prior written consent, in Assignee’s sole and absolute discretion. The foregoing notwithstanding, Assignor may process any amendment that does not affect the Transferred Property, and, if necessary, Assignee shall consent thereto and execute all documents necessary to accomplish said amendment, provided that said amendment does not affect the Transferred Property or any of the Assigned Interests.

Assignee shall not request, process or consent to any amendment to the Development Agreement that would affect the Assignor Property or the Assignor’s remaining rights and obligations pursuant to the Development Agreement without Assignor’s prior written consent, in Assignor’s sole and absolute discretion. The foregoing notwithstanding, Assignee may process any amendment that does not affect the Assignor Property, and, if necessary, Assignor shall consent thereto and execute all documents necessary to accomplish said amendment, provided that said amendment does not affect the Assignor Property or any of Assignor’s remaining rights and obligations pursuant to the Development Agreement.

**V. GENERAL PROVISIONS**

**1. Notices.**

All notices, invoices and other communications required or permitted under this Agreement shall be made in writing, and shall be delivered either personally (including by private courier), by certified mail, postage prepaid and return receipt requested, or by nationally recognized overnight courier service to the following addresses, or to such other addresses as the parties may designate in writing from time to time:

If to Assignee: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

with copies to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Attn: \_\_\_\_\_

If to Assignor: KB Bakewell Seaside Joint Venture II, LLC

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

With copies to: KB Home South Bay  
5000 Executive Parkway, Suite 125  
San Ramon, CA 94583  
Attn: Vice President and Regional Counsel

Cox, Castle & Nicholson LLP  
50 California Street, 32nd Floor  
San Francisco, California 94111  
Attn: Margo N. Bradish, Esq.

Notices personally delivered shall be deemed received upon delivery. Notices delivered by certified mail as provided above shall be deemed received on actual delivery. Notices delivered by courier service as provided above shall be deemed received twenty-four (24) hours after the date of deposit. From and after the Assignment Effective Date and until further written notice from Assignor and/or Assignee to the City pursuant to the terms of the Development Agreement, Assignor and Assignee hereby designates as their respective notice addresses for notices sent by the City pursuant to Section 33 of the Development Agreement, the notice addresses set forth above.

**2. Estoppel Certificates.**

Within ten (10) days after receipt of a written request from time to time, either party shall execute and deliver to the other, or to an auditor or prospective lender or purchaser with respect to the Transferred Property, a written statement certifying to that party's actual knowledge: (i) that the Development Agreement is unmodified and in full force and effect (or, if there have been modifications, that the Development Agreement is in full force and effect, and stating the date and nature of such modifications); (ii) that there are no current defaults under the Development Agreement by the City and either Assignor or Assignee, as the case may be (or, if defaults are asserted, so describing with reasonable specificity) and that there are no conditions which, with the passage of time or the giving of notice, or both, would constitute a default (or, if conditions are asserted, so describing with reasonable specificity); (iii) that this Assignment Agreement is unmodified and in full force and effect (or, if there have been modifications, that this Assignment Agreement is in full force and effect, and stating the date and nature of such modifications); and (iv) such other matters as may be reasonably requested.

**3. Attorneys' Fees.**

In the event of any legal or equitable proceeding in connection with this Assignment Agreement, the prevailing party in such proceeding shall be entitled to recover its reasonable costs and expenses, including without limitation reasonable attorneys' fees, costs and disbursements paid or incurred in good faith at the arbitration, pre-trial, trial and appellate levels, and in enforcing any award or judgment granted pursuant thereto.

**4. No Waiver.**

No delay or omission by either party in exercising any right, remedy, election or option accruing upon the noncompliance or failure of performance by the other party under the provisions of this Assignment Agreement shall constitute an impairment or waiver of any such right, remedy, election or option. No alleged waiver shall be valid or effective unless it is set forth in a writing executed by the party against whom the waiver is claimed. A waiver by either party of any of the covenants, conditions or obligations to be performed by the other party shall not be construed as a waiver of any subsequent breach of the same or any other covenants, conditions or obligations.

**5. Amendment.**

This Assignment Agreement may be amended only by a written agreement signed by both Assignor and Assignee.

**6. Successors and Assigns.**

This Assignment Agreement runs with the land and shall be binding on and inure to the benefit of the parties and their respective successors and assigns.

**7. No Joint Venture.**

Nothing contained herein shall be construed as creating a joint venture, agency, or any other relationship between the parties hereto other than that of assignor and assignee.

**8. Severability.**

If any term or provision of this Assignment Agreement or the application thereof to any person or circumstance is found by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining term and provision of this Assignment Agreement shall be valid and enforceable to the full extent permitted by law; provided that, if the invalidation or unenforceability would deprive either Assignor or Assignee of material benefits derived from this Assignment Agreement or make performance under this Assignment Agreement unreasonably difficult, then Assignor and Assignee shall meet and confer and shall make good faith efforts to modify this Assignment Agreement in a manner that is acceptable to Assignor, Assignee and the City.

**9. Governing Law.**

This Assignment Agreement shall be governed by and construed in accordance with the internal laws of the State of California without reference to choice of law or conflict of law provisions.

**10. Third Party Beneficiaries**

Assignor and Assignee acknowledge that City is a third party beneficiary of the terms and conditions of this Assignment Agreement to the extent necessary for City to enforce the terms and conditions of the Development Agreement. This Agreement shall not be deemed or construed to confer any rights, title or interest, including without limitation any third party beneficiary status or right to enforce any provision of this Assignment Agreement, upon any person or entity other than Assignor, Assignee, and City.

**11. Time of the Essence.**

Time is of the essence in the performance by each party of its obligations under this Assignment Agreement.

**12. Authority.**

Each party to this Agreement represents and warrants that the person or person executing this Assignment Agreement on such party's behalf has the authority to bind his or her respective party to the performance of its obligations hereunder and that all necessary board of directors', shareholders', partners' and other approvals have been obtained.

**13. Term.**

The term of this Assignment Agreement shall commence on the Assignment Effective Date and shall expire upon the expiration or earlier termination of the Development Agreement, subject to any obligations under the Development Agreement that expressly survive the expiration or termination of the Development Agreement. Upon the expiration or earlier termination of this Assignment Agreement, the parties shall have no further rights or obligations hereunder, except with respect to any obligation to have been performed prior to such expiration or termination or with respect to any default in the performance of the provisions of this Assignment Agreement which occurred prior to such expiration or termination or with respect to any obligations which are specifically set forth as surviving this Assignment Agreement or the Development Agreement.

**14. Counterparts.**

This Assignment Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signature pages may be detached from the counterparts and attached to a single copy of this Assignment Agreement to physically form one document.

**15. Default.**

Any failure by either party to perform any material term or provision of this Assignment Agreement shall constitute a default (a) if such defaulting party does not cure such failure within thirty (30) days following written notice of default from the other party, where such failure is of a nature that can be cured within such thirty (30) day period, or (b) if such default is not of a nature that can be cured within such thirty (30) day period, if the defaulting party does not within such thirty (30) day period commence substantial efforts to cure such failure, or thereafter does not within a reasonable time prosecute to completion with diligence the curing of such failure. Any notice of default given hereunder shall be given in the same manner as provided in Section 5.1 hereof and shall specify in detail the nature of the failures in performance that the noticing party claims and the manner in which such failure can be satisfactorily cured.

*[remainder of page left intentionally blank – signature pages follow]*

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment Agreement by proper persons thereunto duly authorized, to be effective as of the Effective Date.

**“Assignor”**

**KB BAKEWELL SEASIDE VENTURE II, LLC,**  
**a Delaware limited liability company**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**“Assignee”**

\_\_\_\_\_,  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
**Title:** \_\_\_\_\_

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF MONTEREY

On \_\_\_\_\_ before me, \_\_\_\_\_  
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, and that by his/her/their signature(s) on the instrument the  
person(s), or the entity(ies) 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.

Place Notary Seal Above

\_\_\_\_\_  
Signature of Notary Public

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF MONTEREY

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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  
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person(s), or the entity(ies) 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.

Place Notary Seal Above

\_\_\_\_\_  
Signature of Notary Public

EXHIBIT A

**Description of the Transferred Property**

**(Attached)**

DRAFT

DRAFT

**CITY OF SEASIDE'S CONSENT TO  
DEVELOPMENT AGREEMENT, CAMPUS TOWN  
[PARTIAL] ASSIGNMENT AND ASSUMPTION AND RELEASE AGREEMENT**

The City of Seaside hereby consents to the assignment and assumption of the Assigned Interests as set forth in that certain DEVELOPMENT AGREEMENT, CAMPUS TOWN [PARTIAL] ASSIGNMENT AND ASSUMPTION AND RELEASE AGREEMENT by and between KB Bakewell Seaside Venture II, LLC, as Assignor, and \_\_\_\_\_, as Assignee, and agrees to the terms and conditions set forth therein.

As of the date hereof, the undersigned is not aware of any default by Assignor, nor of the occurrence of any event which with notice or the passage of time would constitute a default by Assignor, under the Development Agreement.”

**CITY OF SEASIDE,**  
a Municipal corporation of the State of California

By: \_\_\_\_\_  
\_\_\_\_\_, Mayor

**ATTEST:**

\_\_\_\_\_  
\_\_\_\_\_, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
\_\_\_\_\_, City Attorney

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF MONTEREY

On \_\_\_\_\_ before me, \_\_\_\_\_  
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, and that by his/her/their signature(s) on the instrument the  
person(s), or the entity(ies) 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.

Place Notary Seal Above

\_\_\_\_\_  
Signature of Notary Public

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