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Recording requested by and When recorded mail to:

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

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**Space above reserved for use of county Recorder**

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**Affordable Housing Agreement  
("Campus Town")**

THIS AGREEMENT, is made and entered into this \_\_\_ day of March, 2020 by and between KB Bakewell Seaside Venture II, LLC, a Delaware limited liability company ("Developer"), whose principal offices are located at 5000 Executive Parkway, Suite 125, San Ramon, California 94583, and the City of Seaside, a municipal corporation, and the City of Seaside in its capacity as the successor to the housing rights and obligations of the former Redevelopment Agency of the City of Seaside (collectively "City").

**RECITALS**

WHEREAS, Developer is purchasing, and will be the owner and developer of, approximately 85 acres of real property located in the area between Gigling Road and Lightfighter Drive/Colonel Durham Road (APNs: 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)) that is described in the attached Exhibit A (the "Property"); and

WHEREAS, Developer proposes to develop and construct 1,485 units consisting of single-family dwellings and townhouses, condominium units, apartments and associated improvements, (the "Project"), on the above-described Property; and

WHEREAS, the Project is required to include twenty (20%) percent or 297 affordable housing unit(s) pursuant to the City's Affordable

Housing Ordinance, Chapter 17.32 of the Seaside Municipal Code (the "Affordable Housing Ordinance"); and

WHEREAS, the Developer proposes an alternative pursuant to Seaside Municipal Code ("SMC") 17.32.060 which will construct 225 affordable units (collectively, the "Affordable Units") to be built on-site and off-site and which provides an equivalent of 350 affordable housing units for purposes of the Affordable Housing Ordinance; and

WHEREAS, the City may consider amending the Affordable Housing Ordinance to promote the construction of workforce housing by allowing a residential development to substitute workforce units without recorded income restrictions for moderate income units required by the Affordable Housing Ordinance at the following equivalents: (a) each moderate income unit is equivalent to two units of workforce housing affordable to households earning at or below 120 percent of area median income, and (b) each moderate income unit is equivalent to three units of workforce housing affordable to households earning at or below 150 percent of area median income (the "Workforce Amendment"); and

WHEREAS it is the intention of Developer and the City to set forth in greater detail and specificity within this separate document the terms and conditions for producing, renting and/or selling the Affordable Units in satisfaction of the Affordable Housing Ordinance requirements applicable to the Project; and

WHEREAS, it is the intention of Developer and the City that this Agreement run with the title to the Property and be binding on all parties that have or will acquire any right, title, or interest in said Property, subject to the release provisions herein.

NOW, THEREFORE, in consideration of the foregoing, and of the mutual terms and covenants hereinafter set forth, the parties hereby agree that Developer shall construct and provide Affordable Units as described in this Agreement.

Section 1. Definitions. Depending upon their context, certain words and phrases used in this Agreement shall have the same meaning as the definitions that are included in the Affordable Housing Ordinance. Other words and phrases used in this Agreement shall have the meanings that are defined below:

- 1.1 Intentionally omitted.
- 1.2 "Affordable Housing Ordinance", unless specifically modified by this Agreement, means Chapter 17.32 of the Seaside Municipal Code in

effect as of the date of this Agreement, a copy of which is attached hereto as Exhibit B.

- 1.3 "Affordable Ownership Cost" means the initial sales price that meets the provisions of California Health and Safety Code 50092.5.
- 1.4 "Affordable Unit(s)" means, depending upon the context, either one or more of the affordable ownership or rental housing units, the development, rental and/or sale of which are regulated by this Agreement.
- 1.5 "Agreement" means this Affordable Housing Agreement.
- 1.6 "Bilingual" means either 1) a person who can speak and read both English and Spanish languages, or 2) documents that are written in both English and Spanish, or both.
- 1.7 "Eligible Purchaser" means persons and families of low or moderate income as defined in California Health and Safety Code section 50093.
- 1.8 "Eligible Renter" means persons and families of low or moderate income as defined in California Health and Safety Code section 50093.
- 1.9 "Excess Sales Proceeds" means ninety percent (90%) of the difference between the Maximum Allowable Sales Price and the Unrestricted Fair Market Value for an Affordable Unit that is allowed to be released from its Resale Agreement upon its sale.
- 1.10 "Maximum Allowable Sales Price" means the maximum price at which an Affordable Unit may be sold under the Affordable Housing Ordinance. The Maximum Allowable Sale Price established for each Affordable Unit is the absolute maximum price that the Developer or individual may charge for the unit or may receive as compensation for the unit. The Developer or individual owner may not charge or receive any additional amount or compensation for an Affordable Unit regardless of whether the additional amount is 1) for options, upgrades or additional improvements to the unit, 2) paid through escrow or outside of escrow, 3) paid prior to, after or as part of the purchase escrow or 4) paid in cash or in kind.
- 1.11 "Median Income" means Area Median Income as defined in the California Health and Safety Code Section 50093.
- 1.12 "Moderate Income" means the maximum income for Persons and Families of Low or Moderate Income as defined in the California Health and Safety Code Section 50093.
- 1.13 "Target Income Level(s)" means, depending upon the context, one or more of the three income levels (i.e., Median Income and

Moderate Income) to which the sale of Affordable Units must be targeted.

- 1.14 "Unrestricted Fair Market Value" means the amount that a for-sale Affordable Unit could sell for if its sales price and occupancy were not restricted under the Affordable Housing Ordinance. The City may, at its sole option, require that the Unrestricted Fair Market Value be established through an appraisal by an MAI or other qualified appraiser.

## Section 2. Standards for Inclusionary Units.

- 2.1 Number, Location and Distribution of Affordable Units. The number, location and distribution and phasing of Affordable Units are specified in Exhibit C of this Agreement, are subject to such revisions as may be reasonably approved by the City Manager and City Attorney, so long as the minimum number of Affordable Units does not fall below 297 units (or its corresponding equivalency offset consistent with SMC 17.32.020A.2.). The location of each Affordable Unit within each phase of the Project shall be set forth on the final subdivision map(s) or parcel map(s) filed in the Official Records of Monterey County, California in accordance with the California Subdivision Map Act.
- 2.2 Design. Inclusionary units shall be comparable in infrastructure (including sewer, water, and other utilities), construction quality and exterior design to the market-rate units. Inclusionary units may be smaller in aggregate size and have different interior finishes and features than market-rate units so long as the interior features are durable, of good quality and consistent with contemporary standards for new housing, provided, however, notwithstanding Seaside Municipal Code Section 17.32.040, interior finishes of any off-site inclusionary units constructed pursuant to this Agreement shall be comparable to the interior finishes of the on-site For Rent market rate units. The number of bedrooms in for-sale inclusionary units shall be the same as those in the for-sale market-rate units, except that if the market-rate units provide more than four bedrooms, the inclusionary units need not provide more than four bedrooms. With respect to any building with both for-rent inclusionary units and for-rent market rate units, the number of bedrooms in the for-rent inclusionary units in a building shall be the same as those in the for-rent market rate units in that same building.
- 2.3 Timing of Construction. All required inclusionary units shall be constructed and occupied concurrently with or prior to the construction of the associated market-rate units or development as set forth in Exhibit C. Provided, however, that the last inclusionary unit in the project shall be constructed before or concurrent with the issuance of the certificate of occupancy for the final market-rate single family unit in the project.

2.4 Limits on Occupancy. Developer shall comply with Chapter 17.32.020A.2. In order to encourage the additional development of low and very-low units, Developer shall be entitled to the equivalents set forth in Section 17.32.020A.2.a. and b. of 1.5 units for each low income unit and 2 units for each additional very low unit. The Developer and the City agree that the Affordable Unit phasing plan set forth on Exhibit C substantially complies with Chapter 17.32.020A.2. If the City adopts the Workforce Amendment and it becomes effective on or before the later to occur of the Close of Escrow on Phase 1 pursuant to the Purchase and Sale Agreement and Escrow Instructions by and between the City and KB-Bakewell Seaside Venture, LLC, a California limited liability company dated February 6, 2017 or June 21, 2021, then Developer, at its election in its sole and absolute discretion, shall have the right to substitute workforce units for the moderate income for-sale units required by the Affordable Housing Agreement at the ratios set forth in the Workforce Amendment.

2.5 Duration of Affordability Restriction. Each inclusionary unit produced shall be legally restricted to occupancy by households of the income levels for which the unit was designated, for a minimum of 45 years for “for sale” units and 55 years for “rental” units.

### 3 Compliance Procedures

3.1 Inclusionary Housing Plan. Developer agrees to provide a more specific Inclusionary Housing Plan addressing the requirements of Chapter 17.32.050 B. However, the initial number, size and general location or phasing of very low, low- and moderate as shown on Exhibit C shall constitute the initial Inclusionary Housing Plan for purposes of approval. Minor modifications or refinements of the initial Inclusionary Housing Plan, which do not reduce the number of affordable units below 297, as adjusted for income equivalency or reduce the percentage of affordable units identified in Exhibit C below twenty percent taking into consideration any equivalency offsets, may be made prior to the approval of a Final Map and issuance of any building permit on the Project or Project phase with the reasonable approval of the City Manager and City Attorney.

3.2 Eligibility for Occupying Inclusionary Units. Developer shall comply with the requirements of Sections 17.32.070.A and 17.32.090.A, governing income eligibility of initial occupants, whether rental or ownership. Developer shall retain the services of an independent third-party, which is mutually agreeable to City, to verify income and other eligibility requirements for occupancy of rental and for-sale units. Upon concurrence of the City Manager and City Attorney, the foregoing third-party verifier may be waived if the assignee of Developer has appropriate qualifications to conduct

such eligibility requirements.

- 3.3 Pricing of Affordable Units. Developer shall sell each Affordable "For Sale" Unit for a price that the eligible household will pay an affordable ownership cost as defined in California Health and Safety Code section 50052.5. Each Affordable "For Sale" unit shall be encumbered by a deed restriction in substantially the form of Exhibit E, limiting the transferability, occupancy and resale of such affordable unit in accordance with SMC Section 17.32.080, to be recorded concurrently with the sale of such unit to its initial occupants. Developer shall ensure that "For Rent" Units are provided at an Affordable Rent as that term is defined in California Health and Safety section 50053 and that "For Rent" units are restricted by either deed restrictions or a regulatory agreement for the benefit of the City, requiring ongoing compliance with the requirements of SMC 17.32.090, in substantially the form as Exhibit G.
- 3.4 Recordation and Release of Agreement. This Agreement shall be recorded against the title to the Property prior to the recordation of the Final Subdivision Map(s) for the Project. Upon the recordation of a Final Subdivision Map(s), the City shall release from this Agreement all parcels created by the Final Subdivision Map(s) that are not designated as Affordable Units. At the closing of the sale of any parcel containing an Affordable "For Sale" Unit, the City shall release such parcel from this Agreement, subject to the concurrent recordation of the deed restriction upon such parcel substantially in the form of Exhibit E hereto. At the closing of the sale of any parcel containing an Affordable "For Rent" Unit, the City shall release such parcel from this Agreement upon the issuance of construction financing for the Affordable "For-Rent" Units and subject to the concurrent recordation of a regulatory agreement upon such parcel substantially in the form of Exhibit G hereto.

#### 4 Marketing and Sales of Affordable Units

- 4.1 General Provisions. Except where this Agreement provides otherwise, Developer shall follow the procedures and comply with the requirements of Section 17.32 and 17.33 of the Seaside Municipal Code when marketing, selling and renting the Affordable Units.
- 4.2 Local and Bilingual Marketing. To the extent allowed by applicable law, Developer shall make reasonable efforts to sell Affordable Units to buyers who live or work within the Seaside City Limits. To the extent necessary to ensure compliance with State and Federal fair housing laws, Developer shall employ bilingual staff or a firm with bilingual staff to market the Affordable Units and shall prepare and use bilingual sales and marketing materials for the Affordable Units.

4.3 Verification of Buyer Eligibility. No earlier than Fifteen (15) days prior to close of escrow for the sale of each Affordable "For Sale" Unit, the Developer shall provide or cause to be provided verification to the City (or an update of any previous verification) that the buyer's income does not exceed the maximum allowed for the Target Income Level for that unit. No later than seven (7) days following receipt of Developer's submission of such income verification, the City shall provide written notice to Developer if the City disputes the income-qualification of the proposed buyer.

4.4 Individual Regulatory, Security and Disclosure Documents. Prior to the sale of each Affordable Unit, Developer shall ensure that:

4.4.1 The buyer signs a Buyer's Occupancy and Resale Agreement with Option to Purchase (hereinafter "Resale Agreement"), which is in the form that is attached as Exhibit E to this Agreement. The Resale Agreements shall be recorded against the title to each unit immediately following the liens for any loans that are obtained by the home buyer to finance the purchase of the unit.

4.4.2 The buyer signs a Deed of Trust, which is in the form that is attached as Exhibit F to this Agreement, to secure performance of the buyer's obligations under the Resale Agreement including, should the buyer fail to comply with the terms of the Resale Agreement, payment of Excess Sales Proceeds. The Deed of Trust shall be recorded against the title to the unit following the liens for any loans that are obtained by the home buyer to finance the purchase of the unit.

4.4.3 The buyer signs a Disclosure concerning the Affordable Housing Ordinance, the Resale Agreement and the Deed of Trust, which is in a form that will be provided or reasonably approved by the City Manager and City Attorney.

5 Default. Failure of the Developer to cure any default in the Developer's obligations under the terms of this Agreement within Sixty (60) days after the delivery of a notice of default from the City (or where the default is of the nature which cannot be cured within such Ninety (90)-day period, the failure of the Developer to commence to cure such default within One-Hundred Twenty (120)-day period or to proceed diligently to complete the cure of such a default within One-Hundred Eighty (180) days will constitute a default under the Development Agreement and a failure to satisfy the land use conditions of approval with respect to the Property and the requirements of the Affordable Housing Ordinance; and the City may exercise any and all remedies available to it with respect to the Developer's failure to satisfy the requirements of the Development Agreement and land use conditions

of approval including but not limited to the withholding of building permits for the Market Units within the Subject Property.

5.1 Cross Default. If Developer and the City have entered into a Development Agreement as part of City's approval for this Project, a default under this Agreement shall also constitute a default under the Development Agreement.

6 Other Provisions. The following terms and conditions shall also apply to this Agreement and the development and sale of the Affordable Units that are governed by this Agreement.

6.1 Term of Agreement. This Agreement shall remain in force until the later of (i) six (6) months following the sale of the last Affordable "For Sale" Unit to an income-qualified initial buyer, or (ii) the date of recordation of a Rental Unit Affordable Housing Regulatory Agreement for the apartment building containing the last Affordable "For Rent" Unit.

6.2 Term of Affordability. Each Affordable "For Sale" Unit shall remain affordable for a minimum period of Forty-Five (45) years from the date of its sale by Developer to an income-qualified initial buyer. Each Affordable "For Rent" Unit shall remain affordable for a minimum period of Fifty-Five (55) years from the date of the first occupancy of a Rental Unit after the recordation of the Rental Unit Affordable Housing Regulatory Agreement for the apartment building containing such unit.

6.3 Seaside Municipal Code. Unless the text of this Agreement specifies otherwise, any reference to a Section number is a reference to the Seaside Municipal Code.

6.4 No Joint Venture or Partnership. Nothing contained in this Agreement or any document executed with this Agreement shall be construed as creating a joint venture or partnership between the City and Developer.

6.5 Reporting and Compliance Monitoring. Compliance with the requirements of this Agreement covering the initial sale of the Affordable Units shall be reported to the City by the Developer on a form reasonably acceptable to the City Manager or his designee. Developer shall provide the City with other reports as reasonably required by the City to verify compliance with this Agreement.

6.6 Appointment of Other Agencies. At its sole discretion, City may designate, appoint or contract with any other public agency, for-profit or non-profit organization to perform the City's obligations under this Agreement.

6.7 Burden to Run with Property. The covenants and conditions



herein contained shall apply to and bind the heirs, executors, administrators, successors, transferees, and assignees of all the parties having or acquiring any right, title or interest in or to any part of the Property and shall run with and burden the Property until terminated or released in accordance with the provisions hereof. Prior to the issuance of building permits, the Developer shall expressly make the conditions and covenants contained in this Agreement a part of any deed or other instrument conveying any interest in the Property. Notwithstanding anything to the contrary set forth in this Agreement, individual purchasers of units pursuant to any approved public report in compliance with the California Subdivided Lands Act, and mortgage lenders holding deeds of trust on such individual units after sale to such purchasers, shall not be subject to the terms of this Agreement; and the terms of this Agreement shall be of no further force or effect with respect to such completed unit on the date of the recordation of a deed to the individual purchaser (with respect to Affordable "For Sale" Units) or the date of the recordation of Rental Unit Affordable Housing Regulatory Agreement for the apartment building containing such unit (with respect to Affordable "For Rent" Units).

6.8 Hold Harmless. Developer will indemnify and hold harmless (without limit as to amount) City and its elected officials, officers, employees and agents in their official capacity (hereinafter collectively referred to as "Indemnitees"), and any of them, from and against all loss, all risk of loss and all damage (including expense) sustained or incurred because of or by reason of any and all claims, demands, suits, actions, judgments and executions for damages of any and every kind and by whomever and whenever made or obtained, allegedly caused by, arising out of or relating in any manner to the development of the Property or the sale of units on the Property, and shall protect and defend Indemnities, and any of them with respect thereto; provided, however, that Developer shall not be required to indemnify, defend or hold harmless any of the Indemnitees from claims, losses, damages, costs and expenses related to the negligence or willful misconduct of any of the Indemnitees.

6.9 Insurance. Developer shall obtain, at its expense, comprehensive general liability insurance for the development of the Property naming Indemnities as additional named insured's with aggregate limits of not less than Two Million Dollars (\$2,000,000) for bodily injury and death and property damage, including coverage for contractual liability and products and completed operations purchased by Developer from an insurance company duly licensed to engage in the business of issuing such insurance in the State, with a current Best's Key Rating of not less than A-V, such insurance to be

evidenced by an endorsement which so provides and delivered to the City Clerk prior to the issuance of any building permit for the development of the Property.

- 6.10 Recording of Agreement. The parties hereto shall cause this Agreement to be recorded against the Property in the official Records of the County of Monterey.
- 6.11 Mortgagees Protection. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Agreement shall defeat or render invalid or in any way impair the lien or charge of any permitted deed of trust recorded on the Property provided, however, that any subsequent owner of the Property shall be bound by the covenants, conditions, restrictions, limitations and provisions of this Agreement, whether such owner's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.
- 6.12 Estoppel Certificate. Upon the request of the Developer, the City shall, through the City Manager, provide Developer and any potential lender or purchaser, with an estoppel certificate by which the City confirms that neither Developer nor the City is in default hereof (or setting forth such defaults) and confirming such other factual matters as Developer or such potential lender or purchaser may reasonably request and the addressees of such estoppel certificates shall be entitled to rely upon the information contained therein.
- 6.13 Third Party Beneficiaries. This Agreement is made for the sole protection and benefit of City, and its permitted Successors. No other person shall have the right of action based on any provision of this Agreement.
- 6.14 Warranties. Each party executing this Agreement warrants they have to legal right to bind their respective parties and encumber the land.
- 6.15 Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California. Jurisdiction shall be the County of Monterey.
- 6.16 Partial Invalidity or Unenforceability. If any provision of this Agreement shall be determined by a court to be invalid and/or unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any statute of the State of California which became effective after the effective date of this Agreement, then the remaining provisions of this Agreement shall nevertheless remain in full force and effect.
- 6.17 Notices and Correspondence. Any notices and correspondence

concerning this Agreement shall be sent to the parties at the following addresses:

City  
Clerk  
Community Development Department  
440 Harcourt Ave  
Seaside, CA 93955

Developer  
Contact Name  
CO  
Address  
City, State Zip

Electronic Copy to:  
[cityattorney@ci.seaside.ca.us](mailto:cityattorney@ci.seaside.ca.us)

In Witness Whereof, the parties have executed this Affordable Housing Agreement as of the day and year written above.

KB Bakewell Seaside Venture II, LLC,  
a Delaware limited liability company

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

Name

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

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

City

\_\_\_\_\_  
Craig Malin, City Manager

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

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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

**Exhibits** 

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Exhibit A - Legal Description

Exhibit B – Affordable Housing Ordinance

Exhibit C - Number, Location and Distribution of Affordable Units [KB Spreadsheet]

Exhibit D - Sample Sales Price Calculation

Exhibit E - Form of Resale Agreement

Exhibit F - Form of Deed of Trust

Exhibit G - Form of Rental Unit Affordable Housing Regulatory Agreement

**EXHIBIT A**  
**LEGAL DESCRIPTION**

PARCEL 1:

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° 26' 36"; thence

12) North 87° 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° 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° 30' 36"; thence

15) North 05° 40' 29" West, 18.97 feet to the Point of Beginning. The bearing North 87° 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° 10' 30" West, 158.83 feet; thence leaving said easterly boundary
- 2) North 87° 49' 30" West, 248.60 feet; thence
- 3) South 23° 58' 19" West, 334.69 feet; thence
- 4) North 66° 01' 41" West, 120.00 feet; thence
- 5) North 23° 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° 35' 49"; thence
- 7) South 77° 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 "QuitclaimDeed..." 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)

Exhibit B  
**Affordable Housing Ordinance**

[Attached]



## Chapter 17.32

### AFFORDABLE HOUSING REQUIREMENTS

#### Sections:

- 17.32.010 Purpose
- 17.32.020 Applicability
- 17.32.030 Exemptions
- 17.32.040 Standards for Inclusionary Units
- 17.32.050 Compliance Procedures
- 17.32.060 Alternatives
- 17.32.070 Eligibility for Occupying Inclusionary Units
- 17.32.080 Owner-Occupied Units
- 17.32.090 Rental Units
- 17.32.100 Adjustments, Waivers
- 17.32.110 Enforcement

#### **17.32.010 Purpose**

The purpose of this chapter is to:

- A.** Encourage the development and availability of housing affordable to a broad range of households with varying income levels within City as mandated by Government Code Section 65580 et seq.;
- B.** Offset the demand for affordable housing created by new development, and mitigate environmental and other impacts that accompany new development by protecting the economic diversity of the City's housing stock, reducing traffic, transit and related air quality impacts, promoting jobs/housing balance, and reducing the demands placed on transportation infrastructure in the region;
- C.** Implement the policies of the Housing Element of the General Plan.

#### **17.32.020 Applicability**

**A. Inclusionary requirement.** Each residential development, including a condominium conversion, shall be designed and constructed to provide at least 20 percent of the total units as inclusionary units restricted for occupancy by moderate-, low- or very low-income households. The number of inclusionary units required for a particular project will be determined only once, at the time of Tentative Map or Parcel Map approval, or for developments not processing a map at the time of Use Permit approval, or prior to issuance of a Building Permit. If a change in the subdivision design changes the total number of units, the number of inclusionary units required will be recalculated to coincide with the final approved project.

**1. Calculation.** For purposes of calculating the number of affordable units required by this section, any additional units authorized as a density bonus in compliance with Chapter 17.33 (Affordable Housing Incentives) will not be counted in determining the required number of inclusionary units. In determining the number of whole inclusionary units required, any decimal fraction less than 0.5 shall be rounded down to the nearest whole number, and any decimal fraction of 0.5 or more shall be rounded up to the nearest whole number.

**2. Limitations on occupancy.** The first one-third of the required inclusionary units shall be restricted to occupancy by low-income households. The second third of the inclusionary units shall

be restricted to occupancy by very low-income households. To encourage additional development of low- and very low-income housing, the Council may authorize the use of the following equivalents:

- a. Each very low-income unit is equivalent to two units affordable to moderate-income households; and
- b. Each low-income unit is equivalent to 1.5 units affordable to moderate-income households.

**B. Minimum requirements.** The requirements of this chapter are minimum and maximum requirements, although nothing in this chapter limits the ability of a person to waive their rights or voluntarily undertake greater obligations than those imposed by this chapter.

### **17.32.030 Exemptions**

The requirements of this chapter do not apply to:

- A.** The reconstruction of a structure that has been destroyed by fire, flood, earthquake or other act of nature; provided, that reconstruction does not increase the number of residential units; or
- B.** A development that already has more units that qualify as affordable to moderate-, low- and very low-income households than this chapter requires; or
- C.** Housing constructed by a government agency; or
- D.** A second unit.

### **17.32.040 Standards for Inclusionary Units**

Each inclusionary unit built in compliance with this chapter shall comply with the following standards:

- A. Location of inclusionary units.** Except as otherwise provided in this chapter, inclusionary units shall be dispersed throughout a residential development.
- B. Design.** Inclusionary units shall be comparable in infrastructure (including sewer, water and other utilities), construction quality and exterior design to the market-rate units. Inclusionary units may be smaller in aggregate size and have different interior finishes and features than market-rate units so long as the interior features are durable, of good quality and consistent with contemporary standards for new housing. The number of bedrooms shall be the same as those in the market-rate units, except that if the market-rate units provide more than four bedrooms, the inclusionary units need not provide more than four bedrooms.
- C. Timing of construction.** All required inclusionary units shall be constructed and occupied concurrently with or prior to the construction and occupancy of the associated market-rate units or development. In a phased development, the inclusionary units may be constructed and occupied in proportion to the number of units in each phase of the residential development; provided, that the last inclusionary unit in the project shall be constructed before the last market-rate unit.
- D. Duration of affordability requirement.** Each inclusionary unit produced in compliance with this chapter shall be legally restricted to occupancy by households of the income levels for which the unit was designated, for a minimum of 40 years from the date of first occupancy for rental units, and for a minimum of 40 years from the date of each sale of any affordable unit for owner occupied units. (Additional affordability requirements may apply in compliance with state redevelopment law (Health

and Safety Code Section 33413(c).)

### **17.32.050 Compliance Procedures**

**A. General.** Approval of an inclusionary housing plan and implementation of a City approved inclusionary housing agreement is a condition of any Tentative Map, Parcel Map, Use Permit, or Building Permit for any development for which this chapter applies. This section does not apply to an exempt project.

**B. Inclusionary Housing Plan.** No application for a Tentative Map, Parcel Map, Use Permit, or Building Permit to which this chapter applies shall be deemed complete until an Inclusionary Housing Plan is submitted with the application. At any time during the review process, the City may require from the developer additional information reasonably necessary to clarify and supplement the application or determine the consistency of the proposed Inclusionary Housing Plan with the requirements of this chapter. The Inclusionary Housing Plan must include:

1. The location, structure (attached, semi-attached, or detached), whether for sale or rental, size of the proposed market-rate and inclusionary units, and the basis for calculating the number of inclusionary units;
2. A floor or site plan showing the location of the inclusionary units;
3. The income levels to which each inclusionary unit will be made affordable;
4. For phased development, a phasing plan that provides for the timely development of the number of inclusionary units proportionate to each proposed phase of development as required by Subsection 17.32.040.C (Standards for Inclusionary Units – Timing of construction).
5. Any alternative means designated in Subsection 17.32.060.A (Alternatives – Developer proposal) proposed for the development along with information necessary to support the findings required by Subsection 17.32.060.B (Alternatives – Discretion) for approval of the alternatives; and
6. Any other information reasonably requested by the City to assist with evaluation of the plan in compliance with the standards of this chapter.

**C. Inclusionary Housing Agreement.** The Inclusionary Housing Agreement shall use the form provided by the City. The contents of the agreement may vary depending on the manner in which the provisions of this chapter are satisfied for a particular development. Each Inclusionary Housing Agreement shall include, at minimum, the following:

1. Description of the development, including whether the inclusionary units will be rented or owner-occupied;
2. The number, size and location of very low-, low- or moderate-income units;
3. Provisions and/or documents for resale restrictions, deeds of trust, rights of first refusal or rental restrictions;
4. Provisions for monitoring the ongoing affordability of the units, and the process for qualifying prospective resident households for income eligibility; and
5. Any additional obligations relevant to the compliance with this chapter.

**D. Recording of agreement.** Each Inclusionary Housing Agreement shall be recorded against owner-occupied inclusionary units and residential projects containing rental inclusionary units, as applicable. Additional rental or resale restrictions, deeds of trust, rights of first refusal, and/or other documents acceptable to the City shall also be recorded against owner-occupied inclusionary units. In cases where the requirements of this chapter are satisfied through the development of off-site units, the Inclusionary Housing Agreement shall simultaneously be recorded against the property where the off-site units are to be developed.

#### **17.32.060 Alternatives**

**A. Developer proposal.** A developer may propose an alternative means of compliance in an Inclusionary Housing Plan as provided in Subsection 17.32.050.B as follows:

- 1. Off-site construction.** Units may be constructed off-site if the inclusionary units will be located in an area where, based on the availability of affordable housing, the review authority finds that the need for such units is greater than the need in the area of the proposed development.
- 2. Land dedication.** In lieu of building inclusionary units, a developer may choose to dedicate land to the City suitable for the construction of inclusionary units that the review authority reasonably determines to be of equivalent or greater value than is produced by applying the inclusionary obligation.
- 3. Combination.** The review authority may accept any combination of on-site construction, off-site construction, in-lieu fees and land dedication that at least equal the cost of providing inclusionary units on site as would otherwise be required by this chapter. The value of a proposed land dedication shall be determined by an appraiser appointed by the City.

**B. Discretion.** The review authority may approve, conditionally approve, or reject any alternative proposed by a developer as part of an Inclusionary Housing Plan. Any approval or conditional approval shall be based on a finding that the purposes of this chapter would be better served by implementation of the proposed alternatives. In determining whether the purposes of this chapter would be better served under the proposed alternative, the review authority should consider:

- 1.** Whether implementation of an alternative would overly concentrate inclusionary units within any specific area and, if so, must reject the alternative unless the undesirable concentration of inclusionary units is offset by other identified benefits that flow from implementation of the alternative in issue; and
- 2.** The extent to which other factors affect the feasibility of prompt construction of the inclusionary units on the property, such as costs and delays, the need for an appraisal, site design, zoning, infrastructure, clear title, grading and environmental review.

#### **17.32.070 Eligibility for Occupying Inclusionary Units**

**A. General eligibility.** No household may occupy an inclusionary unit unless the City or its designee has approved the household's eligibility, or has failed to make a determination of eligibility within the time or other limits provided by an Inclusionary Housing Agreement or resale restriction. If the City or its designee maintains a list or identifies eligible households, initial and subsequent occupants will be selected first from the list of identified households, to the maximum extent possible, in compliance with any rules approved by the City.

**B. Occupancy.** A household who occupies a rental inclusionary unit or purchases an inclusionary unit shall occupy the unit as a principal residence.

### **17.32.080 Owner-Occupied Units**

**A. Initial sales price.** The initial sales price of the inclusionary unit must be set so that the eligible household will pay an affordable ownership cost.

**B. Transfer.** Renewed restrictions will be entered into on each change of ownership, with a 40-year renewal term, upon transfer of an owner-occupied inclusionary unit prior to the expiration of the 40-year affordability period.

**C. Resale.** The maximum sales price permitted on resale of an inclusionary unit designated for owner occupancy shall be the lower of:

1. Fair market value; or
2. The seller's lawful purchase price, increased by the lesser of:
  - a. The rate of increase of area median income during the seller's ownership; or
  - b. The rate at which the consumer price index increased during the seller's ownership.

To the extent authorized in any resale restrictions or operative Inclusionary Housing Agreement, sellers may recover at time of sale the market value of capital improvements made by the seller and the seller's necessary and usual costs of sale, and may authorize an increase in the maximum allowable sales price to achieve such recovery.

**D. Change in title.** The following requirements apply in the event of a change in circumstance, including death, marriage, and divorce, that may occur prior to the expiration of the required affordability period:

1. Upon the death of one of the owners, title in the property may transfer to the surviving joint tenant, tenant in common, or community property holder, without respect to the income eligibility of the household.
2. Upon the death of a sole owner or all owners, and inheritance of the inclusionary unit by a non-income-eligible inheritee, there will be a one year compassion period between the time when the estate is settled and the time when the property must be sold to an income-eligible household. A non-eligible inheritee may request and the Council may waive this requirement on the basis of hardships specified by the Council. Alternatively, the Council may authorize their continued ownership with the unit rented at an affordable rate to an eligible household.

### **17.32.090 Rental Units**

**A. Eligibility of tenants.** The owner of rental inclusionary units shall be responsible for certifying the income of the tenant to the Director at the time of initial rental, and annually thereafter. This shall be completed by viewing acceptable documentation, including income tax statements or a W-2 for the previous calendar year, and submitting, on a form approved by the City, a certification that the tenant qualifies as an income eligible household.

**B. Selection of tenants.** The owner of rental inclusionary units shall fill vacant units by either:

1. Selecting income-eligible households themselves as long as the owner complies with the publication requirements in Subsection C of this section (Publication of availability of units).
2. Selecting income-eligible households from the City's Section 8 Housing Choice Voucher

Waiting List available from the Department.

**C. Publication of availability of units.** Whenever an inclusionary unit becomes available, the owner shall publish notices of the availability of the inclusionary unit in newspapers circulated widely in the City, including newspapers that reach minority communities. The notice should briefly explain what inclusionary housing is, state the applicable income requirements, indicate where applications are available, state when the application period opens and closes, and provide a telephone number for questions. Applications may require the name, address, and telephone number of the applicant; the number of persons to occupy the household; and any other information relevant to determine whether the applicant is eligible to occupy an inclusionary unit. The owner shall submit proof of publication to the Director.

**D. Notification to City.** Whenever an inclusionary unit becomes available, the owner shall immediately notify the Director in writing.

**E. Subsequent rental to income-eligible tenant.** The owner of rental inclusionary units shall apply the same rental terms and conditions to tenants of inclusionary units as are applied to all other tenants, except as otherwise required to comply with this chapter (i.e., rent levels, occupancy restrictions, and income requirements) and/or government subsidy programs. Discrimination based on subsidies received by the prospective tenant is prohibited.

**F. Changes in tenant income.** If after moving into an inclusionary unit the tenant's income eventually exceeds the income limit for that unit, the tenant may remain in the unit (the "original unit") as long as his/her income does not exceed 140 percent of the income limit for the original unit. Once the tenant's income exceeds 140 percent of the income limit for the original unit, the following shall apply:

1. If the tenant's income does not exceed the income limits of other inclusionary units in the residential development, the owner may, at the owner's option, allow the tenant to remain in the original unit at the tenant's new applicable affordable housing cost, as long as the next vacant unit is redesignated for the same lower-income category applicable to the original unit. If the owner does not want to redesignate the next vacant unit, the tenant shall be given one year's notice to vacate the unit. If during the year, an inclusionary unit becomes available and the tenant meets the income eligibility for that unit, the owner shall provide the tenant with the opportunity to submit an application for that unit.

2. If there are no units designated for a higher income category within the residential development that may be substituted for the original unit, the tenant shall be given one year's notice to vacate the unit. If within that year, another unit in the residential development is vacated, the owner may, at the owner's option, allow the tenant to remain in the original unit and raise the tenant's rent to market rate and designate the newly vacated unit for the original unit at the applicable affordable housing cost. The newly vacated unit must be comparable in size (i.e., number of bedrooms, bathrooms, square footage, etc.) and location (i.e., same floor, same view, etc.) as the original unit.

### **17.32.100 Adjustments, Waivers**

The requirements of this chapter may be adjusted or waived in extreme cases if the developer demonstrates to the Council by the presentation of substantial evidence that applying the requirements of this chapter would take property in violation of the United States or California constitutions.

**A. Timing.** To receive an adjustment or waiver, the developer must make a showing when applying

for a first approval for the residential development, and/or as part of any appeal that the City provides as part of the process for the first approval.

**B. Considerations.** In making a determination on an application to adjust or waive the requirements of this chapter, the Council may assume each of the following when applicable:

1. That the developer is subject to the inclusionary housing requirement or in-lieu fee;
2. The extent to which the developer will benefit from inclusionary incentives;
3. That the developer will be obligated to provide the most economical inclusionary units feasible in terms of construction, design, location and tenure; and
4. That the developer is likely to obtain other housing subsidies where such funds are reasonably available.

**C. Decision and further appeal.** The Council, upon legal advice provided by or at the behest of the City Attorney, will determine the application and issue a written decision.

**D. Modification of plan.** If the Council, upon legal advice provided by or at the behest of the City Attorney, determines that the application of the provisions of this chapter lacks a reasonable relationship between the impact of a proposed residential project and the requirements of this chapter, or that applying the requirement of this chapter would take property in violation of the United States or California constitutions, the inclusionary housing plan shall be modified, adjusted or waived to reduce the obligations under this chapter to the extent necessary to avoid an unconstitutional result. If the Council determines no violation of the United States or California constitutions would occur through application of this chapter, the requirements of this chapter remain applicable.

### **17.32.110 Enforcement**

**A. Penalty for violation.** It shall be a misdemeanor to violate any provision of this chapter. Without limiting the generality of the foregoing, it shall also be a misdemeanor for any person to sell or rent to another person an affordable unit under this chapter at a price or rent exceeding the maximum allowed under this chapter or to sell or rent an affordable unit to a household not qualified under this chapter. It shall further be a misdemeanor for any person to provide false or materially incomplete information to the City or to a seller or lessor of an inclusionary unit to obtain occupancy of housing for which he or she is not eligible.

**B. Legal action.** The City may institute any appropriate legal actions or proceedings necessary to ensure compliance with this chapter, including:

1. Actions to revoke, deny or suspend any permit, including a Building Permit, Certificate of Occupancy, or discretionary approval;
2. Actions to recover from any violator of this chapter civil fines, restitution to prevent unjust enrichment from a violation of this chapter, and/or enforcement costs, including attorneys fees;
3. Eviction or foreclosure; and
4. Any other appropriate action for injunctive relief or damages. Failure of any official or agency to fulfill the requirements of this chapter shall not excuse any person, owner, household or other party from the requirements of this chapter.

Exhibit C

**Number, Location and Distribution of  
Affordable Units Number of Affordable Units**



Phase	Location	Housing Type	Rent/Sale/Fee	Total Units	Inclusionary Units	Income Level	X	Equivalent Inclusionary Units (EIUs)	Comments
I	Offsite (TBD)	Apartments	Rent	0	21	VLow	2	42	KB-Bakewell will build all offsite units for the land owner that agrees to accommodate the units on their property.
I	Offsite (TBD)	Apt/Condo	For Sale	0	24	Low	2	48	
I	Onsite - Phase I	THs	For Sale	117	4	Mod	1	4	Located in the Phase I Dev Area
I	Onsite - Phase I	SFDs-Alley	For Sale	126	0	Mod	1	0	
II	Onsite - Phase II	Apartments	Rent	100	33	Vlow	2	66	KB-Bakewell Land Dedication of 1-2 acres site to a non-profit affordable housing group. Potential for Senior Affordable.
II	Onsite - Phase II	Apartments	Rent		34	Low	1.5	51	
II	Onsite - Phase II	Apartments	Rent		33	Mod	1	33	
II	Onsite - Phase II	THs	For Sale	111	10	Mod	1	10	Located in the Phase II Dev Area
II	Onsite - Phase II	SFDs-Alley	For Sale	483	6	Mod	1	6	
III	Onsite - Phase III	Apartments	Rent	548	20	Vlow	2	40	Market Rate Apartments with affordable component as noted
III	Onsite - Phase III	Apartments	Rent	0	20	Low	1.5	30	
III	Onsite - Phase III	Apartments	Rent	0	20	Mod	1	20	
					0				
					0				
<b>Totals</b>				1485	225	15.2%	1.56	350	23.6%

VLow	74	5.0%	148	10.0%
Low	78	5.3%	129	8.7%
Mod	73	4.9%	73	4.9%
	225	15.2%	350	23.6%

Additional Requirements:

- 1) Allow Equivalent Inclusionary Units at the following Ratios: Vlow 2:1, Low 1.5:1, Mod 1:1
- 2) All City Fees are waived for all affordable units (Onsite & Offsite) except time for building inspectors paid at cost.
- 3) Allow provisions for density bonus per state law.

## EXHIBIT D

### Sample Sales Price Calculation for a Two-Bedroom Median Income Unit

The Maximum Allowable Sales Price for Affordable "For Sale" Units shall be calculated using the procedures and formulas described below and in California Health and Safety Code Section 50052.5. Income limits for the target affordability level shall be as identified by the California Housing and Community Development Department for Monterey County as adjusted for affordability level and household size. The prevailing interest rate used in these calculations shall be determined by the City in its reasonable discretion, based on available interest rates from residential mortgage lenders active in Monterey County, for a fully amortizing fixed-rate 30-year mortgage loan.

1. Determine the annual Seaside Median Income Limit for a household size that is one person larger than the number of bedrooms in the affordable unit;
2. Multiply the income limit determined in the previous step by thirty percent (30%) to obtain an annual housing allowance of thirty percent (30%) of income;
3. Divide the annual housing allowance determined in the previous step by twelve (12) to determine the monthly housing allowance;
4. Using a standard amortization table or formula, calculate the loan amount that can be repaid over thirty (30) years with equal monthly payments equal to the monthly housing allowance using the prevailing interest rate for thirty (30) years, and assuming a fully amortized fixed rate mortgage; and
5. Divide the loan amount calculated in the previous step by .95 to determine the Maximum Allowable Sales Price assuming a five percent (5%) down payment.

The following calculations are for a two-bedroom unit that is affordable at the Median Income Level based on the Income Limits adopted by the State Housing and Community Development for 2019 (which are revised annually), and the Prevailing Interest Rate adopted by the City Manager on [DATE].

Step 1	Median Income Limit for a 3 person household	\$66,700
Step 2	30% of the Income Limit determined in Step 1	\$20,010
Step 3	One twelfth of the amount calculated in Step 2	\$1667.50
Step 4	Amount that can be financed with payment calculated in Step 3 with a 30 year fixed-rate loan at a ____% interest rate (the adopted rate) [NOTE: 6.75% is not the correct interest rate as of the date of this mark-up. The rate is below 4% today]	\$
Step 5	Loan amount in Step 4 divided by 95%	\$

The Maximum Allowable Sales Price Calculation for resales by individual home owners who purchased an affordable unit shall be the above calculation using the income limits at the time of sale.

## Sample Rental Price Calculation for a Two-Bedroom Median Income Unit

The Maximum Allowable Rental for Affordable Units shall be calculated using the procedures and formulas described below and in the California Health and Safety Code Chapter 50052.5 and 50053; provided, however, in the case of Affordable "For-Rent" Units that are financed with low-income housing tax credits under Section 42 of the Internal Revenue Code ("Tax Credits"), as administered pursuant to the regulations of the California Tax Credit Allocation Committee ("CTCAC"), then the Maximum Allowable Rental for such Affordable Units shall be calculated using the procedures and formulas described in the CTCAC regulations and documents in lieu of California Health and Safety Code Chapter 50052.5 and 50053, and the procedures and formulas set forth below shall be updated accordingly.

1. Determine the annual Seaside Income Limit for the target level of affordability for a household size that is one person larger than the number of bedrooms in the affordable unit;
6. Multiply the income limit determined in the previous step by thirty percent (30%) to obtain an annual housing allowance of thirty percent (30%) of income;
7. Divide the annual housing allowance determined in the previous step by twelve (12) to determine the monthly housing allowance;

The following calculations are for a two-bedroom unit that is affordable at the **Median** Income Level based on the Income Limits adopted in 2019 by the State Housing and Community Department.

Step 1	Median Income Limit for a 3 person household	\$66,700
Step 2	30% of the Income Limit determined in Step 1	\$20,010
Step 3	One twelfth of the amount calculated in Step 2	\$1,667.5

**Exhibit E [ Under  
Review]**

**Form of Resale  
Agreement**

Complimentary Recording Requested  
Pursuant To Government Code  
Section 6103 and 27383  
When Recorded Mail To:  
City of Seaside  
440 Harcourt Avenue  
Seaside, CA 93955  
Attn: Affordable Housing  
Program

**BUYER'S OCCUPANCY AND RESALE  
AGREEMENT WITH OPTION TO  
PURCHASE**

**CITY OF SEASIDE INCLUSIONARY HOUSING PROGRAM**

Owner: \_\_\_\_\_ Address of Home: \_\_\_\_\_

Development:                      «Subdivision»                      APN:

Income Category of Home:

Number of Bedrooms: \_\_\_\_\_ Original

Sales Price: \_\_\_\_\_

This Buyer's Occupancy and Resale Agreement with Option to Purchase (the "Agreement") is entered into as on \_\_\_\_\_, 20\_\_, by and between the City of Seaside, a Municipal Corporation, and the City of Seaside in its capacity as Successor for Housing Functions of its dissolved Redevelopment Agency (the "City") and----- (the "Owner").

## RECITALS

A. Pursuant to Chapter 17.32 of the Seaside Municipal Code, a portion of all new housing constructed in the City of Seaside is required to be affordable for median to above moderate income households.

B. «Developer\_Name» (the "Developer") entered into an Affordable Housing Agreement dated «AHO\_Agreement\_Date». Pursuant to the Affordable Housing Agreement, the Developer agreed to sell «Number\_of\_units» homes to very low, low moderate, or moderate income households at affordable prices (the "Affordable Units").

C. Owner intends to purchase the property located at in the City of Seaside, and more particularly described in Exhibit A attached hereto and incorporated herein (the "Home"). The Home is one of the Affordable Units. The Home has been designated by the City and the Developer as an \_\_\_\_\_ unit.

D. Pursuant to the Affordable Housing Ordinance and the Affordable Housing Agreement, the Developer and the City are required to ensure the continued affordability of the Home as an Affordable Unit, and the City therefore requires the Owner to execute this Agreement as a condition of the Owner's purchase of the Home. The Owner has agreed to execute and comply with this Agreement in consideration of the Developer's agreement to sell the Home to the Owner at an affordable price, which is below the fair market value of the Home.

E. The purpose of this Agreement is to place resale controls on the Home and to require the payment of any excess proceeds of sale to the City. This Agreement also provides the City an option to purchase the Home at a restricted price, given in consideration of the economic benefits to the Owner resulting from purchase of the Home at a below market price under the City's Affordable Housing Program.

F. The Owner is receiving a first mortgage loan (the "First Mortgage Loan") from (the "First Lender"). The First Mortgage Loan is secured by a deed of trust executed by the Owner in favor of First Lender and recorded in the County of Monterey (the "First Mortgage Deed of Trust").

G. This Agreement shall be secured by a deed of trust on the Home (the "City Deed of Trust"). This Agreement and the City Deed of Trust shall be subordinate to the lien of the First Mortgage Deed of Trust.

NOW, THEREFORE, in consideration of the benefits received by the Owner and the City hereunder, the Owner and the City agree, as follows:

I. DEFINITIONS

The following terms are specially defined for this Agreement and their definitions can be found in the sections indicated below:

- A. "Affordable Housing Requirement" - Recital A
- B. "Agreement" - First sentence of the Agreement on page 1
- C. "Affordable Price" - Section 10B
- D. "City" - First sentence of the Agreement on page 1
- E. "City Deed of Trust" - Recital G
- F. "City Option" - Section 12A
- G. "City Option Price" - Section 12B
- H. "Eligible Purchaser" - Section 11B
- I. "Excess Sales Proceeds" - Section 14
- J. "Unrestricted Fair Market Value" - Section 10C
- K. "First City Response Notice" - Section 8
- L. "First Lender" - Recital F
- M. "First Mortgage Deed of Trust" - Recital F
- N. "First Mortgage Loan" - Recital F
- O. "Home" - Recital C and Section 2
- P. "Housing Price Index" - Section 10A
- Q. "Indexed Value" - Section 10A
- R. "Market Purchaser" - Section 14
- S. "Marketing Period" - Section 11A
- T. "Maximum Allowable Sales Price" - Section 10
- U. "Owner" - First sentence of the Agreement on Page 1
- V. "Owner's Notice of Failure to Locate Eligible Purchaser" - Section 11E

W. "Owner's Notice of Intent to Sell" - Section 7

X. "Second City Response Notice" - Section 11E

Y. "Transfer" - Section 6

2. DESCRIPTION OF PROPERTY

This Agreement concerns the real property in the City of Seaside, State of California with the street address set forth on page 1 of this Agreement, which is more fully described in Exhibit A attached hereto and incorporated in this Agreement by reference (the "Home").

3. OWNER CERTIFICATIONS: OWNER OCCUPANCY REQUIREMENT

The Owner certifies that the financial and other information previously provided in order to qualify to purchase the Home is true and correct as of the date first written above. The Owner shall occupy the Home as the Owner's principal place of residence. The Owner shall be considered as occupying the Home if the Owner is living in the unit for at least ten (10) months out of each calendar year. The Owner shall provide an annual written certification to the City that the Owner is occupying the Home as his or her principal place of residence.

4. LEASING OF HOME

The Owner shall not lease the Home to another party. Any lease in violation of this Agreement is prohibited, and shall be a default under this Agreement and the City Deed of Trust.

5. MAINTENANCE AND INSURANCE REQUIREMENTS

A. The Owner shall maintain the Home, including landscaping, in good repair and in a neat, clean and orderly condition and will not commit waste or permit deterioration of the Home.

B. The Owner shall maintain a standard all risk property insurance policy equal to the replacement value of the Home (adjusted every five (5) years by appraisal, if requested by City), naming the City as an additional insured. Additional insurance requirements are set forth in Section 5 of the City Deed of Trust.

6. RESTRICTIONS ON RESALE OF THE HOME

Any Transfer of the Home will be subject to the provisions of this Agreement including, without limitation, the City Option described in Section 12 below. "Transfer" means any sale, assignment or transfer, voluntary or involuntary, of any interest in the Home,



including, but not limited to, a fee simple interest, a joint tenancy interest, a life estate, a leasehold interest, or an interest evidenced by a land contract by which possession of the Home is transferred and Owner retains title. Any Transfer without satisfaction of the provisions of this Agreement is prohibited. Transfers by devise or inheritance to an existing spouse or domestic partner, or a spouse, as part of a dissolution proceeding, or in connection with marriage shall not be considered a Transfer for the purposes of this Agreement.

7. NOTICE OF INTENDED TRANSFER; PREPARATION OF HOME FOR SALE

A. In the event the Owner intends to Transfer or vacate the Home, the Owner shall promptly give the City written notice of such intent (the "Owner's Notice of Intent to Sell"). The Owner's Notice of Intent to Sell shall be sent to the City by certified mail, return receipt requested at the address provided in Section 31 of this Agreement. The Owner's Notice of Intent to Sell shall include the information necessary for the City to determine the Maximum Allowable Sales Price of the Home, including the following information:

- (1) the address of the Property;
- (2) the date of purchase of the Home by the Owner;
- (3) the purchase price of the Home paid by the Owner at the time of his/her purchase;
- (4) a copy of the HUD-1 Settlement Statement or equivalent document from the close of escrow on the Owner's purchase of the Home;
- (5) the date on which Owner intends to vacate Home;
- (6) the date Home will be placed on the market; and
- (7) the name and phone number of the person to contact to schedule inspection of the Home by the City.

B. Following delivery to the City of the Owner's Notice of Intent to Sell, the Owner shall prepare the Home for sale, as follows:

- (1) within thirty (30) days of delivery of the Owner's Notice of Intent to Sell, the Owner shall obtain and deliver to the City a current written report of inspection of the Home by a licensed structural pest control operator;
- (2) within the sooner of (a) XXXX (##) days from the

date of delivery of the Owner's Notice of Intent to Sell, or (b) prior to close of escrow on the Transfer, the Owner shall repair all damage noted in the pest report including damage caused by infestation or infection by wood-destroying pests;

(3) within XXX (##) business days of the date of the Owner's Notice of Intent to Sell, the Owner shall allow the City, or its designee, to inspect the Home to determine its physical condition;

(4) if the Home is vacant, the Owner shall maintain utility connections until the close of escrow on the Transfer;

8. CITY RESPONSE TO OWNER'S NOTICE OF INTENT TO SELL

The City shall respond in writing (the "First City Response Notice") to the Owner's Notice of Intent to Sell within XXX (##) business days of City receipt of a complete Owner's Notice of Intent to Sell that includes all information required under Section 7 above and access to inspect the Home as required under Section XX (#)(#) above. The First City Response Notice shall inform the Owner of the following information: (1) the maximum qualifying income for an Eligible Purchaser; (2) the certifications required of an Eligible Purchaser; and (3) the Maximum Allowable Sales Price the Owner may receive for the Home, calculated by the City pursuant to Section 10 below.

9. OWNER ACKNOWLEDGMENT OF CITY RESPONSE NOTICE

No later than seven (7) days following the date of the First City Response Notice, the Owner shall acknowledge in writing to the City that he/she has received the City Response Notice and still intends to Transfer the Home.

10. DETERMINATION OF MAXIMUM ALLOWABLE SALES PRICE FOR RESTRICTED SALE

If the Owner sells to an Eligible Purchaser, the maximum sales price (the "Maximum Allowable Sales Price") that the Owner shall receive from the Eligible Purchaser for purchase of the Home shall be the greater of the Indexed Value or the Affordable Price, but in no event greater than the Unrestricted Fair Market Value.

A. Indexed Value. The Indexed Value of the Home means the sales price of the Home at the time of purchase by the Owner, as set forth on page 1 of this Agreement, increased by fifty percent (50%) of the annual percentage of increased value in the Housing Price Index from the date of the original purchase of the Home by the Owner to the date of receipt by the City of the Owner's Notice of Intent to Transfer, and, where applicable, adjusted pursuant to

subsection (2) below to reflect the cost of deferred maintenance. "Housing Price Index" shall mean the Seaside Metropolitan Statistical Area Housing Price Index as published from time to time by the office of Federal Housing Enterprise Oversight or, if such index is no longer published, a comparable index designated by the City of Seaside.

B. Affordable Price. The Affordable Price of the Home means the affordable price for a Very Low Income Home, Low Income Home, or Moderate Income Home, (as applicable, pursuant to the designation of the Home on page 1 of this Agreement), pursuant to Section Section 50093 of the California Health and Safety Code.

C. Unrestricted Fair Market Value. In certain circumstances it may be necessary to determine the fair market value of the Home (the "Unrestricted Fair Market Value"). These circumstances include: (1) where the parties wish to determine if the Maximum Allowable Sales Price exceeds the Unrestricted Fair Market Value in order to determine the Maximum Allowable Sales Price pursuant to Section 10; (2) where the Owner is selling the Home to a Market Purchaser at an unrestricted price pursuant to Section 13; and (3) where the Owner wishes to refinance the First Mortgage Loan as described in Section 24 below. If it is necessary to determine the Unrestricted Fair Market Value of the Home, it shall be determined by a certified MAI or other qualified real estate appraiser approved in advance by the City. If possible, the appraisal shall be based upon the sales prices of comparable properties sold in the market area during the preceding three (3)-month period. Nothing in this section shall preclude the Owner and the City from establishing the Unrestricted Fair Market Value of the Home by mutual agreement in lieu of an appraisal pursuant to this section.

D. Holdback for Damage Repair Cost. If the City finds that the Owner, through neglect, abuse, or lack of adequate maintenance, has damaged the Home, the City may require that repairs be made at the Owner's cost prior to sale or through the escrow for the sale of the Home.

## 11. SALE OF HOME TO ELIGIBLE PURCHASER AT RESTRICTED PRICE

Following receipt of the First City Response Notice notifying the Owner of the Maximum Allowable Sales Price, the Owner may proceed to sell the Home in compliance with the following requirements:

A. Marketing Period. The Owner shall have two hundred forty-five (245) days from the date of the First City Response Notice (the "Marketing Period") to market the Home and find an Eligible Purchaser. During the Marketing Period, the Owner shall use bona

in good faith efforts to sell the Home to an Eligible Purchaser in compliance with this Section 11, including listing the Home on the Multiple Listing Service, keeping the Home in an orderly condition, making the Home available to show to agents and prospective buyers, and providing buyers with Eligible Purchaser requirements, including income qualifications and the City's form of disclosure statement summarizing the terms of the buyer's resale agreement. A proposed purchaser ("Proposed Purchaser"), who the Owner believes will qualify as an Eligible Purchaser, shall be referred to the City for an eligibility determination.

B. Eligible Purchaser. A Proposed Purchaser shall qualify as an "Eligible Purchaser" if he or she meets the following requirements, as determined by the City:

(2) Intent to Owner Occupy. The Proposed Purchaser shall certify that he or she will occupy the Home as his or her principal place of residence throughout his or her ownership.

(2) Agreement to Sign Buyer's Resale Agreement and to Cooperate with City. The Proposed Purchaser shall agree to sign a buyer's resale and occupancy agreement with option to purchase restricting future resale of the Home and shall agree to cooperate fully with the City in promptly providing all information requested by the City to assist the City in monitoring the Proposed Purchaser's compliance with the buyer's resale and occupancy agreement with option to purchase.

(3) Income Eligibility. The combined maximum income for all household members of the Proposed Purchaser shall not exceed the income level designated by the City in the First City Response Notice.

C. Maximum Allowable Sales Price and Closing Costs. The purchase price for the sale of the Home by the Owner to the Eligible Purchaser shall not exceed the Maximum Allowable Sales Price calculated by the City pursuant to Section 17.33.070 (B) of the Affordable Housing Ordinance and Section 10 above, as set forth in the First City Response Notice. The Maximum Allowable Sales Price shall not include closing costs paid by the Eligible Purchaser. The closing costs paid by the Eligible Purchaser shall not exceed reasonable and customary buyers' closing costs in the County of Monterey.

D. Disclosure and Submittals. The Owner and the Proposed Purchaser shall provide the following information and documents to the City:

(2) The name, address and telephone number in writing of the Proposed Purchaser.

(3) A signed financial statement of the Proposed Purchaser in a form acceptable to the City and any other supporting documentation requested by the City. The financial information shall be used by the City to determine the income eligibility of the Proposed Purchaser.

(4) The proposed sales contract and all other related documents which shall set forth all the terms of the sale of the Home. Said documents shall include at least the following terms: (a) the sales price; and (b) the price to be paid by the Proposed Purchaser for the Owner's personal property, if any, for the services of the Owner, if any, and any credits, allowances or other consideration, if any.

(5) A written certification, from the Owner and the Proposed Purchaser in a form acceptable to the City that the sale shall be closed in accordance with the terms of the sales contract and other documents submitted to and approved by the City. The certification shall also provide that the Proposed Purchaser or any other party has not paid and will not pay to the Owner, and the Owner has not received and will not receive from the Proposed Purchaser or any other party, money or other consideration, including personal property, in addition to what is set forth in the sales contract and documents submitted to the City. The written certification shall also include a provision that in the event a Transfer is made in violation of the terms of this Agreement or false or misleading statements are made in any documents or certification submitted to the City, the City shall have the right to foreclose on the Home or file an action at law or in equity as may be appropriate. In any event, any costs, liabilities or obligations incurred by the Owner and the Proposed Purchaser for the return of any moneys paid or received in violation of this Agreement or for any of the Owner's and/or the Proposed Purchaser's costs and legal expenses, shall be borne by the Owner and/or the Proposed Purchaser and they shall hold the City and its designee harmless and reimburse the City's and its designee's expenses, legal fees and costs for any action they reasonably take in good faith in enforcing the terms of this Agreement.

(6) An executed buyer's resale and occupancy agreement and option to purchase and an executed deed of trust from the Proposed Purchaser in forms provided by the City. The recordation of the new deed of trust and buyer's resale and occupancy agreement and option to purchase shall be a condition of the City's approval of the proposed sale.

(7) The name of the title company escrow holder for the sale of the Home, the escrow number, and name, address, and phone number of the escrow officer.

(8) Upon the close of the proposed sale, certified copies of the recorded City deed of trust and buyer's resale agreement, a copy of the final sales contract, settlement statement, escrow instructions, and any other documents which the City may reasonably request.

E. Failure To Locate Eligible Purchaser: Notice to City. If, despite bona fide good faith marketing efforts, the Owner is unable to locate an Eligible Purchaser during the Marketing Period and any extensions to the Marketing Period granted by the City, the Owner shall provide written notice to the City of this fact (the "Owner's Notice of Failure to Locate Eligible Purchaser"). Within thirty (30) days of receipt of the Owner's Notice of Failure to Locate Eligible Purchaser, the City shall provide a second response notice to the Owner (the "Second City Response Notice") stating either (1) that the City will exercise the City Option to purchase the Home pursuant to Section 12 below, or (2) that the Owner may Transfer the Home to a person of the Owner's choosing (a "Market Purchaser") who is not an Eligible Purchaser, at an unrestricted price (supported by an MAI or other qualified appraisal), but shall pay all Excess Sales Proceeds to the City as set forth in Section 13 below.

## 12. CITY PURCHASE OPTION

A. Exercise of Option. If the Owner fails to sell the Home to an Eligible Purchaser at or below the Maximum Allowable Sales Price, the City shall then have the option to purchase the Home (the "City Option") for the City Option Purchase Price, as defined below. The City Option may be exercised by the City in the Second City Response Notice (as described in Section 11E above), to be sent by the City to the Owner within thirty (30) days of receipt of the Owner's Notice of Failure to Locate Eligible Purchaser. If the Second City Response Notice states that the City will exercise the City Option, the City shall purchase the Home within seventy-five (75) days of the date of the Second City Response Notice. The City may, instead of purchasing the Home itself, assign its right to purchase the Home pursuant to the City Option to another public agency, a nonprofit corporation, or to an Eligible Purchaser. In the event of exercise of the City Option and purchase of the Home by the City or its designee, the Owner shall permit a final walk-through of the Home by the City in the final three (3) days prior to close of escrow on the Transfer.

B. City Option Price. If the City exercises the City Option, the purchase price to be paid by the City (the "City Option Purchase

Price") shall be the highest of the following: (1) the outstanding principal balance of the First Mortgage Loan; (2) the total of the outstanding principal balance of the First Mortgage Loan and any purchase money second mortgage loan provided by a governmental body; or (3) the appraised value of the Home with the affordability covenants intact, as determined by an appraiser selected by the City and approved by the Owner, and who employs standard appraisal practices.

### 13. UNRESTRICTED SALES

If the Second City Response Notice states that the City will not exercise the City Option and that the Owner may proceed to Transfer the Home to a person of the Owner's choosing (a "Market Purchaser") who is not an Eligible Purchaser, at an unrestricted price (supported by an MAI or other qualified appraisal), the Owner may proceed to do so, but the Owner shall pay all Excess Sales Proceeds to the City as set forth in Section 14 below. If the Owner Transfers the Home pursuant to this Section 13, the purchaser shall not be required to execute a buyer's resale and occupancy agreement with option to purchase, and the City shall reconvey the liens of this Agreement and the City Deed of Trust from the Home, provided that the Owner pays the Excess Sales Proceeds to the City pursuant to Section 14 below. The Owner shall provide the City with the following documentation associated with such a Transfer:

(1) The name and address of the purchaser;

(2) The final sales contract and all other related documents, which shall set forth all the terms of the sale of the Home. Said documents shall include at least the following terms: (a) the sales price; and (b) the price to be paid by the Market Purchaser for the Owner's personal property, if any, for the services of the Owner, if any, and any credits, allowances or other consideration, if any.

(3) A written certification, from the Owner and the Market Purchaser in a form acceptable to the City that the sale shall be closed in accordance with the terms of the sales contract and other documents submitted to and approved by the City. The certification shall also provide that the Market Purchaser or any other party has not paid and will not pay to the Owner, and the Owner has not received and will not receive from the Market Purchaser or any other party, money or other consideration, including personal property, in addition to what is set forth in the sales contract and documents submitted to the City. The written certification shall also include a provision that in the event a Transfer is made in violation of the terms of this Agreement or false or misleading statements are made in any documents or

certification submitted to the City, the City shall have the right to foreclose on the Home or file an action at law or in equity as may be appropriate. In any event, any costs, liabilities or obligations incurred by the Owner and the Market Purchaser for the return of any moneys paid or received in violation of this Agreement or for any costs and legal expenses, shall be borne by the Owner and/or the Market Purchaser and they shall hold the City and its designee harmless and reimburse their expenses, legal fees and costs for any action they reasonably take in good faith in enforcing the terms of this Agreement.

(4) A copy of the MAI or other qualified appraisal for the Home.

(5) Upon the close of the proposed sale, a copy of the final sales contract, settlement statement, escrow instructions, and any other documents that the City may reasonably request.

#### 14. PAYMENT TO CITY OF EXCESS SALES PROCEEDS

If the Owner Transfers the Home at an unrestricted price pursuant to Section 13 above, or if the Owner makes a Transfer in violation of this Agreement, the Owner shall pay the Excess Sales Proceeds to the City. For purposes of this Agreement, "Excess Sales Proceeds" shall mean ninety percent (90%) of the amount by which the Unrestricted Fair Market Value for the Home exceeds the Maximum Allowable Sales Price for the Home (in the amount that was stated in the First City Response Notice). This amount shall be a debt of the Owner to the City, secured by the City Deed of Trust. The Owner acknowledges that the City shall have no obligation to cause reconveyance of this Agreement or of the City Deed of Trust until the Excess Sales Proceeds are paid to the City. The City shall utilize the Excess Sales Proceeds for City affordable housing programs. The Owner and the City acknowledge that the formula for calculation of the amount of Excess Sales Proceeds due from the Owner to the City is intended to cause the Owner to receive the same net sales proceeds (following payment by Owner of a standard broker's commission) from sale of the Home at an unrestricted price to an Market Purchaser as the Owner would receive from sale of the Home to the City or to an Eligible Purchaser at the Maximum Allowable Sales Price.

#### 15. DEFAULTS

A. The following events shall constitute a Default by the Owner under this Agreement:

(2) The City determines that the Owner has made a misrepresentation to obtain the benefits of purchase of the



Home or in connection with its obligations under this Agreement;

(2) The Owner fails to owner occupy the home, as required pursuant to Section 3 above, and such failure continues following written notice by the City and Sixty (60) days opportunity to cure following the date of such notice.

(3) The Owner makes a Transfer in violation of this Agreement;

(4) The Owner otherwise fails to comply with the requirements of this Agreement and such violation is not corrected to the satisfaction of the City within Ninety (90) days after the date of written notice by the City to the Owner of such violation; or

(5) A notice of default is issued under First Mortgage Loan or other financing secured by the Home.

(6) A lien is recorded against the Home other than the lien of a bona fide mortgage loan.

(7) Owner places a mortgage on the Home in violation of Section 24 below.

B. Upon a declaration of Default by the City under this Agreement, the City may exercise any remedies at law or in equity, including without limitation, any or all of the following:

(1) Declare all Excess Sales Proceeds immediately due and payable without further demand and invoke the power of sale under the City Deed of Trust;

(2) Apply to a court of competent jurisdiction for such relief at law or in equity as may be appropriate;

(3) Declare a Default under the City Deed of Trust and pursue all City remedies under the City Deed of Trust; and

(4) Exercise the City Purchase Option Upon Default as described in Section

17 below.

## 16. NOTICE OF DEFAULT AND FORECLOSURE

A request for notice of default and any notice of sale under any deed of trust or mortgage with power of sale encumbering the Home shall be recorded by the City in the Office of the Recorder of the

County of Monterey for the benefit of the City. The City may declare a Default under this Agreement upon receipt of any notice given to the City pursuant to Civil Code Section 2924b, and may exercise its rights as provided in Sections 15 and 17.

In the event of default and foreclosure, the City shall have the same right as the Owner to cure defaults and redeem the Home prior to the foreclosure sale. Nothing herein shall be construed as creating any obligation of the City to cure any such default, nor shall this right to cure and redeem operate to extend any time limitations in the default provisions of the underlying deed of trust or mortgage.

If the City failed to file the request for notice of default, the City's right to purchase the Home shall commence from the date a notice of default is given by the City to the Owner.

#### 17. PURCHASE OPTION UPON DEFAULT

Notwithstanding, and in addition to, the remedies provided the City in Section 16, and the City Option provided to the City in Section 12, the Owner hereby grants to the City the option to purchase the Home following written notice by the City to the Owner of the declaration of a Default by the City under this Agreement. This option to purchase is given in consideration of the economic benefits received by the Owner resulting from ownership of the Home made possible by the City's Affordable Housing Program.

The City shall have Forty-five (45) days after a Default is declared to notify the Owner and the First Lender of its decision to exercise its option to purchase under this Section 17.33.110. Not later than Ninety (90) days after the notice is given by the City to the Owner of the City's intent to exercise its option under this Section 17, the City shall purchase the Home for the City Option Price, payable in cash or by assuming existing debt and paying the balance in cash, calculated in the manner set forth in Section 12B.

#### 18. NONLIABILITY OF THE CITY

A. No Obligation to Exercise Option. The City shall have no obligation to exercise any option granted it under this Agreement. In no event shall the City become in any way liable or obligated to the Owner or any successor-in-interest to the Owner by reason of its option to purchase under Sections 12 and 17 nor shall the City be in any way obligated or liable to the Owner or any successor-in-interest to the Owner for any failure to exercise its option to purchase.

B. Non-liability for Negligence, Loss, or Damage. Owner acknowledges, understands and agrees that the relationship between Owner and the City is solely that of an owner and an administrator of a City affordable housing program, and that the City does not undertake or assume any responsibility for or duty to Owner to select, review, inspect, supervise, pass judgment on, or inform Owner of the quality, adequacy or suitability of the Home or any other matter. The City owes no duty of care to protect Owner against negligent, faulty, inadequate or defective building or construction or any condition of the Home and Owner agrees that neither Owner, or Owner's heirs, successors or assigns shall ever claim, have or asset any right or action against the City for any loss, damage or other matter arising out of or resulting from any condition of the Home and will hold the City harmless from any liability, loss or damage for these things.

C. Indemnity. Owner agrees to defend, indemnify, and hold the City harmless from all losses, damages, liabilities, claims, actions, judgments, costs, and reasonable attorneys fees that the City may incur as a direct or indirect consequence of: (1) Owner's default, performance, or failure to perform any obligations as and when required by this Agreement or the Deed of Trust; or (2) the failure at any time of any of Owner's representations to the City to be true and correct.

19. RESTRICTIONS ON FORECLOSURE PROCEEDS

If a creditor acquires title to the Home through a deed in lieu of foreclosure, a trustee's deed upon sale, or otherwise, the Owner shall not be entitled to the proceeds of sale to the extent that such proceeds otherwise payable to the Owner when added to the proceeds paid or credited to the creditor exceed the Maximum Allowable Sales Price. The Owner shall instruct the holder of such excess proceeds to pay such proceeds to the City in consideration of the benefits received by the Owner through purchase of the Home under the City's Affordable Housing Ordinance.

20. RESTRICTION ON INSURANCE PROCEEDS

If the Home is damaged or destroyed and the Owner elects not to rebuild or repair the Home, the Owner shall pay the City the portion of any insurance proceeds received by the Owner for such destruction or damage that is in excess of the Maximum Allowable Sales Price calculated pursuant to Section 10 above.

21. TERM OF AGREEMENT

All the provisions of this Agreement, including the benefits and burdens, run with the Home and this Agreement shall bind, and the benefit hereof shall inure to, the Owner, his or her heirs, legal representatives, executors, successors in interest and assigns, and to the City and its successors, until the earlier of (i) forty-five (45) years from the date of purchase of the Home by Owner, or (ii) the date of Transfer of the Home to the City or another purchaser in compliance with this Agreement.

## 22. SUPERIORITY OF AGREEMENT

The Owner covenants that he or she has not, and will not, execute any other agreement with provisions contradictory to or in opposition to the provisions hereof, and that, in any event, this Agreement is controlling as to the rights and obligations between and among the Owner, the City and their respective successors.

## 23. SUBORDINATION

Notwithstanding any provision herein, this Agreement shall not diminish or affect the rights of the First Lender under the First Lender Deed of Trust or any subsequent First Lender deeds of trust hereafter recorded against the Home in compliance with Section 24 of this Agreement.

Notwithstanding any other provision hereof, the provisions of this Agreement and the City Deed of Trust shall be subordinate to the lien of the First Lender Deed of Trust and shall not impair the rights of the First Lender, or such lender's assignee or successor in interest, to exercise its remedies under the First Lender Deed of Trust in the event of default under the First Lender Deed of Trust by the Owner. Such remedies under the First Lender Deed of Trust include the right of foreclosure or acceptance of a deed or assignment in lieu of foreclosure. After such foreclosure or acceptance of a deed in lieu of foreclosure, this Agreement and the City Deed of Trust shall be forever terminated and shall have no further effect as to the Home or any transferee thereafter; provided, however, if the holder of such First Lender Deed of Trust acquires title to the Home pursuant to a deed or assignment in lieu of foreclosure, this Agreement and the City Deed of Trust shall automatically terminate upon such acquisition of title, only if (i) the City has been given written notice of default under such First Lender Deed of Trust with a sixty (60)-day cure period and (ii) the City shall not have cured the default within such sixty (60)-day period or commenced to cure and given its firm commitment to complete the cure in form and substance acceptable to the First Lender, or (iii) the City shall not have exercised its option to purchase the Home pursuant to Section 17 above within such sixty (60)-day period and then proceeded diligently to cure the default within sixty (60) days of acquiring title to the Home.

24. REFINANCE OF FIRST MORTGAGE LOAN; FURTHER ENCUMBRANCE OF HOME

A. The Owner must secure the City's approval in accordance with this Section 24 before the Owner refinances their existing First Mortgage Loan with a new First Mortgage Loan. If the Owner desires to refinance their existing First Mortgage Loan and record a new First Mortgage Deed of Trust, the Owner must first submit a written request to the City, which the City will promptly consider. The City will approve the Owner's refinancing request only if all of the following are true:

- (1) the new First Mortgage Loan principal balance will not exceed the greater of (a) the then-current principal balance of the existing First Mortgage Loan, or (b) ninety-five percent (95%) of the Indexed Value of the Home, determined in accordance with Section 10A above;
- (2) the Owner's total monthly debt service (inclusive of principal, interest, taxes and insurance) with respect to the new First Mortgage Loan will not exceed the Owner's current monthly debt service with respect to the existing First Mortgage Loan;
- (3) the terms of the new First Mortgage Loan do not allow for negative amortization, the principal balance of the new First Mortgage Loan will be fully amortized over its term, and the new First Mortgage Loan repayment schedule will not include lump sum or "balloon" payments;
- (4) the Owner's total monthly recurring debt payments (e.g., auto loans, credit cards, revolving and non-revolving credit), including the monthly debt service (inclusive of principal, interest, taxes and insurance) related to the new First Mortgage Loan, will not exceed fifty percent (50%) of the Owner's gross monthly income; and
- (5) the Owner's total monthly obligations with respect to debt which is secured by the Home, including the monthly debt service (inclusive of principal, interest, taxes and insurance) related to the new First Mortgage Loan, will not exceed

fifty percent (50%) of the Owner's gross monthly income.

- (6) The Owner will be responsible for demonstrating to the City's sole but reasonable satisfaction that the new First Mortgage Loan will satisfy all of the conditions described in paragraph A. (1) - (5) above and/or the City's current Affordable Housing Ordinance. The Owner will provide the City with the documents and other information needed to establish the matters set forth in paragraph A. (1) - (5) above and/or Affordable Housing Ordinance. If the City approves the Owner's request, the City will execute and deliver the instruments reasonably required by the new First Mortgage Lender to subordinate this Agreement and the City Deed of Trust to the lien of the new First Mortgage Deed of Trust.
- (7) Even if the proposed new First Mortgage Loan satisfies all of the conditions described in paragraph A. (1) - (5), above, the City may, in its sole and absolute discretion, disapprove any request to refinance the Owner's existing First Mortgage Loan if the term of the new First Mortgage Loan will be less than thirty (30) years.
- (8) The Owner covenants and agrees not to place any mortgage, lien or other encumbrance on the Home other than the original First Mortgage Deed of Trust, a deed of trust securing the Owner's obligations to the City, or a new First Mortgage Deed of Trust approved by the City in accordance with this Section 24. The Owner agrees that the requirements of this Section 24 are reasonably necessary to ensure the continued affordability of the Home to the Owner, to minimize the risk of loss of the Home and its affordability through default and foreclosure of mortgages, liens and other encumbrances, and to fulfill an important public purpose. The Owner acknowledges that any violation of this Section 24 will constitute a Default under this Agreement and the City may exercise all remedies available to the City under this Agreement, the City Deed of Trust, at law or in equity upon such a Default."

(1) NONDISCRIMINATION

The Owner covenants by and for itself and its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, age, disability, sex, sexual orientation, marital status, ancestry or national origin in the sale, transfer, use, occupancy, tenure or enjoyment of the Home, nor shall the Owner or any person claiming under or through the Owner establish or permit any such practice or practices of discrimination or segregation with reference to the use, occupancy, or transfer of the Home. The foregoing covenant shall run with the land.

(2) RIGHTS OF BENEFICIARIES UNDER DEEDS OF TRUSTS

This Agreement shall not diminish or affect the rights of the City under the City Deed of Trust. Notwithstanding any other provision in this Agreement to the contrary, this Agreement shall not diminish or affect the rights of the California Housing Finance Agency ("CHFA"), United States Department of Housing and Urban Development ("HUD"), the Federal National Mortgage Association ("FNMA"), or the Veterans Administration ("VA") under the First Mortgage Deed of Trust or any subsequent First Lender deeds of trust hereafter recorded against the Home in compliance with Section 24 above. Notwithstanding any other provisions in this Agreement to the contrary, all of the provisions of this Agreement shall terminate and have no further force and effect upon the occurrence of one of the following events: Title is acquired by CHFA, HUD, FNMA, VA, the First Lender or another party upon foreclosure of a deed of trust to the First Lender or CHFA, or a deed of trust insured by HUD or guaranteed by VA.

a. Title is acquired by another party by a deed in lieu of foreclosure of the First Lender, CHFA, or FNMA deed of trust.

(3) HUD FORBEARANCE RELIEF

Notwithstanding other provisions of this Agreement, the City Option on Default pursuant to Section 17 above shall not be exercised by the City when a deed of trust insured by HUD is secured by the Home, and: (i) the owner is undergoing consideration by HUD for assignment forbearance relief; or (ii) the owner is undergoing consideration for relief under HUD's Temporary Mortgage Assistance Payment (TMAP) program.

(4) INVALID PROVISIONS

If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or

unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

(5) CONTROLLING LAW

The terms of this Agreement shall be interpreted under the laws of the State of California. The venue for any legal action pertaining to this Agreement shall be Monterey County, California.

(6) NO WAIVER

No delay or omission in the exercise of any right or remedy of City upon any default by Owner shall impair such right or remedy or be construed as a waiver. The City's failure to insist in any one or more instance upon the strict observance of the terms of this Agreement shall not be considered a waiver of the City's right thereafter to enforce the provisions of the Agreement. The City shall not waive its rights to enforce any provision of this Agreement unless it does so in writing, signed by an authorized agent of the City.

(7) NOTICES

All notices required herein shall be sent by certified mail, return receipt requested or express delivery service with a delivery receipt and shall be deemed to be effective as of the date received or the date delivery was refused as indicated on the return receipt as follows:

Owner: At the address of the Home.

**City:**

City of Seaside  
440 Harcourt Avenue Seaside, CA 93955  
Attn: City Clerk  
City of Seaside  
440 Harcourt Avenue Seaside, CA 93955  
Attn: Affordable Housing Program

The parties may subsequently change addresses by providing written notice of the change in address to the other parties in accordance with this Section.

(8) INTERPRETATION OF AGREEMENT

The terms of this Agreement shall be interpreted so as to avoid speculation on the Home and to insure to the extent possible that its sales price and mortgage payments remain affordable to persons and families of low- and/or moderate-income.



(9) EXHIBITS

Any exhibits referred to in this Agreement are incorporated in this Agreement by such reference.

IN WITNESS WHEREOF, the City and Owner(s) have executed this Agreement on or as of the date first written above.

CITY: \_\_\_\_\_

OWNER(S): \_\_\_\_\_

\_\_\_\_\_

—  
Craig Malin, City Manager

\_\_\_\_\_

**Exhibit F I**  
**Under Review I**

**Form of Deed  
of Trust**

Complimenta  
ry Recording  
Requested  
Pursuant To  
Government  
Code  
Sections  
6103 And  
27383

When Recorded Mail To:

City of Seaside  
440 Harcourt Avenue  
Seaside, CA 93955  
Attn: Affordable Housing Program

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DEED OF TRUST  
AND SECURITY  
AGREEMENT

THIS DEED OF TRUST AND SECURITY AGREEMENT ("Deed of Trust") made on \_\_\_\_\_, among the Trustor, \_\_\_\_\_ ("Owner"), whose address is \_\_\_\_\_, XXXX, California, and City of Seaside, a Municipal Corporation, and the City of Seaside in its capacity as Successor for Housing Functions of its dissolved Redevelopment Agency ("Trustee"), in favor of the City of Seaside and the City of Seaside in its capacity as Successor for Housing Functions of its dissolved Redevelopment Agency (the "City") as Beneficiary.

The Owner, in consideration of the promises herein recited and the trust herein created, irrevocably grants, transfers, conveys and assigns to Trustee, in trust, with power of sale, the property located in the City of Seaside, Monterey County, State of California, described as

Refer to Exhibit "A"

and more commonly known as **Seaside, CA**  
APN: \_\_\_\_\_ (the "Property").

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, and all fixtures now or hereafter attached to the property, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the property covered by this Deed of Trust; and

TOGETHER with all articles of personal property or fixtures now or hereafter attached to or used in and about the building or buildings now

erected or hereafter to be erected on the Property which are necessary to the complete and comfortable use and occupancy of such building or buildings for the purposes for which they were or are to be erected, including all other goods and chattels and personal property as are ever used or furnished in operating a building, or the activities conducted therein, similar to the one herein described and referred to, and all renewals or replacements thereof or articles in substitution therefore, whether or not the same are, or shall be attached to said building or buildings in any manner; and all of the foregoing, together with the Property, is herein referred to as the "Security"; To have and to hold the Security together with acquittances to the Trustee, its successors and assigns forever;

TO SECURE to the City the performance of the covenants and agreements of Owner contained in that certain Buyer's Occupancy and Resale Agreement with Option to Purchase executed by and between the Owner and the City of even date herewith (the "Resale Agreement") and to secure the payment of Excess Sales Proceeds (as defined in the Resale Agreement) that may become due by Owner to City.

TO SECURE the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Deed of Trust; and the performance of the covenants and agreements of Owner herein contained.

OWNER AND CITY COVENANT AND AGREE AS FOLLOWS:

1. Owner's Estate. That Owner is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Security, that other than this Deed of Trust, the Security is encumbered only by: (a) that deed of trust executed by Owner in connection with a loan made to Owner by \_\_\_\_\_ (the "First Lender"), securing a promissory note executed by Owner in favor of the First Lender ("First Lender Note"), to assist in the purchase of the Property and (b) the Resale Agreement. Owner agrees to warrant and defend generally the title to the Security against all claims and demands, subject to any declarations, easements or restrictions listed in a schedule of exceptions to coverage in any title insurance policy insuring the City's interest in the Security. (As used in this Deed of Trust, the term "First Lender" shall include all successors and assigns of the First Lender.)
2. Payment of Excess Sales Proceeds. Owner will promptly pay to the City, when and if due pursuant to the Resale Agreement, the Excess Sales Proceeds (as defined in the Resale Agreement).
3. Resale Agreement. Owner will observe and perform all of the covenants and agreements of the Resale Agreement.
4. Charges; Liens. Owner will pay all taxes, assessments and other charges, fines and impositions attributable to the Security which may attain a priority over this Deed of Trust, by Owner making any payment, when due, directly to the payee thereof. Upon request by the City, Owner will promptly furnish to the City all notices of amounts due under this paragraph. In the event Owner makes payment directly, Owner will promptly discharge any lien which has priority over this Deed of Trust;

provided, that Owner will not be required to discharge the lien of the Deed of Trust securing the First Lender Note (the "First Lender Deed of Trust") or any other lien described in this paragraph so long as Owner will agree in writing to the payment of the obligation secured by such lien in a manner acceptable to the City, or will, in good faith, contest such lien by, or defend enforcement of such lien in, legal proceedings which operate to prevent the enforcement of the lien or forfeiture of the Security or any part thereof.

5. Hazard Insurance. Owner will keep the Security insured by a standard all risk property insurance policy equal to the replacement value of the Security (adjusted every five (5) years by appraisal, if requested by the City). If the Security is located in a flood plain, Owner shall also maintain flood insurance.

The insurance carrier providing this insurance shall be licensed to do business in the State of California and be chosen by Owner subject to approval by the City.

All insurance policies and renewals thereof will be in a form acceptable to the City and will include a standard mortgagee clause with standard lender's endorsement in favor of the holder of the First Lender Note and the City as their interests may appear and in a form acceptable to the City. The City shall have the right to hold, or cause its designated agent to hold, the policies and renewals thereof, and Owner shall promptly furnish to the City, or its designated agent, the original insurance policies or certificates of insurance, all renewal notices and all receipts of paid premiums. In the event of loss, Owner will give prompt notice to the insurance carrier and the City or its designated agent. The City, or its designated agent, may make proof of loss if not made promptly by Owner. The City shall receive thirty (30) days advance notice of cancellation of any insurance policies required under this section.

Unless the City and Owner otherwise agree in writing, insurance proceeds, subject to the rights of the First Lender, will be applied to restoration or repair of the Security damaged, provided such restoration or repair is economically feasible and the security of this Deed of Trust is not thereby impaired. If such restoration or repair is not economically feasible or if the security of this Deed of Trust would be impaired, the insurance proceeds will be used to repay any amounts due under the Resale Agreement, with the excess, if any, paid to Owner. If the Security is abandoned by Owner, or if Owner fails to respond to the City, or its designated agent, within thirty (30) days from the date notice is mailed by either of them to Owner that the insurance carrier offers to settle a claim for insurance benefits, the City, or its designated agent, is authorized to collect and apply the insurance proceeds at the City's option either to restoration or repair of the Security or to pay amounts due under the Resale Agreement.

If the Security is acquired by the City, all right, title and interest of Owner in and to any insurance policy and in and to the proceeds thereof resulting from damage to the Security prior to the sale or acquisition will pass to the City to the extent of the sums secured by this Deed of Trust immediate prior to such sale or acquisition, subject to the rights of the First Lender.

6. Preservation and Maintenance of Security. Owner will keep the Security in good repair and in a neat, clean, and orderly condition and will not commit waste or permit impairment or deterioration of the Security. If there arises a condition in contravention of this Section 5, and if the Owner has not cured such condition within thirty (30) days after receiving a City notice of such a condition, then in addition to any other rights available to the City, the City shall have the right (but not the obligation) to perform all acts necessary to cure such condition, and to establish or enforce a lien or other encumbrance against the Security to recover its cost of curing.

7. Protection of the City's Security. If Owner fails to perform the covenants and agreements contained in this Deed of Trust or if any action or proceeding is commenced which materially affects the City's interest in the Security, including, but not limited to, default under the First Lender Deed of Trust, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then the City, at the City's option, upon notice to Owner, may make such appearances, disburse such sums and take such action as it determines necessary to protect the City's interest, including but not limited to, disbursement of reasonable attorney's fees and entry upon the Security to make repairs.

Any amounts disbursed by the City pursuant to this paragraph, with interest thereon, will become an indebtedness of Owner secured by this Deed of Trust. Unless Owner and City agree to other terms of payment, such amount will be payable upon notice from the City to Owner requesting payment thereof, and will bear interest from the date of disbursement at the lesser of (i) ten percent (10%); or (ii) the highest rate permissible under applicable law. Nothing contained in this paragraph will require the City to incur any expense or take any action hereunder.

8. Inspection. The City may make or cause to be made reasonable entries upon and inspections of the Security; provided that the City will give Owner reasonable notice of inspection.

9. Forbearance by the City Not a Waiver. Any forbearance by the City in exercising any right or remedy will not be a waiver of the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by the City will not be a waiver of the City's right to require payment of any amounts secured by this Deed of Trust.

10. Remedies Cumulative. All remedies provided in this Deed of Trust are distinct and cumulative to any other right or remedy under this Deed of Trust or any other document, or afforded by law or equity, and may be exercised concurrently, independently or successively.

11. Successors and Assigns Bound. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of the City and Owner subject to the provisions of this Deed of Trust.

12. Joint and Several Liability. All covenants and agreements of Owner shall be joint and several.

13. Notice. Except for any notice required under applicable law to be given in another manner, (a) any notice to Owner provided for in this Deed of Trust will be given by certified mail, addressed to Owner at the address shown in the first paragraph of this Deed of Trust or such other address as Owner may designate by notice to the City as provided herein, and (b) any notice to the City will be given by express delivery, return receipt requested, to the City of Seaside at 440 Harcourt Avenue, Seaside, California, 93955, Attention: City Manager, or to such other address as the City may designate by notice to Owner as provided above. Notice shall be effective as of the date received by City as shown on the return receipt.

14. Governing Law. This Deed of Trust shall be governed by the laws of the State of California.

15. Severability. In the event that any provision or clause of this Deed of Trust or the Resale Agreement conflicts with applicable law, such conflict will not affect other provisions of this Deed of Trust or the Resale Agreement which can be given effect without the conflicting provision, and to this end the provisions of the Deed of Trust and the Resale Agreement are declared to be severable.

16. Captions. The captions and headings in this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.

17. Nondiscrimination. The Owner covenants by and for itself and its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, religion, creed, age, disability, sex, sexual orientation, marital status, ancestry or national origin in the sale, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Owner or any person claiming under or through the Owner establish or permit any such practice or practices of discrimination or segregation with reference to the use, occupancy, or transfer of the Home. The foregoing covenant shall run with the land.

18. Non-liability for Negligence, Loss, or Damage. Owner acknowledges, understands and agrees that the relationship between Owner and City is solely that of an owner and an administrator of a City density bonus program, and that City neither undertakes nor assumes any responsibility for or duty to Owner to select, review, inspect, supervise, pass judgment on, or inform Owner of the quality, adequacy or suitability of the Security or any other matter. City owes no duty of care to protect Owner against negligent, faulty, inadequate or defective building or construction or any condition of the Security and Owner agrees that neither Owner, or Owner's heirs, successors or assigns shall ever claim, have or assert any right or action against City for any loss, damage or other matter arising out of or resulting from any condition of the Security and will hold City harmless from any liability, loss or damage for these things.

19. Indemnity. Owner agrees to defend, indemnify, and hold City and Agency harmless from all losses, damages, liabilities, claims, actions, judgments, costs, and reasonable attorneys fees that City and Agency may incur as a direct or indirect consequence of:

A. Owner's failure to perform any obligations as and when required by the Resale Agreement and this Deed of Trust; or

B. The failure at any time of any of Owner's representations or warranties to be true and correct.

20. Acceleration. Remedies. Upon Owner's breach of any covenant or agreement of Owner in this Deed of Trust, including, but not limited to, the covenants to pay, when due, any sums secured by this Deed of Trust, the City, prior to acceleration, will mail by express delivery, return receipt requested notice to Owner specifying; (1) the breach; (2) the action required to cure such breach; (3) a date, not less than thirty (30) days from the date the notice is received by Owner as shown on the return receipt, by which such breach is to be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Security. The notice will also inform Owner of Owner's right to reinstate after acceleration and the right to bring a court action to assert the nonexistence of default or any other defense of Owner to acceleration and sale. If the breach is not cured on or before the date specified in the notice, the City, at the City's option, may:

(a) declare all of the sums secured by this Deed of Trust to be immediately due and payable without further demand and may invoke the power of sale and any other remedies permitted by California law. (b) either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon the Security and take possession thereof (or any part thereof) and of any of the Security, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value or marketability of the Property, or part thereof or interest therein, increase the income therefrom or protect the security thereof. The entering upon and taking possession of the Security shall not cure or waive any breach hereunder or invalidate any act done in response to such breach and, notwithstanding the continuance in possession of the Security, the City shall be entitled to exercise every right provided for in this Deed of Trust, or by law upon occurrence of any uncured breach, including the right to exercise the power of sale; (c) commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof; (d) deliver to Trustee a written declaration of default and demand for sale, pursuant to the provisions for notice of sale found at California Civil Code Sections 2924, et seq., as amended from time to time; or (e) exercise all other rights and remedies provided herein, in the instruments by which the Owner acquires title to any Security, or in any other document or agreement now or hereafter evidencing, creating or securing all or any portion of the obligations secured



hereby, or provided by law.

The City shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph, including, but not limited to, reasonable attorney's fees.

21. Owner's Right to Reinstate. Notwithstanding the City's acceleration of the sums secured by this Deed of Trust, Owner will have the right to have any proceedings begun by the City to enforce this Deed of Trust discontinued at any time prior to five (5) days before sale of the Security pursuant to the power of sale contained in this Deed of Trust or at any time prior to entry of a judgment enforcing this Deed of Trust if: (a) Owner pays City all sums which would be then due under this Deed of Trust and no acceleration under this Deed of Trust or the Resale Agreement has occurred; (b) Owner cures all breaches of any other covenants or agreements of Owner contained in the Resale Agreement or this Deed of Trust; (c) Owner pays all reasonable expenses incurred by City and Trustee in enforcing the covenants and agreements of Owner contained in the Resale Agreement or this Deed of Trust, and in enforcing the City's and Trustee's remedies, including, but not limited to, reasonable attorney's fees; and (d) Owner takes such action as City may reasonably require to assure that the lien of this Deed of Trust, City's interest in the Security and Owner's obligation to pay the sums secured by this Deed of Trust shall continue unimpaired. Upon such payment and cure by Owner, this Deed of Trust and the obligations secured hereby will remain in full force and effect as if no acceleration had occurred.

22. Due on Transfer of the Property. Upon a Transfer (as defined in the Resale Agreement) of the Property or any interest in it, the City shall require immediate payment in full of all sums secured by this Deed of Trust.

23. Reconveyance. Upon payment of all sums secured by this Deed of Trust, the City will request Trustee to reconvey the Security and will surrender this Deed of Trust and the Resale Agreement to Trustee. Trustee will reconvey the Security without warranty and without charge to the person or persons legally entitled thereto. Such person or persons will pay all costs of recordation, if any.

24. Substitute Trustee. The City, at the City's option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. The successor trustee will succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law.

25. Superiority of First Lender Documents. Notwithstanding any provision herein, this Deed of Trust shall not diminish or affect the rights of the First Lender under the First Lender Deed of Trust or any subsequent First Lender deeds of trust hereafter recorded against the Security in compliance with the requirements of Section 24 of the Resale Agreement. City agrees to promptly upon request execute and deliver any documents reasonably requested to subordinate this Deed of Trust to any subsequent First Lender Deed of Trust permitted by Section 24 of the Resale Agreement.

Notwithstanding any other provision hereof, the provisions of this Deed of Trust shall be subordinate to the lien of the First Lender Deed of Trust and shall not impair the rights of the First Lender, or such lender's assignee or successor in interest, to exercise its remedies under the First Lender Deed of Trust in the event of default under the First Lender Deed of Trust by the Owner. Such remedies under the First Lender Deed of Trust include the right of foreclosure or acceptance of a deed or assignment in lieu of foreclosure. After such foreclosure or acceptance of a deed in lieu of foreclosure, this Deed of Trust shall be forever terminated and shall have no further effect as to the Property or any transferee thereafter; provided, however, if the holder of such First Lender Deed of Trust acquired title to the Property pursuant to a deed or assignment in lieu of foreclosure, this Deed of Trust shall automatically terminate upon such acquisition of title by First Lender, provided that (i) the City has been given written notice of default under such First Lender Deed of Trust with a sixty (60)-day cure period and (ii) the City shall not have cured or commenced to cure the default within such sixty (60)-day period or commenced to cure and given its firm commitment to complete the cure in form and substance acceptable to the First Lender; or (iii) the City shall not have exercised its option to purchase the Property pursuant to Section 17 of the Resale Agreement and then proceeded diligently to cure the default within such sixty (60)-day period.

26. Request for Notice. Owner requests that copies of the notice of default and notice of sale be sent to Owner at the address set forth in Section 13 above.

IN WITNESS WHEREOF, the City and Owner have executed this Deed of Trust as of the date first written above.

CITY: \_\_\_\_\_  
Craig Malin, City Manager

OWNER(S): \_\_\_\_\_  
\_\_\_\_\_

EXHIBIT G

**FORM OF RENTAL UNIT AFFORDABLE HOUSING REGULATORY AGREEMENT**

[ATTACHED]

Complimentary Recording Requested Pursuant To  
Government Code Section 6103 and 27383

When Recorded Mail To:

City of Seaside  
440 Harcourt Avenue  
Seaside, CA 93955  
Attn: Affordable Housing Program

*Space Above This Line for Recorder's Use Only*

### AFFORDABLE HOUSING REGULATORY AGREEMENT

This Affordable Housing Regulatory Agreement (this “**Agreement**”) is made and entered into as of \_\_\_\_\_ by and between the City of Seaside, a Municipal Corporation, and the City of Seaside in its capacity as Successor for Housing Functions of its dissolved Redevelopment Agency (the “**City**”) and \_\_\_\_\_ (the “**Developer**”).

#### RECITALS

A. Defined terms used but not defined in these recitals are as defined in Article 1 of this Agreement.

B. Pursuant to Chapter 17.32 of the Seaside Municipal Code, a portion of all new housing constructed in the City of Seaside is required to be affordable for median to above moderate income households.

C. KB Bakewell Seaside Venture II, LLC, a Delaware limited liability company (the “**Master Developer**”) entered into an Affordable Housing Agreement dated \_\_\_\_\_. Pursuant to the Affordable Housing Agreement, dated \_\_\_\_\_, recorded in the Official Records of the County of Monterey on \_\_\_\_\_ (the “**Affordable Housing Agreement**”), the Developer agreed to develop 225 affordable housing units, including for-sale and for-rent units, affordable to very low, low moderate, or moderate income households. Master Developer and the City entered into the Affordable Housing Agreement in connection with the Master Developer’s execution of that certain Development Agreement, dated \_\_\_\_\_, recorded in the Official Records of the County of Monterey on \_\_\_\_\_ (the “**Development Agreement**”),

D. Concurrently herewith, Master Developer is selling to Developer, and Developer is acquiring from the Master Developer, that certain property identified on Exhibit A hereto (the “**Property**”)

E. This Agreement evidences Developer’s Agreement, for the benefit of the City, to enter into for-rent unit affordability restrictions for \_\_\_\_ of the 225 affordable housing units required to be developed under the Affordable Housing Agreement, in partial satisfaction of Master Developer’s obligations thereunder.

F. In order to ensure that the entire Property will be used and operated in accordance with these conditions and restrictions, the City and Developer wish to enter into this Agreement.

THEREFORE, the City and Developer hereby agree as follows.

## ARTICLE 1 DEFINITIONS

### 1.1 Definitions.

When used in this Agreement, the following terms have the respective meanings assigned to them in this Article 1.

- (a) **“Actual Household Size” means the actual number of persons in the applicable household.**
- (b) **“Affordable Housing Parcel” is defined in Recital D.**
- (c) **“Affordable Units” means the \_\_\_\_ residential units to be developed on the Property.**
- (d) **“Agreement” means this Affordable Housing Regulatory Agreement.**
- (e) **“Assumed Household Size” means one person in a studio apartment, two persons in a one-bedroom unit, three persons in a two-bedroom unit, and one additional person for each additional bedroom thereafter, unless a federal standard applicable to the development (such as the low-income housing tax credit program under Section 42 of the Internal Revenue Code (“Tax Credits”)), as administered pursuant to the regulations of the California Tax Credit Allocation Committee (“CTCAC”)) provides for the use of a different assumed household size, in which case the federal standard shall apply. In the case of Tax Credits, the CTCAC definition for “assumed household size” shall apply.**
- (f) **“City” means the City of Seaside.**
- (g) **“Completion Date” means the date a final certificate of occupancy, or equivalent document is issued by the City to certify that the Improvements may be legally occupied.**
- (h) **“Developer” means \_\_\_\_\_, and its authorized representatives, assigns, transferees, or successors-in-interest thereto.**
- (i) **“Development Agreement” is defined in Recital C.**
- (j) **“Improvements” means the \_\_\_-unit affordable rental housing development, plus \_\_ manager’s units, appurtenant landscaping, parking, and other on-site improvements to be constructed on the Property.**
- (k) **“Low Income Household” means a household whose income does not exceed 60 percent of Median Income adjusted for Actual Household Size.**

(l) “Low Income Rent” means a monthly Rent amount not exceeding 60 percent of the Median Income, adjusted for Assumed Household Size based on unit size, multiplied by 30 percent and divided by 12.

(m) “Low Income Units” means the Affordable Units, which, pursuant to Section 2.1(b) below, are required to be occupied by Low Income Households.

(n) “Management Agent” has the meaning set forth in Section 5.5.

(o) “Management Contract” has the meaning set forth in Section 5.5.

(p) “Management Plan” has the meaning set forth in Section 5.3.

(q) “Marketing Plan” is defined in Section 5.1.

(r) “Median Income” means median income for Monterey County, adjusted for household size, as published pursuant to California Code of Regulations, Title 25, Section 6932 (or its successor provision); provided, if the Improvements are financed in whole or in part through the use of Tax Credits and/or the proceeds of tax-exempt bonds or other obligations the interest on which are exempt from tax under the Internal Revenue Code and which are issued under the volume limitations pursuant to Section 146 of the Internal Revenue Code (“Tax-Exempt Bonds”), then “Median Income” means median income for the Monterey County promulgated by the United States Department of Housing and Urban Development (“HUD”), as adjusted for household size, as published in the Federal Register.

(s) “Ordinance” means Chapter 17.32 of the Seaside Municipal Code.

(t) “Property” means the real property described in Exhibit A attached hereto and incorporated herein.

(u) “Rent” means the total of monthly payments by the Tenant of an Affordable Unit for the following: use and occupancy of the Affordable Unit and land and associated facilities, including parking, which are required by City ordinance to be provided as amenities for the Improvements; any separately charged fees or service charges assessed by Developer which are required of all Tenants, other than security deposits; the Utility Allowance; and any other interest, taxes, fees or charges for use of the land or associated facilities and assessed by a public or private entity other than Developer, which are required of all Tenants.

(v) “Tenant” means a household legally occupying an Affordable Unit pursuant to a valid lease with Developer.

(w) “Tenant Selection Plan” is defined in Section 5.2.

(x) “Term” means the term of this Agreement, which commences on the date of this Agreement and continues until the fifty-five (55) year anniversary of the date of the first valid lease with a Tenant.

(y) “Utility Allowance” means an allowance for the cost of an adequate level of service for utilities paid by the Tenant, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuel, but not telephone service or cable TV, as determined annually by the City, unless a federal standard applicable to the development (such as

the Tax Credit program administered pursuant to the regulations of CTCAC) provides for the use of a different utility allowance, in which case the federal utility allowance standard shall apply.

(z) “Very Low Income Household” means a household whose income does not exceed 50 percent of median Income adjusted for Actual Household Size.

(aa) “Very Low Income Rent” means a monthly Rent amount not exceeding 50 percent of the Median Income, adjusted for Assumed Household Size based on unit size, multiplied by 30 percent and divided by 12.

(bb) “Very Low Income Units” means the Affordable Units, which, pursuant to Section 2.1(a) below, are required to be occupied by Very Low Income Households.

## ARTICLE 2 AFFORDABILITY AND OCCUPANCY COVENANTS

2.1 Occupancy Requirements. The Affordable Units shall be occupied by Tenants meeting the following income requirements:

(a) Very Low Income Units. \_\_\_\_\_ ( ) of the Affordable Units on the Affordable Housing Parcel are required to be rented to and occupied by or, if vacant, available for occupancy by Very Low Income Households.

(b) Low Income Units. \_\_\_\_\_ ( ) of the Affordable Units on the Affordable Housing Parcel are required to be rented to and occupied by or, if vacant, available for occupancy by Low Income Households.

2.2 Allowable Rent.

(a) Very Low Income Rent. Subject to the provisions of Section 2.3 below, the Rent (including the Utility Allowance) paid by Tenants of the Very Low Income Units shall not exceed the Very Low Income Rent.

(b) Low Income Rent. Subject to the provisions of Section 2.3 below, the Rent (including the Utility Allowance) paid by Tenants of the Low Income Units shall not exceed the Low Income Rent.

(c) City Approval of Initial and Subsequent Rents. For so long as the Improvements are encumbered by a Tax Credit and/or Tax-Exempt Bond low-income regulatory agreement, Initial Rents for all Affordable Units and all rent increases thereafter shall be charged strictly in accordance with the rent schedules published by CTCAC, and the Developer shall provide the City with notice annually of the then-applicable Rent levels. At any time this Agreement is the sole encumbrance recorded against title to the Improvements setting forth rent and income restrictions for the Affordable Units, the Initial Rents for all Affordable Units shall be reported to the City prior to occupancy for review and approval, not to be unreasonably withheld, conditioned or delayed and all rent increases also shall be reported to the City for review and approval, not to be unreasonably withheld, conditioned or delayed. Developer may not raise Rent more often than once every twelve (12) months unless Developer and Tenant have previously agreed otherwise. At any time this Agreement is the sole encumbrance recorded against title to the Improvements setting forth rent and income restrictions for the Affordable Units, the City shall provide Developer with a schedule of maximum permissible rents for the Affordable Units annually, and, within thirty (30) days following receipt of such schedule, Developer shall provide



evidence reasonably satisfactory to City confirming that the Rents charged by Developer comply with the maximum permissible rents indicated on such schedule.

2.3 Increased Income of Tenants.

(a) If, upon recertification of the income of a Tenant of an Affordable Unit, Developer determines that such Very Low Income Household's income has increased and exceeds the qualifying income for a Very Low Income Household, but does not exceed the qualifying limit for a Low Income Household, then, the Tenant may continue to occupy the Affordable Unit, and upon expiration of the Tenant's lease, (i) Developer may increase the Rent charged to the Tenant to the Low Income Rent, provided that Developer has provided the Tenant thirty (30) days written notice, and (ii) Developer shall rent the next available Affordable Unit that is comparable in size (i.e., number of bedrooms, bathrooms, square footage, etc.) and location (i.e., same floor, same view, etc.) as the original unit to a Very Low Income Household, at a Rent not exceeding the maximum Rent specified in Section 2.2 to comply with the requirements of Sections 2.1 and 2.2 above. Upon renting the next available Affordable Unit to a Very Low Income Household, the Affordable Unit with the over-income Tenant will no longer be considered a Very Low Income Unit.

(b) If, upon recertification of the income of a Tenant of an Affordable Unit, Developer determines that a former Low Income Household has an income exceeding 140% of the qualifying income for a Low Income Household, then the tenant shall be given one year's notice to vacate the unit, and Developer may raise the tenant's rent as provided below. Notwithstanding the foregoing, no resident that occupies a unit subject to a regulatory agreement with respect to the Tax Credits and/or the Tax-Exempt Bonds, shall be evicted as a result of such resident being over income except as and when allowed by Federal law, including 26 U.S.C. §42. If any law or other public agency regulatory agreement prohibits the Developer from requiring the Tenant to vacate the Affordable Unit, such Tenant shall be permitted to continue to occupy the Affordable Unit and such Tenant's Rent may be increased to one-twelfth of thirty percent (30%) of the household's actual income, adjusted for Assumed Household Size, upon thirty (30) days written notice to the Tenant provided. In either instance, the Affordable Unit will continue to be classified as a Very Low Income Unit or Low Income Unit as applicable until the Tenant vacates the Affordable Unit, at which time Developer shall re-rent the Affordable Unit to a Very Low Income Household or Low Income Household as applicable to meet the requirements of Section 2.1 above.

2.4 Termination of Occupancy. Upon termination of occupancy of an Affordable Unit by a Tenant, such Affordable Unit will be deemed to be continuously occupied by a household of the same income level (e.g., Very Low Income Household or Low Income Household) as the initial income level of the vacating Tenant, until such Affordable Unit is reoccupied, at which time the income character of the Affordable Unit (e.g., Very Low Income Household or Low Income Household) will be re-determined. In any event, Developer shall maintain the occupancy requirements set forth in Section 2.1 above, except as may be modified by Section 2.3.

ARTICLE 3  
INCOME CERTIFICATION AND REPORTING

3.1 Income Certification.

(a) Developer shall obtain, complete and maintain on file, immediately prior to initial occupancy income certifications from each Tenant renting any of the Affordable Units. Developer shall make a good faith effort to verify that the income provided by an applicant or

**occupying household in an income certification is accurate by collecting acceptable documentation, including income tax statements or a W-2 for the previous calendar year, and submitting, on a form approved by the City, a certification that the tenant qualifies as an income eligible household. Developer shall conduct annual re-certifications pursuant to the same process.**

(b) **Developer shall provide copies of all Tenant income certifications to the City upon request.**

### 3.2 Annual Report to City.

Developer shall submit to the City, not later than the ninetieth (90) day after the close of each calendar year, or such other date as may be requested by the City, a report setting forth the information called for therein.

### 3.3 Additional Information.

Developer shall provide any additional information reasonably requested by the City. The City shall have the right to examine and make copies of all books, records or other documents of Developer which pertain to the Improvements with reasonable notice to Developer.

### 3.4 Tenant Records.

(a) Developer shall keep and maintain, complete, accurate and current records pertaining to the Improvements, and shall permit any duly authorized representative of the City to inspect records, including records pertaining to income and household size of Tenants and Rent charged Tenants. Developer shall maintain all Tenant lists, applications and waiting lists relating to the Improvements separate and identifiable from any other business of Developer and such documents must be maintained as required by the City, in a reasonable condition for proper audit and subject to examination during business hours by representatives of the City.

(b) The City shall notify Developer of any records it deems insufficient. Developer shall have thirty (30) calendar days after the receipt of such a notice to correct any deficiency in the records specified by the City in such notice, or if a period longer than thirty (30) days is reasonably necessary to correct the deficiency, then Developer shall begin to correct the deficiency within thirty (30) days and correct the deficiency as soon as reasonably possible.

### 3.5 On-site Inspection.

The City shall have the right, with reasonable notice to Developer, to perform an on-site inspection of the Improvements at least one (1) time per year to verify compliance with the requirements of this Agreement. Developer agrees to cooperate in such inspection. If City desires to inspect the interior of the Affordable Units, City shall give Developer sufficient notice to allow Developer to give not less than seventy-two (72) hours written notice to Tenants.

## ARTICLE 4 OPERATION OF THE IMPROVEMENTS

### 4.1 Residential Use.

Developer shall operate the Improvements only for residential use. Developer shall not operate

any part of the Improvements as transient housing in which the term of occupancy is less than thirty (30) days.

#### 4.2 Taxes and Assessments.

Developer shall pay all real and personal property taxes, assessments and charges and all franchise, income, employment, old age benefit, withholding, sales, and other taxes assessed against it, or payable by it, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property; provided, however, that Developer shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event Developer exercises its right to contest any tax, assessment, or charge against it, Developer, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

#### 4.3 Property Tax Exemption

City consent is not required for Developer to apply for a property tax exemption for the Affordable Housing Parcel under California Revenue and Taxation Code Section 214(g). The prior written consent of the City is required in the event the Developer seeks to apply for any other property tax exemption for the Affordable Housing Parcel.

#### 4.4. Local Preference

To the extent permitted by applicable law and consistent with the program regulations for funding sources used for development of the Improvements, Developer shall give preference in the rental of Affordable Units to Low Income Households or Very Low Income Households, as applicable, to tenants who meet reasonable criteria, including without limitation, existing City of Seaside residents, persons who are employed in the City of Seaside or other reasonable criteria that may be determined by the City from time to time. The preference stated in this Section shall apply to rental of all Affordable Units throughout the Term.

No preference herein may be used for the purpose or effect of delaying or otherwise denying admission to any Affordable Unit based on the race, color, ethnic origin, gender, religion, disability, or age of any member of an applicant household. Nothing herein shall restrict Developer from screening tenants through the application of criteria which is lawful and customary in apartment management in the City and otherwise consistent with federal, state and local regulations and restrictions applicable to the Improvements. The City shall consider reasonable factors, as determined by the City from time to time, including without limitation

## ARTICLE 5 PROPERTY MANAGEMENT AND MAINTENANCE

#### 5.1 Management Responsibilities.

Developer is responsible for all management functions with respect to the Improvements, including without limitation the selection of Tenants, certification and recertification of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The City shall have no responsibility over management of the Improvements. Developer shall retain a professional property management company approved by the City in its reasonable discretion to perform its management duties hereunder.

## 5.2 Management Agent.

No later than six (6) months prior to the projected date of the completion of the construction of the Improvements, Developer shall submit to the City for approval the name and qualifications of the proposed management agent (the "Management Agent"), and the proposed management contract (the "Management Contract"). The Management Agent shall have demonstrated the ability to operate residential facilities like the Improvements in a manner that will provide decent, safe, and sanitary housing. Developer shall also submit such additional information about the background, experience and financial condition of any proposed Management Agent as is reasonably necessary for the City to determine whether the proposed Management Agent meets the standards for a qualified Management Agent of Improvements of this type.

## 5.3 Performance Review.

The City reserves the right to conduct an annual (or more frequently, if deemed necessary by the City) review of the management practices and financial status of the Improvements. The purpose of each periodic review will be to enable the City to determine if the Improvements are being operated and managed in accordance with the requirements and standards of this Agreement. Developer shall cooperate with the City in such reviews.

## 5.4 Property Maintenance.

Developer shall, for the entire Term of this Agreement, maintain all interior and exterior improvements, including landscaping, on the Affordable Housing Parcel in good condition and repair (and, as to landscaping, in a healthy condition) and in accordance with all applicable laws, rules, ordinances, orders and regulations of all federal, state, county, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials.

# ARTICLE 6 ENFORCEMENT

## 6.1 Enforcement by the City.

If Developer fails to perform any obligation under this Agreement, and fails to cure the default within thirty (30) days after the City has notified Developer in writing of the default or, if the default cannot be cured within thirty (30) days, fails to commence to cure within thirty (30) days and thereafter diligently pursue such cure and complete such cure within ninety (90) days, the City shall have the right to enforce this Agreement by any or all of the following actions, or any other remedy provided by law or equity:

(a) **Action to Compel Performance or for Damages.** The City may bring an action at law or in equity to compel Developer's performance of its obligations under this Agreement, and/or for damages.

(b) **Remedies Provided Under the Ordinance.** The City may exercise any other remedy provided under the Ordinance.

(c) **Cure Rights.** Notwithstanding anything to the contrary contained herein, City hereby agrees that any cure of any default made or tendered by (i) Developer's limited

partner, or (ii) Developer's senior mortgage lender, shall be deemed to be a cure by Developer and shall be accepted or rejected on the same basis as if made or tendered by Developer.

## ARTICLE 7 MISCELLANEOUS

### 7.1 Lease Provisions.

**(a) In leasing the Affordable Units in the Improvements, the form of Tenant lease shall also comply with all requirements of this Agreement, and shall, among other matters:**

*(1) provide for termination of the lease and consent by the Tenant to immediate eviction for failure: (i) to provide any information required under this Agreement or reasonably requested by Developer to establish or recertify the Tenant's qualification, or the qualification of the Tenant's household, for occupancy in the Improvements in accordance with the standards set forth in this Agreement, or (ii) to qualify as a Very Low Income Household or Low Income Household as a result of any material misrepresentation made by such Tenant with respect to the income computation or certification;*

*(2) provide that if the household's income increases above the applicable limits for a Very Low Income Household or Low Income Household, as applicable, such household's Rent may be subject to increase, and such household's occupancy may be subject to termination due to an increased income above that of a Low Income Household, provided, however, so long as applicable CTCAC regulations or any law or regulations associated with the Tax-Exempt Bonds prohibit termination as a result of increases in income above applicable income limits, the form of tenant Lease for any unit subject to a regulatory agreement with respect to the Tax Credits and/or the Tax-Exempt Bonds shall not be required to provide for termination due to an increased income above that of a Low Income Household; and*

*(3) be for an initial term of not less than one (1) year. After the initial year of tenancy, the lease may be month to month by mutual agreement of Developer and the Tenant.*

**(b) Any termination of a lease (other than default by Tenant) or refusal by Developer to renew must be preceded by no less than thirty (30) days' written notice to the Tenant by Developer specifying the grounds for the action, and with such further notice as may be required by Section 2.4. Termination of a lease for a default by Tenant shall be in accordance with applicable law.**

### 7.2 Nondiscrimination.

**(a) Developer herein covenants by and for itself, its subcontractors, its successors and assigns, and all persons claiming under or through them, that there shall be no unlawful discrimination, irrespective of any person's race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or any other protected status recognized under the law against any employee or applicant for employment**

related to the Affordable Units. Developer shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination or harassment. In addition to the foregoing general obligations, Developer shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0, et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any state or local regulations adopted to implement any of the foregoing, as such statutes and regulations may be amended from time to time.

(b) The provisions of paragraph (a) shall further apply to the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Affordable Units, and Developer and any person claiming under or through the Developer, shall not establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the Affordable Units or in connection with the employment of persons for the construction, operation and management of any Affordable Unit.

#### 7.3 Section 8 Voucher and Certificate Holders.

Developer shall accept as Tenants, on the same basis as all other prospective Tenants, persons who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing housing certificate program or the Housing Choice Voucher Program under Section 8 of the United States Housing Act, or its successor. Developer shall not apply selection criteria to Section 8 certificate or voucher holders that are more burdensome than the criteria applied to all other prospective Tenants, nor shall Developer apply or permit the application of management policies or lease provisions with respect to the Improvements which have the effect of precluding occupancy of units by such prospective Tenants.

#### 7.4 Term.

The provisions of this Agreement apply to the Affordable Housing Parcel for the entire Term. This Agreement is binding on any successor, heir or assign of Developer, whether a change in interest occurs voluntarily or involuntarily, by operation of law or otherwise, except as expressly released by the City.

#### 7.5 Subordination to Security Interest.

**This Agreement shall be subordinated to any bona fide mortgage, deed of trust, or other security financing interest encumbering the Affordable Housing Parcel.**

#### 7.6 Covenants to Run With the Land.

The City and Developer hereby declare their express intent that the covenants and restrictions set forth in this Agreement shall run with the land, and shall bind all successors in title to the Property, provided, however, that on the expiration of the Term of this Agreement said covenants and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof, shall be held conclusively to have been executed, delivered and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless the City expressly releases such conveyed portion of the Property from the requirements of this Agreement.

#### 7.7 Indemnification.

**Developer will indemnify and hold harmless (without limit as to amount) City and its elected officials, officers, employees and agents in their official capacity (hereinafter collectively referred to as "Indemnitees"), and any of them, from and against all loss, all risk of loss and all damage (including expense) sustained or incurred because of or by reason of any and all claims, demands, suits, actions, judgments and executions for damages of any and every kind and by whomever and whenever made or obtained, allegedly caused by, arising out of or relating in any manner to the development of the Property or the sale of units on the Property, and shall protect and defend Indemnities, and any of them with respect thereto; provided, however, that Developer shall not be required to indemnify, defend or hold harmless any of the Indemnitees from claims, losses, damages, costs and expenses related to the negligence or willful misconduct of any of the Indemnitees.**

7.8 Recording and Filing.

The City and Developer shall cause this Agreement, and all amendments and supplements to it, to be recorded in the Official Records of Monterey County.

7.9 Successors Bound.

Developer covenants, for itself and its successors and assigns, not to sell, transfer, assign or otherwise dispose of ownership of the Property (a "Transfer"), without the express written consent of the City, not to be unreasonably withheld, conditioned or delayed. The parties agree that it shall not be unreasonable for City to withhold or condition approval of any Transfer where the proposed transferee has not demonstrated to the City's satisfaction that it has the qualifications, experience and financial resources necessary and adequate as may be reasonably determined by the City to competently manage the Improvements and to otherwise fulfill the obligations undertaken by the Developer under this Agreement. Any prospective purchaser, transferee or assignee shall expressly promise in writing to be bound by all of the provisions hereof, including the covenant in this Section 7.9 to require successors to expressly assume the obligations herein. The Transfer shall be effectuated pursuant to a written instrument satisfactory to the City in form recordable in the Official Records. Upon the Transfer of Developer's rights and interests under this Agreement pursuant to this Section 7.9, Developer shall automatically be released from its obligations and liabilities under this Agreement arising or accruing after the date of Transfer. Upon any Transfer and the express assumption of Developer's obligations under this Agreement by such transferee, City agrees to look solely to the transferee for compliance by such transferee with the provisions of this Agreement. Failure to deliver a written assumption agreement hereunder shall not affect the running of any covenants herein with the land, as provided in Section 7.6 above, nor shall such failure negate, modify or otherwise affect the liability of any transferee pursuant to the provisions of this Agreement.

7.10 Governing Law.

This Agreement is governed by the laws of the State of California.

7.11 Waiver of Requirements.

No waiver of the requirements of this Agreement shall occur unless expressly waived by the City in writing. No waiver will be implied from any delay or failure by the City to take action on any breach or default of Developer or to pursue any remedy permitted under this Agreement or applicable law. Any extension of time granted to Developer to perform any obligation under this Agreement will not operate as a waiver or release from any of its obligations under this Agreement. Consent by the City to any act or omission by Developer shall not be construed to be consent to any other or subsequent act or omission or

to waive the requirement for the City's written consent to future waivers.

7.12 Amendments.

This Agreement may be amended only by a written instrument executed by all the parties hereto or their successors in title, and duly recorded in the real property records of the County of Alameda.

7.13 Notices.

Any notices and correspondence concerning this Agreement shall be sent to the parties at the following addresses:

City	Developer
Clerk	Contact Name
Community Development Department	CO
440 Harcourt Ave	Address
Seaside, CA 93955	City, State Zip

Electronic Copy to:  
cityattorney@ci.seaside.ca.us

Such addresses may be changed by notice to the other party given in the same manner as provided above.

7.14 Severability.

If any provision of this Agreement is found invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions of this Agreement shall not in any way be affected or impaired thereby.

7.15 Multiple Originals; Counterparts.

This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

[Signatures on Next Page]



IN WITNESS WHEREOF, the City and Developer have entered into this Agreement, as of the date first written above.

**DEVELOPER:**

**CITY:**

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 \_\_\_\_\_ )

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(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

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 \_\_\_\_\_ )

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(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Notary Public

EXHIBIT A  
**LEGAL DESCRIPTION**  
**[ATTACHED]**

