

DEPOSIT AND REIMBURSEMENT AGREEMENT

This DEPOSIT AND REIMBURSEMENT AGREEMENT (this "Agreement") is dated as of December 1, 2011, and is entered into by and between the CITY OF SEASIDE, a municipal corporation (the "City") and MONTEREY DOWNS, LLC, a California limited liability company (the "Developer"). The City and the Developer are sometimes individually referred to as a "Party" and are sometimes collectively referred to as the "Parties."

R E C I T A L S

A. Monterey Downs, LLC, a California limited liability company (the "Developer") plans to seek certain land use entitlements and other regulatory approvals for the proposed Monterey Downs and Horse Park project (the "Project"), to be located in the Parker Flats area of the former Fort Ord and generally described in the Monterey Downs and Horse Park Illustrative Site Plan attached hereto as Exhibit "A".

B. A portion of the Project is located within the jurisdiction of the City and the Seaside-Fort Ord Redevelopment Project Area of the Redevelopment Agency of the City of Seaside (the "City Agency"), and a portion of the Project is located within the jurisdiction of the County and the Fort Ord Redevelopment Project Area of the Redevelopment Agency of the County of Monterey (the "County Agency"). As a result, the City, City Agency, County and County Agency have certain regulatory jurisdiction over various aspects of the Project.

C. On May 11, 2010, the County Agency and Developer entered into an Exclusive Negotiating Rights Agreement (the "ENRA") relating to the initial stages of County's and County Agency's review of the Project.

D. On September 16, 2010, the City, the City Agency and Developer entered into an Exclusive Negotiating Agreement (the "ENA") relating to the initial stages of City's and City Agency's review of the Project.

E. The ENA requires the Developer to cooperate with the City and the City Agency in the preparation of environmental impact reports and other reports and analyses necessary for California Environmental Quality Act ("CEQA") compliance.

F. The City and the County have entered into a "Memorandum of Understanding for the Processing of Environmental Review and Economic Review for Land Use Entitlements and Regulatory Approvals Required for the Proposed Monterey Downs and Horse Park Project" (the "MOU") dated November 17, 2011 designating the City as the "lead agency" for purposes of CEQA compliance in connection with the Project.

G. The Developer and the City desire to enter into this Agreement to provide for a deposit of funds by Developer with City that can be used by City to reimburse itself for costs incurred by City in complying with CEQA in connection with the Project.

NOW, THEREFORE, the Parties hereto agree as follows:

1. Developer shall reimburse the City for all of City's actual out-of-pocket costs and expenses (including legal fees and costs, public outreach and noticing) incurred in

complying with CEQA and preparing the environmental impact report (“EIR”) for the Project, including, but not limited to the cost of City staff time (as calculated in good faith by City) (collectively, the “Reimbursable EIR Costs”).

2. Concurrently with its execution of this Agreement, Developer shall deposit with the City the sum of One Hundred Thousand and No/100 Dollars (\$100,000.00) (the “EIR Reimbursement Funds”). The EIR Reimbursement Funds may be used and applied from time to time by the City to pay itself for Reimbursable EIR Costs. The City shall bill Developer monthly for any Reimbursable EIR Costs in excess of the EIR Reimbursement Funds and Developer shall pay all such bills within thirty (30) days after they are delivered.

3. The balance of the EIR Reimbursement Funds shall remain at One Hundred Thousand and No/100 Dollars (\$100,000.00). If payment by Developer to the City for Reimbursable EIR Costs in excess of such balance is not received within thirty (30) days after copies of invoices documenting costs are delivered to Developer, the City shall cease all work until such time as the full payment is received.

4. Any remaining amount of the EIR Reimbursement Funds shall be delivered to the Developer (along with a final accounting of the City's use of the EIR Reimbursement Funds) within thirty (30) business days after the certification of a Final Environmental Impact Report or the termination of the ENA or MOU. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.

5. Developer shall have the right to review, but not approve or disapprove, all contract(s) and contract amendment(s), including scope of work and budget prior to their execution. Developer shall have the right to review, but not approve or disapprove, all invoices prior to payment by the City.

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

If to the Developer:

Monterey Downs, LLC
26885 Mulholland Highway
Calabasas, CA 91302
Attn: Brian Boudreau

If to the Agency:

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

7. This Agreement constitutes the entire agreement of the Parties hereto with respect to the specific subject matter hereof. There are no agreements or understandings between the Parties and no representations by either Party to the other as an inducement to enter into this Agreement, except as expressly set forth herein. All prior negotiations between the Parties are

superseded by this Agreement. Neither the City nor its officers, members, staff or agents have made any representations, warranties or promises to Developer other than as expressly set forth herein.

8. This Agreement may not be altered, amended or modified except by a writing executed by both Parties.

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

10. The interpretation and enforcement of this Agreement shall be governed by the laws of the State of California.

11. Time is of the essence of each and every provision hereof.

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

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

CITY:

THE CITY OF SEASIDE


By: 

Ray Corpuz
City Manager

DEVELOPER:

MONTEREY DOWNS, LLC,
a California limited liability company

By: Monterey Bay Ventures, LLC, a
California limited liability company,
its Managing Member

By: 
Brian Boudreaux,
Managing Member

ATTACHMENT NO. 1

SITE MAP

(Attached.)



Legend

1. Training Facility
2. Country Walk
3. Horse Park
4. Habitat Area
5. Open Space / Parks
6. Affordable Extended Stay - Hotel
7. Residential
8. Neighborhood Parks
9. Water District
10. Hotel / Office / Athletic Club

CSUMB Open Space

Army Parcel

Future Seaside Public Yard

Future Mixed-Use Parcels

Dept. of Defense

Veterans Cemetery

MPC Annex

MPC EVOOC

County/BLM Open Space

Future Seaside Parkway

City of Seaside Monterey County Line

City of Seaside Monterey County Line

City of Seaside Monterey County Line

Perkins Park Center

Perkins Park Road

Ugland Road

001 Street

001 Street