

EXTERNAL DRAFT OF 3.23.2008

MASTER DEVELOPMENT AGREEMENT

BETWEEN

THE CITY OF AUSTIN

AND

SEAHOLM DEVELOPMENT, LLC

CONCERNING THE REDEVELOPMENT OF THE SEAHOLM POWER PLANT

AUSTIN, TEXAS

TABLE OF CONTENTS AND EXHIBIT LIST

ARTICLE I. DEFINED TERMS	1
1.1 Defined Terms.	1
1.2 Modification of Defined Terms	13
1.3 References and Titles	13
1.4 Term of Agreement.....	13
1.5 ENA	13
ARTICLE II. REPRESENTATIONS	13
2.1 Representations of the City	13
(a) Title	13
(b) Parties in Possession	13
(c) Proceeding by Governmental Authority	14
(d) Litigation or Administrative Proceeding	14
(e) Performance Will Not Result in Breach	14
(f) Execution	14
(g) Not a Foreign Person	14
(h) Broker	14
2.2 Representations of Seaholm.....	15
(a) Authorization	15
(b) Performance	15
(c) Execution	15
(d) Broker	15
2.3 Change in Representations.....	15
2.4 NO OTHER REPRESENTATIONS OR WARRANTIES	16
ARTICLE III. COVENANTS AND AGREEMENTS	16
3.1 Seaholm’s Development Related Covenants	16
(a) Improvements Design and Performance	16
(b) Subdivision Plat	17
(c) Zoning	17
(d) Construction	17
(e) Design Changes.	18
(f) Payments; Liens	19
(g) Defects and Deficiencies.....	19
(h) Assignability	19
(i) Maintenance of the Property	20
(j) Development Personnel	20
(k) Coordination of Work	20
(l) Licensing and Leasing	20
(m) Grants.....	20
(n) Property Development Costs and Property Operating Costs	20
(o) Inspection.....	21
(p) Construction Completion	21
(q) Sale of the Property.....	22

	(r) Initial Hotel Manager.....	22
3.2	Seaholm’s General Covenants	22
	(a) Single Asset Entity.....	22
	(b) Books and Records	22
	(c) Reporting.....	22
	(d) M/WBE	23
3.3	City’s Covenants.....	23
	(a) Litigation.....	23
	(b) No Further Sales	23
	(c) No Further Leases	23
	(d) Dedicated Team	24
	(e) City Utility Infrastructure Improvements	24
	(f) Coordination of Work	24
	(g) Zoning and Subdivision	24
	(h) Environmental.....	24
	(i) Offsite Parking Garage.	25
	(j) Offsite Parking Garage Management Agreement.....	26
	(k) Inspection Prior to Takedown Date.	26
3.4	Economic Development Agreement	27
ARTICLE IV. PROPERTY TAKEDOWN AGREEMENTS		27
4.1	Takedown Agreement.....	27
4.2	Takedown Conditions	27
	(a) The City’s Takedown Conditions	27
	(b) Seaholm’s Takedown Conditions	28
4.3	Title Binder and Survey	28
	(a) Title Binder and Survey	28
	(b) Updating Title Binder and Survey	28
	(c) Review of Updated Title Binder and Survey	28
	(d) Seaholm’s Option to Waive Updating Title Binder and Survey.....	29
4.4	Condemnation	29
	(a) Knowledge	29
	(b) Seaholm’s Role	30
	(c) Legal Requirements	30
ARTICLE V. PROPERTY TAKEDOWNS		30
5.1	The Takedowns.....	30
	(a) The City’s Takedown Obligations	30
	(b) Seaholm’s Takedown Obligations	30
	(c) Taxes and Assessments.....	31
ARTICLE VI. PAYMENT OF INCENTIVES AND OTHER REIMBURSEMENTS		31
6.1	Incentives.....	31
6.2	Requirements for Disbursement of Each Incentive.	33
	(a) Frequency.....	33
	(b) Timing.....	33
	(c) Certain Events.....	33

	(d)	Disputed Amounts.	33
	(e)	Additional Information	33
6.3		Other Requirements for Payments of Incentives.	33
	(a)	Transfer Price Incentive.....	33
	(b)	Street Incentive	34
	(c)	Power Plant Rehab Incentive	35
	(d)	Plaza Incentive	35
	(e)	Reimbursable Fees Incentive	36
6.4		Offsite Parking Garage Reimbursement.	37
	(a)	Disbursement	37
	(b)	Timing.....	37
	(c)	Events.....	37
	(d)	Title	37
	(e)	Invoices	37
	(f)	Certification	38
	(g)	Additional Information	38
ARTICLE VII. REPAYMENT OF INCENTIVES			38
7.1		Distribution of Property Net Income.	38
	(a)	First	38
	(b)	Second.....	38
	(c)	Third.....	38
7.2		Survivability of Distribution Obligation.....	38
ARTICLE VIII. FEES AND EXPENSES			39
8.1		Public Art Fee	39
8.2		Transactions With Affiliates.	39
ARTICLE IX. INSURANCE AND INDEMNITY			39
9.1		Insurance	39
	(a)	General.....	39
	(b)	Special Requirements.....	41
	(c)	Additional Insured	41
	(d)	Cost	41
9.2		Indemnity and Release.....	42
	(a)	Indemnity	42
	(b)	Claims	42
	(c)	Notification.	42
	(d)	Release.	43
ARTICLE X. EVENTS OF DEFAULT AND REMEDIES			43
10.1		Events of Default – Seaholm	43
	(a)	Failure to Pay	43
	(b)	Abandonment or Suspension	43
	(c)	Failure to Perform Obligations	43
	(d)	Insurance	43
	(e)	Assignment	43
	(f)	Other Agreement Events of Default	43

	(g) Receiver and Bankruptcy	44
	(h) Litigation.....	44
	(i) Mortgagee as the Developer	44
10.2	Remedies of the City.....	44
	(a) Termination of Rights	45
	(b) Specific Performance	45
	(c) Damages.....	45
	(d) Liquidated Damages.	45
	(e) Assignment	45
	(f) Reconveyance.	45
	(g) Tolling of Other Obligations.....	45
	(h) Remedies Under Other Agreements	45
10.3	Events of Default – City	46
	(a) Failure to Pay	46
	(b) Failure to Perform Obligations	46
	(c) Other Agreement Events of Default	46
	(d) Assignment	46
	(e) Receiver and Bankruptcy	46
	(f) Litigation.....	46
10.4	Remedies of Seaholm	46
	(a) Termination of the Development	46
	(b) Specific Performance	46
	(c) Damages.....	47
	(d) Tolling of Other Obligations.....	47
10.5	Rights and Remedies Are Cumulative.....	47
10.6	Plans and Data.....	47
10.7	LIMITED WAIVER OF SOVEREIGN IMMUNITY	47
ARTICLE XI. SEAHOLM’S RIGHT TO FINANCE AND MORTGAGEE PROTECTION		47
11.1	Seaholm’s Right to Finance	47
	(a) Amount	48
	(b) Rate	48
	(c) Mortgage.....	48
	(d) Equity Kicker	48
11.2	Limitation of Liability.....	48
11.3	Use of Loan Proceeds	48
11.4	Refinancing	48
11.5	Mortgagee Protection.....	48
	(a) Termination.....	49
	(b) Notice.....	49
	(c) Cure Right.....	49
	(d) Bankruptcy	49
	(e) Multiple Mortgagees	50
	(f) Default Under Loan Documents	50
ARTICLE XII. MISCELLANEOUS PROVISIONS		50
12.1	Notices	50

12.2	Limitation on Liability	51
12.3	Independent Contractor	52
12.4	Severability	52
12.5	Construction of Agreement	52
12.6	Entire Agreement	52
12.7	No Waiver	52
12.8	Time Is of the Essence	52
12.9	Governing Laws	53
12.10	Attorney's Fees and Interest	53
12.11	No Third Party Beneficiaries	53
12.12	Counterparts	53
12.13	Time of Performance	53
12.14	Estoppel Certificates	53
12.15	Successors and Assigns	53
	(a) General	53
	(b) City Assignment	54
	(c) Seaholm Assignment	54
	(d) Bankruptcy	55
12.16	No Recording/Filing	55
12.17	Effect of Force Majeure, City Caused Delays and Seaholm Caused Delays	55
12.18	Further Acts	56
12.19	Consents and Approvals	56
12.20	Correction of Technical Errors	56
12.21	Interstate Land Sales Full Disclosure	56
12.22	Termination Prior to MDA Commencement Date	56
12.23	Termination Prior to Commencement of Constriction	56
12.24	Guaranty	57

Schedule I Defined Terms

Exhibit A Property

Exhibit A-1 Hotel/Condo Property

Exhibit A-2 Power Plant Property

Exhibit A-3 Office Property

Exhibit B City Utility Infrastructure Improvements

Exhibit C Declaration

Exhibit D Deed

Exhibit E Offsite Parking Garage Management Agreement

Exhibit F Proforma

Exhibit G Ground Lease

Exhibit H Guaranty

MASTER DEVELOPMENT AGREEMENT

This Master Development Agreement (this “**Agreement**”) is made to be effective as of the * ___ day of *, 2008 (the “**Effective Date**”), between THE CITY OF AUSTIN, a Texas home rule city and municipal corporation (the “**City**”) and SEAHOLM DEVELOPMENT, LLC, a Delaware limited liability company (“**Seaholm**”).

RECITALS

A. On August 27, 2004, the City issued a Request for Qualifications for an entity to develop the property currently known as the Seaholm Power Plant on Caesar Chavez, Austin, Texas (as more particularly defined below, the “**Property**”).

B. On April 28, 2005, Seaholm was selected by the City Council of the City of Austin from a pool of bidders as the master developer in satisfaction of Texas law requiring competitive bidding for certain sales or conveyances of public property.

C. The City and Seaholm entered into an Exclusive Negotiation Agreement (as extended, the “**ENA**”) dated effective November 14, 2005, pursuant to which Seaholm was given certain rights to negotiate the terms of this Agreement for the redevelopment of the Property.

D. The purpose of this Agreement is to set forth the terms and conditions of the lease, purchase, sale and redevelopment of the Property.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, the City and Seaholm agree as follows:

ARTICLE I. DEFINED TERMS

1.1 Defined Terms. As used in this Agreement, terms used, but not defined in the body of this Agreement will have the meanings indicated:

“**Affiliate**” means any Person controlling, controlled by or under common control with any other Person. For the purposes of this definition, the term “control” when used with respect to any Person means the power to direct the management or policies of such Person, directly or indirectly, whether through the ownership of voting securities, by law, regulation, contract or otherwise, and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“**Applicable Bankruptcy Law**” as defined in Section 10.1(g) hereof.

“**Approved Leases**” means leases of the applicable building which (a) do not exempt the owner of the applicable building from the payment of real estate taxes, (b) have an initial term of at least 5 years (3 years for a Local Business), (c) the rent payable thereunder is generally at market rates (i.e., arms length, fair market, annual, nonrenewal rental rate per rentable square foot entered into on or about the relevant date for space

comparable to the applicable premises and buildings comparable to the applicable building), (d) are in full force and effect, (e) do not contain any contingency to the effectiveness of such lease other than the completion of construction of improvements, and (f) the tenant thereunder leased the applicable premises primarily to conduct its business with the general public (as opposed to a party which leases space to sublease to other parties); provided however, Approved Leases will not include any lease with an Affiliate of Seaholm if such lease(s) causes more than 15% of the applicable square footage of applicable Improvement to be leased to Affiliates of Seaholm.

“Austin MSA” means the Austin-San Marcos Metropolitan Statistical Area as designated by the U.S. Census Bureau and each successor designation which includes the City of Austin.

“Bankruptcy Event” means a petition for relief under the applicable bankruptcy law or an involuntary petition for relief is filed against Seaholm under any applicable bankruptcy law and such petition is not dismissed within sixty (60) days after the filing thereof, or an order for relief naming Seaholm or Guarantor is entered under any applicable bankruptcy law, or any composition, rearrangement, extension, reorganization or other relief of debtors now or hereafter existing is requested or consented to by Seaholm. A Bankruptcy Event may exist even if an Event of Default cannot be declared because of a Bankruptcy Event.

“Books and Records” as defined in Section 3.2(b) hereof.

“Business Day” means any day other than a Saturday, Sunday, federally-mandated bank holiday, or the day after Thanksgiving. If the last day for performance of an act falls upon a day that is not a Business Day, then the last day for performance will automatically be extended until the next-following regular Business Day.

“Certificate of Occupancy” means a final and unconditional Certificate of Occupancy of a shell building (or its equivalent) from all applicable Governmental Authorities permitting the lawful construction of individual tenant improvements within such shell building; provided however, if due to seasonal concerns or construction phasing of a building, the applicable landscaping is not yet complete, a “landscaping completion” conditional Certificate of Occupancy will satisfy the prerequisite for a “Certificate of Occupancy” hereunder.

“City Caused Delay” means any actual delay caused solely by the City (a) with respect to its obligations which *are not specified* hereunder in its capacity as a governmental entity (such as building permit issuance or plat approval), by its unlawful action or inaction; provided however, if Seaholm is obligated under this Agreement to perform an action within a specified time period, and that time period is shorter than the specific time frame established by Legal Requirements for a related regulatory action by the City acting in its governmental capacity, then the time for Seaholm’s performance will be extended beyond the contractual time period at least to the date of the related City regulatory action, (b) with respect to its obligations which *are specified* hereunder in its capacity as a governmental entity (such as providing a dedicated review team), by its

unreasonable delay in such action or inaction, or (c) in its capacity as a landowner (such as design approval, and financial approvals), by its failure to meet the specific timeframes for action set forth herein.

“City Utility Infrastructure Cost” means the City’s cost of relocating (a) a 72” waterline on the Property, (b) electrical lines on the Property and (c) the City Utility Infrastructure Improvements.

“City Utility Infrastructure Improvements” means those improvements listed on Exhibit B attached hereto.

“City’s Actual Knowledge” and **“Actual Knowledge”**, or similar language, means the actual, current, conscious knowledge of (a) the current or any future Director of the City’s Economic Growth & Redevelopment Services Office as to knowledge of that person while he/she serves as Director, and (b) the current or any future internal legal counsel specifically assigned to the Property as to knowledge of that person while he/she serves as such counsel, without any duty of inquiry or investigation, and does not include constructive, imputed or inquiry knowledge.

“Claim” as defined in Section 9.2(a) hereof.

“Commence Construction” and **“Commencement of Construction”** mean

(a) with respect to the Hotel/Condo Building and the Office Building, the commencement of bona-fide pouring of concrete footings for construction of the proposed “build out” of the improvements on the applicable portion of the Property; and

(b) with respect to the Power Plant Building, the bona-fide, good faith initiation of physical redevelopment of the Power Plant Building.

“Complete Construction” and **“Completion of Construction”** mean, with respect to the applicable portion of the Improvements or Offsite Parking Garage, the day on which all of the following have been satisfied:

(a) the applicable Improvements or Offsite Parking Garage have been substantially completed in accordance with the applicable plans and specifications therefor,

(b) all Governmental Authorities having jurisdiction have issued applicable certificates of completion, certificates of occupancy or their equivalent, as applicable, for the Improvements or Offsite Parking Garage, and

(c) all bills for such Improvements or Offsite Parking Garage have been paid or, if in a good faith dispute, appropriate reserves for such bills have been made to the reasonable satisfaction of the City.

“Cure Period” as defined in Section 4.3(c) hereof.

“Declaration” means the Declaration of Restrictive Covenants substantially in the form attached hereto as Exhibit C.

“Deed” means the Special Warranty Deed substantially in the form attached hereto as Exhibit D.

“Design Approval Request” as defined in Section 3.1(d)(iii).

“Disclosure Notice” as defined in Section 2.3 hereof.

“Dry-In Condition” means, (a) with respect to the Office Building and the Hotel/Condo Building, the applicable building has been completed to a “dried in” and “weather tight” condition (i.e. completion of the foundation and shell of the building with windows, doors, final roof and final exterior facing) and the surrounding property landscaped (as appropriate based on seasonal conditions and construction phasing of a building), each in accordance with plans approved by the City, this Agreement and Legal Requirements, and (b) with respect to the Power Plant Building, the interior of the Power Plant Building has been demolished and reconstructed in a manner which allows the commencement of construction of all the individual tenant improvements in the Power Plant Building (including construction of applicable improvements to achieve a “dried in” and “weather tight” condition) and the surrounding property landscaped (as appropriate based on seasonal conditions and construction phasing of a building) in accordance with plans approved by the City, this Agreement and Legal Requirements.

“Event of Default” means any happening or occurrence described in Sections 10.1 or 10.3 hereof following the expiration of any applicable grace, notice or cure period.

“Financing” as defined in Section 11.1.

“Force Majeure” means acts of God, strikes, lockouts or other industrial disturbances, shortages of labor or materials, war, acts of public enemies, terrorism, orders of any kind of the government of the United States, the State of Texas, Travis County, Texas, City of Austin, or any other civil or military authority, insurrections, riots, epidemics, landslides, earthquakes, lightning, fires, hurricanes, storms, floods, washouts, other natural disasters, a party not receiving a governmental permit, license, approval or inspection in time to meet a contractual time period imposed hereunder provided that party, in good faith, was diligent in the application or request for and prosecution of the process to obtain that permit, license, approval or inspection, restraint of government and people, civil disturbances, explosions, acts or omissions of either party (or a subdivision thereof) to this Agreement or other causes not reasonably within the control of the party claiming such inability (except that in no event shall Force Majeure include (a) financial inability to perform unless such event, act or cause results primarily from the occurrence of a Force Majeure event described above, or (b) acts of the party claiming such inability, or a subdivision thereof, including without limitation any ordinances, regulations, orders or similar action by such party or a subdivision thereof). The term “Force Majeure” also includes actual delays in the initial development of the Property caused by an injunction

requested by a local community or citizen group or individual and granted by a court of competent jurisdiction which specifically prohibits the development of the Property, but only to the extent and during such time period such injunction is in effect.

“GAAP” means generally accepted accounting principles, consistently applied, as promulgated by the Financial Accounting Standards Board.

“Governmental Authority” means any and all courts, boards, agencies, commissions, offices or authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

“Guarantor” means CIM Fund III, L.P., a Delaware limited partnership.

“Guaranty” means the Guaranty executed by Guarantor in the form of Exhibit H attached hereto.

“Ground Lease” means a ground lease in the form of Exhibit G attached hereto.

“Hazardous Materials” mean any substance that is now or hereafter defined or listed in, or otherwise classified pursuant to, any Legal Requirements or common law, as “hazardous substance,” “hazardous material,” “hazardous waste,” “acutely hazardous”, “extremely hazardous waste,” infectious waste,” “toxic substance,” “toxic pollutant” or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, or toxicity, including any petroleum, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas) or derivatives thereof. **“Hazardous Materials”** also include, without limitation, those substances listed in the United States Department of Transportation Table (49 CFR 172.101, as amended).

“Hotel/Condo Building” means at least a 160 room “Class A” hotel and at least 62 high rise condominium units to be constructed on the Hotel/Condo Property as it may be modified pursuant to Section 3.1(e)(ii).

“Hotel/Condo Property” means that portion of the Property more particularly described on Exhibit A-1 attached hereto.

“Improvements” means the Street Improvements, the Plaza, the Hotel/Condo Building, the Office Building and the Power Plant Building.

“Incentive Disbursement” means a disbursement of an Incentive.

“Incentive Disbursement Request” means a request by Seaholm for disbursement of an Incentive in a form reasonably approved by the City.

“Incentives” as defined in Section 6.1.

“Inspection Right” as defined in Section 3.3(k).

“IRR” means Internal Rate of Return and is the discount rate at which the present value of the future cash flows of an investment (returns on investment) equals the cost of the investment (outflows of investment). For the purposes of this Agreement, the return will be calculated on a compounded, monthly, unleveraged basis as the return is calculated in Microsoft Excel 2003 and is calculated on actual cash collected (distributions) and cash invested (contributions) basis. Unleveraged basis is defined as all cash flows less costs associated with any Financing including origination fees, commitment fees, points and interest expense. The monthly cost and return cash flows used for this calculation shall include:

(a) Property Development Costs, less payment of any Incentives and any grants or tax credits obtained by Seaholm under and subject to Section 3.1(m); and

(b) Property Net Income.

“Legal Requirements” mean applicable restrictive covenants (including the Declaration), service extension requests, zoning ordinances, and building codes; access, health, safety, environmental, and natural resource protection laws and regulations and all other applicable federal, state, and local laws, statutes, ordinances, rules, design criteria, regulations, orders, determinations and court decisions.

“Local Business” means:

(a) the business’ headquarters or first retail or restaurant location is located in the Austin MSA, or

(b) the business is owned by an individual who resides in or has his or her principal place of business in the Austin MSA, or

(c) the business is a group of individuals and more than half of the individuals reside in or have their principal place of business in the Austin MSA (the “more than half” requirement means that if there were only two individuals, then they would both need to reside in or have their principal place of business in the Austin MSA, but if there were three individuals, then only two would need to reside in or have their principal place of business in the Austin MSA), or

(d) the business is a business organization (such as a corporation, partnership or limited liability company) that is controlled by or at least 51% owned by: (A) an individual who resides in or has his or her principal place of business in the Austin MSA, or (B) a group of individuals of which more than half reside in or have their principal places of business in the Austin MSA, or

(e) the business has its principal place of business in the Austin MSA.

“Major Event of Default” means:

(a) an Event of Default exists under Section 6 of the Deed (Repurchase Right – Failure to Commence Construction);

(b) an Event of Default exists under Section 8 of the Deed (Repurchase Right - Work Stoppage);

(c) an Event of Default exists under Section 5.1 of the Ground Lease (Termination Right – Failure to Commence Construction);

(d) an Event of Default exists under Section 5.3 of the Ground Lease (Termination Right – Work Stoppage);

(e) an Event of Default exists under Section 12.15(c) hereof; or

(f) if the unpaid liquidated damages under Section 10.2(d) hereof are equal to or exceed \$365,000.

“M&M Lien” means a lien, claim of lien or affidavit of a lien concerning any work performed or materials delivered to the Property.

“MDA Commencement Date” means the date that all of the following has occurred (i) the Property is zoned in accordance with Section 3.1(c) hereof, (ii) the Property is platted and subdivided in accordance with Section 3.1(b) hereof, (iii) the VCP Certificates are issued by the TCEQ as contemplated by Section 3.3(h) hereof, (iv) the City has obtained a release or reconveyance of the easement estate(s) in favor of Union Pacific Railroad Company that burden the Property, (v) the Offsite Parking Garage has been approved for construction under Section 3.3(i), and (vi) funding for the Offsite Parking Garage has been approved by the Austin City Council.

“Mortgage” means a mortgage, deed of trust, security agreement, indenture or similar security agreement that encumbers the Property and secures any Financing of Seaholm.

“Mortgagee” means an institutional lender, agent or trustee who is the holder a Mortgage which secures the monetary obligations of Seaholm; provided however, no Affiliate of Seaholm will be deemed to be a Mortgagee unless such Affiliate is the only lender to Seaholm (i.e., if an Affiliate is a secondary lender to Seaholm with respect to the Property through a transaction which is an equity investment documented as a loan, such arrangement will not be characterized as a lending transaction and the lender thereof will not be entitled to receive the special Mortgagee protections hereunder).

“Objection Period” as defined in Section 4.3(c) hereof.

“Office Building” means at least a 66,000 gross square foot “Class A” office building to be constructed on the Office Property as it may be modified pursuant to Section 3.1(e)(ii).

“Office Property” means that portion of the Property more particularly described on Exhibit A-3 attached hereto.

“Offsite Parking Garage” means an approximate 315 space aboveground parking garage on an adjacent parcel of land shown on Exhibit A attached hereto owned by the City which will be used partially by the Property and partially as a public parking garage. The Offsite Parking Garage will be managed by Seaholm under the Offsite Parking Garage Management Agreement.

“Offsite Parking Garage Management Agreement” means the Management Agreement attached hereto as Exhibit E.

“Permitted Encumbrances” mean, as applicable to each applicable portion of the Property, (a) general real estate taxes on the applicable portion of the Property for the year of Takedown, if any, (b) the Declaration, (c) the encumbrances accepted by Seaholm as provided in Section 4.3(c) hereof, (d) all exceptions to title coverage set forth in the Title Binder and any update thereto, (e) all matters shown on the Survey and any update thereto, (f) all matters shown on the subdivision plat for the applicable portion of the Property approved by Seaholm, which approval will not be unreasonably withheld, conditional or delayed and (g) any other encumbrances approved, or caused, by Seaholm.

“Permitted Transfer Date” as defined in Section 12.15(c) hereof.

“Person” means an individual, corporation, partnership, limited liability company, unincorporated organization, association, joint stock company, joint venture, trust, estate, real estate investment trust, government, agency or political subdivision thereof or other entity, whether acting in an individual, fiduciary or other capacity.

“Plaza” means the main plaza of the Property located between the buildings of the Property, portions of which will be located on each subdivided tract of the Property.

“Plaza Incentive” as defined in Section 6.1.

“Potential Event of Default” means any condition or event which after notice and/or the lapse of time would constitute an Event of Default.

“Power Plant Building” means the existing Seaholm Power Plant Building on the Power Plant Property which will be redeveloped into at least 99,000 gross square feet of space for retail, office, restaurant, cocktail lounge/nightclub, convenience storage and event uses.

“Power Plant Property” means that portion of the Property more particularly described on Exhibit A-2 attached hereto.

“Power Plant Rehab Incentive” as defined in Section 6.1.

“Preferred Mortgagee” means a Mortgagee which:

(a) is Comerica Bank, Wachovia Bank, ING, Citibank, Wells Fargo, Bank of America, J.P. Morgan Chase, Column Financial (Credit Suisse) or Keybank; or

(b) (i) at the time of determination, is listed as one of the largest 30 banks in the United States in terms of total assets by a publicly available and industry accepted publication, (ii) is regularly engaged in the business of making or owning commercial real estate loans or operating commercial mortgage properties, and (iii) maintains a headquarters in the United States (all of which thresholds must be confirmed and evidenced in writing to the City).

“Proforma” means the proforma attached hereto as Exhibit F.

“Property” means the property described on Exhibit A attached hereto.

“Property Development Costs” means, without duplication of Property Operating Costs, all reasonable and customary costs actually incurred in connection with the construction of the Improvements and development of the Property as contemplated in Section 3.1(n) and the Proforma as Land - Acquisition Fee; Building Shell; Tenant Improvements; Interior Finishout; Furniture, Fixtures and Equipment; Garage and Parking; Plazas; Hardscape; Landscape; Development Fee/Overhead; Architectural/Structural/MEP/-Civil and other consultants; Tstg/Std/Cnslts/Permit Cnslt; Construction Management Fee; Real Estate Taxes/Insurance; Leasing Commissions; Legal / Accounting; City Fees; Reimbursables; Marketing; Hotel Soft Costs; and Title Costs.

“Property Net Income” means Property Revenues *less* Property Operating Costs, to the extent the result is positive.

“Property Operating Costs” means all reasonable and customary costs actually incurred in connection with the development (including Property Development Costs, but without duplication thereof) and operation of the Property as contemplated hereby, which costs are incurred on or after the Effective Date and exclude only the following:

(a) Administrative costs (except to the extent expressly permitted herein and included in the Proforma).

(b) Seaholm’s financing interest payments, deferred interest, principal payments and similar “interest” or debt service components. Seaholm’s financing origination and commitment fees’.

(c) Seaholm’s costs incurred in selling, syndicating, assigning, or hypothecating any of Seaholm’s interest in the Property.

(d) Costs reimbursed by third parties.

(e) Distributions to the members, managers or other investors of Seaholm.

(f) Fees paid by Seaholm for the management of any property owned by the City (including any structured parking facility).

(g) Any tax on Seaholm's income, franchise, gross receipts, corporation, capital levy, excess profits, revenue, or payroll (other than payroll taxes concerning employees to the extent such employees are providing services for the development, ownership, management or operation of the Property).

(h) Penalties, fines, late fees, or default fees caused by Seaholm under any contract, agreement, or Legal Requirements relating to the Property. Costs and expenses incurred or paid, including legal fees, as a result of Seaholm's negligence, wrongful act or omission.

(i) Charitable contributions.

(j) The Public Art Fee.

(k) All costs which are eligible for reimbursement through an Incentive.

(l) Depreciation.

(m) Reserves for anticipated future expenses.

(n) Payroll taxes (other than concerning employees to the extent such employees are providing services for the operation of the Property), association dues, meeting expenses, computer maintenance, computer supplies, data/network equipment, entertainment, courier service, insurance, license & fees, office moving expenses, employee functions, office equipment, office furniture, services for equipment, office supplies, temporary services, printing, publications, office rent, training, postage and stationary, telephone services, cell phone services, travel services, salaries and wages, bonus, employee benefits, parking, and miscellaneous other general and administrative costs (except to the extent directly applicable to the development, ownership, management or operation of the Property and included in the Proforma).

(o) To the extent payments under contracts or agreements with Seaholm Affiliates to perform services or supply products to the Property are not commercially reasonable or do not represent an arm's length transaction.

(p) All costs associated with the Offsite Parking Garage.

"Property Revenues" means all receipts and revenues generated by or in connection with the Property, including, without limitation, rents, sales proceeds, interest income, insurance proceeds, condemnation awards and payments received from interest rate hedging or similar agreements. Property Revenues includes net sale revenues (i.e., not less than 92% of the gross sale revenues) from condo units and net sale proceeds (i.e., not less than 92% of the gross sale revenues) or re-financing net proceeds from hotel,

office and Seaholm building but excludes any management fees paid by the City to Seaholm for the management and operation of the Offsite Parking Garage.

“Reimbursable Fees” includes any initial development fees which are individually in excess of \$10,000 payable by Seaholm to the City directly relating to Seaholm’s (but not the occupants of the Property) development of the Property, up to a maximum amount of \$1,000,000. The term “development fees” includes: temporary use of right of way use fees, shell building construction inspection fees, shell building permit fees, payment of a fee in lieu of water quality improvements, zoning fees, platting/subdivision fees, right of way excavation fees, drainage construction fees, electrical meter fees, shell building plan review fees, utility tap fees, and parkland dedication fees.

“Reimbursable Fees Incentive” as defined in Section 6.1.

“Repayment Incentives” means the total amount of the Transfer Price Incentive, Power Plant Rehab Incentive, the Reimbursable Fees, the Plaza Incentive, UP Easement Acquisition Costs and the City Utility Infrastructure Cost.

“Repayment Incentives Date” means the earlier to occur of (a) the date the Repayment Incentives have actually been fully repaid to the City, or (b) the sale of all of Seaholm’s interest in the Property to an independent third party which is not an Affiliate of Seaholm. The Repayment Incentives Date will not be deemed to occur because of any bankruptcy, insolvency, foreclosure, deed in lieu of foreclosure or similar event (including without limitation a sale resulting therefrom) it being the intent of the parties that the obligation to repay the Repayment Incentives survive until the Property is sold from one private owner/developer to another private owner/developer. Upon the written request of Seaholm, the City will confirm in writing that the Repayment Incentives Date has occurred.

By way of example and not of limitation, the following events WILL NOT constitute the Repayment Incentives Date:

- (a) transfer to a Seaholm Affiliate;
- (b) foreclosure sale;
- (c) deed to a Mortgagee in lieu of foreclosure; and
- (d) sale by a bankruptcy trustee to a developer/owner.

By way of example and not of limitation, the following events WILL constitute the Repayment Incentives Date:

- (a) sale of the Office Property by Seaholm to a Real Estate Investment Trust; and
- (b) transfer of the Ground Lease concerning the Power Plant Property

by Seaholm to another retail owner/developer.

“Replacement Developer” means a substitute developer which is either (a) designated as the developer by a Preferred Mortgagee to assume the role of developer under and pursuant to this Agreement or (b) approved by the City to assume the role of developer under and pursuant to this Agreement, with the parties acknowledging that, with respect to this clause (b), the Replacement Developer will be evaluated by the City in the same manner as Seaholm was evaluated by the City in its original RFQ process.

“Seaholm Caused Delay” means any actual delay caused solely by Seaholm’s failure to meet the specific timeframes for action set forth herein.

“Street Improvements” means the construction to City standards of West Avenue and Seaholm Drive with related sidewalks and streetscape.

“Street Incentives” as defined in Section 6.1.

“Survey” means the survey of the Property dated January 4, 2008 prepared by Gregorio Lopez, Jr. of Macias and Associates, LP.

“Takedown” means the transfer by the City of a portion of the Property to Seaholm and Seaholm’s acceptance of such transfer from the City for redevelopment of the Property in accordance with this Agreement. **“Takedowns”** means the process of a Takedown. **“Takendown”** means a prior Takedown process.

“Takedown Date” means the Business Day on which a Takedown occurs.

“TCEQ” means the Texas Commission on Environmental Quality, including its successors.

“Title Binder” means the Commitment for Title Insurance issued by the Title Company for the Property, GF Number 00051963 dated effective January 14, 2008 and all exceptions to title coverage set forth therein as provided in Section 4.4.

“Title Company” means Heritage Title Company of Austin, Inc., its successors and assigns, or any other title company approved by the City and Seaholm.

“Transfer” as defined in Section 12.15(c).

“Transfer Price” means:

Hotel/Condo Property	\$2,000,202
Power Plant Property	\$99
Office Property	\$915,000
Total	\$2,915,301

“Transfer Price Incentive” means the reimbursement of the Transfer Price to Seaholm as described in Section 6.1.

“Transfer Request” as defined in Section 12.15(c).

“UP Easement Acquisition Cost” means the cost to acquire the easement estate regarding the Union Pacific Railroad Easement on the Property.

1.2 Modification of Defined Terms. Unless the context clearly otherwise requires or unless otherwise expressly provided herein, the terms defined in this Agreement which refer to a particular agreement, instrument or document also refer to and include all renewals, extensions, supplements, modifications, amendments and restatements of such agreement, instrument or document; provided that nothing contained in this Section shall be construed to authorize any such renewal, extension, supplement, modification, amendment or restatement.

1.3 References and Titles. All references in this Agreement to exhibits, schedules, addenda, articles, paragraphs, subparagraphs, sections, subsections and other subdivisions refer to the exhibits, schedules, addenda, articles, paragraphs, subparagraphs, sections, subsections and other subdivisions of this Agreement unless expressly provided otherwise. Titles appearing at the beginning of any subdivisions are for convenience only and do not constitute any part of such subdivisions and shall be disregarded in construing the language contained in such subdivisions. The words “this Agreement”, “herein”, “hereof”, “hereby”, “hereunder” and words of similar import refer to this Agreement as a whole and not to any particular subdivision unless expressly so limited. The phrases “this paragraph” and “this subparagraph” and similar phrases refer only to the paragraphs or subparagraphs hereof in which such phrases occur. The word “or” is not exclusive, and the word “including” (in its various forms) means “including without limitation.” Pronouns in masculine, feminine and neuter genders shall be construed to include any other gender, and words in the singular form shall be construed to include the plural and vice versa, unless the context clearly otherwise requires. References to any constitutional, statutory or regulatory provision means such provision as it exists on the Effective Date and any future amendments thereto or successor provisions thereof.

1.4 Term of Agreement. The term of this Agreement shall commence on the Effective Date and shall continue until the earliest to occur of: (a) the Repayment Incentives Date and (b) the date this Agreement is earlier terminated pursuant to the terms hereof.

1.5 ENA. The ENA is terminated as of the Effective Date and neither party has any ongoing responsibilities or liabilities thereunder.

ARTICLE II. REPRESENTATIONS

2.1 Representations of the City. The City represents to Seaholm as follows:

(a) Title. The City presently has good and indefeasible title to the Property, subject to the applicable Permitted Encumbrances.

(b) Parties in Possession. As of the Effective Date, there is no party in possession of the Property (other than the City and its departments), and on the applicable Takedown Date, there will not be any party in possession of the applicable portion of the

Property. As of the Effective Date, no party has a present right or any future right to occupy or acquire any portion of a structure or improvement on the Property (other than Seaholm and the City and its departments), and on the applicable Takedown Date, no party will have a then current right or any future right to occupy any portion of a structure or improvement on the applicable portion of the Property. Seaholm understands and acknowledges that the City may utilize (i.e., occupy or store nonHazardous Materials in) all or any portion of the Property prior to its applicable Takedown Date.

(c) Proceeding by Governmental Authority. There is no pending or, to the City's Actual Knowledge, threatened condemnation or similar proceeding or special assessment affecting the Property or any part thereof (except with respect to this representation made as of a Takedown Date, any condemnation legislation filed in the Legislature of the State of Texas).

(d) Litigation or Administrative Proceeding. To the City's Actual Knowledge, the City has received no service of process or other written notification of any litigation or administrative proceedings which would materially and adversely affect title to the Property or the ability of the City to perform any of its obligations hereunder.

(e) Performance Will Not Result in Breach. Performance of this Agreement pursuant to the terms hereof will not result in any breach of, or constitute any default under, or result in the imposition of any lien or encumbrance upon the Property under, any agreement or other instrument to which the City is a party or by which the City or the Property might be bound.

(f) Execution. The execution and delivery of, and the City's performance under, this Agreement are within the City's powers and have been duly authorized by all requisite municipal action. The Person executing this Agreement on behalf of the City has the authority to do so. This Agreement constitutes the legal, valid and binding obligation of the City enforceable in accordance with its terms, subject to the principles of equity.

(g) Not a Foreign Person. The City is not a "foreign person" within the meaning of the Internal Revenue Code, as amended, Sections 1445 and 7701 or the regulations promulgated thereunder.

(h) Broker. The City has not authorized any broker or finder to act on its behalf in connection with the transactions contemplated herein and it has not dealt with any broker or finder purporting to act on behalf of any other party. To the extent allowed by Legal Requirements, the City agrees to indemnify and hold harmless Seaholm from and against any and all claims, losses, damages, costs or expenses of any kind or character arising out of or resulting from any agreement, arrangement or understanding alleged to have been made by such party or on its behalf with any broker or finder in connection with this Agreement or the transactions contemplated hereby. Notwithstanding anything to the contrary contained herein, this Section will survive the Takedowns and any expiration or termination of this Agreement.

2.2 Representations of Seaholm. Seaholm represents to the City as follows:

(a) Authorization. Seaholm is duly organized and legally existing under the laws of its state of organization. Seaholm is duly qualified to do business in the State of Texas.

(b) Performance. Performance of this Agreement will not result in any breach of, or constitute any default under, any agreement or other instrument to which Seaholm is a party or by which Seaholm might be bound.

(c) Execution. The execution and delivery by Seaholm of, and Seaholm's performance under, this Agreement are within Seaholm's powers and have been duly authorized by all requisite organizational action. The Person executing this Agreement on behalf of Seaholm has the authority to do so. This Agreement constitutes the legal, valid and binding obligation of Seaholm enforceable in accordance with its terms, subject to the principles of equity.

(d) Broker. Seaholm has not authorized any broker or finder to act on its behalf in connection with the transactions contemplated herein and it has not dealt with any broker or finder purporting to act on behalf of any other party. Seaholm agrees to indemnify and hold harmless the City from and against any and all claims, losses, damages, costs or expenses of any kind or character arising out of or resulting from any agreement, arrangement or understanding alleged to have been made by such party or on its behalf with any broker or finder in connection with this Agreement or the transactions contemplated hereby. Notwithstanding anything to the contrary contained herein, this Section will survive the Takedowns and any expiration or termination of this Agreement.

2.3 Change in Representations. If, after the Effective Date and prior to any applicable Takedown, either party obtains actual knowledge of any fact, matter or circumstance which causes any of its representations made in Sections 2.1 or 2.2 to be inaccurate or untrue in any material respect, such party shall submit written notice thereof to the other party (a "**Disclosure Notice**") specifying in reasonable detail such fact, matter or circumstance. The disclosure of such fact, matter or circumstance by Disclosure Notice will not be an Event of Default under this Agreement. If, in the Disclosure Notice, the sending party agrees to take such action as is necessary to remedy the fact, matter or circumstance disclosed in the Disclosure Notice and otherwise cause the subject representation to be true and correct as to the particular parcel of property which is the subject of the applicable Takedown, then such party shall be obligated to cause the representation to be true as of the applicable Takedown, and the other party has no right to exercise its remedy set forth in this Section. If the sending party does not advise the other party in the Disclosure Notice that it agrees to take such action as is necessary to remedy the fact, matter or circumstance disclosed in the Disclosure Notice and otherwise cause the subject representation to be true and correct as to the particular parcel of property which is the subject of the applicable Takedown, then such other party has until the date which is five Business Days after the date of the Disclosure Notice, at its option, to elect, in the case of the City, not to consummate any more Takedowns hereunder, and, in the case of Seaholm, not to consummate the sale or lease at the applicable Takedown. The failure to elect not to close within the period described in the preceding sentence will be deemed to be a waiver of the fact, matter

or circumstance disclosed by the Disclosure Notice, in which case the subject representation will be deemed amended to include the information contained in the Disclosure Notice without an obligation to effect any cure or remedy with respect thereto.

2.4 NO OTHER REPRESENTATIONS OR WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN ANY EXHIBIT ATTACHED HERETO TO THE CONTRARY, IT IS UNDERSTOOD AND AGREED THAT THE PROPERTY IS BEING SOLD , LEASED AND CONVEYED HEREUNDER “AS IS” WITH ANY AND ALL FAULTS AND LATENT AND PATENT DEFECTS WITHOUT ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY BY CITY. CITY HAS NOT MADE AND DOES NOT HEREBY MAKE AND HEREBY SPECIFICALLY DISCLAIMS (EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN ANY EXHIBIT ATTACHED HERETO) ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR CHARACTER WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY (OTHER THAN CITY’S SPECIAL WARRANTY OF TITLE CONTAINED IN ANY DEED), ITS CONDITION (INCLUDING WITHOUT LIMITATION ANY REPRESENTATION OR WARRANTY REGARDING SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE), ITS COMPLIANCE WITH ENVIRONMENTAL LAWS OR OTHER LAWS, OR ANY OTHER MATTER OR THING RELATING TO OR AFFECTING THE PROPERTY, AND CITY HEREBY DISCLAIMS AND RENOUNCES ANY OTHER REPRESENTATION OR WARRANTY. SEAHOLM ACKNOWLEDGES AND AGREES THAT IT IS ENTERING INTO THIS AGREEMENT WITHOUT RELYING (EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN ANY EXHIBIT ATTACHED HERETO) UPON ANY SUCH REPRESENTATION, WARRANTY, STATEMENT OR OTHER ASSERTION, ORAL OR WRITTEN, MADE BY CITY OR ANY REPRESENTATIVE OF CITY OR ANY OTHER PERSON ACTING OR PURPORTING TO ACT FOR OR ON BEHALF OF CITY WITH RESPECT TO THE PROPERTY BUT RATHER IS RELYING UPON ITS OWN EXAMINATION AND INSPECTION OF THE PROPERTY. SEAHOLM REPRESENTS THAT IT IS A KNOWLEDGEABLE PURCHASER OF REAL ESTATE AND THAT, EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN ANY EXHIBIT ATTACHED HERETO, IT IS RELYING SOLELY ON ITS OWN EXPERTISE AND THAT OF ITS CONSULTANTS IN PURCHASING THE PROPERTY. THE TERMS AND CONDITIONS OF THIS SECTION WILL EXPRESSLY SURVIVE THE TAKEDOWNS, NOT MERGE WITH THE PROVISIONS OF ANY TAKEDOWN DOCUMENT AND BE INCORPORATED INTO ANY DEED AND GROUND LEASE(S). SEAHOLM FURTHER ACKNOWLEDGES AND AGREES THAT THE PROVISIONS OF THIS SECTION WERE A MATERIAL FACTOR IN CITY’S DETERMINATION OF THE CONSIDERATION FOR THE TRANSFER OF THE PROPERTY TO SEAHOLM.

ARTICLE III.
COVENANTS AND AGREEMENTS

3.1 Seaholm’s Development Related Covenants.

(a) Improvements Design and Performance. Seaholm shall design and

construct the Improvements and the Offsite Parking Garage in accordance with Legal Requirements, the Declaration and this Agreement.

(b) Subdivision Plat. Seaholm shall be responsible for subdividing and platting the Property in accordance with Legal Requirements, except that the City shall execute (solely in its capacity as a landowner) all preliminary plans, subdivision plats and related documents (including applications therefor) reasonably approved by the City in its capacity as a landowner. In furtherance of this subdivision requirement, Seaholm shall cause its civil engineer to prepare the preliminary plans, the subdivision plats and related documents (including applications therefor) for each applicable portion of the Property and all other civil engineering information and/or documentation necessary to finalize such subdivision plats. The City will be the applicant with respect to such subdivision plat(s). Seaholm acknowledges the City staff will require all subdivision plats to contain utility easements necessary to service the proposed improvements on the Property.

(c) Zoning. Seaholm shall be responsible for the zoning of the Property to allow the construction and operation of the Improvements, except that the City shall execute (solely in its capacity as a landowner) any zoning applications and related documents reasonably approved by the City in its capacity as a landowner. In furtherance of this zoning requirement, Seaholm shall cause its consultants to prepare the zoning application and related documents for the Property. The City will be the applicant with respect to such zoning applications.

(d) Construction.

(i) Subject to Force Majeure and City Caused Delays, Seaholm shall Commence Construction of the applicable Improvements in a timely manner following each Takedown. Following Commencement of Construction, Seaholm shall, subject to Force Majeure and City Caused Delays, diligently and in good faith continue construction of the Improvements to Completion of Construction.

(ii) Seaholm agrees that no substantial improvement will be commenced or constructed upon the Property, unless and until the site plan, the exterior facades and the landscape plans therefor (and any material exterior modifications thereto) will have first been submitted to and reasonably approved in writing by the City. Except as provided in Section 3.1(e)(ii) hereof and pursuant to the City's regulatory capacity, the City will not have any rights to review or approve interior aspects of the Improvements.

(iii) Each request for the City's approval (a "**Design Approval Request**") under section (ii) above must be accompanied by plans and specifications showing the partition layout, site layout, exterior elevations, exterior materials and colors, landscaping, drainage, lighting, irrigation and such other information related to the exterior appearance of the improvements as the City may reasonably require (the "**Plans**"); which Plans must be submitted for the City's approval through a Design Approval Request at the conclusion of the

following 2 planning stages – (A) upon completion of conceptual Plans (i.e., prior to commencement of detailed construction drawings) and (B) upon completion of “50% construction drawings”. The existing improvements on the Power Plant Property will be designated historic and, as such, will be subject to federal regulation affecting any changes that may be made thereto.

(iv) In reviewing a Design Approval Request, the City may consider any factors it reasonably deems relevant, including, without limitation, visual and environmental impact, ecological compatibility, natural platforms and finish grade elevation, and harmony of the proposed external design with surrounding structures and environment.

(v) If the City fails to notify Seaholm in writing of its approval, disapproval or comments to the complete Design Approval Request within 30 days of the City’s deemed receipt thereof, Seaholm may provide the City a second written Design Approval Request (containing a statement in all bold and capital letters that reads “**FAILURE TO RESPOND TO THIS DESIGN APPROVAL REQUEST WITHIN 15 DAYS SHALL CONSTITUTE DEEMED APPROVAL OF THIS DESIGN APPROVAL REQUEST**”) which if not responded to by the City within 15 days after deemed receipt will be deemed approval of the Design Approval Request. In such event and on Seaholm’s written request to the City, the City will provide written confirmation to Seaholm of such deemed approval. The City will notify the applicant in writing of any materials that the City believes are missing to make a Design Approval Request complete. The City may: (A) approve the Design Approval Request with or without conditions; (B) approve a portion of the Design Approval Request and disapprove other portions specifying the segments or features that are objectionable and suggestions, if any, to address the objectionable portions; or (C) disapprove the Design Approval Request.

(vi) If the City approves the Design Approval Request with conditions, approves a portion of the Design Approval Request and disapproves other portions and a revised Design Approval Request with revised Plans is submitted, the City shall notify the applicant in writing of the final determination on any such revised Design Approval Request no later than 15 days after its receipt of such revised Design Approval Request and all required submissions.

(vii) Because of the possibility of environmental issues arising during the development of the Property, the construction contracts concerning the construction of the Office Property, the Hotel/Condo Property and the redevelopment of the Power Plant Property will be documented using construction contracts incorporating environmental provisions substantially similar to those contained in the City’s standard construction contract.

(e) Design Changes.

(i) Seaholm may, with the City’s prior consent (which consent shall

not be unreasonably withheld or conditioned) switch the “condo” portion of the Hotel/Condo Property to the Office Property, which approval will be requested, evaluated and granted under the same procedure as approval of the construction plans in Sections 3.1(d)(i) through 3.1(d)(vi) above.

(ii) No substantial exterior addition to or substantial exterior change or alteration to the Property may be made, unless and until the modified site plan, the exterior facades and the landscape plans therefor will have first been submitted to and reasonably approved in writing by the City, provided however, City’s approval shall not be required regarding changes solely related to a reduction in (A) the square footage of the improvements to the “hotel” portion of the Hotel/Condo Property in excess of 20% of an anticipated 100,676 square feet of hotel improvements, (B) the “condo” portion of the Hotel/Condo Property in which the total residential condo unit count is less than 40 units, and/or (C) the square footage of the improvements to the Office Property in excess of 20% of an anticipated 66,000 square feet may be made, unless the plans therefor will have first been submitted to and approved in writing by the City, which approval will be requested, evaluated and granted under the same procedure as approval of the construction plans in Sections 3.1(d)(i) through 3.1(d)(vi) above.

(f) Payments; Liens. Seaholm shall make timely payment under the terms of the applicable contracts entered into by it to the architect, engineer and construction contractor(s) for work performed concerning the Improvements and the Offsite Parking Garage unless Seaholm in good faith by appropriate proceedings diligently disputes any such payment. Seaholm shall not cause or permit any liens to be filed against the Property by reason of any work, labor, services, or materials supplied or claimed to have been supplied to or for Seaholm. If any such lien is filed, Seaholm shall either cause the same to be removed or if Seaholm in good faith desires to contest the lien and no Event of Default exists, take timely action to do so by appropriate procedures, at Seaholm’s sole expense. If Seaholm contests the lien, Seaholm agrees to indemnify and hold the City harmless from all liability for damages occasioned by the lien and/or the lien contest and shall, if there is a judgment of foreclosure on the lien, cause the lien to be discharged and removed prior to execution of the judgment. Should any such lien arise out of the construction of the Improvements or any other improvements, Seaholm shall bond against or discharge the same within 30 days after written request by City, and shall defend, indemnify, reimburse and hold the City and the Property harmless therefrom.

(g) Defects and Deficiencies. Seaholm shall notify the City in writing of defects and deficiencies found in the Improvements or the Offsite Parking Garage and cause the contractor(s) to correct such defects and deficiencies.

(h) Assignability. Seaholm shall use its commercially reasonable efforts to cause all contracts or agreements entered into by Seaholm concerning the Improvements and the Offsite Parking Garage and all marketing and informational materials prepared for, or on behalf of, Seaholm including without limitation all intellectual property and website domains, to be assignable under Section 10.2(e) hereof.

(i) Maintenance of the Property. Seaholm will be solely responsible for all maintenance and repairs within the boundaries of the Property in accordance with the Declaration.

(j) Development Personnel. Except with respect to any work required to be performed by the City hereunder, Seaholm shall provide all necessary personnel required to develop the Property in accordance with this Agreement. Seaholm will cause its personnel, contractors and consultants to devote the time and effort necessary to satisfy its obligations hereunder.

(k) Coordination of Work. To the extent that Seaholm is to perform work on or for the benefit of any portion of the Property and the Offsite Parking Garage to fulfill its obligations under this Agreement, Seaholm shall coordinate that work with the City so as to not interfere with or cause delay in any work of the City, and Seaholm shall otherwise fully cooperate with the City in the performance of any such work.

(l) Licensing and Leasing. Seaholm will not license, lease or otherwise similarly transfer possessory rights to any portion of the Property prior to a Takedown without the prior written consent of the City (which may be withheld in the City's sole and absolute discretion).

(m) Grants. Seaholm shall apply for and diligently attempt to secure all available public grants and tax credits for the construction and/or operation of the Property from entities other than the City. The City will reasonably cooperate with Seaholm in connection with the application of such grants and tax credits, but will not be obligated to incur any liability or expense in connection therewith. Except with respect to grants for rainwater collection and solar energy which are not presently contemplated in the Proforma and grants for historic tax credits (to the extent set forth in the Proforma), each grant or tax credit obtained by Seaholm will reduce, on a dollar for dollar basis, the City's obligation to fund the Incentives (which reduction will start with respect to the Incentive which is applicable to the portion of the Property for which the grant or tax credit applies and if such grant or tax credit does not apply to a specific portion of the Property, to the Incentive reasonably selected by the City).

(n) Property Development Costs and Property Operating Costs. Seaholm shall monitor the Property Development Costs and use commercially reasonable efforts to cause Completion of Construction of the Improvements according to the estimated Property Development Costs under the "Totals" column of the Proforma. If Seaholm believes such estimated Property Development Costs are no longer accurate, Seaholm shall promptly submit a revised Proforma with estimates of more accurate Property Development Costs together with a description of the variance between the original and revised Property Development Costs. Seaholm shall monitor the Property Operating Costs and use commercially reasonable efforts to operate the Property according to the estimated Property Operating Costs under the "Totals" column of the Proforma. If Seaholm believes such estimated Property Operating Costs are no longer accurate, Seaholm shall promptly submit a revised Proforma with estimates of more accurate Property Operating Costs together with a description of the variance between the original

and revised Property Operating Costs.

(o) Inspection. Seaholm shall permit the City's representatives reasonable access to the Property to inspect the Improvements and the Offsite Parking Garage.

(p) Construction Completion. Within 30 days after Completion of Construction of each applicable portion of the Improvements, Seaholm shall:

(i) with respect to the Hotel/Condo Property, the Office Property, the Plaza Improvements and the Street Improvements, provide to the City as-built drawings for such Improvements prepared and duly sealed by Seaholm's project engineer/architect, and

(ii) with respect to the Power Plant Property, provide to the City as-built drawings for such Improvements that have been modified by Seaholm prepared and duly sealed by Seaholm's project engineer/architect.

Contemporaneously with the City's acceptance of the Street Improvements for maintenance:

(i) assign to the City all warranties, guarantees, maintenance bonds, or like assurances of performance applicable to the Street Improvements which the City will own or maintain,

(ii) execute such bills of sale, assignments, or other instruments of transfer as may be deemed reasonably necessary by the City to evidence the City's ownership of the Street Improvements which the City will own or maintain, without representation or warranty, except an obligation of Seaholm to cause its contractor to provide a maintenance bond for a period of one year, and

(iii) provide to City such other instruments or documentation reasonably requested by the City to evidence the transfer of ownership of the Street Improvements under this Agreement.

Within 30 days after Completion of Construction of the Offsite Parking Garage, Seaholm shall:

(i) provide to the City as-built drawings for the Offsite Parking Garage prepared and duly sealed by Seaholm's project engineer/architect,

(ii) assign to the City all warranties, guarantees, maintenance bonds, or like assurances of performance applicable to the Offsite Parking Garage,

(iii) execute such bills of sale, assignments, or other instruments of transfer as may be deemed reasonably necessary by the City to evidence the City's ownership of the Offsite Parking Garage which the City will own or maintain, without representation or warranty, and

(iv) provide to City such other instruments or documentation reasonably requested by the City to evidence the transfer of ownership of the Offsite Parking Garage under this Agreement.

(q) Sale of the Property. Seaholm will use commercially reasonable efforts to maximize the sale price of each portion of the Property which it sells and rental rate of each portion of the Property which it leases as a landlord or sublandlord.

(r) Initial Hotel Manager. Seaholm may not engage the initial hotel manager for the Hotel/Condo Property without first obtaining the written consent of the City (which approval will not be unreasonably withheld), which request for approval must include information as the City may reasonably require. The City has approved La Corsha Hospitality Group as a hotel manager.

3.2 Seaholm's General Covenants.

(a) Single Asset Entity. During the term of this Agreement, Seaholm shall not (i) acquire any real or personal property other than real property within the Property and personal property related to the redevelopment, operation and maintenance of the Property, (ii) operate any business other than the redevelopment, management and operation of the Property, or (iii) maintain its assets in a way that would make them difficult to segregate and identify.

(b) Books and Records.

(i) Maintenance. Seaholm shall keep complete and accurate (A) books and records relating both to the Property Development Costs and Property Operating Costs and (B) books and records relating to Property Revenues (collectively, the "**Books and Records**") in one centralized location. The Books and Records will be maintained until the Repayment Incentives Date.

(ii) Audit. The City and its representatives shall have access to inspect or audit the Books and Records at all reasonable times during normal business hours upon reasonable prior notice and may make copies thereof. Not more than one time per calendar year, the City may request in writing that Seaholm conduct an audit or other agreed upon procedure review of the Books and Records by a nationally or regionally recognized accounting firm reasonably acceptable to the City.

(c) Reporting.

(i) On or before March 31 of each calendar year, Seaholm shall prepare and submit to the City an updated Proforma (prepared on a month to month basis) showing (A) for each line item, as applicable, original projected, revised projected, actual and historical Property Development Costs and Property Operating Costs and Property Revenues to date, and (B) such other information reasonably related to the foregoing as the City reasonably requests. Each such annual report's historical data (as opposed to future projections) will, unless

waived by the City, be audited by a nationally or regionally recognized accounting firm reasonably acceptable to the City. This audit, at the City's election, may take the form of an agreed upon procedures audit rather than a financial audit as determined in advance by the City, Seaholm and the auditor. An officer of Seaholm reasonably acceptable to the City must certify that the financial information in the updated Proforma has been compiled and reported in accordance with GAAP, or if it was not prepared in accordance with GAAP, such certification shall be accompanied by an explanation of how the report deviates from GAAP. Seaholm will prepare and submit to the City any other statements or reports relating to the Property as the City may reasonably request. All statements and reports under this Section must be in form reasonably satisfactory to the City.

(ii) On or before December 1 and June 1 of each calendar year until the Completion of Construction of all the Improvements (covering the prior 6 month period), Seaholm shall prepare and submit to the City a report showing the use of Minority-owned and Women-owned Business Enterprises (MBE/WBE), as defined by the City's Minority-owned and Women-owned Business Enterprise Procurement Program to include, (a) on a percentage basis, the number of minority and women owned businesses employed as subcontractors concerning the Property which were hired by, or on behalf of, Seaholm, and (b) a summary of Seaholm's efforts to implement the Minority-owned and Women-owned Business Enterprise Procurement Program in Section 3.2(d).

(d) M/WBE. Seaholm will use good faith efforts to select and to cause its agents and contractors to comply with the City's Minority and Women Business Enterprise ordinance and retain a third party consultant specializing in outreach to Minority/Women Business Enterprise contractors. Seaholm will also provide the City with a detailed description of the scope of its development of the Property, to enable the City's Department of Small and Minority Business Resources to assist Seaholm in recruiting businesses owned by minorities and women to assist in the development of the Property.

3.3 City's Covenants.

(a) Litigation. Prior to the applicable Takedown, the City will notify Seaholm of any administrative proceeding, litigation or written, threatened and reasonably meritorious claim against the City, which if adversely determined, would substantially impair the redevelopment of the Property, each of which the City has Actual Knowledge.

(b) No Further Sales. Prior to the applicable Takedown, the City will not voluntarily sell or otherwise transfer all or any portion of the Property to a party other than Seaholm, without the prior written consent of Seaholm which Seaholm may grant or deny in its sole and absolute discretion; provided however, the foregoing will not apply to any portion of the Property which is repurchased by the City or any portion of the Property which the City acquires due to a termination of a Ground Lease.

(c) No Further Leases. Without the prior written consent of Seaholm (which

Seaholm may grant or deny in its sole and absolute discretion) prior to the applicable Takedown, the City will not enter into a lease or otherwise grant a possessory interest to third parties concerning all or any portion of the Property which (i) cannot be terminated on up to 30 days prior notice, and (ii) materially and adversely interferes with Seaholm's obligation to redevelop the Property under this Agreement; provided however, the foregoing will not apply to any portion of the Property which is repurchased by the City or any portion of the Property which the City acquires due to a termination of a Ground Lease.

(d) Dedicated Team. Prior to the date which is three years following the Effective Date, the City shall maintain a dedicated permit review team who will process all infrastructure plans and permits, all zoning applications, all preliminary plans, subdivision plats, site development permits, and all other shell building permits for redevelopment within the Property (other than the finish out of interior space for use by a tenant or other end user) which are normally processed by the Watershed Protection and Development Review Department and the Neighborhood Planning and Zoning Department.

(e) City Utility Infrastructure Improvements. Subject to annual appropriation, the City shall complete the City Utility Infrastructure Improvements on the schedule set forth on Exhibit B attached hereto; provided however, the City is entitled to "rebid" each City Utility Infrastructure Improvement no more than once and the timeframes set forth on Exhibit B will be adjusted (up to a maximum extension of 6 months) to take into account such "rebid." Failure of the City to appropriate funds and timely complete such work shall be a City Caused Delay.

(f) Coordination of Work. To the extent that the City is to perform work on or for the benefit of any portion of the Property to fulfill its obligations under this Agreement, the City shall coordinate that work with Seaholm so as to not interfere with or cause delay in any work of Seaholm, and the City shall otherwise fully cooperate with Seaholm in the performance of any such work.

(g) Zoning and Subdivision. City will perform its covenants and obligations pertaining to zoning and subdivision as set forth in Sections 3.1(b) and 3.1(c) above. Following approval of the zoning as provided in Section 3.1(c) above, the City, solely in its capacity as the owner of the Property, agrees not to seek a zoning change concerning the Property without Seaholm's approval.

(h) Environmental. City shall, at its sole cost and expense, diligently perform all remedial work and any other response action required by the TCEQ (including its regulations and staff directives) under the two pending actions on the portion of the Property known as the "Wye Tract" in the TCEQ's Voluntary Cleanup Program ("VCP") and will obtain one or more VCP "Final Certificates of Completion" from the TCEQ concerning a (i) "residential land use" standard for the Hotel/Condo Property, and (ii) industrial land use standard for the Office Property. If Seaholm desires to perform cleanup on the Property which is in excess of the City's obligations under this Section, such as to attain a "residential land use" standard for the Office Property in the event the

City's required activities do not attain such standard, Seaholm may do so at its own cost and expense (which will be included as a Project Development Cost), provided the standard to which Seaholm cleans the Property is commercially reasonable. In connection with the environmental work on the Property, most of the railroad track existing on the Property will be removed by the City.

(i) Offsite Parking Garage.

(i) The City currently has an agreement (the "**Gables Agreement**") with LG Lamar Limited Partnership ("**Gables**") by which the City may cause Gables to construct the Offsite Parking Garage at the time Gables constructs an adjacent parking garage for itself (the "**Gables Garage**"). It is anticipated that the Offsite Parking Garage and the Gables Garage will be adjacent to one another and share one or more common elements (e.g., entrance/exit ramps). Under the Gables Agreement, the City may elect to participate in the design of the Offsite Parking Garage, which the City has elected to do. As the design of the Offsite Parking Garage has not yet been completed, the specific layout of the Offsite Parking Garage and the Gables Garage has not been completed. Additionally, it is unknown whether both the Offsite Parking Garage and the Gables Garage will be constructed at the same time or in phases. Seaholm shall diligently work with Gables and the City to determine the design of the Offsite Parking Garage and define the manner in which it is constructed.

(ii) The City is under no obligation to construct, or cause the construction, of the Offsite Parking Garage. The construction of the Offsite Parking Garage and the Gables Garage by Seaholm and/or Gables will be determined following the completion of the design phase thereof.

(iii) The City will assist Seaholm in the negotiation with Gables to determine and finalize the design of the Offsite Parking Garage, construction costs and the manner in which construction will be completed.

(iv) Seaholm may not commence construction of the Offsite Parking Garage prior to commencing the redevelopment of the Property. If Seaholm constructs the Offsite Parking Garage, Seaholm will diligently pursue construction of the Offsite Parking Garage to Completion of Construction. Seaholm may not start the construction of the Offsite Parking Garage unless and until the City has reviewed and reasonably approved the construction budget and construction plans and specifications for the Offsite Parking Garage as herein provided.

(v) So long as (A) the City is not obligated to construct the Offsite Parking Garage, (B) the City has reasonably approved the construction budget and construction plans and specifications for the Offsite Parking Garage, and (C) the construction of the Offsite Parking Garage will not be commenced prior to the commencement of the physical redevelopment of the Property by Seaholm, a supplemental agreement to this Agreement which defines the relative rights and

responsibilities with respect to the design, construction and management of the Offsite Parking Garage will not be deemed a substantial modification of this Agreement and may be executed by the City Manager pursuant to Section 12.19 hereof.

(j) Offsite Parking Garage Management Agreement. It is anticipated that the Offsite Parking Garage will be managed by Seaholm under the Offsite Parking Garage Management Agreement; provided however, as the design of the Offsite Parking Garage and the Gables Garage has not been determined, the exact management structure of such garages will have to be determined in connection with the construction thereof. Seaholm acknowledges that the City does not have a right to manage the Gables Garage.

(k) Inspection Prior to Takedown Date.

(i) Seaholm may enter upon the Property, and to cause authorized representatives of Seaholm to enter upon the Property to conduct general or special physical investigations and inspections of the Property on behalf of Seaholm in furtherance of the purpose of assessing and causing the development of the Property (the "Inspection Right"). All inspections performed by Seaholm shall be at Seaholm's sole expense. Seaholm shall make such inspections in good faith and with due diligence and in compliance with all Legal Requirements. City reserves the right to have a representative present at the time of making any such inspection. Seaholm shall notify City not less than two business days in advance of exercising the Inspection Right.

(ii) If, for any reason, this Agreement expires or terminates, Seaholm shall repair any damage to the Property which has not been Takedown caused by Seaholm, or its agents, contractors or employees, arising out of or concerning the Inspection Right, and restore such portion of the Property to substantially the same condition it was in prior to the occurrence of damage. If Seaholm fails to commence to repair such damage within a reasonable time after written notice from the City and diligently pursue the restoration to completion, the City may perform such repair and restoration work, and Seaholm agrees to compensate the City for the actual cost thereof plus a 10% charge for overhead expenses upon receipt of an invoice. Seaholm shall cause its agents and contractors to execute and deliver to the City waivers of liability substantially in the form previously utilized between the City and Seaholm concerning the Property as a condition to entry upon the Property. In making any inspection hereunder, Seaholm will, and will cause any representative of Seaholm to, use discretion so as not to unreasonably disturb the occupants or personal property of the Property. The provisions of this subsection will survive the expiration or earlier termination of this Agreement.

(iii) **SEAHOLM ACKNOWLEDGES THAT THE INSPECTION RIGHT IS GRANTED TO THE PROPERTY AS IS, WITH ALL FAULTS, IN ITS EXISTING CONDITION AND STATE. THE CITY EXPRESSLY DISCLAIMS ANY WARRANTIES, EXPRESS OR IMPLIED,**

CONCERNING THE CONDITION OF THE PROPERTY, SPECIFICALLY INCLUDING THE PROPERTY'S GENERAL STATE OF SAFETY FOR INDIVIDUALS. SEAHOLM PARTICULARLY UNDERSTANDS AND IS AWARE THAT THE PROPERTY IS A PART OF A FORMERLY OPERATIONAL POWER PLANT, WITH DANGEROUS MACHINERY, HAZARDOUS CONDITIONS, AND HAZARDOUS OR POTENTIALLY HAZARDOUS CHEMICALS, SUBSTANCES AND OPERATIONS. SEAHOLM UNDERSTANDS SUCH HAZARDS ARE ENCOMPASSED WITHIN THE PROPERTY.

3.4 Economic Development Agreement. For purposes of Article III, Section 52-a of the Texas Constitution, this Agreement shall be considered an economic development agreement under Chapter 380, Texas Local Government Code.

ARTICLE IV. PROPERTY TAKEDOWN AGREEMENTS

4.1 Takedown Agreement. Generally, the Property will be Takedown in three parcels (the Office Property, the Power Plant Property and the Hotel/Condo Property), accomplished in accordance with this Article; provided however, Seaholm will not have any right to Takedown any portion of the Property following the date which is one year following the MDA Commencement Date.

4.2 Takedown Conditions.

(a) The City's Takedown Conditions. The City's Takedown obligations are subject to the fulfillment of each of the following conditions, which may be waived in the City's sole discretion:

(i) Notice. Seaholm has provided the City with 90 calendar days notice.

(ii) Representations, Warranties and Agreements. The material representations and warranties of Seaholm contained herein shall be materially true, accurate and correct as of the Takedown Date except to the extent they relate only to an earlier Takedown Date. Seaholm has performed all the material agreements to be performed by Seaholm as of the Takedown Date.

(iii) No Event of Default. No Seaholm Bankruptcy Event, Event of Default or Potential Event of Default exists.

(iv) Zoning. A zoning ordinance for the Property has been approved by the Austin City Council.

(v) Subdivision. A subdivision plat acceptable to the City (in its

regulatory capacity) has been approved and recorded for the applicable portion of the Property. A subdivision plat acceptable to the City (in its landowner capacity, which will not be unreasonably withheld) has been approved and recorded for the applicable portion of the Property.

(vi) Declaration. The Declaration must be executed, notarized and recorded in the Real Property Records of Travis County, Texas prior to the execution of any Ground Lease or Deed.

(vii) MDA Commencement Date. The conditions to the MDA Commencement Date have been satisfied.

(b) Seaholm's Takedown Conditions. Seaholm's Takedown obligations are subject to the fulfillment of each of the following conditions, which may be waived in Seaholm's sole discretion:

(i) Representations, Warranties and Agreements. The material representations and warranties of the City contained herein shall be materially true, accurate and correct as of the Takedown Date except to the extent they relate only to an earlier Takedown Date. The City has performed all the material agreements to be performed by the City as of the Takedown Date.

(ii) No Event of Default. No City Event of Default or Potential Event of Default exists.

(iii) Zoning. A zoning ordinance for the Property acceptable to Seaholm has been approved by the Austin City Council.

(iv) Subdivision. A subdivision plat acceptable to Seaholm has been approved and recorded for the applicable portion of the Property.

(v) MDA Commencement Date. The conditions to the MDA Commencement Date have been satisfied.

4.3 Title Binder and Survey.

(a) Title Binder and Survey. Seaholm has received and approved the Title Binder and Survey.

(b) Updating Title Binder and Survey. Not less than 30 days' prior to any proposed Takedown, Seaholm may obtain an update of the Survey and an update of the Title Binder covering the applicable portion of the Property.

(c) Review of Updated Title Binder and Survey. If such (i) updated Survey shows any easement, right-of-way, or other encumbrance that was not created by, through or under Seaholm affecting the applicable portion of the Property, other than the Permitted Encumbrances, or (ii) updated Title Binder shows any additional exceptions to title coverage that were not created by, through or under Seaholm, other than the

Permitted Encumbrances and the standard printed exceptions, and such new easement, right-of-way, other encumbrance or additional exceptions has a material and adverse effect on the title to the applicable portion of the Property, Seaholm shall, within 10 days after receipt of both the updated Title Binder and the Survey, notify the City in writing of such fact and the reasons therefor (each such period, an “**Objection Period**”), in which event the City will have 10 days after the expiration of such Objection Period to cure such objections (the “**Cure Period**”). Upon the expiration of the Cure Period, Seaholm shall be deemed to have accepted the updated Title Binder and Survey and all matters shown or listed thereon (except for the matters which are the subject of a notification permitted under the preceding sentence), and such matters will be included in the term “**Permitted Encumbrances**” as used herein. Notwithstanding anything to the contrary contained herein, the City shall have no obligation to bring any action or proceeding or otherwise to incur any expense to eliminate or modify such unacceptable exceptions except monetary liens, security interests and other collateral financing interests granted by the City against the Property, judgment liens against the City and any exceptions and encumbrances created by the City after the Effective Date without Seaholm’s consent. If the City is unable or unwilling to eliminate or modify such objectionable matters to the reasonable satisfaction of Seaholm within the Cure Period, Seaholm may, on or before the date which is 10 days following the expiration of the Cure Period (as its sole and exclusive remedies), either (x) terminate its obligation to accept that portion of the Property affected by such Takedown by notice in writing to the City, and this Agreement will remain in full force and effect with respect to the remaining portion of the Property, (y) terminate this Agreement by delivering written notice of termination to the City, in which event neither party shall have any right or obligation under this Agreement, except those which expressly survive such termination, or (z) accept such title to the applicable portion of the Property as the City can deliver and such objectionable matters will be deemed approved by Seaholm as Permitted Encumbrances and Seaholm may cure such objectionable matters. The location and encumbrance of the Lance Armstrong Bikeway is deemed a Permitted Encumbrance.

(d) Seaholm’s Option to Waive Updating Title Binder and Survey. Seaholm may waive its right to obtain the Title Binder and Survey with respect to any applicable portion of the Property. If Seaholm waives its right to obtain the Title Binder and Survey, the “Permitted Encumbrances” for the applicable portion of the Property will be “subject to general real estate taxes on the Property for the current year, zoning laws, regulations and ordinances of municipal and other governmental authorities, if any, affecting the Property and any and all valid restrictions, easements and other encumbrances, affecting the Property as the same appear of record, and all matters that would be disclosed in a current, accurate ALTA/ACSM Land Title Survey of the Property.”

4.4 Condemnation.

(a) Knowledge. With respect to any portion of the Property which has not been Takedown, upon the City obtaining written knowledge of the institution of any actual or threatened proceedings for the stated purchase or condemnation of the Property or any portion thereof, the City will send Seaholm written notice of the pendency or

threat of such proceedings; provided, however, the City's obligations to deliver such notice with respect to threatened legislation will not apply to threatened legislation which the City does not deem (in its reasonable discretion) a threat which could realistically result in the condemnation of the Property or a portion thereof.

(b) Seaholm's Role. Provided no Seaholm Event of Default exists, Seaholm may intervene in good faith by appropriate proceedings in any such proceedings for the sole purpose of protecting its interests under this Agreement, and, upon request from Seaholm, the City shall from time to time deliver to Seaholm written consent to such intervention. In any such condemnation event, this Agreement will remain in full force and effect until completion of such proceedings or as otherwise provided in this Section 4.4.

(c) Legal Requirements. The parties have the rights and duties set forth in this Section rather than as prescribed by the Uniform Vendor and Purchaser Risk Act (Texas Property Code, Section 5.007).

ARTICLE V. PROPERTY TAKEDOWNS

5.1 The Takedowns. Each Takedown will take place at the offices of the Title Company on the applicable scheduled Takedown Date or such other time and place mutually agreed upon by the parties. At each Takedown the following will occur, each of which will be a concurrent condition to each Takedown:

(a) The City's Takedown Obligations. At each Takedown, the City shall:

(i) In the case of the Takedown of the Hotel/Condo Property, deliver to the Title Company a duly executed and acknowledged Deed in favor of Seaholm covering the Hotel/Condo Property, subject only to the Permitted Encumbrances applicable thereto.

(ii) In the case of the Takedown of the Office Property or the Power Plant Property, deliver to the Title Company a duly executed Ground Lease covering the applicable portion of the Property, subject only to the Permitted Encumbrances applicable thereto.

(iii) Deliver possession of the applicable portion of the Property to Seaholm, subject only to the Permitted Encumbrances applicable to such portion of the Property.

(iv) Deliver such other documentation or instruments as reasonably required by the Title Company for the Takedown to occur in accordance with this Agreement.

(b) Seaholm's Takedown Obligations. At each Takedown, Seaholm shall:

(i) Pay to the City the applicable Transfer Price. City and Seaholm acknowledge and agree that, with respect to the Office Property, Seaholm shall pay the \$915,000 first year Rent (as defined in the Ground Lease) when Seaholm Takedown the Office Property by virtue of a Ground Lease.

(ii) In the case of the Takedown of the Hotel/Condo Property, deliver to the Title Company a duly executed and acknowledged counterpart of the Deed covering the Hotel/Condo Property, subject only to the Permitted Encumbrances applicable thereto.

(iii) In the case of the Takedown of the Office Property or the Power Plant Property, deliver to the Title Company a duly executed Ground Lease covering the applicable portion of the Property, subject only to the Permitted Encumbrances applicable thereto.

(iv) Deliver such other documentation or instruments as reasonably required by the Title Company for the Takedown to occur in accordance with this Agreement.

(c) Taxes and Assessments. Real estate taxes and assessments, if any, concerning the Property for the calendar year of Takedown, to the extent the City is obligated to pay such items, will be apportioned between the City and Seaholm at the applicable Takedown as of midnight of the day preceding such applicable Takedown Date.

ARTICLE VI. PAYMENT OF INCENTIVES AND OTHER REIMBURSEMENTS

6.1 Incentives. The City has agreed to provide the following incentives (collectively, the “**Incentives**”).

<u>Incentive</u>	<u>Disbursement Amount</u>	<u>Disbursement Thresholds</u> <u>(Regardless of the order achieved)</u>
Reimbursement of the Transfer Price (the “ <u>Transfer Price Incentive</u> ”)	Not to exceed Transfer Price paid by Seaholm to the City	<ul style="list-style-type: none">• 1st - 20% upon Office Building achieving Dry-In Condition• 2nd - 20% upon issuance of a Certificate of Occupancy for the shell Office Building• 3rd - 40% upon the full execution of Approved Leases covering at least 50% of the net rentable square feet of the Office Building• 4th - 20% upon the hotel portion of the Hotel/Condo Building opening for business to the general public
Reimbursement (the “ <u>Street Incentive</u> ”) for	Not to exceed \$4,200,000	On a monthly basis as construction progresses upon commencement of construction

<u>Incentive</u>	<u>Disbursement Amount</u>	<u>Disbursement Thresholds</u> <u>(Regardless of the order achieved)</u>
the Street Improvements		
Reimbursement for rehabilitation of the Power Plant Property pursuant to plans and specifications approved by the City as provided herein (the “ <u>Power Plant Rehab Incentive</u> ”)	Not to exceed \$4,500,000	<ul style="list-style-type: none"> • 1st - \$1,500,000 upon the Power Plant Building achieving Dry-In Condition • 2nd - \$1,500,000 upon issuance of a shell Certificate of Occupancy for the redeveloped Power Plant Building • 3rd - \$1,500,000 upon the full execution of Approved Leases covering at least 50% of the net rentable square feet of the Power Plant Building
Reimbursement for construction of the Plaza pursuant to plans and specifications approved by the City as provided herein (the “ <u>Plaza Incentive</u> ”)	Not to exceed 55.2% of the construction cost of the Plaza (City payment not to exceed \$2,100,000)	Monthly, as construction progresses upon commencement of construction
Reimbursement of the Reimbursable Fees (the “ <u>Reimbursable Fees Incentive</u> ”)	Not to exceed the fees paid to the City by Seaholm (each disbursement of Reimbursable Fees may include only those fees which are eligible for reimbursement and have not previously been reimbursed)	<ul style="list-style-type: none"> • 1st - Unreimbursed Reimbursable Fees to date, on a building by building basis, upon the Hotel/Condo Building, the Office Building, Power Plant Building, as applicable, achieving Dry-In Condition • 2nd - Unreimbursed Reimbursable Fees to date, on a building by building basis, upon the issuance of a shell Certificate of Occupancy with respect to the Hotel/Condo Building, the Office Building, Power Plant Building, as applicable • 3rd - Unreimbursed Reimbursable Fees to date, on a building by building basis, upon the (a) full execution of Approved Leases covering at least 50% of the net rentable square feet with respect to the Office Building and Power Plant Building, as applicable, and (b) sale of at least 50% of the condos and opening for business of the hotel with respect to the Hotel/Condo Building

Seaholm may reallocate cost savings from the “not to exceed” \$4,200,000 and \$4,500,000 line items above to the other such line item if: (a) no Seaholm Bankruptcy Event, Event of Default or

Potential Event of Default exists, (b) Seaholm submits evidence to the City that the work under the applicable line item was completed under budget, (c) reallocations are made only from complete line items to incomplete line items, and (d) Seaholm delivers to the City evidence of the cost overruns associated with the incomplete line item.

6.2 Requirements for Disbursement of Each Incentive. The following are conditions precedent for the City's obligation to disburse any Incentive:

(a) Frequency. Upon request of Seaholm, but not more frequently than monthly, City shall, subject to the conditions hereinafter set forth, be obligated to make Incentive Disbursements to Seaholm. All Incentive Disbursements will be disbursed at City's option, (i) by City's check delivered to Seaholm; or (ii) by City's wire transfer to an account directed by Seaholm.

(b) Timing. All Incentive Disbursements will be disbursed by the City no later than the date which is 30 calendar days following the date which all conditions to such Incentive Disbursement have been met. Unless City notifies Seaholm in writing within 30 calendar days after it receives Seaholm's request for an Incentive Disbursement that one or more conditions to such Incentive Disbursement have not been met and specifying in reasonable detail the condition or conditions that have not been met, all such conditions will be deemed to have been met for such Incentive Disbursement only.

(c) Certain Events. No Bankruptcy Event, Event of Default or Potential Event of Default exists at the time of the applicable Incentive Disbursement Request is made or when the Incentive Disbursement Request is to be disbursed.

(d) Disputed Amounts. No Incentive will be disbursed through an Incentive Disbursement to the extent such sum is in dispute.

(e) Additional Information. Seaholm has delivered to the City such other documents and information as the City may reasonably require in connection with the applicable Incentive Disbursement Request.

Any Incentive Disbursement made hereunder before all the requirements for such Incentive Disbursement under this Article are met will not be deemed a waiver of such requirement, and the City may refuse to make any subsequent Incentive Disbursement(s) until all such conditions are satisfied.

6.3 Other Requirements for Payments of Incentives. In addition to the requirements of Section 6.2, the following are specific conditions precedent for the City's obligation to disburse the Incentives:

(a) Transfer Price Incentive. With respect to an Incentive Disbursement Request concerning the Transfer Price Incentive:

(i) Seaholm has delivered to the City a title report or other satisfactory evidence that the construction of the Office Building has not resulted in an M&M Lien or, if there is any such M&M Lien, Seaholm is diligently disputing same in

good faith by appropriate proceedings and has provided the City with (A) a recorded payment bond concerning such M&M Lien satisfying the requirements of Section 53.172 of the Texas Property Code or (B) other security reasonably acceptable to the City in connection therewith.

(ii) With respect to the 1st disbursement of the Transfer Price Incentive, certification from Seaholm's architect (or other third party acceptable to the City) that the Office Building has achieved Dry-In Condition in accordance with the plans reasonably approved by the City, this Agreement and all Legal Requirements.

(iii) With respect to the 2nd disbursement of the Transfer Price Incentive, Seaholm has delivered to the City (A) an all Bills Paid Affidavit (executed by Seaholm) certifying that all outstanding bills for the construction of the Office Building have been paid, and (B) full and final lien waivers concerning the construction of the Office Building; provided however, Seaholm may in good faith by appropriate proceedings diligently dispute any outstanding bill or M&M Lien so long as Seaholm has provided the City with (A) a recorded payment bond concerning such outstanding bill or M&M Lien satisfying the requirements of Section 53.172 of the Texas Property Code or (B) other security reasonably acceptable to the City in connection therewith.

(iv) With respect to the 3rd and 4th disbursements of the Transfer Price Incentive, certification from Seaholm's property manager that the applicable threshold has been achieved.

(b) Street Incentive. With respect to an Incentive Disbursement Request concerning the Street Incentive:

(i) Seaholm has delivered to the City a title report or other satisfactory evidence that the construction of the Street Improvements has not resulted in an M&M Lien or, if there is any such M&M Lien, Seaholm is diligently disputing same in good faith by appropriate proceedings and has provided the City with (A) a recorded payment bond concerning such M&M Lien satisfying the requirements of Section 53.172 of the Texas Property Code or (B) other security reasonably acceptable to the City in connection therewith.

(ii) Seaholm has delivered to the City copies of all applicable invoices which have been or will be paid with the requested Incentive Disbursement, together with (A) a Certificate of Payment (A.I.A. Document G-702 and G-703, or other form reasonably approved by the City) executed by Seaholm's general contractor, (B) a Bills Paid Affidavit (executed by Seaholm) certifying that all outstanding bills have been paid other than the bills reflected on the Incentive Disbursement Request and that all bills reflected on the Incentive Disbursement Request will be paid with the proceeds of the Incentive Disbursement, (C) unconditional lien waivers concerning all bills prior to the current Incentive Disbursement Request, and (D) conditional lien waivers concerning all

outstanding bills reflected on the Incentive Disbursement Request.

(iii) Certification from Seaholm's general contractor (or other third party acceptable to the City) as to (A) the percentage of completion and the value of the work and materials then in place with respect to the Street Improvements, and (B) the amount of the Incentive Disbursement Request is correct for that stage of construction and the construction of the Street Improvements theretofore performed has been in accordance with the plans reasonably approved by the City and all Legal Requirements.

(c) Power Plant Rehab Incentive. With respect to an Incentive Disbursement Request concerning the Power Plant Rehab Incentive:

(i) Seaholm has delivered to the City a title report or other satisfactory evidence that the redevelopment of the Power Plant Property has not resulted in an M&M Lien or, if there is any such M&M Lien, Seaholm is diligently disputing same in good faith by appropriate proceedings and has provided the City with (A) a recorded payment bond concerning such M&M Lien satisfying the requirements of Section 53.172 of the Texas Property Code or (B) other security reasonably acceptable to the City in connection therewith.

(ii) With respect to the 1st disbursement of the Power Plant Rehab Incentive, certification from Seaholm's architect (or other third party acceptable to the City) that the Power Plant Building has been redeveloped in accordance with the plans reasonably approved by the City, this Agreement and all Legal Requirements.

(iii) With respect to the 2nd disbursement of the Power Plant Rehab Incentive, Seaholm has delivered to the City (A) an all Bills Paid Affidavit (executed by Seaholm) certifying that all outstanding bills for the redevelopment of the Power Plant Building have been paid, and (B) full and final lien waivers concerning the redevelopment of the Power Plant Building, provided however, Seaholm may in good faith by appropriate proceedings diligently dispute any outstanding bill or M&M Lien so long as Seaholm has provided the City with (A) a recorded payment bond concerning such outstanding bill or M&M Lien satisfying the requirements of Section 53.172 of the Texas Property Code or (B) other security reasonably acceptable to the City in connection therewith.

(iv) With respect to the 3rd disbursement of the Power Plant Rehab Incentive, certification from Seaholm's property manager that the applicable threshold has been achieved.

(d) Plaza Incentive. With respect to an Incentive Disbursement Request concerning the Plaza Incentive:

(i) Seaholm has delivered to the City a title report or other satisfactory evidence that the construction of the Plaza has not resulted in an M&M Lien or, if there is any such M&M Lien, Seaholm is diligently disputing same in good faith

by appropriate proceedings and has provided the City with (A) a recorded payment bond concerning such M&M Lien satisfying the requirements of Section 53.172 of the Texas Property Code or (B) other security reasonably acceptable to the City in connection therewith.

(ii) Seaholm has delivered to the City copies of all applicable invoices which have been or will be paid with the requested Incentive Disbursement, together with (A) a Certificate of Payment (A.I.A. Document G-702 and G-703 or other form reasonably approved by the City) executed by Seaholm's general contractor, (B) a Bills Paid Affidavit (executed by Seaholm) certifying that all outstanding bills have been paid other than the bills reflected on the Incentive Disbursement Request and that all bills reflected on the Incentive Disbursement Request will be paid with the proceeds of the Incentive Disbursement, (C) unconditional lien waivers concerning all bills prior to the current Incentive Disbursement Request, and (D) conditional lien waivers concerning all outstanding bills reflected on the Incentive Disbursement Request.

(iii) Certification from Seaholm's general contractor (or other third party acceptable to the City) as to (A) the percentage of completion and the value of the work and materials then in place with respect to the Plaza, and (B) the amount of the Incentive Disbursement Request is correct for that stage of construction and the construction of the Plaza theretofore performed has been in accordance with the plans reasonably approved by the City and all Legal Requirements.

(e) Reimbursable Fees Incentive. With respect to an Incentive Disbursement Request concerning the Reimbursable Fees Incentive:

(i) Seaholm has delivered to the City a title report or other satisfactory evidence that the redevelopment of the Power Plant Property has not resulted in an M&M Lien or, if there is any such M&M Lien, Seaholm is diligently disputing same in good faith by appropriate proceedings and has provided the City with (A) a recorded payment bond concerning such M&M Lien satisfying the requirements of Section 53.172 of the Texas Property Code or (B) other security reasonably acceptable to the City in connection therewith.

(ii) With respect to the 1st disbursement of the Reimbursable Fees Incentive, certification from Seaholm's architect (or other third party acceptable to the City) that the Power Plant Building has been redeveloped in accordance with the plans reasonably approved by the City, this Agreement and all Legal Requirements.

(iii) With respect to the 2nd disbursement of the Reimbursable Fees Incentive, Seaholm has delivered to the City (A) an all Bills Paid Affidavit (executed by Seaholm) certifying that all outstanding bills for the redevelopment of the Power Plant Building have been paid, and (B) full and final lien waivers concerning the redevelopment of the Power Plant Building; provided however,

Seaholm may in good faith by appropriate proceedings diligently dispute any outstanding bill or M&M Lien so long as Seaholm has provided the City with (A) a recorded payment bond concerning such outstanding bill or M&M Lien satisfying the requirements of Section 53.172 of the Texas Property Code or (B) other security reasonably acceptable to the City in connection therewith.

(iv) With respect to the 3rd disbursement of the Reimbursable Fees Incentive, certification from Seaholm's property manager that the applicable threshold has been achieved.

6.4 Offsite Parking Garage Reimbursement. Upon commencement of construction of the Offsite Parking Garage, the City will reimburse Seaholm the actual construction costs (an **"Offsite Parking Garage Reimbursement"**) of the Offsite Parking Garage incurred by Seaholm on a monthly basis as construction progresses, each reimbursement request (an **"Offsite Parking Garage Reimbursement Request"**), made in accordance with, and subject to, the following:

(a) Disbursement. All Offsite Parking Garage Reimbursements will be disbursed at City's option, (i) by City's check delivered to Seaholm; or (b) by City's wire transfer to an account directed by Seaholm. The City will not be obligated to fund any Offsite Parking Garage Reimbursement which is in excess of the then City approved construction budget for the Offsite Parking Garage.

(b) Timing. The City is not required to make any Offsite Parking Garage Reimbursement unless and until it has had at least 20 Business Days to review the information submitted to the City and to satisfy itself that all applicable conditions to such Offsite Parking Garage Reimbursement have been met.

(c) Events. No Bankruptcy Event, Event of Default or Potential Event of Default exists at the time of the applicable Offsite Parking Garage Reimbursement Request is made or when the Offsite Parking Garage Reimbursement Request is to be disbursed.

(d) Title. Seaholm has delivered to the City a title report or other satisfactory evidence that the construction of the Offsite Parking Garage has not resulted in an M&M Lien or, if there is any such M&M Lien, Seaholm is diligently disputing same in good faith by appropriate proceedings and has provided the City with (i) a recorded payment bond concerning such M&M Lien satisfying the requirements of Section 53.172 of the Texas Property Code or (ii) other security reasonably acceptable to the City in connection therewith.

(e) Invoices. Seaholm has delivered to the City copies of all applicable invoices which have been or will be paid with the requested Offsite Parking Garage Reimbursement, together with (i) a Certificate of Payment (A.I.A. Document G-702 and G-703, or other form reasonably approved by the City) executed by Seaholm's general contractor, (ii) a Bills Paid Affidavit (executed by Seaholm) certifying that all outstanding bills have been paid other than the bills reflected on the Offsite Parking Garage Reimbursement Request and that all bills reflected on the Offsite Parking Garage

Reimbursement Request will be paid with the proceeds of the Offsite Parking Garage Reimbursement, and (iii) conditional lien waivers concerning all outstanding bills that have been paid other than the bills reflected on the Offsite Parking Garage Reimbursement Request.

(f) Certification. The City has received Certification from Seaholm's general contractor (or other third party acceptable to the City) as to (i) the percentage of completion and the value of the work and materials then in place with respect to the Offsite Parking Garage, and (ii) the amount of the Offsite Parking Garage Reimbursement Request is correct for that stage of construction and the construction of the Offsite Parking Garage theretofore performed has been in accordance with the plans reasonably approved by the City and all Legal Requirements.

(g) Additional Information. Seaholm has delivered to the City such other documents and information as the City may reasonably require in connection with the applicable Offsite Parking Garage Reimbursement Request.

Any Offsite Parking Garage Reimbursement made hereunder before all the requirements for such Offsite Parking Garage Reimbursement under this Article are met will not be deemed a waiver of such requirement, and the City may refuse to make any subsequent Offsite Parking Garage Reimbursement(s) until all such conditions are satisfied.

ARTICLE VII. REPAYMENT OF INCENTIVES

7.1 Distribution of Property Net Income. All Property Net Income from the operation and sale of the Property will be distributed as follows:

(a) First. 100% to Seaholm until Seaholm has achieved a cumulative 13% IRR;

(b) Second. 25% to the City and 75% to Seaholm until the earlier to occur of (i) Seaholm has achieved a cumulative 15% IRR, and (ii) the City has been repaid the amount of the Repayment Incentives; and

(c) Third. 50% to the City and 50% to Seaholm until the City has been repaid the amount of the Repayment Incentives.

Regardless of the foregoing, after the City has been repaid the amount of the Repayment Incentives, 100% of the Property Net Income will be paid to Seaholm.

7.2 Survivability of Distribution Obligation. **SEAHOLM ACKNOWLEDGES THAT THE CITY IS RELYING ON THE OBLIGATION TO REPAY THE REPAYMENT INCENTIVES AS EXPRESSLY PROVIDED HEREIN AND THE CITY WOULD NOT OFFER SUCH INCENTIVES ABSENT THE REPAYMENT MECHANISM. THE OBLIGATION TO DISBURSE PROPERTY NET INCOME WILL SURVIVE ANY BANKRUPTCY, INSOLVENCY OR SIMILAR PROCEEDING AND**

ANY FORECLOSURE, DEED IN LIEU OF FORECLOSURE OR SIMILAR EVENT (INCLUDING A CONTEMPORANEOUS SALE) AND BURDEN SEAHOLM'S SUCCESSORS AND ASSIGNS UNTIL THE REPAYMENT INCENTIVES DATE. THE DISTRIBUTIONS TO THE CITY IN THIS ARTICLE WILL CONTINUE ONLY UNTIL THE REPAYMENT INCENTIVES DATE (I.E. UNTIL A VOLUNTARY SALE HAS OCCURRED WITH RESPECT TO THE ENTIRETY OF THE PROPERTY EVEN IF SUCH SALE(S) ARE INSUFFICIENT TO REPAY THE REPAYMENT INCENTIVES). AFTER THE REPAYMENT INCENTIVES DATE, REGARDLESS OF WHETHER THE CITY HAS BEEN REPAID THE FULL AMOUNT OF THE REPAYMENT INCENTIVES, ALL PROPERTY NET INCOME, REVENUES, PROFITS AND OTHER DISTRIBUTIONS FROM THE PROPERTY WILL BE THE SOLE PROPERTY OF SEAHOLM, ITS SUCCESSORS AND ASSIGNS. SEAHOLM AND THE CITY ACKNOWLEDGE AND UNDERSTAND THAT PROPERTY NET INCOME FROM A SALE OF THE ENTIRE PROPERTY MAY NOT ACHIEVE THE DESIRED IRR TARGETS AND THEY FURTHER UNDERSTAND THE CONSEQUENCES THEREOF INCLUDING THAT THE REPAYMENT INCENTIVES MAY NOT BE REPAID IN FULL OR AT ALL.

**ARTICLE VIII.
FEES AND EXPENSES**

8.1 Public Art Fee. Within 30 days following the Effective Date, Seaholm will deliver to the City \$100,000 to be deposited in a special public art fund to be used for public art on the Property in accordance with the policies and procedures of such fund. The City and Seaholm shall jointly prepare recommendations for the use of the Public Art Fee, but acknowledge that the ultimate award of the Public Art Fee is subject to the City's then current policies regarding public art.

8.2 Transactions With Affiliates. Seaholm may enter contracts, leases or agreements with its Affiliates to perform services, supply products to the Property or occupy space in the Property provided such contracts or agreements (including, without limitation, the economic terms thereof) are commercially reasonable and represent an arms-length transaction. Seaholm will provide the City with copies of all such contracts or agreement with its Affiliates within 30 days of the execution thereof.

**ARTICLE IX.
INSURANCE AND INDEMNITY**

9.1 Insurance.

(a) General. Seaholm shall carry and maintain throughout the term of this Agreement (except for the insurance required by Section 9.1(a)(iv) which will be in effect for at least 1 year following Completion of Construction of the Improvements, the actual duration, if any, beyond such 1 year being at Seaholm's sole discretion) the following insurance policies:

(i) Workers' Compensation and Employers' Liability Insurance coverage with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Art. 401) and minimum policy limits for employers liability of \$1,000,000 bodily injury for each accident, \$1,000,000 bodily injury by disease policy limit and \$1,000,000 bodily injury by disease each employee. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.

(ii) Automobile Liability Insurance for all owned, non-owned, and hired motor vehicles, which Seaholm, or its agents or contractors on Seaholm's behalf, will utilize with respect to the Property in a minimum amount of \$1,000,000, combined single limit.

(iii) Commercial General Liability policy with a minimum limit of \$1,000,000 per occurrence for bodily injury and/or property damage, products and completed operations with a minimum aggregate of \$1,000,000 and blanket contractual coverage, independent contractors' coverage and explosion, collapse and underground (X, C & U) coverage.

(iv) Pollution Legal Liability Insurance coverage reasonably approved by the City and listing the City as an additional insured with a minimum limit reasonably approved by the City.

(v) For contractors/subcontractors providing professional services under this Agreement, Engineers' Professional Liability Insurance with a minimum limit of \$1,000,000 per claim and in the aggregate to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission committed or alleged to have been committed with respect to plans, maps, drawings, analyses, reports, surveys, change orders, designs or specifications prepared or alleged to have been prepared by the assured.

(vi) For work that involves asbestos or any hazardous materials or pollution, the following will be in addition to the other insurance required hereunder:

A. Asbestos abatement endorsement or pollution coverage to the Commercial General Liability policy with minimum bodily injury and property damage limits of \$1,000,000 per occurrence for coverages A&B and products/completed operations coverage with a separate aggregate of \$1,000,000. This policy cannot exclude asbestos or any hazardous materials or pollution and shall provide "occurrence" coverage without a sunset clause.

B. Pollution coverage in accordance with Title 49 CFR 171.8 requiring an MCS 90 endorsement with a \$5,000,000 limit when transporting asbestos in bulk in conveyances of gross vehicle weight rating

of 10,000 pounds or more. All other transporters of asbestos shall provide either an MCS 90 endorsement with minimum limits of \$1,000,000 or an endorsement to their Commercial General Liability Insurance policy that provides coverage for bodily injury and property damage arising out of the transportation of asbestos or other hazardous materials. The endorsement must, at a minimum, provide a \$1,000,000 limit of liability and cover events caused by the hazardous properties of airborne asbestos arising from fire, wind, hail, lightning, overturn of conveyance, collision with other vehicles or objects, and loading and unloading of conveyances.

The insurance required under this subsection (vi) will only be required concerning the entity which is actually performing such work. For example, if Seaholm's contractor (instead of Seaholm) is performing such work, the contractor, not Seaholm, will be required to carry such insurance.

(b) Special Requirements. Seaholm will not cause any insurance required hereunder to be canceled or lapse during the term of this Agreement. With respect to Sections 9.1(a)(i), (ii) and (iii), insurance coverage is to be written by companies duly authorized to do business in the State of Texas at the time the policies are issued and will be written by companies with an A.M. Best rating of AVII or better or otherwise acceptable to the City. Additionally with respect to Sections 9.1(a)(i), (ii) and (v), all policies will contain a provision in favor of the City waiving subrogation or other rights of recovery against the City, to the extent available under Legal Requirements, and will be endorsed to provide the City with a 30-day notice of cancellation. The City will be an additional insured as its interests may appear on the Commercial General and Automobile Liability policies. All policies will provide primary coverage as applicable, with any insurance maintained by the City being excess and non-contributing. Seaholm will submit a certificate of insurance to the City providing evidence of insurance coverage required by this Agreement. Seaholm will be responsible for (i) overseeing its contractors with respect to such contractors' obtaining and maintaining the insurance required hereunder and (ii) obtaining and keeping copies of such contractors' insurance certificates evidencing the insurance coverages required hereunder.

(c) Additional Insured. All endorsements, waivers, and notices of cancellation as well as the certificate of insurance shall indicate the City as an additional insured and be delivered to: City of Austin, Economic Growth and Redevelopment Services Office, Attn: Director, P.O. Box 1088, Austin, Texas 78767, or such other address as the City may notify Seaholm in writing.

(d) Cost. Seaholm shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in the insurance policies to be carried hereunder by Seaholm (not by its contractors and any subcontractors). All deductibles or self-insured retentions shall be disclosed on the certificate of insurance. The insurance coverages required under this Agreement are required minimums and are not intended to limit or otherwise establish the responsibility or liability of Seaholm or the City under this Agreement.

9.2 Indemnity and Release.

(a) Indemnity. Seaholm will indemnify and hold the City and its respective officers, directors, employees and agents harmless from, and reimburse the City and its respective officers, directors, contractors, employees and agents for and with respect to, all claims, demands, actions, damages, losses, liabilities, judgments, costs and expenses, including, without limitation, reasonable legal fees and court costs (each a “**Claim**”) which are suffered by, recovered from or asserted against the City or its respective officers, directors, employees and agents to the extent any such Claim arises from or in connection with (i) any Seaholm Event of Default, (ii) the consequences of any alleged, established or admitted act or omission of Seaholm or any agents, contractors, representatives or employees of Seaholm, and (iii) to the extent covered by the insurance (specifically including environmental insurance) required to be maintained by Seaholm hereunder, any alleged, established or admitted act or omission of the City or any agents, contractors, representatives or employees of the City, **INCLUDING ALL CLAIMS CAUSED BY THE NEGLIGENCE OR STRICT LIABILITY OF THE CITY**, but excluding Claims to the extent caused by the gross negligence or willful misconduct of the City.

(b) Claims. If the City notifies Seaholm of any Claim, Seaholm shall assume on behalf of the City and conduct with due diligence and in good faith the investigation and defense thereof and the response thereto with counsel selected by Seaholm but reasonably satisfactory to the City; provided, that the City has the right to be represented by advisory counsel of its own selection and at its own expense; and provided further, that if any such Claim involves Seaholm and the City, and the City has been advised in writing by counsel that there may be legal defenses available to it which are inconsistent with those available to Seaholm, then the City has the right to select separate counsel to participate in the investigation and defense of and response to such Claim on its own behalf, and Seaholm shall pay or reimburse the City for all reasonable legal fees and costs incurred by the City because of the selection of such separate counsel. If any Claim arises as to which the indemnity provided for in this Section applies, and Seaholm fails to assume within 20 days after being notified of the Claim the defense of the City, then the City may contest (or settle, with the prior written consent of Seaholm, which consent will not be unreasonably withheld, conditioned or delayed) the Claim at Seaholm’s expense using counsel selected by the City; provided, that if any such failure by Seaholm continues for 30 days or more after Seaholm is notified thereof, no such contest need be made by the City and settlement or full payment of any Claim may be made by the City without Seaholm’s consent and without releasing Seaholm from any obligations to the City under this Section so long as, in the written opinion of reputable counsel to the City, the settlement or payment in full is clearly advisable. So long as Seaholm does not admit liability or agree to affirmative obligations on behalf of the City, Seaholm is authorized to settle a Claim for itself and the City.

(c) Notification. The City shall (i) use commercially reasonable efforts to provide prompt written notice to Seaholm of a Claim, and (ii) reasonably cooperate with Seaholm in the investigation and defense of a Claim. If the City breaches its obligations contained in the previous sentence, the liability of Seaholm under this Section shall be

reduced by the amount such breach directly caused a material impairment of the defense of the Claim.

(d) Release. Other than to the extent caused by a City Event of Default, Seaholm hereby releases the City with respect to all Claims regarding any alleged, established or admitted negligent or wrongful act or omission of the City or any agents, contractors, representatives or employees of the City, **INCLUDING ALL CLAIMS CAUSED BY THE NEGLIGENCE OR STRICT LIABILITY OF THE CITY**.

The provisions of this Section will survive the expiration or earlier termination of this Agreement.

ARTICLE X. EVENTS OF DEFAULT AND REMEDIES

10.1 Events of Default – Seaholm. The following constitute Events of Default by Seaholm:

(a) Failure to Pay. Seaholm fails to pay any amount required to be paid hereunder when due and such failure continues for a period of 15 days from the date of written notice thereof from the City.

(b) Abandonment or Suspension. Following Commencement of Construction, Seaholm voluntarily abandons or substantially suspends such construction for more than 60 consecutive days, subject to Force Majeure and City Caused Delays.

(c) Failure to Perform Obligations. Without limiting any other provision of this Section, Seaholm fails to perform any other obligations or duties provided in this Agreement, subject to Force Majeure and City Caused Delays, after the time for any cure or the expiration of any grace period specified therefor, or if no such time is specified, within 30 days after the date of written demand by the City to Seaholm to perform such obligation and duty, or in the case of a default not susceptible of cure within 30 days, Seaholm fails promptly to commence to cure such default and thereafter to prosecute diligently such cure to completion within a reasonable time, but in no event longer than 120 days after the date of the written demand.

(d) Insurance. Seaholm fails to maintain the insurance required under Section 9.1 hereof.

(e) Assignment. Seaholm violates the terms of Section 12.15 hereof.

(f) Other Agreement Events of Default. Seaholm commits an event of default under the Declaration, the Deed or a Ground Lease or Guarantor commits an event of default under the Guaranty, any of which continues past any applicable grace, notice or cure period(s), including without limitation,

(i) under Section 6 of the Deed (Repurchase Right – Failure to

Commence Construction);

(ii) under Section 8 of the Deed (Repurchase Right Work Stoppage);

(iii) under Section 9 of the Deed (Liquidated Damages Completion);

(iv) under Section 5.1 of the Ground Lease (Termination Right – Failure to Commence Construction);

(v) under Section 5.3 of the Ground Lease (Termination Right – Work Stoppage); and

(vi) under Section 5.4 of the Ground Lease (Liquidated Damages – Completion).

(g) Receiver and Bankruptcy. A receiver, trustee or custodian is appointed for, or takes possession of, all or substantially all of the assets of Seaholm, either in a proceeding brought by Seaholm or in a proceeding brought against Seaholm, and such appointment is not discharged or such possession is not terminated within 90 days after the effective date thereof or Seaholm consents to or acquiesces in such appointment or possession. Seaholm files a petition for relief under the Federal Bankruptcy Code or any other present or future federal or state insolvency, bankruptcy or similar law (all of the foregoing collectively, “**Applicable Bankruptcy Law**”) or an involuntary petition for relief is filed against Seaholm under any Applicable Bankruptcy Law and such petition is not dismissed within 90 days after the filing thereof, or an order for relief naming Seaholm is entered under any Applicable Bankruptcy Law, or any composition, rearrangement, extension, reorganization or other relief of debtors now or hereafter existing is requested or consented to by Seaholm.

(h) Litigation. Any reasonably meritorious third party suit shall be filed against Seaholm, which if adversely determined, would substantially impair the ability of Seaholm to perform in any material respect each and every one of its material obligations under and by virtue of this Agreement, and pursuant to which a permanent injunction is issued by a court of competent jurisdiction enjoining Seaholm from performing its obligations hereunder and such injunction is not released or bonded around within 90 days of its issuance, unless such claim arises out of or is related to the City entering into this Agreement with Seaholm.

(i) Mortgagee as the Developer. If a Mortgagee acquires title to the Property or the rights of Seaholm under this Agreement and fails to propose a Replacement Developer to assume the role of Seaholm under this Agreement (or a new agreement is not executed pursuant to Section 11.5(d)) within 180 days of Mortgagee’s title or rights acquisition, Mortgagee may not exercise any right or remedy of Seaholm hereunder unless and until such Replacement Developer assumes Seaholm’s obligations and rights hereunder in a written instrument approved by the City.

10.2 Remedies of the City. Upon the occurrence and during the continuance of an Event of Default by Seaholm, the City has, as the City’s sole and exclusive remedies, the

remedies set forth below (except those remedies which are only available concerning a Major Event of Default):

(a) Termination of Rights. With respect to a Major Event of Default, the City may terminate all or a portion of Seaholm's rights under (i) this Agreement, (ii) the Declaration, (iii) the Ground Leases and (iv) the Offsite Parking Garage Management Agreement, upon not less than 10 days' written notice to Seaholm.

(b) Specific Performance. The City may institute an action for specific performance, to the extent permitted by Legal Requirements.

(c) Damages. The City may pursue a claim against Seaholm for actual, but not punitive or consequential, damages.

(d) Liquidated Damages. Except with respect to a Major Event of Default, Seaholm will pay to the City as liquidated damages the sum of \$1,000 per day for each day a Seaholm Event of Default exists (without duplication), which sum has been agreed because of the difficulty and uncertainty of determining actual damages for each individual Event of Default.

(e) Assignment. With respect to a Major Event of Default and only upon a reconveyance of the Property effected under Section 10.2(f) below, the City may cause Seaholm to assign to another Person all or a portion of its rights and obligations without any representations or warranties (i) hereunder, (ii) the Declaration, (iii) the Ground Leases, (iv) to the extent assignable, under any and all contracts or agreements entered into by Seaholm concerning the Improvements, provided such assignee assumes such rights and obligations, and (v) to the extent assignable, all marketing and informational materials prepared for, or on behalf of, Seaholm including without limitation all intellectual property and website domains. If the assignee assumes such rights, Seaholm has no further rights or obligations hereunder or thereunder as of the date of such assumption.

(f) Reconveyance. With respect to a Major Event of Default, the City may cause Seaholm to reconvey to the City (or an assignee of the City) that portion of the Property deeded to Seaholm by a Deed in accordance with the reconveyance rights and obligations under the Deed.

(g) Tolling of Other Obligations. The City may toll performance of its obligations under this Agreement and any required time for performance thereof will be extended by the number of days the Seaholm Event of Default existed.

(h) Remedies Under Other Agreements. The City may exercise any remedy provided to the City under the Deed, the Ground Lease and/or the Declaration.

EXCEPT AS SET FORTH ABOVE, THE CITY WAIVES ANY OTHER RIGHT OR CLAIM OF MONETARY DAMAGES OR EQUITABLE RELIEF AGAINST SEAHOLM FOR SEAHOLM'S EVENT OF DEFAULT.

10.3 Events of Default – City. The following constitute Events of Default by the City:

(a) Failure to Pay. The City fails to pay any amount required to be paid hereunder when due and such failure continues for a period of 15 days from the date of written notice thereof from Seaholm.

(b) Failure to Perform Obligations. Without limiting any other provision of this Section, the City fails to perform any other obligations and duties provided in this Agreement after the time for any cure or the expiration of any grace period specified therefor, or if no such time is specified, within 30 days after the date of written demand by Seaholm to the City to perform such obligation and duty, or, in the case of a default not susceptible of cure within 30 days, the City fails promptly to commence to cure such default and thereafter to prosecute diligently such cure to completion within a reasonable time, but in no event longer than 120 days after the date of the written demand.

(c) Other Agreement Events of Default. The City commits an “event of default” under the Ground Lease which continues past any applicable grace, notice or cure periods.

(d) Assignment. City violates the terms of Section 12.15 hereof.

(e) Receiver and Bankruptcy. A receiver, trustee or custodian is appointed for, or takes possession of, all or substantially all of the assets of the City, either in a proceeding brought by the City, or in a proceeding brought against the City and such appointment is not discharged or such possession is not terminated within 90 days after the effective date thereof or the City consents to or acquiesces in such appointment or possession. The City files a petition for relief under Applicable Bankruptcy Law or an involuntary petition for relief is filed against the City under any Applicable Bankruptcy Law and such petition is not dismissed within 90 days after the filing thereof, or an order for relief naming the City is entered under any Applicable Bankruptcy Law, or any composition, rearrangement, extension, reorganization or other relief of debtors now or hereafter existing is requested or consented to by the City.

(f) Litigation. Any reasonably meritorious suit shall be filed against the City, which if adversely determined, would substantially impair the ability of the City to perform each and every one of its obligations under and by virtue of this Agreement, which is not dismissed within 90 days of filing.

10.4 Remedies of Seaholm. Upon the occurrence of an Event of Default by the City, Seaholm has, as Seaholm’s sole and exclusive remedies, the remedies set forth below:

(a) Termination of the Development. Seaholm may terminate its obligations under (i) this Agreement, (ii) the Deed, (iii) the Ground Leases and (iv) the Offsite Parking Garage Management Agreement.

(b) Specific Performance. Seaholm may institute an action against the City for specific performance, to the extent permitted by Legal Requirements.

(c) Damages. Seaholm may pursue a claim against the City for actual, but not punitive or consequential, damages.

(d) Tolling of Other Obligations. Seaholm may toll performance of its obligations under this Agreement and any required time for performance thereof will be extended by the number of days the City Event of Default existed.

EXCEPT AS SET FORTH ABOVE, SEAHOLM WAIVES ANY OTHER RIGHT OR CLAIM OF MONETARY DAMAGES OR EQUITABLE RELIEF AGAINST THE CITY FOR ANY CITY EVENT OF DEFAULT.

10.5 Rights and Remedies Are Cumulative. The rights and remedies of the parties to this Agreement are cumulative and the exercise by either party of any one (1) or more of such remedies will not preclude the exercise by it, at the same or a different time, of any other such remedies for the same default or breach or of any of its remedies for any other default or breach by the other party. No waiver made by either party with respect to the performance, or manner or time thereof, of any obligation of the other party or any condition to its own obligation under this Agreement will be considered a waiver with respect to the particular obligation of the other party or condition to its own obligation beyond those expressly waived and to the extent thereof, or a waiver in any respect in regard to any other rights of the party making the waiver or any other obligations of the other party.

10.6 Plans and Data. If the City terminates this Agreement under Section 10.2(a) or causes the assignment of the right to develop under Section 10.2(e) before Completion of Construction of all the Improvements, Seaholm shall deliver to the City, without any representations or warranties as to accuracy or completeness or the City's right to rely thereon and without any liability to Seaholm therefor, copies of any and all documents, studies, reports, cost estimates, plans, and specifications in the possession of or, to the extent reasonably available to Seaholm, prepared for Seaholm or the City for the redevelopment within 30 days after demand or notice from the City.

10.7 LIMITED WAIVER OF SOVEREIGN IMMUNITY. TO THE EXTENT PERMITTED BY APPLICABLE LAWS, THE CITY VOLUNTARILY WAIVES ITS RIGHT TO ASSERT SOVEREIGN IMMUNITY FROM SUIT OR LIABILITY IN RESPONSE TO AN ACTION BY SEAHOLM SEEKING ONLY THE REMEDIES SPECIFIED IN SECTION 10.4 HEREOF. THE CITY DOES NOT OTHERWISE WAIVE IMMUNITIES EXISTING UNDER APPLICABLE LAWS, AND IT IS EXPRESSLY UNDERSTOOD THAT THE WAIVER HERE GRANTED IS A LIMITED AND NOT A GENERAL WAIVER, AND THAT ITS EFFECT IS LIMITED TO SPECIFIC CLAIMS UNDER THIS AGREEMENT.

ARTICLE XI.

SEAHOLM'S RIGHT TO FINANCE AND MORTGAGEE PROTECTION

11.1 Seaholm's Right to Finance. Without the prior written consent of the City, prior to the Repayment Incentives Date, Seaholm covenants to the City that it will not enter into any financing arrangement with a Mortgagee concerning financing the acquisition, development,

renovation, repair, maintenance, operation or refinance of the Property (a “**Financing**”). The City will not unreasonably withhold such consent if Seaholm’s Financing is:

(a) Amount. In a total principal amount not to exceed eighty percent (80%) of the appraised fair market value (as determined by an MAI appraisal reasonably satisfactory to the City) of Seaholm’s interest in the Property, provided however, nothing herein shall prohibit or restrict a Mortgagee from making additional loans or advances to (i) protect such Mortgagee’s interest in the Property (i.e., advances to pay insurance, taxes, Property maintenance, attorney’s fees) or (ii) pay unanticipated costs to complete construction (i.e., costs to comply with applicable Legal Requirements and cost overruns).

(b) Rate. Contains commercially reasonable fixed or variable rates of interest consistent with then current market rates.

(c) Mortgage. Provided by a Mortgagee.

(d) Equity Kicker. Not structured to contain an “equity kicker” or similar financing arrangement which shares with the lender any “equity” in the Property.

Because of certain accommodations made under the Guaranty, Seaholm’s required equity contribution under any Financing arrangement must be contributed in all material respects to the Property prior to any advance of Financing.

Any Financing may be evidenced by one or more promissory notes and may be (but shall not be required to be) secured by one or more Mortgages. If any Financing is secured by a Mortgage, the Mortgage shall be subject to all of the terms and conditions set forth herein.

11.2 Limitation of Liability. The City shall not be liable for the payment of the sum secured by any Mortgage, nor for any expenses in connection with the same, and neither the Mortgage nor any document related thereto shall contain any covenant or other obligation on the City’s part to pay such debt, or any part thereof, or to take any affirmative action of any kind whatsoever with respect to the payment of such debt, except as the City may deem necessary or desirable to protect its interest hereunder (provided nothing herein gives the City the right to pay any such debt). Furthermore, such Mortgage shall expressly provide that the Mortgagee thereunder shall not seek a judgment against the City for the payment of such debt based upon such Mortgage or any instrument or document related thereto.

11.3 Use of Loan Proceeds. Seaholm covenants and agrees with the City that the sums advanced under any Mortgage loan shall be applied exclusively with respect to the Property and the Mortgage must not be “cross collateralized” with any other property or “cross defaulted” with any other transaction.

11.4 Refinancing. Seaholm may refinance any debt secured by the Mortgage(s) without the consent of the City, provided that such new Mortgage, or Mortgages, meets the requirements of this Section.

11.5 Mortgagee Protection. The execution and delivery by Seaholm of any Mortgage,

in and of itself, shall not be deemed to constitute a transfer or assignment under Section 12.15(c) of this Agreement, nor a Mortgagee, as such, be deemed a transferee or assignee of this Agreement so as to require such Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions on the part of Seaholm to be performed hereunder. Notwithstanding any provision of this Agreement to the contrary, the following terms and provisions shall apply regarding any Mortgage with respect to Seaholm's interest in this Agreement:

(a) Termination. The City shall not terminate or accept the termination or surrender of, this Agreement without Mortgagee's prior written consent, except as otherwise required by Legal Requirements or expressly permitted by the terms hereof.

(b) Notice. If any Mortgagee shall have delivered to the City prior written notice of the address of such Mortgagee, the City shall simultaneously send duplicate copies of all notices of Seaholm's Events of Default to Mortgagee at such address. Such notices shall be given in the manner prescribed in Section 12.1 hereof.

(c) Cure Right. Mortgagee has no duty to cure any defaults under this Agreement by Seaholm, but the City shall accept cure by Mortgagee and for such purpose the City and Seaholm hereby authorize such Mortgagee to enter upon the Property and to exercise any of such Mortgagee's rights and powers under this Agreement. The time for Mortgagee's cure of any Seaholm Event of Default shall be extended for 60 days beyond the later to occur of (i) the period of cure granted to Seaholm and (ii) the date notice of such default is received by Mortgagee; provided however, if a Seaholm Event of Default is not susceptible of cure within such 60 day period, Mortgagee shall have such additional time as is necessary to cure such Seaholm Event of Default, but in no event longer than a total of 120 days. If a Seaholm Event of Default exists, Mortgagee may, at its election, acquire title to Seaholm's estate in the Property or Seaholm's interest in this Agreement diligently and in good faith by appropriate proceedings, including foreclosure (or deed-in-lieu) of a Mortgage, and the time period for Mortgagee's cure shall be tolled during the pendency of such title acquisition proceedings; provided, however, that if Mortgagee elects to foreclose or take a deed-in-lieu of foreclosure in order to obtain title and cure, Mortgagee shall first give revocable written notice thereof to the City of such intent. Additionally, if a default exists under the Mortgage at a time when no Seaholm Event of Default exists and Mortgagee is exercising its rights under the Mortgage to acquire title to Seaholm's estate in the Property or Seaholm's interest in this Agreement diligently and in good faith by appropriate proceedings, including foreclosure (or deed-in-lieu) of its Mortgage, then Mortgagee shall have the same rights to cure any Seaholm Event of Default as contained in this section. Mortgagee shall not be required to cure or commence to cure any default that is personal to Seaholm (e.g., bankruptcy). The City will not exercise its remedies for an Event of Default under Section 10.2 of this Agreement or under a Deed so long as Mortgagee has a right to cure such Event of Default under this Section.

(d) Bankruptcy. If Seaholm's interest hereunder is terminated because of a rejection of this Agreement by a trustee in bankruptcy (and provided an unsatisfied Mortgage in favor of a Mortgagee then is of record), upon written request of Mortgagee

delivered to the City within 15 days following such rejection, the City will execute and deliver a new agreement with such Mortgagee or a Replacement Developer for the remainder of the Term with the same agreements, covenants, representations, warranties and conditions (except for any requirements that have been fulfilled by Seaholm prior to termination and any requirements that are personal to Seaholm) as were contained herein; provided, however, that such Mortgagee or the Replacement Developer must promptly commence and diligently pursue to completion the cure of any default of Seaholm hereunder. Neither Mortgagee nor the Replacement Developer shall be required to cure or commence to cure any default that is personal to Seaholm (e.g., bankruptcy).

(e) Multiple Mortgagees. If at any time there shall be more than one Mortgagee, the holder of the Mortgage prior in lien shall be vested with the rights of this Section to the exclusion of the holder of any junior Mortgagee and the City's obligations hereunder only extend to such senior Mortgagee.

(f) Default Under Loan Documents. Mortgagee shall furnish to the City copies of all default notices which Seaholm is entitled to receive from Mortgagee under any note, mortgage, deed of trust, loan agreement, instrument or document (collectively, the "**Loan Documents**") contemporaneously as when sent to Seaholm. Upon request by the City (not to be given more than twice per 12 month period), Mortgagee shall certify in writing to the City whether or not, to Mortgagee's actual knowledge without inquiry, any default on the part of Seaholm exists under the Loan Documents and the nature of any such default. Failure by Mortgagee to identify any such default shall not impact any of its rights or remedies under the Loan Documents or under this Agreement.

ARTICLE XII. MISCELLANEOUS PROVISIONS

12.1 Notices. Formal notices, demands and communications between the parties will be sufficiently given if, and will not be deemed given unless, delivered personally, dispatched by certified mail, postage prepaid, return receipt requested, or sent by a nationally recognized express delivery or overnight courier service, to the office of the parties shown as follows, or such other address as the parties may designate in writing from time to time:

<u>Seaholm:</u>	Seaholm Development, LLC c/o Southwest Strategies Group 1214 W. 6th Street, Suite 220 Austin, Texas 78703-5261 Attention: John Rosato
with a copy to:	Seaholm Development, LLC c/o Centro Partners LLC 823 Congress Avenue, Suite 800 Austin, Texas 78701 Attention: Kent Collins

and: DuBois, Bryant & Campbell, LLP
700 Lavaca, Suite 1300
Austin, Texas 78701
Attention: Rick Reed

Guarantor: CIM Fund III, LP
c/o CIM Group, Inc.
6922 Hollywood Boulevard
Ninth Floor
Los Angeles, CA 90028
Attention: Jeff Rosen

City: City of Austin
City Manager's Office
301 West 2nd Street
Austin, Texas 78701
Attention: City Manager

with a copy to: City of Austin
Economic Growth and Redevelopment Services Office
301 West 2nd Street
Austin, Texas 78701
Attention: Director

and: City of Austin
Law Department
301 West 2nd Street
Austin, Texas 78701
Attention: Susan Groce

and: K&L Gates
111 Congress Avenue, Suite 900
Austin, Texas 78701
Attention: Kirk Watson

and: Thompson & Knight L.L.P.
98 San Jacinto, Suite 1900
Austin, Texas 78701
Attention: James E. Cousar and Andrew Ingram

Such written notices, demands, and communications will be effective on the date shown on the delivery record as the date delivered (or the date on which delivery was refused) or in the case of certified mail 2 Business Days following deposit of such instrument in the United States Mail.

12.2 Limitation on Liability. No member, official or employee of the City shall be personally liable to Seaholm for any default or breach by the City, or for any amount which may become due to Seaholm, or on any obligations under the terms of this Agreement. No Affiliate

of Seaholm, and no officer, manager, director, partner, shareholder, member, official or employee of Seaholm or any Affiliate of Seaholm shall be personally liable to the City for any default or breach by Seaholm, or for any amount which may become due to the City, or on any obligations under the terms of this Agreement.

12.3 Independent Contractor. Seaholm is an independent contractor with respect to the Improvements and is not serving as the employee or agent of the City. Nothing contained in this Agreement shall be construed as creating or constituting any partnership, joint venture, employment or agency between the parties. Each of Seaholm and the City has sole authority and responsibility to employ, discharge and otherwise control its own employees, and the respective employees of Seaholm and the City are not, and shall not be deemed to be, employees of the other. Neither party has the right or power to bind or obligate the other party for any liabilities or obligations without the prior written consent of the other party.

12.4 Severability. If any term(s) or provision(s) of this Agreement or the application of any term(s) or provision(s) of this Agreement to a particular situation, is (are) held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Agreement or the application of such term(s) or provision(s) of this Agreement to other situations, shall remain in full force and effect unless amended or modified by mutual consent of the parties; provided that, if the invalidation, voiding or unenforceability would deprive either the City or Seaholm of material benefits derived from this Agreement, or make performance under this Agreement unreasonably difficult, then the City and Seaholm shall meet and confer and shall make good faith efforts to amend or modify this Agreement in a manner that is mutually acceptable to the City and Seaholm.

12.5 Construction of Agreement. This Agreement has been reviewed and revised by legal counsel for both Seaholm and the City, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

12.6 Entire Agreement. This Agreement and all the documents, agreements, exhibits and schedules referenced herein constitute the entire understanding and agreement of the parties and supersede all negotiations or previous agreements between the parties with respect to the subject matter of this Agreement.

12.7 No Waiver. No delay or omission by either party in exercising any right or power accruing upon non-compliance or failure to perform by the other party under any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either party of any of the covenants or conditions to be performed by the other party shall be in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought, and any such waiver shall not be construed as a waiver of any succeeding breach or non-performance of the same or other covenants and conditions hereof.

12.8 Time Is of the Essence. Time is of the essence for each provision of this Agreement for which time is an element.

12.9 Governing Laws. This Agreement shall be construed and enforced in accordance with the laws of the State of Texas.

12.10 Attorney's Fees and Interest. Should any legal action be brought by either party because of a breach of this Agreement or to enforce any provision of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and such other costs as may be found by the court or arbitrator. If any party hereto fails to pay any amount under this Agreement when it is due, that amount will bear interest from the date it is due until the date it is paid at the lesser of 18% per annum or the maximum rate of interest permitted under Legal Requirements.

12.11 No Third Party Beneficiaries. Except with respect to any permitted assignees of Seaholm and the City as contemplated in Section 12.15 and any Mortgagee as contemplated in ARTICLE XI, the City and Seaholm hereby renounce the existence of any third party beneficiary to this Agreement and agree that nothing contained herein shall be construed as giving any other person or entity third party beneficiary status.

12.12 Counterparts. This Agreement may be executed by each party on a separate signature page, and when the executed signature pages are combined, shall constitute one (1) single instrument.

12.13 Time of Performance. All performance dates (including without limitation cure dates) expire at 5:00 p.m. Central Standard Time, on the performance or cure date. A performance or cure date which falls on a day other than a Business Day is deemed extended to the next Business Day.

12.14 Estoppel Certificates. Upon 30 days' prior written notice and not more than twice in any 12-month period, the City and Seaholm each agree to sign and deliver to the other party a statement certifying (a) that this Agreement is unmodified and in full force and effect (or, if that is not the case, so stating and setting forth any modifications), (b) that, to the responding party's knowledge, the requesting party is not in breach of this Agreement (or, if that is not the case, so stating and setting forth any alleged breaches), and (c) any other information reasonably related to the status of this Agreement. This certificate may only be relied upon by the party requesting the certificate and any parties specifically identified by name in the request, may only be used to estop the responding party from claiming that the facts are other than as set forth in the certificate, and may not be relied upon by any person or entity, even if named in such estoppel certificate, who knows or should know that the facts are other than as set forth in such certificate.

12.15 Successors and Assigns.

(a) General. Except as provided in this Section, this Agreement will be binding upon and inure to the benefit of the permitted successors and assigns of the City and Seaholm, and where the terms "Seaholm" or "the City" are used in this Agreement, they mean and include their respective permitted successors and assigns. If any party hereto assigns its interest herein as permitted hereby, the assigning party will not be released from its obligations hereunder, except to the extent it obtains a written release from the beneficiary party to such obligations, which such beneficiary party may give or

withhold in its sole and absolute discretion.

(b) City Assignment. Without Seaholm's prior consent, the City may only assign its interest in the Property to a special entity to facilitate the redevelopment of the Property, provided the City remains liable for the City's obligations to Seaholm in this Agreement. If the City assigns its interest hereunder, the City's assignee shall execute an assumption agreement unconditionally assuming the City's obligations hereunder, a copy of which shall be provided to Seaholm.

(c) Seaholm Assignment.

(i) Except as expressly permitted by ARTICLE XI, prior to the date (the "**Permitted Transfer Date**") which is one year following the date on which 75% of the Office Building and the Power Plant Building are leased under Approved Leases and occupied by the tenants thereunder, Seaholm shall not assign (including without limitation, by transfer or pledge of a majority of [or controlling] ownership interests, merger, or dissolution, which transfer or pledge of majority interest of [or controlling] ownership interests, merger, or dissolution shall be deemed an assignment), transfer, mortgage, pledge, or hypothecate all or any interest in this Agreement (a "**Transfer**"). On and following the Permitted Transfer Date, Seaholm shall not Transfer (including without limitation, by transfer of a majority of [or controlling] ownership interests, merger, or dissolution, which transfer of majority [or controlling] interest ownership interests, merger, or dissolution shall be deemed an assignment) any interest in this Agreement without the prior written consent of the City. Notwithstanding the foregoing, without the City's prior consent (but with prior written notice to the City) Seaholm may Transfer its interest in this Agreement to an Affiliate of Seaholm provided that such Affiliate is owned and controlled by the people or entities that own and control Seaholm as of the Effective Date.

(ii) Any request for a Transfer by Seaholm must be in writing (a "**Transfer Request**") and include (A) the proposed effective date of the Transfer, (B) the proposed form of all Transfer documentation, (C) all of the terms of the proposed Transfer, (D) identity of the proposed transferee (including principals and development/management experience), (E) current financial statements of the proposed transferee, (F) business, credit and personal references and business history of the proposed transferee, (G) proposed development/management plan for the Property, and (H) any other information reasonably required by the City which will enable the City to determine the financial responsibility, experience, character, and reputation of the proposed transferee. If the City fails to notify Seaholm in writing of its approval, disapproval or comments to the complete Transfer Request within 60 days of the City's deemed receipt thereof, Seaholm may provide the City a second written Transfer Request (containing a statement in all bold and capital letters that reads "**FAILURE TO RESPOND TO THIS TRANSFER REQUEST WITHIN 30 DAYS SHALL CONSTITUTE DEEMED APPROVAL OF THIS TRANSFER REQUEST**") which if not responded to by the City within 30 days after deemed receipt will be deemed

approval of the Transfer Request. In such event and on Seaholm's written request to the City, the City will provide written confirmation to Seaholm of such deemed approval. The City will notify the applicant in writing of any materials that the City believes are missing to make a Transfer Request complete. The City may: (AA) approve the Transfer Request with or without conditions; (BB) approve a portion of the Transfer Request and disapprove other portions specifying the segments or features that are objectionable and suggestions, if any, to address the objectionable portions; or (CC) disapprove the Transfer Request.

(d) Bankruptcy. If, pursuant to Applicable Bankruptcy Law, Seaholm (or its successor in interest hereunder) is permitted to assign this Agreement in disregard of the restrictions contained in this Article (or if this Agreement shall be assumed by a trustee for such person), the trustee or assignee shall cure any Event of Default under this Agreement and shall provide adequate assurance of future performance by the trustee or assignee, including (i) the source of performance of Seaholm's obligations under this Agreement for which adequate assurance shall mean the deposit of cash or equivalent security with the City in an amount equal to the sum of 20% of Seaholm's estimated remaining monetary obligations under this Agreement, which deposit shall be held by City, without interest, as security for the full and faithful performance of all of the obligations under this Agreement on the part of Seaholm yet to be performed; (ii) that the trustee's or assignee's development expertise with respect to mixed use urban developments is at least equal to that of Seaholm as of the Effective Date, and (iii) that the use of the Property shall be in accordance with the terms hereof and, further, shall in no way diminish the reputation of the Property as a "Class A" mixed use urban development or impose any additional burden upon the Property or increase the services to be provided by City. If all Events of Defaults are not cured and such adequate assurance is not provided within ninety (90) days after there has been an order for relief under Applicable Bankruptcy Law, then this Agreement shall be deemed rejected, Seaholm or any other person in possession shall immediately vacate the Property and the City shall have no further liability to Seaholm or any person claiming through Seaholm or any trustee under this Agreement.

12.16 No Recording/Filing. Neither party will record or file this Agreement or any memorandum thereof in any public recording office.

12.17 Effect of Force Majeure, City Caused Delays and Seaholm Caused Delays. If the City or Seaholm is delayed, hindered, or prevented from performance of any of its respective obligations under this Agreement by reason of Force Majeure or, as applicable, City Caused Delays or Seaholm Caused Delays, and if such party has not otherwise committed an Event of Default hereunder which is continuing, the time for performance of such obligation is automatically extended for the period of such delay, provided that the following requirements are complied with by the affected party:

(a) The affected party shall give prompt written notice of such occurrence to the other party; and

(b) The affected party shall diligently attempt to remove, resolve, or otherwise

eliminate any such event within the reasonable control of such affected party, keep the other party advised with respect thereto, and commence performance of its affected obligations hereunder immediately upon such removal, resolution, or elimination.

12.18 Further Acts. In addition to the acts and deeds recited in this Agreement and contemplated to be performed, executed, and/or delivered by the parties, the City and Seaholm agree to perform, execute, and/or deliver or cause to be performed, executed, and/or delivered at each Takedown or at such other time or times as may be necessary or appropriate under this Agreement any and all further lawful acts, deeds, and assurances as are reasonably necessary or appropriate to consummate and implement the transactions and agreements reasonably contemplated hereby.

12.19 Consents and Approvals. Unless expressly stated otherwise herein to the contrary, any approval, agreement, clarification, determination, consent, waiver, estoppel certificate, estimate or joinder by the City required hereunder may be given by the City Manager of the City of Austin or its designee; provided however, except for clarifications, minor amendments and minor modifications, the City Manager does not have the authority to execute any substantial modification or amendment of this Agreement without approval of the Austin City Council.

12.20 Correction of Technical Errors. If, by reason of inadvertence, and contrary to the intention of the City and Seaholm, errors are made in this Agreement in the legal descriptions or the references thereto or within any exhibit with respect to the legal descriptions, in the boundaries of any parcel in any map or drawing which is an exhibit, or in the typing of this Agreement or any of its exhibits or any other similar matters, the parties by mutual agreement may correct such error by memorandum executed by them without the necessity of amendment of this Agreement.

12.21 Interstate Land Sales Full Disclosure. The City and Seaholm acknowledge and agree that the sale of each portion of the Property in accordance with this Agreement will be exempt from the provisions of the Interstate Land Sales Full Disclosure Act in accordance with the exemption applicable to the sale or lease of property to any person who acquires such property for the purpose of engaging in the business of constructing residential, commercial or industrial buildings or for the purpose of resale of such property to persons engaged in such business.

12.22 Termination Prior to MDA Commencement Date. If any or all of the conditions to the MDA Commencement Date have not occurred by the first anniversary of the Effective Date, Seaholm may terminate this Agreement by delivering written notice of termination to the City prior to the date, if any, that all such conditions have been fully satisfied. In the event of a termination under this Section, neither party shall have any right or obligation under this Agreement, except those which expressly survive such termination.

12.23 Termination Prior to Commencement of Construction. At any time prior to Commencement of Construction, Seaholm may terminate this Agreement by delivering written notice of termination to the City. In the event of a termination under this Section, neither party shall have any right or obligation under this Agreement, except those which expressly survive

such termination.

12.24 Guaranty. Contemporaneously with the execution hereof, Guarantor is executing the Guaranty in the form attached hereto as Exhibit H.

[END OF TEXT-SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date.

CITY:

THE CITY OF AUSTIN, a Texas home rule city
and municipal corporation

By: _____
Name: _____
Title: _____

Approved as to form and content for the City
by the City's external legal counsel:

THOMPSON & KNIGHT L.L.P.

SEAHOLM:

SEAHOLM DEVELOPMENT, LLC, a Delaware
limited liability company

By: _____
Name: _____
Title: _____