



# Supplemental Council Agenda Report

City Council Meeting  
09-13-21

**Item  
4.B.**

To: Mayor Grisanti and Honorable Members of the City Council

Prepared by: Adrian Fernandez, Assistant Planning Director

Reviewed by: Richard Mollica, Planning Director

Approved by: Steve McClary, Interim City Manager

Date prepared: September 13, 2021 Meeting Date: September 13, 2021

Subject: Coastal Development Permit No. 17-086, Conditional Use Permit No. 21-001, General Plan Amendment No. 21-001, General Plan Map Amendment No. 17-002, Local Coastal Program Amendment No. 16-006, Zoning Map Amendment No. 17-002, Zoning Text Amendment No. 20-001, Development Agreement No. 21-001, Lot Merger No. 20-002, Demolition Permit No. 20-19, Initial Study No. 21-001, and Mitigated Negative Declaration No. 21-001 – An application for the conversion of an existing office building and gas station into a hotel, including new development (Continued from August 19, 2021)

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## RECOMMENDED ACTION:

1) Adopt Resolution No. 21-45 for the adoption of Initial Study No. 21-001 and Mitigated Negative Declaration No. 21-001 (IS/MND) prepared for the project pursuant to the California Environmental Quality Act (CEQA) and approval of Coastal Development Permit (CDP) No. 17-086, Conditional Use Permit (CUP) No. 21-001, Lot Merger (LM) No. 20-002, and Demolition Permit (DP) No. 20-19 to change the land use designation of the properties from Community Commercial (CC) to Commercial Visitor Serving-2 (CV-2) and a new 26,734 square foot, 39-room hotel, involving the remodel of an existing four-story, 15,392 square foot commercial building and a 9,500 square foot parking level at 22741 Pacific Coast Highway (PCH) and construction of a new two-story, 11,342 square foot addition plus a basement on an adjacent parcel at 22729 PCH, and authorizing the Planning Director to submit a letter of public convenience or necessity for the use. The project includes a restaurant/bar, spa, rooftop deck, swimming pool, new surface parking lot, hardscape, landscaping, grading, retaining wall, lighting, utilities, and an upgrade and expansion of the existing onsite wastewater treatment system and associated lot merger

of the two involved in the CC zoning district at 22741 and 22729 Pacific Coast Highway (Grey Granite, LLC; Las Tunas Beach, LLC; and Sea View Terrace, LLC).

2) Adopt Resolution No. 21-46 for approval of General Plan Amendment (GPA) No. 21-001 and General Plan Map Amendment (GPMA) No. 17-002.

3) After the City Attorney reads the title of the ordinance, introduce on first reading Ordinance No. 491 (Attachment 3) for Local Coastal Program Amendment (LCPA) No. 16-006, Zoning Map Amendment (ZMA) No. 17-002, Zoning Text Amendment (ZTA) No. 20-001, and Development Agreement (DA) No. 21-001 to rezone the properties from Community Commercial (CC) to Commercial Visitor Serving-Two (CV-2), a new Sea View Hotel Overlay District with associated development standards, including the proposed floor area ratio of 0.52 for the public benefits provided by the project for the Sea View Hotel Overlay District.

4) Direct staff to schedule second reading and adoption of Ordinance No. 491 for the September 27, 2021 Regular City Council meeting.

The matter would subsequently be submitted to the California Coastal Commission (CCC) for certification of the LCPA.

DISCUSSION: The City Attorney's office made a few additional edits to the Development Agreement pursuant to comments made at the August 19, 2021 City Council meeting. These edits are depicted in track changes in the attached Development Agreement.

EXHIBIT: Redlined Development Agreement

**SEA VIEW HOTEL  
DEVELOPMENT AGREEMENT**

This Development Agreement (Agreement") is entered into on this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between the following entities:

1. City of Malibu ("CITY"), a general law city duly organized and existing under the laws of the State of California, and
2. Sea View Terrace LLC, Las Tunas Beach LLC, and Grey Granite LLC; jointly and severally, which are authorized to do business in the State of California and shall be referred to herein as "SEA VIEW."

CITY and SEA VIEW may be referred to individually as "Party" and collectively as "Parties."

**1. RECITALS**

This Agreement is made with respect to the following facts and for the following purposes, each of which is acknowledged as true and correct by the Parties:

- 1.1. SEA VIEW has submitted an application to CITY for the development of two parcels of land located at 22729 and 22741 Pacific Coast Highway, Malibu, California (the "Parcels.") The parcel located at 22729 Pacific Coast Highway shall be referred to herein as "Parcel A," and the parcel located at 22741 Pacific Coast Highway will be referred to herein as "Parcel B." The Parcels are described more specifically below and in Exhibit A, attached. A map showing the location of the Parcels is attached as Exhibit B. The application is for the project (the "Project") described hereinafter and more specifically shown on the approved Project plans and by the City-approved construction plans.
- 1.2. The Project consists of the following elements:
  - A. A 39-room hotel with a restaurant and associated facilities.

The Project will include the remodel of an existing commercial building on Parcel B, located at 22741 Pacific Coast Highway,

and the construction of a new building on Parcel A, located at 22729 Pacific Coast Highway. Parcel A is immediately adjacent to Parcel B on the entire west side and north side of Parcel A.

Parcel A and Parcel B will be merged together as a condition of the project's approval by the City and the California Coastal Commission.

The merger of the Parcels will occur prior to the City's issuance of the construction permits required to build the Project.

The operation of the hotel will include a Conditional Use Permit for the serving of alcoholic beverages in the restaurant, the guest rooms and decks, and the rooftop deck.

The hotel design includes setback modifications and other modifications to the City's general commercial development standards, which are being made for the hotel to function properly and legally.

The proposed hotel design features, and modifications to the City's general commercial development standards, are justified and are included in the plans that are approved by the City of Malibu.

- B. An Amendment to CITY's zoning map and Local Coastal Program (LCP) land use map changing the land use designation from Community Commercial ("CC") to Commercial Visitor Serving-2 ("CV-2").
- C. An Amendment to CITY's General Plan and Local Coastal Program (LCP) as stated below:
  - 1) The LCP Land Use Plan will be amended as follows: the designated land use of the Parcels will be changed from a Community Commercial use, ("CC"), to a Visitor Serving Use ("CV-2").

The reason for the land use change is to allow for the development of a hotel on the Parcels and CV-2 is the only land use category that will permit a hotel use.

2) A provision in Malibu's General Plan and LCP Land Use Plan, Section 30244, subsection C-2, under the heading "Commercial Visitor Serving (CV)", which limits the maximum Floor Area Ratio, will not apply to the Project Parcels if approved as detailed in Malibu City Council Resolutions nos. 21-45, 21-46 and Ordinance no. 491. This provision will facilitate the economic viability for the 39-room hotel which will achieve the goals, objectives and policies specified in Malibu's General Plan and LCP. The requested LCP amendment is required because of the existence of a situation in which the current legal permitted uses of the parcels can achieve only a fraction of the goals and objectives specified in the CITY's General Plan and LCP when compared to the proposed hotel use.

Page 1-48 of Malibu's General Plan states that "Visitor Serving uses such as motels and hotels shall be consistent with compatible accessory uses, shall protect the surrounding properties, shall ensure safe traffic circulation, and shall promote economically viable visitor serving areas of the City."

D. The proposed Project and any modification to the Project will be implemented in accord with the provisions of Malibu City Council Resolutions nos. 21-45, 21-46 and Ordinance no. 491 (which include this Development Agreement and the Sea View Hotel Overlay District) all of which are an integral part of the Project approval and the terms of the future development of the land contained in Parcel A and Parcel B, and which are incorporated here by reference.

1.3. Government Code §65864, *et seq.* authorizes CITY to enter into binding development agreements such as this Agreement with persons having legal or equitable interests in real property in order to, among other things, provide certainty in the approval of development projects so as to strengthen the public planning process, encourage private participation in comprehensive planning, provide needed public facilities, make maximum efficient utilization of resources at the least economic cost to the public and avoid waste of resources escalating the cost of development to the consumer. This Agreement provides assurances to SEA VIEW that,

if the Project is approved, during the term of this Agreement it may be implemented in accord with Ordinance no. 491 (approving a Zoning Text Amendment, creating the Sea View Hotel Overlay District and CITY's official policies, ordinances, rules and regulations in force as of the date Ordinance no. 491 was approved by the City Council;

- 1.4. Pursuant to Government Code §65865, CITY has adopted rules and regulations for consideration of development agreements, and proceedings have been taken in accordance with CITY's rules and regulations;
- 1.5. By entering into this Agreement, CITY shall bind future City Councils of CITY by the obligations specified herein and limit the future exercise of certain of its governmental and proprietary powers to the extent specified in this Agreement and permitted by law;
- 1.6. The terms and conditions of this Agreement have been reviewed by SEA VIEW, CITY and the City Council. CITY and SEA VIEW acknowledge and agree that the consideration to be exchanged pursuant to this Agreement is fair, just and reasonable;
- 1.7. This Agreement and the Project which is the subject of this Agreement are consistent with the goals and objectives in the CITY's General Plan, and its LCP;
- 1.8. All actions taken and approvals given by CITY have been duly taken or approved in accordance with all applicable legal requirements for notice, public hearings, including hearings by the planning commission and legislative body, findings, votes, and other procedural matters;
- 1.9. Development of the Project will further the comprehensive planning objectives by achieving the goals and objectives specified in CITY's General Plan and LCP, which include the following:
  - 1.9.1. Potential reduction of traffic on Pacific Coast Highway. An accredited California State licensed Traffic Engineer's study shows the uses of the existing building, including a spa, salon, doctor's offices, a gym and other businesses currently generate more traffic on PCH than the proposed

39-room hotel will generate when constructed and operated in accordance with this Development Agreement.

~~1.9.2. The Project will reduce the number of existing active driveways permitting vehicles to enter and exit Pacific Coast Highway by 50%. The westerly access drive will also be available to emergency vehicles and large trucks.~~

~~1.9.3.1.9.2. The proposed project is consistent with the character of \_\_\_\_\_ the \_\_\_\_\_ neighborhood.~~

The proposed hotel is located in a commercial district in the CITY; there is a public crosswalk and stop light within 220± feet of the proposed hotel, which will allow visitors to cross PCH safely to a 10-foot-wide public access to the beach; many restaurants and historical places of interest are within easy walking distance of the proposed hotel site including Nobu Restaurant, the Malibu Pier, the Adamson House, the Malibu Lagoon, and Surfrider Beach.

~~1.9.4.1.9.3. The proposed project will improve the visual resources as seen by travelers on Pacific Coast Highway. The parcel that contains the remaining structures from the abandoned Shell Gas Station has been identified by the City Planning Department as a "visual blight", and the hotel project will eliminate this blight.~~

The project will also landscape the 20 feet adjoining PCH, excepting the access drives.

In addition to the above, the hotel structure will be located 46+ feet from Pacific Coast Highway, which is almost twice the required front yard setback if Parcel A were to be developed independently of Parcel B; this setback will increase the openness of the peripheral view of travelers on PCH.

~~1.9.5.1.9.4. The hotel will increase funding for low to moderate overnight accommodations. The Project will include a component to increase lower cost overnight visitor~~

accommodations in accord with CITY's LCP, LIP Section 12.11, "New Luxury Overnight Accommodations."

1.9.6.1.9.5. The hotel will generate funds that can be used to assist the City in providing benefits and amenities for its citizens and the general public. Such funds will be generated by a combination of a payment of \$800,000, which shall be paid to the City prior to the issuance of any construction permits for the Project, and additional Transient Occupancy Tax generated by the hotel which SEA VIEW has represented to be expected to be more than \$1,300,000 every year.

1.9.7.1.9.6. The Project will increase short term visitor serving overnight accommodations.

The City has 27 miles of shoreline with beautiful beaches and mountains, however the City has only one small, 47-room hotel and five motels. The hotel was approved 32± years ago before Malibu incorporation and the motels were constructed over 50 years ago. Three of the motels have been remodeled and 8 rooms were eliminated in the process.

The need for additional short-term overnight accommodations is verified by the increase in Airbnb short-term rentals in Malibu's Rural Residentially Zoned areas.

1.9.8.1.9.7. The Project will have the collateral effect of increasing the City's firefighting capability.

The owner of the hotel project will pay for the design and participate in the cost of installing a new 20" diameter check valve near the intersection of Topanga Canyon Road and PCH so water from two water tanks containing 4.0± million gallons of water close to the top of Topanga Canyon can provide additional water flow into the major water main in PCH during times of an emergency. The cost of replacing the check valve is estimated to be \$400,000 to \$500,000.

1.9.9.1.9.8. The Project will provide emergency overnight accommodations to Malibu's residents during times of

emergencies. When an emergency occurs in the City which prevents homeowners from occupying their homes, the hotel will provide rooms for a minimum of six weeks at 50% of its average nightly rates. The hotel will be 100% sprinklered, and the 9,500 square foot enclosed garage is 2-hour rated and defined as a "place of refuge" by the Los Angeles County Fire Department.

## **AGREEMENT**

**NOW, THEREFORE,** in consideration of the mutual terms, covenants, conditions, promises and benefits contained herein, and for other good and valuable consideration, the Parties agree as follows:

### **2. DEFINITIONS**

For the purposes of this Agreement, the following terms shall have the meanings set forth below:

- 2.1. "Agreement" means this Development Agreement.
- 2.2. "Sea View Hotel Overlay District" means the Overlay District that applies to the land within the parcels located at 22729 and 22741 Pacific Coast Highway, Malibu.
- 2.3. "Vesting Date" means the date on which the Project was approved through the adoption of Malibu City Council Resolutions nos. 21-45, 21-46 and Ordinance no. 491.
- 2.4. "CITY" means the City of Malibu, a general law city, duly organized and existing under the laws of the State of California.
- 2.5. "SEA VIEW" means Sea View Terrace LLC, Las Tunas Beach LLC, and Grey Granite LLC jointly and severally.
- 2.6. The "Project" means the Project described in Section 5.1.
- 2.7. "Development" means the entitlement, and improvement of the Property for the purposes of completing the structures, improvements and facilities described herein including, but not limited to: grading; the construction of infrastructure and public facilities related to the Project (as such Project may be approved) whether located within or outside the Property; the construction

of buildings and structures; and the installation of landscaping, septic system, retaining walls, drainage devices, retention ponds, drive aisles with at grade parking, a basement, fire department turnarounds, water features, and hardscaping.

- 2.8. "Development Agreement Statute" means Government Code § 65864, *et seq.* as it exists on the Vesting Date.
- 2.9. "Project Approvals" means all plans, permits, and other entitlements for use of every kind and nature, whether discretionary or ministerial, necessary in connection with development of the Project in accordance with this Agreement, which may include but are not limited to:
  - 2.9.1. Compliance with the California Environmental Quality Act, Public Resources Code § 21000, *et seq.* ("CEQA");
  - 2.9.2. Plot Plans;
  - 2.9.3. Site Plan Review;
  - 2.9.4. Coastal Development Permits;
  - 2.9.5. General Plan Amendments;
  - 2.9.6. Local Coastal Program amendments;
  - 2.9.7. Zone text amendments;
  - 2.9.8. Conditional Use Permits, including, but not limited to the consumption of alcoholic beverages and staging of entertainment;
  - 2.9.9. Minor modifications;
  - 2.9.10. Variances to Development Standards;
  - 2.9.11. Grading and building permits;
- 2.10. The "Applicable Rules" shall consist of the following:

- 2.10.1. CITY's General Plan and Local Coastal Program (LCP) and the fee schedule as they exist on the Vesting Date;
  - 2.10.2. CITY's Municipal Code, including those sections of the Zoning Code which are applicable to the development of the Property, as the Municipal Code exists on the Vesting Date;
  - 2.10.3. Such other laws, ordinances, rules, regulations, Overlay Districts, and official policies governing permitted uses of the Property, density, design, improvement, and construction standards and specifications applicable to the development of the Property in force at the time of the Vesting Date;
- 2.11. "Development Exaction" means any requirement of CITY in connection with or pursuant to any Applicable Rule or Project approval, the construction of improvements or public infrastructure and facilities, or the payment of any type of fees, taxes, and assessments in order to lessen, offset, mitigate or compensate for the impacts of development on the environment or other public interests.
- 2.12. "Subsequent Rules" means any change in the Applicable Rules, except as provided in Section 2.13, including, without limitation, any change in applicable general plan or specific plan, local coastal program zoning, or subdivision regulation, adopted or becoming effective after the Vesting Date, excluding any such change processed concurrently with this Agreement, but including, without limitation, any change effected by means of an ordinance, initiative, resolution, policy, order or moratorium, initiated or instituted for any reason whatsoever and adopted by the City Council, the Planning Commission or any other board, agency, commission or department of the CITY, or any officer or employee thereof, or by the electorate, as the case may be (collectively the "Subsequent Rules"), which would, absent this Agreement, otherwise be applicable to the Property, shall not be applied by the CITY to any part of the Project, except as SEA VIEW may consent to the application thereof pursuant to Section 3.1 of this Agreement.
- 2.13. "Reservations of Authority" means the rights and authority excepted from the assurances and rights provided to SEA VIEW

and reserved to CITY under this Agreement. Notwithstanding any other provision of this Agreement, the following Subsequent Rules shall apply to the development of the Property.

2.13.1. Processing fees and charges imposed by CITY to cover the estimated actual costs to CITY of processing applications for development approvals and permits for monitoring compliance with any development approvals or permits granted or issued.

2.13.2. Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure.

2.13.3. Regulations governing construction standards and specifications including without limitation, the CITY's Building Code, Plumbing Code, Mechanical Code, Electrical Code, Fire Code and Grading Code.

2.13.4. Regulations that otherwise would not apply to the development of the Property or Project for which SEA VIEW has given its written consent to the application of such regulations pursuant to Section 3.1 of this Agreement.

2.14. The "Property" shall mean Parcel A and Parcel B together, as described below.

2.14.1. Project Parcels Descriptions

2.14.1.1. "Parcel A," identified as Assessor's Parcel Number 4452-022-010, at 22729 Pacific Coast Highway, Malibu, California, and legally described in Exhibit A.

2.14.1.2. "Parcel B," identified as Assessor's Parcel Number 4452-022-017, at 22741 Pacific Coast Highway, Malibu, California, and legally described in Exhibit A.

2.15. "Mortgagee" means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other security-device lender, and their

successors and assigns, including without limitation the purchaser at a judicial or non-judicial foreclosure sale or a person or entity who obtains title by deed-in-lieu of foreclosure on the Property.

### **3. VESTED DEVELOPMENT RIGHTS**

3.1. SEA VIEW is hereby granted the vested right to develop the Project on the Parcels, subject to the Applicable Rules, the Project Approvals, and any future approvals applied for by SEA VIEW, or its successors, and granted by the CITY for the Project (the "Future Approvals").

3.1.1. Vested Development Rights. Notwithstanding any future action of the CITY, whether by ordinance, resolution, initiative, or otherwise, the Applicable Rules shall govern the development of the Project during the term of this Agreement, except and subject to the Reservations of Authority and the terms of this Agreement. In developing the Property, SEA VIEW is provided, and assured, the vested right to require that the rules governing the development of the Project during the term of this Agreement shall be as provided in this Agreement, and shall permit the project to be constructed as approved by the City and the Coastal Commission. SEA VIEW in its sole discretion may elect to be subject to any Subsequent Rules that may be enacted.

Any such election by SEA VIEW shall be made in its sole discretion and shall be in writing.

3.1.2. This Agreement does not (1) grant density in excess of that established in the Project Approvals, (2) supersede, nullify or amend any condition imposed in the Project Approvals, (3) guarantee to Owner any profits from the Project, or (4) prohibit or, if legally required indicate Owner's consent to, the Property's inclusion in any public financing district or assessment district, except as specified herein.

3.2. Purposes of Agreement. This Agreement is entered into in order to provide a mechanism for planning and carrying out the Project in a manner that will ensure certain anticipated benefits to both CITY,

including without limitation the existing and future residents of CITY, and SEA VIEW, and to provide to SEA VIEW assurances regarding the land use regulations that will be applicable to the development of the Property, including but not limited to, those land use regulations relating to timing, density and intensity of development, that will justify the undertaking and commitments of SEA VIEW described in this Agreement and the investment in planning and development of the major on-site infrastructure and improvements needed for the Projects.

- 3.3. Modification or Suspension by State or Federal Law. In the event that state or federal laws or regulations, enacted after the Vesting Date of this Agreement, prevent or preclude compliance with one or more of the provisions of this Agreement, those provisions shall be modified or suspended as may reasonably be necessary to comply with such state or federal laws or regulations; provided, however, that this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations unless compliance with such state or federal laws or regulations causes a material breach or failure of consideration.

Upon repeal of any such law or regulation, or the occurrence of any other event removing the effect thereof, the provisions of this Agreement shall be restored to their original effect.

- 3.4. Ownership of Property. SEA VIEW represents and covenants that it is the owner of the fee simple title to the Property.
- 3.5. Binding Effect of Agreement. All of the Property shall be subject to this Agreement. The burdens of this agreement are binding upon, and the benefits of the Agreement inure to, the CITY and SEA VIEW. Any and all rights and obligations that are attributed to SEA VIEW under this agreement shall run with the land, subject to the assignment of provisions of Section 4 of this Agreement.
- 3.6. Term. The term of this Agreement shall commence on the Vesting Date, and shall continue for a period of ten years thereafter unless this term is modified or extended pursuant to the provisions of this Agreement.

- 3.6.1. The Term of Project Approvals. The term of each of the Project Approvals, shall be extended through the termination date of this Agreement.
- 3.6.2. Tolling of Term of Agreement. The term of this agreement shall be tolled during the time the Project is pending before the California Coastal Commission. The term of this Agreement shall be tolled during any period of time during which a development moratorium is in effect. For purposes of this Agreement, a development moratorium shall be deemed to exist (i) during the period that any action or inaction by CITY or other public agency that regulated land use, development or the provision of services to the land prevents, prohibits or delays the use of the approval or the construction of the Project or (ii) during the period any lawsuit is pending brought by any third party concerning this Agreement, any of the Project Approvals, including pursuant to CEQA, or any Subsequent Approval.

Any tolling pursuant to this Agreement of the commencement, or running, of SEA VIEW's ten-year vesting period will likewise, for an equal period of time, toll the performance of CITY's obligations.

- 3.7. Bargained For Reliance by Parties. The assurance of the CITY to SEA VIEW and of SEA VIEW to the CITY, in this Agreement are provided pursuant to, and as contemplated by, the Development Agreement Statute, and are bargained for, and in consideration of, the undertakings of SEA VIEW and the CITY set forth in this Agreement.

#### **4. ASSIGNMENT**

- 4.1. SEA VIEW may assign or transfer its rights and obligations under Agreement with respect to the Property, or any portion thereof, pursuant to the following provisions.
- 4.2. Right to Assign. SEA VIEW shall have the right to sell, transfer or assign the Property, in whole or in part (provided that no such partial transfer shall be made in violation of the Subdivision Map Act, Government Code § 66410, *et seq.*), to any person, partnership, joint venture, firm or corporation at any time during

the term of this Agreement; provided, however, that any such sale, transfer or assignment shall include the assignment and assumption of the rights, duties and obligations arising under or from this Agreement with respect to the property transferred.

- 4.3. Partial Transfers. The Property currently consists of two parcels. As long as the two parcels are used and operated as a hotel, the two parcels shall be held together and shall be owned by the same entity.
- 4.4. Approval by CITY. If SEA VIEW transfers its right, title or interest in the Property, or if there is a change in control of SEA VIEW, SEA VIEW shall submit to the CITY a request for approval of such proposed sale, transfer ~~or,~~ assignment, or change in control, which approval shall not unreasonably be withheld by the CITY. The CITY may not withhold its approval if a reasonable person would find that:
  - (i) The proposed purchaser, transferee ~~or,~~ assignee, or controlling party demonstrates the financial ability to perform the obligations of this Agreement; and
  - (ii) The proposed purchaser, transferee ~~or,~~ assignee, or controlling party has the necessary qualifications, competence, experience or capability to implement the development plan contemplated by the Project Approvals with the skill, expertise and quality equivalent to that of SEA VIEW.
- 4.5. Provisions of Information. SEA VIEW shall provide promptly to the CITY such information that the CITY reasonably requests so that CITY can make the determinations called for by Section 4.4 above.
- 4.6. Provision of Security. The proposed purchaser, transferee or assignee shall provide the CITY with security equivalent to any security previously provided by SEA VIEW to secure performance of its obligations under this Agreement. Upon provisions of such security the CITY shall promptly release any security previously provided by SEA VIEW.
- 4.7. Provision of Executed Agreement. Concurrently with the closing of any approved sale, transfer or assignment, SEA VIEW shall provide the CITY with an agreement executed by the purchaser, transferee or assignee, demonstrating compliance with the applicable provisions of this Section.

- 4.8. Applicability. The provisions of Sections 4.4, 4.5, 4.6, and 4.7 shall not be applicable to (i) a transfer or assignment of a mortgage or deed of trust, or (ii) a transfer made in connection with the enforcement of the security interest of a mortgage or deed of trust or by deed in lieu thereof.
- 4.9. Termination of CITY's Right of Approval. The provisions of Sections 4.4, 4.5, 4.6, 4.7 and 4.8 shall terminate when SEA VIEW has completed construction of the Project and CITY has issued certificates of occupancy for all structures located on the PROPERTY.
- 4.10. Release of Transferring Owner. A transferring owner shall be released from all obligations under this Agreement with respect to the portions of the Property transferred, provided the transferor has complied with all of the applicable provisions of Section 4 and this Agreement.
- 4.11. Subsequent Assignment. Any subsequent sale, transfer or assignment of the Property, or a portion thereof, after an initial sale, transfer or assignment must be made in accordance with, and subject to, the terms and conditions of this Section 4.

## 5. DESCRIPTION AND PROCESSING OF THE PROJECT

### 5.1.

- 5.1.1. General Project Description. The Project consists of the development of two adjacent parcels of land, Parcel A and Parcel B into a 39-room Hotel, Restaurant, and associated facilities. The Project also includes landscaped areas, open space areas, and 86 parking spaces ~~(all of which are required to be parked by valet only).~~

The details of the Project are described and shown on the Project plans, and are or will be further defined by the approved and permitted construction plan, this development agreement, and Malibu City Council Resolutions nos. 21-45, 21-46 and Ordinance no. 491, which are incorporated herein by reference.

It is noted that Parcel B was fully developed with valid approvals and permits from the City of Malibu and the California Coastal Commission and, accordingly, the improvements to Parcel B will involve an internal remodel and modifications to meet ADA access laws and the Fire Department's requirements for emergency exit stairs. Although this Project description discusses the portion of the proposed project on Parcel A and on Parcel B, the Parcels will be merged into a single parcel to allow for development across the common property lines to improve the design of the hotel so the hotel can function properly with respect to access, wastewater treatment facilities, and parking facilities.

The proposed development includes the merging of Parcel A and Parcel B into a single Parcel.

The merging of two Parcels will eliminate the common property lines that separate Parcel A and Parcel B which will eliminate some inconsistencies with respect to Malibu's development setback standards, will allow the buildings to be connected in the future, and to function more efficiently as a hotel. Although the Project includes the merging of Parcel A and Parcel B, the Parcels will continue to be referenced in the description of the project.

The development plans may be modified consistent with the City's development standards and the floor area ratio specified herein, provided, however, that no modification that conflicts with the terms and conditions of Malibu City Council Resolutions nos. 21-45, 21-46 and/or Ordinance no. 491 shall be permitted without the process required by law including the City's MMC and LIP. Said modifications may include dividing one or two of the largest guest rooms into one or two additional guest rooms and/or creating an additional guest room by modifying an area in the existing building on Parcel B that has been included in the total floor area in accord with the City's current development standards, i.e. the area is already 60% enclosed and permitted, and includes covered breezeways. Additionally, and subject to the City's geology department and the

project's structural engineer, a subterranean pedestrian access may be incorporated into the plans, from the first floor, adjacent to the elevator and reception area, extending northerly beneath the surface of the ground and the existing parking structure to an elevator that will take guests up to the existing elevator area in the existing building; the walkway would be entirely beneath the ground and not visible except for the access door on the first floor; -- the walkway would be a basement.

The Agreement will permit modifications to the approved plans provided that said modifications are consistent with the provisions and processes specified in the City's Municipal Code and the LCP.

5.1.2. General Parcel By Parcel Breakdown of the Project. The following summarizes the Project.

5.1.2.1. Parcel A is at 22729 Pacific Coast Highway and is the site of an abandoned Shell Gas Station. The property is currently and temporarily being used as a hand car wash and is leased for parking.

The parcel is located adjacent to and 26± feet below the floor of the parking garage of the existing building at 22741 Pacific Coast Highway, herein referred to as Parcel B. Parcel A is located adjacent to and south of Parcel B.

Parcel A is also adjacent to Pacific Coast Highway and will provide the primary access to the hotel from Pacific Coast Highway. The area adjacent to Pacific Coast Highway is relatively flat, however, the most northerly 27± feet of the property rises up 10± feet and is supported by a retaining wall; this topographic increase in height allows for a third level of development without violating the City's development height standards, or

the City's restriction that limits new building to no more than two-story sections.

Parcel A is approximately 18,375 square feet of land area and will be developed with a new building.

The first level of the hotel will be located on Parcel A and will provide 31 valet parking spaces with six electric car charging ports, the reception area, front desk, and a small restaurant and kitchen; the basement level will contain an area for linen storage, liquor storage, employee changing rooms with bathrooms, and recreational facilities for the hotel guests. The second level of the hotel will be developed with nine guest rooms including large decks adjacent to each room overlooking the ocean which will serve as private patios furnished with a landscaped area, jacuzzi, lounges, etc. The rooms will be accessed by a subterranean hallway cut into the hillside and invisible.

The third level will be developed with 8 guest rooms with large decks adjacent to each room overlooking the ocean and furnished similar to the decks described above. All three levels and basement area will be connected with an elevator and stairs which are consistent with ADA requirements.

The Project includes modifications to the City's commercial development standards which are required due to the following:

- a) The Los Angeles County Fire Department's emergency access and exit requirements.

- b) Exception to the commercial standards to bring the project into conformity with the character of the neighborhood.
- c) ADA access laws.
- d) Potential differences in interpretations with respect to what qualifies as landscaped areas and open space areas. The justifications for the Project modifications to the City's general development standards have been justified as required in Malibu's Municipal Code and Local Coastal Program. The referenced modifications or exceptions to any development standards are also permitted in the Sea View Hotel Overlay District.

The Project plans provide a more detailed description of the Project, which will be further defined by the approved and permitted construction plans.

Parcel A is legally described in Exhibit A attached.

5.1.2.2. Parcel B is at 22741 Pacific Coast Highway and has 33,384 square feet of land area. Topographically, the existing building on Parcel B is located midway up a hill that rises northerly, so the lowest floor of the building, the garage floor, is 26± feet above the flat area of Parcel A below. The existing building on Parcel B has a floor area of 12,889± square feet in accord with the interpretation of the commercial development standards at the time the City approved the building. The building includes a 9,500± square-foot semi-subterranean garage. The building is notched

into the hillside so each level steps back northerly and upward relative to the level below consistent with the natural topography of the hillside. The building was approved and permitted by the City of Malibu.

The building's tenant improvement plans that were stamped "City of Malibu approved" by the Planning Department and the Environmental and Building Safety Department" are compared to the interior remodel plans required to create 22 guest rooms of the hotel as shown on Exhibits E-1, E-2 and E-3 of the hotel plans.

The hotel design requires the removal of less than 10% of the building's exterior walls and will not increase the existing floor area in accord with current development standards.

Ten of the above referenced 22 hotel guest rooms will be located on the level above the garage, which is also one level above the proposed third level of that portion of the hotel that will be located predominantly on Parcel A; accordingly the referenced ten guest rooms will be the fourth level of the hotel. The level above the fourth level will have 6 guest rooms and is the fifth level of the hotel. The level above the fifth level has six additional guest rooms and is the sixth level of the hotel. Above the sixth level is an existing rooftop deck/patio, ac units, etc. The existing rooftop deck is tiled and drains to the north at a 2%± slope; the deck will be covered with a non-flammable wood deck with planks that are spaced ¼" apart to allow water to drain through to the tiled deck below.

The proposed wood deck surface will not slope to the north like the tiled surface;

however, it will not be any higher than the southerly flat portion of the existing roof. The rooftop deck will have a small swimming pool sunken into the area between the ceiling below and the top of the roof deck. All of the referenced 22 guest rooms will have large decks overlooking the ocean and furnished with lounge chairs, jacuzzis, umbrellas, landscaping, etc.

All of the rooms and the rooftop deck will be connected with stairs and an elevator; the existing elevator will be extended upward to provide ADA access to the rooftop deck. The portion of the Project located on the area within Parcel B will require an exception to the City's development standards for the extension of the existing elevator to the rooftop deck, which is required by ADA laws, and the encroachment of emergency exit stairs into a portion of the east side yard setback area as required by the Los Angeles County Fire Department. The Project plans provide a more detailed description of the Project, which will be further defined by the approved and permitted construction plans.

The proposed development plans and the description of development contained herein may be modified from time to time in the future consistent with the City's development standards and the floor area ratio specified herein; provided, however, that no modification that conflicts with the terms and conditions of Malibu City Council Resolutions nos. 21-45, 21-46 and/or Ordinance no. 491 shall be permitted without the process required by law including the City's MMC and LIP. Said modifications may include altering the number of guest rooms and the number and location of access walkways, etc.,

provided the modifications are consistent with the Sea View Hotel Overlay District.

Less than 10% of the exterior walls of the existing building will be removed and replaced.

Parcel B is legally described in Exhibit A attached.

5.1.3. Summary of Entitlements for the Project.

5.1.3.1. Coastal Development Permit. In accordance with § 13.3 of the LCP, the Project requires the Coastal Development Permit approved by Resolution No. 21-45, which permits the development of buildings, landscaping, drainage devices, septic system, roadways, etc.

5.1.3.2. Local Coastal Program Amendment. Pursuant to Sections 3.8 and 13.28.1 of the LCP, the LCP Amendment approved by Resolution no. 21-46 and Ordinance no. 491 is required for the Project.

5.1.3.3. Development Agreement. This Agreement between the CITY and SEA VIEW is entered into pursuant to 3.1, 3.3 and 13.28 of the LIP, which require that projects proposing FAR greater than .15 are processed in accordance with either a development agreement (DA) or as a planned development (PD). In either case, the DA or the PD must also be subsequently certified by the California Coastal Commission as an LCP Amendment. SEA VIEW has elected to utilize this Development Agreement.

5.1.3.4. Zone Text Amendment. The Zone Text Amendment approved by Resolution no. 21-46 and Ordinance no. 491 is required to

establish new development standards for the Project in accordance with section 3.8(A)(5)(f) of the CITY's LCP.

5.1.3.5. Parcel Merger. Parcel A and Parcel B will be merged as a condition of the City's approval of the Project.

5.1.3.6. Conditional Use Permit. Pursuant to Section 3.3(k) of the LIP, Table B of the LIP and Sections 17.28 CV-2 and 17.66 of the CITY's Municipal Code, the Conditional Use Permit approved by Resolution no. 21-45 is required for restaurants and the operation of the hotel. A conditional Use Permit is being applied for which will permit the serving of alcoholic beverages and providing entertainment.

5.1.3.7. General Plan Map Amendment. Pursuant to Section 17.74.030 of the CITY'S Municipal Code, the Project requires the General Plan Amendment approved by Resolution no. 21-46 and Ordinance no. 491.

5.1.3.8. Zoning Map Amendment. Pursuant to Section 17.74.050 of the CITY'S Municipal Code, the Project requires the Zoning Map Amendment approved by Resolution 21-46 and Ordinance no. 491.

5.2. Fees, Exactions, Mitigation Measures, Conditions, Reservations and Dedications. All development Exactions that are applicable to the Project or the Property are established by the Applicable Rules, the Project Approvals and this Agreement.

Other than as set forth herein, this section shall not be construed to limit the authority of CITY to charge SEA VIEW the then current normal and customary application, processing, and permit fees for land use approvals, building permits and other similar permits, which fees are designed to reimburse CITY's actual expenses attributable to such application, processing and permitting and are in force and effect on a CITY-wide basis as of the Vesting Date.

SEA VIEW waives any and all rights it may have to challenge development fees that are in force as of the Vesting Date.

SEA VIEW retains the right to challenge amended or increased development fees enacted after the Vesting Date.

- 5.3. Plan Review. Plans for each building of the Project, including plans for signage, trash enclosures and screening and landscaping, shall be reviewed and approved by the City's Planning and Building and Safety Director prior to issuance of a building permit; provided, however, that the sole purpose of such review shall be to verify consistency with this Development Agreement, Development Standards, Exceptions to the Standards as approved by the City Council, the Applicable Rules and Project Approvals.
- 5.4. CITY Processing of Permit Applications On An Expedited Basis. The CITY shall expedite the processing of all permits needed for the Project at SEA VIEWS expense, including, but not limited to, all plan checking, excavation, grading, building, encroachment and street improvement permits, certificates of occupancy, utility connection authorizations, and other permits or approvals necessary, convenient as appropriate for the grading, excavation, construction, development, improvement, use and occupancy of the Project in accordance with the CITY's accelerated plan check process under the Applicable Rules. Without limiting the foregoing, if requested by SEA VIEW, the CITY agrees to utilize contract planners and plan checkers (at SEA VIEW's sole cost), and any other reasonably available means, to expedite the processing of Project applications and approvals, including concurrent processing applications by various CITY departments.
- 5.5. Issuance of Building Permits. The CITY shall not unreasonably withhold or condition any ministerial permit provided SEA VIEW has satisfied all requirements for such permits.
- 5.6. Timing of Development. The Parties acknowledge that SEA VIEW cannot at this time predict when or the rate at which the Property will be developed. Such decisions depend upon numerous factors which are not within the control of SEA VIEW, such as market orientation and demand, interest rates, completion and other similar factors.

In *Pardee Construction Co. v. City of Camarillo (Pardee)*, 37 Cal.3d 465 (1984), the California Supreme Court held that the failure of the parties therein provide for the timing or rate of development resulted in a later-adopted initiative restricting the rate of development prevailing as against the parties' agreement. CITY and SEA VIEW intend to avoid the result in *Pardee* by acknowledging and providing that SEA VIEW shall have the right to develop the Property in such order and at such rate and times as SEA VIEW deems appropriate solely within the exercise of its subjective business judgement, but SEA VIEW shall have no obligation to develop the Project or the Property.

5.6.1. In furtherance of the Parties' intent, as set forth in this Section 5.6 no future amendment of any existing CITY ordinance or resolution, or future adoption of any ordinance, resolution or other action, that purports to limit the rate or timing of development over time or alter the sequencing of development phases, whether adopted or imposed by the City Council or through the initiative or referendum process, shall apply to the Property or the Project.

5.6.2. Moratorium. The CITY shall not impose a moratorium on the Property or Project unless the CITY has made legislative findings that there is a current and immediate threat to the public health, safety or welfare and that the approval of the entitlement sought by SEA VIEW would result in that threat to public health, safety or welfare, and provided that the CITY as otherwise complied with all applicable law.

## **6. PROJECT HEARINGS**

6.1. Hearing Schedule. The requirements for notice and hearing are governed by the applicable sections of the CITY's LCP and Municipal Code.

6.2. Coastal Commission. If the Project is considered by the California Coastal Commission, and during that consideration modified, then the matter shall be placed on the Planning Commission agenda and, if required, on the City Council agenda, consistent with legal

noticing requirements, at the earliest reasonable opportunity, subject to Section 7.3.1.

6.2.1. If the Project is modified by the California Coastal Commission, SEA VIEW in its sole discretion may elect not to proceed with the hearing process. The CITY retains its legal discretion to disapprove a modified project after it conducts the required public hearing process.

## **7. DEFAULT AND REMEDIES**

- 7.1. Default. Either Party to this Agreement shall be deemed to have breached this Agreement if it materially breaches any of the provisions of this Agreement and the same is not cured within the time set forth in a written Notice of Violation from the non-breaching Party to the breaching Party. The period of time to cure shall not be less than thirty days from the date that the Notice of Violation is deemed received; provided, however, that if the breaching Party cannot reasonably cure a default within the time set forth in the Notice of Violation, then the breaching Party shall not be in default if it commences to cure the default within the time limit and diligently effects the cure thereafter.
- 7.2. Specific Performance. The Parties acknowledge that money damages are inadequate, and specific performance and other non-monetary relief are particularly appropriate remedies for the enforcement of this Agreement and are available to the Parties.

## **8. ADMINISTRATION OF AGREEMENT**

- 8.1. Appeal. Any decision by CITY staff concerning the interpretation or administration of this Agreement or the development of the Project or Property in accordance herewith, may be appealed by SEA VIEW to the Planning Commission, and thereafter, if necessary, to the City Council, following the procedures set forth in the CITY's Municipal Code. All determinations of the CITY's Planning Commission with respect to the Property or Project may be appealed to the City Council pursuant to such Municipal Code procedures. Final determinations by the City Council are subject to judicial review in accordance with California law.

8.2. No increase in FAR without modification of this Agreement. Any proposed modification of the performances of CITY or SEA VIEW which results in any increase in the total developable square footage of the entire Property in excess of the maximum FAR of .52 allowed under this shall not constitute a clarification but rather shall require an amendment of this Agreement.

## **9. TERMINATION**

- 9.1. This Agreement shall be deemed terminated and of no further effect upon the occurrence of any of the following events:
- 9.2. Expiration of the stated term of this Agreement except for its provisions that are stated to survive its termination.
  - 9.2.1. Entry of a final judgment after all appeals are concluded setting aside, voiding or annulling the adoption of the ordinance approving this Agreement.
  - 9.2.2. The adoption of a referendum measure overriding or repealing the ordinance approving this Agreement and the conclusion of any litigation, including appeal, upholding the measure overriding or repealing the ordinance that approved this Agreement.

## **10. INDEMNIFICATION/DEFENSE.**

- 10.1. SEA VIEW's Indemnification. SEA VIEW shall indemnify, defend, and hold harmless the CITY and its elected officials, appointed commissioners, officers, employees and agents from and against (i) any and all losses, liabilities, fines, penalties, costs, claims, demands, damages, injuries or judgments arising out of, or resulting in any way from, SEA VIEW's performance pursuant to this Agreement, except to the extent such is a result of the CITY's sole negligence, gross negligence or intentional misconduct, and (ii) any action or proceeding to attack, review, set aside, void or annul this Agreement or the Project Approvals, including without limitation, the CEQA determination.
- 10.2. Defense of Agreement. The CITY agrees at SEA VIEW's expense to, and shall timely take, all actions which are necessary or

required to uphold the validity and enforceability of this Agreement and the Applicable Rules.

The CITY may retain counsel of its choice or, at its sole discretion, demand that SEA VIEW provide counsel to provide such defense in which the event the CITY shall cooperate with such counsel.

10.2.1. If the City should engage the City Attorney to provide legal services for which SEA VIEW is financially responsible the rate per hour billed to SEA VIEW for the services of the City Attorney shall be the City Attorney's regular hourly rate billed to the CITY, with persons billing at a lesser rate billed to SEA VIEW at their actual rate billed to the CITY.

10.2.2. In defending such joint litigation, the CITY agrees that SEA VIEW's counsel may take the laboring oar to avoid duplicative work.

10.2.3. The CITY shall not settle any lawsuit attacking the Project Approvals, or other litigation implicating SEA VIEW, without SEA VIEW's written consent, obtained in advance.

10.3. This section 10 shall survive the termination of this Agreement.

**11. TIME OF ESSENCE.** Time is of the essence for each provision of this Agreement of which time is an element.

**12. NOTICES.** As used in this Agreement, "notice" includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment or other communication required or permitted hereunder.

12.1. All notices shall be in writing and shall be given by personal delivery, by deposit in the U.S. mail first class with postage prepaid, or by sending the same by overnight delivery service, or, registered or certified mail with return receipt requested, with postage and postal charges prepaid, or by facsimile, as follows:

If to CITY:

City Clerk

City of Malibu  
23815 Stuart Ranch Road  
Malibu, California 90265

With copies to:

The City Attorney:  
Trevor Rusin, Esq., Assistant City Attorney  
Best, Best & Krieger LLP  
300 South Grand Ave., 25<sup>th</sup> Floor  
Los Angeles, CA 90071

If to SEA VIEW:

Sea View Terrace  
c/o Norman Haynie  
22741 Pacific Coast Highway, Suite #400  
Malibu, California, 90265

With copies to:

The Attorney for Sea View:  
Fred Gaines.  
Gaines & Stacey LLP  
16633 Ventura Blvd., Suite 1220  
Encino, CA 91436

- 12.2. Either Party may change its designated recipient, mailing address and/or facsimile number, by giving written notice of such change in the manner provided herein. All notices under this Agreement shall be deemed received on the earlier of the date personal delivery is affected or not date deposited in the mail or the delivery date shown on the return receipt, air bill or facsimile confirmation sheet.

### **13. MISCELLANEOUS PROVISIONS**

13.1. Payment by SEA VIEW. SEA VIEW shall pay the CITY \$800,000, as partial consideration of this Agreement, prior to the issuance of any construction permits for the Project<sup>7.1</sup>.

~~13.1.~~

- 13.2. Police Power. The parties acknowledge and agree that the City is restricted in its authority to limit its police power by contract and that the foregoing limitations, reservations and exceptions are intended to reserve to City all of its police power which cannot be so limited. This Agreement shall be construed to reserve to City all such power and authority which cannot be restricted by contract. As such, the City is under no obligation to approve any future entitlement requests, nor shall denial of such requests invalidate this Agreement.
- 13.3. Recordation of Agreement. This Agreement and any amendment or cancellation thereof shall be recorded with the County Recorder by the Clerk of the City Council within ten days of execution, as required by Government Code § 65868.5.
- 13.4. Entire Agreement. This Agreement, together with any other documents incorporated by reference and related exhibits and schedules, contains the sole and entire agreement between the Parties regarding the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, representations and warranties, oral or written. This Agreement may only be amended, modified, supplemented, or clarified by an agreement in writing signed by both Parties and upon compliance with the provisions of Government Code section 65868.
- 13.5. Waiver. No waiver of any of the terms of this Agreement shall be binding, unless it is executed in writing by a duly authorized representative of the Party against whom enforcement of the waiver is sought and upon compliance with the provisions of Government Code § 65868. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, whether or not similar; nor shall any such waiver constitute a continuing or subsequent waiver of the same provision.
- 13.6. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable. The remainder of this Agreement shall be effective to the extent the remaining provisions are not rendered impractical to perform, taking into consideration the purposes of this Agreement.

- 13.7. Relationship of the Parties. Each Party acknowledges that, in entering into and performing under this Agreement, it is acting as an independent entity and not as an agent of any other Party in any respect. Nothing contained herein or in any document executed in connection herewith shall be construed as creating the relationship of partners.
- 13.8. No Third-Party Beneficiaries. This Agreement is made and entered into for the sole benefit of the Parties and their successors in interest. No other person or party shall have any right of action based upon any provision of this Agreement.
- 13.9. Cooperation Between CITY and SEA VIEW. CITY and SEA VIEW shall execute and deliver to the other all such other and further instruments and documents as may be reasonably necessary to carry out the purposes of this Agreement.
- 13.10. Rules of Construction. The captions and headings of the various sections and subsections of this Agreement are for convenience of reference only, and they shall not constitute a part of this Agreement for any other purpose or affect interpretation of the Agreement. Should any provision of this Agreement be found to conflict with any provision of the Applicable Rules or the Project Approvals or the Future Approvals, the provisions of this Agreement shall control.
- 13.11. Joint Preparation. This Agreement shall be deemed to have been prepared jointly and equally by the Parties, and it shall not be construed against any Party on the ground that the Party prepared the Agreement or caused it to be prepared.
- 13.12. Governing Law and Venue. This Agreement is made and entered into in the County of Los Angeles, California, and the laws of the State of California shall govern its interpretation and enforcement. Any action, suit or proceeding related to, or arising from, this Agreement shall be filed in the County of Los Angeles.
- 13.13. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which constitute one and the same instrument.

13.14. Weekend/Holiday Dates. Whenever any determination is to be made or action to be taken on a date specified in this Agreement, if such date shall fall upon a Saturday, Sunday or federal or state holiday, the date for such determination or action shall be extended to the first business day immediately thereafter.

13.15. Not a Public Dedication. Except as otherwise expressly provided herein, nothing herein contained, or shown or graphically depicted on the approved plans for the Project, including without limitation all site plans and surveys, shall be deemed to be a gift or dedication of the Property, or of the Project, or any portion thereof, to the general public, for the general public, or for any public use or purpose whatsoever, it being the intention and understanding of the Parties that this Agreement be strictly limited to the development of the Project for the purposes herein expressed.

SEA VIEW shall have the right to prevent or prohibit the use of the Property, or the Project, or any portion thereof, including common area and building and improvements located thereon, by any person for any purpose which is not consistent with the development of the project. Any portion of the Property conveyed to the CITY by SEA VIEW as provided herein shall be held and used by the CITY only for the purposes contemplated herein or otherwise provided in such conveyance, and the CITY shall not take or permit to be taken (if within the power or authority of the CITY) any action or activity with respect to such portion of the Property that would deprive SEA VIEW of the material benefits of this Agreement, or would in any manner interfere with the development of the Project as contemplated by this Agreement.

13.16. Singular and Plural. As used herein, the singular of any word includes the plural.

13.17. Excusable Delays. Performance by any Party of its obligations hereunder shall be excused during any period of "Excusable Delay," as hereinafter defined provided that the Party claiming the delay gives notice of the delay to the other Party as soon as reasonably possible after the same has been ascertained.

For purposes hereof, Excusable Delay shall mean delay that directly affects, and is beyond the reasonable control of, the Party

claiming the delay, including without limitation: (a) act of God; (b) civil commotion; (c) riot; (d) strike, picketing or other labor dispute; (e) shortage of materials or supplies; (f) damage to work in progress by reason of fire, flood, earthquake, or other casualty; (g) reasonably unforeseeable delay caused by a reasonably unforeseeable restriction imposed or mandated by a governmental entity other than CITY; (h) litigation brought by a third party attacking the validity of this Agreement, a Project Approval, a Future Approval or any other action necessary for development of the Property, (a) delays caused by any default by CITY or SEA VIEW hereunder, or (b) delays due to presence or remediation of hazardous materials. The term of this Agreement shall be extended by any period of Excusable Delay.

13.18. Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the Party benefited thereby of the covenants to be performed hereunder by such benefited Party.

13.19. Successors in Interest. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the Parties to this Agreement. All of the provisions, agreements, rights, power, standards, terms, covenants, and obligations contained in this Agreement shall be binding upon the Parties and their respective heirs, successors, and assignees, devisees, administrators, representatives, lessees, and all other persons acquiring the Property, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors and assignees. All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable laws, including, but not limited to, Section 1468 of the Civil Code of the State of California. Each covenant to do, or refrain from doing, some act on the Property hereunder, (a) is for the benefit of such properties and is a burden upon such properties, (b) runs with such properties, and (c) is binding upon each Party and each successive owner during its ownership of such properties or any portion thereof, and each person having any interest therein derived in any manner through any owner of such properties, or any portion thereof, and shall benefit each Party and

its Property hereunder, and each other person succeeding to an interest in such properties.

13.20. Further Actions and Instruments. Each of the Parties shall cooperate with and provide reasonable assistance to the other in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either Party at any time, the other Party shall promptly execute, with acknowledgement or affidavit if reasonably required, and file or record any reasonably required instruments and writings, and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement and to evidence or consummate the transactions contemplated by this Agreement.

13.21. Authority to Execute.

13.21.1. The persons signing below on behalf of SEA VIEW warrant and represent that they have the authority to bind SEA VIEW and that all necessary partners, managing members, board of directors, shareholders, or other approvals have been obtained.

13.21.2. The persons signing below on behalf of the CITY warrant and represent that they have the authority to bind the CITY and that all necessary approvals from the City Council have been obtained.

13.21.3. Exhibits. All Exhibits attached to this Agreement are hereby incorporated by reference as if set forth in full.

IN WITNESS THEREOF, the Parties hereto have executed this Agreement on the day and year set forth below.

<b>CITY OF MALIBU</b>	
Dated: _____	By: _____ Mayor of Malibu

<b>ATTEST:</b>
By: _____ (SEAL)

<b>APPROVED AS TO FORM</b>
By: _____ Counsel for the CITY

**SEA VIEW TERRACE**

Dated:

\_\_\_\_\_

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

Title: \_\_\_\_\_

Dated:

\_\_\_\_\_

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

Title: \_\_\_\_\_

**APPROVED AS TO FORM**

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

Counsel for the CITY