



November 30, 2023

Questions and Answers Report



Mayor Kirk Watson

Council Member Natasha Harper-Madison, District 1

Council Member Vanessa Fuentes, District 2

Council Member José Velásquez, District 3

Council Member Josè “Chito” Vela, District 4

Council Member Ryan Alter, District 5

Council Member Mackenzie Kelly, District 6

Council Member Leslie Pool, District 7

Council Member Paige Ellis, District 8

Council Member Zohaib “Zo” Qadri, District 9

Council Member Alison Alter, District 10

The City Council Questions and Answers Report was derived from a need to provide City Council Members an opportunity to solicit clarifying information from City Departments as it relates to requests for council action. After a City Council Regular Meeting agenda has been published, Council Members will have the opportunity to ask questions of departments via the City Manager's Agenda Office. This process continues until 5:00 p.m. the Tuesday before the Council meeting. The final report is distributed at noon to City Council the Wednesday before the council meeting.

QUESTIONS FROM COUNCIL

Item #3 and #4:

Item #3: Approve issuance of a capacity-based incentive to Public Storage Orangeco Inc. for the installation of solar electric systems on 20 of its facilities in the Austin Energy service territory, in an amount not to exceed \$388,776 and approve issuance of a five-year performance-based incentive to Public Storage Orangeco Inc., in a total amount not to exceed \$1,024,185.28.

Item #4: Approve issuance of a five-year performance-based incentive to Starwood Capital Group LLC for the installation of solar electric systems on its facilities located at 8310 North Capital of Texas Highway Southbound 2, Austin, Texas 78759 and 5707 Southwest Parkway 1, Austin, Texas 78735, in an amount not to exceed \$770,089.

COUNCIL MEMBER ALISON ALTER'S OFFICE

1) Please provide the program guidelines for the Austin Energy Solar PV CBI Program that govern what percentage of a project AE can cover with a rebate and the performance-based requirements. Please include any requirements related to the size of the solar installation and/or the size of the business requesting the assistance.

Capacity-Based Incentive (CBI) – The CBI program provides a one-time, upfront incentive tailored for and designed in coordination with small businesses and non-profit customers. The customer type, non-profit or for-profit, determines the incentive level. The incentive level is then multiplied by the system size in kW-dc (panel nameplate).

Performance-Based Incentive (PBI) – The PBI provides a monthly incentive in the form of a bill credit that is based on the energy (kWh) generated by the solar array over the first five years. This allows for a longer stream of payments and influences the customer to maintain production and design the photovoltaic (PV) system for optimization. As the system size (kW-AC) increases the incentive level decreases. This generally tracks with economies of scale that customers receive with larger scale systems.

- Incentive as a Percentage of Customer Cost: Our guidelines do not include a minimum percentage match from customers. Incentives are generally structured such that they would not likely exceed a 50% percent match at best. However, sometimes non-profits can leverage other benefits such as other donations and discounted pricing that in combination with the incentive would result in a customer contribution that is less than 50%. We encourage non-profits to leverage other resources to make solar projects viable for them.
- PV System Performance Requirements: The incentive program requires that the installed solar arrays be designed to achieve a 75% total solar resource fraction (TSRF).

This means that the system should be able to produce at least 75% as much energy as an optimally installed solar systems (unshaded, 30-degree tilt, facing due south).

- Customer Class Requirements: All commercial customers may participate in their choice of commercial incentive offerings regardless of the size of their business.
- PV System Size Requirements: PV system annual production is limited to 110% of the customer's historical annual energy consumption. The solar system size (determined by the new solar installed behind a meter) and the customer type (non-profit vs for-profit) dictates the incentive level and eligibility:
 - o CBI program eligibility:
 - Non-profit customers: 2.5 kW AC – 400 kW AC qualify for the non-profit rate
 - For profit customer: 2.5 kW AC – 75 kW AC qualify for the for-profit rate
 - o PBI program eligibility:
 - 2.5 kW AC – 399 kW AC: Medium Commercial Incentive Rate
 - 400 kW AC – 999 kW AC: Large Commercial Incentive Rate
 - 1000 kW AC and above: Extra-Large Commercial Incentive Rate

Item #9: Approve a resolution amending the Family Business Loan Program guidelines and criteria, including modifications to increase the maximum loan amount and establish an approval process for proposed loans exceeding the maximum loan amount and modifications to increase the minimum amount of proposed loans under the Micro-loan Program.

COUNCIL MEMBER JOSE "CHITO" VELA'S OFFICE

1) How much money is currently in the Family Business Loan Program?

Funding currently available for new loans is approx. \$4,76,599.00

2) How much money was distributed in loans for FY21-22 and FY22-23?

Total funding loaned out by FY 21-22 (\$290,000.00) FY 22-23 (\$0.00)

<https://data.austintexas.gov/dataset/Economic-Development-Compliance-Family-Business-Lo/7neq-k7nf/data>

3) Are general funds appropriated for this program each year? If so, how much was appropriated for FY23-24?

No general funds are appropriated for FY23-24.

4) It appears the last time we accepted funding from HUD was in 2017. Do we receive additional funding from HUD or other federal sources for this program each year?

2017 was the most recent acceptance of funding from HUD. Funds are not annually appropriated rather they are applied for and approved, based on a formula in proportion to the City's CDBG allocation. The City of Austin does have the option to request additional funding in accordance with the HUD Section 108 application process.

5) How would raising the minimum microloan amount from \$1,000 to \$10,000 potentially affect the pool of eligible applicants? Would applicants who could currently qualify for the \$1,000 amount potentially not qualify for \$10,000?

The impact to application pool is estimated to be de minimums based on a few factors:

1. The program is designed as a public-private partnership, with the following participation structure of 50% Private Lender/40% City/ 10% applicant equity. There is no interest from private lenders for transaction less than \$10,000 due to the cost to process a loan.
2. Little to no applicant demand (Since 2012) for loans less than 10K. The average loan application amount for the FBLP program as of 11/2023 is \$238,590 (rounded)
3. Federal program requirements and prevailing market cost means a loan for less than \$10,000 are financially impractical.
 - Federal Program guidelines requires the creation of at least 1 full-time equivalent, sustaining an employee on an investment of less than \$10,000 is challenging.
 - Program applicants must operate within the boundaries of the City of Austin, sub- 10K loans provide little to no impact for businesses operating in Austin due to affordability.

6) *What percentage of loans have been successfully repaid over the last five years?*

As of November 2023, 100% of loans have been repaid or are currently in-repayment.

7) *Please provide a demographic breakdown of loan recipients over the last five years.*

Total of eleven loans from 2016 to 2023. Note that some applicants are represented in both the women and BIPOC demographics.

BIPOC-Owned (27%), Women-Owned (45%), Non-BIPOC/Women (45%)

8) *What languages other than English can loan applications be submitted in?*

Applications are submitted in English. Applicants are provided aid in a preferred language through translation support services offered by EDD/City of Austin.

9) *Why have so few loans been distributed over the last several years? What barriers to accessing the program have staff identified, if any?*

Loans Distributed:

Production of the last five years is directly related to following factors.

1. CARES Act (3/2020) and ARPA (3/2021), resulted in local governments (including COA) prioritizing distribution of federal relief funding beginning March 2020 and continuing to December 2024.

More information at the linked [COVID-19 Economic Recovery](#) page.

2. Short-term decline in demand for small business borrowing due immediate and lasting impact of COVID-19.
3. Extended vacancy of the lender role

The short-term decline in demand is due to the impacts of COVID-19. The immediate effect was a small business delaying loan applications to focus on the preservation of capital to pay employees and vendors. The longer-term impacts are a surge of U.S. federal grant funding available in the market that has reduced demand for borrowing. According to the U.S. Small

Business Administration (SBA) in Travis County alone, businesses received \$4 billion in Payment Protection Program (PPP) funds, that is in addition to the fund noted in bullet 1 above distributed by the City of Austin. As these sources of U.S. grant funding have exhausted, program staff is observing an increased demand for borrowing to fund small business investment.

Barriers:

Based on client feedback, the extended amount of time it takes to close a loan is the most common reason for clients not opting for a loan from the City. For perspective, traditional non-profit lenders and banks can close a loan within 45 days or less, subject to the amount and complexity of the transaction. This process can take nearly 90 days or more for the City of Austin.

This includes 2 – 6 weeks for the following:

1. Due diligence review is required by HUD and performed by EDD.
2. The Council agenda timeline for public posting. Required for all loan applications over CMO authority.
3. Law Department closing document preparation.

The extended timeline can create barriers to borrowers seeking to fund real estate, and equipment purchases within terms of purchase agreement. Loan program staff has already taken measures to address items 1 and 3. For item 1 a vendor has been contracted to provide loan program staff additional capacity to manage multiple applications in conformance with HUD under due diligence requirements. For item 3, EDD in consultation with the Law department has contracted with outside counsel to reduce to the total time for loan closing document preparation.

Item #19: Approve an ordinance terminating Reinvestment Zone Number 18, City of Austin, Texas, related to the Seaholm Redevelopment Project.
COUNCIL MEMBER JOSE “CHITO” VELA’S OFFICE

1) How much tax revenue has this TIRZ collected in each of the last three fiscal years?

In each of the last three years, the Seaholm TIRZ has collected \$1.84 million, \$1.86 million, and \$1.7 million, respectively.

Seaholm Tax Increment Financing Fund

	2020-21	2021-22	2022-23	2022-23	2023-24
	Actual	Actual	Estimated	Amended	Approved
Beginning Balance	73,386	204,419	1,056,593	1,052,824	2,761,123
Revenue					
Current Property Taxes	1,836,769	1,857,792	1,704,130	1,704,130	1,649,650
Interest	206	4,069	400	400	400
Total Revenue	1,836,975	1,861,861	1,704,530	1,704,530	1,650,050
Total Available Funds	1,836,975	1,861,861	1,704,530	1,704,530	1,650,050
Transfers Out					
Trf to GGCIIP fund	1,705,941	1,009,687	0	0	0
Total Transfers Out	1,705,941	1,009,687	0	0	0
Total Requirements	1,705,941	1,009,687	0	0	0
Excess (Deficiency) of Total Available Funds Over Total Requirements	131,034	852,174	1,704,530	1,704,530	1,650,050
Adjustment to GAAP	(1)	0	0	0	0
Ending Balance	204,419	1,056,593	2,761,123	2,757,354	4,411,173

COUNCIL MEMBER RYAN ALTER'S OFFICE

1) Can you please provide the most current versions of the Seaholm TIRZ Project Plan and Master Development Agreement?

Please see [attachment](#)

Item #21: Approve an ordinance authorizing the negotiation and execution of all documents and instruments necessary and desirable to convey approximately nine acres of parkland located at 2525 South Lakeshore Boulevard, also known as the Central Maintenance Complex to Oracle.

COUNCIL MEMBER ALISON ALTER'S OFFICE

1) Please provide the original public RFP or solicitation that was issued after passage of Prop B

Please see [attachment](#)

2) Please provide the final Prop B ballot language.

Shall the City Council be authorized to convey or lease approximately 9 acres of parkland currently used as the Central Maintenance Complex (CMC) located at 2525 S. Lakeshore Blvd. through a public bidding process, where the total value of the bid is equal to or greater than the appraised fair market value of CMC, in exchange for at a minimum: 1) at least 48 acres of waterfront land contiguous to an existing City park; and 2) the cost or construction of a new maintenance facility for the Parks and Recreation Department on other city-owned land; and 3) partial or full funding for the removal of Fiesta Gardens' existing maintenance facility and restoration of that land to parkland?

partial or full funding for the removal of Fiesta Gardens' existing maintenance facility and restoration of that land to parkland?

3) Please provide details on how the land we are being conveyed at 4800 Delwau Road provides at least 48 acres of waterfront land.

The Law Department has addressed this question separately.

4) What specific body of water will the land being conveyed to the City of Austin be fronting?

The southern portion of the abuts a neighboring pond and segments of the northern portion abut Walnut Creek.

5) For this waterfront land being conveyed to the city, how many linear feet of land is actually fronting water?

This information is currently unavailable.

6) At what date was the most recent independent appraisal conducted? Does the appraisal include the assumption that the City's property could be zoned "Corridor Mixed Use" under the East Riverside Corridor Regulating Plan?

The City's last appraisal of the CMC site has an effective date of 12.22.22 and does not assume that the City's property could be zoned "Corridor Mixed Use" under the East Riverside Corridor Regulating Plan but rather assumes PUD zoning.

7) The RFP for this item included an addendum. The addendum included numerous questions from the respondent. One of the questions was Question 6: For the maintenance facility structure, can we get a copy of the material/design requirements?

The response was: The facility should be able to accommodate approximately 100 office employees and 250 field employees. The City requires Capital Improvement Projects to be LEED Silver certified at minimum. Beyond that, there are no specific material/design requirements and the full programming scope of the facility is still being developed.

Will 250 field employees be accommodated at this site?

The 250 employee estimate was adjusted to 211 to reflect the actual number of employees. The Parks and Recreation Department is prepared to adjust operations and capitalize on facility efficiencies to accommodate operational needs.

8) On the proposed program sheet, before the site plan on Exhibit A which we were given today, it seems to indicate that this project will accommodate 46 field employees and that we will have a total of 1370 square feet for that use. Is that accurate?

Field employees spend the majority of their time in the field. This space is used as needed at intermittent/random times by employees throughout scheduled work days. The square footage calculation considers the City's administrative office standards, industry hoteling space recommendations and site visit observations demonstrating the practical use of a space.

- 9) *What changed from the initial response within the RFP that indicated we needed space for 250 field employees? Please provide additional context as to why 1370 square feet is the appropriate square footage for the field employee use?*

The 250 employee estimate was adjusted to 211 to reflect the actual number of employees. Field employee use of shared hoteling space is intermittent at various times throughout the day. The Department is prepared to adjust operations and capitalize on facility efficiencies to accommodate operational needs. Additionally, staff will ensure the facility design supports the potential to include a second phase for future development by the City to further enhance maintenance operations.

- 10) *What was the process that negotiated that number downwards?*

Proposition B ballot language required that a bid include “the cost or construction of a new maintenance facility for the Parks and Recreation Department on other city-owned land.” Accordingly, the RFP noted it sought “proposals that are consistent with voter’s affirmation of Proposition B” as well as stated the specific project goals and additional desirable attributes for the new maintenance facility to be “Funding sufficient for the relocation and construction of a modern secured maintenance compound comparable to or better than existing location at 2525 South Lakeshore Boulevard or commitment to design and construct a Parks and Recreation Department approved modern maintenance complex.” The Parks and Recreation Department provided the current square footage for all the various buildings, storage, workspaces, etc. of both the Central Maintenance Complex and Fiesta Gardens maintenance facility. Oracle has committed to providing a new facility that provides the same total square footage but in a new, modern, and far more efficient space. As a result, the negotiation with Oracle meets the requirements of the Proposition language. Also, as previously stated, the City’s administrative office standards were applied to the components of the administrative building, which caused adjustments to associated square footage requirements.

- 11) *Question 9 of the RFP Addendum stated that separate outbuilding shops are required for welding, woodworking, sign fabrication, and small tool and equipment maintenance. Equipment maintenance includes repairs on small engines and motors, such as those found on chainsaws and pumps. Each shop should be single use and should have loading/unloading areas. There will also be required outbuildings for tool storage and chemical storage. The full scope of outbuilding programming is still being developed.*

Where are these separate outbuildings for these different disciplines? There appears to be only a single workshop in Exhibit A. Is that accurate?

The various storage areas and trade workshop will accommodate the different disciplines. The design of the facility will support options for potential future expansion by the City.

- 12) *How is it possible for us to include these requirements in the RFP addendum but then not include those requirements in the final approval? Why did we initially indicate we needed separate outbuildings and what changed afterwards?*

The RFP states “The City acknowledges that the specific terms proposed for the transaction will be refined over time and through additional due diligence and negotiations.” While the RFP addendum noted these requirements, through the negotiation process, the final offer resulted in a modified facility proposal.

13) *Was there a staff committee that graded the response to the RFP?*

Yes, the response was evaluated and rated by a committee.

14) *How did the response get graded and where is that information?*

The response was graded based on the criteria included in the solicitation document which was as follows:

RFP Evaluation Factors	Maximum Points
Executive Summary (Per submittal section 9.1 above)	Pass/Fail
Public Information Pack (Per submittal Section 9.3 above)	Pass/Fail
Financial Qualifications (Per submittal Section 9.7 above)	Pass/Fail
Land Characteristics and Environmental Assessment (Per submittal sections 9.2 and 9.4 above)	40
Financial Proposal: New Maintenance Complex (Per submittal section 9.5.1 above)	30
Financial Proposal: Fiesta Gardens (Per submittal section 9.5.2 above)	20
Proposer Experience & Management Plan (Per submittal section 9.6 and 9.8 above)	10
Total	100

15) *What rules governed the grading of the response? Typically we have a scoring process and rules associated with RFPs. Please provide a copy of whatever rules applied to this case.*

The response was graded based on how it responded to the evaluation criteria listed in item 8 above, by an evaluation panel comprised of 6 staff with expertise in the area from three City departments.

17) *Please include a copy of the RFP addendum #1 in the Q:A.*

See [attached](#).

Item #53: Authorize negotiation and execution of a contract with Austin Tenants' Council to administer the Tenants' Rights Assistance Program, for up to three years for a total contract amount not to exceed \$900,000.

COUNCIL MEMBER VANESSA FUENTES' OFFICE

1) *Please provide the number of residents served as part of this contract for the last 5 years, listed by year. Please provide information related to what type of service was administered and in what zipcodes the tenants reside.*

The number of residents served is below:

	Number of unduplicated renters receiving counseling or technical assistance
FY19	434
FY20	318
FY21	297
FY22	317
FY23	334

These numbers are federally reported annually in the Consolidated Annual Performance Evaluation Report (CAPER) and in the Austin Tenant’s Council (ATC) annual report. Zip code level data is reported each month in a demographic report in PDF format. Consolidated zip code data for the previous five years is [attached](#).

Item #54: Ratify the first amendment to an agreement with Family Eldercare, Inc. for renovating the Pecan Gardens (formerly known as Candlewood Suites) located at 10811 Pecan Park Boulevard, Austin, Texas 78750, which extended the term of the agreement to March 31, 2024, and provided for an additional extension of the term if needed, and authorized negotiation and execution of a second amendment to add an additional \$2,695,112 for a total contract amount not to exceed \$6,598,328.13.

COUNCIL MEMBER ALISON ALTER’S OFFICE

1) What is the total amount of public dollars we have spent on Pecan Gardens (formerly known as Candlewood Suites) located at 10811 Pecan Park Boulevard, Austin, Texas 78750 for renovations, security, services, or any other financial commitments we have had to make for the site? Assuming we have approved funding on multiple occasions, provide detailed information on the purpose of each expenditure.

On August 24, 2021, the City of Austin acquired the Candlewood Suites at 10811 Pecan Park Blvd for a cost of \$9.55M. The City contracted with Family Eldercare to manage the property and serve the population of this Permanent Supportive Housing development, renamed to Pecan Gardens. To complete the conversion of this hotel to permanent supportive housing for long-term residences, the City awarded a rehabilitation contract in the amount of \$3,903,216.13 on May 19, 2022. Due to issues associated with the vandalism that this property experienced and issues discovered as part of the rehabilitation, the contractor has requested an additional \$2,695,112 for a revised total amount for the rehabilitation and conversion not to exceed \$6,598,328.13. Combined with the acquisition, this constitutes a total capital outlay for this hotel conversion of \$16,148,328.12. The Austin Housing Finance Corporation has also awarded this property 28 Local Housing Vouchers to complement the 50 vouchers awarded by HACA. The HUD Fair Market Rent value of these vouchers is \$1,253 per month, for a total operating subsidy not to exceed \$421,008 in the first year of a 15-year commitment. Similarly, Austin Public Health has awarded a services contract for this property to provide permanent supportive services for this population.

Item #55: Authorize negotiation and execution of a second amendment to the agreement with Austin-Travis County Mental Health and Mental Retardation Center d/b/a Integral Care for renovating the Bungalows at Century Park (formerly known as the Texas Bungalows Hotel & Suites) located at 13311 Burnet Road, Austin, Texas 78727 to add an additional \$397,002.03 for a total contract amount not to exceed \$1,761,212.43.

COUNCIL MEMBER ALISON ALTER'S OFFICE

1) What is the total amount of public dollars we have spent on the Bungalows at Century Park (formerly known as the Texas Bungalows Hotel & Suites) located at 13311 Burnet Road, Austin, Texas 78727 for renovations, security, services, or any other financial commitments we have had to make for the site?

The total capital outlay of \$6.7M for acquisition and \$1,761,212.43 for conversion totals \$8,461,212.43. Additionally, Austin Public Health has awarded a services contract for this property to provide permanent supportive services for this population. On July 30, 2021, the City of Austin acquired Texas Bungalows and Suites at 13311 Burnet Road for \$6.7M. Council authorized the negotiation and execution of a contract with Integral Care for \$1,364,210.40 on February 3, 2022, to fund renovations and conversion of the hotel to a Permanent Supportive Housing development renamed Bungalows at Century Park. Due to cost overruns associated with a minor flooding incident, the contractor has requested an additional \$397,002.03 to finance the remaining portions of the conversion project.

Item #56: Approve an ordinance repealing Ordinance Nos. 820401-D, 850506-A, 900315-C, and 20201203-042 and adopting updated requirements and provisions that apply to the use of Community Development Block Grant funds.

COUNCIL MEMBER JOSE "CHITO" VELA'S OFFICE

1) What is the intent of this change to CDBG use? Is there a specific project that this change is designed to address?

Staff is proposing a cleanup of various legacy ordinances related to our CDBG funding, dating back several decades. Over the years, we have heard a lot from the community about the need for various investments in low- and moderate-income communities, such as grocery stores, economic development, infrastructure needs, etc. Essentially, the new ordinance allows us as a community to determine the best use of our CDBG funds within the constraints of federal regulations. The project it is designed to address is the Consolidated Plan process set to begin in early 2024. This will give us a clean slate as we go into the process.

2) What benefits would this change have for potential future use of CDBG funds? Please provide examples of projects that would not be able to use CDBG funds currently that could use them if these changes are approved?

As stated above, federal regulations allow for CDBG funds to be used for a variety of residential programs, including home repair, downpayment assistance, and acquisition, as well as nonresidential projects, including broadband, infrastructure, public facilities, economic development, grocery stores, and other community needs.

COUNCIL MEMBER VANESSA FUENTES' OFFICE

1) Are programs related to food insecurity eligible for the CDBG funds?

Programs related to hunger relief and prevention are eligible under the public services portion of the CDBG block grant (limited to 15% of total CDBG funding). In other jurisdictions, CDBG funds have been used for the direct purchase of food, delivery of food to low-income, housebound seniors, summer food programs for low-income youth, and food bank operations.

Item #57: Authorize negotiation and execution of an amendment to the Fiscal Year 2023-2024 service agreement with the Austin Housing Finance Corporation to increase its funding in the amount of \$4,791,036 for a total contract amount not to exceed \$117,525,451.
COUNCIL MEMBER ALISON ALTER'S OFFICE

1) Please provide additional information on what the increase in funding will be used for and confirm whether we have substituted Housing Trust Fund dollars for GO Bond dollars, and if so, why.

The GO Bond budget was decreased due to shelter expenses incurred of \$3,092,114 by COA and not AHFC. Hence, the AHFC budget reduction. While the Bond reduction is needed to true up AHFC's available bond funds, its action is separate and apart from the HTF \$7,883,150 budget increase. The net of the two distinct actions results in a \$4,791,036 increase.

Item #58: Approve an ordinance amending the Fiscal Year 2023-2024 Housing Department's Operating Budget (Ordinance No. 20230816-008) to increase appropriations by \$7,883,150 in the Housing Trust Fund, reduce its ending balance by the same amount, and transfer to and appropriate \$7,883,150 in the Housing Department's Capital Budget (Ordinance No. 20230816-008) for housing activities.
COUNCIL MEMBER JOSE "CHITO" VELA'S OFFICE

1) What is the money being transferred to be used for?

The majority of the \$7.88M, or \$7.12M is earmarked for the Housing Development Assistance Program, while the remaining \$0.76M is set aside for the Homeless Assistance Program.

2) If this is to go towards the purchase of the Salvation Army facility, why is the amount \$7.88 million instead of the \$5 million approved by Council at the previous Council meeting?

The approved RCA (20231109-006) that sets aside \$5M for the Salvation Army facility is a transaction that is separate and apart from the \$7.88M budget amendment RCA scheduled for the end of this month. The cash for the latter originates almost entirely (\$7.12M) from the City's downtown density bonus and PUD programs. The remaining dollars (\$0.76M) appropriated are derived from annual interest earned and other income sources.

3) What are the plans for replenishing the Trust Fund?

Each year the HTF is funded with three major funding streams. They are a transfer in from the general fund, fee-in-lieu cash received, and interest and other revenues. For context, the 2024 totals for each category are \$10.2 cash received from the General Fund, \$7.12M from fee-in-lieu cash receipts, and \$0.76M from interest/other income.

Item #66: Authorize negotiation and execution of an interlocal agreement with the Capital Area Council of Governments (CAPCOG) to provide funding in support of CAPCOG's role in regional coordination of air quality program activities, including, air quality monitoring, Central Texas Clean Air Coalition coordination, outreach activities, air quality planning, data collection and analysis, for a 12-month term in an amount not to exceed \$160,000, with two additional 12-month terms for a total agreement amount not to exceed \$480,000.

COUNCIL MEMBER VANESSA FUENTES' OFFICE

1) Where are/will the air quality monitoring stations located?

CAPCOG has 10 Ozone monitoring sites found in the following locations:

CAMS 614 (Dripping Springs), CAMS 690 (Georgetown), CAMS 1604 (Lockhart), CAMS 1605 (St. Edward's), CAMS 1612 (Bastrop), CAMS 1613 (Elgin), CAMS 1619 (East Austin), CAMS 1620 (Round Rock), CAMS 1629 (Kyle), CAMS 1630 (Taylor), and CAMS 1675 (San Marcos).

Partner air monitoring sites include:

Ozone: CAMS 3 (Austin N Hills): TCEQ, CAMS 38 (Austin Audubon): TCEQ, CAMS 1605 (St. Edward's): St Edward's University

Particulate Matter 2.5: CAMS 3 (Austin N Hills): TCEQ, CAMS 171 (Webberville Rd): TCEQ, CAMS 1068 (Austin N I 35): TCEQ, and Temporary monitor CAMS 1094 (Jarrell): TCEQ

A map showing all current monitoring sites can be found using this link:

<https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=ab6f85198bda483a997a6956a8486539>

The EPA recently awarded CAPCOG \$660,000 for two fine Particulate Matter (PM) monitoring projects. The first project will place seven research-grade continuous fine PM monitoring stations strategically across the region, while the other will place one research-grade speciated fine PM monitor strategically in the region. The following locations were chosen as sites for research-grade continuous PM2.5 sites: CAMS 614 (Dripping Springs), CAMS 690 (Georgetown), CAMS 1604 (Lockhart), CAMS 1612 (Bastrop), CAMS 1630 (Taylor), CAMS 1675 (San Marcos), and a NEW SITE in Northeast Travis County. CAMS 1604 (East Austin) was the site selected for the speciated PM2.5 monitor. These sites were approved by the Clean Air Coalition in November 2023 based on recommendations from the Clean Air Coalition Advisory Committee Monitoring subcommittee and public comments. The subcommittee recommended the selected sites considering geographic coverage across the region and areas that likely have the highest number of vulnerable populations living in higher PM2.5 concentrations. As part of this project, CAPCOG also plans to deploy up to 20 PM sensors. The goal is to set up the sensors in areas that complement the approved monitoring sites and in areas that generated the most public comments during the public feedback process.

2) When will the next air quality report be released?

CAPCOG provides multiple reports throughout the year. The 2022 Data Analysis report will likely be finalized in December 2023. This report compares air quality data to other factors like

meteorological and temporal conditions and compares this data to previous years to help better understand conditions that result in higher air pollution. The Air Quality Annual Report comes out each summer. This serves as a status check on air quality conditions and ongoing activities related to regional air quality for the Clean Air Coalition and its stakeholders. The 2022 report is available online here: <https://www.capcog.org/wp-content/uploads/2023/08/2022-MSA-Air-Quality-Report.pdf>. The Local Funding Progress Report is shared in January of each year and details what work was completed in the previous year using local funding contributions from the Clean Air Coalition.

Item #107: C814-2014-0110.02.SH - Colony Park Sustainable Communities Initiative PUD - Conduct a public hearing and approve an ordinance amending City Code Title 25 by rezoning property locally known as 7900 Loyola Lane (Walnut, Decker and Elm Creek Watersheds). Applicant Request: To rezone from planned unit development (PUD) base district zoning to planned unit development (PUD) base district zoning, to change a condition of zoning. The ordinance may include exemption from or waiver of fees, alternative funding methods, modifications of City regulations, and acquisition of property. Staff and Planning Commission recommendation: To grant planned unit development (PUD) base district zoning. Owner/Applicant: City of Austin. Agent: McCann Adams Studio (Jim Adams). City Staff: Jonathan Tomko, Planning Department, (512) 974-1057.
COUNCIL MEMBER ALISON ALTER'S OFFICE

1) Please confirm whether, or to what degree, short-term rentals will be a permitted use within this PUD?

The Colony Park PUD Ordinance will not have short-term rental regulations that differ from the City of Austin short-term rental regulations.

2) Will this project be subject to 2022 /2023 PLD requirements or an updated version?

The Colony Park PUD will comply with the PLD requirements documented in this PUD and in the Terms Sheet and updated PLD versions that do not conflict with this PUD Ordinance.

3) How will this project comply with existing WUI building requirements and/or the anticipated adoption of the WUI code requirements that we are adopting in next year?

Development within the Colony Park PUD will comply with the existing WUI building requirements and with future WUI code requirements that do not conflict with this PUD Ordinance.

WUI Fire Apparatus Access Road regulations will comply with the street sections provided by this PUD.

ORDINANCE NO. 20091119-033

AN ORDINANCE AMENDING ORDINANCE NO. TO ADOPT THE FINAL PROJECT AND FINANCING PLAN FOR THE SEAHOLM REDEVELOPMENT PROJECT TAX INCREMENT FINANCING ZONE NO. 18.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. On December 11, 2008, the City Council adopted Ordinance No. 20081211-028, which created the Seaholm Redevelopment Project Tax Increment Financing Zone No. 18 ("Zone") and established a board of directors and preliminary project and financing plan for the Zone.

PART 2. Section 311.001, Tax Code, provides both that the Board of the Zone shall prepare and adopt a final project and financing plan for the Zone and that Council shall also adopt the final project and financing plan after approval by the Board.

PART 3. On March 26, 2009, the Board of the Zone adopted the final project and financing plan for the Zone that is attached to and incorporated into this ordinance as Exhibit A ("Plan"). Council finds that the Plan is feasible and conforms to the comprehensive plan of the City of Austin and adopts the Plan.

PART 4. This ordinance takes effect on November 30, 2009.

PASSED AND APPROVED

_____, November 19, 2009

§
§
§ _____
Lee Leffingwell
Mayor

APPROVED: _____
David Allan Smith
City Attorney

ATTEST: _____
Shirley A. Gentry
City Clerk

EXHIBIT A

**City of Austin
Seaholm Redevelopment Project
Tax Increment Financing Reinvestment Zone No. 18**

**Final
Project Plan and Reinvestment Zone Financing Plan**

March 2009

Table of Contents

I. Executive Summary	1
II. Project Plan	3
A. Introduction	3
B. Adopted Zoning Ordinance, Use and Site Development Regulations, and Conditional Overlay, and Plans of the Municipality.....	4
C. Seaholm District Master Plan	4
D. List of Estimated Non-Project Costs.....	5
E. Statement of Method of Relocating Persons to be Displaced as a Result of Implementing the Project	5
III. Reinvestment Zone Financing Plan	6
A. List of Estimated Project Costs of the Zone	6
B. Statement Listing the Kind, Number, and Location of All Proposed Public Works or Public Improvements in the Zone	6
C. Economic Feasibility Study	6
D. Estimated Amount of Bonded Indebtedness	7
E. Time When Monetary Obligations are to be Incurred	7
F. Description of the Method of Financing of All Estimated Project Costs and the Expected Sources of Revenue to Finance or Pay Project Costs Including the Percentage of Tax Increment to Be Derived from the Property Taxes of Each Taxing Unit that Levies Taxes of Real Property in the Zone.....	7
G. The Current Appraised Value of Taxable Real Property in the Zone.....	8
H. The Estimated Captured Value of the TIF During Each Year of its Existence	8
I. Duration of the Zone	8

Exhibits

Exhibit 1	Map - TIF Boundaries
Exhibit 2	Renderings – Seaholm Redevelopment Project
Exhibit 3	Seaholm District Master Plan
Exhibit 4	Seaholm Tax Revenue Schedule

I. Executive Summary

The City of Austin is proposing to create Tax Increment Financing Reinvestment Zone No. 18 (the “TIF”) to finance the construction of public improvements for the Seaholm Redevelopment Project (the “Project”). The proposed boundaries are located within the area bounded on the west by the planned Seaholm Drive from Third Street south to Cesar Chavez Street; on the south by Cesar Chavez Street from the planned West Avenue east to Seaholm Drive; on the east by West Avenue from Cesar Chavez Street north to Third Street; and on the north by Third Street between Seaholm Drive and West Avenue. Exhibit 1 depicts the boundaries for the TIF.

In accordance with State law, this final project plan and financing plan has been prepared to describe the Project and associated financing using dedicated tax increment revenue from the City of Austin as the sole taxing unit participating in the TIF.

The Seaholm Power Plant is a circa 1950 Art Deco industrial building, designed by the renowned national engineering firm, Burns and McDonnell. The name Seaholm pays homage to Walter Seaholm, Austin’s fourth City Manager and a former utility director. Seaholm served for many years as Austin’s primary electrical generation facility and stopped generating power in 1989. In 1996, the Austin City Council authorized the environmental remediation of the Seaholm Power Plant with a view to its eventual adaptive reuse as “a unique and exceptional cultural facility in Downtown Austin.” In 1997, the Seaholm Reuse Planning Committee, made up of interested community representatives, led a public polling process to determine the best use or uses for the power plant structures. The Committee’s 1998 report recommended preserving the facility for a multi-use public attraction developed through a public-private partnership. A master plan for the district was also recommended to address issues of parking transit, and pedestrian and bicycle linkages. In the summer of 2000, ROMA Design Group was commissioned by the City to prepare a Seaholm District Master Plan. The purpose of the master plan was to establish an appropriate context for the redevelopment and reuse of the Seaholm Power Plant site as a successful mixed-use public attraction.

On August 27, 2004, the City issued a request for qualifications for an entity to redevelop the Seaholm Power Plant site. On April 28, 2005, Seaholm Power Development, LLC (SPD) was selected by the City Council from a pool of respondents as the master developer. On November 14, 2005, the City and SPD entered into an exclusive negotiating agreement. On April 10, 2008, the City Council authorized the negotiation and execution of a master development agreement (MDA) with SPD. The MDA was executed on June 17, 2008.

The purpose of the Project, which is to be partially financed through the TIF, is to provide for the redevelopment of the historically significant Seaholm Power Plant and its immediate grounds. The site impairs the City’s growth because of deteriorating structures, inadequate street layout, and unsafe conditions.

In addition to rehabilitation for the historic power plant, the Project will relocate utilities, provide for new street infrastructure to connect Cesar Chavez Street and Third Street, and provide for the development of an office building and hotel/condo tower. The new street infrastructure will

provide access to the office building and hotel/condo tower thereby supporting the economic viability for the Project.

To finance the public infrastructure and power plant rehabilitation components of the Project, the City intends to form the TIF in accordance with State law. In a tax increment reinvestment zone, one or more political subdivisions contribute up to 100% of the property tax on the increase in value of real property in the district (tax increment) as generated. Under the terms of the TIF, the City of Austin will contribute 100% of its property tax and sales tax increment. Tax increment revenues so generated may be expended only for purposes described in the project and financing plan for the TIF. The public infrastructure and power plant rehabilitation components of the Project will be primarily funded by the issuance of debt that will be repaid from the tax increment revenues, both property taxes and sales taxes, collected during the 30-year duration of the TIF.

II. Project Plan

A. Introduction

This section describes the project plan for the TIF and the Project, in the City of Austin, Texas, as required by Chapter 311 of the Texas Tax Code. The purpose of the TIF is to finance the construction of public improvements at the Project site.

The City of Austin will be solely responsible for managing the MDA for the Project, and administering the TIF, which is located on the Southwestern edge of the downtown area of Austin, Texas. It is anticipated that the investment in private development will benefit the City financially and will also benefit Austin citizens through the creation of jobs and recreational amenities.

The Project represents a very important opportunity for the City to redevelop publicly-owned land and will spur economic development within the Southwest quadrant of downtown. Recently, several residential development projects have been located in Southwest Downtown. Development within the Reinvestment Zone area has lagged in comparison to Southwest Downtown and other sections of the City. The Project will:

- Enhance and contribute to Downtown Austin and the Seaholm District
- Complement and enhance Lady Bird Lake, Shoal Creek and Sand Beach Reserve
- Incorporate sustainability, green building and alternative energy
- Provide a positive economic and financial impact to the City
- Enable the development of a central rail transit hub

Once complete, the Project site will feature a mix of uses, including retail shops, condominiums, a boutique hotel, office space, special event space, and an outdoor terrace that overlooks Lady Bird Lake.

Seaholm Power Plant

The centerpiece of the Project is the historic preservation of the Seaholm Power Plant. The building is a 136,000 square foot iconic structure that has more than 110,000 square feet of useable floor space. The building features a turbine hall that measures 110 by 235 feet with a ceiling that is 65 feet high. Once renovated, the building will house an event center, office, retail, and restaurant uses. Part of the renovation includes creating a dynamic entrance on the west end of the building.

Street Infrastructure

The Project's street infrastructure will create a link between Cesar Chavez Street and Third Street. New street infrastructure includes the construction of Seaholm Drive to the west of the Project site and West Avenue to the east of the Project site. Seaholm Drive will lead to the drop off area for the entry point into the power plant building and will serve as an entry to the below grade garage that will serve the Project from below the plaza. Additionally, Seaholm Drive will connect the City-owned parking garage to the Project site. West Avenue is to the east of the Project site and will also connect Cesar Chavez and Third Street. West Avenue will intersect with the planned 2nd Street extension, connecting both the new Central Library and future redevelopment on the Green Water Treatment Plant site. With the connection to 2nd Street, the

Project will be the west anchor for residential and retail development occurring within the 2nd Street area.

Plaza

Aside from providing enhanced streetscapes, the Project will provide open space for pedestrians traversing the Seaholm District. An inner plaza will be at the center of the Project and is designed for events, retail, and restaurant activity. The plaza will link the renovated Seaholm Power Plant to the office building and hotel/condo tower. The pedestrian-friendly plaza will provide connections from the Green Water Treatment Plant redevelopment and new Central Library to the proposed Seaholm Intermodal Station located just west of the Project.

With its parkland enhancement and anticipated economic development stimulus, the Project will promote tourism by convention center visitors and other visitors. The Project will incorporate a portion of the Lance Armstrong Bikeway and connections to the planned Pfluger Bridge Extension and Bowie Street Underpass. There is a possibility to have a stop for the proposed Downtown Circulator at the plaza near West Avenue and Third Street.

B. Adopted Zoning Ordinance, Use and Site Development Regulations, and Conditional Overlay, and Plans of the Municipality

All project construction is anticipated to adhere to existing design and building criteria and regulations. Currently, there are no proposed changes to City ordinances, master plans or building codes. On January 10, 2008, City Council approved Ordinance No. 20080110-075 rezoning the property, and establishing use and site development regulations for the Project site.

The zoning ordinance rezoned the site from Public (P) district and unzoned (UNZ) to Downtown Mixed Use-Central Urban Redevelopment District-Conditional Overlay (DMU-CURE-CO) combining district. The Zoning Case No. C14-2007-0164 file is available at the City's Neighborhood Planning and Zoning Department regarding the rezoning.

Generally, use and site development regulations were modified as follows:

- The maximum height is 393 feet from ground level for the proposed hotel/condo tower lot
- Outdoor entertainment is a permitted use of the property
- Public right-of-way is allowed to be used for off-street loading and trash collection

The conditional overlay adds the following conditions:

- A cocktail lounge is a permitted use for a maximum gross floor area of 9,000 square feet
- A convenience storage is a permitted use for a maximum gross floor area of 25,000 square feet

C. Seaholm District Master Plan

In June 2000 ROMA Design Group was commissioned by the City to prepare the Seaholm District Master Plan, generally bounded by 5th Street on the north, San Antonio Street on the east, Lady Bird Lake on the south and Lamar Boulevard on the west. The purpose of the master plan is to establish an appropriate context for the redevelopment and reuse of Seaholm as a successful mixed-use public attraction.

Key goals of the master plan are:

- Preserve and reuse the historic structures on the site and in the surrounding district
- Ensure adequate parking for the future major public attraction that can be developed in close proximity to the facility
- Preserve and enhance the open space character of the Sand Beach Reserve
- Achieve an appropriate balance between pedestrian, transit, bicycle and automobile transportation, recognizing that the district is an important hub of pedestrian, bicycle and transit systems entering into the downtown area
- Explore the potential for redevelopment of public and privately owned properties in the district

D. List of Estimated Non-Project Costs

The City anticipates constructing a City-owned parking garage outside, but in the immediate vicinity, of the boundaries of the TIF. Surplus revenues from the parking garage will be contributed to the Project.

E. Statement of Method of Relocating Persons to be Displaced as a Result of Implementing the Project

No persons will be displaced as a result of the construction or implementation of the Project.

III. Reinvestment Zone Financing Plan

The City of Austin will contribute 100% of its tax increment, both property tax and sales tax, to the TIF. This section describes the financing plan for the TIF and the Project.

A. List of Estimated Project Costs of the Zone

The total estimated development cost of the Project is \$113.4 million (in July 2008 dollars). The Project will include an office building, hotel/condo tower, plaza, terrace, rehabilitation of the Seaholm Power Plant, and construction of two roadways running north to south on the east and west side of the Seaholm Power Plant site.

The following table itemizes the estimated Project and non-Project costs (in millions). The Project is expected to incur bond financing costs but these costs have not been included in the list below.

Table 1: Project and Non-Project Costs (in millions)

Project Costs						
Project Component	Developer Funded	City of Austin				Total Costs
		TIF Funded	Water and Electric Utility CIP Funded	Other	1/4 Cent CIP Funded	
Office Building	14.8					\$ 14.8
Hotel/Condo	63.0					63.0
Power Plant Rehabilitation	19.1	4.5				23.6
Plaza	1.7	2.1				3.8
Street Work		1.5			2.7	4.2
Utility Relocations			0.9	3.1		4.0
Totals	\$ 98.6	\$ 8.1	\$ 0.9	\$ 3.1	\$ 2.7	\$ 113.4

Non-Project Costs	
City-Owned Parking Garage (Anticipated to be funded by revenue bonds)	\$3.8

B. Statement Listing the Kind, Number, and Location of All Proposed Public Works or Public Improvements in the Zone

The proposed public infrastructure for the Project is located throughout the TIF zone and is shown in Exhibit 2.

C. Economic Feasibility Study

In April 2008, the City Council approved the negotiation and execution of the MDA with Seaholm Power Development, LLC for the redevelopment of the Seaholm Power Plant. In developing the MDA, the City contracted with Economic & Planning Systems, Inc., to conduct a financial feasibility assessment of the Project and to analyze pro forma financial statements for

the Project. The Seaholm Tax Revenue Schedule is attached as Exhibit 4 and indicates the TIF build out, property tax revenue, and sales tax revenue from the Project.

Table 2 below reflects all revenues and expenses for the City of Austin, including the City-owned parking garage, which as indicated previously, will have surplus revenues used to supplement TIF revenues. The financial feasibility assessment indicates that revenues from the Project and the City-owned parking garage will be sufficient to pay for expenses.

Table 2: Financial Feasibility (in millions)

Estimated Revenues and Expenses	Subtotal	Total
Estimated Revenues (Net Present Value, August 2008)		
Property Taxes (30 Years @ 100%)	\$ 6.2	
Sales Taxes (30 Years @ 100%)	2.4	
Parking Gross Revenues (30 Years @ 100%)	7.1	
1/4 Cent Capital Improvement Project (CIP) Funding	2.7	
Water Utility CIP	.5	
Electric Utility CIP	.4	
Total Estimated Revenues		\$ 19.3
Less: Estimated Expenses		
Power Plant Rehabilitation	- 4.5	
Plaza	- 2.1	
Street Work	- 4.2	
Utility Relocations	- 4.0	
City-Owned Parking Garage	- 3.8	
Total Estimated Expenses		- 18.6
Difference		\$ 0.7

CIP funding from the 1/4 cent program, water utility, and electric utility is allocated toward utility extensions and a portion of the street improvements for the Project.

D. Estimated Amount of Bonded Indebtedness

The estimated amount of bonded indebtedness to be incurred by the TIF is \$8.1 million.

E. Time When Monetary Obligations are to be Incurred

Monetary obligations are to begin in the late summer of 2009, beginning with the development of the plaza area.

F. Description of the Method of Financing of All Estimated Project Costs and the Expected Sources of Revenue to Finance or Pay Project Costs Including the Percentage of Tax Increment to Be Derived from the Property Taxes of Each Taxing Unit that Levies Taxes of Real Property in the Zone

Description of the Methods of Financing

The City of Austin is allowed, under the provisions of Section 311.015 of the Tax Increment Financing Act, to issue tax-exempt bonds or notes, the proceeds of which may be used to provide

for project related costs. The City possesses the authority under Texas law to issue certificates of obligation to finance public improvements such as those described in the project plan. The City will issue debt under its own authority to finance the City's portion of the power plant rehabilitation, street improvements, and the development of the plaza area as outlined in the MDA with Seaholm Power Development, LLC. When the City issues certificates of obligation to fund Project costs described in this project plan, revenues deposited to the credit of the TIF will be made available to the City for the purpose of paying debt service on the certificates of obligation.

Sources of Tax Increment Revenue

The tax increment revenues necessary to pay the Project costs are expected to come from two sources and are shown in Exhibit 4, Seaholm Tax Revenue Schedule. Revenue will come from the incremental growth in property tax revenue due to new commercial and residential investment in the area adding taxable value to property in the TIF. The City of Austin is currently the only taxing entity in the appraisal jurisdiction participating in the TIF. The financing plan is based on the City of Austin contributing 100% of their collected incremental property tax revenue to the TIF. The tax rate for the City of Austin for Fiscal Year 2009 is \$0.4012 per \$100 of valuation.

Tax increment revenues are also anticipated from the increase in sales taxes generated in the TIF from the development of retail businesses in the area. The current sales tax rate in the City is 8 1/4% of which 1% is the City's portion. It is this 1% in sales tax receipts from retail sales in the TIF that is the second source of increment revenue. Current sales tax receipts in the TIF are \$0.

G. The Current Appraised Value of Taxable Real Property in the Zone

The current appraised value for the TIF is \$0 because in 2008, the base year for the TIF, the property included in the TIF is City owned and is considered tax-exempt. The City intends to sell and lease the land bounded by the TIF to Seaholm Power Development, LLC as agreed to in the MDA, thereby making the real property taxable.

H. The Estimated Captured Value of the TIF During Each Year of its Existence

The estimated captured appraised value of the TIF is shown in the Seaholm Tax Revenue Schedule, Exhibit 4.

I. Duration of the Zone

The proposed duration of the TIF is 30 years. The proposed first year of the TIF begins January 1, 2008 with the TIF base valuation dated January 1, 2008. January 1, 2008 will be the first date for which the TIF captured appraisal value will be recorded. No sales taxes have been assessed or levied as of the date of the TIF creation. Fiscal year 2011 will be the first year the associated tax increment will be paid into the TIF. The TIF will terminate September 30, 2038, or the date the project has been fully implemented and all Project costs of the TIF, including any debt or interest on that debt, issued by the City in accordance with the financing plan have been paid or otherwise satisfied in full.

Exhibit 1
Map – TIF Boundaries



Exhibit 2
Architectural Renderings – Seaholm Redevelopment Project



Overall Project Aerial



Lower Entry to Power Plant Building

Exhibit 2
(continued)
Architectural Renderings – Seaholm Redevelopment Project



Streetscape Improvements



Plaza

Exhibit 3
Seaholm District Master Plan

[see Internet link below]

<http://www.ci.austin.tx.us/planning/seaholmdraft.htm>

Exhibit 4
Seaholm Tax Revenue Schedule

Fiscal Year Ending	Assessed Value (AV) on Tax Roll by Fiscal Year by Use				Property Tax Revenue		Sales Tax Revenue	
	Office	Hotel/Condo	Power Plant	Project Total AV	Annual Collection	NPV at 7% (2010\$) ¹	Annual Collection	NPV at 7% (2010\$) ¹
2011	9,451,826	22,003,801	11,812,361	43,267,988	173,591	157,000		
2012	18,903,651	44,007,601	23,624,722	86,535,975	347,182	452,000	166,317	141,000
2013	19,376,243	66,011,402	24,215,341	109,602,985	439,727	800,000	170,475	276,000
2014	19,860,649	67,661,687	24,820,724	112,343,060	450,720	1,133,000	174,737	405,000
2015	20,357,165	69,353,229	25,441,242	115,151,636	461,988	1,453,000	179,105	529,000
2016	20,866,094	71,087,060	26,077,273	118,030,427	473,538	1,759,000	183,583	648,000
2017	21,387,746	72,864,236	26,729,205	120,981,188	485,377	2,052,000	188,172	761,000
2018	21,922,440	74,685,842	27,397,435	124,005,718	497,511	2,333,000	192,877	870,000
2019	22,470,501	76,552,988	28,082,371	127,105,861	509,949	2,602,000	197,699	975,000
2020	23,032,264	78,466,813	28,784,430	130,283,507	522,697	2,860,000	202,641	1,075,000
2021	23,608,070	80,428,484	29,504,041	133,540,595	535,765	3,107,000	207,707	1,170,000
2022	24,198,272	82,439,196	30,241,642	136,879,110	549,159	3,343,000	212,900	1,262,000
2023	24,803,229	84,500,175	30,997,683	140,301,087	562,888	3,570,000	218,222	1,350,000
2024	25,423,309	86,612,680	31,772,625	143,808,614	576,960	3,787,000	223,678	1,434,000
2025	26,058,892	88,777,997	32,566,941	147,403,830	591,384	3,995,000	229,270	1,515,000
2026	26,710,364	90,997,447	33,381,114	151,088,926	606,169	4,194,000	235,002	1,592,000
2027	27,378,124	93,272,383	34,215,642	154,866,149	621,323	4,385,000	240,877	1,666,000
2028	28,062,577	95,604,193	35,071,033	158,737,802	636,856	4,567,000	246,899	1,737,000
2029	28,764,141	97,994,297	35,947,809	162,706,248	652,777	4,742,000	253,071	1,804,000
2030	29,483,245	100,444,155	36,846,504	166,773,904	669,097	4,910,000	259,398	1,869,000
2031	30,220,326	102,955,259	37,767,667	170,943,251	685,824	5,071,000	265,883	1,932,000
2032	30,975,834	105,529,140	38,711,859	175,216,833	702,970	5,225,000	272,530	1,991,000
2033	31,750,230	108,167,369	39,679,655	179,597,253	720,544	5,372,000	279,343	2,049,000
2034	32,543,985	110,871,553	40,671,646	184,087,185	738,558	5,513,000	286,327	2,103,000
2035	33,357,585	113,643,342	41,688,438	188,689,364	757,022	5,649,000	293,485	2,156,000
2036	34,191,525	116,484,425	42,730,649	193,406,598	775,947	5,778,000	300,822	2,206,000
2037	35,046,313	119,396,536	43,798,915	198,241,763	795,346	5,902,000	308,342	2,254,000
2038	35,922,471	122,381,449	44,893,888	203,197,807	815,230	6,021,000	316,051	2,300,000
2039	36,820,532	125,440,985	46,016,235	208,277,753	835,610	6,135,000	323,952	2,344,000
2040	37,741,046	128,577,010	47,166,641	213,484,696	856,501	6,244,000	332,051	2,387,000

¹ The columns labeled “NPV at 7% (2010\$) represent the calculated net present value (NPV) of *cumulative* tax revenue-to-date by year, represented in 2010 dollars. These values have been reduced by 3% to account for the costs of issuing debt to be repaid by the tax increment. After this reduction for issuance costs, the NPV of cumulative total revenues, as shown in year 2040, are \$6,244,000 for property tax and \$2,387,000 for sales tax.

ORDINANCE NO. 20120524-014

AN ORDINANCE AMENDING ORDINANCE NOS. 20081211-028 AND 20091119-033 TO INCREASE THE GEOGRAPHIC BOUNDARIES OF THE SEAHOLM REDEVELOPMENT PROJECT TAX INCREMENT FINANCING ZONE NO. 18. CITY OF AUSTIN AND AMENDING THE FINAL PROJECT AND FINANCING PLAN, BOARD APPOINTMENTS, AND TERM OF THE ZONE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. Findings. The City Council finds that:

- (A) On December 11, 2008, Council adopted Ordinance No. 20081211-028, which created the Seaholm Redevelopment Project Tax Increment Financing Zone No. 18 (Zone), and established a board of directors (Board) and preliminary project and financing plan for the Zone, as well as set the term and satisfied other statutory requirements in order to establish the Zone.
- (B) On March 26, 2009, the Board adopted the final project and financing plan, and on November 30, 2009, Council adopted Ordinance No. 20091119-033, which adopted the final project and financing plan for the Zone (the Plan), finding the Plan feasible and in conformance with the Comprehensive Plan of the City of Austin.
- (C) The Zone was created in accordance with the requirements of chapter 311 of the Texas Tax Code (the Act), and included real property surrounding the Seaholm Project, located within the area bounded on the west by the planned Seaholm Drive from Third Street south to Cesar Chavez Street; on the south by Cesar Chavez Street from the planned West Avenue west to Seaholm Drive; on the east by West Avenue from Cesar Chavez Street north to Third Street; and on the north by Third Street between Seaholm Drive and West Avenue.
- (D) Owner(s) of real property adjacent and contiguous to the Zone's current geographic boundaries are in support of their inclusion in the Zone.
- (E) The City Council has reviewed and determined that the Zone would benefit from the addition of real property described in this ordinance, and that the Zone's geographic boundaries should be revised and enlarged as depicted on the map in **Exhibit A** attached to and incorporated as part of this ordinance (Amended Zone).

- (F) The City has prepared an amended reinvestment zone project and financing plan, attached to and incorporated as part of this ordinance as **Exhibit B** (Amended Plan).
- (G) The Amended Plan provides that the ad valorem and sales taxes of the City that constitute the City's tax increment from property and sales within the Amended Zone will be deposited into the Tax Increment Fund created by Ordinance No. 20081211-028, and that the ad valorem and sales taxes of the other taxing units, if agreed to by those taxing units, constituting their respective tax increments from property within the proposed Amended Zone may also be utilized for the purposes described in the Amended Plan. Further, the Amended Plan is economically feasible and in conformance with the City's Comprehensive Plan.
- (H) The Act was recently amended and provides that the composition of the Board shall consist of members appointed by participating taxing entities of the Zone; and currently the City is the only taxing entity participating in the Amended Zone.
- (I) On April 26, 2012, the Board reviewed the amendments to the Zone's geographic boundaries, the project and financing plan, appointment of the Directors, and revisions to the term, and found the amendments will benefit the City and the property in the Amended Zone, and voted to recommend the changes for Council approval.
- (J) On April 26, 2012, at Austin City Hall, Austin, Texas, Council held a public hearing to receive public comments on the amendments to the Zone's geographic boundaries, the project and financing plan, appointment of the Board of Directors, and term, and now finds the amendments will benefit the City and the property in the proposed Amended Zone.
- (K) In compliance with the Act, notice of the date, time and location of the public hearing on the proposed amendments to the Amended Zone was published at least seven days before the date of the public hearing in the Austin American-Statesman, a daily paper of general circulation in the City.
- (L) At the hearing, the City Council heard comment from each interested person supporting or opposed to: the amended boundaries of the Amended Zone; the benefit to the property in the Amended Zone; the Amended Plan; the amendment to the composition of the Board of Directors for the proposed Amended Zone; and term of the Amended Zone.
- (M) The owner(s) of property located within the proposed additional territory to the Amended Zone, other taxing units, and other interested persons were given a reasonable opportunity at the public hearing to protest the

amendments to the proposed Amended Zone, including the inclusion of additional property in the proposed Amended Zone.

- (N) The additional property to be added to the geographic boundaries of the Amended Zone meet the criteria for a reinvestment zone as set forth in the Act because:
 - (1) It is a contiguous geographic area located wholly within the corporate limits of the City.
 - (2) It meets the requirements of Section 311.005 (*Criteria for Reinvestment Zone*) of the Act, including specifically Subsections 311.005(a)(1)(B), (D) and (E) because of the inadequate street layout, unsafe conditions, and the deterioration of the site and improvements; and Subsection 311.005(a)(2), because the area is predominantly open and contains deteriorating structures and site improvements, that substantially impair the sound growth of the City. Because of these conditions, the area is unproductive and underdeveloped.
 - (3) The improvements proposed to be implemented in the amended portion of the Amended Zone will significantly enhance the value of all taxable real property in the Amended Zone.
- (O) The amendments to the geographic boundaries and Amended Plan for the Amended Zone will benefit the City, its residents and property owners, including the property, residents, and property owners in the Amended Zone.
- (P) The development or redevelopment of the property in the Amended Zone will not occur solely through private investment in the reasonably foreseeable future.
- (Q) No more than thirty percent of the property in the Amended Zone is currently used for residential purposes as defined by the Act.
- (R) According to the most recent appraisal rolls of the Travis Central Appraisal District, the total appraised value of all taxable real property in the proposed Amended Zone together with the total appraised value of taxable real property in all other existing reinvestment zones within the City does not exceed twenty-five percent of the current total appraised value of taxable real property in the City and in the industrial districts created by the City, if any.
- (S) The amendments to the Amended Zone and the expenditure of funds on deposit in the Tax Increment Fund are necessary or convenient for the Amended Zone or to the implementation of the Amended Plan for the

Amended Zone, and constitutes a program to promote local economic development and to stimulate business and commercial activity in the City.

- (T) The City Council determines that tax increment generated from municipal sales and use and ad valorem taxes attributable to the Amended Zone, above the sales tax base and tax increment base (as hereinafter defined), shall be deposited into the Tax Increment Fund, to be used for the purposes outlined in the Amended Plan for the proposed Amended Zone, consistent with the provisions of Section 311.0123 of the Act.

PART 2. Amendments.

- (A) **Geographic Boundary.** The geographic boundaries of Reinvestment Zone Number Eighteen, City of Austin, Texas, designated in Ordinance No. 20081211-028 is amended to include the additional territory described and shown in **Exhibit A**, attached and incorporated for all purposes, and the reinvestment zone, including the amended boundary, shall continue to be known as the Reinvestment Zone Number Eighteen, City of Austin, Texas. **Exhibit A** designated in Ordinance No. 20081211-028 is repealed in its entirety by this ordinance and its exhibits.
- (B) **Project and Financing Plan.** Exhibit A, the project and financing plan designated in Ordinance No. 20091119-033 is repealed and replaced in its entirety by **Exhibit B**, attached and incorporated for all purposes to this ordinance. Council finds that the amendments to the Plan are feasible and in conformance with the Comprehensive Plan of the City.
- (C) **Board of Directors.** Part 3. of Ordinance No. 20081211-028, is deleted in its entirety and amended to read as follows:

PART 3. Board of Directors.

- (A) A Board of Directors for the Zone is established, consisting of seven members (Board) appointed by the City Council.
- (B) A Board member shall serve a two year term. The City Council shall designate a member of the Board to serve as its chair. The Board shall elect from its members a vice chair and other officers as it deems necessary.
- (C) The Board shall make recommendations to the City Council concerning the administration of the Zone. The Board shall possess all powers necessary to prepare, implement and monitor the project plan and financing plan for the Zone as the City Council considers

advisable, including the submission of an annual report on the status of the Zone.

- (D) The City Council authorizes the Board to exercise any of the City's powers with respect to the administration, management, or operation of the Zone or the implementation of the project and financing plan for the Zone, except that the Board may not: issue tax increment bonds or notes; impose taxes or fees; exercise the power of eminent domain; or give final approval to the project and financing plan.
- (E) The Board may enter into a contract with a local government corporation created by the City under Chapter 431 (*Texas Transportation Corporation Act*) of the Texas Transportation Code, to manage the Zone or implement the approved project plan and financing plan. Funds on deposit in the Tax Increment Fund may be transferred to the local government corporation to secure bonds, notes or other obligations issued by the local government corporation relating to the implementation of the approved project plan and financing plan for the Zone.

PART 3. Tax Increment Base. The tax increment base for the additional territory added to the Zone is the total appraised value determined as of January 1, 2012, of all taxable real property located in the Zone as provided in Texas Tax Code Section 311.012(c).

PART 4. Sales Tax Base. The sales tax base for the additional territory added to the Zone is the amount of municipal sales and use taxes attributable to that amended portion of the Zone for the year in which the new geographic boundaries of the Zone is designated, as provided in Texas Tax Code Section 311.0123, which the City finds to be zero.

PART 5. Severability. If any section, paragraph, clause, or provision of this ordinance is for any reason held to be invalid or unenforceable, the invalidity or unenforceability of that section, paragraph, clause, or provision shall not affect any of the remaining provisions of this ordinance.

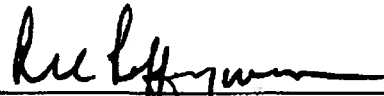
PART 6. Effective Date and Termination. The Zone took effect on December 11, 2008, and as amended on the effective date of this ordinance, and shall terminate on the following: (1) September 30, 2043, or (2) at an earlier time designated by the City Council by ordinance if the council determines in its sole discretion that the Zone should be terminated due to insufficient private investment, accelerated private investment, or other good cause, or (3) when all project costs and tax increment bonds or notes, contract revenue bonds, or other indebtedness if any, including interest, have been paid in full.

PART 7. Effective Date. The Council finds that Subsection 311.004(a)(3) of the Act requires that the amendments to the Zone described in this Ordinance shall take effect immediately upon passage of this Ordinance.

PASSED AND APPROVED

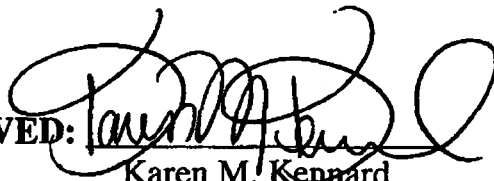
_____, May 24, 2012

§
§
§



Lee Leffingwell
Mayor

APPROVED: _____



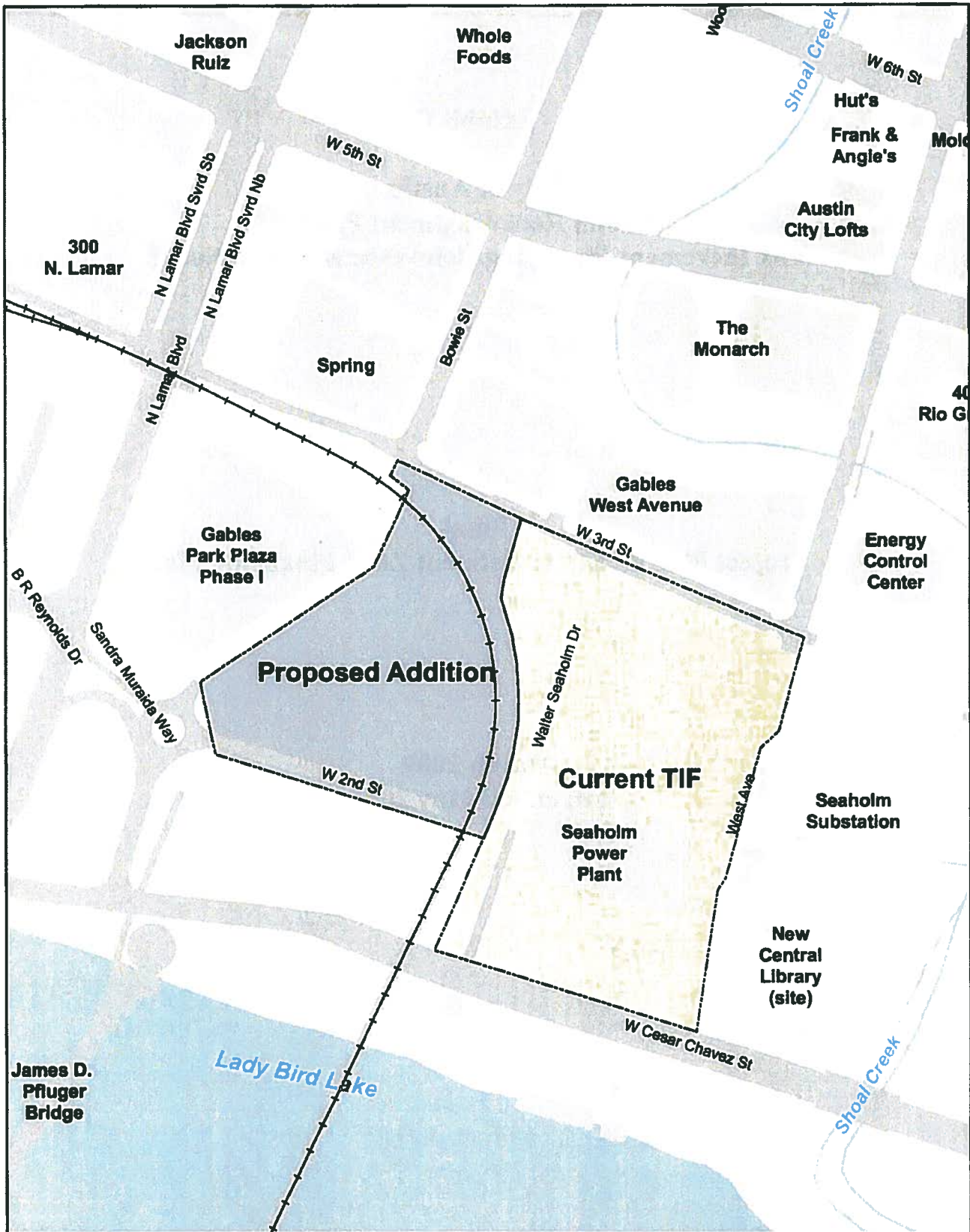
Karen M. Kennard
City Attorney

ATTEST: _____



Shirley A. Gentry
City Clerk

Exhibit A - Map - TIF Boundaries - Revised



Seaholm TIF (TIF #18)



City of Austin — EGR80
September 2, 2011

Exhibit B

**City of Austin
Seaholm Redevelopment Project
Tax Increment Financing Reinvestment Zone No. 18**

**Final
Project Plan and Reinvestment Zone Financing Plan**

**March 2009
Amended May 2012**

Table of Contents

I. Executive Summary.....	2
II. Project Plan	4
A. Introduction.....	4
B. Adopted Zoning Ordinance, Use and Site Development Regulations, and Conditional Overlay, and Plans of the Municipality.....	5
C. Seaholm District Master Plan	5
D. List of Estimated Non-Project Costs.....	6
E. Statement of Method of Relocating Persons to be Displaced as a Result of Implementing the Project.....	6
III. Reinvestment Zone Financing Plan	7
A. List of Estimated Project Costs of the Zone.....	7
B. Statement Listing the Kind, Number, and Location of All Proposed Public Works or Public Improvements in the Zone	7
C. Economic Feasibility Study	8
D. Estimated Amount of Bonded Indebtedness.....	8
E. Time When Monetary Obligations are to be Incurred	8
F. Description of the Method of Financing of All Estimated Project Costs and the Expected Sources of Revenue to Finance or Pay Project Costs Including the Percentage of Tax Increment to Be Derived from the Property Taxes of Each Taxing Unit that Levies Taxes of Real Property in the Zone.....	9
G. The Current Appraised Value of Taxable Real Property in the Zone.....	9
H. The Estimated Captured Value of the TIF During Each Year of its Existence	10
I. Duration of the Zone	10

Exhibits

Exhibit 1	Map - TIF Boundaries - Revised
Exhibit 2	Renderings – Seaholm Redevelopment Project
Exhibit 3	Seaholm District Master Plan
Exhibit 4	Tax Revenue Schedule - Revised

I. Executive Summary

The City of Austin created Tax Increment Financing Reinvestment Zone No. 18 (the "TIF") to finance the construction of public improvements for the Seaholm Redevelopment Project (the "Project"). The original boundaries of the TIF Zone were: on the west Seaholm Drive from Third Street south to Cesar Chavez Street; on the south Cesar Chavez Street from the planned West Avenue west to Seaholm Drive; on the east West Avenue from Cesar Chavez Street north to Third Street; and on the north Third Street between Seaholm Drive and West Avenue. Exhibit 1 depicts revised geographic boundaries for the TIF Reinvestment Zone No. 18.

In accordance with State law, the project plan and financing plan were prepared to describe the Project and associated financing using dedicated tax increment revenue from the City of Austin as the sole taxing unit participating in the TIF. In accordance with State law, the project plan and financing plan may be amended by the City Council by ordinance and recommendation from the board of directors of the zone at any time. The amended project plan and financing plan has been reviewed by the TIF Board and City Council and is found to be economically feasible. This project and financing plan, along with its exhibits, is intended to supersede and control over the prior final project and financing plan adopted by the City in 2009. This project plan and financing plan is being amended for the following reasons:

- Boundary change which increases the geographic area of the TIF zone
- Increase in projected tax revenue
- Increase in project costs
- Increase in debt to be incurred
- Modification of term

The Seaholm Power Plant is a circa 1950 Art Deco industrial building, designed by the renowned national engineering firm, Burns and McDonnell. The name Seaholm pays homage to Walter Seaholm, Austin's fourth City Manager and a former utility director. Seaholm Power Plant served for many years as Austin's primary electrical generation facility and ceased generating power in 1989. In 1996, the Austin City Council authorized the environmental remediation of the Seaholm Power Plant with a view to its eventual adaptive reuse as "a unique and exceptional cultural facility in Downtown Austin." In 1997, the Seaholm Reuse Planning Committee, made up of interested community representatives, led a public polling process to determine the best use or uses for the power plant structures. The Committee's 1998 report recommended preserving the facility for a multi-use public attraction developed through a public-private partnership. A master plan for the district was also recommended to address issues of parking, transit, and pedestrian and bicycle linkages. In the summer of 2000, ROMA Design Group was commissioned by the City to prepare a Seaholm District Master Plan. The purpose of the master plan was to establish an appropriate context for the redevelopment and reuse of the Seaholm Power Plant site as a successful mixed-use public attraction.

On August 27, 2004, the City issued a request for qualifications for an entity to redevelop the Seaholm Power Plant site. On April 28, 2005, Seaholm Power Development, LLC (SPD) was

selected by the City Council from a pool of respondents as the master developer. On November 14, 2005, the City and SPD entered into an exclusive negotiating agreement. On April 10, 2008, the City Council authorized the negotiation and execution of a master development agreement (MDA) with SPD. The MDA was executed on June 17, 2008.

The purpose of the Project, which is to be partially financed through the TIF, is to provide for the redevelopment of the historically significant Seaholm Power Plant and its immediate grounds. The site impairs the City's growth because of deteriorating structures, inadequate street layout, and unsafe conditions.

In addition to rehabilitation of the historic power plant, the Project will relocate utilities, provide for new street infrastructure to connect Cesar Chavez Street and Third Street, and provide for the development of an office building and a multi-unit residential tower. The new street infrastructure will provide access to the office building and multi-unit residential tower thereby supporting the economic viability of the Project.

To finance the public infrastructure and power plant rehabilitation components of the Project, the City formed the TIF in accordance with State law. In a tax increment reinvestment zone, one or more political subdivisions contribute up to 100% of the property tax on the increase in value of real property in the district (tax increment) as generated. Under the terms of the TIF, the City of Austin will contribute 100% of its property tax and 100% of its sales tax increment. Tax increment revenues so generated may be expended only for purposes described in the project and financing plan for the TIF. The public infrastructure and power plant rehabilitation components of the Project will be primarily funded by the issuance of debt that will be repaid from the tax increment revenues, both property taxes and sales taxes, collected during the 30-year duration of the TIF.

II. Project Plan

A. Introduction

This section describes the project plan for the TIF and the Project, in the City of Austin, Texas, as required by Chapter 311 of the Texas Tax Code. The purpose of the TIF is to finance the construction of public improvements at and adjacent to the Project site.

The City of Austin will be solely responsible for managing the MDA for the Project, and administering the TIF, which is located on the Southwestern edge of the downtown area of Austin, Texas. It is anticipated that the investment in private development will benefit the City financially and will also benefit Austin citizens through the creation of jobs and recreational amenities.

The Project represents a very important opportunity for the City to redevelop publicly-owned land and will spur economic development within the Southwest quadrant of downtown. Recently, several residential development projects have been located in Southwest Downtown. Development within the Reinvestment Zone area has lagged in comparison to Southwest Downtown and other sections of the City. The Project will:

- Enhance and contribute to Downtown Austin and the Seaholm District
- Complement and enhance Lady Bird Lake, Shoal Creek and Sand Beach Reserve
- Incorporate sustainability, green building and alternative energy
- Provide a positive economic and financial impact to the City
- Enable the development of a central rail transit hub

Once complete, the Project site will feature a mix of uses, including retail shops, residential units, office space, special event space, and an outdoor terrace that overlooks Lady Bird Lake.

Seaholm Power Plant

The centerpiece of the Project is the historic preservation of the Seaholm Power Plant. The building is a 136,000 square foot iconic structure that has more than 110,000 square feet of useable floor space. The building features a turbine hall that measures 110 by 235 feet with a ceiling that is 65 feet high. Once renovated, the building will house an event center, office, retail, and restaurant uses. Part of the renovation includes creating a dynamic entrance on the west end of the building.

Street Infrastructure

The Project's street infrastructure will create a link between Cesar Chavez Street and Third Street. New street infrastructure includes the construction of Seaholm Drive to the west of the Project site and West Avenue to the east of the Project site. Seaholm Drive will lead to the drop off area for the entry point into the power plant building and will serve as an entry to the garage that will serve the Project from below the plaza. West Avenue is to the east of the Project site and will also connect Cesar Chavez and Third Street. West Avenue will intersect with the planned 2nd Street extension, connecting both the new Central Library and future redevelopment

on the Green Water Treatment Plant site. With the connection to 2nd Street, the Project will be the west anchor for residential and retail development occurring within the 2nd Street area. West Avenue is planned to be designed as a “festival street”, a street that utilizes streetscape features to create a street that can easily be converted to public and pedestrian friendly use on weekends or for special events.

Plaza

Aside from providing enhanced streetscapes, the Project will provide open space for pedestrians traversing the Seaholm District. An inner plaza will be at the center of the Project and is designed for events, retail, and restaurant activity. The plaza will link the renovated Seaholm Power Plant to the office building and residential tower. The pedestrian-friendly plaza will provide connections from the Green Water Treatment Plant redevelopment and new Central Library to the proposed Seaholm Intermodal Station located just west of the Project. With its parkland enhancement and anticipated economic development stimulus, the Project will promote tourism by convention center visitors and other visitors. The Project will incorporate a portion of the Lance Armstrong Bikeway and connections to the Pfluger Bridge Extension and planned Bowie Underpass. There will possibly be a stop for the proposed Urban Rail at the plaza near West Avenue and Third Street.

Bowie Underpass

Completion of the Bowie Underpass and the Union Pacific Railroad (UPRR) Bridge span replacement will provide a safe passage and alternative transportation choice for bicyclists and pedestrians across the barrier formed by the UPRR. The Bowie Underpass will connect users to the proposed Seaholm Lone Star Rail/Urban Rail transfer station. This project will also replace the northernmost span of the existing UPRR Lady Bird Lake Bridge, which is located over the newly constructed 2nd Street, with a new ballasted deck as required by UPRR. Negotiations with UPRR resulted in the addition of the bridge span replacement. In order to construct the underpass while maintaining rail service, the rail line will be slightly realigned within the existing right of way from the north end of the bridge over Lady Bird Lake to Lamar. This realignment requires the bridge span replacement and underpass to be constructed concurrently and all elements of the project to be designed together.

B. Adopted Zoning Ordinance, Use and Site Development Regulations, and Conditional Overlay, and Plans of the Municipality

All project construction is anticipated to adhere to existing design and building criteria and regulations. Currently, there are no proposed changes to City ordinances, master plans or building codes. The zoning for the original and amended TIF Zone is consistent with the Seaholm District Master Plan. All zoning information is available at the City’s Planning and Development Review Department.

C. Seaholm District Master Plan

In June 2000 ROMA Design Group was commissioned by the City to prepare the Seaholm District Master Plan, generally bounded by 5th Street on the north, San Antonio Street on the east, Lady Bird Lake on the south and Lamar Boulevard on the west. The purpose of the master

plan is to establish an appropriate context for the redevelopment and reuse of Seaholm as a successful mixed-use public attraction (Exhibit 3).

Key goals of the master plan are:

- Preserve and reuse the historic structures on the site and in the surrounding district
- Ensure adequate parking for the future major public attraction that can be developed in close proximity to the facility
- Preserve and enhance the open space character of the Sand Beach Reserve
- Achieve an appropriate balance between pedestrian, transit, bicycle and automobile transportation, recognizing that the district is an important hub of pedestrian, bicycle and transit systems entering into the downtown area
- Explore the potential for redevelopment of public and privately owned properties in the district

D. List of Estimated Non-Project Costs

The City anticipates investing \$10.2 million in a parking garage within the TIF Zone to support the Project. Parking revenue will be used to finance these public parking spaces.

E. Statement of Method of Relocating Persons to be Displaced as a Result of Implementing the Project

No persons will be displaced as a result of the construction or implementation of the Project.

III. Reinvestment Zone Financing Plan

The City of Austin will contribute 100% of its tax increment, both property tax and sales tax, to the TIF. This section describes the financing plan for the TIF and the Project.

A. List of Estimated Project Costs of the Zone

The total estimated development cost of the Project is \$123.0million (in July 2012 dollars). The Project will include an office building, multi-unit residential tower, plaza, terrace, rehabilitation of the Seaholm Power Plant, and construction of two roadways running north to south on the east and west side of the Seaholm Power Plant site.

The following table itemizes the estimated Project and non-Project costs (in millions). The Project is expected to incur bond financing costs but these costs have not been included in the list below.

Table 1: Project and Non-Project Costs (in millions)

Project Costs				
Project Component	Developer Funded	City of Austin		Total Costs
		TIF Funded	Water and Electric Utility CIP Funded	
Office/Retail Building	14.8			\$ 14.8
Multi-unit Residential	76.0			63.0
Power Plant Rehabilitation	19.1	4.5		23.6
Plaza	1.7	2.1		3.8
Street Work		7.0		7.0
Bowie Underpass		6.8		6.8
Utility Relocations			4.0	4.0
Totals	\$ 111.6	\$ 20.4	\$ 4.0	\$ 136.0

Non-Project Costs	
City-Owned Parking Garage (Anticipated to be funded by revenue bonds and sale of general fund portion of crescent property to Austin Energy)	\$10.2

B. Statement Listing the Kind, Number, and Location of All Proposed Public Works or Public Improvements in the Zone

The proposed public infrastructure for the Project is located throughout the TIF zone and is illustrated in Exhibit 2.

C. Economic Feasibility Study

In April 2008, the City Council approved the negotiation and execution of the MDA with Seaholm Power Development, LLC for the redevelopment of the Seaholm Power Plant. In developing the MDA, the City contracted with Economic & Planning Systems, Inc., to conduct a financial feasibility assessment of the Project and to analyze pro forma financial statements for the Project. The revised Tax Revenue Schedule is attached as Exhibit 4 and indicates the TIF build out, property tax revenue, and sales tax revenue from the Project.

Table 2 below reflects all revenues and expenses for the City of Austin. The financial feasibility assessment indicates that revenues from the Project will be sufficient to pay for expenses.

Table 2: Financial Feasibility (in millions)

Estimated Revenues and Expenses	Subtotal	Total
Estimated Revenues (Net Present Value, 2012)		
Property Taxes (30 Years @ 100%)	\$18.0	
Sales Taxes (30 Years @ 100%)	\$4.5	
Water Utility CIP	\$3.6	
Electric Utility CIP	\$0.4	
Total Estimated Revenues		\$26.5
Less: Estimated Expenses		
Power Plant Rehabilitation	- 4.5	
Plaza	- 2.1	
Street Work	- 7.0	
Bowie Underpass	-6.8	
Utility Relocations	- 4.0	
Total Estimated Expenses		- 24.4
Difference		\$ 2.1

CIP funding from the water utility and electric utility is allocated toward utility extensions for the Project.

D. Estimated Amount of Bonded Indebtedness

The estimated amount of bonded indebtedness to be incurred by the TIF is \$20.4 million.

E. Time When Monetary Obligations are to be Incurred

Monetary obligations are to begin in late 2012.

F. Description of the Method of Financing of All Estimated Project Costs and the Expected Sources of Revenue to Finance or Pay Project Costs Including the Percentage of Tax Increment to Be Derived from the Property Taxes of Each Taxing Unit that Levies Taxes of Real Property in the Zone

Description of the Methods of Financing

The City of Austin is allowed, under the provisions of Section 311.015 of the Tax Increment Financing Act, to issue tax-exempt bonds or notes, the proceeds of which may be used to provide for project related costs. The City possesses the authority under Texas law to issue certificates of obligation to finance public improvements such as those described in the project plan. The City will issue debt under its own authority to finance the City's portion of the power plant rehabilitation, street improvements, and the plaza area, as outlined in the MDA with Seaholm Power Development, LLC, and the construction of the Bowie Underpass and related UPRR bridge span replacement and track realignment. When the City issues certificates of obligation to fund Project costs described in this project plan, revenues deposited to the credit of the TIF will be made available to the City for the purpose of paying debt service on the certificates of obligation.

Sources of Tax Increment Revenue

The tax increment revenues necessary to pay the Project costs are expected to come from two sources and are shown in Exhibit 4, Tax Revenue Schedule. Revenue will come from the incremental growth in property tax revenue due to new commercial and residential investment in the area adding taxable value to property in the TIF. The City of Austin is currently the only taxing entity in the appraisal jurisdiction participating in the TIF. The financing plan is based on the City of Austin contributing 100% of their collected incremental property tax revenue to the TIF. The tax rate for the City of Austin for Fiscal Year 2012 is \$0.4811 per \$100 of valuation.

Tax increment revenues are also anticipated from the increase in sales and use taxes generated in the TIF from the development of retail businesses in the area. The current sales tax rate in the City is 8 1/4% of which 1% is the City's portion. It is this 1% in sales tax receipts from retail sales in the TIF that is the second source of increment revenue. Current sales tax receipts in the TIF are \$0.

G. The Current Appraised Value of Taxable Real Property in the Zone

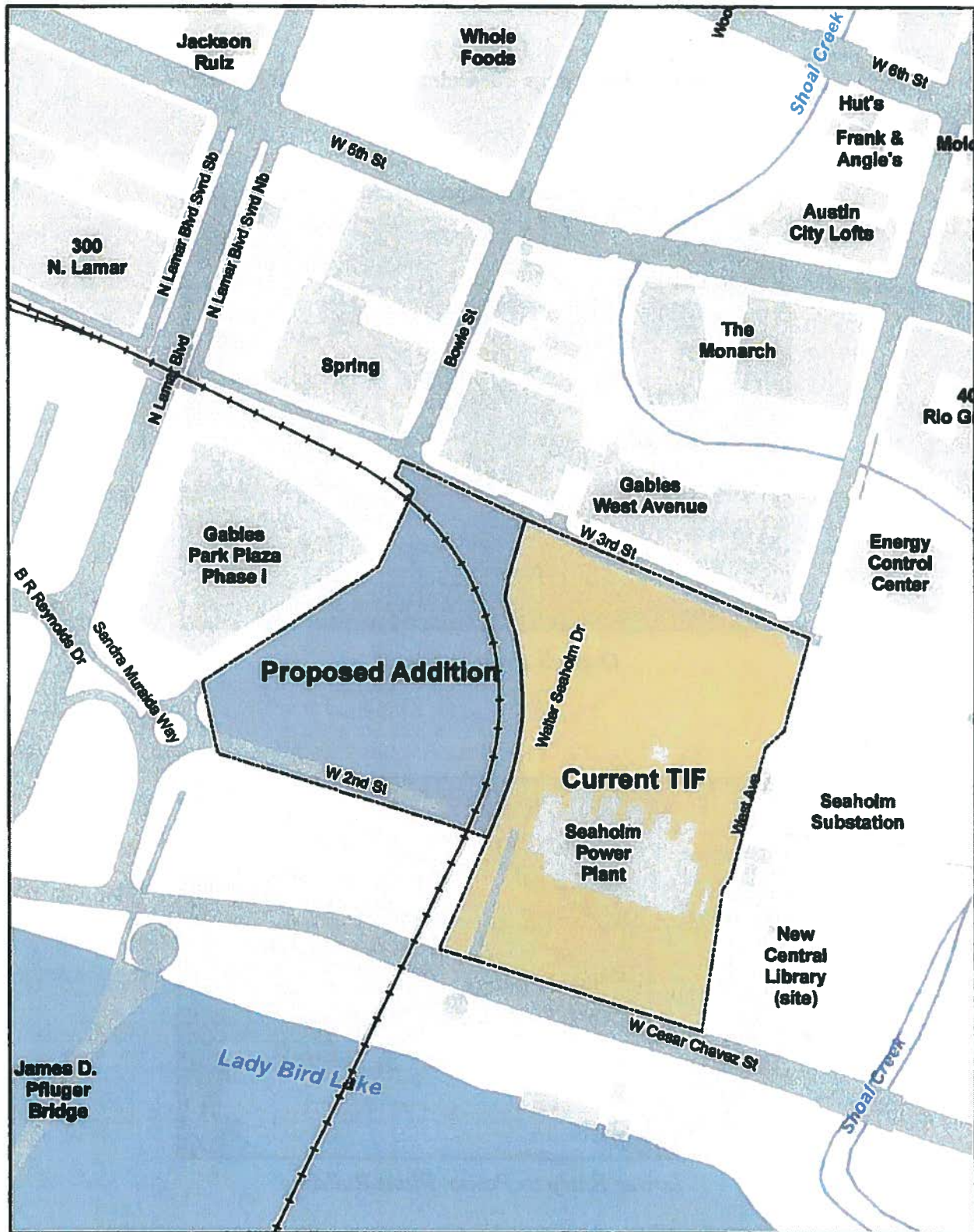
The appraised value for the original TIF Zone was \$0 because in 2008, the base year for the TIF, the property included in the TIF was City owned and was considered tax-exempt. The City intends to sell and lease the land within the TIF Zone to Seaholm Power Development, LLC as agreed to in the MDA, thereby making the property taxable. The expanded TIF Zone includes privately-owned property appraised at \$6.65 million in 2012, the base year for the additional TIF area.

H. The Estimated Captured Value of the TIF During Each Year of its Existence
The estimated captured appraised value of the TIF is shown in the Tax Revenue Schedule, Exhibit 4.

I. Duration of the Zone

The proposed duration of the TIF Zone is 35 years. The first year of the original TIF Zone began January 1, 2008 with the TIF base valuation dated January 1, 2008. Fiscal year 2013 will be the first year the associated tax increment will be paid into the TIF. The TIF will terminate September 30, 2043, or earlier if the project has been fully implemented and all Project costs of the TIF, including any debt or interest on that debt, issued by the City in accordance with the financing plan have been paid or otherwise satisfied in full.

Exhibit 1 - Map - TIF Boundaries - Revised



Seaholm TIF (TIF #18)



City of Austin — EGRSD
September 2, 2011

Exhibit 2
Architectural Renderings – Seaholm Redevelopment Project



Overall Project Aerial



Lower Entry to Power Plant Building

Exhibit 2
(continued)
Architectural Renderings – Seaholm Redevelopment Project



Streetscape Improvements



Plaza

Exhibit 3
Seaholm District Master Plan

[see link below]

<ftp://ftp.ci.austin.tx.us/npzd/website/planning/seaholmdraft.htm>

Exhibit 4
Project Tax Revenue Schedule

Fiscal Year Ending	Estimated New Assessed Values on Tax Roll by Fiscal Year [1.2]						Estimated City Revenues by Fiscal Year by Source		
	Sanborn Low-Rise Office	Sanborn High-Rise Office	Sanborn Power Plant	Sanborn Total AV	Gaslines Total AV	TIF #16 Total AV	Property Tax at 0.4811	Sales and Use Taxes [3]	TIF Area Total
2013	7,233,366	24,620,598	13,503,750	45,358,704	15,855,296	61,509,973	286,800	0	286,800
2014	14,470,732	48,691,176	27,007,500	91,169,408	31,870,537	123,039,945	597,801	0	597,801
2015	21,706,086	74,467,764	40,671,261	136,705,112	47,605,608	184,310,720	887,701	233,612	1,121,313
2016	22,244,750	76,354,089	41,653,052	140,251,891	49,000,961	189,252,852	903,894	240,802	1,144,696
2017	22,814,213	78,644,669	42,789,753	144,248,635	50,470,960	194,719,595	937,191	247,801	1,185,000
2018	23,603,689	81,004,020	44,052,846	148,659,554	51,855,108	200,514,662	966,308	256,218	1,222,526
2019	24,311,810	83,434,141	45,374,437	153,120,381	53,544,862	206,665,243	994,298	262,833	1,257,131
2020	25,041,184	85,937,165	46,726,684	157,713,883	55,131,002	212,844,885	1,024,093	270,718	1,294,811
2021	25,782,389	88,416,800	48,137,734	162,446,923	56,805,632	219,252,555	1,054,816	278,819	1,333,635
2022	26,540,317	91,170,738	49,591,689	167,312,745	58,508,688	225,821,433	1,086,461	287,182	1,373,643
2023	27,303,156	94,005,680	51,088,372	172,396,208	60,294,989	232,691,197	1,118,065	296,755	1,414,820
2024	28,078,572	96,723,036	52,601,401	177,402,009	62,072,639	239,474,647	1,150,208	304,635	1,454,843
2025	28,860,460	99,434,489	54,179,443	182,474,392	63,855,127	246,329,519	1,182,205	313,720	1,495,925
2026	29,649,413	102,141,489	55,804,627	187,595,529	65,635,181	253,230,710	1,214,201	322,777	1,536,978
2027	30,437,413	104,841,873	57,478,972	192,758,258	67,415,753	260,174,011	1,246,201	332,108	1,578,309
2028	31,224,389	107,539,889	59,103,341	197,867,619	69,196,440	267,064,059	1,278,201	341,735	1,619,936
2029	32,011,359	110,234,508	60,728,441	202,974,308	70,977,110	273,951,418	1,310,201	351,108	1,661,309
2030	32,798,329	112,929,127	62,353,541	208,080,997	72,757,781	280,838,778	1,342,201	360,481	1,702,682
2031	33,585,301	115,623,746	63,978,641	213,187,688	74,538,452	287,726,140	1,374,201	369,854	1,744,055
2032	34,372,272	118,318,365	65,603,741	218,295,378	76,319,123	294,613,501	1,406,201	379,227	1,785,428
2033	35,159,243	121,012,984	67,228,841	223,403,068	78,099,794	301,500,862	1,438,201	388,600	1,826,802
2034	35,946,214	123,707,603	68,853,941	228,510,758	79,880,465	308,388,223	1,470,201	397,973	1,868,176
2035	36,733,185	126,402,222	70,479,041	233,618,448	81,661,136	315,275,584	1,502,201	407,346	1,909,550
2036	37,520,156	129,096,841	72,104,141	238,726,138	83,441,807	322,162,945	1,534,201	416,719	1,950,924
2037	38,307,127	131,791,460	73,729,241	243,833,828	85,222,478	329,050,306	1,566,201	426,092	1,992,298
2038	39,094,098	134,486,079	75,354,341	248,941,518	87,003,149	335,937,667	1,598,201	435,465	2,033,672
2039	39,881,069	137,180,698	76,979,441	254,049,208	88,783,820	342,825,028	1,630,201	444,838	2,075,046
2040	40,668,040	139,875,317	78,604,541	259,156,898	90,564,491	349,712,389	1,662,201	454,211	2,116,420
2041	41,455,011	142,569,936	80,229,641	264,264,588	92,345,162	356,600,750	1,694,201	463,584	2,157,794
2042	42,242,022	145,264,555	81,854,741	269,372,324	94,125,833	363,488,111	1,726,201	472,957	2,199,168
2043	43,029,033	147,959,174	83,479,841	274,480,059	95,906,504	370,375,570	1,758,201	482,330	2,240,542
2044	43,816,044	150,653,793	85,104,941	279,587,795	97,687,175	377,262,931	1,790,201	491,703	2,281,916
2045	44,603,055	153,348,412	86,730,041	284,695,530	99,467,846	384,150,392	1,822,201	501,076	2,323,290
2046	45,390,066	156,043,031	88,355,141	289,803,271	101,248,517	391,037,753	1,854,201	510,449	2,364,664
2047	46,177,077	158,737,650	89,980,241	294,911,012	103,029,188	397,925,114	1,886,201	519,822	2,406,038
2048	46,964,088	161,432,269	91,605,341	300,018,753	104,809,859	404,812,475	1,918,201	529,195	2,447,412
2049	47,751,099	164,126,888	93,230,441	305,126,494	106,590,530	411,700,024	1,950,201	538,568	2,488,786
2050	48,538,110	166,821,507	94,855,541	310,234,235	108,371,201	418,587,485	1,982,201	547,941	2,530,160
2051	49,325,121	169,516,126	96,480,641	315,341,976	110,151,872	425,474,846	2,014,201	557,314	2,571,534
2052	50,112,132	172,210,745	98,105,741	320,449,717	111,932,543	432,362,207	2,046,201	566,687	2,612,908
2053	50,899,143	174,905,364	99,730,841	325,557,458	113,713,214	439,249,568	2,078,201	576,060	2,654,282
2054	51,686,154	177,600,000	101,355,941	330,665,199	115,493,885	446,136,929	2,110,201	585,433	2,695,656
2055	52,473,165	180,294,636	102,981,041	335,772,940	117,274,556	453,024,290	2,142,201	594,806	2,737,030
2056	53,260,176	182,989,272	104,606,141	340,880,681	119,055,227	459,911,651	2,174,201	604,179	2,778,404
2057	54,047,187	185,683,908	106,231,241	345,988,422	120,835,898	466,799,012	2,206,201	613,552	2,819,778
2058	54,834,198	188,378,544	107,856,341	351,096,163	122,616,569	473,686,373	2,238,201	622,925	2,861,152
2059	55,621,209	191,073,180	109,481,441	356,203,904	124,397,240	480,573,734	2,270,201	632,298	2,902,526
2060	56,408,220	193,767,816	111,106,541	361,311,645	126,177,911	487,461,095	2,302,201	641,671	2,943,900
2061	57,195,231	196,462,452	112,731,641	366,419,386	127,958,582	494,348,456	2,334,201	651,044	2,985,274
2062	57,982,242	199,157,088	114,356,741	371,527,127	129,739,253	501,235,817	2,366,201	660,417	3,026,648
2063	58,769,253	201,851,724	115,981,841	376,634,868	131,519,924	508,123,178	2,398,201	669,790	3,068,022
2064	59,556,264	204,546,360	117,606,941	381,742,609	133,300,595	515,010,539	2,430,201	679,163	3,109,396
2065	60,343,275	207,240,996	119,232,041	386,850,350	135,081,266	521,897,900	2,462,201	688,536	3,150,770
2066	61,130,286	210,000,000	120,857,141	391,958,091	136,861,937	528,785,261	2,494,201	697,909	3,192,144
2067	61,917,297	212,759,636	122,482,241	397,065,832	138,642,608	535,672,622	2,526,201	707,282	3,233,518
2068	62,704,308	215,519,272	124,107,341	402,173,573	140,423,279	542,560,000	2,558,201	716,655	3,274,892
2069	63,491,319	218,278,908	125,732,441	407,281,314	142,203,950	549,447,361	2,590,201	726,028	3,316,266
2070	64,278,330	221,038,544	127,357,541	412,389,055	143,984,621	556,334,722	2,622,201	735,401	3,357,640
2071	65,065,341	223,798,180	128,982,641	417,496,796	145,765,292	563,222,083	2,654,201	744,774	3,399,014
2072	65,852,352	226,557,816	130,607,741	422,604,537	147,545,963	570,109,444	2,686,201	754,147	3,440,388
2073	66,639,363	229,317,452	132,232,841	427,712,278	149,326,634	577,000,805	2,718,201	763,520	3,481,762
2074	67,426,374	232,077,088	133,857,941	432,820,019	151,107,305	583,888,166	2,750,201	772,893	3,523,136
2075	68,213,385	234,836,724	135,483,041	437,927,760	152,887,976	590,775,527	2,782,201	782,266	3,564,510
2076	69,000,396	237,596,360	137,108,141	443,035,501	154,668,647	597,662,888	2,814,201	791,639	3,605,884
2077	69,787,407	240,355,996	138,733,241	448,143,242	156,449,318	604,550,249	2,846,201	801,012	3,647,258
2078	70,574,418	243,115,632	140,358,341	453,250,983	158,229,989	611,437,610	2,878,201	810,385	3,688,632
2079	71,361,429	245,875,268	141,983,441	458,358,724	160,010,660	618,324,971	2,910,201	819,758	3,730,006
2080	72,148,440	248,634,904	143,608,541	463,466,465	161,791,331	625,212,332	2,942,201	829,131	3,771,380
2081	72,935,451	251,394,540	145,233,641	468,574,206	163,572,002	632,100,693	2,974,201	838,504	3,812,754
2082	73,722,462	254,154,176	146,858,741	473,681,947	165,352,673	639,000,054	3,006,201	847,877	3,854,128
2083	74,509,473	256,913,812	148,483,841	478,790,688	167,133,344	645,888,415	3,038,201	857,250	3,895,502
2084	75,296,484	259,673,448	150,108,941	483,899,429	168,914,015	652,776,776	3,070,201	866,623	3,936,876
2085	76,083,495	262,433,084	151,734,041	489,008,170	170,694,686	659,665,137	3,102,201	875,996	3,978,250
2086	76,870,506	265,192,720	153,359,141	494,116,911	172,475,357	666,553,498	3,134,201	885,369	4,019,624
2087	77,657,517	267,952,356	154,984,241	499,225,652	174,256,028	673,441,859	3,166,201	894,742	4,061,000
2088	78,444,528	270,711,992	156,609,341	504,334,393	176,036,699	680,330,220	3,198,201	904,115	4,102,374
2089	79,231,539	273,471,628	158,234,441	509,443,134	177,817,370	687,218,581	3,230,201	913,488	4,143,748
2090	80,018,550	276,231,264	159,859,541	514,551,875	179,598,041	694,106,942	3,262,201	922,861	4,185,122
2091	80,805,561	278,990,900	161,484,641	519,660,616	181,378,712	701,000,303	3,294,201	932,234	4,226,496
2092	81,592,572	281,750,536	163,109,741	524,769,357	183,159,383	707,888,664	3,326,201	941,607	4,267,870
2093	82,379,583	284,510,172	164,734,841	529,878,098	184,940,054	714,777,025	3,358,201	950,980	4,309,244
2094	83,166,594								

FINAL VERSION

MASTER DEVELOPMENT AGREEMENT

BETWEEN

THE CITY OF AUSTIN

AND

SEAHOLM POWER 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	14
1.4 Term of Agreement	14
1.5 ENA	14
ARTICLE II. REPRESENTATIONS	14
2.1 Representations of the City	14
(a) Title	14
(b) Parties in Possession	14
(c) Proceeding by Governmental Authority	14
(d) Litigation or Administrative Proceeding	15
(e) Performance Will Not Result in Breach	15
(f) Execution	15
(g) Not a Foreign Person	15
(h) Broker	15
2.2 Representations of Seaholm	15
(a) Authorization	15
(b) Performance	15
(c) Execution	16
(d) Broker	16
2.3 Change in Representations	16
2.4 NO OTHER REPRESENTATIONS OR WARRANTIES	16
ARTICLE III. COVENANTS AND AGREEMENTS	17
3.1 Seaholm's Development Related Covenants	17
(a) Improvements Design and Performance	17
(b) Subdivision Plat	17
(c) Zoning	18
(d) Construction	18
(e) Design Changes	19
(f) Payments; Liens	20
(g) Defects and Deficiencies	20
(h) Assignability	20
(i) Maintenance of the Property	20
(j) Development Personnel	21
(k) Coordination of Work	21
(l) Licensing and Leasing	21
(m) Grants	21
(n) Property Development Costs and Property Operating Costs	21
(o) Inspection	22
(p) Construction Completion	22
(q) Sale of the Property	23

3.2	(r) Initial Hotel Manager	23
	Seaholm's General Covenants	23
	(a) Single Asset Entity	23
	(b) Books and Records	23
	(c) Reporting	23
	(d) M/WBE	24
3.3	City's Covenants	25
	(a) Litigation	25
	(b) No Further Sales	25
	(c) No Further Leases	25
	(d) Dedicated Team	25
	(e) City Utility Infrastructure Improvements	25
	(f) Coordination of Work	26
	(g) Zoning and Subdivision	26
	(h) Environmental	26
	(i) Offsite Parking Garage.	26
	(j) Offsite Parking Garage Management Agreement	27
	(k) Inspection Prior to Takedown Date.	27
ARTICLE IV. PROPERTY TAKEDOWN AGREEMENTS		28
4.1	Takedown Agreement	28
4.2	Takedown Conditions	29
	(a) The City's Takedown Conditions	29
	(b) Seaholm's Takedown Conditions	29
4.3	Title Binder and Survey	30
	(a) Title Binder and Survey	30
	(b) Updating Title Binder and Survey	30
	(c) Review of Updated Title Binder and Survey	30
	(d) Seaholm's Option to Waive Updating Title Binder and Survey	31
4.4	Condemnation	31
	(a) Knowledge	31
	(b) Seaholm's Role	31
	(c) Legal Requirements	31
ARTICLE V. PROPERTY TAKEDOWNS		32
5.1	The Takedowns	32
	(a) The City's Takedown Obligations	32
	(b) Seaholm's Takedown Obligations	32
	(c) Taxes and Assessments	33
ARTICLE VI. PAYMENT OF INCENTIVES AND OTHER REIMBURSEMENTS		33
6.1	Incentives	33
6.2	Requirements for Disbursement of Each Incentive.	34
	(a) Frequency	35
	(b) Timing	35
	(c) Certain Events	35
	(d) Disputed Amounts.	35

	(e)	Additional Information	35
6.3		Other Requirements for Payments of Incentives	35
	(a)	Transfer Price Incentive.....	35
	(b)	Street Incentive	36
	(c)	Power Plant Rehab Incentive.....	37
	(d)	Plaza Incentive	37
	(e)	Reimbursable Fees Incentive	38
6.4		Offsite Parking Garage Reimbursement	39
	(a)	Disbursement	39
	(b)	Timing.....	39
	(c)	Events.....	39
	(d)	Title.....	39
	(e)	Invoices	39
	(f)	Certification	40
	(g)	Additional Information	40
ARTICLE VII. REPAYMENT OF INCENTIVES			40
7.1		Distribution of Property Net Income.	40
	(a)	First	40
	(b)	Second.....	40
	(c)	Third.....	40
7.2		Survivability of Distribution Obligation.....	40
ARTICLE VIII. FEES AND EXPENSES			41
8.1		Public Art Fee	41
8.2		Transactions With Affiliates	41
ARTICLE IX. INSURANCE AND INDEMNITY			41
9.1		Insurance	41
	(a)	General.....	41
	(b)	Special Requirements.....	43
	(c)	Additional Insured	43
	(d)	Cost	44
9.2		Indemnity and Release.....	44
	(a)	Indemnity	44
	(b)	Claims	44
	(c)	Notification.	45
	(d)	Release.	45
ARTICLE X. EVENTS OF DEFAULT AND REMEDIES			45
10.1		Events of Default – Seaholm	45
	(a)	Failure to Pay	45
	(b)	Abandonment or Suspension	45
	(c)	Failure to Perform Obligations	45
	(d)	Insurance	46
	(e)	Assignment	46
	(f)	Other Agreement Events of Default	46
	(g)	Receiver and Bankruptcy.....	46

	(h) Litigation.....	46
	(i) Mortgagee as the Developer	47
10.2	Remedies of the City.....	47
	(a) Termination of Rights	47
	(b) Specific Performance	47
	(c) Damages.....	47
	(d) Liquidated Damages.	47
	(e) Assignment	47
	(f) Reconveyance.	47
	(g) Tolling of Other Obligations.....	48
	(h) Remedies Under Other Agreements	48
10.3	Events of Default – City	48
	(a) Failure to Pay	48
	(b) Failure to Perform Obligations	48
	(c) Other Agreement Events of Default	48
	(d) Assignment	48
	(e) Receiver and Bankruptcy	48
	(f) Litigation.....	49
10.4	Remedies of Seaholm	49
	(a) Termination of the Development	49
	(b) Specific Performance	49
	(c) Damages.....	49
	(d) Tolling of Other Obligations.....	49
10.5	Rights and Remedies Are Cumulative.....	49
10.6	Plans and Data.....	49
10.7	LIMITED WAIVER OF SOVEREIGN IMMUNITY	50
ARTICLE XI. SEAHOLM’S RIGHT TO FINANCE AND MORTGAGEE PROTECTION		50
11.1	Seaholm’s Right to Finance	50
	(a) Amount	50
	(b) Rate	50
	(c) Mortgagee	50
	(d) Equity Kicker	50
11.2	Limitation of Liability.....	50
11.3	Use of Loan Proceeds	51
11.4	Refinancing.....	51
11.5	Mortgagee Protection.....	51
	(a) Termination.....	51
	(b) Notice.....	51
	(c) Cure Right.....	51
	(d) Bankruptcy.....	52
	(e) Multiple Mortgagees	52
	(f) Default Under Loan Documents	52
ARTICLE XII. MISCELLANEOUS PROVISIONS		53
12.1	Notices	53
12.2	Limitation on Liability.....	54

12.3	Independent Contractor.....	54
12.4	Severability	54
12.5	Construction of Agreement.....	55
12.6	Entire Agreement	55
12.7	No Waiver	55
12.8	Time Is of the Essence	55
12.9	Governing Laws.....	55
12.10	Attorney's Fees and Interest	55
12.11	No Third Party Beneficiaries	55
12.12	Counterparts	55
12.13	Time of Performance	56
12.14	Estoppel Certificates	56
12.15	Successors and Assigns.....	56
	(a) General	56
	(b) City Assignment.....	56
	(c) Seaholm Assignment	56
	(d) Bankruptcy	57
12.16	No Recording/Filing	58
12.17	Effect of Force Majeure, City Caused Delays and Seaholm Caused Delays.....	58
12.18	Further Acts	58
12.19	Consents and Approvals	58
12.20	Correction of Technical Errors	59
12.21	Interstate Land Sales Full Disclosure	59
12.22	Termination Prior to MDA Commencement Date.....	59
12.23	Termination Prior to Commencement of Construction	59
12.24	Guaranty.....	59

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 17th day of June, 2008 (the "**Effective Date**"), between THE CITY OF AUSTIN, a Texas home rule city and municipal corporation (the "**City**") and SEAHOLM POWER 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.

“Approved Team” means the following:

Partners: Centro Development, LLC; La Corsha Hospitality, Ltd.; and Southwest Strategies Group, Inc.

Consultants: ACR Engineering; Arup; Ayers Saint Gross; Black + Vernooy; Bury+Partners; Macias and Associates, LP; Cloteal Haynes; Columbus Communication; Design Collective, Inc (formerly listed as partner); Bay and Associates Inc.; HCBeck, Ltd. (formerly listed as partner); HS&A Project Management (formerly Herndon, Stauch & Associates); Structures+Haynes Whaley; Susman Tisdale Gayle; TBG Partners and WHM/HDR (formerly WHM).

“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/WBE” as defined in Section 3.2(c)(ii).

“M/WBE Ordinance” means Chapter 2-9A, 2-9B, 2-9C, and 2-9D of the Austin City Code.

“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 generally described on Exhibit A attached hereto, which description will be replaced with the legal description of the Property set forth on the filed subdivision plat of the Property.

“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 of less than 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 in excess of 40 units, and/or (C) the square footage of the improvements to the Office Property of less than 20% of an anticipated 66,000 square feet, 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 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) Seaholm shall provide quarterly reports to allow the City's Department of Small and Minority Business Resources to track (A) the utilization on a percentage basis of minority-owned and women-owned business enterprises ("M/WBE") firms in the design and construction of the Improvements, and (B) a summary of Seaholm's efforts to implement City Council resolution number 20071109-127, relating to M/WBE compliance. The City shall provide the forms to be used by Seaholm in submitting such reports.

(d) M/WBE. Commencing on the Effective Date, with respect to the design and construction of the Improvements, Seaholm, its architect and its general contractor will meet the following annual, ethnic-specific participation goals or demonstrate its good faith efforts to meet the goals:

	Professional Services Participation Goals	Construction Participation Goals
African-American-owned Business Enterprises	1.7%	1.7%
Hispanic-owned Business Enterprises	9.5%	9.7%
Asian-American and Native American-owned Business Enterprises	5.3%	1.5%
Women-owned Business Enterprises	14.2%	12.6%

The City will provide a list of certified firms to Seaholm from which Seaholm shall solicit participation in the design and construction of the Improvements. The City will assist Seaholm to identify potential scopes of work, establish the bid packages available, schedule and host outreach meetings, and assist Seaholm in soliciting M/WBE firms to

provide bids. The foregoing covenant shall not require Seaholm to solicit participation during a period in which Seaholm is not designing and/or constructing the Improvements, but rather, requires Seaholm to incorporate the standards and principles of the M/WBE Ordinance into its development process as and when such process exists. Additionally, Seaholm's covenant to meet the M/WBE goals or demonstrate a good faith effort to meet the M/WBE goals does not require Seaholm to modify or amend any contract or agreement that Seaholm has entered into prior to the Effective Date. The foregoing covenant does not require Seaholm to change or modify the composition of the Approved Team, which is the team of professionals assembled by Seaholm prior to the Effective Date to work on the design of the Improvements .

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.**

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 Takendown, 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 Takedowns 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> (Regardless of the order achieved)
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 the Street Improvements	Not to exceed \$4,200,000	On a monthly basis as construction progresses upon commencement of construction
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

<u>Incentive</u>	<u>Disbursement Amount</u>	<u>Disbursement Thresholds</u> (Regardless of the order achieved)
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 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 Commencement of Construction of any portion of the Improvements, 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 as specifically noted below) 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. The insurance required by this subsection shall be in effect commencing not later than the Commencement of Construction of any portion of the Improvements.

(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. The insurance required by this subsection shall be in effect commencing not later than the date of the first Takedown until 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.

(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. The insurance required by this subsection shall be in effect commencing not later than the Commencement of Construction of any portion of the Improvements.

(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 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. The insurance required by this subsection shall be in effect commencing not later than the Commencement of Construction of any portion of the Improvements.

(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) under the Declaration, (iii) under 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, under 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 a 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) Mortgagee. 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 or a Ground Lease 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:

Seaholm: Seaholm Power 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 Power 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: Sue Edwards
Name: SUE EDWARDS
Title: Acting Assistant City Manager

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

THOMPSON & KNIGHT L.L.P.

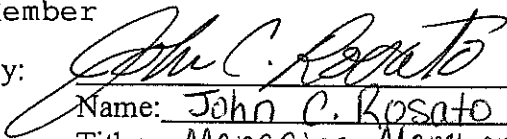
Thompson & Knight L.L.P.

SEAHOLM:

SEAHOLM POWER DEVELOPMENT, LLC, a
Delaware limited liability company

By: Seaholm Power, LLC, Its Managing
Member

By:


Name: John C. Rosato
Title: Managing Member

**EXHIBIT A
TO MASTER DEVELOPMENT AGREEMENT**

Property

See Attached.

The attached will be replaced with the legal description on the filed subdivision plat of the
Property.



MACIAS & ASSOCIATES, L.P.
LAND SURVEYORS

CITY OF AUSTIN
TO
SEAHOLM POWER, LLC.
January 4, 2008

LEGAL DESCRIPTION

BEING A 7.128 ACRE TRACT OF LAND OUT OF OUTLOT 11, DIVISION Z, ORIGINAL CITY OF AUSTIN, TRAVIS COUNTY, TEXAS, AS SHOWN ON THE 1840 MAP KNOWN AS THE "SANDUSKY MAP" ON FILE IN THE GENERAL LAND OFFICE IN AUSTIN, TRAVIS COUNTY, TEXAS; BEING ALL OF A 2.614 ACRE TRACT REFERRED TO AS TRACT 1 IN EXHIBIT A AS DESCRIBED IN A DEED WITHOUT WARRANTY DATED NOVEMBER 24, 2003, FROM UNION PACIFIC RAILROAD COMPANY TO THE CITY OF AUSTIN, RECORDED IN DOCUMENT NO. 2003282535, OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, SAID 2.614 ACRE TRACT BEING PART OF LOTS 1 THROUGH 4, BLOCK 6, RAYMOND PLATEAU, A SUBDIVISION RECORDED IN BOOK 1, PAGE 30, PLAT RECORDS OF TRAVIS COUNTY, TEXAS; ALSO BEING ALL OF A 4.513 ACRE TRACT REFERRED TO AS THE SEAHOLM TRACT AS DESCRIBED IN A DEED RECORDATION AFFIDAVIT DATED JANUARY 24, 2006 BY THE CITY OF AUSTIN ELECTRIC UTILITY DEPARTMENT (D/B/A AUSTIN ENERGY), RECORDED IN DOCUMENT NO. 2006014196, OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS; SAID 7.128 ACRE TRACT AS SHOWN ON THE ACCOMPANYING SKETCH, BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a mag nail with washer stamped "LAI RPLS 4878" found in concrete wall along the south side of a concrete sidewalk having Texas State Plane Coordinate (Central Zone, NAD83, U.S. Feet, Combined Scale Factor 0.999941) values of N=10,070,525.15, E=3,111,505.03, at the intersection of the south right-of-way line of West 3rd Street, a 60-foot wide right-of-way, with the west right-of-way line of West Avenue, an 80-foot wide right-of-way, and at the northeast corner of said 2.614 acre tract, for the northeast corner and the **POINT OF BEGINNING** of this tract;

THENCE, S 16°35'45" W, with the west right-of-way line of West Avenue and the east line of said 2.614 acre tract, at 103.32 feet, pass a 1/2" iron rod with plastic cap stamped "MACIAS & ASSOC." set at the most northerly southeast corner of said 2.614 acre tract, at the northeast corner of said 4.513 acre tract and at the northwest corner of a 1.12 acre portion of West Avenue vacated by the City of Austin by Vacation of Right-of-Way document dated January 15, 1997 and recorded in Volume 12852, Page 133, Real Property Records of Travis County, Texas, and continuing with the west line of said vacated portion of West Avenue and the east line of said 4.513 acre tract, and continuing a total distance of 711.16 feet to a 1/2" iron rod with plastic cap stamped "MACIAS & ASSOC." set on the north right-of-way line of West Cesar Chavez Street, 7.128 Acre Tract

7.128_AC.doc

a varying width right-of-way, at the southeast corner of said 4.513 acre tract and at the southwest corner of said vacated portion of West Avenue, for the southeast corner of this tract, from said point, an iron bolt found, bears S 16°35'45" W, 130.87 feet;

THENCE, with the north right-of-way line of West Cesar Chavez Street and the south line of said 4.513 acre tract, the following two (2) courses:

- 1) N 73°23'02" W, a distance of 115.61 feet to a 1/2" iron rod with plastic cap stamped "MACIAS & ASSOC." set for an angle point;
- 2) N 72°05'04" W, at 132.66 feet, pass a calculated point on the recognized north line of a 77.15 acre Sand Beach Reserve Tract patented to the City of Austin, dated July 3, 1945 (established per 1916 survey by O. E. Metcalfe), and being the south line of said Outlot 11, and continuing across said 77.15 acre tract, a total distance of 299.49 feet to a 1/2" iron rod with plastic cap stamped "MACIAS & ASSOC." set at the southwest corner of said 4.513 acre tract, for the southwest corner of this tract;

THENCE, N 27°10'48" E, continuing across said 77.15 acre tract, with the west line of said 4.513 acre tract, a distance of 76.97 feet to a 1/2" iron rod counter sunk below a 1" iron pipe with 2" aluminum cap stamped "CITY OF AUSTIN LAI RPLS 4878" found on the north line of said 77.15 acre tract and on the south line of said Outlot 11, at the most southerly southeast corner of said 2.614 acre tract, for an angle point;

THENCE, N 45°57'56" W, with the south line of said Outlot 11, the south line of said 2.614 acre tract and the north line of said 77.15 acre tract, a distance of 7.72 feet to a 1/2" iron rod counter sunk below a 1" iron pipe with 2" aluminum cap stamped "CITY OF AUSTIN LAI RPLS 4878" found on the east line of a remaining portion of a tract described in a deed dated July 21, 1880 to the International and Great Northern Railroad Company, recorded in Volume 47, Page 419, Deed Records of Travis County, Texas; title to said tract subsequently transferred to the Union Pacific Railroad Company, at the southwest corner of said 2.614 acre tract, for an angle point, said point being 50 feet east of and perpendicular to the main railroad track;

THENCE, with the east line of said railroad company remainder tract and the west line of said 2.614 acre tract, along a curving line being 50 feet east of and parallel to the center of said main railroad track, the following four (4) courses:

- 1) N 25°49'41" E, a distance of 128.10 feet to a 1/2" iron rod with plastic cap stamped "MACIAS & ASSOC." set at a point of curvature of a curve to the left;
- 2) Along said curve to the left having a radius of 640.35 feet, a central angle of 13°34'17", a chord which bears, N 19°52'42" E, 151.32 feet, and an arc distance of 151.68 feet to a 1/2" iron rod with plastic cap stamped "MACIAS & ASSOC." set at a point of compound curvature;

- 3) Along a curve to the left having a radius of 525.60 feet, a central angle of $31^{\circ}04'05''$, a chord which bears, $N\ 03^{\circ}04'21''\ W$, 281.52 feet, and an arc distance of 285.00 feet to a 1/2" iron rod with plastic cap stamped "MACIAS & ASSOC." set at a point of compound curvature;
- 4) Along a curve to the left having a radius of 531.85 feet, a central angle of $23^{\circ}28'33''$, a chord which bears, $N\ 30^{\circ}12'53''\ W$, 216.39 feet, and an arc distance of 217.92 feet to a 60d nail found on the south right-of-way line of West 3rd Street, at the northwest corner of said 2.614 acre tract, for the northwest corner of this tract;

THENCE, $S\ 67^{\circ}27'34''\ E$, with the south right-of-way line of West 3rd Street and the north line of said 2.614 acre tract, a distance of 634.46 feet to the **POINT OF BEGINNING** and containing 7.128 acres of land.

BEARING BASIS NOTE

The coordinates and bearings described herein are Texas State Plane Grid Bearings, (Central Zone, NAD83, Combined Scale Factor 0.999941). The coordinates were established by GPS from reference point "H-22-2001" having coordinate values of $N=10,071,008.45$, $E=3,110,361.65$ and "J-21-4001" (CB08) having coordinate values of $N=10,065,600.89$, $E=3,114,070.43$.

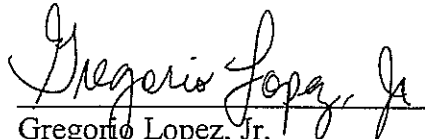
THE STATE OF TEXAS §
COUNTY OF TRAVIS §

KNOW ALL MEN BY THESE PRESENTS:

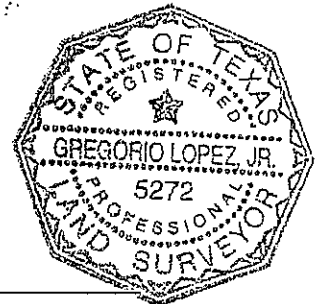
That I, Gregorio Lopez, Jr., a Registered Professional Land Surveyor, do hereby state that the above description is true and correct to the best of my knowledge and belief and that the property described herein was determined by a survey made on the ground under my direction and supervision.

WITNESS MY HAND AND SEAL at Austin, Travis County, Texas, this 4th day of January, 2008, A.D.

Macias & Associates, L.P.
5410 South 1st Street
Austin, Texas 78745
512-442-7875



Gregorio Lopez, Jr.
Registered Professional Land Surveyor
No. 5272 – State of Texas



REFERENCES

MAPSCO 2003 584Z
Austin Grid No. MH-22
TCAD PARCEL ID NO. 01-0500-0102 & 0105
MACIAS & ASSOCIATES, L.P., PROJECT NO. 423-01-07

EXHIBIT A-1
TO MASTER DEVELOPMENT AGREEMENT

Hotel/Condo Property

[To be added upon the filing of the subdivision plat for the Property]

EXHIBIT A-2
TO MASTER DEVELOPMENT AGREEMENT

Power Plant Property

[To be added upon the filing of the subdivision plat for the Property]

EXHIBIT A-3
TO MASTER DEVELOPMENT AGREEMENT

Office Property

[To be added upon the filing of the subdivision plat for the Property]

EXHIBIT B
TO MASTER DEVELOPMENT AGREEMENT

City Utility Infrastructure Improvements

<u>Infrastructure Improvement</u>	<u>Anticipated Completion Date</u>
Relocate the portion of the 24" waterline necessary to complete the driveway on the Property which is parallel to Third Street	March 31, 2009, subject to Force Majeure

EXHIBIT C
TO MASTER DEVELOPMENT AGREEMENT

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

After Recording Return To:
Thompson & Knight L.L.P.
1700 Pacific Avenue, Suite 3300
Dallas, Texas 75201
Attention: Andrew A. Ingram

DECLARATION OF RESTRICTIVE COVENANTS

This Declaration of Restrictive Covenants (this "**Declaration**") is made to be effective as of the ____ day of _____, 2008 by THE CITY OF AUSTIN, a Texas home rule city and municipal corporation ("**Declarant**").

RECITALS:

A. Declarant is the owner of that certain tract of land located in the County of Travis, State of Texas described on Exhibit A attached hereto and made a part hereof ("**Property**") which is approximately _____ acres;

B. Pursuant to a Master Development Agreement (the "**MDA**") dated _____, 2008 between Declarant and Seaholm Power Development, LLC, a Delaware limited liability company ("**Seaholm**"), the Declarant has engaged Seaholm as the developer of the Property;

C. In the course of the development of the Property, the Property has been, or will be, subdivided into 3 distinct parcels or lots: a hotel/condo portion described on Exhibit A-1 attached hereto (the "**Hotel/Condo Property**"), the power plant portion described on Exhibit A-2 attached hereto (the "**Power Plant Property**") and an office portion described on Exhibit A-3 attached hereto (the "**Office Property**"); and

D. To ensure that the Property is developed, owned, managed and maintained as a uniform development, the Declarant desires to impose certain restrictions on the Property.

NOW THEREFORE, Declarant declares for the benefit of the Property, that the Property be held, transferred, sold, conveyed, or occupied subject to the following restrictions:

1. Design Approval.

(a) No substantial improvement will be commenced or constructed upon the Property, nor will any substantial exterior addition to or substantial exterior change or

alteration thereof be made, 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 Declarant. Except as provided in Section 2(b) hereof and pursuant to the Declarant's regulatory capacity, the Declarant will not have any rights to review or approve interior aspects of the improvements.

(b) Each request for Declarant's approval (a "**Design Approval Request**") under section (a) 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 Declarant may reasonably require (the "**Plans**"); which Plans must be submitted for Declarant'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 have been designated historic and, as such, are subject to federal regulation affecting any changes that may be made thereto.

(c) In reviewing a Design Approval Request, Declarant 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.

(d) If Declarant fails to notify Owner in writing of its approval, disapproval or comments to the complete Design Approval Request within 30 days of Declarant's deemed receipt thereof, Owner may provide Declarant 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 Declarant 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 Declarant, the Declarant will provide written confirmation to Seaholm of such deemed approval. Declarant will notify the applicant in writing of any materials that Declarant believes are missing to make a Design Approval Request complete. Declarant may: (i) approve the Design Approval Request with or without conditions; (ii) 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 (iii) disapprove the Design Approval Request.

(e) If Declarant 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, Declarant 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.

(f) Following such approval, Declarant shall promptly apply for and diligently pursue regulatory approval (e.g., building permit, site plan) concerning such approved construction. If construction does not commence within the period required by such regulatory approval, the approval granted hereunder shall automatically expire, and the applicant must reapply for approval before commencing any activities. Once construction is commenced, it shall be diligently pursued to completion.

2. Design Changes.

(a) Owner may, with the Declarant'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 Section 1 above.

(b) 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 therefore will have first been submitted to and reasonably approved in writing by the Declarant, provided however, Declarant'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 of less than 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 more than 40 units, and/or (C) the square footage of the improvements to the Office Property of less than 20% of an anticipated 66,000 square feet, unless the plans therefor will have first been submitted to and approved in writing by the Declarant, which approval will be requested, evaluated and granted under the same procedure as approval of the construction plans in Section 1 above.

3. Architectural Standards. The following architectural standards apply to the Power Plant Property:

(a) The generator building must be diligently conserved and thoughtfully adapted for one (or more) highly public uses to create a region-wide attraction.

(b) The events center should amplify the inherent architectural attraction that the Power Plant Property offers.

(c) One or more exterior boiler structures and all smokestacks of the Power Plant Property are considered to be intrinsic to the historic significance of the complex and must be preserved.

(d) The industrial "power plant" spirit of the Power Plant Property should be clearly maintained and enhanced. Certain of the Power Plant Property's key artifacts have been selected to remain in and around the building as witness to its previous life. The Property should incorporate the power plant "Light" and "Power" motifs.

(e) The new uses should honor the Power Plant Property's architectural form and style.

(f) Constructed elements within the turbine hall of the Power Plant Property may be added to define space and increase square footage at potential mezzanine levels, but must maintain the sense of the overall volume of the space by ensuring that the clerestory windows and entire ceiling is visible from any point within this space. Likewise, suspended ceiling systems are inappropriate here, as these would obscure the original shell of the building. Mechanical and lighting systems should be expressed rather than hidden, in keeping with the industrial and functional spirit of the Power Plant Property.

(g) The Power Plant Property must conserve and restore the existing neon signage on the west face of the Power Plant Property depicting the "City of Austin Power Plant" and on its two southern doorways "Light" and "Power". The Property should work with these themes in establishing its new identity.

4. Construction. Each holder of fee simple title to all or any part of the Property, except if the applicable portion of the Property is subject to a Ground Lease, in which case the ground lessee (each such party, an "Owner") agrees to perform its respective construction: (i) where approval is required, in accordance with such approved Plans; (ii) with due diligence to completion and in a good and workmanlike manner, using first class materials; provided however, the standard for construction and completion contained in the MDA shall govern the initial construction of the improvements; (iii) so as not to unreasonably interfere with any construction work being performed on any other portion of the Property or with the use, occupancy and enjoyment of any other portion of the Property; (iv) to comply with the then current private and governmental requirements applicable thereto (including amendments and modifications), including, without limitation, the Downtown Austin Design Guidelines, building, environmental and zoning laws of the state, county, municipality or other subdivision in which the Property is situated, and all laws, ordinances, orders, rules, regulations and requirements of all federal, state, county and municipal governments and the appropriate departments, commissions, agencies, boards and officers thereof (collectively, "Legal Requirements"). Maintenance. Each Owner shall maintain its portion of the Property, including all structures, parking areas, landscaping, and other improvements, in good condition and repair in a manner consistent with a Class A mixed use urban development. Such maintenance includes, but is not limited to, the following (as applicable), which will be performed in a timely manner:

- (a) Prompt removal of all litter, trash, refuse, and waste.
- (b) Tree and shrub pruning.
- (c) Watering.
- (d) Keeping exterior lighting and mechanical facilities in working order.
- (e) Keeping lawn and garden areas alive, free of weeds, and in an attractive condition.

- (f) Keeping planting beds free of turf grass.
- (g) Keeping sidewalks and driveways in good condition, repair and appearance.
- (h) Complying with all government, health, safety and police requirements applicable to its portion of the Property in all material respects.
- (i) Repainting of improvements.

Each Owner shall also be responsible for maintaining landscaping and common areas within that portion of any adjacent public right-of-way, plaza, common area, street or alley provided that the Owner has been granted and accepted a license from the Declarant in its regulatory capacity to do so.

The responsibility for maintenance includes responsibility for repair and replacement. Each Owner shall carry property insurance for the full replacement cost of all insurable improvements on its Property, less a reasonable deductible, unless another entity (e.g., a condominium or owners association) carries such insurance. Within 180 days after any damage to or destruction of any improvement constructed upon the Property, the applicable Owner shall promptly repair or reconstruct the improvement in a manner consistent with the original construction or such other plans and specifications as are approved hereunder. Alternatively, the applicable Owner shall clear its Property of debris and maintain it in a neat and attractive landscaped condition.

6. Prohibited Uses on the Property. Unless otherwise approved by Declarant, no Owner may operate or permit on its portion of the Property:

- (a) Any use which constitutes a public or private nuisance or which permits or generates a noxious (as opposed to the normal and customary Class A retail, Class A restaurant, Class A office, Class A hotel or residential) odor, noise, sound, litter, dust, or dirt which can be heard, smelled or readily seen outside of the Property.
- (b) Any use which produces or is accompanied by any unusual fire, explosive, or other damaging or dangerous hazards (including the storage or sale of explosives or fireworks).
- (c) A thrift shop (e.g., Goodwill or St. Vincent de Paul), flea market or pawn shop.
- (d) Repair or service center (except that service centers or service uses which are incidental to a store selling goods and/or services is not prohibited hereunder).
- (e) Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation.
- (f) Any massage parlor (except that this prohibition will not prohibit day spas or health clubs or spas including those associated with a hotel use).

(g) Any pet store (other than a "boutique" pet store), veterinary hospital, veterinary office or animal raising or boarding facilities.

(h) Any mortuary, funeral home, or crematorium.

(i) Any gambling facility or operation, including but not limited to: off-track or sports betting parlor; table games such as black-jack or poker; slot machines, video poker/black-jack/keno machines or similar devices; or bingo hall; provided however this will not apply to governmental sponsored gambling activities, or charitable gambling activities, so long as such governmental and/or charitable activities are incidental to the business operation.

(j) An operation primarily used as a storage warehouse operation and any assembling, manufacturing, fabricating, distilling, refining, smelting, agricultural or mining operation.

(k) Any establishment selling or exhibiting pornographic materials or which sells drug-related paraphernalia or which exhibits either live nude or partially clothed dancers or wait staff or similar establishments; provided, however, this will not prohibit the operation of a movie theater for movies, Blockbuster Video, Hollywood Video or similar operation or a Borders, Barnes & Noble, Waldenbooks or a Books-A-Million or similar operation so long as such operations are not adult oriented (as defined in the sexually-oriented business ordinance of the City).

(l) A dry cleaning plant, provided this will not prohibit a dry cleaning drop off and pick up use.

(m) A tattoo parlor, beauty supply store or tanning salon (other than tanning equipment incidental with a spa, health club or hotel).

(n) A store selling alcoholic beverages for off-premises consumption, other than (i) an "upscale" store selling wines and similar alcoholic beverages, and (ii) stores in which beverages represent less than five percent (5%) of the store's merchandise calculated on the basis of approximate number of individually sold items in such store, it not being Declarant's intent, for example, to prohibit use of the Property for a market in which alcoholic beverages for off-premises consumption represent only a portion of the merchandise available in such market.

(o) Dance clubs, bars or cocktail lounges with aggregate square footage in excess of 8,000 square feet on the ground level of a building (provided that live music venues, hotels, restaurants or comedy clubs with bars or cocktail lounges are permitted).

(p) Bowling alleys on the ground level.

(q) Check-cashing services, unless incidental to use as a bank or other financial institution. This restriction will not prohibit automated teller machines.

(r) Correctional or detention facilities.

(s) Janitorial supplies or services (other than normal janitorial services being provided exclusively to the Property).

(t) Laundromats, provided that this will not prohibit an internal laundry facility associated with a hotel.

(u) Plant nursery (but florist shops are permitted as long as they do not grow flowers in bulk on the premises).

(v) Tools and heavy equipment sales.

(w) Workers compensation offices.

7. Prohibited Uses in Power Plant Property. No Owner of any of the Power Plant Property may operate or permit on its portion of the Power Plant Property:

(a) Any school, training or educational facility, including but not limited to: beauty schools, barber colleges, trade school, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers; provided, however, this prohibition will not be applicable to on-site employee training incidental to the conduct of its business in the Power Plant Property.

(b) A daycare center larger than 5,000 square feet.

(c) Any business operated on a part time retail basis (i.e., a business operated less than 7 days per week or half of a weekday or Saturday), other than seasonal kiosks.

(d) Collection agencies.

(e) Doctor or dentist offices or other medical facilities (other than incidental first aid facilities).

(f) Rental offices (furniture, etc.); other than rental offices for local transport (e.g., personal motorized transports, boats).

(g) Tobacco shop (other than a "high end" tobacco shop) (provided that the ancillary sale of tobacco is permitted in other retail establishments).

(h) Any residential use, including, but not limited to: single family dwellings, apartments, townhouses, condominiums, other multi-family units and other forms of living quarters, sleeping apartments or lodging rooms.

(i) With respect to the ground level of the Power Plant Property, any Office and Services Use. The term "Office or Service Use" includes those uses which are traditionally associated with an office, industrial, limited office and related uses and include Quasi-Retail, Service Retail, and Service Office uses. "Quasi-Retail" includes but is not limited to a travel agency, establishment that sells glasses but also has an optometrist on site, cell phone store. "Service Retail" includes but is not limited to a

copy center, cleaners, tailor/alterations, salon, travel agent, etc. "Service Office" includes but is not limited to brokerage office, insurance agency, medical or dental office, law office, office offering income tax preparation.

It is the intent of the Declarant that the Power Plant Property be utilized for traditional retail uses except as specifically provided above.

8. Other Restrictions And Requirements.

(a) Plaza Programming. The Owners must cause the Property's management company to submit to the Declarant, for the Declarant's review and approval, on or before January 1 of each of the first 3 years following completion of the renovation of the Power Plant Property a proposed programming plan for the plaza located on the North side of the Power Plant Property. Such programming plan will include, in reasonable detail, the events planned for the upcoming year.

(b) Naming of Development. Owner shall not change the name of the Power Plant Property without the prior written consent of Declarant, which consent may be granted or withheld in Declarant's sole discretion.

(c) Tax Exempt Entities. Prior to the Repayment Incentives Date (as defined in the MDA), the Owner shall not sell any portion of the Property or lease any portion of the Property to a governmental entity, nonprofit corporation, nonprofit organization or similar entity which may be exempted under Legal Requirements from the obligation to pay ad valorem taxes without the prior approval of the Declarant.

(d) Green Building Covenant. Owner will cause the shell portion of the improvements on the Hotel/Condo Property and the Office Property (i.e., not including individual condominium units or other commercial interiors) to be constructed to achieve at least a Three Star Green Building rating under the Declarant's Green Building Program. Owner will cause the shell portion of the improvements on the Power Plant Property (i.e., not including individual condominium units or other commercial interiors) to be renovated to achieve at least a Two Star Green Building rating under the Declarant's Green Building Program. If Declarant's Green Building Program no longer exists, Declarant, in its reasonable discretion, shall select another comparable program and standard with which to evaluate the improvements.

(e) Affordable Housing. If any portion(s) of the Property equal to or greater 10% of the total units in the Property is owned by a single owner or a group of related owners and such units are utilized as a "for rent" residential multi-unit facility (e.g., not a hotel or the lease of individual units by end users), such applicable portion(s) of the Property must comply with the remainder of this Section. The Property is anticipated to be developed as a hotel, retail, office and "for sale" residential condos. If the Property is not so developed (or is later redeveloped) or all or any portion (or multiple portions) of the Property is utilized as a "for rent" (i.e., a common owner owns multiple units and rents such units to end users), it is the intent of the Declarant to ensure that a portion of

such "for rent" units be available to persons of limited financial means, as provided below.

(i) For a period of 25 years beginning on the date the Property is utilized as "for lease" property (the "**Affordable Housing Period**"), the applicable Owner agrees to lease, or hold available to lease, to households whose income is equal to or less than 80% of the median income for households of equivalent size as determined by the United States Department of Housing and Urban Development ("**HUD**") for the Austin – San Marcos, Texas Metropolitan Statistical Area (the "**MSA**"), 5% of the units then in existence in the applicable portion of the Property. A unit that is leased, or held available for lease, to persons who meet the above criteria (a "**Qualifying Household**") is hereinafter referred to as a "**Restricted Unit**". If the applicable portion of the Property contains at least twenty units of a particular type (e.g., one bedroom, two bedroom three bedroom), then at least 5% of the "for rent" units of that type shall be Restricted Units. If the applicable portion of the Property contains less than twenty units of a particular type, then Owner may, but is not obligated to, designate one or more of the units of that type as a Restricted Unit. The Restricted Units must be comparable in quality to similarly sized, non-restricted units of the same type on the applicable Property, but Owner shall have the discretion to designate any unit on the applicable portion of the Property as a Restricted Unit and to change such designation at any time. The examples set out above (one bedroom, two bedroom, three bedroom, etc.) are examples only, and Owner is not obligated to construct or offer any specific type of unit, nor any specific number of particular types of units

(ii) The rental rate for the Restricted Units must be an amount which does not exceed 28% of such Qualifying Household's gross income. During the Affordable Housing Period, Owner shall keep records of the rental amounts of the Restricted Units and the gross income of the Qualifying Households. The records will be available for annual review by the Declarant.

(iii) Notwithstanding any other provision of this Declaration, the following provisions will govern any breach by Owner of its covenants in this Section:

(A) Owner must not be considered to have breached any covenant in this Section until Declarant has provided Notice to Owner of Owner's breach and Owner has not cured such breach within 30 days of Owner's receipt of such Notice.

(B) Should Owner breach a covenant in this Section and until such time as the breach is cured, as Declarant's sole and exclusive remedies, (i) Owner shall pay to Declarant liquidated damages in the amount of \$1,000 per month for each unrestricted unit that would need to be restricted in order to maintain the requirement that 5% of the units in the applicable portion of the Property be Restricted Units and (ii)

Declarant shall have the right to specifically enforce the covenants set forth in this Section.

(C) Declarant acknowledges that Owner will be relying on prospective tenants to provide Owner with the information to determine whether or not such prospective tenants are Qualifying Households. Declarant agrees that in no event will Owner be held liable for a breach of this Section due to false information provided to Owner by such prospective tenants, provided that upon learning that a tenant of a Restricted Unit is not a Qualifying Household, Owner diligently pursues the leasing of such Restricted Unit to a Qualifying Household following the expiration of the lease term of such tenant.

9. Modifications and Termination. This Declaration may be modified or terminated upon the written consent of all of (a) Declarant, and (b) the Owner(s) of at least fifty-one percent (51%) of the floor area of the improvements within two of the buildings located on the Property; provided however, the City may remove any portion of the Property from this Declaration if it owns fee title to said portion of the Property and such portion of the Property is not burdened by a ground lease. In (b) above "Owners" shall mean, with respect to a portion of the Property that is subject to a ground lease, the ground lessee and not the ground lessor.

10. Term. The term of this Declaration will commence upon the date of filing this instrument for record in the land records of Travis County, Texas and will continue for a term of forty (40) years; thereafter this Declaration will be renewed automatically for successive twenty (20) years terms unless, at any time, terminated pursuant to Section 9 of this Declaration, and such termination is filed of record.

11. Default.

(a) In the event of a default of the terms and conditions of this Declaration by any Owner, such Owner will have 20 days in which to cure such default after receipt of notice of said default from Declarant or another Owner. Declarant shall also deliver such written notice to any unaffiliated, third party lender ("Lender") of such defaulting Owner if Declarant is provided notice of such Lender in writing (with a contact name and address) prior to such default and such Lender will have the same right of cure hereunder as the defaulting Owner and the timeframe for cure will run concurrently with such Owner's cure period. If the default can not be cured, using reasonable due diligence, within 20 days of receipt of the notice of default, then the defaulting Owner or the applicable Lender will have such additional time as may be reasonably necessary to cure such default, conditioned upon the defaulting Owner or applicable Lender commencing the cure within such 20 day period and diligently pursuing the curing of the default through conclusion; provided however, such additional time will not apply for any situations, conditions or issues in which the health or safety of the public at large is compromised. If that the default cannot be cured in a timely manner as required in this Section, Declarant or the notifying Owner will have the right to obtain an injunction from an applicable court of law to enforce specific performance on the part of the defaulting Owner, the amount of any bond for same being not more than \$100. In addition to the

foregoing, the Declarant will have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Declaration against the defaulting Owner. With respect to a default of maintenance responsibilities under Section 5 hereof, following the notice and cure period set forth above, the Declarant may perform such maintenance responsibilities and assess all costs incurred by the Declarant against such defaulting Owner; provided, Declarant may assign its right to conduct such maintenance to any appropriate entity. **THE DECLARANT AND ANY NOTIFYING OWNER AND THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, OR EMPLOYEES WILL NOT BE HELD LIABLE TO ANY PERSON FOR EXERCISING THE RIGHTS GRANTED BY THIS DECLARATION (INCLUDING LIABILITIES RESULTING FROM DECLARANT'S OR NOTIFYING OWNER'S NEGLIGENCE OR STRICT LIABILITY) UNLESS SUCH LOSS, DAMAGE, OR INJURY IS DUE TO THE WILLFUL MISCONDUCT, GROSS NEGLIGENCE, OR BAD FAITH OF THE DECLARANT OR NOTIFYING OWNER, AS THE CASE MAY BE, OR ONE OR MORE OF THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, OR EMPLOYEES.**

(b) In the event of a default hereunder which is not cured within any time herein specified, it will not terminate this Declaration nor the obligations of any of the Owners, nor terminate the rights of any other Owner with respect to its portion of the Property, nor withhold the benefits of this Declaration from any other Owner by reason of any default by such Owner, it being the express understanding that, subject to any other terms hereof, this Declaration will continue in effect throughout its term, notwithstanding any default by any Owner.

12. Approval. Unless expressly stated otherwise herein to the contrary, any approval (including without limitation, approval of any amendment), agreement, determination, consent, waiver, estoppel certificate, estimate or joinder by the Declarant required hereunder may be given by the City Manager of the Declarant or its designee; *provided however*, except for minor amendments, modifications or clarifications, the City Manager does not have the authority to execute any substantial modification or termination of this Declaration without the approval of the Austin City Council. With respect to any plan approvals, the City Manager may enlist any individual or party to assist in such approval.

13. Miscellaneous.

(a) Capacity of Declarant. **GENERALLY, APPROVALS UNDER THIS DECLARATION ARE NOT A SUBSTITUTE FOR ANY APPROVALS OR REVIEWS REQUIRED BY ANY GOVERNMENTAL AUTHORITY OR ENTITY HAVING JURISDICTION OVER ARCHITECTURAL OR CONSTRUCTION MATTERS. THE DECLARANT UNDER THIS DECLARATION IS A GOVERNMENTAL ENTITY, HOWEVER, ALL ACTIONS OF DECLARANT TAKEN SOLELY WITH RESPECT TO THIS DECLARATION WILL BE ACTIONS TAKEN IN ITS CAPACITY AS A LANDOWNER (I.E., A SELLING LANDOWNER AND AS THE OWNER OF AN ADJACENT PARCEL OF LAND) INSTEAD OF IN ITS CAPACITY AS A GOVERNMENTAL ENTITY. BY WAY**

OF EXAMPLE AND NOT OF LIMITATION, APPROVAL BY DECLARANT OF THE PLANS WILL NOT CONSTITUTE APPROVAL TO COMMENCE CONSTRUCTION (I.E., A BUILDING PERMIT) BY THE CITY OF AUSTIN IN ITS REGULATORY CAPACITY. NOTHING IN THIS SECTION IS DEEMED TO WAIVE OR INHIBIT ANY SOVEREIGN IMMUNITY RIGHTS. OWNER ACKNOWLEDGES THAT THE DECLARANT CANNOT CONTRACT IN ANY MANNER REGARDING THE EXERCISE OF ITS SOVEREIGN POWERS.

(b) Notices. Formal notices, demands and communications 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 Declarant may designate in writing from time to time:

If Declarant: 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

With a copy to: City of Austin
Law Department
301 West 2nd Street
Austin, Texas 78701
Attention: City Attorney

Notices to the Owners within the Property will be sent to the tax address maintained by the Travis Central Appraisal District (or successor entity).

(c) Consents. Whenever pursuant to this Declaration an Owner's consent or approval is required, such consent or approval must be in writing and, unless otherwise provided in this Declaration, the decision as to whether or not to grant such consent or approval will be in the sole discretion of such Owner and such consent or approval may be withheld by such Owner for any reason.

(d) Covenants Run with the Land. The terms of this Declaration constitute covenants running with, and will be appurtenant to, the land affected by this Declaration for the term hereof. All terms of this Declaration will inure to the benefit of and be binding upon the parties which have an interest in the benefited or burdened land and their respective successors and assigns in title. This Declaration is not intended to

supersede, modify, amend, or otherwise change the provisions of any prior instrument affecting the land burdened hereby. All provisions of this Declaration that govern the conduct of the Owner and that provide for sanctions against the Owner for the breach hereof will also apply to all occupants (including lessees), guests, and invitees. Every Owner shall cause all occupants (including lessees) of the Owner's portion of the Property to comply with this Declaration and any rules and regulations adopted, and will be responsible for all violations and losses caused by those occupants (including lessees), notwithstanding the fact that those occupants (including lessees) of the Owner's portion of the Property are fully liable and may be sanctioned for any violation of this Declaration and rules and regulations adopted pursuant thereto.

(e) Singular and Plural. Whenever required by the context of this Declaration, the singular will include the plural, and vice versa, and the masculine will include the feminine and neuter genders, and vice versa.

(f) Negation of Partnership or Other Entity. None of the terms or provisions of this Declaration will be deemed to create a partnership between or among the Owners in their respective businesses or otherwise, nor will it cause them to be considered joint venturers or members of any joint enterprise. Each Owner will be considered a separate owner, and no Owner will have the right to act as an agent for another Owner, unless expressly authorized to do so herein or by separate written instrument signed by the Owner to be charged.

(g) Not a Public Dedication. Nothing herein contained will be deemed to be a gift or dedication of any portion of the Property or portion thereof to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided, no rights, privileges or immunities of the Owner will inure to the benefit of any third party, nor will any third party be deemed to be a beneficiary of any of the provisions contained herein.

(h) Severability. Invalidity of any of the provisions contained in this Declaration, or of the application thereof to any person by judgment or court order will in no way affect any of the other provisions hereof or the application thereof to any other person and the same will remain in full force and effect.

(i) Captions and Capitalized Terms. The captions preceding the text of each article and/or section are included only for convenience of reference. Captions will be disregarded in the construction and interpretation of the Declaration. Capitalized terms are also selected only for convenience of reference and do not necessarily have any connection to the meaning that might otherwise be attached to such term in a context outside of this Declaration.

(j) Time. Time is of the essence of this Declaration.

(k) Non-Waiver. The failure of any party to insist upon strict performance of any of the terms, covenants or conditions hereof will not be deemed a waiver of any rights or remedies which that party may have hereunder or at law or equity and will not

be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.

(l) No Merger. The subsequent merger of title in and to any one or more of portions of the Property, or any portions thereof, by sale, transfer or other conveyance, will not operate as a merger or termination of any other rights created and established hereunder, it being the intent that such rights will survive notwithstanding the merger of title.

(m) Legal Fees. In any action to enforce this Declaration, the prevailing party will be entitled to recover all costs, including, without limitation, reasonable attorneys fees and court costs reasonably incurred in such action.

(n) Mortgage Subordination. Any mortgage or deed of trust affecting any portion of the Property will at all times be subject and subordinate to the terms of this Declaration and any party foreclosing any such mortgage or deed of trust, or acquiring title by deed in lieu of foreclosure or trustee's sale, will acquire title subject to all of the terms and provisions of this Declaration.

(o) Binding Effect. Every agreement, declaration, covenant, promise undertaking, condition, right, privilege, option and restriction made, declared, granted or assumed, as the case may be, in this Declaration is not only for the benefit of each Owner personally but also as Owners of a portion of the Property, and will constitute an equitable servitude on the portion of the Property owned or leased by such party appurtenant to and for the benefit of the other portions of the Property, and the benefits and burdens thereof will run with the title to the Property. Any transferee of any part of the Property will automatically be deemed, by acceptance of the title to any portion of the Property, to have assumed all obligations of this Declaration relating thereto to the extent of its interest in its portion of the Property and to have agreed with the then Owner or Owners of all other portions of the Property to execute any and all instruments and to do any and all things reasonably required to carry out the intention of this Declaration at no cost to such Owners. Upon the completion of such transfer, the transferor will be relieved of all further liability under this Declaration except liability with respect to matters remaining unsatisfied which arose during its period of ownership of the portion of the Property so conveyed. All obligations and restrictions set out in this Declaration will run with the land, be binding upon and inure to the benefit of all of the Owners of the Property.

(p) Remedies Cumulative. All of the remedies permitted or available to the Declarant or Owners under this Declaration, or at law or in equity, will be cumulative and not alternative, and the invocation of any such remedy will not constitute a waiver or election of remedies with respect to any other permitted or available remedy.

(q) Effect of Declaration. Reference in any deed, mortgage, trust deed or any other recorded documents to the restrictions and covenants herein described or to this Declaration will be sufficient to create and reserve such covenants to the respective grantees, mortgagees, or trustees of such parcels as fully and completely as if those

restrictions and covenants were fully related and set forth in their entirety in said documents.

(r) Effect of Force Majeure. If the Declarant or an Owner is delayed, hindered, or prevented from performance of any of its respective obligations under this Declaration by reason of acts of God, strikes, lockouts or other industrial disturbances, shortages of labor or materials, war, acts of public enemies, terrorism, order 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, acts of public enemies, 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 Declaration or other causes not reasonably within the control of the party claiming such inability (other than (a) financial inability to perform, 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), 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:

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

(ii) The affected party shall diligently use commercially reasonable efforts 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.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Declarant has duly executed this Declaration on the date of acknowledgment set forth below to be effective as of the date set forth above.

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.

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on _____, 200____, by
_____, _____ of THE CITY
OF AUSTIN, a municipal corporation, on behalf of said municipal corporation.

Notary Public, State of Texas

(Printed name)

My Commission Expires:

EXHIBIT A
TO DECLARATION OF RESTRICTIVE COVENANTS

Property

EXHIBIT A-1
TO DECLARATION OF RESTRICTIVE COVENANTS

Hotel/Condo Property

EXHIBIT A-2
TO DECLARATION OF RESTRICTIVE COVENANTS

Power Plant Property

EXHIBIT A-3
TO DECLARATION OF RESTRICTIVE COVENANTS

Office Property

EXHIBIT D
TO MASTER DEVELOPMENT AGREEMENT

Form of Special Warranty Deed

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

After Recording Return To:

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

SPECIAL WARRANTY DEED

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS THAT:
COUNTY OF TRAVIS §

1. Grant. THE CITY OF AUSTIN, a Texas home rule city and municipal corporation ("City"), for and in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration paid to City by SEAHOLM POWER DEVELOPMENT, LLC, a Delaware limited liability company ("Seaholm"), the receipt and sufficiency of which are hereby acknowledged, does hereby GRANT, SELL, CONVEY, ASSIGN and DELIVER to Seaholm the real property described in Exhibit A attached hereto and made a part hereof, together with all buildings and other improvements situated thereon, all fixtures and other property affixed thereto and all and singular the rights and appurtenances pertaining to such real property (the "Property"), subject to the encumbrances described in Exhibit B attached hereto and made a part hereof (the "Permitted Encumbrances").

2. Warranty. TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereto in anywise belonging unto Seaholm, its successors and assigns, forever, and City does hereby bind itself and its successors and assigns to warrant and forever defend all and singular the said premises unto Seaholm, its successors and assigns against every person whomsoever lawfully claiming, or to claim the same, or any part thereof by, through or under City, but not otherwise; subject, however, to the Permitted Encumbrances.

3. AS-IS. EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN THAT MASTER DEVELOPMENT AGREEMENT DATED _____, 2008 BETWEEN CITY AND SEAHOLM RELATING TO THE PROPERTY (THE "MDA")

TO THE CONTRARY, IT IS UNDERSTOOD AND AGREED THAT THE PROPERTY IS BEING SOLD 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 AND IN THE MDA) ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR CHARACTER WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY (OTHER THAN AS SET FORTH IN THE MDA AND CITY'S SPECIAL WARRANTY OF TITLE CONTAINED HEREIN), 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 ACCEPTING THIS SPECIAL WARRANTY DEED WITHOUT RELYING (EXCEPT AS EXPRESSLY SET FORTH HEREIN AND IN THE MDA) 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 IT IS RELYING (EXCEPT AS EXPRESSLY SET FORTH HEREIN AND IN THE MDA) SOLELY ON ITS OWN EXPERTISE AND THAT OF ITS CONSULTANTS IN PURCHASING THE PROPERTY (EXCEPT AS EXPRESSLY SET FORTH HEREIN AND IN THE MDA). 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.

4. Terms. Capitalized terms used herein but not defined have the meanings assigned to such terms in the MDA and the following terms shall have the meanings assigned:

"Commenced Construction" and "Commencement of Construction" mean 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.

"Delinquency Interest Rate" means a per annum rate of interest equal to the lesser of (1) the Prescribed Rate plus 3% or (2) the then highest lawful contract rate which Seaholm is authorized to pay and the City is authorized to charge under the laws of the State of Texas with respect to the relevant obligation.

"Owner" means the owner of the Property.

"Prescribed Rate" means the "prime rate" published in The Wall Street Journal as being the base rate on corporate loans at large U.S. money center commercial banks on the first Business Day following the due date of such payment. If The Wall Street Journal ceases to publish such a prime rate, the Prescribed Rate will be the per annum interest rate which a large U.S. money center commercial bank doing business in Texas designated by the City publicly announces (whether or not actually charged in each instance) from time to time (adjusted daily) as its "prime rate" (or if there is no "prime rate," a similar borrowing reference rate).

"Repurchase Price" means

(a) prior to a conveyance of the Property by foreclosure or a deed in lieu of foreclosure, the amount of architectural, engineering and "hard" construction costs concerning the Property incurred and paid by Owner for which Owner has received a lien release reasonably acceptable to City, which costs will not exceed the corresponding estimated per square foot development cost calculations set forth in the Proforma concerning the sellable/leaseable improvements, except parking, on the Property or include costs associated with financing, equity, taxes, insurance, marketing, furniture, development fees, or interest, less any unpaid liquidated damages due to the City by Owner under any agreement related to the Property (but without duplication); or

(b) following the conveyance of the Property by foreclosure in which an independent third party purchases the Property (i.e., not the Owner, Mortgagee or an affiliate thereof), the sum of (i) amount paid by such purchaser at the foreclosure sale, *plus* (ii) the amount of architectural, engineering and "hard" construction costs concerning the Property incurred and paid by such purchaser for which such purchaser has received a lien release reasonably acceptable to City, which costs will not exceed the corresponding estimated per square foot development cost calculations set forth in the Proforma concerning the sellable/leaseable improvements, except parking, on the Property or include costs associated with financing, equity, taxes, insurance, marketing, furniture, development fees, or interest, less any unpaid liquidated damages due to the City by such purchaser under any agreement related to the Property (but without duplication); or

(c) following the conveyance of the Property by foreclosure or deed in lieu of foreclosure in which the Mortgagee (or its affiliate) acquires title to the Property, the sum of (i) the outstanding principal balance of the loan by such Mortgagee together with all accrued interest thereon (excluding however, any late charges, default interest, exit fees, breakage charges, prepayment premiums or similar fees) *plus* (ii) the amount of architectural, engineering and "hard" construction costs concerning the Property incurred and paid by Mortgagee (or its affiliate) for which Mortgagee (or its affiliate) has received a lien release reasonably acceptable to City, which costs will not exceed the corresponding

estimated per square foot development cost calculations set forth in the Proforma concerning the sellable/leaseable improvements, except parking, on the Property or include costs associated with financing, equity, taxes, insurance, marketing, furniture, development fees, or interest, less any unpaid liquidated damages due to the City by Mortgagee (or its affiliate) under any agreement related to the Property (but without duplication).

“Repurchase Permitted Exceptions” means the same exceptions as appear on Exhibit B hereof and those exceptions which the City has required or consented to in writing following the date hereof whether in its regulatory or landowner capacities or are otherwise allowed under the terms of the MDA.

5. Repurchase Right – Seaholm Major Event of Default under MDA. Subject to all the terms and conditions hereof and the financing and Mortgagee protection provisions of the MDA, City hereby reserves the preferential and exclusive option (but not obligation) if a Seaholm Major Event of Default occurs and is continuing under the MDA to repurchase the Property (the **“Repurchase Right - MDA Default”**) at a repurchase price equal to the Repurchase Price. If such option is exercised by City, then the Owner will reconvey the Property to City not more than 120 days following the date the City gives written notice to Owner and any Mortgagee of Owner of the City’s exercise of the Repurchase Right – MDA Default by a deed in substantially the same form as this Special Warranty Deed, with no title exceptions except for the Repurchase Permitted Exceptions. City will have the right to enforce the Repurchase Right - MDA Default by specific performance in addition to all other legal and equitable remedies. Upon termination of the Repurchase Right - MDA Default for any reason described herein and receipt of a written request from the Owner, City will execute and deliver in recordable form a notice of termination of the Repurchase Right - MDA Default. The Repurchase Right - MDA Default will run with the land and bind future owners of the Property but will automatically terminate (a) with respect to the entirety of the Property, upon the Repayment Incentives Date (as defined in the MDA), and (b) with respect to individual residential condominiums on the Property, upon the closing of the sale of such residential condominium to a third party.

6. Repurchase Right – Failure to Commence Construction.

(a) Subject to all the terms and conditions hereof and the financing and Mortgagee protection provisions of the MDA, City hereby reserves the preferential and exclusive option (but not obligation) to repurchase the Property (the **“Repurchase Right - Commencement of Construction”**) at a repurchase price equal to 100% of the gross purchase price paid by Seaholm to City under the MDA under the circumstances contained in this paragraph, which amount is payable simultaneously with the reconveyance of the Property as described below.

(b) If the Owner has not Commenced Construction of the Improvements on the Property on or before _____ [30 months following the MDA Commencement Date] (the **“Construction Commencement Date”**) such event will be deemed an event of default hereunder and City will be entitled to exercise its Repurchase

Right – Commencement of Construction if the Owner does not, in good faith, Commence Construction on or before the date which is 30 days following written notice by the City to the Owner and any Mortgagee of Owner of the City's intent to exercise its Repurchase Right – Commencement of Construction. The Construction Commencement Date will be extended on a day for day basis for each Business Day of actual delay due to Force Majeure and City Caused Delays.

(c) If such option is exercised by City, and the Repurchase Right – Commencement of Construction does not terminate because of the Commencement of Construction as described above, Owner will reconvey the Property to City not more than 120 days following the date of City's notice by a deed in substantially the same form as this Special Warranty Deed, with no title exceptions except for the Repurchase Permitted Exceptions. City will have the right to enforce the Repurchase Right - Commencement of Construction by specific performance in addition to all other legal and equitable remedies. Upon termination of the Repurchase Right - Commencement of Construction for any reason described herein and receipt of a written request from the Owner, City will execute and deliver in recordable form a notice of termination of the Repurchase Right - Commencement of Construction. The Repurchase Right - Commencement of Construction will run with the land and bind future owners of the Property but will automatically terminate in the event Commencement of Construction has occurred on the applicable portion of the Property on or before the Construction Commencement Date.

7. Liquidated Damages – Work Stoppage. Upon Commencement of Construction, Owner agrees to diligently and in good faith prosecute the construction of the Improvements to Dry-In Condition (the “**Dry-In Condition**”). If, following Commencement of Construction, the good faith and bona-fide construction of the Improvements ceases for a period of 45 or more consecutive days (a “**Delay Period**”), such event will be deemed an event of default hereunder and Owner will pay to City as liquidated damages the sum of \$1,000 per day for each day past the Delay Period which bona-fide construction does not occur (such amount, “**Liquidated Damages - Work Stoppage**”). The calculation of each potential Delay Period will be extended on a day for day basis for each Business Day of actual delay due to Force Majeure and City Caused Delays which would otherwise be within such Delay Period. City and Owner agree that the Liquidated Damages - Work Stoppage has been set as liquidated damages for such event because of the difficulty and uncertainty of determining actual damages for such event. The Liquidated Damages - Work Stoppage will be due and payable monthly on the 10th day of the month following the month in which they accrue and any unpaid Liquidated Damages - Work Stoppage which are not paid within 10 days of the date which they are due and payable will accrue interest at a per annum interest rate equal to the Delinquency Interest Rate. Upon termination of the Liquidated Damages – Work Stoppage provision (including payment of any Liquidated Damages – Work Stoppage) and receipt of a written request from the Owner, City will execute and deliver in recordable form a notice of termination of the Liquidated Damages – Work Stoppage. This provision will run with the land and bind future owners of the Property but will automatically terminate upon Dry-In Condition being achieved (but will not release Owner for any unpaid Liquidated Damages – Work Stoppage) or City's election to exercise the Repurchase Right – Work Stoppage.

8. Repurchase Right – Work Stoppage.

(a) Subject to all of the terms and conditions hereof and the financing and Mortgagee protection provisions of the MDA, in addition to the Liquidated Damages - Work Stoppage set forth in the previous section and the Liquidated Damages - Completion set forth in the following section, City hereby reserves the preferential and exclusive option (but not obligation) to repurchase the Property (the “**Repurchase Right - Work Stoppage**”) at the Repurchase Price under the circumstances contained in (b) below, which Repurchase Price is payable simultaneously with the reconveyance as described below.

(b) If the Owner Commences Construction, but such construction is ceased for a period of 90 or more consecutive days for any reason (such 90-day period, a “**Substantial Delay Period**”), such event will be deemed an event of default hereunder and City will be entitled to exercise its Repurchase Right - Work Stoppage if the Owner does not, in good faith, recommence such construction on or before the date which is 30 days following written notice by the City to the Owner and any Mortgagee of Owner of the City’s intent to exercise its Repurchase Right – Work Stoppage. The calculation of each potential Substantial Delay Period will be extended on a day for day basis for each Business Day of actual delay due to Force Majeure and City Caused Delays which would otherwise be within such Substantial Delay Period. It is the intention of the City and Owner that this Repurchase Right – Work Stoppage be exercisable if Owner fails to diligently and in good faith proceed to achieve Dry-In Condition of the Improvements on the Property. Accordingly, actions by Owner to continue construction on an intermittent basis (e.g., one day a week or one week every 90 days) to prevent exercise of the Repurchase Right – Work Stoppage will not prevent such exercise. If the option is exercised by City, the Owner will reconvey the Property to City not more than 120 days following the date of City’s notice by a deed in substantially the same form as this Special Warranty Deed, with no title exceptions except for the Repurchase Permitted Exceptions.

(c) City will have the right to enforce the Repurchase Right - Work Stoppage by specific performance in addition to all other legal and equitable remedies. If the Repurchase Right - Work Stoppage is not exercised within one year after the Substantial Delay Period, the Repurchase Right - Work Stoppage will automatically terminate and be of no further force and effect. Upon termination of this Repurchase Right - Work Stoppage provision for any reason described herein and receipt of a written request from the Owner, City will execute and deliver in recordable form a notice of termination of the Repurchase Right - Work Stoppage. The Repurchase Right - Work Stoppage will run with the land and bind future owners of the Property but will automatically terminate upon Dry-In Condition.

9. Liquidated Damages - Completion.

(a) Following Commencement of Construction, Owner agrees to diligently and in good faith prosecute the construction of the Improvements to Dry-In Condition on or before the date which is _____ [54 months following the MDA Commencement Date] (such date, the "**Dry-In Condition Date**").

(b) If the Dry-In Condition has not been achieved on or before the Dry-In Condition Date and the City has not exercised the Repurchase Right – Work Stoppage, such event will be deemed an event of default hereunder and Owner will pay to City, the sum of \$1,000 (the "**Liquidated Damages - Completion**") per day past the Dry-In Condition Date in which Dry-In Condition has not been achieved. The Dry-In Condition Date will be extended on a day for day basis for each Business Day of actual delay due to Force Majeure and City Caused Delays. City and Owner agree that the Liquidated Damages - Completion has been set as liquidated damages for such event because of the difficulty and uncertainty of determining actual damages for such event. The Liquidated Damages - Completion will be due and payable monthly on the 10th day of the month following the month in which they accrue and any unpaid Liquidated Damages - Completion which are not paid within 10 days of the date which they are due and payable will accrue interest at a per annum interest rate equal to the Delinquency Interest Rate.

(c) Upon termination this Liquidated Damages – Completion provision (including payment of any Liquidated Damages – Completion) and receipt of a written request from the Owner, City will execute and deliver in recordable form a notice of termination of the Liquidated Damages – Completion. This section will run with the land and bind future owners of the Property but will automatically terminate upon Dry-In Condition being achieved (but will not release Owner for any unpaid Liquidated Damages – Completion).

(d) If prior to achieving the Dry-In Condition, a Mortgagee acquires title to the Property through a foreclosure sale or deed in lieu of foreclosure, and in the reasonable judgment of such Mortgagee, the Dry-In Condition cannot be achieved by the Dry-In Condition Date, such Mortgagee shall propose in writing to City a new Dry-In Condition Date (together with evidence supporting such new date). If the proposed replacement Dry-In Condition Date is not approved by City (in its reasonable discretion) within 10 days following such written request, Mortgagee and City shall work together during the following 10 days to agree upon the Dry-In Condition Date. If at the expiration of such second 10 day period, the parties still do not agree on the Dry-In Condition Date, Mortgagee or City may request in writing (the "Arbitration Demand") that such issue ("Issue") be resolved by an Arbitrator through a binding arbitration process.

The arbitrator (whether one or three, the "Arbitrator") must be a professional with at least ten (10) years' experience in commercial construction related matters in the Austin, Texas area. If the parties do not agree upon the Arbitrator within 10 days of the

Arbitration Demand, each party shall appoint its own Arbitrator, the two Arbitrators shall appoint a third Arbitrator and the decision of the majority of the Arbitrators shall be binding. The parties shall share equally in the cost of the Arbitrator.

Within 15 days of an Arbitration Demand, each party shall submit to the Arbitrator its proposed Dry-In Condition Date and the materials that such party believes will be useful for the Arbitrator in deciding the Issue (the "Decision Materials"). The Arbitrator will make a determination in writing to both City and Mortgagee within 10 days of its receipt of the Decision Materials.

10. Reservation of Declaration. City is executing and encumbering, or has executed and encumbered, the Property with the Declaration and with respect to certain restrictive covenants executed in connection with the zoning of the Property (the "**Zoning Restrictive Covenants**"). The execution and encumbrance of the Property pursuant to the Declaration and the Zoning Restrictive Covenants is also deemed to be pursuant to a reservation of such rights hereunder and will be superior to any vendor's lien, deed of trust, mortgage, assignment and/or security interest which burdens the Property.

11. Estoppel. Upon 30 days' prior written notice and not more than twice in any 12-month period, the City agrees to deliver to any lender of Owner an estoppel certifying, in form and content reasonably acceptable to the City and such Owner, to the extent factually accurate, that neither the Repurchase Right – Commencement of Construction nor the Repurchase Right – Work Stoppage has been exercised. The estoppel may only be relied upon by the party requesting the estoppel 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 estoppel, and may not be relied upon by any person or entity, even if named in such estoppel, who knows or should know that the facts are other than as set forth in such estoppel.

12. Miscellaneous. If any term or provision hereof is declared by a court of competent jurisdiction to be illegal or invalid, such illegal or invalid term or provision shall not affect the balance of the terms and provisions hereof. If any action or suit is brought by reason of any breach of this Special Warranty Deed or any other dispute between the parties concerning this Special Warranty Deed, then the prevailing party shall be entitled to have and recover from the other party all costs and expenses of suit, including reasonable attorney's fees. This Special Warranty Deed shall be governed by and construed and enforced in accordance with the laws of the State of Texas. This Special Warranty Deed is to be deemed to have been prepared jointly by the parties hereto, and if any inconsistencies or ambiguities exist herein, they shall not be interpreted or construed against either party as the drafter. All paragraph headings are inserted for convenience only and shall not be used in any way to modify, limit, construe or otherwise affect this Special Warranty Deed. This Special Warranty Deed shall be binding upon and inure to the benefit of City and Seaholm and their respective heirs, successors, legal representatives and assigns.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, this Special Warranty Deed is executed by City on the date of acknowledgment set forth below to be effective as of the ____ day of _____, 20 ____.

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

By: _____
Name: _____
Title: _____

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on _____, 200____, by
_____, _____ of THE CITY
OF AUSTIN, a municipal corporation, on behalf of said municipal corporation.

Notary Public, State of Texas

(Printed name)

My Commission Expires:

[End Of Signature And Notary Blocks]

EXHIBIT E
TO MASTER DEVELOPMENT AGREEMENT

MANAGEMENT AGREEMENT

THIS MANAGEMENT AGREEMENT (this "**Agreement**") is made and entered into as of the _____ day of _____, 200__ (the "**Effective Date**"), by and between THE CITY OF AUSTIN, a Texas home rule city and municipal corporation ("**Owner**") and SEAHOLM POWER DEVELOPMENT, LLC, a Delaware limited liability company ("**Manager**").

WITNESSETH:

WHEREAS, Owner is the owner of an approximately 315 space parking garage located in Austin, Texas and described on Exhibit A attached hereto (the "**Property**").

WHEREAS, Owner desires to employ Manager as an independent contractor in the management and operation of the Property, whereby Manager shall have certain responsibilities and duties in connection with the operation, management, and supervision of the Property, and Manager desires to assume such responsibilities and duties upon the terms and conditions set forth in this Agreement; and

WHEREAS, the primary purpose of the Property is to provide parking for the office and retail mixed-use development adjacent to the Property known as the "**Seaholm Development**."

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained, the receipt and sufficiency of which are hereby acknowledged, Owner and Manager agree as follows:

ARTICLE I.
TERM OF AGREEMENT

The term of this Agreement shall commence on the Effective Date for a period of one year and thereafter shall be automatically renewed for annual periods of one year each, unless terminated pursuant to the terms hereof.

ARTICLE II.
DUTIES AND RIGHTS OF MANAGER

2.1 Appointment of Manager. Owner grants to Manager the exclusive right to supervise and direct the management, and operation of the Property, and Manager accepts and assumes the responsibilities and duties specified herein.

2.2 General Operation. Manager shall, subject to the limitations contained herein, operate the Property in a manner which is customary and usual in the operation of comparable facilities and shall provide such services as are customarily provided by managers of properties of comparable class and standing consistent with the Property's facilities in the Central Business District of Austin, Texas, and shall consult with Owner and keep Owner advised as to all policy matters affecting the Property. In addition to the other obligations of Manager set forth herein,

Manager shall render the following services and perform the following duties for Owner in a faithful, diligent and efficient manner:

(a) Maintain businesslike relations with the users of the Property (the "Users"). Complaints of a serious nature shall, after thorough investigation, be reported to Owner with appropriate recommendations.

(b) Collect all rents, charges and other fees (the "Rent") from the Users; and with Owner's consent, request, demand, collect, receive and receipt for any and all delinquent Rents which become due to Owner. With respect to any delinquencies in Rent beyond 60 days, Manager shall not file suit or take legal action except on behalf of and with prior written approval of Owner.

(c) To the extent practicable, full compliance by the Users with the terms and conditions of their respective lease, use or rental agreements (the "Rental Agreements") shall be secured, and to this end, Manager shall see that all Users are informed with respect to the rules, regulations and notices for the Property as may be promulgated by Owner from time to time. Manager shall be expected, for the account and at the expense of Owner, to perform such other acts and deeds as are reasonable, necessary and proper in the discharge of its duties under this Agreement.

(d) Furnish to Owner, if requested, copies of all correspondence exchanged in connection with the management and operation of the Property.

(e) Maintain a current inventory of all personal property, if any, located in or used in connection with the Property.

(f) Obtain and maintain all licenses, permits and certificates required by federal, state, and/or local authorities for the operation, maintenance and business of the Property.

(g) Use good faith efforts to select and to cause its agents and contractors to comply with the Owner's Minority and Women Business Enterprise ordinance and retain a third party consultant specializing in outreach to Minority/Women Business Enterprise contractors. Otherwise, Manager shall have full responsibility and authority in hiring, discharging, training, supervising and paying the management staff (i.e. manager, assistant manager, and other personnel necessary to be employed by Manager in order to operate the Property). Owner will not be required to directly pay salaries and payroll expenses of personnel of Manager. Manager shall supervise through said management staff the work, hiring and discharge of all independent contractors performing services in or about the Property. Said independent contractors shall not be deemed to be employees of Manager or Owner and shall carry their own general and automobile liability insurance coverage. Manager shall be responsible for obtaining all proper documentation from said independent contractors, and any increase in Manager's workers compensation premiums resulting from failure to obtain such documentation shall be the sole expense of Manager.

(h) Negotiate arrangements for utilities, maintenance, security protection, and any other services which are provided for comparable parking garages of similar quality.

Contracts which can be terminated with 30 days prior notice do not require Owner's written approval. Manager shall also place purchase orders for such equipment, tools, appliances, materials and supplies as are necessary to properly maintain the Property. When taking bids or issuing purchase orders, Manager shall use commercially reasonable efforts to secure for and credit to Owner any discounts, commissions and rebates obtainable as a result of such purchases. Manager shall at all times make purchases and (where necessary or desirable) let bids for necessary labor and materials at the lowest possible cost as in its judgment is consistent with good quality workmanship and service standards. For any major expenditure (defined as a single expenditure in excess of \$5,000), at least two competitive bids shall be submitted in writing by Manager to Owner. Manager shall not incur any obligation to any person or entity in which Manager, its officers, agents, employees, or family members of any of the former, has a financial interest, at a price or fee higher than that which would have been charged as a result of bona fide, arms-length negotiations for goods or services of comparable quality, and shall disclose to Owner all non-arms-length or related-party transactions.

(i) Subject to the limitations and requirements set forth herein, shall do or cause to be done at Owner's expense, all necessary or desirable repairs, interior and exterior cleaning, painting and decorating, alterations, replacements, improvements and other normal maintenance and repair work in and to the Property as are customarily in the operation of parking garages of similar quality and utility; provided, however, that no alterations, additions or improvements involving a fundamental change in the character of the building or constituting a major new construction program (the expenses of which will exceed \$5,000) shall be made without the prior written approval of Owner. No expenditures in excess of the Budget (as defined in Section 5.2) which will be approved in advance by Owner may be made for any purpose under this Agreement without the prior written approval of Owner; provided, however, that emergency repairs involving manifest danger to life or substantial damage to property and immediately necessary for the preservation or the safety of the Property, or for the safety of the Users, may be made by Manager, provided such emergency repairs shall be made only to the extent necessary to obviate the manifest danger to life or substantial damage to property, and immediate continuous, diligent and reasonable efforts must be made by Manager to notify Owner of the existence of such situation and to obtain Owner's written approval and consent to any further action.

(j) Notify Owner promptly upon receipt of any notice, demand, or similar communication charging or claiming a default with respect to any obligation of Owner. Manager shall comply with all statutes, laws, rules, regulations, requirements, orders, notices, and ordinances of any government or governmental agency having jurisdiction over the Property and with the requirements of any insurance companies covering any risks relating to the Property. If the cost of compliance with any such statute or law exceeds \$1,000 in any instance, Manager shall promptly obtain Owner's written approval before authorizing or making any such expenditure. Manager's responsibilities shall be limited to funds made available by Owner to cause such compliance.

(k) In addition to the other notices it is required to give pursuant to this Agreement, give written notice to Owner of the occurrence of any of the following events

within 3 business days of said occurrence: the filing, or the threat to file, any mechanics' or materialmen's lien materially affecting the Property; any breach of contract by any contractor, subcontractor, service company, or material supplier, which, in the reasonable opinion of the Manager is of material significance; any labor dispute or work stoppage of a material nature involving any contractor or subcontractor; any rejection of any item of work by any building inspector, authorized government authority or public utility which results in total, substantial or prolonged (i.e., more than 3 days) work stoppage; and any casualty loss.

ARTICLE III. MANAGEMENT FEE

The Management Fee (herein so called) shall be equal to an amount equal to the greater of (a) an annual fee of \$_____, or (b) of 3% of the collected aggregate Rents of the Property for the applicable monthly accounting period. For purposes of this Agreement, an "applicable monthly accounting period" means the period encompassing a full calendar month as designated by Owner. Such payment shall be made by Manager from the Rents and other revenues before distributing any sums to Owner hereunder. For purposes of this Section, "Rents" will be deemed not to include: (i) cancellation or penalty payments; (ii) late payment charges or default interest; (iii) rental payable but not received by Owner by reason of concession; (iv) deposits such as security, utility and/or for damages until the forfeiture of any deposit and its payment to Owner; (v) interest on bank accounts; (vi) proceeds from the sale of any part or all, or refinancing of the Property; (vii) insurance dividends or proceeds; (viii) condemnation awards; and (ix) any trade discounts and/or rebates received in connection with the operation and maintenance of the Property and/or purchase of personal property; and/or (x) such other additional income Owner and Manager mutually agree to eliminate (there being no obligation on the part of Manager or Owner to agree to any such elimination).

ARTICLE IV. PROCEDURE FOR HANDLING RECEIPTS AND OPERATING CAPITAL

4.1 Bank Deposits. It is understood that Manager for the benefit of Owner will be collecting Rents and paying the expenses for the operation of the Property. All monies, except security deposits or other amounts paid as deposits received by Manager for or on behalf of Owner in connection with the operation and management of the Property, shall be deposited by Manager in an separate account established at a bank approved by Owner (the "**Bank**"), and such monies shall not be commingled by Manager with any funds belonging to or held on behalf of anyone other than Owner. All such deposits will constitute the property of the Owner and will not be subject to any lien, security interest, assignment or setoff rights of Manager's lender(s).

4.2 Disbursement of Deposits. Manager for the benefit of Owner shall disburse and pay all funds on deposit in such amounts and at such times as the same are required in connection with the ownership, maintenance, and operation of the Property on account of:

(a) All previously approved expenses and costs in connection with the operation of the Property, including Manager's fees, all expenditures for repairs and maintenance, for capital improvements, legal fees, utilities, services, and concessions at

the Property, and any and all other expenditures provided in this Agreement, shall be paid by Manager for the benefit of Owner;

(b) All taxes, insurance and similar items, including those items required to be paid under the terms of any mortgage affecting the Property will be paid by Manager for the benefit of Owner if such amounts are included in the Budget or if Owner otherwise makes funds available therefor.

On the 15th day of each month during the term of this Agreement or at such other time as requested by Owner, Manager will disburse to Owner upon the written direction of Owner, all funds remaining in such bank account after payment of all expenses and fees provided hereunder for the preceding calendar month, less an amount for working capital equal to that provided for in the Budget. In the event the amounts in the bank account are less than the approved expenses payable and working capital, if any, provided hereunder, the Manager shall notify Owner thereof, and Owner shall deposit into said account an amount not less than such deficiency.

4.3 Manager's Obligations Limited. Manager shall not be obligated to make any advances to or for the account of Owner or to pay any sum (except as specifically provided above) except out of funds held in any account for the benefit of Owner, nor shall Manager be obligated to incur any liability or obligation for the account of Owner or the Property without written assurance that the necessary funds for the discharge thereof shall be provided by Owner.

4.4 Authorized Signatories. Designated officers and employees of Manager, indicated to Owner in writing and acceptable to Owner, shall be the authorized signatories on the bank account established by Manager pursuant to this Article and shall have authority to make disbursements from such account. Manager shall cause all persons who are authorized signatories or who in any way handle funds for the Property to be bonded in an amount acceptable to Owner unless such requirement as to any person or persons is waived in writing by Owner. Owner shall at all times be a signatory to such account and have the right jointly or severally to draw upon the account. To the extent Owner draws funds from the account other than for expenses permitted by the Budget, Owner will assume the liability (to the extent of such withdrawal) for all existing financial obligations for the Property which were incurred by the Manager pursuant to, and in accordance with, the terms of this Agreement.

ARTICLE V. ACCOUNTING

5.1 Books and Records. Manager for the benefit of Owner shall keep and, on behalf of Owner, shall supervise and direct the keeping of a comprehensive system of office records, books and accounts on a cash basis and in a manner reasonably satisfactory to Owner, which records shall be subject to examination by Owner, or its authorized agent, attorneys and accountants at all reasonable business hours upon not less than 24 hours notice to Manager. Manager shall preserve all records, books, and accounts for a period of five years and at the end of such period shall deliver or make available to Owner such records. All such records shall, at all times, be the property of Owner.

5.2 Budget. Manager shall submit for written approval of Owner, not later than 30 days prior to the first day of each calendar year, a proposed Budget with respect to the operation and management of the Property for the ensuing calendar year. Such budget, as approved as set forth in this Agreement, is herein called the "**Budget.**" If Owner, in Owner's sole and absolute judgment, disapproves of any proposed Budget submitted by Manager, Owner shall give Manager written notice thereof, in which event Manager shall (i) make all revisions thereto which Owner shall direct and (ii) resubmit the revised Budget to Owner for its written approval. In the absence of such written notice of disapproval within 30 days after delivery of the Budget to Owner, the Budget shall be deemed to have been approved by Owner as of the first day of the first month of such calendar year until the date, if any, that Owner delivers to Manager written notice of disapproval of the Budget. Each approved Budget shall constitute the control instrument under which Manager shall operate for the calendar year covered thereby. Approval of the Budget shall be deemed to be approval by Owner of all items specified therein. Subject to Section 2.2(i) hereof, Manager shall not incur, or permit to be incurred, expenses in any approved Budget (excluding utility expenses, general real estate taxes, insurance premiums, and emergency expenses) in excess of the amount set forth in the Budget for any single expense classification. Subject to Section 2.2(i) hereof, there shall be no variance from any approved Budget without the prior written consent of Owner. Owner reserves the right to modify and/or update the Budget periodically throughout the calendar year; provided that such modification or update is without prejudice to any expense incurred or commitment made by Manager in accordance herewith prior to such change or update that is in compliance with the Budget in effect at the time such expense is incurred or commitment made.

5.3 Periodic Statements. On or before 15 days following the end of each month during the term of this Agreement, Manager shall deliver or cause to be delivered to Owner (i) a summary of gross income (including all income, receipts, proceeds or revenue pertaining to the Property) and disbursements for the preceding calendar month and the calendar year to date; (ii) a rental delinquency schedule; (iii) a monitoring statement comparing Budget items to actual expenses incurred; (iv) copies of bank statements and bank reconciliations for all accounts held for or on behalf of Property and/or Owner; and (v) a balance sheet showing cash on hand and in bank accounts, cash advances from Owner and cash distributions to Owner. Within 90 days after the end of each calendar year, Manager will deliver or cause to be delivered to Owner, at Owner's expense, an income and expense statement showing the results of operation of the Property during the preceding calendar year, in a form reasonably acceptable to Owner. At Owner's request and expense, Manager shall prepare financial reports and perform a bookkeeping service in addition to those provided herein including but not limited to the preparation of Internal Revenue Service Form 1099 Misc. for all contractors rendering services to the Property.

5.4 Audit. At the option and expense of Owner, an annual audit of the records may be requested, and Manager shall reasonably cooperate with the auditors at no additional charge to Owner and shall make all books and records reasonably available.

ARTICLE VI.
GENERAL COVENANTS OF OWNER AND MANAGER

6.1 Operating Expenses. Owner shall be solely liable for the costs and expenses of maintaining and operating the Property, and shall pay (subject to the limitations and requirements set forth herein) all such costs and expenses.

6.2 Time Devoted. Manager shall devote such of its time, attention and business capacity to the management and operation of the Property as may be necessary in order for Manager to fully comply with the terms of this Agreement; provided, however, that nothing contained herein shall restrict the right of Manager, its officers, directors and shareholders, to own, operate and/or manage other properties that compete with or might be competitive with the Property.

6.3 Covenants of Owner. Owner agrees that, subject to the terms and conditions of this Agreement, Manager shall be the exclusive management agent for the Property during the term of this Agreement.

6.4 Parking Rates. Manager shall not charge parking rates which are lower than the current list of parking rates from time to time approved by Owner. The parking rates must be generally consistent with the parking rates charged for similar properties.

ARTICLE VII.
PAYMENTS OF EXPENSES

7.1 Permitted Costs. Any and all costs necessary to the management, control, operation, direction, and maintenance of the Property which are covered within the Budget or which may exceed the Budget but which are approved by Owner or otherwise authorized under this Agreement (except as specifically excluded by Section 7.2) shall be paid directly from the Rents (collectively, the "**Permitted Costs**"). Subject to applicable budgetary limitations set forth in this Agreement, such costs include:

(a) Costs of the gross salary and all compensation or a pro rata share thereof (to include, payroll taxes, insurance, workers' compensation, if applicable, and other benefits, bonuses and burdens, and an allocation of central support charges for payroll processing, personnel and training) of the staff and a reasonable allocation of said costs of any off-site staff;

(b) An appropriate allocation of all costs for general accounting, control and financial reporting services for Manager's accounting office (whether located on-site and/or off-site) which may include gross salary and compensation, rent, payroll taxes, and all other bonuses, benefits and burdens;

(c) Cost of all business forms, papers, ledgers, and all other supplies and equipment used in the on-site or off-site Manager's office which are related to the Property;

(d) Costs to correct any violation of federal, state and municipal laws, ordinances, regulations and orders relative to the leasing, use, repair and maintenance of the Property, or relative to the rules, regulations or orders of the local board of fire underwriters or other similar body, provided that such cost is not a result of the gross negligence or willful misconduct of Manager or its agents or employees;

(e) Actual costs of making all repairs, decorations and alterations to the Property;

(f) Costs incurred in connection with all service agreements;

(g) Costs of collection of delinquent rentals;

(h) Costs of capital expenditures;

(i) Legal fees of attorneys, provided such attorneys have been approved by Owner in writing in advance of retention;

(j) Costs of an on-site management office, if applicable;

(k) All other out-of-pocket costs and expenses reasonably incurred by Manager in performing its duties hereunder; and

(l) All other costs and expenses for which Owner is obligated to reimburse Manager as provided for in this Agreement.

7.2 Not Permitted Costs. All costs incurred by or on behalf of Manager as a result of Manager's willful misconduct, fraud, bad faith, gross negligence or breach of this Agreement shall be at the sole cost and expense of Manager and shall not be reimbursed by Owner.

ARTICLE VIII. TERMINATION

8.1 Termination. Either party may terminate this Agreement, for cause or without cause, at any time upon 30 days prior written notice to the other party. In case of termination for cause, any compensation due Manager shall be subject to Owner's offset rights against such compensation concerning any amounts owed by Manager to Owner hereunder or otherwise. In case of termination without cause, Manager shall be entitled to all compensation accrued or earned prior to termination and remaining unpaid. Upon termination, all books, records, Rental Agreements, rent rolls and other properties and operating and maintenance information regarding the Property (including those stored in computers) must be delivered to Owner; provided Manager may keep a copy thereof for its own records.

8.2 Expiration of Term. Upon the expiration of the term hereof pursuant to ARTICLE I hereof, unless sooner terminated pursuant to Section 8.1, Manager shall deliver to

Owner all funds, records and other property of Owner then in possession or control of Manager; provided Manager may keep a copy thereof for its own records.

8.3 Following Termination. If this Agreement is terminated, the City shall take appropriate steps to restrict the use and/or management of the Property to ensure that the primary purpose of the Property is to provide parking for the Seaholm Development.

ARTICLE IX. INSURANCE

9.1 Manager's Insurance Coverage. Manager shall provide and maintain, at Manager's sole cost and expense (subject to reimbursement as provided herein), so long as this Agreement is in force, workers compensation insurance, including a waiver of subrogation in favor of Owner, covering all employees of Manager performing work in respect to the Property operations, as well as comprehensive general liability and automobile liability insurance, with minimum limits of \$1,000,000 per occurrence. Notwithstanding anything contained herein, Manager shall at all times during the term of this Agreement carry automobile liability and workers compensation insurance covering all of Manager's employees engaged in the management and operation of the Property and shall provide Owner with a certificate of insurance evidencing such coverage. Proof of such insurance shall be furnished to Owner by means of a certificate of insurance showing at least 30 days notice of cancellation. Each such policy of insurance shall name Owner and such other parties and/or entities specified by Owner as named insured, additional named insured, additional insured, or such other designation specified by Owner in each instance. Manager shall promptly investigate and report to Owner and the insurance company involved all accidents, claims for damage relating to the ownership, operation, and maintenance of the Property, and any damage or any and all claims against insurance companies that may be covered by any such policies.

Owner and Manager hereby waive any rights against the other party arising out of loss or damage to the Property to the extent that such loss or damage is covered or could be covered by a "special form" property insurance policy, **EVEN IF SUCH LOSS OR DAMAGE IS CAUSED BY THE FAULT OR NEGLIGENCE OF THE INDEMNIFIED PARTY OR ITS EMPLOYEES, AGENTS OR INVITEES AND EVEN IF THE INDEMNIFIED PARTY WOULD OTHERWISE BE STRICTLY LIABLE UNDER APPLICABLE LAW.** Each party agrees to give its respective insurance company written notification of the terms of the mutual waiver contained in this paragraph, and to have said insurance policy properly endorsed, if necessary, to prevent the invalidation of said insurance coverage by reason of said waiver (provided that if Manager is procuring and maintaining property insurance for the Property on behalf of the Owner and at Owner's expense, then Manager shall give such notice to the insurer of the Property).

ARTICLE X. LIABILITY OF MANAGER

Manager shall not be responsible to Owner for any loss which may occur by reason of depreciation in the value of the Property, or any other loss or damage which may occur to Owner, except that Manager shall be liable to Owner for fraud, misrepresentation, negligence or

intentional misfeasance in the management of the Property by Manager or any of its employees or agents. Manager shall indemnify and hold harmless Owner from and against any and all claims arising from any fraud, misrepresentation, intentional misfeasance or negligence of Manager or any Manager's employees or agents. Owner agrees to maintain general liability insurance of at least \$1,000,000 per occurrence for the Property and no less than \$2,000,000 commercial umbrella insurance, and to cause Manager to be named as an additional insured under such policy.

ARTICLE XI. MISCELLANEOUS PROVISIONS

11.1 Governing Law. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Texas. Manager shall notify Owner promptly of any violation which comes to Manager's attention and which by nature is Owner's responsibility under this Agreement (zoning, fire, etc.). Manager shall not accept service of process for Owner.

11.2 Notices. Any notice or communication hereunder must be in writing, and may be given by certified mail, return receipt requested, and if given by certified mail, same shall be deemed to have been given and received 3 days after a certified letter containing such notice, properly addressed, with postage prepaid, return receipt requested, is deposited in an official depository under the regular care and custody of the United States mail; and if given otherwise than by registered mail, it shall be deemed to have been given when delivered to and actually received by the party to whom it is addressed. Such notices or communications shall be given to the parties hereto at their following address:

Manager: Seaholm Power 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 Power Development, LLC
 c/o Centro Partners LLC
 823 Congress Avenue, Suite 800
 Austin, Texas 78701
 Attention: Kent Collins

Owner: 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

Any party hereto may at any time, by giving 10 days written notice to the other party hereto, designate any other address in substitution of the foregoing address to which such notice or communication shall be given.

11.3 Severability. If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each other term, covenant or condition of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law.

11.4 No Joint Venture or Partnership. Owner and Manager hereby renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making Manager and Owner joint venturers or partners. In no event shall Manager have any obligation or liability whatsoever with respect to any debts, obligations or liabilities of Owner. Manager is not authorized to make any representations or warranties regarding the Property or to bind Owner to any contract.

11.5 Modification. This Agreement may be amended or modified only by a written instrument executed by Manager and Owner.

11.6 Attorney's Fees. Should either party employ an attorney or attorneys to enforce any of the provisions hereof or to protect its interest in any manner arising under this Agreement, or to recover damages for the breach of this Agreement, the non-prevailing party in any action (the finality of which is not legally contested) agrees to pay to the prevailing party all reasonable costs, damages and expenses, including reasonable attorney's fees, expended or incurred in connection therewith.

11.7 Total Agreement. This Agreement is a total and complete integration of any and all undertakings existing between Manager and Owner concerning the management of the Property and supersedes any prior oral or written agreements, promises or representations between them.

11.8 Approvals and Consents. Anything contained herein to the contrary notwithstanding, any authorizations, approvals, or consents required of Owner herein for the

operation and management of the Property, including but not limited to the expenditure of funds and the execution of contracts, must be communicated in writing by Owner, it being expressly understood and agreed that the parties hereto shall not be bound by any oral agreement. Unless expressly stated otherwise herein to the contrary, any approval, agreement, clarification, determination, consent, waiver, estoppel certificate, estimate or joinder by the Owner 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.

11.9 Assignments. Owner shall have the unlimited right of assignment of any or all of its right, title and interest in and to this Agreement to any party that acquires the Property from Owner. Inasmuch as Owner is looking specifically to Manager for the performance and fulfillment of the duties and obligations of Manager hereunder, Manager shall not have the right to assign, transfer and convey any of its right, title or interest hereunder, except by delegation to its employees and any independent contractors who would normally perform and fulfill such duties and obligations for or on behalf of Manager. Notwithstanding the foregoing, if the Manager transfers its interest in the ground lease concerning that portion of the Seaholm Development known as the "power plant" to another operator, this Agreement shall also be contemporaneously assigned.

11.10 Headings. The Article and Section headings throughout this Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

[END OF TEXT-SIGNATURES ON FOLLOWING PAGE]

EXHIBIT F
TO MASTER DEVELOPMENT AGREEMENT

Proforma

[See Attached]

Exhibit_F_
Total Project Proforma
Seaholm Master Development Agreement

Totals	Nov-08	Dec-08	Jan-09	Feb-09	Mar-09	Apr-09	May-09	Jun-09
Street Expenditures	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Street Incentive Payments	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Plaza Expenditures	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Plaza Incentive Payments	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Transfer Price Payments	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Transfer Price Incentive Payments	\$2,915,203	\$2,915,203	\$2,915,203	\$2,915,203	\$2,915,203	\$2,915,203	\$2,915,203	\$2,915,203
20% at Office 'Dried-In'	\$583,041	\$0	\$0	\$0	\$0	\$0	\$0	\$0
20% at Office Cert. of Occ.	\$583,041	\$0	\$0	\$0	\$0	\$0	\$0	\$0
40% at Office 50% Lease-Up	\$1,166,081	\$0	\$0	\$0	\$0	\$0	\$0	\$0
20% at Hotel Opening	\$583,041	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Power Plant Rehab Incentive	\$4,500,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0
33% at Power Plant 'Dry-In'	\$1,500,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0
33% at Power Plant Cert. of Occ.	\$1,500,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0
33% at Power Plant 50% Lease-Up	\$1,500,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Reimbursable Fees	TBD							
Reimbursable Fees Incentive	TBD							
Offsite Parking Garage Expenditures	TBD							
Offsite Parking Garage Reimbursements	TBD							
Building Cash Flows (excluding Transfer Price payments)								
Seaholm Power Building	(\$457,283)	(\$457,283)	(\$457,283)	(\$457,283)	(\$457,283)	(\$457,283)	(\$457,283)	(\$457,283)
Office Building	(\$237,360)	(\$237,360)	(\$237,360)	(\$237,360)	(\$237,360)	(\$237,360)	(\$237,360)	(\$237,360)
CardoHotel Tower	(\$1,073,918)	(\$1,073,918)	(\$1,073,918)	(\$1,073,918)	(\$1,073,918)	(\$1,073,918)	(\$1,073,918)	(\$1,073,918)
Total Building Cash Flows	(\$1,768,562)	(\$1,768,562)	(\$1,768,562)	(\$1,768,562)	(\$1,768,562)	(\$1,768,562)	(\$1,768,562)	(\$1,768,562)
TOTAL PROJECT CASH FLOW	\$58,503,018	\$58,503,018	\$58,503,018	\$58,503,018	\$58,503,018	\$58,503,018	\$58,503,018	\$58,503,018

**Exhibit_F_
Total Project Proforma
Seaholm Master Development Agreement**

Totals	Jul-09	Aug-09	Sep-09	Oct-09	Nov-09	Dec-09	Jan-10	Feb-10	Mar-10	Apr-10	May-10	Jun-10
Street Expenditures	\$0	(\$840,000)	(\$840,000)	(\$840,000)	(\$840,000)	(\$840,000)	\$0	\$0	\$0	\$0	\$0	\$0
Street Incentive Payments	\$0	\$0	\$840,000	\$840,000	\$840,000	\$840,000	\$840,000	\$0	\$0	\$0	\$0	\$0
Plaza Expenditures	(\$632,917)	(\$632,917)	(\$632,917)	(\$632,917)	(\$632,917)	(\$632,917)	\$0	\$0	\$0	\$0	\$0	\$0
Plaza Incentive Payments	\$0	\$349,370	\$349,370	\$349,370	\$349,370	\$349,370	\$349,370	\$0	\$0	\$0	\$0	\$0
Transfer Price Payments	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Transfer Price Incentive Payments	\$0	\$0	\$0	\$0	\$0	\$583,041	\$0	\$0	\$0	\$0	\$0	\$0
20% at Office 'Dried-In'	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
20% at Office Cert. of Occ.	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$583,041	\$0	\$0
40% at Office 50% Lease-Up	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
20% at Hotel Opening	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Power Plant Rehab Incentive	\$4,500,000	\$0	\$0	\$0	\$0	\$1,500,000	\$0	\$0	\$0	\$0	\$0	\$0
33% at Power Plant 'Dry-In'	\$1,500,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$1,500,000	\$0	\$0
33% at Power Plant Cert. of Occ.	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
33% at Power Plant 50% Lease-Up	\$1,500,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Reimbursable Fees	TBD											
Reimbursable Fees Incentive	TBD											
Offsite Parking Garage Expenditures	TBD											
Offsite Parking Garage Reimbursements	TBD											
Building Cash Flows (excluding Transfer Price payments)												
Seaholm Power Building	(\$1,095,992)	(\$1,095,992)	(\$1,095,992)	(\$1,095,992)	(\$1,095,992)	(\$1,095,992)	(\$1,095,992)	(\$1,095,992)	(\$1,095,992)	(\$1,095,992)	(\$1,095,992)	(\$1,095,992)
Office Building	(\$824,105)	(\$824,105)	(\$824,105)	(\$824,105)	(\$824,105)	(\$824,105)	(\$824,105)	(\$824,105)	(\$824,105)	(\$824,105)	(\$824,105)	(\$824,105)
Condo/Hotel Tower	(\$3,201,788)	(\$3,201,788)	(\$3,201,788)	(\$3,201,788)	(\$3,201,788)	(\$3,201,788)	(\$3,201,788)	(\$3,201,788)	(\$3,201,788)	(\$3,201,788)	(\$3,201,788)	(\$3,201,788)
Total Building Cash Flows	(\$5,121,885)	(\$5,121,885)	(\$5,121,885)	(\$5,121,885)	(\$5,121,885)	(\$5,121,885)	(\$5,121,885)	(\$5,121,885)	(\$5,121,885)	(\$5,121,885)	(\$5,121,885)	(\$5,121,885)
TOTAL PROJECT CASH FLOW	(\$5,754,801)	(\$6,245,431)	(\$5,405,431)	(\$5,405,431)	(\$5,405,431)	(\$3,322,391)	(\$3,932,515)	(\$5,121,885)	(\$5,121,885)	(\$3,038,844)	(\$5,121,885)	(\$5,121,885)

**Exhibit F_
Total Project Proforma
Seaholm Master Development Agreement**

	Totals	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11
Street Expenditures		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Street Incentive Payments	(\$4,200,000) \$4,200,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Plaza Expenditures		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Plaza Incentive Payments	(\$3,797,500) \$2,096,220	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Transfer Price Payments		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Transfer Price Incentive Payments	(\$2,915,203) \$2,915,203	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
20% at Office 'Dried-In'	\$583,041	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
20% at Office Cert. of Occ.	\$583,041	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
40% at Office 50% Lease-Up	\$1,166,081	\$0	\$0	\$1,166,081	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
20% at Hotel Opening	\$583,041	\$0	\$0	\$0	\$0	\$583,041	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Power Plant Rehab Incentive		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
33% at Power Plant 'Dry-In'	\$4,500,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
33% at Power Plant Cert. of Occ.	\$1,500,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
33% at Power Plant 50% Lease-Up	\$1,500,000	\$0	\$0	\$0	\$1,500,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Reimbursable Fees	TBD												
Reimbursable Fees Incentive	TBD												
Offsite Parking Garage Expenditures	TBD												
Offsite Parking Garage Reimbursements	TBD												
Building Cash Flows (excluding Transfer Price payments)		(\$45,276)	(\$45,276)	(\$45,276)	(\$45,276)	(\$45,276)	(\$45,276)	(\$45,276)	(\$45,276)	(\$45,276)	(\$45,276)	(\$45,276)	(\$45,276)
Seaholm Power Building	\$11,351,849	(\$22,959)	(\$22,959)	(\$22,959)	(\$22,959)	(\$22,959)	(\$22,959)	(\$22,959)	(\$22,959)	(\$22,959)	(\$22,959)	(\$22,959)	(\$22,959)
Office Building	\$16,409,927	\$959,262	\$959,262	\$959,262	\$959,262	\$959,262	\$959,262	\$959,262	\$959,262	\$959,262	\$959,262	\$959,262	\$959,262
Condo/Hotel Tower	\$27,942,523	\$891,026	\$891,026	\$891,026	\$891,026	\$891,026	\$891,026	\$891,026	\$891,026	\$891,026	\$891,026	\$891,026	\$891,026
Total Building Cash Flows	\$55,704,299	\$891,026	\$891,026	\$891,026	\$891,026	\$891,026	\$891,026	\$891,026	\$891,026	\$891,026	\$891,026	\$891,026	\$891,026
TOTAL PROJECT CASH FLOW	\$58,503,018	\$891,026	\$891,026	\$2,057,107	\$2,391,026	\$1,474,067	\$891,026	\$891,026	\$891,026	\$891,026	\$891,026	\$891,026	\$891,026

Exhibit_F_
Total Project Proforma
Seaholm Master Development Agreement

Totals	Jul-11	Aug-11	Sep-11	Oct-11	Nov-11	Dec-11	Jan-12	Feb-12	Mar-12	Apr-12	May-12	Jun-12
Street Expenditures	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Street Incentive Payments	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Plaza Expenditures	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Plaza Incentive Payments	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Transfer Price Payments	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Transfer Price Incentive Payments	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
20% at Office 'Dried-In'	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
20% at Office Cert. of Occ.	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
40% at Office 50% Lease-Up	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
20% at Hotel Opening	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Power Plant Rehab Incentive	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
33% at Power Plant 'Dry-In'	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
33% at Power Plant Cert. of Occ.	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
33% at Power Plant 50% Lease-Up	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Reimbursable Fees	TBD											
Reimbursable Fees Incentive	TBD											
Offsite Parking Garage Expenditures	TBD											
Offsite Parking Garage Reimbursements	TBD											
Building Cash Flows (excluding Transfer Price payments)												
Seaholm Power Building	\$136,244	\$136,244	\$136,244	\$136,244	\$136,244	\$136,244	\$136,244	\$136,244	\$136,244	\$136,244	\$136,244	\$136,244
Office Building	\$137,248	\$137,248	\$137,248	\$137,248	\$137,248	\$137,248	\$137,248	\$137,248	\$137,248	\$137,248	\$137,248	\$137,248
Condo/Hotel Tower	\$221,812	\$221,812	\$221,812	\$221,812	\$221,812	\$221,812	\$221,812	\$221,812	\$221,812	\$221,812	\$221,812	\$221,812
Total Building Cash Flows	\$495,304	\$495,304	\$495,304	\$495,304	\$495,304	\$495,304	\$495,304	\$495,304	\$495,304	\$495,304	\$495,304	\$495,304
TOTAL PROJECT CASH FLOW	\$495,304	\$495,304	\$495,304	\$495,304	\$495,304	\$495,304	\$495,304	\$495,304	\$495,304	\$495,304	\$495,304	\$495,304

**Exhibit F -
Total Project Proforma
Seaholm Master Development Agreement**

Totals	Jul-12	Aug-12	Sep-12	Oct-12	Nov-12	Dec-12	Jan-13	Feb-13	Mar-13	Apr-13	May-13	Jun-13
Street Expenditures												
Street Incentive Payments	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Plaza Expenditures												
Plaza Incentive Payments	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Transfer Price Payments												
Transfer Price Incentive Payments	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
20% at Office 'Dried-In'	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
20% at Office Cont. of Occ.	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
40% at Office 50% Lease-Up	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
20% at Hotel Opening	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Power Plant Rehab Incentive												
33% at Power Plant 'Dry-In'	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
33% at Power Plant Cont. of Occ.	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
33% at Power Plant 50% Lease-Up	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Reimbursable Fees												
Reimbursable Fees Incentive	TBD											
Offsite Parking Garage Expenditures												
Offsite Parking Garage Reimbursements	TBD											
Building Cash Flows (excluding Transfer Price payments)												
Seaholm Power Building	\$140,610	\$140,610	\$140,610	\$140,610	\$140,610	\$140,610	\$140,610	\$140,610	\$140,610	\$140,610	\$140,610	\$140,610
Office Building	\$141,379	\$141,379	\$141,379	\$141,379	\$141,379	\$141,379	\$141,379	\$141,379	\$141,379	\$141,379	\$141,379	\$141,379
Control/Hotel Tower	\$252,561	\$252,561	\$252,561	\$252,561	\$252,561	\$252,561	\$252,561	\$252,561	\$252,561	\$252,561	\$252,561	\$252,561
Total Building Cash Flows	\$534,550	\$534,550	\$534,550	\$534,550	\$534,550	\$534,550	\$534,550	\$534,550	\$534,550	\$534,550	\$534,550	\$534,550
TOTAL PROJECT CASH FLOW	\$534,550	\$534,550	\$534,550	\$534,550	\$534,550	\$534,550	\$534,550	\$534,550	\$534,550	\$534,550	\$534,550	\$534,550

Exhibit_F_
Total Project Proforma
Seaholm Master Development Agreement

Totals	Jul-13	Aug-13	Sep-13	Oct-13	Nov-13	Dec-13	Jan-14	Feb-14	Mar-14	Apr-14	May-14	Jun-14
Street Expenditures	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Street Incentive Payments	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Plaza Expenditures	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Plaza Incentive Payments	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Transfer Price Payments	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Transfer Price Incentive Payments	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
20% at Office 'Dried-In'	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
20% at Office Cert. of Occ.	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
40% at Office 50% Lease-Up	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
20% at Hotel Opening	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Power Plant Rehab Incentive	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
33% at Power Plant 'Dry-In'	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
33% at Power Plant Cert. of Occ.	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
33% at Power Plant 50% Lease-Up	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Reimbursable Fees	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Reimbursable Fees Incentive	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Offsite Parking Garage Expenditures	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Offsite Parking Garage Reimbursements	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Building Cash Flows (excluding Transfer Price payments)	\$145,113	\$145,113	\$145,113	\$145,113	\$145,113	\$145,113	\$145,113	\$145,113	\$145,113	\$145,113	\$145,113	\$145,113
Seaholm Power Building	\$145,634	\$145,634	\$145,634	\$145,634	\$145,634	\$145,634	\$145,634	\$145,634	\$145,634	\$145,634	\$145,634	\$145,634
Office Building	\$289,377	\$289,377	\$289,377	\$289,377	\$289,377	\$289,377	\$289,377	\$289,377	\$289,377	\$289,377	\$289,377	\$289,377
Condo/Hotel Tower	\$580,124	\$580,124	\$580,124	\$580,124	\$580,124	\$580,124	\$580,124	\$580,124	\$580,124	\$580,124	\$580,124	\$580,124
Total Building Cash Flows	\$580,124	\$580,124	\$580,124	\$580,124	\$580,124	\$580,124	\$580,124	\$580,124	\$580,124	\$580,124	\$580,124	\$580,124
TOTAL PROJECT CASH FLOW	\$580,124	\$580,124	\$580,124	\$580,124	\$580,124	\$580,124	\$580,124	\$580,124	\$580,124	\$580,124	\$580,124	\$580,124

Exhibit_F__
Total Project Proforma

[illegible]

Exhibit_F_
Total Project Proforma
Seaholm Master Development Agreement

Totals	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16	Feb-16	Mar-16	Apr-16	May-16	Jun-16
Street Expenditures	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Street Incentive Payments	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Plaza Expenditures	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Plaza Incentive Payments	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Transfer Price Payments	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Transfer Price Incentive Payments	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
20% at Office 'Dried-In'	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
20% at Office Cert. of Occ.	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
40% at Office 50% Lease-Up	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
20% at Hotel Opening	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Power Plant Rehab Incentive	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
33% at Power Plant 'Dry-In'	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
33% at Power Plant Cert. of Occ.	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
33% at Power Plant 50% Lease-Up	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Reimbursable Fees	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Reimbursable Fees Incentive	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Offsite Parking Garage Expenditures	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Offsite Parking Garage Reimbursements	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Building Cash Flows (excluding Transfer Price payments)	\$23,673,794	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Seaholm Power Building	\$22,631,678	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Office Building	\$54,738,806	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Condo/Hotel Tower	\$100,944,278	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Building Cash Flows	\$100,944,278	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
TOTAL PROJECT CASH FLOW	\$58,503,018	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

Exhibit F
Office Building Proforma
Seaholm Master Development Agreement

Item	Total	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8
PROPERTY DEVELOPMENT COSTS									
Transfer Price	\$915,201	915,201	0	0	0	0	0	0	0
Land - Acquisition Fee	\$50,000	50,000	0	0	0	0	0	0	0
Hard Costs									
Building Shell	\$7,199,197	1,223,863	5,975,333	0	0	0	0	0	0
Tenant Improvements	\$1,650,000	0	400,000	1,250,000	0	0	0	0	0
Site Work/Underground	\$400,000	312,000	88,000	0	0	0	0	0	0
Garage / Parking Lot	\$2,574,000	437,580	2,136,420	0	0	0	0	0	0
Furniture, Fixtures & Equipment	\$60,000	10,200	49,800	0	0	0	0	0	0
Hard Cost Contingency	\$563,388	95,776	467,612	0	0	0	0	0	0
Subtotal Hard Costs	\$12,446,585	2,079,419	9,117,165	1,250,000	0	0	0	0	0
Soft Costs									
Development Fee / Overhead	\$250,000	42,500	207,500	0	0	0	0	0	0
Architect/Engineer/Geotech	\$497,208	387,822	109,386	0	0	0	0	0	0
Testing/Consultants	\$112,221	87,532	24,689	0	0	0	0	0	0
Constr. Management Fee	\$278,120	47,280	230,840	0	0	0	0	0	0
Legal/Closing	\$112,544	87,784	24,760	0	0	0	0	0	0
Leasing Commissions	\$378,308	0	91,711	286,597	0	0	0	0	0
Taxes/Insurance	\$51,205	8,705	42,501	0	0	0	0	0	0
Accounting / Admin	\$19,293	3,280	16,013	0	0	0	0	0	0
Title Costs	\$54,000	54,000	0	0	0	0	0	0	0
Subtotal Soft Costs	\$1,752,900	718,904	747,399	286,597	0	0	0	0	0
Total, Property Development Costs	\$15,114,686	3,763,525	9,864,564	1,536,597	0	0	0	0	0
Property Development Costs per Gross Sq. Ft.	\$220								
Property Development Costs per Net Sq. Ft.	\$229								
PROPERTY REVENUES									
Rents and Reimbursements	\$14,409,550	0	35,755	1,893,841	2,364,545	2,428,465	2,494,163	2,561,688	2,631,094
Sale Proceeds	\$20,677,299	0	0	0	0	0	0	0	20,677,299
Interest Income	\$0	0	0	0	0	0	0	0	0
Insurance Proceeds	\$0	0	0	0	0	0	0	0	0
Condemnation Awards	\$0	0	0	0	0	0	0	0	0
Other	\$0	0	0	0	0	0	0	0	0
Total, Property Revenues	\$35,086,849	0	35,755	1,893,841	2,364,545	2,428,465	2,494,163	2,561,688	23,308,393
PROPERTY OPERATING COSTS									
	\$4,427,438	0	60,450	632,757	717,564	731,915	746,553	761,485	776,714
PROPERTY NET INCOME (Revenues less Operating Costs)	\$30,659,411	0	(24,695)	1,261,084	1,646,981	1,696,550	1,747,609	1,800,204	22,531,678
TOTAL PROJECT CASH FLOW	\$15,494,726	(3,763,525)	(9,889,259)	(275,513)	1,646,981	1,696,550	1,747,609	1,800,204	22,531,678
CASH FLOW EXCLUDING TRANSFER PRICE	\$16,409,927	(2,848,324)	(9,889,259)	(275,513)	1,646,981	1,696,550	1,747,609	1,800,204	22,531,678
Gross Building Square Footage	68,640								
Net Leaseable Building Square Footage	66,000								

Sources: Seaholm Power Development LLC; Economic & Planning Systems, Inc.

Economic & Planning Systems, Inc. 8/12/2008

C:\WP\Public\H\www\ISS\URR\UART6-8593_1

Exhibit F
Hotel/Condo Building Proforma
Seaholm Master Development Agreement

Item	Total	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8
PROPERTY DEVELOPMENT COSTS									
Transfer Price	\$2,000,001	2,000,001	0	0	0	0	0	0	0
Land - Acquisition Fee	\$50,000	50,000	0	0	0	0	0	0	0
Hard Costs									
Building Shell	\$28,720,061	4,595,210	18,668,040	5,456,812	0	0	0	0	0
Site Work/Underground	\$800,000	640,000	128,000	32,000	0	0	0	0	0
Garage / Parking Lot	\$4,516,000	722,880	2,936,700	858,420	0	0	0	0	0
Furniture, Fixtures & Equipment - Hotel	\$12,100,560	1,936,090	7,865,364	2,289,106	0	0	0	0	0
Tenant Improvements - Condo Finishout	\$2,719,000	435,040	1,767,350	516,610	0	0	0	0	0
Hard Cost Contingency	\$4,885,762	781,722	3,175,745	928,295	0	0	0	0	0
Subtotal Hard Costs	\$53,743,383	9,110,941	34,541,199	10,091,243	0	0	0	0	0
Soft Costs									
Development Fee / Overhead	\$1,612,302	257,968	1,047,998	306,337	0	0	0	0	0
Architect/Engineer/Geotech	\$1,734,565	1,387,652	277,530	69,383	0	0	0	0	0
Testing/Consultants	\$433,641	346,913	69,383	17,346	0	0	0	0	0
Constr. Management Fee	\$1,209,226	193,476	785,997	229,753	0	0	0	0	0
Taxes/Insurance	\$159,546	25,527	103,705	30,314	0	0	0	0	0
Legal/Closing	\$617,939	98,870	401,660	117,408	0	0	0	0	0
Leasing Commissions	\$0	0	0	0	0	0	0	0	0
Accounting / Admin	\$54,205	8,673	35,233	10,299	0	0	0	0	0
Extra Hotel Soft Costs	\$175,000	28,000	113,750	33,250	0	0	0	0	0
Soft Cost Contingency	\$250,000	40,000	162,500	47,500	0	0	0	0	0
Title Costs	\$171,000	171,000	0	0	0	0	0	0	0
Subtotal Soft Costs	\$6,417,424	2,558,080	2,997,755	861,590	0	0	0	0	0
Total, Property Development Costs	\$62,160,809	13,719,022	37,538,954	10,952,833	0	0	0	0	0
Property Development Costs per Gross Sq. Ft.	\$287								
Property Development Costs per Net Sq. Ft.	\$340								
PROPERTY REVENUES									
Condo Sales Proceeds	\$21,314,948	0	0	21,314,948	0	0	0	0	0
Hotel Gross Operating Revenues	\$91,772,529	0	0	9,124,119	14,294,385	15,887,994	16,649,511	17,620,670	18,495,650
Hotel Sale Proceeds	\$50,569,935	0	0	0	0	0	0	0	50,569,935
Interest Income	\$0	0	0	0	0	0	0	0	0
Insurance Proceeds	\$0	0	0	0	0	0	0	0	0
Condemnation Awards	\$0	0	0	0	0	0	0	0	0
Other	\$0	0	0	0	0	0	0	0	0
Total, Property Revenues	\$163,657,412	0	0	30,439,067	14,294,385	15,887,994	16,649,511	17,620,670	69,065,785
PROPERTY OPERATING COSTS									
Working Capital (Hotel)	\$1,050,000	168,000	682,500	199,500	0	0	0	0	0
Pre-Open Costs (Hotel)	\$1,250,000	1,000,000	200,000	50,000	0	0	0	0	0
Operating Expenses (Hotel)	\$73,204,082	0	0	7,725,588	11,632,638	12,557,284	13,176,986	13,784,626	14,326,980
Total, Property Operating Costs	\$75,504,082	1,168,000	882,500	7,975,088	11,632,638	12,557,284	13,176,986	13,784,626	14,326,980
PROPERTY NET INCOME (Revenues less Operating Costs)	\$88,153,330	(1,168,000)	(882,500)	22,463,979	2,661,747	3,030,730	3,472,524	3,836,044	54,738,806
TOTAL PROJECT CASHFLOW	\$25,942,522	(14,887,022)	(38,421,454)	11,511,147	2,661,747	3,030,730	3,472,524	3,836,044	54,738,806
CASH FLOW EXCLUDING TRANSFER PRICE	\$27,942,523	(12,687,021)	(38,421,454)	11,511,147	2,661,747	3,030,730	3,472,524	3,836,044	54,738,806
Gross Building Square Footage	216,821								
Net Leaseable Building Square Footage	182,971								

Sources: Seaholm Power Development LLC; Economic & Planning Systems, Inc.

Exhibit F
Seaholm Power Plant Building Proforma
Seaholm Master Development Agreement

Item	Total	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8
PROPERTY DEVELOPMENT COSTS									
Transfer Price	\$0	0	0	0	0	0	0	0	0
Land - Acquisition Fee	\$0	0	0	0	0	0	0	0	0
Hard Costs									
Building Shell	\$17,008,448	3,571,774	13,435,674	0	0	0	0	0	0
Tenant Improvements	\$2,236,686	0	733,590	1,503,096	0	0	0	0	0
Garage / Parking Lot	\$400,000	84,000	316,000	0	0	0	0	0	0
Furniture, Fixtures & Equipment	\$200,000	42,000	158,000	0	0	0	0	0	0
Hard Cost Contingency	\$875,180	183,788	691,392	0	0	0	0	0	0
Subtotal Hard Costs	\$20,720,314	3,881,562	15,335,656	1,503,096	0	0	0	0	0
Soft Costs									
Development Fee / Overhead	\$100,000	21,000	79,000	0	0	0	0	0	0
Architect/Engineer/Geotech	\$1,058,761	931,710	127,051	0	0	0	0	0	0
Testing/Consultants	\$338,481	297,863	40,618	0	0	0	0	0	0
Constr. Management Fee	\$709,147	148,921	560,226	0	0	0	0	0	0
Legal/Closing	\$170,876	150,195	20,481	0	0	0	0	0	0
Leasing Commissions	\$448,085	0	145,770	302,315	0	0	0	0	0
Accounting / Admin	\$29,259	6,144	23,115	0	0	0	0	0	0
Title Costs	\$50,000	50,000	0	0	0	0	0	0	0
Subtotal Soft Costs	\$2,804,409	1,605,833	986,261	302,315	0	0	0	0	0
Total, Property Development Costs	\$23,524,722	5,487,395	16,331,917	1,805,411	0	0	0	0	0
Property Development Costs per Gross Sq. Ft.	\$174								
Property Development Costs per Net Sq. Ft.	\$237								
PROPERTY REVENUES									
Historic Tax Credits	\$3,220,693	0	3,220,693	0	0	0	0	0	0
Rents and Reimbursements	\$17,297,568	0	69,901	2,314,343	2,825,942	2,902,158	2,980,489	3,060,995	3,143,738
Sales Proceeds	\$21,819,253	0	0	0	0	0	0	0	21,819,253
Interest Income	\$0	0	0	0	0	0	0	0	0
Insurance Proceeds	\$0	0	0	0	0	0	0	0	0
Condemnation Awards	\$0	0	0	0	0	0	0	0	0
Other	\$0	0	0	0	0	0	0	0	0
Total, Property Revenues	\$42,337,514	0	3,290,594	2,314,343	2,825,942	2,902,158	2,980,489	3,060,995	24,962,992
PROPERTY OPERATING COSTS									
PROPERTY NET INCOME (Revenues less Operating Costs)	\$7,360,942	0	110,580	1,052,251	1,191,019	1,214,840	1,239,136	1,263,919	1,289,198
TOTAL PROJECT CASHFLOW	\$34,976,572	0	3,180,014	1,252,093	1,634,923	1,687,319	1,741,353	1,797,076	23,673,794
CASH FLOW EXCLUDING TRANSFER PRICE	\$11,351,849	(5,487,395)	(13,151,902)	(543,318)	1,634,923	1,687,319	1,741,353	1,797,076	23,673,794
Gross Building Square Footage	135,865								
Net Leasable Building Square Footage	99,490								

Sources: Seaholm Power Development LLC; Economic & Planning Systems, Inc.

EXHIBIT G
TO MASTER DEVELOPMENT AGREEMENT

Form of Ground Lease

[See Attached]

GROUND LEASE

BETWEEN

THE CITY OF AUSTIN

AND

SEAHOLM POWER DEVELOPMENT, LLC

GROUND LEASE

This Ground Lease (this "**Lease**") is executed to be effective as of _____, 200_ (the "**Commencement Date**"), between THE CITY OF AUSTIN, a Texas home rule city and municipal corporation ("**Landlord**") and SEAHOLM POWER DEVELOPMENT, LLC, a Delaware limited liability company ("**Tenant**").

Recitals

A. Landlord and Tenant entered into that certain Master Development Agreement (the "**MDA**") dated as of _____, 2008 concerning the redevelopment of the property commonly known as the Seaholm Power Plant in Austin, Texas.

B. Section 5.1 of the MDA contemplates the leasing by Landlord, as landlord, to Tenant, as tenant, certain real property described on Exhibit A attached hereto located in Austin, Travis County, Texas (the "**Land**").

C. Landlord and Tenant desire to enter into this Lease to set forth the terms and conditions of the lease of the Land.

NOW, THEREFORE, the parties enter into this Lease upon the terms and conditions herein set forth.

ARTICLE I. DEFINITIONS

1.1 Defined Terms. In addition to the terms set forth above and elsewhere in this Lease, the following terms will have the following meanings:

"**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.

"**Bankruptcy Event**" means a petition for relief under the applicable bankruptcy law or an involuntary petition for relief is filed against Tenant 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 Tenant 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 Tenant. A Bankruptcy Event may exist even if an Event of Default cannot be declared because of a Bankruptcy Event.

"**Business Day**" means any day other than a Saturday, Sunday, federally-mandated bank holiday, or the day after Thanksgiving.

"Casualty" as defined in Section 17.1(a).

"Commence Construction", "Commenced Construction" and "Commencement of Construction" mean ***[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]***

*** [POWER PLANT BUILDING the bona-fide, good faith initiation of physical redevelopment of the Property.]***

*** [OFFICE BUILDING - **"Complete Construction"** and **"Completion of Construction"** mean the day on which all of the following have been satisfied:

(a) the Improvements 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, and

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

"Condemnation" as defined in Section 17.2.

"Construction Standards" as defined in Section 4.2.

"Declaration" means the Declaration of Restrictive Covenants dated _____, 200____, burdening the Property.

"Delinquency Interest Rate" means a per annum rate of interest equal to the lesser of (1) the Prescribed Rate plus 3% or (2) the then highest lawful contract rate which Tenant is authorized to pay and Landlord is authorized to charge under the laws of the State of Texas with respect to the relevant obligation. **"Prescribed Rate"** means the "prime rate" published in The Wall Street Journal as being the base rate on corporate loans at large U.S. money center commercial banks on the first Business Day following the due date of such payment. If The Wall Street Journal ceases to publish such a prime rate, the Prescribed Rate will be the per annum interest rate which a large U.S. money center commercial bank doing business in Texas designated by Landlord publicly announces (whether or not actually charged in each instance) from time to time (adjusted daily) as its "prime rate" (or if there is no "prime rate," a similar borrowing reference rate).

***[POWER PLANT - **"Dry-In Condition"** means the interior of the Improvements has been demolished and reconstructed in a manner which allows the commencement of construction of all the individual tenant improvements in the Improvements (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 Landlord, this Agreement and Legal Requirements.

*** [OFFICE - **"Dry-In Condition"** means, 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 Landlord, this Agreement and Legal Requirements.

"Dry-In Condition Date" as defined in Section 5.4.

"End User" means a third party which subleases space in the Improvements primarily to conduct its business with the general public (as opposed to a party which subleases space in the Improvements to subsublease space to other parties).

"Environmental Claim" means, but is not limited to, any claim, demand, action, cause of action, suit, loss, cost, damage, fine, penalty, expense, liability, judgment, forfeitures, proceeding, or injury, whether threatened, sought, brought, or imposed, that seeks to impose costs or liabilities for: (a) noise, (b) pollution or contamination of the air, surface water, groundwater, or soil, (c) solid, gaseous, or liquid waste generation, handling, treatment, storage, disposal, or transportation, (d) exposure to Hazardous Materials, (e) the generation, handling, treatment, transportation, manufacture, processing, distribution in commerce, use, storage or disposal of Hazardous Materials, (f) injury to or death of any person or persons directly or indirectly connected with Hazardous Materials and directly or indirectly related to the Property, (g) destruction or contamination of any property directly or indirectly in connection with Hazardous Materials and directly or indirectly related to the Property, (h) any and all penalties directly or indirectly connected with Hazardous Materials and directly or indirectly related to the Property, (i) the costs of removal of any and all Hazardous Materials from all or any portion of the Property, (j) costs required to take necessary precautions to protect against the release of Hazardous Materials at, on, in, about, under, within, near or in connection with the Property in or into the air, soil, surface water, groundwater, or soil vapor, any public domain, or any surrounding areas, (k) costs incurred to comply, in connection with all or any portion of the Property or any surrounding areas, with all Legal Requirements with respect to Hazardous Materials, including any such laws applicable to the work referred to in this sentence, (l) the costs of site investigation, response, and remediation of any and all Hazardous Materials at, on, about, under, within, near or in all or any portion of the Property, or (m) any asserted or actual breach or violation of any requirements of Legal Requirements, or any event, occurrence, or condition as a consequence of which, pursuant to any requirements of Legal Requirements, (i) Tenant, Landlord, or any owner, occupant, or person having any interest in the Property will be liable or suffer any disability, or (ii) the Property will be subject to any restriction on use, ownership, transferability, or (iii) any Remedial Work will be required.

“Environmental Costs” mean all liabilities (including strict liabilities), losses, costs, damages (including consequential damages or indirect), expenses, claims, reasonable attorney’s fees, experts’ fees, consultants’ fees and disbursements of any kind or of any nature whatsoever arising from or related to an Environmental Claim. For the purposes of this definition, such losses, costs and damages will include, without limitation, remedial, removal, response, abatement, cleanup, legal, investigative and monitoring costs and related costs, expenses, actual losses, damages, penalties, fines, obligations, defenses, judgments, suits, forfeitures, proceedings and disbursements.

“Escrow Agent” means a third party approved by Landlord with an office in Austin, Texas and is (a) a national bank or other institutional lender or a (b) servicing agent with capitalization of \$100,000,000 or greater; provided however, with respect to the disbursement of any insurance proceeds, the Escrow Agent may be the applicable insurance company if the terms of the applicable insurance policy require periodic disbursement by such insurance company.

“Event of Default” as defined in Section 19.1.

“Existing Environmental Condition” means the presence on the Property of any Hazardous Material caused by the Landlord, the removal or remediation of which is required by any federal, state, or local government agency, authority or unit, to the extent that the condition has not been exacerbated by the negligent or wrongful acts or omissions of Tenant or any agents, contractors, representatives or employees of Tenant.

“Fee Estate” means Landlord’s interest in the Property and this Lease.

“Force Majeure” means acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, 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 to this Lease (or a subdivision thereof) 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).

“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.

“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).

“Hazardous Materials Activity” means any activity relating to such Hazardous Materials.

“Improvements” means

*** [POWER PLANT PROPERTY: the redevelopment of the existing power plant building into a **“Class A”** retail facility.]***

[OFFICE PROPERTY: a **“Class A”** office building together with an underground parking garage containing * _____ spaces; provided however, such square footage may change in accordance with Section 3.1(e)(ii) of the MDA.]

The term **“Improvements”** does not include the Offsite Parking Garage.

“Landlord Caused Delay” means any actual delay caused solely by the Landlord (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 Tenant 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 Landlord acting in its governmental capacity, then the time for Tenant’s performance will be extended beyond the contractual time period at least to the date of the related Landlord 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.

“Landlord Mortgagee” means a lender, agent or trustee who is the holder a Mortgage which secures the monetary obligations of Landlord.

“Landlord’s Actual Knowledge”, or similar language, means the actual, current, conscious knowledge of (a) the current or any future Director of the City of Austin’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.

"Lease Year" means (a) the period that commences with the Commencement Date and terminates on December 31st of the same calendar year and (b) thereafter, each successive 12 calendar month period (but if this Lease terminates on a day other than December 31, then the last Lease Year will end on the date of termination of this Lease).

"Leasehold Estate" means the Tenant's interest in the Property and its interest in this Lease and subleases for space in the Improvements.

"Legal Requirements" mean the MDA, the Declaration, all other applicable title encumbrances, zoning ordinances, and building codes, access, disabilities, health, safety, environmental, and natural resource protection laws and regulations, and all other applicable federal, state, and local laws, statutes, ordinances, rules, common law, design criteria, regulations, orders, determinations and court decisions

"Mortgage" means a mortgage, deed of trust, security agreement, indenture or similar security agreement (including public financing and bond security instruments) which secures sums owed to a Mortgagee or Landlord Mortgagee, as applicable; provided however, no Mortgage for the benefit of a Mortgagee may secure sums other than for the acquisition, development and refinance of solely the Property; provided further however, no Mortgage shall encumber more than the relevant parties' interest in the Property (e.g., in the case of a Tenant Mortgage, the tenant's leasehold estate in this Lease).

"Mortgagee" means a lender, agent or trustee who is the holder of a Mortgage which secures the monetary obligations of Tenant; provided however, no Affiliate of Tenant will be deemed to be a Mortgagee unless such Affiliate is the only lender to Tenant (i.e., if an Affiliate is a secondary lender to Tenant 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).

"Nondisturbance Sublease" means a sublease which;

- (a) leases more than 10,000 square feet in the Improvements, or
- (b) the subtenant thereunder is an investment grade national tenant (i.e., the subtenant has a credit rating of at least BBB as determined by Standard and Poor's or a credit rating of at least Baa as determined by Moody's);
- (c) the subtenant thereunder is not an Affiliate of Tenant in any respect,

(d) does not exempt the owner of the applicable building from the payment of real estate taxes,

(e) has an term which is shorter than the Term,

(f) 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), and

(g) the subtenant thereunder subleased 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).

"Offsite Parking Garage" means a to be constructed approximately 315 space structured parking facility located on the Offsite Parking Garage Land.

"Offsite Parking Garage Land" means the land described on Exhibit C attached hereto, which is currently owned by the Landlord.

"Permitted Encumbrances" mean (a) general real estate taxes, if any, (b) the Declaration, (c) the **"Permitted Encumbrances"** as defined in the MDA, (d) all matters shown on the subdivision plat for the applicable portion of the Property approved by Tenant, which approval will not be unreasonably withheld, conditional or delayed and (e) any other encumbrances approved, or caused, by Tenant.

"Permitted Use" means all uses permitted in the zoning ordinance for the Property except those prohibited as set forth in the Declaration.

"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.

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

"Property" means the Land and the Improvements. ***[NOTE: WITH RESPECT TO THE POWER PLANT PROPERTY, NEED TO CARVE OUT AREA OF UNCERTAIN TITLE. POTENTIALLY RESOLVED WITH UP EASEMENT TERMINATION]***

"Real Property Records" means the real property records of Travis County, Texas, including, without limitation, the Official Public Records of Travis County, Texas.

"Remedial Work" means any investigation, monitoring, response, remediation, removal, restoration, abatement, repair, cleanup, detoxification or other ameliorative work related to the Property required by Legal Requirements and relating to Hazardous

Materials or Hazardous Materials Activity, except that relating to an Existing Environmental Condition.

"Rent" means

[OFFICE PROPERTY: the sum of \$915,000 for the first year and \$1 per year thereafter (i.e., a total of \$915,098).]

[POWER PLANT PROPERTY: the sum of \$1.00 for the first year and \$1 per year thereafter (i.e., a total of \$99.00).]

"Retainage" as defined in Section 17.1(c)(ii).

"Subleases" means all written or oral leases, subleases, rental agreements, licenses, concessions, occupancies and other agreements or arrangements granted to Subtenants for the use or occupancy of all or any portion of the Property.

"Subtenant" means any subtenant or occupant (other than Tenant) of the Property, claiming by, through or under Tenant.

"Taxes" means all taxes, general and special assessments, and other charges of every description which are levied on or assessed against the Property by a Governmental Authority during the Term. If at any time a Governmental Authority levies or assesses a tax or excise on rents against Landlord or the compensation payable or performable by Tenant as a substitution in whole or in part for taxes assessed or imposed on the Property, the same will be deemed to be included within the term "Taxes", and Tenant shall pay and discharge such tax or excise in accordance with ARTICLE XII.

"Term" as defined in Section 3.1.

"Termination Price" means

(a) prior to a conveyance of this Lease by foreclosure or an assignment in lieu of foreclosure, the amount of architectural, engineering and "hard" construction costs concerning the Property incurred and paid by Tenant for which Tenant has received a lien release reasonably acceptable to Landlord, which costs will not exceed the corresponding estimated per square foot development cost calculations set forth in the Proforma concerning the sellable/leaseable improvements, except parking, on the Property or include costs associated with financing, equity, taxes, insurance, marketing, furniture, development fees, or interest, less any unpaid liquidated damages due to the Landlord by Tenant under any agreement related to the Property (but without duplication); or

(b) following the conveyance of this Lease by foreclosure in which an independent third party purchases Tenant's interest in this Lease (i.e., not the Tenant, Mortgagee or an affiliate thereof), the sum of (i) the amount paid by such purchaser at the foreclosure sale *plus* (ii) the amount of architectural, engineering

and "hard" construction costs concerning the Property incurred and paid by such purchaser for which such purchaser has received a lien release reasonably acceptable to Landlord, which costs will not exceed the corresponding estimated per square foot development cost calculations set forth in the Proforma concerning the sellable/leaseable improvements, except parking, on the Property or include costs associated with financing, equity, taxes, insurance, marketing, furniture, development fees, or interest, less any unpaid liquidated damages due to the Landlord by such purchaser under any agreement related to the Property (but without duplication); or

(c) following the conveyance of this Lease by foreclosure or an assignment in lieu of foreclosure in which the Mortgagee (or its affiliate) acquires Tenant's interest in this Lease, the sum of (i) amount of the outstanding principal balance of the loan to such Mortgagee together with all accrued interest thereon (excluding however, any late charges, default interest, exit fees or prepayment premiums), *plus* (ii) the amount of architectural, engineering and "hard" construction costs concerning the Property incurred and paid by Mortgagee (or its affiliate) for which Mortgagee (or its affiliate) has received a lien release reasonably acceptable to Landlord, which costs will not exceed the corresponding estimated per square foot development cost calculations set forth in the Proforma concerning the sellable/leaseable improvements, except parking, on the Property or include costs associated with financing, equity, taxes, insurance, marketing, furniture, development fees, or interest, less any unpaid liquidated damages due to the Landlord by Mortgagee (or its affiliate) under any agreement related to the Property (but without duplication).

"Trade Fixtures" means any and all items of property used by Tenant or any Subtenant in, upon or about the Property for the carrying on of its business and which may or may not be annexed to the realty by Tenant but in any event can be removed by hand tools without any material injury or damage to the Property, including but not limited to moveable furniture, equipment, shelves, bins and machinery; provided, however, that the term Trade Fixtures will not include the following: any machinery or equipment used in the operation of the building; i.e. elevators, gates, meters, lighting devices, air conditioners, or any permanent leasehold improvements, including but not limited to any floor, wall or ceiling coverings, any interior walls, any lighting fixtures, track lights or any property a part of or associated with any electrical, plumbing, heating and air conditioning or mechanical equipment or systems, notwithstanding that the same may have been installed in, upon or about 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 Lease 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 will be construed to authorize any such renewal, extension, supplement, modification, amendment or restatement.

1.3 References and Titles. All references in this Lease to exhibits, schedules, addenda, articles, paragraphs, subparagraphs, sections, subsections and other subdivisions refer to the exhibits, articles, paragraphs, subparagraphs, sections, subsections and other subdivisions of this Lease 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 will be disregarded in construing the language contained in such subdivisions. The words "this Lease", "herein", "hereof", "hereby", "hereunder" and words of similar import refer to this Lease 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 will be construed to include any other gender, and words in the singular form will 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 Commencement Date and any future amendments thereto or successor provisions thereof.

1.4 Nature of Lease. As the Term of this Lease will span many generations, specific references herein such as the names of City of Austin departments, street names, laws and regulations may cease to exist prior to the expiration or earlier termination hereof. It is the intent of the Landlord and Tenant that, notwithstanding the fact that such references may no longer be correct, the spirit and intent of this Lease be given effect as close as possible with respect to the relevant affected term or provision hereof.

ARTICLE II. GROUND LEASE

2.1 Lease. In consideration of the mutual covenants and agreements set forth in this Lease, and other good and valuable consideration, Landlord does hereby lease to Tenant, and Tenant does hereby lease from Landlord, the Property, together with all rights, privileges, improvements, easements, appurtenances, and immunities belonging to or in any way appertaining to the Property, including, but not limited to, any and all easements, rights, title, and privileges of Landlord, existing now or in existence at any time during the Term in, to, or under the Property, adjacent streets, sidewalks, alleys, party walls, and property contiguous to the Land and reversions which may later accrue to Landlord as owner of the Property by reason of the closing of any street, sidewalk, or alley.

2.2 ***[POWER PLANT ONLY: Use of Events Center. Landlord is given the right to utilize, at no charge, the approximate 5,000 square foot events center on the entry level of the Improvements (the "**Events Center**") up to 20 days per calendar year, subject to availability, booking no more than 90 days in advance, and limited to no more than 3 consecutive days. Specific excluded dates are New Year's Eve, Mother's Day, Easter Sunday, Thanksgiving, and dates during which the following take place: the South by Southwest Conference, Austin City Limits Music Festival, and City-wide conventions with over 5,000 room peak-night attendance. The use of the Events Center space at no charge will only include the Events Center space and no additional products such as food or beverages, set-up, audio visual, or other services or space unless the Landlord pays the prevailing charges applicable thereto. Reservations by Landlord

must be made or confirmed in writing with Tenant, and exceptions thereto made or approved through Tenant or Tenant's management company.]***

2.3 Ownership of Improvements. The Improvements (other than Trade Fixtures owned by Subtenants in the Improvements) will be owned by Tenant during the Term. Upon termination of this Lease for any reason, the Improvements (other than the Trade Fixtures owned by Subtenants and those Trade Fixtures of Tenant which Tenant elects to remove without material damage to the Property) will (in their then "AS-IS, WHERE IS" condition) become the property of Landlord without necessity of further action by Tenant or any other party.

2.4 Quiet Enjoyment. As long as Tenant performs its obligations under this Lease, Tenant shall lawfully and quietly hold, occupy, and enjoy the Property during the Term without hindrance or molestation by Landlord or any person claiming by, through, and under Landlord, except such portion of the Property, if any, as shall be taken under the power of eminent domain, and the Permitted Encumbrances. Landlord is executing and encumbering, or has executed and encumbered, the Property with the Declaration. The execution and encumbrance of the Property pursuant to the Declaration is also deemed to be pursuant to a reservation of such rights hereunder and will be superior to any vendor's lien, deed of trust, mortgage, assignment and/or security interest which burdens the Property.

ARTICLE III. GROUND LEASE TERM AND RENT

3.1 Term. The term of this Lease (the "Term") will commence on the Commencement Date and will continue until the date which is 99 years following the Commencement Date.

3.2 Rent. Contemporaneously with the execution hereof, Tenant shall pay Landlord the Rent.

3.3 Net Lease. This Lease will constitute a net lease, and the obligations of Tenant hereunder are absolute and unconditional. Tenant shall pay all operating expenses arising out of the use, operation and/or occupancy of the Property, including without limitation, those expenses set forth in Sections 9.4(a), 9.4(c), 12.1 and 12.3.

ARTICLE IV. DESIGN AND CONSTRUCTION OF IMPROVEMENTS

4.1 Design Review and Approval. Tenant acknowledges that Landlord has reserved certain design approval as set forth in the Declaration.

4.2 Standards of Construction. All Improvements constructed on the Land at any time during the Term and any and all alterations, rebuilding, restoration, renovations, repairs, refurbishments, or other work with regard to any Improvement will be performed in accordance with the following "Construction Standards" (herein so called):

(a) All such construction or work will be performed in a good and workmanlike manner utilizing good industry practice for the type of work in question.

(b) All such construction or work will be done in compliance with the Legal Requirements.

(c) No such construction or work done will be commenced until all applicable approvals, licenses, permits, and authorizations required by this Lease have been issued for the commencement of such construction.

4.3 Construction Contract. Tenant shall require that all construction contracts for the construction of Improvements contain the following provisions:

(a) The general contractor shall obtain and maintain insurance as required by this Lease.

(b) The construction of the Improvements is being completed for and on behalf of Tenant, and not for or on behalf of Landlord.

(c) The general contractor does not have, and will not assert or claim, any lien against the fee title to the Land, and any lien with respect to the construction of the Improvements shall be subordinate and inferior to the right, title and interest of Landlord in and to the Improvements.

ARTICLE V. FAILURE TO COMMENCE AND COMPLETE CONSTRUCTION OF THE IMPROVEMENTS

5.1 Termination Right – Failure to Commence Construction. Landlord reserves the right (but not obligation), subject to Article 13 hereof, to terminate this Lease (the “**Termination Right - Commencement of Construction**”) if Tenant has not Commenced Construction of the Improvements on the Property on or before _____, 200__ [30 months following the MDA Commencement Date] (the “**Construction Commencement Date**”). Such event will be deemed an Event of Default hereunder and Landlord will be entitled to exercise its Termination Right - Commencement of Construction at any time prior to Commencement of Construction by written notice delivered to Tenant and any Mortgagee. At the termination of this Lease under the Termination Right – Commencement of Construction, Landlord will deliver to Tenant the prorated amount of the Rent concerning the remaining Term. The Construction Commencement Date will be extended on a day for day basis for each Business Day of actual delay due to Force Majeure or Landlord Caused Delays.

5.2 Liquidated Damages – Work Stoppage. Upon Commencement of Construction, Tenant agrees to diligently and in good faith prosecute the construction of the Improvements to Dry-In Condition. If, following Commencement of Construction, the good faith and bona-fide construction of the Improvements ceases for a period of 45 or more consecutive days (a “**Delay Period**”), such event will be deemed an Event of Default hereunder and Tenant will pay to Landlord as liquidated damages the sum of \$1,000 per day for each day past the Delay Period which bona-fide construction does not occur (such amount, “**Liquidated Damages - Work Stoppage**”). The calculation of each potential Delay Period will be extended on a day for day basis for each Business Day of actual delay due to Force Majeure and Landlord Caused Delays which would otherwise be within such Delay Period. Landlord and Tenant agree that the

Liquidated Damages - Work Stoppage has been set as liquidated damages for such event because of the difficulty and uncertainty of determining actual damages for such event. The Liquidated Damages - Work Stoppage will be due and payable monthly on the 10th day of the month following the month in which they accrue and any unpaid Liquidated Damages - Work Stoppage which are not paid within 10 days of the date which they are due and payable will accrue interest at a per annum interest rate equal to the Delinquency Interest Rate. Upon termination of this Liquidated Damages - Work Stoppage provision (including payment of any Liquidated Damages - Work Stoppage) and receipt of a written request from the Tenant, Landlord will execute and deliver in recordable form a notice of termination of the Liquidated Damages - Work Stoppage. This Section will automatically terminate upon Dry-In Condition being achieved (except for any accrued but unpaid Liquidated Damages - Work Stoppage) or the Landlord's election to exercise the Termination Right - Work Stoppage. Any amounts due to Landlord under this paragraph will be deemed additional Rent.

5.3 Termination Right - Work Stoppage. In addition to the Liquidated Damages - Work Stoppage set forth in the previous section and the Liquidated Damages - Completion set forth in the following section, Landlord hereby reserves the right (but not obligation), subject to Article 13 hereof, to terminate this Lease (the "**Termination Right - Work Stoppage**") if the Tenant Commences Construction, but such construction is ceased for a period of 90 or more consecutive days for any reason (such 90-day period, a "**Substantial Delay Period**"). Landlord will be entitled to exercise its Termination Right - Work Stoppage if the Tenant does not, in good faith, recommence such construction on or before the date which is 30 days following written notice by the Landlord to Tenant and any Mortgagee of the Landlord's intent to exercise its Termination Right - Work Stoppage and such event will be deemed an Event of Default hereunder. The calculation of each potential Substantial Delay Period will be extended on a day for day basis for each Business Day of actual delay due to Force Majeure and Landlord Caused Delays which would otherwise be within such Substantial Delay Period. It is the intention of the Landlord and Tenant that this Termination Right - Work Stoppage be exercisable if Tenant fails to diligently and in good faith proceed to achieve Dry-In Condition of the Improvements on the Property. Accordingly, actions by Tenant to continue construction on an intermittent basis (e.g., one day a week or one week every 90 days) to prevent exercise of the Termination Right - Work Stoppage will not prevent such exercise. At the termination of this Lease under the Termination Right - Work Stoppage, Landlord will deliver to Tenant the prorated amount of the Rent concerning the remaining Term *plus* the Termination Price. Upon termination of this Termination Right - Work Stoppage provision for any reason described herein and receipt of a written request from the Tenant, Landlord will execute and deliver in recordable form a notice of termination of the Termination Right - Work Stoppage. The Termination Right - Work Stoppage automatically terminate upon Dry-In Condition.

5.4 Liquidated Damages - Completion. Upon Commencement of Construction, Tenant agrees to diligently and in good faith prosecute the construction of the Improvements to Dry-In Condition on or before the date which is _____ [54 months following the MDA Commencement Date] (such date, the "**Dry-In Condition Date**"). If the Dry-In Condition has not been achieved on or before the Dry-In Condition Date and the Landlord has not exercised the Termination Right - Work Stoppage, such event will be deemed an Event of Default hereunder and Tenant will pay to Landlord, the sum of \$1,000 (the "**Liquidated Damages - Completion**") per day past the Dry-In Condition Date in which Dry-In Condition has not been achieved. The

Dry-In Condition Date will be extended on a day for day basis for each Business Day of actual delay due to Force Majeure and Landlord Caused Delays. Landlord and Tenant agree that the Liquidated Damages - Completion has been set as liquidated damages for such event because of the difficulty and uncertainty of determining actual damages for such event. The Liquidated Damages - Completion will be due and payable monthly on the 10th day of the month following the month in which they accrue and any unpaid Liquidated Damages - Completion which are not paid within 10 days of the date which they are due and payable will accrue interest at a per annum interest rate equal to the Delinquency Interest Rate. Upon termination of this Liquidated Damages - Completion provision (including payment of any Liquidated Damages - Completion) and receipt of a written request from the Tenant, Landlord will execute and deliver in recordable form a notice of termination of the Liquidated Damages - Completion. This Section 5.4 will automatically terminate upon Dry-In Condition being achieved (except for any accrued but unpaid Liquidated Damages - Completion). Any amounts due to Landlord under this paragraph will be deemed additional Rent.

If prior to achieving the Dry-In Condition, a Mortgagee acquires title to the Property through a foreclosure sale or deed in lieu of foreclosure, and in the reasonable judgment of such Mortgagee, the Dry-In Condition cannot be achieved by the Dry-In Condition Date, such Mortgagee shall propose in writing to Landlord a new Dry-In Condition Date (together with evidence supporting such new date). If the proposed replacement Dry-In Condition Date is not approved by Landlord (in its reasonable discretion) within 10 days following such written request, Mortgagee and Landlord shall work together during the following 10 days to agree upon the Dry-In Condition Date. If at the expiration of such second 10 day period, the parties still do not agree on the Dry-In Condition Date, Mortgagee or Landlord may request in writing (the "**Arbitration Demand**") that such issue ("**Issue**") be resolved by an Arbitrator through a binding arbitration process.

The arbitrator (whether one or three, the "**Arbitrator**") must be a professional with at least ten (10) years' experience in commercial construction related matters in the Austin, Texas area. If the parties do not agree upon the Arbitrator within 10 days of the Arbitration Demand, each party shall appoint its own Arbitrator, the two Arbitrators shall appoint a third Arbitrator and the decision of the majority of the Arbitrators shall be binding. The parties shall share equally in the cost of the Arbitrator.

Within 15 days of an Arbitration Demand, each party shall submit to the Arbitrator its proposed Dry-In Condition Date and the materials that such party believes will be useful for the Arbitrator in deciding the Issue (the "**Decision Materials**"). The Arbitrator will make a determination in writing to both Landlord and Mortgagee within 10 days of its receipt of the Decision Materials.

ARTICLE VI. MODIFICATION OF IMPROVEMENTS

Tenant, at its sole cost and expense, at any time and from time to time without the consent of Landlord may make modifications, alterations, renovations, improvements and additions to the completed Improvements or any part thereof and substitutions and replacements therefor (collectively, "**Modifications**"), and Tenant shall make any and all Modifications

required to be made pursuant to all Legal Requirements; provided, that: (i) no completed Modification will have a substantial adverse effect on the value, utility or useful life of the Improvements as a whole from those Improvements which existed immediately prior to such Modification (assuming the Improvements were in the condition required by this Lease); (ii) each Modification will be done expeditiously and in a good and workmanlike manner; (iii) no Modification will adversely and materially affect the structural integrity of the Improvements; (iv) to the extent required by this Lease, Tenant will maintain builders' risk insurance at all times when a Modification is in progress; (v) subject to the terms of ARTICLE VIII relating to permitted contests, Tenant will pay all costs and expenses and discharge any liens arising with respect to any Modification; and (vi) each Modification will comply with the requirements of this Lease and all Legal Requirements.

ARTICLE VII. CONDITION

For specific and valuable consideration of Landlord's entering into this Lease and as an inducement to Landlord to lease the Property to Tenant, Tenant makes the following covenants, representations and warranties, each of which is material and is being relied upon by Landlord:

7.1 Condition of Land. IT IS UNDERSTOOD AND AGREED THAT , EXCEPT AS OTHERWISE SET FORTH HEREIN, THE PROPERTY IS BEING LEASED HEREUNDER "AS IS" WITH ANY AND ALL FAULTS AND LATENT AND PATENT DEFECTS WITHOUT ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY BY LANDLORD. EXCEPT AS OTHERWISE SET FORTH HEREIN, LANDLORD HAS NOT MADE AND DOES NOT HEREBY MAKE AND HEREBY SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR CHARACTER WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY AND THE OFFSITE PARKING GARAGE, THEIR CONDITION (INCLUDING WITHOUT LIMITATION ANY REPRESENTATION OR WARRANTY REGARDING SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE), COMPLIANCE WITH ENVIRONMENTAL LAWS OR OTHER LAWS, OR ANY OTHER MATTER OR THING RELATING TO OR AFFECTING THE PROPERTY AND/OR THE OFFSITE PARKING GARAGE, AND LANDLORD HEREBY DISCLAIMS AND RENOUNCES ANY OTHER REPRESENTATION OR WARRANTY. TENANT ACKNOWLEDGES AND AGREES THAT IT IS ENTERING INTO THIS LEASE 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 LANDLORD OR ANY REPRESENTATIVE OF LANDLORD OR ANY OTHER PERSON ACTING OR PURPORTING TO ACT FOR OR ON BEHALF OF LANDLORD WITH RESPECT TO THE PROPERTY AND/OR THE OFFSITE PARKING GARAGE BUT RATHER IS RELYING (EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN ANY EXHIBIT ATTACHED HERETO) UPON ITS OWN EXAMINATION AND INSPECTION OF THE PROPERTY AND THE OFFSITE PARKING GARAGE. TENANT REPRESENTS THAT IT IS A KNOWLEDGEABLE DEVELOPER OF REAL ESTATE AND THAT IT IS RELYING (EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN ANY EXHIBIT ATTACHED HERETO) SOLELY ON ITS OWN

EXPERTISE AND THAT OF ITS CONSULTANTS IN DEVELOPING THE PROPERTY. THE TERMS AND CONDITIONS OF THIS SECTION WILL EXPRESSLY SURVIVE THE TERMINATION OF THIS LEASE. TENANT FURTHER ACKNOWLEDGES AND AGREES THAT THE PROVISIONS OF THIS SECTION WERE A MATERIAL FACTOR IN LANDLORD'S DETERMINATION OF THE CONSIDERATION FOR ENTERING INTO THIS LEASE.

7.2 Landlord's Representations. Notwithstanding the provisions of Section 7.1 above, Landlord hereby represents that as of the Commencement Date,

(a) The Landlord's performance under this Lease are within the Landlord's powers and have been duly authorized by all requisite municipal action. This Lease constitutes the legal, valid and binding obligation of the Landlord enforceable in accordance with its terms, subject to the principles of equity.

(b) There is no pending or, to the Landlord'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 the Commencement Date, any condemnation legislation then filed in the Legislature of the State of Texas).

(c) To the Landlord's Actual Knowledge, Landlord 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 Landlord to perform any of its obligations hereunder.

(d) There are no parties in possession of all or any portion of the property as tenants or otherwise.

ARTICLE VIII. MECHANICS' LIENS

Neither Tenant nor anyone claiming any interest in the Property by, through, or under Tenant will have the authority to create any lien or other charge encumbering the Fee Estate. Tenant shall not cause or permit any liens to be filed against the Fee Estate by reason of any work, labor, services, or materials supplied or claimed to have been supplied to or for Tenant or any Subtenant. If any such lien is filed, Tenant shall either cause the same to be removed or if Tenant in good faith desires to contest the lien and no Event of Default exists, take timely action to do so by appropriate procedures, at Tenant's sole expense. If Tenant contests the lien, Tenant agrees to indemnify and hold Landlord 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, Tenant shall bond against or discharge the same within 30 days after written request by Landlord, and shall defend, indemnify, reimburse and hold Landlord and the Property and the Fee Estate owner harmless therefrom.

ARTICLE IX.
OPERATION, REPAIR, AND MAINTENANCE

9.1 Permitted Uses. Tenant will have the right to use the Property only for the Permitted Use.

9.2 Operations. Tenant shall obey, perform and comply in all material respects with any and all Legal Requirements existing at any time during the Term in any way affecting the Property or the use or condition thereof. Tenant shall not permit or suffer the Property to be used in any manner which violates applicable Legal Requirements in any material manner. Tenant shall at its own expense obtain any and all licenses and permits necessary for its use of the Property. Landlord will join in the applications for any such licenses and permits or otherwise as necessary to comply with the Legal Requirements where the signature of Landlord as owner of the Land is required, provided Tenant pays all reasonable costs and expenses of Landlord associated therewith, if any, and Landlord incurs no additional liability.

9.3 Waste; Nuisance. Tenant shall not occupy or use the Property in any manner that will constitute waste or a nuisance, or permit any portion of the Property to be occupied or used for any purpose other than as expressly permitted herein, or which is unlawful or reasonably deemed by Landlord to be extra hazardous on account of fire, nor permit anything to be done that will in any way invalidate the insurance on the Property.

9.4 Maintenance and Repair; Utilities.

(a) Tenant. Tenant, at its sole cost and expense, shall maintain the Property in good condition, repair and working order in accordance with this Lease and the Declaration (excepting (i) ordinary wear and tear and (ii) each Casualty which is addressed in accordance with the terms of this Lease), and make all necessary repairs thereto and replacements thereof, of every kind and nature whatsoever, whether interior or exterior, ordinary or extraordinary, structural or nonstructural or foreseen or unforeseen and on a basis generally consistent with the operation and maintenance of properties or equipment by the Tenant comparable in type and function to the Property. All components which are added to the Property will become the property of (and title thereto will vest in) Landlord immediately upon termination of this Lease to the extent provided in Section 2.3 above, but will be deemed incorporated in the Property and subject to the terms of this Lease as if originally leased hereunder. Upon reasonable advance notice, Landlord and its agents shall have the right to inspect the Property and maintenance records (to the extent available) with respect thereto at any reasonable time during normal business hours but will not, in the absence of the occurrence and continuance of an Event of Default, materially or unreasonably disrupt the business of Tenant or End Users. If an Event of Default has occurred and is continuing, any such inspection will be at the sole cost and expense of Tenant.

(b) Landlord. Landlord shall under no circumstances be required by this Lease to build any improvements or install any equipment on the Property or the Offsite Parking Garage Land, make any repairs, replacements, alterations or renewals of any nature to the Property or the Offsite Parking Garage, make any expenditure whatsoever in connection with this Lease or maintain the Property or Offsite Parking Garage in any way. Landlord shall not be

required by this Lease to maintain, repair or rebuild all or any part of the Property or the Offsite Parking Garage, and Tenant waives any right which might arise by virtue of this Lease to (i) require Landlord to maintain, repair, or rebuild all or any part of the Property or the Offsite Parking Garage, or (ii) make repairs to the Property or the Offsite Parking Garage at the expense of Landlord pursuant to the terms of any Legal Requirement, contract, agreement, covenant, condition or restriction.

(c) Utilities. Tenant shall pay, or cause to be paid, prior to delinquency, charges for all utilities, and services furnished to, or used by, the Property. Landlord, in its capacity as the owner of the Land, will not be obligated under this Lease to furnish any utility to the Property or the Offsite Parking Garage.

ARTICLE X. INTENTIONALLY OMITTED

ARTICLE XI. HAZARDOUS MATERIALS

11.1 Prohibition. Neither Tenant nor any Subtenants may bring on the Property or the Offsite Parking Garage Land any Hazardous Materials, except in reasonable quantities required for Tenant's or Subtenant's uses of the Property and operation thereon, that are acquired, kept, stored, maintained, transported and disposed of in strict accordance with this Lease and all Legal Requirements.

11.2 Remedial Work. If Remedial Work is required, Tenant shall within 30 days after written demand for performance thereof by Landlord or any such agency (or such shorter period of time as may be required under any applicable Legal Requirements), promptly commence, or cause to be commenced, and thereafter diligently prosecute to completion, all such Remedial Work, but only with respect to matters occurring or conditions existing during the Term. All Remedial Work shall be performed by one or more contractors, approved in advance in writing by Landlord, and, if required by Landlord, under the supervision of a consulting engineer approved in advance in writing by Landlord, Landlord agrees not to unreasonably withhold any such approvals. All Environmental Costs related to such Remedial Work shall be paid by Tenant including, without limitation, Environmental Costs incurred by Landlord in connection with oversight, monitoring or review of such Remedial Work. If Tenant shall fail to promptly commence, or cause to be commenced, or fail to diligently prosecute to completion, such Remedial Work, Landlord may, but will not be required to, cause such Remedial Work to be performed and all Environmental Costs will become an Environmental Claim hereunder.

11.3 Other Rights. Nothing contained in this Lease will prevent or in any way diminish or interfere with any rights or remedies, including, without limitation, the right to contribution, which Landlord may have against Tenant under any Legal Requirements, all such rights being hereby expressly reserved.

11.4 Notice of Actions. Landlord and Tenant each agrees to give the other prompt written notice of the receipt of any notice or discovery of any information regarding any actual,

alleged or potential Environmental Claim relating to the Property, and to deliver to the other copies of any and all orders, notices, permits, reports, and other communications, documents and instruments which the notifying party receives pertaining to such Environmental Claim.

ARTICLE XII. TAXES, INSURANCE, AND REIMBURSEMENT OBLIGATIONS

12.1 Taxes. Beginning on the Commencement Date and continuing throughout the remainder of the Term, Tenant shall pay, prior to delinquency, all Taxes on the Property directly to the appropriate Person. Where any Tax that Tenant is obligated to pay may be paid pursuant to law in installments, Tenant may pay such Tax in installments as and when such installments become due. Beginning on the Commencement Date, Tenant shall render the Property for each Governmental Authority imposing Tax thereon and may, if Tenant shall so desire, endeavor at any time or times to obtain a lowering of the valuation of the Property for any year for the purpose of reducing ad valorem taxes thereon and, in such event, Landlord will, at the request of Tenant, cooperate in effecting such a reduction, provided the Landlord shall not be required to incur any expense or incur any obligations in connection therewith without its prior written consent.

12.2 Tenant's Right to Contest Taxes. Tenant shall not be required to pay, discharge or remove any Tax so long as Tenant shall contest in good faith the amount or validity of such Tax by appropriate proceeding(s) which shall operate to prevent or stay the collection of the Tax so contested, in which event the payment thereof may be deferred, as permitted by law, during the pendency of such contest, if diligently prosecuted by appropriate proceedings. Fifteen (15) days prior to the date any contested Tax shall become due, Tenant shall deposit with Landlord or an Escrow Agent (if required by a senior Mortgagee) the amount so contested and unpaid, together with a sum to cover all interest and penalties in connection therewith and all charges that may be assessed or become a charge against the Property in such proceeding, which deposit must first be used to pay any unpaid Taxes (and associated costs and expenses) prior to payment of any other sum. During such contest, Landlord shall have no right to pay the Tax contested except as provided herein. Upon the termination of such proceeding, Tenant shall deliver to Landlord proof of the amount of the Tax as finally determined and thereupon Landlord shall, out of the sum so deposited with it by Tenant, pay such Tax and shall refund any balance to Tenant. If the sum deposited with Landlord is insufficient to pay the full amount of such Tax and the interest, penalties and other charges, Tenant shall forthwith pay any deficiency. If during such proceeding Landlord shall deem (in its reasonable judgment) the sums deposited with it insufficient, Tenant shall upon demand deposit with Landlord such additional sums as Landlord may reasonably request and upon failure of Tenant so to do, the amount theretofor deposited may be applied by Landlord to the payment, removal and discharge of such Tax, and the interest and penalties in connection therewith and any costs, fees or other liability accruing in any such proceedings, and the balance, if any, shall be returned to Tenant. Tenant shall give Landlord written notice of any such contest and Landlord, at Tenant's sole expense, shall join in any such proceeding if any law, rule or regulation at the time in effect shall so require. Any proceeding for contesting the validity or amount of any Tax, or to recover any Tax paid by Tenant, may be brought by Tenant in the name of Landlord or in the name of Tenant, or both, as Tenant may deem advisable. Landlord shall not be subjected to any liability for the payment of any costs or

expenses in connection with any proceedings and Tenant will indemnify and save Landlord harmless from any such costs and expenses.

12.3 Insurance.

(a) Property Insurance.

(i) By Tenant. Commencing as of the completion of construction of any Improvements, Tenant shall maintain property insurance covering the Improvements caused by perils now or hereafter embraced by or defined in an "all risk" policy (or any successor to such policy), including at least such perils as customarily insured for similar properties in Austin, Texas, in an amount equal to the full replacement value of the Property. The policy will contain an agreed value endorsement and a laws and ordinances endorsement. Such insurance will name Landlord and Tenant jointly as loss payees, as their respective interests may appear. Tenant may, at its option, maintain insurance covering its personal property located in or on the Property.

(ii) By Contractor. During construction of any Improvements, Tenant shall require the contractor to purchase and maintain (or at Tenant's option, Tenant may purchase and maintain) Builder's Risk Insurance concerning such work to be written on a completed value form and in an amount equal to construction contract amount plus reasonable compensation for architect's services and expenses made necessary by an insured loss. Insured property will include portions of the work located away from the site but intended for use at the site, and will also cover portions of the work in transit. The policy will include as insured property scaffolding, false work, and temporary buildings located at the site. The policy will cover the cost of removing debris, including demolition as may be made legally necessary by the operation of any law, ordinance, or regulation. Coverage will be no less broad than that provided by the special causes of loss form CP 10 30 10 91 as promulgated by Insurance Services Office, except that collapse will be covered as a cause of loss. Such insurance will be non-cancelable with respect to Landlord. Such builder's risk insurance will name Landlord and such parties as Landlord may reasonably designate as additional insureds, and such endorsement will be without exceptions for the acts or omissions of any additional insured (including negligence).

(b) Liability Insurance.

(i) By Tenant. Commencing on the Commencement Date, Tenant shall maintain a standard policy of commercial general liability insurance against injury or death to Persons or damage to property arising out of occurrences on or about the Property ("**CGL Insurance**") in the amount of \$2,000,000 per occurrence, \$5,000,000 annual aggregate, \$1,000,000 property damage. The CGL Insurance policy will (i) state that it is primary with regard to any other insurance carried by Landlord (and any insurance carried by Landlord will be excess, secondary, and noncontributing), (ii) name Landlord and such parties as

Landlord may reasonably designate as additional insureds, and such endorsement will be without exceptions for the acts or omissions of any additional insured (including negligence), (iii) be endorsed, if necessary, to provide cross-liability coverage, and (iv) will not have a deductible or self-insured retention in excess of \$10,000. Landlord may require Tenant to increase the amount of liability insurance from time to time (but not more often than once every three years) if the amount of liability insurance generally carried by owners of similar buildings in Austin, Texas increases above the amount of insurance required to be carried by this Lease. Any dispute will be resolved by a third party insurance consultant that (x) has at least ten years of experience in Texas, (y) is unrelated to Landlord or Tenant, and (z) is chosen by Landlord. The cost of any such insurance consultant will be split between the parties.

(ii) By Contractor. Tenant will cause the general contractor to obtain and maintain CGL Insurance complying with all provisions of subsection (1) immediately above. Furthermore, if such insurance is subject to a general aggregate, then \$5,000,000 will be dedicated to this project by Specific Job Limit Endorsement. The products-completed operations coverage will be maintained in effect for the benefit of the insured and additional insureds for a period of two years following completion of the work and will be at least two times its each occurrence limit.

(c) Other Insurance. Tenant will cause the general contractor to obtain and maintain business auto liability and, if necessary, commercial umbrella liability insurance with limits reasonably acceptable to Landlord, which policy will be endorsed to include Landlord and parties reasonably designated by Landlord as additional insureds (without exceptions for acts or omissions of the additional insureds, including negligence). Tenant will cause the general contractor to obtain and maintain workers' compensation insurance as required by Legal Requirements.

(d) Insurance Carriers. All of the insurance policies required hereunder will be issued by corporate insurers licensed to do business in the state of Texas and rated Policyholder's Rating of "A" and a Financial Size Rating of "VIII" or better by A. M. Best Company.

(e) Insurance Certificates. To the extent insurance is required hereunder, Tenant shall provide or cause to be provided to Landlord certificates of insurance evidencing all insurance required to be carried hereunder, (i) prior to the Commencement Date (or the date of completion of the Improvements, with respect to Tenant's property insurance) and (ii) at least 15 days prior to the expiration or renewal of any such insurance policy. All such certificates of insurance will be on an ACORD Form 27 (or any equivalent successor form); provided, however, with the prior review and approval of Landlord, an ACORD Form 25-S (or any equivalent successor form) may be used for CGL Insurance provided Landlord has been provided with a certified copy of all insurance policies, including all required endorsements, and provided (a) there is attached to the Certificate of Insurance a valid and binding Revised Cancellation Endorsement specifying the requirement of the carriers to give 30 day advance notice of cancellation or material change in the policies and the words

“endeavor to” and “but failure to mail such notice will impose no obligation or liability of any kind upon the company, its agents or representatives” will be deleted from the certificate form’s cancellation provision and (b) Landlord is authorized to contact the issuing insurance agency and the insurance carriers to confirm the existence of the coverages. Furthermore, if requested in writing by Landlord, Tenant, general contractor, and any Subtenant will provide to Landlord a copy of any or all insurance policies or endorsements required by the Lease.

(f) Failure to Carry Insurance. If Tenant does not keep or cause to be kept insurance required in this Lease in full force and effect, Landlord may notify Tenant of this failure, and if Tenant or its Subtenant does not deliver to Landlord certificates showing all such insurance to be in full force and effect within 5 days after this notice, Landlord may, at its option, take out and/or pay the premiums on the insurance needed to fulfill Tenant’s obligations under the provisions of this Article. Upon demand from Landlord, Tenant shall reimburse Landlord the full amount of any insurance premiums paid by Landlord pursuant to this section, with interest at the Delinquency Interest Rate.

(g) Waiver of Subrogation. Landlord and Tenant release each other from any losses for injury or death to Persons or damage to property that is caused by or which results from risks insured against under insurance carried or required to be carried hereunder, **EVEN IF SUCH LOSS ARISES OUT OF THE NEGLIGENCE OF THE RELEASED PARTY OR ANY MATTER FOR WHICH THE RELEASED PARTY WOULD OTHERWISE BE STRICTLY LIABLE UNDER LEGAL REQUIREMENTS.** All policies of insurance required hereunder will contain provisions to evidence the waiver of all rights of subrogation of the insurer against Landlord and its successors, assigns, directors, officers, employees, and agents.

12.4 Indemnity. Except as otherwise provided in the MDA, Tenant assumes liability for, and shall indemnify, protect, save and keep harmless the Landlord and its respective officers, directors, contractors, employees and agents (each an “**Indemnitee**”) from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs and expenses, including reasonable legal expenses, of whatsoever kind and nature, imposed on, incurred by or asserted against any Indemnitee (a “**Claim**”), in any way arising out of (a) this Lease, (b) the use of the Offsite Parking Garage, (c) Tenant’s acts or omissions, (d) except as otherwise specifically provided herein, the use, ownership, possession, delivery, lease, sublease, operation or condition of the Property, the Offsite Parking Garage or any part thereof (including, without limitation, latent or other defects, whether or not discoverable by Tenant or any other Person, any claim in tort for strict liability and any claim for patent, trademark or copyright infringement), **EVEN IF CAUSED BY THE NEGLIGENCE OR ALLEGED NEGLIGENCE OF AN INDEMNITEE (BUT NOT THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE) OR IF AN INDEMNITEE WOULD OTHERWISE BE STRICTLY LIABLE UNDER LEGAL REQUIREMENTS. NOTWITHSTANDING THE FOREGOING, TENANT SHALL NOT BE REQUIRED TO INDEMNIFY LANDLORD UNDER THIS SECTION 12.4 WITH RESPECT TO CLAIMS AGAINST LANDLORD RESULTING FROM ANY EXISTING ENVIRONMENTAL CONDITION UNLESS SUCH EXISTING ENVIRONMENTAL CONDITION IS COVERED BY INSURANCE CARRIED BY TENANT.** The provisions of this paragraph will survive the expiration or earlier termination of this Lease.

12.5 Indemnity Procedures. With respect to all the indemnity obligations in this Lease, if an Indemnatee notifies Tenant of any claim, demand, action, administrative or legal proceeding, investigation or allegation as to which the indemnity provided for in this Section applies, Tenant shall assume on behalf of the Indemnatee and conduct with due diligence and in good faith the investigation and defense thereof and the response thereto with counsel reasonably satisfactory to the Indemnatee; provided, that the Indemnatee shall have 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, demand, action, proceeding, investigation or allegation involves both Tenant and the Indemnatee and the Indemnatee shall have been advised in writing by reputable counsel that there may be legal defenses available to it which are inconsistent with those available to Tenant, then the Indemnatee shall have the right to select separate counsel to participate in the investigation and defense of and response to such claim, demand, action, proceeding, investigation or allegation on its own behalf, and Tenant shall pay or reimburse the Indemnatee for all attorney's fees incurred by the Indemnatee because of the selection of such separate counsel. If any claim, demand, action, proceeding, investigation or allegation arises as to which the indemnity provided for in this Section applies, and Tenant fails to assume promptly (and in any event within 20 days after being notified of the claim, demand, action, proceeding, investigation or allegation) the defense of the Indemnatee, then the Indemnatee may contest (or settle, with the prior consent of Tenant, which consent will not be unreasonably withheld) the claim, demand, action, proceeding, investigation or allegation at Tenant's expense using counsel selected by the Indemnatee; provided, that after any such failure by Tenant which continues for 60 days or more no such contest need be made or continued by the Indemnatee and settlement or full payment of any claim may be made by the Indemnatee without Tenant's consent and without releasing Tenant from any obligations to the Indemnatee under this Section if, in the written opinion of reputable counsel to the Indemnatee, the settlement or payment in full is clearly advisable. In no event, however will Tenant be required to indemnify any Indemnatee for loss or liability arising from acts or events which occur after the Property has been returned to Landlord in accordance with this Lease, or for loss or liability resulting to the extent of the willful misconduct or gross negligence of such Indemnatee or resulting from any transfer, sale or assignment of such Indemnatee's interest in the Property or Lease prior to an Event of Default. Landlord 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 Landlord 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. Other than to the extent caused by a City Event of Default, Seaholm hereby releases Landlord with respect to all Claims regarding any alleged, established or admitted negligent or wrongful act or omission of Landlord or any agents, contractors, representatives or employees of Landlord, **INCLUDING ALL CLAIMS CAUSED BY THE NEGLIGENCE OR STRICT LIABILITY OF LANDLORD.** The provisions of this paragraph will survive the expiration or earlier termination of this Lease.

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

ARTICLE XIII.
TENANT'S RIGHT TO FINANCE AND MORTGAGEE PROTECTION

13.1 Tenant's Right to Finance; Subordination. Tenant may finance a portion of its cost to acquire the Property and construct, alter and/or remove the Improvements as hereinafter specified, and shall have the right to Mortgage the Leasehold Estate; provided that, such financing and mortgage(s) meet the requirements of this Article. Without the prior written consent of Landlord, Tenant covenants to Landlord 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**"). Landlord will not unreasonably withhold such consent if Tenant'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 Landlord) of Tenant'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.

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.

13.2 Limitation of Liability. Landlord 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 Landlord'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 Landlord may deem necessary or desirable to protect its interest hereunder. Furthermore, such Mortgage shall expressly provide that the Mortgagee thereunder shall not seek a judgment against Landlord for the payment of such debt based upon such Mortgage or any instrument or document related thereto.

13.3 Use of Loan Proceeds. Tenant covenants and agrees with Landlord 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.

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

13.5 Mortgagee Protection. The execution and delivery by Tenant of any Mortgage, in and of itself, shall not be deemed to constitute a transfer or assignment under ARTICLE XVIII of this Lease, nor a Mortgagee, as such, be deemed a transferee or assignee of this Lease so as to require such Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions on the part of Tenant to be performed hereunder. Notwithstanding any provision of this Lease to the contrary, the following terms and provisions shall apply regarding any Mortgage with respect to Tenant's interest in this Lease:

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

(b) Notice. If any Mortgagee shall have delivered to Landlord prior written notice of the address of such Mortgagee, Landlord shall simultaneously send duplicate copies of all notices of Tenant's Events of Default to Mortgagee at such address. Such notices shall be given in the manner prescribed in Section 21.5 hereof.

(c) Cure Right. Mortgagee has no duty to cure any defaults under this Lease by Tenant, but Landlord shall accept cure by Mortgagee and for such purpose Landlord and Tenant hereby authorize such Mortgagee to enter upon the Property and to exercise any of such Mortgagee's rights and powers under this Lease. The time for Mortgagee's cure of any Tenant Event of Default shall be extended for 60 days beyond the later to occur of (i) the period of cure granted to Tenant and (ii) the date notice of such default is received by Mortgagee; provided however, if a Tenant 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 Tenant Event of Default, but in no event longer than a total of 120 days. If a Tenant Event of Default exists, Mortgagee may, at its election, acquire title to Tenant's estate in the Property or Tenant's interest in this Lease diligently, 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 Landlord of such intent. Mortgagee shall not be required to cure or commence to cure any default that is personal to Tenant (e.g., bankruptcy). Additionally, if a default exists under the Mortgage at a time when no Tenant Event of Default exists and Mortgagee is exercising its rights under the Mortgage to acquire title to Tenant's estate in the Property or Tenant's interest in this Lease 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 Tenant 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 Tenant (e.g., bankruptcy). Landlord will not exercise its remedies for an Event of Default under this Lease so long as Mortgagee has a right to cure such Event of Default under this Section.

(d) Bankruptcy. If Tenant's interest hereunder is terminated because of a rejection of this Lease 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 Landlord within 15 days following such rejection, Landlord will execute and deliver a new agreement with such Mortgagee or a Replacement Developer (as defined in the MDA) for the remainder of the Term with the same agreements, covenants, representations, warranties and conditions (except for any requirements that have been fulfilled by Tenant prior to termination and any requirements that are personal to Tenant) as were contained herein; provided, however, that such Mortgagee or the Replacement Developer must immediately cure any default of Tenant hereunder. Mortgagee shall not be required to cure or commence to cure any default that is personal to Tenant (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 Mortgage and Landlord's obligations hereunder only extend to such senior Mortgagee.

13.6 Default Under Loan Documents. Mortgagee shall furnish to Landlord copies of all default notices which Tenant 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 Tenant. Upon request by Landlord (not to be given more than twice per 12 month period), Mortgagee shall certify in writing to Landlord whether or not, to Mortgagee's actual knowledge without inquiry, any default on the part of Tenant 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 Lease.

13.7 Fee Estate. Mortgagee shall have no lien, security interest or other interest in the Fee Estate. Mortgagee shall not acquire any lien, security interest or other interest in the Fee Estate in connection with any foreclosure action or acceptance of a deed in lieu thereof from Tenant.

ARTICLE XIV. LANDLORD'S RIGHT TO FINANCE

14.1 Right to Encumber. Landlord shall have the right, from time to time, to encumber the Fee Estate with a Mortgage, subject to the provisions of this Article. The Mortgage shall not encumber the Leasehold Estate. Landlord confirms that there currently exists no Mortgage. The parties hereby acknowledge and agree that this Lease shall therefore be prior in time and superior to the lien of any future Mortgage.

14.2 Protective Provisions. If Landlord encumbers its Fee Estate with a Mortgage in compliance with this Article, then Landlord shall provide Tenant written notice thereof, providing with such notice the name and mailing address of the Landlord Mortgagee in question, and Tenant shall, upon request, acknowledge receipt of such notice, and, for so long as the Mortgage in question remains in effect, the following shall apply:

(a) Tenant shall give to any Landlord Mortgagee of which it has been given notice as provided above, a duplicate copy of any notices to Landlord which are required to be given prior to Tenant exercising any right or remedy as a result of a default by Landlord under this Lease, and no such notice shall be effective as to the Landlord Mortgagee until such duplicate copy is actually received by such Landlord Mortgagee.

(b) No Landlord Mortgagee shall be or become liable to Tenant as an assignee of this Lease until such time as such Landlord Mortgagee, by foreclosure or other procedures, shall either acquire the rights and interests of Landlord under this Lease and upon such Landlord Mortgagee's assigning such rights and interests to another party, such Landlord Mortgagee shall have no further such liability thereafter arising under this Lease.

(c) Nothing contained in this Article shall prevent Tenant's pursuing monetary damages or injunctive relief relating to Landlord's default as permitted under this Lease.

(d) The provisions of this Article are solely for the benefit of and enforceable by the Landlord Mortgagee and are not for the benefit of, and may not be enforced by, Landlord.

ARTICLE XV. OTHER COVENANTS AND AGREEMENTS

15.1 Estoppel Certificates. Upon 30 days' prior written notice not more than twice in any 12-month period, the Landlord and the Tenant each agree to sign and deliver to the other party a statement certifying (a) that this Lease 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 Lease (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 Lease. Any such certificate from Landlord shall be in form and content acceptable to Landlord, Tenant and any Mortgagee requesting same. 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.

ARTICLE XVI. SURRENDER

No act by Landlord will be an acceptance of a surrender of the Property, and no agreement to accept a surrender of the Property will be valid unless it is in writing and signed by Landlord. At the end of the Term or the termination of Tenant's right to possess the Property, Tenant shall: (a) deliver to Landlord the Property with all improvements located thereon in good repair and condition, reasonable wear and tear (subject however to Tenant's maintenance obligations) and damage by Casualty (subject to Section 17.1), and (b) deliver to Landlord all keys to the Property in Tenant's possession or control. Provided that there is then no Event of Default hereunder, Tenant may remove all personal property and Trade Fixtures in the Property installed by Tenant. Notwithstanding the previous sentence, Tenant, without notice from Landlord, shall remove all Hazardous Materials and all additions, alterations, improvements, machinery and movable and nonmovable fixtures relating to the use, testing or storage of such Hazardous Materials in compliance with all Legal Requirements prior to the expiration of the Term. All items required to be removed hereunder and not so removed will, at the option of Landlord, be deemed abandoned by Tenant and may be appropriated, sold, stored, destroyed, or otherwise disposed of by Landlord on reasonable notice to Tenant and without any obligation to account for such items, and Tenant shall pay for the actual and reasonable costs incurred by Landlord in connection therewith. All work required of Tenant under this Article will be done in a good and workmanlike manner, in accordance with all Legal Requirements, and so as not to damage the Property in any material respect. Tenant shall, at its expense, repair all damage caused by any work performed by Tenant under this Article.

ARTICLE XVII. CASUALTY AND CONDEMNATION

17.1 Damage or Destruction.

(a) Damage or Destruction.

(i) Notice of Damage or Destruction. Tenant shall give Landlord immediate written notice if any portion of the Property is damaged or destroyed by fire, casualty, or other cause ("Casualty"). Tenant shall appear in any proceeding or action to defend, negotiate, prosecute, or adjust any claim for any insurance payment on account of any Casualty and shall take all appropriate action in connection with any such Casualty. No settlement of any such proceeding or action will be made by Tenant or Landlord without the prior written consent of the other party hereto, which consent will not be unreasonably withheld.

(ii) Tenant's Obligation to Repair. In the event of a Casualty, whether partial or total, and whether or not such Casualty is covered by insurance, Tenant shall repair, restore, and rebuild the Property to substantially the same or better condition as existed immediately prior to such Casualty, all in accordance with Legal Requirements. Tenant shall be solely responsible for and shall pay the balance, if any, of the costs to so restore the Property.

(iii) Casualty During Last 7 Lease Years. Notwithstanding the foregoing, if a Casualty occurs during the last 7 years of the Term, Tenant shall have the following options:

(A) Lease Termination. Tenant may elect not to repair and restore the Property, but instead terminate this Lease by giving written notice of termination to Landlord within 150 days after the date of the Casualty. If Tenant elects to so terminate this Lease, Tenant shall, at Tenant's expense, raze the Improvements and level, clear, clean, and otherwise put the Land in good order and in a safe condition and the insurance proceeds shall be available to pay for or reimburse Tenant for the cost of such work, with the balance of the remaining insurance proceeds being distributed to the Mortgagees for application on the Mortgages, and then the balance of the proceeds are to be distributed to Landlord.

(B) Lease Continuance. If Tenant does not elect to terminate this Lease as provided herein and repairs and restores the Property, the Term shall be extended for a period equal to the time reasonably required for Tenant to so repair and restore the Property.

(b) Conditions Precedent to Restoration by Tenant. If Tenant is required or elects to repair or restore the Property after a Casualty, the insurance proceeds, after deduction therefrom of all reasonable expenses actually incurred in settling or adjusting the claim, including attorneys' fees, will be available to Tenant for the repair and restoration of the Property on and subject to the following terms and conditions:

(i) Event of Default. No Tenant Event of Default Exists.

(ii) Construction Costs Covered. Tenant furnishes to Landlord an estimate of the cost to fully restore the Property, and Landlord is satisfied that the insurance proceeds actually available to Tenant hereunder, plus any additional amount supplied by Tenant from other sources (which additional amount will be escrowed with the funds described in section (c)(i) below and used prior to the insurance proceeds) are sufficient to pay all of the costs of such restoration.

(iii) Construction Quality and Compliance. Prior to commencement of construction of the restoration work, Tenant obtains all necessary permits from all Governmental Authorities.

(iv) Construction Contract Terms. Tenant has furnished Landlord a copy of the construction contract(s) for such restoration complying with the provisions of this Lease.

(c) Disbursal of Proceeds. If the conditions set forth immediately above are satisfied, then Landlord and Tenant shall execute an escrow agreement with an Escrow Agent, which shall contain the following provisions:

(i) Deposit of Funds. Landlord and Tenant shall cause the insurance company to deposit with the Escrow Agent the available insurance proceeds and Tenant shall deposit with the Escrow Agent the amount of the estimated costs in excess of the available insurance proceeds (unless Tenant has made arrangements reasonably acceptable to Landlord for the financing and funding of such amount as provided above).

(ii) Construction Draws. The Escrow Agent shall disburse such funds, within 10 days after written request of Tenant and provided the Escrow Agent does not receive written objection by Landlord to any or all of such requested disbursement within said 10 day period (provided Landlord shall have no right to object in the event Tenant is restoring the Property in accordance with the terms of this Lease), upon delivery by Tenant to the Escrow Agent (with a copy to Landlord) of draw requests for the amount of the restoration costs then incurred by Tenant (together with bills paid affidavits, releases of liens and other evidence of the payment of such costs as Landlord may reasonably request) and a certificate from Tenant's architect certifying that the work for which such reimbursement is requested has been completed in accordance with the plans; provided an amount equal to 10% of such costs (the "Retainage") shall be retained from each reimbursement payment. The Retainage shall be paid to Tenant 35 days after the date of the completion of the restoration, as evidenced by an affidavit of completion executed by Tenant, Tenant's architect and the general contractor, subject to Tenant's delivery to Landlord and the Escrow Agent of a final certificate of occupancy issued by the applicable Governmental Authority and all bills paid affidavits and releases of liens from the general contractor and all subcontractors furnishing labor or materials.

(iii) Disposition of Remainder of Insurance Proceeds. Subject to the terms of any Mortgage (which shall govern and control over this subsection), any and all insurance proceeds remaining after deduction of all reasonable expenses incurred by Landlord and Tenant in settling or adjusting the claim (including reasonable attorneys' fees) in excess of the cost of such repairs and restoration of the Property or clearance shall be paid to Tenant.

17.2 Condemnation.

(a) Action. Tenant shall appear in any proceeding or action to defend, negotiate, prosecute, or adjust any claim for any award or compensation on account of any actual or threatened condemnation or eminent domain proceedings or other action by any Person having the power of eminent domain or condemnation (each, a "Condemnation") and shall take all appropriate action in connection with any such Condemnation.

(b) Total Taking. During the Term, if title to and possession of all of the Property is taken by Condemnation, then this Lease shall terminate on the day of the earlier to occur of the vesting of legal title to the Property in the entity exercising the power of Condemnation and the taking of actual physical possession of the Property by the entity exercising such power. After such termination, both Landlord and Tenant are released from

all obligations under this Lease; except for the provisions of this Lease that expressly survive termination of this Lease. Any compensation or damages awarded or payable under this Section will be distributed as provided in Section 17.1(c).

(c) Partial Taking.

(i) Partial Taking Only and No Adverse Effect on Operations. If a partial taking shall occur by the taking of a portion of the Property only which is unencumbered by the Improvements (a "**Property Taking**") and the Property Taking does not materially and adversely affect the operations of the Improvements, then in that event, this Lease will not terminate and Landlord will be entitled to all Condemnation awards payable as a result of the Property Taking.

(ii) Partial Taking Only with Adverse Effect on Operations or Partial Taking of Property and Improvements. In the event that (A) a partial taking of the Property occurs which has a material adverse effect on the operations of the Improvements or (B) a material portion (but not all) of the Property shall be taken or condemned, then, Tenant may terminate this Lease by providing Landlord written notice of same within 60 days after Tenant has received written notice of the institution of a Condemnation action under this Section. Thereafter, this Lease shall terminate as of the effective date of the taking. On termination of this Lease pursuant to this Section, both Landlord and Tenant shall be released from all obligations under this Lease, except for the provisions of this Lease that expressly survive termination or expiration of this Lease. As used in this paragraph, the phrase "**material portion**" means (AA) a taking that results in the inability to qualify for all necessary licenses or permits from any Governmental Authority needed to rebuild, restore or renovate the remaining Improvements, (BB) a taking that causes access to the Property to be materially and permanently impaired, or (CC) a taking that reduces the parking available at the Property by 5% or more. Any compensation or damages awarded or payable under this Section shall be distributed as provided in Section 17.1(c).

(d) Participation by Tenant's Mortgage. Any Mortgagee shall be entitled to participate in any Condemnation proceedings.

(e) Voluntary Conveyance in Lieu of Condemnation. Nothing in this Article prohibits Landlord from voluntarily conveying all or part of the Property to a public utility, agency, or authority under threat of a taking under the power of condemnation. Any such voluntary conveyance shall be treated as a taking within the meaning of this Article.

(f) Temporary Taking. If the whole or any portion of the Property shall be taken for temporary use or occupancy, (i) the Term shall not be reduced, (ii) Tenant shall continue to satisfy all monetary obligations under this Lease, (iii) except to the extent Tenant is prevented from so doing pursuant to the terms of the order of the condemning authority, Tenant shall continue to perform and observe all non-monetary obligations under this Lease, and (iv) Tenant shall be entitled to receive the entire award therefor unless the period of temporary use or occupancy shall extend beyond the expiration of the Term, in which case

such award shall be apportioned between Landlord and Tenant in the same ratio that the part of the period for which such compensation is made falling before the day of expiration and that part falling after, bear to such entire period.

17.3 Distribution of Award. In any Condemnation proceeding that will or may potentially affect the Improvements, the parties will request that the condemning authority grant separate awards for the Fee Estate and the Leasehold Estate.

(a) Separate Awards. If separate awards are obtained, then Landlord shall be entitled to the award for the Fee Estate and Tenant shall be entitled to the award for the Leasehold Estate (but without duplication). As between Tenant and any Mortgagee, the Mortgage shall govern distribution of the Tenant's award; provided that no Mortgagee shall have any claim to an award made for the Fee Estate.

(b) Combined Award. If separate awards are not obtained, then the parties shall have the Property that is being taken appraised. Such appraisal process will determine the percentage of any award that should be attributed to the Fee Estate (the "**Fee Estate Percentage**") and the percentage of any award that should be attributed to the Leasehold Estate excluding the Tenant's Fixtures (the "**Leasehold Estate Percentage**") (and the aggregate of such percentages must equal 100%). Landlord shall be entitled to the Fee Estate Percentage of any award and Tenant (or Mortgagee, if applicable) shall be entitled to the Leasehold Estate Percentage of any award. As between Tenant and any Mortgagee, the Mortgage shall govern distribution of the Leasehold Estate Percentage; provided that no Mortgagee shall have any claim to the Fee Estate Percentage.

(c) Use of Condemnation Award. If this Lease is not terminated by Tenant as a result of the condemnation as expressly permitted above, any condemnation awards received by Tenant shall be used to restore the Improvements to an architecturally whole unit, and, to the extent possible given the nature of the taking, to substantially the same or better condition as existed immediately prior to such taking. Any Condemnation awards payable to Tenant for restoration or repair of the Property will be held and disbursed as set forth in Section 17.1(c).

ARTICLE XVIII. ASSIGNMENTS AND SUBLEASES

18.1 Prior to Permitted Assignment Date. Without Landlord's prior written consent (which consent may be withheld in Landlord's sole discretion), Tenant may not assign this Lease or sublet a portion of the Property to anyone other than an End User prior to the date on which leases covering 75% of the net rentable square feet of the Improvements are occupied by End Users paying market rent (i.e., the rent for similar premises that would be charged in an arm's length transaction between unaffiliated, informed and willing tenants and landlords) (such date, the "**Permitted Assignment Date**"). The 75% End User threshold in this section will not include any sublease with an Affiliate of Tenant if such lease(s) causes more than 15% of the applicable square footage of the Improvement to be leased to Affiliates of Tenant. This section shall apply to the hypothecation (except for financing covered by ARTICLE XIII hereof) of any of Tenant's interest in the Leasehold Estate (except for financing covered by ARTICLE XIII

hereof), including, but not limited to, the transfer of more than a majority of the ownership interests in Tenant or Tenant's controlling entities.

18.2 Following Permitted Assignment Date.

(a) Following the Permitted Assignment Date, without Landlord's prior written consent (which consent shall not be unreasonably withheld), Tenant may not assign this Lease or sublet a portion of the Property (a "**Transfer**") to anyone other than an End User. This section shall apply to the hypothecation of any of Tenant's interest in the Leasehold Estate (except for financing covered by ARTICLE XIII hereof), including, but not limited to, the transfer of more than a majority of the [or controlling] ownership interests in Tenant or Tenant's controlling entities. Landlord will be deemed to have reasonably withheld its consent to any proposed assignment or subletting upon the existence of any of the following: (i) Landlord's determination (in its sole discretion) that such subtenant or assignee is not of the character or quality of a tenant to whom Landlord would have originally leased the Property, (ii) the fact that such sublease or assignment is not in form and of substance reasonably satisfactory to Landlord, (iii) such sublease or assignment conflicts in any manner with this Lease, (iv) the proposed subtenant or assignee is a governmental entity, (v) such sublessee or assignee has a net worth less than that of Tenant at the time of the requested transfer, or (vi) the sublessee or assignee does not have extensive and relevant experience in the ownership of mixed use, urban retail developments.

(b) Any request for a Transfer by Tenant must be in writing (a "**Transfer Request**") and include (i) the proposed effective date of the Transfer, (ii) the proposed form of all Transfer documentation, (iii) all of the terms of the proposed Transfer, (iv) identity of the proposed transferee (including principals and development/management experience), (v) current financial statements of the proposed transferee, (vi) business, credit and personal references and business history of the proposed transferee, (vii) proposed development/management plan for the Property, and (viii) any other information reasonably required by the Landlord which will enable the Landlord to determine the financial responsibility, experience, character, and reputation of the proposed transferee. If the Landlord fails to notify Tenant in writing of its approval, disapproval or comments to the complete Transfer Request within 60 days of the Landlord's deemed receipt thereof, Tenant may provide the Landlord 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 Landlord within 30 days after deemed receipt will be deemed approval of the Transfer Request. In such event and on Tenant's written request to the Landlord, the Landlord will provide written confirmation to Tenant of such deemed approval. The Landlord will notify the applicant in writing of any materials that the Landlord believes are missing to make a Transfer Request complete. The Landlord may: (x) approve the Transfer Request with or without conditions; (xi) 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 (xii) disapprove the Transfer Request.

18.3 Subletting to End Users; Nondisturbance. Nothing in this Article will prevent Tenant from subleasing a portion of the Improvements to End Users. Upon Tenant's written request, the Landlord will enter into a nondisturbance agreement concerning a Nondisturbance Sublease which will be in form and content reasonably satisfactory to Landlord, Tenant and the affected End User.

18.4 Assignments and Subletting Generally. Without limiting Landlord's consent rights and as a condition to obtaining Landlord's consent, (i) each assignee must assume all obligations under this Lease and (ii) each sublessee must confirm that its sublease is subject and subordinate to this Lease. No assignee or sublessee of the Property or any portion thereof may assign or sublet the Property or any portion thereof without the prior written consent of Landlord, which consent may not be unreasonably withheld (provided nothing herein shall require Landlord's consent to any subleasing or assignment of any portion of the Improvements by End Users to subsequent End Users). Consent by Landlord to one or more assignments or sublettings shall not operate as a waiver of Landlord's rights as to any subsequent assignments and/or sublettings. Tenant shall deliver to Landlord, at least thirty (30) days prior to the date Tenant desires to consummate a proposed assignment or subletting, written notice of the intended assignment or subletting, naming the proposed assignee or subtenant, as the case may be, together with a current balance sheet and income statement for the proposed subtenant or assignee, a copy of the proposed assignment and assumption agreement, and such other information as Landlord may reasonably request in writing. Tenant shall deliver to Landlord a copy of each assignment or sublease entered into by Tenant promptly after the execution thereof, whether or not Landlord's consent is required in connection therewith. All reasonable legal fees and expenses incurred by Landlord in connection with any assignment or sublease proposed by Tenant will be the responsibility of Tenant and will be paid by Tenant within ten (10) days of receipt of an invoice from Landlord. Nothing in this Article will prevent Tenant from pledging its interests to a Mortgagee pursuant to ARTICLE XIII hereof or any succession of rights provided for in ARTICLE XIII, nor shall any such pledging or Mortgagee's succession, whether by foreclosure or by conveyance or assignment in lieu thereof, or otherwise, constitute a Potential Event of Default or an Event of Default hereunder, and Landlord acknowledges that such Mortgagee may succeed to the interest of the Tenant hereunder and in and to the Leasehold Estate in the manner, and to the extent, provided for in ARTICLE XIII hereof. ***[POWER PLANT ONLY: If the Tenant is also the manager of the Offsite Parking Garage under a management agreement between the Landlord and the Tenant, a permitted assignment of this Lease to a third party will also constitute an assignment of such management agreement to such third party.]***

18.5 Assignments after Bankruptcy. If, pursuant to Applicable Bankruptcy Law, Tenant (or its successor in interest hereunder) is permitted to assign this Lease in disregard of the restrictions contained in this Article (or if this Lease shall be assumed by a trustee for such person), the trustee or assignee shall cure any Event of Default under this Lease and shall provide adequate assurance of future performance by the trustee or assignee, including (a) the source of performance of Tenant's obligations under this Lease (for which adequate assurance shall mean the deposit of cash security with Landlord in an amount equal to the sum of one (1) year's of operating expenses, then reserved hereunder for the calendar year preceding the year in which such assignment is intended to become effective, which deposit shall be held by Landlord, without interest, for the balance of the Term as security for the full and faithful performance of

all of the obligations under this Lease on the part of Tenant yet to be performed and that any such assignee of this Lease shall have a net worth exclusive of good will, computed in accordance with the generally accepted accounting principles, equal to at least ten (10) times the aggregate of the operating expenses under this Lease); and (b) 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 Landlord. If all Events of Defaults are not cured and such adequate assurance is not provided within sixty (60) days after there has been an order for relief under Applicable Bankruptcy Law, then this Lease shall be deemed rejected, Tenant or any other person in possession shall immediately vacate the Property, and Landlord shall be entitled to retain any Rent, together with any security deposit previously received from the Tenant, and shall have no further liability to Tenant or any person claiming through Tenant or any trustee.

18.6 Bankruptcy of Assignee. If Tenant assigns this Lease to any party and such party or its successors or representatives causes termination or rejection of this Lease pursuant to Applicable Bankruptcy Law, then, notwithstanding any such termination or rejection, Tenant (a) shall remain fully liable for the performance of all covenants, agreements, terms, provisions and conditions contained in this Lease, as though the assignment never occurred and (b) shall, without in any way limiting the foregoing, in writing ratify the terms of this Lease, as same existed immediately prior to the termination or rejection.

ARTICLE XIX. DEFAULT AND REMEDIES

19.1 Default. Each of the following events is an “**Event of Default**” by Tenant under this Lease:

(a) Monetary Defaults. Failure by Tenant to pay any sums of money stipulated in this Lease to be paid by Tenant, and such failure continues for a period of 30 days after written notice thereof has been delivered to Tenant.

(b) Non-Monetary Defaults. Failure by Tenant to perform or observe any of the terms, covenants, conditions, agreements and provisions of this Lease (other than as set forth in subsection (a) above) and such failure continues for a period of 90 days after notice has been delivered to Tenant; provided however, that if any such failure (other than a failure involving payment of liquidated sums of money) cannot reasonably be cured within the 90-day period, then such failure will not be an Event of Default so long as Tenant has commenced to cure such failure after the effective date of the notice and within the 90-day period and proceeds in good faith, continuously, and with due diligence to remedy and correct any such failure.

(c) Other Agreements. An event of default occurs after any applicable grace, notice and/or cure periods under the MDA or the Declaration.

(d) Levy or Attachment. The initiation of any proceeding whereupon the Leasehold Estate, or any portion thereof, or in this Lease is levied upon or attached if such

proceeding is not vacated, discharged or bonded within 60 days after the date of such levy or attachment.

(e) Bankruptcy, Receivership, Etc. The entry of any decree or order for relief by a court having jurisdiction in respect of Tenant in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of Tenant or for any substantial part of the assets of Tenant, or the entry of any decree or order with respect to winding-up or liquidation of the affairs of Tenant, if any such decree or order continues unstayed and in effect for a period of 60 consecutive days

(f) Voluntary Proceedings. The commencement by Tenant of a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by Tenant to the appointment of or possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of Tenant or for any substantial part of the assets of Tenant, or any assignment made by Tenant for the benefit of creditors.

19.2 Remedies. During the existence of an Event of Default, Landlord will have the option to do and perform any one or more of the following in addition to, and not in limitation of, any other remedy or right permitted it by law or in equity or by this Lease:

(a) Landlord may terminate this Lease by giving written notice thereof to Tenant, in which event this Lease and the Leasehold Estate and all interest of Tenant and all parties claiming by, through, or under Tenant shall automatically terminate upon the effective date of such notice and Tenant shall immediately surrender the Property to Landlord. If Tenant fails to immediately surrender the Property to Landlord, Landlord may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession of the Property and expel or remove Tenant and any other person who may be occupying the Property, or any part thereof, by force, if necessary, without having any civil or criminal liability therefor, to the extent permitted by Legal Requirements, and Tenant hereby agrees to pay to Landlord on demand the amount of all actual loss and damage which Landlord may suffer by reason of such termination, specifically including, but not limited to any increase in insurance premiums caused by the vacancy of the Property. Nothing contained in this Lease shall limit or prejudice the right of Landlord to prove for and obtain in proceedings for bankruptcy or insolvency by reason of the termination of this Lease, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, the damages are to be proved, whether or not the amount be greater, equal to, or less than the amount of the loss or damages referred to above.

(b) Landlord may enter upon and take possession of the Property and expel or remove Tenant or any other person who may be occupying the Property, or any part thereof, by force, if necessary, without being liable for prosecution or any claim for damages therefor; and without terminating this Lease, Landlord may (but shall be under

no obligation to) lease, manage, and operate the Property and collect the rents, issues, and profits therefrom all for the account of Tenant, in the name of Tenant or Landlord or otherwise, for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term) and on such conditions (which may include concessions or free rent) and for such uses as Landlord in its absolute discretion may determine and Landlord may collect and receive any rents payable by reason of such reletting and credit to the satisfaction of Tenant's obligations hereunder the net rental thus received (after deducting therefrom all reasonable and actual costs and expense of repossessing, leasing, managing and operating the Property). No such re entry or taking of possession of the Property by Landlord shall be construed as an election on Landlord's part to terminate this Lease unless a written notice of such termination is given to Tenant in accordance with the terms of this Lease. No repossession of or reentering on the Property or any part thereof pursuant to this subparagraph or otherwise and no reletting of the Property or any part thereof pursuant to this subparagraph shall relieve Tenant of its liabilities and obligations hereunder, all of which shall survive such repossession or reentering.

(c) Enter upon the Property, by force if necessary, without having any civil or criminal liability therefor, and, with or without such entry upon the Property, do whatever Tenant is obligated to do under the terms of this Lease, and Tenant agrees to reimburse Landlord on demand for any expenses which Landlord may incur in thus effecting compliance with Tenant's obligations under this Lease with interest from demand until payment at the Delinquency Interest Rate and Tenant further agrees that Landlord shall not be liable for any damages resulting to Tenant from such action, **WHETHER CAUSED BY THE NEGLIGENCE OF LANDLORD OR OTHERWISE** (except such damages as are caused by the gross negligence or willful misconduct of Landlord).

19.3 Payment by Tenant. Tenant shall pay to Landlord all costs and expenses incurred by Landlord as a result of an Event of Default, including court costs and reasonable attorney's fees in (i) retaking or otherwise obtaining possession of the Property under this Lease, (ii) removing and storing Tenant's or any other occupant's personal property, (iii) repairing or restoring the Improvements to the condition in which Tenant is required to deliver the Improvements at the end of the Term, (iv) paying or performing the underlying obligation that gave rise to the subject default and that Tenant failed to pay or perform and (v) enforcing any of Landlord's rights under this Lease arising as a consequence of the Event of Default.

19.4 Other Remedies. Any termination of this Lease as provided in this Article will not relieve Tenant from the payment of any sum or sums that are due and payable to Landlord under the Lease at the time of termination, or any claim for damages then or previously accruing against Tenant under this Lease, and any such termination will not prevent Landlord from enforcing the payment of any such sum or sums or claim for damages by any remedy provided for by law, or from recovering damages from Tenant for any Event of Default under the Lease. All rights, options, and remedies of either party contained in this Lease will be construed and held to be cumulative, and no one of them will be exclusive of the other, and the non-defaulting party will have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law, whether or not stated in this Lease.

19.5 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 Lease will 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 will 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 will not be construed as a waiver of any succeeding breach or non-performance of the same or other covenants and conditions hereof.

ARTICLE XX. TRANSFER OF FEE ESTATE

[OFFICE BUILDING ONLY]

20.1 Conditions to Transfer. Landlord shall transfer the Fee Estate to Tenant upon satisfaction of the following:

- (a) No Bankruptcy Event, Event of Default or Potential Event of Default exists.
- (b) Completion of Construction of the Improvements has occurred.
- (c) At least 75% of the net rentable square feet of the Improvements are occupied by End Users paying market rent (i.e., the rent for similar premises in an arm's length transaction between unaffiliated, informed and willing tenants and landlords).
- (d) The hotel portion of the Hotel/Condo Property (as defined in the MDA) is open for business to the general public.
- (e) All of "Seaholm's" obligations under the MDA have been completed to the extent completion is required as of such date.

20.2 Transfer Mechanism. The transfer of the Fee Estate will be accomplished by a Deed (as defined in the MDA) and will be subject to (a) the Permitted Encumbrances and (b) all matters consented to by Tenant, and (c) all other matters arising from an act or omission of Tenant. Tenant will pay all costs, fees and expenses associated with the transfer of the Fee Estate.

ARTICLE XXI. MISCELLANEOUS

21.1 Right of Entry and Inspection. Upon 24 hours prior written notice to Tenant, Tenant will permit Landlord or Landlord's agents to enter on the Property for the purposes of determining whether Tenant is in compliance with the terms of this Lease.

21.2 No Partnership or Joint Venture. The relationship between Landlord and Tenant at all times will remain solely that of landlord and tenant and will not be deemed a partnership or a joint venture.

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

21.4 Release of Landlord. If Landlord sells or transfers all or part of the Land and as a part of the transaction assigns its interest as Landlord in and to this Lease, then from and after the effective date of the sale, assignment, or transfer, Landlord will have no further liability under this Lease to Tenant, except as to matters of liability that have accrued and are unsatisfied as of that date, it being intended that the covenants and obligations of Landlord contained in this Lease will be binding on Landlord and its successors and assigns only during and in respect of their respective successive periods of ownership of the fee. Nothing contained herein will release Landlord from any of its obligations under the MDA.

21.5 Delivery of Notices. Formal notices, demands and communications between the parties must be in writing and 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:

Tenant: Seaholm Power Development, LLC
 c/o Southwest Strategies Group
 1214 W. 6th Street, Suite 220
 Austin, TX 78703-5261
 Attention: John Rosato

with a copy to: Seaholm Power Development, LLC
 c/o Centro Partners LLC
 823 Congress Avenue, Suite 800
 Austin, TX 78701
 Attention: Kent Collins

with a copy to: 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

Landlord: 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: City Attorney

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

21.6 Parties Bound. This Lease will be binding upon and inure to the benefit of the parties to the Lease and their respective heirs, executors, administrators, legal representatives, successors, and permitted assigns.

21.7 Severability. If any term(s) or provision(s) of this Lease or the application of any term(s) or provision(s) of this Lease to a particular situation, is (are) held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Lease or the application of such term(s) or provision(s) of this Lease to other situations, will 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 Landlord or the Tenant of material benefits derived from this Lease, or make performance under this Lease unreasonably difficult, then the Landlord and the Tenant will meet and confer and will make good faith efforts to amend or modify this Lease in a manner that is mutually acceptable to the Landlord and the Tenant.

21.8 Prior Agreements Superseded. Except for the MDA and the Declaration, this Lease constitutes the sole and only agreement of the parties to the Lease and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter of the Lease.

21.9 Amendment. No amendment, modification, or alteration of the terms of this Lease will be binding unless it is in writing, dated subsequent to the date of this Lease, and duly executed by the parties to this Lease.

21.10 Merger. There will be no merger of this Lease or of the Leasehold Estate by reason of the fact that the same Person may acquire, own or hold, directly or indirectly, in whole or in part, (a) this Lease or the Leasehold Estate or any interest in this Lease or such Leasehold Estate, or (b) any right, title or interest in the Property.

21.11 Attorney's Fees and Interest. Should any legal action be brought by either party because of a breach of this Lease or to enforce any provision of this Lease, the prevailing party will 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 Lease when it is due, that amount will bear interest from the date it is due until the date it is paid at the Delinquency Interest Rate.

21.12 Limitation on Liability. No member, shareholder, officer, director, manager, official, representative or employee of the Landlord or the Tenant will be personally liable to the other party to this Lease for any default or breach by the first party, or for any amount which may become due to the other party, or on any obligations under the terms of this Lease.

21.13 Construction of Agreement. This Lease has been reviewed and revised by legal counsel for both the Tenant and the Landlord, and no presumption or rule that ambiguities will be construed against the drafting party will apply to the interpretation or enforcement of this Lease.

21.14 No Third Party Beneficiaries. The Landlord and the Tenant hereby renounce the existence of any third party beneficiary to this Lease and agree that nothing contained herein will be construed as giving any other Person or entity third party beneficiary status.

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

21.16 Time of Performance. All performance dates (including cure dates) expire at 5:00 p.m. Central Standard or Daylight Time, as then applicable, 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.

21.17 Manner of Payment. All Rent and other sums payable to Landlord must be paid in the lawful money of the United States of America at the time of payment to Landlord at Landlord's address for notices as set forth herein, or at such other address as may be designated by Landlord.

21.18 Landlord 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 Landlord required hereunder may be given by the City Manager of the City of Austin or its designee; provided however, except for clarifications, minor

amendments or minor modifications, the City Manager does not have the authority to execute any substantial modification or amendment of this Lease without approval of the Austin City Council.

21.19 Correction of Technical Errors. If, by reason of inadvertence, and contrary to the intention of the Landlord and the Tenant, errors are made in this Lease 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 Lease 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 Lease.

21.20 Memorandum. Landlord and Tenant shall execute a Memorandum of this Lease at the same time as they execute this Lease in the form attached as Exhibit B. The Memorandum of Lease will be recorded in the Real Property Records. This Lease, and not the Memorandum of Lease, is what creates the Leasehold Estate and whether the Lease is terminated or expires is governed by the terms of this Lease.

21.21 LANDLORD'S REGULATORY CAPACITY VERSUS LANDOWNER CAPACITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, LANDLORD IS EXECUTING THIS LEASE SOLELY IN ITS CAPACITY AS AN OWNER OF THE LAND (E.G., THE RIGHTS AND OBLIGATIONS OF LANDLORD WILL NOT BE MORE THAN THOSE OF A PRIVATE LANDOWNER) AND NOT IN ITS CAPACITY AS A REGULATORY BODY (E.G., REGULATORY APPROVALS OR IN ANY OTHER REGULATORY CAPACITY). FURTHER, TENANT SPECIFICALLY ACKNOWLEDGES THAT THE LANDLORD CANNOT CONTRACT IN ANY MANNER REGARDING THE EXERCISE OF ITS SOVEREIGN POWERS.

21.22 LIMITED WAIVER OF SOVEREIGN IMMUNITY. TO THE EXTENT PERMITTED BY APPLICABLE LAWS, LANDLORD VOLUNTARILY WAIVES ITS RIGHT TO ASSERT SOVEREIGN IMMUNITY FROM SUIT OR LIABILITY IN RESPONSE TO AN ACTION BY TENANT SEEKING ONLY THE REMEDIES SPECIFIED IN THIS LEASE. LANDLORD 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 LEASE.

21.23 Brokers. Tenant warrants that it has had no dealings with any broker or agent in connection with the negotiation or execution of this Lease, and Tenant agrees to indemnify Landlord and to hold Landlord harmless from and against any and all costs, expenses or liability for commissions or other compensations or charges claimed by any broker or agent with respect to this Lease, through such broker's or agent's dealings with Tenant. Landlord warrants that it has had no dealings with any broker or agent in connection with the negotiation or execution of this Lease, and Landlord agrees to indemnify Tenant and to hold Tenant harmless from and against any and all costs, expenses or liability for commissions or other compensations or

charges claimed by any broker or agent with respect to this Lease, through such broker's or agent's dealings with Landlord.

21.24 Landlord's Lien. The statutory landlord's lien granted to Landlord pursuant to the Texas Property Code will be subject and subordinate to any Mortgage. Landlord will execute additional documentation acceptable to Landlord and a Mortgagee evidencing such subordination.

[End of Text – Signatures on Following Pages]

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

LANDLORD:

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

By: _____
Name: _____
Title: _____

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

THOMPSON & KNIGHT L.L.P.

[Signature Block on Following Page]

TENANT:

SEAHOLM POWER DEVELOPMENT, LLC, a
Delaware limited liability company

By: _____
Name: _____
Title: _____

**EXHIBIT A
TO GROUND LEASE**

Land

**EXHIBIT B
TO GROUND LEASE**

Memorandum of Ground Lease

**EXHIBIT C
TO GROUND LEASE**

Offsite Parking Garage Land

EXHIBIT H
TO MASTER DEVELOPMENT AGREEMENT

Form of Guaranty

GUARANTY

This Guaranty (this "**Guaranty**") is made to be effective as of _____, 2008 by CIM FUND III, L.P., a Delaware limited partnership (the "**Guarantor**") in favor of THE CITY OF AUSTIN, a Texas home rule city and municipal corporation (the "**City**").

RECITALS:

A. SEAHOLM POWER DEVELOPMENT, LLC, a Delaware limited liability company ("**Seaholm**") has entered into that certain Master Development Agreement with the City dated of even date herewith (the "**MDA**") and will enter into a Special Warranty Deed (the "**Deed**") and one or more Ground Leases with the City (collectively the "**Ground Lease**") as contemplated in the MDA.

B. Guarantor will benefit by the execution of each of the MDA and the Ground Lease.

C. As a condition to entering into each of the MDA and the Ground Lease, the City requires Guarantor to guaranty certain obligations of Seaholm to the City.

D. Capitalized terms used herein but not defined shall have the meanings assigned to such terms in the MDA.

For good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, Guarantor agrees as follows:

1. Guarantor unconditionally guarantees unto the City the prompt and complete payment when due of:

(a) any and all liabilities, losses, costs, damages, expenses, claims, reasonable attorneys' fees, experts' fees, and consultants' fees incurred by the City as a result of:

(i) Seaholm's generation, handling, treatment, transportation, manufacture, processing, distribution, use, storage or disposal of any material classified by an environmental law as a "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 (excluding, however, the environmental obligations that are the obligation of the City as specifically set forth in MDA, the Ground Lease and/or the Deed);

(ii) Seaholm's commission of any criminal act, fraud or misrepresentation by, or for the benefit of, Seaholm in connection with the MDA or the Ground Lease;

(iii) insurance proceeds which are received by or on behalf of Seaholm and which are not applied as required under the terms of the MDA or the Ground Lease;

(iv) Seaholm's failure to maintain the insurance required by the provisions of the MDA and the Ground Lease;

(v) the existence of any mechanic's, materialman's, tax or other similar lien filed against the Property as the result of an act or omission of Seaholm;

(vi) Seaholm's failure to pay any taxes or assessments concerning the Property;

(vii) the Property, or any part thereof, becoming an asset in a bankruptcy or insolvency proceeding regarding Seaholm; provided, however, that the guaranty obligation of Guarantor under this subsection shall only extend to reasonable attorneys' fees, expert witness fees and consultants' fees incurred by the City as a result thereof (and no other liabilities, losses, costs, damages, expenses or claims of any kind), and provided, further, that, this subsection shall not apply if an involuntary bankruptcy is filed by the City;

and, following the occurrence of a Major Event of Default, the performance of the following obligations:

(b) following Commencement of Construction by Seaholm, to complete and to pay the cost of Completion of Construction of the Improvements;

(c) following Commencement of Construction by Seaholm, to pay all expenses, charges, costs and fees of or relating to the requirements of (b) above, including, without limitation, all permitting fees, licensing fees, utility expenses, insurance expenses, penalties, charges and amounts payable to all architects, engineers, construction managers, contractors, subcontractors, tenants and material suppliers engaged in connection with any of the foregoing;

each in accordance with the terms of the MDA and the Ground Lease (the obligations in (b) and (c) above, collectively, the "**Completion Obligations**" and the obligations in (a), (b) and (c) above, collectively, the "**Guaranteed Obligations**"); provided, that, notwithstanding the foregoing or any provision express or implied of this Guaranty to the contrary, in no event may the City enforce the Completion Obligations at any time prior to the Commencement of Construction by Seaholm.

2. If a Major Event of Default occurs (taking into account any applicable grace, notice or cure period), then upon the earlier to occur of a written request of the City or at the

written election of the Guarantor, the Guarantor shall have the right to elect by written notice to the City (the "**Completion Election Notice**") within 30 days following such written request to either:

(a) Perform the Completion Obligations. If, in the reasonable judgment of the Guarantor, the Dry-In Condition (as defined in the Deed and the Ground Lease, as applicable) cannot be achieved by the Guarantor on or before the Dry-In Condition Date (as defined in the Deed and the Ground Lease, as applicable), the Guarantor shall propose in writing to City a new Dry-In Condition Date (together with evidence reasonably substantiating such new date). If the proposed replacement Dry-In Condition Date is not approved by City (in its reasonable discretion) within 10 days following such written request, Guarantor and City shall work together during the following 10 days to agree upon the Dry-In Condition Date. If at the expiration of such second 10 day period, the parties still do not agree on the Dry-In Condition Date, Guarantor or City may make an Arbitration Demand that such Issue be resolved by an Arbitrator through a binding arbitration process (as the terms "Arbitration Demand" and "Issue" and as the arbitration process is provided for in the Deed and the Ground Lease, as applicable).

If Guarantor shall elect to perform the Completion Obligations pursuant to such Completion Election Notice, then the City shall not have the right to enforce (and shall be barred from enforcing) its remedy or right to:

- (i) repurchase the Property under the MDA or the Deed;
- (ii) seek to or to enforce its rights or remedies under MDA Sections 10.2(a), 10.2(e), 10.2(f), 10.2(g) (limited solely to construction/reimbursement obligations) and 10.2(h), or
- (iii) enforce the corresponding similar rights under the Deed and the Ground Lease,

notwithstanding the prior occurrence or continuance of any Event of Default or Major Event of Default under the MDA or any of the Exhibits to the MDA, provided, however, that:

(x) the City shall have and retain all other rights and remedies against Seaholm under MDA Sections 10.2(b), 10.2(c), 10.2(d), 10.2(g) (limited to nonconstruction/nonreimbursement obligations) and the exhibits to the MDA concerning any past and future Event of Default thereunder (excluding, however, rights and remedies attendant to any Major Event of Default that resulted in the Completion Election Notice), with the foregoing limitation and exclusion equally applicable to the rights of the City under MDA Section 9.2 solely with respect to the other provisions listed in this paragraph (e.g., the City may not enforce liquidated damages under MDA Sections 10.2(d) or 9.2 of the MDA), and

(xi) if Guarantor shall default in the performance of the Completion Obligations in accordance with the applicable terms of the MDA and the Exhibits to the MDA (subject to all grace periods, and notice and cure rights therein

contained with respect to such terms), then the right of the City to so enforce such barred rights and remedies thereupon shall be reinstituted (and no remedy will be limited) with respect to any such Event of Default, or

(xii) if Guarantor shall Transfer its interest in the Property, then the right of the City to so enforce such barred rights and remedies thereupon shall be reinstituted (and no remedy will be limited) with respect to any such Event of Default.

In furtherance and not in limitation of the foregoing, Guarantor shall have the right by any suit or action at law or in equity to stay any effort by the City to enforce any right or remedy barred by operation of this Section 2(a).

(b) Pay to the City a liquidated damages payment (the "**Liquidated Damages Payment**") equal to the sum of: (i) the aggregate amount of all Incentives paid by the City to Seaholm or Guarantor, *plus* (ii) \$1,000,000. The Liquidated Damages Payment shall be paid to the City within 10 days following the date of the Completion Election Notice. The Liquidated Damages Payment shall be retained by the City as liquidated damages, and not as a penalty, the parties agreeing the estimation of the damages concerning a failure to complete construction would be difficult to compute. If Guarantor elects to pay the Liquidated Damages Payment, neither Seaholm nor Guarantor shall have any claim, right, title or interest to the value of any work completed on the Property (except for any Repurchase Price payable by the City under a repurchase of the Property as provided for in the Deed or the Termination Price payable by the City under a termination of the Ground Lease as provided in the Ground Lease).

If Guarantor fails to deliver the Completion Election Notice, Guarantor will be deemed to have elected option 2(b) and the Completion Election Notice will be deemed to be given on the date which the Completion Election Notice was due.

If Guarantor elects, or is deemed to elect, option 2(b) above and title to the Property is held by Seaholm or Guarantor, in lieu of receiving the \$1,000,000 payment in subsection 2(b)(ii) above, the City may elect in writing within 30 days following the date of the Completion Election Notice to have Guarantor raze (or caused to be razed) all existing improvements on the Property (other than the Power Plant Improvements) and level, clear, clean, and otherwise put the applicable portion of the Property in good order and in a safe condition, all of which must be completed within 180 days following the date of the Completion Election Notice. If the City fails to deliver the election required by this paragraph, the City will be deemed to elect NOT to have Guarantor raze the improvements.

If Guarantor elects or is deemed to elect option 2(b) above, then, upon full payment of the Liquidated Damages Payment (and, if applicable, the razing of such improvements):

(aa) the obligation of the Guarantor hereunder to perform the Completion Obligations thereupon shall terminate and expire, and

(bb) the City thereupon shall have no further rights or remedies against Seaholm under:

(i) Sections 9.2 (except with respect to Pending Claims) and 10.2 of the MDA, but specifically excluding the rights of indemnity/hold harmless with respect to Pending Claims, reconveyance, termination and assignment contained therein (and specific performance in connection with such rights),

(ii) the Deed, but specifically excluding the right of reconveyance (and specific performance in connection with such right), and

(iii) the Ground Lease but specifically excluding the rights of termination and indemnity/hold harmless with respect to Pending Claims (and specific performance in connection with such right).

The City expressly retains its rights and remedies under Section 1(a) hereof. As used in this Section 2(bb), the term "Pending Claims" means a third party "Claim" (i.e., a claim by a third party against "Indemnitee" for which Seaholm is obligated to indemnify and hold harmless such Indemnitee) under Section 9.2 of the MDA or Section 12.4 of a Ground Lease of which the City has received notification either by notice of a filed Claim or written notice of a threatened Claim on or before the payment date of the Liquidated Damages Payment.

The foregoing provisions of this Section 2 shall supersede any provision express or implied to the contrary of this Guaranty, the MDA (other than the Mortgagee protections and seniority provisions of the MDA Section 12.5), the Declaration, the Ground Lease or the Deed.

3. Subject to the limitations set forth in Sections 1 and 2 above, the obligations under this Guaranty are unconditional and absolute, and if for any reason all or any portion of the Guaranteed Obligations is not paid or performed promptly when due (follow the expiration of any applicable grace, notice or cure period), Guarantor will immediately pay the same to the City or commence performance, as the case may be, regardless of any defense, right of setoff or counterclaim which Seaholm may have or assert, and regardless of whether the City has taken any steps to enforce any rights against Seaholm or any other entity to collect such sum, and regardless of any other condition or contingency.

4. Subject to the limitations set forth in Sections 1 and 2 above, the obligations, covenants, agreements and duties of Guarantor under this Guaranty will in no way be affected or impaired by reason of: (a) the release or waiver, by operation of law or otherwise, of the performance or observance by Seaholm or any co-guarantor, surety, endorser or other obligor of any express or implied agreement, covenant, term or condition to be performed or observed by such party, (b) the extension of the time for the payment or performance of all or any portion of the Guaranteed Obligations, (c) the supplementing, modification or amendment (whether material or otherwise) of the obligations of Seaholm, Guarantor or any surety for Seaholm, (d) any failure, omission, delay or lack of diligence on the part of the City, or any other person or entity, to enforce, assert or exercise any right, privilege, power or remedy conferred on the City or any other person or entity, or any action on the part of the City or such other person or entity granting indulgence or extension of kind, (e) the release, modification, waiver or failure to enforce any guaranty, surety or indemnity agreement whatsoever, (f) the release, modification, waiver or failure to enforce any right, benefit, privilege or interest under any contract or

agreement at any time when Seaholm is the developer under the MDA, (g) the voluntary or involuntary liquidation, dissolution, sale of any collateral, marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or deficiency readjustment of debt of, or other similar proceedings affecting Seaholm or any other surety for Seaholm or any of the assets of Seaholm, (h) any invalidity of or defect or deficiency in the MDA or a Ground Lease, (i) the settlement, compromise or subordination of any obligation guaranteed hereby or hereby incurred, (j) the bankruptcy, insolvency or dissolution of Seaholm (even though the same shall render the Guaranteed Obligations void or unenforceable or uncollectible, in whole or in part, as against Seaholm), or (k) any other circumstance that might otherwise constitute a defense available to, or discharge of Seaholm or Guarantor, except a City Event of Default and/or payment and performance of the Guaranteed Obligations.

5. This is an absolute guaranty of payment and not of collection, and Guarantor waives any right to require that any action be brought against Seaholm or any other person or entity. This Guaranty is an absolute and unconditional guaranty of the payment and performance of the Guaranteed Obligations, is irrevocable and will continue in full force and effect until payment and performance in full of the Guaranteed Obligations.

6. Guarantor represents and warrants to the City that: (a) Guarantor is duly organized, legally existing and in good standing under the laws of the state of its organization, (b) this Guaranty has been duly executed and delivered by Guarantor and constitutes a legal, valid and binding obligation of Guarantor enforceable in accordance with its terms (subject to applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws and equitable principles generally affecting creditors' rights); (c) the execution, delivery and performance of this Guaranty (i) do not and will not violate any agreement, certificate or instrument by which Guarantor or its property may be bound, (ii) to the knowledge of Guarantor, do not and will not violate or conflict with any law, governmental rule or regulation or any judgment, writ, order, injunction, award or decree of any court, arbitrator, administrative agency or other governmental authority applicable to Guarantor or any indenture, mortgage, contract, agreement or other undertaking to which Guarantor is a party, and (iii) do not and will not require any consent of any other person or entity or any consent, license, permit, authorization or other approval of, registration with, any giving of notice to or any exemption by, any court, arbitrator, administrative agency or other governmental authority, which has not been obtained, (d) there is no action, suit or proceeding pending or, to the knowledge of Guarantor, in writing threatened against or affecting Guarantor before any court or administrative agency which might result in any material adverse change in the business or financial condition of Guarantor, (e) all financial statements supplied to the City by or on behalf of Guarantor prior to the execution of this Guaranty are true and complete in all material respects and fairly represent the financial condition of the subject thereof as of the dates thereof and for the periods then ended, (f) all financial statements furnished to the City by or on behalf of Guarantor will be true and complete in all material respects and fairly represent the financial condition of the subject thereof as of the dates thereof and for the periods then ended, (g) no material adverse change has occurred in the financial condition reflected in such financial statements since the respective dates thereof, (h) Guarantor is not in default with respect to any order, writ, injunction, decree or demand of any court or other governmental authority, or in the payment of any indebtedness for borrowed money or under the terms or provisions of any agreement or instrument evidencing or securing

any such indebtedness, and (i) the execution and delivery of this Guaranty to the City will directly or indirectly benefit Guarantor.

7. At the request of the City, Guarantor shall deliver to an advisor designated by the City in writing ("**Advisor**"), the annual audited financial statement of Guarantor for any fiscal year of the Guarantor, provided, that the foregoing delivery obligation is subject to the condition precedent that such Advisor first enter into a confidentiality agreement respecting its receipt of any such financial statement, which confidentiality agreement shall prohibit further disclosure to any person (including without limitation the City) and otherwise shall be upon terms acceptable to the Guarantor in the exercise of its reasonable judgment.

8. The City shall provide Guarantor notice of an Event of Default under the MDA contemporaneously with providing such notice to Seaholm. Without limitation of Section 2(a) hereof, Guarantor shall have the same period of time as is given to Seaholm under the MDA to cure such Event of Default. The City shall accept any timely cure of such Event of Default by Guarantor as the cure of Seaholm.

9. Guarantor expressly subordinates its rights to payment of any indebtedness owing from Seaholm to Guarantor, whether now existing or arising at any time in the future, to the prior right of the City to receive or require payment or performance in full of the Guaranteed Obligations and until payment and performance in full of the Guaranteed Obligations (and including interest accruing after any petition under the Bankruptcy Code, which post-petition interest Guarantor agrees shall remain a claim that is prior and superior to any claim of Guarantor notwithstanding any contrary practice, custom or ruling in proceedings under the Bankruptcy Code generally).

10. No delay on the part of the City in exercising any right hereunder or failure to exercise the same will operate as a waiver of such right, nor will any single or partial exercise of any right, power or privilege bar any further or subsequent exercise of the same or any other right, power or privilege.

11. This Guaranty will not be changed orally, but shall be changed only by agreement in writing signed by the person against whom enforcement of such change is sought.

12. Any notice, request or other communication required or permitted to be given hereunder will be given in accordance with the notice provisions of the MDA or the Ground Lease, as applicable. Guarantor's address is set forth on the signature page hereof.

13. The masculine and neuter genders used herein will each include the masculine, feminine and neuter genders and the singular number used herein will include the plural number. The words "person" and "entity" will include individuals, corporations, partnerships, joint ventures, associations, joint stock companies, trusts, unincorporated organizations, and governments and any agency or political subdivision thereof.

14. This Guaranty will be binding upon and will inure to the benefit of, and be enforceable by, Guarantor and its trustees, receivers, successors and assigns, and will be binding upon and will inure to the benefit of, and be enforceable by, the City and its successors and assigns. Guarantor shall not assign its obligations hereunder without the prior written consent of

the City. This Guaranty may be executed in multiple counterparts, and each counterpart executed by any party shall be deemed an original and shall be binding upon the person or entity executing the same, irrespective of whether any other Guarantor has executed that or any other counterpart of this Guaranty. Production of any counterpart other than the one to be enforced shall not be required.

15. This Guaranty and the rights and obligations of the parties hereunder will in all respects be governed by, and construed and enforced in accordance with, the laws of the State of Texas. Guarantor hereby irrevocably submits to the non-exclusive jurisdiction of any State or federal court sitting in the County of Travis, State of Texas, over any suit, action or proceeding arising out of or relating to this Guaranty.

16. If any other person or entity will, with respect to any of the Guaranteed Obligations at any time, execute and deliver any guaranty, or any other agreement or document with substantially the same effect as this Guaranty, then the obligations of the Guarantor hereunder shall not thereby be limited or impaired, but instead shall be deemed to be joint and several obligations with such other guaranty to the extent of the Guaranteed Obligations hereunder.

17. Nothing herein shall be construed to cancel, amend, discharge or limit any other guaranty or similar obligation executed by Guarantor (in the capacity as a guarantor) in favor of the City.

[END OF TEXT-SIGNATURE ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Guarantor has executed this Guaranty on the date of acknowledgment below to be effective as of the date first above written.

GUARANTOR:

CIM FUND III, L.P., a Delaware limited partnership

By: CIM Fund III GP, LLC, a California limited liability company, its general partner

By: _____
Name: _____
Title: _____

Address for Notice:
CIM Fund III, L.P.
c/o CIM Group, Inc.
6922 Hollywood Boulevard
Ninth Floor
Los Angeles, CA 90028
Attention: Jeff Rosen

STATE OF _____ §
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 200_, by _____ of CIM Fund III GP, LLC, a California limited liability company, on behalf of said limited liability company in its capacity as general partner of CIM FUND III, L.P., a Delaware limited partnership, on behalf of said limited partnership.

Notary Public, State of _____

[Seal]
Printed Name of Notary and
Commission Expiration Date:

FIRST AMENDMENT TO MASTER DEVELOPMENT AGREEMENT

(Uses and Street Reimbursement)

This First Amendment to Master Development Agreement (this "Agreement") is dated effective as of June 18, 2012, between THE CITY OF AUSTIN, a Texas home rule city and municipal corporation ("City") and SEAHOLM POWER DEVELOPMENT, LLC, a Delaware limited liability company ("Seaholm").

R E C I T A L S:

A. City and Seaholm executed that certain Master Development Agreement dated June 17, 2008 (as amended, the "MDA") concerning the redevelopment of the Seaholm Power Plant in Austin, Texas (the "Property") as more particularly described therein.

B. Since the execution of the MDA, the parties have discussed the possibility of adding to Seaholm's public infrastructure component and adding more flexibility to the development plan for the Property.

C. On June 7, 2012, the City Council of the City passed Ordinance No. 20120607-009 (the "Ordinance") which authorized the negotiation and execution of an amendment to the MDA.

D. The parties desire to amend the MDA as authorized by the Ordinance.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Terms. Initially capitalized terms used herein but not defined will have the meaning assigned such terms in the MDA.

2. Residential Development Flexibility.

(a) Since the execution of the MDA, the real estate market conditions have significantly changed and for sale condominiums are no longer feasible on the Property. As the parties desire that the development of the Property happen in the near term (as opposed to waiting for the condominium market to return), the parties desire to amend the MDA to provide for residential development flexibility.

(b) The Hotel/Condo Building under the MDA, will now be called the "Residential Building" which will allow the construction of condos and a hotel as currently provided in the MDA or a 305 unit (or greater) "Class A" multifamily for rent project. All references in the MDA to the "Hotel/Condo Building" and "Hotel/Condo Property" are now respectively the "Residential Building" and "Residential Property".

(c) With respect to the "Property Revenues" under the MDA (i) for the Residential Building and the Residential Property, if utilized as a multifamily for rent project, the Property Revenues will include the net sale proceeds (i.e., not less than 92%

of the gross sale revenues) or re-financing net proceeds from the Residential Building and Residential Property, (ii) the phrase “but excludes any management fees paid by the City to Seaholm for the management and operation of the Offsite Parking Garage” is replaced with the phrase “but excludes any management fees paid by the City to Seaholm for the management and operation of any portion of the underground parking garage not ground leased to or owned by Seaholm”.

(d) With respect to the development flexibility in Section 3.1(e)(ii) of the MDA and Section 2(a) of the Declaration, if the Residential Building is developed as “for-rent” multi-family residential units, Seaholm may not decrease the number of multifamily units in the Residential Building below 280 without the City’s consent, upon the parameters otherwise set forth within such paragraphs.

(e) With respect to the reimbursements in Section 6.1 of the MDA, if the Residential Property is utilized as multifamily for rent units, the 4th Disbursement Threshold for the Transfer Price Incentive will be the issuance of a Certificate of Occupancy for the Residential Building and the move-in of the first resident of the Residential Building.

(f) With respect to the reimbursements in Section 6.1 of the MDA, if the Residential Property is utilized as multifamily for rent units, the 3rd Disbursement Threshold for the Reimbursable Fees Incentive will be the lease of at least 50% of the units in the Residential Property.

3. Expansion of Public Streets and Reimbursement.

(a) At the original execution of the MDA, the extension of Third Street through the Property was anticipated to be a private street. Now, the parties have agreed that Third Street should be a publicly dedicated street built to City standards and certain other public infrastructure items should be included in the scope of the street improvement work and the cost thereof should be reimbursed to Seaholm by the City.

(b) The definition of “Street Improvements” in the MDA is revised as follows:

“Street Improvements” means the construction to City standards of West Avenue, Third Street and Seaholm Drive with related sidewalks and streetscape together with streetscape work and parking along 3rd Street, a retaining wall on the west side of the Property, thickened roadway sections to protect utilities, an additional water line, and festival street amenities for West Avenue.

(c) The “not to exceed” amount of the Street Incentive in Section 6.1 of the MDA is increased from \$4,200,000 to \$7,000,000.

4. Retail Development Flexibility. Since the execution of the MDA, more detailed market studies and potential tenant interviews have led to the conclusion that, due to the lack of visibility and parking, the ground level of the Power Plant Building is not an optimal location for

retail uses. While Seaholm will continue to make reasonable efforts to include retail in the ground level of the Power Plant Building, the “retail only” restriction in the Declaration concerning the ground level of the Power Plant Building will be modified in the execution version of the Declaration to permit more flexibility with respect to non-retail uses of the ground level of the Power Plant Building.

5. Mortgagee Protection. Seaholm has indicated that it may engage separate lenders to finance different aspects of the acquisition and development of the Property. Accordingly, the term Mortgage shall include a mortgage, deed of trust, security agreement, indenture or similar security agreement that encumbers the Property or any portion thereof and secures any Financing of Seaholm, and the term Mortgagee shall include a Mortgage lender of all or a portion of the Property (i.e., includes a Mortgagee on the Office Property as well as a Mortgagee on the Residential Property and a Mortgagee on the Power Plant Property, to the extent each Mortgagee has a Mortgage) and each such first lien Mortgage lender will have the rights afforded a Mortgagee under the MDA. City will not be responsible for the resolution of any conflicts arising as a result of multiple Mortgagees.

6. Leasing. Section 3.1(l) is modified to allow Seaholm to enter into leases of the Property if (a) such leases comply with the restrictions set forth or contemplated in the MDA, and (b) the validity and effectiveness of such leases are expressly conditioned upon Seaholm’s acquisition of a fee or leasehold interest in the applicable portion of the Property covered by such lease.

7. Notices. Section 12.1 of the MDA is modified to delete the requirement to send copies of notices to K&L Gates. Additionally, Section 4.2(a)(i) of the MDA is modified to only require 30 calendar days notice (together with execution versions of applicable closing documents) to the City for the Takedown of the Property or any portion thereof.

8. Execution Versions of Exhibits to the MDA. Modifications to the agreements attached as exhibits to the MDA to effectuate the modifications evidenced herein will be made in the execution versions of such agreements.

9. Ratification. Except as specifically modified herein, the MDA remains unchanged, is in full force and effect and is ratified and confirmed in all respects.

10. No Modification. This Agreement supersedes and merges all prior and contemporaneous promises and agreements. No modification of this Agreement or any other Loan Document, or any waiver of rights under any of the foregoing, shall be effective unless made by supplemental agreement, in writing, executed by City and Seaholm. City and Seaholm further agree that this Agreement may not in any way be explained or supplemented by a prior, existing or future course of dealings between the parties or by any prior, existing, or future performance between the parties pursuant to this Agreement or otherwise.

11. Waiver. The execution hereof is not an actual or implied waiver of any condition or obligation imposed under the MDA, but does amend the MDA as expressly provided herein.

12. Miscellaneous. This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All such counterparts

shall be construed together and shall constitute one instrument, but in making proof hereof it shall only be necessary to produce one such counterpart. If any covenant, condition, or provision herein contained is held to be invalid by final judgment of any court of competent jurisdiction, the invalidity of such covenant, condition, or provision shall not in any way affect any other covenant, condition or provision herein contained. The parties acknowledge and confirm that each of their respective attorneys have participated jointly in the review and revision of this Agreement and that it has not been written solely by counsel for one party. The parties hereto therefore stipulate and agree that the rule of construction to the effect that any ambiguities are to or may be resolved against the drafting party shall not be employed in the interpretation of this Agreement to favor either party against the other. The terms and provisions hereof shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns (to the extent an assignment is permitted under the MDA).


13. Applicable Law. This Agreement and the rights and duties of the parties hereunder shall be governed for all purposes by the law of the State of Texas and the law of the United States applicable to transactions within said State.

[END OF TEXT - SIGNATURE BLOCKS ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned have executed this Agreement to be effective as of the date first set forth above.

CITY:

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

By: 
Name: Sue Edwards
Title: Asst. City Manager

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

THOMPSON & KNIGHT L.L.P.

SEAHOLM:

SEAHOLM POWER DEVELOPMENT, LLC, a
Delaware limited liability company

By: Seaholm Power, LLC,
a Texas limited liability company
Its: Managing Member

By: 
John Rosato, Manager

IN WITNESS WHEREOF, the undersigned have executed this Agreement to be effective as of the date first set forth above.

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.

A handwritten signature in blue ink, appearing to read "Andrew Ferguson", is written over a horizontal line.

SEAHOLM:

SEAHOLM POWER DEVELOPMENT, LLC, a
Delaware limited liability company

By: Seaholm Power, LLC,
a Texas limited liability company
Its: Managing Member

By: _____
John Rosato, Manager

CONSENT OF GUARANTOR

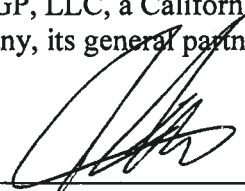
CIM FUND III, L.P., a Delaware limited partnership, as guarantor of certain obligations of Seaholm under the MDA pursuant to that certain Guaranty dated June 17, 2008 (the "Guaranty"), consents to the terms and conditions of the Agreement and agrees that the Guaranty is in full force and effect and is ratified and confirmed in all respects.

Executed to be effective as of the effective date of the above Agreement.

CIM FUND III, L.P., a Delaware limited partnership

By: CIM Fund III GP, LLC, a California limited liability company, its general partner

By:


Name: Abraham Shemesh
Title: President

SECOND AMENDMENT TO MASTER DEVELOPMENT AGREEMENT
(Onsite Underground Garage)

This Second Amendment to Master Development Agreement (this "Agreement") is dated effective as of June 18, 2012, between THE CITY OF AUSTIN, a Texas home rule city and municipal corporation ("City") and SEAHOLM POWER DEVELOPMENT, LLC, a Delaware limited liability company ("Seaholm").

R E C I T A L S:

A. City and Seaholm executed that certain Master Development Agreement dated June 17, 2008 (as amended, the "MDA") concerning the redevelopment of the Seaholm Power Plant in Austin, Texas (the "Property") as more particularly described therein.

B. The MDA was amended by that certain First Amendment to Master Development Agreement dated effective June 18, 2012.

C. Since the execution of the MDA, the parties have concluded that the development of the 315 space Offsite Parking Garage (as defined in the MDA) is not feasible and, as an alternative, the parties have discussed the City using its anticipated investment in the Offsite Parking Garage to expand Seaholm's to be constructed onsite underground parking garage by the addition of 315 parking spaces to be owned by the City.

D. On June 7, 2012, the City Council of the City authorized the negotiation and execution of all documents and instruments necessary or desirable for the City to acquire 315 public parking spaces in such garage.

E. The parties desire to amend the MDA as authorized by Council.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Terms. Initially capitalized terms used herein but not defined will have the meaning assigned such terms in the MDA.

2. Revised Parking Structure Generally.

(a) As a result of the City's investment in the Onsite Underground Garage, the Onsite Underground Garage will be expanded from 223 spaces to 538 spaces (a 315 space increase).

(b) To evidence anticipated future separate ownership interests in the Onsite Underground Garage, prior to the transfer of any Property interest to Seaholm, the City will execute that certain Master Condominium Declaration for Seaholm Power Master Condominium (the "Condo Declaration") which divides the future Onsite Underground Garage area, the Office Property and the Residential Property into multiple condominium

units. The Onsite Underground Garage will be divided into two units – Garage Master Unit B (“Garage Master Unit B”) for the Seaholm parking area and Garage Master Unit A (“Garage Master Unit A”) for the City parking area.

(c) Garage Master Unit B will be leased to Seaholm though the Ground Lease for the Office Property without an increase in the rent thereunder. The option to purchase the fee estate of the Office Property contained in Article XX of the Office Property Ground Lease will also apply to the Garage Master Unit B of the Onsite Underground Garage. Garage Master Unit A will continue to be owned by the City.

(d) Seaholm will be responsible for the development of the entire Onsite Underground Garage (including without limitation, Garage Master Unit A and Garage Master Unit B). The development of the Onsite Underground Garage will be governed by the MDA, as amended hereby. The MDA, as amended hereby, will also govern the City’s contribution to purchase the construction of Garage Master Unit A. The ongoing maintenance and operation of the Onsite Underground Garage will be governed by the Declaration and the Condo Declaration.

3. Revised Parking Structure Specifics.

(a) The following definitions are added to the MDA:

“**Condo Declaration**” means that certain Master Condominium Declaration for Seaholm Power Master Condominium executed by the City which separates the Office Property and the Residential Property into condominium units.

“**Onsite Underground Garage**” means a 538 space parking garage located underneath the Office Property and the Residential Property, which will be condominiumized pursuant to the Condominium Declaration. Both Garage Master Unit A and Garage Master Unit B are contained in the Onsite Underground Garage.

“**Garage Master Unit A**” means the 315 space portion of the Onsite Underground Garage designated as Garage Master Unit A under the Condo Declaration. Garage Master Unit A will be owned by the City until such time as the City, in its sole discretion, decides to sell Garage Master Unit A.

“**Garage Master Unit B**” means the 223 space portion of the Onsite Underground Garage designated as Garage Master Unit B under the Condo Declaration. Garage Master Unit B will be owned by the City and initially leased to Seaholm under the Office Property Ground Lease and will be available for purchase under Article XX of the Office Building Ground Lease.

(b) The Condo Declaration is included in the definition of Legal Requirements under the MDA.

(c) The definition of Offsite Parking Garage in the MDA is deleted and references to Offsite Parking Garage in the definition of MDA Commencement Date are deleted. The MDA Commencement Date occurred on January 1, 2013.

(d) No costs associated with the Onsite Underground Garage which are reimbursed and/or paid by the City will constitute Property Development Costs or Property Operating Costs.

(e) All remaining references to "Offsite Parking Garage" in the MDA shall now refer to the Onsite Underground Garage.

(f) An updated Proforma which includes the Onsite Underground Garage is attached hereto as Exhibit F.

(g) The Offsite Parking Garage Management Agreement attached to the MDA and referenced in Section 3.3(j) of the MDA will now be used to manage the Onsite Underground Garage, with appropriate modifications in the execution version thereof made to reflect, among other things, the change in the parking structure and ownership and unified management of the Onsite Underground Garage.

(h) With respect to the general construction obligations in MDA Section 3.1(d)(i), the following is added to such section:

Subject to Force Majeure and City Caused Delays, Seaholm shall Commence Construction of the Onsite Underground Garage in a timely manner following the execution of the Office Property Ground Lease. Following Commencement of Construction, Seaholm shall, subject to Force Majeure and City Caused Delays, diligently and in good faith continue construction of the Onsite Underground Garage to Completion of Construction. Seaholm shall have the right to enter upon the Garage Master Unit A, the Garage Master Unit B, the Office Property and the Residential Property for the purposes of conducting its obligations under this Section.

(i) In MDA Section 3.1(d)(vii), Seaholm must also use construction contracts incorporating environmental provisions substantially similar to those contained in the City's standard construction contract with respect to the construction of the Onsite Underground Garage.

(j) In MDA Sections 3.2(c)(ii) and 3.2(d), Seaholm will also comply with those sections with respect to the design and construction of the Onsite Underground Garage.

(k) Section 3.3(i) of the MDA (concerning the development of the Offsite Parking Garage) and all references to "Gables Garage" in the MDA are deleted.

- (l) MDA Section 6.4 is replaced with the following:

Onsite Underground Garage Reimbursement. Upon commencement of construction of the Onsite Underground Garage (being the bona-fide, good faith initiation of excavation for the Onsite Underground Garage), the City will reimburse Seaholm the actual construction costs (an **"Onsite Underground Garage Reimbursement"**) of Garage Master Unit A incurred by Seaholm on a monthly basis as construction progresses, each reimbursement request (an **"Onsite Underground Garage Reimbursement Request"**) made in accordance with, and subject to, the following:

(a) Disbursement. All Onsite Underground 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 total Onsite Underground Garage Reimbursements in excess of \$9,900,000.**

(b) Timing. The City is not required to make any Onsite Underground 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 Onsite Underground Garage Reimbursement have been met. All Onsite Underground Garage Reimbursements will be disbursed by the City no later than the date which is 30 calendar days following the date which all conditions to such Onsite Underground Garage Reimbursement have been met. Unless City notifies Seaholm in writing within 30 calendar days after it receives Seaholm's Onsite Underground Garage Reimbursement Request that one or more conditions to such Onsite Underground Garage Reimbursement 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 Onsite Underground Garage Reimbursement only. No Onsite Underground Garage Reimbursement will be disbursed to the extent such sum is in dispute.

(c) Events. No Bankruptcy Event, Event of Default or Potential Event of Default exists at the time of the applicable Onsite Underground Garage Reimbursement Request is made or when the Onsite Underground 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 Onsite Underground 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 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 Onsite Underground 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 Onsite Underground Garage Reimbursement Request and that all bills reflected on the Onsite Underground Garage Reimbursement Request will be paid with the proceeds of the Onsite Underground Garage Reimbursement, and (iii) conditional lien waivers concerning all outstanding bills that have been paid other than the bills reflected on the Onsite Underground 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 Onsite Underground Garage, and (ii) the amount of the Onsite Underground Garage Reimbursement Request is correct for that stage of construction and the construction of the Onsite Underground Garage theretofore performed has been in accordance with the plans reasonably approved by the City and all Legal Requirements. At the City's option, the City may hire an inspector to inspect the construction of the Onsite Underground Garage and approve all Onsite Underground Garage Reimbursement Requests in which case such approval will be a condition for disbursement of an Onsite Underground Garage Reimbursement hereunder.

(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 Onsite Underground Garage Reimbursement Request.

Any Onsite Underground Garage Reimbursement made hereunder before all the requirements for such Onsite Underground 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 Onsite Underground Garage Reimbursement(s) until all such conditions are satisfied.

(m) In MDA Sections 9.1(a)(i), 9.1(a)(v) and 9.1(a)(vi), the coverages required by those sections must be in effect commencing not later than the Commencement of Construction of the earlier to occur of the Improvements or the Onsite Underground Garage.

(n) In MDA Section 10.2(e)(iv), City may cause Seaholm to assign contracts concerning the Onsite Underground Garage.

(o) In MDA Section 12.3, Seaholm confirms it is an independent contractor in connection with the development of the Onsite Underground Garage.

(p) It is anticipated that the Residential Property and the Power Plant Property/Office Property will be developed using two different lenders. If any lender requires that either the Residential Property or the Power Plant Property/Office Property be owned and developed by a single asset entity (an "SAE Developer") following or in connection with a Takedown, Seaholm, without the prior consent of the City, may Transfer its interest in, or right to Takedown (in which case the SAE Developer will Takedown) such property to an SAE Developer provided that (i) Seaholm is the sole owner of the SAE Developer, and (ii) the SAE Developer, Seaholm and the City enter into a Master Development Agreement Joinder in the form attached hereto as Exhibit I. The Master Development Agreement Joinder attached hereto as Exhibit I is added to the MDA.

4. Legal Descriptions. As the platting of the Property has been completed and the Condo Declaration has been executed, the legal descriptions for the Property are as follows:

Exhibit A (All Property)

H/R Master Unit, L/R Master Unit and Garage Master Unit B of Seaholm Power Master Condominium in the City of Austin, Texas according to the Master Condominium Declaration for Seaholm Power Master Condominium recorded as Instrument Number 2013062625 in the Real Property Records of Travis County, Texas together with all common elements and limited common elements appurtenant thereto.

and

Lot 1 of the SEAHOLM SUBDIVISION, an addition to the City of Austin, Travis County, Texas, as recorded in Document No. 201100062, Official Public Records, Travis County, Texas.

Exhibit A-1 (Residential Property)

The H/R Master Unit of Seaholm Power Master Condominium in the City of Austin, Texas according to the Master Condominium Declaration for Seaholm Power Master Condominium recorded as Instrument Number 2013062625 in the Real Property Records of Travis County, Texas together with all common elements and limited common elements appurtenant thereto.

Exhibit A-2 (Power Plant Property)

Lot 1 of the SEAHOLM SUBDIVISION, an addition to the City of Austin, Travis County, Texas, as recorded in Document No. 201100062, Official Public Records, Travis County, Texas.

Exhibit A-3 (Office Property)

L/R Master Unit and Garage Master Unit B of Seaholm Power Master Condominium in the City of Austin, Texas according to the Master Condominium Declaration for Seaholm Power Master Condominium recorded as Instrument Number 2013062625 in the Real Property Records of Travis County, Texas together with all common elements and limited common elements appurtenant thereto.

5. Chilled Water Easements. The Property will be serviced by chilled water provided by Austin Energy, but the locations of the chilled water transmission lines to, servicing and through the Property have not yet been determined. Upon the final determination of the location of such lines, Developer and Austin Energy will enter into location, construction and maintenance easements acceptable to both parties regarding the location of the chilled water lines.

6. Execution Versions of Exhibits to the MDA. Modifications to the agreements attached as exhibits to the MDA to effectuate the modifications evidenced herein will be made in the execution versions of such agreements.

7. Ratification. Except as specifically modified herein, the MDA remains unchanged, is in full force and effect and is ratified and confirmed in all respects.

8. No Modification. This Agreement supersedes and merges all prior and contemporaneous promises and agreements. No modification of this Agreement or any other Loan Document, or any waiver of rights under any of the foregoing, shall be effective unless made by supplemental agreement, in writing, executed by City and Seaholm. City and Seaholm further agree that this Agreement may not in any way be explained or supplemented by a prior, existing or future course of dealings between the parties or by any prior, existing, or future performance between the parties pursuant to this Agreement or otherwise.

9. Waiver. The execution hereof is not an actual or implied waiver of any condition or obligation imposed under the MDA, but does amend the MDA as expressly provided herein.

10. Miscellaneous. This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All such counterparts shall be construed together and shall constitute one instrument, but in making proof hereof it shall only be necessary to produce one such counterpart. If any covenant, condition, or provision herein contained is held to be invalid by final judgment of any court of competent jurisdiction, the invalidity of such covenant, condition, or provision shall not in any way affect any other covenant, condition or provision herein contained. The parties acknowledge and confirm that each of their respective attorneys have participated jointly in the review and revision of this Agreement and that it has not been written solely by counsel for one party. The parties hereto therefore stipulate and agree that the rule of construction to the effect that any ambiguities are to or may be resolved against the drafting party shall not be employed in the interpretation of this Agreement to favor either party against the other. The terms and provisions hereof shall be

binding upon and inure to the benefit of the parties hereto, their successors and assigns (to the extent an assignment is permitted under the MDA).

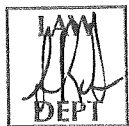
11. Applicable Law. This Agreement and the rights and duties of the parties hereunder shall be governed for all purposes by the law of the State of Texas and the law of the United States applicable to transactions within said State.

[END OF TEXT - SIGNATURE BLOCKS ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned have executed this Agreement to be effective as of the date first set forth above.

CITY:

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



By: *Sue Edwards*
Name: *Sue Edwards*
Title: *Assistant City Manager*

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

THOMPSON & KNIGHT L.L.P.

Andrew Fagun

SEAHOLM:

SEAHOLM POWER DEVELOPMENT, LLC, a
Delaware limited liability company

By: Seaholm Power, LLC, a Texas limited
liability company, its Managing Member

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the undersigned have executed this Agreement to be effective as of the date first set forth above.

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 POWER DEVELOPMENT, LLC, a
Delaware limited liability company

By: Seaholm Power, LLC, a Texas limited
liability company, its Managing Member

By: _____

Name: _____

Title: _____

[Signature]
JOHN ROZATO
MANAGER

CONSENT OF GUARANTOR AND FIRST AMENDMENT TO GUARANTY

CIM FUND III, L.P., a Delaware limited partnership, as guarantor of certain obligations of Seaholm under the MDA pursuant to that certain Guaranty dated June 17, 2008 (the "Guaranty"), consents to the terms and conditions of the Agreement and agrees that the Guaranty is in full force and effect and is ratified and confirmed in all respects (as amended hereby).

Section 1(b) of the Guaranty is amended to read as follows:

(b) following Commencement of Construction by Seaholm, to complete and to pay the cost of Completion of Construction of the Improvements and the Onsite Underground Garage;

Executed to be effective as of the effective date of the above Agreement.

CIM FUND III, L.P., a Delaware limited
partnership

By: CIM Fund III GP, LLC, a California limited
liability company, its general partner

By: 

Name: Shaul Kuba

Title: Vice President

EXHIBIT F
TO MASTER DEVELOPMENT AGREEMENT

Updated Proforma

Exhibit F
Total Project Proforma
Seaholm Master Development Agreement

Item	Total	Jun-08	Jul-08	Aug-08	Sep-08	Oct-08	Nov-08	Dec-08	Jan-09	Feb-09	Mar-09	Apr-09	May-09	Jun-09
Incentives and Reimbursements														
Street/Plaza Expenditures	\$9,388,836	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Street/Plaza Incentive Payments	\$9,100,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Garage Expenditures	\$19,314,585	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Garage Reimbursements	\$9,900,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Reimbursable Fee Expenditures	\$148,481	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Reimbursable Fee Incentive Payments	\$148,481	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Transfer Price – High-Rise	\$2,000,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Transfer Price Reimbursement – High-Rise	\$2,000,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Transfer Price – Low-Rise	\$915,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Transfer Price Reimbursement – Low-Rise	\$915,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Power Plant Rehab Incentive	\$4,500,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
33% at Power Plant 'Dry-In'	\$1,500,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
33% at Power Plant Cert. of Occ.	\$1,500,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
33% at Power Plant 50% Lease-Up	\$1,500,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Private Building Cashflows (excluding Transfer Price Payments)														
Power Plant														
Development Costs	\$25,320,157	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Net Operating Income	(\$453,060)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Net Sales Proceeds	<u>\$42,304,347</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Total Cash Flow	\$16,531,131	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Low-Rise														
Development Costs	\$14,731,488	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Net Operating Income	\$3,454,147	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Net Sales Proceeds	<u>\$27,571,311</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Total Cash Flow	\$16,293,970	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
High-Rise														
Development Costs	\$80,591,296	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Net Operating Income	\$5,512,209	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Net Sales Proceeds	<u>\$121,377,336</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Total Cash Flow	\$46,298,250	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Private Buildings														
Development Costs	\$120,642,941	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Net Operating Income	\$8,513,297	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Net Sales Proceeds	<u>\$191,252,994</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Total Cash Flow	\$79,123,351	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Pre-Development Costs	\$9,970,852	\$709,689	\$709,689	\$709,689	\$192,518	\$192,518	\$192,518	\$259,316	\$259,316	\$259,316	\$260,021	\$260,021	\$260,021	\$66,606
Total Project Cash Flow (Incentives + Private Buildings)	\$63,949,078	(\$709,689)	(\$709,689)	(\$709,689)	(\$192,518)	(\$192,518)	(\$192,518)	(\$259,316)	(\$259,316)	(\$259,316)	(\$260,021)	(\$260,021)	(\$260,021)	(\$66,606)

Exhibit F
Total Project Proforma
Seaholm Master Development Agreement

Item	Total	Jul-09	Aug-09	Sep-09	Oct-09	Nov-09	Dec-09	Jan-10	Feb-10	Mar-10	Apr-10	May-10	Jun-10
Incentives and Reimbursements													
Street/Plaza Expenditures	\$9,388,836	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Street/Plaza Incentive Payments	\$9,100,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Garage Expenditures	\$19,314,585	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Garage Reimbursements	\$9,900,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Reimbursable Fee Expenditures	\$148,481	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Reimbursable Fee Incentive Payments	\$148,481	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Transfer Price -- High-Rise	\$2,000,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Transfer Price Reimbursement -- High-Rise	\$2,000,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Transfer Price -- Low-Rise	\$915,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Transfer Price Reimbursement -- Low-Rise	\$915,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Power Plant Rehab Incentive	\$4,500,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
33% at Power Plant 'Dry-In'	\$1,500,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
33% at Power Plant Cert. of Occ.	\$1,500,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
33% at Power Plant 50% Lease-Up	\$1,500,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Private Building Cashflows (excluding Transfer Price Payments)													
Power Plant													
Development Costs	\$25,320,157	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Net Operating Income	(\$453,060)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Net Sales Proceeds	<u>\$42,304,347</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Total Cash Flow	\$16,531,131	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Low-Rise													
Development Costs	\$14,731,488	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Net Operating Income	\$3,454,147	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Net Sales Proceeds	<u>\$27,571,311</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Total Cash Flow	\$16,293,970	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
High-Rise													
Development Costs	\$80,591,296	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Net Operating Income	\$5,512,209	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Net Sales Proceeds	<u>\$121,377,336</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Total Cash Flow	\$46,298,250	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Private Buildings													
Development Costs	\$120,642,941	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Net Operating Income	\$8,513,297	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Net Sales Proceeds	<u>\$191,252,994</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Total Cash Flow	\$79,123,351	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Pre-Development Costs	\$9,970,852	\$66,606	\$66,606	\$53,313	\$53,313	\$53,313	\$51,485	\$51,485	\$51,485	\$36,546	\$36,546	\$36,546	\$31,635
Total Project Cash Flow (Incentives + Private Buildings)	\$63,949,078	(\$66,606)	(\$66,606)	(\$53,313)	(\$53,313)	(\$53,313)	(\$51,485)	(\$51,485)	(\$51,485)	(\$36,546)	(\$36,546)	(\$36,546)	(\$31,635)

Exhibit F
Total Project Proforma
Seaholm Master Development Agreement

Item	Total	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11
Incentives and Reimbursements													
Street/Plaza Expenditures	\$9,388,836	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Street/Plaza Incentive Payments	\$9,100,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Garage Expenditures	\$19,314,585	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Garage Reimbursements	\$9,900,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Reimbursable Fee Expenditures	\$148,481	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Reimbursable Fee Incentive Payments	\$148,481	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Transfer Price -- High-Rise	\$2,000,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Transfer Price Reimbursement -- High-Rise	\$2,000,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Transfer Price -- Low-Rise	\$915,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Transfer Price Reimbursement -- Low-Rise	\$915,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Power Plant Rehab Incentive	\$4,500,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
33% at Power Plant 'Dry-In'	\$1,500,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
33% at Power Plant Cert. of Occ.	\$1,500,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
33% at Power Plant 50% Lease-Up	\$1,500,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Private Building Cashflows (excluding Transfer Price Payments)													
Power Plant													
Development Costs	\$25,320,157	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Net Operating Income	(\$453,060)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Net Sales Proceeds	<u>\$42,304,347</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Total Cash Flow	\$16,531,131	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Low-Rise													
Development Costs	\$14,731,488	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Net Operating Income	\$3,454,147	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Net Sales Proceeds	<u>\$27,571,311</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Total Cash Flow	\$16,293,970	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
High-Rise													
Development Costs	\$80,591,296	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Net Operating Income	\$5,512,209	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Net Sales Proceeds	<u>\$121,377,336</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Total Cash Flow	\$46,298,250	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Private Buildings													
Development Costs	\$120,642,941	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Net Operating Income	\$8,513,297	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Net Sales Proceeds	<u>\$191,252,994</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Total Cash Flow	\$79,123,351	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Pre-Development Costs	\$9,970,852	\$31,635	\$31,635	\$19,650	\$19,650	\$19,650	\$42,623	\$42,623	\$42,623	\$21,234	\$21,234	\$21,234	\$46,383
Total Project Cash Flow (Incentives + Private Buildings)	\$63,949,078	(\$31,635)	(\$31,635)	(\$19,650)	(\$19,650)	(\$19,650)	(\$42,623)	(\$42,623)	(\$42,623)	(\$21,234)	(\$21,234)	(\$21,234)	(\$46,383)

Exhibit F
Total Project Proforma
Seaholm Master Development Agreement

Item	Total	Jul-11	Aug-11	Sep-11	Oct-11	Nov-11	Dec-11	Jan-12	Feb-12	Mar-12	Apr-12	May-12	Jun-12
Incentives and Reimbursements													
Street/Plaza Expenditures	\$9,388,836	\$0	\$0	\$0	\$0	\$19,322	\$19,322	\$19,322	\$19,322	\$19,322	\$19,322	\$19,322	\$19,322
Street/Plaza Incentive Payments	\$9,100,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Garage Expenditures	\$19,314,585	\$0	\$0	\$0	\$0	\$39,750	\$39,750	\$39,750	\$39,750	\$39,750	\$39,750	\$39,750	\$39,750
Garage Reimbursements	\$9,900,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Reimbursable Fee Expenditures	\$148,481	\$0	\$0	\$0	\$0	\$4,524	\$4,524	\$4,524	\$4,524	\$4,524	\$4,524	\$4,524	\$4,524
Reimbursable Fee Incentive Payments	\$148,481	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Transfer Price -- High-Rise	\$2,000,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Transfer Price Reimbursement -- High-Rise	\$2,000,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Transfer Price -- Low-Rise	\$915,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Transfer Price Reimbursement -- Low-Rise	\$915,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Power Plant Rehab Incentive	\$4,500,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
33% at Power Plant 'Dry-In'	\$1,500,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
33% at Power Plant Cert. of Occ.	\$1,500,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
33% at Power Plant 50% Lease-Up	\$1,500,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Private Building Cashflows (excluding Transfer Price Payments)													
Power Plant													
Development Costs	\$25,320,157	\$0	\$0	\$0	\$0	\$42,283	\$42,283	\$42,283	\$42,283	\$42,283	\$42,283	\$42,283	\$42,283
Net Operating Income	(\$453,060)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Net Sales Proceeds	<u>\$42,304,347</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Total Cash Flow	\$16,531,131	\$0	\$0	\$0	\$0	(\$42,283)	(\$42,283)	(\$42,283)	(\$42,283)	(\$42,283)	(\$42,283)	(\$42,283)	(\$42,283)
Low-Rise													
Development Costs	\$14,731,488	\$0	\$0	\$0	\$0	\$24,600	\$24,600	\$24,600	\$24,600	\$24,600	\$24,600	\$24,600	\$24,600
Net Operating Income	\$3,454,147	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Net Sales Proceeds	<u>\$27,571,311</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Total Cash Flow	\$16,293,970	\$0	\$0	\$0	\$0	(\$24,600)	(\$24,600)	(\$24,600)	(\$24,600)	(\$24,600)	(\$24,600)	(\$24,600)	(\$24,600)
High-Rise													
Development Costs	\$80,591,296	\$0	\$0	\$0	\$0	\$277,781	\$277,781	\$277,781	\$277,781	\$277,781	\$277,781	\$277,781	\$277,781
Net Operating Income	\$5,512,209	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Net Sales Proceeds	<u>\$121,377,336</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Total Cash Flow	\$46,298,250	\$0	\$0	\$0	\$0	(\$277,781)	(\$277,781)	(\$277,781)	(\$277,781)	(\$277,781)	(\$277,781)	(\$277,781)	(\$277,781)
Total Private Buildings													
Development Costs	\$120,642,941	\$0	\$0	\$0	\$0	\$344,664	\$344,664	\$344,664	\$344,664	\$344,664	\$344,664	\$344,664	\$344,664
Net Operating Income	\$8,513,297	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Net Sales Proceeds	<u>\$191,252,994</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Total Cash Flow	\$79,123,351	\$0	\$0	\$0	\$0	(\$344,664)	(\$344,664)	(\$344,664)	(\$344,664)	(\$344,664)	(\$344,664)	(\$344,664)	(\$344,664)
Pre-Development Costs	\$9,970,852	\$46,383	\$46,383	\$36,414	\$36,414	\$36,414	\$57,307	\$57,307	\$57,307	\$302,570	\$302,570	\$302,570	\$412,078
Total Project Cash Flow (Incentives + Private Buildings)	\$63,949,078	(\$46,383)	(\$46,383)	(\$36,414)	(\$36,414)	(\$444,674)	(\$465,567)	(\$465,567)	(\$465,567)	(\$710,830)	(\$710,830)	(\$710,830)	(\$820,338)

Exhibit F
Total Project Proforma
Seaholm Master Development Agreement

Item	Total	Jul-12	Aug-12	Sep-12	Oct-12	Nov-12	Dec-12	Jan-13	Feb-13	Mar-13	Apr-13	May-13	Jun-13
Incentives and Reimbursements													
Street/Plaza Expenditures	\$9,388,836	\$19,322	\$19,322	\$19,322	\$19,322	\$19,322	\$19,322	\$19,322	\$19,322	\$19,322	\$19,322	\$602,736	\$602,736
Street/Plaza Incentive Payments	\$9,100,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$347,802	\$602,736
Garage Expenditures	\$19,314,585	\$39,750	\$39,750	\$39,750	\$39,750	\$39,750	\$39,750	\$39,750	\$39,750	\$39,750	\$39,750	\$1,239,939	\$1,239,939
Garage Reimbursements	\$9,900,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$715,494	\$1,239,939
Reimbursable Fee Expenditures	\$148,481	\$4,524	\$4,524	\$4,524	\$4,524	\$4,524	\$4,524	\$4,524	\$4,524	\$4,524	\$4,524	\$4,524	\$4,524
Reimbursable Fee Incentive Payments	\$148,481	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Transfer Price -- High-Rise	\$2,000,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$2,000,000	\$0	\$0
Transfer Price Reimbursement -- High-Rise	\$2,000,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Transfer Price -- Low-Rise	\$915,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$915,000	\$0	\$0
Transfer Price Reimbursement -- Low-Rise	\$915,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Power Plant Rehab Incentive	\$4,500,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
33% at Power Plant 'Dry-In'	\$1,500,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
33% at Power Plant Cert. of Occ.	\$1,500,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
33% at Power Plant 50% Lease-Up	\$1,500,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Private Building Cashflows (excluding Transfer Price Payments)													
Power Plant													
Development Costs	\$25,320,157	\$42,283	\$42,283	\$42,283	\$42,283	\$42,283	\$42,283	\$42,283	\$42,283	\$42,283	\$42,283	\$674,470	\$1,126,248
Net Operating Income	(\$453,060)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Net Sales Proceeds	<u>\$42,304,347</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Total Cash Flow	\$16,531,131	(\$42,283)	(\$42,283)	(\$42,283)	(\$42,283)	(\$42,283)	(\$42,283)	(\$42,283)	(\$42,283)	(\$42,283)	(\$42,283)	(\$674,470)	(\$1,126,248)
Low-Rise													
Development Costs	\$14,731,488	\$24,600	\$24,600	\$24,600	\$24,600	\$24,600	\$24,600	\$24,600	\$24,600	\$24,600	\$24,600	\$392,413	\$655,261
Net Operating Income	\$3,454,147	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Net Sales Proceeds	<u>\$27,571,311</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Total Cash Flow	\$16,293,970	(\$24,600)	(\$24,600)	(\$24,600)	(\$24,600)	(\$24,600)	(\$24,600)	(\$24,600)	(\$24,600)	(\$24,600)	(\$24,600)	(\$392,413)	(\$655,261)
High-Rise													
Development Costs	\$80,591,296	\$277,781	\$277,781	\$277,781	\$277,781	\$277,781	\$277,781	\$277,781	\$277,781	\$277,781	\$277,781	\$277,781	\$277,781
Net Operating Income	\$5,512,209	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Net Sales Proceeds	<u>\$121,377,336</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Total Cash Flow	\$46,298,250	(\$277,781)	(\$277,781)	(\$277,781)	(\$277,781)	(\$277,781)	(\$277,781)	(\$277,781)	(\$277,781)	(\$277,781)	(\$277,781)	(\$277,781)	(\$277,781)
Total Private Buildings													
Development Costs	\$120,642,941	\$344,664	\$344,664	\$344,664	\$344,664	\$344,664	\$344,664	\$344,664	\$344,664	\$344,664	\$344,664	\$1,344,664	\$2,059,290
Net Operating Income	\$8,513,297	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Net Sales Proceeds	<u>\$191,252,994</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Total Cash Flow	\$79,123,351	(\$344,664)	(\$344,664)	(\$344,664)	(\$344,664)	(\$344,664)	(\$344,664)	(\$344,664)	(\$344,664)	(\$344,664)	(\$344,664)	(\$1,344,664)	(\$2,059,290)
Pre-Development Costs	\$9,970,852	\$412,078	\$412,078	\$724,230	\$724,230	\$724,230	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Project Cash Flow (Incentives + Private Buildings)	\$63,949,078	(\$820,338)	(\$820,338)	(\$1,132,490)	(\$1,132,490)	(\$1,132,490)	(\$408,260)	(\$408,260)	(\$408,260)	(\$408,260)	(\$3,323,260)	(\$2,128,566)	(\$2,063,814)

Exhibit F
Total Project Proforma
Seaholm Master Development Agreement

Item	Total	Jul-13	Aug-13	Sep-13	Oct-13	Nov-13	Dec-13	Jan-14	Feb-14	Mar-14	Apr-14	May-14	Jun-14
Incentives and Reimbursements													
Street/Plaza Expenditures	\$9,388,836	\$602,736	\$602,736	\$602,736	\$602,736	\$602,736	\$602,736	\$602,736	\$602,736	\$602,736	\$602,736	\$602,736	\$602,736
Street/Plaza Incentive Payments	\$9,100,000	\$602,736	\$602,736	\$602,736	\$602,736	\$602,736	\$602,736	\$602,736	\$602,736	\$602,736	\$602,736	\$602,736	\$602,736
Garage Expenditures	\$19,314,585	\$1,239,939	\$1,239,939	\$1,239,939	\$1,239,939	\$1,239,939	\$1,239,939	\$1,239,939	\$1,239,939	\$1,239,939	\$1,239,939	\$1,239,939	\$1,239,939
Garage Reimbursements	\$9,900,000	\$1,239,939	\$1,239,939	\$1,239,939	\$1,239,939	\$1,239,939	\$1,239,939	\$504,930	\$0	\$0	\$0	\$0	\$0
Reimbursable Fee Expenditures	\$148,481	\$4,524	\$4,524	\$4,524	\$4,524	\$4,524	\$4,524	\$4,524	\$4,524	\$4,524	\$4,524	\$4,524	\$4,524
Reimbursable Fee Incentive Payments	\$148,481	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$148,481
Transfer Price -- High-Rise	\$2,000,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Transfer Price Reimbursement -- High-Rise	\$2,000,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Transfer Price -- Low-Rise	\$915,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Transfer Price Reimbursement -- Low-Rise	\$915,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Power Plant Rehab Incentive	\$4,500,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$3,000,000
33% at Power Plant 'Dry-In'	\$1,500,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$1,500,000
33% at Power Plant Cert. of Occ.	\$1,500,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$1,500,000
33% at Power Plant 50% Lease-Up	\$1,500,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Private Building Cashflows (excluding Transfer Price Payments)													
Power Plant													
Development Costs	\$25,320,157	\$1,126,248	\$1,126,248	\$1,126,248	\$1,126,248	\$1,126,248	\$1,126,248	\$1,126,248	\$1,126,248	\$1,126,248	\$1,126,248	\$1,126,248	\$7,339,504
Net Operating Income	(\$453,060)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Net Sales Proceeds	<u>\$42,304,347</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Total Cash Flow	\$16,531,131	(\$1,126,248)	(\$1,126,248)	(\$1,126,248)	(\$1,126,248)	(\$1,126,248)	(\$1,126,248)	(\$1,126,248)	(\$1,126,248)	(\$1,126,248)	(\$1,126,248)	(\$1,126,248)	(\$7,339,504)
Low-Rise													
Development Costs	\$14,731,488	\$655,261	\$655,261	\$655,261	\$655,261	\$655,261	\$655,261	\$655,261	\$655,261	\$655,261	\$655,261	\$655,261	\$4,270,187
Net Operating Income	\$3,454,147	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Net Sales Proceeds	<u>\$27,571,311</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Total Cash Flow	\$16,293,970	(\$655,261)	(\$655,261)	(\$655,261)	(\$655,261)	(\$655,261)	(\$655,261)	(\$655,261)	(\$655,261)	(\$655,261)	(\$655,261)	(\$655,261)	(\$4,270,187)
High-Rise													
Development Costs	\$80,591,296	\$277,781	\$277,781	\$277,781	\$277,781	\$277,781	\$4,859,552	\$4,859,552	\$4,859,552	\$4,859,552	\$4,859,552	\$4,859,552	\$4,859,552
Net Operating Income	\$5,512,209	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Net Sales Proceeds	<u>\$121,377,336</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Total Cash Flow	\$46,298,250	(\$277,781)	(\$277,781)	(\$277,781)	(\$277,781)	(\$277,781)	(\$4,859,552)	(\$4,859,552)	(\$4,859,552)	(\$4,859,552)	(\$4,859,552)	(\$4,859,552)	(\$4,859,552)
Total Private Buildings													
Development Costs	\$120,642,941	\$2,059,290	\$2,059,290	\$2,059,290	\$2,059,290	\$2,059,290	\$6,641,061	\$6,641,061	\$6,641,061	\$6,641,061	\$6,641,061	\$6,641,061	\$16,469,243
Net Operating Income	\$8,513,297	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Net Sales Proceeds	<u>\$191,252,994</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Total Cash Flow	\$79,123,351	(\$2,059,290)	(\$2,059,290)	(\$2,059,290)	(\$2,059,290)	(\$2,059,290)	(\$6,641,061)	(\$6,641,061)	(\$6,641,061)	(\$6,641,061)	(\$6,641,061)	(\$6,641,061)	(\$16,469,243)
Pre-Development Costs	\$9,970,852	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Project Cash Flow (Incentives + Private Buildings)	\$63,949,078	(\$2,063,814)	(\$2,063,814)	(\$2,063,814)	(\$2,063,814)	(\$2,063,814)	(\$6,645,585)	(\$7,380,594)	(\$7,885,524)	(\$7,885,524)	(\$7,885,524)	(\$7,885,524)	(\$14,565,226)

Exhibit F
Total Project Proforma
Seaholm Master Development Agreement

Item	Total	Jul-14	Aug-14	Sep-14	Oct-14	Nov-14	Dec-14	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15
Incentives and Reimbursements													
Street/Plaza Expenditures	\$9,388,836	\$602,736	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Street/Plaza Incentive Payments	\$9,100,000	\$602,736	\$313,900	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Garage Expenditures	\$19,314,585	\$1,239,939	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Garage Reimbursements	\$9,900,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Reimbursable Fee Expenditures	\$148,481	\$1,856	\$1,856	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Reimbursable Fee Incentive Payments	\$148,481	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Transfer Price -- High-Rise	\$2,000,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Transfer Price Reimbursement -- High-Rise	\$2,000,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$2,000,000	\$0	\$0	\$0
Transfer Price -- Low-Rise	\$915,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Transfer Price Reimbursement -- Low-Rise	\$915,000	\$0	\$915,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Power Plant Rehab Incentive	\$4,500,000	\$0	\$0	\$1,500,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
33% at Power Plant 'Dry-In'	\$1,500,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
33% at Power Plant Cert. of Occ.	\$1,500,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
33% at Power Plant 50% Lease-Up	\$1,500,000	\$0	\$0	\$1,500,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Private Building Cashflows (excluding Transfer Price Payments)													
Power Plant													
Development Costs	\$25,320,157	\$411,095	\$2,619,023	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Net Operating Income	(\$453,060)	\$0	\$0	(\$132,894)	(\$132,894)	(\$132,894)	(\$132,894)	(\$136,881)	(\$136,881)	(\$136,881)	(\$136,881)	(\$136,881)	(\$136,881)
Net Sales Proceeds	<u>\$42,304,347</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Total Cash Flow	\$16,531,131	(\$411,095)	(\$2,619,023)	(\$132,894)	(\$132,894)	(\$132,894)	(\$132,894)	(\$136,881)	(\$136,881)	(\$136,881)	(\$136,881)	(\$136,881)	(\$136,881)
Low-Rise													
Development Costs	\$14,731,488	\$239,179	\$1,523,771	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Net Operating Income	\$3,454,147	\$0	\$0	\$0	\$0	\$0	\$0	(\$9,455)	\$524	\$67,166	\$67,166	\$83,941	\$108,534
Net Sales Proceeds	<u>\$27,571,311</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Total Cash Flow	\$16,293,970	(\$239,179)	(\$1,523,771)	\$0	\$0	\$0	\$0	(\$9,455)	\$524	\$67,166	\$67,166	\$83,941	\$108,534
High-Rise													
Development Costs	\$80,591,296	\$4,859,552	\$4,859,552	\$4,859,552	\$4,859,552	\$4,859,552	\$4,859,552	\$4,859,552	\$5,613,047	\$0	\$0	\$0	\$0
Net Operating Income	\$5,512,209	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	(\$119,879)	(\$103,527)	(\$23,051)
Net Sales Proceeds	<u>\$121,377,336</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Total Cash Flow	\$46,298,250	(\$4,859,552)	(\$4,859,552)	(\$4,859,552)	(\$4,859,552)	(\$4,859,552)	(\$4,859,552)	(\$4,859,552)	(\$5,613,047)	\$0	(\$119,879)	(\$103,527)	(\$23,051)
Total Private Buildings													
Development Costs	\$120,642,941	\$5,509,826	\$9,002,346	\$4,859,552	\$4,859,552	\$4,859,552	\$4,859,552	\$4,859,552	\$5,613,047	\$0	\$0	\$0	\$0
Net Operating Income	\$8,513,297	\$0	\$0	(\$132,894)	(\$132,894)	(\$132,894)	(\$132,894)	(\$146,336)	(\$136,357)	(\$69,715)	(\$189,594)	(\$156,467)	(\$51,397)
Net Sales Proceeds	<u>\$191,252,994</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Total Cash Flow	\$79,123,351	(\$5,509,826)	(\$9,002,346)	(\$4,992,446)	(\$4,992,446)	(\$4,992,446)	(\$4,992,446)	(\$5,005,887)	(\$5,749,403)	(\$69,715)	(\$189,594)	(\$156,467)	(\$51,397)
Pre-Development Costs	\$9,970,852	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Project Cash Flow (Incentives + Private Buildings)	\$63,949,078	(\$6,751,621)	(\$7,775,302)	(\$3,492,446)	(\$4,992,446)	(\$4,992,446)	(\$4,992,446)	(\$5,005,887)	(\$5,749,403)	\$1,930,285	(\$189,594)	(\$156,467)	(\$51,397)

Exhibit F
Total Project Proforma
Seaholm Master Development Agreement

Item	Total	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16	Feb-16	Mar-16	Apr-16	May-16	Jun-16
Incentives and Reimbursements													
Street/Plaza Expenditures	\$9,388,836	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Street/Plaza Incentive Payments	\$9,100,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Garage Expenditures	\$19,314,585	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Garage Reimbursements	\$9,900,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Reimbursable Fee Expenditures	\$148,481	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Reimbursable Fee Incentive Payments	\$148,481	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Transfer Price -- High-Rise	\$2,000,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Transfer Price Reimbursement -- High-Rise	\$2,000,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Transfer Price -- Low-Rise	\$915,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Transfer Price Reimbursement -- Low-Rise	\$915,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Power Plant Rehab Incentive	\$4,500,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
33% at Power Plant 'Dry-In'	\$1,500,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
33% at Power Plant Cert. of Occ.	\$1,500,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
33% at Power Plant 50% Lease-Up	\$1,500,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Private Building Cashflows (excluding Transfer Price Payments)													
Power Plant													
Development Costs	\$25,320,157	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Net Operating Income	(\$453,060)	(\$36,401)	(\$36,401)	(\$36,401)	(\$2,717)	(\$2,717)	(\$2,717)	(\$2,799)	(\$2,799)	(\$2,799)	(\$2,799)	(\$2,799)	(\$2,799)
Net Sales Proceeds	<u>\$42,304,347</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Total Cash Flow	\$16,531,131	(\$36,401)	(\$36,401)	(\$36,401)	(\$2,717)	(\$2,717)	(\$2,717)	(\$2,799)	(\$2,799)	(\$2,799)	(\$2,799)	(\$2,799)	(\$2,799)
Low-Rise													
Development Costs	\$14,731,488	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Net Operating Income	\$3,454,147	\$108,534	\$164,793	\$164,793	\$164,793	\$164,793	\$164,793	\$169,175	\$169,175	\$169,175	\$169,175	\$169,175	\$169,175
Net Sales Proceeds	<u>\$27,571,311</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Total Cash Flow	\$16,293,970	\$108,534	\$164,793	\$164,793	\$164,793	\$164,793	\$164,793	\$169,175	\$169,175	\$169,175	\$169,175	\$169,175	\$169,175
High-Rise													
Development Costs	\$80,591,296	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Net Operating Income	\$5,512,209	(\$23,051)	\$57,426	\$57,426	\$137,902	\$137,902	\$218,379	\$225,976	\$309,671	\$309,671	\$401,415	\$401,415	\$493,158
Net Sales Proceeds	<u>\$121,377,336</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Total Cash Flow	\$46,298,250	(\$23,051)	\$57,426	\$57,426	\$137,902	\$137,902	\$218,379	\$225,976	\$309,671	\$309,671	\$401,415	\$401,415	\$493,158
Total Private Buildings													
Development Costs	\$120,642,941	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Net Operating Income	\$8,513,297	\$49,083	\$185,818	\$185,818	\$299,978	\$299,978	\$380,455	\$392,351	\$476,047	\$476,047	\$567,790	\$567,790	\$659,533
Net Sales Proceeds	<u>\$191,252,994</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Total Cash Flow	\$79,123,351	\$49,083	\$185,818	\$185,818	\$299,978	\$299,978	\$380,455	\$392,351	\$476,047	\$476,047	\$567,790	\$567,790	\$659,533
Pre-Development Costs	\$9,970,852	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Project Cash Flow (Incentives + Private Buildings)	\$63,949,078	\$49,083	\$185,818	\$185,818	\$299,978	\$299,978	\$380,455	\$392,351	\$476,047	\$476,047	\$567,790	\$567,790	\$659,533

Exhibit F
Total Project Proforma
Seaholm Master Development Agreement

Item	Total	Jul-16	Aug-16	Sep-16	Oct-16	Nov-16	Dec-16	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17
Incentives and Reimbursements													
Street/Plaza Expenditures	\$9,388,836	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Street/Plaza Incentive Payments	\$9,100,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Garage Expenditures	\$19,314,585	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Garage Reimbursements	\$9,900,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Reimbursable Fee Expenditures	\$148,481	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Reimbursable Fee Incentive Payments	\$148,481	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Transfer Price — High-Rise	\$2,000,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Transfer Price Reimbursement -- High-Rise	\$2,000,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Transfer Price — Low-Rise	\$915,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Transfer Price Reimbursement -- Low-Rise	\$915,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Power Plant Rehab Incentive	\$4,500,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
33% at Power Plant 'Dry-In'	\$1,500,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
33% at Power Plant Cert. of Occ.	\$1,500,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
33% at Power Plant 50% Lease-Up	\$1,500,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Private Building Cashflows (excluding Transfer Price Payments)													
Power Plant													
Development Costs	\$25,320,157	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Net Operating Income	(\$453,060)	(\$2,799)	(\$2,799)	(\$2,799)	\$258,647	\$258,647	\$258,647	\$266,407	\$0	\$0	\$0	\$0	\$0
Net Sales Proceeds	<u>\$42,304,347</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$42,304,347</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Total Cash Flow	\$16,531,131	(\$2,799)	(\$2,799)	(\$2,799)	\$258,647	\$258,647	\$258,647	\$42,570,754	\$0	\$0	\$0	\$0	\$0
Low-Rise													
Development Costs	\$14,731,488	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Net Operating Income	\$3,454,147	\$169,175	\$169,175	\$169,175	\$169,175	\$169,175	\$169,175	\$173,676	\$0	\$0	\$0	\$0	\$0
Net Sales Proceeds	<u>\$27,571,311</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$27,571,311</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Total Cash Flow	\$16,293,970	\$169,175	\$169,175	\$169,175	\$169,175	\$169,175	\$169,175	\$27,744,987	\$0	\$0	\$0	\$0	\$0
High-Rise													
Development Costs	\$80,591,296	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Net Operating Income	\$5,512,209	\$493,158	\$501,206	\$501,206	\$509,253	\$509,253	\$517,301	\$0	\$0	\$0	\$0	\$0	\$0
Net Sales Proceeds	<u>\$121,377,336</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$121,377,336</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Total Cash Flow	\$46,298,250	\$493,158	\$501,206	\$501,206	\$509,253	\$509,253	\$121,894,637	\$0	\$0	\$0	\$0	\$0	\$0
Total Private Buildings													
Development Costs	\$120,642,941	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Net Operating Income	\$8,513,297	\$659,533	\$667,581	\$667,581	\$937,075	\$937,075	\$945,123	\$440,083	\$0	\$0	\$0	\$0	\$0
Net Sales Proceeds	<u>\$191,252,994</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$121,377,336</u>	<u>\$69,875,659</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Total Cash Flow	\$79,123,351	\$659,533	\$667,581	\$667,581	\$937,075	\$937,075	\$122,322,459	\$70,315,741	\$0	\$0	\$0	\$0	\$0
Pre-Development Costs	\$9,970,852	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total Project Cash Flow (Incentives + Private Buildings)	\$63,949,078	\$659,533	\$667,581	\$667,581	\$937,075	\$937,075	\$122,322,459	\$70,315,741	\$0	\$0	\$0	\$0	\$0

EXHIBIT I
TO MASTER DEVELOPMENT AGREEMENT

MASTER DEVELOPMENT AGREEMENT JOINDER

THIS MASTER DEVELOPMENT AGREEMENT JOINDER (this "Joinder") is executed to be effective as of _____, 20____, between THE CITY OF AUSTIN, a Texas home rule city and municipal corporation (the "**City**"), SEAHOLM POWER DEVELOPMENT, LLC, a Delaware limited liability company ("**Master Developer**") and _____ (the "**SAE Developer**").

RECITALS:

A. The City and the Master Developer entered into that certain Master Development Agreement dated as of June 17, 2008 (as amended or modified from time to time, the "**MDA**") relating to the sale, purchase and redevelopment of certain property commonly known as the Seaholm Power Plant;

B. Pursuant to Section 3(p) of the Second Amendment to Master Development Agreement dated as of June 18, 2012, the Master Developer has transferred the property commonly known as _____ (the "**SAE Property**") to SAE Developer or SAE Developer has Takendown the SAE Property from the City.

C. The City, Master Developer and SAE Developer desire to confirm their agreements with respect to the SAE Developer and the MDA.

NOW, THEREFORE, for good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the City, Master Developer and SAE Developer agrees as follows:

1. Definitions. Capitalized terms used herein and not otherwise defined herein shall have the meanings given to them in the MDA.

2. Joinder.

(a) Representations. The SAE Developer hereby consents to being joined in and hereby makes in its own name each and every representation of the Master Developer under the following Sections of the MDA (as applied to the SAE Property only to the extent such representations concern the SAE Property): Section 2.2 (Representations of Developer).

(b) Obligations. The SAE Developer hereby consents to being joined and obligated to each and every obligation of the Master Developer under the following Sections of the MDA (as applied only to the SAE Property only to the extent such obligations concern the SAE Property): Sections 3.1 (Seaholm's Development Related Covenants), but the parties hereto acknowledge that Section 3.1(b) [Subdivision] and

Section 3.1(c) [Zoning] have already been satisfied; 3.2 (Seaholm's General Covenants). ***[carve out construction of onsite garage from residential property joinder]***; Sections 6.2 (Requirements for Disbursement of Each Incentive) and 6.3 (Other Requirements for Payments of Incentives), as applicable; Section 8.1 (Public Art Fee); and Article IX.

SAE Developer agrees that it is bound by the foregoing provisions and assumes in full, and acknowledges that it is liable for, the satisfaction and performance of such obligations as if it were an original developer signatory to the MDA, but that it is not liable for the satisfaction of the Master Developer's separate obligations under the MDA or any other SAE Developer's separate obligations under a separate joinder.

(c) Benefits. SAE Developer shall be deemed a third party beneficiary of, and shall have the same rights as, the Master Developer under the following Sections of the MDA to the extent such rights concern the SAE Property:

- (i) Section 3.3(d) (Dedicated Team)
- (ii) Section 3.3(e) (City Utility Infrastructure Improvements)
- (iii) Section 3.3(f) (Coordination of the Work)
- (iv) Section 3.3 (g) (Zoning and Subdivision)
- (v) Section 3.3 (h) (Environmental)
- (vi) Section 3.3(i) (Onsite Parking Garage) ***[office/power plant property only]***
- (vii) Section 3.3(j) (Onsite Parking Garage Management Agreement) ***[office/power plant property only]***
- (viii) Section 6.1 (Incentives) (Street Incentive, Power Plant Rehab Incentive, Plaza Incentive and Reimbursable Fees Incentive only) ***[office/power plant only]***
- (ix) Section 6.1 (Incentives) (Transfer Price Incentive and Reimbursable Fees Incentive only) ***[residential only]***
- (x) Sections 6.2 (Requirements for Disbursement of Each Incentive) and 6.3 (Other Requirements for Payments of Incentives) ***[both]***
- (xi) Section 6.4 (Onsite Parking Garage Reimbursement) ***[office/power plant only]***
- (xii) Section 10.3 (Events of Default – City) (applied only to the SAE Property)

(xiii) Section 10.4 (Remedies of Developer) (applied only to the SAE Property)

(xiv) Section 10.5 (Rights and Remedies are Cumulative)

(xv) Section 10.7 (Limited Waiver of Sovereign Immunity)

(xvi) Article XI

(d) IRR Calculation. So long as the Property is owned by an Affiliate of Master Developer and/or Master Developer, the IRR will be calculated based on the entire Property. But, if an Affiliate of Master Developer and/or Master Developer no longer own the entire Property, then the IRR will be separated and independently calculated on the Office Property/Power Plant Property on the one hand and the Residential Property on the other hand. In the circumstance described in the immediately preceding sentence, the owner of each of the Office Property/Power Plant Property on the one hand and the Residential Property on the other hand will be entitled to the benefits of and be subject to the burdens of Article VI (Payment of Incentives and Other Reimbursements) as set forth above with the "liability" for the repayment of such Repayment Incentives in accordance with Article VII (Repayment of Incentives) as follows:

(i) Residential Property – Repayment Incentives related to the Transfer Price Incentive and Reimbursable Fees Incentive (applicable to the Residential Property), 57% of the UP Acquisition Costs and 57% of the City Utility Infrastructure Cost. The above percentages for the UP Acquisition Costs and the City Utility Infrastructure Cost are derived from the relative project values of the Residential Property compared to the entire Property.

(ii) Office Property/Power Plant Property – All Repayment Incentives other than those described in (i) immediately above.

(e) Defaults. An MDA Event of Default caused by the act or omission of the SAE Developer as applied to the obligations the SAE Developer has assumed in this Joinder will constitute an Event of Default under Section 10.1 of the MDA and will entitle the City to exercise the remedies under Section 10.2 of the MDA; provided however, the City's exercise of remedies under Section 10.2 of the MDA will only be applicable to the SAE Developer and the SAE Property. It is the intention of the parties that a default by any "SAE Developer" under the MDA obligations such SAE Developer assumes under Section 2(b) hereof entitles the City to cause the termination/assignment of the MDA under Sections 10.2(a) and (e) as to the SAE Property and the SAE Developer only, but the exercise of other remedies under the MDA be available only against the defaulting "SAE Developer" and only on a defaulting SAE Property basis. Further, an Event of Default caused by the act or omission of the Master Developer under the MDA will constitute an Event of Default under Section 10.1 of the MDA and will entitle the City to exercise the remedies under Section 10.2 of the MDA as to the Master Developer, but not as to

the SAE Developer or the SAE Property. The SAE Developer has no responsibility for any obligations or liabilities (i) with respect to the Master Developer, any other SAE Developer or SAE Property out of the Property other than the SAE Property and (ii) except to the extent expressly assumed in this Joinder, under the MDA.

(f) Notices. All notices provided to SAE Developer under the MDA shall be provided to:

SAE Developer: c/o Southwest Strategies Group
1214 W. 6th Street, Suite 220
Austin, Texas 78703-5261
Attention: John Rosato

with a copy to: 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

with a copy to: CIM Fund III, LP
c/o CIM Group, Inc.
6922 Hollywood Boulevard
Ninth Floor
Los Angeles, CA 90028
Attention: John Bruno

3. Conflicting Obligations/Benefits. To the extent the obligations assumed by SAE Developer hereunder or benefits granted to the SAE Developer hereunder conflict with the Master Developer's MDA obligations and/or benefits or with another SAE Developer's MDA obligations and/or benefits assumed or granted under a separate joinder with that SAE Developer, Master Developer, SAE Developer and any other SAE Developer will be solely responsible, as applicable, to resolve such conflict among themselves without assistance from the City - it being the intention of the parties that this Joinder is an accommodation to Master Developer and SAE Developer and that the City will be entitled to receive the benefit of its bargains under the MDA without the possible adverse affect of conflicting obligations or obligors.

4. Miscellaneous. No lender or receiver appointed for the assets of a SAE Developer may receive the benefit of this Joinder unless it also enters into a Master Development Agreement Joinder with the City and Master Developer concerning any period for which such entity owns the SAE Property. This joinder is deemed to be a part of the MDA in all respects. No party hereto may assign its rights under this Joinder without the express written consent of the other parties hereto. Any approval (including without limitation, approval of any

amendment), agreement, determination, consent, waiver, estoppel certificate, estimate or joinder by the City required hereunder may be given by the City Manager of the City or its designee; provided however, except for minor amendments, modifications, clarifications or removals of property, the City Manager does not have the authority to execute any substantial modification or termination of this Joinder without the approval of the Austin City Council.

[add signatures]

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.

THIRD AMENDMENT TO MASTER DEVELOPMENT AGREEMENT

This Third Amendment to Master Development Agreement (this "Agreement") is dated effective as of the 17th day of September, 2013, between THE CITY OF AUSTIN, a Texas home rule city and municipal corporation ("City") and SEAHOLM POWER DEVELOPMENT, LLC, a Delaware limited liability company ("Seaholm").

RECITALS:

A. City and Seaholm executed that certain Master Development Agreement dated June 17, 2008 (as amended, the "MDA") concerning the redevelopment of the Seaholm Power Plant in Austin, Texas (the "Property") as more particularly described therein.

B. The MDA was amended by that certain First Amendment to Master Development Agreement dated effective June 18, 2012 (the "MDA First Amendment") and Second Amendment to Master Development Agreement dated effective June 18, 2012 (the "MDA Second Amendment").

C. The First Amendment allowed for certain development flexibility concerning the residential portion of the Property.

D. The parties wish to clarify the MDA First Amendment's development flexibility.

E. Under Section 12.19 of the MDA, the City Manager of the City has the authority to execute clarifications, minor amendments and minor modifications to the MDA without the prior approval of the Austin City Council.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Terms. Initially capitalized terms used herein but not defined will have the meaning assigned such terms in the MDA.

2. Development Flexibility.

(a) Section 2(b) of the First Amendment is amended to read as follows (emphasis added to show additions):

The Hotel/Condo Building under the MDA will now be called the "Residential Building" which will allow the construction of (i) condos and a hotel as currently provided in the MDA, (ii) a 305 unit (or greater) "Class A" multifamily for rent project, or (iii) a 305 unit (or greater) "Class A" for sale residential condominium project. All references in the MDA to the "Hotel/Condo Building" and "Hotel/Condo Property" are now respectively the "Residential Building" and "Residential Property".

(b) If the Residential Building is developed as a full condominium project as provided in Section 2(a)(iii) above, Seaholm may not decrease the number of condo units in the Residential Building below 280 without the City's consent. This floor replaces the floor parameters in section 3.1(e)(ii)(A)-(B) of the MDA for this specific instance.

(c) If the Residential Building is developed as a full condominium project as provided in Section 2(a)(iii) above, the calculation of Property Revenues (MDA definitions) will be calculated as originally provided under the MDA.

(d) If the Residential Building is developed as a full condominium project as provided in Section 2(a)(iii) above, the 4th Disbursement Threshold for the Transfer Price Incentive (MDA Section 6.1) will be the issuance of a Certificate of Occupancy for the entire Residential Building and the closing of the first sale of a condo unit in the Residential Building to a third party unaffiliated with the Borrower.

(e) If the Residential Building is developed as a full condominium project as provided in Section 2(a)(iii) above, the 3rd Disbursement Threshold for the Reimbursable Fees Incentive (MDA Section 6.1) will be the closing of the sale of a condo unit(s) in the Residential Building which, in the aggregate, are in excess of at least 50% of the total condo units in the Residential Building, which sales must be to third parties unaffiliated with the Borrower.

Nothing contained in this Section 2 modifies or amends Sections 2(a), (c), (d), (e) and (f) of the MDA First Amendment and those Sections remain in full force and effect and are ratified and confirmed in all respects.

3. Ratification. Except as specifically amended herein, the MDA remains unchanged, is in full force and effect and is ratified and confirmed in all respects.

4. No Modification. This Agreement supersedes and merges all prior and contemporaneous promises and agreements. No modification of this Agreement or any other Loan Document, or any waiver of rights under any of the foregoing, shall be effective unless made by supplemental agreement, in writing, executed by City and Seaholm. City and Seaholm further agree that this Agreement may not in any way be explained or supplemented by a prior, existing or future course of dealings between the parties or by any prior, existing, or future performance between the parties pursuant to this Agreement or otherwise.

5. Waiver. The execution hereof is not an actual or implied waiver of any condition or obligation imposed under the MDA, but does amend the MDA as expressly provided herein.

6. Miscellaneous. This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All such counterparts shall be construed together and shall constitute one instrument, but in making proof hereof it shall only be necessary to produce one such counterpart. If any covenant, condition, or provision herein contained is held to be invalid by final judgment of any court of competent jurisdiction,

the invalidity of such covenant, condition, or provision shall not in any way affect any other covenant, condition or provision herein contained. The parties acknowledge and confirm that each of their respective attorneys have participated jointly in the review and revision of this Agreement and that it has not been written solely by counsel for one party. The parties hereto therefore stipulate and agree that the rule of construction to the effect that any ambiguities are to or may be resolved against the drafting party shall not be employed in the interpretation of this Agreement to favor either party against the other. The terms and provisions hereof shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns (to the extent an assignment is permitted under the MDA).


7. Applicable Law. This Agreement and the rights and duties of the parties hereunder shall be governed for all purposes by the law of the State of Texas and the law of the United States applicable to transactions within said State.

[END OF TEXT - SIGNATURE BLOCKS ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned have executed this Agreement to be effective as of the date first set forth above.

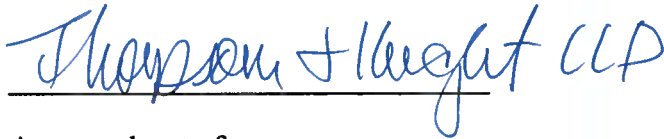
CITY:

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

By: 
Name: Sue Edwards
Title: Assistant City Manager

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

THOMPSON & KNIGHT L.L.P.



Approved as to form:



Assistant City Attorney – Susan R. Groce

SEAHOLM:

SEAHOLM POWER DEVELOPMENT, LLC, a Delaware limited liability company

By: Seaholm Power, LLC, a Texas limited liability company, its Managing Member

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the undersigned have executed this Agreement to be effective as of the date first set forth above.

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.

Approved as to form:

Assistant City Attorney – Susan R. Groce

SEAHOLM:

SEAHOLM POWER DEVELOPMENT, LLC, a
Delaware limited liability company

By: Seaholm Power, LLC, a Texas limited
liability company, its Managing Member

By:  _____

Name: John Rosato

Title: Manager

CONSENT OF GUARANTOR

CIM FUND III, L.P., a Delaware limited partnership, as guarantor of certain obligations of Seaholm under the MDA pursuant to that certain Guaranty dated June 17, 2008 (the "Guaranty"), consents to the terms and conditions of the Agreement and agrees that the Guaranty is in full force and effect and is ratified and confirmed in all respects.

Executed to be effective as of the effective date of the above Agreement.

CIM FUND III, L.P., a Delaware limited
partnership

By: CIM Fund III GP, LLC, a California limited
liability company, its general partner

By: 

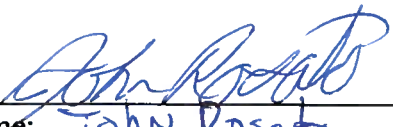
Name: Eric Rubinfeld
Title: Vice President & Secretary

CONSENT OF JOINDER PARTIES

SEAHOLM H/R, LLC, a Texas limited liability company, as SAE Developer pursuant to that certain Master Development Agreement Joinder (High Rise-Residential Property) dated April 11, 2013 (the "H/R Joinder"), consents to the terms and conditions of the Agreement and agrees that the H/R Joinder is in full force and effect and is ratified and confirmed in all respects.

Executed to be effective as of the effective date of the above Agreement.

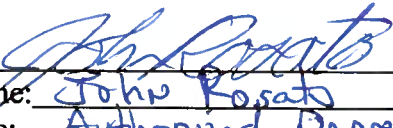
SEAHOLM H/R, LLC, a Texas limited liability company

By: 
Name: John Rosato
Title: Authorized Representative

SEAHOLM L/R, LLC, a Texas limited liability company, as SAE Developer pursuant to that certain Master Development Agreement Joinder (Low Rise-Office Property and Power Plant Property) dated April 11, 2013 (the "L/R Joinder"), consents to the terms and conditions of the Agreement and agrees that the L/R Joinder is in full force and effect and is ratified and confirmed in all respects.

Executed to be effective as of the effective date of the above Agreement.

SEAHOLM L/R, LLC, a Texas limited liability company

By: 
Name: John Rosato
Title: Authorized Representative



Request For Proposals –

Description : City seeks to convey or lease approximately 9.22 acres of parkland located at 2525 South Lakeshore Boulevard also known as Central Maintenance Complex (CMC) in exchange for a minimum of 48 acres of waterfront land contiguous to an existing City park, the cost of construction of a new maintenance facility and funding for restoration and remediation of land currently being used at Fiesta Gardens for a Maintenance Facility.

Solicitation Issue Date: November 15, 2021

RFP Response Due Date and Time: December 9, 2021; Prior to 2:00PM CST

eResponse and Hardcopy Offers will be opened one (1) hour after the Offers Due Date and Time

Authorized contact:

Marek Izydorczyk, Program Manager, Office of Real Estate Services

Phone: (512) 974-7093

Email: Marek.Izydorczyk@austintexas.gov



Contents

- A. Introduction and Purpose..... 3
- B. Overview of Property 5
- C.Instructions 6
- D. Required Proposal Submittals.....14
- E. Required Forms..... 17
- F. Exhibits 22

A. INTRODUCTION AND PURPOSE

The City of Austin, Texas (City), as approved by the voters on November 2, 2021, seeks to convey or lease approximately 9.22 acres of parkland located at 2525 South Lakeshore Boulevard also known as Central Maintenance Complex (CMC) in exchange for the following:

1. At least 48 acres of waterfront land contiguous to an existing City park,
2. The cost or construction of a new maintenance facility for the Parks and Recreation Department on other City-owned land, and
3. Partial or full funding for the removal of Fiesta Gardens' existing maintenance facility and restoration of that land to parkland.

The 9.22 acres of parkland located at 2525 South Lakeshore Boulevard was purchased by the Parks and Recreation Department on December 31, 1958 and has been used as a Parks and Recreation Department maintenance compound since 1983. Recent dense mixed used development has occurred directly to the West and South of 2525 South Lakeshore Boulevard creating constraints for efficient operations and the City has determined that a maintenance complex use is no longer optimal at this location. On July 29, 2021, City Council passed Resolution No. 20210729-177 directing the City Clerk to conduct an election for the conveyance and exchange of land through a public bidding process. On November 2, 2021, voters approved Proposition B which asked if the City should sell, lease or exchange nine acres of park property (known as Central Maintenance Complex located 2525 S. Lakeshore Blvd) in exchange for at least 48 acres of waterfront land, the cost of a new maintenance facility on other City-owned land to be determined, and partial or full funding for the removal of Fiesta Garden's existing maintenance facility (located at 2202 Jesse E. Segovia Street) and restoration of that land to parkland.

The City is seeking proposals that are consistent with voter's affirmation of Proposition B and the City's values as it relates to its parks and recreation system. This Request for Proposals (RFP) is designed to capture the minimum criteria as well as additional desirable attributes identified for the three items set forth in Proposition B.

The City acknowledges that the specific terms proposed for the transaction will be refined over time and through additional due diligence and negotiations. Certain City requirements regarding construction projects will apply, such as the minority-owned and women-owned business enterprise procurement program, construction of buildings, and Third-Party agreements, which include paying prevailing wage and ensuring worker safety and project sustainability.

The process and factors used for the evaluation of proposals are further described in the Required Proposal Submittals, Section D, of this solicitation package. The City will make information regarding this solicitation available to prospective Proposers through the [Austin Finance Online website](#).



B. OVERVIEW OF THE PROPERTY AND PROJECT GOALS

Overview of the Property

The City's Central Maintenance Complex is a 9.22-acre tract located at 2525 South Lakeshore Boulevard and is situated at the southwest corner of South Lakeshore Boulevard and South Pleasant Valley Road. It is legally described as Lot 2, South Lake Shore Addition, a subdivision in Travis County, Texas according to the map or plat thereof, recorded in Volume 75, Page 148, Plat Records of Travis County, Texas.

Project Goals

The successful proposal will uphold Proposition B requirements and the City's values as it relates to the parks and recreation system. The total Offer package proposed must meet or exceed the City's appraised value of the City's Central Maintenance Complex, which is \$35,300,000. Specific project goals and additional desirable attributes are identified below:

- Land
 - Minimum of 48 acres,
 - Land contiguous to an existing parkland, Unencumbered access to body of water
 - Ability to provide immediate recreational programming activation,
 - Potential opportunity for future park enhancement activations,
 - Potential connectivity to existing trail systems,
 - Existing natural and environmental features reflective of Central Texas ecosystems (prairies, river basins, riparian corridors),
 - Easy ingress/egress to existing roadways (streets, roads, highways) and
 - Recognized environmental conditions have been addressed and the land has been deemed suitable for recreational land use as determined by environmental professionals and/or appropriate regulatory entities.
- New Maintenance Facility
 - Funding sufficient for the relocation and construction, by the City, of a modern secured maintenance compound comparable to or better than existing location at 2525 South Lakeshore Boulevard or commitment to design and construct a Parks and Recreation Department approved modern maintenance complex.
- Fiesta Gardens Restoration
 - Amount of proposed funding for restoration of the land to parkland where currently the Fiesta Gardens' maintenance facility is located or commitment to restore parkland as developed and agreed to by the Parks and Recreation Department.

C. INSTRUCTIONS

1.0 GENERAL

- 1.1 Solicitation – RFP. The documents that make up this Solicitation constitute a Request for Proposals (“RFP” or “Solicitation”). This RFP is comprised of three (3) general components including:
 - a. Instructions (this component) describing the City’s competitive process;
 - b. “Required Proposal Submittals” requirements and
 - c. “Required Forms”, composed of the required forms for a Proposer responding to this Solicitation.
- 1.2 Authorized Contact Person. The Authorized Contact Person (or persons) for this Solicitation are listed on the Solicitation’s cover page. The Authorized Contact Person is the only City staff designated to act on behalf of the City with regards to this Solicitation.
- 1.3 Vendor Help Desk. For general questions concerning the City’s online financial services system, Austin Finance Online, Vendor Connection (“Vendor Connection”), Proposers may contact the Vendor Help Desk at (512) 974-2018. Assistance from the Vendor Help Desk is limited to navigating and using Vendor Connection only. The Vendor Help Desk will not respond to any questions concerning a specific Solicitation.
- 1.4 Review of Documents. Proposers shall examine all documents that make up the Solicitation and promptly notify the Authorized Contact Person(s) of any perceived omission, ambiguity, inconsistency or error that the Proposer may discover. Proposers shall also notify the Authorized Contact Person(s) of any instructions or requirements in the Solicitation the Proposer perceives to be unduly restrictive or that may unreasonably limit the Proposer’s ability to compete for any contract that may result from this Solicitation. The City assumes no responsibility for any errors, misrepresentations or misinterpretations that result from the use of incomplete Solicitations.
- 1.5 General Reservations. The City reserves the right to cancel this Solicitation at any time, before or after the Due Date and Time, and to solicit or procure these same products or services at any time, during or after this Solicitation.

2.0 PUBLICATION, AVAILABILITY AND NOTICES

- 2.1 Publication and Availability. This Solicitation was published and is available for viewing and download from Austin Finance Online (AFO).
https://www.austintexas.gov/financeonline/account_services/solicitation/solicitations.cfm
This Solicitation is also available in hardcopy from the City of Austin Purchasing Office. Requests for hardcopies of this Solicitation shall be directed to the Authorized Contact Person(s).
- 2.2 Initial Notice. An initial notice of the Solicitation’s availability was issued automatically to all companies or persons registered in Vendor Connection on AFO. This notice was issued to all vendors that indicated their interest in being notified of solicitations for the products and/or services sought in this Solicitation through their selection of NIGP commodity codes in their registration profile.
- 2.3 Newspaper and Supplemental Notices. Notices concerning this Solicitation were published in a local newspaper.

- 2.4 Non-Suspension or Debarment. The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000.00 and all non-procurement transactions.
- 2.5 Non-Conflict of Interest. As provided in Sections 2-7-61 through 2-7-65 of the City Code, no individual with a substantial interest in Proposer may be a City official or employee or may be related to any City official or employee within the first or second degree of consanguinity or affinity. As required by Chapter 176 of the Texas Local Government Code, Proposer must file a Conflict of Interest Questionnaire with the Office of the City Clerk no later than 5:00 P.M. on the seventh (7th) business day after the commencement of contract discussions or negotiations with the City or the submission of an Proposal, or other writing related to a potential Contract with the City. The questionnaire is available on-line at the following website for the City Clerk:

<http://www.austintexas.gov/departments/conflict-interest-questionnaire>

There are statutory penalties for failure to comply with Chapter 176.

3.0 PRE-PROPOSAL EXCHANGES AND ADDENDA

- 3.1 Questions and Responses. All inquiries concerning this Solicitation shall be directed to the Authorized Contact Person listed on the solicitation cover page and shall be received no later than 5:00 PM CST on November 22, 2021. Responses which provide additional information or clarification to the solicitation will be provided in an Addenda issued online in AFO.
- 3.2 Solicitation Addenda and Versions. From the time the Solicitation is published and through the Due Date and Time for Proposals, this Solicitation is subject to changes through the issuance of written Solicitation Addenda. Any Solicitation Addenda issued will identify all changes made to the Solicitation. With the publication of each Solicitation Addendum, the City will simultaneously publish the revised version of the Solicitation that includes all of the changes indicated in the Solicitation Addendum. Any explanation, clarification, interpretation or change to the Solicitation made in any other manner is not binding upon the City, and Proposers shall not rely upon such explanation, clarification, interpretation or change. Oral explanations or instructions given before the award of the Contract are not binding.

4.0 PROPOSAL PREPARATION AND CONTENTS

- 4.1 Proposal Preparation or Participation Costs. All costs directly or indirectly related to preparation of a Proposal as well as costs associated with any subsequent exchanges with the City, including but not limited to travel, lodging, food, presentation expenses and all other expenses related to the Proposer's participation in the competitive process, shall be the sole responsibility of the Proposer.
- 4.2 Alternate Proposals. In addition to their primary Proposal, Proposers may submit one or more Alternate Proposals with differentiated products, services, pricing and/or terms. Alternate Proposals shall be included as additions to the Proposal submittals and not submitted as separate Proposals. If including alternate Proposals, Proposers must note them clearly as different options in their Proposals.
- 4.3 Exceptions – RFP. Proposers shall indicate if they take exception to any portions of the Solicitation in their Proposal. Any exceptions included in the Proposal may negatively impact the City's

evaluation of the Proposal or may cause the City to reject the Proposal entirely.

- 4.4 **Proprietary/Confidential Information.** All material submitted to the City becomes public property and is subject to the Texas Public Information Act, Chapter 552, Texas Government Code, upon receipt. If a Proposer does not desire proprietary information in the Proposal to be disclosed, each page containing such proprietary information must be identified and marked proprietary at the time of submittal. The City will, to the extent allowed by law, endeavor to protect such information from disclosure. The City may request a review and determination from the Attorney General’s Office of the State of Texas, of any Bid contents marked as “Proprietary.” A copyright notice or symbol is insufficient to identify proprietary or confidential information.
- 4.5 **Proposal Contents.** Proposal shall at a minimum include all of the Submittals referenced in this Solicitation, completed, and signed where instructed, including any additional documentation required in response to specific Submittals. Proposers shall comply with any further instructions included in the Submittals.
- 4.6 All Proposals are valid for a period of one hundred and eighty (180) calendar days subsequent to the RFP closing date unless a longer acceptance period is offered in the Proposal.

5.0 PROPOSAL SUBMISSION AND OPENING

Proposals in response to this solicitation may be submitted using one of the following methods.

- 5.1 **Electronic Offers (Proposals).** Electronic Proposals (electronic documents) shall be submitted to the City of Austin using the Solicitation’s eResponse function, available through the City’s online financial system, Austin Finance Online. To submit Electronic Proposals using the eResponse function, Proposer’s must first be registered as a vendor with the City of Austin in Austin Finance Online. Instructions for Electronic Proposals can be found online. Electronic Offers shall not be submitted by email, facsimile or any other transmission method. Any Electronic Offers submitted outside Austin Finance Online will not be considered.

See [Instructions, Submitting Offers in Austin Finance Online](#).

For these responses, Proposers will need to select a label from the drop down menu in the system for each file uploaded. To assist, Proposers should use the following to inform which label from the drop down menu to use:

Identifying Documents				
Upload online using these labels	Price Offer	Offer & Cert.	Technical Offer	Other
Required Proposal Submittals Section 9 EXCEPT section 9.7 (Financial Qualifications)			X	
Required Proposal Submittal Section 9.7 (Financial Qualifications)	X			

Signed offer sheet		X		
Non-Discrimination & Retaliation Certification		X		
Signed addenda (if applicable)				X

- 5.1.1 Due Date and Time for Electronic Proposals. Electronic Proposals in response to this Solicitation shall be submitted via eResponse by the Offer Due Date and Time displayed in the Important Dates section of the Solicitation Cover Sheet. The system time within Austin Finance Online shall be the official time of record for Electronic Proposals.
- 5.1.2 Withdrawing Electronic Proposals. Electronic Proposals submitted online in response to this Solicitation may be withdrawn, revised and resubmitted using the eResponse function any time prior to the Solicitation's Due Date and Time. Withdrawn Electronic Proposals may be resubmitted, with or without modifications, up to the Solicitation's Due Date and Time.
- 5.1.3 Late Electronic Proposals. Late Proposals shall not be accepted, therefore the Solicitation's eResponse function in Austin Finance Online will not allow Electronic Proposals to be submitted past the Solicitation's Due Date and Time.
- 5.1.4 Opening Electronic Proposals. The information regarding Electronic Proposals will become available on or shortly after the Proposal Opening Date and Time as stated on the Solicitation's Cover Sheet. When Electronic Proposals are opened, the names of each Proposer would be displayed within the Solicitation's eResponse section.
- 5.2 **Hardcopy Offers (Proposals).** Hardcopy Proposals (physical documents including paper and flash drives) must be returned in a sealed envelope and shall be delivered to the City of Austin's Purchasing Office at one of the following addresses, depending on the delivery method:

Deliveries by US Mail	Deliveries by Courier Services (e.g., Fedex, UPS, etc.) and In-Person Deliveries
City of Austin Purchasing Office Response to Solicitation: RFP 5500 SMW3005 P.O. Box 1088 Austin, Texas 78767-8845	City of Austin, Municipal Building Purchasing Office Response to Solicitation: RFP 5500 SMW3005 124 W 8 th Street, Rm 310 Austin, Texas 78701 Reception Phone: (512) 974-2500

--	--

- 5.2.1 Due Date and Time for Hardcopy Proposals. Hardcopy Proposals in response to this Solicitation shall be received by the City via one of the aforementioned delivery methods by the Offer Due Date and Time displayed on the Cover Sheet. The time stamp clock at the Purchasing Office reception desk shall be the official time of record for Hardcopy Proposals.
- 5.2.2 Withdrawing Hardcopy Proposals. See below for changes due to the COVID-19 pandemic.
- 5.2.3 Late Hardcopy Proposals. All Hardcopy Proposals received after the Solicitation's Due Date and Time will be rejected. Late Hardcopy Proposals that are inadvertently received by the City shall be returned to the Proposer. It is the responsibility of the Proposer to ensure that their Proposal arrives at the proper location by the Solicitation's Due Date and Time. Arrival at the City's mailroom, mail terminal, or post office box will not constitute the Hardcopy Proposal arriving on time. The City may, at its sole discretion, receive a late Hardcopy Proposal if the City's misdirection or mishandling was the sole or main cause for the Hardcopy Proposal's late receipt at the designated location.
- 5.2.4 Opening Hardcopy Proposals. The City will open Hardcopy Proposals on or shortly after the Proposal Opening Date and Time stated on the Solicitation's Cover Sheet. When Hardcopy Proposals are opened, the names of each Proposer would be read aloud.

5.3 **Special procedures due to COVID pandemic**

- 5.3.1 Confirmation of Submittals – Due to the current Pandemic circumstances, the City is not able to provide written confirmation of Hardcopy Proposals when they are received or able to verify receipt of Hardcopy Proposals or provide signature confirmation of Proposals delivered by common carriers.
- 5.3.2 Withdrawing Hardcopy Proposals – Hardcopy Proposals may be withdrawn in writing or by email at any time prior to the Solicitations Due Date and Time. Proposers must send emails to withdraw Proposals to the following email address: PurchasingAdmin@austintexas.gov
- 5.3.3 Solicitation Openings - Due to the current Pandemic circumstances, the City is not facilitating public attendees at Solicitation openings. Instead, the City will conduct this Solicitation opening via live webcast at the following website:
https://www.austintexas.gov/financeonline/afo_content.cfm?s=66 .

When conducting a Solicitation opening via webcast, the City will read the applicable information from Hardcopy Proposals aloud and will refer the public to the Solicitation's eResponse section to view the remaining Electronic Proposals.

6.0 EVALUATION OF PROPOSALS ACCESS AND ENVIRONMENTAL SITE ASSESSMENT



- 6.1 Minimum Responsiveness - RFP. Proposals are Minimally Responsive when they include all of the Submittals listed in this Solicitation, completed and with sufficient detail in each to evaluate the Proposal in accordance with Solicitation's Instructions and any further instructions within each Submittal including minimum requirements of the proposal itself. Proposals that are not Minimally Responsive may be rejected.
- 6.2 Access. Within 5 business days after notice from the City, any employee, its agents, and representatives must be granted access to enter upon the Property for the purpose of inspecting the Property and conducting any tests, appraisals, studies or assessments as may be reasonably required or desired by the City. Without limiting the generality of the forgoing, City and Proposer acknowledge that the City may, at its own cost, conduct or otherwise obtain a Phase 1 environmental site assessments of the Land, and Proposer consents to City's entry upon the Property to obtain such items.
- 6.3 Environmental Site Assessment. The City may conduct a Phase I Environmental Site Assessment for the land offered by all Proposers. Depending on the results, the highest evaluated Proposer may be required to complete a ASTM Phase II Environmental Site Assessment report on behalf of the City, if deemed necessary by the City. Any cost involved with the report will be the responsibility of the Proposer.
- 6.4 Clarifications - RFP. Any time after the opening of Proposals, the City may contact Proposers to ask questions about their Proposal's contents in order to better understand these contents as-written. Responses to clarification questions, whether done verbally or submitted in writing, do not change the Proposal's contents. Clarifications are not to be confused with Discussions as described herein.
- 6.5 Evaluation – RFP. Proposals that are Minimally Responsive will be evaluated based on Evaluation Factors listed in the Submittals section of the Solicitation. Evaluation Factors correspond to their specified Submittals and shall indicate their respective weighting next to each. Submittals not identified as Evaluation Factors will be evaluated on a pass / fail basis in accordance with the Solicitation's Instructions and any further instructions within each Submittal. Although minimum responses are required in all Submittals, the Submittals identified as Evaluation Factors will be used to differentiate the Proposals and to identify which Proposal(s) represent the Best Value to the City. The City's evaluation may be made without Clarifications or Discussions with Proposers. Proposals should, therefore, include the Proposer's most favorable terms.
- 6.6 Discussions and Proposal Revisions – RFP. After completing initial evaluations, the City may enter into Discussions with one or more Proposers submitting the highest rated Proposal(s). Following the completion of Discussions, the City may request Proposal revisions from these Proposers. The City may seek multiple rounds of Discussions and Proposal revisions as deemed necessary by the City. The City may revise its initial evaluations depending on the contents of any Proposal revisions received following these Discussions.
- 6.7 Interviews/Presentations. The City may require that one or more Proposer submitting the highest rated Proposals participate in interviews and/or presentations at the City's sole discretion.
- 6.8 Evaluation Reservations. The City reserves the right to reject or cancel any or all Proposals; reject any Proposals that have material omissions; reject a Proposal submitted by a Proposer who is currently debarred or suspended by the City, State or Federal Government; reject any Proposals that contain fraudulent information; evaluate and as applicable; evaluate and recommend award of any Alternative Proposals received when most advantageous to the City; reject Proposals that

include unbalanced unit prices; and/or waive any minor informality in any Proposal or procedure so long as the deviation does not affect the competitiveness of a Proposal or the process.

7.0 AWARD DETERMINATION AND AUTHORIZATION

- 7.1 Award Determination. City staff will recommend Contract award to the Proposer(s) submitting the highest rated Proposal(s) based on the Evaluation Factors set forth in this Solicitation. The Award Determination will be published to AFO and will be sent to all Proposers subscribed to the Solicitation.
- 7.2 Survey. Within 5 business days after notice from the City, highest evaluated Proposer must, at Proposer's sole cost and expense, deliver or cause to be delivered to City a copy of an update to the Existing Survey or a copy of a current on-the-ground survey of the Property made by a duly licensed surveyor reasonably acceptable to City along with a certification by the surveyor to the City that: (i) the Survey was made on the ground, (ii) the Survey is correct, (iii) the Land adjoins a publicly-dedicated roadway, and (iii) there are no discrepancies, conflicts, shortages in area, boundary line conflicts, encroachments, or visible or apparent easements, roadways or rights of way, except as shown on the Survey.
- 7.3 Contract Formation. After the City has concluded the evaluations, and performed its due diligence, staff will request contract authorization from Council via the issuance of a Recommendation for Council Action.

8.0 DEFINITIONS

Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

- 8.1 Addendum – means a written instrument issued by the Contract Awarding Authority that modifies or clarifies the solicitation prior to the Due Date. “Addenda” is the plural form of the word.
- 8.2 Best Proposal - the best evaluated Proposal in response to a Request for Proposals or Request for Qualifications/Statements.
- 8.3 Best Proposer - the Proposer submitting the Best Proposal.
- 8.4 City – means the City of Austin, a Texas home-rule municipal corporation.
- 8.5 Contract – means a binding legal agreement between the City and the Proposer, regardless of what it may be called, for the procurement of goods or services.
- 8.6 Due Date and Time – means the date and time specified for receipt of Proposals.

- 8.7 **Interested Party** – means a person who has a controlling interest in a business entity with whom the City contracts or who actively participates in facilitating the Contract or negotiating the terms of the Contract, including a broker, intermediary, advisor, or attorney for the Proposer
- 8.8 **Late Proposal** – means a Proposal that is received after the Due Date and time specified in the Solicitation.
- 8.9 **Proposal** – means a complete, properly signed Proposal to a Request for Proposals.
- 8.10 **Proposer** -- means a person, firm, or entity that submits an Proposal in response to a City Solicitation. Any Proposer may be represented by an agent after submitting evidence demonstrating the agent’s authority. The agent cannot certify as to his own agency status.
- 8.11 **Purchasing Office** – refers to the Purchasing office in the Financial Services Department of the City.
- 8.12 **Request for Proposal (RFP)** – means all documents, whether attached or incorporated by reference, utilized for soliciting Proposals.
- 8.13 **Responsible Proposer** – means the financial and practical ability of the Proposer to perform the Contract and takes into consideration resources, expertise, and past performance of the Proposer as well as compliance with all City ordinances concerning the purchasing process.
- 8.14 **Responsive** – means meeting all the requirements of a Solicitation.
- 8.15 **Solicitation** – means a Request for Proposals or RFP.

D. REQUIRED PROPOSAL SUBMITTALS

9.0 PROPOSAL SUBMITTALS

- 9.1 **Executive Summary.** Provide an Executive Summary that summarizes your RFP response and confirms that the respondent will comply with the requirements, provisions, terms, and conditions specified in this solicitation. The Executive Summary should be in the form of a standard business letter on official business letterhead and signed by an authorized representative of respondent. Include the complete name and address of your firm, telephone number, and email address of the person the City of Austin should contact regarding your firm's response.
- 9.2 **Land Characteristics.** Please provide your land description for the site in narrative form with supporting graphics and photographs. This concept must correspond with the minimum requirements and identified project goals. A copy of a title committent must be included.
- 9.3 **Public Information Packet.** All Proposers must include a project summary of no more than four pages that describes the overall concept of the proposal. Nothing in this submittal may be marked as confidential or proprietary. City staff may release Public Information Packets from all Proposers once an award recommendation from staff to Austin City Council is announced; however, the Public Information Packet from the firm recommended by staff will be included in staff's recommendation to Council for contract authorization.
- 9.4 **Environmental Site Assessment.** Proposers should provide all previously completed environmental due diligence reports including ASTM Phase I and/or II Environmental Site Assessment reports and asbestos containing materials, lead based paint, mold surveys on existing buildings.
- 9.5 **Financial Proposal.** Please provide the following information including estimated timeframe for access to funds by the City.
 - 9.5.1 **Overall Approach to Financing: New Maintenance Complex** – Describe your intended approach to project financing or conceptual maintenance complex design and identification of potential challenges and uncertainties and corresponding mitigation/risk management strategies and the financing model.
 - 9.5.1.1 **Predevelopment Expenses** – If applicable, expected costs and timing of planning, design, review, dependent upon proposal to either provide funding for City to undertake construction or if the proposer desires to construct a new facility.

- 9.5.1.2 **Infrastructure Expenses** – If applicable, expected costs and timing of site preparation and infrastructure. All information is subject to change depending on the actual project demands and existing conditions.
- 9.5.2 **Overall Approach to Financing: Removal/Restoration Fiesta Gardens** – Describe your intended approach to project financing model inclusive of conceptual plans for removal of the existing facility and restoration of the designated land to usable park space.
- 9.5.2.1 **Predevelopment Expenses** – If applicable, expected costs and timing of planning, design, review, dependent upon proposal to remove existing facility and restore the Fiesta Gardens location.
- 9.5.2.2 **Infrastructure Expenses** – If applicable, expected costs and timing of site preparation and infrastructure. All information is subject to change depending on the actual project demands and existing conditions.
- 9.6 **Proposer Experience** – If applicable, the Proposer must provide a description of their qualifications to assume the responsibilities required for the construction of the maintenance complex and restoration opportunity, including ...?
- 9.6.1 **Firm History and Presence** – Years of development experience as a company, signature projects, size and value of property portfolio, location of offices, total employees, and similar information.
- 9.6.2 **Relevant Experience** - Narrative and diagrams of the Proposer's relevant experience. Provide examples of projects of similar scale. Relevant projects may include those with one or more of the following types of attributes:; light industrial/warehouse development; partnerships and/or negotiations with public agency landowners and sustainability and smart growth principles.
- 9.7 **Financial Qualifications** – Please provide audited corporate financial statements from each of the past three years reflecting your company's cash flow and balance sheet. In addition, please provide a listing and description of any bankruptcies and/or litigation that the Proposer has been involved in during the past three years, with a statement regarding the current status of such actions.
- 9.8 **Project Management Plan**
- 9.8.1 **Team Members** -If applicable, the Proposer must provide resumes for key members of the project team that demonstrate the assigned personnel are experienced in executing similar projects. This should include resumes of assigned staff including project roles and responsibilities and tenure at firm and in relevant industry.
- 9.8.2 **Approach to Project Management** - In addition, if applicable, the Proposer should describe the plan for the expected efforts to manage the project from beginning to end, including:

9.8.2.1 A description of the expected due diligence and negotiation process with the City and other stakeholders; and

9.8.2.2 A description of the expected process of securing funding agreements with lenders and investors

9.9 Evaluation of Proposals

9.9.1 Evaluation Factors

RFP Evaluation Factors	Maximum Points
Executive Summary (Per submittal section 9.1 above)	Pass/Fail
Public Information Pack (Per submittal Section 9.3 above)	Pass/Fail
Financial Qualifications (Per submittal Section 9.7 above)	Pass/Fail
Land Characteristics and Environmental Assessment (Per submittal sections 9.2 and 9.4 above)	40
Financial Proposal: New Maintenance Complex (Per submittal section 9.5.1 above)	30
Financial Proposal: Fiesta Gardens (Per submittal section 9.5.2 above)	20
Proposer Experience & Management Plan (Per submittal section 9.6 and 9.8 above)	10
Total	100

9.9.2 **Interviews and/or presentations, Optional.** Interviews or presentations may be conducted at the sole discretion of the City. **Maximum 25 points.**

E. REQUIRED FORMS



The undersigned, by his/her signature, represents that he/she is submitting a binding Proposal and is authorized to bind the Proposer to fully comply with the Solicitation document contained herein. The Proposer, by submitting and signing below, acknowledges that he/she has received and read the entire document packet sections defined above including any addenda issued, and agrees to be bound by the terms therein. Proposals submitted with incomplete and/or unsigned Offer Sheets are not considered to be Offers and will be rejected as non-responsive.

By submitting this Proposal, the Proposer hereby certifies the following:

1. That its firm and its principals are not currently suspended or debarred from bidding on any Federal, State, or City of Austin Contracts.
2. That it has not in any way directly or indirectly:
 - a. Colluded, conspired, or agreed with any other person, firm, corporation, Proposer or potential Proposer to the amount of this Proposal or the terms or conditions of this Proposal.
 - b. paid or agreed to pay any other person, firm, corporation Proposer or potential Proposer any money or anything of value in return for assistance in procuring or attempting to procure a contract or in return for establishing the prices in the attached Proposal or the Proposal of any other Proposer.
3. That it has not received any compensation or a promise of compensation for participating in the preparation or development of the underlying Solicitation or Contract documents. In addition, the Proposer has not otherwise participated in the preparation or development of the underlying Solicitation or Contract documents, except to the extent of any comments or questions and responses in the solicitation process, which are available to all Proposers, so as to have an unfair advantage over other Proposers, provided that the Proposer may have provided relevant product or process information to a consultant in the normal course of its business.
4. That it has not participated in the evaluation of Proposals or other decision making process for this Solicitation, and, if Proposer is awarded a Contract no individual, agent, representative, consultant, subcontractor, or sub-consultant associated with Proposer, who may have been involved in the evaluation or other decision making process for this Solicitation, will have any direct or indirect financial interest in the Contract, provided that the Proposer may have provided relevant product or process information to a consultant in the normal course of its business.
5. That it is not presently aware of any potential or actual conflicts of interest regarding this Solicitation, which either enabled Proposer to obtain an advantage over other Proposers or would prevent Proposer from advancing the best interests of the City in the course of the performance of the Contract.
6. That it does not have an employment or other business relationship with any local government officer of the City or a family member of that officer that results in the officer or family member receiving taxable income;
7. That it has not given a local government officer of the City one or more gifts, other than gifts of food, lodging, transportation, or entertainment accepted as a guest, that have an aggregate value of more than \$100 in the

twelve month period preceding the date the officer becomes aware of the execution of the Contract or that City is considering doing business with the Proposer.

8. That it does not have a family relationship with a local government officer of the City in the third degree of consanguinity or the second degree of affinity.

If the Proposer cannot affirmatively swear and subscribe to the forgoing statements, the Proposer shall provide a detailed written explanation with any solicitation responses on separate pages to be annexed hereto.

Company
Name:

Company
Address:

City, State, Zip:

City Vendor Registration No.

Printed Name of Officer or Authorized

Representative:

Title:

Signature of Officer or Authorized

Representative:

Date:

Email

Address:

Phone

Number:



NON-DISCRIMINATION & RETALIATION CERTIFICATION –

City of Austin, Texas

Equal Employment/Fair Housing Office

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

- (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions of this chapter.
- (4) To state in all Solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices is being carried out.
- (7) To require of all Subcontractors having fifteen or more employees who hold any Subcontract providing for the expenditure of \$2,000 or more in connection with any Contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

For the purposes of this Proposal and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Non-Discrimination and Non-Retaliation Policy set forth below.

City of Austin Minimum Standard Non-Discrimination and Non-Retaliation in Employment Policy

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue. Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination and non-retaliation employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE THE CITY A COPY OF THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, **OR** THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 and the City's Non-Retaliation Policy may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4 and the Non-Retaliation Policy.

Term:

The Contractor agrees that this Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the City, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payment, the Contractor's Non-Discrimination and Non-Retaliation Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this _____ day of _____, _____

CONTRACTOR	_____
Authorized Signature	_____
Title	_____

F. EXHIBITS –

1. Right of Entry (Law Department language) statement for propers signature.
2. Map of 2525 South Lakeshore Boulevard.

EXHIBIT 1
RIGHT OF ENTRY FORM



Consent for Access to Property

NAME OF PROPERTY OWNER: _____

PROPERTY ADDRESS: _____

TYPE OF PROPERTY: _____

I hereby consent to officers, employees, authorized representatives of the City of Austin and their contractors, subcontractors and consultants the right to enter the property and continued access and use of by, through, and on the property for the following purposes related to Survey, Appraisal, and Site Assessments:

1. The taking of samples, surface and subsurface, including but not limited to soil, sediments, water, and air, and other solids or liquids stored or disposed of at the property as may be determined to be necessary;
2. The documenting of scientific and engineering observations, including, but not limited to taking notes, recordings, photographs and surveying;
3. The drilling and finishing of boreholes for the purposes of collecting soil and groundwater samples without limitation;
4. All actions necessary to conduct an appraisal of the property and perform a land survey, including setting survey control points and locating property corners;
5. Other investigation actions at the property that may be necessary to determine nature and extent of contaminants or potential threat to human health and the environment; and

I am the property owner or an individual having the authority or the authorization of the property owner to sign this access agreement. I give this written permission voluntarily with the full knowledge of my right to refuse and without threats or promises of any kind.

By signing this document, I am granting access to the property. I can be notified by email or telephone regarding the planned date of access to the property, and to provide access to the site, if the site or a portion thereof, is in a locked or secured area.

ACCESS GRANTED: ☐ YES ☐ NO

Name (Printed): _____ Date: _____

Name (Signature): _____

Address: _____ Zip: _____




Telephone Number(s): Work: _____ Cell: _____

Email: _____

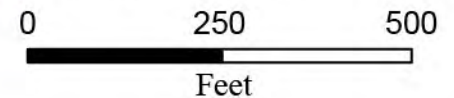
EXHIBIT 2

MAP OF 2525 SOUTH LAKESHORE BOULEVARD



-  CMC BOUNDARY
-  TCAD PROPERTY LINES
-  EXISTING PARKLAND

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. This product has been produced by the Parks and Recreation Department for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.



CENTRAL MAINTENANCE COMPLEX

24 May 2021 RowlinsonT



**ADDENDUM
PURCHASING OFFICE
CITY OF AUSTIN, TEXAS**

Solicitation: RFP 8600 SMW3010 Addendum No: # 1 Date of Addendum: December 2, 2021

This addendum is to incorporate the following changes to the above referenced solicitation:

I. The following are questions with City responses which have been received in regards to this solicitation:

Question 1: For the maintenance facility, can we get clarification of the statement in last paragraph on Pg 3 (Certain City requirements . . .)?

Response: The resulting contract will include standard City of Austin requirements pertaining to City construction projects such as Minority and Women Owned (MBE/WBE) business program, prevailing wage, and worker safety.

Question 2: For the maintenance facility, can we get a copy of any existing entitlements?

Response: We are not aware of any existing entitlements.

Question 3: For the maintenance facility, can we get a copy of any existing Utilities?

Response: The site is located within the City of Austin water and wastewater services area with access to public water and wastewater services.

Question 4: For the maintenance facility, can we get a list of Preferred site(s)?

Response: Bolm District Park, located at 6700 Bolm Rd, Austin, TX 78725, has been identified as an option due to its central location close to a major arterial road (US-183). Other sites may be considered, and the Parks and Recreation Department (PARC) is open to recommendations.

Question 5: For the maintenance facility, can the location/orientation on site be shared?

Response: If at Bolm District Park, the western side of the park was identified as the most likely site within that property. The facility should be located out of the floodplain and preferably near the edge of the property to allow easy access for vehicles and to maximize the remaining space available for parkland. The final location of the facility on any site would require further evaluation dependent on conditions, utilities, and site constraints.

Question 6: For the maintenance facility structure, can we get a copy of the material/design requirements?

Response: The facility should be able to accommodate approximately 100 office employees and 250 field employees. The City requires Capital Improvement Projects to be LEED Silver certified at minimum. Beyond that, there are no specific material/design requirements and the full programming scope of the facility is still being developed.

Question 7: For the maintenance facility interior, can we get a copy of the material/design requirements?

Response: Please see Response to Question 6.

Question 8: For the maintenance facility services, in reference to the fuel pumping station - What is the number of pumps? What is the capacity of tank(s)? And What types of fuel need to be accounted for?

Response: Currently, PARD has 2 dual hose fuel dispensers (gas and diesel) and 2 fuel tanks @ 6,000 gallons each. To accommodate growth at current fuel usage, PARD projects that 3 x 15,000 gallon tanks (E85, gas, and diesel) would be needed. However, the long-term plan is to move towards electric fleet, and these needs have not yet been finalized.

Question 9: For the maintenance facility outbuildings shops - what will be done in these woodworking? metal/fabrication?

Response: Separate outbuilding shops are required for welding, woodworking, sign fabrication, and small tool and equipment maintenance. Equipment maintenance includes repairs on small engines and motors, such as those found on chainsaws and pumps. Each shop should be single use and should have loading/unloading areas. There will also be required outbuildings for tool storage and chemical storage. The full scope of outbuilding programming is still being developed.

Question 10: For the maintenance facility outbuildings, can we get the requirements for the trade vehicle storage?

Response: A garage is required for specialty tools such as UTVs, pump trucks, wood chippers, mowers and tractors, roughly estimated at 4,000 SF.

PARD currently operates roughly 200 vehicles and 20 trailers. These vehicles may be stored on surface parking lots. Some spaces may be covered. Size of the spaces range from 20' to 60' in length, and all lots must include room to turn and maneuver large commercial vehicles. Parking needs are still being evaluated and a final scope has not been finalized.

Question 11: For the maintenance facility outbuildings, are there any specific power requirements?

Response: All outbuildings, both shops and storage, will require light and power (120V and 240V outlets). Parking stations will also need access to power. Several trucks have 120V receptacles for shore power, and there are currently several electric cars in the fleet that will need charging stations. There must be capacity to add additional charging stations as the electric fleet grows.

Question 12: For the maintenance facility outbuildings, what are the water requirements?

Response: Eye wash stations are required at outbuildings with chemical storage. Maintenance outbuildings need the ability to wash down equipment and a dedicated wash bay is preferred. All outbuildings require potable water.

Question 13: For the maintenance facility outbuildings, what are the air requirements?

Response: Vehicle storage buildings may be a pole barn or garage, and do not require HVAC. Most shops do not require heat or air conditioning but must be well-ventilated. Some specialized shops (such as signage fabrication) and all main office spaces will require HVAC.

Question 14: For Fiesta Gardens, can we get definition of the area to be restored?

Response: Please see attachment following this addendum.

The area highlighted in pink outlines the area for partial restoration. The area highlighted in yellow includes the historic buildings that are part of the full restoration scope.

Question 15: For Fiesta Gardens, can we get the partial restoration and the full restoration scope?

Response: Partial restoration includes demolition of current temporary storage facilities, leveling, Phase 1 clean up and basic landscaping to restore the shoreline. Partial restoration may also include plantings and recreational amenities in accordance with the [Holly Shores/Edward Rendon Sr. Park Vision Plan](#) in the outlined area.

Full restoration includes the above described restorative work and the rehabilitation of the historic structure currently used as office space to be accessible for public recreational programming in accordance with the [Holly Shores/Edward Rendon Sr. Park Vision Plan](#) as described in pages 82 and 83 of the plan.

Question 16: For Fiesta Gardens, what is the expectation on restoration timing (not before new maintenance facility?)

Response: Restoration may begin after the new facility is completed and all personnel and equipment have been relocated.

Question 17: For Fiesta Gardens, if our intent is to develop both, is 9.5.2 still applicable?

Response: All sections of the Proposal submitted should be completed as applicable to the individual submittals. If, based on an Offerors Proposal, a section is not applicable, it should be marked as such.

Question 18: What is the timing of Parcel Ownership Changes?

Response: The timing is undetermined at this time.

Question 19: Is there a sample of the contract that will be used that we can see for review?

Response: No. There is no sample contract available for a land swap at this time.

Question 20: Can we get clarification of goal "Ability to provide immediate recreation programming activities"?

Response: At minimum, any necessary site cleanup, remediation, restoration, clearing, grubbing and canopy raising, plus trails and basic infrastructure for public access (such as trailheads, appurtenances and parking).

Question 21: Can we get clarification of goal " . . . the land has been deemed suitable for recreational land . . ."?

Response: The property must have a Phase 1 ESA and meet the goals of the City of Austin [Parks and Recreation Department's Long Range Plan](#). The land should include areas sufficiently flat and well drained for active recreation and should be easily accessible by the public.

Question 22: Proposal Requirement: "A copy of the title commitment must be included." Is copy of a signed PSA sufficient for this?

Response: A signed PSA will not be sufficient for this requirement.

Question 23: Is an access easement acceptable for compliance to adjoining a publicly-dedicated roadway?

Response: It will depend on the specific language in the access easement. For example, as a right of way that allows public access.

Question 24: The public information packet calls for a project summary that is limited to no more than 4 pages, are there any other page limit restrictions?

Response: No, there are no limits for the other submittals.

Question 25: The Project Management Plan: nothing is listed here, what is required?

Response: The requirements for project management are described in sections 9.8.1 and 9.8.2.

Question 26: 9.9.1/2 With the two, it appears that there is a possible 125 evaluation points, is that accurate?

Response: There are a possible 100 points possible from the evaluation of the Proposal submitted. If the City conducts interviews or presentations, those will be worth a maximum of an additional 25 points, for a maximum of 125 points.

Question 27: Are there going to be interviews as this is listed as optional? If intended, do you have an idea of when this would occur?

Response: The City is reserving the right to conduct interviews or presentations if it is in the best interest of the City at that time.

Question 28: Is there an anticipated date on when final selection will occur?

Response: The City does not yet have an anticipated date for selection, but will make that determination as soon as possible while ensuring the integrity of the process.

II. ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

ACKNOWLEDGED BY:

Name

Authorized Signature

Date

RETURN ONE COPY OF THIS ADDENDUM TO THE PURCHASING OFFICE, CITY OF AUSTIN, WITH YOUR RESPONSE OR PRIOR TO THE SOLICIATION CLOSING DATE. FAILURE TO DO SO MAY CONSTITUTE GROUNDS FOR REJECTION.

Attachment:

FIESTA GARDENS RESTORATION AREA

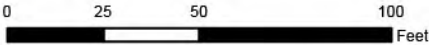


**RESTORATION
AREA**



**BUILDING
RESTORATION**

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. This product has been produced by the Parks and Recreation Department for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.



**Fiesta Gardens
Restoration Area**

FY 2019

ZIP CODES	TOTAL
78610	
78617	4
78620	
78621	
78641	
78645	
78652	
78653	
78654	
78660	4
78664	
78669	
78701	6
78702	23
78703	4
78704	37
78705	8
78712	
78717	1
78719	
78721	14
78722	6
78723	42
78724	12
78725	
78726	3
78727	9
78728	
78729	2
78730	2
78731	3
78732	
78733	
78734	1
78735	5
78736	1
78737	
78738	
78739	
78740	
78741	57
78742	
78744	27
78745	25
78746	

FY 2020

ZIP CODES	TOTAL
78610	
78617	
78620	
78621	
78641	
78645	
78652	
78653	
78654	
78660	2
78664	
78669	
78701	6
78702	8
78703	2
78704	19
78705	18
78712	
78717	2
78719	
78721	7
78722	8
78723	32
78724	4
78725	1
78726	3
78727	4
78728	
78729	3
78730	
78731	4
78732	2
78733	
78734	
78735	2
78736	
78737	
78738	
78739	1
78740	
78741	39
78742	
78744	16
78745	23
78746	4

FY 2021

ZIP CODES	TOTAL
78610	1
78617	
78620	
78621	
78641	
78645	
78652	
78653	
78654	
78660	2
78664	
78669	
78701	2
78702	12
78703	2
78704	22
78705	15
78712	
78717	1
78719	
78721	5
78722	2
78723	22
78724	
78725	
78726	1
78727	4
78728	1
78729	3
78730	
78731	12
78732	
78733	
78734	
78735	5
78736	
78737	
78738	
78739	
78740	
78741	42
78742	
78744	11
78745	24
78746	3

78747	2
78748	7
78749	4
78750	
78751	11
78752	14
78753	39
78754	7
78756	5
78757	10
78758	30
78759	9
Homeless	
Out of County	
Unknown/Other	
Total	434

78747	2
78748	11
78749	2
78750	2
78751	8
78752	6
78753	25
78754	8
78756	5
78757	6
78758	19
78759	14
Homeless	
Out of County	
Unknown/Other	
Total	318

78747	5
78748	14
78749	8
78750	2
78751	11
78752	11
78753	18
78754	2
78756	2
78757	3
78758	17
78759	12
Homeless	
Out of County	
Unknown/Other	
Total	297

FY 2022

ZIP CODES	TOTAL
78610	
78617	
78620	
78621	
78641	
78645	
78652	
78653	
78654	
78660	2
78664	
78669	
78701	1
78702	12
78703	3
78704	14
78705	20
78712	
78717	1
78719	
78721	6
78722	5
78723	25
78724	5
78725	
78726	7
78727	4
78728	8
78729	6
78730	1
78731	9
78732	
78733	
78734	
78735	1
78736	4
78737	
78738	1
78739	
78740	
78741	15
78742	
78744	17
78745	20
78746	6

FY 2023

ZIP CODES	TOTAL
78610	
78617	
78620	
78621	
78641	
78645	
78652	
78653	
78654	
78660	6
78664	
78669	
78701	4
78702	7
78703	6
78704	20
78705	17
78712	
78717	
78719	1
78721	10
78722	2
78723	18
78724	9
78725	3
78726	4
78727	6
78728	13
78729	8
78730	2
78731	13
78732	
78733	
78734	1
78735	3
78736	1
78737	
78738	1
78739	1
78740	
78741	20
78742	
78744	15
78745	19
78746	5

78747	4
78748	12
78749	2
78750	
78751	21
78752	16
78753	19
78754	9
78756	4
78757	10
78758	12
78759	15
Homeless	
Out of County	
Unknown/Other	

Total 317

78747	5
78748	14
78749	3
78750	3
78751	14
78752	9
78753	25
78754	4
78756	6
78757	10
78758	21
78759	5
Homeless	
Out of County	
Unknown/Other	

Total 334