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**AMENDMENT NO. 1
TO DISPOSITION AND DEVELOPMENT AND LEASE AGREEMENT
BETWEEN THE SUCCESSOR AGENCY TO THE REVELOPMENT AGENCY OF THE
COUNTY OF MONTEREY AND
DARRYL CHOATES**

THIS AMENDMENT NO. 1 to the Disposition and Development and Lease Agreement (“Agreement”) between the County of Monterey (“County”) (successor in interest to the Successor Agency to the Redevelopment Agency of the County of Monterey (“Agency”)), and Darryl Choates (“Lessee”) is hereby entered into between the County and the Lessee (collectively, the “Parties”) and effective as of the last date opposite the respective signatures below.

I. Recitals

WHEREAS, the Agency and Lessee entered into the Agreement on October 4, 2006 , in order to facilitate Lessee’s leasing and development of that certain real property more particularly described in Exhibit “A” hereto, incorporated herein by reference (“Property.”)

WHEREAS, Section 3.5 of the Agreement required that as of August 2016, the monthly rent for the Property be adjusted to reflect the fair market rate value of the leasehold as established by an independent appraiser, the Agency’s appraiser determined the monthly fair market rental value to be \$10,855.00, and Lessee has agreed that said amount reflects the fair market value of the leasehold and has tendered rent in that amount accordingly.

WHEREAS, the Parties acknowledge that the Property is subject to the Monterey County Successor Agency Long Range Property Management Plan (“LRPMP”), approved by the Monterey County Oversight Board on April 17, 2014.

WHEREAS, the Parties acknowledge that pursuant to the LRPMP, the Property is intended to be transferred to the County of Monterey for continued governmental use.

WHEREAS, on ____, 20__ the Agency transferred ownership of certain real properties including the Property to the County, subject to the Agreement and County is the current Owner and Lessor of the Property.

WHEREAS, the Parties acknowledge that the Agency, and County are in negotiations with the City of Marina (“City”), and intend to enter into a separate agreement(s) to transfer ownership of the Property along various other real properties owned by the Agency and or County, to the City of Marina in compliance with the requirements of the LRPMP and Fort Ord Base Reuse Plan. Specifically, the Parties acknowledge that the Agency and or County will convey or cause to be conveyed to the City the following real properties: Parcel E8a.1.2 (APN 031-101-039); Parcel E8a.1.3 (APN 031-101-040); Parcel E8a.1.4 (APN 031-101-041); Parcel E8a.1.5 (APN 031-101-042); Parcel E8a.1.1.2 (APN 031-101-056); Parcel E4.6.2 (APN 031-101-058); Parcel E8a.2 (No APN); and Parcel E8a.1.1.1 (APN 031-101-057) (collectively, “Fort Ord Boot Properties.”)

WHEREAS, the LRPMP contemplates that Lessee would be provided with a “first right to purchase” the Property for fair market value.

WHEREAS, the County and Lessee, agree that it is mutually advantageous to negotiate a first right for Lessee to purchase the Property under certain terms and conditions as detailed herein.

NOW WHEREFORE, the Parties hereby agree to amend the terms of the Agreement as follows:

1. In all places within the Agreement, any reference to the Redevelopment Agency of the County of Monterey, is hereby replaced by “the County of Monterey.”
2. Section 2.1 is hereby removed from Article 2 in its entirety and replaced to read as follows:

“2.1 Lease Term: The term of this Agreement (the “Lease Term”) shall be twenty-four (24) years, commencing on August 22, 2006 (the “Lease Commencement Date”) and ending on August 22, 2030 unless sooner terminated pursuant to the terms of this Agreement (“Lease Expiration Date”).”

3. Section 2.2 is hereby removed from Article 2 in its entirety and replaced to read as follows:

“2.2 No Extended Term: This Agreement is for a fixed twenty-four (24) year term and does not provide any guaranteed right of extension. If Lessee desires to extend the Lease Term, Lessee shall provide notice of such intent at least 180 days in advance of the expiration of the Lease Term. The Lessor may, in its sole discretion, decide whether to enter into negotiations with Lessee to extend the Lease Term.

4. Section 2.3 is hereby added to Article 2, to read as follows:

“2.3 Lessee’s First Right to Purchase: Prior to the expiration of the Lease Term , or termination pursuant to Article 4 of the Agreement (whichever occurs first,) and subject to the ability of the City of Marina to dispose of the Property as set forth herein (as to which ability the County of Monterey makes no representations), Lessee shall have the right to purchase the Property for fair market value before any other individual or entity, pursuant to the following terms and conditions:

- a) Lessee shall not have the right to purchase the Property unless and until:
 - 1) The Agency and County of Monterey transfer title of the Property and Fort Ord Boot Properties to the City of Marina; and
 - 2) The City of Marina has sent written notice to Lessee that it intends to transfer title of the Property to a third party or independent governmental entity. Said

notice shall be sent to Lessee no less than sixty (60) calendar days in advance of any proposed transfer of title ("Triggering Event").

- b) Lessee shall affirm in writing its intent ("Notice of Intent") to exercise its first right to purchase within thirty (30) calendar days after the Triggering Event.
- c) Within one hundred and twenty (120) calendar days after Lessee provides to City its Notice of Intent, the City shall obtain an appraisal for the fair market value of the Property including all improvements, and City shall provide the Lessee with a copy of the appraisal. In the event the Lessee disagrees with the conclusions of the City's appraisal the Lessee shall so notify the City in writing within thirty (30) calendar days of receipt of the appraisal and inform the City that Lessee intends to obtain its own appraisal of the fair market value of the Property. The Lessee shall then obtain an appraisal of the Property within sixty (60) calendar days of receipt of the City's appraisal and shall provide the City with a copy of any such appraisal. Within fifteen (15) calendar days of receipt of the Lessee's appraisal by the City, the City and the Lessee shall meet and confer to determine if the parties can agree on a fair market value for the Property. If the Parties are unable to agree upon a fair market value within forty-five (45) calendar days of receipt of the Lessee's appraisal by the City, the City and the Lessee shall promptly and diligently cooperate with one another to engage the services of a general referee ("Referee") pursuant to the provision of Code of Civil Procedure §§ 638 through 645.1, inclusive, in Monterey County, California. The Referee may engage the services of a professional appraiser if necessary to resolve the dispute between the Parties. The City and the Lessee agree to abide by the determination of the Referee. The City and the Lessee shall each bear the costs of their own appraisals; and the Referee, in his or her sole discretion, shall have the authority to apportion between the Parties, or award to either party, the costs for the Referee's services and any other expense for professional services reasonably incurred to resolve the dispute (e.g. cost of appraisal). Lessee's Notice of Intent to exercise its first right to purchase shall not constitute an automatic extension of the terms of the Lease Agreement.
- d) Lessee's first right to purchase the Property pursuant to this Section shall not survive the expiration or termination of the Lease Agreement; excepting, that if Lessee has timely submitted a Notice of Intent pursuant to subdivision (b) above, and thereafter the Term of the Lease Agreement expires without renewal or holdover (pursuant to Article 16 of the Agreement) then Lessee's first right to purchase pursuant to this Section shall survive the expiration of the Lease Agreement.
- e) In addition to the common-law duty of good faith and fair dealing, the Parties agree, to engage in good faith and fair dealing in all negotiations occurring after the Lessee's delivery of the Notice of Intent as described in section (b) above.
- f) Notwithstanding any of the above to the contrary, Lessor retains all rights to take all or any portion of the Premises through the process of Eminent Domain pursuant to Article 17 of the Agreement."

5. Section 3.5.1 is hereby added to Article 3, to read as follows:

"3.5.1 Adjusted Rent After Widening of Imjin Road: The Parties agree and acknowledge that the area of the Property totals three (3) acres which is equivalent to 130,680 square feet; and, that the

monthly fair market rental value for the Property is 0.0833 cents/square foot (\$10,885/130,680 square feet) ("Rent Per Square Foot). If before the end of the Lease Term County, City, or FORA proceeds with road widening which results in the termination of the Agreement as to a portion of the Property pursuant to Article 4 Section 4.3 below, the Parties agree that until the end of the Lease Term, the Basic Rent, the Car Wash Rent, and the Gas Station Rent shall be in a dollar amount determined by reducing the monthly fair market rental value of \$10,885.00 by the Rent Per Square Foot for the amount of square feet actually removed from the leasehold for the road widening."

6. Section 4.3 is hereby removed from Article 4 in its entirety and replaced to read as follows:

"4.3 Relocation: Lessee acknowledges and understands that the Property is in a redevelopment project area and, pursuant to the Fort Ord Reuse Plan and Redevelopment Plan, the use of the Property contemplated by this Agreement is an interim use, pending the ultimate reconfiguration and redevelopment of the Property. Lessee further acknowledges that a portion of the Property is designated in the Fort Ord Reuse Plan for road widening and that in the event the County, City, or FORA proceeds with the road widening at any time during this Agreement, Lessor may terminate this Agreement as provided in Section 4.2 as to some or all of the Property and Lessee may lose some or all of the use of the Property. In the event that the Lessor terminates this Lease as to a portion of the Property in order to accommodate the road widening and such portion reduces the parking available to the Lessee, the Rent for the Premises shall be adjusted pursuant to Article 3, Section 3.5.1 for the remainder of the Term, and the Lessor shall not have a duty to make available to the Lessee any adjacent property for use as parking, nor shall the Lessor require the Lessee to replace any parking spaces.

Lessee acknowledges and understands that if Lessor terminates the tenancy, either on the Lease Expiration Date or sooner as provided in section 4.2 above, Lessee shall not be eligible for relocation assistance, payments, or benefits of any kind. If any dispute arises as to whether Lessee is entitled to relocation assistance, payments, or benefits, Lessee further acknowledges and agrees that Lessor promises to reimburse Lessee for the cost of Premise Improvements and the goodwill value of the business operating on the Premises as set forth in section 4.2 above, the Lessor promises to provide the Lessee with the opportunity to reenter the Property and the Lessor promises to restore any parking lost by the Lessee in the event of a partial termination in order to accommodate a road widening shall fulfill any obligation to provide any relocation payments, benefits, or assistance, any loss of goodwill compensation for and any obligation to provide owner participation rights under the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act, the California Relocation Assistance Law, Community Redevelopment Law, the Redevelopment Plan, or other law or regulation."

7. Notices as required by Article 5 of the Agreement shall be sent to: "The County of Monterey c/o Chief Administrative Office, 168 W Alisal St. 3rd Floor, Salinas California 93901" and "The Resource Management Agency Financial Department, 1441 Schilling Place, South 2nd Floor, Salinas, California 93901."
8. Article 9 is hereby removed in its entirety and replaced to read as follows:

"ARTICLE 9 – ASSIGNMENT AND SUBLETTING

This Agreement is granted to the Lessee solely for the purpose of development and operation of the Property, and its subsequent use in accordance with the terms of this Agreement, and not for speculation in landholding. The Lessee recognizes that, in view of the following factors, the qualifications and identity of the Lessee are of particular concern to the community and Agency:

- (a) The importance of the redevelopment of the Property to the general welfare of the community;
- (b) The fact that a sublease or assignment of this Agreement is for practical purposes a transfer or disposition of the leasehold interest in the Property then owned by Lessee.
- (c) The fact that the Leasehold and the Property are not to be acquired, developed or used for speculation, but only for development and operation by Lessee in accordance with this Agreement and the DDA.

Lessee further recognizes that it is because of such qualifications and identity that Agency is entering into this Agreement with Lessee and for these reasons Lessee shall not assign or sublet all or any portion of the Property without the prior written consent of Lessor, which consent shall not be unreasonably or arbitrarily withheld."

9. Section 20.10 is hereby added to Article 20, to read as follows: "Release and Waiver of Claims and Right to Bring Suit.
 - (a) Lessee hereby irrevocably waives and foregoes any right it may have, or may later accrue, to file any legal action of any kind whatsoever (including but not limited to any claim to attack, set aside, void, annul, review (including by writ) or other challenge) against the Agency, County of Monterey, and or City of Marina, resulting from, arising out of, or related to the transfer of the Property and or Fort Ord Boot Properties to the City of Marina.
 - (b) The Parties hereby release all claims, rights, demands, liabilities, obligations and causes of action of every kind, nature and description that each party may have, or at any time ever had, against the other which relates to the Agency's and County's transfer of the Property and or Fort Ord Boot Properties to the City of Marina; and, the

road widening generally described in Article 4, Section 4.3. All parties hereto, are represented by an attorney at the time of executing this Agreement, and or have waived their right to such representation. Each party and their attorney has spent considerable time examining the occurrences and transactions which are the subject of this Agreement, and based upon that examination, as to the future transfer of the Property and Fort Ord Boot Properties to the City of Marina, and the road widening generally described in Article 4 Section 4.3, expressly waive and relinquish their respective rights created under California Civil Code § 1542, which states:

" A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

10. All other terms and conditions of the Agreement remain unchanged and in full force
11. This Amendment No. 1 shall be attached to the Agreement and incorporated therein as if fully set forth in the Agreement.
12. The recitals to this Amendment No. 1 are incorporated into the Agreement and this Amendment No. 1.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment No. 1 to the Agreement which shall be effective as of the last date opposite the respective signatures below.
Executed this ____ day of _____, ____, at _____, California.

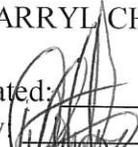
COUNTY OF MONTEREY

DARRYL CHOATES

Dated: _____

Dated: 10/10/19

By: _____

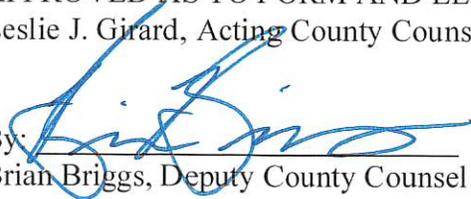
By: 

John Phillips, Chair

Darryl Choates

APPROVED AS TO FORM AND LEGALITY:

Leslie J. Girard, Acting County Counsel

By: 

Brian Briggs, Deputy County Counsel

By: 

Debra Tipton, Attorney for Darryl Choates