

**LEASE AGREEMENT BETWEEN THE
CITY OF SANTA CRUZ AND
THE SANTA CRUZ SEASIDE COMPANY
FOR THE USE OF BEACH FLATS COMMUNITY GARDEN**

This Lease is entered into on April 1, 2016 (the "Effective Date") by and between the Santa Cruz Seaside Company, a California corporation, referred to herein as "Landlord," and the City of Santa Cruz, a municipal corporation and California charter city, referred to herein as "Tenant."

RECITALS

- A. Landlord is the owner of certain real property in the City of Santa Cruz, CA, located at 313 Third Street, 213 Uhden Street, and 304 Park Place and known as Assessor Parcel Numbers 007-282-04, 08, and 09, consisting of approximately Twenty-Six Thousand (26,000) square feet, (the "Property") as shown on Exhibit "A", attached hereto and made a part of.
- B. Tenant and Landlord entered into a lease agreement on April 13, 1994, for nominal rent of One Dollar (\$1.00) per year, for use of the Property as a community garden for residents of the area (the "Original Lease"). Said lease agreement was for a term of one year, expiring April 12, 1995.
- C. The Original Lease agreement was subsequently amended to provide that the term would continue until cancelled by either of the parties, upon ninety days' notice.
- D. Tenant received notice from Landlord on March 16, 2015 that Landlord now wishes to utilize a portion of the Property (the "Landlord Parcel") for its own use and cancel the Original Lease agreement. Landlord has indicated willingness to lease the remainder of the Property to Tenant, under a new lease agreement, to continue as a community garden, for a period of three years.

NOW THEREFORE, for and in consideration of the covenants to be performed by Tenant under this Lease, Landlord agrees to lease certain property, as described below, to Tenant, and Tenant agrees to lease said property from Landlord, on the terms and conditions set forth herein.

- 1. Premises. Tenant shall lease from Landlord approximately Sixteen Thousand (16,000) square feet of the Property (the "Premises"), more particularly described in Exhibit "B," attached hereto and made a part hereof. Tenant has inspected the Premises prior to execution of this Lease, and agrees to take possession on the Premises "As Is" without any warranty, express or implied, other than those that may be set forth herein.

2. Use:
 - a. Tenant agrees to utilize the property as a garden tended by community residents, subject to the terms of this Agreement and to all limitations and conditions established by the City of Santa Cruz Planning Commission in a Use Permit (Project No. CP-15-0202) issued December 17, 2015, (the "Use Permit") attached hereto as Exhibit "C." Landlord may restrict the use of the grounds to conform to applicable local, State, or Federal statutes. Tenant shall comply with all applicable statutes, ordinances, regulations, or rules pertaining to the use and occupancy of these grounds, as set forth in Exhibit C.
 - b. Tenant shall have the discretion to establish the size and number of individual garden plots within the Premises.
3. Permits: Tenant shall obtain and keep in force all permits and permissions required to operate the garden.
4. Term. The term of this lease shall be three years commencing on the Effective Date, and terminating three years later, unless otherwise terminated according to the terms of Section 12, below.
5. Rent. The annual lease rental shall be One Dollar (\$1.00) payable by Tenant to Landlord at the Office of the Property Manager of the Santa Cruz Seaside Company. Rent for the entire period of the lease shall be paid within thirty (30) days of the execution of this Lease.
6. Utilities:
 - a. Tenant shall be responsible for supplying and payment of all applicable utilities and other services furnished to or used on the Premises, including water, gas, electricity, green waste, and trash removal.
 - b. If it becomes necessary to prohibit and regulate the use of water for conservation purposes, and the City Council has adopted an ordinance for such purposes, the Tenant shall bear the responsibility for payment of all fees, penalties, or charges for the use of water under such ordinance.
7. Taxes. Tenant shall be responsible for payment of any real-property taxes or possessory interest taxes that may be assessed upon the Premises under provision of State or Federal law. Tenant shall pay the taxes within thirty (30) days of receiving an invoice from Landlord showing total tax due for the entire parcel and breaking out Tenant's share.
8. Improvements to Property, Repairs and Maintenance, Inspections.
 - a. Tenant shall not make or suffer to be made any alterations or improvements to the Premises without the prior written consent of Landlord, other than to divide the property into several individual plots of land and install fencing around the

perimeter of the Premises, as stated below. It is acknowledged and accepted by both parties that various alterations to the property will result from the planting and maintenance of gardens, and such activities are hereby approved by Landlord. All such alterations and improvements shall be made in accordance with the Use Permit.

- b. Tenant is responsible for all repairs and maintenance to the Premises and to the fencing installed around the Premises. Landlord is responsible for the repair and maintenance of the fencing on Third Street and the section on Uhden Street adjacent to Landlord's premises .
 - c. Landlord and Tenant shall together conduct an annual walkthrough inspection in October of each lease year. The date of the walkthrough shall mutually be scheduled and is subject to change by mutual agreement.
 - d. Landlord shall additionally have the right to make inspections of grounds, upon providing Tenant with 24-hour written notice, to assure compliance with the terms of this Agreement.
9. Fencing: Tenant and Landlord agree to share the cost to purchase and install fencing for the Premises. Landlord agrees to pay the cost to install fencing on the Third Street frontage and a proportionate share of the expense for Landlord's portion of Premises fronted by Uhden and Raymond Streets (based on linear footage) as well as 50% of the cost of the internal fence separating the Garden from the property being used by the Seaside Company. The fence separating the Garden from the Seaside Company portion shall be a visually solid wooden fence. Tenant shall bear the cost of the balance of the work. Tenant will install internal fencing. In addition, Tenant agrees to create a curb-cut on Uhden Street adjacent to the Seaside Company portion of the property, to provide vehicle access to the Seaside Company portion of the Property. The parties acknowledge that, pursuant to the California Labor Code, the fence installation work is subject to the payment of prevailing wages.
10. Hazardous Substance or Waste.

- a. Hazardous Materials. As used in this Lease, the term "hazardous materials" shall mean any substance or material which has been determined by the State of California, the federal government, or any agency of said governments to be capable of posing a risk of injury to health, safety and property including, but not limited to, all of those materials and substances designated as hazardous or toxic by the Environmental Protection Agency, the California Water Quality Control Board, the U.S. Department of Labor, the California Department of Industrial Relations, the Department of Transportation, the Department of Agriculture, the Consumer Products Safety Commission, the Department of Health, Education & Welfare, the Food & Drug Administration or any other governmental agency now or hereafter authorized to regulate materials and substances in the environment. Without limiting the generality of the foregoing, the term "hazardous materials" shall

include all of those materials and substances defined as "toxic materials" in Sections 66680 through 66685 of Title 22 of the California Administrative Code, Division 4, Chapter 30, as the same may be amended from time to time.

- b. **Tenant's Compliance.** Tenant shall promptly comply with all laws related to hazardous materials, including any and all required monitoring and record keeping, and any orders of a governmental authority requiring the cleanup and removal of hazardous materials from the Premises. If the Premises, or any part thereof (including the soil, surface water, ground water or the air in or about the Premises), becomes contaminated by any hazardous material through an act or omission of Tenant, its agents, employees, or invitees, Tenant shall promptly at its sole cost take all action necessary to clean up and remove such contamination and restore the Premises to the condition existing immediately prior to the existence of such hazardous material in or about Premises. Tenant's obligations under this paragraph shall survive Lease termination. Tenant shall immediately notify Landlord in writing if Tenant causes or permits any hazardous material to be used or kept in or about the Premises or knows or has reasonable cause to believe that any hazardous material has come to be located in or about the Premises or discovers the existence of any hazardous material in or about the Premises. Tenant shall be solely responsible for the cost of any required cleanup and removal of hazardous materials and/or toxic wastes which have been placed or left upon the Premises by Tenant after the date of execution of this Lease.
- c. **Indemnification by Tenant.** Tenant shall indemnify Landlord and its successors and assigns against and hold them harmless from any and all of the following claims, demands, liabilities, damages, including punitive damages, costs, expenses and reasonable attorney's fees, herein collectively referred to as "Claims":
 - i. Any claim by a federal, state or local government agency arising out of or in any way connected with the environmental condition of the Premises caused by an act or omission of Tenant, its agents, employees, or invitees, including, but not limited to, claims for cleanup of hazardous materials on the Premises; and
 - ii. Any claim by a successor in interest of Tenant, or by any subtenant, licensee, or invitee of Tenant arising out of or in any way connected with the environmental condition of the Premises caused by any act or omission of Tenant, its agents, employees, or invitees.
- d. **Indemnification by Landlord.** Landlord shall indemnify Tenant and its successors and assigns against and hold them harmless from any and all of the following claims, demands, liabilities, damages, including punitive damages, costs, expenses and reasonable attorney's fees, herein collectively referred to as "Claims":
 - i. Any claim by a federal, state or local governmental agency arising out of or in any way connected with the environmental condition of the Premises existing prior to commencement of the Tenant's Original Lease which

commenced April 13, 1994, that was not caused by any act or omission of Tenant, its agents, employees, or invitees, including, but not limited to claims for cleanup of hazardous materials on the Premises; and

- ii. Any claim by a successor in interest of Tenant, or by any subtenant, licensee, or invitee arising out of or in any way connected with the environmental condition of the Premises existing prior to commencement of the Tenant's Original Lease, which commenced April 13, 1994, that was not caused by any act or omission of Tenant, its agents, employees, or invitees.

11. Insurance and Hold Harmless.

- a. Tenant agrees to indemnify, defend, and hold harmless Landlord, its affiliates, members, shareholders, officers, directors, employees, and agents, from and against any and all claims, demands, actions, damages, or judgments, including associated costs of investigation and defense, arising from any omission, fault, negligence, or other conduct of Tenant, its permittees, invitees, or any members of the public, in any way related to or in connection with Tenant's, its permittees', invitees', or any member of the public's occupancy, activity, use, maintenance or repair of the Property, except to the extent that such claims, demands, actions, damages or judgment are caused by the negligence or wrongful conduct of Landlord, its affiliates, members, shareholders, officers, employees or agents.
- b. Without limiting the foregoing in any way, Tenant shall carry Liability Insurance in an amount of not less than Two Million Dollars (\$2,000,000) per occurrence combined single-limit Bodily Injury and Property Damage liability coverage. Alternatively, Tenant may self-insure for said coverage.
- c. Tenant shall obtain and maintain, during the life of the agreement, Worker's compensation Insurance, covering all its employees on the project, with a company satisfactory to Landlord. Alternatively, Tenant may be self-insurance for said coverage.
- d. For all insurance provided above, policies shall provide that the same cannot be cancelled except upon thirty (30) days' written notice to Landlord.
- e. Except for Workers' Compensation, all insurance provided above shall name Landlord, its affiliates, members, shareholders, officers, directors, employees, and agents as an additional insured and shall include cross liability in favor of Landlord, its officers, agents and employees.
- f. A certificate of insurance, or evidence that Tenant is permissibly self-insured, shall be furnished to Landlord as evidence of the above coverages and conditions prior to occupancy of the Premises. Any statements that relieve the insurance company from liability if notice of cancellation is not sent are not acceptable.

12. Termination of Lease.

- a. This lease may be terminated immediately by Landlord, upon providing written notice to Tenant, for the following:
 - i. Landlord determines, in its sole discretion, that it desires to terminate the Lease, or in the event that Landlord's application for a use permit and coastal development permit for the project described in that certain application submitted to the City of Santa Cruz in April, 2016 and identified as Application No. CP16-0081 is denied by final action of the City Council.
 - ii. Tenant has not substantially complied with all applicable provisions of the Use Permit, attached hereto as Exhibit C.
 - iii. Tenant is in default of any term of this lease, and has failed to correct the default within thirty (30) days after being notified by Landlord of said default. Until the default is fully corrected, Tenant shall pay market rate rent for the Premises.
 - iv. Tenant's failure to correct, within thirty (30) days after Landlord provides written notice, any condition or practice which the Landlord, in its sole discretion, determines to be defective, unsafe, unhealthful, or unlawful.
 - v. Upon mutual written agreement of the Parties.
- b. Notice of Termination under Paragraph 12(a) may be effective as soon as sixty (60) days after delivery of notice by Landlord of said termination. In the event of termination of this Lease, whether through expiration or exercise of rights under this Paragraph 12, Tenant shall make its best reasonable efforts to return the Premises to Landlord, vacant and clear of all garden-related improvements, by the effective date of a termination given hereunder.

13. **Damage to Premises.** If the Premises be so damaged by fire, flood, earthquake, casualty or other cause as to be unfit for use as a garden, then this lease shall terminate as of the date of such damage. Landlord shall not be liable to Tenant for any loss or damage sustained by Tenant due to such events, casualties, or other causes

14. **Assignment or Subletting Prohibited.** Tenant shall not assign this agreement or sublet the Premises or any portion thereof, under any circumstances. No assignment or subletting may be made to any invitee or licensee, including gardeners for garden plots. Plots shall be permitted annually, on a calendar year basis, utilizing a form of permit subject to Landlord's review and comment, and which disclaims and makes best efforts to preclude the creation of tenancy rights in the gardeners.

15. Notice. Any notice, demand or other communication required or permitted by law or any provision of this Lease to be given or served on either party shall be in writing, addressed to the party at the address set forth below, or such other address as the party may designate from time to time by notice, and (a) deposited in the United States Mail, registered or certified, return receipt requested, postage prepaid; (b) delivered by an overnight private mail service which provides delivery confirmation; (c) personally delivered at such address; or (d) sent electronically by way of facsimile or email transmission. All communications delivered as set forth herein shall be deemed received by the addressee on the delivery date, or the delivery refusal date shown on the return receipt or the delivery confirmation, or the facsimile confirmation date evidencing successful transmission, or the email transmission date provided the sending party does not receive electronic notification of failed delivery.

To Landlord:

Santa Cruz Seaside company
Attn: Kris Reyes
400 Beach Street
Santa Cruz, CA 95060
Phone: (831) 423-5590
Email: pr@scseaside.com

With a copy to:

Baskin & Fowler, Inc.
Attn: Caleb Baskin
101 Cooper Street
Santa Cruz, CA 95060
Phone: 831-427-7970
Email: Caleb@baskinandfowler.com

To Tenant:

City of Santa Cruz
Attn: Director of Parks & Recreation
323 Church Street
Santa Cruz, CA 95060
Phone: (831) 420-5270
Email:
parksandrec@cityofsantacruz.com

With a copy to:

City of Santa Cruz
City Attorney
PO Box 481
Santa Cruz CA 95061
Email: tcondotti@abc-law.com

IN WITNESS WHEREOF, the parties have executed this Lease as of the dates set forth below.

LANDLORD: Santa Cruz Seaside Company

TENANT: City of Santa Cruz

By:

By: Martin Bernal, City Manager

Date

Date

Approved as to Form:

Approved as to Form:

Caleb Baskin, Baskin & Fowler, Inc.
Attorneys for LANDLORD

Tony Condotti, City Attorney
Attorney for TENANT

Exhibit A
 ("Property")

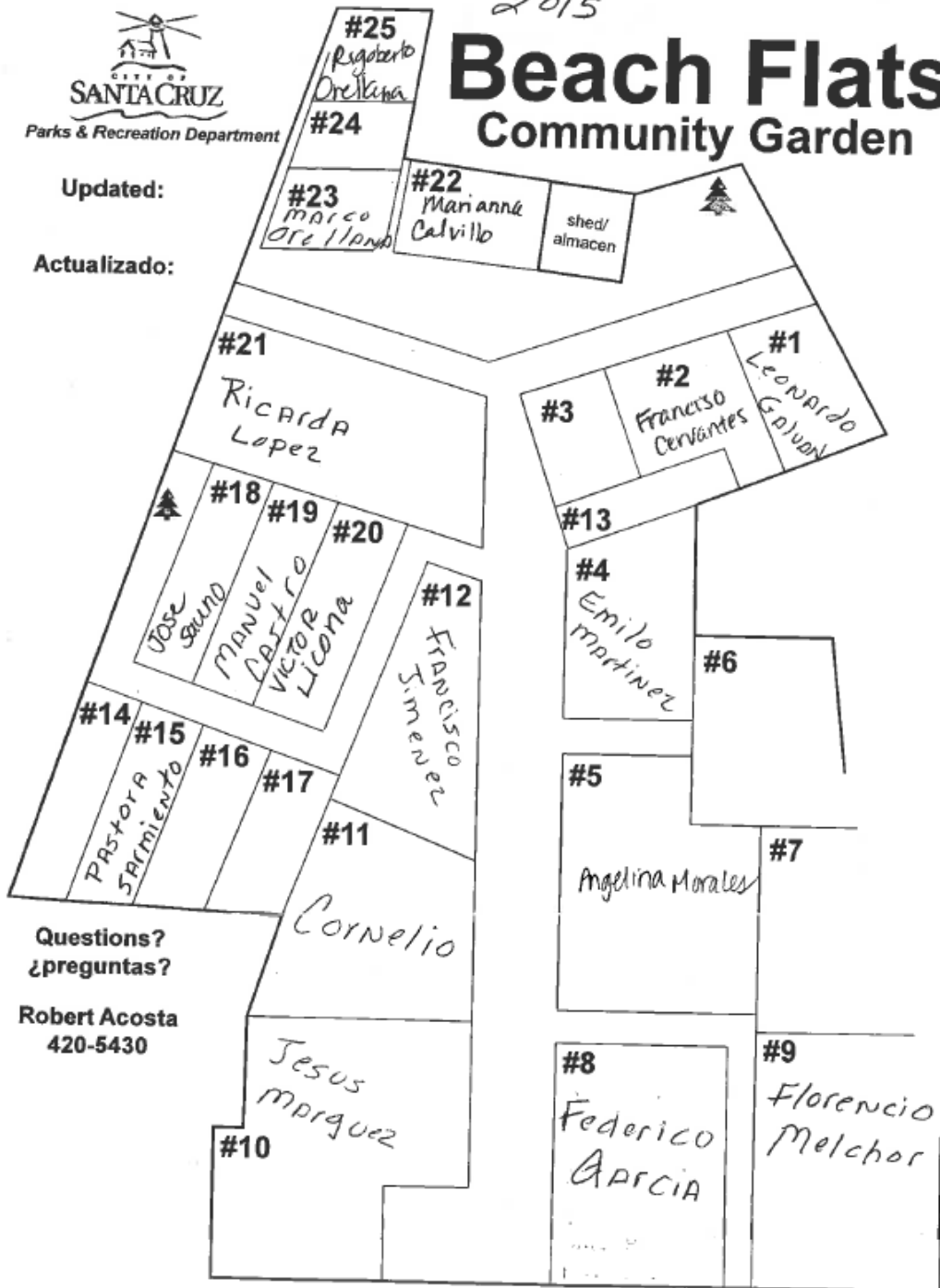


Updated:

Actualizado:

2015

Beach Flats Community Garden



Questions?
 ¿preguntas?

Robert Acosta
 420-5430

Exhibit B
(“Premises”)

