

**REIMBURSEMENT AGREEMENT BETWEEN  
THE CITY OF REDONDO BEACH AND CATALINA FUND LLC**

This Reimbursement Agreement (the "Agreement") is made and entered into this 20th day of August, 2019 (the "Effective Date"), by and between the City of Redondo Beach ("City") and CATALINA FUND LLC, a California Limited Liability Company ("CATALINA FUND").

**RECITALS**

WHEREAS, CATALINA FUND is the owner of property in the City of Redondo Beach and CATALINA FUND proposes to develop an adaptive reuse and reduction of existing retail at 100-132 North Catalina Avenue as well as the construction of 30 new residential units ("Proposed Project"); and

WHEREAS, CATALINA FUND is prepared to reimburse costs incurred by City to fund the environmental analysis (Initial Study-Mitigated Negative Declaration (IS-MND) prepared pursuant to the California Environmental Quality Act ("CEQA," Pub. Resources Code, §§ 21000 *et seq.*) for the Proposed Project; and

WHEREAS, CEQA and the CEQA Guidelines (14 Cal. Code Regs., §§ 15000 *et seq.*) provide that City may contract with a private consultant to prepare the environmental review of the Proposed Project (CEQA, § 21082.1, subd. (a); CEQA Guidelines, § 15084, subd. (d)(2)); and

WHEREAS, CEQA authorizes City to collect fees from project applicants to recover the costs for the preparation and processing of environmental review of the Proposed Project (CEQA, § 21089, subd. (a)).

NOW, THEREFORE, in reliance on the foregoing recitals and in consideration of the mutual covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and CATALINA FUND hereby agree as follows:

**AGREEMENT**

**1. NO WAIVER OF CITY'S DISCRETIONARY AUTHORITY**

A. CATALINA FUND and City acknowledge and agree that the Planning Commission and City Council retain all discretion granted to them under law in considering the Proposed Project and that nothing in this Agreement is intended to limit their discretionary powers or waive any third party procedural due process rights.



## **2. TERM AND TERMINATION OF AGREEMENT**

A. The term of this Agreement shall commence upon the Effective Date and shall terminate upon the Termination Date.

B. For purposes of this Agreement, the "Termination Date" shall mean thirty (30) days after the date which all city permits and approvals for the Proposed Project have become final or thirty (30) days after CATALINA FUND or City, terminate this Agreement by providing written notice of termination.

C. In the event litigation is initiated by a third party related to the CEQA and/or land use entitlement process for the Project, and the Developer has elected to reimburse the City for the defense of such litigation as provided as set forth below, the "Termination Date" shall be extended until litigation is concluded.

D. In the event litigation is initiated by a third party related to the potential certification/approval of environmental documents prepared pursuant to CEQA, potential approval of land use entitlements, including but not limited to Conditional Use Permits, Variances, etc., Developer shall have the right within thirty (30) days of receipt of notice of such litigation, to provide written approval to the City of Developer's election to reimburse the City for its reasonably incurred attorneys' fees and costs for the defense of such litigation, such approval not to be unreasonably withheld, conditioned or delayed. In the event that the Developer makes the foregoing election, Developer shall reimburse City's litigation expenses in connection with such litigation, including but not limited to reasonable attorney's fees, and costs incurred and shall directly be responsible to satisfy any judgments rendered in the litigation against the City including any monetary judgments. In the event the Developer elects not to reimburse the City for its litigation expenses or at any time fails to reimburse the City for all fees and costs incurred up to the Termination Date, even after Developer elected to reimburse the City, the City shall have the right to rescind all approvals or actions related to the litigation including, but not limited to, certification and approval of any documents prepared pursuant to CEQA, any land use approvals, and any leases or other agreements entered with respect to the Project.

E. Upon the occurrence of any of the foregoing termination events, City shall immediately cease work on the environmental review of the Proposed Project, shall instruct its environmental consultant and outside legal counsel to cease all work including on the environmental review, and shall cease all other technical assessments relating to the Proposed Project. Developer shall reimburse the City for all fees and costs incurred up to the Termination Date, and the City shall refund to Developer the full balance of reimbursement amount remaining after all required payments for all fees and costs incurred up to the Termination Date have been made therefrom. In no event shall either party be reimbursed by the other for any further costs incurred after the effective date of such termination that relate to the environmental review of the Proposed Project.



### **3. ENVIRONMENTAL REVIEW; CONSULTANTS; PAYMENT**

A. All environmental review for the Proposed Project shall be prepared in accordance with all applicable federal, state, city laws, regulations and statutes, including CEQA.

B. City will enter into an agreement with an environmental consultant of City's choosing to conduct the prepared environmental documents of the Proposed Project pursuant to CEQA. City will also enter into an agreement with outside legal counsel, if none exists at the time, to assist City in preparing the environmental review in compliance with CEQA and any transactional work. The environmental consultant and outside legal counsels hired by the City shall collectively be known as "Consultants". City shall provide copies of the executed agreements to CATALINA FUND.

C. For purposes of this agreement, "environmental review" shall refer to all work performed by City's Consultants and City staff in conducting the City's environmental review, which includes the preparation of the environmental documents for the Proposed Project as required by CEQA and other applicable laws.

D. Subject to the limits set forth below, CATALINA FUND agrees to reimburse all costs and fees incurred by City in preparing the environmental review of the Proposed Project by the Consultants and City staff. Costs and fees for which CATALINA FUND shall be responsible shall include costs and fees for the services of the Consultants in preparing the environmental review of the Proposed Project and City staff time. City agrees to provide a copy of the environmental consultant's bills to CATALINA FUND within ten (10) days of receipt by City and City agrees to provide a copy of the legal counsel's invoice to CATALINA FUND within ten (10) days of receipt by City. The legal counsel invoices provided to CATALINA FUND shall only include the number of hours spent and the hourly rate without violating attorney-client privilege and confidentiality between the City and its attorney or such other privileges allowed by law. The maximum reimbursement amount CATALINA FUND agrees to pay under this Agreement shall be **\$119,868**. In the event the fees and costs will exceed the amounts stated above, this Agreement must be amended by the parties to reflect the additional amounts as agreed to by the parties before such additional fees and expenses are incurred. All work shall be suspended pending the parties reaching an agreement for the additional amounts.

E. Attached as Exhibit A is the Scope of Services which identifies the services to be performed and to the extent possible the identity of Consultants and the estimated cost for their services. City reserves absolute discretion as to the selection and hiring of any Consultants not specifically identified in Exhibit A.

F. Within 14 days after the Effective Date, CATALINA FUND shall make a payment of \$119,868 to City as a full advance on City's costs and fees for the environmental review by Consultants ("Advance").



G. Following commencement of preparation of the environmental review of the Proposed Project, City shall periodically request, as needed (but in no event if the Advance is sufficient to pay such fees and costs), that CATALINA FUND provide City with further payments for the costs and fees incurred in preparing the environmental review. Such payments shall be made within 14 days of City's request.

H. In the event that, for any reason, CATALINA FUND does not provide City with payments requested within the timeframe set forth in paragraph (F), above, City reserves the right to cease environmental review of the Proposed Project.

I. City agrees that, within thirty (30) days after completion of the environmental review or termination of this Agreement, City will return to CATALINA FUND any funds paid by CATALINA FUND that were not spent (this does not include expenses incurred by City prior to the effective date of termination) by City on the environmental review of the Proposed Project and provide CATALINA FUND with an accounting of such fees and expenses.

#### **4. LEAD AGENCY'S INDEPENDENT JUDGMENT REGARDING ENVIRONMENTAL REVIEW**

A. City's decision to approve or deny the project application, and City's determinations pursuant to CEQA, must reflect the lead agency's independent judgment. (CEQA, § 21082.1(c); 14 Cal. Code Regs., § 15084.) Accordingly, final responsibility and final authority on all questions concerning the content and quality of the environmental review of the Proposed Project lies in City's sole discretion. CATALINA FUND understands and agree that the environmental consultant and outside counsel only owe a duty to City, and not to CATALINA FUND or to any other third-person or entity. CATALINA FUND agrees that the adequacy of performance of the environmental consultant and the extent of payment to the environmental consultant for its work shall be determined at the sole discretion of City.

B. CATALINA FUND is expressly prohibited from directly or indirectly exercising any supervision or control over any employee, agent or Consultant of the City involved in the Project. This prohibition shall not be construed to preclude CATALINA FUND, their agents or representatives, from providing information to the City or any employee, agent or Consultant of the City for incorporation into the Project, or from seeking information from the City, or any employee, agent or Consultant of the City with respect to the Project.

C. CATALINA FUND's advance of funds shall not be dependent upon the City's approval or disapproval of any of CATALINA FUND's application(s), or upon the result of any action, and shall in no way influence the Project. Neither CATALINA FUND nor any other person providing funding for the Project shall, as a result of such funding, have any expectation as to the outcome of any application or the selection of an alternative favorable to or benefiting Developer.



## **5. INFORMATION SHARING**

A. The City and the CATALINA FUND both seek to ensure environmental documents are prepared in compliance with CEQA. Similarly, the City and the CATALINA FUND seek to ensure that all potential land use entitlements are processed in compliance with all applicable laws, including but not limited to the City's Municipal Code. The City and CATALINA FUND therefore may agree to share information, as reasonably necessary to accomplish their common goals and interests, without waiver of the Attorney Client Privilege, Work Product Doctrine, or other applicable privileges ("Joint Defense and Common Interest Doctrine"). CATALINA FUND agrees to provide City with all information regarding the proposed Project, including a description of the proposed Project, as may be reasonably requested by City.

B. City and CATALINA FUND shall meet on a regular basis or as requested by either party to discuss the progress of the environmental review.

## **6. COMMUNICATIONS**

CATALINA FUND agrees that neither CATALINA FUND, nor their employees or agents will contact the environmental consultant or City's outside legal counsel in connection with the Proposed Project without prior approval from City, except that CATALINA FUND's attorneys may contact City's outside legal counsel.

## **7. NO CONFIDENTIALITY**

A. The parties may reveal all or part of this Agreement to others as required by law.

## **8. ASSIGNMENTS**

A. CATALINA FUND may not assign their rights under this Agreement to any third party but may assign the entire Agreement to any subsidiary or affiliate of CATALINA FUND. Any assignment by CATALINA FUND shall not relieve CATALINA FUND from its duties hereunder. Any prohibited assignment or purported assignment shall be null and void, and CATALINA FUND shall bear sole responsibility for any consequences resulting from such prohibited or purported assignment. City may not assign its rights under this Agreement.

## **9. MISCELLANEOUS**

A. Applicable Law. This Agreement will be governed by and constructed under the laws of the State of California without regard to conflicts of laws principles.

B. Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed to be an original copy and all of which, when taken together, will be deemed to constitute one and the same document, which shall be



binding and effective as to each of the parties hereto. A facsimile shall be deemed to be an original.

C. Time of the Essence. Time is of the essence in this Agreement.

D. Legal Capacity. Each individual executing this Agreement hereby represents and warrants that he has the capacity set forth on the signature pages hereof with the full power and authority to bind the party on whose behalf he is executing this Agreement to the terms hereof.

E. Notice. The following addresses shall serve as the locations to which notices and other correspondences between City and CATALINA FUND shall be sent which notices shall be effective one (1) business day after being sent by overnight courier or personal delivery, return receipt requested:

To the City: Michael W. Webb  
City Attorney  
City of Redondo Beach  
415 Diamond Street  
Redondo Beach, CA 90277

With a copy to: Community Development Director  
City of Redondo Beach  
415 Diamond Street  
Redondo Beach, CA 90277

To Developer: CATALINA FUND LLC  
1221 Hermosa Ave. #101  
Hermosa Beach, CA 90254



**WITNESS WHEREOF**, the parties hereto have executed this Reimbursement Agreement as of the Effective Date.

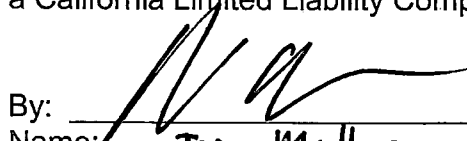
Date: 9/2/19

**THE CITY OF REDONDO BEACH**

  
William C. Brand, Mayor

**CATALINA FUND LLC**  
a California Limited Liability Company

Date: 7/18/19

By:   
Name: Jason Muller  
Title: General Manager, BCCM

ATTEST:

  
Eleanor Manzano, City Clerk

APPROVED AS TO FORM:

  
Michael W. Webb, City Attorney



## EXHIBIT A

### SUMMARY OF REIMURSABLE COSTS

SERVICE	PROVIDER OF SERVICE	COST OF SERVICE
Preparation of Initial Study-Mitigated Negative Declaration (IS-MND) and Traffic Study	Rincon Consultants, Inc.	\$99,921
CEQA and Land Use Legal Counsel	Best Best & Krieger	\$19,765
	Total Reimbursable Costs	\$119,686

