

January 1, 2006

**Implementation Plan
Between the City of Manhattan Beach
And Metlox LLC
For Operation, Maintenance Costs and Activities
For the Metlox Development ("Metlox")**

WHEREAS, the City of Manhattan Beach (City) and the Metlox LLC (Metlox) have previously entered into a Disposition and Development Agreement ("DDA") for the Construction and Operation of a mixed-use commercial facility and public parking structure,

WHEREAS, this Implementation Plan shall not modify or amend the DDA, and,

WHEREAS, the City and Metlox desire to cooperate in the operation and maintenance of the facility, and,

WHEREAS, there are certain maintenance functions and services that need to be shared either in function or in cost, and,

WHEREAS, the City and Metlox desire to augment the DDA with this Implementation Plan which sets forth a plan of action for the equitable sharing of the maintenance costs and responsibilities, the City and the Metlox hereby agree to commence the operation of Metlox on the following terms of maintenance responsibilities and costs as follows:

1. **External landscaping and fountains** (including plaza and streetscape) will be the responsibility of the City. Maintenance of any interior plants or exterior planters which are attached to leased space or any plants on the second floor will be the responsibility of Metlox. Generally, the fountains will be operated from 7am to 11pm seven days a week and the kiln will be operated from dusk (+/-5pm) to 11pm seven days a week.

2. **Maintenance of Storm Water Treatment Devices** including the CDS unit will be done by the City. Cost of such maintenance will be shared between City and Metlox on a 50% split basis. Maintenance of grease interceptors to the City's sanitary sewer system will be the responsibility of Metlox.

3. **Escalator:** In the spirit of mutual cooperation, and without creating a permanent obligation on Metlox to pay for the costs of the escalator and any other Public Improvement, Metlox will pay 25% and the City will pay 75% of **annual** maintenance and energy cost for the escalators. The City will administer maintenance contract for escalators and elevator. Commencing in June 2007, an Escalator Capital Replacement Fund will set up, into which \$10,000 per year shall be paid, which the City and Metlox will pay on a prorated basis, 75% by the City and 25% by Metlox. Payments to this Fund

should continue until the replacement cost of the escalators is accumulated. (Replacement cost to be determined after ten years of contribution have been made to the Fund). In the event major repairs in excess of \$5,000 per incident are required the cost will be paid from the funds available in the Escalator Capital Replacement Fund, and the balance of any costs in excess of the funds available in the Escalator Capital Replacement Fund will be negotiated separately. If replacement of escalators due to wear and tear or catastrophic failure is necessary any cost required beyond the Escalator Capital Replacement fund will be negotiated separately. Generally, the escalators will be operated from 7am to 11pm seven days a week.

4. Plaza cleaning and maintenance will be the responsibility of the City with the exception of designated seating for restaurants or food service businesses which will be the responsibility of Metlox. Cleaning and maintenance of outdoor merchandise display areas are the responsibility of Metlox. In addition, any cost of cleaning extraordinary spills, or repairing damage resulting from the business operations of the tenants will be the responsibility of Metlox when the responsibility for such spill can be traced to a Metlox tenant. Tenants may elect to have the City perform maintenance of the outdoor, tenant use space at an agreed upon price.

5. Restroom and Storage Room Maintenance - City will be responsible for the cleaning and maintenance and utilities cost of lower level Restroom and any City-used storage areas, including the City storage in Building C. At the outset of this agreement, the plaza-level restroom located in Building C is intended for occasional use for tenant customers only and will be maintained by Metlox. Customers may use the restroom with a passkey from the tenants. If this restroom becomes a general use public restroom at a later date, the City will assume the maintenance of the restroom. During large events the City may choose to open the restroom to the general public and assume the maintenance of the restroom in those cases.

6. Utilities – Cost of utilities will be the responsibility of the party for which the utility is metered including the decorative kiln which is metered and will be paid by the City.

7. Trash, recycling service – The allocation for the cost of refuse and recycling service will be 90% Metlox and 10% City. This allocation is subject to re-evaluation at any time by either party. Any disputes as to allocation will be resolved per Section 13 of this agreement. All refuse and recycling will be transported to the designated collection area as often as necessary and without leaving residue, drips or spills. Any additional cost incurred by the City caused by improper waste handling by Metlox tenants will be billed to Metlox. No trash or recyclable material shall be stored where it is visible to the public. Tenants will not use litter receptacles located in the plaza or on the streetscape for business trash. Tenants will supply trash receptacles for outdoor eating areas designated for their business and will be responsible for handling and disposing of this waste.

Tenants will be responsible, at their expense, for transporting refuse and recycling from their premises to the designated collection areas. City will be responsible, at its expense,

for transporting refuse and recycling from the receptacles located in the plaza and on the streetscape to the designated collection areas.

8. Loading and Trash Area - Cleaning of the loading area, including the catch basin and catch basin inserts will be the responsibility of Metlox. Loading area will be kept clean of trash and debris at all times. If the City becomes a regular user of the loading and trash areas, costs for cleaning and maintenance will be shared based on the percentage of use between the City and Metlox.

9. Common Portions of the Fire Life Safety - Costs for monitoring the common portions of the fire suppression system, namely the alarm monitoring (central station contract), or any other common portion of the system will be shared on the basis of square feet of leased space as follows: Tolkin 64,000 sq. ft., City 220,000 sq. ft. = 78% City, 22% Tolkin.

10. Streetscape - Except as provided below, the streetscape and landscaping located on public right of way will be the responsibility of the City.

Daily debris removal, sweeping and hosing off of the driveway and sidewalk adjacent to the Inn on Valley Drive; the maintenance (including watering and replanting) of the landscaping adjacent to the Inn, including the islands on Valley Drive, will be the responsibility of the Shade Hotel. Periodic pressure washing of the driveway adjacent to the Inn on Valley Drive will be the responsibility of the City.

12. Access Issues - Metlox and the Metlox tenants will not store, or in any way restrict access to ventilation shafts which serve the parking structure. The City will give reasonable notice if entry onto tenant leased space is required for maintenance or repair needs. In the event of emergencies notice may not be possible. If damage is caused to tenant's property due to non-emergency City repairs, City will be responsible for the cost of repairing the damage. Should damage occur due to Emergency Services response the cost of repairs will be as set forth in California State law.

13. Dispute Resolution - Any disagreements or disputes that arise between the City and Metlox in connection with this Implementation Plan shall be resolved by an independent mediator, acceptable to both City and Metlox. In the event of any ambiguity between ~~X~~ this Implementation Plan and the Ground Lease / DDA between the City and Metlox, LLC, the terms of Ground Lease DDA shall govern and control the interpretation of the agreement and obligations by and between the parties.

14. Compliance with Clean Water Regulations - All cleaning, maintenance, repair and waste management practices will be in compliance with State and City regulations regarding run off pollution and anti-litter laws. Normal sidewalk (or plaza) washing is permissible. However, spilled food and litter is to be swept up before wash down. Any accumulation of spilled food products such as ice cream, pastry, or soft drinks is to be

mopped up prior to wash down. All mop water will be disposed in a sanitary sewer. There will be no discharge of wastewater of any kind from the site unless it is directed to the sanitary sewer system (within covered buildings). Water used for cleaning any outdoor surface area will be collected and discharged into the sanitary sewer system. The storm water treatment devices are installed to treat run off as a result of natural rainfall and normal sidewalk washing and are not to be use to treat waste water of any kind. Violations of State of City waste water pollution regulations will result in enforcement action by the City or other regulatory body. Penalties may include fines or prosecution under clean water statutes

15. Cost Parameters:

City labor will be charged in accordance with the City's resolution of fees.

Cost of materials and supplies charged by the City will be at actual cost. Cost of materials and supplies charged by Metlox, if any, will be at actual cost.

Cost of outside services incurred by the City and passed on the Metlox will be at the actual cost of the service. Cost of outside services incurred by the Metlox and passed on the City, if any, will be at the actual cost of the service.

City will charge 5% administrative fee applied to the total of any invoice prepared for the billing of maintenance costs in connection with this agreement. Likewise, Tolkin will add a 5% administrative fee to billings sent to the City for services covered under this agreement.

The parties understand that costs incurred by Metlox, LLC may be subject to reimbursement to Metlox, LLC by Metlox tenants and that Metlox on behalf of its tenants has a desire to minimize the costs outlined herein so that the continued success of the Metlox tenants is not impacted by the costs outlined in this Implementation Plan.

16. Security. City and Metlox will address security issues if and when such issues arise.

17. Annual Review of Agreement. City and Metlox Agree to meet at least annually to review this agreement to assure it is adequately meeting the needs of both the City and Metlox.

Neil S. Mully
Approved by: City

4-16-07
Date

[Signature], Manager
Approved by: Metlox, LLC

4.20.07
Date

APPROVED AS TO FORM:

By [Signature]
City Attorney

Contact Information:

City: City of Manhattan Beach
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Metlox, LLC:

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