

**PURCHASE AND SALE AGREEMENT  
AND JOINT ESCROW INSTRUCTIONS**

THIS PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (this “**Agreement**”) is entered into as of \_\_\_\_\_, 2020 (the “**Effective Date**”), by and between the City of San Leandro, a California charter city (the “**City**” or “**Seller**”), and Cal Coast Companies LLC, Inc., a Delaware corporation doing business in California as Cal Coast Developer, Inc. (“**Buyer**”). Seller and Buyer are collectively referred to herein as the “**Parties.**”

**RECITALS**

- A. Seller seeks the development of certain City-owned real property consisting of approximately seventy-five (75) acres located within the City limits in the Shoreline-Marina area (the “**Shoreline Area**”).
- B. Buyer desires to develop the Shoreline Area with a multi-component development that includes, but is not limited to, reconstruction of the nine-hole executive golf course, and construction of single and multi-family residential units, a hotel, a restaurant, a market, and associated infrastructure improvements (the “**Shoreline Project**”).
- C. Buyer and Seller have entered into that certain Disposition and Development Agreement regarding the Shoreline Area and development of the Shoreline Project dated February 24, 2020 (the “**DDA**”).
- D. The DDA includes the requirement that the Buyer redesign and reconstruct, at Buyer’s sole cost, a nine-hole par 3 links style golf course, located on that portion of the City’s Marina Golf Course located adjacent to the Property (the “**Golf Course Element**”).
- E. As part of the Golf Course Element, Buyer is required to provide an implementation plan that includes (a) a golf course redesign plan that incorporates input from applicable community groups, (b) a budget for the Golf Course Element, and (c) evidence of commitments for the proposed funding for the Golf Course Element (the “**Golf Course Implementation Plan**”).
- F. The redesign undertaken through the Golf Course Element will free up approximately 16.26 acres located on that portion of the existing nine-hole Marina Golf Course (the “**Property**”), as more particularly described in Exhibit A attached hereto and incorporated herein by this reference.
- G. As part of the Shoreline Project, Buyer intends to construct on the Property not less than two hundred (200) and up to two hundred fifteen (215) for-sale single-family homes (the “**Single Family Element**”), with the final number subject to the City’s approval of the Project Approvals for the Single Family Element, which shall include the construction of attached single-family townhomes on approximately forty-eight (48) or more lots (the “**Townhome Lots**”) and the construction of detached single-family homes on approximately one hundred fifty-two (152) or more lots (the “**Detached Lots**”) (the Townhome Lots and the Detached Lots are referred to collectively as the “**Lots**”). For purposes of this

Agreement, a single condominium lot which will accommodate multiple attached townhomes and multiple detached single family homes will be counted as multiple Lots equal to the number of attached townhomes and detached single family homes which are approved, rather than counted as a single Lot. The requirements for the construction of the Single Family Element are set forth in the DDA.

H. The Seller has caused an appraisal for the Property to be prepared that concludes that the Property is valued at One Hundred Sixteen Thousand Six Hundred Ninety-Seven Dollars (\$116,697) per Townhome Lot and One Hundred Fifty-Seven Thousand Two Hundred Seventy-Six Dollars (\$157,276) per Detached Lot, based upon certain assumptions described in the appraisal.

I. Buyer has entered into a Letter of Intent with the Building and Trades Council of Alameda County with respect to the labor requirements pertaining to the construction of the Single Family Element, dated \_\_\_\_\_, 2020 (the “**Project Labor LOI**”).

J. Buyer agrees to purchase the Property from Seller, and Seller agrees to sell the Property to Buyer, subject to the terms of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged by the parties, Seller and Buyer hereby agree as follows:

1. INCORPORATION OF RECITALS AND EXHIBITS. The Recitals set forth above and the Exhibits attached to this Agreement are each incorporated into the body of this Agreement as if set forth in full.

2. PURCHASE AND SALE.

2.1 Agreement to Buy and Sell. Subject to the terms and conditions set forth herein, Seller agrees to sell the Property to Buyer, and Buyer hereby agrees to acquire the Property from Seller.

2.2 Purchase Price. The purchase price for the Property to be paid by Buyer to Seller (the “**Purchase Price**”) is the sum of the following: (a) the number of approved Townhome Lots multiplied by One Hundred Sixteen Thousand Six Hundred Ninety-Seven Dollars (\$116,697), plus (b) the number of approved Detached Lots multiplied by One Hundred Fifty-Seven Thousand Two Hundred Seventy-Six Dollars (\$157,276); provided, however, that the Purchase Price shall not be less than Twenty-Nine Million Three Hundred Forty-Five Thousand and Ninety-Two Dollars (\$29,345,092) unless the total number of approved Lots is less than Two Hundred (200) or the number of approved Detached Lots is less than One Hundred Forty-Eight (148). The number of approved Lots shall be determined pursuant to the Governmental Entitlements (as defined below) in effect as of the date of Close of Escrow.

2.3 Payment of Purchase Price. The Purchase Price shall be paid by Buyer as follows: (i) the Initial Deposit shall be paid into Escrow within three business days after the Opening of Escrow in accordance with Section 3.3 hereof, and (ii) the balance of the

Purchase Price, less the Deposit and any interest accrued thereon, shall be paid into the Escrow in immediately available funds within one day prior to Closing (defined below).

### 3. ESCROW.

3.1 Escrow Account. Seller shall open an interest-bearing escrow account (the “**Escrow**”) maintained by Old Republic Title Company (the “**Escrow Holder**”), with interest accruing to the benefit of Buyer. Escrow Holder shall perform all escrow and title services in connection with this Agreement.

3.2 Opening of Escrow. Within five (5) business days after the expiration of the appeal periods for the General Plan Text Amendment, General Plan Map Amendment, Zoning Map Amendment and Addendum to Shoreline Project EIR which were adopted by the City concurrently with the DDA, the Parties will deposit into Escrow the fully executed Agreement, or executed counterparts thereto. The date such fully executed Agreement is received by Escrow Holder will be deemed the “**Opening of Escrow**” and Escrow Holder will give written notice to the Parties of such occurrence.

3.3 Buyer’s Deposits. Within three (3) business days after the Opening of Escrow, the Buyer shall deposit Three Hundred Thousand Dollars (\$300,000) into Escrow (the “**Initial Deposit**”). If Buyer exercises its right to extend the Entitlement Contingency Date pursuant to Section 3.5(b) or to extend the Outside Closing Date pursuant to Section 5.1, Buyer shall deposit an additional Two Hundred Thousand Dollars (\$200,000) in Escrow in consideration for each such extension (each, an “**Additional Deposit**”). The Initial Deposit and Additional Deposits are collectively referred to herein as the “**Deposit**.” The Deposit is applicable to the Purchase Price at Closing. After the Buyer’s approval of the Property in accordance with Section 3.4(b) hereof, the Buyer shall not be entitled to a refund of the Initial Deposit except if the Close of Escrow does not occur by the time set forth herein as a result of a failure of a Buyer Condition Precedent (as defined in Section 5.2 below), or if this Agreement is terminated by Buyer prior to the Close of Escrow as a result of the Default of Seller. The Buyer shall not be entitled to a refund of the full amount of the Additional Deposits except if this Agreement is terminated by Buyer prior to the Close of Escrow as a result of the Default of Seller or the failure of a Buyer Condition Precedent to be satisfied or waived by Buyer prior to the Outside Closing Date (except those Buyer Conditions Precedent which are not satisfied due to Buyer’s failure to timely act).

### 3.4 Satisfaction of Due Diligence Contingency.

(a) Buyer will have ninety (90) days from the Effective Date (the “**Due Diligence Contingency Period**”) to complete physical inspections of the Property and due diligence related to the purchase of the Property. Seller shall provide to Buyer copies of all reasonably available and known documents relating to the ownership and operation of the Property, including but not limited to plans, permits and reports (environmental, structural, mechanical, engineering and land surveys) that Seller has in its possession not later than five (5) business days following the Opening of Escrow. All physical inspections must be coordinated with Seller’s representative and shall take place not more than three (3) days after the date Buyer provides written or emailed notice of the timing of such inspections and related testing. Buyer

hereby agrees to indemnify and hold Seller harmless for any damage to the Property caused (but not merely revealed) solely by Buyer's inspections.

(b) Buyer shall have the right, in its sole discretion, to disapprove the Property and terminate this Agreement for any reason (or no reason) prior to the expiration of the Due Diligence Contingency Period by delivery of written notice thereof to Seller in accordance with Section 13.8 hereof ("**Disapproval Notice**"). Within thirty (30) days of delivery of the Disapproval Notice, Buyer shall receive a refund of the Deposit plus any interest which has accrued thereon. If Buyer elects to approve the Property, Buyer shall provide written notice to Seller in accordance with Section 13.8 hereof prior to the expiration of the Due Diligence Contingency Period ("**Approval Notice**"). If Buyer fails to issue either an Approval Notice or Disapproval Notice before 5:00 p.m. on the last day of the Due Diligence Contingency Period, Buyer shall be deemed to have disapproved the Property.

### 3.5 Satisfaction of Entitlements Contingency.

(a) Buyer shall have two hundred seventy (270) days from the Effective Date (the "**Entitlements Contingency Date**") to obtain all required governmental land use approvals, site plan approvals, environmental approvals, and any other discretionary governmental approval necessary for the construction of the Single Family Element. Such approvals shall include any general plan amendments, zoning change approvals, zoning variance approvals, Planned Development approval, vesting tentative tract map, and other land use entitlements necessary or desirable for the construction and development of the Single Family Element (but shall not include approval of construction plans, building permits, grading permits, demolition permits, or other required permits). Such approvals shall be referred to in this Agreement individually as the "**Governmental Entitlements**." Buyer agrees to (i) diligently pursue and use reasonable and good faith efforts to obtain the Governmental Entitlements as soon as practicable after the Effective Date, and (ii) deliver written notice of receipt of the Governmental Entitlements to Seller (other than Governmental Entitlements approved by City, for which no notice to Seller shall be required) within five (5) days of receipt of the Governmental Entitlements. Buyer agrees to provide Seller with copies of all written applications and/or submittals delivered by Buyer to any governmental agency other than City in connection with the Governmental Entitlements.

(b) In the event that Buyer has not received the Governmental Entitlements by the Entitlements Contingency Date, Buyer shall have the right to extend the Entitlements Contingency Date for one ninety (90) day extension (the "**Entitlement Extension**") to secure the Governmental Entitlements. Buyer must provide Seller with written notice in accordance with Section 13.8 hereof at least ten (10) days prior to the Entitlements Contingency Date and deposit an additional Two Hundred Thousand Dollars (\$200,000) into Escrow as an Additional Deposit in consideration for Buyer's exercise of the Entitlement Extension. The Additional Deposit is applicable to the Purchase Price as provided in Section 3.3(a) hereof.

(c) If Buyer fails to deliver written notice removing the Entitlements Contingency by the Entitlements Contingency Date, or the expiration of the Entitlement Extension, or if Buyer fails to provide the notice and deposit increase required by Section 3.5(b) to extend this Agreement, this Agreement will terminate as of the Entitlements

Contingency Date, or the expiration date of any exercised extension thereof, and neither Seller nor Buyer will have any further obligation or responsibility to the other to perform under this Agreement. In that event, the Escrow Holder will return to Buyer the Deposit and any interest accrued thereon.

3.6 Independent Consideration. As independent consideration for Seller's entering into this Agreement to sell the Property to Buyer, Buyer shall deliver the sum of One Hundred Dollars (\$100.00) to Seller through Escrow ("**Independent Consideration**"). Seller shall retain the Independent Consideration whether or not the Close of Escrow occurs.

#### 4. PROPERTY DISCLOSURE REQUIREMENTS.

4.1 Condition of Title/Preliminary Title Report. Escrow Holder shall deliver a Preliminary Title Report for the Property (the "**Preliminary Report**") to Buyer within three (3) days after the Opening of Escrow. Buyer shall have until the end of the Due Diligence Contingency Period to approve the condition of title to the Property. If Buyer delivers the Approval Notice, Buyer agrees to take title to the Property subject to the following "**Permitted Exceptions**": (a) standard printed exceptions in the Preliminary Report; (b) general and special real property taxes and assessments constituting a lien not yet due and payable; (c) a lien or other covenants prohibiting the sale of more than one hundred thirty-two (132) homes on the Property prior to substantial completion of the Golf Course Element as set forth in the DDA; and (d) the Schedule B exceptions to the title approved by Buyer in the Approval Notice.

4.2 Environmental and Natural Hazards Disclosure. California Health & Safety Code section 25359.7 requires owners of non-residential real property who know, or have reasonable cause to believe, that any release of hazardous substances are located on or beneath the real property to provide written notice of same to the buyer of real property. Other applicable laws require Seller to provide certain disclosures regarding natural hazards affecting the Property. Seller has disclosed to Buyer the actual knowledge Seller has with respect to the deposit of hazardous materials on the Property, as described in Exhibit K to the DDA and incorporated herein. Seller agrees to make all further disclosures required by law within five (5) business days after the Opening of Escrow.

4.3 Golf Course Lease. The Seller has entered into a Lease with American Golf Corporation, dated November 15, 1997, as amended, pursuant to which the Seller has leased the golf course which is located on the Property to American Golf Corporation (the "Golf Course Lease"). The Seller shall use good faith efforts to enter into an amendment of the Golf Course Lease, as soon as practicable after the Effective Date, but no later than April 20, 2020, which will permit the Seller to terminate the Golf Course Lease upon notice to American Golf Corporation. The termination of the Golf Course Lease is a Buyer's Condition Precedent and a Seller's Condition Precedent to the Closing.

#### 5. CLOSING AND PAYMENT OF PURCHASE PRICE.

5.1 Closing. Subject to the satisfaction or waiver of the Buyer's Conditions Precedent and Seller's Conditions Precedent as provided below, the closing (the "**Closing**" or "**Close of Escrow**") will occur no later than the first to occur of (a) ninety (90)

days after Buyer has received the Governmental Entitlements for the Single Family Element, or (b) December 31, 2021 (“**Outside Closing Date**”). Buyer shall have the right to extend the Outside Closing Date by ninety (90) days, no more than one time (the “**Extension Period**”), by payment of an Additional Deposit of Two Hundred Thousand Dollars (\$200,000) into the Escrow in accordance with Section 3.3(a) hereof in consideration for Buyer’s extension of the Outside Closing Date. The Additional Deposit is applicable to the Purchase Price as provided in Section 3.3(a) hereof.

5.2 Buyer’s Conditions to Closing. Buyer’s obligation to purchase the Property is subject to the satisfaction of all of the following conditions (“**Buyer’s Conditions Precedent**”) or Buyer’s written waiver thereof (in Buyer’s sole discretion) on or before the Outside Closing Date:

- (a) Buyer shall have received the Governmental Entitlements for the Property, and the Development Agreement shall have been approved by the Parties.
- (b) Buyer shall not have sent (or be deemed to have sent) a Disapproval Notice to Seller prior to the expiration of the Due Diligence Contingency Period.
- (c) Seller shall have performed all obligations to be performed by Seller pursuant to this Agreement.
- (d) Seller’s representations and warranties herein shall be true and correct in all material respects as of the Closing.
- (e) There shall be no litigation or administrative proceeding pending with respect to the Property or the Governmental Entitlements as of the Closing, nor any moratoria which would adversely impact the development, use or value of the Property as contemplated by this Agreement.
- (f) The Property shall be free of tenants, occupants, leases and contracts, except as provided pursuant to Section 4.3 hereof.
- (g) Seller shall have terminated the Golf Course Lease on or before the Closing.
- (h) The DDA shall be in full force and effect.
- (i) There shall have been no material adverse change with respect to the Property since the date of Buyer’s Approval Notice.
- (j) The Title Company shall be irrevocably committed to issue an ALTA Title Policy, together with any title insurance endorsements requested by Buyer, effective as of the Closing, insuring title to Buyer in the full amount of the Purchase Price subject only to the Permitted Exceptions.
- (k) Seller has deposited into the Escrow all documents to be submitted by Seller pursuant to this Agreement, all duly executed by Seller.

In the event any of the Buyer's Conditions to Closing are not satisfied or waived by Buyer prior to the Outside Closing Date, Buyer may either (i) terminate this Agreement upon written notice to Seller, whereupon Seller shall cause Escrow Holder to promptly return to Buyer any and all sums (including the full amount of the Deposit and all interest accrued thereon) placed into the Escrow by Buyer, and except for the rights and obligations expressly provided to survive termination of this Agreement, neither party shall have any further obligations or liabilities hereunder, or (ii) elect to extend the Outside Closing Date for ninety (90) days as provided in Section 5.1 hereof, during which time Buyer shall use reasonable good faith efforts to cause the unsatisfied Buyer's Conditions Precedent to be satisfied, and Seller shall cooperate in good faith with such efforts by Buyer.

5.3 Seller's Conditions to Closing. The Close of Escrow and Seller's obligation to sell and convey the Property to Buyer are subject to the satisfaction of the following conditions or Seller's written waiver (in Seller's sole discretion) of such conditions on or before the Outside Closing Date:

(a) The Seller shall have received and reasonably approved a financing plan for the Single Family Element which includes the following:

(i) A detailed budget for the construction and development of the Horizontal Improvements for the Single Family Element (as described in the Scope of Development), as submitted by Buyer to Seller.

(ii) The Seller shall have determined that there are commitments for sufficient debt financing and/or equity funding available to the Buyer for the construction and development of the Horizontal Improvements at a cost consistent with the submitted budget.

(b) The Buyer shall have entered into a Project Labor Agreement in accordance with Section 7.9 hereof.

(c) The Buyer shall have submitted to the Seller and the Seller shall have approved the Buyer's evidence of insurance required pursuant to Section 9 hereof.

(d) The Buyer shall have submitted an application for the Horizontal Improvements, together with all required fees and deposits, which application shall have been accepted as complete by the City, as necessary for the City's issuance of all Building Permits, Grading Permits and Demolition Permits for the Horizontal Improvements.

(e) Seller shall have terminated the Golf Course Lease on or before the Closing.

(f) Seller shall have approved the Golf Course Implementation Plan.

(g) Buyer shall have provided evidence of financing for construction of the Golf Course Element, and Seller shall have determined that there is sufficient funding available to Buyer for the construction of the Golf Course Element.

(h) Buyer shall have submitted an application for the Golf Course Element, together with all required fees and deposits, which application has been accepted as complete by the City, as necessary for the City's issuance of Building Permits, Grading Permits and Demolition Permits for the Golf Course Element.

(i) Buyer and Seller shall have entered into the Public Improvements Agreement for the Golf Course and the Public Improvements Agreement for the Single Family Element.

(j) Buyer shall have entered into a contract with a qualified general contractor for construction of the Golf Course Element in accordance with the requirements of the DDA.

(k) Seller shall have approved the Development Agreement and the Governmental Entitlements for the Property.

(l) Buyer shall not be in default of its obligations pursuant to this Agreement, and there shall be no matters which would constitute a default of Buyer upon the passage of time.

(m) Buyer's representations and warranties set forth herein shall be true and correct in all material respects as of the Closing.

(n) Buyer has deposited into the Escrow the Purchase Price and Buyer's Escrow and Title Costs.

(o) Buyer has deposited into the Escrow all documents to be submitted by Buyer pursuant to this Agreement, all duly executed by Buyer.

In the event any of the Seller's Conditions to Closing are not satisfied or waived by Seller prior to the Outside Closing Date, Seller may either (i) terminate this Agreement upon written notice to Buyer, whereupon Escrow Holder shall return to Buyer any and all sums (including the full amount of the Deposit and all interest accrued thereon) placed into the Escrow by Buyer, and except for the rights and obligations expressly provided to survive termination of this Agreement, neither party shall have any further obligations or liabilities hereunder, or (ii) elect to extend the Outside Closing Date for no more than ninety (90) days, during which time Seller shall use reasonable good faith efforts to cause the unsatisfied Seller's Conditions Precedent to be satisfied, and Buyer shall cooperate in good faith with such efforts by Seller.

5.4 Conveyance of Title. Seller shall deliver marketable fee simple title to Buyer at the Closing, subject only to the Permitted Exceptions. The Property will be conveyed by Seller to Buyer in an "as is" condition, with no warranty, express or implied, by Seller as to the physical condition including, but not limited to, the soil, its geology, or the presence of known or unknown faults or Hazardous Materials or hazardous waste (as defined by state and federal law); provided, however, that the foregoing shall not relieve Seller from disclosure of any such conditions of which Seller has actual knowledge. Seller has disclosed to



Developer the actual knowledge Seller has with respect to the deposit of hazardous materials on the Property, which is described in Exhibit K to the DDA and incorporated herein.

### 5.5 Deliveries at Closing.

(a) Deliveries by Seller. Seller shall deposit into the Escrow for delivery to Buyer at Closing: (i) a grant deed substantially in the form attached hereto as Exhibit “B” and incorporated herein (the “Grant Deed”); (ii) an affidavit or qualifying statement which satisfies the requirements of paragraph 1445 of the Internal Revenue Code of 1986, as amended, any regulations thereunder (the “**Non-Foreign Affidavit**”); (iii) a California Franchise Tax Board form 590 to satisfy the requirements of California Revenue and Taxation Code Section 18805(b) and 26131; (iv) an executed copy of the Public Improvement Agreement for the Single Family Element; (v) an executed copy of the Public Improvement Agreement for the Golf Course Element; and (vi) executed copies of all other documents required by this Agreement to complete the Closing.

(b) Deliveries by Buyer. Not less than one (1) business day prior to the close of escrow, Buyer shall deposit into Escrow immediately available funds in the amount, which together with the Deposit plus interest thereon, if any, is equal to: (i) the Purchase Price; (ii) Buyer’s share of Escrow fees and recording fees; (iii) the cost of the Title Policy; and (iv) any remaining costs of the EIR and compliance with CEQA which Buyer is obligated to pay pursuant to Section 7 of the ENRA and the letter agreement between Buyer and Seller dated May 31, 2013. Buyer shall also deposit into Escrow an executed copy of the Public Improvement Agreement for the Single Family Element, an executed copy of the Public Improvement Agreement for the Golf Course Element, and all other documents required by this Agreement to complete the Closing.

(c) Closing Costs. Seller shall pay (i) the cost of recording the Grant Deed, (ii) the cost of recording any documents necessary to remove liens, encumbrances, or title exceptions, and (iii) all City and County documentary transfer taxes. Each Party shall pay one-half of the escrow fees. Buyer shall pay the cost of any title insurance coverage and any title surveys or endorsements. Each Party shall pay its own legal fees and costs. All other costs or expenses not otherwise provided for in this Agreement shall be divided equally between Seller and Buyer.

(d) Prorations. At the close of escrow, the Escrow Agent shall make the following prorations: any bond or assessment that constitutes a lien on the Property at the Close of Escrow will be the responsibility of Buyer; provided, however, that all payments for all bonds and assessments that are due prior to the Close of Escrow shall be paid exclusively by Seller. The Property is currently exempt from the payment of property taxes, so no proration of property taxes will be made through Escrow.

(e) Closing. Upon Closing, Escrow Holder shall: (i) record the Grant Deed; (ii) disburse to Seller the Purchase Price, less Seller’s share of any escrow fees, costs and expenses; (iii) deliver to Buyer the Non-Foreign Affidavit, the California Certificate and a copy of the Grant Deed; (iv) deliver to Seller the Public Improvement Agreement for the Single Family Element and the Public Improvement Agreement for the Golf Course Element; (v)

pay any other expenses payable through Escrow; and (vi) distribute to itself the payment of Escrow fees and expenses required hereunder.

6. REPRESENTATIONS, WARRANTIES AND COVENANTS.

6.1 Seller's Representations, Warranties and Covenants. In addition to the representations, warranties and covenants of Seller contained in other sections of this Agreement, Seller hereby represents, warrants and covenants to Buyer that the statements below in this Section 6.1 are each true and correct as of the Closing; provided however, if to Seller's actual knowledge any such statement becomes untrue prior to Closing, Seller will notify Buyer in writing and Buyer will have sixty (60) days thereafter to determine if Buyer wishes to proceed with Closing. If Buyer determines it does not wish to proceed, then the terms of Section 6.2 will apply.

(a) Authority. Seller is a California charter city, lawfully formed, in existence and in good standing under the laws of the State of California. Seller has the full right, capacity, power and authority to enter into and carry out the terms of this Agreement. This Agreement has been duly executed by Seller, and upon delivery to and execution by Buyer is a valid and binding agreement of Seller.

(b) Encumbrances. Seller has not alienated, encumbered, transferred, mortgaged, assigned, pledged, or otherwise conveyed its interest in the Property or any portion thereof, nor entered into any Agreement to do so, and Seller does not have any actual knowledge of any liens, encumbrances, mortgages, covenants, conditions, reservations, restrictions, easements or other matters affecting the Property, except as disclosed in the Preliminary Report. Seller will not, directly or indirectly, alienate, encumber, transfer, mortgage, assign, pledge, or otherwise convey its interest prior to the Close of Escrow, as long as this Agreement is in force, without the approval of the Buyer.

(c) Agreements. Seller does not have any actual knowledge of any agreements affecting the Property except those which have been disclosed by Seller. There are no agreements which will be binding on the Buyer or the Property after the Close of Escrow, except those which can be terminated on thirty (30) days prior written notice.

(d) Environmental Condition. Seller has disclosed to Buyer all information, records, and studies in Seller's possession or reasonably available to Seller relating to the Property concerning Hazardous Substances and their use, storage, spillage or disposal on the Property.

Seller makes no representations or warranties to Seller that any of the Lots will have views of San Francisco Bay or the Shoreline Marina. The truth and accuracy of each of the representations and warranties, and the performance of all covenants of Seller contained in this Agreement are conditions precedent to Buyer's obligation to proceed with the Closing hereunder. The foregoing representations and warranties shall survive the expiration, termination, or close of escrow of this Agreement and shall not be deemed merged into the deed upon closing.

6.2 Buyer's Representations and Warranties. In addition to the representations, warranties and covenants of Buyer contained in other sections of this Agreement, Buyer hereby represents, warrants and covenants to Seller that the statements below in this Section 6.2 are each true as of the Effective Date, and, if to Buyer's actual knowledge any such statement becomes untrue prior to Closing, Buyer shall so notify Seller in writing and if Buyer cannot cause any such representation to be true prior to the Close of Escrow, Seller shall have at least three (3) business days thereafter to determine if Seller wishes to proceed with Closing.

(a) Buyer is a Delaware corporation, and is authorized to conduct business in the State of California. Buyer has the full right, capacity, power and authority to enter into and carry out the terms of this Agreement. This Agreement has been duly executed by Buyer, and upon delivery to and execution by Seller shall be a valid and binding agreement of Buyer.

(b) Buyer is not bankrupt or insolvent under any applicable federal or state standard, has not filed for protection or relief under any applicable bankruptcy or creditor protection statute, and has not been threatened by creditors with an involuntary application of any applicable bankruptcy or creditor protection statute.

The truth and accuracy of each of the representations and warranties, and the performance of all covenants of Buyer contained in this Agreement are conditions precedent to Seller's obligation to proceed with the Closing hereunder.

## 7. USE AND DEVELOPMENT OF SINGLE FAMILY ELEMENT.

7.1 Construction of Single Family Homes. Buyer shall use the Property solely for the purposes of constructing attached and detached for-sale housing thereon in accordance with this Agreement. Buyer will design and construct not less than two hundred (200) and up to two hundred fifteen (215) for-sale single-family homes, with such mix of single-family townhomes and detached single-family homes in accordance with the Scope of Development attached hereto as Exhibit "C" and incorporated herein, and as further determined by the Governmental Entitlements. The Single-Family Element shall include, but is not limited to, construction of streets, sidewalks, landscaping, lighting and all its onsite and offsite utilities, including but not limited to sanitary sewer, storm drain, water, natural gas, electric and fiber optic internet service to all units. The construction of the Single Family Element shall include compliance with any mitigation monitoring plan adopted by the City in accordance with CEQA by the City for the Shoreline Project. The cost of planning, designing, developing, and constructing the Single Family Element shall be borne solely by the Buyer.

7.2 Timing of Construction of Single Family Element. Once construction of a discrete phase of the Single Family Element is commenced, such phase shall continuously and diligently be pursued to completion; provided that Buyer shall not close escrow for the initial sale of more than one hundred thirty-two (132) new residential units constructed on the Property until the Golf Course Element is substantially complete as set forth in Section 7.12 hereof. During the course of construction and until the issuance of the Certificate of Occupancy

for the final home in the Single Family Element, Buyer shall provide monthly reports to Seller of the progress of construction.

7.3 Seller's Cooperation in Construction of the Single Family Element.

Seller shall cooperate with and assist Buyer, to the extent reasonably requested by Buyer, in Buyer's efforts to obtain the appropriate governmental approvals, consents, permits or variances which may be required in connection with the undertaking and performance of the development of the Single Family Element. Such cooperative efforts may include Seller's joinder in any application for such approval, consent, permit or variance, where joinder therein by Seller is required or helpful; provided, however, that Buyer shall reimburse Seller for Seller's actual third party out-of-pocket costs incurred in connection with such joinder or cooperative efforts (other than the costs of any brokers, including brokerage commissions). Notwithstanding the foregoing, Buyer and Seller acknowledge that the approvals given by Seller under this Agreement in no way release Buyer from obtaining, at Buyer's expense, all permits, licenses and other approvals required by law for the construction of Single Family Element on the Property, and that Seller's duty to cooperate and Seller's approvals under this Agreement do not in any way modify or limit the exercise of Seller's governmental functions or decisions as a city, as distinct from its proprietary functions pursuant to this Agreement.

7.4 Construction Contract.

Buyer shall enter into contracts with one or more general contractors for the demolition, grading and construction work for the Single Family Element with a general contractor or contractors, which general contractor(s) shall be duly licensed in the State and shall have significant experience in constructing and contracting public-private development projects of the type and scale similar to the Single Family Element.

7.5 Construction Requirements.

No development or construction on the Property shall be undertaken until Buyer shall have procured and paid for all required permits, licenses and authorizations. All changes and alterations shall be made in a good and workmanlike manner and in compliance with all applicable building and zoning codes and other legal requirements.

7.6 Compliance with Laws.

Buyer shall carry out the design, construction and sale of the Single Family Element in conformity with all applicable laws. The design, construction and sale of the Single Family Element shall be in compliance with any mitigation measures adopted in accordance with CEQA for the Single Family Element and the Shoreline Project. This Agreement does not provide Buyer any vested rights to construct the Single Family Element in accordance with the existing policies, rules and regulations of the City, or to construct the Single Family Element subject only to the existing conditions of approval which may have been previously approved by the City, except as Buyer may already have obtained vested rights to develop the Single Family Element in accordance with a Development Agreement between the City and Buyer, and/or a vesting tentative map.

7.7 Prevailing Wages.

If and to the extent required by state and federal prevailing wage laws, Buyer and its contractors and agents shall pay prevailing wages for all construction, alteration, demolition, installation, and repair work performed with respect to the construction of the Single Family Element as required herein and described in the Scope of Development, in compliance with Labor Code Section 1720, et seq., and its implementing

regulations, and perform all other obligations including the employment of apprentices in compliance with Labor Code Section 1770, et seq., keeping of all records required pursuant to Labor Code Section 1776, complying with the maximum hours requirements of Labor Code Sections 1810 through 1815, and fulfilling all duties under the Civil Code or any other provision of law pertaining to providing, obtaining and maintaining all bonds to secure the payment of wages to workers required to be paid prevailing wages, all as may be amended from time to time (the "Prevailing Wage Law"). Seller does not make any representations to Buyer as to the applicability of the Prevailing Wage Law to the construction of the Single Family Element, and Buyer agrees and acknowledges that it is not relying on any representations of Seller in making its determination as to the applicability of the Prevailing Wage Law. It is agreed by the Parties that, in connection with the construction of the Single Family Element, as between Seller and Buyer, Buyer shall be solely responsible for determining whether the Prevailing Wage Law is applicable to the construction of the Single Family Element, and Buyer shall bear all risks of payment or non-payment of prevailing wages under the Prevailing Wage Law and/or the implementation of Labor Code Section 1781, as the same may be amended from time to time, and/or any other similar law. For purposes of this paragraph, "construction" includes work performed during the design and preconstruction phases of construction, including, but not limited to, inspection and land surveying work, and work performed during the postconstruction phases of construction, including, but not limited to, all cleanup work at the jobsite. The Buyer shall periodically, upon request of the Seller, certify to the Seller that, to its knowledge, it is in compliance with the requirements of this paragraph.

7.8 Indemnity. Buyer shall indemnify, protect, defend and hold harmless the City and its officers, employees, contractors and agents, with counsel reasonably acceptable to the City, from and against any and all loss, liability, damage, claim, cost, expense and/or "increased costs" (including reasonable attorney's fees, court and litigation costs, and fees of expert witnesses) which, in connection with the construction and development of the Single Family Element, results or arises in any way from any of the following: (a) the noncompliance by Buyer with the Prevailing Wage Law, if applicable; (b) Section 1781 of the Labor Code, as the same may be amended from time to time, or any other similar law; and/or (c) failure by Buyer to provide any required disclosure or identification as required by Labor Code Section 1781, as the same may be amended from time to time, or any other similar law. "Increased costs," as used in this Section 7.8, shall have the meaning ascribed to it in Labor Code Section 1781, as the same may be amended from time to time. The foregoing indemnity shall survive termination of this Agreement and shall continue after completion of the construction of the Single Family Element by the Buyer.

7.9 Project Labor Agreement. Prior to the Close of Escrow, and throughout the term of construction of the Single Family Element, Buyer shall enter into, remain a party to and comply with one or more Project Labor Agreements with respect to the construction of the Single Family Element, in accordance with the Project Labor LOI. For purposes hereof, a Project Labor Agreement is a pre-hire collective bargaining agreement that establishes terms and conditions of employment for a specific construction project or projects and is an agreement described in Section 158(f) of Title 29 of the United States Code and California Public Contracts Code Section 2500, or successor statutes.

7.10 Inclusionary Housing Requirements. The Single-Family Element shall be subject to all of the requirements of the City's Inclusionary Housing Ordinance (San Leandro Zoning Code section 6-3000 *et seq.*), which requires fifteen percent (15%) of the units to be restricted to occupancy by moderate income or low-income households, unless an alternative means of compliance is approved in accordance with Section 6-3016. As an alternate means of compliance, Buyer may elect to provide not less than six percent (6%) of the units as workforce housing, restricted to sale at a price affordable to households earning up to 135% of the Area Median Income, and to provide not less than four percent (4%) of the units as moderate income housing, restricted to sale at a price affordable to households earning up to 120% of the Area Median Income, and to pay an in lieu fee equal to \$10 per square foot of all Single Family Element residential habitable floor area (exclusive of garage and off-street parking areas, balconies, decks and patios), multiplied by the remaining percentage of the required inclusionary housing units, divided by fifteen (15). For example, if Buyer elects to satisfy the Inclusionary Housing Ordinance by performing the minimum required amount of construction of workforce housing and moderate income housing, and constructs exactly six percent (6%) of the units as workforce housing, and constructs exactly four percent (4%) of the units as moderate income housing, the remaining percentage of the required inclusionary housing units would be five percent (5%), and the in lieu fee would be \$10 per square foot of all Single Family Element residential gross floor area (exclusive of garage and off-street parking areas, decks and patios), multiplied by one-third (5 divided by 15)). The method of compliance with the Inclusionary Housing Ordinance shall be set forth in an Inclusionary Housing Plan approved by the Seller and an Inclusionary Housing Agreement to be executed by Buyer and Seller with respect to the Single Family Element pursuant to Section 6-3014 of the City Zoning Code.

7.11 Homeowner Association and CC&Rs. Buyer hereby agrees to form a homeowner association ("**HOA**") to own, maintain, repair and manage streets, storm drains (including any Municipal Regional Stormwater Permit compliance features), sanitary sewer systems, utilities, landscaping, common areas and other improvements within the Single-Family Parcel as a common interest development under the Davis-Stirling Common Interest Development Act. The purpose of the HOA will be to enforce the rules and regulations adopted from time to time by its board of directors, enhance and protect the value, desirability, and attractiveness of the community, and discharge such other lawful duties and responsibilities as may be required pursuant to its bylaws and the declaration of covenants, conditions and restrictions ("**CC&Rs**") to be recorded in the Office of the Recorder of Alameda County. The CC&Rs shall require the construction, protection, preservation and maintenance of the appearance, condition, function and operation of the Single-Family Parcel and the Single-Family Element, including but not limited to all landscaping visible from any public or private road. In addition to other matters, the CC&Rs shall provide for the coordination of the Single Family Element with the operation of the City's Marina Golf Course, maintenance of borders and access between the Single Family Element and the Marina Golf Course, and communications between the occupants of the Single-Family Element and the operator of the Marina Golf Course. Prior to recordation of the declaration of CC&Rs, Buyer agrees to provide City a reasonable opportunity to review and comment on the provisions of the CC&Rs to ensure consistency and compliance with the requirements of this Agreement and any other applicable law. City shall not unreasonably withhold its approval of the CC&Rs.

7.12 Golf Course Element. Buyer shall redesign and reconstruct, at Buyer's sole expense, a nine-hole par 3 links style par 3 golf course located on that portion of the City's Marina Golf Course not part of the Property (the "Golf Course Element"), as further described and depicted in Exhibit C to the DDA (the "Golf Course Parcel"). The Golf Course Parcel shall be stripped of existing improvements and landscaping, then graded and improved to create a new golf course. The existing north lake (subject to City-approved reconfiguration), mature trees (where feasible and appropriate as determined by the City Public Works Director), and the monarch butterfly nesting area shall remain. Per Mitigation Measure BIO-1A in the San Leandro Shoreline Development Final EIR, a Monarch Butterfly Roosting Habitat Protection Program (MBRHPP) shall be prepared by a qualified biologist and ensure adequate avoidance and protection of the winter roosting colony, consistent with the intent of Section 4-1-1000, Interference with Monarch Butterflies Prohibited, of the San Leandro Municipal Code. Improvements shall include a new irrigation system, stormwater management and drainage features, landscaping, concrete paths, and a protection fence for the residential neighborhood to the east as well as a new attendant shack and restroom. A golf cart path shall connect the new entrance with the existing crosswalk on Fairway Drive, in a location approved by the City. The existing maintenance yard and building shall remain, subject to any changes by the City as a part of the construction of the new Mulford-Marina Library. The existing water pipe connecting the north lake to the 18 hole golf course to the south of Fairway Drive shall remain. Final golf course design and any changes to existing infrastructure, including water features, are subject to review and approval of the Public Works and Engineering & Transportation Departments.

Buyer shall be responsible for and pay for the design of the Golf Course Element. The design work shall be completed by a consultant approved by the Seller. The final design for the Golf Course Element is subject to review and approval in writing by the City Manager in consultation with the Directors of the Public Works and Engineering & Transportation Departments, respectively. The design work shall be completed by a consultant approved by the Seller. The final design for the Golf Course Element shall be approved by the Seller in writing, with input from applicable community groups. Buyer shall provide an implementation plan that includes (a) a golf course redesign plan that includes input from applicable community groups, (b) a detailed budget and schedule for completion of the Golf Course Element, and (c) evidence of commitments for the proposed funding for the Golf Course Element sufficient to ensure timely completion (the "**Golf Course Implementation Plan**"). Buyer and Seller shall also enter into a Public Improvement Agreement in substantially the form of Exhibit Q attached to the DDA (the "**Public Improvement Agreement**") regarding the construction of certain public improvements throughout the Project which shall, among other things, (i) set forth the procedures and requirements for inspection and acceptance of the Golf Course Element by the Seller, and (ii) contains the acknowledgement of the Parties that, following such acceptance of the Golf Course Element, the Seller shall have the exclusive obligation to operate and maintain the Golf Course Element. The Seller's approval of the Golf Course Implementation Plan, the parties' execution of the Public Improvement Agreement for the Golf Course Element, and Buyer's furnishing of all bonds and/or other security required by the Public Improvement Agreement, Buyer's application for Building Permits, Grading Permits and Demolition Permits, Buyer's entrance into a contract with a qualified general contractor for construction, and Buyer's compliance with any other applicable Seller's Conditions to Closing, as set forth in Section 5.3 hereof, shall be conditions precedent to the close of escrow for Seller's sale of the Single Family Parcel to Buyer.

Buyer shall not close escrow for the initial sale of more than one hundred thirty-two (132) new residential units constructed on the Property until the Golf Course Element is substantially complete. Substantial completion will be achieved when all major construction is complete and only minor work and/or maturation of landscaping is remaining, as determined by acceptance of the work as substantially complete by the City Director of Engineering and Transportation and Public Works Director. The Grant Deed shall prohibit the sale of more than one hundred thirty-two (132) new residential units on the Property until the Golf Course Element is substantially complete. Buyer acknowledges and agrees that the City is not obligated to issue Certificates of Occupancy for more than one hundred thirty-two (132) new residential units on the Property until the Golf Course Element is substantially complete. Seller shall execute a release of such restriction after the Golf Course Element is substantially complete and accepted by the City Council. Prior to the release of such restriction, upon Buyer's demand, Seller shall sign and deliver to Buyer's designated escrow holder releases or other appropriate documents certifying that one or more of the first one hundred thirty-two (132) individual homes do not violate such restriction and are permitted to be sold, in such form and content reasonably required by applicable title insurance companies in order to release such restriction. The Parties acknowledge that the Seller is and shall remain the owner of the Golf Course Parcel after the Close of Escrow for the Property.

7.13 Performance and Payment Bonds. Prior to commencement of any public works required by the City as conditions of approval of the Single Family Element, Buyer shall cause its general contractor to deliver to the Seller an executed copy of the Public Improvement Agreement, and any payment bond(s) and performance bond(s) or other security required thereunder.

7.14 Force Majeure. The time within which a Party shall be required to perform any act under this Agreement shall be extended by a period of time equal to the number of days during which performance of such act is delayed unavoidably and beyond the reasonable control of the Party seeking the delay by strikes, lock-outs and other labor difficulties, Acts of God, inclement weather, failure or inability to secure materials or labor by reason of priority or similar regulations or order of any governmental or regulatory body, delays of governmental agencies, changes in local, state or federal laws or regulations, any development moratorium or any action of other public agencies that regulate land use, development or the provision of services that prevents, prohibits or delays construction of the Project, enemy action, civil disturbances, wars, terrorist acts, fire, earthquakes, floods, unavoidable casualties, litigation involving this Agreement, or bankruptcy, insolvency or defaults of Project lenders or equity investors. Delays for any other reasons, including without limitation delays due to inability to obtain financing, or recession or other general economic conditions, shall not constitute events of force majeure pursuant to this Agreement; provided that Seller may approve extensions of time for such reasons upon the request of Buyer, in Seller's sole discretion. Such extension(s) of time shall not constitute an Event of Default and shall occur at the request of any Party.

7.15 Financing District. Buyer and Seller shall cooperate in the formation of a community facilities district or districts by the City pursuant to the Mello Roos Community Facilities District Act of 1982 (Gov. Code §§ 53311–53368.3) (the “**Mello-Roos Act**”). Special taxes derived from the District will be used to pay for public area maintenance, public area utilities, reserves and capital expenditures for public infrastructure, and



administration of the District, as provided in Section 1.5 of the DDA. Public area maintenance may include maintenance to public streets, parking lots, park, trail, boat launch, building(s), the harbor basin, and the pedestrian bridge. Such maintenance may be related to hardscape, landscape, and irrigation; lighting; site amenities (picnic tables, bbqs, public art, etc.); stormwater facilities; rodent and pest control; aeration fountains; and riprap. Reserves and capital expenditures may be utilized to make improvements and adaptation for sea level rise, including installation of additional rip rap or a seawall, as well as capital improvements to public areas, such as road replacement, infrastructure upgrades, and amenity replacement. The final scope of the Community Facilities District shall be subject to the Local Goals and Policies and Rate and Method of Apportionment Boundary Map, as adopted by the applicable landowners. The Rate and Method of Apportionment Map shall detail, among other things, how the special tax is levied, maximum special tax rates, and method of apportionment.

## 8. HAZARDOUS SUBSTANCES

### 8.1 “Hazardous Substances” means all of the following:

(a) Any substance, product, waste or other material of any nature whatsoever which is or becomes defined, listed or regulated as a “hazardous substance”, “hazardous material”, “hazardous waste”, “toxic substance”, “solid waste” or similarly defined substance, product, waste or other material pursuant to any Environmental Law (which Environmental Law shall include any and all regulations in the Code of Federal Regulations or any other regulations implemented under the authority of such Environmental Law), including all of the following and their state equivalents or implementing laws: (i) The Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601, et. seq. (“CERCLA”); (ii) The Hazardous Materials Transportation Act, 49 U.S.C. §1801, et. seq.; (iii) Those substances listed on the United States Department of Transportation Table (49 C.F.R. 172.01 and amendments thereto); (iv) The Resource Conservation and Recovery Act, 42 U.S.C. §6901 et. seq. (“RCRA”); (v) The Toxic Substances Control Act, 15 U.S.C. §2601 et. seq.; (vi) The Clean Water Act, 33 U.S.C. §1251 et. seq.; (vii) The Clean Air Act, 42 U.S.C. §7401 et. seq.; and (viii) any other Federal, state or local law, regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect; or any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above laws or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or Federal court.

(b) any Environmental Law, petroleum, any petroleum by-products, waste oil, crude oil or natural gas;

(c) Any material, waste or substance that is or contains asbestos or polychlorinated biphenyls, or is radioactive, flammable or explosive;

(d) Lead based paint and other forms of lead and heavy metals, mold, grease tanks, waste storage areas, batteries, light bulbs, refrigerators, freezers, appliances, heating and cooling systems, thermostats, electronic devices, electrical switches, gauges, thermometers, aerosol cans, cleaning products, formaldehyde, polyurethane, pressure treated

wood containing arsenic, and building materials containing PCBs or volatile organic compounds, and

(e) Any other substance, product, waste or material defined or to be treated or handled as a Hazardous Substance pursuant to the provisions of this Agreement.

8.2 The term “Hazardous Substances” shall include the following “Permitted Hazardous Substances:” all (i) construction supplies, (ii) gardening supplies, (iii) gasoline, motor oil, or lubricants contained within vehicles or machinery operated on the Property or within the Single Family Element, (iv) general office supplies and products, cleaning supplies and products, and other commonly used supplies and products, in each case to the extent the same are [A] used in a regular and customary manner or in the manner for which they were designed; [B] customarily used in the ordinary course of business by Buyer, stored and handled in such amounts as is normal and prudent for the user’s business conducted on the Property; and [C] used, handled, stored and disposed of in compliance with all applicable Environmental Laws and product labeling and handling instructions.

8.3 “Environmental Law(s)” means any federal, state, or local laws, ordinances, rules, regulations, requirements, orders, formal guidelines, or permit conditions, in existence as of the Effective Date of this Agreement or as later enacted, promulgated, issued, modified or adopted, regulating or relating to Hazardous Substances, and all applicable judicial, administrative and regulatory judgments and orders and common law, including those relating to industrial hygiene, public safety, human health, or protection of the environment, or the reporting, licensing, permitting, use, presence, transfer, treatment, analysis, generation, manufacture, storage, discharge, Release, disposal, transportation, Investigation or Remediation of Hazardous Substances. Environmental Laws shall include, without limitation, all of the laws listed under the definition of Hazardous Substances.

8.4 Presence and Use of Hazardous Substances. Buyer shall not keep on or around the Property, for use, disposal, treatment, generation, storage or sale, any Hazardous Substances on the Property; provided, however, that Buyer and its permittees may use, store, handle and transport on the Property Permitted Hazardous Substances. Buyer shall: (a) use, store, handle and transport such Permitted Hazardous Substances in accordance with all Environmental Laws, and (b) not construct, operate or use disposal facilities for Permitted Hazardous Substances on the Property or within any improvements located thereon. Seller shall not generate, use, store, release, dump, transport, handle or dispose of any Hazardous Substances on the Property in violation of Environmental Laws.

8.5 Cleanup Costs, Default and Indemnification.

(a) Buyer shall be fully and completely liable for any and all cleanup costs, and any and all other charges, fees, penalties (civil and criminal) imposed by any governmental authority with respect to Buyer’s use, disposal, transportation, generation and/or sale of Hazardous Substances, in or about the Property.

(b) Buyer shall indemnify, defend and save Seller harmless from any and all of the costs, fees, penalties and charges assessed against or imposed upon Seller

(as well as Seller's attorneys' fees and costs) as a result of Buyer's use, disposal, transportation, generation and/or sale of Hazardous Substances.

(c) Upon and after the Close of Escrow, Buyer agrees to indemnify, defend and hold Seller harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, reasonable attorneys' fees), resulting from, arising out of, or based upon (i) the release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Property, which release, use, generation, discharge, storage or disposal occurs after the Close of Escrow, or (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to the use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials on, under, in or about, to or from, the Property, which release, use, generation, discharge, storage or disposal occurs after the Close of Escrow, excepting only any such loss, liability, claim, or judgment arising out of the intentional wrongdoing or gross negligence of Seller, or its officers, employees, agents or representatives. This indemnity shall include, without limitation, any damage, liability, fine, penalty, cost or expense arising from or out of any claim, action, suit or proceeding, including injunctive, mandamus, equity or action at law, for personal injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the environment, nuisance, contamination, leak, spill, release or other adverse effect on the environment. Buyer's obligations under this Section 8.5 shall survive the Close of Escrow and completion of the Single Family Element.

8.6 Duty to Prevent Hazardous Materials Contamination. Buyer shall take all commercially reasonable precautions to prevent the release of any Hazardous Materials into the environment in violation of Governmental Requirements, but such precautions shall not prohibit the use of substances of kinds and in amounts ordinarily and customarily used or stored in similar properties for the purposes of cleaning or other maintenance or operations and otherwise in compliance with all Governmental Requirements. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials.

8.7 Environmental Inquiries. Buyer shall notify Seller, and provide to Seller a copy or copies, of the following environmental permits, disclosures, applications, entitlements or inquiries relating to the Property: notices of violation, notices to comply, citations, inquiries, clean up or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements, and reports filed or applications made pursuant to any Governmental Requirement relating to Hazardous Materials and underground tanks. In the event of a release of any Hazardous Materials into the environment in violation of Governmental Requirements, Buyer shall, as soon as reasonably possible after the release, furnish to Seller a copy of any and all reports relating thereto and copies of all correspondence with governmental agencies relating to the release. Upon request of Seller, Buyer shall furnish to Seller a copy or copies of any and all other environmental entitlements or inquiries relating to or affecting the Property including, but not limited to, all permit applications, permits and reports including, without limitation, those reports and other matters which may be characterized as confidential

8.8 Storage or Handling of Hazardous Materials. Buyer, at its sole cost and expense, shall comply and shall use commercially reasonable efforts to cause its contractors to comply with all Governmental Requirements for the storage, use, transportation, handling and disposal of Hazardous Materials on or about the Property, including without limitation wastes generated in connection with the uses conducted on the Property. In the event Buyer and/or any of its contractors will store, use, transport, handle or dispose of any Hazardous Materials in violation of Governmental Requirements, Buyer shall promptly notify Seller in writing. Buyer shall conduct all monitoring activities required or prescribed by applicable Governmental Requirements, and shall, at its sole cost and expense, comply with all posting requirements of Proposition 65 or any other similarly enacted Governmental Requirements. Buyer's obligations hereunder shall survive the Close of Escrow and completion of the Single Family Element.

9. INSURANCE AND INDEMNITY.

9.1 Indemnity.

(a) Buyer shall indemnify, defend and save harmless Seller and its officers, employees, contractors, agents, representatives and volunteers (collectively, the "Indemnitees") from any and all liability, damage, expense, cause of action, suits, claims or judgments by any reason whatsoever caused, arising out of the development, use, occupation, and control of the Property by Buyer, its officers, contractors, agents, and employees, except as and to the extent arising out of the willful or negligent act of the Indemnitees. Seller and Buyer agree that this provision shall not require Buyer to indemnify, defend and save the Indemnitees harmless from the Indemnitees' sole or concurrent negligence, if any.

(b) All provisions of this Agreement pursuant to which Indemnitor agrees to indemnify Indemnitee against liability for damages arising out of bodily injury to persons or damage to property relative to the construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any building, road, or other structure, project, development, or improvement attached to real estate, including the Property, shall not apply to damages as and to the extent caused by or resulting from the negligence of the Indemnitees. The indemnifications provided in this Article 9 shall not be limited to damages, compensation or benefits payable under insurance policies, workers' compensation acts, disability benefit acts or other employees' benefit acts.

(c) Unless otherwise expressly provided in this Agreement to the contrary, Seller shall have no responsibility, control or liability with respect to any aspect of the Property or any activity conducted thereon from and after the Close of Escrow. Notwithstanding anything to the contrary in this Agreement, to the greatest extent permitted by law, and except to the extent caused by Seller's negligence or willful misconduct, Seller shall not be liable for any injury, loss or damage suffered by Buyer or to any person or property occurring or incurred in or about the Property from any cause. This Section 9.1 shall survive the Close of Escrow and completion of the Single Family Element.

9.2 Acquisition of Insurance Policies. Buyer shall, at its sole cost and expense, procure and maintain, or cause to be procured and maintained from the Close of Escrow

until the completion of the construction of the Single Family Element, and covering all occurrences during such period, the insurance described in this Article 9 (or if not available, then its available equivalent), issued by an insurance company or companies licensed to do business in the State of California, with an A.M. Bests' rating of no less than A:VII, reasonably satisfactory to Seller reasonably covering and protecting Buyer. Such insurance may be provided by blanket policies covering multiple properties.

9.3 Types of Required Insurance. Buyer shall procure and maintain the following:

(a) Commercial General Liability Insurance. Commercial liability insurance including contractual liability covering claims with respect to injuries or damages to persons or property sustained in, or about the Property and the Single Family Element, and the appurtenances thereto, including the sidewalks and alleyways adjacent thereto, with limits of liability (which limits shall be adjusted as provided in Section 22.13(a) below) no less than the following:

Bodily Injury and Property Damage Liability – Five Million Dollars (\$5,000,000) each occurrence; Ten Million Dollars (\$10,000,000) Aggregate.

Such limits may be achieved through the use of umbrella liability insurance sufficient to meet the requirements of this Section 9.3 for the Property and Single Family Element.

(b) Worker's Compensation Insurance. Worker's Compensation and Employer's Liability Insurance with respect to any work by employees of Buyer and its contractors on or about the Property, in such policy amounts as are required by law.

(c) Business Interruption Insurance. Business interruption insurance in such policy amount as may be required by any lender to Buyer.

(d) Mutual Waivers of Recovery. Seller, Buyer, and all parties claiming under them, each mutually release and discharge each other from responsibility for that portion of any loss or damage paid or reimbursed by an insurer of Seller or Buyer under any fire, extended coverage or other property insurance policy maintained by Buyer with respect to its improvements or property or by Seller with respect to the Property (or which would have been paid had the insurance required to be maintained hereunder been in full force and effect), no matter how caused, including negligence, and each waives any right of recovery from the other, including, but not limited to, claims for contribution or indemnity, which might otherwise exist on account thereof. Any fire, extended coverage or property insurance policy maintained by Buyer with respect to the Single Family Element or Property shall contain a waiver of subrogation provision or endorsement in favor of Seller, or, in the event that such insurers cannot or shall not include or attach such waiver of subrogation provision or endorsement, Buyer shall obtain the approval and consent of its insurers, in writing, to the terms of this Agreement. Buyer agrees to indemnify, protect, defend and hold harmless the Seller from and against any claim, suit or cause of action asserted or brought by Buyer's insurers for, on behalf of, or in the name of Buyer, including, but not limited to, claims for contribution, indemnity or subrogation, brought

in contravention of this paragraph. The mutual releases, discharges and waivers contained in this provision shall apply EVEN IF THE LOSS OR DAMAGE TO WHICH THIS PROVISION APPLIES IS CAUSED SOLELY OR IN PART BY THE NEGLIGENCE OF SELLER OR BUYER.

9.4 Terms of Insurance. The policies required under Section 9.3 above, shall name Seller as additional insured and Buyer shall provide promptly to Seller certificates of insurance with respect to such policies. Further, all policies of insurance described in Section 9.3 above shall:

(a) Be written as primary policies not contributing with and not in excess of coverage that Seller may carry;

(b) Contain an endorsement providing that such insurance may not be materially changed, amended or cancelled with respect to Seller, except after thirty (30) days prior written notice from Buyer to Seller or, in the event of non-payment, after ten days (10) prior written notice from Buyer to Seller;

(c) Contain an endorsement containing express waiver of any right of subrogation by the insurance company against Seller, its agents and employees;

(d) Provide that the insurance proceeds of any loss will be payable notwithstanding any act or negligence of Buyer which might otherwise result in a forfeiture of said insurance; and

(e) Provide that Seller shall not be required to give notice of accidents or claims and that Seller shall have no liability for premiums.

9.5 Seller's Acquisition of Insurance. If Buyer at any time prior to the completion of construction of the Single Family Element fails to procure or maintain such insurance or to pay the premiums therefor, after ten (10) days prior notice to Buyer and a reasonable opportunity to cure, Seller shall have the right to procure such insurance (but shall be under no obligation to do so) and to pay any and all premiums thereon, and Buyer shall pay to Seller upon demand the full amount so paid and expended by Seller, together with interest thereon at the rate of ten percent per annum, from the date of such expenditure by Seller until repayment thereof by Buyer. Any policies of insurance obtained by Seller covering physical damage to the Property or Single Family Element shall contain a waiver of subrogation against Buyer if and to the extent such waiver is obtainable and if Buyer pays to Seller on demand the additional costs, if any, incurred in obtaining such waiver. Any insurance or self-insurance procured or maintained by Seller shall be excess coverage, non-contributory and for the benefit of the Seller only.

## 10. REMEDIES

10.1 Seller Default. In the event of a breach or default under this Agreement by Seller which occurs prior to Close of Escrow, Buyer reserves the right to either (a) seek specific performance from Seller, or (b) to do any of the following: (i) to waive the breach or default and proceed to close as provided herein; (ii) to extend the time for performance and

the Outside Closing Date until Seller is able to perform; (iii) to terminate this Agreement upon written notice to Seller, whereupon Seller shall cause Escrow Holder to return to Buyer any and all sums (including the full amount of the Deposit and all interest accrued thereon) placed into the Escrow by Buyer, and except for the rights and obligations expressly provided to survive termination of this Agreement, neither party shall have any further obligations or liabilities hereunder; or (iv) to pursue a claim for Buyer's actual damages.

10.2 Buyer Default. IN THE EVENT OF A BREACH OR DEFAULT HEREUNDER BY BUYER AND THE CLOSING DOES NOT OCCUR DUE TO SUCH DEFAULT, SELLER'S SOLE REMEDY SHALL BE TO RETAIN THE THREE HUNDRED THOUSAND DOLLAR (\$300,000) INITIAL DEPOSIT AND ALL OF THE ADDITIONAL DEPOSITS, AND ALL INTEREST ACCRUED THEREON, AS LIQUIDATED DAMAGES. THE PARTIES AGREE THAT IN SUCH INSTANCE, SUCH PORTION OF THE DEPOSIT AND ALL INTEREST ACCRUED THEREON REPRESENTS A REASONABLE APPROXIMATION OF SELLER'S DAMAGES AND IS NOT INTENDED AS A FORFEITURE OR PENALTY BUT RATHER AN ENFORCEABLE LIQUIDATED DAMAGES PROVISION PURSUANT TO CALIFORNIA CIVIL CODE SECTION 1671, ET SEQ. IN NO EVENT SHALL EITHER PARTY BE ENTITLED TO LOST PROFITS OR CONSEQUENTIAL DAMAGES AS A RESULT OF THE OTHER PARTY'S BREACH OF THIS AGREEMENT.

\_\_\_\_\_  
Buyer's Initials

\_\_\_\_\_  
Seller's Initials

10.3 Notice and Right to Cure. A party shall not be in default hereof until the default continues for ten (10) days in the event of a monetary default or thirty (30) days in the event of a nonmonetary default after the date upon which the other party shall have given written notice of the default; provided however, if the default is of a nature that it cannot be cured within thirty (30) days, an event of default shall not arise hereunder if such party commences to cure the default within thirty (30) days and thereafter prosecutes the curing of such default with due diligence and in good faith to completion and in no event later than ninety (90) days after receipt of notice of the default.

11. BROKERS. Seller represents that no real estate broker has been retained by Seller in the sale of the Property or the negotiation of this Agreement. Buyer represents that no real estate broker has been retained by Buyer in the procurement of the Property or negotiation of this Agreement. Each Party shall indemnify, hold harmless and defend the other Party from any and all claims, actions and liability for any breach of the preceding sentence, and any commission, finder's fee, or similar charges arising out of the indemnifying Party's conduct.

12. ASSIGNMENT. Absent an express signed written agreement between the Parties to the contrary, neither Seller nor Buyer may assign its rights or delegate its duties under this Agreement without the express written consent of the other. Notwithstanding the foregoing, however, Buyer shall have the right to assign this Agreement to any entity which is an approved or permitted transferee pursuant to Section 7.1 of the DDA. No permitted assignment of any of the rights or obligations under this Agreement shall result in a novation or in any other way release the assignor from its obligations under this Agreement.

13. MISCELLANEOUS.

13.1 Attorneys' Fees. If any party employs counsel to enforce or interpret this Agreement, including the commencement of any legal proceeding whatsoever (including insolvency, bankruptcy, arbitration, mediation, declaratory relief or other litigation), the prevailing party shall be entitled to recover its reasonable attorneys' fees and court costs (including the service of process, filing fees, court and court reporter costs, investigative fees, expert witness fees, and the costs of any bonds, whether taxable or not) and shall include the right to recover such fees and costs incurred in any appeal or efforts to collect or otherwise enforce any judgment in its favor in addition to any other remedy it may obtain or be awarded. Any judgment or final order issued in any legal proceeding shall include reimbursement for all such attorneys' fees and costs. In any legal proceeding, the "prevailing party" shall mean the party determined by the court to most nearly prevail and not necessarily the party in whose favor a judgment is rendered.

13.2 Interpretation. This Agreement has been negotiated at arm's length and each party has been represented by independent legal counsel in this transaction and this Agreement has been reviewed and revised by counsel to each of the Parties. Accordingly, each party hereby waives any benefit under any rule of law (including Section 1654 of the California Civil Code) or legal decision that would require interpretation of any ambiguities in this Agreement against the drafting party.

13.3 Survival. All indemnities, covenants, representations and warranties contained in this Agreement shall survive Close of Escrow.

13.4 Successors. Except as provided to the contrary in this Agreement, this Agreement shall be binding on and inure to the benefit of the Parties and their successors and assigns.

13.5 Governing Law & Venue. This Agreement shall be construed and interpreted in accordance with the laws of the State of California. Venue for any dispute arising hereunder shall be in the Superior Court of Alameda County or the Northern District of California.

13.6 Integrated Agreement; Modifications. This Agreement contains all the agreements of the Parties concerning the subject hereof any cannot be amended or modified except by a written instrument executed and delivered by the parties. There are no representations, agreements, arrangements or understandings, either oral or written, between or among the parties hereto relating to the subject matter of this Agreement that are not fully expressed herein. In addition there are no representations, agreements, arrangements or understandings, either oral or written, between or among the Parties upon which any party is relying upon in entering this Agreement that are not fully expressed herein.

13.7 Severability. If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such illegal, unenforceable, or invalid provisions or part thereof shall be stricken from this Agreement, any such provision shall not affect the legality, enforceability, or validity of the remainder of this



Agreement. If any provision or part thereof of this Agreement is stricken in accordance with the provisions of this Section, then the stricken provision shall be replaced, to the extent possible, with a legal, enforceable and valid provision in keeping with the intent of the Parties as expressed herein.

13.8 Notices. Any delivery of this Agreement, notice, modification of this Agreement, collateral or additional agreement, demand, disclosure, request, consent, approval, waiver, declaration or other communication that either party desires or is required to give to the other party or any other person shall be in writing. Any such communication may be served personally, or by nationally recognized overnight delivery service (i.e., Federal Express) which provides a receipt of delivery, or sent by prepaid, first class mail, return receipt requested to the party's address as set forth below:

To Buyer: Cal Coast Companies LLC, Inc.  
11755 Wilshire Boulevard, Suite 1660  
Los Angeles, CA 90025  
Attn: Edward J. Miller

with copies to: Nicholas F. Klein, Esq.  
11755 Wilshire Boulevard, Suite 1660  
Los Angeles, CA 90025

To Seller: City of San Leandro  
835 E. 14th Street  
San Leandro, CA 94577  
Attn: Community Development Director  
Copy to: City Attorney

To Escrow Holder: Old Republic Title Company  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

Any such communication shall be deemed effective upon personal delivery or on the date of first refusal to accept delivery as reflected on the receipt of delivery or return receipt, as applicable. Any party may change its address by notice to the other party. Each party shall make an ordinary, good faith effort to ensure that it will accept or receive notices that are given in accordance with this section and that any person to be given notice actually receives such notice.

13.9 Time. Time is of the essence to the performance of each and every obligation under this Agreement.

13.10 Days of Week. If any date for exercise of any right, giving of any notice, or performance of any provision of this Agreement falls on a Saturday, Sunday or holiday, the time for performance will be extended to 5:00 p.m. on the next business day.

13.11 Reasonable Consent and Approval. Except as otherwise provided in this Agreement, whenever a party is required or permitted to give its consent or approval under this Agreement, such consent or approval shall not be unreasonably withheld or delayed. If a party is required or permitted to give its consent or approval in its sole and absolute discretion or if such consent or approval may be unreasonably withheld, such consent or approval may be unreasonably withheld but shall not be unreasonably delayed.

13.12 Further Assurances. The Parties shall at their own cost and expense execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to confirm the status of this Agreement or to carry out the intent and purposes of this Agreement.

13.13 Waivers. Any waiver by any party shall be in writing and shall not be construed as a continuing waiver. No waiver will be implied from any delay or failure to take action on account of any default by any party. Consent by any party to any act or omission by another party shall not be construed to be a consent to any other subsequent act or omission or to waive the requirement for consent to be obtained in any future or other instance.

13.14 Counterparts and Electronic Signatures. This Agreement may be executed simultaneously or in any number of counterparts, each of which shall be deemed an original, equally admissible in evidence, but all of which together shall constitute one and the same Agreement, notwithstanding that the signatures of each Party or their respective representatives do not appear on the same page of this Agreement. The Parties hereby acknowledge and agree that electronic signatures that comply with the eSign Act (15 U.S.C. Ch. 96) (such as DocuSign signatures), or signatures transmitted by electronic mail in so-called "PDF" format shall be legal and binding and shall have the same full force and effect as if an original of this Agreement had been delivered. The Parties hereto (a) intend to be bound by the signatures on any document sent by electronic means including by electronic mail, (b) are aware that the other Party will rely on such signatures, and (c) hereby waive any defenses to the enforcement of the terms of this Agreement based on the foregoing forms of signature.

13.15 Representation on Authority of Parties. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

13.16 Nondiscrimination. Buyer covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry, physical or mental disability, or sexual orientation, or on the basis of any other category or status not permitted by law in the sale, lease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall Buyer itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of residents, tenants, or vendees of the Property or any portion thereof. The foregoing covenants shall run with the land.

13.17 Conflict of Interest. No member, official or employee of Seller shall have any personal interest, direct or indirect, in this Agreement nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his personal interests or the interests of any limited partnership, partnership or association in which he is directly or indirectly interested. Buyer warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement.

13.18 Further Actions and Instruments; City Manager Authority. Each of the Parties shall reasonably cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either Party at any time, the other Party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement. Seller hereby authorizes the City Manager to make approvals, issue interpretations, waive provisions, make and execute further agreements and/or enter into amendments of this Agreement on behalf of the Seller so long as such actions do not materially or substantially change the uses or construction permitted on the Property, or materially or substantially add to the costs incurred or to be incurred by the Seller as specified herein, or reduce the revenue earned or to be earned by Seller, as may be necessary or proper to satisfy the purpose and intent of this Agreement. Notwithstanding the foregoing, the City Manager shall maintain the right to submit to the City Council for consideration and action any action or additional agreement under the City Manager's authority if the City Manager determines it is in the best interests of Seller to do so. The City Manager may delegate some or all of his or her powers and duties under this Agreement to one or more management level employees of the City.

***SIGNATURES ON FOLLOWING PAGE***

IN WITNESS WHEREOF, this Agreement is executed by Buyer and Seller as of the Effective Date.

**SELLER:**

**City of San Leandro**

By: \_\_\_\_\_  
Jeff Kay  
City Manager

Attest:

By: \_\_\_\_\_  
Leticia I. Miguel  
City Clerk

Reviewed as to Form:

By: \_\_\_\_\_  
Richard Pio Roda  
City Attorney

**BUYER:**

**Cal Coast Companies LLC, Inc.**

By: \_\_\_\_\_  
Edward J. Miller  
Title: Authorized Signatory

## EXHIBIT A

### LEGAL DESCRIPTION OF PROPERTY

That real property located in the City of San Leandro, County of Alameda, State of California, described as follows:

Being a portion of the Lands as described in that certain Grant Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a municipal corporation, recorded on September 13, 1963 in Reel 990 at Image 651, Official Records of Alameda County, and a Real property, situated in the City of San Leandro, County of Alameda, State of California; and a portion of the Lands as described in that certain Grant Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a municipal corporation, recorded on November 19, 1962 in Reel 727 at Image 444, Official Records of Alameda County, being more particularly described as follows:

Beginning at the most easterly corner of said Lands of the City of San Leandro (Re: 990 Im: 651), said corner being also the intersection of the southeasterly line of Fairway Drive (formerly Second Avenue), being 80.00 feet in width, with the southwesterly line of Aurora Drive (formerly Kenmore Avenue), being 50.00 feet in width, as said Second Avenue and said Kenmore Avenue are shown on that certain Map entitled "Mulford Gardens Manor", filed for record on May 1, 1929 in Book 8 of Maps at Page 5, Records of Alameda County;

Thence leaving said point and along said southwesterly line of Aurora Drive, the following courses and distances:

- South  $63^{\circ}18'08''$  West, 5.00 feet to the beginning of a non-tangent curve, concave Westerly, having a radius of 30.00 feet, with a radial line that bears North  $62^{\circ}30'00''$  East;
- Southerly along said curve, through a central angle of  $90^{\circ}48'08''$ , for an arc length of 47.54 feet to the northwesterly line of said Fairway Drive;

Thence along said northwesterly line of Fairway Drive, the following courses and distances:

- South  $63^{\circ}18'08''$  West, 463.43 feet to the beginning of a curve to the left, having a radius of 840.00 feet;
- Southwesterly along said curve, through a central angle of  $11^{\circ}06'46''$ , for an arc length of 162.92 feet to the beginning of a reverse curve, concave to the Northwest, having a radius of 760.00 feet;
- Southwesterly along said curve through a central angle of  $11^{\circ}06'47''$ , for an arc length of 147.41 feet;
- South  $63^{\circ}18'10''$  West, 267.44 feet to the **TRUE POINT OF BEGINNING** of this description;

Thence leaving said point and continuing along said northwesterly line of Fairway Drive, the following courses and distances:

- South  $63^{\circ}18'10''$  West, 367.68 feet to the beginning of a curve to the right, having a radius of 30.00 feet;
- Westerly along said curve, through a central angle of  $81^{\circ}37'46''$ , for an arc length of 42.74 feet to a point on the northeasterly line of Monarch Bay Drive, being 84.00 feet in width;

Thence along said northeasterly line of Monarch Bay Drive, the following courses and distances:

North 35°04'04" West, 405.83 feet to the beginning of a curve to the right, having a radius of 1,100.00 feet; Northwesterly along said curve, through a central angle of 04°44'50", for an arc length of 91.14 feet;

Thence leaving said northeasterly line of Monarch Bay Drive, the following courses and distances:

- North 62°55'28" East, 53.25 feet to the beginning of a curve to the left, having a radius of 30.00 feet;
- Northerly along said curve, through a central angle of 90°00'00", for an arc length of 47.12 feet;
- North 27°04'32" West, 25.00 feet;
- South 62°55'28" West, 84.99 feet to said northeasterly line of Monarch Bay Drive, said point being also the beginning of a non-tangent curve, concave to the Northeast, having a radius of 1,100.00 feet, with a radial line that bears South 62°32'46" West;

Thence along said Monarch Bay Drive, the following courses and distances:

- Northwesterly along said curve, through a central angle of 06°53'12", for an arc length of 132.22 feet;
- North 20°34'02" West, 496.33 feet to the beginning of a curve to the left, having a radius of 642.00 feet;
- Northwesterly along said curve, through a central angle of 18°56'39", for an arc length of 212.27 feet;
- North 39°30'41" West, 20.54 feet to the beginning of a curve to the right, having a radius of 526.00 feet;
- Northerly along said curve, through a central angle of 58°50'17", for an arc length of 540.16 feet to the beginning of a non-tangent curve, concave to the Southeast, having a radius of 352.23 feet, with a radial line that bears North 70°39'59" West;
- Northeasterly along said curve, through a central angle of 41°34'58", for an arc length of 255.63 feet;
- South 27°16'28" East, 54.01 feet;
- North 62°43'32" East, 42.41 feet to the southwesterly line of Block U, as said Block is shown on that certain Map entitled "Mulford Gardens Addition", filed for record on February 1, 1928 in Book 7 of Maps at Page 55, Records of said County;

Thence along said southwesterly line of Block U and Block V of said Map, South 27°30'00" East, 543.19 feet;

Thence leaving said southwesterly line, the following courses and distances:

- South 62°30'00" West, 17.13 feet;
- South 20°33'26" East, 134.14 feet;
- South 69°26'34" West, 80.00 feet;
- South 20°33'26" East, 726.01 feet;
- South 34°04'02" East, 130.39 feet;
- North 71°53'55" East, 180.71 feet to the beginning of a non-tangent curve, concave to the Southwest, having a radius of 50.00 feet, with a radial line that bears North 18°37'44" West;
- Southeasterly along said curve, through a central angle of 89°56'49", for an arc length of 78.49 feet;
- South 18°40'54" East, 370.01 feet to the **TRUE POINT OF BEGINNING** of this description.

Containing 708,087 square feet or 16.225 acres, more or less.

APN \_\_\_\_\_

## EXHIBIT B

**GRANT DEED**

Recording Requested by  
and When Recorded, Return to:



(SPACE ABOVE THIS LINE RESERVED FOR RECORDER’S USE)

Documentary Transfer Tax: \$ \_\_\_\_\_

Based on full value of real property conveyed

**GRANT DEED**

For valuable consideration, receipt of which is hereby acknowledged, as of \_\_\_\_\_, 20\_\_, the City of San Leandro, a California charter city (the “Grantor”), hereby grants to [Cal Coast Companies LLC, Inc., a Delaware corporation] (the “Grantee”), all that real property located in the City of San Leandro, County of Alameda, State of California and more particularly described in Attachment No. 1 hereto and incorporated in this grant deed (“Grant Deed”) by this reference (the “Property”).

The grant of the Property to Grantee is subject to a Purchase and Sale Agreement between Grantor and Grantee, dated as of \_\_\_\_\_, 2020 (the “PSA”). The use and development of the Property by Grantee and its successors and assigns shall be in compliance with the requirements of the PSA. Grantee and its successors and assigns shall not close escrow for the initial sale of more than one hundred thirty-two (132) new residential units constructed on the Property until the Golf Course Element (as defined in the PSA) is substantially complete.

**City of San Leandro**

By: \_\_\_\_\_  
Jeff Kay  
City Manager

Attest:

By: \_\_\_\_\_  
Leticia I. Miguel  
City Clerk

Attachment No. 1 to Grant Deed

**LEGAL DESCRIPTION**

That real property located in the City of San Leandro, County of Alameda, State of California, described as follows:

Being a portion of the Lands as described in that certain Grant Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a municipal corporation, recorded on September 13, 1963 in Reel 990 at Image 651, Official Records of Alameda County, and a Real property, situated in the City of San Leandro, County of Alameda, State of California; and a portion of the Lands as described in that certain Grant Deed, from Oakland Scavenger Company Inc., a corporation to the City of San Leandro, a municipal corporation, recorded on November 19, 1962 in Reel 727 at Image 444, Official Records of Alameda County, being more particularly described as follows:

Beginning at the most easterly corner of said Lands of the City of San Leandro (Re: 990 Im: 651), said corner being also the intersection of the southeasterly line of Fairway Drive (formerly Second Avenue), being 80.00 feet in width, with the southwesterly line of Aurora Drive (formerly Kenmore Avenue), being 50.00 feet in width, as said Second Avenue and said Kenmore Avenue are shown on that certain Map entitled "Mulford Gardens Manor", filed for record on May 1, 1929 in Book 8 of Maps at Page 5, Records of Alameda County;

Thence leaving said point and along said southwesterly line of Aurora Drive, the following courses and distances:

- South 63°18'08" West, 5.00 feet to the beginning of a non-tangent curve, concave Westerly, having a radius of 30.00 feet, with a radial line that bears North 62°30'00" East;
- Southerly along said curve, through a central angle of 90°48'08", for an arc length of 47.54 feet to the northwesterly line of said Fairway Drive;

Thence along said northwesterly line of Fairway Drive, the following courses and distances:

- South 63°18'08" West, 463.43 feet to the beginning of a curve to the left, having a radius of 840.00 feet;
- Southwesterly along said curve, through a central angle of 11°06'46", for an arc length of 162.92 feet to the beginning of a reverse curve, concave to the Northwest, having a radius of 760.00 feet;
- Southwesterly along said curve through a central angle of 11°06'47", for an arc length of 147.41 feet;
- South 63°18'10" West, 267.44 feet to the **TRUE POINT OF BEGINNING** of this description;

Thence leaving said point and continuing along said northwesterly line of Fairway Drive, the following courses and distances:

- South 63°18'10" West, 367.68 feet to the beginning of a curve to the right, having a radius of 30.00 feet;
- Westerly along said curve, through a central angle of 81°37'46", for an arc length of 42.74 feet to a point on the northeasterly line of Monarch Bay Drive, being 84.00 feet in width;

Thence along said northeasterly line of Monarch Bay Drive, the following courses and distances:



North 35°04'04" West, 405.83 feet to the beginning of a curve to the right, having a radius of 1,100.00 feet; Northwesterly along said curve, through a central angle of 04°44'50", for an arc length of 91.14 feet;

Thence leaving said northeasterly line of Monarch Bay Drive, the following courses and distances:

- North 62°55'28" East, 53.25 feet to the beginning of a curve to the left, having a radius of 30.00 feet;
- Northerly along said curve, through a central angle of 90°00'00", for an arc length of 47.12 feet;
- North 27°04'32" West, 25.00 feet;
- South 62°55'28" West, 84.99 feet to said northeasterly line of Monarch Bay Drive, said point being also the beginning of a non-tangent curve, concave to the Northeast, having a radius of 1,100.00 feet, with a radial line that bears South 62°32'46" West;

Thence along said Monarch Bay Drive, the following courses and distances:

- Northwesterly along said curve, through a central angle of 06°53'12", for an arc length of 132.22 feet;
- North 20°34'02" West, 496.33 feet to the beginning of a curve to the left, having a radius of 642.00 feet;
- Northwesterly along said curve, through a central angle of 18°56'39", for an arc length of 212.27 feet;
- North 39°30'41" West, 20.54 feet to the beginning of a curve to the right, having a radius of 526.00 feet;
- Northerly along said curve, through a central angle of 58°50'17", for an arc length of 540.16 feet to the beginning of a non-tangent curve, concave to the Southeast, having a radius of 352.23 feet, with a radial line that bears North 70°39'59" West;
- Northeasterly along said curve, through a central angle of 41°34'58", for an arc length of 255.63 feet;
- South 27°16'28" East, 54.01 feet;
- North 62°43'32" East, 42.41 feet to the southwesterly line of Block U, as said Block is shown on that certain Map entitled "Mulford Gardens Addition", filed for record on February 1, 1928 in Book 7 of Maps at Page 55, Records of said County;

Thence along said southwesterly line of Block U and Block V of said Map, South 27°30'00" East, 543.19 feet;

Thence leaving said southwesterly line, the following courses and distances:

- South 62°30'00" West, 17.13 feet;
- South 20°33'26" East, 134.14 feet;
- South 69°26'34" West, 80.00 feet;
- South 20°33'26" East, 726.01 feet;
- South 34°04'02" East, 130.39 feet;
- North 71°53'55" East, 180.71 feet to the beginning of a non-tangent curve, concave to the Southwest, having a radius of 50.00 feet, with a radial line that bears North 18°37'44" West;
- Southeasterly along said curve, through a central angle of 89°56'49", for an arc length of 78.49 feet;
- South 18°40'54" East, 370.01 feet to the **TRUE POINT OF BEGINNING** of this description.

Containing 708,087 square feet or 16.225 acres, more or less.

APN \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California                    )  
  ) ss.  
County of \_\_\_\_\_ )

On \_\_\_\_\_, 20\_\_\_\_ before me, \_\_\_\_\_, a Notary Public, in and for said State and County, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
NOTARY PUBLIC

3166098.9

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California                    )  
  ) ss.  
County of \_\_\_\_\_ )

On \_\_\_\_\_, 20\_\_ before me, \_\_\_\_\_, a Notary Public, in and for said State and County, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
NOTARY PUBLIC

## EXHIBIT C

### SCOPE OF DEVELOPMENT

The following definition of terms shall apply to this Scope of Development and the Agreement:

Horizontal Improvements – Improvements to underlying land and infrastructure before the Vertical Improvements can be realized. This includes flood plain and sea level rise mitigation, geotechnical mitigation, grading and installation of offsite and onsite utilities, including, but not limited to sanitary sewer, storm drain, water, natural gas, electricity, and fiber optic internet service.

Vertical Improvements – Construction of building, structures (including foundations), landscaping, lighting, streets, sidewalks, curb and gutter, parking areas and other improvements to be constructed or installed on or in connection with the development of the Project.

**1. Single Family Element.** Buyer shall design and construct approximately between 200 and 215 detached and attached single-family homes and attached townhomes that include affordable units in accordance with the requirements of the City's inclusionary housing ordinance as specified in the DDA.

- a) The Single-Family Element shall include, but is not limited to, construction of streets, sidewalks, landscaping, lighting and all onsite and offsite utilities, including but not limited to sanitary sewer, storm drain, water, natural gas, electricity and fiber optic internet service to all units, all in conformance with City Building and Zoning codes and pursuant to plans to be approved by the City.
- b) All single-family homes and townhomes shall meet or exceed CA Title 24 requirements and be EnergyStar Rated.
- c) Outdoor landscaping on the Single-Family Element shall utilize tertiary treated recycled water (grey water) from the San Leandro Water Pollution Control Plant, subject to availability and final City approval.
- d) Developer shall perform all of the mitigation measures adopted by the City with respect to the impacts of the project of the Agreement, including design of structures to be 15 percent more energy efficient than the current Building and Energy Standards (Title 24, Part 6m of the California Building Code)

**2. Golf Course Element.**

- a) Buyer shall redesign and reconstruct a nine-hole links style golf course (“Golf Course Parcel”).
- b) The Golf Course Parcel shall be stripped of existing improvements and landscaping, then graded and improved to create a new golf course.
- c) The existing north lake shall be reconfigured, mature trees (where feasible and appropriate), and the monarch butterfly roosting habitat shall remain.
- d) Per Mitigation Measure BIO-1A in the San Leandro Shoreline Development Final EIR, a Monarch Butterfly Roosting Habitat Protection Program (MBRHPP) shall be prepared by a qualified biologist and ensure adequate avoidance and protection of the winter roosting colony, consistent with the intent of Section 4-1-1000, Interference with Monarch Butterflies Prohibited, of the San Leandro Municipal Code.
- e) Improvements shall include a new irrigation system, stormwater management and drainage features, landscaping, concrete paths, and a protection fence for the residential neighborhood to the east as well as a new attendant shack and restroom.
- f) A golf cart path shall connect the new entrance with the existing crosswalk on Fairway Drive, in a location approved by the City.
- g) The existing maintenance yard and building shall remain, subject to any changes by the City as a part of the construction of the new Mulford-Marina Library.
- h) The existing water pipe connecting the north lake to the 18 hole golf course to the south of Fairway Drive shall remain.
- i) Any changes to existing infrastructure, including water features, are subject to review and approval of the Public Works and Engineering & Transportation Departments.
- j) The public improvements related to the Golf Course Element shall be subject to a Public Improvement Agreement.
- k) Buyer shall be responsible for and pay for the design of the Golf Course Element. The design work shall be completed by a consultant approved by the City, with input from applicable community groups.
- l) The final design for the Golf Course Element is subject to review and approval in writing by the City Manager in consultation with the Directors of the Public Works and Engineering & Transportation Departments, respectively.

**EXHIBIT D**

**SCHEDULE OF PERFORMANCE**

<b>Task</b>	<b>Time for Performance</b>
<b>1. Single Family Element</b>	
Effective Date	_____, 2020
Opening of Escrow	5 business days from expiration of appeals periods for the General Plan Text Amendment, General Plan Map Amendment, Zoning Map Amendment and Addendum to Shoreline Project EIR
Deposit due	3 business days from Opening of Escrow
Escrow Holder delivers a Preliminary Title Report for the Property	3 business days from Opening of Escrow
Due Diligence Contingency Period	90 days from Effective Date
Entitlements Contingency Date	270 days from Effective Date (subject to one 90 day extension)
Buyer and City enter Public Improvement Agreement for Single Family Element, and Buyer submits required security to City	Prior to Close of Escrow
Close of Escrow for Property occurs.	Within 90 days after first to occur of (a) receipt of Government Entitlements (subject to one 90 day extension), or (b) December 31, 2021
Commencement of construction of Horizontal Improvements	Within 90 days of receipt of City approval of first permit for Horizontal Improvements (demolition, encroachment, or grading), permit is issued and work begins
Completion of construction of Horizontal Improvements	Within 24 months of commencement of construction of Horizontal Improvements, work under demolition, encroachment and grading permits is given final approval
	Prior to Close of Escrow

Submittal of Building Permit applications for Vertical Construction for Single-Family Element

## 2. Golf Course Element

Buyer submits Golf Course Implementation Plan to City

90 days from Opening of Escrow, or after termination of lease with the American Golf Corporation for that portion of land to be utilized for the Single-Family Element, whichever comes later

Buyer and City enter Public Improvement Agreement for Golf Course Element, and Buyer submits required security to City

Prior to Close of Escrow

Buyer commences construction of Golf Course Element

Within 90 days after receipt of City approval of first permit for Golf Course Element (demolition, encroachment and/or grading), permit is issued and work begins under such permit

Buyer substantially completes construction of Golf Course Element.

Within 30 months after commencement of construction of Golf Course Element, all major construction is complete and only minor work and/or maturation of landscaping remains, as accepted by the Directors of Engineering and Transportation and Public Works

Buyer may sell more than 132 completed residential units within the Single Family Element.

Upon substantial completion of the Golf Course Element

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