

THIRD AMENDMENT TO PURCHASE AND SALE AGREEMENT AND DISPOSITION AND DEVELOPMENT AGREEMENT

THIS THIRD AMENDMENT TO PURCHASE AND SALE AGREEMENT AND DISPOSITION AND DEVELOPMENT AGREEMENT (this “Third Amendment”) is entered into as of December 19, 2022, by and between the City of San Leandro, a California charter city organized and existing under the laws of the State of California (“City”), and Cal Coast Companies LLC, Inc., a Delaware corporation doing business in California as Cal Coast Companies & Development (“Developer”). City and Developer are referred to individually as “Party,” and collectively as the “Parties.”

RECITALS

A. City and Developer have entered into a Disposition and Development Agreement for development of certain City owned property located within the City limits in the Shoreline-Marina area, dated as of July 22, 2020, and amended by the First Amendment to Purchase and Sale Agreement and Disposition and Development Agreement dated March 17, 2021, and the Second Amendment to Purchase and Sale Agreement and Disposition and Development Agreement dated June 21, 2022 (as amended, the “DDA”).

B. In connection with the DDA, City and Developer have entered into a Purchase and Sale Agreement (the “Single Family PSA”) for development of between two hundred (200) and two hundred fifteen (215) for sale attached and detached single family homes on certain City-owned property to be sold to Developer (the “Single Family Property”), dated as of July 22, 2020, as amended. The Single Family PSA provides for Developer to pay to City the full purchase price for the Single Family Property through the escrow for the closing of the sale.

C. Developer has requested that City provide short-term seller takeback financing for a portion of the purchase price of the Single Family Property, with the remainder of the purchase price to be paid by Developer through the escrow.

D. City and Developer desire to enter into this Third Amendment to provide for City to make a short-term seller takeback loan to Developer for a portion of the Single Family Property purchase price, and to make other changes to the Single Family PSA and the DDA. In order to accommodate the making of such loan, the Parties desire to revise the outside date for the close of escrow of the sale of the Single Family Property pursuant to the Single Family PSA, and the commencement of the Ground Leases pursuant to the DDA, to a date not later than December 31, 2022.

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Takeback Financing Loan. City agrees to loan to Developer the total principal amount of Twenty-Four Million Eight Hundred Eighty-Two Thousand Nine Hundred Fifty-Eight Dollars (\$24,882,958) (“City Loan”). The City Loan constitutes seller takeback financing for a portion of the purchase price of the Single Family Property, and the City shall not be required to

make any cash disbursements of the City Loan funds to or on behalf of Developer. City's obligation to make the City Loan is conditioned upon Developer's deposit of the remaining Five Million Dollar (\$5,000,000) amount of the purchase price into the escrow for the conveyance of the Single Family Property. The City Loan shall be evidenced by a Promissory Note ("City Loan Promissory Note") executed by Developer, substantially in the form attached hereto as Exhibit "A." The City Loan Promissory Note shall be secured by a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (the "City Loan Deed of Trust") executed by Developer as Trustor for the benefit of City and recorded against the Single Family Property. The initial term of the City Loan shall be six (6) months, and Developer shall have six options to extend the City Loan by three (3) months each, for a total potential term of two years. The City Loan shall bear interest at the prime rate charged by United States banks, as reported in the Wall Street Journal Money Rates Table. The initial term interest rate shall be the prime rate which is in effect as of the effective date of the Promissory Note, and the interest rate for term extensions shall be the prime rate which is in effect as of the first date of each extension of the City Loan. The entire outstanding balance of the City Loan, together with all interest accrued thereon, shall be due and payable not later than the last day of the term of the City Loan, as it may be extended. City shall obtain, at Developer's expense, a lender's policy of title insurance with a policy amount equal to the City Loan amount, which shall insure the City's first priority lien rights in the Single Family Property.

2. Deferral of Conditions Precedent to PSA Closing.

(a) The following Seller's Conditions Precedent to Closing shall be "Post-Closing PSA Requirements" that may be satisfied after the date of the Closing by Developer within the times set forth in paragraph (c) below, in lieu of being satisfied before the Closing:

(i) §5.3(a) [Approval of financing plan for the Single Family Element]

(ii) §5.3(b) [Buyer entry into Project Labor Agreement]; provided that Buyer shall submit evidence of entry into a Labor Relations Development Agreement prior to closing, under which each applicable prime contractor is required to enter into a Project Labor Agreement for the performance of covered work for the Single Family Element Project prior to the issuance of permits for each phase of construction (Site Preparation, Horizontal Improvements, and Vertical Improvements).

(iii) §5.3(c) [Buyer submission of evidence of insurance]; provided that Buyer shall, prior to the closing, submit to City evidence of the type and amount of insurance which the City reasonably determines to be necessary for the period prior to commencement of construction.

(iv) Each of the Additional Seller's Conditions Precedent to Closing as set forth in Section 1(a) of the Second Amendment to Purchase and Sale Agreement and Disposition and Development Agreement.

(b) The following Buyer's Condition Precedent to Closing shall be a "Post-Closing PSA Requirement" that may be satisfied after the date of the Closing by City within the times set forth in in paragraph (c) below, in lieu of being satisfied before the Closing:

(i) §5.2(f) [No tenants or occupants of the Property]

(c) The Post-Closing PSA Requirements in (a)(i), (a)(ii) and (a)(iii) above shall be satisfied prior to the issuance of permits for site preparation for the Single Family Element. The Post-Closing PSA Requirement in (a)(iv) above shall be satisfied by the approval of the Subsequent Map for the Single Family Element. The Post-Closing PSA Requirement in (b)(i) above shall be satisfied prior to the issuance of permits for site preparation for the Single Family Element.

3. Deferral of Conditions Precedent to Commencement of Ground Leases. The following City's Conditions Precedent to Ground Lease Commencement shall be "Post-Commencement Ground Lease Requirements" that may be satisfied after the date of the Ground Lease Commencement by Developer within the times set forth below, in lieu of being satisfied before the Ground Lease Commencement:

(i) §1.4.3.1(g), 1.4.4.1(e), 1.4.5.1(f), 1.4.6.1(f) [Notice of prevailing wage applicability]

(ii) §1.4.3.1(h), 1.4.4.1(f), 1.4.5.1(g), 1.4.6.1(g) [General Contractor entry into Project Labor Agreement]; provided that Developer shall submit evidence of entry into a Labor Relations Development Agreement prior to Ground Lease Commencement, under which each applicable prime contractor is required to enter into a Project Labor Agreement for the performance of covered work for the applicable Element Project prior to the issuance of permits for each phase of construction (Site Preparation, Horizontal Improvements, and Vertical Improvements).

(iii) 1.4.3.1(j), 1.4.4.1(g), 1.4.5.1(h), 1.4.6.1(h) [Developer submission of insurance policies]

The Post-Commencement Ground Lease Requirements in (i), (ii), and (iii) above shall be satisfied prior to the issuance of permits for site preparation for the applicable Element.

4. Schedule of Performance. The DDA Schedule of Performance (Exhibit J to the DDA) is hereby replaced with the Amended and Restated Schedule of Performance attached hereto as Exhibit J (Amended) and incorporated herein. The Single Family PSA Schedule of Performance (Exhibit D to the Single Family PSA) is hereby amended to be consistent with the Amended and Restated Schedule of Performance attached hereto.

5. No Modification or Waiver. Except as otherwise expressly set forth herein, all other terms and conditions of the DDA and Single Family PSA remain in full force and effect. Capitalized terms used without definition herein have the meaning ascribed to such terms in the DDA and Single Family PSA, as applicable.

IN WITNESS WHEREOF, the Parties have executed this Third Amendment as of the date first written above.

CITY:

CITY OF SAN LEANDRO,
a California charter city

By: _____
Frances M. Robustelli, City Manager

ATTEST:

By: _____
Kelly Clancy, Acting City Clerk

APPROVED AS TO FORM:

By: _____
Richard D. Pio Roda, City Attorney

DEVELOPER:

CAL-COAST COMPANIES LLC, INC.,
a Delaware corporation

By: _____
Edward J. Miller
Title: Authorized Signatory

EXHIBIT "A"

CITY LOAN PROMISSORY NOTE

[To Be Attached]

EXHIBIT "B"

CITY LOAN DEED OF TRUST

[To Be Attached]

EXHIBIT J (Amended)

AMENDED AND RESTATED SCHEDULE OF PERFORMANCE

[To Be Attached]