

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

THIS SECOND AMENDMENT TO PURCHASE AND SALE AGREEMENT AND DISPOSITION AND DEVELOPMENT AGREEMENT (this “Second Amendment”) is entered into as of June 21, 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 (the “DDA”). In connection with the DDA, City and Developer have entered into a Purchase and Sale Agreement 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, dated as of July 22, 2020 (the “Single Family PSA”).

B. The DDA and Single Family PSA were amended by that certain First Amendment to Purchase and Sale Agreement and Disposition and Development Agreement dated as of March 17, 2021 (the “First Amendment”). The First Amendment added an additional Buyer Condition Precedent to closing under the Single Family PSA, that the Developer has approved the “Jurisdictional Determination” of the existence of jurisdictional waters on the golf course portion of the property by the U.S. Army Corps of Engineers. The Developer has subsequently approved such Jurisdictional Determination and such Buyer Condition Precedent has been satisfied.

C. The DDA provides for City to convey fee title and leasehold interests to Developer in certain land owned by the City, as follows:

(1) The sale of land (the “Single Family Element”) to Developer pursuant to the Single Family PSA;

(2) A Ground Lease for land (“Developer Hotel Element”) to be used for the construction and operation of a hotel with publicly accessible outdoor space and a restaurant (“Developer Hotel Ground Lease”);

(3) A Ground Lease for land (“Multifamily Element”) to be used for the construction and operation of a market-rate multifamily residential development (“Multifamily Ground Lease”);

(4) A Ground Lease for land (“Developer Restaurant Element”) to be used for the construction and operation of a restaurant and banquet facility (“Developer Restaurant Ground Lease”); and

(5) A Ground Lease for land (“Market Element”) to be used for the construction and operation of a single-story free-standing building shell to house a market or other neighborhood serving retail or service facility (“Market Ground Lease”).

D. The Single Family PSA provides for certain conditions to be satisfied prior to the close of escrow for the conveyance of the Single Family Element to Developer. The DDA provides for certain conditions to be satisfied prior to the commencement of the Developer Hotel Ground Lease, Multifamily Ground Lease, Developer Restaurant Ground Lease, and Market Ground Lease (collectively, the “Ground Leases”).

E. The DDA provides that the close of escrow for the sale of the Single Family Element pursuant to the Single Family PSA and the commencement of each of the Ground Leases will all occur prior to December 15, 2022. City and Developer desire to enter into this Second Amendment to provide for certain changes to the conditions precedent to the close of escrow for the Single Family Element and the commencement of the Ground Leases, and to make corresponding changes to the DDA Schedule of Performance and Scope of Development, to facilitate the sale of the Single Family Element and the commencement of the Ground Leases prior to December 15, 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. Conditions Precedent to Closing for Single Family Element.

a. In addition to the Seller’s Conditions Precedent to Closing set forth in Section 5.3 of the PSA, the Close of Escrow and City’s obligation to sell and convey the Single Family Element property to Developer pursuant to the PSA are subject to the satisfaction of the following additional conditions or City’s written waiver (in City’s sole discretion) of such conditions on or before the Closing (the “Additional Seller’s Conditions Precedent to Closing”) :

(i) A site visibility analysis for all public/private street and private street/drive alleyway intersections within the Single Family Element shall be submitted by Developer and approved by the City’s Engineering & Transportation Department, in accordance with Condition of Approval No. 14 of the Shoreline Entitlements Conditions of Approval, as adopted by City Council Resolution No. _____ on June 21, 2022 (the “Shoreline Entitlements Conditions of Approval”).

(ii) An adaptive management plan for sea level rise mitigation for the Single Family Element shall be submitted by Developer and approved by City Engineering & Transportation Director, in accordance with Shoreline Entitlements Condition of Approval No. 15.

(iii) A waste management plan for the Single Family Element is submitted by Developer and approved by the hauler and the City, in accordance with Shoreline Entitlements Condition of Approval No. 16.

b. In the event that (i) Developer is then in full compliance with its obligations under the Single Family PSA and DDA, (ii) Developer has satisfied all of the Additional Seller's Conditions Precedent to Closing set forth in Section 1(a) hereof, and (iii) all of the other Seller's Conditions Precedent to Closing set forth in the Single Family PSA have been satisfied or waived by City, the following Seller's Conditions Precedent to Closing may be satisfied after the date of the Closing in lieu of being satisfied before the Closing:

§5.3 d [Complete application for Horizontal Improvements]

§5.3 g [Golf Course Financing]

§5.3 h [Complete Application for Golf Course Element]

§5.3 i [Public Improvements Agreements for Golf Course and Single Family Element]

§5.3 j [Construction Contract for Golf Course Element]

The foregoing Seller's Conditions Precedent to Closing described above are referred to herein as the "Post-Closing PSA Requirements." The Post-Closing PSA Requirements shall be performed by Developer within the times set forth in the Schedule of Performance, as revised by this Second Amendment.

2. Deferral of Conditions Precedent to Commencement of Ground Leases. In the event that, as of the date of the Ground Lease, (i) Developer is then in full compliance with its obligations under the DDA, and (ii) all of the other City's Ground Lease Commencement Conditions Precedent have been satisfied or waived by City, the following City's Ground Lease Commencement Conditions Precedent, as set forth in the DDA, may be satisfied after the Effective Date of the applicable Ground Lease in lieu of being satisfied before Lease Commencement:

a. Developer Hotel Ground Lease:

§1.4.3.1 a [Approval of Developer Hotel Ground Lease Subtenant]

§1.4.3.1 b [City Approval of Hotel Brand and Franchise Agreement]

§1.4.3.1 c [City Approval of Operator]

§1.4.3.1 d [Evidence of Developer Hotel Element Funding]

§1.4.3.1 e [General Contractor]

§1.4.3.1 f [Construction Contract]

§1.4.3.1 k [Bonds and Security]

§1.4.3.1 l [Permits for Horizontal Improvements]

§1.4.3.1 m [Construction to Commence]

b. Multifamily Ground Lease:

§1.4.4.1 a [Approval of Multifamily Ground Lease Subtenant]

§1.4.4.1 b [Evidence of Multifamily Element Funding]

§1.4.4.1 c [General Contractor]

§1.4.4.1 d [Construction Contract]

§1.4.4.1 h [Bonds and Security]

§1.4.4.1 i [Permits for Horizontal Improvements]

§1.4.4.1 j [Construction to Commence]

c. Developer Restaurant Ground Lease:

§1.4.5.1 a [Approval of Developer Restaurant Ground Lease Subtenant]

§1.4.5.1 b [City Approval of Developer Restaurant]

§1.4.5.1 c [Evidence of Developer Restaurant Element Funding]

§1.4.5.1 d [General Contractor]

§1.4.5.1 e [Construction Contract]

§1.4.5.1 i [Bonds and Security]

§1.4.5.1 j [Permits for Horizontal Improvements]

§1.4.5.1 l [Construction to Commence]

d. Market Ground Lease:

§1.4.6.1 a [Approval of Market Ground Lease Subtenant]

§1.4.6.1 b [Evidence of Market Element Funding]

§1.4.6.1 d [General Contractor]

§1.4.6.1 e [Construction Contract]

§1.4.6.1 i [Bonds and Security]

§1.4.6.1 j [Permits for Horizontal Improvements]

§1.4.6.1 l [Construction to Commence]

The foregoing City's Conditions Precedent to Closing described above are referred to herein as the "Post-Commencement Ground Lease Requirements." The Post-Commencement Ground Lease Requirements shall be performed by Developer within the times set forth in the Schedule of Performance, as revised by this Second Amendment. The term "Post-Commencement Ground Lease Requirements" shall be added as a defined term in Section 1.1 of

each of the Ground Leases, which definition shall specify the Post-Commencement Ground Lease Requirements applicable to such Ground Lease.

3. Existing Restaurant Building and Lease. The following Developer's Ground Lease Commencement Condition Precedent shall be satisfied by City after the Effective Date of the Developer Hotel Ground Lease in lieu of being satisfied before Commencement of the Developer Hotel Ground Lease: DDA §1.4.3.2 (b) [Property Vacant]. City shall be permitted to maintain the Existing Restaurant Lease (as defined in Section 1.4.3 of the DDA) in full force and effect prior to and after the Effective Date of the Developer Hotel Ground Lease, and shall terminate the Existing Restaurant Lease at such time as is required by Section 1.4.3 of the DDA.

a. The third sentence in the last paragraph of Section 1.4.3 of the DDA is modified to read as follows:

“Upon Developer obtaining City approval of a demolition permit for the existing El Torito restaurant building, Developer shall give City at least sixty (60) days' notice of Developer's intended date for such demolition, and City shall terminate the Existing Restaurant Lease and cause the relocation of the tenant thereof within such sixty (60) day period.”

b. The following shall be added after the first sentence in Section 1.2 of the Developer Hotel Ground Lease:

“The Permitted Exceptions shall include, without limitation, the “Existing Restaurant Lease” (as defined in Section 1.4.3 of the DDA). The Property leased to Tenant hereunder shall not include the real property subject to the Existing Restaurant Lease until such time as the term of the Existing Restaurant Lease has ended in accordance with Section 1.4.3 of the DDA.”

4. Developer Improvements on the Single Family Element Prior to Performance of Post-Closing PSA Requirements. Developer shall not commence the construction of any of the Site Preparation, Horizontal Improvements or Vertical Improvements on the Single Family Element until all of the Post-Closing PSA Requirements have been completed. Until the completion of construction of the Vertical Improvements on the Single Family Element, Developer shall secure the Single Family Element in compliance with all applicable City and other public agency requirements, and take necessary measures to ensure that the Single Family Element is clean, clear and screened, including the placement of appropriate fencing and informational project signage. Developer shall ensure that the Single Family Element is secure from trespassers and meets the foregoing property maintenance standards on an ongoing basis, including the removal of nuisance vegetation and providing security personnel as may be required. City shall not be obligated to issue any building permits for the Site Preparation, Horizontal Improvements and Vertical Improvements on the Single Family Element until all of the Post-Closing PSA Requirements have been completed.

5. City Use of Golf Course Prior to Commencement of Single Family Element Site Preparation. Upon the Closing for City's conveyance of the Single Family Element to

Developer, City and Developer shall enter into an Interim License Agreement which permits City to continue to use that portion of the City's Marina Golf Course located on the Single Family Element for the operation of the golf course until Developer is ready to commence the Single Family Element Site Preparation. Such Interim License Agreement shall be substantially in the form attached hereto as Exhibit "S" and incorporated herein.

6. Rent Commencement Date. Section 3.1.1.1 of each of the Ground Leases shall be revised to provide that the "Rent Commencement Date" shall be the earliest to occur of (a) ninety (90) days after the TCO Date, (b) eighteen (18) to forty-eight (48) months after the approval of the first Building Permit for Vertical Improvements for the applicable Element, as further defined in Schedule of Performance, or (c) the outside date therefor set forth in the Schedule of Performance (i.e., sixty (60) months after the Effective Date for the Developer Hotel Ground Lease and Multifamily Ground Lease, and seventy-two (72) months after the Effective Date for the Developer Restaurant Ground Lease and Market Ground Lease).

7. Developer Improvements Prior to Performance of Post-Commencement Ground Lease Requirements. The following language shall be added as a new Section 6.8 to each of the Ground Leases:

"6.8 Improvements Prior to Performance of Post-Commencement Ground Lease Requirements. Tenant may conduct Site Preparation and Horizontal Improvement activities on the Property prior to completion of performance of the Post-Commencement Ground Lease Requirements, except that Post-Commencement Ground Lease Requirement (*insert paragraph number: 1.4.3.1(k) for Developer Hotel Ground Lease, 1.4.4.1(h) for Multifamily Ground Lease, 1.4.5.1(i) for Developer Restaurant Ground Lease, and 1.4.6.1(i) for Market Ground Lease*) [Bonds and Security] shall have been completed, and all applicable permits for such Site Work and Horizontal Improvements shall have been issued by the City, prior to commencement of the applicable Site Preparation and Horizontal Improvement activities. Tenant shall not commence the construction of any of the Vertical Improvements on the Property until all of the Post-Commencement Ground Lease Requirements have been completed. City shall not be obligated to issue any building permits for the Vertical Improvements on the Property until all of the Post-Commencement Ground Lease Requirements have been completed. Until the commencement of construction of the Vertical Improvements on the Property, Tenant shall secure the Property in compliance with all applicable City and other public agency requirements, and take necessary measures to ensure that the Property is clean, clear and screened, including the placement of appropriate fencing and informational project signage. Tenant shall ensure that the Property is secure from trespassers and meets the foregoing property maintenance standards on an ongoing basis, including the removal of nuisance vegetation and providing security personnel as may be required."

8. Tenant's Failure to Timely Perform Post-Commencement Ground Lease Requirements Constitutes Default. The following language shall be added after the first sentence of Section 16.1.2 of each of the Ground Leases:

“For purposes of the previous sentence, without limitation, Tenant’s material failure to perform any of the Post-Commencement Ground Lease Requirements within the time set forth therefor in the Schedule of Performance shall constitute a failure to perform a provision of this Lease.”

9. Scope of Development. The DDA Scope of Development (Exhibit I to the DDA) is hereby replaced with the Amended and Restated Scope of Development which is attached hereto as Exhibit I (Amended) and incorporated herein. The Single Family PSA Scope of Development (Exhibit C to the Single Family PSA) is hereby amended to be consistent with the Amended and Restated Scope of Development attached hereto.

10. 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.

11. Surplus Land Act. City and Developer have determined that the conveyance of land to Developer under the DDA, Single Family PSA and Ground Leases is not subject to the current requirements of the Surplus Land Act, Government Code Section 54220, *et seq.*, pursuant to the exception set forth in Government Code Section 54234(a)(1), because City and Developer entered into an Exclusive Negotiating Rights Agreement dated as of April 12, 2012, as amended. The DDA, Single Family PSA, and Ground Leases were negotiated, prepared and approved through the negotiations of the parties pursuant to the Exclusive Negotiating Rights Agreement, and the disposition of the land from City to Developer will occur not later than December 31, 2022. City shall make written findings that the conveyance of land to Developer under the DDA, Single Family PSA, and Ground Leases prior to December 31, 2022 is exempt from the current requirements of the Surplus Land Act, and shall provide a copy of City’s findings to the California Department of Housing and Community Development (“HCD”) promptly after the date of approval of this Second Amendment. In the event that HCD sends City a Notice of Violation of the Surplus Land Act, City shall timely respond to the Notice of Violation, and shall use good faith efforts to vigorously defend the City’s Surplus Land Act findings and the right of the City to convey the land to Developer under the terms of the DDA, Single Family PSA, and Ground Leases. City and Developer shall work cooperatively with each other in any such response to a Notice of Violation from HCD. City shall not be obligated to convey any of such land to Developer until and unless the Notice of Violation has been withdrawn and/or satisfactorily resolved. In the event that the Closing of the Single Family Element or the Commencement of any of the Ground Leases does not occur prior to December 31, 2022, for whatever reason, City and Developer shall take such actions as may be required to comply with the Surplus Land Act, which may include the filing and prosecution of any appeals or challenges necessary to allow such conveyances to occur, the termination of the PSA, the termination of the Parties’ rights under the DDA with respect to those Elements which have not been sold or ground leased to Developer by such date, and/or City issuance of a notice of availability of real property pursuant to the current requirements of the Surplus Land Act.

12. Severability. If any term of this Second Amendment is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the City or Developer are materially altered or abridged by such invalidation, voiding or unenforceability.

13. 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, Single Family PSA and Ground Leases, as applicable.

IN WITNESS WHEREOF, the Parties have executed this Second 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: _____
Leticia I. Miguel, City Clerk

APPROVED AS TO FORM:

By: _____
Richard M. Pio Roda, City Attorney

DEVELOPER:

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

By: _____
Edward J. Miller
Title: Authorized Signatory

EXHIBIT I

(Revised June 2022)

AMENDED SCOPE OF DEVELOPMENT

For the purposes of this Agreement, the following definitions shall apply:

Site Preparation – means all site preparation required for development of each of the Developer Project Elements, as well as the Park Promenades and boat launch. Site Preparation shall include tree removal, demolition of existing buildings and hardscape improvements, including but not limited to asphalt pavement, concrete sidewalk, curb and gutter, and other improvements, floodplain and sea level rise mitigation, surcharging, geotechnical mitigation, and rough grading in accordance with the Scope of Development, this Schedule of Performance, and Shoreline Responsibility Map (Exhibit R) of the DDA.

Horizontal Improvements – means improvements to the underlying land and infrastructure before the Vertical Improvements can be realized. This includes installation of onsite and offsite utilities and upgrades to existing utility facilities as required, including, but not limited to sanitary sewer, storm drain, water, natural gas, electricity and fiber optic internet service.

Vertical Improvements – means construction and/or installation of buildings, structures (including foundations), landscaping, lighting, streets, sidewalks, curb and gutter, parking areas, stormwater bioretention treatment areas, and other improvements to be constructed or installed on or in connection with the development of the Project.

1. Single Family Housing Element

- a) 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.
- b) 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.
- c) All single-family homes and townhomes shall meet or exceed CA Title 24 requirements and be EnergyStar Rated.
- d) 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.
- e) 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) Redesign and reconstruct the Marina Course at the Monarch Bay Golf Club as a nine-hole par 3 parkland style golf course.
- b) The portion of the Golf Course Parcel which is not located on the Single Family Element Property 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, and all 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) Developer 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.

3. Developer Hotel Element

- a) Developer shall design and construct on the Developer Hotel Parcel a First Class Hotel that has between 200 and 220 rooms.

- b) The Developer Hotel Element may consist of two distinct hotels which share common facilities such as a lobby.
- c) The Hotel Parcel shall include publicly accessible outdoor space, parking, lighting, landscaping, ancillary food and beverage amenities and all site utilities, all in conformance with the City Building and Zoning codes, and pursuant to plans to be approved by the City.
- d) Parking for the Developer Hotel Element shall be provided in accordance with all applicable requirements of the San Leandro Zoning Code or as otherwise approved by the City.
- e) Developer agrees that an easement shall be recorded on the Developer Hotel Parcel allowing the public to use certain designated parking spaces located adjacent to the Park Parcel, with rights of ingress and egress thereto. The days and hours of public use of such designated parking spaces shall be as determined by the mutual agreement of City and Developer.
- f) Developer further agrees that an easement shall be recorded on the Developer Hotel Parcel allowing users of the Developer Restaurant Element (parcel J) and the Market Element (parcel K) to utilize parking on the Developer Hotel Parcel and to provide for joint access between the parcels.
- g) The Developer Hotel Element shall include a full-service restaurant of approximately 5,000 square-foot, which the Developer or Developer Hotel Ground Lease Subtenant may sublease to an independent third-party operator, subject to the prior approval of the City and the requirements of the Developer Hotel Ground Lease.

4. Multifamily Element

- a) Developer shall design and construct a multifamily residential development with approximately two hundred eighty-five (285) rental units (“Multifamily Element”).
- b) The Multifamily Element shall include parking, landscaping, lighting and all onsite and offsite utilities, including but not limited to fiber optic internet service to all units, all in conformance with the City Building and Zoning codes, and pursuant to plans to be approved by the City.
- c) Parking for the Multifamily Element shall be provided in accordance with all applicable requirements of the San Leandro Zoning Code or as otherwise approved by the City.
- d) The unit mix and any amenities are subject to the Project Approvals, as defined in Section 2.1 of the Agreement.
- e) The Multifamily Element shall meet the objectives of the City’s Inclusionary Housing Ordinance (San Leandro Zoning Code section 6-3000 *et seq.*) by paying a fee in-lieu of providing affordable rental units (the “Affordable Rental Housing In-Lieu Fee”). If Developer elects not to pay the Affordable Rental Housing In-Lieu Fee, the size and income distribution of the affordable rental units shall be subject to the requirements of the Inclusionary Housing Ordinance.

5. Developer Restaurant Element

- a) Developer shall design and construct (or cause to be designed and constructed) a two-story building shell in which an approximately 7,500 square foot full-service restaurant shall be located on the first floor and an approximately 7,500 square foot banquet facility shall be located on the second floor (“Developer Restaurant Element”).
- b) Developer shall provide for the Developer Restaurant Ground Lease Subtenant or the operator of the Restaurant to construct the tenant improvements for the Restaurant, or Developer shall construct the tenant improvements itself.
- c) The Developer Restaurant Element shall include parking, lighting, landscaping and all site utilities, all in conformance with City Building and Zoning codes and pursuant to plans to be approved by the City. Parking for the Developer Restaurant Element shall be provided in accordance with all applicable requirements of the San Leandro Zoning Code, or as otherwise approved by the City.

6. Market Element

- a) Developer shall construct an approximately 3,000 square foot single-story free-standing building shell (the “Market”).
- b) The Market Element shall include lighting, landscaping and all site utilities, all in conformance with City Building and Zoning codes and pursuant to plans to be approved by the City.
- c) A food market, bait shop, and/or other retail or service business shall be located in the Market, with the specific use to be approved by the City in its reasonable discretion.
- d) The Market building shall share parking with the Developer Hotel Element and be located at the southeast corner of the Developer Hotel Element parking lot at Monarch Bay Drive and Mulford Point Drive.

7. Park Element

- a) City shall be responsible for the design and construction of Monarch Bay Park, to be located on the peninsula portion of the Property, as described and depicted in Exhibit H (the “Park Parcel”).
- b) The Park Element shall consist of pedestrian paths, plazas, landscaping, irrigation, restrooms, boat launch, sitting areas, parking, public art and sections of the San Francisco Bay Trail, all in conformance with City Building and Zoning codes and pursuant to plans to be approved by the City.
- c) The trail design shall conform to the San Francisco Bay Trail Design Guidelines and Toolkit, dated June 2016, as it may be amended.
- d) The City’s obligation for the Park Element is expressly made contingent upon the close of escrow for the Single Family Parcel.
- e) Such design work shall be completed by an architect and/or consultant selected by the City in its sole discretion, and may be performed as part of a design-build

contract as determined by the City in its sole discretion.

- f) The final design for the Park Element shall be approved by the City in its sole discretion and approved by the San Francisco Bay Conservation and Development Commission (“BCDC”).

8. **Park Promenades.**

- a) Developer shall be responsible for the construction of the portions of the Park Element located along the San Francisco Bay shoreline, adjacent to the Developer Hotel Parcel (“**Hotel Promenade**”) and on the Multifamily Parcel (“**Multifamily Promenade**”) (collectively referred to herein as the “**Park Promenades**”), in accordance with Sections 1.4.3 and 1.4.4 of the DDA, and as shown on the Shoreline Responsibility Map of the DDA (Exhibit R to the DDA), except as modified herein.
- b) Such development work shall include all necessary improvements, including Site Preparation as described herein and all underground infrastructure and surface improvements necessary for the construction of the Park Promenades.
- c) Surface improvements shall include the construction of a multiuse trail within such area as required and approved by BCDC, including the integration of an Emergency Vehicle Access within the construction of the Bay Trail adjacent to the Developer Hotel Element as defined by, and/or modified by, Fire Department requirements and approvals.
- d) Surface improvements shall also include, but are not limited to, all walkways, viewing stations, overlooks, hardscape (concrete, asphalt, decomposed granite), planters, planter walls, benches and other FF&E, structures, kiosks, restrooms, picnic areas, water quality detention areas, trees, shrubs, irrigation, ground cover, and 90 days’ plant establishment and maintenance.
- e) Developer shall design all Multifamily and Developer Hotel Elements in such a way as to maintain public access to the Park Promenades as may be required by BCDC.
- (f) City and Developer shall mutually agree upon a budget for such improvements.

9. **Harbor Element**

- a) The City shall perform demolition at the San Leandro Marina Harbor adjacent to the Property in order to make a clean, aesthetically appropriate and environmentally sound environment, in conformance with plans approved by the City, BCDC and other applicable agencies.
- b) The City’s obligation to cause the demolition within the Harbor is expressly made contingent upon the close of escrow for the conveyance of the Single Family Parcel from City to Developer pursuant to the Single Family PSA between City and Developer.

- c) Developer shall be responsible for relocating the Wes McClure public boat launch located on the outside of the Harbor from its current location to Pescador Point in accordance with Section 1.4.9 of the DDA, as further described herein. The cost of relocating the boat launch to be funded by Developer shall include all work as required to remove the existing boat launch and restore the remaining area, install the boat launch at the new location and prepare the area for boat service. Developer shall be eligible for credit against the applicable Park Facilities Development Impact Fee, for applicable costs for restoration of the area from which the boat launch is being removed in accordance with Section 3.25 of the DA.
- d) The removal of the existing boat launch and restoration of the remaining area shall include demolition (including removal of rip rap, docks, concrete, utilities, and landscaping), dredging as needed, grading (cut and/or fill), installation of rip rap, relocation of utilities, Storm Water Pollution Protection Plan (SWPPP), sea level rise mitigation, rough and finish grading (cut and/or fill), relocation of utilities as required, landscaping, and any other work required to replace the current boat launch area with a levee in line with existing infrastructure and in accordance with plans as approved by all agencies having jurisdiction and in coordination with the City.
- e) The installation of the boat launch at the new location at Pescador Point and preparation of the area for boat service shall include demolition as may be required for a new boat launch, dredging, SWPPP, sea level rise mitigation, rough and finish grading, underground utilities, mechanical, electrical, plumbing (MEPs), fire protection, installation of rip rap, sea walls, piles, concrete ramp, gangways and docks, non-motorized water craft launching docks, and any other appurtenances as may be required for a fully functioning boat launch. Existing boat launch materials may be relocated to the new boat launch location, subject to suitability and approval of BCDC, the City, and any other applicable agencies. Such work shall comply with the approved plans and scope as approved by BCDC, the City, and any other applicable agencies.

10. Library Element.

- a) The City shall demolish and reconstruct the Mulford-Marina Branch Library.

11. Monarch Bay Drive Element

- a) Developer shall be responsible for design, expansion, and reconstruction of Monarch Bay Drive in accordance with the requirements of Section 1.4.10 of the DDA, this DDA Scope of Development, the DDA Schedule of Performance and Shoreline Responsibility Map of the DDA. Construction of Monarch Bay Drive shall include, but not be limited to, Site Preparation as described in the Infrastructure Element, construction of a two lane road with appropriate left turn

lanes, a class I bicycle facility, parking, sidewalks, new curb-to-curb pavement, striping, new signage, median island and landscaping, storm drains and catch basins, storm water treatment, ADA wheelchair ramps, irrigation, new and/or modified utilities, undergrounding of utilities (including utility stub outs for future phases and Park Element), lighting, pedestrian and transit amenities, and construction of a traffic circle at Monarch Bay Drive and Mulford Point Drive, and sea level rise mitigation to ensure the City's critical infrastructure is protected. The Monarch Bay Drive Element shall include work on Marina Boulevard up to and including the intersection at Fairway Drive.

- b) Access to existing properties and their respective parking lots shall be maintained at all times. Developer shall be responsible for any repair and renovation of existing parking lots, driveways, entrances, striping, patching, curb and gutter, landscaping and irrigation that may be required due to impacts related to the Project to provide a code compliant and usable parking lot for existing properties.

12. Infrastructure Element.

- a) Developer shall be responsible for all Site Preparation for the Developer Project Elements, Park Promenades and boat launch, as well as for Site Preparation, design and reconstruction of portions of Mulford Point and Pescador Point Drives and the Park Element Parking Lot in accordance with the requirements of Section 1.4.11 of the DDA. Hotel Promenade and Multifamily Promenade infrastructure shall include all required soil import, surcharging, rough grading, extension of rip rap, and any other work required for establishing proper grades and mitigating sea level rise in accordance with and approvals by all agencies having jurisdiction.

13. Site Preparation

- a) The Developer shall be responsible, at its sole expense, for the installation and/or coordination of all site preparation required for the development of the following Project Elements: Single Family Housing, Golf Course, Developer Hotel, Multifamily, Developer Restaurant, and Market, as well as the Park Promenades and boat launch. Site Preparation shall include demolition of existing hardscape improvements, including but not limited to asphalt pavement, concrete sidewalk, curb, gutter, buildings, and other improvements, tree removal, flood plain and sea level rise mitigation, including provisions for sea level rise protection of City's critical infrastructure, surcharging, geotechnical mitigation, and rough grading in accordance with this DDA Scope of Development, DDA Schedule of Performance, and Shoreline Responsibility Map (Exhibit R) of the DDA.
- b) Upon Final Completion of Site Preparation, Developer shall obtain certification of a finished building pad. For Developer Project Elements in which Developer has completed the Site Preparation, but has not Commenced Construction of Vertical Improvements, Developer shall secure the site in compliance with all applicable City and other public agency requirements, and take necessary measures to ensure that the site is clean, clear and screened, including the placement of appropriate fencing and informational project signage. Developer shall ensure that the site is

secure from trespassers and meets the foregoing property maintenance standards on an ongoing basis, including the removal of nuisance vegetation and providing security personnel as may be required.

14. Eastern Portions of Mulford Point and Pescador Point Drives.

- a) Developer shall be responsible for design and reconstruction of the portions of Mulford Point and Pescador Point Drives, which are located south of the Developer Hotel Element and to the north of the Multifamily Element, in accordance with this DDA Scope of Development, DDA Schedule of Performance, and the Shoreline Responsibility Map (Exhibit R) to the DDA. Such improvements shall include, but are not limited to, sidewalks, new curb-to-curb pavement, striping, new signage, landscaping, irrigation, new and/or modified utilities, undergrounding of overhead utilities, lighting, stormwater treatment, and pedestrian amenities, subject to final review and approval by the City Engineering and Transportation Director. Developer shall maintain access to existing Mulford Point Drive until the new road is constructed and operational. Developer shall be responsible for any restoration of existing parking lots, driveways, entrances, striping, patching, curb and gutter, landscaping and irrigation that may be required due to impacts related to the Project to provide a code compliant and usable parking lot for existing properties that are not a part of the Project.

15. Park Element Parking Lot and Western Portion of Mulford Point Drive.

- a) Developer shall be responsible for design and construction of portions of Mulford Point Drive located to the west of the Developer Hotel Element and the shared Park Element Parking Lot located to the west of the Developer Hotel Element and the Developer Restaurant Element, in accordance with Section 1.4.11 of the DDA, this DDA Scope of Development, the DDA Schedule of Performance, and the Shoreline Responsibility Map (Exhibit R) of the DDA. City shall provide conceptual drawings for the Park Element Parking Lot. Developer shall be responsible for the preparation of design development drawings and construction drawings, obtaining City and other governmental permits and approvals, and construction of the Park Element Parking Lot. Work shall include, but is not limited to: demolition, Site Preparation, including surcharging, sea level rise mitigation, rough and finish grading (cut/fill), underground utilities, curb cuts, paving sections, landscaping and irrigation, trees, water detention areas, SWPPP, concrete, curb and gutter, asphalt, decomposed granite, site lighting, site water, clarifiers, signage, striping, pay stations, and any other elements as may be required for the development of a fully functioning public parking lot. This work shall also include all necessary connections to Mulford Point Drive between the Park Element Parking Lot and Monarch Bay Drive.

16. Property Level

- a) In accordance with the requirements of Section 1.4.17 of the DDA, and Mitigation Measure HYDRO-7 of the MMRP, the Developer Project Elements must meet City

engineering requirements related to flood plain and sea level rise, with such requirements and the site engineering plans subject to approval of the City Engineering and Transportation Director. In accordance with Mitigation Measure HYDRO-7, the Project shall be designed to be resilient to a mid-century sea level rise projection. If the Project would remain in place longer than mid-century, an adaptive management plan shall be developed to address the long-term impacts that would arise. The results of the risk assessment shall be incorporated into the site design. Such plans shall include provisions related to surcharge and raising the level of the Property in accordance with technical recommendations and approved plans.

- b) An acceptable method of fulfilling the adaptive management plan required by Mitigation Measure HYDRO-7 is to design structures to be resilient to the 2070 sea level rise projection and establish a funding mechanism to address capital improvements necessary for future adaptation to sea level rise. As such, Developer has agreed to participate in Community Facilities District financing which will address future sea level rise improvements. Developer Project Element structures on the Property shall be designed to be resilient to a 2070 sea level rise projection of 3.5 feet above Base Flood Elevation as defined by the Medium-High Risk Aversion scenario in the 2018 State of California Sea Level Guidance. The minimum finish floor elevation to meet the base flood elevation plus sea level rise to 2070 is 13.5 NAVD88, unless alternate approved means are approved by the City Engineering and Transportation Director. Future elevation plans shall be submitted in NAVD88.

17. Soils Exportation

- a) Upon the approval of City, Developer shall deposit its available excess soil on the portion of the Park Parcel that is the responsibility of the City in accordance with City plans and as described and depicted in the Shoreline Responsibility Map (Exhibit R) of the DDA, provided that City shall have the right to disapprove the importation of excess soil to the Park Parcel which the City determines is not necessary. Developer shall not be obligated to import additional soil in order to make such deposits on the portion of the Park Parcel that is the responsibility of the City. Developer's deposit of soil shall be in accordance with the requirements of Section 2.7 of the DDA and this DDA Scope of Development, including the parties' execution of a right of entry agreement which protects City from defects in the condition of the deposited soil and provides for the testing of soil to confirm that there are no contaminants or similar unsuitable constituents and the stabilization of the soil deposited on the Park Parcel. Deposit of soil shall include proper SWPPP, access lanes, be in accordance with geotechnical recommendations for use for future grading operations, and include all necessary chain of custody documentation related to the nature of the material. City and Developer shall use good faith efforts to coordinate and make compatible the construction schedules for the City's construction of the Park Element with Developer's deposit of excess soil on the Park Element.

18. Public Art.

- a) Developer shall place public art at appropriate locations on the Property. The actual cost of such public art shall be not less than one percent (1%) of the total permit valuation for the Project, in a minimum total cumulative amount of Two Million Dollars (\$2,000,000). Eligible expenses for Public Art include: art and artist selection process, site preparation, design, acquisition and/or construction of the art works. The location of the Public Art on the Property shall be mutually agreed to by the City and Developer. In lieu of funding on-site public art, Developer may fulfill all or a portion of its requirements under this Section by making a payment calculated as one percent (1%) of the total construction budget for the Project, payable for each Developer Project Element prior to issuance of the first building permit for Vertical Improvements for such Developer Project Element, to be deposited by City into a public art fund managed by the City (the “**Public Art Fund**”). The Public Art Fund shall be used by City exclusively for eligible expenses for art on the Property in conformance with Section 1.4.13 of the DDA.

19. Sustainability.

- a) Developer shall perform the mitigation measures adopted by the City with respect to the impacts of the Project, including those related to greenhouse gas emissions and traffic, and shall install the facilities and improvements necessary to perform such mitigation measures, as set forth in the mitigation measures in the FEIR, the MMRP adopted by the City, and any amendments thereto and subsequent requirements of CEQA, all in accordance with Section 1.4.16 of the DDA. In addition to the required mitigation measures and Building Code requirements, Developer shall obtain a Leadership in Energy and Environmental Design (LEED) Certified rating for Building Design and Construction from the U.S. Green Building Council (USGBC) for the Developer Hotel and Multifamily Elements. Outdoor landscaping on the Single Family Element shall also utilize tertiary treated recycled water (grey water) from the San Leandro Water Pollution Control Plant, subject to availability and final City approval. Developer shall install the facilities and improvements necessary to utilize such recycled water. The scope of and responsibility for such facilities and improvements shall be set forth in an approved Public Improvement Agreement.

20. Mitigation Monitoring and Reporting Program (MMRP).

- a) Developer shall be solely responsible for conducting and paying for all mitigation and reporting measures applicable to the Developer Project Elements that are identified in the MMRP in accordance with Section 1.8 of the DDA.

EXHIBIT J-2

REVISED DDA SCHEDULE OF PERFORMANCE (June 2022 Revision)

For purposes of this Revised DDA Schedule of Performance, the following definitions shall apply. Many terms used herein but not separately defined herein shall have the meanings of those terms as set forth in the DDA.

- **CD Director** – Community Development Director of the City of San Leandro
- **Certificate of Occupancy** – means a final certificate of occupancy issued by the City. A Certificate of Occupancy (C of O) is a document issued by Building & Safety which certifies that a commercial space or newly constructed residential building, has been inspected for compliance with the California Building Standards Code and local ordinances which govern construction and occupancy.
- **Commence Construction** – means building or other permit has been issued for the applicable work of improvement and substantial work under the permit has begun.
- **Developer Project Elements** – means the Single Family Element, Golf Course Element, Developer Hotel Element, Multifamily Element, Developer Restaurant Element, Market Element, Monarch Bay Drive Element, and Infrastructure Element (as those terms are defined in the DDA).
- **Developer Western Elements** – means the Developer Project Elements to be located to the west of Monarch Bay Drive, including Developer Hotel Element, Multifamily Element, Developer Restaurant Element, Market Element, and Park Promenades.
- **ET Director** – Director of Engineering and Transportation of the City of San Leandro
- **Horizontal Improvements** – means improvements to the underlying land and infrastructure before the Vertical Improvements can be realized. This includes installation of onsite and offsite utilities and upgrades to existing utility facilities as required, including, but not limited to sanitary sewer, storm drain, water, natural gas, electricity and fiber optic internet service.
- **Permit Issuance** – means the time in which the city and/or other applicable jurisdiction has approved and issued the Building, Grading or other required permit for the Developer, including payment of all fees and compliance with all applicable requirements and conditions, and the Developer is approved to begin work. If multiple permits are to be issued for phases of work within the same stage of construction (Site Preparation, Horizontal Improvements or Vertical Improvements). Permit Issuance shall mean the date on which the first permit is issued to allow for commencement of such stage.
- **Post Closing PSA Requirements** – means Seller’s Conditions Precedent to Closing in the Single Family Purchase and Sale Agreement (‘PSA’), which may be satisfied after the date of the Closing in lieu of being satisfied before the Closing, within the times set forth in the Schedule of Performance, as described in the Second Amendment to the Purchase and Sale Agreement and Disposition and Development Agreement between the City and the Developer.

REVISED DDA SCHEDULE OF PERFORMANCE
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- **Post Commencement Ground Lease Requirements** – means City’s Ground Lease Commencement Conditions Precedent, as set forth in the DDA, which may be satisfied after the Effective Date of the applicable Ground Lease in lieu of being satisfied before Ground Lease Commencement, within the times set forth in the Schedule of Performance, as described in the Second Amendment to the Purchase and Sale Agreement and Disposition and Development Agreement between the City and the Developer.
- **Site Preparation** – means all site preparation required for development of each of the Developer Project Elements, as well as the Park Promenades and boat launch. Site Preparation shall include tree removal, demolition of existing buildings and hardscape improvements, including but not limited to asphalt pavement, concrete sidewalk, curb and gutter, and other improvements, floodplain and sea level rise mitigation, surcharging, geotechnical mitigation, and rough grading in accordance with the Scope of Development, this Schedule of Performance, and Shoreline Responsibility Map (Exhibit R) of the DDA.
- **Substantial Completion** – means the stage in the progress of the work where the work or designated portion is sufficiently complete in accordance with the Contract Documents so that the Developer can occupy or utilize the work for its intended use. The City or its designated representative shall determine in its sole discretion when Substantial Completion is achieved and will issue a list of remaining items of work (Punch List) in the issuance of the Notice of Substantial Completion that must be completed and accepted before Final Completion.
- **Vertical Improvements** – means construction and/or installation of buildings, structures (including foundations), landscaping, lighting, streets, sidewalks, curb and gutter, parking areas, stormwater bioretention treatment areas, and other improvements to be constructed or installed on or in connection with the development of the Project.

REVISED DDA SCHEDULE OF PERFORMANCE
(June 2022 Revision)

Task	Time for Performance
1. Entire Project	
Agreement Date	Executed July 22, 2020
Developer submits Initial Application for Governmental Entitlements to City	Completed by May 31, 2021
City holds public hearing on Complete Application for Governmental Entitlements	By July 31, 2022
Development Agreement for the Project is approved by both Parties	By August 31, 2022
2. Pre Closing Requirements	
Site visibility analysis for all public/private streets and private street/drive alleyway intersection within the Single Family Element is approved by the ET Director.	Prior to Close of Sale of Single Family Parcel
Plan for sea level rise mitigation for the Single Family Element is approved by ET Director	Prior to Close of Sale of Single Family Parcel
Waste management plan for the Single Family Element is approved by the hauler and the City	Prior to Close of Sale of Single Family Parcel
3. Site Preparation	
Developer Hotel, Developer Restaurant, Market, and Multifamily Elements, and Park Promenade ('Developer Western Elements')	
Developer and City enter Public Improvement Agreement for Developer Western Elements and other Public Improvements	Prior to Permit Issuance for Site Preparation for Single Family Element or approval of final map for any future subdivision for Single Family Element
Developer completes Post-Commencement Ground Lease Requirements for General Contractor, Construction Contract, and Bonds and Security	Prior to issuance of Permits for Site Preparation for each Developer Western Elements

REVISED DDA SCHEDULE OF PERFORMANCE
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Developer obtains all necessary City and other public agency permits for Site Preparation for Developer Western Elements and commences construction	Prior to the first to occur: 1) Permit Issuance for Vertical Improvements for any one of Developer Project Elements, including the first single family or townhome, or 2) 24 months following Effective Date of Ground Leases for Developer Hotel, Developer Restaurant, Market and Multifamily Elements
Developer substantially completes Site Preparation for Developer Western Elements	Within 24 months following commencement of construction of Site Preparation for Developer Western Elements
4. Monarch Bay Drive Element	
Developer commences construction of Monarch Bay Drive Element	Prior to the first to occur: 1) Permit Issuance for Vertical Improvements for any one of Developer Project elements, including the first single family or townhome or 2) as otherwise approved in the applicable Public Improvement Agreement
Developer substantially completes Monarch Bay Drive Element	Prior to the first to occur: 1) Issuance of a Certificate of Occupancy for any one of Developer's Project Elements, including the first single family or townhome or 2) 24 months following the commencement of construction of the Monarch Bay Drive Element, with final timing as to be approved by City in the applicable Public Improvement Agreement
5. Infrastructure Element	
In accordance with the Development Agreement, City and Developer shall use good faith efforts to coordinate and make compatible the construction schedules for the City's construction of the Park Element with Developer's construction of Project Elements adjacent to the Park Element.	
Developer substantially completes Park Element Parking Lot and improvements to Mulford Point Drive	Prior to the first to occur: 1) Issuance of a Certificate of Occupancy for the Developer Hotel Element or Developer Restaurant

REVISED DDA SCHEDULE OF PERFORMANCE
(June 2022 Revision)

	Element or 2) Substantial Completion of the Park Element
Developer substantially completes improvements to Pescador Point Drive	Prior to the first to occur: 1) Issuance of a Certificate of Occupancy for the Multifamily Element or 2) Substantial Completion of the Park Element
Developer substantially completes Hotel Promenade	Prior to the first to occur: 1) Issuance of Certificate of Occupancy for the Developer Hotel or 2) Issuance of Certificate of Occupancy for the Developer Restaurant
Developer substantially completes the Multifamily Promenade	Prior to issuance of Certificate of Occupancy for the Multifamily Element
Developer substantially completes boat launch relocation	Prior to Substantial Completion of the Park Element
6. Single Family Element	
Effective Date	Executed July 22, 2020
Opening of Escrow	Completed August 13, 2020
Initial Deposit due	Completed August 21, 2020
Second Deposit due	Completed April 1, 2021
Escrow Holder delivers a Preliminary Title Report for the Property	Delivered August 24, 2020
Due Diligence Contingency Date	March 31, 2021
Developer submits Initial Application for Governmental Entitlements to City	Completed June 1, 2021
City holds public hearing on Application for Governmental Entitlements	By July 31, 2022
Developer and City enter into Public Improvement Agreement for Single Family Element, and Developer submits required security to City	Prior to the first to occur of: 1) Approval of final map for any future residential subdivision for the Single Family Element or 2) Permit Issuance of Grading Permits

REVISED DDA SCHEDULE OF PERFORMANCE
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	for Site Preparation for Single Family Element
Close of Escrow for Single Family parcel occurs	By December 15, 2022
Developer Completion of all of the Post-Closing PSA Requirements	Prior to the first to occur of 1) Permit Issuance for Site Preparation for Single Family Element, or 2) 24 months after Close of Escrow for the Single Family Element.
Developer commences construction of Site Preparation for Single-Family Element	Within the first to occur of: 1) 90 days after Permit Issuance for Site Preparation for the Single Family Element or 2) 24 months following Close of Escrow for the Single Family Element
Developer substantially completes Horizontal Improvements for Single Family Element	Within 36 months of Commencement of Construction of Site Preparation for the Single Family Element
7. Golf Course Element	
Submit Golf Course Implementation Plan to City	November 19, 2021 (completed)
Developer and City enter Public Improvement Agreement for Golf Course Element, and Developer submits required security to City	Prior to Permit Issuance for Site Preparation for Single Family Element
Developer commences construction of Golf Course Element	Within 90 days after Permit Issuance for Site Preparation for Golf Course Element
Developer substantially completes construction of Golf Course Element and 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.	Within 36 months of Commencement of Construction of Golf Course Element and prior to sale of 133 rd residential unit within the Single-Family Element
8. Developer Hotel Element	
All conditions precedent to commencement of Developer Hotel Ground Lease (except for the Post-Commencement Conditions) are satisfied or waived by the parties.	By December 15, 2022

REVISED DDA SCHEDULE OF PERFORMANCE
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Effective Date - Execution and commencement of Developer Hotel Ground Lease occurs.	By December 15, 2022
Developer obtains Permit Issuance for Horizontal Improvements for the Developer Hotel Element	Within 48 months following Effective Date of Developer Hotel Ground Lease
Developer commences construction of Horizontal Improvements for the Developer Hotel Element	Within the first to occur of 1) 90 days after Permit Issuance for Horizontal Improvements, or 2) 51 months following Effective Date of Developer Hotel Ground Lease
Developer substantially completes Horizontal Improvements for Developer Hotel Element	Within 24 months of commencement of construction of Horizontal Improvements for Developer Hotel
Developer completion all of the remaining Post-Commencement Ground Lease Requirements for Hotel Element	Prior to the first to occur of 1) Permit Issuance for Vertical Improvements for Developer Hotel Element, or 2) 75 months following Effective Date of Developer Hotel Lease
Developer commences construction of Vertical Improvements for Developer Hotel Element	Within the first to occur of 1) 90 days of Permit Issuance for Vertical Improvements for Developer Hotel, or 2) 78 months following Effective Date of Developer Hotel Ground Lease
Developer completion of Construction of Vertical Improvements and receives Temporary Certificate of Occupancy (TCO) for the Developer Hotel.	Within 42 months after Permit Issuance for Vertical Improvements for Developer Hotel
Developer Hotel opens for business to the public	Within 90 days after receipt of Temporary Certificate of Occupancy (TCO) for Developer Hotel
Rent Commencement Date occurs	The earliest to occur of: 1) 90 days after receipt of TCO, 2) 46 months after Permit Issuance for Vertical Improvements for Developer Hotel, or 3) 60 months following Effective Date of Developer Hotel Ground Lease

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9. Multifamily Element	
All conditions precedent to commencement of Multifamily Ground Lease (except for the Post-Commencement Conditions) are satisfied or waived by the parties.	By December 15, 2022
Effective Date - Execution and commencement of Multifamily Ground Lease occurs.	By December 15, 2022.
Developer obtains Permit Issuance for Horizontal Improvements for the Multifamily Element	Within 48 months following Effective Date of Multifamily Ground Lease
Developer commences construction of Horizontal Improvements for the Multifamily Element	Within first to occur of 1) 90 days of Permit Issuance for Horizontal Improvements, or 2) 51 months following Effective Date of Multifamily Ground Lease
Developer substantially completes Horizontal Improvements for Multifamily Element	Within 24 months of Commencement of Construction of Horizontal Improvements for Multifamily Element
Developer completes all remaining Post-Commencement Ground Lease Requirements for Multifamily Element	Prior to first to occur: 1) Permit Issuance for Vertical Improvements for Multifamily Element or 2) 75 months following Effective Date of Multifamily Ground Lease
Developer commences construction of Vertical Improvements for Multifamily Element	Within first to occur of 1) 90 days of Permit Issuance for Vertical Improvements for Multifamily Element, or 2) 78 months following Effective Date of Multifamily Ground Lease
Developer substantially completes Vertical Improvements and obtains Temporary Certificate of Occupancy (TCO) for Multifamily Element	Within 46 months after Permit Issuance for Vertical Improvements for Multifamily Element
Rent Commencement Date occurs	The earliest to occur of: 1) 90 days after receipt of TCO, 2) 46 months after Permit Issuance for Vertical Improvements for Multifamily Element, or 3) 60 months following Effective Date of Multifamily Ground Lease

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10. Developer Restaurant Element	
All conditions precedent to commencement of Developer Restaurant Ground Lease (except for the Post-Commencement Conditions) are satisfied or waived by the parties	By December 15, 2022
Effective Date - Execution and commencement of Developer Restaurant Ground Lease occurs	By December 15, 2022
Developer obtains Permit Issuance for Horizontal Improvements for the Developer Restaurant Element	Within first to occur of 1) 60 months following Effective Date of Developer Restaurant Ground Lease or 2) 12 months prior to substantial completion of Developer Hotel
Developer commences construction of Horizontal Improvements for the Developer Restaurant Element	Within first to occur of 1) 90 days of Permit Issuance for Horizontal Improvements, or 2) 63 months following Effective Date of Developer Restaurant Ground Lease
Developer substantially completes Horizontal Improvements for Developer Restaurant Element	Within 18 months of Commencement of Construction of Horizontal Improvements for Developer Restaurant Element
Developer completion of all of the remaining Post-Commencement Ground Lease Requirements for Developer Restaurant Element	Prior to first to occur of 1) Permit Issuance for Vertical Improvements for Developer Restaurant Element, or 2) 81 months following Effective Date of Developer Restaurant Ground Lease
Developer commences construction of Vertical Improvements for Developer Restaurant Element	Within first to occur of 1) 90 days of Permit Issuance for Vertical Improvements for Developer Restaurant Element, or 84 months following Effective Date of Developer Restaurant Ground Lease
Developer substantially completes Vertical Improvements and receives Temporary Certificate of Occupancy (TCO) for Developer Restaurant Element	Within 24 months after Permit Issuance for Vertical Improvements for Developer Restaurant Element.
Rent Commencement Date occurs	The earliest to occur of: 1) 90 days after receipt of TCO, 2) 24 months after Permit

REVISED DDA SCHEDULE OF PERFORMANCE
(June 2022 Revision)

	Issuance for Vertical Improvements for Developer Restaurant Element, or 3) 72 months following Effective Date of Developer Restaurant Ground Lease
11. Market Element	
All conditions precedent to commencement of Market Ground Lease (except for the Post-Commencement Conditions) are satisfied or waived by the parties.	By December 15, 2022
Effective Date - Execution and commencement of Market Ground Lease occurs.	By December 15, 2022.
Developer obtains Permit Issuance for Horizontal Improvements for the Market Element	Within 60 months following Effective Date of Market Ground Lease
Developer commences construction of Horizontal Improvements for the Market Element	Within first to occur of 1) 90 days of Permit Issuance for Horizontal Improvements, or 2) 63 months following Effective Date of Market Ground Lease
Developer substantially completes Horizontal Improvements for Market Element	Within 24 months of Commencing Construction of Horizontal Improvements for Market Element
Developer completion of all remaining Post-Commencement Ground Lease Requirements for Market Element	Prior to first to occur of 1) Permit Issuance for Vertical Improvements for Market Element, or 2) 87 months following Effective Date of Market Ground Lease
Developer commences construction of Vertical Improvements for Market Element	Within first to occur of 1) 90 days of Permit Issuance for Vertical Improvements for Market Element, or 2) 90 months following Effective Date of Market Ground Lease
Developer substantially Completes Vertical Improvements and receives Temporary Certificate of Occupancy (TCO) for Market Element	Within 18 months after Permit Issuance for Vertical Improvements for Market Element
Rent Commencement Date occurs	The earliest to occur of: 1) 90 days after receipt of TCO, 2) 36 months after Permit

REVISED DDA SCHEDULE OF PERFORMANCE
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	Issuance for Vertical Improvements for Market Element, or 3) 72 months following Effective Date of Market Ground Lease
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It is expressly understood and agreed by the Parties that the foregoing schedule of performance is subject to all of the terms and conditions set forth in the text of the Disposition and Development Agreement including, without limitation, extension due to Force Majeure. Times of performance under the Disposition and Development Agreement may be extended by request of any Party memorialized by a mutual written agreement between the Parties, which agreement may not be unreasonably denied or delayed by the non-requesting Party (subject to events of force majeure set forth in the Disposition and Development Agreement).

5119244.1

Exhibit S

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (this “Agreement”) is entered into as of _____, 2022, by and between _____ (“Licensor”), and the City of San Leandro, a California charter city (“Licensee”). Licensor and Licensee are hereinafter collectively referred to as the “Parties.”

RECITALS

A. Licensee and Licensor have entered into that certain Purchase and Sale Agreement and Joint Escrow Instructions, dated July 22, 2020, as amended by that certain First Amendment to Purchase and Sale Agreement and Disposition and Development Agreement dated as of March 17, 2021, and that certain Second Amendment to Purchase and Sale Agreement and Disposition and Development Agreement dated as of June 21, 2022 (as amended, the “PSA”). Pursuant to the PSA, Licensee has conveyed to Licensor certain real property in the City of San Leandro for Licensor’s development of a single family housing development thereon (the “Single Family Element Property”).

B. Licensee and Licensor have also entered into that certain Disposition and Development Agreement with respect to the Shoreline Area of the City of San Leandro and development of the Shoreline Project, dated July 22, 2020, as amended by that certain First Amendment to Purchase and Sale Agreement and Disposition and Development Agreement dated as of March 17, 2021, and that certain Second Amendment to Purchase and Sale Agreement and Disposition and Development Agreement dated as of June 21, 2022 (as amended, the “DDA”).

C. There is currently a golf course located on the Single Family Element Property known as the Marina Course at the Monarch Bay Golf Club. Licensee is the operator of the Marina Course and the Monarch Bay Golf Club. The PSA and DDA require that the Licensor will demolish the portion of the Marina Course which is located on the Single Family Element Property, and redesign and reconstruct a nine-hole par 3 parkland style golf course on the portion of the Monarch Bay Golf Club that is adjacent to the Single Family Element Property.

D. Licensor intends to commence the development of the Single Family Element Property upon receiving all required governmental approvals and permits for the site work to be performed thereon, as specified in the PSA and DDA (the “Site Work”). Until Licensor is ready to commence the Site Work, the parties desire for Licensee to have a license to continue using and operating the portion of the Marina Course which is located on the Single Family Element Property (the “Licensed Premises”). The parties intend that the term of the license will end at such time as Licensor requires the use of the Licensed Premises for the performance of the Site Work for the development of the Single Family Element Property.

E. For and in consideration of the covenants and agreements set forth herein, Licensor desires to license the Licensed Premises, as depicted on the Map of Licensed

Premises attached hereto as Exhibit A, to Licensee for the purpose of Licensee's continued operation of the existing golf course thereon.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. License. Licensor grants to Licensee a license to enter upon and use the Licensed Premises for the purposes and subject to the terms and conditions set forth in this Agreement. This grant of license is not a lease and shall not constitute a grant of any property rights.

2. Term. The term of this Agreement shall be ten (10) years, commencing as of the date of this Agreement and ending ten (10) years thereafter ("Term"), unless earlier terminated pursuant to the terms hereof. Upon Licensor's determination that (i) it will obtain all governmental approvals and permits for the Site Work within ninety (90) days, and (ii) Licensor's determination that it is ready to commence the Site Work upon receipt of those approvals and permits, Licensor shall have the right, in its sole discretion, without cause, to terminate this Agreement prior to the end of the Term, upon not less than ninety (90) days' written notice to Licensee. Licensee acknowledges and agrees that Licensee is not entitled to receive any compensation as a result of Licensor's termination of this Agreement.

3. License Fee. The annual license fee shall be One Dollar (\$1.00) per year (the "License Fee"). The License Fee shall be due and payable on the date of this Agreement and each anniversary thereof, payable to Licensor at the address shown in Section 22 or such other place as Licensor may designate in writing.

4. No Security Deposit. No security deposit shall be required in connection with this Agreement.

5. Use. Absent the written consent of Licensor, Licensee is permitted to use the Licensed Premises solely and exclusively for the purposes of the operation of the Marina Course and associated community and athletic events thereon ("Permitted Use"). Licensor shall have complete discretion to grant or withhold consent to any request by Licensee to use the Licensed Premises for any use which is not a Permitted Use, and Licensor may condition any such consent to compliance with such conditions as Licensor in its sole discretion finds appropriate.

6. Compliance with Laws. Licensee shall comply with all state, federal and local laws, ordinances, rules and regulations applicable to the use and maintenance of the Licensed Premises, including without limitation, all Environmental Laws (as defined in the PSA).

7. Expenses. Licensee shall be responsible for any and all expenses associated with Licensee's use of the Licensed Premises.

8. Removal of Personal Property. Upon expiration of the Term or upon any earlier termination of this Agreement, Licensee shall, at Licensee's sole cost and expense, remove or cause to be removed from the Licensed Premises any and all vehicles, tools, equipment, materials and other personal property. Licensee shall not be required to remove any buildings, structures or other fixtures on the Licensed Premises, including without limitation any underground pipes and irrigation systems. If Licensee fails to remove its personal property upon expiration of the Term, Licensor may remove and dispose of such property at Licensee's sole cost and expense.

9. Damages to Licensor. Licensee shall bear responsibility for any and all damages to the Licensed Premises and improvements therein caused by Licensee's use of the Licensed Premises or by any act or omission of Licensee, unless such damages are caused by the sole negligence of Licensor.

10. Indemnity. To the fullest extent permitted by law, Licensee shall indemnify, defend, and hold harmless Licensor, its officers, agents, and employees (collectively, "Indemnitees"), from and against any and all claims, damages, demands, liability, costs, losses and expenses, including without limitation court costs and reasonable attorneys' fees (collectively, "Claims"), arising out of or in connection with Licensee's actions or inactions relating to Licensee's or Licensee's customers, guests, invitees, contractors, agents, or employees use of the Licensed Premises or Licensee's failure to comply with any of its obligations contained in this Agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of Licensor. The provisions of this Section 10 shall survive the expiration or earlier termination of this Agreement.

11. Insurance. Licensee shall procure and maintain for the duration of this Agreement Comprehensive General Liability insurance against claims for injuries or in connection with Licensee's operations on the Licensed Premises, with limits no less than \$10,000,000 combined single limit per occurrence for combined single limit per occurrence for bodily injury, personal injury, and property damage. Such insurance policy may be provided by Licensee's manager of the golf course, and may cover portions of the Monarch Bay Golf Club other than the Licensed Premises. The policy shall contain, or be endorsed to contain, the following provisions:

(a) Licensor, its officials, employees, and volunteers are to be covered as insureds as respects liability arising out of operations of Licensee on the Licensed Premises. The coverage shall contain no special limitations on the scope of protection afforded to Licensor, its officials, employees, or volunteers.

(b) Licensee's insurance coverage shall be primary insurance as respects Licensor, its officials, employees, and volunteers. Any insurance or self-insurance maintained by Licensor, its officials, employees, or volunteers shall be excess of Licensee's insurance and shall not contribute with it.

(c) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to Licensor, its officials, employees, and/or volunteers.

(d) Coverage shall state that Licensee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(e) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to Licensor.

(f) Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

Prior to commencement of the Term, Licensee shall furnish Licensor with certificates of insurance and with original endorsements effecting coverage required by this Section. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

12. Assignment; No Encumbrance. The license granted hereby is personal to Licensee, and shall not be assigned by operation of law or otherwise absent the written consent of Licensor, which Licensor may condition or withhold in Licensor's sole discretion. Licensee shall not permit the placement of liens or encumbrances on the Licensed Premises absent Licensor's written consent, which Licensor may condition or withhold in Licensor's sole discretion.

13. Amendment and Actions. This Agreement can be amended only by the mutual written consent of Licensor and Licensee, and neither Licensor nor Licensee shall be bound by verbal or implied agreements. The City Manager (or designee) shall have the authority to make approvals, issue interpretations, waive provisions, make and execute further agreements and/or enter into amendments of this Agreement on behalf of the Licensee so long as such actions do not materially or substantially reduce the uses permitted on the Licensed Premises, or materially or substantially add to the costs incurred or to be incurred by the Licensee as specified herein. All other material and/or substantive interpretations, waivers, or amendments shall require the consideration, action and written consent of the City Council. Notwithstanding the foregoing, the City Manager shall maintain the right to submit to the City Council for consideration or action any matter under the City Manager's authority if the City Manager desires 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.

14. Waiver. The waiver by Licensor of any term, covenant, or condition contained in this Agreement shall not be deemed to be a continuing waiver of such term, covenant, or condition, or any subsequent breach of the same or any other term, covenant, or condition in this Agreement.

15. No Rights in Third Parties. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under this Agreement on any third party, nor is anything in this Agreement intended to relieve or discharge any obligation or

liability of any third party to any party in this Agreement, nor shall any provision in this Agreement give any third party any right of subrogation or action over or against any party to this Agreement.

16. Time of Essence. Time is and shall be of the essence of this Agreement.

17. Governing Law; Attorneys' Fees. This Agreement shall be interpreted and enforced in accordance with the laws of the State of California without regard to principles of conflicts of laws. Any action to enforce or interpret this Agreement shall be brought in a court of competent jurisdiction in Alameda County, California. Should any legal action be brought by a Party for breach of this Agreement or to enforce any provision of this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees, court costs, and other such costs as may be affixed by the Court. Licensor shall be entitled to recover all costs, including attorneys' fees, incurred in enforcing this Agreement, whether or not Licensor brings a legal action for breach of this Agreement.

18. Successors and Assigns. Subject to the restrictions on assignment set forth in Section 12, the provisions, terms, and conditions of this Agreement shall bind and inure to the benefit of the Parties, their heirs, successors, executors, administrators, and permitted assigns.

19. Relationship of Parties. Licensor and Licensee intend by this Agreement to establish the relationship of Licensor and Licensee only, and do not intend to create a partnership, joint venture, joint enterprise, or any other business relationship other than that of licensor and licensee.

20. Remedies Cumulative. No remedy or election of remedies provided for in this Agreement shall be deemed exclusive, but shall be cumulative with all other remedies at law or in equity. Each remedy shall be construed to give it the fullest effect allowed by law.

21. Severability. If any provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be or become invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

22. Notices. Unless otherwise provided herein, all notices required hereunder shall be given by United States registered or certified mail, or other form of mail which offers proof of mailing, postage prepaid and addressed to the Party at the address below:

Licensor:

c/o Cal Coast Companies LLC, Inc.
12301 Wilshire Boulevard, Suite 620
Los Angeles, CA 90025
Attn: Edward J. Miller

Licensee: City of San Leandro
835 East 14th Street
San Leandro, CA 94577-3767
Attn: _____

Either party may change its address by giving notice of such change to the other party in the manner provided in this Section. All notices and other communications shall be deemed communicated as of actual receipt or after the second day after deposit in the United States Mail.

23. Integration. This Agreement contains all of the agreements and understandings of the Parties with respect to any matter mentioned in this Agreement, and supersedes and terminates all prior and contemporaneous agreements between Licensor and Licensee with respect to the matters covered in this Agreement.

24. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

25. Default and Remedies. An event of default ("Event of Default") shall arise hereunder if Licensee defaults in the performance of any term, provision, covenant or agreement set forth in this Agreement, and (unless such provision specifies a shorter cure period for such default) the default continues for thirty (30) days after the date upon which Licensor shall have given written notice of the default to Licensee. If Licensee fails to cure the default within the foregoing time period, or if a cure is not possible, Licensor may proceed with any of the following remedies:

- A. Terminate this Agreement;
- B. Bring an action for equitable relief seeking the specific performance of the terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of such terms and conditions, and/or seeking declaratory relief; or
- C. Pursue any other remedy allowed at law or in equity.

Each of the remedies provided herein is cumulative and not exclusive of, and shall not prejudice any other remedy provided herein or under applicable law. No officer, employee or agent of Licensor shall be personally liable to Licensee, or any successor in interest, in the event of any default or breach by Licensor, or for any amount of money which may become due to Licensee or its successor or for any obligation of Licensor under this Agreement.

26. Construction and Interpretation. It is agreed and acknowledged by Licensee that the provisions of this Agreement have been arrived at through negotiation, and that Licensee has had a full and fair opportunity to revise the provisions of this Agreement and to have such provisions reviewed by legal counsel. Therefore, the normal

rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this Agreement.

IN WITNESS WHEREOF, Licensor and Licensee have executed this Agreement as of the date and year first written above.

LICENSOR:

By: _____

LICENSEE:

CITY OF SAN LEANDRO,
a California charter city

By: _____
Frances M. Robustelli, City Manager

ATTEST:

By: _____
Leticia I. Miguel, City Clerk

APPROVED AS TO FORM:

By: _____
Richard D. Pio Roda, City Attorney

Exhibit A

Depiction of Licensed Premises

(attach map)