

## **FIRST AMENDMENT TO EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT**

THIS FIRST AMENDMENT to Exclusive Negotiating Rights Agreement (this “**Amendment**”) is entered into as of April 2, 2018, by and between City of San Leandro, a California charter city (the “**City**”) and Cal-Coast Companies LLC, a Delaware limited liability company (“**Developer**”), and amends that certain Exclusive Negotiating Rights Agreement dated April 2, 2012 (the “**Agreement**”) by and between the City and Developer. Developer and City are collectively referred to herein as the “**Parties.**” Capitalized terms used without definition herein have the meaning ascribed to such terms in the Agreement.

### **RECITALS**

A. The City and Developer entered into the Agreement in order to negotiate terms and conditions governing the development of the Marina-Shoreline Project (the “**Project**”), and the Parties have in good faith pursued such negotiations.

B. Pursuant to the Agreement, Developer has requested, and the City has agreed, to two eighteen month extensions of time for performance, with an expiration date of the Agreement of April 2, 2018.

C. Based on negotiations, staff input and the CEQA analysis that was certified on July 20, 2015, the scope of the Project has evolved and changed to better meet the needs of the citizens of the City.

D. The City and Developer desire to enter into this Amendment to (i) provide for further extensions of the time for performance under the Agreement, (ii) to reflect a more accurate description of the Project, and (iii) to effect a re-design of the nine hole golf course related to the Project.

**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:

Section 1. Section 3 of the Agreement is hereby replaced in its entirety as follows:

3. Term. The Parties hereby acknowledge that the term of the Agreement (“**Term**”) has been extended twice and expires on April 2, 2018. Pursuant to the Amendment dated April 2, 2018, the Term is extended for a period of up to ten months to February 2, 2019. Developer will be permitted one additional extension of up to four additional months to June 2, 2019 upon the mutual written agreement of Developer and City acting through and in the discretion of its City Manager.

Section 2. Section 6 of the Agreement is hereby amended as follows (strikethrough is deletion and underline is addition):

6. Description of the Project. The Conceptual Master Plan, attached hereto as Exhibit B, describes the following elements which would be developed in phases as detailed below:

~~Phase 1—~~

- ~~200-225 room conference hotel with outdoor space and an approximately 5,000 square foot restaurant~~ a 15,000–20,000 square foot conference center, outdoor pool and spa;
- An approximately ~~6,000~~ 7,500 square foot quality full-service restaurant with second floor banquet facility;
- Market/Café/Bait Shop;
- ~~An approximately 4,000 square foot full-serve restaurant;~~
- ~~Between 50,000 and 250,000 square feet of office with ground floor retail along Monarch Bay Drive and a Parking Structure;~~
- Approximately 285 multi-family residential rental units ~~Up to 46 two—three story residential units with a ground floor commercial component along Monarch Bay Drive;~~
- Up to a total of ~~215~~ 46 two and three story townhomes along the 9-hole golf course;
- ~~36 multi-family rental units on Fairway Drive and Aurora;~~
- ~~Library/Community Building;~~
- Nine hole executive golf course re-design and re-construction;
- Approximately 18.6 acre Monarch Bay Park.

~~The residential units in phase 1 must be started along with the demolition, grading, site work and infrastructure improvements for the other phase 1 improvements. Grading and building permits will be issued concurrently for the entire first phase.~~

~~The library/community building would be constructed in conjunction with the 46 residential units on Monarch Bay Drive and the 16 residential units along the golf course.~~

~~The majority of the infrastructure improvements related to the applicable phase of the Project, including roads, lighting, landscaping, pedestrian pathways, would be completed prior to the issuance of a certificate of occupancy for residential units in the phase. The City may require Developer to execute an Improvement Agreement addressing completion of infrastructure related to future phases of the Project.~~

~~Phase 2—~~

- ~~A Café/boat rental facility (8,000 sf) on the former Boatworks site;~~
- ~~Up to a Project total of 250,000 square feet of Office and a Parking Structure~~
- ~~Up to 70 Homes on Fairway Drive~~
  - ~~Up to 42 Two Story Single Family Detached Homes~~
  - ~~Up to 28 Townhomes~~
  - ~~Associated infrastructure~~

~~Phase 3—~~

- ~~A mixed use Office/Retail Building (40,000 sf)~~

- ~~The balance of the 250,000 square feet of office~~
- ~~Associated infrastructure~~

The Parties acknowledge that on July 20, 2015 the City Council of the City approved a General Plan Amendment, Zone Change and certified the project EIR for the Project. The Parties have agreed to enter into exclusive negotiations pertaining to the City's disposition of a portion of the executive golf course land for housing. Development of the Site for the Project will require the grant of discretionary land use entitlements subject to the City's normal review and approval process, that the Project must comply with CEQA, and that nothing in this Agreement is intended to or shall be interpreted as the grant of any approvals for development of the Project or the Site, or the modification or waiver of any City procedures or requirements. The Parties acknowledge that nothing in this Agreement shall be deemed a commitment by the City to enter into an agreement for conveyance of any interest in the Site or for the development of the Project. In addition, the Parties acknowledge that the final form of any agreement governing the leasing and development of the Site may contain matters not covered in this Agreement, and the provisions herein are not intended to exclude or preclude any other issues that may arise during negotiations.

Section 3. Exhibit C. Section 6.1 of the Agreement is hereby deleted in its entirety, including Exhibit C attached to the Agreement.

Section 4. Golf Course Redesign. As a condition to this Amendment, Developer hereby agrees to prepare a redesign of the nine hole golf course, and a construction budget for the redesigned golf course, in sufficient detail to be used for public outreach and input, by no later than the July 1, 2018.

Section 5. Conceptual Master Plan. Exhibit B to the Agreement is hereby replaced in its entirety by Exhibit B-1, attached hereto and incorporated into the Amendment and into the Agreement by this reference.

Section 6. Timeline. Exhibit D to the Agreement is hereby replace in its entirety by Exhibit D-1, attached hereto and incorporated into this Amendment and into the Agreement by this reference.

Section 7. Severability. If any term of this 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.

Section 8. No Modification or Waiver. Except as otherwise expressly set forth herein, all other terms and conditions of the Agreement remain in full force and effect.

**SIGNATURES ON FOLLOWING PAGE**

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

**THE CITY OF SAN LEANDRO,**  
a California charter city

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

ATTEST:

By: \_\_\_\_\_  
Tamika Greenwood, City Clerk

APPROVED AS TO FORM:

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

**DEVELOPER:**

**CAL-COAST COMPANIES LLC**  
a Delaware limited liability company

By: \_\_\_\_\_  
Edward J. Miller

Title: Manager and Sole Member



**EXHIBIT D - 1**  
**Shoreline Development Tasks and Developer Milestones**

**Task**

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|---|---|
| EIR Addendum  | May 2018                                  |
| Development Agreement, and associated documents, including but not limited to, Ground Leases, Purchase & Sale Agreement for Excess Golf Course Land |   |
| - Lease Negotiations, Market & Feasibility Studies  | On-going                                  |
| - Appraisal Parameters Est. between Developer & City  | April –May 2018                           |
| - Appraisal Excess Golf Course Land   | July 2018                                 |
| - Golf Course & Park Design and Cost Estimates  | July 1, 2018                              |
| - Development Agreement Documents Finalized   | September 30, 2018                        |
| - Development Agreement Approval  | Concurrent with or following entitlements |
| Permitting  |   |
| - Meeting with Agencies   | On-going                                  |
| - BCDC Design Review Board Approval   | September 2018                            |
| - BCDC Application Approved   | Winter 2018                               |
| Planned Development/Vesting Tentative Map   |   |
| - Community Meetings  | As needed                                 |
| - Designs Submitted (Design Development)  | August 2018                               |
| - Planning Commission & City Council Work Session   | If needed                                 |
| - Planning Commission & City Council Public Hearing   | Fall 2018                                 |
| Construction Drawings (Grading) Submitted   | Fall 2018                                 |
| Ground Break/Demo & Grading   | Fall 2018                                 |
| Construction  | Spring 2019                               |