

**OPTION AGREEMENT
AND
AGREEMENT OF PURCHASE AND SALE**

DATE: March __, 2022 (“Effective Date”)
FROM: L & C TRS LLC (“Owner”)
TO: City of Rockaway Beach (“Optionee”)

RECITALS

Owner owns fee-simple title to the real property described in Exhibit A attached hereto, together with all improvements situated on it. The real property and improvements, together with all other rights, hereditaments, and tenements appurtenant to the real property and improvements, are collectively referred to herein as the “Property.”

Optionee desires to acquire an option to purchase the Property on the terms and conditions herein stated. Owner has agreed to grant Optionee an exclusive option to purchase the Property, and the parties desire to evidence their agreement regarding the option.

AGREEMENT

Section 1. Grant of Option

Owner, in consideration of the sum of \$1,000.00 paid to Owner by Optionee in cash, receipt of which is acknowledged by Owner, grants to Optionee the sole and exclusive option to purchase the Property (the “Option”) in the manner and for the price stated in this Agreement.

Section 2. Option Terms

2.1 Term. The initial term of the Option (the “Initial Term”) commences on the Effective Date and will continue for a period of ten (10) months. Optionee has the right to extend the term of the Option for one additional period of six (6) months. This extension period (the “Extension Term”) will commence on the date that the Initial Term expires. The Initial Term and the Extension Term are referred to collectively in this Agreement as the “Term.” Optionee’s payment of the Extension Term Payment due under Section 3 of this Agreement before the Initial Term expires will be deemed to constitute an election to extend the Option for the Extension Term. If the last day of the Initial Term or the Extension Term falls on a Saturday, Sunday, or a holiday recognized by the federal government or the State of Oregon, all of Optionee’s rights during either such time period will extend through the next business day.

2.2 Exercise of Option. The Option must be exercised, if at all, by written notice (the “Exercise Notice”) given by Optionee to Owner at any time during the Term, stating that Optionee has elected to exercise the Option. The Option may be exercised only with respect to the entire Property, and nothing contained herein will be construed as permitting Optionee to purchase less than all of the Property under this Agreement. Upon exercise of the Option, Optionee will be obligated to purchase the Property from Owner, and Owner will be obligated to sell the Property to Optionee, for the price and in the manner herein set forth.

2.3 Failure to Exercise Option. If Optionee fails for any reason to exercise the Option in the manner set forth herein, Optionee will have no further claim against or interest in the Property or any of the Option-Money Payments, unless Optionee is entitled to a refund of

the Option-Money Payments under another provision of this Agreement. In the event of the failure to exercise the Option, Optionee will provide Owner with any instruments that Owner reasonably deems necessary for the purpose of removing from the public record any cloud on title to the Property that is attributable to the grant or existence of the Option.

2.4 Inspection Contingencies. During the Term, Optionee will satisfy itself concerning all aspects of the Property, including, without limitation, the physical condition thereof; the availability of any governmental permits and approvals; and the feasibility of using the Property for Optionee's intended use. Optionee has the right to perform any tests, inspections, and feasibility studies on the Property as Optionee may deem necessary. Owner will permit and, to the extent reasonably required by Optionee, will assist Optionee in Optionee's review of the Property. All costs and expenses of all of Optionee's tests, inspections, and studies will be paid by Optionee when due, regardless of whether this transaction closes. Optionee will indemnify, defend, and hold harmless owner from and against any and all costs, losses, damages, expenses, liabilities, actions, liens, or claims arising from or related to any activities on or about the Property by Optionee or any agent, employee, contractor, or invitee of Optionee.

Section 3. Option Money

In payment for Owner's grant of this Option, Optionee has paid or will pay Owner the following sums (the "Option-Money Payments"):

(1) Contemporaneously with the execution of this Agreement, Optionee has paid Owner the cash sum of \$1,000.00 as stated in Section 1, the receipt of which is acknowledged by Owner. No other Option-Money Payments are due or payable during the Initial Term.

(2) Upon Optionee's election to exercise the Extension Term under Section 2, Optionee will pay Owner the cash sum of \$1,000.00 (the "Extension Term Payment"). Regardless of whether the Option is actually exercised, the Option-Money Payments belong to Owner. If Optionee exercises the Option, the Option-Money Payments will be credited against the Purchase Price.

Section 4. Amount of Acreage

Although Owner believes that the Property contains approximately 10.15 acres of land, neither party considers the precise amount of acreage contained in the Property to be material to the purchase or sale of the Property. On exercise of the Option, the parties' obligations under this Agreement will not be avoided due to any determination that the Property in fact contains more than 10.15 acres or fewer than 10.15 acres, unless the excess or deficiency is material. The parties agree that any excess or deficiency in excess of two (2) acres is "material." In the event of a material discrepancy in the acreage, Optionee may elect to terminate this Agreement and receive a refund of all Option-Money Payments previously paid by giving notice of termination to Owner within 30 days of the discovery of the discrepancy. In the event of an excess material discrepancy, Owner may elect to terminate this Agreement or receive additional compensation of \$3,000 per acre or prorated portion thereof.

Section 5. Purchase Price

5.1 Purchase Price. The purchase price for the Property (the "Purchase Price") will be \$30,000.00.

5.2 Payment of Purchase Price. The Purchase Price for the Property will be payable as follows:

5.2.1 Optionee will be given credit for the Option-Money Payments actually paid by Optionee to Owner.

5.2.2 The entire balance of the Purchase Price will be paid in cash at Closing.

Section 6. Remedies

6.1 Optionee. If Owner breaches any term or provision of this Agreement, then Optionee, as its exclusive remedy and in lieu of any other relief, may either (1) terminate this Agreement and obtain the return of all Option-Money Payments previously paid to Owner, or (2) tender performance of the obligations of Optionee and specifically enforce all obligations of Owner under this Agreement. Except as noted in Section 6.3 and any specific remedies reserved elsewhere in this Agreement, Optionee waives the right to pursue any remedy at law or in equity against Owner other than the remedies specified above, including any action for damages, in the event of a default by Owner.

6.2 Owner. If Optionee breaches any term or provision of this Agreement, regardless of whether the breach occurs before or after Optionee notifies Owner of the exercise of the Option, then Owner, as its exclusive remedy and in lieu of any other relief, will be entitled to terminate this Agreement by giving Optionee written notice of termination and to retain all Option-Money Payments paid by Optionee. Owner acknowledges (1) the adequacy of this exclusive remedy, and (2) that this limitation of remedies is an essential part of this Agreement from the perspective of Optionee. Except as noted in Section 6.3 and any specific remedies reserved elsewhere in this Agreement, Owner expressly waives the right to pursue any other right or remedy at law or in equity other than the remedy specified above, including the right of specific performance and the right to sue for damages, in the event of a default by Optionee. Optionee and Owner have established the foregoing remedy in favor of Owner because of the difficulty and inconvenience of ascertaining the actual damages Owner may suffer as a result of a breach of this Agreement by Optionee.

6.3 Other Remedies. The limitations on remedies set forth in this Section do not apply to any cause of action accruing after Closing or preclude either party from seeking or obtaining injunctive relief or from seeking recovery against the other under any contractual indemnity set forth herein or for causing physical damage or injury to persons or property.

Section 7. Conditions Precedent to Closing

In addition to any other conditions contained in this Agreement, set forth below are certain conditions precedent for the benefit of Optionee (the "Conditions"). The Conditions are intended solely for the benefit of Optionee and Optionee will have the right to waive, by written notice, any of the Conditions, at its sole discretion; giving the Exercise Notice will not constitute such a waiver. If any Condition is not satisfied or waived on or before the deadline for satisfaction specified herein, then Optionee will have the right to terminate this Agreement, at its sole election, by giving Owner notice of termination before the deadline expires, to obtain the return of the Option-Money Payments paid, and to exercise any remedy available to Optionee if the subject Condition was not satisfied by reason of a breach of this Agreement by Owner. If Optionee does not give Owner notice of termination before the applicable deadline, then Optionee will be deemed to have waived the termination privilege with respect to the Condition in question. The Conditions specifically delineated in this Section are the following:

7.1 On the Closing Date, the Title Company (defined in Section 9.1) will be ready, willing, and able to issue, and will issue to Optionee on recordation of the Owner's deed mentioned below, the title insurance policy required by Section 9.6.

7.2 On or before the Closing Date, Owner will have performed all of the covenants, conditions, agreements, and promises to be performed by it under this Agreement.

Section 8. Title

Within 30 days following the Effective Date, Optionee will obtain, at Optionee's expense, a preliminary title report (the "Title Report") covering the Property. The Title Report will be issued by the Title Company (defined in Section 9.1). The Title Report will be accompanied by legible copies of all plats and exceptions to title referenced in the Title Report (the "Exceptions"). Within 60 days of receiving the Title Report and the Exceptions, Optionee will give written notice (the "Initial Notice") to Owner of the Exceptions that Optionee will require Owner to remove of record at or before Closing (the "Unacceptable Exceptions"). If Optionee fails to give Owner the Initial Notice, then Optionee will be deemed to have approved the Title Report. Owner has 10 days following receipt of the Initial Notice to give written notice (the "Reply Notice") to Optionee of those Unacceptable Exceptions that Owner concludes, in good faith, that Owner cannot or will not remove at or before Closing. Owner will not have any obligation to institute litigation or spend any sum of money to cure or remove any Exceptions, but Owner will be obligated to remove, at or before Closing, any Exception created, or suffered to be created, by Owner that is security for payment of a sum of money (including mortgages, deeds of trust, tax liens, contractor's liens, and judgment liens) and any Exception created, or suffered to be created, by Owner after the Effective Date, excluding any liens or contract debt expressly permitted to remain in force after Closing pursuant to the terms of this Agreement. Owner agrees to remove all Unacceptable Exceptions not referenced in a duly given Reply Notice. If one or more of the Unacceptable Exceptions cannot be removed at or before Closing and Owner so states in a duly given Reply Notice, then Optionee may exercise any of the following rights by giving written notice to Owner within 15 days of receiving the Reply Notice: (1) Optionee may terminate this Agreement, in which event the Option-Money Payments will be refunded to Optionee and neither party will have any further liability; (2) Optionee may accept title to the Property subject to the Unacceptable Exceptions; or (3) Optionee may attempt to cure the Unacceptable Exceptions or any of them without cost or liability to Owner (but Owner will be obligated to cooperate with the cure efforts and to join in the execution of any curative instruments that will operate to remove the Unacceptable Exceptions). The foregoing rights of Optionee will not be deemed waived by giving the Exercise Notice. Exceptions that are shown on the Title Report and to which Optionee does not object or to which Optionee agrees, in writing, to waive objection, are referred herein to as the "Permitted Exceptions."

Owner will not cause, permit, or suffer any matter to be recorded with respect to the Property during the Term, except (1) the Memorandum referenced in Section 15, and (2) any other matter that Optionee approves, in writing and at its sole discretion, before recordation.

Section 9. Closing

9.1 Time and Place. Closing of the sale and purchase of the Property (the "Closing") will occur on a date (the "Closing Date") selected by Optionee, but in all events the Closing will occur within 90 days after the date that the Exercise Notice is given. The escrow for the Closing will be established at the office of Ticolor, at 507 Laneda Ave., Suite 4, Manzanita OR 97130.

9.2 Closing Obligations. On the Closing Date, Owner and Optionee will deposit the following documents and funds in escrow, and the Title Company will close escrow in accordance with the instructions of Owner and Optionee.

9.2.1 Owner will deposit the following:

(1) The conveyance documents described in Section 10, duly executed and acknowledged;

(2) A duly executed affidavit certifying that Owner is not a foreign person, trust, partnership, or corporation in compliance with the requirements of IRC § 1445(b) and any documents required to comply with Oregon income tax withholding obligations;

(3) Such documents as Optionee or the Title Company may require to evidence the authority of Owner to consummate this transaction; and

(4) Such other documents and funds, including (without limitation) any escrow instructions, that are required of Owner to close the sale in accordance with this Agreement.

9.2.2 Optionee will deposit the following:

(1) The cash payment specified in Section 5, minus any credits due Optionee under the terms of this Agreement;

(2) Any documents that Owner or the Title Company may require to evidence the authority of Optionee to consummate this transaction; and

(3) Any other documents and funds, including (without limitation) any escrow instructions, that are required of Optionee to close the sale and purchase of the Property in accordance with this Agreement.

9.3 Costs. Optionee will pay the escrow fee of the Title Company with respect to the Closing. Optionee will pay the premium for the title insurance policy that Owner is obligated to provide to Optionee, and Owner will pay all conveyance or excise taxes payable by reason of the purchase and sale of the Property. Optionee will pay the fee (exclusive of any conveyance or excise tax) for recording the conveyance documents referred to herein.

9.4 Prorations. All items of expense incurred by Owner with respect to the Property will be paid by Owner at Closing, without proration. All real property taxes and assessments payable with respect to the tax year in which Closing occurs will be prorated between Owner and Optionee as of the Closing Date.

9.5 Real Estate Taxes. As provided in Section 9.4, real estate taxes shall be prorated to the Closing Date. Owner has advised Optionee that the Property has been classified as designated forest land property and therefore has been given an ad valorem tax deferral. Optionee will be responsible for any taxes attributable to periods after the Closing Date, including any deferred taxes assessed after the Closing Date.

9.6 Title Insurance Policies. As soon as practicable after Closing, and in any event no later than 14 days after the Closing Date, Owner will cause the Title Company to issue to Optionee its standard form Owner's ALTA Title Insurance Policy, in the amount of the Purchase Price, insuring fee simple title to the Property is vested in Optionee, subject only to the Permitted Exceptions and the standard printed exceptions.

Section 10. Conveyance

At the Closing, Owner will execute, acknowledge, and deliver to Optionee a Statutory Warranty Deed conveying the Property to Optionee, subject only to the Permitted Exceptions.

Section 11. Possession

Optionee will be entitled to exclusive possession of the Property on and after the Closing Date. Owner expressly acknowledges that growing crops, timber, and nursery stock (the "Stock") are included in the Property and that Owner will have no right to harvest the Stock after Closing. Owner further agrees to continue to harvest the Stock during the Term in the same manner that the Stock was harvested before this Agreement was executed, in the ordinary course of its business and consistent with good agricultural practice.

Section 12. Access to Property

12.1 Access. Owner grants to Optionee and its agents the right to enter on the Property at any reasonable times before the Closing Date for the purpose of conducting tests or studies that Optionee may deem necessary or appropriate in connection with its acquisition of the Property. Owner will cooperate with Optionee in making the tests and studies. Without limiting the preceding, Owner acknowledges Optionee's intent to excavate test pits and perform boring on the Property for purposes of Optionee's environmental review and geotechnical review of the Property. Optionee will protect, defend, and hold Owner harmless from any loss, liability, or damage to persons or property arising out of or related to Optionee's activities on the Property. If Optionee fails to exercise the Option and purchase the Property, Optionee will fully compensate Owner for any physical damage to the Property or any lien, encumbrance, or charge on it attributable to Optionee's activities under this paragraph. If Optionee fails to exercise the Option, Optionee will deliver to Owner a legible copy of any reports, studies, and drawings owned by Optionee that relate to the Property.

12.2 Approvals. Optionee has the right to apply for and obtain any governmental approvals to use and develop the Property as Optionee may desire. Owner will assist and cooperate with Optionee in obtaining any such approvals. Such cooperation includes (without limitation) signing all applications and other documents requested by Optionee that may be reasonably related to such matters, as long as Owner approves the form and substance of all such documents and such documents do not create encumbrances against the Property prior to Closing. All costs and expenses incurred with respect to such approvals will be paid for by Optionee. Without limiting the above, and in addition to the environmental review condition set out in Section 2.4, Owner acknowledges that the following third-party approvals are required by Optionee before Optionee will exercise the Option: 1) receipt of funding for Optionee's land acquisition costs; and 2) final approval by the City of Rockaway Beach of necessary land use action to approve creation of legal lot for purposes of conveying the Property.

Section 13. Covenants of Owner

Owner acknowledges that the covenants of Owner contained in this Agreement, including the covenants contained in this Section 13 (the "Covenants"), are material inducements to Optionee to enter into this Agreement. The Covenants specifically delineated in this Section are the following:

13.1 Information. Owner agrees to deliver to Optionee, within 20 days after the Effective Date, all of the following documents and reports, to the extent the same exist and are in Owner's possession or control: (a) copies of all current service contracts in force; (b) any environmental assessments or audits of the Property that are in Owner's possession or under owner's control; (c) all studies, reports, surveys, aerial photographs, and other documents of a like nature related to the Property; and (d) any engineering reports or studies of the Property that are in Owner's possession or under Owner's control. Except as otherwise specifically provided in this Agreement, Owner is under no obligation to create any additional data or documentation or obtain any reports for Optionee.

13.2 Maintenance. Before the Closing Date, Owner will maintain the Property in the same condition as it now exists, ordinary wear and tear and casualty excepted, and will not cause or permit any waste.

13.3 Ownership. During the Term, Owner will not sell, contract to sell, assign, lease, or otherwise transfer the Property or any part of it, nor grant an option to any third party to acquire all or any portion of it.

Section 14. Warranties and Representations of Owner

14.1 Warranties. Owner acknowledges that the warranties and representations of Owner contained in this Agreement, including the warranties and representations contained in this Section (the “Warranties”), are material inducements to Optionee to enter into this Option Agreement. All Warranties, and Optionee’s right to assert a breach of them, survive execution of this Agreement, the Closing, and the execution and delivery of the Closing documents. If, before Closing, Optionee discovers or is advised that any of the Warranties was untrue when made, then Optionee will have the option to either (1) terminate this Agreement and obtain the return of all Option-Money Payments paid, without waiving any cause of action that Optionee may be entitled to assert against Owner by reason of the breach of the Warranty; or (2) continue this Agreement, without waiving any cause of action that Optionee may be entitled to assert against Owner by reason of the breach of the Warranty. If, after Closing, Optionee discovers or is advised that any of the Warranties were untrue when made, then Optionee may pursue any remedy available to Optionee at law or in equity by reason of the breach of the Warranty. Owner warrants and represents to Optionee that the following matters are true and correct:

14.1.1 No Condemnation or Assessment Proceedings. There is no pending or threatened condemnation or similar proceeding or assessment affecting the Property, or any part of it, and, to the knowledge of Owner, no such proceeding is contemplated by any governmental entity.

14.1.2 Litigation; Law. There is no litigation, arbitration, or administrative hearing pending before any governmental authority that concerns or affects the Property and, to the knowledge of Owner, no such proceeding is threatened. To the knowledge of Owner, the Property complies with all laws, ordinances, and governmental approvals that relate to it.

14.1.3 Site Conditions. Owner warrants and represents to Optionee that, to the knowledge of Owner, there are no material encroachments onto the Property.

14.1.4 Hazardous Substances. For purposes of this Agreement, the phrase “Hazardous Substances” has the same meaning attributed to it in ORS 465.200(16). Owner warrants, represents, and covenants as follows:

(1) To the knowledge of Owner, there are no Hazardous Substances in, on, or buried on or beneath the Property, and no Hazardous Substances have been emitted or released from the Property in violation of any applicable laws;

(2) Owner has not brought onto, stored on, buried on, used on, emitted or released from, or allowed to be brought onto, stored on, buried on, used on, or emitted or released from, the Property any Hazardous Substances in violation of any applicable environmental laws; and

(3) To the knowledge of Owner, no underground storage tanks are located on the Property, including (without limitation) any storage tanks that contain, or previously contained, any Hazardous Substances, and Owner agrees not to cause or permit any such tanks to be installed in the Property before Closing.

14.1.5 Status of Owner. Owner is not a foreign person, foreign partnership, foreign corporation, or foreign trust, as those terms are defined in IRC § 1445.

14.1.6 Breach of Agreements. Neither the execution of this Agreement, nor the execution, delivery, or recordation of any document or agreement referenced herein, nor the

exercise of the Option and closing of the transaction contemplated herein, constitutes or will constitute a default under any other agreement or contract that relates to the Property or to which Owner is a party.

14.1.7 Authority. No consents, documents, or approvals that have not been obtained are necessary to the effectiveness of the grant of the Option by Owner.

14.1.8 Contracts and Leases. There are no lease agreements, maintenance contracts, service agreements, or other contracts of any nature that pertain to, cover, or affect the Property or any part of it which would survive Closing.

As used herein, the phrase “to the knowledge of Owner” or any variation of that phrase refers to matters within the actual knowledge of Mark Garrigues and does not include constructive or imputed notice or knowledge; and the use of that phrase does not imply that Owner has undertaken any special inquiry or investigation with respect to the representation modified by the phrase, unless circumstances within the actual knowledge of Owner would warrant a reasonable person to undertake further inquiry when presented with similar circumstances.

14.2 Changed Conditions. If Owner discovers that one or more of the Warranties or one of the conditions referred to in the Warranties has changed after this Agreement is executed, Owner will immediately inform Optionee, in writing, of that discovery. If the changed condition or Warranty cannot be cured within 10 days of the date Owner discovers the change, then Optionee may terminate this Agreement (and its exercise of the Option, if any) by giving written notice of termination to Owner within 15 days after receiving the notice from Owner, and all Option-Money Payments previously paid by Optionee will be returned to Optionee. If the changed condition or Warranty can be corrected within 10 days after discovery by Owner, Optionee will not have the right to terminate this Option Agreement under this Section and Owner will correct the changed condition or Warranty within 10 days of the discovery. If Optionee does not terminate this Agreement and the changed condition or Warranty can be corrected and is not corrected by the Closing Date, then Optionee will have the right to withhold 150% of the estimated costs of correcting the changed condition or Warranty until the changed condition is corrected, and Owner will correct the changed condition, at Owner’s sole expense and in an expeditious manner, failing which Optionee may use the withheld sums to make the correction. A change caused by Owner is deemed to be a breach of this Agreement by Owner if the change materially and adversely affects the Property or Optionee’s rights.

Section 15. Recording

On the Effective Date, Owner will execute, acknowledge, and deliver to Optionee a Memorandum in the form attached as Exhibit B. If Optionee fails to exercise the Option before the Term expires, Optionee will execute, acknowledge, and deliver to Owner a statutory quitclaim deed releasing any interest in the Property.

Section 16. Waiver

Failure by Owner or Optionee to enforce any right under this Agreement will not be deemed to be a waiver of that right or of any other right.

Section 17. Successors and Assigns

Subject to the limitations on Owner’s right to convey the Property set forth elsewhere herein, the terms, covenants, and conditions herein contained are binding on and inure to the benefit of the heirs, successors, and assigns of Owner and Optionee. Optionee may not assign

its interest in this Option Agreement and the Property to any person or entity, without the consent of Owner.

Section 18. Notices

All notices required or permitted to be given will be in writing and will be deemed given and received on personal service or two business days after deposit in the United States Mail, certified or registered mail, postage prepaid, return receipt requested, addressed as follows:

To Owner: L & C TRS LLC
1500 SW 1st Ave, Ste 1150
Portland, OR 97201

To Optionee: City Manager
City of Rockaway Beach
P.O. Box 5
Rockaway Beach, OR 97136

The foregoing addresses may be changed by written notice, given in the same manner. Notice given in any manner other than the manner set forth above will be effective when received by the party for whom it is intended.

Section 19. Attorney Fees

If litigation is instituted with respect to this Agreement, including any litigation undertaken in the context of bankruptcy proceedings, the prevailing party will be entitled to recover from the losing party, in addition to all other sums and allowable costs, its reasonable attorney fees, both in preparation for and at trial and any appeal or review, the amount to be set by the court before which the matter is heard.

Section 20. Real Estate Commission

Each party agrees to pay any commission or finder's fees that may be due on account of this transaction to any broker or finder employed by it and to indemnify the other party against any claims for commissions or fees asserted by any broker claiming by, through, or under the indemnifying party.

Section 21. Risk of Loss

Owner bears the risk of all loss or damage to the Property from all causes through the Closing Date. If, before the Closing Date, and regardless of whether the Exercise Notice has yet been given or is subsequently given, all or part of the Property is damaged by fire or by any other cause of any nature, or if all or any portion of the Property is taken by condemnation, or if any condemnation is threatened, Owner must give Optionee written notice of such event. Optionee may terminate this Agreement by giving written notice to Owner within 15 days after receipt by Optionee of written notice from Owner of such casualty or condemnation, and Owner will return to Optionee the Option-Money Payments previously paid. If Optionee does not elect to terminate this Agreement, then this Agreement will continue in force and, if Optionee exercises the Option and the Property is conveyed to Optionee, all interest of Owner in and to any insurance proceeds or condemnation awards that may be payable to Owner on account of the casualty or condemnation will be assigned to Optionee at Closing.

Section 22. Integration, Modification, or Amendments

This Agreement contains the entire agreement of the parties with respect to the Property and supersedes all prior written and oral negotiations and agreements with respect to the

Property. Any modifications, changes, additions, or deletions to this Agreement must be approved by Owner and Optionee in writing.

Section 23. Representation

Owner and Optionee have each been represented by separate legal counsel of choice with respect to this transaction. Except as otherwise provided in Section 19, each party will be responsible for all attorney fees incurred by it with respect to this Agreement.

Section 24. Counterparts; Pronouns

This Agreement may be executed in one or more counterparts, all of which will be considered one and the same Agreement and will be effective when one or more counterparts have been signed and delivered by Owner and Optionee. With respect to any pronouns used, each gender used includes the other gender and the singular and the plural, as the context may require.

Section 25. Governing Law; Interpretation

This Agreement is governed by the laws of Oregon. If a court of competent jurisdiction holds any portion of this Agreement to be void or unenforceable as written, Owner and Optionee intend that (1) that portion of this Agreement be enforced to the extent permitted by law and (2) the balance of this Agreement remain in full force and effect.

Section 26. Time Is of the Essence

Time is of the essence of this Agreement.

Section 27. Authority to Execute

Each person executing this Agreement on behalf of Owner and Optionee, respectively, warrants his or her authority to do so.

Section 28. Statutory Disclaimer


THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, ORS 195.301, AND ORS 195.305 TO 195.336 AND OREGON LAWS 2007, CHAPTER 424, SECTIONS 5 TO 11, OREGON LAWS 2009, CHAPTER 855, SECTIONS 2 TO 9 AND 17, AND OREGON LAWS 2010, CHAPTER 8, SECTIONS 2 TO 7. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR ORS 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, ORS 195.301 AND ORS 195.305 TO 195.336 AND OREGON LAWS 2007, CHAPTER 424, SECTIONS 5 TO 11, OREGON LAWS 2009, CHAPTER 855, SECTIONS 2 TO 9 AND 17, AND OREGON LAWS 2010, CHAPTER 8, SECTIONS 2 TO 7.

Section 29. Consents


The parties agree to act in good faith and with fair dealing with one another in the execution, performance, and implementation of the terms and provisions of this Agreement. Whenever the consent, approval, or other action of a party is required under any provision of this Agreement, the consent, approval, or other action will not be unreasonably withheld, delayed, or conditioned by a party unless the provision in question expressly authorizes the party to withhold or deny consent or approval or to decline to take action in accordance with a different standard, in which case the consent or approval or the decision to not take action may be withheld, delayed, or conditioned in accordance with the different standard. Any provision indicating that consent is not to be unreasonably withheld is to be interpreted to mean that consent will not be unreasonably withheld, delayed, or conditioned.

Executed on the day and year first above written.

OPTIONEE:

By: 
Name: Luke Shepard
Title: City Manager

OWNER:

By: 
Name: David Miller
Title: Vice President

Attachments:

Exhibit A—Property

Exhibit B—Form of Memorandum

EXHIBIT A

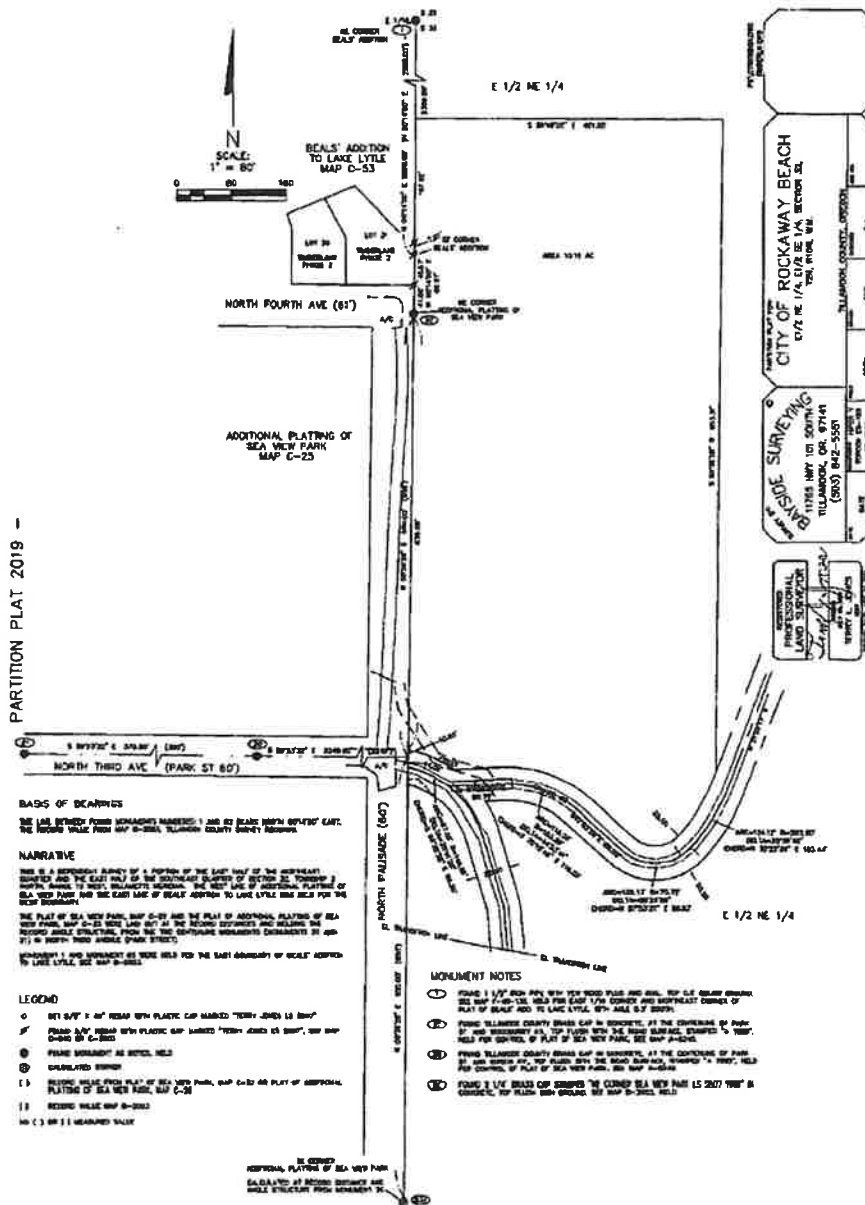
Property

[Description of property]

An approximately 10.15 acre portion of Map & Tax Lot 2N1000000-06000, generally situated to the east of North Palisade Street, north of Spring Creek, the full parcel being a total of approximately 159 acres.

[The legal description is to be determined after land use procedures to create a separate legal lot consisting of the subject property.]

The Property is generally shown in the following map:



OPTIONEE

By: [Signature]
Name: Luke Shepard
Title: City Manager

STATE OF OREGON)
) ss.
County of Tillamook)

This instrument was acknowledged before me on MARCH 2nd, 2022, by Luke Shepard, as City Manager of the City of Rockaway Beach, an Oregon municipal corporation, on behalf of said City.

/s/ [Signature]
Notary Public for Oregon
My commission expires: 3/5/2022



Memorandum Exhibit A
Legal Description