

AGREEMENT BETWEEN CITY OF CARMEL-BY-THE-SEA AND PACASO, INC.

This Agreement is entered into by and between the City of Carmel-by-the-Sea (“City”) and Pacaso, Inc. (“Pacaso”) and Dolores 7 SW of 13th LLC, a Delaware limited liability company (collectively with Pacaso and the City, “Parties”). This Agreement shall be effective on the first calendar day after which all signatories have signed this Agreement (“Effective Date”).

RECITALS

WHEREAS, the City Municipal Code until 2022 included Section 17.14.040 “Additional Use Regulations” and Section 17.28.010 “Timeshare Projects” (“2022 Code”) and a copy of said code sections is attached as Exhibit “1”.

WHEREAS, on January 21, 2022, a Grant Deed was recorded for a home located at Dolores 7 SW 13th, Carmel-by-the-Sea, California 93921 (“Dolores Home”), which transferred title to the Dolores Home to Dolores 7 SW of 13th LLC;

WHEREAS, on March 27, 2023, the City adopted Ordinance 2022-007, which amended the City Municipal Code relating to timeshares;

WHEREAS, Ordinance 2022-007 applies to the use of real property or any portion thereof in all zoning districts in the City;

WHEREAS, on April 24, 2023, the City submitted Ordinance 2022-007 to the California Coastal Commission (“CCC”) as a proposed amendment to the Local Coastal Plan Implementation Plan (“Implementation Plan Amendment”);

WHEREAS, on October 13, 2023, the CCC certified the Implementation Plan Amendment finding that it conforms with, and is adequate to carry out the provisions of, the certified Land Use Plan;

WHEREAS, there is a good faith dispute between the Parties regarding whether the ownership of the Dolores Home violates the 2022 Code and/or Ordinance 2022-007; and

WHEREAS, this Agreement is being entered into by the Parties in order to resolve their dispute regarding the applicability of the 2022 Code and Ordinance 2022-007 to the Dolores Home, and to avoid the time and expense of litigation.

NOW, THEREFORE, in consideration of the mutual covenants and undertakings contained herein, it is hereby agreed by the Parties as follows:

1. With respect to the 2022 Code and Ordinance 2022-007, the Dolores Home shall be deemed a lawful, nonconforming use pursuant to the City Municipal Code, including pursuant to Chapter 17.36 of the City Municipal Code.
2. The City shall not undertake any enforcement action against the Dolores Home or the past, current, or future owners of the Dolores Home pursuant to the 2022 Code, Ordinance 2022-007,

or any amendments thereto, or pursuant to any other past, present, or future provision of the City Municipal Code that purports to regulate timeshares.

3. Pacaso, Dolores 7 SW of 13th LLC, and the current owners of the Dolores Home, and their successors (including any subsequent owners of their property interest(s) in the Dolores Home), can continue to market, use, and sell their partial interests in the Dolores Home.

4. Any sale by Pacaso, Dolores 7 SW of 13th LLC, or a current owner of a property interest in the Dolores Home, or their successors, of a partial interest in the Dolores Home that increases or decreases the number of owners of the eight partial interests in the Dolores Home shall not be considered a change or extension of use under the City Municipal Code, provided that the number of partial interests in the Dolores Home shall not exceed eight.

5. Any maintenance, repair, alteration, or other modification to the Dolores Home, including any alteration, repair, or remodeling that enlarges, extends, or increases the floor area, building envelope, or exterior volume of or otherwise expands the Dolores Home, or any maintenance, alteration, repair, or remodeling in a 12 month period that exceeds 10 percent of the value of the Dolores Home, shall not affect the Dolores Home's status as a lawful, nonconforming use under the City Municipal Code, provided that the proposed maintenance, repair, alteration, or other modification complies with all requirements of the City Municipal Code.

6. Pacaso (including any parent, subsidiary or affiliate) shall not market, use, sell or purchase any real property or portion thereof in all zoning districts in the City ("Property") that is fractionally-owned, or intended to be fractionally owned, or any interest in an entity that owns or holds title to Property in the City that is fractionally-owned, or intended to be fractionally owned, and shall not assist in any way other persons or entities in the market, use, sale or purchase of any Property that is fractionally-owned, or intended to be fractionally owned, for as long as the City Municipal Code prohibits fractionally-owned Property. This Section 6 shall not apply to the marketing, use, or sale of the Dolores Home.

7. If at any time after the Effective Date the 2022 Code, Ordinance 2022-007, or any other provision of the City Municipal Code are amended to allow for the marketing, use, or sale of fractionally-owned Property in the City or to allow Pacaso to market, use, or sell fractionally-owned Property in the City, Section 6 shall be considered null and void and of no force or effect.

8. If at any time after the Effective Date another entity or individual is allowed by the City to engage in activity that is prohibited by the 2022 Code or Ordinance 2022-007 (including any amendments thereto) on terms that are more favorable than those set forth in this Agreement, this Agreement shall be amended to incorporate those more favorable terms.

9. This Agreement, and the obligations imposed on the Parties hereby, are limited to Property located in the City.

10. General Provisions:

10.1 Voluntary Agreement. This Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of the Parties, or of any other person, firm, or entity.

10.2 Binding On Successors. This Agreement shall inure to the benefit of and be binding upon each of the Parties and their respective owners, agents, principals, shareholders, partners, joint venturers, officers, directors, trustees, attorneys, representatives, assigns, subsidiaries, parent companies, and predecessors or successors.

10.3 Construction And Interpretation. Neither the Parties nor their respective counsel shall be deemed the drafter of this Agreement for purposes of interpreting any provision hereof in any judicial or other proceeding that may arise between or among them.

10.4 Modifications And Amendments. No amendment, change, or modification of this Agreement or any part thereof shall be valid unless in writing and signed by the Parties.

10.5 Third-Party Beneficiaries. The Parties do not intend this Agreement to benefit any other third parties or persons not a party to this Agreement, except as this Agreement expressly provides.

10.6 No Representations Of Fact. In entering into and executing this Agreement, the Parties warrant that they are acting upon their respective independent judgments and upon the advice of their respective counsel, and not in reliance upon any warranty or representation, express or implied, of any nature or kind by any other person or entity, other than the warranties and representations expressly made in this Agreement.

10.7 Governing Law. This Agreement is entered into in accordance with the laws of the State of California and shall be governed by and interpreted in accordance with the laws of the State of California, without regard to its conflict of law principles.

10.8 Enforcement. Upon a breach by any Party, the aggrieved Party may institute proceedings to compel injunctive relief or specific performance by the other Party in breach of its obligations.

10.9 Waiver. A non-breaching Party may waive the breach of any provision of this Agreement only by executing a writing. Waiver of any breach shall not be deemed to be a waiver of any other breach of the same or any other provisions of this Agreement.

10.10 Further Assurances. Each of the Parties shall execute and deliver any and all additional papers, documents, and other assurances and shall do any and all acts or things reasonably necessary in connection with the performance of its or his or her obligations hereunder to carry out the express intent of the Parties.

10.11 Incorporation Of Recitals. The foregoing recitals are incorporated herein by reference and hereby made a part of this Agreement.

10.12 Counterparts and Signatures Transmitted by Email. This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument. The several signature pages may be collected and annexed to one or more documents to form a complete counterpart. Photocopies of executed copies of this Agreement may be treated as originals. Signatures of this Agreement may be transmitted by email and shall have the same force and effect as an original signature.

10.13 Entire Agreement. This Agreement shall constitute the entire agreement among the Parties with regard to subject matter of this Agreement and shall supersede all previous agreements and understandings between the Parties. Each of the Parties acknowledges that no other party, nor any agent, representative, or attorney of any other party, has made any promise, agreement, covenant, representation, or warranty whatsoever, express or implied, concerning the subject matter of this Agreement that is not contained in this Agreement.

10.14 Rules Of Construction. The headings set forth herein have been inserted solely for purposes of convenience and shall not be deemed to modify, explain, expand, or restrict any of the provisions of this Agreement in any manner whatsoever. Words in the singular number in this Agreement shall be interpreted to include the plural, and vice versa, unless the context requires otherwise. The terms “hereof,” “herein,” and “hereby,” and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole. Section references are to the sections to this Agreement unless otherwise specified. The words “include” or “including,” when used in this Agreement, shall mean “including, without limitation.” The word “or” shall not be exclusive.

10.15 Survival. All representations and warranties set forth in this Agreement shall be deemed continuing and shall survive the Effective Date, or termination or expiration of this Agreement.

10.16 Signatory Authority. The respective signatories to this Agreement each represent and warrant that they are fully authorized to enter into this Agreement on behalf of the respective Parties.

10.17 Severability. If any provision of this Agreement is later declared void, the remaining provisions of the Agreement are severable and remain binding on the Parties.


10.18 Restrictions On Use Of This Agreement. This Agreement is entered into as a compromise to avoid the inherent risks and expenses posed by litigation of the dispute between the Parties regarding the applicability of the 2022 Code and Ordinance 2022-007 to the Dolores Home. Neither the fact nor content of this Agreement, nor any action based on it, will constitute, be construed as, or be admissible in evidence as an admission of the validity of any claim or defense, of any fact alleged in any pending or subsequently filed action, or of any wrongdoing, fault, violation of law, or liability or non-liability. Any Party may file this Agreement in any action that may be brought against it solely in order to support any defense or counterclaim. This Section 10.18 shall survive the expiration or voiding of this Agreement.

10.19 Attorneys’ Fees And Costs. The Parties agrees to bear their own attorneys’ fees and costs associated with or having anything to do with the negotiation and execution of this Agreement.

IN WITNESS OF THIS AGREEMENT, the undersigned Parties, being duly authorized, have caused this Agreement to be executed on the dates shown below.

[Signatures on following pages]

PACASO, INC.


By:  _____
DocuSigned by:
A17180654AE043A...

Print Name: David Willbrand

Print Title: Chief Legal Officer

Date: 6/27/2024

DOLORES 7 SW OF 13TH LLC

By:  _____
DocuSigned by:
A17180654AE043A...

Print Name: David Willbrand

Print Title: Authorized Representative

Date: 6/27/2024

CITY OF CARMEL-BY-THE SEA

By: _____
Dave Potter, Mayor

Date: _____

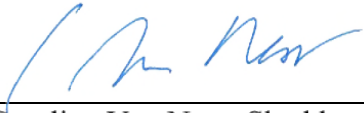
ATTEST

Nova Romero, City Clerk

Date: _____

[Signatures continue on next page]

APPROVED AS TO FORM



Caroline Van Ness, Skadden, Arps, Slate, Meagher & Flom LLP
Attorneys for Pacaso, Inc.

Brian A. Pierik, Burke, Williams & Sorensen
City Attorney
City of Carmel-by-the-Sea

CITY OF CARMEL-BY-THE-SEA 2022 CODE

17.14.040 Additional Use Regulations.

A. All Uses.

1. No new structure or modification to an existing structure shall be permitted nor shall any business license be issued that would allow the creation of publicly accessible retail space occupying fewer than 200 square feet or more than 5,000 square feet unless approved through a use permit and pursuant to the adoption of findings per CMC 17.64.200, Retail Space of Less Than 200 Square Feet or Greater Than 5,000 Square Feet.
2. No timeshare projects, programs or occupancies shall be established or permitted in any zone.
3. Except in restaurants, not more than five persons in any one individually licensed business shall be engaged in the production, repair or manufacturing of goods.
4. No use shall be permitted and no process, equipment or materials shall be employed which is found by the Planning Director or by the Planning Commission to be objectionable to persons residing or working in the vicinity by reason of odor, fumes, noise, vibration, illumination, glare, unsightliness, dust, cinders, dirt, refuse, water-carried wastes or heavy truck traffic, or involve any hazard of fire or explosion. .

17.28.010 Timeshare Projects.

Timeshare projects, programs and occupancies are prohibited uses within all of the zoning districts within the City.

17.70.020 Definitions.

The words, terms, and phrases defined in this chapter shall, for all purposes connected with this title, be construed as having the meanings respectively set forth in this chapter. . . .

Time-Share Definitions.

Time-Share Estate. A right of occupancy in a time-share project that is coupled with an estate in the real property.

Time-Share Use. A license or contractual or membership right of occupancy in a time-share project which is not coupled with an estate in the real property.

Time-Share Occupancy. An occupancy related to the situation wherein a purchaser receives the right or entitlement in perpetuity, for life, or for a term of years or other extended term, to the recurrent, exclusive use or occupancy of a lot, parcel, unit, room(s), hotel or portion thereof, or segment of real property, annually or on some other seasonal or periodic basis, for a period of time that has been or will be allotted from the use or occupancy periods into which the time-share project which is involved has been divided. The right or entitlement to occupancy may attach in advance to a specific lot, parcel, unit, room(s) or portion of a hotel, or segment of real property, or may involve designation or selection of the same at a future time or times.

Time-Share Program. Any arrangement for a project whereby the use, occupancy, or possession of real property has been made subject to a time-share estate, use, or occupancy, whereby such use, occupancy, or possession circulates among purchasers of the time-share intervals according to a fixed or floating time schedule on a periodic basis for a specific period of time during any given year, but not necessarily for consecutive years.

Time-Share Project. A project in which a purchaser receives the right in perpetuity, for life, or for a term of years, to the recurrent, exclusive use or occupancy of a lot, parcel, unit, or segment of real property, annually or on some other periodic basis, for a period of time that has been or will be allotted for the use or occupancy periods into which the project has been divided.

Vacation Time-Sharing Project. Any real property that is subject to a time-share program.