374.

Recording Requested
When Recorded Return to:

City Clerk
City of Hercules
111 Civic Drive
Hercules, CA 94547

CONTRA COSTA Co Recorder Office
STEPHEN L. WEIR, Clerk-Recorder
DOC- 2012-0142855-00
Check Number
Friday, JUN 15, 2012 14:55:00
FRE $0.00
Ttl Pd $0.00 Rcpt # 0001304223
MNH/R9/1-374

[SPACE ABOVE FOR RECORDER'S USE]
[EXEMPT FROM RECORDATION FEE PER GOV. CODE §§27383 & 6103]

[NOTE TO RECORDER:
RECORDATION PURSUANT
TO GOV. CODE §65868.5]

IMPLEMENTING DEVELOPMENT AGREEMENT

FOR THE

HERCULES BAYFRONT PROJECT

by and between the

CITY OF HERCULES,

and

HERCULES BAYFRONT, LLC

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IMPLEMENTING DEVELOPMENT AGREEMENT

This IMPLEMENTING DEVELOPMENT AGREEMENT is entered into as of March 14, 2012, by and between CITY OF HERCULES, a municipal corporation of the State of California and HERCULES BAYFRONT, LLC, a Delaware limited liability company.

RECITALS

This Agreement is entered into on the basis of the following facts, understandings and intention of the Parties:

B. The purpose of this Agreement is to set forth the Parties rights and obligations concerning the entitlement and improvement of Owner's private development project on certain real property found within the Project Site. The Project Site legal description is provided as EXHIBIT A(1) and the Project Site Map is provided as EXHIBIT B(1). Owner's development of its private project on the Project Site pursuant to this Agreement and the fulfillment generally of this Agreement are in the vital and best interests of City and the health, safety, and welfare of City's residents, and in accordance with the public purposes and provisions of applicable federal, state and local laws and requirements.

C. Owner is a limited liability company, organized and existing under the laws of the State of Delaware, in good standing thereunder, and qualified to conduct business in California. Owner has a legal and equitable interest in the certain property, which consists of approximately 103.9 acres within the City of Hercules, Contra Costa County, State of California, and which is more particularly described in EXHIBIT A(1).

D. City is a general law city and municipal corporation of the State of California and is duly organized and existing and authorized to exercise powers under the laws of the State of California and City Municipal Code.

E. City has enacted the Development Agreement Ordinance establishing the procedures and requirements for the consideration of development agreements pursuant to California Government Code Section 65864 et seq. This Agreement is a statutory development agreement and includes conditions and requirements for the implementation of the Owner's Project.

F. On July 22, 2008, the City Council of City adopted the Initiative, which, among other things, adopted the Initiative Development Agreement.

G. On September 19, 2011, the City Council certified the Hercules Bayfront Project EIR and thereafter approved certain Project Approvals, including without limitation General Plan Amendment No. 09-02, Zoning Designation Change No. 09-01, and amendments to the Hercules Waterfront District Master Plan referred to as "Zoning Text Amendment" (No. 09-03). Owner intends to develop the Project on the Project Site consistent with the General Plan (as amended by General Plan Amendment No. 09-02), and the Zoning Code (as amended by Zoning Designation Change 09-01 and by Zoning Designation Change 09-03).

H. Following the issuance of the Project Approvals, the City Council approved the Vesting DA. The Vesting DA was recorded on 6-15-12 in the Official Records of the County of Contra Costa as Instrument No. 2012-0142851-00

I. City intends to develop a separate and independent project – the ITC Project – on certain property within the Project Site. A draft Environmental Impact Report/Environmental Impact Statement was prepared for the ITC Project and on August 9, 2011 the City Council certified the Final EIR.

J. In order to build the ITC Project, City must acquire certain property within the Project Site from Owner and the conveyance of that land by Owner to City is one of the public benefits to be received by City under this Agreement. City and Owner have entered, or will enter, into the Landside PSA to facilitate City's ITC Project. If the Landside PSA is terminated or if escrow does not close on the Landside PSA, certain provisions of this Agreement will be modified, as set forth herein below. City also desires to acquire and Owner desires to transfer certain other property reflected in the Waterside PSA. The legal description of property to be owned by Owner assuming close of escrow on the Landside PSA and the Waterside PSA is attached hereto as EXHIBIT A(2). A depiction of the property to be owned by Owner assuming close of escrow on the Landside PSA and the Waterside PSA is attached hereto as EXHIBIT B(2).

K. City anticipates that development by Owner of the Project on the Project Site will remove blighting conditions, result in the development of residential, retail hotel and office land uses, and provide revenues and jobs to the community and provide a catalyst for City's economic development addressing problem properties impaired by physical and economic conditions that have impeded private sector investment.

L. Separate from and in addition to benefits from the conveyance of land by Owner to City for the ITC Project, development of the Project in a comprehensive and orderly fashion as contemplated in this Agreement will result in substantial additional public benefits to City, its residents and surrounding communities. Other public benefits created by the Project include new housing and jobs, affordable housing, and economic development. In exchange for these benefits to City, Owner desires to receive the assurance that it may proceed with the Project in accordance with the Governing Ordinances and the Project Approvals, subject to the terms and conditions contained in this Agreement.

M. The Project and this Agreement have been analyzed and reviewed by City under all applicable legal requirements, including land use standards and policies. Implementation of the Project will require City approval of Subsequent Project Approvals, including but not limited to tentative and final tract maps, subdivision maps for individual lots, design review for architecture and landscaping, building and grading permits, certificates of occupancy, and ministerial actions. Execution of this Agreement by the City does not constitute an approval of those Subsequent Project Approvals.

N. This Agreement is intended to grant Owner a fully vested right to develop the Project as provided herein, and to provide City with certain binding assurances with respect to the nature and scope of such development. This Agreement also establishes the conditions

governing City's issuance of Subsequent Project Approvals, and the standards within which the obligations of Owner for certain improvements will be met, and otherwise to provide the criteria for the development of the Project.

O. For these reasons, City has determined that the Project is a development for which a statutory development agreement pursuant to Government Code Section 65864 et seq. is appropriate in order to achieve the goals and objectives of City's land use planning policies, and to provide appropriate assurances to Owner regarding its ability to develop the Project. This will in turn eliminate uncertainty in planning for and securing orderly development of the Project, assure construction and installation of necessary public improvements and provision of public services appropriate to development of the Project, assure attainment of the maximum effective utilization of resources within City at the least economic cost to its citizens, and otherwise achieve the goals and purposes for which the Development Agreement Ordinance was enacted by City.

P. It is the intent of the Parties that this Agreement will generally define the Parties rights and obligations with regard to the development of the Project Site and the Vesting DA will only apply to the Project Site (*i*) in the event of a Successful Third Party Legal Challenge, or (*ii*) if this Agreement is terminated by either Party, for any reason.

Q. City desires to encourage development of the Project, but in doing so does not commit to using any redevelopment or general funds or discretionary funds of City including but not limited to its general fund on the Project. City will use its best efforts to fund from outside funding sources the ITC Project and its related infrastructure, which includes the City Public Improvements as set forth in EXHIBIT G, and is pursuing grant funding and other funding for those improvements and the ITC Project. By entering into this Agreement, City is committing to spend identified outside funding grants, if obtained, on the construction of the City Public Infrastructure and the ITC Project. The Parties agree and acknowledge that the City's ability to complete some or all of the ITC Project, its related infrastructure, and/or the City Public Improvements is contingent on City receiving or obtaining adequate outside funding.

R. On November 28, 2011, after consideration of the staff report and all other documentary and oral evidence submitted at a duly noticed public hearing pursuant to the Development Agreement Ordinance, the Planning Commission recommended that the City Council find and determine that this Agreement is consistent with the objectives, policies, and uses and programs specified in the Hercules General Plan; is compatible with the uses authorized in and the regulations prescribed for the zoning district in which the Project Site is located; is in conformity with and will promote public convenience, general welfare and good land use practices; will not be detrimental to the health, safety, and general welfare of City or the region surrounding City; will not adversely affect the orderly development of property in general or the Project Site; and will promote and encourage the development of the Project by providing a greater degree of requisite certainty with respect thereto.

S. On February 28, 2012, the City Council held a duly noticed public hearing on this Agreement and introduced the Enacting Ordinance. Thereafter, on March 13, 2012, the City Council adopted the Enacting Ordinance. According to law, the Enacting Ordinance took effect thirty (30) days after adoption.

AGREEMENT:

In consideration of the foregoing Recitals which are incorporated herein and made a part hereof, and the mutual covenants contained in this Agreement, City and Owner agree as follows:

1. DEFINITIONS

In addition to the terms defined elsewhere in this Agreement, the following terms shall have the meaning set forth below:

"Affiliate" means and refers to, with respect to Owner, (*i*) any entity which has the power to direct Owner's management and operation, or any entity whose management and operation is controlled by Owner; or (*ii*) any entity in which an entity described in clause (i) has a controlling interest; (*iii*) any entity a majority of whose voting equity is owned by Owner, or for which Owner serves as the managing member or general partner; or (*iv*) any entity in which, or with which, Owner, its successors or assigns, is merged or consolidated, in accordance with applicable statutory provisions for merger or consolidation, as long as the liabilities of the entities participating in such merger or consolidation are assumed by the entity surviving such merger or created by such consolidation.

"Affordable Housing Program" means and refers to the plan for the development and funding of affordable housing units attendant to the Project, as forth in EXHIBIT E attached hereto and incorporated herein.

"Agreement" means and refers to this Implementing Development Agreement by and between City and Owner.

"Agreement Amendment" means and refers to an alteration to the terms of this Agreement through the adoption of an amendment in accordance with the requirements of Government Code section 65868.

"CEQA" means and refers to the California Environmental Quality Act, Public Resources Code Section 21000 *et seq.*, and its implementing Guidelines found in Title 14, Section 15000 *et seq.* of the California Code of Regulations.

"City" means and refers to the City of Hercules, a municipal corporation of the State of California.

"City Attorney" means and refers to the City Attorney of the City of Hercules.

"City Clerk" means and refers to the City Clerk of the City of Hercules.

"City Council" means and refers to the City Council of the City of Hercules.

"City Manager" means and refers to the City Manager of the City of Hercules.

"City Phase I Improvements" means and refers to those improvements to be constructed by City during its initial phase of development of the ITC Project, which improvements are

specified in Phasing Plan (EXHIBIT F) and further defined in the List of City Public Improvements (EXHIBIT G).

"City Public Improvements" means and refers to the public improvements identified in the EXHIBIT G which are City's obligation to fund and construct in accordance with the Phasing Plan, subject to Section 4.12(b). These improvements include the improvements for the ITC Project.

"Conditions of Approval" means and refers to the conditions of approval attached to the approval of the Project and set forth in EXHIBIT L, together with those conditions that are in the future lawfully imposed in accordance with the terms and limitations set forth in this Agreement.

"Coordinated Project Management Plan" means and refers to the Coordinated Project Management Plan attached as EXHIBIT M hereto.

"Development Agreement Ordinance" means and refers to Hercules Municipal Code, Title 10, Section 8, commencing with Section 10-8.101.

"Effective Date" means and refers to the effective date of this Agreement which shall be the thirtieth (30th) day following the adoption of the Enacting Ordinance by the City Council, which date shall be inserted into the preamble to this Agreement.

"Enacting Ordinance" means and refers to the Ordinance No. 467, adopted by the City Council on March 13, 2012, approving this Agreement. This Agreement shall constitute a part of the Enacting Ordinance as if incorporated therein in full.

"Event of Default" means and refers to the failure or unreasonable delay by any Party to this Agreement to perform any term, provision or condition of this Agreement as set forth in Section 14 of this Agreement.

"Exactions" means and refers to all exactions, fees, in lieu payment, other monetary payments, conditions of approval, mitigation measures from the Hercules Bayfront Project EIR, requirements for acquisition, dedication, reservation or maintenance of land, obligations to construction site or off site public or private improvements called for in connection with the development of the Project under this Agreement or otherwise, that as of the Effective Date are controlled by and may be imposed by City as a condition of developing the Project. All of the monetary exactions for the Project are identified on EXHIBIT I. All remaining Exactions for the Project are identified as Conditions of Approval in EXHIBIT L. Nothing in this Agreement prevents the City from increasing administrative fees related to the processing of Subsequent Project Approvals. Increases in City administrative processing fees shall be applicable to the Project to the extent such increases are based solely on City cost-recovery for administrative time and overhead associated with processing Owner applications so long as the fees are imposed uniformly at the same rate City-wide and are in no event more than two percent (2%) per year greater than the fees existing as of the Effective Date.

"Excused Public Benefit Fee Amount" means and refers to an amount equal to one hundred fifty percent (150%) on the Public Benefit Fee Advance Amount.

"Existing Project Approvals" means and refers to the approvals and entitlements for the Project granted as of the Effective Date, including but not limited to, the CEQA Findings and Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program relating to the Hercules Bayfront Project EIR, General Plan Amendment (No. 09-02), Zoning Designation Change (No. 09-01), the Initiative, Amendments to the Hercules Waterfront District Master Plan referred to as "Zoning Text Amendment" (No. 09-03), Vesting Tentative Map (No. 9290), and the Vesting DA.

"Governing Ordinances" means and refers to the ordinances, resolutions, official policies, rules and regulations of City governing the permitted uses of land, intensity of development, Exactions charged in connection with the development of land, improvement and construction standards and requirements, specifications and Conditions of Approval applicable to the development of the Project as of the Effective Date including, but not limited to, the Initiative, Hercules General Plan, Zoning Ordinance, the Enacting Ordinance, Subdivision Ordinance, Municipal Code, Resolution No. 11-132 and building/construction codes.

"Hercules Bayfront Project EIR" means and refers to Environmental Impact Report No. 2009112058, prepared by City and Certified by City Council on October 11, 2011 by City Council Resolution 11-122.

"Initiative" means and refers to the Waterfront Now Initiative, adopted by the City Council on July 22, 2008, which among other things adopted the Initiative Development Agreement.

"Initiative Development Agreement" means and refers to that certain Development Agreement adopted by City through the Initiative, and recorded on September 8, 2010 in the Official Records of the County of Contra Costa as Instrument No. 004199831. The Initiative Development Agreement is attached as EXHIBIT C(1).

"Initial Entitlement" means and refers to Owner's land use entitlement for the Project Site, as measured in dwelling units, hotel rooms, or square feet of office, retail, commercial and/or flex development, as the case may be, existing as of the Effective Date.

"Initial Vested Fee Period" means and refers to the longer of (*i*) five (5) years after the Effective Date and (*ii*) three (3) years after City's completion of the City Phase I Improvements; provided, however, that if City and Owner do not close escrow on all or any portion of the property identified in the Landside PSA, or if the Landside PSA is terminated, then the "Initial Vested Fee Period" shall mean and refer to five (5) years after the Effective Date; provided further that, notwithstanding the foregoing, if the City does not initiate construction on the John Muir Parkway portion of the City Public Improvements by July 1, 2014, then the Initial Vesting Period shall expire no earlier than June 30, 2020 (the Parties agreeing that if the Initial Vesting Period would otherwise expire after June 30, 2020, then the Initial Vesting Period shall expire on such later date).

"ITC Project" means and refers to the Intermodal Transit Center Project and related improvements to support train, bus, and ferry service, to be developed as a project separate and

independent from the Project on portions of the Project Site that Owner anticipates conveying to City and City anticipates acquiring from Owner.

"Landside PSA" means and refers to that certain "Purchase and Sale Agreement and Escrow Instructions for Public Use Land, ITC Right of Way Expansion and ITC Station and Plaza," attached as EXHIBIT J(1).

"Laws" means and refers to the constitutions and laws of the State of California and the United States, the laws of any political subdivision within the State of California with jurisdiction over or relating to the Project or the Project Site, any codes, statutes, ordinances, resolutions, regulations, official policies, or rules of any of them, effective within City and any court decision, state or federal, thereunder.

"Mortgagee" means and refers to the holder, including any affiliate of Owner, of any mortgage, the beneficiary of any deed of trust, or the holder or beneficiary of any other security device or instrument, in the Project Site or any portion thereof, including the purchaser of all or any portion of the Project Site at a judicial or non-judicial foreclosure sale and any person or entity who acquires title to all or any part of the Project Site by deed-in-lieu of foreclosure, and any of their respective heirs, successors, and assigns.

"Net Developable Land" means and refers to the portions of the Project Site, excluding those portions of the Project Site conveyed to the City under the Landside PSA and/or the Waterside PSA that are entitled for construction of buildings and associated improvements, including but not limited to, parking, landscaping, and setbacks. "Net Developable Land" does not include lands used for or reserved for use as public or private rights of way.

"New Law" means and refers to changes in or adoptions of new Laws, regulations, plans or policies, to the extent that such changes are specifically mandated and required by changes in state or federal laws or regulations.

"Notice" means and refers to any notice or communication required pursuant to this Agreement by any Party hereto.

"Notice of Default" means and refers to a Notice from one Party advising another Party that the Party receiving the Notice has, in the Party giving the Notice's opinion, failed or unreasonably delayed in the performance of an obligation under this Agreement.

"Owner" means and refers to Hercules Bayfront, LLC a Delaware limited liability company.

"Owner's Additional Work Exaction Credits" means and refers to the fair value of any funding or work provided by Owner to City under Section 3.6, plus reasonable overhead, profit, and interest thereon.

"Owner's Exaction Credits" means and refers to the sum of Owner's Landside PSA Exaction Credits, plus Owner's Waterside PSA Exaction Credits (if any), plus Owner's Reimbursement Exaction Credits, plus Owner's Additional Work Exaction Credits (if any).

"Owner's Landside PSA Exaction Credits" means and refers to the five hundred twenty four thousand five hundred twenty dollars ($524,520) in credits toward City-imposed fees and exactions that City will provide to Owner in partial fair value compensation to Owner for the provision of right of way land, upon close of escrow on the Landside PSA. If the Parties fail to close escrow on the right of way land described in the Landside PSA or the Landside PSA is terminated prior to the transfer of any land thereunder, there shall be no Owner's Landside PSA Exaction Credits.

"Owner's Public Benefit Fee Advance Exaction Credits" means and refers to an amount equal to the Public Benefit Fee Advance Amount.

"Owner's Reimbursement Exaction Credits" means and refers to the three million two hundred sixty five thousand six hundred dollars ($3,265,600) in credits toward City-imposed fees and exactions that City will provide to Owner as fair value reimbursement for prior expenses incurred by Owner for the benefit of City.

"Owner's Reimbursement Exaction Credits Buyback Amount" means and refers to one million eight hundred ninety thousand six hundred dollars ($1,890,600) of the Owner's Reimbursement Exaction Credits.

"Owner's Waterside PSA Exaction Credits" means and refers to the four hundred ninety three thousand two hundred dollars ($493,200) in credits toward City-imposed fees and exactions that City will provide to Owner in partial fair value compensation to Owner for the provision of land, upon close of escrow on the Waterside PSA. If the Parties fail to close escrow on the land described in the Waterside PSA for which credits are paid as compensation, or the Waterside PSA is terminated prior to the transfer of any land thereunder, there shall be no Owner's Waterside PSA Exaction Credits.

"Parties" means City and Owner collectively.

"Party" means and refers to City or Owner, as the context requires.

"Phase" means and refers to a defined phase of the development set forth in the Phasing Plan.

"Phasing Plan" means and refers to the Phasing Plan attached as EXHIBIT F hereto.

"Prevailing Party" means and refers to the Party determined by a court to have most nearly prevailed in a dispute between the Parties, even if such Party did not prevail in all matters, not necessarily the one in whose favor a judgment is rendered. If the court fails or refuses to make a determination of the prevailing party, the Party who is awarded costs of suit shall also be deemed to be the prevailing party for purposes of awarding attorneys' fees.

"Project" means and refers to the improvements to be constructed on the Project Site for the development of Owner's private project in any manner consistent with the General Plan and Zoning Code as they exist on the Effective Date.

"Project Approvals" means and refers to all City approvals, entitlements and permits required for the development of the Project, including but not limited to the Existing Project Approvals and the Subsequent Project Approvals. These approvals include but are not limited to a General Plan Amendment, rezoning, a final planned development plan, parcel maps, tentative and final subdivision maps, conditional use permits, design review approvals, grading and construction permits, building permits, encroachment permits, certificates of occupancy and all other approvals required to be obtained in order to construct the Project on the Project Site.

"Project Description and Scope of Development" means and refers to the description and scope of development for the implementation of Owner's private project, as set forth in EXHIBIT D.

"Project Site" means and refers to that certain real property described in EXHIBIT A(1) to this Agreement.

"Project Site Map" means and refers to the map included as EXHIBIT B(1) to this Agreement.

"Pro-Rata Basis" means and refers to, in connection with a sale, transfer, or assignment of all or any portion of the Project Site to a buyer, transferee, or assignee, that portion of the economic security which (*i*) is reasonably related to the public improvement costs which are Owner's obligation under this Agreement and which are associated with the portion of the Project Site sold, transferred, or assigned; (*ii*) is to be in lieu of and substituted for that portion of the economic security posted, pledged, or otherwise provided by Owner for benefit of City; and (*iii*) Owner has negotiated with the transferee to assume in writing (the "Substituted Security"). The amount and nature of the Substituted Security must be reasonably satisfactory to the City Manager, provided that if any of, or a combination of any of, the following is/are provided such form of Substituted Security shall be deemed acceptable to City: (A) an irrevocable standby letter of credit from an FDIC insured banking institution, (B) an irrevocable corporate surety bond issued by a licensed California surety, and/or (C) cash or cash equivalents such as obligations of the United States. The amount of the Substituted Security must reasonably relate to the projected cost to install and/or complete the public improvement(s) which is(are) Owner's obligation under this Agreement, on the portion of the Project Site sold, transferred, or assigned, the obligation of which to install or complete is transferred to the buyer, transferee, or assignee.

"Public Benefit Fee" means and refers to the fees charged by City to Owner in the amounts specified under the line item "NEW PUBLIC BENEFIT FEE" on the Schedule of Exactions.

"Public Benefit Fee Advance Amount" means and refers to the amount that shall not exceed two million dollars ($2,000,000) which Owner advances to City in accordance with Section 3 of this Agreement.

"Public Financing Plan" means and refers to that certain plan attached hereto as EXHIBIT H that sets forth the program agreed to by City and Owner for the implementation of one or more assessment districts, community facilities districts, and other measures for funding the public improvements required for the Project, or a specific Phase or portion thereof.

"Subsequent Project Approvals" means and refers to project approvals that occur after the Effective Date of this Agreement that are consistent with the General Plan and Zoning Code in existence as of the Effective Date and are necessary to implement the Project, including but not limited to tentative and final tract maps, subdivision maps for individual lots, design review for architecture and landscaping, building and grading permits, certificates of occupancy, and ministerial actions.

"Substituted Security" shall have the meaning ascribed in the definition of "Pro-Rata Basis" set forth hereinabove.

"Successful Third Party Legal Challenge" means and refers to a Third Party Legal Challenge that results in a temporary, preliminary, or permanent order, ruling, or judgment, or voter initiated legislative action that results in the inability to enforce all or any portion of this Agreement.

"Streamlined Approval Process" means and refers to the conditions, time frames, requirements, and obligations set forth in EXHIBIT K.

"Term" means and refers to the Term of this Agreement as provided in Section 2.2.

"Third Party Legal Challenge" means and refers to a referendum or third-party action or legal action that is instituted which might affect or challenge the validity or enforceability of the Enacting Ordinance or this Agreement including its Exhibits or any provision thereof, or any document implementing the provisions contained in this Agreement including its Exhibits, or the Existing Project Approvals, or the Subsequent Project Approvals.

"Transferee" means and refers to any entity or individual to which Owner and/or its successors and assigns sells, assigns or transfers this Agreement or any or all of the rights and/or obligations provided hereunder.

"Vested Exactions" means and refers to the following fee categories and rates, as set forth on the Schedule of Exactions: Parks and Recreation Facilities Fee, New Public Benefit Fee, General Public Facilities Fee, and Traffic Facilities (2) Fee.

"Vesting DA" means and refer to the Vesting Development Agreement on the Project Site approved by the City Council by Ordinance No. 468 on March 13, 2012. The Vesting DA is attached EXHIBIT C(2), and serves to amend and restate the Initiative Development Agreement in its entirety.

"Vested Fee Period" means the Initial Vested Fee Period plus two (2) years.

"Waterside PSA" means and refers to that certain "Purchase & Sale Agreement and Escrow Instructions For Hercules Point, Water Parcel North and Water Parcel South," attached as EXHIBIT J(2).

"Zoning Code" means and refers to the City of Hercules Zoning Code, as amended by Zoning Designation Change No. 09-01, and the Hercules Waterfront District Master Plan, as amended by Zoning Text Amendment No. 09-03.

2. EFFECTIVE DATE; TERM

2.1 Effective Date; Recordation. This Agreement shall be dated and the obligations of City and Owner hereunder shall be effective as of the Effective Date. Not later than ten (10) days after the Enacting Ordinance takes effect, City and Owner shall execute and acknowledge this Agreement. Thereafter the City Clerk shall cause this Agreement, including all exhibits hereto, to be recorded in the Official Records of the County of Contra Costa, State of California.

2.2 Term; Extension of Project Approvals for Term. The Term of this Agreement shall commence on the Effective Date and shall extend twenty (20) years thereafter unless extended as hereinafter provided, or as otherwise mutually agreed in writing. All Project Approvals, including but not limited to tentative maps pursuant to Government Code Section 66452.6, shall automatically be extended for the Term.

2.3 Extension of Term. The Term shall extend for an additional five (5) years if Owner has improved with buildings, parking, landscape or other improvements necessary to the Project, no less than fifty percent (50%) of the Net Developable Land. The Term shall extend for a second additional five (5) years following the expiration of the first extension if Owner has improved with buildings, parking, landscape or other improvements necessary to the Project, no less than sixty five percent (65%) of the Net Developable Land. At the time of its annual review under Section 8 of this Agreement for the year prior to the expiration of the initial term, the City Council will make the determination whether Owner has met this criterion for extensions.

2.4 Challenge to Agreement and Project Approvals. If there is a Successful Third Party Legal Challenge to this Agreement, the Vesting DA shall continue to apply to the Project Site.

3. PUBLIC BENEFIT FEE AND REIMBURSEMENTS

3.1 Public Benefit Fee. In addition to the other substantial public benefits provided by Owner to City under this Agreement, Owner shall pay to City the Public Benefit Fee at the time of issuance of certificates of occupancy for individual structures. Notwithstanding the foregoing, Owner shall not be required to pay the Public Benefit Fee to the extent addition of the Public Benefit Fee to the fees otherwise payable by Owner to the City under this Agreement create a greater fee burden on Owner than would be imposed on similar development in the City. For example, if (*i*) the total fees, including the Public Benefit Fee, payable by Owner under this Agreement for the development of a unit of multi-family development total five thousand seven hundred ninety six dollars ($5,796), of which two thousand three hundred fifty dollars ($2,350) is the Public Benefit Fee, and (*ii*) the total fees payable for a unit of multi-family development elsewhere in the City total five thousand dollars ($5,000), then (*iii*) Owner shall be required to pay a Public Benefit Fee of one thousand five hundred fifty four ($1,554) per multi family unit, so that Owner's total fee burden is five thousand dollars ($5,000) per multi-family unit. The Public Benefit Fee shall be expended by City on the planning and development of the City Public Improvements, as set forth in Exhibit G.

3.2 Public Benefit Fee Advances.

(a) Upon City's request Owner shall advance to City the Public Benefit Fee Advance Amount, so long as all of the following conditions and requirements are satisfied.

3.2.a.1 All City Phase I Improvements must be fully completed and operational.

3.2.a.2 Owner must have refinanced its debt obligations for the Project and the Project Site such that all debt obligations of Owner with regard to the Project and the Project Site existing as of the Effective Date have been fully satisfied and/or replaced with new debt obligations.

3.2.a.3 The Public Benefit Fee Advance Amount must be restricted for use on physical improvements that have a demonstrated benefit to Owner's Project as well as the ITC Project and the City Public Improvements.

3.2.a.4 The Public Benefit Fee Advance Amount must be used as "local match" funding that creates access to matching funds from a third party agency.

3.2.a.5 Owner must have a demonstrated financial ability to make the Pubic Benefit Fee Advance Amount available to City.

(b) If it is necessary that Owner build portions City Public Improvements in order to facilitate Owner's development of the Project, Owner may request that City enter into an agreement with Owner under which (*i*) the fair market value of Owner's work on the City Public Infrastructure shall be credited against Owner's future Public Benefit Fee obligations to City, and (*ii*) City shall provide Owner, at no cost to Owner, with all access rights (by way of right of entry, or otherwise) necessary to complete Owner's work on said portion(s) of the City Public Improvements. This paragraph 3.2(b) contains all of the material provisions of said agreement, and all remaining terms shall be negotiated in good faith. City's approval of said agreement shall not be unreasonably withheld, delayed, conditioned, or denied.

3.3 Public Benefit Fee Advance Dispute Resolution. If City and Owner disagree as to whether Owner is required by Section 3.2 to advance to City the Public Benefit Fee Advance Amount, the matter shall be submitted to an expedited arbitration process in accordance with Section 14.2. If the arbitrator determines that Owner is required to advance the Public Benefit Fee Advance Amount, then notwithstanding any other provision of this Agreement, the sole and exclusive remedies available to the City shall be, at Owner's election in its sole and absolute discretion, either (*i*) Owner shall make the Public Benefit Fee Advance Amount available to City, or (*ii*) Owner shall forfeit credits in an amount equal to the lesser of (A) the requested Public Benefit Fee Advance Amount or (B) seven hundred fifty thousand dollars ($750,000) in credits; said forfeiture of credits shall be from any or all of the following categories of credits (in the Owner's sole and absolute discretion): pre-existing Owner's Public Benefit Fee Advance Exaction Credits, Owner's Landside PSA Exaction Credits, Owner's Waterside PSA Exaction Credits, and/or Owner's Reimbursement Exaction Credits. If, and only if, Owner fails to provide one of those two remedies specified in the preceding sentence, City may proceed with the breach and termination procedures set forth in Section 14.1.

3.4 Reduction in Public Benefit Fees Upon Payment of Advance. Upon Owner's payment of a Public Benefit Fee Advance Amount to City, Owner shall receive credits against future Public Benefit Fees in the amount of the Excused Public Benefit Fee Amount. Owner shall be entitled to expend said Public Benefit Fee credits until exhausted before re-commencing any cash payment of Public Benefit Fees.

3.5 Reimbursement of Development Expenses Related to ITC Project. The City has been presented with evidence demonstrating and documenting substantial expenditures incurred by Owner for the benefit of City's development of the ITC Project. Based on that evidence, the City has found and determined that reimbursement for expenses incurred by Owner in an amount equal to the sum of Owner's Reimbursement Exaction Credits is necessary, appropriate, and in the best interest of advancing the Project and the ITC Project. Owner's Reimbursement Exaction Credits shall be provided by City to Owner on the Effective Date.

3.6 Additional Advances Upon Mutual Agreement. At any time during the term of this Agreement, the City may request that Owner advance funding and/or make available human resources and/or advance construction of improvements that are the responsibility of the City and/or otherwise devote Owner's resources to the advancement of City objectives. Owner, in its sole and absolute discretion, may for any reason or no reason choose to decline City's request. If, however, Owner accepts City's request, Owner shall at a minimum receive Owner's Additional Work Exaction Credits in an amount equal to the fair value of Owner's work or funding, plus reasonable overhead, profit, and interest thereon.

4. GENERAL DEVELOPMENT OF THE PROJECT

4.1 Vested Right to Develop the Project. During the Term, the terms and conditions of development applicable to the Project Site, including but not limited to permitted uses of the Project Site, fees, exactions, and conditions applicable to the Project Site, the density and intensity of use, maximum height and size of proposed buildings and provisions for the reservation and dedication of land for public purposes shall be those, and only those, set forth in this Agreement and the Governing Ordinances. City's right to control development and use of the Project Site is subject to the provisions of this Agreement, the Project Approvals, and the Governing Ordinances. Except as otherwise specified in this Agreement, the Project Approvals and Governing Ordinances shall control the overall design, development and construction of the Project and the issuance of Subsequent Project Approvals.

4.2 Subsequent Changes In Land Use Regulations. Given Owner's vesting of its right to development of the Project Site in accordance with this Agreement, the Project Approvals, and the Governing Ordinances, any General Plan amendment or zone changes will not become effective as to the Project Site unless consented to in writing by Owner or its successors-in-interest as to their respective portions of the Project Site. By this paragraph City does not represent that it will accept, process or approve any General Plan Amendment or zone changes; provided, however, that City shall, subject to and consistent with its police power authority, accept, process and approve all regulatory actions that are consistent with this Agreement in order to effectuate the vested rights and benefits to Owner contained herein. Nothing in this Agreement shall prevent the City from imposing upon Owner laws, rules, or regulations that are required by state, federal, or regional authorities to be imposed by City on Owner. This

Agreement does not change or diminish Owner's or voter's rights under the Initiative including without limitation Sections 13, 14, 15 and 16 of the Initiative.

4.3 Timing of Development. Owner shall have the right to develop the Project in compliance with this Agreement, the Project Approvals, the Governing Ordinances and the Phasing Plan and Protocol set forth in EXHIBIT F. The Parties further acknowledge that Owner cannot at this time predict when or in what order a development phase of the Project will be developed unless otherwise specified in this Agreement. Owner has developed the Phasing Plan to generally describe anticipated phasing of development; provided, however, that, as specified in EXHIBIT F, Owner shall be permitted to alter or vary the Phasing to accommodate market conditions and demands, construction schedules, funding availability, and other development factors. Since the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465, that the failure of the parties therein to consider and expressly provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the Parties' desire to avoid that result by expressly acknowledging herewith that development of the Project Site shall proceed in such order and at such rate and at such times as Owner deems appropriate within the exercise of its business judgment pursuant to the terms of this Agreement.

4.4 Phasing Plan. Subject to Section 4.3, the Parties agree to observe and abide by the Phasing Plan and the protocols, procedures and requirements contained therein.

4.5 Application for Subsequent Project Approvals. Prior to the commencement of grading, construction or any work related thereto on any particular area of the Project Site, Owner shall secure, or cause to be secured, any and all Subsequent Project Approvals, as well as any permits and approvals required by other governmental agencies, as are required to develop that area. City will timely issue such Subsequent Project Approvals as are needed for development and construction activities and are in compliance with this Agreement, the Project Approvals, and the Governing Ordinances; provided, however, that nothing in this Agreement shall prevent the City from imposing upon Owner laws, rules, or regulations or conditions on Subsequent Project Approvals that are required by state, federal, or regional authorities to be imposed by City on Owner.

(a) Issuance of Subsequent Project Approvals. Owner shall timely submit to City complete applications for any and all Subsequent Project Approvals as necessary to develop the Project under this Agreement, the Existing Project Approvals, and the Governing Ordinances. Upon submission by Owner of an application, City shall promptly commence and diligently complete all steps necessary to review, process, and grant the requested Subsequent Project Approvals, to the extent that they are consistent with the Existing Project Approvals, this Agreement, the Governing Ordinances, and state and federal law. The permitted uses of the Project Site, the type, density and intensity of use, the maximum height, bulk and size of proposed buildings, setbacks, provisions for the acquisition, reservation or dedication of land for public purposes, imposition of development impact fees, location of public improvements, location of public utilities, Exactions, and other terms and conditions of development applicable to the Project Site shall be those set forth in the Existing Project Approvals, Governing Ordinances, and this Agreement. Unless otherwise required or permitted pursuant to this Agreement, City is not obligated to issue a certificate of occupancy for any part of the Project

unless and until all fees and charges due and payable for that part of the Project have been received by City; provided, however, that in the case of the issuance of a certificate of occupancy (or temporary certificate of occupancy) authorizing only the partial occupancy of a building, only those fees and charges due and payable for the portion of the building to be occupied must be paid prior to the issuance of said certificate.

(b) Environmental Review for Subsequent Project Approvals. The Hercules Bayfront Project EIR was certified in connection with the approval of this Agreement and the Existing Project Approvals and provides appropriate mitigation measures (all of which measures, together with other conditions, are included in the Conditions of Approval). City shall utilize the Hercules Bayfront EIR to the full extent allowed by CEQA in processing Subsequent Project Approvals. City may prepare a supplemental or subsequent EIR only if City is required to do so pursuant to either: (a) a judgment in a Third Party Legal Challenge or (b) the requirements of Public Resources Code Section 21166 and Title 14, Section 15162 of the California Code of Regulations, as they may be amended from time to time. In connection with such future environmental review, City acknowledges that due to the vested rights conferred under this Agreement, City shall not impose additional mitigation measures that are in conflict with the Conditions of Approval, unless Owner proposes major revisions to General Plan, Zoning Code, and/or Vesting Tentative Map No. 9290 (in which case the City may impose additional mitigation measures to the extent necessary to offset the additional increment of impact caused by such change, when compared to the amount of impact forecasted to occur on account of the development assumed in the Hercules Bayfront Project EIR). If the City's inability to impose additional mitigation measures is challenged in a Third Party Legal Challenge, Owner shall comply with the procedures for the defense of such a challenge, as set forth in Section 14.3. If such a Third Party Legal Challenge is successful, Owner shall comply with the final judgment or elect to abandon the Project changes prompting the additional mitigation and shall pay 100% of the City's costs of compliance.

4.6 Streamlined Approval Process. The Parties agree to observe and abide by the Streamlined Approval Process (EXHIBIT K), and the protocols, procedures and requirements contained therein.

4.7 Other Governmental Permits. Owner shall apply for such other permits and approvals as may be required by other governmental or quasi-governmental agencies having jurisdiction over the Project or Project Site as may be required for the development of, or provision of services to, the Project including, without limitation, public utilities or utility districts. At the request of Owner, City shall reasonably cooperate with Owner in its endeavors to obtain such permits and approvals in order to facilitate the availability of such permits and approvals or services, at each stage of the development of the Project, including as appropriate, in City's discretion, to serve as a co-applicant with Owner for permits and approvals required from other public agencies.

4.8 Permitted Uses. The uses permitted on the Project Site are those identified in the Existing Project Approvals and in the Project Description and Scope of Development.

4.9 Maintenance of Initiative Rights and Obligations. Except as specifically modified by the Existing Project Approvals, the rights and obligations of the Parties under the Initiative,

including without limitation sections 13, 14, 15, and 16 of the Initiative, are neither modified nor diminished by this Agreement.

4.10 Exactions; Public Improvements; Use of Exaction Credits.

(a) Schedule of Exactions. Owner shall pay the monetary Exactions set forth in the Schedule of Exactions attached hereto as EXHIBIT I. Owner shall pay such monetary Exactions prior to issuance of building permits for a particular Phase or sub-Phase of the Project except to the extent Owner is permitted by law to defer such payment(s) to prior to issuance of a certificate of occupancy.

(b) No Other Exactions. So long as Owner develops the Project in accordance with the Project Description and Scope of Development and this Agreement, and subject to the partial waiver of vested rights set forth in Section 4.10(c), the only Exactions applicable to the Project and/or the Project Site shall be those set forth in the Schedule of Exactions and the Conditions of Approval, which set forth in full the Exactions applicable to the Project under the Governing Ordinances and Existing Project Approvals as of the Effective Date.

(c) Partial Waiver of Vested Rights. Notwithstanding Owner's vested right to pay the Vested Exactions in the amounts specified in Schedule of Exactions and in City Council Resolution No. 11-132, Owner agrees as follows:

4.10.c.1 Owner shall be entitled to pay the Vested Exactions at the rate set forth in the Schedule of Exactions during the Initial Vested Fee Period.

4.10.c.2 For fees due and payable during the first year following the expiration of the Initial Vested Fee Period, Owner shall pay (*i*) the amount required by the Schedule of Exactions, plus (*ii*) one third of the difference between any newly adopted fee rate and the amount required by the Schedule of Exactions.

4.10.c.3 For fees due and payable during the second year following the expiration of the Initial Vested Fee Period, Owner shall pay (*i*) the amount required by the Schedule of Exactions, plus (*ii*) two thirds of the difference between any newly adopted fee rate and the amount required by the Schedule of Exactions.

4.10.c.4 For fees due and payable during and after the third year following the expiration of the Initial Vested Fee Period, Owner shall pay, when due and payable, the fully adjusted fee rate for Vested Exactions.

4.10.c.5 Notwithstanding anything to the contrary in this Agreement, during the Term, no increases in the General Plan Update Fee or Art in Public Spaces Fee (or equivalent fee) above the rates shown on the Schedule of Exactions shall be applicable to Owner's development of the Project Site.

4.10.c.6 Notwithstanding anything to the contrary in this Agreement, during the Term, no Exactions other than those set forth on the Schedule of Exactions shall be applicable to Owner's development of the Project Site in a manner consistent with this

Agreement. These exactions specifically include the Public Benefit Fee which shall remain in effect for the life of the project.

(d) Right to Pay Fees at Lower of Vested and Actual Rate. Notwithstanding anything to the contrary in this Agreement, during the Vested Fee Period, Owner has the right to pay the lower of (*i*) the Vested Exaction rates set forth in Sections 4.10(a) through 4.10(c), and (*ii*) the then-generally applicable fee rate imposed by City.

(e) Use and Transferability of Owner's Exaction Credits: Owner's Exaction Credits shall not expire. Owner may transfer, through one or multiple separate transactions, Owner's Exactions Credits, or any portion thereof, to one or more third parties for use in satisfaction of fee and exaction obligations imposed by the City in connection with development anywhere in the City. If Owner proposes to sell any portion of Owner's Reimbursement Exaction Credits Buyback Amount to a third party, the following procedures shall apply.

4.10.e.1 Owner shall provide City with thirty (30) days prior written notice of Owner's intent to transfer of any portion of Owner's Reimbursement Exaction Credits Buyback Amount to a third party.

4.10.e.2 During said thirty (30) day period, City may, in its sole and absolute discretion, elect to purchase the portion of Owner's Reimbursement Exaction Credits Buyback Amount that are proposed by Owner for transfer to a third party.

4.10.e.3 If City makes the election authorized by Paragraph 4.10.e.3 the purchase price of the portion of the Owner's Reimbursement Exaction Credits Buyback Amount proposed for transfer shall be (i) fifty percent of the face amount of the portion of the Owner's Reimbursement Exaction Credits Buyback Amount proposed for transfer plus (ii) four percent (4%) per year following the Effective Date multiplied by fifty percent (50%) of the face amount of the portion of the Owner's Reimbursement Exaction Credits Buyback Amount proposed for transfer. For example, if Owner proposes to sell one million dollars ($1,000,000) of Owner's Reimbursement Exaction Credits Buyback Amount to a third party two (2) years after the Effective Date, City may instead purchase those credits for five hundred forty eight hundred dollars ($540,800).

4.10.e.4 If City does not make the election authorized by Paragraph 4.10.e.3, Owner may complete the proposed transfer of the portion of the Owner's Reimbursement Exaction Credits Buyback Amount to a third party within one hundred twenty (120) days after the notification provided in Paragraph 4.10.e.1.

4.10.e.5 If Owner complete a transfer of a portion of Owner's Reimbursement Exaction Credits Buyback Amount to a third party, the consideration received by Owner shall be divided among City and Owner as follows: (1) Owner shall receive fifty percent (50%) of the face value of the portion of Owner's Reimbursement Exaction Credits Buyback Amount transferred to a third party plus eight percent (8%) per year following the Effective Date multiplied by fifty percent (50%) of the face amount of the portion of the Owner's Reimbursement Exaction Credits Buyback Amount transferred to the third party plus fifty percent (50%) of any remaining amount received from the third party; and (2) City shall receive

any remaining portion of the amount received by the third party after deduction of the amounts specified in sub-section (1), above. For example, if Owner sells two million dollars ($2,000,000) of Owner's Reimbursement Exaction Credits Buyback Amount to a third party for one million six hundred thousand dollars ($1,600,000) one (1) year after the Effective Date, Owner shall retain one million three hundred forty thousand dollars ($1,340,000) of the consideration paid by the third party, and City shall receive two hundred sixty thousand dollars ($260,000) of the consideration paid by the third party.

4.11 Confirmation of Exaction Pre-Payment Rights. Consistent with City Council Resolution No. 11-132, Owner may pre-pay Exactions that City does not collect on behalf of another agency, subject to the following limitations and requirements.

(a) First, the prepayment rate for all Exactions shall be the rate applicable to Owner at the time of prepayment.

(b) Second, Owner shall have no obligation to propose a specific development project prior to prepaying any Exactions that are otherwise pre-payable under this Agreement.

(c) Third, Owner may, in Owner's sole and absolute discretion, expend any or all of Owner's Exaction Credits to prepay Exactions.

(d) Fourth, in addition to the expenditure of Owner's Exaction Credits, Owner may, in Owner's sole and absolute discretion, also prepay Exactions for up to forty percent (40%) of the Initial Entitlement with either (*i*) cash or equivalent funds, or (*ii*) Owner's Public Benefit Fee Advance Exaction Credits (if any). Notwithstanding the foregoing, if an advance of a Public Benefit Fee Advance Amount causes Owner to hold Owner's Public Benefit Fee Advance Exaction Credits that if fully expended to prepay Exactions would cause Owner to exceed the forty percent (40%) limitation set forth in the preceding sentence, then Owner may nevertheless fully expend Owner's Public Benefit Fee Advance Exaction Credits to prepay Exactions.

(e) Fifth, Owner shall expend $200,000 of Owner's Reimbursement Exaction Credits on Exactions applicable to retail, office, or flex space.

(f) Sixth, once Owner elects to prepay Exactions under this Section 4.11, Owner shall have no financial responsibility for any increase in the amount of any Exaction that may occur between the time of prepayment and the time payment of the Exaction would otherwise be due and payable to City.

4.12 Project Improvements.

(a) Owner's Responsibilities. Subject to Section 4.3, and except for the City Public Improvements, Owner shall, at Owner's expense, design, construct, install, or repair, as appropriate, all on-site roads, streets, utility lines and conduits, sewers, parks, and other site improvements necessary to serve the Project including, without limitation, drainage improvements on the Project Site, traffic improvements on the Project Site, domestic water service on the Project Site, storm drain facilities on the Project Site, public and private street improvements and utility improvements (including electric and natural gas service,

telecommunications and other public utilities) on the Project Site, sewage conveyance facilities on the Project Site, landscaping on the Project site and other public facilities within the Project Site. During the Vested Fee Period, Owner's payment of the amounts set forth in the Schedule of Exactions shall fully satisfy Owner's obligations with regard to any and all off-site improvements necessary to serve the Project.

(b) City's Responsibilities. Owner shall have no responsibility, and City shall have full responsibility, for the funding and construction of the City Public Improvements; provided, however, that the precise timing of the funding and construction of the City Public Improvements is subject to Section 6.2 concerning the availability of funds. In addition to the funding and construction of the City Public Improvements, City shall actively pursue planning, funding, and establishment of a ferry terminal to operate in tandem with, and complementary to, the ITC Project; provided, however, that the City's obligation to pursue the ferry terminal is subject to Section 6.2 concerning the availability of funds. Notwithstanding the foregoing, City obligation to build the City Public Improvements exists only to the extent of City's ability to obtain outside, non-general fund, funding to build improvements. If for any reason the Parties fail to close escrow on the lands described in the Waterside PSA, City shall have no responsibility to fund and construct those City Public Improvements that are located on those portions of the land for which escrow on the Waterside PSA does not close. Neither the failure to close escrow on the Landside PSA nor the failure to close escrow on the Waterside PSA shall expressly or impliedly create an obligation on Owner to fund or construct City Public Improvements on land that is not acquired by City under the Landside PSA and/or the Waterside PSA.

4.13 Substituted Security. In connection with the transfer, sale, or assignment of all or any portion of the Project Site, any security provided by Owner for the installation of public improvements which are Owner's obligation under this Agreement, shall be substituted with Substituted Security on a Pro-Rata Basis.

4.14 Taxes and Assessments. Owner shall pay when due all ad valorem property taxes and special assessments imposed on the Project Site and the improvements thereon. In addition, Owner shall pay all other valid and applicable City taxes imposed upon the Project Site.

4.15 Obligations of Open Space and Slope Maintenance. City shall be responsible for any costs and obligations relating to the ownership and maintenance of the natural open space areas within the portions of the Project Site acquired by City under either the Landside PSA or the Waterside PSA, or both; provided, however, that (*i*) this Agreement shall not require City to fund such costs if City is prevented from doing so by budgetary limitations which shall be determined in the sole and absolute discretion of the City; and (*ii*) City shall have no right to impose such costs on Owner in the event City is prevented from budgetary limitations from funding such costs. To the extent Owner has maintenance obligations for the remaining portions of the Project Site (*i.e.,* those not conveyed through the Landside PSA and/or the Waterside PSA), it may transfer such maintenance obligations to one or more property owners' or homeowners' association created for the Project or any portion thereof. Notwithstanding anything in this Agreement to the contrary, the transfer of such obligation to such association(s) shall be effective upon City's receipt of notification of such transfer.

4.16 Participation in Assessment Districts, Community Facilities Districts, and Other Public Financing Mechanisms. City and Owner mutually agree to abide by the Public Financing Plan, which contemplates the formation of one or more assessment districts, community facilities districts, or other mechanisms to publicly finance the cost of construction and installation of public improvements within or necessitated by the Project that are the obligations of Owner under this Agreement.

4.17 Coordinated Project Management. The Parties shall observe and abide by the Phasing Plan and Protocols set forth in EXHIBIT F, unless (*i*) the Parties fail to close escrow on the Landside PSA or the Landside PSA is terminated, and (*ii*) the City affirmatively decides that it will not construct any of the City Public Improvements.

5. DEVELOPMENT PLAN

5.1 Inclusionary Housing. The Parties acknowledge that Owner's development of housing units as part of the Project will trigger an obligation for inclusionary housing pursuant to City's inclusionary housing ordinance set forth in Chapter 19 of Title 10 of the Hercules Municipal Code. The Parties further acknowledge and agree that subdivision (3) of Section 10-19.105 of the Hercules Municipal Code allows City to approve an alternate method of achieving full compliance with Chapter 19 of Title 10 the Hercules Municipal Code. Under Section 10-19.105, the City Council finds and declares that the affordable housing obligations set forth in the Affordable Housing Program (EXHIBIT E) is an alternate method of full compliance with Chapter 19 of Title 10 of the Hercules Municipal Code. Except for Owner's obligations as set forth in the Affordable Housing Program, Owner shall not be responsible for producing any additional affordable or inclusionary housing units within or related to the Project or the Project Site.

5.2 Design and Building Permits. Owner or its designee shall follow the procedures in Exhibit K in obtaining design and building permits, consistent with the Existing Approvals.

6. CITY'S OBLIGATIONS REPRESENTATIONS AND WARRANTIES

6.1 Generally. The Parties acknowledge and agree that each Party's agreement to perform and abide by the covenants and obligations of such Party set forth herein is material consideration for the other Party's agreement to perform and abide by the covenants and obligations of the other Party set forth herein.

6.2 Permitting and Construction of the ITC Project and the City Public Improvements. To the extent City's financial resources allow, City shall diligently pursue its goal of permitting and constructing the ITC Project and the City Public Improvements. City intends to construct the ITC Project and the City Public Improvements with grant money, Public Benefit Fees and other sources and needs to acquire funding and to continue to process and ultimately build the ITC Project and the City Public Improvements. Consistent with the foregoing, City shall (i) use the grant funds that, as of the Effective Date, have been identified for expenditure on the ITC Project and the City Public Improvements for the permitting and construction of the ITC Project and the City Public Improvements, and (ii) diligently pursue additional grant funding to obtain additional resources for the permitting and construction on the

ITC Project and the City Public Improvements. City has no obligation to Owner under this Agreement to build the ITC Project or the City Public Improvements if and to the extent City does not obtain adequate outside funding for the permitting and construction.

6.3 Financial Obligations. By entering into this Agreement, City is not agreeing to provide any redevelopment funds, and City general funds or other City discretionary funds, or financial assistance or subsidy of any sort toward the Project.

6.4 City Representations and Warranties. In addition to any other representations and warranties of City set forth in this Agreement, City hereby represents and warrants to Owner as follows:

(a) City is a general law city and municipal corporation of the State of California and is duly organized and existing and authorized to transact business and exercise powers under the laws of the State of California and the Municipal Code of the City of Hercules, and City has the full lawful right, power, and authority to enter into, carry out, give effect to, and consummate the transactions contemplated by this Agreement.

(b) This Agreement and all other transactions contemplated by this Agreement have been duly executed by City and constitutes the valid and binding agreement of City enforceable against City in accordance with its terms.

(c) The individuals who have executed this Agreement on behalf of City have the right, power, and authority to execute this Agreement on behalf of City.

(d) To the best knowledge of the City other than identified herein, there is no action, suit, proceeding, inquiry, or investigations, at law or in equity, before or by any court, public board, or body, that is pending or after due inquiry, threatened against City contesting or affecting any of the matters referred to in this Agreement. Owner is aware of (1) the pending/threatened challenges to the City's redevelopment authority, (2) the state auditor's investigation of City's past finances, and (3) the possible federal investigation of former City officials.

6.5 [RESERVED].

6.6 Repurchase of Landside PSA Property. If at any time after the close of escrow on the Landside PSA, City determines not to use one or more of Parcels 16, 20, 22, 24, 33, 37, and/or 41 (as those Parcel numbers are defined in the Landside PSA) for the development of the City Public Improvements, City shall offer to convey those parcels to Owner at the same price as contained in the Landside PSA plus a three percent (3%) per year escalation from and after the close of escrow on the Landside PSA. If Owner fails to accept City's offer of conveyance, City may offer such parcels on the open market.

6.7 Repurchase of Waterside PSA Property: If at any time after the close of escrow on the Waterside PSA, City determines not to use any portion of the land that is the subject of the Waterside PSA for the development of the City Public Improvements and/or the ITC Project, City shall offer to convey those parcels to Owner at the same price as contained in the Waterside PSA, plus a three percent (3%) per year escalation from and after the close of escrow on the

Waterside PSA. If Owner fails to accept City's offer of conveyance, City may offer such parcels on the open market.

6.8 Use of Parcel 33. City covenants for itself, and for all of its successors and assigns, to use Parcel 33 (as that Parcel number is defined in the Landside PSA) for the construction of a train station or other municipal facility that is designed to provide public services to the general citizenry (e.g., a City Hall). Allowable uses for Parcel 33 shall exclude public works yards, jails, shelters, or other similar facilities. The covenant contained in this Paragraph 6.8 shall run with the land for the benefit of the Project Site, but shall be extinguished upon conveyance of Parcel 33 from City (or any successor in interest to City) to Owner. The Parties agree to execute such further instruments as are reasonably requested by Owner to ensure the enforceability of this use restriction.

6.9 Use of Parcels 37 and 41: After the acquisition of Parcel 37 and/or Parcel 41 (as those parcel numbers are defined in the Landside PSA), City shall from time to time examine the scope of the "Transit Loop" component of the ITC Project and determine if any portion of Parcel 37 and/or Parcel 41 is not necessary for City's development of the Transit Loop component of the ITC Project. City shall convey to Owner those Portions of Parcel 37 and/or Parcel 41 that are determined by the City to be not needed for the development of the Transit Loop component of the ITC Project and Owner shall, upon such conveyance, return those portions of Owner's Landside PSA Exaction Credits that are attributable to the property conveyed by City to Owner.

7. SPECIFIC CRITERIA APPLICABLE TO DEVELOPMENT OF THE PROJECT

7.1 Applicable Ordinances And Approvals. Owner shall have the right to proceed with development of the Project in compliance with this Agreement, the Project Approvals, and the Governing Ordinances. In the event of any conflict between this Agreement and the Existing Project Approvals on the one hand, and the Governing Ordinances on the other, this Agreement and the Existing Project Approvals shall control. Except as allowed elsewhere in this Agreement and specifically in Sections 4.2, 4.5, and 9.2 City shall not, in subsequent actions applicable to the Project Site or the Project, apply new rules, regulations or official policies that conflict with this Agreement, the Project Approvals, the Exactions, or the Governing Ordinances. Any act or proceeding of City purporting to have any of the following effects shall be presumed to be in conflict with this Agreement, the Project Approvals, and the Governing Ordinances, which presumption shall affect the burden of proof:

(a) Limiting or reducing the density, intensity, setbacks, or other development standards as set forth in this Agreement or the Project Approvals for all or any part of the Project, or otherwise requiring any reduction in the square footage or total number of proposed improvements.

(b) Limiting or reducing the transfer of density within the Project Site provided that the overall Project density is no greater than set forth in this Agreement or the Project Approvals.

(c) Limiting the improvements on the Project Site in a manner which is inconsistent with or more restrictive than the limitations included in this Agreement and the Project Approvals.

(d) Except for the Uniform Codes governing construction, building, fire, plumbing, electrical and life safety, applying to the Project any amendment of the Governing Ordinances or any new ordinance, or any written or unwritten rule, regulation, or policy which is inconsistent with the terms of the Governing Ordinances, or which is inconsistent with any term or condition of this Agreement or the Project Approvals. Notwithstanding anything in this Agreement to the contrary, City may apply the then-current California Building Standards Code and other Uniform construction codes to any Subsequent Project Approval provided such standards are applied uniformly to all comparable development within City.

(e) Imposing any additional Exaction on the Project that is not expressly contained within or authorized by this Agreement including those set forth in Exhibits I and L.

(f) Limiting, constraining, or restricting in any manner the rate, timing, phasing, or accelerating of the phasing of the Project or any Phase or sub-Phase or portion thereof, which is not expressly provided for in the Project Phasing Plan.

7.2 Rights of Access; Temporary Construction Access. The Parties shall cooperate reasonably and in good faith to provide one another with temporary access to each other's property as necessary to facilitate construction in accordance with the Project Description and Scope of Development and/or the Phasing Plan. The duration of access provided under this Section 7.2 shall be no longer than necessary to complete the improvements for which access is sought. The Party seeking access under this Section 7.2 shall promptly commence and diligently pursue to completion the construction of the improvement for which access is sought, with an objective of minimizing the inconvenience such access causes to the other Party. Neither Party shall charge any fee to the other for a right of access necessary to implement the development described in the Project Description and Scope of Development and/or the Phasing Plan; provided, however, that Owner may charge City for temporary access rights over, under, or along those portions of the Project Site owned by Owner, in connection with improvements that are not City Phase I Improvements. Charges to City for temporary access to the Project Site or any portion thereof, for the temporary access rights beyond that necessary for construction of City Phase I Improvements shall be subject to negotiations between Owner and City and, if agreement cannot be reached, subject to a value determination by a mutually selected independent third party appraiser, the costs of which appraisal shall be paid by City.

7.3 Eminent Domain Powers. City shall not impose any Conditions of Approval on the Project that require the acquisition of public or private property, unless City affirmatively demonstrates that it can and will exercise its powers of eminent domain to acquire such property. Nothing herein is a prejudgment of any of the matters concerning acquisition of real property, whether by condemnation or otherwise.

7.4 Nondiscrimination.

(a) General.

7.4.a.1 Owner, on behalf of itself and its successors and assigns, covenants that there shall be no discrimination in the rental, sale, or leasing of the Project Site or any portion thereof on any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code. All deeds, leases, or contracts for the sale, lease, sublease, or other transfer of any land in the Project Site shall contain or be subject to the nondiscrimination or nonsegregation clauses prescribed in this Section 7.4.

7.4.a.2 Notwithstanding Section 7.4.a.1 above, with respect to familial status, Section 7.4.a.1 shall not be construed to apply to housing for older persons, as defined in Government Code Section 12955.9. With respect to familial status, nothing in Section 7.4.a.1 shall be construed to affect Civil Code Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5, relating to housing for senior citizens. Civil Code Sections 15(d), 1360 and Government Code Sections 12955(n), (o), and (p) shall apply to Section 7.4.a.1.

(b) Nondiscrimination Provisions. Owner, on behalf of itself and its successors and assigns, covenants that the following provisions shall be included in all deeds, leases, and contracts with respect to the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Project Site in substantially the following form:

7.4.b.1 In deeds the following language shall appear – "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

7.4.b.2 Notwithstanding paragraph 7.4.b.1, with respect to familial status, Section 7.4.b.1 shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in Section 7.4.b.1 shall be construed to affect Civil Code Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5, relating to housing for senior citizens. Civil Code Sections 51(d) and 1360, and Government Code sections 12955(n), (o), and (p) shall apply to Section 7.4.b.1.

7.4.b.3 In leases the following language shall appear--"The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and

assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased."

7.4.b.4 Notwithstanding paragraph 7.4.b.3, with respect to familial status, Section 7.4.b.3 shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in Section 7.4.b.3 shall be construed to affect Civil Code Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5, relating to housing for senior citizens. Civil Code Sections 51(d) and 1360, and Government Code sections 12955(n), (o), and (p) shall apply to Section 7.4.b.3.

8. PERIODIC REVIEW OF COMPLIANCE

8.1 Annual Review. Pursuant to Government Code Section 65865.1, on or before December 1 of each year during the Term, City shall annually review this Agreement and all actions taken pursuant to the terms of this Agreement to determine good faith compliance with this Agreement. On or before October 15 of each year, Owner shall initiate the annual review by submitting to the City Manager a report demonstrating the good faith compliance with this Agreement. City Manager shall then present a report to the City Council concerning the status of Owner's good faith compliance with this Agreement. Notwithstanding the foregoing, nothing in this Agreement shall preclude the City Council, in its sole and absolute discretion, from delegating to the City Manager the authority to review and approve Annual Reviews under this Agreement.

8.2 Copies of Documents. City shall deliver to Owner a copy of all staff reports and documents to be used or relied upon in conducting the annual review and, to the extent practical, related exhibits concerning Owner's performance hereunder, at least ten (10) days prior to any hearing before the City Council. Owner shall be permitted during the annual review to respond, to City's evaluation of Owner's performance. The annual review shall be limited in scope to determining compliance with the terms of this Agreement.

8.3 Failure to Conduct Annual Review. In the event Owner timely submits its compliance report and if City fails to either: (*i*) conduct the annual review, or (*ii*) notify Owner in writing (following the time during which the review is to be conducted) of City's determination as to compliance or noncompliance with the terms of this Agreement, which includes delivery of a Notice of Default, and such failure to provide Notice remains uncured as of January 1 of each year, such failure shall be deemed a determination by City of Owner's compliance with the terms of this Agreement for that annual review period. Failure of City to perform the annual review shall not otherwise affect the validity or enforceability of this Agreement.

8.4 Noncompliance Review by City Council. If the City Council determines at a hearing that there is an event of alleged non-compliance on the part of Owner, City Council may elect to initiate the Notice of Default, Event of Default, opportunity to cure, and termination procedures set forth in Section 14. This Agreement shall not be modified or terminated on grounds of noncompliance by Owner, unless and until City has complied with the processes and procedures set forth in Section 14.1.

9. PERMITTED DELAYS; SUPERSEDURE BY SUBSEQUENT LAWS

9.1 Permitted Delays. In addition to any specific provisions of this Agreement, performance by Owner of its obligations hereunder may be excused during any period of delay caused at any time by reason of (*i*) war or civil commotion, acts of terrorism, riots, strikes, picketing, or other labor disputes; (*ii*) shortage of materials or supplies, or damage to work in process by reason of fire, rains, floods, earthquake, or other casualties out of the control of Owner; (*iii*) restrictions or delays caused, imposed or mandated by governmental or quasi-governmental entities; (*iv*) enactment of conflicting New Law(s) (including, without limitation, new or supplementary environmental regulations); (*v*) initiation of a Third Party Legal Challenge; (*vi*) failure of nonparty agencies to promptly process or grant any application necessary for the Project, or any facet thereof to proceed; (*vii*) any actions or inactions on the part of City or any other governmental or quasi governmental agency or entities (including without limitation utilities) having jurisdiction over the Project or the Project Site, (*viii*) significant adverse economic or market conditions affecting the ability of Owner to obtain financing, construction contracts, or tenant leases at commercially reasonable rates and on commercially reasonable terms (*ix*) any other cause beyond the reasonable control of Owner. Owner shall promptly notify City of any delay hereunder as soon as possible after the same has been ascertained. Further, after the issuance of such notification, City may request in writing that Owner provide a confirmation of the status and then-current duration of any permitted delay under this Paragraph 9.1. Within ten (10) days after receipt of such request, Owner shall provide in writing confirmation as to whether the permitted delay is continuing and, if it is, the then-current duration of the permitted delay; alternately, if the permitted delay is no longer in effect, the written notice shall indicate the length of the full duration of the permitted delay. Any disputes as to the existence or duration of a permitted delay under this Paragraph 9.1 shall be resolved in accordance with the arbitration procedure set forth in Section 14.2.

9.2 State and Federal Law. As provided in Government Code Section 65869.5, this Agreement shall not preclude the application to the Project or the Project Site of New Laws. If any New Law made or enacted after the date of this Agreement prevents or precludes compliance with one or more provisions of this Agreement, then the provisions of this Agreement shall, to the extent feasible, be modified or suspended as may be necessary to comply with such New Law. Immediately after enactment of any such New Law, City and Owner shall meet in good faith to determine the feasibility of any such modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this Agreement. If such modification or suspension is infeasible in Owner's reasonable business judgment, then Owner shall have the right to terminate this Agreement by written notice to City, or, at Owner's election the Term of this Agreement may be extended pursuant to Section 9.1 for

the duration of the period during which such New Law precludes compliance with the provisions of this Agreement. Owner shall have the right to challenge the New Law preventing compliance with this Agreement, and, in the event such challenge is successful, this Agreement shall remain unmodified and in full force and effect, except that the Term may be extended by the period of such challenge pursuant to Section 9.1 above. Notwithstanding the foregoing, City and Owner shall each retain the right (if and to the extent such right exists) to enforce the obligation of the other Party to complete any public improvements after construction of such public improvements has commenced.

10. TRANSFERS AND ASSIGNMENTS

10.1 Right to Assign. Owner and its successors and assigns shall have the right to sell, assign or transfer this Agreement with respect to all or a portion of the Project Site, and all or a portion of its rights, duties and obligations hereunder, to any Transferee; provided, however, that no assignment of Owner's rights, interests and obligations under this Agreement shall occur without approval by the City, which approval shall not be withheld, conditioned, delayed, or denied in a commercially unreasonable manner. Owner shall remain liable for all obligations hereunder, and no assignment or assumption of this Agreement shall be valid, unless Owner obtains the prior approval of the City Council.

10.2 Form of Assignment Agreement. Unless and until (*i*) City provides written consent to assignment of this Agreement to a Transferee and (*ii*) City approves a form of Assignment Agreement (which is executed and recorded by Owner, City and Transferee), Owner shall remain liable for any and all obligations hereunder, notwithstanding any sale or transfer of the Property or portion thereof. The form of Assignment Agreement shall (*i*) set forth the rights and obligations which are being expressly assigned to and assumed by Transferee, (*ii*) provide that the Transferee shall be subject to all the terms and conditions of this Agreement, and (*iii*) require adequate replacement security for any obligations being assumed by Transferee that require security under this Agreement.

10.3 Release of Owner Upon Transfer. Upon the written consent of City Council to the partial or complete assignment of this Agreement (which consent shall not be unreasonably withheld) and the express written assumption, in the form approved by City under Section 10.2, of such assigned obligations of Owner under this Agreement by assignee, Owner shall be relieved of its legal duty to perform the assigned obligations set forth in this Agreement.

10.4 Termination of Agreement With Respect to Individual Residential Units or Lots Upon Sale to Public. Notwithstanding any other provision of this Agreement, this Agreement shall automatically terminate with respect to any residential unit or lot, and such unit or lot shall be released and no longer subject to this Agreement, when a final certificate of occupancy or equivalent is issued for any lot or parcel within a phase or tract. Such release of obligations shall occur automatically and shall not require the execution or recordation of any further document or instrument.

10.5 Agreement Binding on Successors. Except as otherwise provided in this Agreement, the burdens of this Agreement shall be binding on, and the benefits of this

Agreement shall inure to, all successors-in-interest to City and Owner pursuant to Government Code Section 65868.5 or any successor Laws.

11. AMENDMENT AND TERMINATION

11.1 In General. Except as provided in Section 8 relating to City's annual review and Section 14.1 relating to termination in the Event of Default, this Agreement may be canceled, modified or amended only by mutual written consent of the Parties, in accordance with the provisions of Government Code Section 65868, City's Development Agreement Ordinance, and the terms of this Agreement.

11.2 Amendment. Any Agreement Amendment shall require giving of notice and shall require a public hearing before the Planning Commission and a public hearing of the City Council. The City Council shall make the final decision on whether to approve an Agreement Amendment. Upon such approval by the City, and Agreement Amendment shall be signed by both parties to become effective.

11.3 Operating Memoranda. The Parties acknowledge that certain minor refinements may need to be made to the Project or this Agreement to allow the parties to perform their obligations under this Agreement. If and when the City Council and the Owner mutually find that minor changes, adjustments, or clarifications are appropriate to further the intended purposes of this Agreement, they may, unless otherwise required by law, effectuate such minor changes, adjustments, or clarifications without amendment to this Agreement through operating memoranda. After execution, it shall be attached hereto as addenda and become a part hereof and which may be further changed and amended from time. To the maximum extent permitted by law, the City Council may in its sole and absolute discretion approve and enter into such operating memoranda and the managing member or other authorized representative designated for such purpose in a writing signed by the managing member or other authorized representative of Owner shall have the authority, on behalf of Owner, to approve and enter into such operating memoranda. Unless otherwise required by law, by the Project Approvals or by the Governing Ordinances, no such minor changes, adjustments, or clarifications shall require prior notice or hearing. Notwithstanding the foregoing, nothing in this Agreement shall preclude the City Council, in its sole and absolute discretion, from delegating to the City Manager the authority to review and approve operating memoranda under this Agreement.

11.4 Assuming Transferee. Where a portion of Owner's right or obligations have been transferred to a Transferee pursuant to Section 10, the signature of the Transferee shall not be required to amend this Agreement unless such amendment would materially alter the rights or obligations of such Transferee hereunder. Owner shall indemnify, defend, and hold harmless City if any such Transferee which Owner determines is not a required signatory to such amendment brings an action against City due to City not requiring that Transferee to sign the amendment. The foregoing sentence does not, and is not intended to, create any third party beneficiary rights in a Transferee. No Transferee shall be entitled to amend this Agreement without the written consent of the entity that is the named Owner or its Affiliate in the preamble to this Agreement as long as such entity or Affiliate owns any portion of the Project Site.

11.5 Recordation of Amendment. The City Clerk shall record an appropriate notice of any Agreement Amendment, cancellation or termination of this Agreement with the Contra Costa County Recorder not later than ten (10) days after the effective date of the action effecting such amendment, cancellation, or termination, accompanied by a legal description of the Project Site or portion thereof affected by such amendment, cancellation, or termination.

12. NOTICES

12.1 Procedure. Any Notice shall be in writing and shall be given either personally, by facsimile transmission, by electronic mail, by Federal Express or other similar courier promising same-day or overnight delivery, or by U.S. mail sent certified, return receipt requested with a copy sent by regular mail.

(a) If given by Federal Express or similar courier, the Notice shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier.

(b) If personally delivered, a Notice shall be deemed to have been given when actually delivered to the Party to whom it is addressed.

(c) If delivered by facsimile transmission, a Notice shall be deemed to have been given upon receipt of the entire document by the receiving Party's facsimile machine as shown by the transmission report issued by the transmitting facsimile machine. Notice transmitted after 5 p.m. or on Saturday or Sunday shall be deemed to have been given as of 10 a.m. on the next business day.

(d) If delivered by electronic mail, a Notice shall be deemed to have been given provided that the sender shall not have received within 24 hours after sending, a notice of non-delivery. Notice transmitted after 5 p.m. or on Saturday or Sunday shall be deemed to have been given as of 10 a.m. on the next business day.

(e) If delivered by U.S. mail, certified, return receipt requested with copy sent by regular U.S. mail, Notice shall be deemed to have been given on the earlier of (*i*) actual receipt or (*ii*) five (5) calendar days after deposit with the U.S. Postal Service.

Notices shall be given to the Parties at their addresses set forth below:

If to City:
City Clerk
City of Hercules
111 Civic Drive
Hercules, California 94547
Telephone: (510) 799-8200
Facsimile: (510) 799-2521
Email: Doreen.mathews@ci.hercules.ca.us

With a copy to:
City Attorney
City of Hercules
111 Civic Drive

Hercules, CA 94607
Fax No.: (510) 799-8200

If to Owner: Hercules Bayfront, LLC
c/o AndersonPacific, LLC
Attn: James R. Anderson
6701 Center Drive West, Suite 710
Los Angeles, CA 90045
Telephone: (310) 689-2300
Facsimile: (310) 689-2305
Email: jra@andersonpacificllc.com

With copy to: Hercules Bayfront, LLC
c/o AndersonPacific, LLC
Attn: Ethan Sischo
6701 Center Drive West, Suite 710
Los Angeles, CA 90045
Telephone: (310) 689-2300
Facsimile: (310) 689-2305
Email: esischo@andersonpacificllc.com

With copy to: Rutan & Tucker, LLP
Attn: Jeffrey Melching
611 Anton Blvd., Suite 1400
Costa Mesa, CA 92626
Telephone: (714) 641-5100
Facsimile: (714) 546-9035
Email: jmelching@rutan.com

Any Party may change its mailing address or contact person(s) at any time by giving written notice of such change to the other Parties in the manner provided herein at least ten (10) days prior to the date such change is effective.

12.2 Form and Effect of Notice. Every Notice (other than the giving or withholding of consent, approval or satisfaction under this Agreement but including requests therefor) given to a Party shall comply with the following requirements. Each such Notice shall state: (*i*) the Section of this Agreement pursuant to which the Notice is given; (*ii*) the period of time within which the recipient of the Notice must respond or if no response is required, a statement to that effect; and (*iii*) if expressly provided in, or applicable to the Section of the Agreement pursuant to which is given, that the failure to respond to the Notice within the stated time period shall be deemed to be the equivalent of the recipient's approval of or consent to tile subject matter of the Notice. Each request for consent or approval shall contain reasonably sufficient data or documentation to enable the recipient to make an informed decision. In no event shall notice be deemed given nor shall a Party's approval of, consent to, or satisfaction with, the subject matter of a Notice be deemed given by such Party's failure to object or respond thereto, if such Notice did not fully comply with the requirements of this Section 12.2. No waiver of this Section 12.2 shall be

inferred or implied from any act (including conditional approvals, if any) of a Party, unless such waiver is in writing, specifying the nature and extent of the waiver.

13. MORTGAGEE PROTECTIONS

13.1 Discretion to Encumber. This Agreement shall not prevent or limit Owner, in any manner, at Owner's sole and absolute discretion, from encumbering the Project Site or any portion thereof or any improvement thereon by any mortgage, deed of trust, UCC financing statement and/or fixture filing, or other security device securing financing of the Project or any portion thereof, or in Owner's sole and absolute discretion the use of the Project Site as collateral or security for any purpose.

13.2 Mortgagee Rights and Obligations. A Mortgagee of the Project Site or any portion thereof shall be entitled, upon written request to City, to receive from City written notification of any default of Owner and any successor or assign of the performance of Owner's (or such successor's or assign's) obligations under this Agreement which has not been cured with in the time required, and subject to the provisions of Section 14; provided that the failure by City to provide such Notice shall not affect the status of Owner's default but shall extend the time for the Mortgagee's right to cure the default which shall not commence to run until it received such written notice.

13.3 Right to Cure. Notwithstanding Owner's default, this Agreement shall not be terminated by City as to any Mortgagee to whom Notice is actually given and to which either of the following is true:

(a) The Mortgagee cures any default by Owner involving payment of money within ninety (90) days, or such additional period of time as City may provide, after Mortgagee's receipt of written Notice of Owner's default; or

(b) As to defaults requiring title or possession of the Project Site or applicable portion thereof to effect a cure: (*i*) the Mortgage agrees in writing, within ninety (90) days after receipt from City of the written Notice of Default, to perform the proportionate share of Owner's obligations under this Agreement allocable to that part of the Project Site in which the Mortgagee has an interest, conditioned upon such Mortgagee's acquisition of the Project Site or portion therefore by foreclosure or by deed-in-lieu of foreclosure; (*ii*) the Mortgagee commences foreclosure proceedings to acquire title to the Project Site or applicable portion thereof, within said ninety (90) day period and thereafter diligently pursues such foreclosure to completion; and (*iii*) the Mortgagee promptly and diligently cures such default after obtaining title or possession. Subject to the foregoing, in the event any Mortgagee records a notice of default as to its security interest, upon the Mortgagee's written request to assume Owner's obligations hereunder City shall consent to the assignment to the Mortgagee or to any purchaser of Owner's interest at a foreclosure or trustee's sale, of the rights and obligations of Owner under this Agreement applicable to the portion of the Project Site to which the Mortgagee has a security interest being foreclosed, provided the Mortgagee executes and delivers to City an assignment and assumption agreement in a form and with terms reasonably acceptable to City, and Owner shall thereafter be released by City from liability under this Agreement with regard to the portion of the Project Site

that is transferred. Notwithstanding the foregoing, City shall not impose any terms on the Mortgagee or such purchaser that are inconsistent with the provisions of this Agreement.

13.4 Extended Cure Period. Notwithstanding the foregoing provisions of Section 13.3, if any Mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings including by any process of injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Owner, the times specified in Section 13.3 for commencing or prosecuting foreclosure or other proceedings or curing any default by Owner, including the payment of money, shall be extended for the period of the prohibition.

13.5 Superior Lien. The lien of any existing or future deeds of trust recorded against all or any part of the Project Site shall be superior and senior to any lien created by this Agreement or the recordation thereof. At the request of any lender whose loan is or will be secured by a deed of trust or other security instrument on all or any part of the Project Site, City shall execute a subordination agreement (which may be recorded at the election of the lender) subordinating its interest hereunder to the lien of such deed of trust or other security instrument, which subordination agreement shall be subject to the reasonable approval of the City Council. Notwithstanding anything to the contrary in this Agreement, the City Council may in its sole and absolute discretion elect to delegate its authority to approve subordination agreements to a City official or employee, including the City Attorney.

13.6 No Impairment of Lien. Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any existing or future mortgage, deed of trust, or other security instrument recorded against the Project Site.

13.7 Election to Assume Obligations. Except as may be provided to the contrary in this Agreement, no Mortgagee or beneficiary shall have an obligation or duty under this Agreement to perform the obligations of Owner hereunder, or to guarantee such performance, and no Mortgagee shall be liable for any defaults or monetary obligations of Owner arising prior to the acquisition of title to the Project Site or applicable portion thereof by the Mortgagee or successors or assigns; provided, however, that except to the extent any covenant to be performed by Owner is a condition to the performance of a covenant by City, the performance thereof shall continue to be a condition precedent to City's performance. In the event a Mortgagee elects to develop the Project Site or applicable portion thereof in accordance with this Agreement and the Project Approvals, the Mortgagee shall be required to assume and perform the obligations of Owner under this Agreement.

13.8 Request for Modifications. City acknowledges that lenders providing financing for the Project may require certain modifications to this Agreement, and City agrees, upon request from time to time, to negotiate in good faith any such requested modification. Requested modifications shall be made without additional conditions, dedications, or Exactions from Owner unless a requested Modification relates to the Exactions, term, permitted uses, overall density requirements, reservation dedication of land for public improvements, or provision of affordable housing.

14. MISCELLANEOUS PROVISIONS

14.1 Default; Termination. Subject to 8.1, failure or unreasonable delay by any Party to perform any obligation under this Agreement for a period of ninety (90) days after written Notice of Default thereof from the other party shall constitute an Event of Default under this Agreement, subject to extensions of time by mutual consent in writing or discretionary approval of extensions by the City Council. Said Notice of Default shall specify the nature of the alleged default and the manner in which said default may be satisfactorily cured. If the nature of the alleged default is such that it cannot reasonably be cured within such ninety (90) day period, the commencement of the cure within such time period and the subsequent diligent prosecution to completion of the cure shall be deemed a cure within such period.

(a) City Termination Procedure. Subject to Section 14.1, after Notice of Default and expiration of the ninety (90) day period without cure, if applicable, City, at its option, may institute legal proceedings to compel performance (but not to terminate this Agreement), and/or give notice of intent to terminate the Agreement pursuant to Government Code Section 65868 and City's Development Agreement Ordinance. Following such notice of intent to terminate, the matter shall be scheduled for consideration before the City Council no sooner than thirty (30) calendar days thereafter, in the manner set forth in Government Code Sections 65865.1, 65867 and 65868. Following consideration of the evidence presented in said review before the City Council, and a determination by the City Council based thereon, City may give written notice of termination of this Agreement to Owner. The waiver by City of any Event of Default under this Agreement shall not operate as a waiver of any subsequent breach of the same or any other provision of this Agreement.

(b) Owner Termination Procedure. Subject to Section 14.1, after notice and expiration of the ninety (90) day period without cure, if applicable, Owner, at its option, may institute legal proceedings pursuant to this Agreement (but not to terminate this Agreement) and/or give notice of intent to terminate the Agreement to City. Following such notice of intent to terminate, City representatives and Owner representatives shall meet and confer in a good faith attempt to resolve the breach of this Agreement. If the meet and confer effort does not result in a satisfactory outcome for Owner, Owner may give written notice of termination of this Agreement to City. The waiver by Owner of any Event of Default under this Agreement shall not operate as a waiver of any subsequent breach of the same or any other provision of this Agreement.

14.2 Arbitration of Disputes Over Public Benefit Fee Advances. The Parties agree that any disputes involving the applicability, interpretation, and enforcement of Sections 3.1 through 3.6, Section 9.1, and Exhibit K, of this Agreement shall be resolved by final and binding arbitration conducted by JAMS' San Francisco, California, office or by such other arbitrator as may be mutually approved by the Parties or, if for whatever reason JAMS or its successor is no longer in business and the Parties cannot agree on the identity of an arbitrator, by an arbitrator selected by the Contra Costa County Superior Court. The Parties shall endeavor to select a JAMS arbitrator within fifteen (15) days after either Party notifies the other Party in writing that it has elected to arbitrate a dispute. If the Parties are unable to agree to a JAMS arbitrator, the Parties consent to having JAMS assign an available arbitrator from a JAMS list, provided that either Party may disqualify any prospective arbitrator who, if the arbitrator were a Superior

Court judge, would be subject to disqualification for cause in accordance with applicable law. The Parties agree that JAMS' Comprehensive Arbitration Rules and Procedures (or the successor rules thereto), as the same exist at the time the arbitration occurs, shall govern, except to the extent the Parties (and JAMS) mutually agree to modify the same; provided, however, that in the case of a dispute arising under Exhibit K of this Agreement (i) the matter shall be submitted to arbitration based on the administrative record associated with the dispute, and (ii) the most expedited review procedure available shall be utilized. If another arbitrator is selected to hear and determine the dispute, the most closely comparable rules of such other arbitrator's firm, if any, shall apply; if no such rules exist, all of the applicable JAMS rules shall apply to the extent the same can be used. The arbitrator shall have the authority to make final determinations concerning the applicable rules and procedures to be utilized, consistent with the foregoing. The Parties agree to cooperate in attempting to obtain a final ruling from the arbitrator as expeditiously as possible and in any event within ninety (90) days after the arbitrator is appointed; provided, however, that (i) the arbitrator shall not be divested of jurisdiction if final resolution of the arbitration does not occur until a later date; and (ii) that in the case of a dispute arising under Exhibit K to this agreement, the parties shall cooperate in attempting to obtain a final ruling from the arbitrator within no longer than thirty (30) days. Any remedy ordered or awarded by the arbitrator shall be subject to the limitations on remedies set forth in this Agreement, including without limitation Section 3.3. Each Party shall be responsible for payment of fifty percent (50%) of the arbitrator's costs and fees; provided, however, that the arbitrator shall have the authority to require the non-prevailing Party to pay or reimburse the prevailing Party for the prevailing Party's portion of such costs and fees.

14.3 Cooperation in the Event of Third-Party Legal Challenge.

(a) Approval of Agreement and Concurrent Approvals and Subsequent Project Approvals. In the event of any Third Party Legal Challenge, Owner reserves the right to withdraw the application that is the subject of the Third Party Legal Challenge. However, in the event that Owner elects not to withdraw its application, the Parties hereby agree to cooperate in defending said action or proceeding, and Owner agrees to diligently defend any such action or proceeding and to bear the litigation expenses of defense, including attorney's fees. City retains the option to employ independent defense counsel at Owner's expense unless Owner elects to withdraw its application. If Owner elects not to contest a Third Party Legal Challenge, City shall have no obligation to contest such challenges. If City elects to contest a Third Party Legal Challenge and Owner does not elect to contest such challenge, City shall have no right of reimbursement from Owner for litigation expenses, including attorney's fees. If Owner elects to defend a Third Party Legal Challenge, Owner shall hold City harmless from all claims for recovery of the third party's litigation expenses, including the third party's attorney's fees.

14.4 Actions; Remedies; Attorney's Fees. In addition to any other rights and remedies, a Party may institute legal action to cure, correct or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation or enforce by specific performance the obligations and rights of the Parties. In no event shall a Party or its officers, agents or employees be liable in monetary damages for any breach or violation of this Agreement, it being expressly understood and agreed that the sole legal or equitable remedy available to any Party for a breach or violation of this Agreement by another Party shall be an action in mandamus, specific performance, injunctive or declaratory relief to enforce the

provisions of this Agreement. The Parties acknowledge that neither City nor Owner would have entered into this Agreement had it been exposed to damage claims from the other Party for any breach thereof. As such, the Parties agree that in no event shall City or Owner be entitled to recover damages against the other Party for breach of this Agreement. Notwithstanding the foregoing, (*i*) a Party shall not be foreclosed from initiating an action to enforce an obligation by another Party to make monetary payments under this Agreement, which action shall be deemed an action for specific performance, and (*ii*) in any legal action between or among the Parties hereto, the Prevailing Party shall be entitled to recover all litigation expenses, including but not limited to its discovery costs, expert witness fees, reasonable attorney's fees, and court costs, and costs of appeal (if any).

14.5 Estoppel Certificates. Either Party or the holder or prospective holder of a mortgage or deed of trust secured by an interest in any portion of the Property may at any time during the Term of this Agreement deliver written notice to the other Party requesting an estoppel certificate stating: (*i*) this Agreement is in full force and effect and is a binding obligation of the Parties; (*ii*) this Agreement has not been amended or modified either orally or in writing or, if so amended, identifying the amendments; (*iii*) no default exists hereunder, nor would any default exist with the passage of time or the giving of notice, or both, or, if a default or failure does exist, the nature thereof and the actions required to be taken by the non-performing Party to cure the default or prevent the same from occurring; and (*iv*) any other matter affecting the status of the rights and obligations of the Parties hereunder as to which the requesting Party, or the holder of the mortgage or deed of trust, may inquire. A Party receiving a request for an estoppel certificate shall provide a signed certificate to the requesting Party, or holder of a mortgage or deed of trust, within thirty (30) days after receipt of the request. The City Manager or any person designated by the City Manager may sign estoppel certificates on behalf of City. The managing member or other authorized representative of Owner may sign on behalf of any Owner. An estoppel certificate may be relied on by the holder of a mortgage or deed of trust, and by Transferees. If one Party requests an estoppel certificate from the other Party, the requesting Party shall reimburse the other Party for all reasonable and direct costs and fees incurred by such Party with respect thereto.

14.6 Effect of Termination. Termination of this Agreement shall not affect the Parties' obligations to comply with the standards, terms and conditions of any land use approvals issued with respect to the Project Site or any portion thereof, nor shall it affect any covenants of any Party which are specified in this Agreement to continue after termination. If this Agreement is terminated, the Vesting DA shall apply to the Project Site assuming the Vesting DA has not terminated, expired or been rendered invalid by a court, in which case the Initiative DA shall apply. If the Vesting DA is no longer valid or operative, development of the Project Site shall be subject to the rules and regulations that may be legally applied to the Project Site.

14.7 Negation of Partnership, Agency and Joint Venture. City and Owner specifically acknowledge that the Project is a private development, that City is not acting as the agent of Owner, and Owner is not acting as the agent of City, in any respect hereunder, and that each Party is an independent contracting entity with respect to the terms, covenants, and conditions contained in this Agreement. None of the provisions of this Agreement shall be deemed to create a partnership between or among the Parties in the businesses of Owner, or the affairs of City, or otherwise, nor shall it cause them to be considered joint venturers or members of any

joint enterprise. This Agreement is not intended nor shall it be construed to create any third party beneficiary rights in any person who is not expressly made a Party and signatory to this Agreement.

14.8 Nonliability of Officers and Employees. No officer, official, director, employee, agent, or representative of any of the Parties hereto or their respective parent, subsidiaries, or affiliates, shall be personally liable to any other Party hereto, or any successor or assign, for any loss, costs, damage, claim, liability, or judgment, arising out of or connected to this Agreement, or for any act or omission on the part of such official, officer, employee, agent or representative.

14.9 Agreement Negotiated; Interpretation. The language in this Agreement shall be construed in accordance with its fair meaning and not strictly for or against a Party hereto. The Parties acknowledge that this Agreement has been prepared by all the Parties hereto and shall not be interpreted or construed against the Party preparing or drafting it or any portion hereof. The Parties hereto have been represented by counsel of their own choosing through the negotiation and preparation of this Agreement. As a consequence, the presumptions of Civil Code Section 1654 relating to the interpretation of contracts against the drafter shall be applied to the interpretation of this Agreement.

14.10 No Third Party Beneficiaries. The Parties to this Agreement acknowledge and agree that the provisions of this Agreement are for the sole benefit of the Parties hereto and not for the benefit, directly or indirectly, express or implies, of any other person or entity, except as may otherwise expressly be provided in this Agreement.

14.11 Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining terms and provision of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the Parties.

14.12 Waivers. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought. No waiver of any right or remedy in respect to any occurrence or event shall be deemed a waiver of any right or remedy in respect to any other or subsequent occurrence or event.

14.13 No Brokers. Each of the Parties hereto represents and warrants to each other Party hereto that it has not employed any broker or finder with respect to the execution and delivery of this Agreement, and each Party agrees to indemnify, defend, and hold harmless the other from and against any and all liability, cost, or expense (including court costs, expert witness fees, and attorney's fees) in any manner connection with a claim asserted by any person or entity for any commission or finder's fee in connection with the execution and delivery of this Agreement, or arising out of any agreement(s) by the indemnifying Party to pay any commission or finder's fee.

14.14 Entire Agreement. This Agreement and the exhibits attached hereto constitute the entire agreement between the Parties with respect to the subject matter hereof. Except as for the

Initiative Development Agreement, the Vesting DA, the Landside PSA, and the Waterside PSA, all prior correspondence, memoranda, agreements, warranties or representations are superseded in total by this Agreement and the exhibits attached hereto except to the extent incorporated herein as an exhibit or by reference.

14.15 Further Documents. Each Party shall execute and deliver such further documents as may be reasonably necessary to achieve the objectives of this Agreement.

14.16 Recordation. This Agreement and any amendment or cancellation hereto shall be recorded against the Property at no cost to City, in the Official Records of Contra Costa County by the City Clerk within the period required by Section 65868.5 of the Government Code. Notwithstanding the foregoing, in no event shall any failure or delay in recording this Agreement and any amendment to this Agreement limit or restrict the validity or enforceability of this Agreement.

14.17 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the United States, the State of California, and the City of Hercules.

14.18 Counterparts. This Agreement may be executed in multiple counterparts, each of which, when all the Parties hereto have signed this Agreement, shall be deemed an original Agreement.

14.19 Time of Essence. Time is of the essence of this Agreement and of each and every term and condition hereof.

14.20 Notice of Termination. Upon the expiration or earlier termination of this Agreement, the other Parties hereto shall, if requested by a Party hereto, execute for recordation in the Official Records of Contra Costa County, a notice stating that this Agreement has terminated or expired, if expired that the Parties have performed all their duties and obligations hereunder and that this Agreement is no longer an encumbrance or servitude on the Project Site.

14.21 Powers of Owner. Owner shall have full power over and exclusive control of Project development, subject only to the limitations and obligations of Owner under this Agreement.

14.22 Recitals Incorporated. The Recitals to this Agreement are incorporated herein and by this reference made a part hereof.

14.23 Exhibits. The following exhibits are attached to this Agreement and are incorporated herein and by this reference made a part hereof:

Exhibit A - Project Site Legal Descriptions
- A(1) Project Site Legal Descriptions – Current Land Under Ownership.
- A(2) Project Site Legal Descriptions – Owner's Land Ownership Assuming Close of Escrow on Landside PSA and Waterside PSA.

Exhibit B - Project Site Map
- B(1) Project Site Maps – Tentative Tract Map

- B(2) Project Site Maps – Depiction of Owner's Land Ownership Assuming Close of Escrow on Landside PSA and Waterside PSA

Exhibit C - Initiative Development Agreement
- C (1) Original Initiative Development Agreement (Recorded)
- C (2) Vesting Development Agreement

Exhibit D - Project Description and Scope of Development

Exhibit E - Affordable Housing Program

Exhibit F - Phasing Plan

Exhibit G - List of City Public Improvements

Exhibit H - Public Financing Plan

Exhibit I - Schedule of Exactions

Exhibit J - Purchase & Sale Agreement (Two Exhibits)
- J (1) Public Use Lands, ITC Right-of-Way Expansion, ITC Station
- J (2) Hercules Point, Water Parcel North and Water Parcel South

Exhibit K - Streamlined Approval Process

Exhibit L - Conditions of Approval

Exhibit M - Coordinated Project Management Plan

[END—SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

CITY:

CITY OF HERCULES, a California municipal corporation

By: _____
Mayor

Approved as to Form:

_____
City Attorney
Patricia E. Curtin
Special Legal Counsel
to City

OWNER:

HERCULES BAYFRONT, LLC, a Delaware limited liability company

By: APL-Hercules, LLC, a Delaware limited liability company,
Its Manager

By: Anderson Pacific, LLC, a Delaware limited liability company,
Its Managing Member

By: _____
James R. Anderson
Its Managing Member

State of California)
County of Contra Costa)

On 3-14-12, before me, Doreen S. Mathews,
(insert name and title of the officer)

Notary Public, personally appeared James R. Anderson,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Doreen S Mathews (Seal)

DOREEN S. MATHEWS
Commission # 1932086
Notary Public - California
Contra Costa County
My Comm. Expires May 14, 2015

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

State of California
County of Contra Costa

On 3-15-12 (Date) before me, Doreen S. Mathews Notary Public (Here Insert Name and Title of the Officer),

personally appeared Dan Romero (Name(s) of Signer(s)),

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

DOREEN S. MATHEWS
Commission # 1932886
Notary Public - California
Contra Costa County
My Comm. Expires May 14, 2015

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Doreen S Mathews
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Implementing Nov. Agmt - Hercules Bayfront

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
☐ Corporate Officer — Title(s): _____
☐ Individual
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____
☐ Corporate Officer — Title(s): _____
☐ Individual
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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Item #5907

EXHIBIT A (1)

CURRENT LAND UNDER OWNERSHIP

LEGAL DESCRIPTION

Real property in the City of Hercules, County of Contra Costa, State of California, described as follows:

TRACT ONE:

PARCELS A, B, C AND D, AS SHOWN ON THE PARCEL MAP MS 491-03, FILED MARCH 10, 2004 IN BOOK 189 OF PARCEL MAPS, AT PAGE 40, OFFICIAL RECORDS.

TRACT TWO:

PARCEL D AND LOT 200, AS SHOWN ON THE MAP OF SUBDIVISION 8407, FILED DECEMBER 19, 2001, IN BOOK 437 OF MAPS, PAGE 31, AND AS AMENDED BY AMENDED SUBDIVISION MAP 8407, FILED JANUARY 27, 2003, IN BOOK 451 OF MAPS, PAGE 14, AND AS CORRECTED BY CERTIFICATES OF CORRECTION RECORDED DECEMBER 11, 2002 AS INSTRUMENT NO. 2002-471412, AND RECORDED DECEMBER 9, 2003 AS INSTRUMENT NO. 2003-594591, AND RECORDED APRIL 06, 2007 AS INSTRUMENT NO. 2007-100623, CONTRA COSTA COUNTY RECORDS.

EXCEPTING FROM A PORTION OF SAID LAND:

"ALL OIL, GAS, CASINGHEAD GASOLINE AND HYDROCARBONS AND MINERAL SUBSTANCES BELOW A POINT 500 FEET BELOW THE SURFACE OF ALL THAT PROPERTY AS SHOWN ON PARCEL MAP NO. 1012, RECORDED JANUARY 17, 1978 IN BOOK 61 OF PARCEL MAPS, PAGES 50, 51 AND 52, CONTRA COSTA COUNTY RECORDS, TOGETHER WITH THE RIGHT TO TAKE, REMOVE, MINE AND DISPOSE OF ALL SAID OIL, GAS, CASINGHEAD GASOLINE AND OTHER HYDROCARBONS AND MINERALS BUT WITHOUT ANY RIGHT WHATSOEVER TO ENTER UPON THE SURFACE OF SAID LAND OR UPON ANY PART OF SAID LAND WITHIN 500 FEET OF THE SURFACE", AS GRANTED IN THE DEED TO TAURUS BUILDING COMPANY, A CALIFORNIA CORPORATION, RECORDED OCTOBER 3, 1979, BOOK 9555, PAGE 583, OFFICIAL RECORDS.

TRACT THREE:

LOT 16, AND PARCELS .A. & .B., AS SHOWN ON THE MAP OF SUBDIVISION 8644 FILED FEBRUARY 25, 2004, IN BOOK 461 OF MAPS, PAGE 24, CONTRA COSTA COUNTY RECORDS.

TRACT FOUR:

PARCEL ONE:

PARCEL D, AS SHOWN ON M.S. 476-00, FILED OCTOBER 12, 2000, BOOK 179 OF PARCEL MAPS, AT PAGE 38, CONTRA COSTA COUNTY RECORDS.

PARCEL TWO:

PARCELS SEVEN AND EIGHT, AS SHOWN ON THE PARCEL MAP MSH-1, FILED APRIL 22, 1974,BOOK 33 OF PARCEL MAPS, PAGE 16, CONTRA COSTA COUNTY RECORDS.

PARCEL THREE:

A RIGHT-OF-WAY 25 FEET WIDE IN THE DEED FROM HERCULES POWER COMPANY, A CORPORATION, RECORDED MAY 19, 1965, BOOK 4871, PAGE 223, OFFICIAL RECORDS, "FOR PIPE LINE OR PIPE LINES AND ACCESSORY FACILITIES, ON, OVER AND UNDER THE LAND DESCRIBED ABOVE TO GRANTOR'S FORMER NORTHEASTERLY BOUNDARY LINE ALONG AND ACROSS A ROUTE ADJACENT TO AN PARALLEL WITH THE EASTERLY BOUNDARY OF THE SOUTHERN PACIFIC RAILROAD RIGHT-OF-WAY."

PARCEL FOUR:

A NON-EXCLUSIVE EASEMENT, GRANTED IN THE DEED TO VALLEY NITROGEN PRODUCERS, INC., A CALIFORNIA CORPORATION, RECORDED OCTOBER 1, 1976, BOOK 8038, PAGE 797, OFFICIAL RECORDS, FOR INGRESS AND EGRESS FOR PEDESTRIAN AND VEHICULAR TRAFFIC OVER A STRIP OF LAND 50 FEET IN WIDTH, THE CENTER LINE OF WHICH IS DESCRIBED AS FOLLOWS:

"COMMENCING AT A POINT ON THE GENERAL NORTHWESTERLY LINE OF SAN PABLO AVENUE AS SHOWN ON SAID POINT BEING THE EASTERLY TERMINUS OF THE COURSE AS SHOWN ON SHEET 5 OF SAID RECORD OF SURVEY AS N 72° 14 02" E., 524.16 FEET; THENCE, FROM SAID POINT OF COMMENCEMENT, EASTERLY ALONG SAID NORTHERLY LINE OF SAN PABLO AVENUE ALONG A NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 949.57 FEET, FROM A TANGENT BEARING OF N. 53° 42' 48" E., THROUGH A CENTRAL ANGLE OF 3° 57' 46" AN ARC DISTANCE OF 65.67 FEET TO THE TRUE POINT OF BEGINNING OF THE CENTER LINE HEREIN DESCRIBED; THENCE N. 49° 03' 02" W., 3089.49 FEET TO A POINT IN THE GENERAL EASTERLY LINE OF PARCEL ONE AS SHOWN ON SHEET 2 OF THE MAP ENTITLED "PARCEL MAP 1006", FILED SEPTEMBER 15, 1976, IN BOOK 48 OF PARCEL MAPS, AT PAGES 6 THROUGH 8 IN THE OFFICE OF THE COUNTY RECORDER OF CONTRA COSTA COUNTY, FROM WHICH THE SOUTHWESTERLY TERMINUS OF THE COURSE AS SHOWN ON THE SAID PARCEL MAP AS N. 49° 30' 00" E., 1500.00 FEET, BEARS S. 49° 30' 00" W., 100.00 FEET, BEING A PORTION OF THAT CERTAIN 436.48 ACRE PARCEL OF LAND, AS SHOWN ON SHEETS 3 THROUGH 6 OF THAT CERTAIN RECORD OF SURVEY FILED AUGUST 15, 1974, IN BOOK 57 OF L.S.M., AT PAGE 23, IN THE OFFICE OF THE COUNTY RECORDER OF CONTRA COSTA COUNTY."

PARCEL FIVE:

A NON-EXCLUSIVE EASEMENT, GRANTED IN THE DEED TO VALLEY NITROGEN PRODUCERS, INC., A CALIFORNIA CORPORATION, RECORDED OCTOBER 1, 1976, BOOK 8038, PAGE 797, OFFICIAL RECORDS, FOR INGRESS AND EGRESS, FOR PEDESTRIAN AND VEHICULAR TRAFFIC, OVER A STRIP OF LAND 50 FEET IN WIDTH, THE CENTER LINE OF WHICH IS DESCRIBED AS FOLLOWS:

"BEGINNING A POINT IN THE GENERAL NORTHERLY LINE OF SAN PABLO AVENUE, FROM WHICH THE SOUTHWESTERLY TERMINUS OF THE COURSE AS SHOWN ON SHEET 6 OF SAID RECORD OF SURVEY AS N. 53° 26' 00" E., 300.62 FEET, BEARS S. 53° 26' 00" W., 25.09 FEET; THENCE FROM SAID POINT OF BEGINNING, N. 31° 45' 00" W., 516.72 FEET TO A POINT ON THE GENERAL SOUTHEASTERLY LINE OF PARCEL ONE OF SAID PARCEL MAP 1006, FROM WHICH THE NORTHEASTERLY TERMINUS OF THE COURSE AS SHOWN ON SHEET 3 OF SAID PARCEL MAP AS N. 58° 15' 00" E., 956.07 FEET, BEARS S. 58° 15' 00" W., 274.47 FEET, BEING A PORTION OF THAT CERTAIN 436.48 ACRE PARCEL OF LAND, AS SHOWN ON SHEETS 3 THROUGH 6 OF THAT CERTAIN RECORD OF SURVEY, FILED AUGUST 15, 1974, IN BOOK 57 OF L.S.M., AT PAGE 23, IN THE OFFICE OF THE COUNTY RECORDER OF CONTRA COSTA COUNTY."

PARCEL SIX:

PARCEL FIVE, AS SHOWN ON THE PARCEL MAP MSH-1, FILED APRIL 22, 1974, BOOK 33 OF PARCEL MAPS, PAGE 16, CONTRA COSTA COUNTY RECORDS. EXCEPTING THEREFROM:

1. "UNDIVIDED TWENTY-FIVE PERCENT (25%) OF ALL OIL, GAS AND OTHER HYDROCARBONS AND ANY OTHER MINERALS OR MINERAL RIGHTS, WHETHER OR NOT SIMILAR TO THOSE HEREIN MENTIONED, UNDERLYING THAT PORTION OF THE LAND DESCRIBED SITUATED BELOW THE SURFACE THEREOF, SPECIFICALLY INCLUDING THE RIGHT TO EXPLORE, DRILL FOR, PRODUCE, EXTRACT, TREAT, REMOVE AND MARKET OIL, GAS AND OTHER HYDROCARBONS AND MINERALS THEREFROM BUT WITHOUT ANY RIGHT TO ENTER UPON OR TO UTILIZE THE SURFACE OF THE LAND DESCRIBED ABOVE FOR ANY SUCH PURPOSES", AS RESERVED IN THE DEED FROM HERCULES POWER COMPANY, RECORDED JUNE 2, 1965, BOOK 4880, PAGE 541, OFFICIAL RECORDS.

2. "THE REMAINING 75% OF 100% OF THE OIL, GAS AND OTHER HYDROCARBONS TOGETHER WITH THE RIGHT TO EXPLORE, DRILL FOR, USING SLANT DRILLING METHODS, PASS IN, UNDER OR THROUGH SAID LAND, PRODUCE, EXTRACT, TREAT, REMOVE, MARKET OIL, GAS AND OTHER HYDROCARBONS, BUT WITHOUT ANY RIGHT TO ENTER UPON OR TO UTILIZE THE SURFACE OF SAID LAND DESCRIBED FOR ANY SUCH PURPOSE," AS RESERVED IN THE DEED FROM AMINOIL HOLDINGS, INC., A CORPORATION, RECORDED AUGUST 15, 1979, BOOK 9487, PAGE 496, OFFICIAL RECORDS.

PARCEL SEVEN:

PARCELS FOUR AND SIX AS SHOWN ON PARCEL MAP MSH-1 FILED APRIL 22, 1974, IN BOOK 33 OF PARCEL MAPS AT PAGE 16, AND MORE PARTICULARLY DESCRIBED AS ADJUSTED PARCEL 4, PARCEL MAP MSH-1 33 PM 16, IN THAT CERTAIN CERTIFICATE OF COMPLIANCE FOR LOT LINE ADJUSTMENT RECORDED JANUARY 31, 2000 AS INSTRUMENT NO. 2000-19349 OF OFFICIAL RECORDS, CONTRA COSTA COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHERLY CORNER OF SAID PARCEL 4 (33 PM 16): THENCE FROM SAID POINT OF BEGINNING ALONG THE EXTERIOR LINES OF SAID PARCEL 4, THE FOLLOWING COURSES:

SOUTH 37° 46' 59" EAST 317.38 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 1,710.68 FEET, A RADIAL LINE TO THE BEGINNING OF SAID CURVE BEARS SOUTH 49° 34' 15" EAST; THENCE FROM SAID POINT OF BEGINNING SOUTHWESTERLY 328.46 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 11° 00' 04"; THENCE SOUTH 51° 25' 49" WEST 341.51 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 1,190.19 FEET; THENCE SOUTHWESTERLY 77.35 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 03° 43' 25" THENCE NORTH 49° 30' 00" WEST 27.37 FEET; THENCE NORTH 17° 28' 00" WEST 56.60 FEET; THENCE NORTH 73° 18' 00" WEST 20.90 FEET; THENCE SOUTH 15° 04' 00" WEST 26.90 FEET; THENCE SOUTH 51° 20' 00" WEST 12.80 FEET; THENCE SOUTH 15° 57' 00" WEST 58.20 FEET; THENCE SOUTH 58° 24' 00" WEST 15.30 FEET; THENCE SOUTH 19° 32' 00" EAST 32.90 FEET; THENCE SOUTH 01° 22' 40" WEST 44.45 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE EAST, HAVING A RADIUS OF 1,190.19 FEET, A RADIAL LINE TO THE BEGINNING OF SAID CURVE BEARS NORTH 48° 44' 56" WEST; THENCE SOUTHWESTERLY 411.81 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 19° 49' 29"; THENCE SOUTH 21° 25' 35" WEST 369.99 FEET TO THE BEGINNING A TANGENT CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 3,393.16 FEET, THENCE SOUTHWESTERLY 429.44 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 07° 15' 05" TO THE EXTERIOR LINE OF SAID PARCEL SIX BEING THE BEGINNING OF A COMPOUND CURVE HAVING A RADIUS OF 3,393.16 FEET, A RADIAL LINE TO THE BEGINNING OF SAID CURVE BEARS SOUTH 61° 19' 20" EAST; THENCE LEAVING SAID EXTERIOR LINE OF PARCEL 4 ALONG SAID EXTERIOR LINE OF PARCEL SIX, THE FOLLOWING COURSES:

SOUTHWESTERLY 439.57 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 07° 25' 21" TO THE BEGINNING OF A COMPOUND CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 1,101.50 FEET, A RADIAL LINE TO THE BEGINNING OF SAID CURVE BEARS SOUTH 53° 53' 59" EAST; THENCE SOUTHWESTERLY 673.63 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 35° 02' 23"; THENCE SOUTH 71° 08' 24" WEST 558.13 FEET; THENCE NORTH 47° 01' 00" WEST 10.32 FEET; THENCE NORTH 76° 06' 00" WEST 108.21 FEET; THENCE SOUTH 87° 00' 00" WEST 114.21 FEET; THENCE SOUTH 81° 00' 00" WEST 160.01 FEET; THENCE NORTH 77° 24' 00" WEST 87.11 FEET; THENCE NORTH 49° 11' 00" WEST 87.21 FEET; THENCE NORTH 56° 59' 00" WEST 47.70 FEET; THENCE NORTH 43° 31' 00" WEST 164.11 FEET; THENCE NORTH 67° 10' 00" WEST 103.11 FEET; THENCE NORTH 26° 34' 00" WEST 80.51 FEET; THENCE NORTH 61° 05' 00" WEST 76.51 FEET; THENCE SOUTH 82° 37' 00" WEST 108.91 FEET; THENCE NORTH 66° 48' 00" WEST 38.10 FEET; THENCE NORTH 85° 11' 00" WEST 95.31 FEET; THENCE NORTH 48° 16' 00" WEST 49.60 FEET; THENCE NORTH 63° 20' 00" EAST 76.01 FEET; THENCE NORTH 86° 45' 00" EAST 89.01 FEET; THENCE SOUTH 83° 55' 00" EAST 85.01 FEET; THENCE SOUTH 67° 10' 00" EAST 152.01 FEET; THENCE SOUTH 78° 00' 00" EAST 116.01 FEET; THENCE SOUTH 87° 35' 00" EAST 71.00 FEET; THENCE NORTH 73° 35' 00" EAST 329.02 FEET; THENCE NORTH 70° 20' 00" EAST 149.01 FEET; THENCE NORTH 59° 35' 00" EAST 516.04 FEET; THENCE NORTH 55° 10' 00" EAST 436.03 FEET; THENCE NORTH 51° 15' 00" EAST 291.02 FEET; THENCE NORTH 41° 55' 10" EAST 172.25 FEET TO SAID EXTERIOR LINE OF SAID PARCEL FOUR; THENCE LEAVING SAID EXTERIOR LINE OF SAID PARCEL SIX ALONG THE EXTERIOR LINES OF SAID PARCEL FOUR THE FOLLOWING COURSES:

NORTH 35° 49' 50" EAST 127.73 FEET; THENCE NORTH 28° 40' 00" EAST 231.02 FEET; THENCE NORTH 37° 15' 00" EAST 58.00 FEET; THENCE NORTH 43° 10' 00" EAST 221.02 FEET; THENCE NORTH 33° 40' 00" EAST 119.01 FEET; THENCE NORTH 22° 40' 00" EAST 86.01 FEET; THENCE NORTH 30° 45' 00" EAST 158.01 FEET; THENCE NORTH 27° 40' 00" EAST 136.01 FEET; THENCE NORTH 35° 35' 00" EAST 91.01 FEET; THENCE NORTH 52° 10' 00" EAST 62.00 FEET; THENCE NORTH 56° 55' 00" EAST 345.02 FEET; THENCE NORTH 48° 42' 00" EAST 142.01 FEET; THENCE NORTH 37° 55' 00" EAST 182.01 FEET; THENCE NORTH 45° 35' 00" EAST 82.39 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM:

1. "UNDIVIDED TWENTY-FIVE PERCENT (25%) OF ALL OIL, GAS AND OTHER HYDROCARBONS AND ANY OTHER MINERALS OR MINERAL RIGHTS, WHETHER OR NOT SIMILAR TO THOSE HEREIN MENTIONED, UNDERLYING THAT PORTION OF THE LAND DESCRIBED SITUATED BELOW THE SURFACE THEREOF, SPECIFICALLY INCLUDING THE RIGHT TO EXPLORE, DRILL FOR, PRODUCE, EXTRACT, TREAT, REMOVE AND MARKET OIL, GAS AND OTHER HYDROCARBONS AND MINERALS THEREFROM BUT WITHOUT ANY RIGHT TO ENTER UPON OR TO UTILIZE THE SURFACE OF THE LAND DESCRIBED ABOVE FOR ANY SUCH PURPOSES", AS RESERVED IN THE DEED FROM HERCULES POWER COMPANY, RECORDED JUNE 2, 1965, BOOK 4880, PAGE 541, OFFICIAL RECORDS.

2. "THE REMAINING 75% OF 100% OF THE OIL, GAS AND OTHER HYDROCARBONS TOGETHER WITH THE RIGHT TO EXPLORE, DRILL FOR, USING SLANT DRILLING METHODS, PASS IN, UNDER OR THROUGH SAID LAND, PRODUCE, EXTRACT, TREAT, REMOVE, MARKET OIL, GAS AND OTHER HYDROCARBONS, BUT WITHOUT ANY RIGHT TO ENTER UPON OR TO UTILIZE THE SURFACE OF SAID LAND DESCRIBED FOR ANY SUCH PURPOSE," AS RESERVED IN THE DEED FROM AMINOIL HOLDINGS, INC., A CORPORATION, RECORDED AUGUST 15, 1979, BOOK 9487, PAGE 496, OFFICIAL RECORDS.

EXHIBIT A(2)

Project Site Legal Descriptions – Owner's Land Ownership Assuming Close of Escrow on Landside PSA and Waterside PSA

LEGAL DESCRIPTION

All that certain real property situate in the City of Hercules, County of Contra Costa, and described as follows:

BEING Parcel D as said parcel is shown on that certain map entitled "Parcel Map MS 476-00", filed October 12, 2000, in Book 179 of Parcel Maps at Pages 38, 39, and 40, in the Office of the Recorder of Contra Costa County.

EXCEPTING THEREFROM THE FOLLOWING:

1. Parcel 1 as said parcel is described in the _____ to _____ recorded _____ as Document Number _____, Contra Costa County Records.

2. Parcel 13 as said parcel is described in the _____ to _____ recorded _____ as Document Number _____, Contra Costa County Records.

3. Parcel 16 as said parcel is described in the _____ to _____ recorded _____ as Document Number _____, Contra Costa County Records.

4. Parcel 20 as said parcel is described in the _____ to _____ recorded _____ as Document Number _____, Contra Costa County Records.

5. Parcel 22 as said parcel is described in the _____ to _____ recorded _____ as Document Number _____, Contra Costa County Records.

6. Parcel 24 as said parcel is described in the _____ to _____ recorded _____ as Document Number _____, Contra Costa County Records.

7. Parcel 26 as said parcel is described in the _____ to _____ recorded _____ as Document Number _____, Contra Costa County Records.

8. Parcel 31 as said parcel is described in the _____ to _____ recorded _____ as Document Number _____, Contra Costa County Records.

9. Parcel 32 as said parcel is described in the _____ to _____ recorded _____ as Document Number _____, Contra Costa County Records.

10. Parcel 33 as said parcel is described in the _____ to _____ recorded _____ as Document Number _____, Contra Costa County Records.

11. Parcel 34 as said parcel is described in the _____ to _____ recorded _____ as Document Number _____, Contra Costa County Records.

12. Parcel 35 as said parcel is described in the _____ to _____ recorded _____ as Document Number _____, Contra Costa County Records.

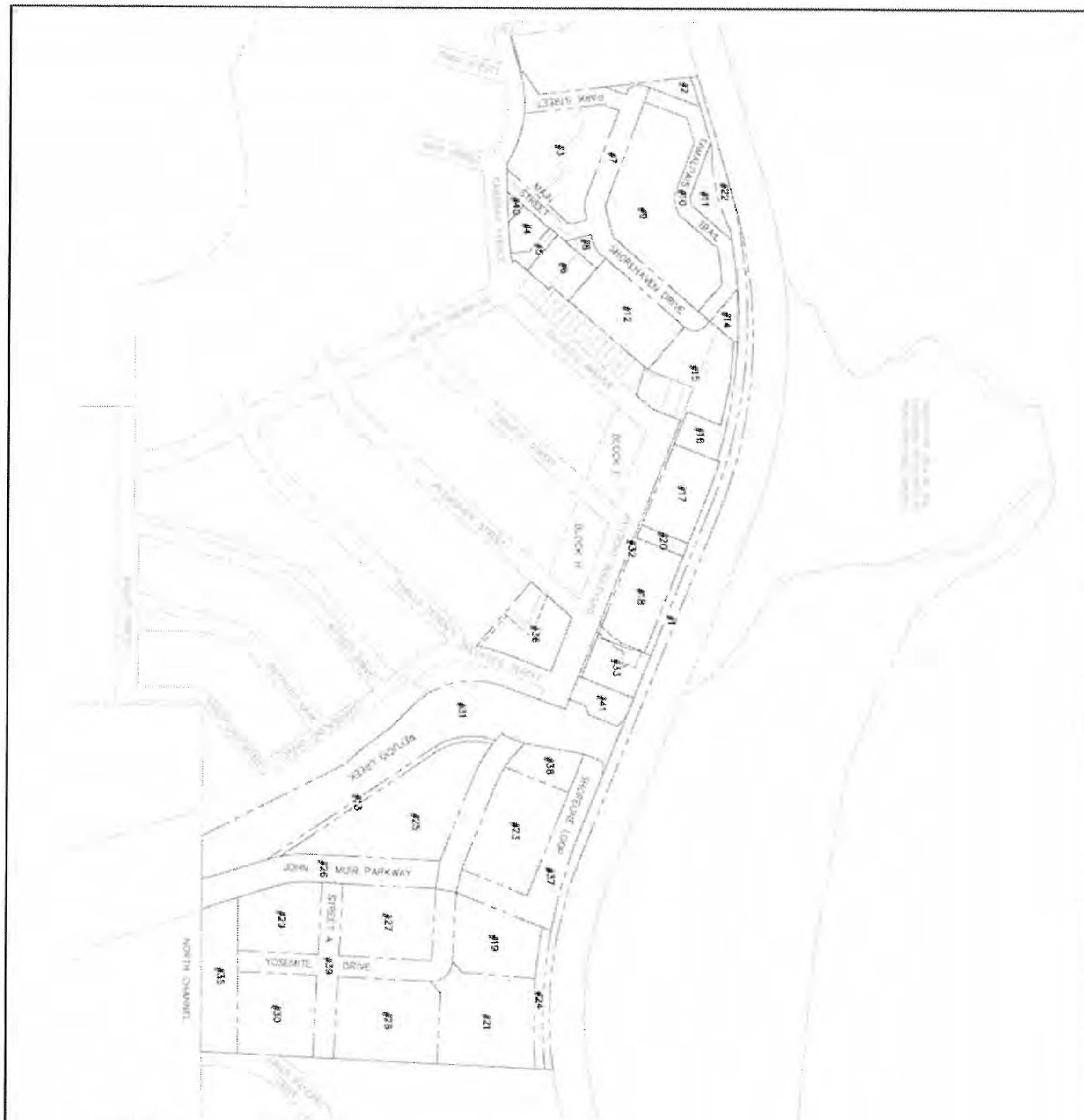
13. Parcel 37 as said parcel is described in the _____ to _____ recorded _____ as Document Number _____, Contra Costa County Records.

14. Parcel 38 as said parcel is described in the _____ to _____ recorded _____ as Document Number _____, Contra Costa County Records.

15. Parcel 41 as said parcel is described in the _____ to _____ recorded _____ as Document Number _____, Contra Costa County Records.

EXHIBIT B (1)

TENTATIVE TRACT MAP



PARCEL #	NAME	(SF)±	(AC)±
1	RAILROAD	60757	1.40
2	HILLSIDE	8277	0.19
3	BLOCK A	68380	1.57
4	BLOCK C1	10107	0.23
5	SPANISH STEPS	5194	0.12
6	BLOCK C2	19480	0.45
7	SHOREHAVEN DRIVE AND PARK STREET	81179	1.86
8	HISTORIC SQUARE	4826	0.11
9	BLOCK B	106951	2.46
10	TAMALPAIS TRAIL	36696	0.84
11	BOWL PARK	12196	0.28
12	BLOCK C3	49276	1.13
13	GREENSIDE TRAIL 2 OF 2	10361	0.24
14	BLOCK D1	6632	0.15
15	BLOCK D2	55969	1.28
16	POWDER WORKS PLAZA	16195	0.37
17	BLOCK E	36338	0.83
18	BLOCK G	43753	1.00
19	BLOCK L	46373	1.06
20	EMERGENCY VEHICLE ACCESS	5784	0.13
21	BLOCK M	73711	1.69
22	BAYTRAIL 1 OF 2	42052	0.95
23	BLOCK K	65479	1.50
24	BAYTRAIL 2 OF 2	10930	0.25
25	BLOCK N	96044	2.20
26	JOHN MUIR PARKWAY	55356	1.27
27	BLOCK O	55658	1.28
28	BLOCK P	70358	1.62
29	BLOCK Q	44432	1.02
30	BLOCK R	52742	1.21
31	REFUGIO CREEK	173082	3.98
32	PUBLIC ROADWAY	6349	0.15
33	HERCULES PLAZA	21080	0.48
34	BAYFRONT BLVD	32674	0.75
35	NORTH CHANNEL	45276	1.04
36	BLOCK J	37730	0.86
37	SHORELINE LOOP 1 OF 2	52814	1.21
38	EDGEWATER PARK	18884	0.43
39	YOSEMITE DRIVE AND STREET A	75139	1.72
40	HISTORIC GROUNDS	2060	0.05
41	SHORELINE LOOP 2 OF 2	14413	0.33

NOTE:
1. PROPOSED USES INCLUDE A MIXTURE OF RESIDENTIAL, OFFICE, RETAIL AND FLEX USES.
2. PROPOSED USES AND PROPOSED DEVELOPED SQUARE FOOTAGE, UNIT COUNTS, AND DENSITIES ARE DESCRIBED IN THE FOLLOWING DOCUMENTS:
2.1. "WATERFRONT NOW INITIATIVE", 2008
2.2. DEVELOPMENT AGREEMENT ASSOCIATED WITH "WATERFRONT NOW INITIATIVE"
2.3. OCTOBER 3, 2008 DEVELOPMENT APPLICATIONS

PS03
3 of 18

HERCULES WATERFRONT
VESTING TENTATIVE MAP
PROPOSED SUBDIVISION
CITY OF HERCULES CONTRA COSTA COUNTY CALIFORNIA

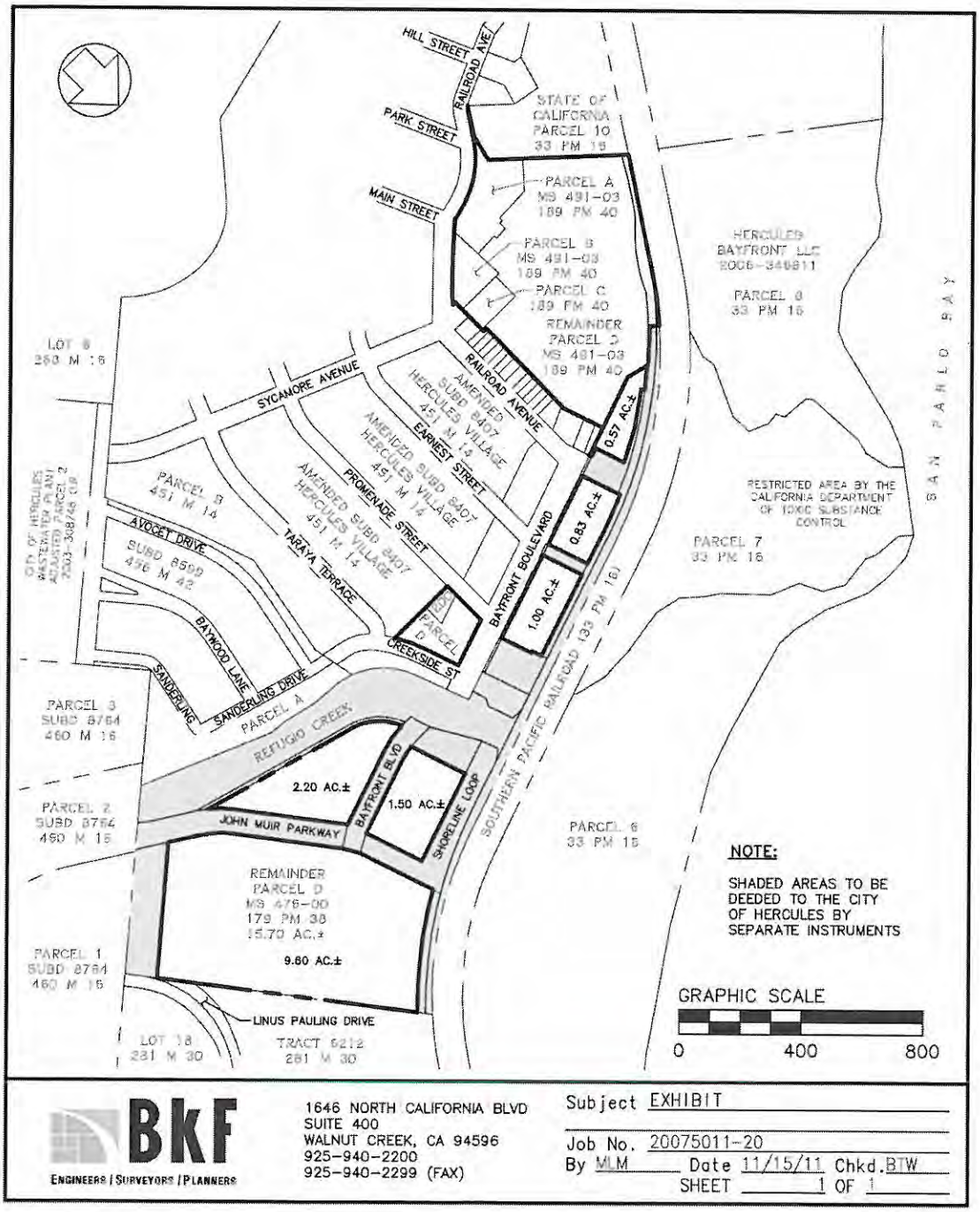
BKF
ENGINEERS / SURVEYORS / PLANNERS

Exhibit B (1)

EXHIBIT B (2)

PROJECT SITE MAPS – DEPICTION OF OWNER'S LAND OWNERSHIP ASSUMING CLOSE OF ESCROW ON LANDSIDE PSA AND WATERSIDE PSA

The following illustrates the land area owned by Hercules Bayfront, LLC ***after*** the land sale to the City of Hercules for the Intermodal Transit Center.



BKF
ENGINEERS | SURVEYORS | PLANNERS

1646 NORTH CALIFORNIA BLVD
SUITE 400
WALNUT CREEK, CA 94596
925-940-2200
925-940-2299 (FAX)

Subject EXHIBIT

Job No. 20075011-20
By MLM Date 11/15/11 Chkd. BTW
SHEET 1 OF 1

EXHIBIT C(1)

ORIGINAL IN:

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN
TO:

City of Hercules
City Clerk's Office
111 Civic Drive
Hercules, CA 94547

Record for the Benefit of
The City of Hercules
Pursuant to Government Code
Section 6301

CONTRA COSTA Co Recorder Office
STEPHEN L. WEIR, Clerk-Recorder
DOC- 2008-0201488-00
Wednesday, SEP 10, 2008 10:10:15
FRE $0.00
Ttl Pd $0.00 Nbr-0004199831
rrc/R9/1-14

Space Above Reserved for Recorder's Use Only

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF HERCULES,

and

HERCULES BAYFRONT, LLC

for

HERCULES WATERFRONT DISTRICT MASTER PLAN

(Historic Town Center, Transit Village, and Hercules Point Sub-Districts)
(Adopted by Initiative)

A/72487269.8

Development Agreement

Hercules Waterfront District Master Plan
(Historic Town Center, Transit Village, and Hercules Point Sub-Districts)

THIS DEVELOPMENT AGREEMENT (this "***Agreement***") is made and entered into in the City of Hercules by and between the City of Hercules (the "***City***"), and Hercules Bayfront, LLC, a Delaware limited liability company, the holders of legal or equitable interests in certain lands located within the incorporated area of the City (the "***Landowner***"), pursuant to the authority of California Government Code §§ 65864 *et seq.* and Hercules Municipal Code, Title 10, Chapter 8.

RECITALS

A. A citizen's initiative entitled the Hercules Waterfront Initiative (the "***Initiative***") was circulated and enacted in order to: promote and enhance the unique waterfront character and scenic resources of the City's Waterfront District through development of a transit-oriented neighborhood that includes walkable streets that serve a variety of dwelling types and businesses, and public plazas with views of San Francisco Bay; implement the final stages of the Hercules Waterfront District Master Plan through adoption of design and development guidelines for the Historic Town Center, Transit Village, and Hercules Point Sub-Districts that encourage a transit-oriented, and pedestrian-oriented mix of uses along the bayfront in the City of Hercules; and, implement the goals and objectives of the Waterfront District Master Plan by providing for the location of a Multi-Modal Transit System linking together rail service, a connection to downtown San Francisco via a ferry terminal, and bus service via WestCAT, making Hercules home to the first train, ferry, and bus center in California. The Initiative implements its purpose by and through the following complimentary mechanisms: 1) amendments to the City's General Plan (the "***General Plan Amendments***"); 2) amendments to the City's Zoning Ordinance and Municipal Code (the "***Code Amendments***"); 3) amendments to the Waterfront District Master Plan (the "***Master Plan Amendments***"); and 4) adoption of this Agreement. The General Plan Amendments, the Code Amendments, the Master Plan Amendments, and this Agreement shall be referred to as the "***Legislative Project Approvals***," and the development of the Project Site, defined below, consistent with these Legislative Project Approvals shall be referred to as the "***Project***."

B. This Agreement is consistent with the City's General Plan, Waterfront District Master Plan, Zoning Ordinance, and Municipal Code as amended by the Initiative. The terms of this Agreement are in conformity with public convenience, general welfare and good land use practice. The terms of this Agreement will not be detrimental to health, safety, or general welfare. The terms of this Agreement will not adversely affect the orderly development of property or the preservation of property values.

C. Consistent with the Initiative and the Legislative Project Approvals, the parties anticipate that during the term of this Agreement and subsequent to the Effective Date, defined below, the Landowner will seek from the City certain other implementing non-legislative project-level land use approvals, entitlements, and permits that are necessary or desirable for the Project (the "***Subsequent Nonlegislative Approvals***"). The Subsequent Nonlegislative

Approvals may include, without limitation, project-level development plans, planned development plans, design review permits, vesting tentative subdivision maps in compliance with California Government Code § 66473.7, final subdivision maps, improvement agreements, development permits, lot line adjustments, use permits, building permits, and any amendments to the foregoing.

NOW, THEREFORE, with reference to the foregoing recitals and in consideration of the mutual promises, obligations and covenants herein contained, the City and the Landowner agree as follows:

AGREEMENT

Article I. Description of Project Site, Effective Date, and Term.

Section 1.01. Description of Project Site. The real properties that are the subject of this Agreement comprise the City's Waterfront District Area and are depicted and described on DA Exhibit A, and are referred to herein as the "***Project Site***," provided, however, that this Agreement shall only be effective as to those properties described in DA Exhibit A for which parties with a legal or equitable interest in the property become signatories to this Agreement. If, due to approval of a lot line adjustment, parcel map, final map, or discovery of a clerical error, a portion of the legal description within DA Exhibit A needs to be corrected or revised, the Landowner shall, at the time of execution of this Agreement, present the City with the revised legal description and DA Exhibit A shall be amended, accordingly.

Section 1.02. Effective Date. The rights, duties, and obligations of the parties hereunder shall be effective and the Term, as defined below, shall commence on the "***Effective Date***," which shall be the earlier of: (a) the date the Hercules City Council adopts the Initiative, including this Agreement, pursuant to California Elections Code §§ 9214 or 9215; or (b) the date the election results on the Initiative approving this Agreement are certified by the City Council in the manner provided by the California Elections Code. Not later than ten (10) days after the Effective Date, the City, by and through its Mayor, shall execute and acknowledge this Agreement and, provided this Agreement is first executed and acknowledged by the Landowner, no later than ten (10) days after the Effective Date, the City Clerk shall cause this Agreement to be recorded in the Official Records of Contra Costa County.

Section 1.03. Term. The term of this Agreement shall commence on the Effective Date and extend fifteen (15) years thereafter unless sooner terminated or extended as herein provided (the "***Term***"). The Term shall automatically extend an additional five (5) years if the Landowner is in compliance with the terms of this Agreement and has commenced construction of the Project on the Project Site.

Article II. Standards, Laws, and Procedures Governing the Project.

Section 2.01. Vested Right to Develop. The Landowner shall have a vested right to develop the Project on the Project Site in substantial conformance with the terms and conditions of the Legislative Project Approvals, the Subsequent Nonlegislative Approvals (as and when issued), the Applicable Law (defined below) and amendments as shall, from time to time, be approved pursuant to this Agreement. The Landowner's vested right to develop the Project shall

be subject to compliance with the California Environmental Quality Act (Public Resources Code, §§21000 et seq.) ("***CEQA***") as it may apply to the Subsequent Nonlegislative Approvals, federal and state laws, and the City's remaining discretion in connection with the Subsequent Nonlegislative Approvals.

The City shall have the right to regulate development and use of the Project Site in accordance with the terms and conditions of this Agreement, the Legislative Project Approvals, the Applicable Law, as defined below, and the Subsequent Nonlegislative Approvals. The City shall not apply new rules, regulations or official policies that conflict with the Legislative Project Approvals or the Applicable Law.

Section 2.02. Permitted Uses. The permitted uses of the Project Site; the density and intensity of use on the Project Site; the maximum height, bulk and size of the proposed buildings; provisions for reservation or dedication of land for public purposes and the location of public improvements; the general location of public utilities; and other terms and conditions of development applicable to the Project, shall be as set forth in the Legislative Project Approvals and, as and when they are issued (but not in any limitation of any right to develop as set forth in the Legislative Project Approvals), the Subsequent Nonlegislative Approvals.

Section 2.03. Applicable Law. "***Applicable Law***" shall mean the existing rules, regulations, official policies, standards and specifications, in force and effect on the Effective Date, governing permitted uses of the Project Site, governing density, and governing the design, improvements, and construction standards and specifications applicable to the Project and Project Site, including those set forth in this Agreement and the Legislative Project Approvals and those set forth in the City's ordinances and resolutions. Nothing in this Agreement is intended to increase or decrease the amount of any applicable impact fees, connection fees, pass-through fees, processing fees, or any other fees, taxes, or assessments in effect at the time of any Subsequent Nonlegislative Approval.

Notwithstanding anything in this Agreement to the contrary, the City may apply the then-current California Building Standards Code and other uniform construction codes to any Subsequent Nonlegislative Approval, provided such standards are applied consistent with the standards applied to other comparable New-Urbanist, transit oriented developments in the San Francisco Bay Area.

Any tentative map approved for any subdivision of land within the Project Site shall comply with the provisions of Government Code § 66473.7.

Section 2.04. Moratorium, Initiatives and Conflicting Enactments. To the extent consistent with state law (and excepting a declaration of a local emergency or state emergency as defined in Government Code § 8558), if any ordinance, resolution or other measure is enacted subsequent to the Effective Date, whether by action of the City, by initiative, referendum, or otherwise, that imposes a building moratorium, a limit on the rate of development, or a voter-approval requirement that would otherwise create an additional procedural requirement or affect the timely development for the Project on all or any part of the Project Site, the City agrees that such ordinance, resolution, or other measure shall not apply to the Project, the Project Site, this

Agreement, the Legislative Project Approvals, or the Subsequent Nonlegislative Approvals, if any, during the Term.

Section 2.05. Life of Legislative Project Approvals and Subsequent Nonlegislative Approvals. The term of any Legislative Project Approval and any Subsequent Nonlegislative Approval shall be automatically extended for the longer of the Term of this Agreement or the term otherwise applicable to such Legislative Project Approval or Subsequent Nonlegislative Approval if this Agreement is no longer in effect. The Term of this Agreement, any other Legislative Project Approval, or any Subsequent Nonlegislative Approval shall not include any period of time during which any applicable development or utility moratorium, lawsuit, or actions by other public agencies that regulate land use, delays development of the Project Site.

Section 2.06. Development Timing. Subject to the Applicable Law, the Landowner shall have the right to develop the Project in such order and at such rate and at such times as the Landowner deems appropriate in the exercise of its subjective business judgment. Prior to the commencement of grading, construction or any work related thereto upon the Project Site, the Landowner shall secure, or cause to be secured, any and all Subsequent Nonlegislative Approvals that may be required by the City, as well as any permits and approvals required by any governmental agency with regulatory authority over such activities.

Article III. Obligations of the Landowner.

Section 3.01. Funding of Environmental Review. The Landowner agrees, to the extent permitted by law, that prior to the City's approval of any discretionary Subsequent Nonlegislative Approval, it will fund at its expense, an environmental impact report, or other adequate CEQA document, evaluating the environmental impacts associated with the requested Subsequent Nonlegislative Approval in accordance with CEQA.

Section 3.02. Bodily Injury and Property Damage Insurance. Prior to the commencement of construction (or any work related thereto) upon the Project Site, the Landowner shall furnish, or cause to be furnished, to the City duplicate originals or appropriate certificates of bodily injury and property damage insurance policies in the amount of at least $1,000,000 for any person, $1,000,000 for any occurrence and $1,000,000 for property damage, naming the City as an additional insured. Such insurance policies shall contain such other and further endorsements, terms, conditions and coverages as may reasonably be deemed necessary by the City. Such insurance policies shall be maintained and kept in force during periods of construction.

Article IV. Obligations of the City.

Section 4.01. Processing Subsequent Nonlegislative Approvals. The Subsequent Nonlegislative Approvals shall be deemed mechanisms to implement those final policy decisions reflected by the Legislative Project Approvals and shall be issued by the City so long as they comply with this Agreement and Applicable Law and are not inconsistent with the Legislative Project Approvals. Consistent with the Initiative, unless agreed to by the Landowner, the City shall not require any further legislative entitlements to enable the Landowner to develop the Project Site. Upon submission by the Landowner of any application, the City shall promptly

commence and diligently complete all steps necessary to review and process the requested Subsequent Nonlegislative Approval.

Article V. Periodic Review of Compliance.

Section 5.01. Annual Review. The City and the Landowner shall annually review this Agreement and all actions taken pursuant to the terms of this Agreement with respect to the development of the Project Site to determine good faith compliance with this Agreement. The City shall be responsible for initiating this annual review process, and shall begin this process by providing the Landowner with the City's standard Compliance Evaluation Form for development agreements. The Landowner shall return the completed Compliance Evaluation Form to the City within thirty (30) days. Thereafter, the City shall initiate such meetings as may be required to complete the annual review.

Section 5.02. Finding of Compliance. The City staff shall review the Landowner's completed Compliance Evaluation Form to ascertain whether the Landowner has complied in good faith with the terms of this Agreement. Upon request of the City, the Landowner shall furnish such additional documents or information as may be reasonably required and available to the Landowner to enable the City staff to make and complete their review hereunder. The City staff's determination hereunder shall be made within sixty (60) days after the submission by the Landowner of the annual Compliance Evaluation Form. Unless the City notifies the Landowner otherwise, the annual review shall be presumed complete and satisfactory at the conclusion of this sixty (60) day period. If the City staff finds good faith compliance by the Landowner with the terms of this Agreement, the City shall issue a certificate of compliance, certifying such good faith compliance with the terms of this Agreement through the period of the applicable annual review. Such certificate of compliance shall, if the Landowner so requests, be in recordable form and shall contain such information as may be necessary in order to impart constructive record notice of the finding of good faith compliance hereunder. The Landowner shall have the right to record the certificate of compliance in the Official Records of Contra Costa County. At least ten (10) days prior to making their determination hereunder, the City staff shall provide to the Landowner copies of all staff reports and other information not subject to legal privileges concerning the Landowner's compliance and the determination proposed by the City staff. In the event the noncompliance is incapable of cure within such ninety (90) day (or greater) period but the Landowner has commenced a cure of the noncompliance and diligently prosecutes such cure, the Landowner shall have such additional time as is reasonably necessary to cure such noncompliance

Section 5.03. Finding of Noncompliance. The Landowner shall be permitted an opportunity to be heard orally or in writing before the City's City Manager regarding such performance and before the City staff makes a non-compliance determination. If the City Manager, on the basis of substantial evidence, finds that the Landowner has not complied in good faith with the terms of this Agreement, he or she shall specify in writing to the Landowner the respects in which the Landowner has failed to comply. The City staff shall also specify in writing a reasonable time for the Landowner to meet the terms of compliance, which time shall be not less than ninety (90) days, and any proposed modification or termination of this Agreement because of the Landowner's noncompliance. In the event the noncompliance is incapable of cure within such ninety (90) day (or greater) period but the Landowner has

commenced a cure of the noncompliance and diligently prosecutes such cure, the Landowner shall have such additional time as is reasonably necessary to cure such noncompliance.

Section 5.04. Review by City Council. Before this Agreement is modified or terminated on grounds of noncompliance by the Landowner, the City Council of the City shall hold a public hearing no earlier than thirty (30) days following the expiration of the cure period identified in Section 6.07. At such hearing, the Landowner shall be entitled to submit evidence and address all the issues raised in the notice of noncompliance or otherwise. The Landowner may present evidence in writing or orally at the hearing before the City Council, or both. If, after receipt of any written response of the Landowner, and after considering the evidence at such public hearing, the City Council finds and determines on the basis of substantial evidence that the Landowner has not complied in good faith with the terms and conditions of this Agreement, then the City Council shall specify to the Landowner the respects in which the Landowner has failed to comply, and shall also specify a reasonable time for the Landowner to meet the terms of compliance, which time shall not be less than ninety (90) days. If the areas of noncompliance specified by the City Council are not perfected within such time limits prescribed, then the City Council may take action to terminate or modify any provision of this Agreement needed to correct the non-compliance, after permitting the Landowner a reasonable opportunity to present evidence (orally or in writing as determined by the City), as to whether or not the areas of noncompliance have been perfected.

Article VI. Miscellaneous.

Section 6.01. Vested Rights to Subsequent Nonlegislative Approvals. Any Subsequent Nonlegislative Approval or amendment to a Subsequent Nonlegislative Approval shall, upon approval or issuance, be automatically vested and incorporated into this Agreement.

Section 6.02. Amendment to this Agreement. Except as provided in Article V, relating to the City's annual review, this Agreement may be canceled, modified, or amended only by mutual written consent of the parties subject to the notice and hearing requirements of California Government Code § 65867 and the Hercules Municipal Code.

Section 6.03. Cooperation in the Event of Third-Party Legal Challenge. In the event of any legal or equitable action or proceeding instituted by a third party challenging the validity of any provision of this Agreement or the procedures leading to its adoption or the issuance of any or all of the Legislative Project Approvals or Subsequent Nonlegislative Approvals, the parties hereby agree to cooperate in defending said action or proceeding. The Landowner shall diligently defend any such action or proceeding and shall bear the litigation expenses of defense, including attorney's fees. The City shall retain the option to employ independent defense counsel at the Landowner's expense. The Landowner further agrees to hold the City harmless from all claims for recovery of the third party's litigation expenses, including attorney's fees.

Section 6.04. Indemnification; Hold Harmless. Except for claims, costs and liabilities caused by the active negligence or intentionally wrongful conduct of the City, its elected and appointed representatives, officers, agents and employees, the Landowner hereby agrees to defend, indemnify, save and hold the City and its elected and appointed representatives, officers, agents and employees harmless from claims, costs and liabilities for any personal injury, death or

property damage which arises, directly or indirectly, from operations performed under this Agreement by the Landowner or its contractors, subcontractors, agents or employees, whether such operations were performed by the Landowner or by any of its contractors, subcontractors, by any one or more persons directly or indirectly employed by, or acting as agent for, the Landowner or any of its contractors or subcontractors. The Landowner shall defend the City and its elected and appointed representatives, officers, agents and employees from actions for such personal injury, death or property damage which is caused, or alleged to have been caused, by reason of the Landowner's activities in connection with the Project.

Section 6.05. Negation of Partnership, Agency, and Joint Venture. The Project is a private development. No party is acting as the agent of the other in any respect hereunder. Each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. None of the provisions of this Agreement shall be deemed to create a partnership between or among the parties in the businesses of the Landowner, or the affairs of the City, or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise.

Section 6.06. No Third Party Beneficiary Rights. This Agreement is not intended nor shall it be construed to create any third party beneficiary rights in any person who is not expressly made a party and signatory to this Agreement.

Section 6.07. Default; Termination. Failure or unreasonable delay by either party to perform any obligation under this Agreement for a period of ninety (90) days after written notice thereof from the other party shall constitute an event of default under this Agreement, subject to extensions of time by mutual consent in writing or discretionary approval of extensions by the City Council. Said notice shall specify the nature of the alleged default and the manner in which said default may be satisfactorily cured. If the nature of the alleged default is such that it cannot reasonably be cured within such ninety (90) day period, the commencement of the cure within such time period and the subsequent diligent prosecution to completion of the cure shall be deemed a cure within such period. Subject to the foregoing, after notice and expiration of the ninety (90) day period without cure, if applicable, the other party to this Agreement, at its option, may institute legal proceedings pursuant to this Agreement and/or give notice of intent to terminate the Agreement pursuant to Government Code Section 65868 and the City's Development Agreement enabling ordinance and consistent with the Hercules Municipal Code, Title 10, Chapter 8. Following such notice of intent to terminate, the matter shall be scheduled for consideration and review by the City Council within thirty (30) calendar days in the manner set forth in Government Code §§ 65865.1, 65867 and 65868. Following consideration of the evidence presented in said review before the City Council, and a determination by the City Council based thereon, the party alleging the default by the other party may give written notice of termination of this Agreement to the other party. The waiver by either party of any event of default under this Agreement shall not operate as a waiver of any subsequent breach of the same or any other provision of this Agreement.

Section 6.08. Legal Actions; Remedies; Attorney's Fees. In addition to any other rights and remedies, either party may institute legal action to cure, correct, enjoin, or remedy any default, enforce any covenant or agreement herein. Neither party or its officers, agents or employees shall be liable in monetary damages for any breach or violation of this Agreement;

instead, the sole legal or equitable remedy available to either party for a breach or violation of this Agreement shall be an action in mandamus, specific performance, injunctive or declaratory relief to specifically enforce the provisions of this Agreement. In any such legal action, the prevailing party shall be entitled to recover all litigation expenses, including reasonable attorney's fees and court costs.

Section 6.09. Governing Law; Interpretation of Agreement. This Agreement shall be governed by and interpreted in accordance with the laws of the United States, the State of California, and the City of Hercules.

Section 6.10. Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the parties

Section 6.11. Supersedure by Subsequent Laws. If any state or federal law made or enacted after the Effective Date of this Agreement prevents or precludes compliance with one or more provisions of this Agreement, then the provisions of this Agreement shall, to the extent feasible, be modified, extended, or suspended as may be necessary to comply with such new law.

Section 6.12. Right to Assign. The Landowner shall have the right to sell, assign or transfer this Agreement, and all of its rights, duties and obligations hereunder, to any person at any time during the Term, subject to the prior written approval of the City's Community Development Director. Such approval shall be granted where the buyer, assignee or transferee has demonstrated the experience, qualifications and financial resources to complete and operate the Project, or applicable portions thereof, to the reasonable satisfaction of the Community Development Director of the City.

Section 6.13. Covenants Running with the Land. All of the provisions contained in this Agreement shall be binding upon the parties and their respective heirs, successors, and assigns, representatives, lessees, and all other persons acquiring all or a portion of the Project Site, or any interest therein, whether by operation of law or in any manner whatsoever. All of the provisions contained in this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to California law including, without limitation, California Civil Code § 1468.

Section 6.14. Further Documents. Each party shall execute and deliver such further documents as may be reasonably necessary to achieve the objectives of this Agreement.

Section 6.15. Notices. Any notice or communication required hereunder between the City and the Landowner must be in writing, and may be given personally, by facsimile (with original forwarded by regular U.S. Mail), by registered or certified mail (return receipt requested), or by a reputable courier promising overnight delivery to the respective addresses specified by each party. Any party hereto may at any time, by giving ten (10) days' written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given.

Section 6.16. Exhibits. The following exhibit is attached to this Agreement and incorporated herein for all purposes:

DA EXHIBIT A - Map & Legal Description of the Project Site

IN WITNESS WHEREOF, this Agreement has been entered into by and between the Landowner and the City as of the Effective Date.

CITY:

City of Hercules,
a California municipal corporation

By: _____

Name: Nelson E. Oliva

Title: City Manager

LANDOWNER:

Hercules Bayfront, LLC
a Delaware limited liability Company

By: APL-Hercules, LLC
a Delaware limited liability Company
Its: Manager

By: Anderson Pacific, LLC
a Delaware limited liability Company
Its: Managing Member

By: _____
James R. Anderson
Managing Member

August 14, 2008

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Contra Costa }

On 8-12-08 (Date) before me, Doreen S. Mathews Notary Public (Here Insert Name and Title of the Officer),

personally appeared Nelson E. Oliva (Name(s) of Signer(s))

who proved to me on the basis of satisfactory evidence to be the person(~~s~~) whose name(~~s~~) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she~~/~~they~~ executed the same in his/~~her~~/~~their~~ authorized capacity(~~ies~~), and that by his/~~her~~/~~their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

DOREEN S. MATHEWS
Commission # 1740001
Notary Public - California
Contra Costa County
My Comm. Expires May 14, 2011

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Doreen S. Mathews (Signature of Notary Public)

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Development Agreement - Hercules Bayfront LLC

Document Date: no date Number of Pages: 13

Signer(s) Other Than Named Above: James R. Anderson

Capacity(ies) Claimed by Signer(s)

Signer's Name:
- ☐ Individual
- ☐ Corporate Officer — Title(s):
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other:

Signer Is Representing:

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name:
- ☐ Individual
- ☐ Corporate Officer — Title(s):
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other:

Signer Is Representing:

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of LOS ANGELES

On AUGUST 14 2009 before me, CHARANJIT K. SINGH
Date — Here Insert Name and Title of the Officer

personally appeared JAMES R. ANDERSON
Name(s) of Signer(s)

CHARANJIT K. SINGH
Commission # 1746868
Notary Public - California
Los Angeles County
My Comm. Expires Jun 19, 2011

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: DEVELOPMENT AGREEMENT

Document Date: AUGUST 14th 2009 Number of Pages: THIRTEEN (13)

Signer(s) Other Than Named Above: NONE

Capacity(ies) Claimed by Signer(s)

Signer's Name: JAMES R. ANDERSON
- ☑ Individual
- ☐ Corporate Officer — Title(s):
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other:

Signer Is Representing:

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name:
- ☐ Individual
- ☐ Corporate Officer — Title(s):
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other:

Signer Is Representing:

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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DA EXHIBIT A

HERCULES BAYFRONT, LLC

LEGAL DESCRIPTION

Real property in the City of Hercules, County of Contra Costa, State of California, described as follows:

PARCELS B, C AND D, AS SHOWN ON THE PARCEL MAP MS 491-03, FILED MARCH 10, 2004 IN BOOK 189 OF PARCEL MAPS, AT PAGE 40, OFFICIAL RECORDS.

PARCEL D AND LOT 200, AS SHOWN ON THE MAP OF SUBDIVISION 8407, FILED DECEMBER 19, 2001, IN BOOK 437 OF MAPS, PAGE 31, AND AS AMENDED BY AMENDED SUBDIVISION MAP 8407, FILED JANUARY 27, 2003, IN BOOK 451 OF MAPS, PAGE 14, AND AS CORRECTED BY CERTIFICATES OF CORRECTION RECORDED DECEMBER 11, 2002 AS INSTRUMENT NO. 2002-471412, AND RECORDED DECEMBER 9, 2003 AS INSTRUMENT NO. 2003-594591, CONTRA COSTA COUNTY RECORDS.

LOT 16, AND PARCELS .A. & .B., AS SHOWN ON THE MAP OF SUBDIVISION 8644 FILED FEBRUARY 25, 2004, IN BOOK 461 OF MAPS, PAGE 24, CONTRA COSTA COUNTY RECORDS.

PARCEL D, AS SHOWN ON M.S. 476-00, FILED OCTOBER 12, 2000, BOOK 179 OF PARCEL MAPS, AT PAGE 38, CONTRA COSTA COUNTY RECORDS.

PARCELS SEVEN AND EIGHT, AS SHOWN ON THE PARCEL MAP MSH-1, FILED APRIL 22, 1974, BOOK 33 OF PARCEL MAPS, PAGE 16, CONTRA COSTA COUNTY RECORDS.

PARCEL FIVE, AS SHOWN ON THE PARCEL MAP MSH-1, FILED APRIL 22, 1974, BOOK 33 OF PARCEL MAPS, PAGE 16, CONTRA COSTA COUNTY RECORDS.

PARCELS FOUR AND SIX AS SHOWN ON PARCEL MAP MSH-1 FILED APRIL 22, 1974, IN BOOK 33 OF PARCEL MAPS AT PAGE 16, CONTRA COSTA COUNTY RECORDS, DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHERLY CORNER OF SAID PARCEL 4 (33 PM 16): THENCE FROM SAID POINT OF BEGINNING ALONG THE EXTERIOR LINES OF SAID PARCEL 4, THE FOLLOWING COURSES:
SOUTH 37° 46' 59" EAST 317.38 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 1,710.68 FEET, A RADIAL LINE TO THE BEGINNING OF SAID CURVE BEARS SOUTH 49° 34' 15" EAST; THENCE FROM SAID POINT OF BEGINNING SOUTHWESTERLY 328.46 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 11° 00' 04"; THENCE SOUTH 51° 25' 49" WEST 341.51 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 1,190.19 FEET; THENCE SOUTHWESTERLY 77.35 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 03° 43' 25" THENCE NORTH 49° 30' 00" WEST 27.37 FEET; THENCE NORTH 17° 28' 00" WEST 56.60 FEET; THENCE NORTH 73° 18' 00" WEST 20.90 FEET; THENCE SOUTH 15° 04' 00" WEST 26.90 FEET; THENCE SOUTH 51° 20' 00" WEST 12.80 FEET; THENCE SOUTH 15° 57' 00" WEST 58.20 FEET; THENCE SOUTH 58° 24' 00" WEST 15.30 FEET; THENCE SOUTH 19° 32' 00" EAST 32.90 FEET; THENCE SOUTH 01° 22' 40" WEST 44.45 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE EAST, HAVING A RADIUS OF 1,190.19 FEET, A RADIAL LINE TO THE BEGINNING OF SAID CURVE BEARS NORTH 48° 44' 56" WEST; THENCE SOUTHWESTERLY 411.81 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 19° 49' 29"; THENCE SOUTH 21° 25' 35" WEST 369.99 FEET TO THE BEGINNING A TANGENT CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 3,393.16 FEET, THENCE SOUTHWESTERLY 429.44 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 07° 15' 05" TO THE EXTERIOR LINE OF SAID PARCEL SIX BEING THE

BEGINNING OF A COMPOUND CURVE HAVING A RADIUS OF 3,393.16 FEET, A RADIAL LINE TO THE BEGINNING OF SAID CURVE BEARS SOUTH 61° 19′ 20" EAST; THENCE LEAVING SAID EXTERIOR LINE OF PARCEL 4 ALONG SAID EXTERIOR LINE OF PARCEL SIX, THE FOLLOWING COURSES:

SOUTHWESTERLY 439.57 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 07° 25′ 21" TO THE BEGINNING OF A COMPOUND CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 1,101.50 FEET, A RADIAL LINE TO THE BEGINNING OF SAID CURVE BEARS SOUTH 53° 53′ 59" EAST; THENCE SOUTHWESTERLY 673.63 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 35° 02′ 23"; THENCE SOUTH 71° 08′ 24" WEST 558.13 FEET; THENCE NORTH 47° 01′ 00" WEST 10.32 FEET; THENCE NORTH 76° 06′ 00" WEST 108.21 FEET; THENCE SOUTH 87° 00′ 00" WEST 114.21 FEET; THENCE SOUTH 81° 00′ 00" WEST 160.01 FEET; THENCE NORTH 77° 24′ 00" WEST 87.11 FEET; THENCE NORTH 49° 11′ 00" WEST 87.21 FEET; THENCE NORTH 56° 59′ 00" WEST 47.70 FEET; THENCE NORTH 43° 31′ 00" WEST 164.11 FEET; THENCE NORTH 67° 10′ 00" WEST 103.11 FEET; THENCE NORTH 26° 34′ 00" WEST 80.51 FEET; THENCE NORTH 61° 05′ 00" WEST 76.51 FEET; THENCE SOUTH 82° 37′ 00" WEST 108.91 FEET; THENCE NORTH 66° 48′ 00" WEST 38.10 FEET; THENCE NORTH 85° 11′ 00" WEST 95.31 FEET; THENCE NORTH 48° 16′ 00" WEST 49.60 FEET; THENCE NORTH 63° 20′ 00" EAST 76.01 FEET; THENCE NORTH 86° 45′ 00" EAST 89.01 FEET; THENCE SOUTH 83° 55′ 00" EAST 85.01 FEET; THENCE SOUTH 67° 10′ 00" EAST 152.01 FEET; THENCE SOUTH 78° 00′ 00" EAST 116.01 FEET; THENCE SOUTH 87° 35′ 00" EAST 71.00 FEET; THENCE NORTH 73° 35′ 00" EAST 329.02 FEET; THENCE NORTH 70° 20′ 00" EAST 149.01 FEET; THENCE NORTH 59° 35′ 00" EAST 516.04 FEET; THENCE NORTH 55° 10′ 00" EAST 436.03 FEET; THENCE NORTH 51° 15′ 00" EAST 291.02 FEET; THENCE NORTH 41° 55′ 10" EAST 172.25 FEET TO SAID EXTERIOR LINE OF SAID PARCEL FOUR; THENCE LEAVING SAID EXTERIOR LINE OF SAID PARCEL SIX ALONG THE EXTERIOR LINES OF SAID PARCEL FOUR THE FOLLOWING COURSES:

NORTH 35° 49′ 50" EAST 127.73 FEET; THENCE NORTH 28° 40′ 00" EAST 231.02 FEET; THENCE NORTH 37° 15′ 00" EAST 58.00 FEET; THENCE NORTH 43° 10′ 00" EAST 221.02 FEET; THENCE NORTH 33° 40′ 00" EAST 119.01 FEET; THENCE NORTH 22° 40′ 00" EAST 86.01 FEET; THENCE NORTH 30° 45′ 00" EAST 158.01 FEET; THENCE NORTH 27° 40′ 00" EAST 136.01 FEET; THENCE NORTH 30° 45′ 00" EAST 158.01 FEET; THENCE NORTH 27° 40′ 00" EAST 136.01 FEET; THENCE NORTH 35° 35′ 00" EAST 91.01 FEET; THENCE NORTH 52° 10′ 00" EAST 62.00 FEET; THENCE NORTH 56° 55′ 00" EAST 345.02 FEET; THENCE NORTH 48° 42′ 00" EAST 142.01 FEET; THENCE NORTH 37° 55′ 00" EAST 182.01 FEET; THENCE NORTH 45° 35′ 00" EAST 82.39 FEET TO THE POINT OF BEGINNING.

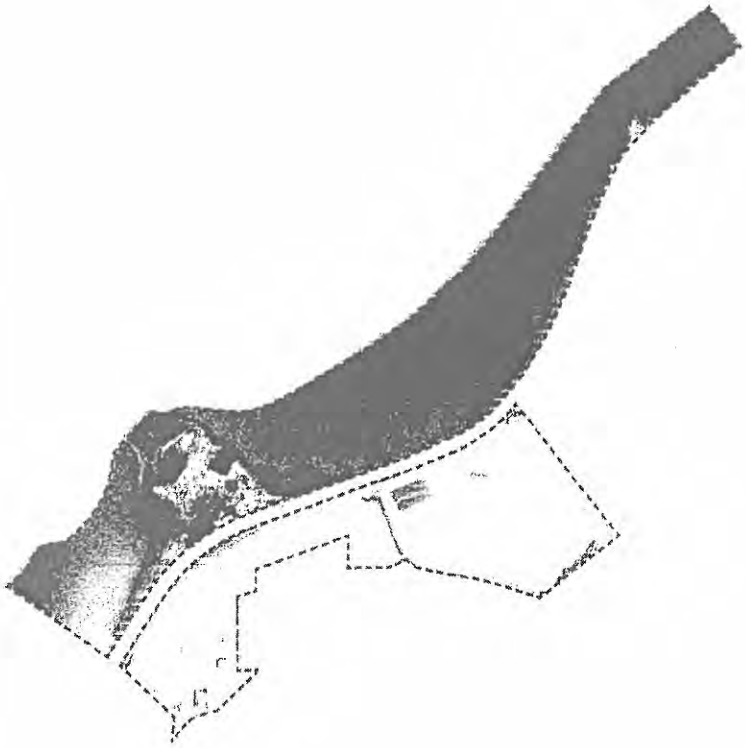

EXHIBIT C(2)

Vesting Development Agreement

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN
TO:

City of Hercules
City Clerk's Office
111 Civic Drive
Hercules, CA 94547

Record for the Benefit of
The City of Hercules
Pursuant to Government Code
§6301

Space Above Reserved for Recorder's Use Only

VESTING DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF HERCULES

and

HERCULES BAYFRONT, LLC

for

HERCULES BAYFRONT PROJECT

DEVELOPMENT AGREEMENT

THIS VESTING DEVELOPMENT AGREEMENT ("***Development Agreement***") is made and entered into by the City of Hercules ("***City***"), and Hercules Bayfront, LLC, a Delaware limited liability company, the holders of legal or equitable interests in certain lands located within the incorporated area of City ("***Owner***"), pursuant to the authority of California Government Code §§ 65864 *et seq.* and Hercules Municipal Code, Title 10, Chapter 8.

RECITALS

A. Owner is the owner of certain real property consisting of approximately 90.29 acres, which is generally depicted and described on Exhibit A attached hereto ("***Project Site***").

B. City is a general law city and municipal corporation of the State of California and is duly organized, existing and authorized to exercise powers under the laws of the State of California and City Municipal Code. City has an enacted a development agreement ordinance establishing the procedures and requirements for consideration of development agreements (Hercules Municipal Code, Title 10, Section A, commencing with Section 10-A.101, the "***Development Agreement Ordinance***"). This Development Agreement is a statutory development agreement and includes conditions and requirements for the development of the Project Site.

C. To strengthen the public planning process, encourage private participation and comprehensive planning, and reduce the economic risk of development, the legislature of the State of California adopted §65864 et seq. of the Government Code ("***Development Agreement Statute***") which authorizes a city to enter into an agreement with any person having a legal or equitable interest in real property, providing for the development of such property and establishing certain development rights therein.

D. On July 22, 2008, the City Council of the City of Hercules ("***City Council***") adopted citizen's initiative entitled the Hercules Waterfront Initiative (the "***Initiative***") which was enacted to promote and enhance the unique waterfront character and scenic resources of the City's Waterfront District through development of a transit-oriented neighborhood that includes walkable streets that serve a variety of dwelling types and businesses, and public plazas with views of San Francisco Bay; implement the final stages of the Hercules Waterfront District Master Plan through adoption of design and development guidelines for the Historic Town Center, Transit Village, and Hercules Point Sub-Districts that encourage a transit-oriented, and pedestrian-oriented mix of uses along the bayfront in the City of Hercules; and, implement the goals and objectives of the Waterfront District Master Plan by providing for the location of a Multi-Modal Transit System linking together rail service, a connection to downtown San Francisco via a ferry terminal, and bus service via WestCAT, making Hercules home to the first train, ferry, and bus center in California. The Initiative implemented its purpose by and through the following complimentary mechanisms: 1) amendments to the City's General Plan (the "***2008 General Plan Amendments***"); 2) amendments to the City's Zoning Ordinance and Municipal Code (the "***2008 Code Amendments***"); 3) amendments to the Waterfront District Master Plan

(the "***2008 Master Plan Amendments***"); and 4) adoption of a Development Agreement (the "***Initiative Development Agreement***") (collectively, the "***2008 Legislative Approvals***").

E. Consistent with the Initiative, the Original Agreement became effective on July 22, 2008, and was recorded on September 10, 2008 in the official records of the County of Contra Costa as Instrument No. 0004199831.

F. To implement the ***Hercules Bayfront Project,*** Owner submitted the following applications for consideration by the City: a General Plan Amendment (No. 09-02), Zoning Designation Change (No. 09-01), amendments to the Hercules Waterfront District Master Plan referred to as "***Zoning Text Amendment***" (No. 09-03), Vesting Tentative Map Plan (No. 9290) (collectively, "***2011 Project Approvals***").

G. On September 19, 2011, the City Council certified the Hercules Bayfront Project EIR. The Hercules Bayfront Project EIR analyzes the environmental impacts of, among other things, the 2011 Project Approvals

H. On January 10, 2012 and on March 13, 2012, City approved the 2011 Project Approvals.

I. Collectively, the 2008 Legislative Approvals as amended by the 2011 Project Approvals shall be referred to as the "***Project Approvals***," and the development of the Project Site, defined below, consistent with these Project Approvals shall be referred to as the "***Project***."

J. Owner and City now desire to amend the Original Agreement with this Development Agreement to reflect and incorporate the 2011 Project Approvals into Owner's vested rights, and to make other changes to the Original Agreement.

K. On November 28, 2011, after a duly noticed public hearing, the Planning Commission recommended that the City Council approve this Development Agreement. On February 28, 2012 the City Council after a duly noticed public hearing on this Development Agreement introduced Ordinance No. 468 approving this Agreement. According to law, Ordinance No. 468 took affect thirty (30) days after adoption.

L. This Development Agreement is consistent with the City's General Plan, Waterfront District Master Plan, Zoning Ordinance, and Municipal Code as amended by the Project Approvals. The terms of this Development Agreement are in conformity with public convenience, general welfare and good land use practice. The terms of this Development Agreement will not be detrimental to health, safety, or general welfare. The terms of this Development Agreement will not adversely affect the orderly development of property or the preservation of property values.

M. Consistent with the Project Approvals, the parties anticipate that during the Term of this Development Agreement, Owner may seek from City approvals and entitlements that are consistent with and necessary or desirable to implement the Project Approvals ("***Subsequent Approvals***"). The Subsequent Approvals may include, without limitation, project-level plans, planned development plans, design review permits, vesting tentative subdivision maps in

compliance with California Government Code § 66473.7, final subdivision maps, improvement agreements, development permits, lot line adjustments, use permits, building permits and any amendments to the foregoing.

NOW, THEREFORE, with reference to the foregoing recitals and in consideration of the mutual promises, obligations and covenants herein contained, City and Owner agree as follows:

AGREEMENT

Article I. Description of Project Site, Effective Date, and Term, and Implementing Development Agreement.

Section 1.01. Description of Project Site. The real properties that are the subject of this Vesting DA comprise City's Waterfront District Area and are depicted and described on Exhibit A, and are referred to herein as the "***Project Site***," provided, however, that this Development Agreement shall only be effective as to those properties described in Exhibit A for which parties with a legal or equitable interest in the property become signatories to this Development Agreement. If, due to approval of a lot line adjustment, parcel map, final map, or discovery of a clerical error, a portion of the legal description within Exhibit A needs to be corrected or revised, Owner shall, at the time of execution of this Development Agreement, present the City with the revised legal description and Exhibit A shall be amended, accordingly.

Section 1.02. Effective Date; Recordation. The "**Effective Date**" of this Development Agreement shall be thirty (30) days after adoption of the ordinance approving this Development Agreement. Not later than ten (10) days after the Effective Date, the City Clerk shall cause this Development Agreement to be recorded in the Official Records of Contra Costa County.

Section 1.03. Term. The term of this Development Agreement shall commence on the Effective Date of the Initiative Development Agreement, which was July 22, 2008, and extend fifteen (15) years thereafter unless sooner terminated or extended as herein provided (the "**Term**"). The Term shall automatically extend an additional five (5) years unless the City Council determines in accordance with Article V that Owner is not compliance with the terms of this Development Agreement.

Section 1.04. Effect of a Challenge. If a referendum or third-party action or legal action is instituted which might affect or challenge the validity or enforceability of the enacting ordinance or this Development Agreement including its Exhibits, or any provision thereof, or any document implementing the provisions contained in this Development Agreement including its Exhibits ("***Third-Party Legal Challenge***"), this Development Agreement shall remain in full force and effect subject to (*i*) any injunction issued by a court of competent jurisdiction, and/or (*ii*) the legal effect of any voter initiated legislative action. If a Third-Party Legal Challenge results in a temporary or preliminary order enjoining the enforcement of or performance of all or any provision under this Development Agreement, or an adverse final adjudication or legislative action concerning the validity or enforceability of all or any portion of this Development Agreement, and such portion of this Development Agreement is not severable under Section 6.10, the Original Agreement shall remain in full force and effect, and nothing shall impair the rights accorded and vested by the Original Agreement.

Section 1.05. Implementing Development Agreement. The parties have entered into the Implementing Development Agreement which also sets forth requirements and conditions for development of the Project Site. The Implementing Development Agreement shall govern development of the Project Site and this Development Agreement will only become operative if the Implementing Development Agreement is for any reason terminated and this Development Agreement is still in effect.

Article II. Standards, Laws, and Procedures Governing the Project.

Section 2.01. Vested Right to Develop. Owner shall have a vested right to develop the Project on the Project Site in substantial conformance with the terms and conditions of this Development Agreement, the Project Approvals, the Subsequent Approvals (as and when issued), the Applicable Law (defined below) and amendments as shall, from time to time, be approved pursuant to this Development Agreement. Owner's vested right to develop the Project shall be subject to compliance with the California Environmental Quality Act (Public Resources Code, §§21000 et seq.) ("***CEQA***") as it may apply to the Subsequent Approvals, and City's remaining discretion in connection with the Subsequent Approvals.

City shall have the right to regulate development and use of the Project Site in accordance with the terms and conditions of this Development Agreement, the Project Approvals, the Applicable Law, as defined below, and the Subsequent Approvals. City shall not apply new City rules, regulations or official policies that conflict with the Project Approvals or the Applicable Law. Notwithstanding anything in this Vesting Development Agreement to the contrary, City shall not be precluded from applying laws, rules and regulations to the extent that such are specifically mandated and required by regional, state or federal agencies.

Section 2.02. Permitted Uses. The permitted uses of the Project Site; the density and intensity of use on the Project Site; the maximum height, bulk and size of the proposed buildings; provisions for reservation or dedication of land for public purposes and the location of public improvements; the general location of public utilities; and other terms and conditions of development applicable to the Project, shall be as set forth in the Project Approvals and, as and when they are issued, the Subsequent Approvals. The issuance of a Subsequent Project Approval shall not divest Owner of the right, after submittal and approval of further entitlement applications, to develop as set forth in the Project Approvals.

Section 2.03. Applicable Law. "***Applicable Law***" shall mean the existing rules, regulations, official policies, standards and specifications, in force and effect on the Effective Date, governing permitted uses of the Project Site, governing density, and governing the design, improvements, and construction standards and specifications applicable to the Project and Project Site, including those set forth in this Development Agreement and the Project Approvals and those set forth in the City's ordinances and resolutions. Nothing in this Development Agreement is intended to increase or decrease the amount of any applicable impact fees, connection fees, pass-through fees, processing fees, or any other fees, taxes, or assessments in effect at the time of any Subsequent Approval. Notwithstanding anything in this Development Agreement to the contrary, City may apply the then-current California Building Standards Code and other uniform construction codes to any Subsequent Approval, provided such standards are

applied consistent with the standards applied to other comparable New-Urbanist, transit oriented developments in the San Francisco Bay Area. In addition, any tentative map approved for any subdivision of land within the Project Site shall comply with the provisions of Government Code §66473.7.

Section 2.04. Moratorium, Initiatives and Conflicting Enactments. To the extent consistent with state law (and excepting a declaration of a local emergency or state emergency as defined in Government Code § 8558), if any ordinance, resolution or other measure is enacted subsequent to the Effective Date, whether by action of City, by initiative, referendum, or otherwise, that imposes a building moratorium, a limit on the rate of development, or a voter-approval requirement that would otherwise create an additional procedural requirement or affect the timely development for the Project on all or any part of the Project Site, City agrees that such ordinance, resolution, or other measure shall not apply to the Project, the Project Site, this Development Agreement, the Project Approvals, or the Subsequent Approvals, if any, during the Term.

Section 2.05. Life of Project Approvals or Subsequent Approvals. The term of any Project Approval and any Subsequent Approval shall be automatically extended for the longer of the Term or the term otherwise applicable to such Project Approval or Subsequent Approval if this Development Agreement is no longer in effect. The Term of this Development Agreement, any other Project Approval, or any Subsequent Approval shall not include any period of time during which any applicable development or utility moratorium, lawsuit, or actions by other public agencies that regulate land use, delays development of the Project Site. Given Owner's vesting of its right to the development of the Project Site in accordance with the Project Approvals, the Subsequent Approvals (as and when issued), the Applicable Law, any General Plan amendments or zone changes or any other future legislative or nonlegislative regulatory approvals with respect to development of the Project Site will not become effective as to the Project Site unless consented to in writing by Owner or its successors-in-interest as to their respective portions of the Project Site. Nothing in this Vesting DA shall prevent the City from imposing upon Owner laws, rules, or regulations that are required by state, federal, or regional authorities to be imposed by City on Owner

Section 2.06. Development Timing. Subject to the Applicable Law, Owner shall have the right to develop the Project in such order and at such rate and at such times as Owner deems appropriate in the exercise of its subjective business judgment. Prior to the commencement of grading, construction or any work related thereto upon the Project Site, Owner shall secure, or cause to be secured, any and all Subsequent Approvals that may be required by City, as well as any permits and approvals required by any governmental agency with regulatory authority over such activities.

Article III. Obligations of Owner.

Section 3.01. Funding of Environmental Review. Owner agrees, to the extent permitted by law, that prior to the City's approval of any discretionary Subsequent Approval, it will fund completion of the level of environmental review required under CEQA associated with the requested Subsequent Approval.

Section 3.02. Bodily Injury and Property Damage Insurance. Prior to the commencement of construction (or any work related thereto) upon the Project Site, Owner shall furnish, or cause to be furnished, to City duplicate originals or appropriate certificates of bodily injury and property damage insurance policies in the amount of at least $1,000,000 for any person, $1,000,000 for any occurrence and $1,000,000 for property damage, naming City as an additional insured. Such insurance policies shall contain such other and further endorsements, terms, conditions and coverages as may reasonably be deemed necessary by City. Such insurance policies shall be maintained and kept in force during periods of construction.

Article IV. Obligations of City.

Section 4.01. Processing Subsequent Approvals. Subsequent Approvals shall be deemed mechanisms to implement those final policy decisions reflected by the Project Approvals and shall be issued by City so long as they comply with this Development Agreement and Applicable Law and are not inconsistent with the Project Approvals. Consistent with the Initiative, unless agreed to by the Owner, the City shall not require any further legislative acts to enable the Owner to develop the Project Site. Upon submission by Owner of any application, City shall promptly commence and diligently complete all steps necessary to review and approve the requested Subsequent Approvals so long as such Subsequent Approvals are consistent with this Agreement.

Article V. Periodic Review of Compliance.

Section 5.01. Annual Review. Pursuant to Government Code Section 65865.1, on or before December 1 of each year during the Term, City shall annually review this Development Agreement and all actions taken pursuant to the terms of this Development Agreement to determine Owner's good faith compliance with this Agreement. On or before October 15 of each year, Owner shall submit to the City Manager a report demonstrating the good faith compliance with this Development Agreement. Failure of City to perform the annual review shall not affect the validity or enforceability of this Development Agreement. Such annual review may be consolidated with the annual review of compliance under the Implementing Development Agreement.

Section 5.02. Finding of Compliance. City staff shall review the Owner's demonstration of good faith compliance to ascertain whether the Owner has complied in good faith with the terms of this Development Agreement. Upon request of City, Owner shall furnish such additional documents or information as may be reasonably required and available to the Owner to enable City staff to make and complete their review hereunder. The City Council shall then consider the staff's recommendation and make a final determination by December 1 of the year the Owner's demonstration of good faith compliance. Unless City notifies Owner otherwise, the annual review shall be presumed complete and satisfactory as of January 1 of the year after the submission by the Owner of the demonstation of good faith compliance. If the City Council finds good faith compliance by Owner with the terms of this Development Agreement, City shall issue a certificate of compliance, certifying such good faith compliance with the terms of this Development Agreement through the period of the applicable annual review. Such certificate of compliance shall, if Owner so requests, be in recordable form and

shall contain such information as may be necessary in order to impart constructive record notice of the finding of good faith compliance hereunder. Owner shall have the right to record the certificate of compliance in the Official Records of Contra Costa County. At least ten (10) days prior to making their determination hereunder, City staff shall provide to Owner copies of all staff reports and other information not subject to legal privileges concerning the Owner's compliance and the determination proposed by City staff. In the event the noncompliance is incapable of cure within such ninety (90) day (or greater) period but Owner has commenced a cure of the noncompliance and diligently prosecutes such cure, Owner shall have such additional time as is reasonably necessary to cure such noncompliance

Section 5.03. Finding of Noncompliance. Owner shall be permitted an opportunity to be heard orally or in writing before the City Council regarding such performance and before the City Council makes a non-compliance determination. If the City Council, on the basis of substantial evidence, finds that Owner has not complied in good faith with the terms of this Vesting DA, he or she shall specify in writing to Owner the respects in which Owner has failed to comply. The City Council shall also specify in writing a reasonable time for Owner to meet the terms of compliance, which time shall be not less than ninety (90) days, and any proposed modification or termination of this Development Agreement because of Owner's noncompliance. In the event the noncompliance is incapable of cure within such ninety (90) day (or greater) period but Owner has commenced a cure of the noncompliance and diligently prosecutes such cure, Owner shall have such additional time as is reasonably necessary to cure such noncompliance.

Section 5.04. Review by City Council. Before this Development Agreement is modified or terminated on grounds of noncompliance by Owner, the City Council of the City shall hold a public hearing no earlier than thirty (30) days following the expiration of the cure period identified in Section 6.07. At such hearing, Owner shall be entitled to submit evidence and address all the issues raised in the notice of noncompliance or otherwise. Owner may present evidence in writing or orally at the hearing before the City Council, or both. If, after receipt of any written response of Owner, and after considering the evidence at such public hearing, the City Council finds and determines on the basis of substantial evidence that Owner has not complied in good faith with the terms and conditions of this Development Agreement, then the City Council shall specify to Owner the respects in which Owner has failed to comply, and shall also specify a reasonable time for Owner to meet the terms of compliance, which time shall not be less than ninety (90) days. If the areas of noncompliance specified by the City Council are not perfected within such time limits prescribed, then the City Council may take action to terminate or modify any provision of this Development Agreement needed to correct the non-compliance, after permitting Owner a reasonable opportunity to present evidence (orally or in writing as determined by City), as to whether or not the areas of noncompliance have been perfected.

Article VI. Miscellaneous.

Section 6.01. Vested Rights to Subsequent Approvals. Any Subsequent Approval or amendment to a Subsequent Approval shall, upon approval or issuance, be automatically vested and incorporated into this Development Agreement.

Section 6.02. Amendment. Any amendment to the Development Agreement shall require giving of notice and public hearings before the Planning Commission and City Council. The City Council, in its sole discretion, shall make the final decision on whether to approve, conditionally approve, or deny an amendment.

Section 6.03. Cooperation in the Event of Third-Party Legal Challenge. In the event of any legal or equitable action or proceeding instituted by a third party challenging the validity of any provision of this Development Agreement or the procedures leading to its adoption or the issuance of any or all of the Project Approvals or Subsequent Approvals, the parties hereby agree to cooperate in defending said action or proceeding. Owner shall diligently defend any such action or proceeding and shall bear the litigation expenses of defense, including attorney's fees. City shall retain the option to employ independent defense counsel at Owner's expense. Owner further agrees to hold City harmless from all claims for recovery of the third party's litigation expenses, including attorney's fees and damages.

Section 6.04. Challenge to Development Agreement. If there is a successful third party challenge to this Development Agreement, the Initiative Development Agreement shall apply to the Project site.

Section 6.05. Indemnification; Hold Harmless. Except for claims, costs and liabilities caused by the active negligence or intentionally wrongful conduct of City, its elected and appointed representatives, officers, agents and employees, Owner hereby agrees to defend, indemnify, save and hold City and its elected and appointed representatives, officers, agents and employees harmless from claims, costs and liabilities for any personal injury, death or property damage which arises, directly or indirectly, from operations performed under this Development Agreement by Owner or its contractors, subcontractors, agents or employees, whether such operations were performed by Owner or by any of its contractors, subcontractors, by any one or more persons directly or indirectly employed by, or acting as agent for, Owner or any of its contractors or subcontractors. Owner shall defend City and its elected and appointed representatives, officers, agents and employees from actions for such personal injury, death or property damage which is caused, or alleged to have been caused, by reason of Owner's activities in connection with the Project.

Section 6.06. Estoppel Certificates. Either party or the holder or prospective holder of a mortgage or deed of trust secured by an interest in any portion of the property may at any time during the Term of this Agreement deliver written notice to the other party requesting an estoppel certificate stating: (*i*) this Development Agreement is in full force and effect and is a binding obligation of the parties; (*ii*) Development Agreement has not been amended or modified either orally or in writing or, if so amended, identifying the amendments; (*iii*) no default exists hereunder, nor would any default exist with the passage of time or the giving of notice, or both, or, if a default or failure does exist, the nature thereof and the actions required to be taken by the non-performing party to cure the default or prevent the same from occurring; and (*iv*) any other matter affecting the status of the rights and obligations of the parties hereunder as to which the requesting party, or the holder of the mortgage or deed of trust, may inquire. A party receiving a request for an estoppel certificate shall provide a signed certificate to the requesting party, or holder of a mortgage or deed of trust, within thirty (30) days after receipt of the request. The

City Manager or any person designated by the City Manager may sign estoppel certificates on behalf of City. The managing member or other authorized representative of Owner may sign on behalf of any Owner. An estoppel certificate may be relied on by the holder of a mortgage or deed of trust, and by Transferees. If one party requests an estoppel certificate from the other party, the requesting party shall reimburse the other party for all reasonable and direct costs and fees incurred by such party with respect thereto.

Section 6.07. Initiative Development Agreement. This Development Agreement does not change Owner's or Voter's rights under §§13, 14, 15 and 16 of the Initiative.

Section 6.08. Negation of Partnership, Agency, and Joint Venture. The Project is a private development. No party is acting as the agent of the other in any respect hereunder. Each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Development Agreement. None of the provisions of this Development Agreement shall be deemed to create a partnership between or among the parties in the businesses of Owner, or the affairs of City, or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise.

Section 6.09. No Third Party Beneficiary Rights. This Development Agreement is not intended nor shall it be construed to create any third party beneficiary rights in any person who is not expressly made a party and signatory to this Development Agreement.

Section 6.10. Default; Termination. Failure or unreasonable delay by either party to perform any obligation under this Development Agreement for a period of ninety (90) days after written notice thereof from the other party shall constitute an event of default under this Development Agreement, subject to extensions of time by mutual consent in writing or discretionary approval of extensions by the City Council. Said notice shall specify the nature of the alleged default and the manner in which said default may be satisfactorily cured. If the nature of the alleged default is such that it cannot reasonably be cured within such ninety (90) day period, the commencement of the cure within such time period and the subsequent diligent prosecution to completion of the cure shall be deemed a cure within such period. Subject to the foregoing, after notice and expiration of the ninety (90) day period without cure, if applicable, the other party to this Development Agreement, at its option, may institute legal proceedings pursuant to this Development Agreement and/or give notice of intent to terminate the Development Agreement pursuant to Government Code §65868 and the City's Development Agreement enabling ordinance and consistent with the Hercules Municipal Code, Title 10, Chapter 8. Following such notice of intent to terminate, the matter shall be scheduled for consideration and review by the City Council within thirty (30) calendar days in the manner set forth in Government Code §§ 65865.1, 65867 and 65868. Following consideration of the evidence presented in said review before the City Council, and a determination by the City Council based thereon, the party alleging the default by the other party may give written notice of termination of this Development Agreement to the other party. The waiver by either party of any event of default under this Development Agreement shall not operate as a waiver of any subsequent breach of the same or any other provision of this Development Agreement.

Section 6.11. Legal Actions; Remedies; Attorney's Fees. In addition to any other rights

and remedies, either party may institute legal action to cure, correct, enjoin, or remedy any default, enforce any covenant or agreement herein. Neither party or its officers, agents or employees shall be liable in monetary damages for any breach or violation of this Development Agreement; instead, the sole legal or equitable remedy available to either party for a breach or violation of this Development Agreement shall be an action in mandamus, specific performance, injunctive or declaratory relief to specifically enforce the provisions of this Development Agreement. In any such legal action, the Prevailing Party shall be entitled to recover all litigation expenses, including reasonable attorney's fees and court costs. For purposes of this Section 6.08, "Prevailing Party" means the Party determined by a court to have most nearly prevailed in a dispute between the Parties, even if such Party did not prevail in all matters, not necessarily the one in whose favor a judgment is rendered. If the court fails or refuses to make a determination of the Prevailing Party, the party who is awarded costs of suit shall also be deemed the Prevailing Party for purposes of awarding attorneys' fees. The parties acknowledge that neither City nor Owner would not have entered into this Agreement had they been exposed to damage claims from the other party for any breach thereof. As such, the parties agree that in no event shall either party be entitled to recover damages against the other party for breach of this Agreement.

Section 6.12. Governing Law; Interpretation of Agreement. This Development Agreement shall be governed by and interpreted in accordance with the laws of the United States, the State of California, and the City of Hercules.

Section 6.13. Severability. If any term or provision of this Development Agreement, or the application of any term or provision of this Development Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining terms and provisions of this Development Agreement, or the application of this Development Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the parties.

Section 6.14. Right to Assign. Owner shall have the right to sell, assign or transfer this Development Agreement, and all of its rights, duties and obligations hereunder, to any person at any time during the Term, subject to the prior written approval of the City Council. Such approval shall be granted where the buyer, assignee or transferee has demonstrated the experience, qualifications and financial resources to complete and operate the Project, or applicable portions thereof, to the reasonable satisfaction of the City Council. Owner shall remain liable for all obligations hereunder, and no assignment or transfer of this Development Agreement shall be valid unless Owner obtains the prior approval of the City Council.

Section 6.15. Supersedure by Subsequent Laws. If any state or federal law made or enacted after the Effective Date of this Development Agreement prevents or precludes compliance with one or more provisions of this Development Agreement, then the provisions of this Development Agreement shall, to the extent feasible, be modified, extended, or suspended as may be necessary to comply with such new law.

Section 6.16. Covenants Running with the Land. All of the provisions contained in this Development Agreement shall be binding upon the parties and their respective heirs, successors,

and assigns, representatives, lessees, and all other persons acquiring all or a portion of the Project Site, or any interest therein, whether by operation of law or in any manner whatsoever. All of the provisions contained in this Development Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to California law including, without limitation, California Civil Code § 1468.

Section 6.17. Further Documents. Each party shall execute and deliver such further documents as may be reasonably necessary to achieve the objectives of this Development Agreement.

Section 6.18. Notices. Any notice or communication required hereunder between the City and the Owner must be in writing, and may be given personally, by facsimile (with original forwarded by regular U.S. Mail), by registered or certified mail (return receipt requested), or by a reputable courier promising overnight delivery to the respective addresses specified by each party. Any party hereto may at any time, by giving ten (10) days' written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given.

Notices shall be given to the parties at their addresses set forth below:

If to City:

City Clerk
City of Hercules
111 Civic Drive
Hercules, California 94547
Telephone: (510) 799-8200
Facsimile: (510) 799-2521
Email: Doreen.mathews@ci.hercules.ca.us

With a copy to:

City Attorney,
City of Hercules
111 Civic Drive
Hercules, CA 94547
Telephone: (510) 332-5001
Facsimile: (510) 238-1404

If to Owner:

Hercules Bayfront, LLC
c/o AndersonPacific, LLC
Attn: James R. Anderson
6701 Center Drive West, Suite 710
Los Angeles, CA 90045
Facsimile: (310) 689-2305
Email: jra@andersonpacificllc.com

With copy to:

Hercules Bayfront, LLC
c/o AndersonPacific, LLC
Attn: Ethan Sischo
6701 Center Drive West, Suite 710

Los Angeles, CA 90045
Facsimile: (310) 689-2305
Email: esischo@andersonpacificllc.com

With copy to:

Rutan & Tucker, LLP
Attn: Dan Slater and Jeffrey Melching
611 Anton Blvd., Suite 1400
Costa Mesa, CA 92626
Facsimile: (714) 546-9035
Email: dslater@rutan.com and
jmelching@rutan.com

Any party may change its mailing address or contact person(s) at any time by giving written notice of such change to the other parties in the manner provided herein at least ten (10) days prior to the date such change is effective.

Section 6.19. Exhibits. The following exhibit is attached to this Development Agreement and incorporated herein for all purposes:

[TEXT AND SIGNATURES CONTINUE ON FOLLOWING PAGE]

EXHIBIT A - Map & Legal Description of the

IN WITNESS WHEREOF, this Development Agreement has been entered into by and between Owner and City as of the Effective Date.

CITY:

City of Hercules,
a California municipal corporation

By: _____

Name: Dan Romero

Title: MAYOR

OWNER:

Hercules Bayfront, LLC, a Delaware limited liability company

By: APL-Hercules, LLC
a Delaware limited liability Company
Its: Manager

By: Anderson Pacific, LLC
a Delaware limited liability Company
Its: Managing Member

By: _____
James R. Anderson
Managing Member

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

State of California
County of Contra Costa

On 3-14-12 (Date) before me, Doreen S. Mathews Notary Public (Here Insert Name and Title of the Officer),

personally appeared JAMES R ANDERSON (Name(s) of Signer(s))

who proved to me on the basis of satisfactory evidence to be the person(~~s~~) whose name(~~s~~) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she~~/~~they~~ executed the same in his/~~her~~/~~their~~ authorized capacity(ies), and that by his/~~her~~/~~their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

DOREEN S. MATHEWS
Commission # 1932886
Notary Public - California
Contra Costa County
My Comm. Expires May 14, 2015

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Doreen S Mathews
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Vesting Dev. Agreement - Hercules Bayfront

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name:	Signer's Name:
☐ Corporate Officer — Title(s):	☐ Corporate Officer — Title(s):
☐ Individual	☐ Individual
☐ Partner — ☐ Limited ☐ General	☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact	☐ Attorney in Fact
☐ Trustee	☐ Trustee
☐ Guardian or Conservator	☐ Guardian or Conservator
☐ Other:	☐ Other:
Signer Is Representing:	Signer Is Representing:
RIGHT THUMBPRINT OF SIGNER — Top of thumb here	RIGHT THUMBPRINT OF SIGNER — Top of thumb here

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Item #5907

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

State of California

County of Contra Costa }

On 3-15-12 (Date) before me, Doreen S. Mathews, Notary Public (Here Insert Name and Title of the Officer),

personally appeared Dan Romero (Name(s) of Signer(s)),

who proved to me on the basis of satisfactory evidence to be the person(~~s~~) whose name(~~s~~) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she~~/~~they~~ executed the same in his/~~her~~/~~their~~ authorized capacity(ies), and that by his/~~her~~/~~their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

DOREEN S. MATHEWS
Commission # 1932886
Notary Public - California
Contra Costa County
My Comm. Expires May 14, 2015

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Doreen S. Mathews (Signature of Notary Public)

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Listing Dev. Agreement

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____	Signer's Name: _____
☐ Corporate Officer — Title(s): _____	☐ Corporate Officer — Title(s): _____
☐ Individual	☐ Individual
☐ Partner — ☐ Limited ☐ General	☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact	☐ Attorney in Fact
☐ Trustee	☐ Trustee
☐ Guardian or Conservator	☐ Guardian or Conservator
☐ Other: _____	☐ Other: _____
Signer Is Representing: _____	Signer Is Representing: _____
RIGHT THUMBPRINT OF SIGNER — Top of thumb here	RIGHT THUMBPRINT OF SIGNER — Top of thumb here

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Item #5907

DA EXHIBIT A

HERCULES BAYFRONT, LLC

LEGAL DESCRIPTION

Real property in the City of Hercules, County of Contra Costa, State of California, described as follows:

PARCELS B, C AND D, AS SHOWN ON THE PARCEL MAP MS 491-03, FILED MARCH 10, 2004 IN BOOK 189 OF PARCEL MAPS, AT PAGE 40, OFFICIAL RECORDS.

PARCEL D AND LOT 200, AS SHOWN ON THE MAP OF SUBDIVISION 8407, FILED DECEMBER 19, 2001, IN BOOK 437 OF MAPS, PAGE 31, AND AS AMENDED BY AMENDED SUBDIVISION MAP 8407, FILED JANUARY 27, 2003, IN BOOK 451 OF MAPS, PAGE 14, AND AS CORRECTED BY CERTIFICATES OF CORRECTION RECORDED DECEMBER 11, 2002 AS INSTRUMENT NO. 2002-471412, AND RECORDED DECEMBER 9, 2003 AS INSTRUMENT NO. 2003-594591, CONTRA COSTA COUNTY RECORDS.

LOT 16, AND PARCELS .A. & .B., AS SHOWN ON THE MAP OF SUBDIVISION 8644 FILED FEBRUARY 25, 2004, IN BOOK 461 OF MAPS, PAGE 24, CONTRA COSTA COUNTY RECORDS.

PARCEL D, AS SHOWN ON M.S. 476-00, FILED OCTOBER 12, 2000, BOOK 179 OF PARCEL MAPS, AT PAGE 38, CONTRA COSTA COUNTY RECORDS.

PARCELS SEVEN AND EIGHT, AS SHOWN ON THE PARCEL MAP MSH-1, FILED APRIL 22, 1974, BOOK 33 OF PARCEL MAPS, PAGE 16, CONTRA COSTA COUNTY RECORDS.

PARCEL FIVE, AS SHOWN ON THE PARCEL MAP MSH-1, FILED APRIL 22, 1974, BOOK 33 OF PARCEL MAPS, PAGE 16, CONTRA COSTA COUNTY RECORDS.

PARCELS FOUR AND SIX AS SHOWN ON PARCEL MAP MSH-1 FILED APRIL 22, 1974, IN BOOK 33 OF PARCEL MAPS AT PAGE 16, CONTRA COSTA COUNTY RECORDS, DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHERLY CORNER OF SAID PARCEL 4 (33 PM 16): THENCE FROM SAID POINT OF BEGINNING ALONG THE EXTERIOR LINES OF SAID PARCEL 4, THE FOLLOWING COURSES:
SOUTH 37° 46′ 59" EAST 317.38 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 1,710.68 FEET, A RADIAL LINE TO THE BEGINNING OF SAID CURVE BEARS SOUTH 49° 34′ 15" EAST; THENCE FROM SAID POINT OF BEGINNING SOUTHWESTERLY 328.46 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 11° 00′ 04"; THENCE SOUTH 51° 25′ 49" WEST 341.51 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 1,190.19 FEET; THENCE SOUTHWESTERLY 77.35 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 03° 43′ 25" THENCE NORTH 49° 30′ 00" WEST 27.37 FEET; THENCE NORTH 17° 28′ 00" WEST 56.60 FEET; THENCE NORTH 73° 18′ 00" WEST 20.90 FEET; THENCE SOUTH 15° 04′ 00" WEST 26.90 FEET; THENCE SOUTH 51° 20′ 00" WEST 12.80 FEET; THENCE SOUTH 15° 57′ 00" WEST 58.20 FEET; THENCE SOUTH 58° 24′ 00" WEST 15.30 FEET; THENCE SOUTH 19° 32′ 00" EAST 32.90 FEET; THENCE SOUTH 01° 22′ 40" WEST 44.45 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE EAST, HAVING A RADIUS OF 1,190.19 FEET, A RADIAL LINE TO THE BEGINNING OF SAID CURVE BEARS NORTH 48° 44′ 56" WEST; THENCE SOUTHWESTERLY 411.81 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 19° 49′ 29"; THENCE SOUTH 21° 25′ 35" WEST 369.99 FEET TO THE BEGINNING A TANGENT CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 3,393.16 FEET, THENCE SOUTHWESTERLY 429.44 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 07° 15′ 05" TO THE EXTERIOR LINE OF SAID PARCEL SIX BEING THE

BEGINNING OF A COMPOUND CURVE HAVING A RADIUS OF 3,393.16 FEET, A RADIAL LINE TO THE BEGINNING OF SAID CURVE BEARS SOUTH 61° 19' 20" EAST; THENCE LEAVING SAID EXTERIOR LINE OF PARCEL 4 ALONG SAID EXTERIOR LINE OF PARCEL SIX, THE FOLLOWING COURSES:

SOUTHWESTERLY 439.57 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 07° 25' 21" TO THE BEGINNING OF A COMPOUND CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 1,101.50 FEET, A RADIAL LINE TO THE BEGINNING OF SAID CURVE BEARS SOUTH 53° 53' 59" EAST; THENCE SOUTHWESTERLY 673.63 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 35° 02' 23"; THENCE SOUTH 71° 08' 24" WEST 558.13 FEET; THENCE NORTH 47° 01' 00" WEST 10.32 FEET; THENCE NORTH 76° 06' 00" WEST 108.21 FEET; THENCE SOUTH 87° 00' 00" WEST 114.21 FEET; THENCE SOUTH 81° 00' 00" WEST 160.01 FEET; THENCE NORTH 77° 24' 00" WEST 87.11 FEET; THENCE NORTH 49° 11' 00" WEST 87.21 FEET; THENCE NORTH 56° 59' 00" WEST 47.70 FEET; THENCE NORTH 43° 31' 00" WEST 164.11 FEET; THENCE NORTH 67° 10' 00" WEST 103.11 FEET; THENCE NORTH 26° 34' 00" WEST 80.51 FEET; THENCE NORTH 61° 05' 00" WEST 76.51 FEET; THENCE SOUTH 82° 37' 00" WEST 108.91 FEET; THENCE NORTH 66° 48' 00" WEST 38.10 FEET; THENCE NORTH 85° 11' 00" WEST 95.31 FEET; THENCE NORTH 48° 16' 00" WEST 49.60 FEET; THENCE NORTH 63° 20' 00" EAST 76.01 FEET; THENCE NORTH 86° 45' 00" EAST 89.01 FEET; THENCE SOUTH 83° 55' 00" EAST 85.01 FEET; THENCE SOUTH 67° 10' 00" EAST 152.01 FEET; THENCE SOUTH 78° 00' 00" EAST 116.01 FEET; THENCE SOUTH 87° 35' 00" EAST 71.00 FEET; THENCE NORTH 73° 35' 00" EAST 329.02 FEET; THENCE NORTH 70° 20' 00" EAST 149.01 FEET; THENCE NORTH 59° 35' 00" EAST 516.04 FEET; THENCE NORTH 55° 10' 00" EAST 436.03 FEET; THENCE NORTH 51° 15' 00" EAST 291.02 FEET; THENCE NORTH 41° 55' 10" EAST 172.25 FEET TO SAID EXTERIOR LINE OF SAID PARCEL FOUR; THENCE LEAVING SAID EXTERIOR LINE OF SAID PARCEL SIX ALONG THE EXTERIOR LINES OF SAID PARCEL FOUR THE FOLLOWING COURSES:

NORTH 35° 49' 50" EAST 127.73 FEET; THENCE NORTH 28° 40' 00" EAST 231.02 FEET; THENCE NORTH 37° 15' 00" EAST 58.00 FEET; THENCE NORTH 43° 10' 00" EAST 221.02 FEET; THENCE NORTH 33° 40' 00" EAST 119.01 FEET; THENCE NORTH 22° 40' 00" EAST 86.01 FEET; THENCE NORTH 30° 45' 00" EAST 158.01 FEET; THENCE NORTH 27° 40' 00" EAST 136.01 FEET; THENCE NORTH 30° 45' 00" EAST 158.01 FEET; THENCE NORTH 27° 40' 00" EAST 136.01 FEET; THENCE NORTH 35° 35' 00" EAST 91.01 FEET; THENCE NORTH 52° 10' 00" EAST 62.00 FEET; THENCE NORTH 56° 55' 00" EAST 345.02 FEET; THENCE NORTH 48° 42' 00" EAST 142.01 FEET; THENCE NORTH 37° 55' 00" EAST 182.01 FEET; THENCE NORTH 45° 35' 00" EAST 82.39 FEET TO THE POINT OF BEGINNING.

EXHIBIT D

Project Description and Scope of Development

The Project is development of the Property in any manner that is consistent with the Hercules General Plan and Hercules Zoning Code in effect as of the Effective Date of the Implementing Development Agreement ("Agreement").

EXHIBIT E

Affordable Housing Plan

I. INTRODUCTION

Pursuant to subdivision (e) of Section 10-19.105 of the Hercules Municipal Code, by approving this Agreement the City Council of the City of Hercules finds that the affordable housing program outlined herein below is an alternate method of full compliance with Chapter 10-19 (Inclusionary Housing) of the Municipal Code and meets the purposes of Chapter 10-19. As such, the alternate affordable housing program set forth herein does not constitute a waiver or reduction of the obligations of Chapter 10-19, or a waiver or reduction of fees set forth in Chapter 10-19, but rather is an alternate to, and equivalent of, the requirements set forth in Chapter 10-19 and thus represents and implements full compliance with the requirements of Chapter 10-19.

The Project is a comprehensive and complex undertaking that will significantly advance City both physically and economically. The Project will contribute not only to the physical growth of City but will create a vibrant residential and commercial center that will enhance property values and tax revenues. Owner acknowledges and agrees that provision of affordable housing in the community is a necessary and vital aspect of the development obligation. City acknowledges and agrees that a project of the scope and complexity of the Project requires the use of Section 10-19.105(e).

In addition, City acknowledges that Chapter 10-19 or significant portions thereof may be invalid and unenforceable pursuant to the court rulings in *Palmer/Sixth Street Properties, L.P. v. City of Los Angeles* (2009) 175 Cal.App.4th 1396 and *Building Industry Ass'n of Cent. California v. City of Patterson* (2009) 171 Cal.App.4th 886. Thus Chapter 10-19 may not apply to the Project. It is in the interest of City to apply Chapter 10-19 to the Project notwithstanding the foregoing court decisions and to apply Chapter 10-19 in a manner that facilitates, rather than undermines, Project feasibility.

As such, using the authority of within Chapter 10-19 to determine an alternate method of full compliance with Chapter 10-19 enables City and Owner to agree upon the best method for Owner's provision of inclusionary housing so that the extraordinary contributions the Project will assist City in achieving its goals set forth in City's General Plan. To do so requires the City Council to implement its authority under Section 10-19.105(e) so the Project contributes to inclusionary housing in a manner that is financially and physically feasible. Moreover, the Owner agrees to comply with this alternate method of full compliance with Chapter 10-19 notwithstanding the above-described court decisions.

The City Council finds that if it did not use its authority under Section 10-19.105(e) to determine this alternate method of full compliance with Chapter 10-19, the City Council would undermine the Project's feasibility which would be detrimental to the very purpose of Chapter 10-19 to effect production of inclusionary housing units.

The City Council further finds that the alternate method of full compliance with Chapter 10-19 as set forth herein, including but not limited to Section 10-19.104 with respect to Projects located within a redevelopment project area, also satisfies the Project's compliance with any Hercules Redevelopment Agency requirements for provision of affordable or inclusionary housing and City hereby agrees to indemnify, defend, and hold the Owner harmless from any application by the Hercules Redevelopment Agency or any other person or entity of the affordable housing or inclusionary or housing production requirements which apply or may apply to the Project as a result of its location within a redevelopment project area.

II. ALTERNATE INCLUSIONARY HOUSING PROGRAM

Given the size, scope, phasing, and complexity of the Project, the City Council finds, pursuant to Section 10-19.105(e), that the following alternate inclusionary housing program set forth below constitutes full compliance with Chapter 10-19:

A. Owner shall build at least five percent (5%) of the total residential units within the Project as affordable units for families with an income level not exceeding sixty percent (60%) of the median income level ("60% of Median Units"). However, if Owner sends City a notice indicating that the cost of development of 60% of Median Units is financially infeasible and there is a lack of adequate supply of housing for families with an income level not exceeding eighty percent (80%) of the median income level ("80% of Median Units"), then Owner may satisfy up to twenty five percent (25%) of its overall affordable housing unit production obligation through the construction of 80% of Median Units (*i.e.*, with the remaining seventy five percent (75%) of the overall affordable housing unit production satisfied through the construction of 60% of Median Units). Collectively, the 60% of Median Units and the 80% of Median Units are hereinafter referred to as ("Affordable Units").

B. Up to three hundred (300) market rate residential units may be built before Owner has an obligation to build any Affordable Units. By the time Owner's total number of residential units constructed reaches five hundred (500), twenty five (25) Affordable Units shall have been built. Each additional increment of two hundred sixty (260) residential units shall include a minimum of thirteen (13) Affordable Units.

C. Owner is solely responsible for financing and construction of Affordable Units, and for screening tenant or buyers to meet income and eligibility criteria established by City that is/are consistent with applicable state and federal law.

D. Owner shall not build any building of residential development within the Project in such a manner as to include more than 35% Affordable Units.

III. ADMINISTRATIVE IMPLEMENTATION

City and Owner agree to meet and confer in good faith on the administrative implementation of the Alternate Inclusionary Housing Program set forth in this Exhibit E.

EXHIBIT F

PHASING PLAN & PROTOCOL

City and Owner are developers of related but independent projects in close geographic proximity to one another. City and Owner recognize and agree that the phasing of development of their respective independent projects must be collaboratively planned and phased in order to realize mutually beneficial efficiencies. Therefore, City and Owner agree to abide by the following (*i*) initial phasing plan (*ii*) protocol for determining and implementing future phases of development for their respective projects, and (*iii*) dispute avoidance and resolution process. The obligations to implement the improvements set forth in this Exhibit are subject to Sections 4.3, 4.12(b), and 6.2, of the Agreement

1. Initial Phasing Plan

a. ***City Phase I***: City shall actively seek outside, i.e. non City general fund, funding sources that may be applied to the construction and implementation of the City Phase I Improvements (as defined immediately below), including but not limited to grant funds. Further, upon obtaining such funds, City shall promptly, diligently, and efficiently apply such funds to the construction and implementation of the City Phase I Improvements. Unless the parties mutually agree to modify the sequence of phasing, the components of City Phase I Improvements are as follows (definitions of individual improvements are more thoroughly set forth in Exhibit G – List of City Public Improvements). Subject to the restrictions imposed by outside funding sources, City shall use its best efforts to sequence the City Phase I Improvements to maximize access to the Project and the ITC Project. City Phase 1 is not only subject to the ability to obtain financing but also the ability to obtain all necessary approvals and permits and force majeure events.

1. Preparation and Bay Trail Segment 1 (Split into multiple projects as needed)

2. Sanitary sewer lift station removal;

3. Construct North Channel crossing (unpaved condition - culvert, abutment, earth cover);

4. Construct mitigation of wetland impacts for John Muir Parkway extension and North Channel crossing;

5. Construct bio-retention area for John Muir Parkway extension and North Channel crossing;

6. Mass excavation for John Muir Parkway and grade access to Bay Trail and construct laydown areas for Hercules Intermodal Transit Center project (complete restoration work from City's prior grading activities to replace earthwork borrowed from east half of the Village);

7. Those retaining walls necessary for anticipated fuel oil line relocations and Bay Trail segments from Powder Works Plaza (VTM #9290, Parcel 16) to the west property line and from John Muir Parkway / Shoreline Loop (VTM #9290, Parcel 37) to the east property line (West and East Bay trail segments);

8. Ground improvements for retaining walls, Bay Trail, transit loop, utility relocations (Zones 1, 3 - HDR C401 Plan);

9. Ground improvements for retaining walls, Bay Trail, utility relocations (Zones 5, 6 - HDR C401 Plan);

10. Incorporate spoils from the soil-nail wall construction, mass excavation / access grading in the Village, and from removal of the Powder Works Plaza surcharge to construct fill walls for Bay Trail, utility relocations;

11. Surcharge Hercules Plaza with spoils from the soil-nail wall construction and mass excavation / access grading in the Village; and

12. Construct Bay Trail - segment adjacent to Bio-Rad.

13. Refugio Creek Restoration upstream of Bayfront Boulevard Bridge.

14. Bayfront Boulevard Bridge (connection for access, interim Bay Trail connection).

15. John Muir Parkway and Bayfront Boulevard extensions.

16. Transit Village Soils Relocation.

b. ***Owner Phase I***: Following the completion of City Phase I, Owner shall commence construction of Owner Phase I. Owner currently contemplates that Owner Phase I will include Blocks N, O, or Q, or any combination thereof, but Owner may at its election select a different area for Owner Phase I construction. Owner commits to diligently pursue Owner Phase I to completion, once construction has commenced. The ability to commence and/or complete Owner Phase I is subject to the availability of funding, ability to obtain financing, the marketability of Owner Phase I, the ability to obtain necessary permits, and force majeure events.

2. **Future Phasing Protocol**

a. **Pursuit of Completion of Development**: City and Owner shall each diligently pursue the completion of the development on their respective properties in a coordinated manner.

i. For Owner, "completion of the development," means utilization of its land in a manner consistent with the Project Approvals, and market conditions.

ii. For City, "completion of the development," means the completion of the City Public Improvements (described in Exhibit G).

b. **Master Phasing Plan & Schedule**: Within 90 days following the Effective Date of the Implementing Development Agreement ("Agreement"), the Parties shall collaboratively create a conceptual phasing schedule – the "Master Phasing Plan & Schedule." The Master Phasing Plan & Schedule will be included as a starting point for discussions regarding future phasing. The Master Phasing Plan & Schedule shall be for purposes of coordinating development schedules but shall be **non-binding** on either Party. All of the City Public Improvements will be included on the Master Phasing Plan & Schedule. City shall prioritize the construction of the City Public Improvements, subject to the availability of funding, ability to obtain necessary permits, and force majeure events.

c. **Quarterly Updates**: Parties shall have quarterly development coordination meetings, attended by representatives knowledgeable about the development of City's and Owner's respective independent projects, during which they will discuss all of the following:

i. The then-current Master Phasing Plan & Schedule and the status of the work anticipated to have been completed at the time of the meeting, as well as those activities to be completed during the next 24-month period;

ii. The need, if any, to shorten or lengthen the time in which any particular component of infrastructure should be commenced or completed as set forth on the then-current Master Phasing Plan & Schedule;

iii. City's and Owner's then-current development plans and schedules for their own proposed development activity to occur on their respective property;

iv. The timing of authorization and estimated amount of proceeds with respect to the issuance of bonds, securing of grant funds, or obtaining of other resources to complete improvements on the Master Phasing Plan & Schedule;

v. Potential additional federal, state or local public funding sources to assist in the payment of the design and/or construction of the City Public Improvements, including any restrictions or limitations on the use or application of such public funding sources;

vi. An assessment of the estimated cost for implementation of the then-remaining portions of the infrastructure on the Master Phasing Plan & Schedule;

vii. The need to modify the scope and/or the specific components of the infrastructure;

viii. Such other matters as Owner and City reasonably determine are relevant to discuss;

ix. The reasonably anticipated phasing of development as reflected on each Party's then-current respective development plans and schedules for their own proposed development activity to occur on each Party's respective property;

x. Market conditions (such as, for example, the general economic certainty or uncertainty in developing, leasing, using and/or selling land and/or issuing obtaining land based financing on acceptable market terms);

xi. Physical or legal constraints (such as, for example, environmental or permitting constraints on development of certain areas of the property);

xii. The impact (including, without limitation, from a physical construction and sequencing standpoint, from a fiscal standpoint and from a legal compliance standpoint), if any, resulting from the imposition by City and/or other governmental authorities of any conditions of approval or other requirements with respect to the development of the items included in the Master Phasing Plan & Schedule; and

xiii. Force majeure delays;

3. **Parties' Obligations; Dispute Avoidance and Resolution Process**:

a. The Parties shall have good faith, commercially reasonable, obligations to (*i*) complete their respective Phase I developments, (*ii*) coordinate with one another over the Master Phasing Plan & Schedule, and (*iii*) diligently pursue their respective developments to completion (subject to the limitations in I.A, I.B, and 2.B, above).

b. If either Party believes the other is not proceeding in a good faith, commercially reasonable, manner, then the "complaining Party" must send a "good faith letter" to the "receiving Party" that (*i*) describes the reasons why an action(s) of the other Party is believed to be not in good faith, (*ii*) provides factual support for the claim, including if appropriate market data or studies, and (*iii*) describes with specificity a course of action that the complaining Party believes would constitute an acceptable outcome.

c. After the receiving Party receives the "good faith letter" the Parties shall meet within 15 days to discuss the concerns of the complaining Party.

d. If the matter is not resolved through discussion, the receiving Party, must send a response to the complaining Party, utilizing substantially the same level of detail in terms of specificity of demand and types of factual back-up, explaining and justifying its course of conduct ("response letter").

e. If the complaining Party is not satisfied with the response letter, the complaining Party shall, prior to pursuing any other remedies, demand that the matter be submitted to mediation. If such demand is made, the matter shall be attempted to be settled in good faith by nonbinding mediation administered by the American Arbitration Association ("AAA"). All statutes of limitations that would otherwise be applicable

shall apply to any mediation proceeding under this Section 3. Except as otherwise provided, the mediator shall be selected in accordance with the rules of the AAA. Any mediator selected under this Section 3 shall be knowledgeable in the subject matter of the dispute. Qualified retired judges with at least five (5) years mediation experience shall be selected through panels maintained by AAA, any court in which the Project Site is located or any private organization providing such services. The mediation shall be held within thirty (30) days of the date the demand for mediation is served on the responding Party. The Parties understand and agree that a representative from each side with full settlement authority will be present at the mediation conference. The mediation process is to be considered settlement negotiations for the purpose of all state and federal rules protecting disclosures made during such conferences from later discovery or use in evidence. The Parties agree that the provisions of California Evidence Code Section 1152 shall apply to any mediation conducted hereunder. All conduct, statements, promises, offers, view and opinions, oral or written, made during the mediation by any Party or a Party's agent, employee or attorney shall not be subject to discovery or admissible for any purpose, including impeachment, in any litigation, arbitration or other proceeding involving the parties. The mediator's fees and costs shall be divided equally among the Parties.

f. If the matter is not resolved through mediation, the complaining parties may exercise any remedy otherwise available under the Agreement.

EXHIBIT G

LIST OF CITY PUBLIC IMPROVEMENTS

ITC Costs – Subject to Section 6.2 of the Agreement, City agrees the City Public Improvement costs associated with the Hercules Intermodal Transit Center ("ITC"), including but not limited to those listed below, will be borne by the City and that neither those improvements nor their attendant costs are the responsibility of Owner and/or the Project. Subject to Sections 4.12(b) and 6.2 of the Agreement, the City has no obligation to fund or construct the City Public Improvements from City general funds or restricted funds other than those grant funds designated for the ITC Project and/or the City Public Improvements..

1. **Sanitary Sewer Lift Station Removal:** Removal of the lift station and wet well improvements in the vicinity of Parcels 18 and 33 near the intersection of Bayfront Boulevard and Promenade Street. Removal of the lift station will require replacement of existing sewer lines and construction of new sewer lines to convey sewer by gravity from the existing development west of the Project to the lift station adjacent the Hercules Corporation Yard.

2. **Bayfront Boulevard Bridge:** Construct Refugio Creek Crossing per Street and Circulation Standards under the Hercules Waterfront District Master Plan ("HWDMP"), including associated grading and wetland mitigations.

3. **Bayfront Boulevard:** Construct the Bayfront Boulevard extension from Bayfront Boulevard Bridge to John Muir Parkway, including roadway, street trees, sidewalks, street lights, and utility improvements on Parcel 34 (all "Parcel" references refer to Parcels as depicted on the Tentative Tract Map No. 9290).

4. **John Muir Parkway:** Construct the John Muir Parkway extension from the current terminus to Bayfront Boulevard, including roadway, street trees, sidewalks, street lights, and utility improvements on Parcel 26. Work will include North Channel Crossing culvert, abutment, and associated bio-retention areas and remediation of impacts associated with the work.

5. **Refugio Creek Restoration:** Restoration and realignment of Refugio Creek, including grading to achieve hydraulic constraints of new bridge structures, removal of the "dog-leg" from the current creek configuration, remediation of impacts associated with the work and other ITC improvements, and planting. Replacement of sanitary sewer lines crossing Refugio Creek.

6. **Waterside Channel Excavation:** Restoration and realignment of the Refugio Creek outfall, including grading to achieve hydraulic constraints of new bridge structures, removal of the "dog-leg" from the current creek configuration, remediation of impacts associated with the work and other ITC improvements, and planting.

7. **Edgewater Park:** Construction of a park, including grading, paths, landscape improvements, lighting, utilities, and storm water treatment areas on Parcel 38.

8. **Bay Trail / Retaining Walls / Bay Trail Promenade:** Construction of the Bay Trail and Bayfront Promenade per the Civic Space Standards under the HWDMP, including grading, paving, lighting, remediation of impacts associated with the work, landscape improvements, storm water treatment, utilities, and retaining walls. Segments include those adjacent to Bio-Rad east of the Project Site (as defined in the Implementation Agreement) and those on Parcels 22, 24, 33, 37, and 41.

9. **Utility Relocation:** Relocation of utilities associated with Union Pacific Railroad work, including fuel oil lines (including but not limited to Kinder Morgan / Shell) and fiber optic lines (including but not limited to Qwest, Comcast, MCI).

10. **Railroad Bridge:** Construction of a bridge for support of the railroad tracks and platform in the new configuration and location depicted on the HWDMP. Work includes improvements, remediation of impacts associated with the work, grading, creek reconfiguration, removal of existing trestle bridge, and infill of prior creek alignment.

11. **Track Work / Railroad Platform / Union Pacific Signal Work:** Realignment of railroad tracks, including all necessary interim improvements, shoe fly tracks, barriers, flagging, and signal work. Construction of new platform structure. Work includes construction in Parcel 1.

12. **Station Structure:** Station Structure improvements including tower, stairs, ramps, elevators, bridges, retaining walls, and utilities. The Station Structure has three sub-structures: one at Hercules Plaza, one at the Railroad Platform, and one at the waterside for emergency egress and future connection to the Ferry Landing.

13. **Emergency Vehicle Access:** Grading, paving, storm water treatment, and landscaping improvements to provide Emergency Vehicle Access to the Railroad Platform and Station Structure as constructed on Parcels 1, 20, 22, and on Hercules Point.

14. **Transit Loop and Bridge:** Construction of the John Muir Parkway extension from the terminus at Bayfront Boulevard to the terminus of Bayfront Boulevard at Creekside Street, including roadway, street trees, sidewalks, street lights, retaining walls, and utility improvements on Parcel 37. Work will include construction of a new bridge structure, remediation of impacts associated with the work, grading, creek reconfiguration, and infill of prior creek alignment.

15. **Hercules Plaza:** Construction of a civic plaza, including grading, paving, landscape improvements, lighting, utilities, and storm water treatment areas on Parcel 33.

16. **Transit Annex / Café Building:** Construction of Station Structure support buildings and retail building on Parcel 33.

17. **Pedestrian Bridge:** Bridge and handicap accessible ramp structures to provide pedestrian access from Parcel 16 to Hercules Point including utilities needed for Hercules Point improvements.

18. **Powderworks Plaza:** Construction of a plaza, including grading, paving, landscape improvements, lighting, utilities, and storm water treatment areas on Parcel 33.

19. **Ferry Landing:** Provision of pier and waterside improvements for ferry landing connected to the waterside station structure. Waterside improvements include remediation of impacts associated with the work.

20. **Hercules Point:** Construct Hercules Point per Civic Space Standards under the HWDMP, including associated grading, paths, paving, landscape improvements, utilities, storm water treatment, and mitigations on Hercules Point.

21. **Parking for ITC:** Surface or structured parking to meet parking needs of the ITC Project.

    a. If ITC requires temporary parking, it will build on land leased from Owner for such use at market rates

    b. If the ITC requires structured parking, it will be paid for as part of the ITC Project and the Parking District set forth in the Public Financing Plan (EXHIBIT H); provided, however, that Owner's contribution to the parking structure(s) through the Parking District shall be no greater than its pro-rata contribution to the parking demand for the Parking Structure.

22. **North Channel Restoration and Realignment:** Areas on and adjacent to Parcel 35 will be re-graded and enhanced to accommodate an expanded wetland area and provide mitigation for impacts associated with John Muir Parkway extension and other ITC Project impacts. This area will also provide some stormwater detention and water quality improvement features.

23. **Creekside Trail:** Construction of the Creekside Trail per the Civic Space Standards (HWDMP), including grading, paving, lighting, remediation of impacts associated with the work, landscape improvements, and storm water treatment constructed on Parcels 13 and 38. Work will include either (*i*) construction of a flashing crosswalk at the street crossing from the off-street Refugio Creek bike path, which would be activated by bicyclist to help ensure a safe crossing, or, (*ii*) Owner shall coordinate with City and WestCAT to determine whether facilities such as bus turnouts shall be incorporated into the project, and the preferred locations for such facilities. Agreement on these facilities shall be reached prior to the approval of the Final Map.

24. **Soft Costs:** All Design, Engineering, Permitting, Management, Legal, and other costs associated with items 1-23 above.

25. **Transit Village Soils Relocation**: Replacement of soil borrowed by the City for surcharge of John Muir Parkway, Bayfront Boulevard Extension, Shoreline Loop, and Edgewater Park totaling approximately 95,000 cubic yards. Soils will be moved from parcels 13, 19, 21, 23, 25, 26, 34, 37, 38 to parcels 27, 28, 29, 30, and 39 (as those parcels are numbered on Vesting Tentative Tract Map 9290).

EXHIBIT H

PUBLIC FINANCING PLAN

1. Public Parking Program

a. Preamble

Included within the City Improvements to be undertaken by the City is the construction of public parking. Separate from the public parking, Owner will be establishing private parking serving its private development. To maximize the ability for the City to develop public parking in the initial phases of the public infrastructure and ITC, and to coordinate with Owner's private parking, Owner agrees that a Public Parking District may be established to serve public and private parking of the Hercules Bayfront Project. Owner and City acknowledge that parking in high-intensity development areas is more appropriately treated as a public infrastructure cost and financed through a neighborhood improvement district parcel assessment, such as a Public Parking District, than as a private cost burden. Thus, the City, as a condition of approval of the project requires that all parking for the Owner's project shall be accommodated by a Public Parking District designed to accommodate both public and private parking needs, except for: (*i*) spaces reserved for residential use per code, excluding guest parking; and (*ii*) some minimum portion of office parking required also to be reserved for key tenants, but not more than 10% of all office parking. The Public Parking District shall establish separate accounts for funds derived from private property and from City or other publicly owned property. To the extent a Public Parking District creates any public funding benefiting any private property, City declares that the requirement for establishment of a Public Parking District is a condition of regulatory approval of the Project for the funding of public infrastructure. The obligations to implement the improvements set forth in this Exhibit are subject to Sections 4.3, 4.12(b), and 6.2, of the Agreement

b. Parking Study

The parties agree that prior to the formation of a Parking District the specifications of parking for the public transit facilities and the initial phases of the private development need to be scrutinized in detail, with particular attention to opportunities for shared parking and parking cost reduction. To that end, by January 1, 2013, City shall conduct a parking study in cooperation with Owner. The costs of the study shall be borne by City. The study shall evaluate precise parking needs for the Project Site, and shall make recommendations on appropriate financing mechanisms, including the formation of a Public Parking District.

c. General Format

The Public Parking District will be a public district funded in part by either in-lieu parking fees or an annual parking tax for private uses. The amount of the tax and the Public Parking District's percentage contribution to parking facilities shall be subject to parking district majority protest procedures. Remaining costs of parking facilities, if any, shall be funded by other means; City will use its best efforts to obtain funding from parking fees and permits, creation of a neighborhood improvement district parcel assessment, such as a Public Parking District, and grant and outside funding sources, to underwrite the public portion of the parking cost.

2. Other Public Financing Options

a. Mutual Cooperation: The Parties shall in good faith coordinate with one another in an effort to plan for additional funds for development of City Infrastructure through the following non-exhaustive list of potential financing mechanisms:

i. Use of financing provided by the California Infrastructure and Economic Development Bank ("CIEDB"), to the extent that any or all of the proposed infrastructure and parking costs are eligible and the City and/or Hercules Redevelopment Agency ("Agency") can qualify for such financing.

ii. Use of Industrial Development Bond ("IDB") financing through the CIEDB, to the extent that any or all of the proposed infrastructure and parking costs are eligible and the City and/or Agency can qualify for such financing.

iii. Pledge of Transient Occupancy Tax should the development include hotels.

iv. Possible creation of Community Service Districts if needed to meet operating costs.

v. Possible creation of a Community Facilities District.

vi. Formation of an Infrastructure Financing District, if that becomes feasible and, for some reason, tax increment is no longer available to the Agency.

vii. Such other new modes of financing which fit the needs of the Project which may emerge over the financing life of the Project.

EXHIBIT I

SCHEDULE OF EXACTIONS

Subject to the City's ability to charge administrative fees related to the processing of Subsequent Project Approvals as described in the Implementation Agreement, this Schedule of Exactions describes in their entirety, the exactions, fees, impositions, dedications that Owner and/or its successors in interest may be required by City, or any agency controlled by or affiliated with City, to pay or provide in accordance with the Governing Ordinances and the Implementation Agreement during the time periods specified in the Implementation Agreement (including without limitation, Sections 4.15). The following is the complete list of Exactions, and no additional Exactions are or may be required of Owner and/or its successor in interest.

Effective November 8, 2011 (Reso 11-132)

	Single Family		$/D.U.
A	Park and Recreation Facilities	$	1,475
B	General Public Facilities	$	717
C	Police Facilities	$	1,269
D	Fire Facilities	$	1,029
E	Traffic Facilities (2)	$	982
F	Sewer Facilities	$	4,048
G	Community Development Tax	$	1,500
H	West County Sub-regional Transp.Mitigation Fee (3)	$	2,904
I	Public Benefit Fee	$	4,000
	$ per Dwelling Unit	**$**	**17,924**

	Multi Family		**$/D.U.**
A	Park and Recreation Facilities	$	895
B	General Public Facilities	$	448
C	Police Facilities	$	792
D	Fire Facilities	$	662
E	Traffic Facilities (2)	$	603
F	Sewer Facilities	$	4,048
G	Community Development Tax	$	1,500
H	West County Sub-regional Transp.Mitigation Fee (3)	$	1,844
I	Public Benefit Fee	$	2,350
	$ per Dwelling Unit	**$**	**13,142**

	Retail		$ / Sq.Ft.
A	Park and Recreation Facilities	$	-
B	General Public Facilities	$	0.14
C	Police Facilities	$	0.26
D	Fire Facilities	$	0.54
E	Traffic Facilities (2)	$	2.01
F	Sewer Facilities	$	0.54
H	West County Sub-regional Transp.Mitigation Fee (3)	$	2.04

I	Public Benefit Fee	$	0.20
	$ per Building Sq.Ft.	**$**	**5.72**

	Office		$ / Sq.Ft.
A	Park and Recreation Facilities	$	-
B	General Public Facilities	$	0.24
C	Police Facilities	$	0.43
D	Fire Facilities	$	0.72
E	Traffic Facilities (Reduced rate)	$	1.45
F	Sewer Facilities	$	1.08
H	West County Sub-regional Transp.Mitigation Fee (3)	$	3.93
I	Public Benefit Fee	$	0.20
	$ per Building Sq.Ft.	**$**	**8.04**

	Flex -- (Assumes Retail Use)		$ / Sq.Ft.
A	Park and Recreation Facilities	$	-
B	General Public Facilities	$	0.14
C	Police Facilities	$	0.26
D	Fire Facilities	$	0.54
E	Traffic Facilities (Reduced rate)	$	2.01
F	Sewer Facilities	$	0.54
H	West County Sub-regional Transp.Mitigation Fee (3)	$	2.04
I	Public Benefit Fee	$	0.20
	$ per Building Sq.Ft.	**$**	**5.72**

	Hotel		$ / Key
A	Park and Recreation Facilities	$	-
B	General Public Facilities	$	23.50
C	Police Facilities	$	26.00
D	Fire Facilities	$	94.00
E	Traffic Facilities (Reduced rate)	$	176.00
H	West County Sub-regional Transp.Mitigation Fee (3)	$	2,197.00
I	Public Benefit Fee	$	20.00
	$ per Room	**$**	**2,536.50**

J	**SMIP Fee Residential** (% of project valuation)	
	% Hard Cost	0.0112%
K	**SMIP Fee Commercial** (% of project valuation)	
	% Hard Cost	0.0235%

L	**Green Building Fee Schedule**		
	$1.00 - $25,000.00 Permit Valuation	$	1
	$25,001.00 - $50,000.00 Permit Valuation	$	2
	$50,001.00 - $75,000.00 Permit Valuation	$	3
	$75,001.00 - $100,000.00 Permit Valuation	$	4
	Every $25,000.00 or fraction thereof above $100,000.00		*Add $1.00*
	$1 per $25,000 of Project Valuation		
M	**Demo & Filing Fee**		
	Demo inspection Review	$	68

	Filing Fee	$	25
		$	**93**
N	**Art in Public Spaces Fee**		
	% Hard Cost		0.00%
O	**General Plan Update Fee**		
	% Hard Cost		0.00%
P	**Affordable Housing**	$0.00	

EXHIBIT J(1)

Purchase & Sale Agreement – Public Use Lands, ITC Right-of-Way Expansion, ITC Station

PURCHASE AND SALE AGREEMENT
AND
ESCROW INSTRUCTIONS
FOR
PUBLIC USE LANDS, ITC RIGHT OF WAY EXPANSION
AND ITC STATION AND PLAZA

THIS PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS ("Agreement") is entered into effective as of March 14, 2012 (the "**Effective Date**") by and between HERCULES BAYFRONT, LLC, a Delaware limited liability company ("**Seller**" or "**HBL**"), the CITY OF HERCULES ("**Buyer**" or "**City**") with reference to the following facts:

RECITALS

A. Seller is the owner of those certain parcels of real property consisting of approximately 40.96 acres, with APN nos. 404-020-065, -083, -084, -085, -086; 404-670-016, -017, -018; 404-490-080, -100 located in the City of Hercules ("**City**"), State of California ("**Overall Property**"). The Overall Property is within the City's Waterfront District Master Plan and is approved for mixed use development pursuant to the Waterfront Master Plan Initiative ("**Project**").

B. Seller desires to convey to Buyer and Buyer desires to acquire from Seller that portion of the Overall Property consisting of approximately 13 acres, more or less, as legally described and depicted as follows: Parcel 1 (Railroad) attached as Exhibit A-1, Parcel 13 (Creekside Trail) attached as Exhibit A-2, Parcel 16 (Powder Works Plaza) attached as Exhibit A-3, Parcel 20 (Emergency Vehicle Access) attached as Exhibit A-4, Parcel 22 (Bay Trail) attached as Exhibit A-5, Parcel 24 (Bayside Trail) attached as Exhibit A-6, Parcel 26 (Right of Way (John Muir Parkway)) attached as Exhibit A-7, Parcel 31 (Refugio Creek) attached as Exhibit A-8, Parcel 32 (Public Roadway) attached as Exhibit A-9, Parcel 33 (Shoreline City Plaza) attached as Exhibit A-10, Parcel 34 (Right of Way (Bayfront Boulevard)) attached as Exhibit A-11, Parcel 35 (North Channel) attached as Exhibit A-12, Parcel 37 (Right of Way (Transit Loop Drive)) attached as Exhibit A-13, Parcel 38 (Edgewater Park) attached as Exhibit A-14, and Parcel 41 (Shoreline Loop) attached as Exhibit A-15, (each a "Parcel" and collectively, the "**Parcels**"). Exhibits A-1 – A-15 are attached hereto and are incorporated herein by reference. The Parcels are generally depicted on Exhibit B-1, attached hereto and incorporated herein. The transfer of Title to the Parcels will be subject to reservations of easements for access, temporary construction, and utilities as generally described on Exhibit B-2; said easements will be created and reserved in favor of Seller prior to Closing. The Parcels, subject to the reservation of easements generally described and depicted in Exhibit B-2, is hereinafter referred to as the "**Property**." Since the conveyance of the Property is to a public entity, the Property can be conveyed to the City through a metes and bounds description, and does not need to be legally subdivided parcels at the time of conveyance pursuant to Government Code sections 66428(a)(2) and 66426.5 and Hercules Municipal Code section 10-2.212. The Property and shall consist of the following:

(1) Real Property. The Land and all improvements and fixtures (if any) located thereon, together with all of Seller's right, title and interest in and to (i) all privileges, rights,

easements and appurtenances which are appurtenant to the Land, (ii) all development rights, air rights, water, water rights and water stock, if any, relating to the Land, (iii) any streets, alleys, passages and other rights-of-way, if any, included within the Land, and (iv) all oil, gas and other mineral and related development rights, if any, appurtenant to the Land (collectively, the "**Real Property**").

(2) Intangible Property. All of Seller's right, title and interest in intangible property (the "**Intangible Property**"), if any, used in connection with the Real Property, including without limitation any licenses, permits, entitlements and other approvals, if any, issued by any federal, state or local authorities relating to the use, maintenance or operation of the Real Property.

(3) Service Contracts. All of the interest of Seller, if any, in all utility contracts, service contracts, maintenance contracts, management contracts and all other contracts utilized by Seller, if any, in connection with the Real Property which are not terminated as of the "**Closing Date**" (as defined in Section 1.2 below), all of which are collectively referred to as the "**Service Contracts**".

C. Buyer and Seller intend to complete the conveyance of the Property in two independent phases. Parcels 13, 16, 20, 22, 24, 26, 31, 32, 34, 35, 37, 38, and 41 (the "**Credit Property**") shall be conveyed by Buyer to Seller in exchange for five hundred twenty four thousand five hundred twenty dollars ($524,520) in development impact fee credits, and said conveyance shall occur on the earlier of (*i*) date that the "Implementing Development Agreement" between the Buyer and Seller becomes effective, and (*ii*) April 15, 2012 (the "**Credit Property Closing Date**"). The remainder of the Property, Parcels 1 and 33 (the "**Cash Property**") shall be conveyed by Buyer to Seller in exchange for one million eight hundred sixty five thousand three hundred dollars ($1,865,300.00) in cash or cash equivalent funds, and said conveyance shall occur on June 30, 2012 (the "**Cash Property Closing Date**").

D. Buyer and Seller desire to terminate and supersede in their entirety all prior offers, counteroffers, side letters, letters of intent and other arrangements between the parties or their representatives and/or agents concerning the purchase and/or condition of the Property.

E. Seller and Buyer are entering into this Agreement to convey the Property to the Buyer, all as more fully set forth below.

NOW, THEREFORE, in reliance upon the foregoing Recitals and in consideration of the mutual covenants set forth herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Buyer and Seller agree as follows:

ARTICLE 1
AGREEMENT; TERM; SELLER TERMINATION

1.1 **AGREEMENT OF SALE**. Seller agrees to sell and convey the Property to Buyer and Buyer agrees to purchase the Property from Seller, on the terms and conditions set forth in this Agreement.

1.2 **TERM**. The term of this Agreement shall commence on the Effective Date and shall continue, unless sooner terminated in accordance with the provisions hereof, until the earlier

to occur of (a) the date that both the Cash Closing Deed and the Credit Closing Deed (both as defined in Section 4.4(a) below) conveying the Real Property is recorded in the Office of the County Recorder for Contra Costa County, California (the "**Closing Date**"), or (b) the Cash Property Closing Date. The Cash Property Closing Date may be extended by mutual consent of Buyer and Seller, or as provided in Section 3.1(c).

Buyer acknowledges and agrees that Buyer shall have no right or option whatsoever to extend the Credit Property Closing Date and/or the Cash Property Closing Date for any reason without the prior written consent of Seller, which consent may be withheld by Seller in Seller's sole and absolute discretion. Buyer further acknowledges and agrees that after the Credit Property Closing Date (for the Credit Property) and/or the Cash Property Closing Date (for the Cash Property) Buyer shall have no further right or option to purchase the Property and this Agreement shall be of no further force or effect in that regard.

1.3 CONDITION PRECEDENT TO SELLER TERMINATION. If not otherwise required in this Agreement, before Seller terminates pursuant to Sections 3.1(b) and 3.2(e) or any other section, Seller shall give Buyer written notice of Seller's intent to terminate. Seller and Buyer shall meet within 15 days following Buyer's receipt of such written notice, and at such meeting shall discuss and attempt to resolve Seller's concerns. If such issues are resolved, this Agreement shall remain in full force and effect.

ARTICLE 2
PURCHASE PRICE

2.1 PURCHASE PRICE. The purchase price for the Cash Property (the "**Cash Property Purchase Price**") shall be $1,865,300.00 for 1.88 acres (based on a price of $32.10 per sq. ft. of developable land in Parcels 1 and 33). The purchase price for the Credit Property (the "**Credit Property Purchase Price**"), which comprises approximately 11.11 acres, shall be $524,520.00 of credit against City's Development Impact Fees.

Buyer agrees that provided Seller has delivered the Non-Foreign Affidavit and required state and local affidavits required under Section 4.4(b) hereof, showing that Seller is not a foreign person and that no tax withholdings or deductions are required, Buyer shall not deduct or withhold, nor instruct First American Title Insurance Company ("**Escrow Holder**") to deduct or withhold, any part of the Cash Property Purchase Price pursuant to Section 1445 or any other provision of the Internal Revenue Code of 1986, as amended (the "**IRC**"), or pursuant to any state or local law.

2.2 PAYMENT OF PURCHASE PRICE. The Cash Property Purchase Price and the Credit Property Purchase Price shall be paid as follows:

(a) Deposit. Within three (3) business days of the Effective Date of this Agreement, City shall deliver Escrow Holder (as defined in Section 3.1(a), below) the sum of one hundred thousand and No/100 Dollars ($100,000.00) (the "**Deposit**"). Escrow Holder shall invest the Deposit in a federally-insured, interest-bearing demand trust account with a national banking association reasonably acceptable to Buyer and Seller with offices in Contra Costa County, California. All interest earned on the investment of such Deposit, if any, shall accrue to the benefit of Buyer and will be treated as an additional deposit hereunder. The Deposit shall be refunded to

Buyer if prior to the expiration of the Contingency Date Buyer terminates this Agreement as a result of Buyer's disapproval or deemed disapproval of due diligence matters pursuant to Section 3.3 below, Buyer terminates this Agreement as a result of Buyer's disapproval or deemed disapproval of the condition of title to the Property pursuant to Section 3.1 below, or this Agreement is terminated by Buyer or Seller prior to the Contingency Date as otherwise provided in this Agreement. Notwithstanding the foregoing, Seller may request partial releases of the Deposit to pay Due Diligence Costs (defined in Section 3.2(a), below). To obtain funds from the Deposit, Seller shall provide invoices for Due Diligence Costs from the Approved Consultants, along with supporting documentation, to Escrow Holder and Buyer. Unless within ten (10) days following the receipt of such invoices Buyer objects that such Due Diligence Costs are not within the Scopes of Work (or were not otherwise Due Diligence Costs incurred at the request of Buyer) Escrow Holder shall release such funds to Seller. The remaining funds in Escrow after each release of funds shall be considered the "Deposit" hereunder and shall remain in Escrow. Any provision of this Agreement requiring the return of the Deposit to Buyer shall apply only to the portion of the Deposit then remaining in Escrow, and Seller shall not be required to return any amounts previously released to Seller for Due Diligence Costs. Any provision of this Agreement requiring the release of the Deposit to Seller as liquidated damages shall apply only to the portion of the Deposit then remaining in Escrow, plus Seller's retention of the amounts released to Seller as Due Diligence Costs, and Buyer shall not be required to provide any additional amounts as liquidated damages, it being acknowledged by Seller that any such remaining Deposit amount and retention of the Due Diligence Costs is a reasonable estimate of damages that would be incurred by Seller. If the Deposit is fully exhausted through the payment of Due Diligence Costs, Seller shall have no further obligation to pay for any due diligence by or through the Approved Consultants, or otherwise, or to conduct any further due diligence unless such costs are paid by Buyer prior to such work being performed. Provided the Deposit is not returned to Buyer pursuant to the terms of this Agreement, the Deposit (less any released Due Diligence Costs) will remain in Escrow until the Closing Date, and will be applied towards the Purchase Price. In the event Buyer materially defaults under this Agreement, the remaining Deposit, and the Due Diligence Cost released to Seller, shall serve as liquidated damages to Seller in accordance with the terms of Section 2.2(b), below.

Seller's Initials: _____ **Buyer's Initials:** _____

(b) Balance of Purchase Price. Provided that all conditions to Buyer's obligations under this Agreement have been satisfied or expressly waived by Buyer, Buyer shall deliver to Escrow Holder (*i*) at least two (2) business days prior to the Credit Property Closing Date a Fee Credit voucher for credits against Development Impact Fees in the amount of $524,520.00 in the form attached hereto as Exhibit C, and (*ii*) at least two (2) business days prior to the Cash Property Closing Date, by wire transfer of immediately available funds, the balance of the Cash Property Purchase Price less the remaining Deposit and any interest accrued thereon, plus or minus Buyer's share of prorations and costs of Escrow hereunder.

2.3 INDEPENDENT CONTRACT CONSIDERATION. Contemporaneously with the execution of this Agreement, Buyer has delivered to Seller, and Seller hereby acknowledges the receipt from Buyer of the sum of One Hundred Dollars ($100.00) (the "**Independent Contract Consideration**"). The Parties have bargained for such amount as consideration for Buyer's exclusive option to purchase the Property pursuant to the terms of this Agreement and for Seller's

execution of this Agreement, in addition to other consideration being described in this Agreement. The Independent Contract Consideration is in addition to and independent of any other consideration or payment provided in this Agreement, is non-refundable, and shall be retained by Seller notwithstanding any other provision of this Agreement, including any termination rights of Buyer. The Parties agree that it is their intention that the amount of the Independent Contract Consideration is sufficient consideration, as such term is defined in Steiner v. Thexton, 48 Cal. 4th 411 (2010) for Buyer's right to purchase the Property pursuant to this Agreement. Buyer and Seller hereby acknowledge and confirm that they have had an opportunity to review this provision with their respective, independent counsel.

2.4 MUTUAL AGREEMENT OF THE PARTIES FOR STAGGERED CLOSE OF PURCHASE. Buyer shall purchase the Property from Seller in two phases. Subject to the conditions and requirements of this Agreement, the Credit Property shall be conveyed from Seller to Buyer on the Credit Property Closing Date. Subject to the conditions and requirements of this Agreement, the Cash Property shall be conveyed from Buyer to Seller on June 30, 2012. The failure to close on the Cash Property shall not affect the prior closing of the Credit Property, which shall remain closed and not subject to rescission or other claims that arise from the failure, if any, to close on the Credit Property.

ARTICLE 3
TITLE REVIEW; DUE DILIGENCE; "AS IS" SALE

3.1 TITLE TO THE LAND.

(a) Promptly after the Effective Date and its receipt of a fully-executed original of this Agreement, Escrow Holder shall cause to be delivered to Buyer and to Seller a current preliminary report issued by First American Title Insurance Company, Diane Burton, 6683 Owens Drive, Pleasanton, California ("**Title Company**") setting forth the condition upon which Title Company is willing to issue its Policy of Title Insurance (ALTA Extended Coverage) to Buyer with respect to the Property and, from time to time thereafter, supplemental reports as the same become available in the course of Title Company's standard business practices (all of such preliminary reports, as supplemented, being hereinafter referred to collectively as the "P**TR**").

(b) Buyer shall have the option until the date that is fifteen (15) days prior to the Contingency Date, and if any supplemental title reports are issued by Title Company then for five (5) days after its receipt of any supplemental title report and copies of any additional underlying documents, to notify Seller and Title Company in writing what exceptions to title first shown thereon, if any, are unacceptable to Buyer ("**Disapproved Exceptions**"); provided, however that (i) Buyer is not required to give notice of disapproval of debts, liens to secure debts, delinquent taxes, or assessments due as of the Closing Date, or other financing or monetary encumbrances on the Property ("**Monetary Disapproved Exceptions**"), and those items shall be considered as Disapproved Exceptions hereunder and either (a) removed from the Property as of the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) (either through payment such amounts or Seller obtaining from any lenders a partial release and reconveyance of the Property from any deed of trust encumbering the Overall Property) or (b) if not removed from the Property as of the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property), shall result in the

termination of this Agreement and the Deposit shall be returned to Buyer, and (ii) Buyer agrees that the following shall not be Disapproved Exceptions: all property taxes and supplemental taxes on the Land which are not delinquent; all nondelinquent assessments and bonds on the Land arising prior or subsequent to the date hereof; all public utility easements; all building or zoning ordinances or regulations; and all matters executed by Buyer or any agency or department of the Buyer, or which arise as a result of the acts or omissions of Buyer or its agents, employees or representatives, and (iii) with respect to any supplemental title reports delivered to Buyer after the Contingency Date, Buyer further agrees that the following shall not be Disapproved Exceptions: all matters which are not monetary liens and all matters previously constituting "**Approved Title**" (as defined in the following sentence). If Buyer provides any notice of Disapproved Exceptions, Buyer shall provide notice of all Disapproved Exceptions on or before the date that is fifteen (15) days prior to the Contingency Date, and if any supplemental title reports are issued by the Title Company then within five (5) days after Buyer's receipt of any supplemental title report and copies of any underlying documents; provided, however, that Buyer is not required to include in its notice of Disapproved Exceptions notice of disapproval of any Monetary Disapproved Exceptions. If Buyer provides no notice of Disapproved Exceptions on or before the date that is fifteen (15) days prior to the Contingency Date, and if any supplemental title reports are issued by the Title Company then within five (5) days after Buyer's receipt of any supplemental title report and copies of any underlying documents, then Seller shall may, in its sole discretion, deliver a written "Request to Identify Disapproved Exceptions" to Buyer on or before the date that is ten (10) days prior to the Contingency Date, and if any supplemental title reports are issued by the Title Company then within seven (7) days after Buyer's receipt of any supplemental title report and copies of any underlying documents. Buyer shall have two business days to deliver a written response to the Request to Identify Disapproved Exceptions by identifying all Disapproved Exceptions, except Monetary Disapproved Exceptions. If Seller does not deliver a written Request to Identify Disapproved Exceptions to Buyer within the time specified in this paragraph, all matters shown on the PTR shall be conclusively deemed to be a Disapproved Exception. If Seller does deliver a written Request to Identify Disapproved Exceptions to Buyer, then only those items identified in Buyer's timely written response to the Request to Identify Disapproved Exceptions shall be Disapproved Exceptions.

(c) If Buyer gives timely notice under Section 3.1 (b) above of any Disapproved Exception, or such exceptions are deemed Disapproved Exceptions, Seller shall have five (5) days after receipt of such notice to notify Buyer and Escrow Holder in writing either (i) that Seller will cure such Disapproved Exception and will provide Buyer with evidence reasonably satisfactory to Buyer that such Disapproved Exception has been cured on or before the Closing Date or (ii) that Seller will not cure such Disapproved Exception ("**Cure/Non-Cure Notice**"). If Seller elects to cure a Disapproved Exception, it shall proceed to cure using commercially reasonably efforts, and if necessary to facilitate those efforts, Seller may extend the Cash Property Closing Date for a period, not to exceed sixty (60) days, without Buyer's written consent thereto. Seller's failure to give a Cure/Non-Cure Notice shall conclusively constitute an election not to cure a Disapproved Exception; provided, however, that Seller shall cure any Disapproved Exception which is a voluntary monetary lien encumbering the Property with Seller 's consent, along with any delinquent property taxes or assessments.

(d) If Seller elects or is deemed to elect not to cure a Disapproved Exception, Buyer shall have the option at any time within three (3) business days after such election or

deemed election to terminate this Agreement by notice to Seller and Escrow Holder to that effect, in which event Escrow Holder shall return the remaining Deposit to Buyer. If Seller elects to cure any Disapproved Exception but is unable, despite Seller's commercially reasonable efforts, to do so by the Closing, Seller shall not be in default hereunder and Buyer shall have the option at any time within five (5) business days after Seller's cessation of efforts to cure a Disapproved Exception to elect to terminate this Agreement by notice to Seller and Escrow Holder to that effect. Buyer's failure to give such notice to terminate with respect to any Disapproved Exception shall conclusively constitute Buyer's waiver of all of its objections thereto, in which case Seller shall have no obligation to cure such Disapproved Exception and it shall thereafter constitute part of approved title hereunder. Notwithstanding the foregoing, or anything herein to the contrary, in no event shall Buyer be deemed to have approved any monetary lien encumbering the Property (through a partial release and reconveyance of the Property or other means acceptable to Title Company to remove such liens), along with any property taxes or assessments as of the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property)(the parties recognizing that such Monetary Disapproved Exceptions will either be cured by Seller or cause the termination of this Agreement in accordance with Section 3.1(b)).

(e) At the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property), Buyer's title to the Credit Property and the Cash Property (as the case may be) shall be insured by an Extended Coverage Owner's Policy of Title Insurance in the amount of the Credit Purchase Price or the Cash Purchase Price (as the case may be), insuring Approved Title to the Real Property in Buyer and including such endorsements as Buyer shall request, subject only to (1) Title Company s standard exceptions and exclusions, (2) the lien of supplemental taxes assessed pursuant to California Revenue and Taxation Code Sections 75, et seq., resulting from this transaction, (3) exceptions to title approved (or deemed approved) by Buyer pursuant to this Section 3.1, and (4) such deeds of trust or other exceptions to title created by or for the benefit of Buyer (the "**Title Policy**"). Buyer may, at Buyer s option, direct Escrow Holder to procure an extended coverage ALTA Owner s Policy of Title Insurance which eliminates some or all of the standard exceptions or which includes endorsements which expand coverage. Buyer acknowledges and agrees that, notwithstanding Sections 4.3(a)(1) and 4.9 below, the issuance of an ALTA extended coverage policy or any particular title endorsements requested by Buyer shall not be a condition precedent to Buyer s obligation to close Escrow.

3.2 DUE DILIGENCE; MATERIAL TO BE FURNISHED BY SELLER PRIOR TO CLOSING. To facilitate Buyer's due diligence and investigation of the Property, Seller shall make available to Buyer (at a mutually agreed location) for Buyer's review during normal business hours, but without representation or warranty by Seller as to any matter, including without limitation the accuracy, reliability or completeness of any document, except as specifically represented and warranted in Sections 3.4(d) and 5.2 of this Agreement, copies of any and all of the following (to the extent such items exist and are in the possession or control of Seller or Seller's representatives): the contracts, leases, soils and geologic reports, environmental surveys, reports and related documents, grading or engineering plans, drawings, surveys, maps, permits, licenses, certificates of use and occupancy and other documents, instruments and written materials that are applicable to the Property, all as listed on Exhibit G attached hereto ("**Reports**"). Buyer shall not have the right to obtain possession of or receive copies of the Reports unless and until the Closing occurs. If and when the Closing occurs, Seller shall provide copies of all Reports to Buyer through Escrow on the Closing Date, and as of the Closing such Reports shall become the property

of the Buyer. Prior to Closing, Buyer shall have no right to obtain copies of the Reports, and with respect to information reviewed by Buyer in the Reports, Buyer shall maintain the confidentiality of all such documents, materials and information pursuant to Section 9.9 below.

Notwithstanding anything to the contrary contained in this Agreement, Buyer acknowledges that it shall have no right to examine any of the following documents (and such documents shall not be considered Reports) in connection with its review of the Property: (i) limited liability company or corporate records of Seller or Seller's members, (ii) pro formas prepared by or for Seller, (iii) internal accounting or income tax records of Seller or Seller's members, (iv) similar proprietary, confidential or privileged information, and (v) any internal memoranda of Seller relating to any of the foregoing (collectively, the "**Confidential Seller Documents**").

Buyer's due diligence shall be subject to the following conditions and requirements:

(a) Each consultant, including without limitation the primary consultant and all environmental consultants, retained to perform due diligence shall be retained by Seller. The parties have agreed that Seller shall retain Geosyntec Consultants and Engeo Incorporated ("**Approved Consultants**") to perform the scopes of work for due diligence set forth on Exhibit D attached hereto ("**Scopes of Work**"). The consultant contract costs incurred for the Scopes of Work, and all modifications thereto, are hereinafter referred to as the "**Due Diligence Costs.**" Buyer, and Buyer's consultants, shall have the right to review any and all work product of the Approved Consultants related to the Property, but shall not have the right to obtain possession of or receive copies of the Approved Consultants' work product unless and until the Closing on the Cash Property occurs. If and when the Closing on the Cash Property occurs, Seller shall provide all work product of the Approved Consultants related to the Property to Buyer through Escrow on the Cash Property Closing Date, and as of the Closing on the Cash Property such work product shall become the property of the Buyer. Buyer (and Buyer's consultants) shall have the right to contact the Approved Consultants only through Seller. Seller shall provide consent to the Approved Consultants to discuss any and all due diligence matters concerning the Property with Buyer and Buyer's consultants; provided, however, that Seller shall have the right to be in attendance at all such discussions. Seller shall have the right to request and/or review any modifications to the Scopes of Work. If Seller does not approve a modification to a Scopes of Work, it shall not be responsible for the incremental additional costs of the modification, and such incremental additional costs shall not be deducted from the Deposit. Upon receipt of a request from Buyer to modify the Scope(s) of Work, Seller shall have the right to either (i) request that the Approved Consultant(s) modify the Scope(s) of Work in the manner requested, (ii) continue with only the original Scope(s) of Work, or (iii) terminate this Agreement in accordance with Section 3.2(e). Seller shall use commercially reasonable efforts to cause all due diligence work within the Scopes of Work to be completed and available for Buyer's review not later than fifteen (15) days following the Effective Date hereof. In the event such Scope of Works is not completed by such date, the Contingency Date (defined in Section 3.3 below) and the Cash Property Closing Date shall be automatically extended the same number of days that it takes to complete the Scopes of Work in excess of such fifteen (15) day period.

(b) Other than the rights of Buyer (and Buyer's consultants) to review such Reports and work product as provided herein, Seller shall have the right, in the exercise of its sole

discretion, to approve the release or distribution of any of the Reports and work product of the Approved Consultants. Unless and until the Closing on the Cash Property occurs, Buyer shall not have the right to release the Reports or the information contained therein, except to the extent such release is otherwise required by applicable law, including without limitation the Public Records Act and the Ralph M. Brown Act, or court order (it being acknowledged by the Parties that Buyer shall not have possession or control of any such Reports or work product unless and until the Closing occurs).

(e) Seller shall have right to terminate if Seller develops good faith, commercially reasonable, concerns over the scope of the due diligence work, the results of the due diligence work, and/or Buyer's handling or disclosure of due diligence information. Prior to terminating on this basis, Seller shall give Buyer written notice of Seller's intent to terminate. Seller and Buyer shall meet within 15 days following Buyer's receipt of such written notice, and at such meeting shall discuss and attempt to resolve Buyer's concerns. If such issues are resolved, this Agreement shall remain in full force and effect.

3.3 CONTINGENCY DATE; INSPECTIONS; BUYER'S RIGHT TO TERMINATE.

(a) Subject to the procedures and limitations set forth in paragraph 3.2 and 3.3(b) and in the Scopes of Work (and any mutually approved modifications thereto), Buyer shall have the right from and after the Effective Date of this Agreement for a period of thirty (30) days thereafter until 5:00 p.m. P.S.T. on such date (the "**Contingency Date**") to conduct all visual inspections of the Property deemed necessary by Buyer, together with the investigations and testing of the Property identified in the Scope of Work (and any mutually approved modifications thereto), and to deliver written approval or disapproval of the due diligence matters to Seller. If Buyer fails to deliver a written notice of approval or disapproval by the Contingency Date, Seller may within two (2) business days thereafter deliver a written "Request for Confirmation of Approval/Disapproval" to Buyer, in which case Buyer may, within two (2) business days thereafter (i.e. four (4) business days after the Contingency Date) deliver to Seller a written confirmation as to whether Buyer does or does not approval the condition of the Property. If Buyer provides no initial written notice of approval or disapproval by the Contingency Date, and Seller does not timely deliver a Request for Confirmation of Approval/Disapproval, then Buyer shall be deemed to have disapproved the due diligence matters. If Seller timely delivers a Request for Confirmation of Approval/Disapproval, but Buyer does not timely respond to said Request for Confirmation of Approval/Disapproval, then Buyer shall be deemed to have approved the due diligence matters. If Buyer disapproves of (or is deemed to disapprove of) the due diligence matters this Agreement shall terminate, neither Seller nor Buyer shall have any further liability or obligation hereunder except for those provisions and obligations which expressly survive such termination, and Escrow Holder shall within five (5) business days thereafter return to Buyer the Deposit (less any appropriate deductions as specified in Section 2.2), and return to the Party entitled thereto (or, if not specified hereunder to the contrary, to the Party who deposited the same) all items and funds previously deposited with Escrow Holder in connection with this escrow.

(b) All inspections and tests on the Real Property, shall be conducted by Seller through the Approved Consultants, as set forth in Section 3.2 and 3.3(a), above.

(c) Buyer shall provide Seller at least 24 hours prior written notice of entry on the Property for visual inspection purposes, together with identification of the person or firm who will undertake the same. The written notice shall also include the general duration of the intended testing activities and the precise nature of the activities on the Property, together with evidence of the existence of public liability insurance covering all risks arising out of such entry. Such insurance shall have a combined single limit per occurrence of at least $2,000,000 for premises liability, bodily injury, personal injury and property damages, shall name Seller as an additional insured, and shall be maintained in effect at all times during the term of this Agreement.

(d) Buyer shall fully indemnify, defend and hold Seller harmless from and against any claim, action, cause of action, demand, liability, obligation, loss, cost, damage or expense (including actual attorneys' fees and costs) which may arise or which Seller may sustain or incur by reason of or in connection with any visual inspection or entry onto the Property, provided however that Buyer shall have no responsibility, indemnity obligation or liability for (i) any act of Seller and/or Seller's agents, employees, consultants and contractors, (ii) any adverse condition or defect on or affecting the Property not caused or made worse by Buyer or its agents, employees, consultants and contractors but merely discovered during their inspections, (iii) the mere discovery of the pre-existing presence of Hazardous Materials or claims resulting from the pre-existing presence of Hazardous Materials, and/or (iv) the results or findings of any test. If Buyer makes an existing adverse condition or defect on the or affecting the property worse as a result of or in connection with Buyer's inspection or entry, Buyer shall (i) have an immediate obligation to notify Seller in writing that Buyer has made an existing adverse condition or defect on or affecting the property worse, and (ii) Buyer's shall indemnify and defend Seller only to the extent of Buyer's contribution to the adverse condition or defect on or affecting the Property. The provisions of this Section shall survive Closing or termination of this Agreement for any cause for a period of six (6) months.

(e) Notwithstanding any provision of this Agreement to the contrary, in addition to termination of this Agreement for Buyer's failure to deliver the approval notice pursuant to Section 3.3(a) above, Buyer shall have the sole and absolute right to terminate this Agreement at any time prior to the Contingency Date upon giving written notice thereof (the "**Termination Notice**") to Seller with a copy to Escrow Holder, in which event this Agreement shall automatically terminate upon Seller's receipt or deemed receipt of the Termination Notice. In the event the Close of Escrow does not occur for any reason other than Seller's or Buyer's breach of or default of its respective obligations hereunder, or if this Agreement is terminated without default by either party as otherwise set forth herein, then Escrow Holder, with no further instructions from the parties hereto, shall return to Buyer the Deposit (less appropriate deductions as specified in Section 2.2) with accrued interest and shall return any other materials previously delivered to Escrow Holder to the depositor thereof, the Escrow shall be automatically terminated and of no force and effect, Buyer and Seller shall each pay one-half of any Escrow termination fees, and except as otherwise provided herein the parties will have no further obligation to one another.

3.4 <u>"AS IS" SALE</u>.

(a) Except for the express representations set forth in Article 5, below, Buyer acknowledges that Buyer has entered into this Agreement in reliance solely upon Buyer's ability to

make Buyer's own investigation of the physical, environmental, economic, financial and legal conditions of the Property, and that Buyer is not relying upon any representations and warranties of Seller concerning the Property other than those expressly set forth in Section 5.2 below. Buyer further acknowledges that Buyer has not received from Seller any accounting, tax, legal, architectural, environmental, engineering or other advice with respect to the Property or the transaction contemplated by this Agreement and that Buyer is relying solely upon the advice of Buyer's own advisors, if any, in entering into this Agreement. Accordingly, Buyer's failure to terminate this Agreement under Section 3.3(e) above shall constitute an acknowledgement that Buyer has considered, inspected and reviewed to Buyer's satisfaction all physical, environmental, economic, financial and legal aspects and conditions of the Property and the existing and potential future requirements imposed by Environmental Laws, as defined in Section 3.4(d) below, and that Buyer is acquiring the Property on the basis of Buyer's own evaluation, without the benefit of any representation or warranty from Seller except as specifically set forth in Section 5.2 below.

(b) Buyer acknowledges that notwithstanding any prior or contemporaneous oral or written representations, statements, documents or understandings, this Agreement and the Implementing Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof and supersedes all such prior or contemporaneous oral or written representations, statements, documents or understandings and will remain unaffected by any representation, statement or understanding subsequent to the date hereof not constituting a duly executed amendment to this Agreement. Buyer further acknowledges that (i) except as expressly set forth in Section 5.2 below, neither Seller nor its constituent members, nor any of their respective members, partners, affiliates, officers, directors, employees, agents or representatives, have previously or does under this Agreement make any representation or warranty of any kind whatsoever, either express or implied, with respect to the Property or any related matter (and hereby disclaims any of the same that may exist), (ii) no person acting on behalf of Seller is authorized to make, and by its execution hereof Buyer acknowledges that no person acting on behalf of Seller has made, any representation, agreement, statement, warranty, guaranty or promise regarding the Property or the transaction contemplated herein except as set forth in this Agreement, and no such representation, warranty, agreement, guaranty, statement or promise, if any, made by any person acting on behalf of Seller shall be valid or binding upon Seller unless expressly set forth in this Agreement or in the documents and instruments to be executed by Seller and delivered at the Closing on the Cash Property pursuant to the terms of this Agreement, and (iii) the Property shall be sold to Buyer hereunder in its "**AS IS**" condition.

(c) In particular, but without limiting the foregoing, and except as set forth in Section 5.2 below, no representations or warranties have been made or are made by Seller hereunder with respect to the condition, habitability, suitability, size, usable area, zoning, development, occupation or management of the Property, the available uses of the Property, the boundary lines of or any encroachments or easements affecting the Land, the access or lack of vehicular and pedestrian access to the Land, the presence of wetlands, the presence or availability of water or sewage disposal on or to the Real Property, the Property's compliance with applicable statutes, laws, codes, ordinances, regulations or requirements relating to development, zoning, subdivision, planning, building, fire, safety, health, leasing, hazardous material or environmental matters or the Property's compliance with covenants, conditions and restrictions (whether or not of record), other local, municipal, regional, state or federal requirements, or other statutes, laws,

codes, ordinances, regulations or requirements, including without limitation any requirements under Environmental Laws.

Buyer, by executing this Agreement, acknowledges that Buyer has made or will make Buyer's own independent investigation as deemed necessary or appropriate concerning the use, sale, development or suitability of the Property, as open space or otherwise, and the status of the land use and other approvals, licenses and/or permits concerning the Real Property, including any requirements under Environmental Laws. Such investigations may include without limitation and, as deemed necessary by Buyer, any desired investigations or analyses of present or future laws, statutes, rules, regulations, ordinances, limitations, restrictions, requirements or approvals concerning the use, density, location or suitability of the Property and the existing or proposed development or condition thereof (collectively "**Regulations**"); any governmental permits, licenses, approvals or acts (collectively, the "**Permits**"); the effect of any governmental action on the issuance or continued effectiveness of any Permits; the necessity or existence of any dedications, fees, charges, costs, exactions or assessments that may be imposed in connection with any Regulations; the creation of any districts or the obtaining of any required Permits; the size, dimensions, location or topography of the Land; the availability or adequacy of vehicular and pedestrian access to the Land, or of water, sewage or any other utilities serving the Land; the presence or adequacy of infrastructure or other improvements on, near or affecting the Land; the presence on the Real Property of any threatened or endangered species, or any archaeological or paleontological significance; the extent or condition of any grading or other site work already performed or hereafter required for the present or proposed use or development of the Land; any surface, soil, soil vapor, subsoil, geologic or groundwater conditions or other physical conditions of or affecting the Real Property, including without limitation hazardous materials and drainage; and all other matters concerning the condition, use, development, operation and sale of the Property or any portion thereof.

Buyer further acknowledges that Buyer shall be responsible for payment of all costs of owning, operating, using and/or developing the Property from and after the Closing Date, including without limitation all governmental fees, taxes and assessments, and that Seller shall not be required to pay any funds or to dedicate, donate or grant any other property owned by Seller in order to satisfy a governmental permit or condition so that Buyer will be allowed to own, operate, use and/or further develop the Property. Buyer further acknowledges and agrees that, from and after the Closing Date, Buyer shall bear all costs and obligations in connection with the use of the Land, including without limitation any environmental clean-up/remediation costs, if any, and the costs, if any, of creating vehicular and/or pedestrian access to the Land by bridge, boardwalk or otherwise for the Property.

(d) As used in this Agreement, "**hazardous materials**" includes petroleum, asbestos, radioactive materials or substances defined as "**hazardous substances**," "**hazardous materials**" or "**toxic substances**" (or words of similar import) in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801, et seq.), the Resource Conservation and Recovery Act (42 U.S.C. 6901, et seq.), under the applicable laws of the State of California or under any other law relating to human health or the environment. The laws described in the preceding sentence, all regulations promulgated thereunder, and all orders, judgments, decrees, licenses, permits and other governmental restrictions, covenants and

requirements relating to such laws, human health, the environment or any hazardous materials are collectively referred to herein as "**Environmental Laws**." Buyer shall rely solely upon its own investigation, testing and inspection of the Property and (at Buyer s option) upon the aid and advice of Buyer's independent hazardous materials and Environmental Laws expert(s) in purchasing the Property, and shall take title to the Property without any warranty, express or implied, by Seller or any employee or agent of Seller as to hazardous materials and Environmental Laws.

ARTICLE 4
CLOSING AND ESCROW

4.1 DEPOSIT WITH ESCROW HOLDER AND ESCROW INSTRUCTIONS. Upon execution of this Agreement, the parties shall deposit an executed counterpart hereof with Escrow Holder and this Agreement, together with the "**General Provisions**" of Escrow Holder's standard preprinted form of escrow instructions, shall serve as the instructions to Escrow Holder for consummation of the purchase and sale contemplated hereby. Seller and Buyer agree to execute such additional and supplementary escrow instructions as may be appropriate to enable Escrow Holder to comply with the terms of this Agreement; provided, however, that in the event of any conflict between the provisions of this Agreement and any supplementary escrow instructions, including such General Provisions, the terms of this Agreement shall control unless such supplemental escrow instructions specifically are stated to control.

4.2 CLOSING. The closing on the Credit Property and the closing on the Cash Property hereunder (the "**Closings**") and the execution and exchange of documents and the delivery of all items to be made at the Closings under the terms of this Agreement shall be made at the offices of Escrow Holder; provided, however, that all such actions shall be effective as of the Closing Dates, unless expressly indicated otherwise. In the case of the Credit Property, the Close of Escrow shall be the date the Grant Deed to the Credit Property is recorded in the office of the County Recorder. In the case of the Cash Property, the Close of Escrow shall be the date the Grant Deed to the Cash Property is recorded in the office of the County Recorder.

4.3 CONDITIONS PRECEDENT. Seller shall have no obligation to sell the Property to Buyer and Buyer shall have no obligation to purchase the Property from Seller unless and until the other party shall have complied with each and every condition of this Agreement applicable to it. Failure by either party to proceed to the Closings prior to the Credit Property Closing Date (for the Credit Property) or the Cash Property Closing Date (for the Cash Property), as a result of the failure by the other party to have satisfied or complied with a condition applicable to it shall not be deemed to be a breach of this Agreement.

(a) Conditions To Buyer's Obligation To Close. Buyer's obligation to close Escrow on the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) under this Agreement shall be subject to the satisfaction or written waiver, in whole or in part, by Buyer of each of the following conditions precedent:

(1) Title Company has committed to issue the Title Policy in the form prescribed in Section 3.1(a).

(2) Seller's representations and warranties set forth in this Agreement shall be true and correct in all material respects as of the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property).

(3) Seller shall not be in material default of any term or condition of this Agreement.

(4) Seller and Buyer shall have entered into the Implementing Agreement, and the Implementing Agreement shall have been recorded in the office of the County Recorder, and shall remain effective.

(b) Conditions To Seller's Obligation To Close. Buyer's obligation to close Escrow on the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) under this Agreement shall be subject to the satisfaction or written waiver, in whole or in part, by Seller of each of the following conditions precedent:

(1) Buyer shall not be in material default of any term or condition of this Agreement.

(2) Buyer s representations and warranties set forth in this Agreement shall be true and correct in all material respects as of the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property).

(3) Seller and Buyer shall have entered into the Implementing Agreement, and the Implementing Agreement shall have been recorded in the office of the County Recorder and shall remain effective.

If any of the foregoing conditions precedent are not satisfied on or before the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property), or expressly waived in writing by the party for whose benefit the condition exists, then subject to the other terms and provisions of this Agreement, such party shall have the right to terminate this Agreement in accordance with Section 7.4.

4.4 CREDIT PROPERTY CLOSING

(a) **DELIVERY BY SELLER**. On or prior to the Credit Property Closing Date, Seller shall deposit with Escrow Holder the following:

(1) A Grant Deed in the form of Exhibit E-1 attached hereto (the "**Credit Closing Deed**"), duly executed by Seller and acknowledged;

(2) A Transferor's Certificate duly executed by Seller in the form of Exhibit F attached hereto (and/or any related form required by Escrow Holder, including without limitation California Form 597W); and

(4) All other documents and instruments called for hereunder which have not previously been delivered.

(b) **DELIVERY BY BUYER**. On or prior to the Credit Property Closing Date, Buyer shall deposit with Escrow Holder the following:

(1) The Purchase Price for the Credit Property in accordance with Sections 2.1 and 2.2 above; and

(3) All other documents and instruments called for hereunder which have not previously been delivered.

4.4 CASH PROPERTY CLOSING

(a) **DELIVERY BY SELLER**. On or prior to the Cash Property Closing Date, Seller shall deposit with Escrow Holder the following:

(1) A Grant Deed in the form of Exhibit E-2 attached hereto (the "**Cash Closing Deed**"), duly executed by Seller and acknowledged;

(2) A Transferor's Certificate duly executed by Seller in the form of Exhibit F attached hereto (and/or any related form required by Escrow Holder, including without limitation California Form 597W); and

(3) The Reports and all documents concerning the Property prepared by the Approved Consultants.

(4) All other documents and instruments called for hereunder which have not previously been delivered.

(b) **DELIVERY BY BUYER**. On or prior to the Cash Property Closing Date, Buyer shall deposit with Escrow Holder the following:

(1) The Purchase Price for the Cash Property in accordance with Sections 2.1 and 2.2 above; and

(3) All other documents and instruments called for hereunder which have not previously been delivered.

4.6 OTHER DELIVERIES. Seller and Buyer shall each deposit with Escrow Holder and Title Company such other instruments as are reasonably requested by such persons or entities or otherwise required to close the escrow and consummate the purchase of the Property in accordance with the terms hereof and to obtain the issuance of the Title Policy.

4.7 PRORATIONS AND APPORTIONMENTS. Subject to the following, all revenues (if any) and expenses of the Property shall be prorated and apportioned by Escrow Holder as of 12:01 a.m. of the Cash Property Closing Date, so that Seller shall bear all expenses and have the benefit of all income with respect to the Property through and including the period preceding that time, subject to the following:

(a) Any revenue or expense amount which cannot be ascertained with certainty as of the Cash Property Closing Date shall be prorated on the basis of the parties' reasonable estimates of such amount and shall be the subject of a final proration as soon thereafter as the precise amounts can be ascertained, but in no event later than thirty (30) days after the Cash Property Closing Date. A pre-Closing statement setting forth such agreed prorations shall be prepared by Escrow Holder and approved and executed by Seller and Buyer at the Cash Property Closing. Escrow Holder shall not make any proration except as set forth on such approved and executed pre-Closing statement.

(b) Income and expenses to be prorated shall include without limitation the following:

(i) Real Property Taxes, Bonds and Assessments. All nondelinquent general and special real property taxes, bonds and assessments with respect to the Real Property shall be prorated as of the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) based upon the latest available tax bills or tax information. Any bonds and assessments with respect to the Real Property, if any, shall not be paid in full by Seller, but the current installment of such bonds and assessments shall be prorated between Buyer and Seller as of the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property), as provided above. All special taxes, supplemental taxes or assessments (including any escaped assessments) which are attributable for the period prior to the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) shall be paid by the Seller. After the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) the Buyer shall be responsible for paying or cancelling, as applicable, the special taxes, property taxes, assessment and/or Mello Roos Bonds. If Seller has prepaid any taxes, assessments, or Mello-Roos bonds that are cancelled pursuant to California Revenue and Taxation Code Section 5086, Seller may seek any refunds to which it is entitled from applicable taxing agencies. Buyer will reasonably cooperate with Seller in Seller's efforts, if any, to seek such refunds. This Section 4.7 shall survive the Closing.

(ii) Supplemental Real Property Taxes. With respect to any supplemental taxes assessed against the Real Property pursuant to California Revenue and Taxation Code Sections 75, et seq., Seller shall be obligated to pay all such supplemental taxes assessed against the Real Property, if any, for any period prior to the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property), and Buyer shall be obligated to pay all such supplemental taxes assessed against the Real Property, if any, for any period from and after the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property).

(iii) Utilities. All payments with respect to any utilities servicing the Property shall be prorated as of the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property). Seller and Buyer shall attempt to obtain billings and meter readings as of the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) to aid in such prorations. Seller shall use Seller's commercially reasonable efforts to switch all utilities to Buyer's name as of the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash

Property) and to receive a direct bill from the providers of utilities outside of Escrow. In addition, all utility deposits posted by Seller prior to the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) shall be the sole property of Seller and shall be retained by Seller, and Buyer shall be solely responsible to post any new utility deposits that are required from and after the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property).

(c) Seller shall pay the portion of the premium for the Title Policy related to issuance of a Standard Coverage Owner's Policy of Title Insurance (without endorsements). Seller shall pay the recording cost and any documentary or other transfer taxes applicable to the Deed and the reconveyance of any deed of trust encumbering the Real Property. Buyer shall pay all premiums, costs and charges in connection with the Title Policy not required to be paid by Seller, including any additional premium for ALTA Extended Coverage. Buyer shall pay all recording costs not applicable to the Deed or any reconveyance of any deed of trust encumbering the Real Property. Buyer shall pay all costs associated with obtaining a new or updated survey of the Land.

(d) Buyer acknowledges that Seller shall terminate all of its insurance coverage with respect to the ownership and operation of the Property as of the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) and agrees that Buyer shall be responsible for obtaining Buyer's own insurance as of the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) and thereafter.

(e) Seller and Buyer shall share equally all escrow fees, costs and charges. All other costs and expenses not specifically provided for hereunder shall be apportioned or allocated between Buyer and Seller in the manner customary in Contra Costa County, California.

(f) Seller and Buyer shall each pay its own attorneys' fees in connection with the drafting, negotiation and execution of this Agreement and the exhibits hereto, and the Closing of the transaction contemplated hereby.

4.8 PAYMENT OF PRORATION ADJUSTMENTS. Either party owing the other party any sum based on adjustments made to prorations after the Cash Property Closing Date shall promptly pay the same to the other party within ten (10) days after delivery of a statement therefor. In the event such payment is not timely made, such sum shall accrue interest at the rate of ten percent (10%) per annum (or, if less, the maximum rate then permitted by law to be contracted for by the parties) from the date of demand until the date of payment.

4.9 CLOSE OF ESCROW.

(a) **Credit Property**: Provided that Escrow Holder has received the documents and funds related to the Credit Property described in Sections 2.2, 4.4, 4.5 and 4.6 above for the close of escrow on the Credit Property and has not received notice from any party either that an agreement of another party hereunder has not been performed, that a condition set forth herein has not been satisfied or waived or that this Agreement has terminated (by its terms or by an election duly made hereunder), and further provided that the issuance of, or an unconditional commitment

to issue, the Title Policy has been obtained, Escrow Holder is authorized and instructed on the Credit Property Closing Date to:

(1) Record the Deed for the Credit Property with the Contra Costa County Recorder; and

(2) Deliver the Title Policy and all items deposited by Seller in Escrow with respect to the Credit Property, other than the Resports, to Buyer.

(a) **Cash Property**: Provided that Escrow Holder has received the documents and funds related to the Cash Property described in Sections 2.2, 4.4, 4.5 and 4.6 above for the close of escrow on the Cash Property and has not received notice from any party either that an agreement of another party hereunder has not been performed, that a condition set forth herein has not been satisfied or waived or that this Agreement has terminated (by its terms or by an election duly made hereunder), and further provided that the issuance of, or an unconditional commitment to issue, the Title Policy has been obtained, Escrow Holder is authorized and instructed on the Cash Property Closing Date to:

(1) Record the Deed for the Cash Property with the Contra Costa County Recorder; and

(2) Deliver the Title Policy and all items deposited by Seller in Escrow with respect to the Cash Property to Buyer.

4.10 DISBURSEMENT OF FUNDS. On the Credit Property Closing Date, Escrow Holder shall disburse to Seller fee credit voucher described in Section 2.2(b). On the Cash Property Closing Date, Escrow Holder shall disburse to Seller by wire transfer pursuant to wire instructions from Seller the Purchase Price, as adjusted to reflect Seller's share of prorations and costs of escrow hereunder.

4.11 NOTIFICATION; CLOSING STATEMENTS. In the event that Escrow Holder cannot comply with the instructions herein or to be provided, Escrow Holder is not authorized to cause the recording of the Deed, but instead shall notify Seller of such fact without delay. As soon as reasonably practicable after the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property), Escrow Holder shall deliver to each party a true, correct and complete copy of such party's Closing Statement, in the form customarily prepared by Escrow Holder, and all other items in Escrow Holder's possession to which such party is entitled hereunder.

ARTICLE 5
REPRESENTATIONS, WARRANTIES AND ADDITIONAL COVENANTS

5.1 BUYER'S REPRESENTATIONS. In order to induce Seller to enter into this Agreement and the transaction contemplated hereunder, and in addition to Buyer's representations, covenants and acknowledgements set forth elsewhere in this Agreement, including without limitation Section 3.4 above, Buyer hereby makes the following representations and warranties as of the date hereof and again as of the Closing Date, which representations and warranties shall survive after the Closing Date pursuant to Section 9.3 below:

(a) Buyer is duly organized and validly existing under the laws of the State of California and has full power and authority to enter into and comply with the terms of this Agreement.

(b) This Agreement and all documents executed by Buyer which are to be delivered to Seller hereunder are and will be duly authorized, executed and delivered by Buyer, are and as of the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) will be legal, valid and binding obligations of Buyer and do not and as of the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) will not violate any provisions of any governing statute, ordinance or regulation that affects Buyer, or any agreement or judicial order to which Buyer is a party or to which Buyer is subject.

(c) No authorization, consent, order, approval or license from, or filing with or other act by, any governmental authority or person or entity is or will be necessary to permit the valid execution and delivery by Buyer of this Agreement or the performance by Buyer of the obligations to be performed by Buyer under this Agreement.

5.2 SELLER'S REPRESENTATIONS. In order to induce Buyer to enter into this Agreement and the transaction contemplated hereunder, as qualified by the provisions of Section 3.4(d) above, Seller hereby makes the following representations and warranties as of the date hereof and again as of the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property), which representations and warranties shall survive for ninety (90) days after the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) pursuant to Section 9.3 below:

(a) Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, is registered and qualified to do business in the State of California, and has full power and authority to enter into and comply with the terms of this Agreement.

(b) This Agreement and all documents executed by Seller which are to be delivered to Buyer hereunder are and will be duly authorized, executed and delivered by Seller, are and as of the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) will be legal, valid and binding obligations of Seller and do not and as of the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) will not violate any provisions of any agreement or judicial order to which Seller is a party or to which it or the Property is subject. The person(s) who have executed this Agreement (and other instruments required hereunder) on behalf of Seller are duly authorized to execute the same on Seller's behalf and no other persons are required to execute this Agreement or such other instruments.

(c) To Seller's actual knowledge, No authorization, consent, order, approval or license from, filing with or other act by any governmental authority or person or entity is or will be necessary to permit the valid execution and delivery by Seller of this Agreement or the performance by Seller of the obligations to be performed by Seller under this Agreement.

(d) Neither Seller nor any member of Seller has commenced (within the meaning of any bankruptcy law) a voluntary case, consented to the entry of an order for relief against it in an involuntary case, or consented to the appointment of a custodian of it or for all or any substantial part of its property, nor has a court of competent jurisdiction entered an order or decree under any bankruptcy law that is for relief against Seller or its members in any involuntary case or appoints a custodian of Seller or its members or for all or any substantial part of Seller's property.

(e) To Seller's actual knowledge, Seller has received no written notice of and has no actual knowledge of any continuing, pending or threatened actions, suits, proceedings or governmental or administrative investigations against or affecting the Property, except that City and/or the Redevelopment Agency of the City of Hercules has previously indicated it/they may pursue condemnation proceedings to obtain all or some portion of the Property.

(f) To Seller's actual knowledge, except as specified in Section 5.2(e), Seller has received no other written notices and has no actual knowledge of any other pending or threatened proceedings for condemnation or other taking by any public authority affecting the Property or any portion thereof.

(g) Except as specified on Exhibit G, Seller has no actual knowledge of any existing oral or written leases, subleases, occupancies or tenancies, with Seller as lessor or landlord, of all or any portion of the Real Property.

(h) Except as specified on Exhibit G, Seller has no actual knowledge that there are any Service Contracts in effect as of the date of this Agreement.

(i) To Seller's actual knowledge, Seller has made available to Buyer, for Buyer's review pursuant to Section 3.2 above, all Reports within its possession or control concerning the Property.

As used in this Agreement and any Exhibit hereto, "Seller's knowledge", "Seller's actual knowledge", the "actual knowledge of Seller" or similar phrase means the actual present knowledge of James R. Anderson of AndersonPacific, LLC, the managing member of APL-Hercules, LLC, which is the manager of Seller. "Seller's knowledge", "Seller's actual knowledge", the "actual knowledge of Seller" or similar phrase expressly excludes any past, constructive, and/or imputed knowledge of James R. Anderson, and further excludes any knowledge of any other employee or agent of Seller or Seller's members or the members of such members. In connection with the foregoing, Seller has no duty of inquiry or to review files and records.

5.3 ADDITIONAL COVENANTS. The parties hereby further covenant and agree as follows:

(a) Indemnities. Buyer shall, in addition to any other indemnities set forth elsewhere in this Agreement, defend, indemnify and hold harmless Seller and its members and their respective members, officers, directors, shareholders, partners, employees, insurers, lenders, attorneys, agents and representatives, and predecessors in interest in the ownership of the Property (including but not limited to members of the Pankey family, Oso Trabuco, LLC and Hercules

Properties, Inc.) from all loss, liability, damages, costs and expenses (including without limitation attorneys fees) (collectively, "Loss") arising from or related to any acts or omissions of Buyer, by and through its members, officers, directors, shareholders, partners, employees, insurers, attorneys, agents, and representatives, as owner of the Property accruing or occurring from and after the Closing Date. Seller shall defend, indemnify and hold harmless Buyer and its officers, directors, employees, insurers, agents and representatives from all Loss arising from or related to any acts or omissions of Seller , by and through its members, officers, directors, shareholders, partners, employees, insurers, attorneys, agents, and representatives, as owner of the Property accruing or occurring prior to the Closing Date. Notwithstanding the foregoing, Buyer expressly acknowledges that Seller shall not indemnify Buyer pursuant to this Section nor shall Seller be responsible in any way for any environmental clean-up, testing, investigation, management or controls, or clean-up or remediation costs that Buyer may incur due to the condition of the Property, or for any costs incurred by Buyer in order to create pedestrian or vehicular access to the Property or to obtain any necessary approval from any government agency with jurisdiction over the Property, or for any costs incurred in order to use the Property for Buyer's current or future intended purpose(s). Notwithstanding the foregoing, or anything herein to the contrary herein, in no event shall Buyer have any indemnity obligation or liability hereunder for any Loss occurring on or related to the Overall Property that is not included within the Property acquired by Buyer, unless such Loss is directly caused by a physical act to the Property by Buyer, its employees, or its agents.

With respect to the indemnity obligations of Buyer and Seller set forth above and elsewhere in this Agreement, promptly after the receipt by any indemnified party (an "**Indemnitee**"), of notice of the commencement of any action against such Indemnitee by a third party, such Indemnitee shall, if a claim with respect thereto is or may be made against Buyer or Seller, as the case may be (an "**Indemnifying Party**"), give such Indemnifying Party prompt written notice thereof, specifying in reasonable detail the Loss claimed and the amount of liability asserted against the Indemnifying Party as a result of the action. The failure to give such notice shall not relieve any Indemnifying Party from any obligation hereunder except where, and then solely to the extent that, such failure actually prejudices the rights of such Indemnifying Party. Such Indemnifying Party shall have the absolute right after the receipt of notice of the action to defend against, negotiate, settle or otherwise deal with such action, at such Indemnifying Party's expense and with counsel of its choice, provided that the Indemnifying Party so notifies the Indemnitee that it will defend such action within thirty (30) days after receipt of such notice and commences the defense of such action (or such lesser time period if, in the reasonable judgment of the Indemnifying Party, the nature and scope of the action so requires it); provided, however, that the Indemnitee may participate in any such proceeding with counsel of its choice and at its sole cost and expense and the Indemnifying Party shall not settle any such action unless the Indemnitee is fully released without any admission of liability and without the requirement that the Indemnified Party take any action or refrain from taking any action. If the Indemnified Party does not elect to assume the defense of such action in accordance with the terms of this Section 5.3(a), the Indemnitee shall have the right to defend such action with counsel of its choice and the Indemnifying Party will reimburse the Indemnitee for the costs thereof, including reasonable attorneys' fees and expenses incurred. The Indemnifying Party will not be liable for any judgment or settlement with respect to such action effected without its prior written consent, which consent will not be unreasonably withheld. The parties agree to cooperate fully with each other in connection with the defense, negotiation or settlement of any such indemnity claim.

Notwithstanding the foregoing, the Indemnitee shall have the right to employ separate counsel at the Indemnifying Party's expense and to control its own defense of such asserted Loss if an actual and material conflict exists between the interests of the Indemnifying Party and the interests of such Indemnitee with respect to the action that would require such separate representation. For purposes hereof, "action" shall mean any claim, action, cause of action or suit (in contract, tort or otherwise), arbitration, proceeding or investigation by any person or entity, including by or before any governmental entity.

Any claim by an Indemnitee for indemnification other than indemnification against a third party action as set forth above in this Section 5.3(a) (a "**Direct Claim**") will be asserted by giving the Indemnifying Party written notice thereof, and the Indemnifying Party will have a period of thirty (30) calendar days (the "**Response Period**") within which to respond in writing to such Direct Claim. If the Indemnifying Party does not respond (or does so respond but does not agree to pay such Direct Claim in full) within the Response Period, the Indemnifying Party will be deemed to have rejected such claim, and the Indemnifying Party or the Indemnitee may refer such dispute to arbitration by notice to the other party within ten (10) days after the expiration of the Response Period (the "**Arbitration Referral Period**"). If the matter is referred to arbitration, each party shall select an arbitrator and the two so selected shall agree on a third arbitrator from a panel of arbitrators selected by the American Arbitration Association. The arbitration shall be pursuant to the Rules of the American Arbitration Association and shall be conducted in Contra Costa, California. The parties shall be entitled to discovery in accordance with Section 1283.05 of the California Code of Civil Procedure. Judgment upon any resulting arbitration award may be entered in any court of competent jurisdiction. As part of such award, the arbitrators shall establish their fees and expenses in connection therewith and allocate such fees and expenses between the parties, who shall promptly pay their allocable shares. Any award shall be a conclusive determination of the matter. If neither party properly refers the matter to arbitration prior to the expiration of the Arbitration Referral Period, then the Indemnitee will be free to pursue such remedies as may be available to the Indemnitee at law or in equity.

(b) Covenant Regarding Access Easement in Favor of Seller. Buyer and Seller acknowledge and agree that the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) and in connection with the severance of Seller's present ownership of the Land and certain adjacent land, Buyer shall grant to Seller or Seller's designee a non-exclusive, perpetual easement (the "**Access Easement**") onto, over and/or across a portion of the Land, such portion to be determined by Buyer and Seller, in order to allow for ingress and egress by Seller to the waterfront from the adjacent land owned and being developed by Seller. Such Access Easement shall be recorded in the Official Records of Contra Costa County, California, with respect to both the Land and Seller's adjacent land, concurrently with such severance of such joint ownership. Seller and Buyer hereby covenant and agree that each will cooperate reasonably with respect to the grant of such Access Easement, including without limitation the exact location of the easement area on the Land and the form and content of the easement document. Buyer shall also grant in its reasonable discretion such other temporary or permanent easements, licenses or similar rights on, over, through, under and across any needed portions of the Land for such access to the waterfront and for such other purposes as are reasonably necessary for the development, operation or maintenance of the adjacent land owned by Seller.

ARTICLE 6

CASUALTY OR CONDEMNATION

6.1 DAMAGE OR DESTRUCTION. Any improvements that may be now existing on the Property are irrelevant to this transaction. Therefore, all risk of loss with regard to such improvements shall be with the Buyer if this transaction closes, and shall remain with the Seller if this transaction does not close. In the event any such improvements are damaged or destroyed prior to the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property), the Buyer shall not be entitled to (i) terminate this Agreement, (ii) a reduction in the Purchase Price, or (iii) an assignment of any insurance proceeds payable to Seller.

6.2 CONDEMNATION.

(a) In the event a governmental entity other than the Buyer or the Redevelopment Agency of the City of Hercules commences eminent domain proceedings to take a material portion of the Property after the date hereof and prior to the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property), then either Buyer or Seller shall have the option to terminate this Agreement by written notice to the other and Escrow Holder within five (5) business days after Buyer and Seller receive notice of such commencement.

(b) In the event a governmental entity commences eminent domain proceedings to take a material portion of the Property after the date hereof and prior to the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property)and this Agreement is not terminated pursuant to Section 6.2(a) above as a result thereof, then the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) shall occur as scheduled notwithstanding such proceeding.

6.3 NO DUTY TO RESTORE. Buyer acknowledges and agrees that in no event shall Seller have any obligation to repair or restore the Property or any portion thereof or any other liability hereunder as a result of any casualty or condemnation.

ARTICLE 7
DEFAULT AND TERMINATION

7.1 DEFAULT BY SELLER. In the event Seller fails to perform any of its obligations or is otherwise in default hereunder, Buyer shall have the right to give notice to Seller and Escrow Holder specifically setting forth the nature of such failure and stating that Seller shall have a period of ten (10) business days to cure such failure. If Seller has not cured such failure within such period (or, if such failure is not capable of being cured within ten (10) business days, Seller either has not commenced in good faith the curing of such failure within such period or does not diligently thereafter complete such cure prior to the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property), Buyer shall have the right to exercise any of the following mutually exclusive remedies:

(a) Waive such failure and proceed to the Closing on the Cash Property or the Credit Property, as the case may be, with no reduction in the Purchase Price.

(b) Terminate this Agreement by notice to Seller and Escrow Holder to that effect, in which event (i) Escrow Holder shall automatically return all sums (including the Deposit, but excluding deductions from the Deposit authorized by Section 2.2) deposited by Buyer (provided that Seller shall retain the Independent Consideration), and (ii) this Agreement shall terminate and the parties shall have no further rights or obligations hereunder except for those that expressly survive termination.

(c) File an action in any court of competent jurisdiction for specific performance only, but subject to Section 9.11 below and provided that in no event shall Seller be liable for damages or monetary relief of any kind (including but not limited to general, special, punitive, or consequential damages) as the result of a default by Seller hereunder (except for attorneys fees pursuant to Section 9.6 herein).

(d) Except for matters included within Seller's representations and warranties expressly set forth herein, effective as of the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property), Buyer and anyone claiming by, through or under Buyer, hereby waives its right to recover from and fully and irrevocably releases Seller, its members, employees, officers, directors, representatives, agents, servants, attorneys, lenders, insurers, affiliates, parent and subsidiary entities, predecessors in interest, successors and assigns ("**Released Parties**") from any and all claims that Buyer may now have or hereafter acquire against any of the Released Parties for any costs, loss, liability, damage, expenses, demand, action or cause of action arising from or related to any matter affecting the Property, or any portion thereof. Except for matters included within Seller's representations and warranties expressly set forth herein, and the fraud or intentional misrepresentation(s) of Seller, effective as of the Closing, this release includes claims of which Buyer is presently unaware or which Buyer does not presently suspect to exist which, if known by Buyer, would materially affect Buyer's release to Seller. To the extent permitted by law, Buyer hereby agrees, represents and warrants, which representation and warranty shall survive the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property), that Buyer realizes and acknowledges that factual matters now unknown to it may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown and unsuspected, and Buyer further agrees, represents and warrants, which representation and warranty shall survive the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property), that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that Buyer nevertheless hereby intends to release, discharge and acquit Seller from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which might in any way be included as a material portion of the consideration given to Seller by Buyer in exchange for Seller's performance hereunder. Buyer hereby expressly waives its rights under Section 1542 of the California Civil Code, which provides as follows:

> A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Seller and Buyer have each initialed this Section 7.1(d) to indicate its awareness and acceptance of each and every provision hereof.

Buyer's Initials Seller's Initials

7.2 DEFAULT BY BUYER. In the event Buyer fails to perform any of Buyer's obligations or is otherwise in default hereunder, Seller shall have the right to give notice to Buyer and Escrow Holder specifically setting forth the nature of such failure and stating that Buyer shall have a period of two (2) business days to cure any failure either to pay money or perform by a date certain and a period of ten (10) business days to cure any other failure. If Buyer has not cured such failure within the applicable period (or, if any such other failure is not capable of being cured within ten (10) business days, Buyer either has not commenced in good faith the curing of such failure within such period or does not diligently thereafter complete such cure prior to the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property), Seller shall have the right to exercise any of the following mutually exclusive remedies:

(a) Waive such failure and proceed to the Credit Property Closing (for the Credit Property) and the Cash Property Closing (for the Credit Property).

(b) Terminate this Agreement by notice to Buyer and Escrow Holder to that effect, in which event (i) the liquidated damages provision in section 2.2 above shall apply, and (ii) this Agreement shall terminate and the parties shall have no further rights or obligations hereunder, except for those that expressly survive termination; provided, however, that termination of this Agreement after the close of escrow on the Credit Property will not impact the completion of the sale and conveyance of the Credit Property.

7.3 OUTSIDE CLOSING DATES. In the event either party has complied with the terms and conditions of this Agreement as of the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) and the other party is not in a position to close, and provided that all conditions precedent to Closing on the Cash Property or the Credit Property (as the case may be) in favor of such non-complying party have been satisfied or waived in writing, such non-complying party shall be in material breach of this Agreement. For a period of thirty (30) days after the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property), the complying party shall have the same rights it would otherwise have under this Article 7 upon the occurrence of an uncured default on the part of the non-complying party. After that, the complying party shall be conclusively deemed hereunder to have irrevocably elected the remedy of termination under Sections 7.1(b) or 7.2(b), as applicable, and this Agreement shall be deemed to have been terminated.

7.4 EFFECT OF TERMINATION.

(a) Upon the termination of this Agreement for any reason, neither Buyer nor Seller shall have any further liability or obligation hereunder, except pursuant to Sections 3.2(a) and 5.3(a) above, this Article 7 and those provisions which survive such termination pursuant to Section 9.3 below, and Escrow Holder shall within five (5) business days thereafter return to the

party entitled thereto (or, if not specified hereunder to the contrary, to the party who deposited the same) all items previously deposited with Escrow Holder in connection with this escrow.

(b) In the event this Agreement is terminated pursuant to Section 7.1(b), 7.2(b) or 7.3 above, the party in default shall immediately upon demand from Escrow Holder pay all escrow costs and cancellation charges.

(c) In the event Buyer or Seller timely elects to terminate this Agreement in accordance with Sections 3.1(c), 3.3(e) or 6.2(a), Buyer and Seller shall split all escrow costs and cancellation charges equally and shall execute supplemental escrow instructions prepared by Escrow Holder canceling the escrow opened hereunder and unconditionally releasing each other from all past and future obligations and liabilities under this Agreement.

ARTICLE 8
MAINTENANCE OF THE PROPERTY

8.1 **MAINTENANCE**. Unless this Agreement is earlier terminated in accordance with its terms, from and after the date hereof through the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property), Seller shall maintain the Cash Property and the Credit Property in its present condition, reasonable wear and tear excepted.

8.2 **CONTRACTS AFFECTING THE PROPERTY**. Unless this Agreement is earlier terminated in accordance with its terms, from and after the Effective Date through the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property), Seller shall not materially amend or modify any existing agreements, and/or enter into any new agreements or voluntary encumbrances, relating to the Property which will not be terminable upon the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property), or which would materially affect Approved Title hereunder, without first obtaining the prior written approval of Buyer, which approval shall not be unreasonably withheld or conditioned and which shall be granted or denied within five (5) days after written request is made therefor. Any such request shall include a copy or description of the proposed amendment or modification or the proposed new agreement or encumbrance. If Buyer fails to object within such five (5) day period, Buyer shall be deemed to have approved any such amendment, modification or new agreement. In the event Buyer disapproves any new agreements, amendments or modifications, such disapproval shall be in writing and shall state with particularity the reasons for the disapproval. Seller agrees to deliver to Buyer copies of any new or amended agreements or encumbrances relating to the Property whether or not Buyer was required to consent thereto.

8.3 **PAYMENT OF OBLIGATIONS**. Unless this Agreement is earlier terminated in accordance with its terms, from and after the date hereof through the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) Seller shall timely perform and pay when due Seller's material obligations under all agreements relating to the Property to which Seller is a party, and shall timely pay when due all taxes, assessments and utility charges affecting the Property.

8.4 **IMPROVEMENTS.** Notwithstanding the foregoing or anything herein to the contrary, Seller further acknowledges that Buyer has no obligation hereunder to cause the construction of any improvements to the Property, and, except as specified in the Implementing Development Agreement, Buyer has not made, does not make and specifically negates and disclaims any representations, warranties, promises, covenants, agreements or guarantees of any kind or character whatsoever whether express or implied, oral or written, past present or future concerning the improvements, whether the improvements will be constructed, the timing of any construction or installation of the improvements, the condition of the improvements, maintenance of the improvements or any other matters whatsoever relating to the improvements.

ARTICLE 9
MISCELLANEOUS

9.1 **NOTICES**. Any notice, approval or other communication required or permitted to be given under this Agreement shall be in writing signed by the party giving such notice, and shall be deemed to have been given: (a) upon delivery by a recognized private courier company, (b) one (1) day after being deposited with Federal Express or another reliable overnight courier service, (c) upon receipt if transmitted by facsimile or e-mail, provided that an additional notice is sent pursuant to clause (a), (b) or (d) herein, or (d) three (3) days after being deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, and addressed as follows:

Seller:
Hercules Bayfront, LLC
c/o APL-Hercules, LLC
c/o AndersonPacific, LLC
6701 Center Drive West, Suite 710
Los Angeles, California 90045
Attention: James R. Anderson
Fax No.: (310) 689-2305
E-mail: jra@andersonpacificll c.com

With a copy to:
Rutan & Tucker, LLP
611 Anton Boulevard, Suite 1400
Costa Mesa, CA 92626-1931
Attention: Dan Slater, Esq.
Fax No.: (714) 546-9035
E-mail: dslater@rutan.com

If to Buyer:
City of Hercules
111 Civic Drive
Hercules, California 94547
Attention: Steve Duran, City Manager
Fax No.: (510) 799-2521
E-mail: Sduran@ci.hercules.ca.us

With a copy to:
City of Hercules
111 Civic Drive
Hercules, California 94547
Attention: City Attorney

Fax No.: (510) 799-2521

If to Escrow Holder: First American Title Insurance Company
6683 Owens Drive
Pleasanton, California 94588
Attention: Diane Burton, Escrow Officer
Escrow No. _____
Fax No.: (866) 648-7806
E-mail: dburton@firstam.com

If to Title Company: First American Title Insurance Company
6683 Owens Drive
Pleasanton, California 94588
Attention: Sue Pratt, Title Officer
Order No. _____
Fax No.: (866) 648-7806
E-mail: spratt@firstam.com

or such other address as either party may from time to time specify in writing to the other in accordance with this Section 9.1.

9.2 BROKERS AND FINDERS.

(a) Buyer hereby represents and warrants that Buyer has not agreed to pay any broker's fee, finder's fee, commission or other similar compensation in connection herewith. Buyer has not acted through any broker or finder who could claim any commission or compensation. Buyer agrees to indemnify and hold Seller harmless from and against all damages, liabilities, costs, expenses and losses (including, without limitation, reasonable attorneys' fees and costs) which Seller may sustain or incur by reason of any claim for any such fee or commission based upon agreement(s) by Buyer to pay a fee or commission.

(b) Seller hereby represents and warrants that Seller has not agreed to pay any broker's fee, finder's fee, commission or other similar compensation in connection herewith and Seller has not acted through any broker or finder who could claim any commission or compensation. Seller agrees to indemnify and hold Buyer harmless from and against all damages, liabilities, costs, expenses and losses (including, without limitation, reasonable attorney's fees and costs) which Buyer may sustain or incur by reason of any claim for any such fee or commission based upon agreement(s) by Seller to pay a fee or commission.

9.3 SURVIVAL OF REPRESENTATIONS AND WARRANTIES. All representations, covenants and warranties of the parties contained herein or in any document, certificate or statement delivered pursuant hereto are intended to and shall remain true and correct at all times during the term of this Agreement and shall be deemed to be material. Each representation and warranty contained herein shall survive the Cash Property Closing Date and any other termination of this Agreement for a period of ninety (90) days only; provided, however, that Buyer's representations set forth in Section 5.1, above, shall survive without such limitation. All indemnities contained herein shall survive the Cash Property Closing Date, the Credit Property Closing Date and any other termination of this Agreement without such limitation, and Buyer's

obligations under Section 9.11 below shall survive any termination of this Agreement other than as a result of the Cash Property Closing Date without such limitation

9.4 **FURTHER ACTS**. Each party shall, at the request of the other, execute, acknowledge (if appropriate) and deliver whatever additional documents, and do such other acts, as may be reasonably required in order to accomplish the intent and purposes of this Agreement.

9.5 **MERGER OF PRIOR AGREEMENTS; AMENDMENTS**. This Agreement and the Exhibits hereto constitute the full and complete agreement and understanding, and supersede all prior and contemporaneous agreements and understandings, between the parties hereto relating to the subject matter hereof except the Implementing Development Agreement. Without limiting the foregoing, the parties acknowledge and agree that all prior offers, counteroffers, side letters, letters of intent and correspondence regarding the Property among the parties or their agents are null and void and of no further force or effect. This Agreement may be amended or modified only by a written instrument executed by the party asserted to be bound thereby.

9.6 **ATTORNEYS' FEES**. In the event either Buyer or Seller brings any suit or other proceeding with respect to the subject matter, or to enforce any provision, of this Agreement, the prevailing party (as determined by the court, agency or other authority which adjudicates such suit or proceeding) shall, in addition to such other relief as may be awarded, be entitled to recover attorneys' fees, expenses and costs of investigation as actually incurred (including, without limitation, attorneys' fees, expenses and costs of investigation incurred in appellate proceedings, in establishing the right to indemnification or in any action or participation in, or in connection with, any state or federal bankruptcy or debtor relief case or proceeding).

9.7 **VALIDITY**. In the event of any finding of invalidity, the invalid portion of this Agreement shall be renegotiated so as to give effect to the original intent of the parties to the maximum extent permissible under law. Other portions of this Agreement shall remain unaffected, except to the extent that modification is necessary for consistency with renegotiated terms.

9.8 **NO WAIVER**. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof, nor shall any waiver constitute a continuing waiver. Except as otherwise provided in this Agreement, no waiver shall be binding unless executed by the party making the waiver.

9.9 **CONFIDENTIALITY**. The parties agree to use their best efforts, within the requirements of applicable law including without limitation the Public Records Act and the Ralph M. Brown Act, to structure their due diligence analyses in such a manner as to establish and preserve the confidentiality of all information, studies and reports relating to the Property obtained by Buyer, either by the observations and examinations of Buyer's agents and representatives or as delivered, disclosed or made available for inspection to Buyer by Seller, shall remain confidential. Buyer shall include provisions in any and all consultant and sub-consultant contracts to ensure that data and results of analyses are maintained in a confidential manner and disclosed only to Buyer and Seller. If the transaction contemplated herein fails to close for any reason, Buyer shall deliver to Seller in accordance with Section 3.3(b) above, at no cost to Seller, all such information, reports

and studies and make no further distributions or disclosures thereof. Buyer and Seller further agree that, to the extent reasonably practical, prior to the Cash Property Closing Date they shall keep the contents of this Agreement confidential and that no publicity or press release to the general public with respect to this transaction shall be made by either party or its agents without the prior written consent of the other party hereto.

9.10 **POSSESSION**. Possession of the Property shall be delivered to Buyer on the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property).

9.11 **NO PERSONAL LIABILITY OF MEMBERS/INDIVIDUALS**. The liability of Seller hereunder shall be limited solely to its interest in the Property. No member of Seller nor any officer, director, employee, broker, agent, member, lender, insurer or attorney of Seller or of Seller's members shall be personally liable with respect to any obligation or liability of Seller under this Agreement.

9.12 **Liquidated Damages.** If Buyer fails or refuses to complete the purchase of the Property on the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) account of a material default or breach hereunder by Buyer, where such default or breach is not cured by Buyer within ten (10) business days of Buyer's receipt from Seller of written notice of such default or breach, the Deposit remaining in Escrow at the time of the default shall constitute liquidated damages as follows:

LIQUIDATED DAMAGES. BUYER AND SELLER EACH AGREE THAT IN THE EVENT OF A DEFAULT OF BUYER UNDER THIS AGREEMENT CAUSED BY BUYER'S FAILURE TO PURCHASE THE PROPERTY, WHEN REQUIRED TO DO SO PURSUANT TO THE TERMS OF THIS AGREEMENT, THE DAMAGES TO SELLER WOULD BE EXTREMELY DIFFICULT AND IMPRACTICABLE TO ASCERTAIN, AND THEREFORE, IN THE EVENT OF BUYER'S FAILURE TO PURCHASE THE PROPERTY ON ACCOUNT OF A MATERIAL DEFAULT OR BREACH HEREUNDER BY BUYER, WHICH DEFAULT OR BREACH IS NOT CURED WITHIN TEN (10) BUSINESS DAYS AFTER WRITTEN NOTICE IS GIVEN BY SELLER TO BUYER, THE DEPOSIT THEN IN ESCROW SHALL SERVE AS LIQUIDATED DAMAGES FOR SUCH DEFAULT BY BUYER, AS A REASONABLE ESTIMATE OF THE DAMAGES TO SELLER, INCLUDING THE INCREMENTAL COSTS OF NEGOTIATING AND DRAFTING THIS AGREEMENT, COSTS OF COOPERATING IN SATISFYING CONDITIONS TO CLOSING, COSTS OF SEEKING ANOTHER BUYER, OPPORTUNITY COSTS IN KEEPING THE PROPERTY OUT OF THE MARKETPLACE, AND OTHER COSTS INCURRED IN CONNECTION HEREWITH. DELIVERY TO AND RETENTION OF THE DEPOSIT BY SELLER SHALL BE SELLER'S SOLE AND EXCLUSIVE REMEDY AGAINST BUYER IN THE EVENT THAT BUYER DEFAULTS UNDER THIS AGREEMENT BY NOT PURCHASING THE PROPERTY, AND SELLER WAIVES ANY AND ALL RIGHT TO SEEK OTHER RIGHTS OR REMEDIES AGAINST BUYER, INCLUDING WITHOUT LIMITATION, SPECIFIC PERFORMANCE. THE

PAYMENT AND RETENTION OF THE DEPOSIT AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677. SELLER HEREBY WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 3389. UPON BUYER'S FAILURE TO PURCHASE THE PROPERTY ON ACCOUNT OF A MATERIAL DEFAULT OR BREACH HEREUNDER BY BUYER, THIS AGREEMENT SHALL BE TERMINATED AND NEITHER PARTY SHALL HAVE ANY FURTHER RIGHTS OR OBLIGATIONS HEREUNDER, EACH TO THE OTHER, EXCEPT FOR THE RIGHT OF SELLER TO RETAIN SUCH LIQUIDATED DAMAGES.

Buyer's Initials	Seller's Initials

9.13 **SUCCESSORS AND ASSIGNS**. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns; provided, however, that Buyer's interest hereunder may not be assigned, encumbered or otherwise transferred, whether voluntarily, involuntarily, by operation of law or otherwise, without the prior written consent of Seller in its sole and absolute discretion. In the event of an approved assignment, Buyer shall not be released from any obligations hereunder.

9.14 **INTERPRETATION**. Words in the singular shall be deemed to include the plural and vice-versa and words in a particular gender shall be deemed to include the other gender. The captions and headings of the Articles and Sections of this Agreement are for convenience of reference only and shall not be deemed to define or limit the provisions hereof.

9.15 **GOVERNING LAW**. This Agreement shall be governed by and construed in accordance with the internal laws, and not the law of conflicts, of the State of California applicable to agreements made and to be performed in California.

9.16 **COUNTERPARTS**. This Agreement may be executed in one or more counterparts by the parties hereto. All counterparts shall be construed together and shall constitute one agreement.

9.17 **REPORTING RESPONSIBILITY**. Escrow Holder shall be deemed to be the "**person responsible for closing**" this transaction for purposes of Section 6045(e)(2)(A) of the IRC and shall prepare and file all returns and statements required by law, if any.

9.18 **TIME OF ESSENCE**. Time is of the essence of each and every provision of this Agreement in which time is an element. The agreement of Buyer and Seller that time is of the essence of each and every provision of this Agreement shall not be waived or modified by any conduct of the parties, and the agreement of Buyer and Seller that time is of the essence of each and every provision of this Agreement may only be modified or waived by the express written

agreement of Buyer and Seller that time shall not be of the essence with respect to a particular date or time period, or any modification or extension thereof, which is provided under this Agreement.

9.19 **EXHIBITS**. All Exhibits to this Agreement are incorporated herein by this reference as though fully set forth in the body hereof.

9.20 **NO RECORDING**. Neither Buyer nor Seller shall, without the consent of the other, record this Agreement or a short form or memorandum hereof, or take any other action that would materially and adversely affect the marketability of Seller's title to the Property.

9.21 **AUTHORITY**. Each person signing this Agreement represents and warrants that (s)he has full power and authority to execute this Agreement on behalf of the entity for whom (s)he is signing this Agreement and that the execution of this Agreement by such person is binding on such entity.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

SELLER:

HERCULES BAYFRONT, LLC, a Delaware limited liability company

By: APL-Hercules, LLC, a Delaware limited liability company Its Manager

By: AndersonPacific, LLC, a Delaware limited liability company Its Managing Member

By: _____
James R. Anderson
Managing Member

BUYER:

CITY OF HERCULES

By: _____
Name: Steve Duran
Title: City Manager

CONSENT OF ESCROW HOLDER

The undersigned Escrow Holder hereby agrees to (a) accept the foregoing Agreement as its Escrow Instructions, (b) be Escrow Holder under said Agreement for its normal and customary fees, and (c) be bound by said Agreement in the performance of its duties as Escrow Holder; provided, however, that the undersigned Escrow Holder shall have no obligations, liabilities or responsibilities under this Consent or otherwise as to any amendment to said Agreement unless and until the same shall be accepted by the undersigned; and provided, further, that this Consent is conditioned upon the parties signing such separate supplemental escrow instructions as the undersigned may request in order to incorporate Escrow Holder s General Provisions, all as contemplated under Section 4.1 of this Agreement.

FIRST AMERICAN TITLE INSURANCE COMPANY

By: _____ Date: _____, 2012

Diane Burton, Escrow Officer

LIST OF EXHIBITS

Exhibit	Description
Exhibit A-1:	Legal Description of the Parcel 1 (Railroad)
Exhibit A-2:	Legal Description of Parcel 13 (Creekside Trail)
Exhibit A-3:	Legal Description of Parcel 16 (Powder Works Plaza)
Exhibit A-4:	Legal Description of Parcel 20 (Emergency Vehicle Access)
Exhibit A-5:	Legal Description of Parcel 22 (Bay Trail)
Exhibit A-6:	Legal Description of Parcel 24 (Bayside Trail)
Exhibit A-7	Legal Description of Parcel 26 (Right of Way (John Muir Parkway))
Exhibit A-8:	Legal Description of Parcel 31 (Refugio Creek)
Exhibit A-9:	Legal Description of Parcel 32 (Public Roadway)
Exhibit A-10:	Legal Description of Parcel 33 (Shoreline City Plaza)
Exhibit A-11:	Legal Description of Parcel 34 (Right of Way (Bayfront Boulevard))
Exhibit A-12:	Legal Description of Parcel 35 (North Channel)
Exhibit A-13:	Legal Description of Parcel 37 (Right of Way (Transit Loop Drive))
Exhibit A-14:	Legal Description of Parcel 38 (Edgewater Park)
Exhibit A-15:	Legal Description of Parcel 41 (Shoreline Loop)
Exhibit B-1:	Depiction of Land
Exhibit B-2:	Easement Areas To Be Reserved In Favor of Seller
Exhibit C:	Fee Credit Voucher
Exhibit D:	Scopes of Work
Exhibit E-1	Form of Grant Deed – Credit Property
Exhibit E-2	Form of Grant Deed – Cash Property
Exhibit F:	Form of Transferor's Certificate
Exhibit G:	Due Diligence Reports

BKF

ENGINEERS
SURVEYORS
PLANNERS

November 4, 2011
BKF Job No.: 20075011-24

EXHIBIT "A-1"
DESCRIPTION
(PARCEL 1)

All that certain real property situate in the City of Hercules, County of Contra Costa, and described as follows:

BEING a portion of Parcel D as said parcel is shown on that certain map entitled "Parcel Map MS 476-00", filed October 12, 2000, in Book 179 of Parcel Maps at Pages 38, 39, and 40 (179 PM 38), in the Office of the Recorder of Contra Costa County, and a portion of Parcel D as said parcel is shown on that certain map entitled "Parcel Map MS 491-03", filed March 10, 2004, in Book 189 of Parcel Maps at Pages 40 and 41 (189 PM 40), in the Office of the Recorder of Contra Costa County, said portion being more particularly described as follows:

(RAILROAD):

BEGINNING on the most northerly corner of said Parcel D (179 PM 38) on the northeasterly line thereof;

THENCE along said northeasterly line South 37°46'59" East 23.44 feet to a point on a curve, concave northwesterly, having a radius of 1477.52 feet, from which the center bears North 45°58'17" West;

THENCE leaving said northeasterly line southwesterly along said curve through a central angle of 27°08'31", an arc distance of 699.93 feet;

THENCE South 71°10'14" West 1016.75 feet;

THENCE along a curve to the left having a radius of 1432.69 feet through a central angle of 38°06'33", an arc distance of 952.93 feet to the northerly line of said Parcel D (189 PM 40);

THENCE along said northerly line North 33°03'41" East 65.54 feet to the northerly line of said Parcel D (179 PM 38);

THENCE along said northerly line of Parcel D (179 PM 38) the following three (3) courses:

1) along a curve to the right having a radius of 1379.53 feet through a central angle of 38°04'43", an arc distance of 916.83 feet;

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Parcel 1

2) North 71°08'24" East 1075.16 feet;

3) along a curve to the left having a radius of 1201.50 feet through a central angle of 29°24'47", an arc distance of 616.80 feet to the **POINT OF BEGINNING**.

Containing an area of 60,767 square feet, more or less.

Subject to any easements of record.

A plat showing the above described is attached hereto and made a part hereof as Exhibit "B-1".

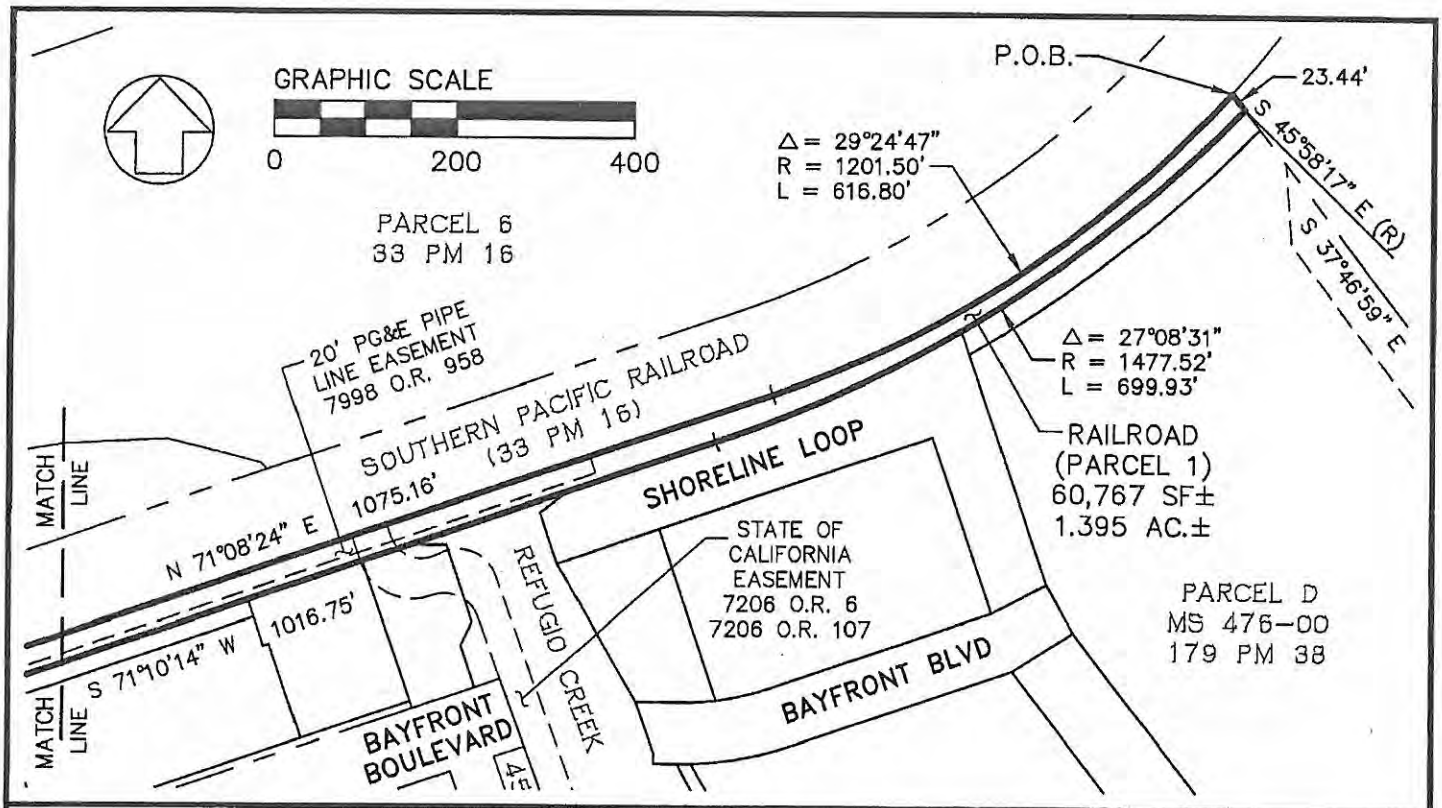
This description has been prepared from record information for BKF Engineers.

By:_____
Barry T. Williams, P.L.S. No. 6711

Dated: 11/7/11

LICENSED LAND SURVEYOR
BARRY T. WILLIAMS
No. 6711
STATE OF CALIFORNIA

K:\MAIN\2007\20075011-10 Hercules Waterfront\08 Survey\K Plats & Legal Descriptions\PARCEL-01-DESC.doc



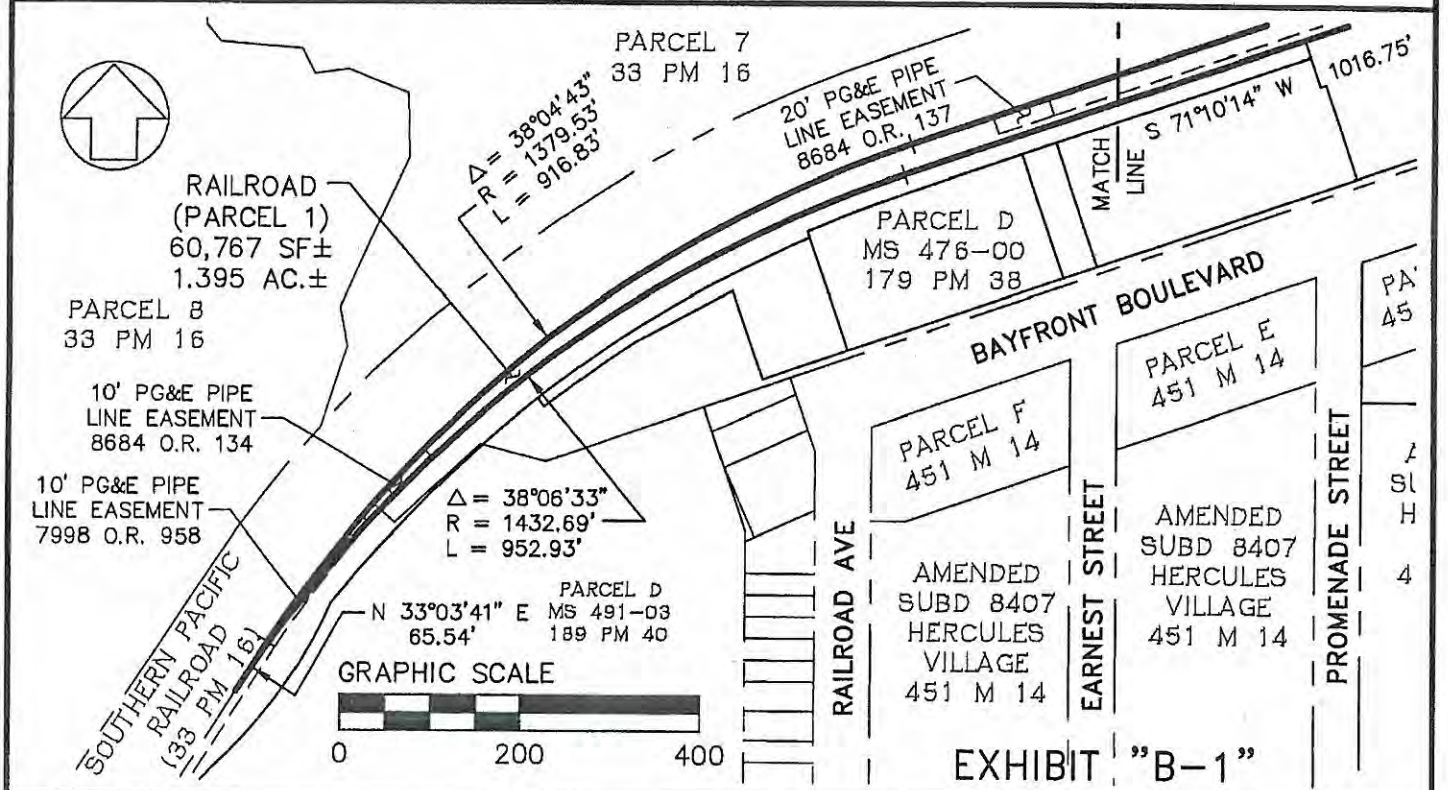


EXHIBIT "B-1"

BKF
ENGINEERS / SURVEYORS / PLANNERS

1646 NORTH CALIFORNIA BLVD
SUITE 400
WALNUT CREEK, CA 94596
925-940-2200
925-940-2299 (FAX)

Subject PLAT TO ACCOMPANY DESCRIPTION (PARCEL 1)
Job No. 20075011-20
By MLM Date 11/04/11 Chkd. BTW
SHEET 1 OF 1

BKF

ENGINEERS
SURVEYORS
PLANNERS

November 4, 2011
BKF Job No.: 20075011-40

EXHIBIT "A-2"
DESCRIPTION
(PARCEL 13)

All that certain real property situate in the City of Hercules, County of Contra Costa, and described as follows:

BEING a portion of Parcel D as said parcel is shown on that certain map entitled "Parcel Map MS 476-00", filed October 12, 2000, in Book 179 of Parcel Maps at Pages 38, 39, and 40, in the Office of the Recorder of Contra Costa County, said portion being more particularly described as follows:

(CREEKSIDE TRAIL):

A strip of land 14 feet in width, the perimeter of which is more particularly described as follows:

COMMENCING on the most easterly corner of said Parcel D on the southeasterly line thereof; THENCE along said southeasterly line South 49°30'00" West 499.01 feet to a point on a curve, concave southwesterly, having a radius of 240.00 feet, from which the center bears South 42°06'30" West; THENCE leaving said southeasterly line along said curve through a central angle of 09°54'14", an arc distance of 41.49 feet; THENCE North 57°47'44" West 152.04 feet to the **POINT OF BEGINNING**;

THENCE North 74°39'05" West 578.17 feet;

THENCE along a curve to the right having a radius of 200.00 feet through a central angle of 37°41'14", an arc distance of 131.55 feet to the beginning of a compound curve having a radius of 270.00 feet;

THENCE along said compound curve through a central angle of 12°43'32", an arc distance of 59.97 feet to a point on an arc of a curve, concave northerly, from which the center bears North 00°43'59 East;

THENCE easterly along said curve having a radius of 367.00 feet through a central angle of 02°24'04", an arc distance of 15.38 feet to a point on an arc of a curve, concave northeasterly, having a radius of 256.00 feet, from which the center bears North 64°22'26 East;

THENCE southeasterly along said curve through a central angle of 11°20'17", an arc distance of 50.66 feet to the beginning of a compound curve having a radius of 186.00 feet;

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Parcel 13

THENCE along said compound through a central angle of 37°41'14", an arc distance of 122.34 feet;

THENCE South 74°39'05" East 539.71 feet to a point on a curve, concave northeasterly, having a radius of 373.00 feet, from which the center bears North 38°29'42 East;

THENCE along said curve through a central angle of 06°17'26", an arc distance of 40.95 feet to the **POINT OF BEGINNING**.

Containing an area of 10,361 square feet, more or less.

Subject to any easements of record.

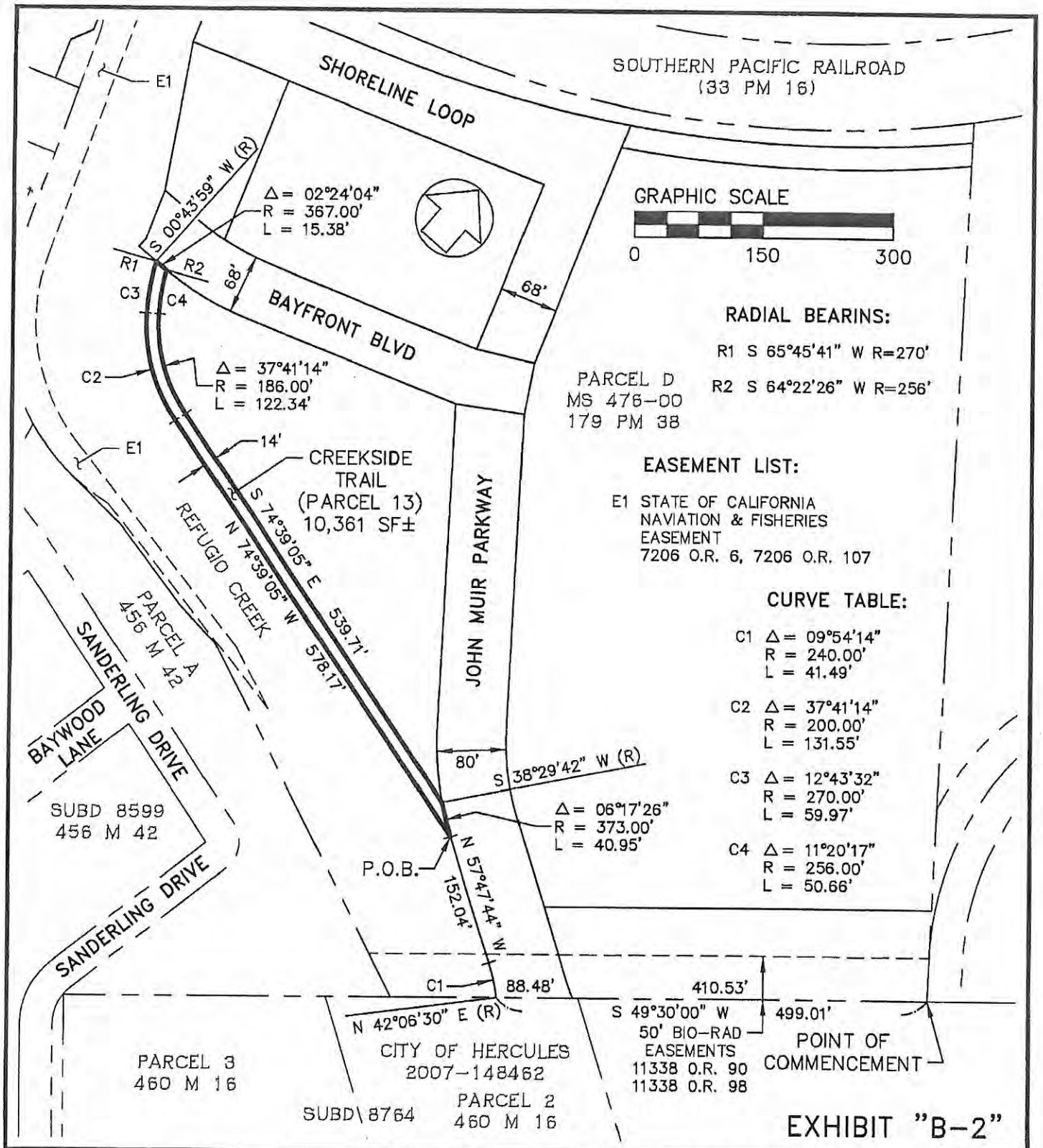
A plat showing the above described is attached hereto and made a part hereof as Exhibit "B-2".

This description has been prepared from record information for BKF Engineers.

By:_____
Barry T. Williams, P.L.S. No. 6711

Dated: 11/7/11

LICENSED LAND SURVEYOR
BARRY T. WILLIAMS
No. 6711
STATE OF CALIFORNIA



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1646 NORTH CALIFORNIA BLVD
SUITE 400
WALNUT CREEK, CA 94596
925-940-2200
925-940-2299 (FAX)

Subject PLAT TO ACCOMPANY DESCRIPTION (PARCEL 13)
Job No. 20075011-20
By MLM Date 11/04/11 Chkd. BTW
SHEET 1 OF 1

BKF

ENGINEERS
SURVEYORS
PLANNERS

November 4, 2011
BKF Job No.: 20075011-40

EXHIBIT "A-3"
DESCRIPTION
(PARCEL 16)

All that certain real property situate in the City of Hercules, County of Contra Costa, and described as follows:

BEING a portion of Parcel D as said parcel is shown on that certain map entitled "Parcel Map MS 476-00", filed October 12, 2000, in Book 179 of Parcel Maps at Pages 38, 39, and 40 (179 PM 38), in the Office of the Recorder of Contra Costa County, said portion being more particularly described as follows:

(POWDER WORKS PLAZA):

COMMENCING at the westerly terminus of that certain course delineated as "South 71°00'00" West 1182.42 feet" as shown on said map (179 PM 38), being also the general southerly line of said Parcel D; THENCE continuing along the last said line North 76°09'08" West 73.83 feet to a point on an arc of a curve, concave southeasterly, having a radius of 1405.69 feet, from which the center bears South 41°23'38" East; THENCE leaving said southerly line northeasterly along said curve through a central angle of 03°16'46", an arc distance of 80.46 feet to the **POINT OF BEGINNING**;

THENCE continuing along said curve having a radius of 1405.69 feet through a central angle of 14°19'25", an arc distance of 351.41 feet;

THENCE South 19°00'00" East 133.14 feet to a point on a line parallel with and distant 8.00 feet northerly, measured at right angles, of said general southerly line;

THENCE along said parallel line South 71°00'00" West 100.00 feet;

THENCE leaving the last said line North 19°00'00" West 104.30 feet;

THENCE South 61°34'51" West 121.12 feet to a point on an arc of a curve, concave southeasterly, having a radius of 1393.45 feet, from which the center bears South 32°59'18" East;

THENCE along said curve through a central angle of 05°07'33", an arc distance of 124.66 feet;

THENCE leaving said curve on a non-tangent line North 37°52'31" West 12.23 feet to the **POINT OF BEGINNING**.

Containing an area of 16,191 square feet, more or less.

November 4, 2011
BKF Job No.: 20075011-40
Parcel 16

Subject to any easements of record.

A plat showing the above described is attached hereto and made a part hereof as Exhibit "B-3".

This description has been prepared from record information for BKF Engineers.

By:_____
Barry T. Williams, P.L.S. No. 6711

Dated: 11/2/11

LICENSED LAND SURVEYOR
BARRY T. WILLIAMS
No. 6711
STATE OF CALIFORNIA

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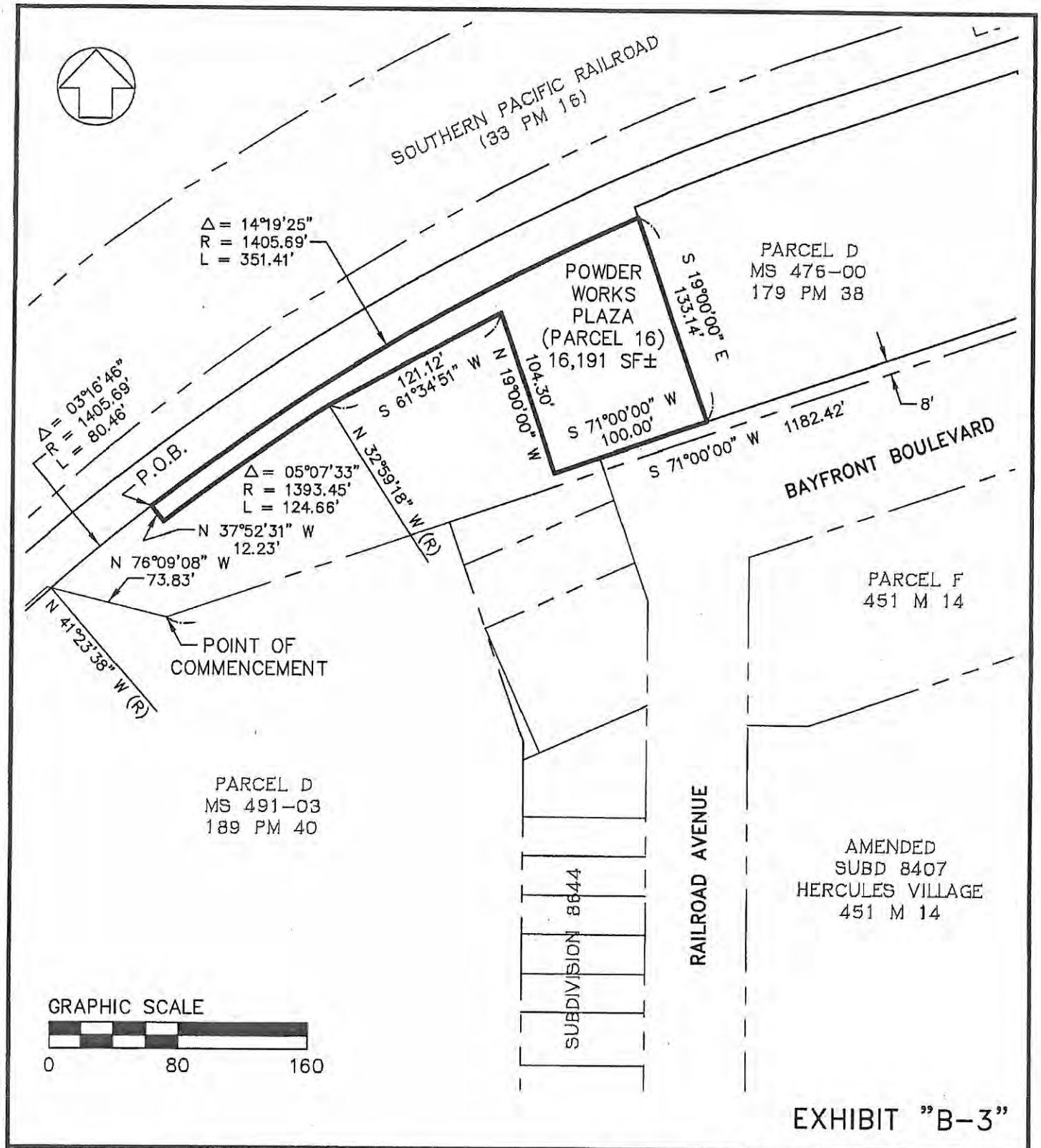


EXHIBIT "B-3"

BKF
ENGINEERS / SURVEYORS / PLANNERS

1646 NORTH CALIFORNIA BLVD
SUITE 400
WALNUT CREEK, CA 94596
925-940-2200
925-940-2299 (FAX)

Subject PLAT TO ACCOMPANY DESCRIPTION (PARCEL 16)
Job No. 20075011-20
By MLM Date 11/04/11 Chkd. BTW
SHEET 1 OF 1

BKF

ENGINEERS
SURVEYORS
PLANNERS

November 4, 2011
BKF Job No.: 20075011-40

EXHIBIT "A-4"
DESCRIPTION
(PARCEL 20)

All that certain real property situate in the City of Hercules, County of Contra Costa, and described as follows:

BEING a portion of Parcel D as said parcel is shown on that certain map entitled "Parcel Map MS 476-00", filed October 12, 2000, in Book 179 of Parcel Maps at Pages 38, 39, and 40 (179 PM 38), in the Office of the Recorder of Contra Costa County, said portion being more particularly described as follows:

(EMERGENCY VEHICLE ACCESS):

COMMENCING at the easterly terminus of that certain course delineated as "South 71°00'00" West 1182.42 feet" as shown on said map (179 PM 38), being also the general southerly line of said Parcel D; THENCE along the last said line South 71°00'00" West 102.77 feet; THENCE leaving said line North 18°49'46" West 8.00 feet to a point on a line parallel with and distant 8.00 feet northerly, measured at right angles, of said general southerly line; THENCE along said parallel line South 71°00'00" West 431.57 feet to the **POINT OF BEGINNING**; THENCE continuing along said parallel line South 71°00'00" West 40.00 feet; THENCE leaving the last said line North 19°00'00" West 144.66 feet; THENCE North 71°10'14" East 40.00 feet; THENCE South 19°00'00" East 144.54 feet to the **POINT OF BEGINNING**.

Containing an area of 5,784 square feet, more or less.

Subject to any easements of record.

A plat showing the above described is attached hereto and made a part hereof as Exhibit "B-4".

This description has been prepared from record information for BKF Engineers.

By:_____
Barry T. Williams, P.L.S. No. 6711

Dated: 11-7-11

LICENSED LAND SURVEYOR
BARRY T. WILLIAMS
No. 6711
STATE OF CALIFORNIA

K:\MAIN\2007\20075011-10 Hercules Waterfront\08 Survey\K Plats & Legal Descriptions\PARCEL-20-DESC.doc

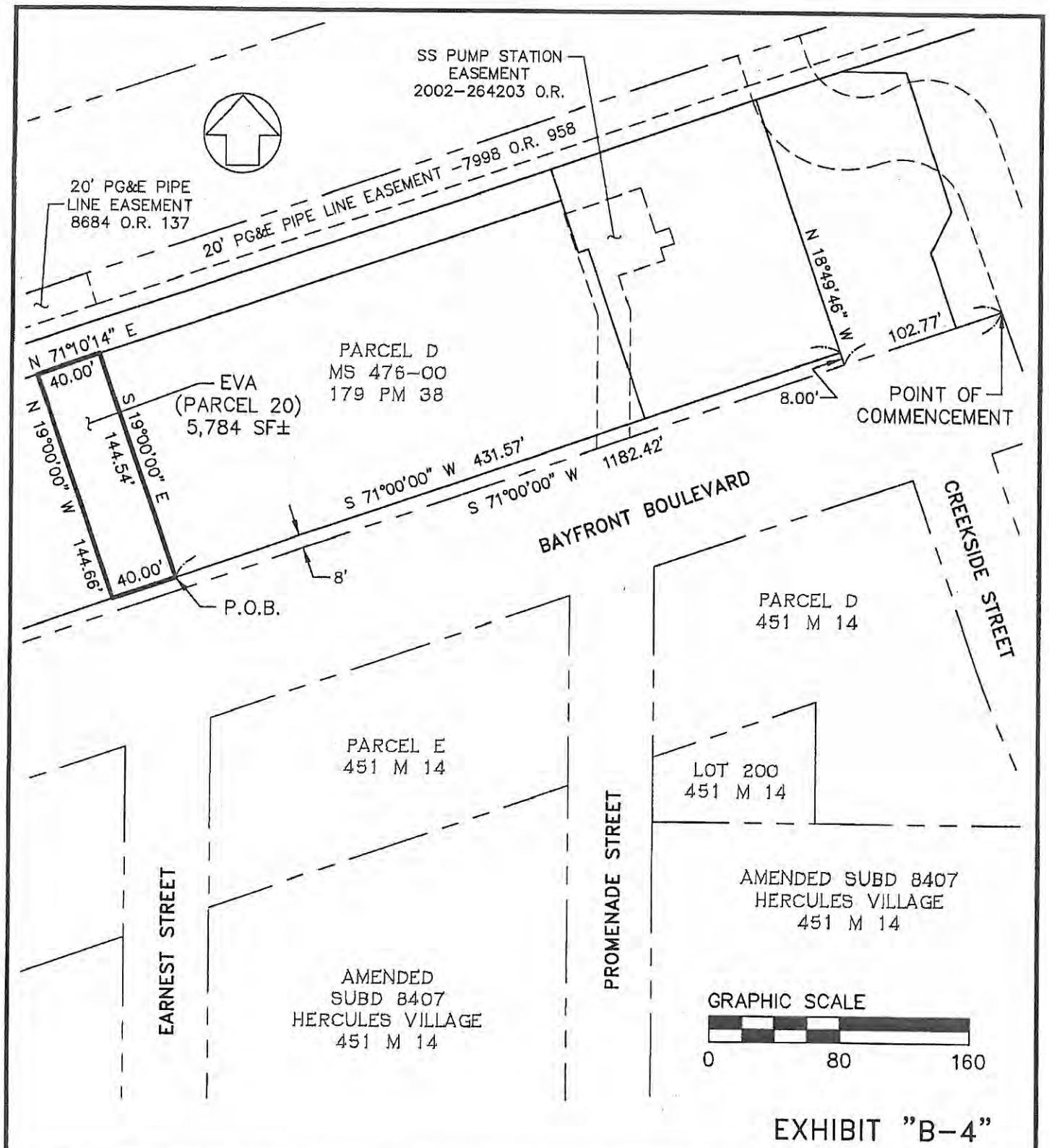


EXHIBIT "B-4"

BKF
ENGINEERS / SURVEYORS / PLANNERS

1646 NORTH CALIFORNIA BLVD
SUITE 400
WALNUT CREEK, CA 94596
925-940-2200
925-940-2299 (FAX)

Subject PLAT TO ACCOMPANY DESCRIPTION (PARCEL 20)
Job No. 20075011-20
By MLM Date 11/04/11 Chkd. BTW
SHEET 1 OF 1

BKF

ENGINEERS
SURVEYORS
PLANNERS

November 4, 2011
BKF Job No.: 20075011-24

EXHIBIT "A-5"
DESCRIPTION
(PARCEL 22)

All that certain real property situate in the City of Hercules, County of Contra Costa, and described as follows:

BEING a portion of Parcel D as said parcel is shown on that certain map entitled "Parcel Map MS 476-00", filed October 12, 2000, in Book 179 of Parcel Maps at Pages 38, 39, and 40 (179 PM 38), in the Office of the Recorder of Contra Costa County, and a portion of Parcel D as said parcel is shown on that certain map entitled "Parcel Map MS 491-03", filed March 10, 2004, in Book 189 of Parcel Maps at Pages 40 and 41 (189 PM 40), in the Office of the Recorder of Contra Costa County, said portion being more particularly described as follows:

(BAY TRAIL):

BEGINNING on the most easterly corner of said Parcel D (189 PM 40) on the northwesterly line thereof;

THENCE along said northwesterly line North 33°03'41" East 315.59 feet;

THENCE leaving said northwesterly line northeasterly along a curve to the right having a radius of 1432.69 feet through a central angle of 38°06'33", an arc distance of 952.93 feet;

THENCE North 71°10'14" East 468.81 feet;

THENCE South 19°00'00" East 20.00 feet;

THENCE South 71°10'14" West 468.87 feet;

THENCE along a curve to the left having a radius of 1412.69 feet through a central angle of 04°56'15", an arc distance of 121.74 feet;

THENCE leaving said curve on a non-tangent line South 19°00'00" East 7.02 feet a point on a curve, concave southeasterly, having a radius of 1405.69 feet, from which the center bears South 23°47'27" East;

THENCE along said curve through a central angle of 27°26'24", an arc distance of 673.21 feet to a point on a curve, concave northwesterly, having a radius of 508.00 feet, from which the center bears North 67°11'22" West;

THENCE along said curve through a central angle of 25°40'09", an arc distance of 227.59 feet to the beginning of a reverse curve having a radius of 162.00 feet;

THENCE along said reverse curve through a central angle of 15°25'06", an arc distance of 43.59 feet;

THENCE South 33°03'41" West 101.91 feet;

THENCE along a curve to the left having a radius of 1000.00 feet through a central angle of 04°53'39", an arc distance of 85.42 feet;

THENCE South 28°10'02" West 3.29 feet to the southwesterly line of said Parcel D (180 PM 40);

THENCE along said southwesterly line North 47°28'32" West 22.19 feet to the **POINT OF BEGINNING**.

Containing an area of 42,694 square feet, more or less.

Subject to any easements of record.

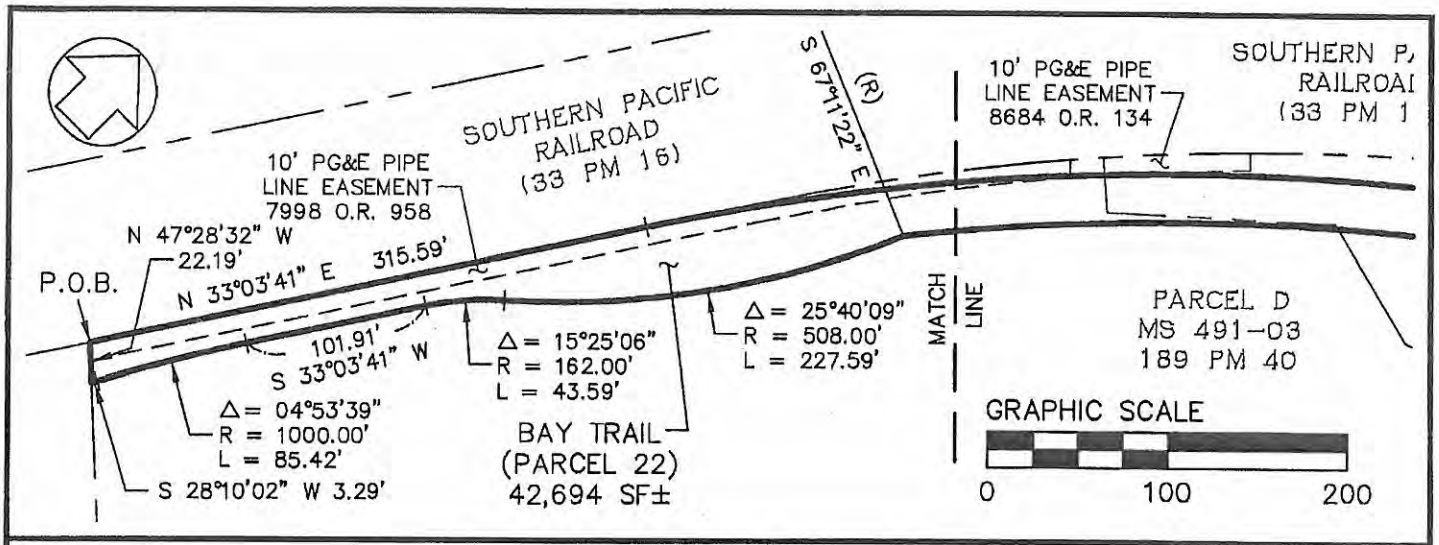
A plat showing the above described is attached hereto and made a part hereof as Exhibit "B-5".

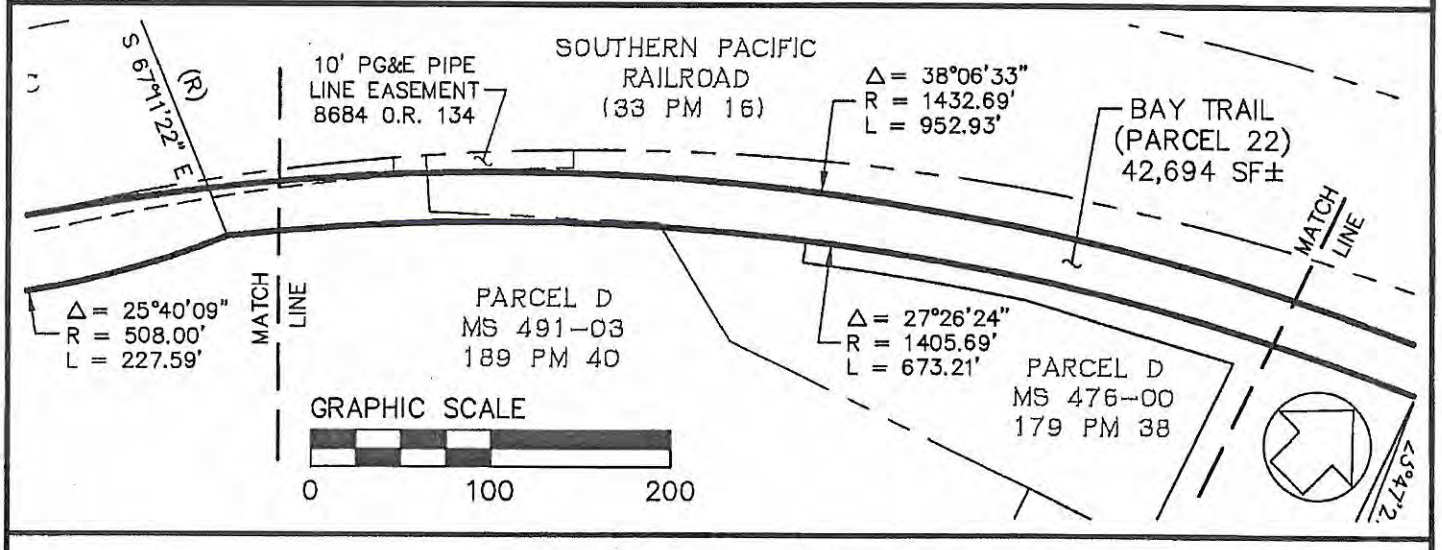
This description has been prepared from record information for BKF Engineers.

By:_____
Barry T. Williams, P.L.S. No. 6711

Dated: 11/7/11

LICENSED LAND SURVEYOR
BARRY T. WILLIAMS
No. 6711
STATE OF CALIFORNIA





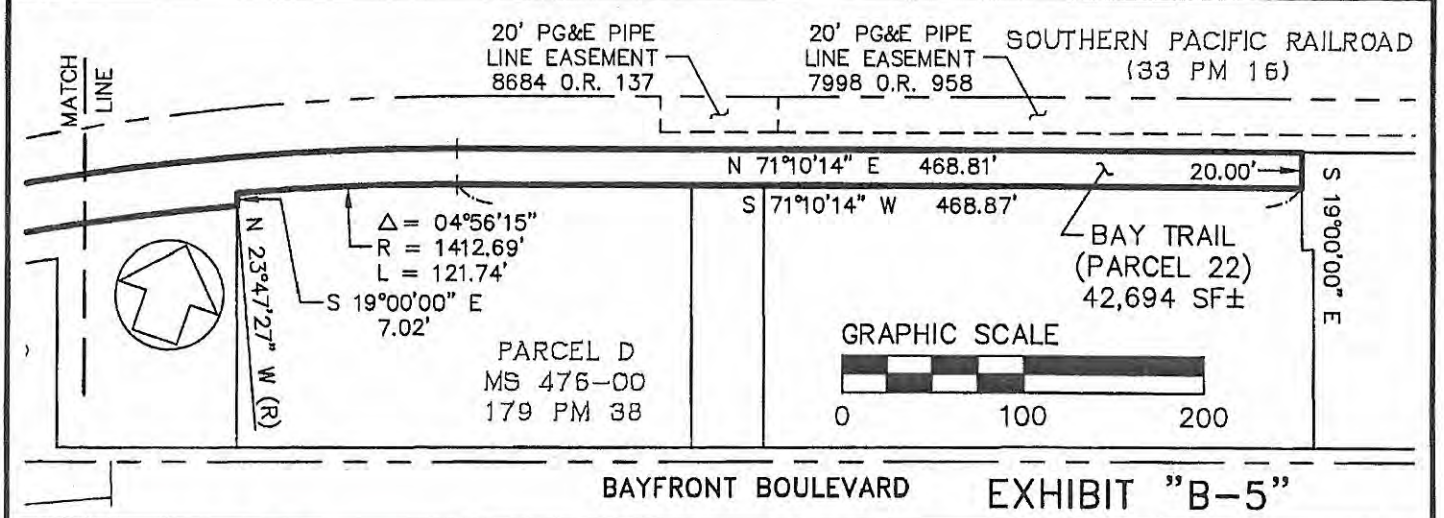


EXHIBIT "B-5"

BKF
ENGINEERS / SURVEYORS / PLANNERS

1646 NORTH CALIFORNIA BLVD
SUITE 400
WALNUT CREEK, CA 94596
925-940-2200
925-940-2299 (FAX)

Subject PLAT TO ACCOMPANY DESCRIPTION (PARCEL 22)
Job No. 20075011-20
By MLM Date 11/04/11 Chkd. BTW
SHEET 1 OF 1

BKF

ENGINEERS
SURVEYORS
PLANNERS

November 4, 2011
BKF Job No.: 20075011-24

EXHIBIT "A-6"
DESCRIPTION
(PARCEL 24)

All that certain real property situate in the City of Hercules, County of Contra Costa, and described as follows:

BEING a portion of Parcel D as said parcel is shown on that certain map entitled "Parcel Map MS 476-00", filed October 12, 2000, in Book 179 of Parcel Maps at Pages 38, 39, and 40, in the Office of the Recorder of Contra Costa County, said portion being more particularly described as follows:

(BAYSIDE TRAIL):

A strip of land 27 feet in width, the perimeter of which is more particularly described as follows:

COMMENCING on the most easterly corner of said Parcel D on the southeasterly line thereof; THENCE along said southeasterly line South 49°30'00" West 410.53 feet to a point on a curve, concave northeasterly, having a radius of 238.00 feet, from which the center bears North 27°12'35" East; THENCE leaving said southeasterly line along said curve through a central angle of 04°59'41", an arc distance of 20.75 feet; THENCE North 57°47'44" West 198.90 feet; having a radius of 293.00 feet through a central angle of 20°00'45", an arc distance of 102.34 feet; THENCE North 37°46'59" West 364.55 feet; THENCE North 29°52'05" West 60.58 feet; THENCE North 18°51'36" West 297.00 feet to a point on a curve, concave northwesterly, having a radius of 1477.52 feet, from which the center bears North 30°26'47" West to the **POINT OF BEGINNING**;

THENCE along said curve through a central angle of 15°31'30", an arc distance of 400.35 feet to the northeasterly line of said Parcel D and a point distant South 37°46'59" East 23.44 feet from the most northerly corner of said Parcel D;

THENCE along said northeasterly line South 37°46'59" East 27.27 feet to a point on a curve, concave northwesterly, having a radius of 1504.52 feet, from which the center bears North 45°49'24" West;

THENCE leaving said northeasterly line along said curve through a central angle of 15°35'15", an arc distance of 409.31 feet;

THENCE North leaving said curve on a non-tangent line 18°51'36" West 27.55 feet to the **POINT OF BEGINNING**.

November 4, 2011
BKF Job No.: 20075011-24
Parcel 24

Containing an area of 10,930 square feet, more or less.

Subject to any easements of record.

A plat showing the above described is attached hereto and made a part hereof as Exhibit "B-6".

This description has been prepared from record information for BKF Engineers.

By:_____
Barry T. Williams, P.L.S. No. 6711

Dated: 11/7/11

LICENSED LAND SURVEYOR
BARRY T. WILLIAMS
No. 6711
STATE OF CALIFORNIA

K:\MAIN\2007\20075011-10 Hercules Waterfront\08 Survey\K Plats & Legal Descriptions\PARCEL-24-DESC.doc

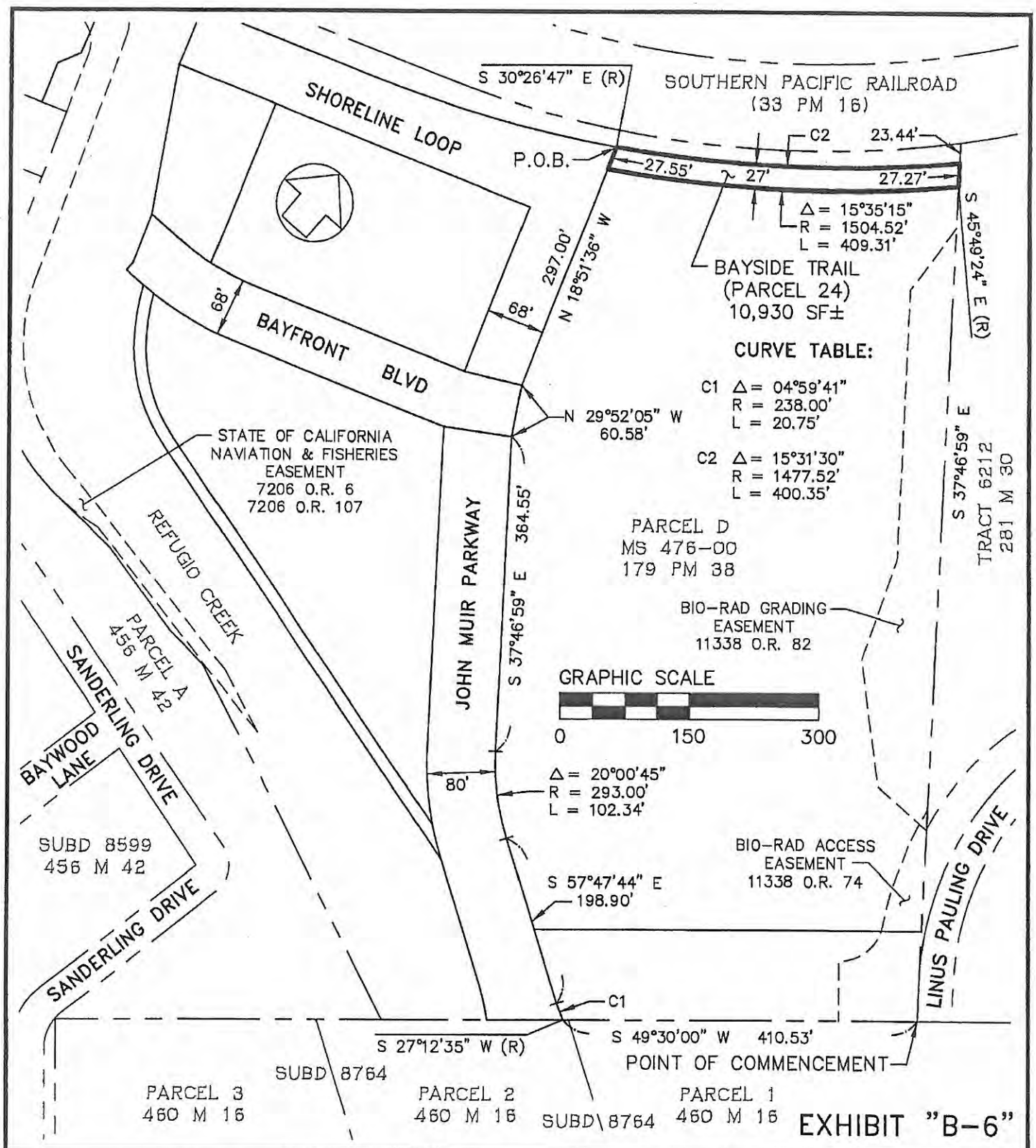


EXHIBIT "B-6"

BKF
ENGINEERS / SURVEYORS / PLANNERS

1646 NORTH CALIFORNIA BLVD
SUITE 400
WALNUT CREEK, CA 94596
925-940-2200
925-940-2299 (FAX)

Subject PLAT TO ACCOMPANY DESCRIPTION (PARCEL 24)
Job No. 20075011-20
By MLM Date 11/04/11 Chkd. BTW
SHEET 1 OF 1

BKF

ENGINEERS
SURVEYORS
PLANNERS

November 4, 2011
BKF Job No.: 20075011-40

EXHIBIT "A-7"
DESCRIPTION
(PARCEL 26)

All that certain real property situate in the City of Hercules, County of Contra Costa, and described as follows:

BEING a portion of Parcel D as said parcel is shown on that certain map entitled "Parcel Map MS 476-00", filed October 12, 2000, in Book 179 of Parcel Maps at Pages 38, 39, and 40, in the Office of the Recorder of Contra Costa County, said portion being more particularly described as follows:

RIGHT OF WAY DEDICATION (John Muir Parkway):

COMMENCING on the most easterly corner of said Parcel D on the southeasterly line thereof; THENCE along said southeasterly line South 49°30'00" West 410.53 feet to the **POINT OF BEGINNING**; THENCE continuing along the last said line South 49°30'00" West 88.48 feet to a point on a curve, concave southwesterly, having a radius of 240.00 feet, from which the center bears South 42°06'30" West; THENCE leaving said southeasterly line along said curve through a central angle of 09°54'14", an arc distance of 41.49 feet; THENCE North 57°47'44" West 152.04 feet; THENCE along a curve to the right having a radius of 373.00 feet through a central angle of 20°00'45", an arc distance of 130.28 feet; THENCE North 37°46'59" West 372.32 feet; THENCE North 57°45'53" East 80.38 feet; THENCE South 37°46'59" East 364.55 feet; THENCE along a curve to the left having a radius of 293.00 feet through a central angle of 20°00'45", an arc distance of 102.34 feet; THENCE South 57°47'44" East 198.90 feet; THENCE along a curve to the left having a radius of 238.00 feet through a central angle of 04°59'41", an arc distance of 20.75 feet to the **POINT OF BEGINNING**. Containing an area of 55,388 square feet or 1.272 acres, more or less.

Subject to any easements of record.

A plat showing the above described is attached hereto and made a part hereof as Exhibit "B-7".

This description has been prepared from record information for BKF Engineers.

By:_____
Barry T. Williams, P.L.S. No. 6711

Dated: 11/7/11

LICENSED LAND SURVEYOR
BARRY T. WILLIAMS
No. 6711
STATE OF CALIFORNIA

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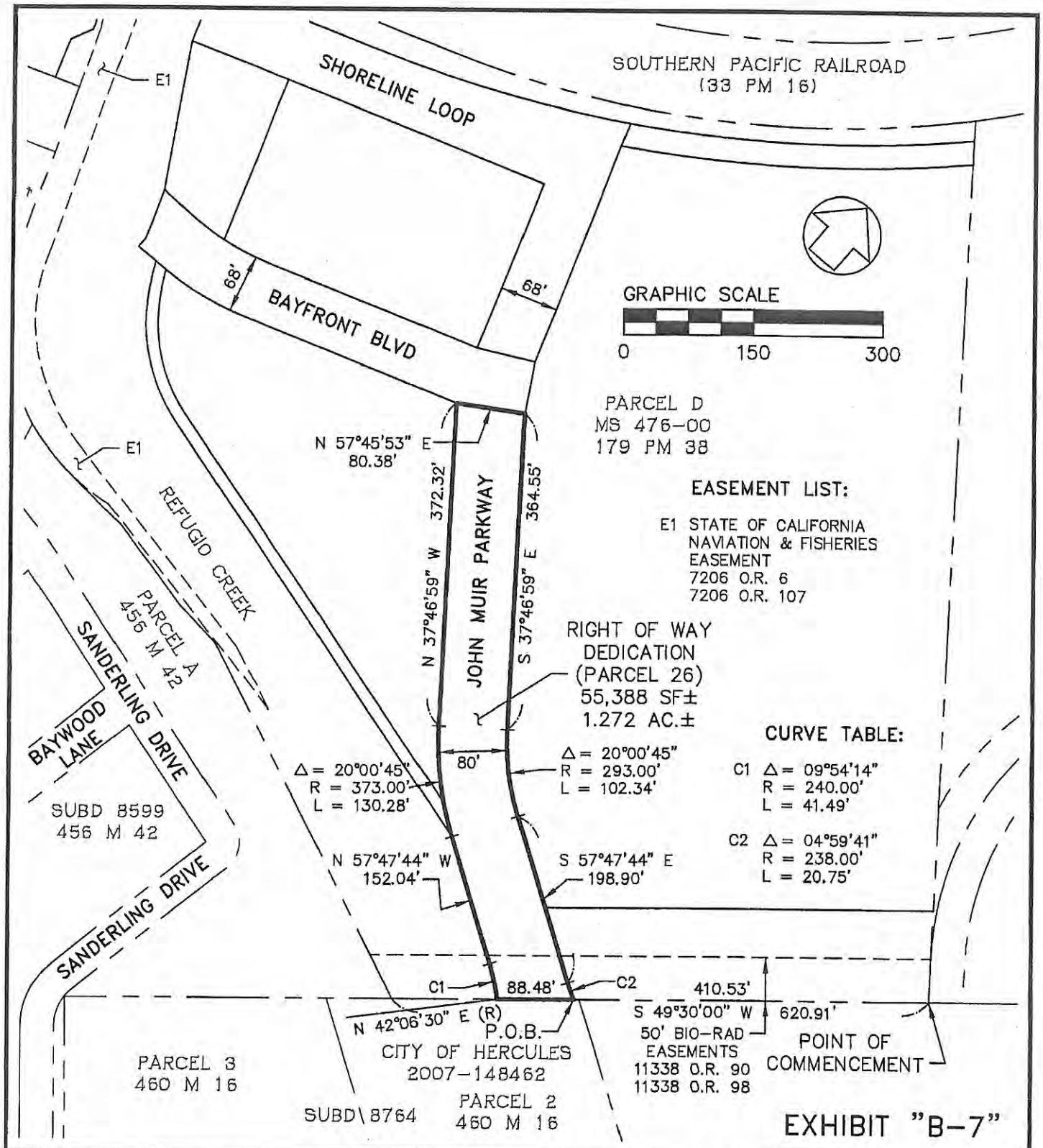

BKF
ENGINEERS / SURVEYORS / PLANNERS

1646 NORTH CALIFORNIA BLVD
SUITE 400
WALNUT CREEK, CA 94596
925-940-2200
925-940-2299 (FAX)

Subject PLAT TO ACCOMPANY RIGHT OF WAY DEDICATION (PARCEL 26)
Job No. 20075011-20
By MLM Date 11/04/11 Chkd. BTW
SHEET 1 OF 1

BKF

ENGINEERS
SURVEYORS
PLANNERS

November 4, 2011
BKF Job No.: 20075011-40

EXHIBIT "A-8"
DESCRIPTION
(PARCEL 31)

All that certain real property situate in the City of Hercules, County of Contra Costa, and described as follows:

BEING a portion of Parcel D as said parcel is shown on that certain map entitled "Parcel Map MS 476-00", filed October 12, 2000, in Book 179 of Parcel Maps at Pages 38, 39, and 40 (179 PM 38), in the Office of the Recorder of Contra Costa County, said portion being more particularly described as follows:

(REFUGIO CREEK):

BEGINNING on the most southerly corner of said Parcel D on the general southerly line thereof; THENCE westerly along said southerly line the following seven (7) courses: 1) North 67°32'13" West 458.77 feet; 2) North 84°25'04" West 56.89 feet; 3) North 77°13'08" West 118.24 feet; 4) North 85°44'53" West 91.49 feet to a point on a curve, concave northeasterly, having a radius of 250.02 feet, from which the center bears North 06°00'36" East; 5) along said curve through a central angle of 63°29'24", an arc distance of 277.05 feet; 6) North 20°30'00" West 193.38 feet to the easterly terminus of that certain course delineated as "South 71°00'00" West 1182.42 feet" as shown on said map (179 PM 38); 7) westerly along said course South 71°00'00" West 30.26 feet; THENCE leaving said southerly line North 19°00'00" West 48.57 feet; THENCE North 26°00'00" East 28.66 feet; THENCE North 18°49'46" West 89.14 feet; THENCE North 89°44'50" West 39.76 feet; THENCE North 71°10'14" East 186.07 feet; THENCE South 52°05'16" West 39.76 feet; THENCE South 18°49'46" East 59.06 feet; THENCE South 30°32'37" East 175.47 feet; THENCE South 19°32'03" East 60.23 feet; THENCE South 00°43'59" West 11.50 feet; THENCE South 89°16'01" East 26.42 feet to a point on a curve, concave northeasterly, having a radius of 270.00 feet, from which the center bears North 65°45'41" East; THENCE along said curve through a central angle of 12°43'32", an arc distance of 59.97 feet to the beginning of a compound curve having a radius of 200.00 feet; THENCE along said compound curve through a central angle of 37°41'14", an arc distance of 131.55 feet; THENCE South 74°39'05" East 578.17 feet; THENCE South 57°47'44" East 152.04 feet; THENCE along a curve to the left having a radius of 240.00 feet through a central angle of 09°54'14", an arc distance of 41.49 feet to the southeasterly line of said Parcel D and a point distant South 49°30'00" West 499.01 feet from the most easterly corner of said Parcel D; THENCE along said southeasterly line South 49°30'00" West 121.89 feet, more or less, to the **POINT OF BEGINNING**.

Containing an area of 172,662 square feet or 3.964 acres, more or less.

November 4, 2011
BKF Job No.: 20075011-40
Parcel 31

Subject to any easements of record.

A plat showing the above described is attached hereto and made a part hereof as Exhibit "B-8".

This description has been prepared from record information for BKF Engineers.

By:_____
Barry T. Williams, P.L.S. No. 6711

Dated: 11/7/11

LICENSED LAND SURVEYOR
BARRY T. WILLIAMS
No. 6711
STATE OF CALIFORNIA

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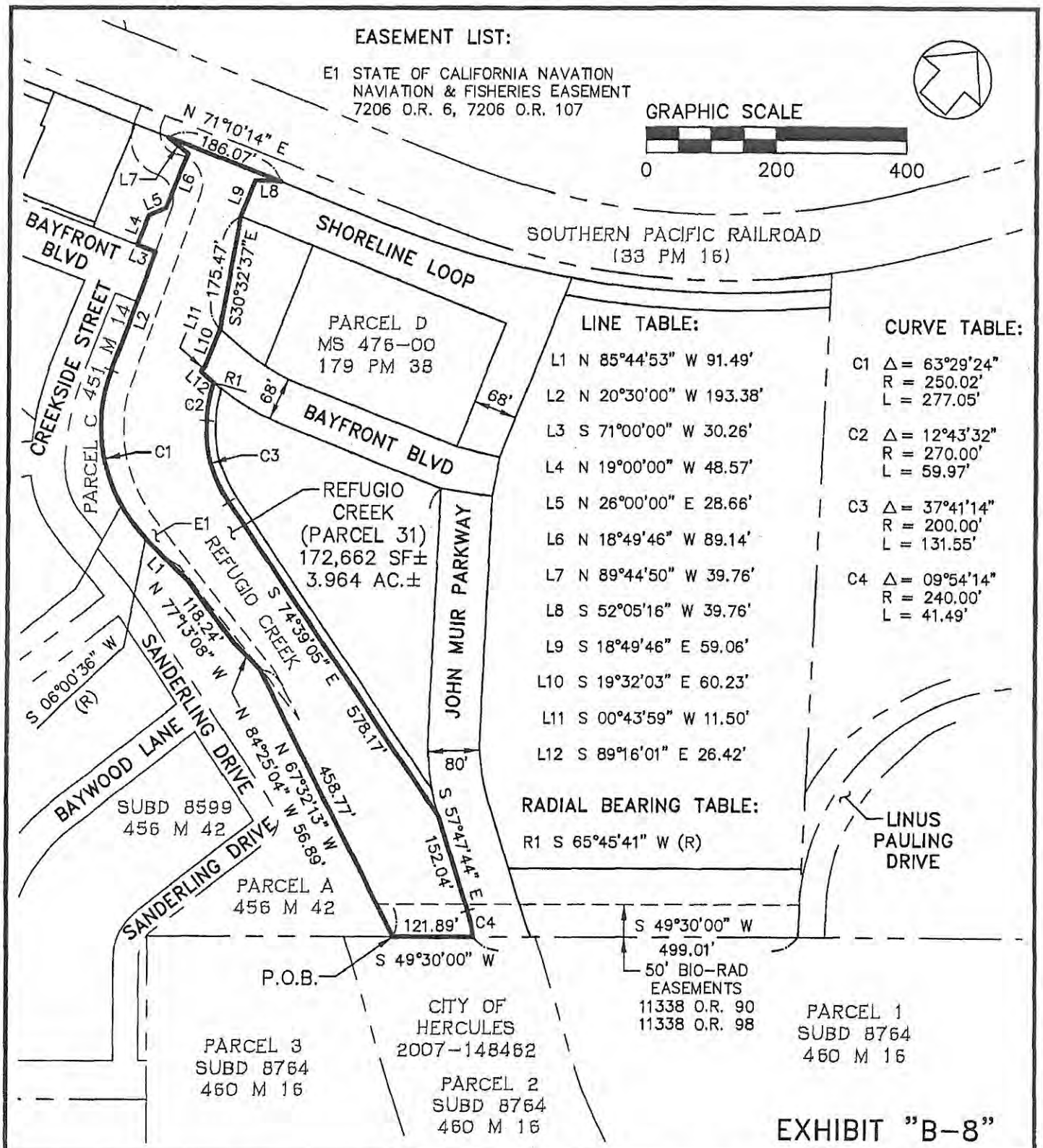

BKF
ENGINEERS | SURVEYORS | PLANNERS
1646 NORTH CALIFORNIA BLVD
SUITE 400
WALNUT CREEK, CA 94596
925-940-2200
925-940-2299 (FAX)

Subject PLAT TO ACCOMPANY DESCRIPTION (PARCEL 31)
Job No. 20075011-20
By MLM Date 11/04/11 Chkd. BTW
SHEET 1 OF 1

BKF

ENGINEERS
SURVEYORS
PLANNERS

November 4, 2011
BKF Job No.: 20075011-40

EXHIBIT "A-9"
DESCRIPTION
(PARCEL 32)

All that certain real property situate in the City of Hercules, County of Contra Costa, and described as follows:

BEING a portion of Parcel D as said parcel is shown on that certain map entitled "Parcel Map MS 476-00", filed October 12, 2000, in Book 179 of Parcel Maps at Pages 38, 39, and 40 (179 PM 38), in the Office of the Recorder of Contra Costa County, said portion being more particularly described as follows:

(PUBLIC ROADWAY):

A strip of land 8 feet in width, the perimeter of which is more particularly described as follows:

COMMENCING at the easterly terminus of that certain course delineated as "South 71°00'00" West 1182.42 feet" as shown on said map (179 PM 38), being also the general southerly line of said Parcel D; THENCE along the last said line South 71°00'00" West 102.77 feet to the **POINT OF BEGINNING**; THENCE continuing along said line South 71°00'00" West 793.55 feet; THENCE leaving said line North 19°00'00" West 8.00 feet to a point on a line parallel with and distant 8.00 feet northerly, measured at right angles, of said general southerly line; THENCE along said parallel line North 71°00'00" East 793.58 feet; THENCE leaving the last said line South 18°49'46" East 8.00 feet to the **POINT OF BEGINNING**.

Containing an area of 6,349 square feet, more or less.

Subject to any easements of record.

A plat showing the above described is attached hereto and made a part hereof as Exhibit "B-9".

This description has been prepared from record information for BKF Engineers.

By:_____
Barry T. Williams, P.L.S. No. 6711

Dated: 11/7/11

LICENSED LAND SURVEYOR
BARRY T. WILLIAMS
No. 6711
STATE OF CALIFORNIA

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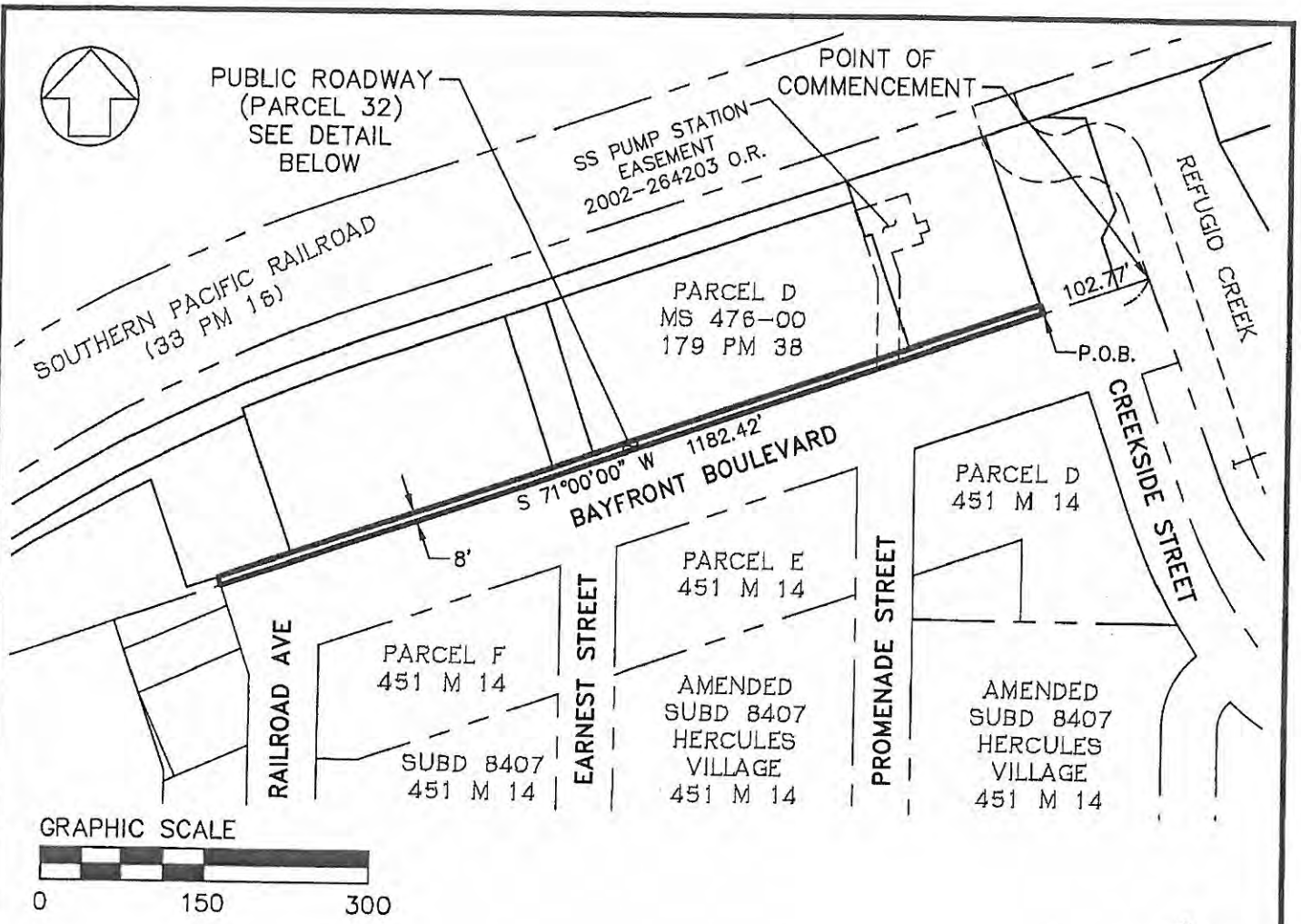
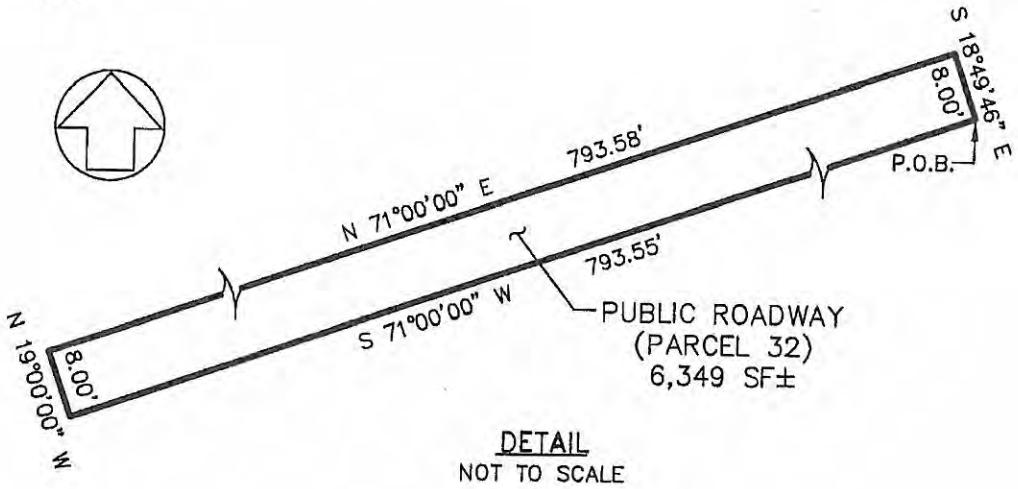
K Plats & Legal Descriptions\PARCEL-32-DESC.doc





DETAIL
NOT TO SCALE

EXHIBIT "B-9"

BKF
ENGINEERS / SURVEYORS / PLANNERS

1646 NORTH CALIFORNIA BLVD
SUITE 400
WALNUT CREEK, CA 94596
925-940-2200
925-940-2299 (FAX)

Subject PLAT TO ACCOMPANY DESCRIPTION (PARCEL 32)
Job No. 20075011-20
By MLM Date 11/04/11 Chkd. BTW
SHEET 1 OF 1

BKF

ENGINEERS
SURVEYORS
PLANNERS

November 4, 2011
BKF Job No.: 20075011-40

EXHIBIT "A-10"
DESCRIPTION
(PARCEL 33)

All that certain real property situate in the City of Hercules, County of Contra Costa, and described as follows:

BEING a portion of Parcel D as said parcel is shown on that certain map entitled "Parcel Map MS 476-00", filed October 12, 2000, in Book 179 of Parcel Maps at Pages 38, 39, and 40 (179 PM 38), in the Office of the Recorder of Contra Costa County, said portion being more particularly described as follows:

(SHORELINE CITY PLAZA):

COMMENCING at the easterly terminus of that certain course delineated as "South 71°00'00" West 1182.42 feet" as shown on said map (179 PM 38), being also the general southerly line of said Parcel D; THENCE along the last said line South 71°00'00" West 102.77 feet; THENCE leaving said line North 18°49'46" West 8.00 feet to a point on a line parallel with and distant 8.00 feet northerly, measured at right angles, of said general southerly line and the **POINT OF BEGINNING**; THENCE along said parallel line South 71°00'00" West 126.57 feet; THENCE leaving the last said line North 19°00'00" West 109.60 feet THENCE South 71°00'00" West 6.53 feet; THENCE North 19°00'00" West 54.05 feet; THENCE North 71°10'14" East 133.59 feet; THENCE South 18°49'46" East 163.25 feet to the **POINT OF BEGINNING**.

Containing an area of 21,080 square feet, more or less.

Subject to any easements of record.

A plat showing the above described is attached hereto and made a part hereof as Exhibit "B-10".

This description has been prepared from record information for BKF Engineers.

By:_____
Barry T. Williams, P.L.S. No. 6711

Dated: 11/2/11

LICENSED LAND SURVEYOR
BARRY T. WILLIAMS
No. 6711
STATE OF CALIFORNIA

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K Plats & Legal Descriptions\PARCEL-33-DESC.doc

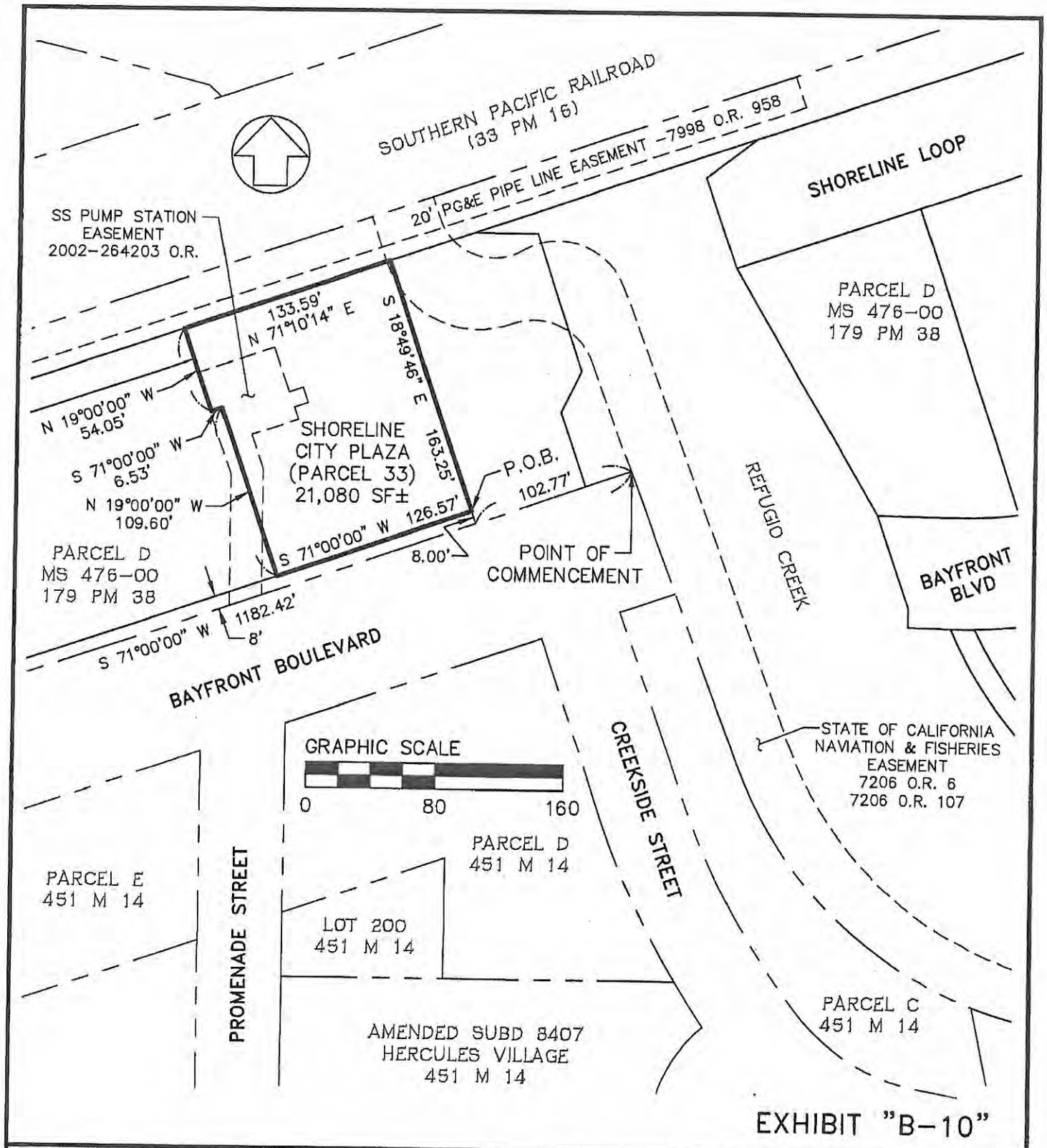

EXHIBIT "B-10"

BKF
ENGINEERS / SURVEYORS / PLANNERS

1646 NORTH CALIFORNIA BLVD
SUITE 400
WALNUT CREEK, CA 94596
925-940-2200
925-940-2299 (FAX)

Subject PLAT TO ACCOMPANY DESCRIPTION (PARCEL 33)
Job No. 20075011-20
By MLM Date 11/04/11 Chkd. BTW
SHEET 1 OF 1

BKF

ENGINEERS
SURVEYORS
PLANNERS

November 4, 2011
BKF Job No.: 20075011-40

EXHIBIT "A-11"
DESCRIPTION
(PARCEL 34)

All that certain real property situate in the City of Hercules, County of Contra Costa, and described as follows:

BEING a portion of Parcel D as said parcel is shown on that certain map entitled "Parcel Map MS 476-00", filed October 12, 2000, in Book 179 of Parcel Maps at Pages 38, 39, and 40, in the Office of the Recorder of Contra Costa County, said portion being more particularly described as follows:

RIGHT OF WAY DEDICATION (Bayfront Boulevard):

COMMENCING on the most easterly corner of said Parcel D on the southeasterly line thereof; THENCE along said southeasterly line South 49°30'00" West 499.01 feet to a point on a curve, concave southwesterly, having a radius of 240.00 feet, from which the center bears South 42°06'30" West; THENCE leaving said southeasterly line along said curve through a central angle of 09°54'14", an arc distance of 41.49 feet; THENCE North 57°47'44" West 152.04 feet; THENCE along a curve to the right having a radius of 373.00 feet through a central angle of 20°00'45", an arc distance of 130.28 feet; THENCE North 37°46'59" West 372.32 feet to the **POINT OF BEGINNING**;

THENCE South 71°08'24" West 261.47 feet;

THENCE along a curve to the right having a radius of 367.00 feet through a central angle of 19°35'35", an arc distance of 125.50 feet;

THENCE North 89°16'01" West 26.42 feet;

THENCE North 00°43'59" East 11.50 feet;

THENCE North 19°32'03" West 60.23 feet;

THENCE South 89°16'01" East 47.29 feet;

THENCE along a curve to the left having a radius of 299.00 feet through a central angle of 19°35'35", an arc distance of 102.25 feet;

THENCE North 71°08'24" East 260.10 feet;

THENCE North 62°43'41" East 68.74 feet;

THENCE South 29°52'05" East 60.58 feet;

November 4, 2011
BKF Job No.: 20075011-40
Parcel 34

THENCE South 57°45'53" West 80.38 feet to the **POINT OF BEGINNING.**

Containing an area of 32,614 square feet, more or less.

Subject to any easements of record.

A plat showing the above described is attached hereto and made a part hereof as Exhibit "B-11".

This description has been prepared from record information for BKF Engineers.

By:_____
Barry T. Williams, P.L.S. No. 6711

Dated: 11/2/11

LICENSED LAND SURVEYOR
BARRY T. WILLIAMS
No. 6711
STATE OF CALIFORNIA

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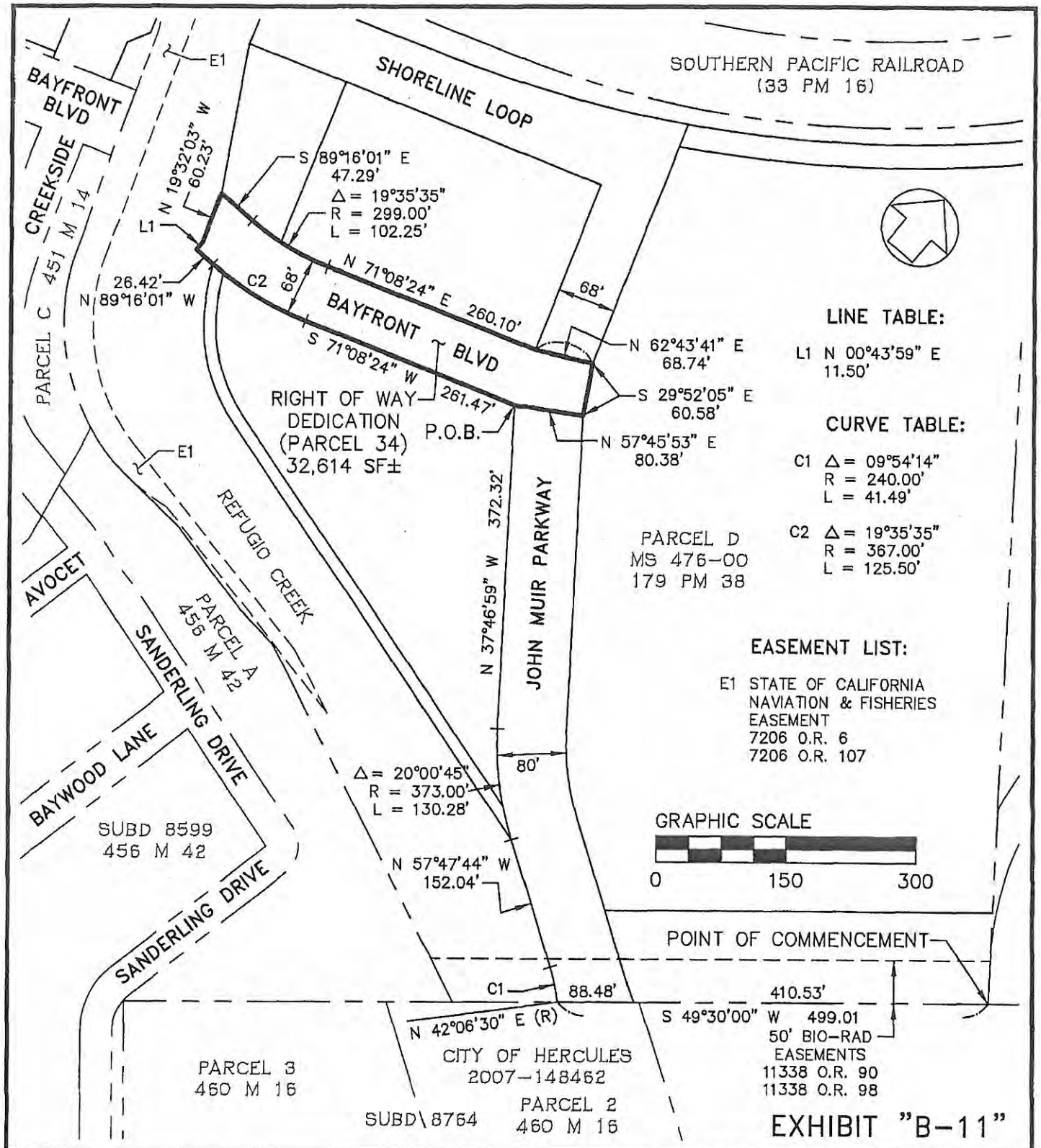

BKF
ENGINEERS / SURVEYORS / PLANNERS

1646 NORTH CALIFORNIA BLVD
SUITE 400
WALNUT CREEK, CA 94596
925-940-2200
925-940-2299 (FAX)

Subject PLAT TO ACCOMPANY RIGHT OF WAY DEDICATION (PARCEL 34)
Job No. 20075011-20
By MLM Date 11/04/11 Chkd. BTW
SHEET 1 OF 1

BKF

ENGINEERS
SURVEYORS
PLANNERS

November 4, 2011
BKF Job No.: 20075011-40

EXHIBIT "A-12"
DESCRIPTION
(PARCEL 35)

All that certain real property situate in the City of Hercules, County of Contra Costa, and described as follows:

BEING a portion of Parcel D as said parcel is shown on that certain map entitled "Parcel Map MS 476-00", filed October 12, 2000, in Book 179 of Parcel Maps at Pages 38, 39, and 40, in the Office of the Recorder of Contra Costa County, said portion being more particularly described as follows:

(NORTH CHANNEL):

BEGINNING on the most easterly corner of said Parcel D on the southeasterly line thereof; THENCE along said southeasterly line South 49°30'00" West 410.53 feet to a point on a curve, concave northeasterly, having a radius of 238.00 feet, from which the center bears North 27°12'35" East; THENCE leaving said southeasterly line along said curve through a central angle of 04°59'41", an arc distance of 20.75 feet; THENCE North 57°47'44" West 89.76 feet; THENCE North 49°30'00" East 449.23 feet to the northeasterly line of said Parcel D; THENCE along said northeasterly line South 37°46'59" East 105.34 feet to the **POINT OF BEGINNING.**

Containg an area of 45,276 square feet or 1.039 acres, more or less.

Subject to any easements of record.

A plat showing the above described is attached hereto and made a part hereof as Exhibit "B-12".

This description has been prepared from record information for BKF Engineers.

By:_____
Barry T. Williams, P.L.S. No. 6711

Dated: 11/3/11

LICENSED LAND SURVEYOR
BARRY T. WILLIAMS
No. 6711
STATE OF CALIFORNIA

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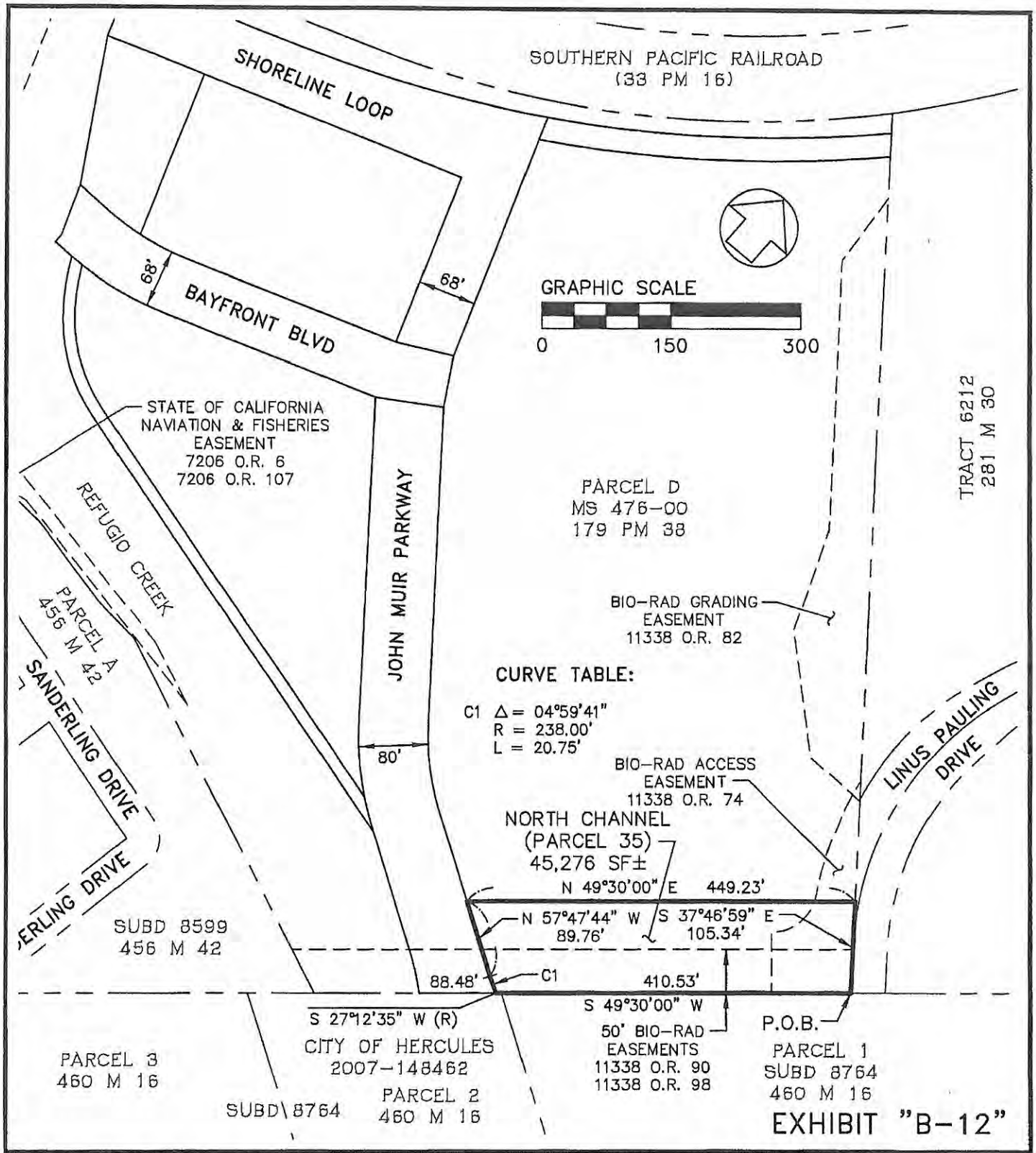

BKF
ENGINEERS / SURVEYORS / PLANNERS

1646 NORTH CALIFORNIA BLVD
SUITE 400
WALNUT CREEK, CA 94596
925-940-2200
925-940-2299 (FAX)

Subject PLAT TO ACCOMPANY DESCRIPTION (PARCEL 35)
Job No. 20075011-20
By MLM Date 11/04/11 Chkd. BTW
SHEET 1 OF 1

BKF

ENGINEERS
SURVEYORS
PLANNERS

November 4, 2011
BKF Job No.: 20075011-40

EXHIBIT "A-13"
DESCRIPTION
(PARCEL 37)

All that certain real property situate in the City of Hercules, County of Contra Costa, and described as follows:

BEING a portion of Parcel D as said parcel is shown on that certain map entitled "Parcel Map MS 476-00", filed October 12, 2000, in Book 179 of Parcel Maps at Pages 38, 39, and 40, in the Office of the Recorder of Contra Costa County, said portion being more particularly described as follows:

RIGHT OF WAY DEDICATION (Shoreline Loop):

COMMENCING on the most easterly corner of said Parcel D on the southeasterly line thereof; THENCE along said southeasterly line South 49°30'00" West 410.53 feet to a point on a curve, concave northeasterly, having a radius of 238.00 feet, from which the center bears North 27°12'35" East; THENCE leaving said southeasterly line along said curve through a central angle of 04°59'41", an arc distance of 20.75 feet; THENCE North 57°47'44" West 198.90 feet; THENCE along a curve to the right having a radius of 293.00 feet through a central angle of 20°00'45", an arc distance of 102.34 feet; THENCE North 37°46'59" West 364.55 feet; THENCE North 29°52'05" West 60.58 feet to the **POINT OF BEGINNING**;

THENCE South 62°43'41" West 68.74 feet;

THENCE North 18°51'36" West 205.00 feet;

THENCE South 71°08'24" West 440.45 feet;

THENCE North 18°49'46" West 59.06 feet;

THENCE North 52°05'16" East 39.76 feet;

THENCE North 71°10'14" East 173.29 feet;

THENCE along a curve to the left having a radius of 1477.52 feet through a central angle of 11°37'01", an arc distance of 299.57 feet;

THENCE leaving said curve on a non-tangent line South 18°51'36" East 297.00 feet to the **POINT OF BEGINNING**.

Containing an area of 52,914 square feet or 1.215 acres, more or less.

November 4, 2011
BKF Job No.: 20075011-40
Parcel 37

Subject to any easements of record.

A plat showing the above described is attached hereto and made a part hereof as Exhibit "B-13".

This description has been prepared from record information for BKF Engineers.

By:_____
Barry T. Williams, P.L.S. No. 6711

Dated: 11/7/11

LICENSED LAND SURVEYOR
BARRY T. WILLIAMS
No. 6711
STATE OF CALIFORNIA

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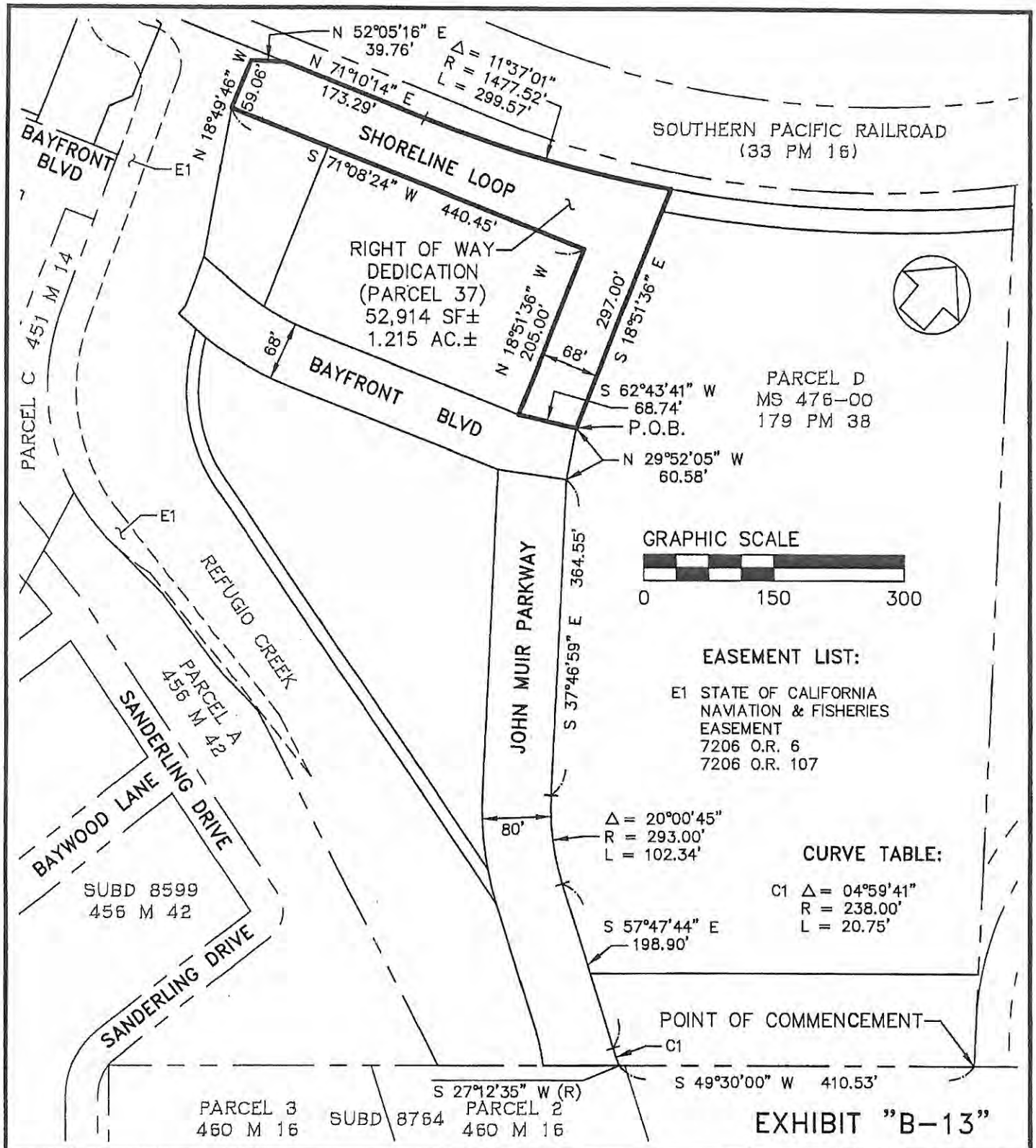


BKF
ENGINEERS / SURVEYORS / PLANNERS

1646 NORTH CALIFORNIA BLVD
SUITE 400
WALNUT CREEK, CA 94596
925-940-2200
925-940-2299 (FAX)

Subject PLAT TO ACCOMPANY RIGHT OF WAY DEDICATION (PARCEL 37)
Job No. 20075011-20
By MLM Date 11/04/11 Chkd. BTW
SHEET 1 OF 1

BKF

ENGINEERS
SURVEYORS
PLANNERS

November 4, 2011
BKF Job No.: 20075011-40

EXHIBIT "A-14"
DESCRIPTION
(PARCEL 38)

All that certain real property situate in the City of Hercules, County of Contra Costa, and described as follows:

BEING a portion of Parcel D as said parcel is shown on that certain map entitled "Parcel Map MS 476-00", filed October 12, 2000, in Book 179 of Parcel Maps at Pages 38, 39, and 40, in the Office of the Recorder of Contra Costa County, said portion being more particularly described as follows:

(EDGEWATER PARK):

COMMENCING on the most easterly corner of said Parcel D on the southeasterly line thereof; THENCE along said southeasterly line South 49°30'00" West 499.01 feet to a point on a curve, concave southwesterly, having a radius of 240.00 feet, from which the center bears South 42°06'30" West; THENCE leaving said southeasterly line along said curve through a central angle of 09°54'14", an arc distance of 41.49 feet; THENCE North 57°47'44" West 152.04 feet; THENCE along a curve to the right having a radius of 373.00 feet through a central angle of 20°00'45", an arc distance of 130.28 feet; THENCE North 37°46'59" West 372.32 feet; THENCE South 71°08'24" West 261.47 feet; THENCE along a curve to the right having a radius of 367.00 feet through a central angle of 19°35'35", an arc distance of 125.50 feet; THENCE North 89°16'01" West 26.42 feet; THENCE North 00°43'59" East 11.50 feet; THENCE North 19°32'03" West 60.23 feet to the **POINT OF BEGINNING**;

THENCE North 30°32'37" West 175.47 feet;

THENCE North 71°08'24" East 120.45 feet;

THENCE South 18°51'36" East 198.94 feet to a point on a curve, concave northerly, having a radius of 299.00 feet, from which the center bears North 07°18'11" West;

THENCE along said curve through a central angle of 08°02'10", an arc distance of 41.94 feet;

THENCE North 89°16'01" West 47.29 feet to the **POINT OF BEGINNING**.

Containing an area of 18,884 square feet, more or less.

November 4, 2011
BKF Job No.: 20075011-40
Parcel 38

Subject to any easements of record.

A plat showing the above described is attached hereto and made a part hereof as Exhibit "B-14".

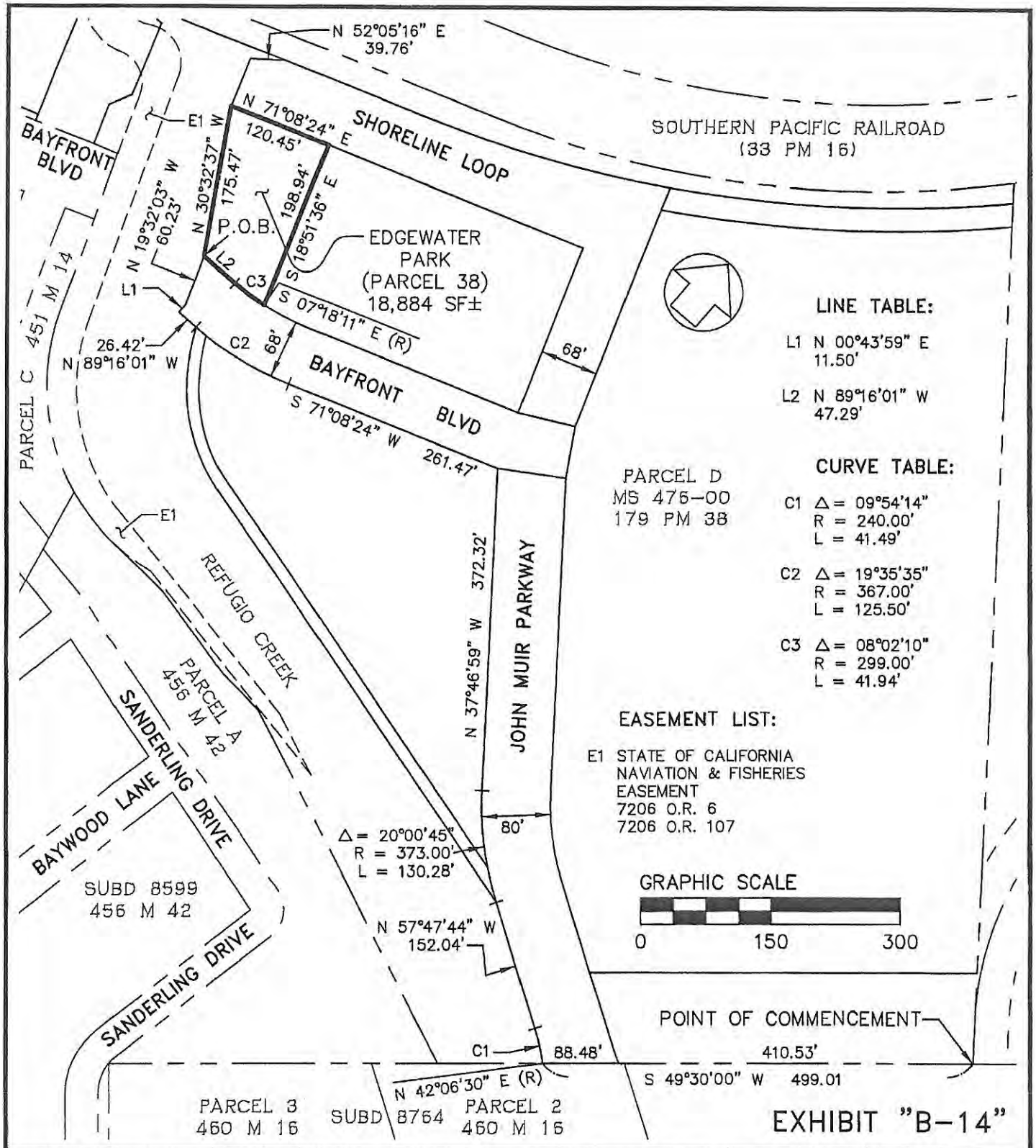
This description has been prepared from record information for BKF Engineers.

By:_____
Barry T. Williams, P.L.S. No. 6711

Dated: 11/7/11

LICENSED LAND SURVEYOR
BARRY T. WILLIAMS
No. 6711
STATE OF CALIFORNIA

K:\MAIN\2007\20075011-10 Hercules Waterfront\08 Survey\K Plats & Legal Descriptions\PARCEL-38-DESC.doc



BKF
ENGINEERS / SURVEYORS / PLANNERS

1646 NORTH CALIFORNIA BLVD
SUITE 400
WALNUT CREEK, CA 94596
925-940-2200
925-940-2299 (FAX)

Subject PLAT TO ACCOMPANY DESCRIPTION (PARCEL 38)
Job No. 20075011-20
By MLM Date 11/04/11 Chkd. BTW
SHEET 1 OF 1

BKF

ENGINEERS
SURVEYORS
PLANNERS

November 4, 2011
BKF Job No.: 20075011-40

EXHIBIT "A-15"
DESCRIPTION
(PARCEL 41)

All that certain real property situate in the City of Hercules, County of Contra Costa, and described as follows:

BEING a portion of Parcel D as said parcel is shown on that certain map entitled "Parcel Map MS 476-00", filed October 12, 2000, in Book 179 of Parcel Maps at Pages 38, 39, and 40 (179 PM 38), in the Office of the Recorder of Contra Costa County, said portion being more particularly described as follows:

(SHORELINE LOOP):

COMMENCING at the easterly terminus of that certain course delineated as "South 71°00'00" West 1182.42 feet" as shown on said map (179 PM 38), being also the general southerly line of said Parcel D; THENCE along the last said line South 71°00'00" West 30.26 feet to the **POINT OF BEGINNING**; THENCE continuing along said line South 71°00'00" West 72.50 feet; THENCE leaving said line North 18°49'46" West 171.25 feet; THENCE North 71°10'14" East 54.99 feet; THENCE South 89°44'50" East 39.76 feet; THENCE South 18°49'46" East 89.14 feet; THENCE South 26°00'00" West 28.66 feet; THENCE South 19°00'00" East 48.57 feet to the **POINT OF BEGINNING**.

Containing an area of 14,413 square feet, more or less.

Subject to any easements of record.

A plat showing the above described is attached hereto and made a part hereof as Exhibit "B-15".

This description has been prepared from record information for BKF Engineers.

By:_____
Barry T. Williams, P.L.S. No. 6711

Dated: 11/7/11

LICENSED LAND SURVEYOR
BARRY T. WILLIAMS
No. 6711
STATE OF CALIFORNIA

K:\MAIN\2007\20075011-10 Hercules Waterfront\08 Survey\K Plats & Legal Descriptions\PARCEL-41-DESC.doc

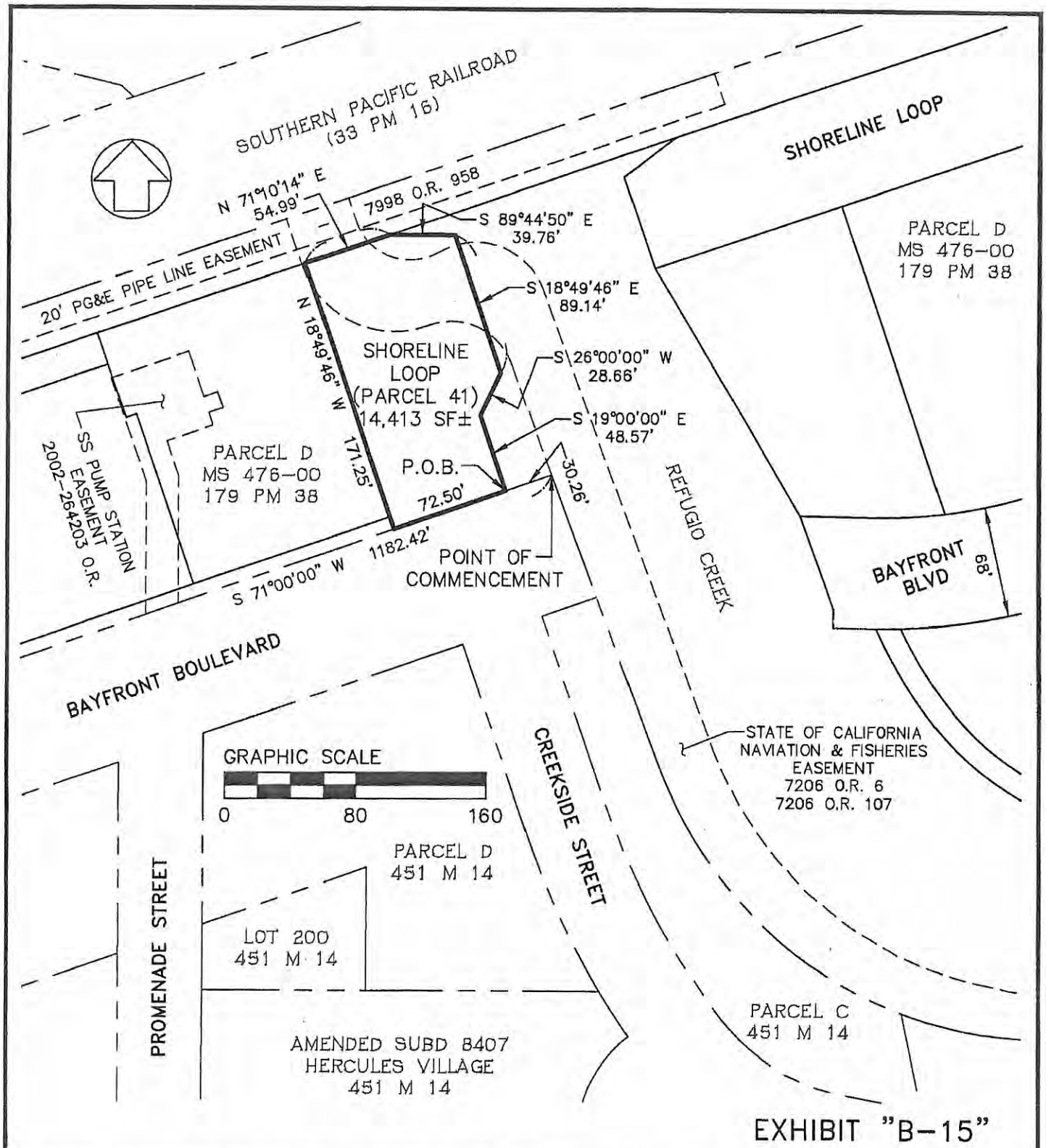


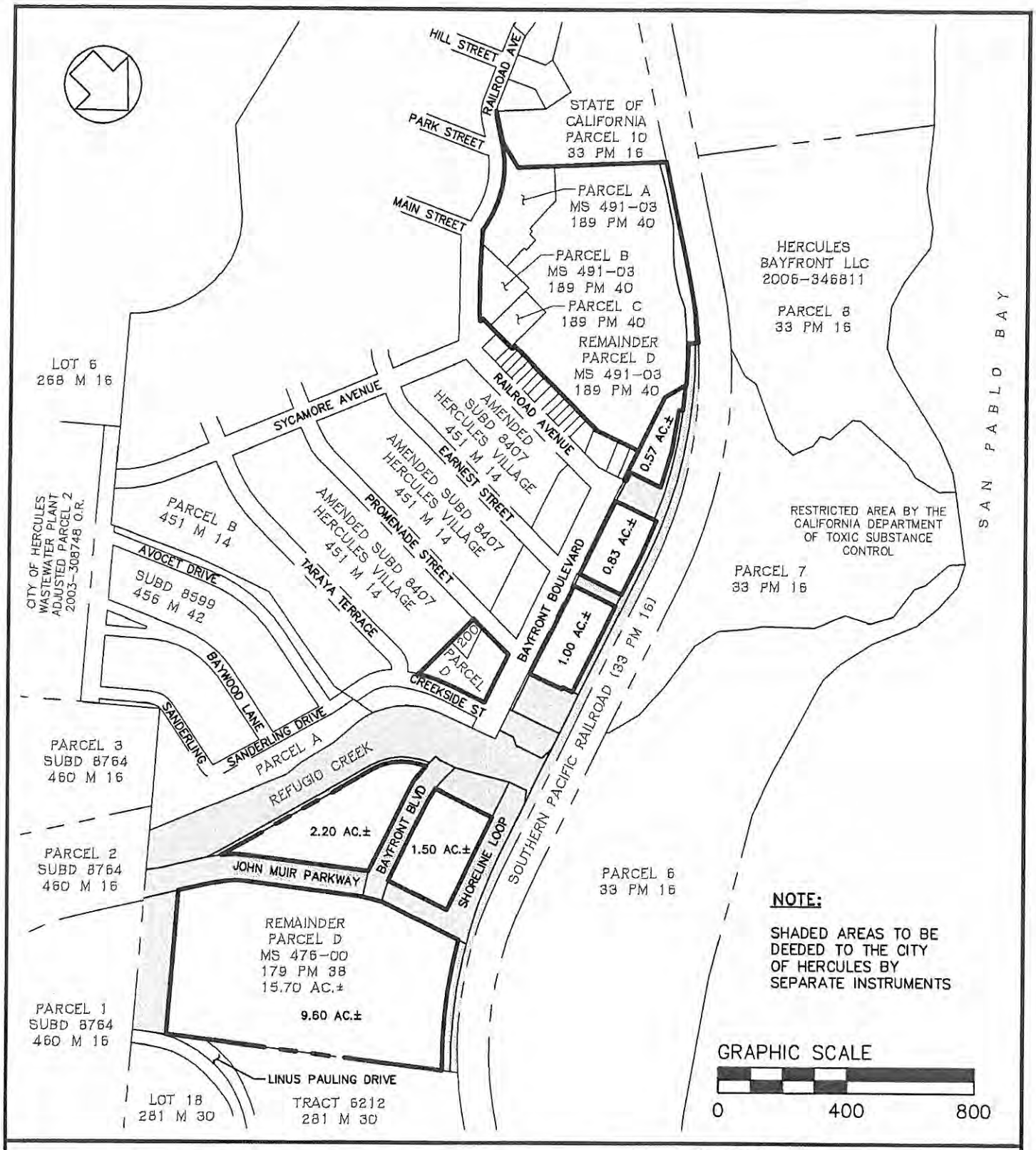
EXHIBIT "B-15"

BKF
ENGINEERS / SURVEYORS / PLANNERS

1646 NORTH CALIFORNIA BLVD
SUITE 400
WALNUT CREEK, CA 94596
925-940-2200
925-940-2299 (FAX)

Subject PLAT TO ACCOMPANY DESCRIPTION (PARCEL 41)
Job No. 20075011-20
By MLM Date 11/04/11 Chkd. BTW
SHEET 1 OF 1

EXHIBIT "B-1"
DEPICTION OF THE PROPERTY



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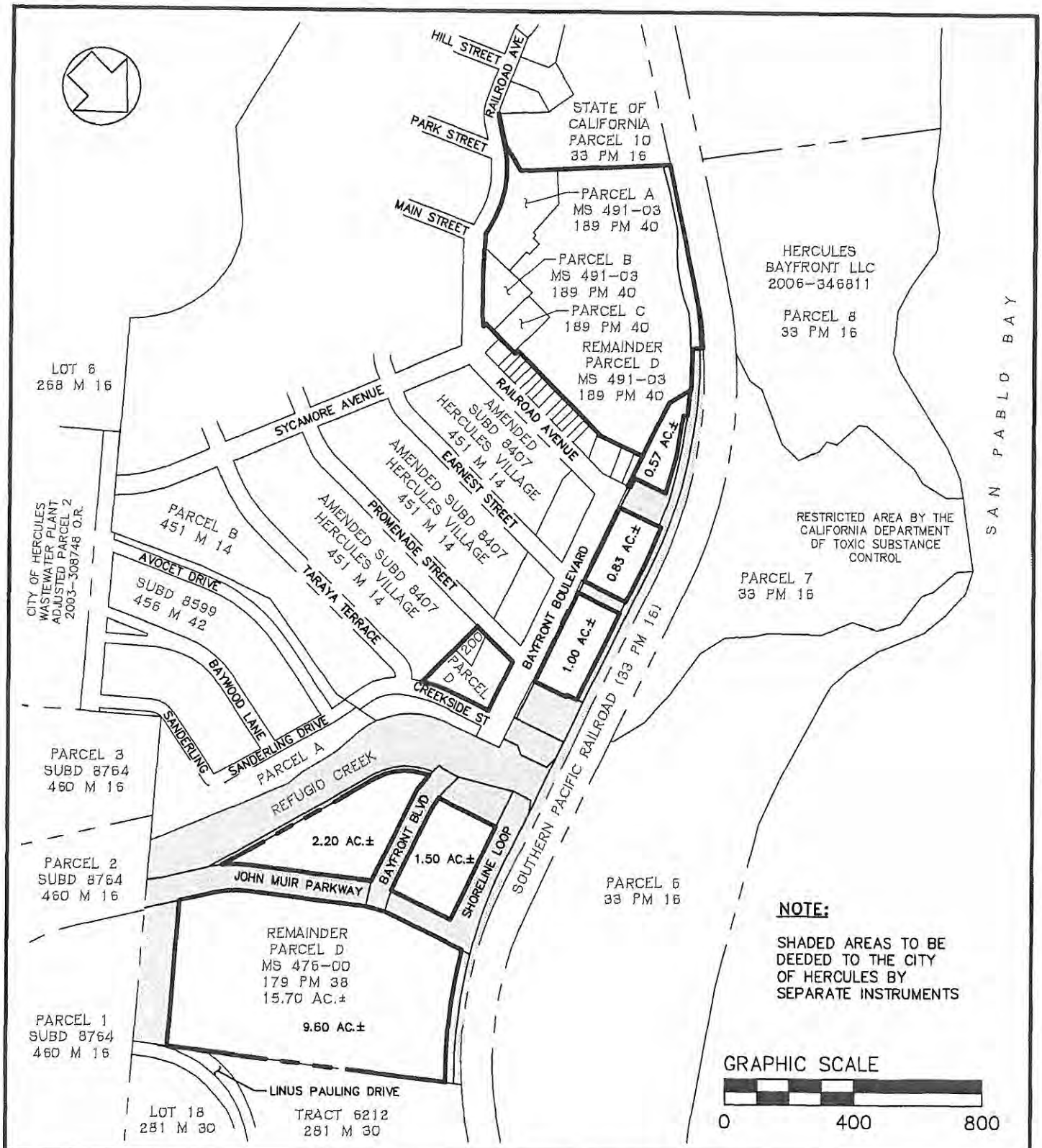
925-940-2200
925-940-2299 (FAX)

Subject EXHIBIT

Job No. 20075011-20
By MLM Date 11/15/11 Chkd. BTW
SHEET 1 OF 1

EXHIBIT "B-2"
EASEMENT AREAS



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1646 NORTH CALIFORNIA BLVD
SUITE 400
WALNUT CREEK, CA 94596
925-940-2200
925-940-2299 (FAX)

Subject EXHIBIT

Job No. 20075011-20
By MLM Date 11/15/11 Chkd. BTW
SHEET 1 OF 1