AGENDA

CITY OF VALLEJO
OVERSIGHT BOARD
FOR THE SUCCESSOR AGENCY
TO THE VALLEJO REDEVELOPMENT AGENCY
REGULAR MEETING

BOARDMEMBERS:
Erin Hannigan, Chair
Annette Taylor, Vice-Chair
Marti Brown
Melvin Jordan
LaGuan Lea
Shane McAffee
Gary Truelsen

THURSDAY, DECEMBER 19, 2013
8:30 A.M.

CITY COUNCIL CHAMBERS, 2ND FLOOR
555 SANTA CLARA STREET, VALLEJO

This AGENDA contains a brief general description of each item to be considered. The posting of the recommended actions does not indicate what action may be taken. If comments come to the Board without prior notice and are not listed on the AGENDA, no specific answers or response should be expected at this meeting per State law.

Those wishing to address the Board on any matter for which another opportunity to speak is not provided on the AGENDA but which is within the jurisdiction of the Board to resolve may come forward to the podium during the "COMMUNITY FORUM" portion of the AGENDA.

Notice of Availability of Public Records: All public records relating to an open session item, which are not exempt from disclosure pursuant to the Public Records Act, that are distributed to a majority of the Board will be available for public inspection at the City Clerk's Office, 555 Santa Clara Street, Vallejo, CA at the same time that the public records are distributed or made available to the Board. Such documents may also be available on the City of Vallejo website at http://www.ci.vallejo.ca.us subject to staff's ability to post the documents prior to the meeting. Information may be obtained by calling (707) 648-4527, TDD (707) 649-3562.

Requests for disability related modifications or accommodations, aids or services may be made by a person with a disability to the City Clerk's office no less than 72 hours prior to the meeting as required by Section 202 of the Americans with Disabilities Act of 1990) and the federal rules and regulations adopted in implementation thereof

1. CALL TO ORDER

2. ROLL CALL

3. COMMUNITY FORUM

4. INTRODUCTION OF LEGAL COUNSEL

5. APPROVAL OF THE MINUTES

A. Approval of the Minutes from the November 21, 2013 Special Meeting

6. OLD BUSINESS – None.

7. NEW BUSINESS

A. **Status Report by Community & Economic Development Director Regarding Any Pending Issues Related to Findings of Completion, Long Range Property Management Plan or any other outstanding matter**
Recommendation: No action required; this item is for informational purposes only.

B. **Resolution Approving, Authorizing and Directing the Successor Agency to Execute and Implement a Fourth Amended and Restated Disposition and Development Agreement among the Successor Agency, the City of Vallejo and Callahan Property Company, Inc., Including the Transfer of Assessor Parcels 55-160-600 and 610 from the Successor Agency to the City**
Recommendation: Adopt a Resolution approving, authorizing and directing the Successor Agency to the former Redevelopment Agency of the City of Vallejo to execute and implement a Fourth Amended and Restated Disposition and Development Agreement among the Successor Agency, the City of Vallejo, and Callahan Property Company, Inc. pursuant to Health and Safety Code Section 34181(e), including the transfer of Assessor Parcels 55-160-600 and 610 (Parcel J) pursuant to Health and Safety Code Section 34181(a) from the Successor Agency to the City, and making related statutory findings.

C. **Discussion Regarding Preparation of Governing Bylaws for the Oversight Board**
Recommendation: Discussion regarding preparation of governing bylaws for the Oversight Board. Upon conclusion, take the appropriate action to direct staff or counsel regarding next steps.

D. **Discussion regarding Oversight Board and Staff Relationship and Expectations**
Recommendation: Discussion regarding Board and staff relationship and expectations. Upon conclusion, provide staff with direction regarding next steps.

8. AGENDA ITEMS FOR FUTURE MEETINGS

A. **Discussion of Agenda Items for Future Meetings and Future Meeting Dates**

9. ADJOURNMENT

CERTIFICATION:

I, Dawn Abrahamson, Secretary, do hereby certify that I have caused a true copy of the above notice and agenda to be delivered to each of the members of the Oversight Board for the Successor Agency of the Vallejo Redevelopment Agency, at the time and in the manner prescribed by law and that this agenda was posted at City Hall, 555 Santa Clara Street, CA at 5:00 p.m., December 13, 2013.

Dated: December 13, 2013

Dawn Abrahamson, Secretary

CITY OF VALLEJO
OVERSIGHT BOARD
FOR THE SUCCESSOR AGENCY TO THE VALLEJO REDEVELOPMENT AGENCY
SPECIAL MEETING MINUTES
NOVEMBER 21, 2013

1. **CALL TO ORDER**
   The meeting was called to order by Vice Chair Taylor at 8:36 a.m.

2. **ROLL CALL**
   Boardmembers Present: Vice Chair Taylor (member representing Employees of Former Redevelopment Agency Appointee), Boardmembers Jordan (Solano County Superintendent of Education Appointee); Lea (Chancellor of California Community College Appointee) arrived at 8:44 a.m.; McAffee, (GVRD, Largest Special District); and Truelsen (Solano County Board of Supervisor's Public Member Appointee)
   Absent: Chair Hannigan (Solano County Board of Supervisors' Appointee) and Boardmember Brown (Mayor of Vallejo Appointee)
   Staff Present: Interim Economic Development Director Marks and Secretary Abrahamson

3. **COMMUNITY FORUM – None.**

4. **APPROVAL OF MINUTES**

   A. **Approval of Minutes from October 17, 2013 Regular Meeting**
   Action: Moved by Boardmember Truelsen, seconded by Boardmember Jordan and carried by members present to approve the minutes. (Absent- Hannigan, Brown and Lea; Abstain-McAffee)

5. **OLD BUSINESS – None.**

6. **NEW BUSINESS**

   A. **Consideration Regarding Changing the Starting Time of Regular Board Meetings**
   Recommendation: Discussion regarding changing the starting time of regular Oversight Board meetings. Upon conclusion, take the appropriate action to officially change the starting time of the regular Oversight Board meetings.

   Boardmembers discussed changing the starting time of regular meetings from 8 a.m. to 8:30 a.m.

   Action: Moved by Boardmember Truelsen, seconded by Boardmember Jordan and carried unanimously by boardmembers present to change the starting time of

regular Oversight Board meetings scheduled for the third Thursday of each month from 8 a.m. to 8:30 a.m.

B. Selection and Appointment of Legal Counsel for Oversight Board
Recommendation: By motion, approve the recommendation of the Oversight Board Ad-hoc Committee to direct the Successor Agency to enter into a Professional Services Agreement with an attorney to provide legal counsel to the Oversight Board

Community & Economic Development Director Sawicki provided an overview of the staff report and the Ad-hoc Committee's proposed recommendation.

Boardmembers Truelsen, Lea and Jordan (members of the Ad-hoc Committee) provided an overview of the Committee's interview and selection process. Boardmember Truelsen highlighted elements of the scope of services and components of the Committee's recommendation, which he provided in hard copy to the Board.

Action: Moved by Boardmember Truelsen, seconded by Boardmember Lea to: (1) approve the Ad-hoc Committee's recommendation to enter into a Professional Services Agreement with Michael Roush to provide legal counsel to the Oversight Board; (2) request Mr. Roush to negotiate a contract for services with the Successor Agency; (3) request that the contract contain standard/boilerplate clauses and that the contract be between the Successor Agency and Michael Roush with the Oversight Board as the client; (4) request that the scope of services recommended by the Ad-hoc Committee be incorporated into the contract; (5) request that the Board chair have direct access to legal counsel and that Board members have limited access; (6) request that the parties execute the contract within the next 3 weeks; and (7) request that the administrative budget be amended to include $30,000 for Mr. Roush's fees.

Vice Chair Taylor raised a concern related to Recommendation 5 – Board chair to have limited access to legal counsel and Board members having limited access. A discussion ensued amongst the Board members.

Boardmember Truelsen restated the motion as noted above with amendments to Recommendations Nos. 5 and 7 as follows: Recommendation 5: request that the Board chair have direct access to legal counsel and that Board members have limited access and provide courtesy copy notification to staff. Recommendation 7: request that the administrative budget be amended to include $30,000 for Mr. Roush's fees, to be redirected from the Property Tax Trust Fund. Boardmember Lea, seconder of the motion, agreed to the amendments. **Motion carried unanimously by members present.**

Boardmembers discussed and came to an agreement on sending letters of appreciation to the applications with staff's assistance.

7. **Agenda Items for Future Meetings**

   A. **Discussion of Agenda Items for Future Meetings**

   Boardmember Truelsen provided a list of potential future items for the December 19, 2013 and January 16, 2014 regular meetings. The list of possible items for the December 19 meeting included: (1) introduction of legal counsel, (2) review of Bylaws; (3) discussion/request to put Oversight Board documents on City website; (4) status report by staff on pending issues (finding of completion, property management, etc.); and (5) discussion of Board/staff relationship and expectations.

   Possible items for the January 16 meeting included: (1) consideration of Errors and Omissions insurance; (2) Statement of Purpose for Oversight Board (law, conflicts, fiduciary obligations, staff and Board responsibilities, etc.); (3) comprehensive review of line item budget to include staff expenses and methodology of cost allocations; and (4) preparation by staff of a one-paragraph description of each contract, debt, DDA, obligation of the Successor Agency with potential or current issues highlighted.

   Secretary Abrahamson informed Boardmembers that all Oversight Board agenda packet and minutes are already a part of the City's website, and agreed to work with IT staff to create an Oversight Board page similar to what is done for standing City Boards and Commissions.

   A discussion ensued regarding the list of potential future items with staff responding to questions of Boardmembers.

8. **ADJOURNMENT**

   The meeting adjourned at 9:47 a.m.

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ANNETTE TAYLOR, VICE CHAIR

ATTEST:

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DAWN G. ABRAHAMSON, SECRETARY

CITY OF VALLEJO
OVERSIGHT BOARD
FOR THE SUCCESSOR AGENCY
TO THE VALLEJO REDEVELOPMENT AGENCY

DATE: December 19, 2013

TO: Chairperson and Members of the Oversight Board

FROM: Mark Sawicki, Community & Economic Development Director

SUBJECT: APPROVE, AUTHORIZE AND DIRECT THE VALLEJO SUCCESSOR AGENCY TO EXECUTE AND IMPLEMENT THE WATERFRONT PROJECT FOURTH AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT, INCLUDING THE TRANSFER OF PARCELS 55-160-600 AND 55-160-610 FROM SUCCESSOR AGENCY TO CITY

RECOMMENDATION

Adopt a Resolution approving, authorizing and directing the Successor Agency ("Successor Agency") to the former Redevelopment Agency of the City of Vallejo ("RDA") to execute and implement a Fourth Amended and Restated Disposition and Development Agreement ("Amended DDA") among the Successor Agency, the City of Vallejo ("City"), and Callahan Property Company, Inc. ("Developer") pursuant to Health and Safety Code Section 34181(e), including the transfer of Assessor Parcels 55-160-600 and 55-160-610 (collectively, "Parcel J") pursuant to Health and Safety Code Section 34181(a) from the Successor Agency to the City, and making related statutory findings.

REASONS FOR RECOMMENDATION

On December 18, 2012 the State Department of Finance ("DOF") by letter (Attachment 1) acknowledged that the Third Amended and Restated Vallejo Waterfront Project Disposition and Development Agreement ("DDA") between the former RDA and the Developer is an "Enforceable Obligation" as defined in ABx1 26, as amended by AB 1484 (the "Redevelopment Dissolution Act"). However, the DOF indicated the DDA was very complicated and contained Successor Agency obligations that may be difficult for the Successor Agency to implement pursuant to the Redevelopment Dissolution Act.

During 2013 the City and DOF have consulted regarding a potential amendment to the current DDA that renegotiates and streamlines the current DDA consistent with the provisions of Health and Safety Code Section 34181(e). That code section authorizes the Oversight Board to approve a renegotiated agreement between the former RDA and a private developer if the renegotiated agreement will reduce Successor Agency liabilities, increase net revenues of the taxing entities, and serve the best interests of the taxing entities. The formal proposal/term sheet for this DDA modification was presented to the DOF during a September 5, 2013 meeting (Attachment 2). There followed a series of City/DOF discussions, culminating in an October 25, 2013 City letter addressing the DOF's key questions (Attachment 3). On the basis of these meetings and correspondence, the DOF has indicated that it will consider approval of the proposed amendments to the current DDA if first approved by the Oversight Board.

These proposed amendments have now been incorporated in the Amended DDA (Attachments 4 and 5), which was provided to DOF for advance review on December 12, 2013 and is being presented for approval of the

City Council and the Successor Agency Board on December 16, 2013. For reasons detailed in this report, the Amended DDA will reduce Successor Agency liabilities, increase net revenues of the taxing entities, and serve the best interests of the taxing entities, thereby making the Amended DDA appropriate for approval by the Oversight Board in accordance with Health and Safety Code Section 34181(e).

BACKGROUND AND DISCUSSION

The Vallejo Waterfront Plan area consists of three plan sub areas identified as the Northern, Central and Southern areas (see Attachment 6). The City owns title to all property in the Northern area and to parcels O and L (Vallejo Station) in the Central area. Only Parcel J in the Central Waterfront, a 6.7 acre site identified on assessor parcel maps as two parcels, APN 55-160-600 and APN 55-160-610, fronting Mare Island Way between the Georgia and Capital Street intersections and west of City Hall, is owned by the Successor Agency. A .9 acre portion of Parcel J is planned for parks and open space to extend the existing Unity Plaza Park from its westerly terminus at the Library building to Mare Island Way parallel to Georgia Street. Title to the Southern Waterfront area totaling 42.3 gross acres is held jointly by the City and Successor Agency and represents the majority of developable land in the Waterfront Project.

Following consultations with the DOF earlier this year regarding a potential amendment to the DDA, City/Successor Agency staff has determined it would be in the long-term best interest of the Successor Agency, the City, and the local affected taxing entities to seek a renegotiation of the current DDA, as documented in the Amended DDA, to simplify and modify the current DDA's terms in a mutually acceptable manner as authorized by Health and Safety Code Section 34181(e), which states:

> *34181. The oversight board shall direct the successor agency to do all of the following: …(e) Determine whether any contracts, agreements, or other arrangements between the dissolved redevelopment agency and any private parties should be terminated or renegotiated to reduce liabilities and increase net revenues to the taxing entities, and present proposed termination or amendment agreements to the oversight board for its approval. The board may approve any amendments to or early termination of those agreements if it finds that amendments or early termination would be in the best interests of the taxing entities.*

To implement the renegotiation and simplification of the DDA in fulfillment of the provisions of the Redevelopment Dissolution Act described above, City/Successor Agency staff and the Developer have prepared the proposed Amended DDA to accomplish the following major objectives:

(1) Eliminate the Successor Agency obligation to fund approximately $60 million of Waterfront Project public and site improvements from future Redevelopment Property Tax Trust Funds ("RPTTF");

(2) Remove the Southern Waterfront Project area totaling 42.3 gross acres from the jurisdiction of the Amended DDA, thereby allowing the private development parcels in the Southern Waterfront to become eligible for disposition under the Successor Agency's Long-Range Property Management Plan ("LRPMP"), instead of being limited to disposition under the DDA;

(3) Cause the Successor Agency to transfer title to Parcel J (6.7 acres +/-) in the Central Waterfront Project area to the City for redevelopment in accordance with the Amended DDA and any subsequent DDA amendments between the City and the Developer (as noted above, the City, rather than the Successor Agency, already owns the balance of the properties in the Northern and Central Waterfront areas that would remain subject to the Amended DDA);

(4) Cause jurisdiction of the Amended DDA to be transferred from the Successor Agency to the City;

(5) State that performance of any Successor Agency funding obligations transferred to the City as a result of the Amended DDA will be strictly limited to grant funds the City has obtained or may obtain, the sale proceeds from the disposition of the development parcels to the Developer, and any other funding sources

mutually agreed by the City and the Developer, so that no City general funds are committed as a result of the Amended DDA; and

(6) As a result of the above-described elimination of future RPTTF funding obligations on the part of the Successor Agency and the removal of any Successor Agency real property from the going forward Waterfront Project plan area, there remains no need or responsibility for ongoing Successor Agency involvement in the Amended DDA; consequently, the Amended DDA specifies that the City and the Developer may proceed to implement the modified and simplified Waterfront Project under the Amended DDA, including the approval and execution of any future subsequent amendments to the Amended DDA ("Subsequent DDA Amendments"), outside the continuing purview of the Redevelopment Dissolution Act and without the need for continuing oversight and approval of the Successor Agency, the Oversight Board and/or the DOF.

The proposed Amended DDA will not affect or modify the current Waterfront Project land use entitlements, including the Planned Development Master Plan ("PDMP"). Rather, the Amended DDA will position the City and the Developer to process Subsequent DDA Amendments (and any accompanying agreed upon modifications to the PDMP) outside the continuing limitations and controls of the Redevelopment Dissolution Act to modify the scope of development, schedule of performance, and method of financing for the Waterfront Project in a mutually acceptable manner to address current and foreseeable planning, financial and real estate market conditions. City staff envisions that the process to seek mutually acceptable Subsequent DDA Amendments (and any accompanying PDMP modifications) would commence in early 2014 and would involve an extensive set of stakeholder consultations as well as completion of a formal review process, including any required further CEQA review, prior to the City Council's consideration of approval of any Subsequent DDA Amendments and PDMP amendments. This Amended DDA sets a one year deadline for the Developer and City to confer on Subsequent DDA Amendments, unless mutually extended by the parties. As such, the parties acknowledge and agree that none of the parties are in default under the existing DDA or the Amended DDA, and that their obligations to perform the tasks set forth in the Schedule of Performance will be tolled and suspended pending approval, execution, and effectiveness of a Subsequent DDA Amendment.

BENEFITS TO TAXING ENTITIES OF AMENDED DDA; FISCAL IMPACTS

The net benefits of the Amended DDA to the Successor Agency and taxing entities are significant, as the relevant costs to the Successor Agency from a proposed Amended DDA are far outweighed by the benefits in the form of reduced liabilities that would otherwise need to be funded from RPTTF. On the cost side, the Successor Agency will forego the right to control Parcel J, a 6.7 acre parcel, which was last appraised in 2008 at a total value below $2.4 million. It is believed that Parcel J's value is lower today due to the overall market decline during the Great Recession, as well as the negative impact on land values that resulted from the recent period of fiscal instability for the City of Vallejo. The value of Parcel J to the Successor Agency is also negatively impacted by the obligation under the current DDA to complete the extension of Capitol Street from Mare Island Way to Santa Clara Street. This requirement will no longer be an obligation of the Successor Agency under the Amended DDA.

On the benefit side, the proposed Amended DDA will eliminate an estimated total of $60 million of Successor Agency costs, listed as Items 14 through 24 on the Successor Agency's Recognized Obligation Payment Schedule ("ROPS") as previously approved by the Oversight Board that would otherwise be funded by RPTTF monies over time. An argument could be made that the Successor Agency may still incur costs or diminution in sale value when it eventually disposes Southern Waterfront properties as part of the LRPMP process rather than under the Waterfront DDA. However, those costs (listed as ROPS items 17 through 21) would represent only $15.5 million of the total $60 million of current estimated Waterfront DDA Successor Agency cost obligations. In fact, $44 million of the current Waterfront DDA costs relate to three public improvement items (ROPS Items 14-16) that are within the Central and Northern Waterfront areas. These Successor Agency obligations will be completely removed under the proposed Amended DDA. The only Waterfront DDA related

RPTTF funding that would remain is payment of the final $257,055 reimbursement owed to the Developer under the existing DDA for cash advances previously made by the Developer for preparation of the Waterfront Project planning documents and the accompanying California Environmental Quality Act ("CEQA") environmental documentation).

In summary, in exchange for transferring Parcel J (valued at less than $2.4 million) to the City, the Successor Agency will be relieved of nearly $44 million of costs in the Central and Northern Waterfront alone. In addition, the Developer will no longer have the right to acquire approximately 29 net acres of development parcels in the Southern Waterfront, freeing up that land for disposition by the Successor Agency under the LRPMP process.

In turn, by removing or retiring nearly $44 million of public improvement cost liabilities from the ROPS, the Successor Agency will require a correspondingly smaller amount of future RPTTF, which will instead directly flow to the affected taxing entities.

Finally, the removal of the Northern and Southern Waterfront properties from the jurisdiction of the Successor Agency, Oversight Board and DOF through the proposed Amended DDA will enable the City and Developer to more aggressively pursue the development of these areas. The sooner this long-awaited development can occur, the earlier the taxing entities will reap significantly increased property and sales tax revenues from the developed properties. There are currently no property or sales tax revenues received from these properties.

For these reasons, the proposed Amended DDA will significantly reduce liabilities and increase net revenues to the taxing entities, thereby serving their best interests.

CEQA COMPLIANCE

As detailed in the proposed Oversight Board resolution approving, authorizing, and directing the execution and implementation of the Amended DDA, the Amended DDA is exempt from CEQA and no further CEQA document is required in connection with the proposed Oversight Board action because:

(1) The Amended DDA does not contain any changes in the underlying physical activities or the resulting environmental impacts from the project previously set forth in the current DDA and evaluated in the 2005 certified Environmental Impact Report and subsequent addendum for the Waterfront Project including the DDA;

(2) Instead, the amendments contained in the Amended DDA comprise "government fiscal activities which do not involve any commitment to a specific project which may result in a potentially significant physical impact on the environment", thereby rendering the Amended DDA exempt from the requirement of CEQA pursuant to State CEQA guidelines Section 15378(b)(4);

(3) Further the amendments to the current DDA contained in the Amended DDA meet the "common sense exemption" to the requirements of CEQA set forth in State CEQA guidelines Section 15061(b)(3), in that it can be seen with certainty that there is not possibility that the activity in question may have a significant impact on the environment"; and

(4) The Amended DDA is categorically exempt under State CEQA guidelines Section 15321, in that the amendments incorporated in the Amended DDA are implemented as actions by regulatory agencies to enforce or revoke a permit, license, or entitlement for use adopted by the agency, including, but not limited to, an administrative decision or order enforcing or revoking the permit, license, or entitlement for use or "enforcing the general rule, standard, or objective." The amendments contained in the Amended DDA, which involve in part revoking the Developer's right to develop the Southern Waterfront and to receive RPTTF funds, have been presented for approval to the Successor Agency, the City, the Oversight Board, and the DOF to enforce the general rule stated in the above cited Health and Safety Code Section 34181(e) that the existing DDA enforceable obligations should be amended to minimize liabilities, and maximize revenues to the affected taxing entities.

ATTACHMENTS

1. DOF Letter dated 12/18/12
2. DDA Amendment Proposal/Term Sheet
3. City of Vallejo 10/25/13 Letter to DOF
4. Fourth Amended and Restated DDA
5. Redline Version of Fourth Amended and Restated DDA
6. Waterfront Project Parcel Map
7. Oversight Board Resolution

CONTACT

Mark Sawicki, Community & Economic Development Director, 707-648-4382, msawicki@ci.vallejo.ca.us

Attachment 1

DEPARTMENT OF FINANCE

EDMUND G. BROWN JR. • GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

December 18, 2012

Ms. Deborah Lauchner, Finance Director
City of Vallejo
555 Santa Clara Street
Vallejo, CA 94590

Dear Ms. Lauchner:

Subject: Recognized Obligation Payment Schedule

This letter supersedes Finance's Recognized Obligation Payment Schedule (ROPS) letter dated October 19, 2012. Pursuant to Health and Safety Code (HSC) section 34177 (m), the City of Vallejo Successor Agency (Agency) submitted a Recognized Obligation Payment Schedule (ROPS III) to the California Department of Finance (Finance) on September 4, 2012 for the period of January 1 through June 30, 2013. Finance issued its determination related to those enforceable obligations on October 19, 2012. Subsequently, the Agency requested a Meet and Confer session on one or more of the items denied by Finance. The Meet and Confer session was held on November 27, 2012.

Based on a review of additional information and documentation provided to Finance during the Meet and Confer process, Finance has completed its review of the specific item being disputed.

- Item 3 – Six Flags parking lot project totaling $7 million through an Owner Participation Agreement (OPA). Finance continues to deny the item at this time. Finance denied the item as it is our understanding that construction or improvements are not expected to begin until 2015. The contract considers the timing of the obligation to begin when the eligible improvements have been made. There is no current funding obligation during the ROPS III period. Section 1 (d) of the OPA states "Upon Site Development Plan Approval by the City and a finding by the Agency that the Eligible Improvements are reasonable necessary to address the loss or anticipated loss of the overflow parking on the County Fairgrounds, or earlier at the option of the Agency, the entire amount of the Participation Payment shall be deposited in a separate bank account maintained by the Agency to be disbursed in accordance with the terms of Exhibit C." The Agency did not provide documentation to demonstrate that the Site Development Plan has been approved, which would require the deposit of funds into a separate account. Therefore, the item is currently not eligible for funding on this ROPS.

- Item 14 through 23 – Waterfront project totaling $60.1 million. Finance is not denying the items at this time. However, we note that HSC 34177.3 (a) prohibits a successor agency from creating new enforceable obligations after June 27, 2011. Furthermore, we maintain that no expenditure contracts have been awarded. Additionally, based on the information provided to Finance during the Meet and Confer session, the Development and Disposition Agreement (DDA) lays out a series of steps to be performed by the

former RDA that cannot likely be performed by the Agency. Nevertheless, due to the complexity of the DDA, Finance will review all items that pertain to the DDA during the next ROPS period. The Agency, or any other parties, should not conclusively rely upon this limited six month approval, as approval for the entire DDA and its associated projects.

The Agency's maximum approved Redevelopment Property Tax Trust Fund (RPTTF) distribution for the reporting period is: $1,864,306 as summarized below:

Approved RPTTF Distribution Amount For the period of January through June 2013	
Total RPTTF funding requested for obligations	$ 1,739,306
Less: Six-month total for item(s) denied or reclassified as administrative cost	
Total approved RPTTF for enforceable obligations	$ 1,739,306
Plus: Allowable RPTTF distribution for administrative cost for ROPS III	125,000
Total RPTTF approved:	$ 1,864,306

Pursuant to HSC section 34186 (a), successor agencies were required to report on the ROPS III form the estimated obligations and actual payments associated with the January through June 2012 period. The amount of RPTTF approved in the above table will be adjusted by the county auditor-controller to account for differences between actual payments and past estimated obligations. Additionally, these estimates and accounts are subject to audit by the county auditor-controller and the State Controller.

The amount available from the RPTTF is the same as the property tax increment that was available prior to enactment of ABx1 26 and AB 1484. This amount is not and never was an unlimited funding source. Therefore, as a practical matter, the ability to fund the items on the ROPS with property tax is limited to the amount of funding available to the successor agency in the RPTTF.

Except for items disallowed as noted above, Finance is not objecting to the remaining items listed in your ROPS III. Obligations deemed not to be enforceable shall be removed from your ROPS. This is Finance's final determination related to the enforceable obligations reported on your ROPS for January 1 through June 30, 2013. Finance's determination is effective for this time period only and should not be conclusively relied upon for future periods. All items listed on a future ROPS are subject to a subsequent review and may be denied even if it was or was not questioned on this ROPS or a preceding ROPS.

Please direct inquiries to Evelyn Suess, Dispute Resolution Supervisor, or Danielle Brandon, Analyst, at (916) 445-1546.

Sincerely,

STEVE SZALAY
Local Government Consultant

cc: On following page

cc: Ms. Elena Adair, Assistance Finance Director, City of Vallejo
Mr. Jun Adeva, Chief Deputy Auditor-Controller, County of Solano
Ms. Simona Padilla-Scholtens, Solano County Auditor-Controller, County of Solano
California State Controller's Office

PROPOSAL FOR RENEGOTIATED VALLEJO WATERFRONT DDA (Pursuant To Health and Safety Code Section 34181(e))

A. Overview and Summary of Proposal

Purpose: Consistent with the provisions of Health and Safety Code Section 34181(e), this document sets forth a proposal for preparation and approval of a renegotiated and simplified amended form (the "Renegotiated DDA") of the current Third Amended and Restated Disposition and Development Agreement (the "Current DDA") for the Vallejo Waterfront Project (the "Waterfront Project") between the former Redevelopment Agency of the City of Vallejo (the "Former RDA") and Callahan Property Company (the "Developer").[1] This proposal for the Renegotiated DDA is consistent with the purpose, intent and requirements of ABx1 26 and AB 1484 (collectively, the "Redevelopment Dissolution Law") by which the Former RDA has been dissolved and its assets, obligations, and liabilities taken over primarily by a successor agency to the Former RDA (the "Successor Agency"). The Current DDA constitutes an "enforceable obligation" within the meaning and for the purposes of the Redevelopment Dissolution Law.

Highlights of Proposed Renegotiated DDA: The Renegotiated DDA would accomplish the following primary objectives consistent with Health and Safety Code Section 34181(e):

- Relieve the Successor Agency of approximately $60 million (current value) of public improvement and site preparation obligations under the Current DDA;
- In turn, eliminate virtually all future allocation of Redevelopment Property Tax Trust Fund ("RPTTF") distributions to the Successor Agency related to the Current DDA, thereby freeing up considerable additional property tax revenues for the taxing entities;
- Remove a major geographic portion of the Vallejo Waterfront, including nearly all the Successor Agency-owned parcels, from the terms of the Current DDA;
- In turn, free up such Successor Agency property from conveyance under the Current DDA, and instead make this Successor Agency-owned land available for conveyance in accordance with a Long-Range Property Management Plan with financial benefits for the taxing entities; and
- Transfer one remaining Successor Agency parcel to the City of Vallejo (the "City") and enable the City and the Developer to flexibly develop the balance of the Current DDA site (virtually all of which is already owned by the City and not the Successor Agency), relying strictly on non-redevelopment resources and without further obligation of the Successor Agency or further oversight by the Successor Agency's Oversight Board (the "Oversight Board") and the Department of Finance (the "DOF") under the Redevelopment Dissolution Law.

In sum, the Renegotiated DDA would substantially reduce liabilities and increase net revenues of the taxing entities in both the short- and long-run, while freeing the City and the Developer to work flexibly using non-redevelopment resources to efficiently develop the mostly City-owned portion of the Waterfront that will generate additional property tax and other revenues for the taxing entities and achieve important local planning and economic development objectives.

[1] Capitalized terms used but not defined in this document have the meanings given in the Current DDA.

B. Proposal For Renegotiated DDA

Current DDA Background: The Waterfront Project under the Current DDA calls for a multi-phased public-private endeavor to redevelop approximately 94 acres of land at the heart of the Vallejo waterfront adjacent to downtown Vallejo (see Parcel Map attached). For descriptive purposes, the Current DDA separates the Waterfront Project into three subareas encompassing the Northern, Central, and Southern sectors of the site (see attached maps).

The Waterfront Project provides for approximately 43-acres of public improvements, including parking garages, street improvements, and park and open space improvements, with a major focus on the Vallejo Station multi-modal transit facility serving the Bay Link Ferry Terminal and a regional bus terminal (see Land Use Plan attached). The Current DDA obligates the Former RDA to fund and complete a comprehensive set of public improvements, hazardous materials remediation, and other site improvements at a currently estimated remaining public cost of approximately $60 million, using property tax increment generated by the Waterfront Project, disposition proceeds received from the Developer for the purchase of the Developer Parcels described below, and other available public sector funds.

The Waterfront Project also includes private development by the Developer of approximately 51 acres (the "Developer Parcels") for a combination of high density commercial, industrial, and residential uses to take advantage of the prime transit-oriented location of the project (see Waterfront Summary attached). The Current DDA sets forth a comprehensive valuation process to establish the fair market purchase price for each of the Developer Parcels, involving appraisals of both the pre-entitlement and post-entitlement value of each parcel and consideration of the Developer's equity contributions to-date of over $11 million toward pre-development activities under the Current DDA.

Parties To Renegotiated DDA: The parties to the proposed Renegotiated DDA would be the Developer, the Successor Agency, and the City.

Purpose Of Renegotiated DDA: The purpose of the Renegotiated DDA is to modify and simplify the Current DDA in order to:

- Substantially reduce the obligations and increase the net revenues of the Former RDA/Successor Agency (as compared to the Current DDA) for the benefit of the affected taxing entities under the Redevelopment Dissolution Law;

- Modify the scope, timing and funding sources for the parties' obligations under the Current DDA to reflect current market and financial resources conditions; and

- Assign all Former RDA/Successor Agency performance obligations under the Current DDA (as modified by the Renegotiated DDA) to the City (with mutually acceptable limits on the City's funding commitments) for performance and further modification, as appropriate, outside the continuing purview of the Oversight Board and the DOF, and outside the continuing requirements of the Redevelopment Dissolution Law.

Process For Renegotiated DDA: The Renegotiated DDA can be entered into by the Successor Agency, the City and the Developer, and approved by the Oversight Board (with review of such approval by the DOF), pursuant to Health and Safety Code Section 34181(e) (as added by the Redevelopment Dissolution Law). That statute, which states in relevant part as follows, authorizes the Oversight Board to direct the Successor Agency to renegotiate any contracts (such as the Current DDA) between the Former RDA and private parties (such as the Developer) to reduce liabilities and increase net revenues to the taxing entities in a manner that is in the best interest of the taxing entities:

> *34181. The oversight board shall direct the successor agency to do all of the following:...(e) Determine whether any contracts, agreements, or other arrangements between the dissolved redevelopment agency and any private parties should be terminated or renegotiated to reduce liabilities and increase net revenues to the taxing entities, and present proposed termination or amendment agreements to the oversight board for its approval. The board may approve any amendments to or early termination of those agreements if it finds that amendments or early termination would be in the best interests of the taxing entities.*

Primary Terms of Renegotiated DDA: Primary terms of the proposed Renegotiated DDA would include:

- Virtually all obligations of the Former RDA/Successor Agency to receive and apply RPTTF funds to pay the Former RDA's obligations under the Current DDA would be eliminated,[2] thereby substantially increasing the receipt of property taxes by the affected taxing entities.

- All rights and obligations of the parties under the Current DDA regarding the Southern Waterfront portion of the Waterfront Project would be deleted, thereby eliminating substantial remediation and public improvement obligations of the Former RDA/Successor Agency with respect to that major area, and freeing up over half of the Developer Parcel acreage (approximately 27 acres) from the Current DDA's obligation to convey to the Developer, and instead making that Southern Waterfront land available for liquidation and disposition by the Successor Agency[3] in a manner that could generate additional property sale proceeds to the taxing entities.

- All of the Successor Agency's rights and obligations under the Current DDA (as modified by the Renegotiated DDA) would be assigned to the City, and the Successor Agency's ownership of Parcel J (approximately 6.8 acres) would be granted to the City for further disposition by the City in accordance with the Renegotiated DDA,[4] thereby relieving the Successor Agency of substantial obligations for the benefit of the taxing entities.

---

[2] No further RPTTF funds would be provided to the Successor Agency beyond the amounts approved in Recognized Obligation Payment Schedules I, II, III, and 13-14A and B, and beyond such further funds, if any, needed to reimburse the Developer the $628,077 owed by the Former RDA for past Developer advances of Former RDA costs under Current DDA Section 109. To date, $126,554 of this amount has been reimbursed with RPTTF funds approved on ROPS 13-14A.

[3] The Southern Waterfront property is currently jointly owned by the Successor Agency and the City.

[4] Parcel J is the only property owned by the Successor Agency in the Northern and Central Waterfront areas—the areas of the Waterfront Project that are proposed to remain subject to the Renegotiated DDA. All other portions of the Northern and Central Waterfront are owned by the City.

- By appropriate accompanying documentation and consistent with Health and Safety Code Section 34181(e), the DOF and the State Controller's Office would acknowledge and agree that the City and the Developer could proceed to implement and modify the Renegotiated DDA without further need for Oversight Board or state approval and without regard to the requirements of the Redevelopment Dissolution Law, since the Renegotiated DDA would no longer require any significant funding from RPTTF or other funds subject to the Redevelopment Dissolution Law.

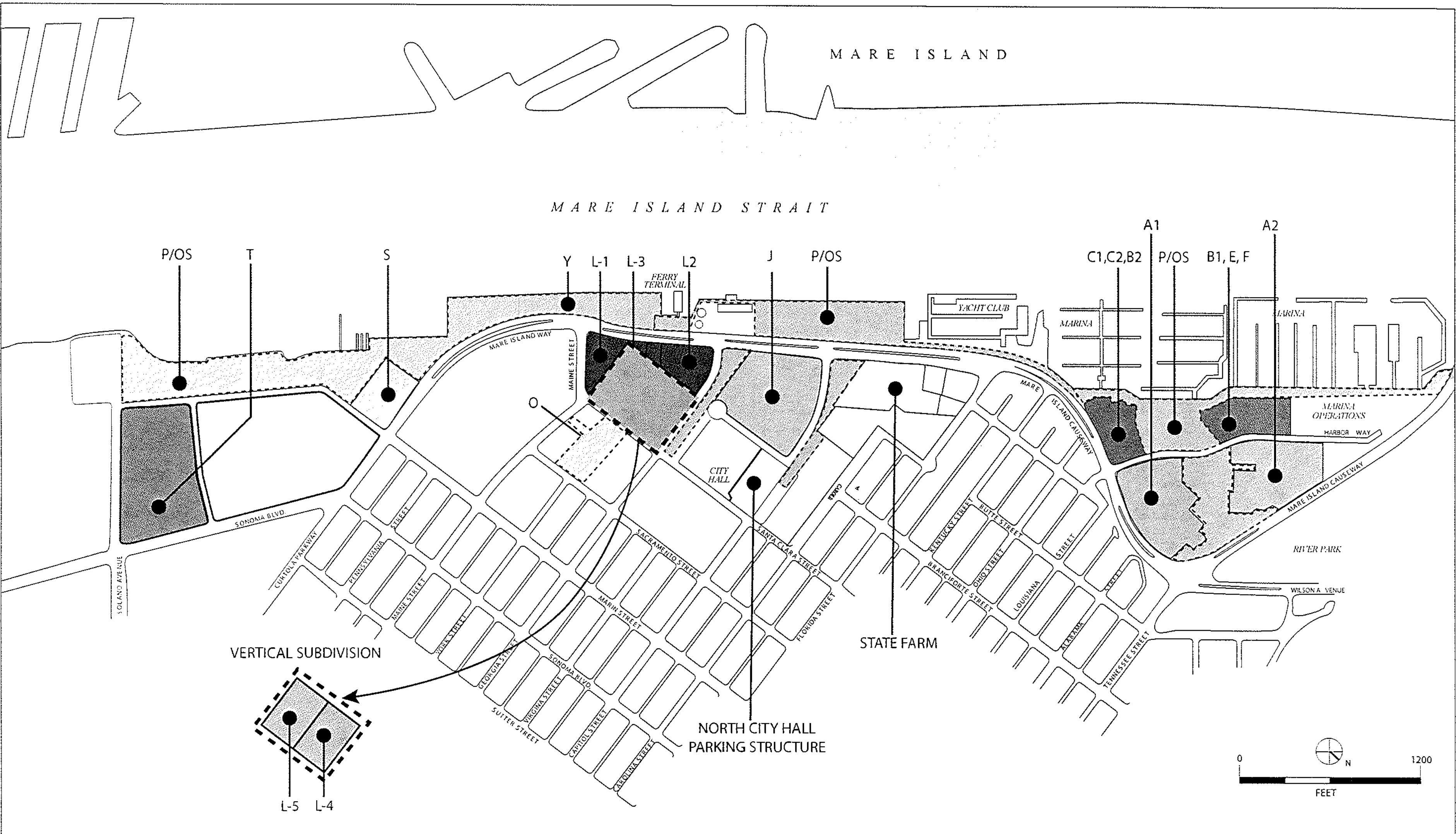
- The City's obligation to fund and complete the public improvements that it would assume under the Renegotiated DDA would be strictly limited to grant funds it has obtained or may obtain, the sale proceeds from the disposition of the Developer Parcels to the Developer, and any other funding sources mutually agreed by the City and the Developer.

- Additionally, the scope of public improvements under the Renegotiated DDA may be modified, reduced and re-prioritized through a joint City/Developer evaluation of the likely sources and timing of available funds and the costs of various public improvements, to better align the total costs and total funding sources.

- The scope of development and schedule of performance for the Developer Parcels and the public improvements that will remain subject to Renegotiated DDA may be modified to reflect current market and financing conditions, thereby maximizing the prospects for near-term feasible development of the reduced-scope Waterfront Project that will generate property taxes and other revenues for the benefit of the affected taxing entities.

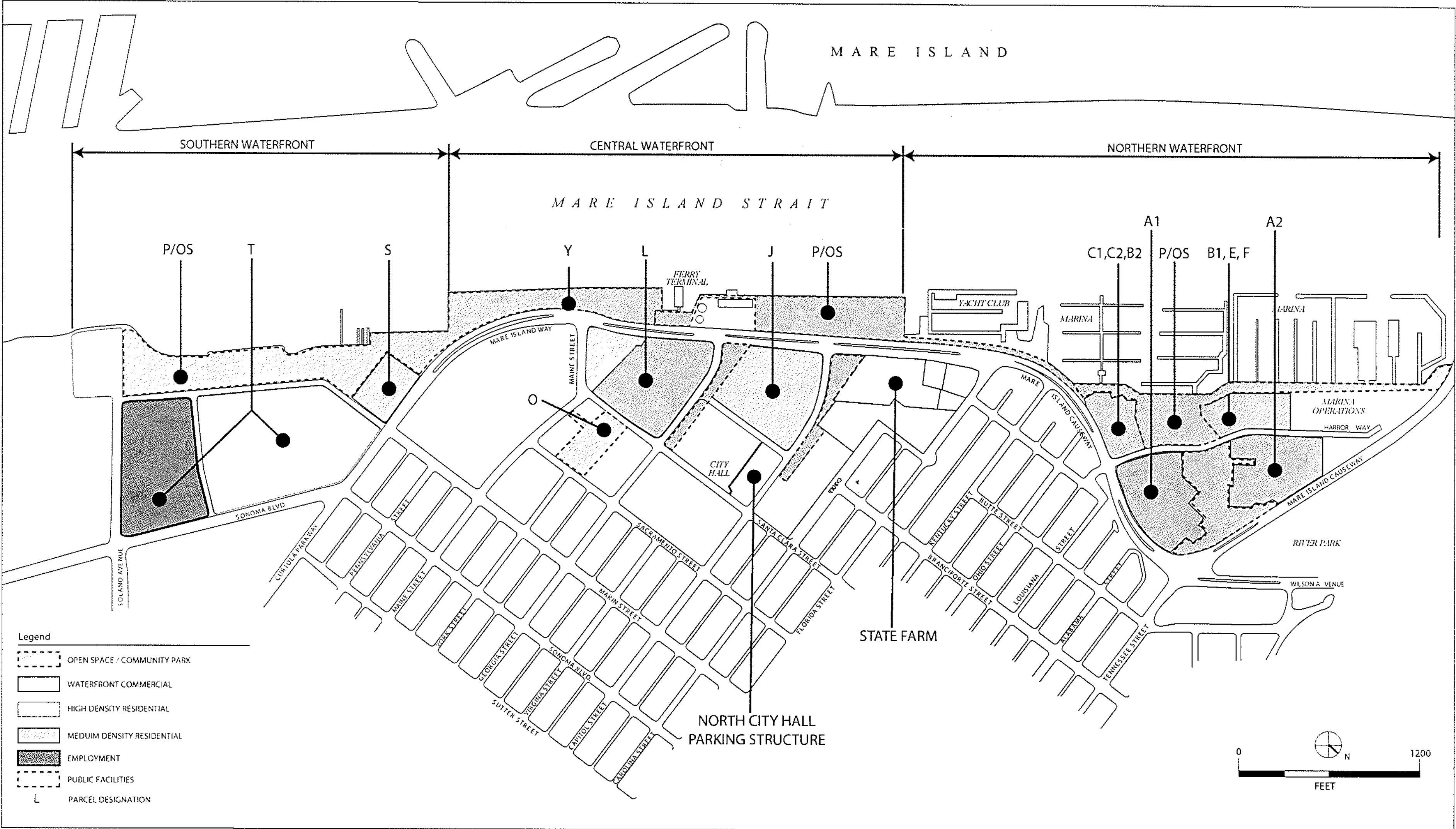
<u>Attachments</u>

Parcel Maps
Land Use Plan
Waterfront Project Summary



THE VALLEJO STATION PROJECT AND WATERFRONT PROJECT

Figure 1: PARCEL MAP



THE VALLEJO STATION PROJECT AND WATERFRONT PROJECT

Figure 2: EXISTING LAND USE PLAN

Vallejo Waterfront Project Summary

Northern Waterfront

Parcel	Acreage	Land Use	Current Ownership	Landuse Jurisdiction
A-1	5.7	Residential	City	City, PDMP
Wetlands Park	4.0	POS	City	City, PDMP
A-2	5.8	Residential	CIty	City, PDMP
B-1	0.14	Commercial, Bldg. pad	City	City, BCDC Permit No. 1-86 as amended ground lease only
B-2	0.14	Commercial, Bldg. pad	City	City, BCDC Permit No. 1-86 as amended ground lease only
C	0.23	Commercial	City	City, BCDC Permit No. 1-86 as amended ground lease only
Community Park	3.50	POS	City	City, BCDC Permit No. 1-86 as amended

Central Waterfront

Parcel	Acreage	Land Use	Current Ownership	Landuse Jurisdiction
J	6.8	Commercial, Residential	Successor Agency	City, PDMP
L-1	1.7	Commercial, Residential	City	City, PDMP
L-2	1.7	Commercial, Residential	City	City, PDMP
L-3	4.3	Vallejo Station TOD Garage	City	City, WETA Baylink Ferry
L-4	2.2	Vallejo Station TOD Garage	City	City, WETA Baylink Ferry
L-5	2.1	Commercial, Hotel	City	City, PDMP, Vertical Subdivision Parcel
Baylink Ferry	4.6	Transit Service	City	City, WETA Baylink FerryBCDC Permit No. 2-82
POS	8.6	POS	City	City, PDMP, BCDC Permit No. 2-82
0	2.2	Bus Transfer Center	City	City, Regional Bus System, WETA Baylink Ferry

Southern Waterfront

Parcel	Acreage	Land Use	Current Ownership	Landuse Jurisdiction
S	2.6	Commercial, Office	Successor Agency, City	City, State Lands Commercial Tidelands Survey, BCDC
POS, Public Streets	13.6	POS, Public Streets	Successor Agency, City	City, State Lands Commercial Tidelands Survey, BCDC
T-1	15.2	Residential	Successor Agency, City	City, State Lands Commercial Tidelands Survey, BCDC
T-2	9.2	R&D, Light Industrial	Successor Agency, City	City, State Lands Commercial Tidelands Survey, BCDC
Solano Ave ROW	1.7	Street ROW	USA	USA, Future dedication to City

Attachment 3

Economic Development Department · 555 Santa Clara Street · Vallejo · CA · 94590 · 707.648.4326

October 25, 2013

Ms. Wendy Griffe
Supervisor
State of California, Department of Finance
Local Government Unit
915 L Street
Sacramento, CA 95814

VIA EMAIL AND U.S. MAIL

Dear Ms. Griffe:

I am writing in response to issues raised by Department of Finance ("DOF") staff on the proposed Amended Vallejo Waterfront DDA ("Amended DDA") during the phone call you had on October 4, 2013 with Dan Marks, the former interim Economic Development Director for the City of Vallejo. As of October 7th, I am the new Community & Economic Development Director in Vallejo, and have taken over responsibility for the Successor Agency and Oversight Board matters.

It is my understanding from Mr. Marks that DOF staff was seeking a better understanding of how the Amended DDA would reduce liabilities and increase net revenues to the taxing entities, thereby benefitting the taxing entities, as called for in the statute under which the Amended DDA will be processed.

By way of recap, the proposed Amended DDA will assign the RDA Successor Agency's interests in the Vallejo Waterfront Project DDA to the City, thereby eliminating the Successor Agency's liabilities and obligations under the current DDA, which include an estimated $60 million of financial responsibilities for site preparation and public improvements. Further, the properties encumbered by the Amended DDA will now only include those located in the Northern and Central Waterfront areas, almost all of which are City-owned properties. The Southern Waterfront area (42.3 gross acres) will no longer be encumbered by the Amended DDA, allowing disposition of those properties to other interested parties pursuant to the Long Range Property Management Plan (LRPMP.

In exchange for these benefits, the Successor Agency would transfer one Central Waterfront parcel (Parcel J) to the City under the Amended DDA, allowing the City and the Developer to proceed on their own with the local redevelopment of the Central and Northern Waterfront, and without any further redevelopment involvement or assistance from the Successor Agency. All

other properties in the Northern and Central Waterfront areas covered by the Amended DDA are already owned by the City and not by the Successor Agency.

The net benefits to the Successor Agency and taxing entities are significant, as the relevant costs to the Successor Agency from a proposed Amended DDA are far outweighed by the benefits in the form of reduced liabilities that would otherwise need to be funded from RPTTF. On the cost side, the Successor Agency will forego the right to control Parcel J, a 6.7 acre parcel which was last appraised in 2008 at a value below $2.4 million. We believe Parcel J's value is lower today due to the overall market decline during the Great Recession, as well as the negative impact on land values resulting from the City of Vallejo's financial problems. The value of Parcel J to the Successor Agency is also negatively impacted by the obligation under the current DDA to complete the extension of Capitol Street from Mare Island Way to Santa Clara Street. This requirement will no longer be an obligation of the Successor Agency under the Amended DDA.

On the benefit side, the proposed Amended DDA will eliminate more than $60 million of Successor Agency costs (listed as Items 14 through 24 on the Successor Agency's ROPS) that would otherwise be funded by RPTTF monies over time. An argument could be made that the Successor Agency may still incur costs or diminution in sale value when it eventually disposes of the Southern Waterfront properties as part of the LRPMP process rather than under the Waterfront DDA. However, those costs (listed as ROPS items 17 through 21) represent only $15.5 million of the total $60 million of current estimated Waterfront DDA Successor Agency cost obligations.[1] In fact, $43.85 million of the current Waterfront DDA costs relate to three public improvement items (ROPS Items 14-16) that are within the Central and Northern Waterfront areas. These Successor Agency obligations will be completely removed under the proposed Amended DDA.

In summary, in exchange for transferring Parcel J (valued at less than $2.4 million) to the City, the Successor Agency will be relieved of $44 million of costs in the Central and Northern Waterfront alone. In addition, the Developer will no longer have the right to acquire approximately 29 net acres of private development parcels in the Southern Waterfront, freeing up that land for disposition by the Successor Agency under the LRPMP process.

In turn, by removing or retiring nearly $44 million of public improvement cost liabilities from the ROPS, the Successor Agency will require a correspondingly smaller amount of future RPTTF, which will instead directly flow to the affected taxing entities.

Finally, the removal of the Northern and Southern Waterfront properties from the jurisdiction of the Successor Agency, Oversight Board and DOF through the proposed Amended DDA will enable the City and Developer to aggressively pursue their development. The sooner this long-

[1] Actually, if freed up from the specific site preparation and public improvement cost obligations specified in the current Waterfront DDA, the Successor Agency should be able to create a desirable commercial development opportunity for the private sector at a typical subdivision cost that is considerably less than the current DDA obligation, hence making the Southern Waterfront development parcels marketable to the private sector at a net "profit" that could be distributed to the taxing entities.

awaited development can occur, the earlier the taxing entities will reap significantly increased property and sales tax revenues from the developed properties. There are currently no property or sales tax revenues received from these properties.

For these reasons, the proposed Amended DDA will significantly reduce liabilities and increase net revenues to the taxing entities, thereby serving their best interests. We will be pleased to forward the Draft Amended and Restated DDA for DOF review and comment prior to submittal to the Successor Agency and Oversight Board.

Sincerely,

Mark Sawicki
Community & Economic Development Director
City of Vallejo

CC: Dan Keen, City Manager
Claudia Quintana, City Attorney
Inder Khalsa, Assistant City Attorney
Iris Yang, Best Best & Krieger, special counsel
Joseph Callahan, Callahan Property Company LLC
Jack Nagle, Goldfarb & Lipman LLP

Version for
12/16/13 Action

FOURTH AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT (INCLUDING ASSIGNMENT OF SUCCESSOR AGENCY RIGHTS AND OBLIGATIONS)

By and Among

CITY OF VALLEJO,

SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF VALLEJO

and

CALLAHAN PROPERTY COMPANY, INC.

Waterfront Redevelopment Project /
Marina Vista Redevelopment Project

Executed as of October 17, 2000

Amended and Restated (First) as of October 1, 2002

Amended as of October 24, 2003

Amended as of August 24, 2004

Amended and Restated (Second) as of October 27, 2005

Amended and Restated (Third) as of February 27, 2007

Amended and Restated (Fourth) as of December 16, 2013

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FOURTH AMENDED AND RESTATED
DISPOSITION AND DEVELOPMENT AGREEMENT
(INCLUDING ASSIGNMENT OF SUCCESSOR AGENCY
RIGHTS AND OBLIGATIONS)

THIS FOURTH AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT (INCLUDING ASSIGNMENT OF SUCCESSOR AGENCY RIGHTS AND OBLIGATIONS) (this "Fourth Restated Agreement" or this "Agreement"), initially executed and previously amended as detailed in Recital A below, is entered into as of December 16, 2013 by and among the CITY OF VALLEJO, a municipal corporation (the "City"), the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF VALLEJO, a public entity (the "Successor Agency"), and CALLAHAN PROPERTY COMPANY, INC., a California corporation (the "Developer"). The City, the Successor Agency, and the Developer are sometimes collectively referred to as the "parties", and individually as a "party". The parties have entered into this Fourth Restated Agreement on the basis of the following facts, understandings and intentions:

RECITALS

A. The Redevelopment Agency of the City of Vallejo (the "RDA"), and Callahan/DeSilva Vallejo, LLC ("CDV") entered into a Disposition and Development Agreement for the Vallejo Waterfront Project, executed as of October 17, 2000, as amended and restated as of October 1, 2002, as further amended by an Amendment entered into as of October 24, 2003, as further amended by a Second Amendment entered into as of July 20, 2004, as further amended and restated for a second time as of October 27, 2005, as further amended and restated for a third time as of February 27, 2007, as further implemented by an Implementation Agreement entered into as of March 8, 2011, and as further implemented by Operating Memorandum No. 1 entered into as of April 13, 2007, Operating Memorandum No. 2 entered into as of February 29, 2008, Operating Memorandum No. 2A entered into as of August 1, 2009, Operating Memorandum No. 3 entered into as of May 14, 2007, Operating Memorandum No. 4 entered into as of May 14, 2007, Operating Memorandum No. 5 entered into as of December 1, 2011, and Operating Memorandum No. 6 entered into as of December 1, 20011 (collectively, the "Prior Agreement").

B. The Prior Agreement provides for the acquisition, disposition and development of certain real property included within the boundaries of the Redevelopment Plans for the Waterfront Redevelopment Project and the Marina Vista Redevelopment Project, and construction in phases of a master planned mixed-use development, including residential, commercial, retail and open space and park uses. Pursuant to the Prior Agreement, the RDA agreed to convey certain property located within the site that is the subject of the Prior Agreement to the Developer, and the Developer agreed to construct on the conveyed real property a mixed-use development as fully set forth in the Prior Agreement. In addition, pursuant to the Prior Agreement, the RDA agreed to fund and cause construction of specified public improvements and performance of certain site improvements and hazardous materials remediation, and for those purposes to pledge certain specified funds, including, without limitation, land disposition proceeds and a portion of the tax increment revenue generated by the redevelopment of the site, to help pay for the RDA's obligations under the Prior Agreement.

C. Attachment No. 9 of this Fourth Restated Agreement provides a brief history and background of the evolution of the Prior Agreement and its intended purposes (the "History and Background").

D. As more fully described in the History and Background (Attachment No. 9), accompanying the Prior Agreement, the City has approved a series of land use entitlements to guide the development of the site (collectively the "Current Approvals"), including, without limitation, a General Plan amendment, a Zoning Ordinance amendment, a Planned Development Master Plan and accompanying Waterfront Design Guidelines, and a First Amended and Restated Development Agreement dated as of April 12, 2007 between the City and the Developer pursuant to Government Code Section 65864 et seq. (the "Development Agreement").

E. As permitted by the Prior Agreement, pursuant to an Assignment and Assumption Agreement among CDV, the Developer, the RDA and the City, dated as of December 20, 2011, CDV assigned all of its right, title and interest in, and obligations and covenants under the Prior Agreement to the Developer, the Developer accepted and assumed such assignment, and the RDA and the City approved such assignment, making Callahan Property, Inc. the "Developer" under and in accordance with all the terms and provisions of the Prior Agreement.

F. Pursuant to ABx1 26 enacted June 28, 2011 (as found constitutional and as partially reformed by the California Supreme Court in the decision of *California Redevelopment Association v. Matosantos* issued December 29, 2011, and as amended by AB 1484 enacted June 27, 2012, the "Dissolution Act"):

1. The RDA, along with all other redevelopment agencies in the State of California, was dissolved as of February 1, 2012;

2. The City, acting in a separate capacity and in the form of a separate legal entity, elected to serve as the successor agency (the "Successor Agency") to the RDA for purposes of fulfilling the enforceable obligations (as further defined in the Dissolution Act, "Enforceable Obligations") of the dissolved RDA and unwinding the affairs of the dissolved RDA;

3. An oversight board (the "Oversight Board") has been selected and convened to oversee, direct and approve specified actions of the Successor Agency; and

4. The California Department of Finance (the "DOF") has been assigned to review the actions of the Oversight Board.

G. The Successor Agency has treated as Enforceable Obligations the obligations of the dissolved RDA under the Prior Agreement, including, without limitation, the obligations to convey specified parcels to the Developer in accordance with specified terms and conditions, to fund and cause construction of various public improvements, and to fund and complete certain property remediation and site preparation duties. Accordingly, the Successor Agency has placed certain of the dissolved RDA's funding obligations under the Prior Agreement on each six-month recognized obligation payment schedule (each, a "ROPS") prepared by the Successor Agency

and submitted to the Oversight Board and the DOF for review and approval, with the purpose of obtaining the appropriate funds to pay such Prior Agreement obligations from the funds to be distributed by the Solano County Auditor-Controller (the "Auditor-Controller") in accordance with Health and Safety Code Section 34183(a)(2) from the Redevelopment Property Tax Trust Fund (the "RPTTF", as further described in Health and Safety Code Section 34170(b)).

H. In connection with the processing of its ROPS for the period January 1 through June 30, 2013 ("ROPS III"), the DOF wrote to the Successor Agency on October 19, 2012, disapproving several line items related to Prior Agreement obligations of the RDA on the basis that such items did not constitute Enforceable Obligations. The Successor Agency requested a "meet and confer" session with the DOF that was subsequently held on November 27, 2012 to seek a reversal of the DOF's determination that such disapproved Prior DDA obligations did not constitute Enforceable Obligations. By letter of December 18, 2012, the DOF informed the Successor Agency that it was temporarily removing its disapproval of the subject Prior Agreement obligations, but indicated several reservations about the long-term viability of implementing the Prior Agreement under the terms and limitations of the Dissolution Act.

I. Following informal consultations with the DOF and the Oversight Board, the parties determined it would be in their long-term best interest and that of the taxing entities to seek a renegotiation of the Prior Agreement to simplify and modify its terms in a mutually acceptable manner as authorized by Health and Safety Code Section 34181(e), which states:

> *34181. The oversight board shall direct the successor agency to do all of the following:...(e) Determine whether any contracts, agreements, or other arrangements between the dissolved redevelopment agency and any private parties should be terminated or renegotiated to reduce liabilities and increase net revenues to the taxing entities, and present proposed termination or amendment agreements to the oversight board for its approval. The board may approve any amendments to or early termination of those agreements if it finds that amendments or early termination would be in the best interests of the taxing entities.*

J. As a result, the parties have prepared amendments to the Prior Agreement (the "Amendments") in the form of this Fourth Restated Agreement, pursuant to which the following primary objectives are achieved:

1. With one limited exception set forth in Section 114, all obligations of the RDA/Successor Agency to receive and apply RPTTF funds to pay the RDA's obligations under the Prior Agreement are eliminated, thereby substantially increasing the receipt of property taxes by the affected taxing entities.

2. As fully provided in Section 103, all rights and obligations of the parties under the Prior Agreement regarding the Southern Waterfront area are deleted, thereby eliminating substantial remediation and public improvement obligations of the RDA/Successor Agency with respect to that major area, and freeing up over half of the private development acreage (approximately 27 acres) from the Prior Agreement's obligation to convey to the Developer, and instead making that Southern Waterfront land available for liquidation and

disposition by the Successor Agency and the City in a manner that could generate additional property sale proceeds to the taxing entities.

3. As further provided in Section 111, virtually all of the Successor Agency's rights and obligations under the Prior Agreement (as modified by this Fourth Restated Agreement) are assigned to the City, and the Successor Agency's ownership of Parcel J will be granted to the City for further disposition by the City in accordance with this Fourth Restated Agreement, thereby relieving the Successor Agency of substantial obligations for the benefit of the taxing entities.

4. As further provided in the Method of Financing (Attachment No. 6), the City's obligation to fund and complete the public improvements that it will assume under this Fourth Restated Agreement will be strictly limited to grant funds it has obtained or may obtain, the sale proceeds from the disposition of the development parcels to the Developer, and any other funding sources mutually agreed by the City and the Developer.

5. As a result of the elimination of future obligations on the part of the Successor Agency under this Fourth Restated Agreement, the City and the Developer may: (a) make future amendments to this Fourth Restated Agreement without the approval of the Successor Agency, the Oversight Board and/or the DOF, so long as such future amendments in (i) no way affect the Retained Successor Agency Obligations or (ii) impose any other obligations upon the Successor Agency as further provided in Sections 111, 115, 703, and 800; and (b) implement the terms of this Fourth Restated Agreement (as may be subsequently amended) without further oversight, approval or other involvement of the Successor Agency, the Oversight Board and/or the DOF and outside the purview and jurisdiction of the Dissolution Act.

K. The Amendments to the Prior Agreement set forth in this Fourth Restated Agreement have the overall purpose and effect of reducing liabilities and increasing net revenues to the affected taxing entities (as further defined in Health and Safety Code Section 33354.2, the "Taxing Entities") and will be in the best interests of the Taxing Entities, thereby satisfying the requirements cited above in Health and Safety Code Section 34181(e) for approval of this Fourth Restated Agreement by the Oversight Board and the DOF, and execution of this Fourth Restated Agreement by the Successor Agency following such approvals.

L. The History and Background (Attachment No. 9) sets forth the procedures and documents used in connection with the Prior Agreement (the "Prior Agreement CEQA Documentation") to accomplish compliance with the requirements of the California Environmental Quality Act and accompanying state and local implementing guidelines ("CEQA"). Approval and execution of this Fourth Restated Agreement are exempt from the requirements of CEQA on the following bases:

1. The Amendments to the Prior Agreement contained in this Fourth Restated Agreement do not contain any changes in the underlying physical activities or the resulting environmental impacts from the project previously set forth in the Prior Agreement and evaluated in the Prior Agreement CEQA Documentation;

2. Instead, such Amendments comprise "government fiscal activities which do not involve any commitment to a specific project which may result in a potentially significant physical impact on the environment," thereby rendering this Fourth Restated Agreement exempt from the requirements of CEQA pursuant to State CEQA guidelines Section 15378(b)(4);

3. Further, this Fourth Restated Agreement and the Amendments to the Prior Agreement incorporated herein meet the "common sense exemption" to the requirements of CEQA set forth in State CEQA guidelines Section 15061(b)(3), in that "it can be seen with certainty that there is no possibility that the activity in question may have a significant impact on the environment"; and

4. This Fourth Restated Agreement is categorically exempt under State CEQA guidelines Section 15321, in that the Amendments incorporated in this Fourth Restated Agreement are implemented as actions by regulatory agencies to enforce or revoke a permit, license, or entitlement for use adopted by the agency, including, but not limited to, an administrative decision or order enforcing or revoking the permit, license, or entitlement for use or "enforcing the general rule, standard, or objective." The Amendments, which involve in part revoking the Developer's right to develop the Southern Waterfront and to receive RPTTF funds, have been presented for approval to the Successor Agency, the City, the Oversight Board, and the DOF to enforce the general rule stated in the above cited Health and Safety Code Section 34181(e) that existing Enforceable Obligations should be amended to minimize liabilities, and maximize revenues to the Taxing Entities.

M. This Fourth Restated Agreement requires Oversight Board approval and accompanying DOF review for the following reasons:

1. As an agreement partly between the Successor Agency and the City, this Fourth Restated Agreement requires Oversight Board approval and direction pursuant to Health and Safety Code Section 34180(h);

2. As an agreement providing for disposition of a Successor Agency parcel (Parcel J, as more fully provided in Section 112), this Fourth Restated Agreement requires Oversight Board approval and direction pursuant to Health and Safety Code Section 34181(a); and

3. As an agreement effectuating a renegotation of the Prior Agreement with a private party (the Developer), this Fourth Restated Agreement requires Oversight Board approval and direction pursuant to Health and Safety Code Section 34181(e).

As a result, this Fourth Restated Agreement will become effective only upon approval and direction of the Oversight Board and completion of certain other actions pursuant to the Dissolution Act as further provided in Section 101.

AGREEMENT

The City, the Successor Agency and the Developer agree as follows:

1. [§100] SUBJECT OF AGREEMENT.

A. [§101] Effectiveness of This Fourth Restated Agreement.

This Fourth Restated Agreement shall become effective only upon satisfaction of the following conditions:

1. Approval of this Fourth Restated Agreement and direction by the Oversight Board for the Successor Agency to execute and implement this Fourth Restated Agreement pursuant to Health and Safety Code Section 34180(h) (the "Oversight Board Action"); and

2 Notification to the DOF of the Oversight Board Action and effectiveness of the Oversight Board Action in accordance with the provisions of Health and Safety Code Section 34179(h).

The date upon which the above conditions are first satisfied is referred to as the "Effective Date". On and after the Effective Date, this Fourth Restated Agreement shall amend, restate and supersede the Prior Agreement, and shall include and incorporate Operating Memoranda Nos. 1, 3, 4 and 5 that formed a part of the Prior Agreement, as further described in Recital A. As of the Effective Date, Operating Memoranda Nos. 2, 2A and 6 (which addressed matters related exclusively to the Southern Waterfront area) shall be terminated and of no further force or effect. Pending the Effective Date, the Prior Agreement shall remain in effect and control the rights and obligation of the parties.

B. [§102] Purpose of This Fourth Restated Agreement.

As further described in Recital J and K, the Amendments to the Prior Agreement incorporated in this Fourth Restated Agreement are intended to serve several related primary purposes including: (a) to eliminate the obligations of the Successor Agency under this Fourth Restated Agreement (except as expressly provided in Section 111) for the benefit of the Taxing Entities; (b) to remove the Southern Waterfront from the terms of this Fourth Restated Agreement; and (c) to authorize the City and the Developer to proceed with the continued implementation of this Fourth Restated Agreement (as may be further amended) without further oversight, approval or other involvement of the Successor Agency, the Oversight Board and/or the DOF and outside the purview and jurisdiction of the Dissolution Act.

In turn, it is the intent that the City and the Developer will then continue under this Fourth Restated Agreement to effectuate the respective Redevelopment Plans (collectively, the "Redevelopment Plans") for the Waterfront Redevelopment Project and the Marina Vista Redevelopment Project (collectively, the "Redevelopment Projects") by providing for the acquisition, disposition and development of certain real property consisting of approximately 54 acres (the "Site") included within the boundaries of the Redevelopment Projects (the "Redevelopment Project Areas"). It is the intent of the Parties that the Site shall be developed as

a master planned mixed-use development, including residential, commercial, retail, hotel, conference center, and open space and park uses. All predisposition activities, property acquisitions and dispositions, demolition and public or private improvements of any nature on any portion of the Site, and all other activities in furtherance of the development of the Site pursuant to this Agreement and the Project Approvals (as defined in Section 104.2) are collectively referred to in this Agreement as the "Project."

The development of the Site pursuant to this Agreement and the fulfillment generally of this Agreement are in the vital and best interests of the City of Vallejo, California, and the health, safety, morals and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state and local laws and requirements.

As fully set forth in the Scope of Development (Attachment No. 4) and the Method of Financing (Attachment No. 6), the Project and the Site are proposed to be developed in two separate and independent geographic elements or areas (each, an "Area"), as follows:

1. The "Northern Waterfront" or "Northern Waterfront Area", generally as shown in the Map of the Site for the Northern Waterfront (Attachment No. 1A); and

2. The "Central Waterfront" or "Central Waterfront Area", generally as shown in the Map of the Site for the Central Waterfront (Attachment No. 1B).

As fully set forth in Section 103, the Southern Waterfront/Southern Waterfront Area is no longer a portion of the Site under this Fourth Restated Agreement.

C. [§103] Removal of Southern Waterfront From Site.

Upon the Effective Date, the Southern Waterfront/Southern Waterfront Area, as referenced in Sections 101 and 104 and depicted in Attachment No. 1C of the Prior Agreement, shall no longer constitute a portion of the Site for any purpose under this Fourth Restated Agreement. Upon the Effective Date, none of the parties shall have any further rights or obligations pursuant to this Fourth Restated Agreement with respect to the Southern Waterfront/Southern Waterfront Area. It is the parties' express understanding and intent that, upon the Effective Date, the future disposition and development of the Southern Waterfront/Southern Waterfront Area shall be solely controlled by the Long-Range Property Management Plan and related implementation documents to be prepared by the Successor Agency and approved by the Oversight Board and the DOF in accordance with the Health and Safety Code Section 34191.5, and not in any way by this Fourth Restated Agreement. Following the Effective Date, the Developer shall execute and deliver such instruments in recordable form, including without limitation quit claim deeds, as may be reasonably requested by the City or the Successor Agency to effectuate the purpose and intent of this Section 103. The City or the Successor Agency shall be responsible for causing the recordation of any such instruments delivered by the Developer.

D. [§104] The Redevelopment Plans; Project Approvals.

1. Redevelopment Plans. A portion of the Site is included within the Waterfront Redevelopment Project Area, and a portion of the Site is included within the Marina Vista Redevelopment Project Area. The Redevelopment Plan for the Waterfront Redevelopment Project was originally approved and adopted by the City Council of the City of Vallejo (the "City Council") on December 26, 1973, by Ordinance No. 206 N.C. (2d). The Redevelopment Plan for the Marina Vista Redevelopment Project was originally adopted by the City Council on January 18, 1960, by Ordinance No. 372 N. C. as the Urban Renewal Plan for the Marina Vista, and was subsequently amended and superseded in its entirety by the adoption of the Redevelopment Plan by Ordinance Nos. 274 N. C. (2d) and 275 N. C. (2d) on May 5, 1975. This Agreement is subject to the provisions of the Redevelopment Plans, as such Redevelopment Plans have been amended to date. The Redevelopment Plans, as they now exist and as they may be subsequently amended pursuant to this Section and Section 701, are incorporated herein by reference and made a part hereof as though fully set forth herein.

By ordinances approved on November 28, 2006, the City Council adopted amendments to the Redevelopment Plans and approved a merged Redevelopment Plan to, among other things, merge the Marina Vista Redevelopment Project, the Waterfront Redevelopment Project, and the adjacent Vallejo Central Redevelopment Project, as more fully set forth in Section 701 hereof.

2. Project Approvals. Development of the Project on the Site pursuant to this Fourth Restated Agreement shall be governed by the terms hereof (and any subsequent amendments to this Fourth Restated Agreement) and the Project Approvals. As used throughout this Agreement, "Project Approvals" has the precise meaning given in the Development Agreement, and consists generally of the Current Approvals (as defined in Recital D and more fully described in the History and Background (Attachment No. 9)), any subsequent amendments to the Current Approvals, and any additional land use approvals, conditions, entitlements, Unit Plans, subdivision maps, permits, and amendments thereto that may hereafter be issued or granted by the City in connection with implementation of the Project on the Site.

E. [§105] The Redevelopment Project Areas.

The Redevelopment Project Areas are located in the City of Vallejo, California, and the exact boundaries thereof are specifically described in the respective Redevelopment Plans.

F. [§106] The Site.

The Site that is the subject of this Agreement is that certain real property shown on the Maps of the Site (Attachment No. 1), which attachment is incorporated herein by reference. Attachment No. 1 consists of three diagrammatic Area maps as follows:

Attachment No. 1A Northern Waterfront Area
Attachment No. 1B Central Waterfront Area

As fully set forth in Section 103, the Southern Waterfront/Southern Waterfront Area is no longer a portion of the Site under this Fourth Restated Agreement.

The Maps of the Site (Attachment No. 1) show the currently anticipated configuration of the public and private parcels within the Site as they are described below in this Section 106 and as they are intended to be subdivided (or re-subdivided) and developed in accordance with this Agreement and the Project Approvals.

As planning of the Project proceeds pursuant to this Agreement, and as applicable subdivision maps are processed for various portions of the Site in accordance with the Project Approvals, the precise configuration and legal description of the Developer Parcels within the Site shall be determined by the parties. Upon creation of each legal parcel constituting a Developer Parcel under this Agreement, a final legal description shall be prepared by the Developer, subject to City review and approval, and attached to this Agreement by Operating Memorandum pursuant to Section 709, and made a part hereof at such time as the applicable final map creating each Developer Parcel is recorded with the County Recorder of Solano County.

The Site consists of certain parcels to be conveyed to the Developer pursuant to this Agreement (referred to collectively as the "Developer Parcels"), and certain parcels that are currently owned by or are intended to be acquired and owned by the City in connection with implementation of this Agreement and the Project Approvals (referred to collectively as the "City Parcels"), all as generally depicted on the Maps of the Site (Attachment No. 1) and described below.

1. <u>Developer Parcels</u>. The Developer Parcels consist of the following parcels and subparcels, organized by Area.

a. <u>Northern Waterfront</u>. The Developer Parcels within the Northern Waterfront Area consist of the following parcels and subparcels as shown on Attachment No. 1A: Parcel A (consisting of subparcels A1 and A2), Parcel B1, Parcel B2, and Parcel C1.

b. <u>Central Waterfront</u>. The Developer Parcels within the Central Waterfront Area consist of the following parcels and subparcels as shown on Attachment No. 1B: Parcel J (consisting of subparcels J1 and J2), Parcel L1, Parcel L2, and Parcel L4. Parcels L1, L2, and L4 are sometimes collectively referred to as the "L Developer Parcels."

2. <u>City Parcels</u>. The City Parcels consist of the following parcels and public streets, organized by Area.

a. <u>Northern Waterfront</u>. The City Parcels within the Northern Waterfront Area consist of the following parcels, and public streets as shown on Attachment No. 1A: Parcel C2, Parcel D1, Parcel D2, Parcel E, Parcel F, and Harbor Way.

b. <u>Central Waterfront</u>. The City parcels within the Central Waterfront Area consist of the following parcels and public streets as shown on Attachment No. 1B: Parcel L3, Parcel L5, Parcel O, the City Hall Parking Lot parcel, Capitol Street and Capitol

Street Dedication, Georgia Street and Georgia Street Extension, Civic Center Drive, Unity Plaza, the Capitol Street Open Space parcel, the Festival Green parcel, the Existing Service Club Park parcel, the Existing Georgia Street Mitigation parcel, the Ferry Facility parcel, the Kiss and Ride parcel, the Independence Park parcel, the Future Expansion parcel, the Independence Park Expansion parcel, and the State Farm Mitigation Independence Park parcel.

G. [§107] Parties to this Agreement.

1. [§108] The Successor Agency.

The Successor Agency is a public entity exercising governmental functions and powers and organized and existing under the Dissolution Act, with particular reference to Health and Safety Code Section 34173. The office of the Successor Agency is located at 555 Santa Clara Street, Vallejo, CA 94590. "Successor Agency," as used in this Agreement, includes the Successor Agency to the Redevelopment Agency of the City of Vallejo and any assignee of or successor to its rights, powers and responsibilities.

2. [§109] The City.

The City is a California municipal corporation and charter city. The office of the City is located at 555 Santa Clara Street, Vallejo, CA 94590. "City," as used in this Agreement, includes the City of Vallejo and any assignee of or successor to its rights, powers and responsibilities.

3. [§110] The Developer.

The Developer is Callahan Property Company, Inc., a California corporation. The office of the Developer is located at 5674 Stoneridge Drive #212, Pleasanton, CA 94588.

The qualifications and identity of the Developer are of particular concern to the City, and it is because of such qualifications and identity that the City has entered into this Agreement with the Developer. Subject to the provisions of Section 315 hereof and any other provision of this Agreement (including the attachments hereto) permitting an assignment or transfer, no voluntary or involuntary successor in interest of the Developer shall acquire any rights or powers under this Agreement except as expressly set forth herein. This Agreement may be terminated by the City pursuant to Section 511 hereof (with respect to the portions of the Site and the Project so specified in Section 511) if there is any significant change (voluntary or involuntary) in the membership, management or control of the Developer prior to the completion of the development of the Site as evidenced by the issuance of a Final Certificate of Completion therefor, except as expressly set forth in this Section 110, Section 315 hereof, or any other provision of this Agreement (including the attachments hereto) permitting an assignment or transfer of this Agreement.

Notwithstanding any other provision hereof, (a) the ownership percentages of the Developer may be adjusted between the owners of the Developer, and/or (b) the Developer may join and associate with other entities in joint ventures, partnerships (including limited

partnerships) or otherwise for the purpose of developing the Site (or one or more Developer Parcels therein), provided that the Developer maintains management and control of such entities and remains fully responsible to the City as provided in this Agreement with respect to the Site. Upon any such change described in subparagraph (a) or (b) above, the Developer shall so notify the City of such change in writing to obtain the City's approval, which consent shall not be unreasonably withheld and shall be deemed granted unless disapproved in writing (stating with specificity the reasons for such disapproval) within fifteen (15) days of City's receipt of such notice. Wherever the term "Developer" is used herein, such term shall include any permitted nominee or assignee as herein provided. Upon request of the Developer, the City shall provide written confirmation in form reasonably acceptable to the Developer that it has approved, if such be the case, any change in membership ownership percentages described in (a) above is in compliance with this Agreement, or any entity formed in accordance with (b) above for all or a portion of the Site is in compliance with this Agreement and is recognized as the Developer under this Agreement for the applicable portion(s) of the Site.

Except as otherwise provided in this Section 110, Section 315, and any other provision of this Agreement (including the attachments hereto) permitting an assignment or transfer of this Agreement, the Developer shall not assign all or any part of this Agreement without the prior written approval of the City.

H. [§111] Assignment of Successor Agency Rights and Obligations; Retained Obligations.

1. Assignment By Successor Agency. Upon dissolution of the RDA, the RDA's rights and obligations under the Prior Agreement were transferred by operation of the Dissolution Act to the Successor Agency and became the rights and obligations of the Successor Agency. Except as otherwise expressly set forth in Section 111.2 below, effective upon the Effective Date, the Successor Agency assigns and delegates to the City the Successor Agency's and the RDA's rights and obligations under the Prior Agreement to the extent such rights and obligations have been carried forward to and remain in this Fourth Restated Agreement. The rights and obligations assigned by the Successor Agency, expressly excluding the obligations described in Section 111.2 below, are referred to as the "Successor Agency's Assigned Rights and Obligations."

2. Retained Successor Agency Obligations. The Successor Agency does not assign the following express obligations, and the following obligations shall be the responsibility and obligation of the Successor Agency under this Fourth Restated Agreement (collectively, the "Retained Successor Agency Obligations"):

a. The obligation of the Successor Agency to transfer Parcel J to the City and execute other instruments in accordance with Section 112;

b. The obligation of the Successor Agency to treat the Additional Deposit First Portion Fund Balance in accordance with Section 113.3; and

c. The obligation to seek and apply RPTTF funds and other available funds to reimburse specified previous Developer advances of funds in accordance with Section 114.

Upon fulfillment of the Retained Successor Agency Obligations, the Successor Agency shall have no further obligations under this Fourth Restated Agreement and shall no longer be deemed a party hereto. No future amendment of this Fourth Restated Agreement shall (1) affect in any way the Retained Successor Agency Obligations or (2) impose any other obligations upon the Successor Agency, without the written approval of the Successor Agency and the approval of the Oversight Board and the DOF.

3. Acceptance and Assumption By City. Effective upon the Effective Date, the City accepts the above assignment and assumes the Successor Agency's Assigned Rights and Obligations. In so doing, the City expressly agrees for the benefit of the Developer to perform and observe all obligations and covenants of the Successor Agency and RDA set forth in the Prior Agreement to the extent such obligations and covenants have been carried forward to and remain in this Fourth Restated Agreement. To that end, wherever the term "Agency", referring to the RDA, appeared in a provision of the Prior Agreement that has been carried forward into this Fourth Restated Agreement, that term has been modified to instead refer to the "City" as the party entitled to or responsible for such right or obligation in this Fourth Restated Agreement.

I. [§112] Conveyance of Parcel J To City; Release of Property Interests.

Promptly following the Effective Date, the Successor Agency shall convey its fee title interest in and to Parcel J to the City. The conveyance shall be made by grant deed reasonably acceptable to the parties. Title to Parcel J at the time of such conveyance shall be subject only to those conditions and exceptions set forth in that certain preliminary title report of November 1, 2013 issued by First American Title Company (Order Number 0131-615378ala). The costs of the conveyance of Parcel J, including the cost of any title insurance policy obtained by the City, shall be borne by the City and the Developer.

Upon request by the City or the Developer, the Successor Agency shall execute any instrument reasonably required to evidence that neither the Successor Agency nor the dissolved RDA has any right, title or interest in and to any other portion of the Site under the Prior Agreement, this Fourth Restated Agreement, or any law or regulation.

J. [§113] Deposit.

The Developer has made or shall make the following deposits to the RDA or the City as specified below.

1. Initial Deposit. The parties acknowledge and agree that:

a. Prior to or simultaneously with the initial execution of the Prior Agreement by the RDA, the Developer delivered for the benefit of the RDA a deposit of cash or certified check in the amount of FIVE HUNDRED THOUSAND DOLLARS ($500,000) (the

"Initial Deposit") as security for the performance of the obligations of the Developer under the Prior Agreement;

b. The Initial Deposit (and interest earned thereon) was used by the RDA in accordance with the terms of the Prior Agreement to pay for costs incurred by the RDA, from time to time, in the preparation of the Prior Agreement and the Current Approvals; and

c. The parties have fully satisfied their respective obligations under the Prior Agreement with respect to the Initial Deposit.

2. Additional Deposit. The Developer delivered to the RDA under the Prior Agreement or shall deliver for the benefit of the City an additional deposit of cash or certified check in the amount of FIVE HUNDRED THOUSAND DOLLARS ($500,000) (the "Additional Deposit") as follows:

a. A TWO HUNDRED THOUSAND DOLLAR ($200,000) portion of the Additional Deposit was delivered to the RDA in April 2007 (the "Additional Deposit First Portion"); and

b. The remaining THREE HUNDRED THOUSAND DOLLAR ($300,000) portion of the Additional Deposit shall be delivered to the City at the time of and as a condition of closing for the conveyance of the first Developer Parcel or Sub-Parcel by the City to the Developer (the "Additional Deposit Second Portion").

3. Treatment of Additional Deposit First Portion Fund Balance. As of the date of approval of this Fourth Restated Agreement by the City and the Successor Agency, the RDA and the Successor Agency have expended for eligible costs under the Prior Agreement all but FORTY-FIVE THOUSAND TWO DOLLARS ($45,002) of the Additional Deposit First Portion (such unexpended balance is referred to as the "Additional Deposit First Portion Fund Balance"). The Additional Deposit First Portion Fund Balance constitutes restricted funds held by the Successor Agency under the terms of the Prior Agreement and this Fourth Restated Agreement. As soon as practical and permitted under the Dissolution Act, the Successor Agency shall obtain any necessary approval to allow the distribution of the Additional Deposit First Portion Fund Balance to the City, and promptly upon the receipt of any necessary approval shall distribute the Additional Deposit First Portion Fund Balance to the City.

4. Expenditure of Additional Deposit. From time to time as appropriate, the City and the Developer shall enter into one or more Operating Memoranda in accordance with Section 709 specifying the expenditure and use to perform mutually acceptable tasks under this Fourth Restated Agreement of the Additional Deposit First Portion Fund Balance and the Additional Deposit Second Portion that are received by the City. The Additional Deposit First Portion Fund Balance and the Additional Deposit Second Portion received by the City shall thereupon be expended and used in the manner provided in such Operating Memoranda.

5. Credit Toward Future Developer Parcel Purchase Prices. The Additional Deposit (including interest earned thereon) shall be credited toward the Purchase Price to be paid to the City by the Developer for the first Developer Parcel(s) or Sub-Parcel(s) acquired by the

Developer after the Developer Parcel for which the Developer deposits the Additional Deposit Second Portion, with such credit applied to each subsequent closing of a Developer Parcel or Sub-Parcel in chronological order until the credit is fully used. If this Agreement is terminated by the Developer pursuant to Section 510 or by the City pursuant to subsection d., h., j., k., l., or o. of Section 511, any unexpended portion of the Additional Deposit (including interest earned thereon) then held by the City shall be returned by the City to the Developer as provided therein.

K. [§114] EIR Preparation and Planning Studies.

1. Developer Advances. The Developer advanced, on the RDA's behalf and in fulfillment of the RDA's obligations under the Prior Agreement, various costs of preparation of the EIR (as defined and described in the History and Background (Attachment No. 9)) and other planning studies and reports necessary for preparation of the Current Approvals, a portion of which Developer prior advances, in the aggregate amount of SIX HUNDRED TWENTY-EIGHT THOUSAND SEVENTY-SEVEN DOLLARS ($628,077), shall be subject to reimbursement as provided in Section 114.2 below (the "Total Reimbursable Developer Advance"). The remaining prior Developer advances to pay costs of preparation of the EIR and other planning studies and reports shall not be subject to reimbursement by the Successor Agency or the City to the Developer.

2. Reimbursement To Developer. The Total Reimbursable Developer Advance has been and will be paid to the Developer as follows:

a. A ONE HUNDRED TWENTY-SIX THOUSAND FIVE HUNDRED FIFTY-FOUR DOLLAR ($126,554) portion of the Total Reimbursable Developer Advance was paid by the Successor Agency to the Developer in August 2013 from RPTTF funds received by the Successor Agency pursuant to the Recognized Obligation Payment Schedule for the period from July through December 2013.

b. An additional TWO HUNDRED FORTY-FOUR THOUSAND FOUR HUNDRED SIXTY-EIGHT DOLLAR ($244,468) portion of the Total Reimbursable Developer Advance was placed by the Successor Agency on its Recognized Obligation Payment Schedule for the period from January through June 2014 approved by the Oversight Board in September 2013 (the "ROPS 13-14B Reimbursement Payment"). The ROPS 13-14B Reimbursement Payment has also been approved by the DOF by letter to the Successor Agency of November 1, 2013, so that as of January 2, 2014 the Successor Agency will have both the authority and all the required funds, including RPTTF funds, to pay the ROPS 13-14B Reimbursement Payment to the Developer. To the extent it has not already done so, upon the Effective Date the Successor Agency shall immediately pay the ROPS 13-14B Reimbursement Payment to the Developer. Following payment of the ROPS 13-14B Reimbursement Payment, the remaining unreimbursed balance of the Total Reimbursable Developer Advance will have been reduced to TWO HUNDRED FIFTY-SEVEN THOUSAND FIFTY-FIVE DOLLARS ($257,055) (the "Unreimbursed Developer Advance Balance").

c. On each succeeding Recognized Obligation Payment Schedule (a "Future ROPS"), beginning with the Future ROPS for the period July through December 2014, the Successor Agency shall request, in connection with the Enforceable Obligation designated as

"Item 12" within the Future ROPS, an amount that will cause the Unreimbursed Developer Advance Balance to be fully paid as expeditiously as possible, taking into account the amount of available RPTTF funds and the Successor Agency's other enforceable obligations for the applicable Future ROPS period. The Successor Agency shall diligently seek approval of such Item 12 on each Future ROPS by the Oversight Board and the DOF. Thereafter, the Successor Agency shall promptly pay the Developer the amounts of RPTTF it receives, or such other amounts as it is authorized to expend, for Item 12 on each approved Future ROPS, until the Successor Agency has paid the Unreimbursed Developer Advance Balance in full, hence causing the Developer to have received the entire Total Reimbursable Developer Advance in accordance with this Section 114.2.

3. Expenditure of Reimbursed Developer Advance. From time to time as appropriate, the City and the Developer shall enter into one or more Operating Memoranda in accordance with Section 709 specifying the expenditure and use to perform mutually acceptable tasks under this Fourth Restated Agreement of the amounts received by the Developer pursuant to Section 114.2 above. The Developer shall thereupon spend and use the amounts it receives pursuant to Section 114.2 in the manner provided in such Operating Memoranda.

L. [§115] City and Developer Consultations Regarding Further Amendments.

For a period of one (1) year (which may be mutually extended by the parties) from the Effective Date, the City and the Developer shall confer in good faith to seek a mutually acceptable further amendment of this Fourth Restated Agreement (the "City/Developer Amendment") and any mutually acceptable amendments to the Current Approvals, in order to better reflect the approach for moving forward with development of the Site under current and foreseeable statutory, planning, financial, and real estate market conditions. It is anticipated that, among other matters, the City/Developer DDA Amendment will include a comprehensive update of the Schedule of Performance (Attachment No. 3), the Scope of Development (Attachment No. 4), and the Method of Financing (Attachment No. 6).

Any proposed City/Developer Amendment, and any accompanying amendments to the Current Approvals, shall be prepared, considered for approval, and executed, and shall become effective in accordance with all applicable laws, rules and regulations. Any City/Developer Amendment (and any other future amendment to this Fourth Restated Agreement or a previously approved City/Developer Amendment) shall not require approval or execution by the Successor Agency to become effective, so long as the City/Developer Amendment or other future amendment in no way (1) affects the Retained Successor Agency Obligations or (2) imposes any other obligations upon the Successor Agency.

For the reasons specified in the History and Background (Attachment No. 9), the parties acknowledge and agree that amendments of the type described in this Section 115 are necessary and appropriate. For those same reasons, and by operation of Section 604, the parties further acknowledge and agree that none of the parties are in default under the Prior Agreement or this Fourth Restated Agreement as of the Effective Date, and none of the parties has a basis for termination or exercise of any other remedies pursuant to Part 500 of this Fourth Restated Agreement as of the Effective Date.A failure to negotiate an amendment in good faith pursuant to this Section 115 arising after the Effective Date shall constitute a default under Section 500.

The City's and the Developer's obligations to perform the tasks set forth in the Schedule of Performance (Attachment No. 3) are tolled and suspended pending approval, execution, and effectiveness of the City/Developer Amendment.

2. [§200] DISPOSITION OF THE DEVELOPER PARCELS.

A. [§201] Acquisition of the Site; Disposition of the Developer Parcels.

1. Basic Obligation; Organization of Section. In accordance with and subject to all the terms, covenants and conditions of this Agreement, the City and the Developer shall cooperate to acquire the real properties comprising the Site, to the extent not already owned by the City. The City agrees to sell or ground lease, as applicable, to the Developer those Developer Parcels owned or to be acquired pursuant to this Agreement by the City on the terms and for the amounts set forth herein. Developer Parcels B1, B2, and C1 (collectively, the "B/C Ground Lease Parcels," and individually, a "B/C Ground Lease Parcel") shall be conveyed to the Developer by ground lease or sub-ground lease, as further provided in Section 201.4. All of the other Developer Parcels shall be conveyed to the Developer in fee simple.

Section 201.2 sets forth the method for determination of the Purchase Price for the Developer Parcels to be conveyed in fee to the Developer. Sections 201.3 through 201.6 set forth the terms for acquisition and conveyance of each of the respective Developer Parcels.

2. Consideration For Conveyances. The purchase price (the "Purchase Price," as further defined in subsection e.(4) below) for each of the Developer Parcels to be conveyed in fee from the City to the Developer shall be determined as set forth in this Section 201.2. The ground rent payments for each of the B/C Ground Lease Parcels shall be based upon the corresponding Purchase Price for each of the B/C Ground Lease Parcels, determined as set forth in this Section 201.2, and converted into annualized ground rent payments in the manner set forth in Section 201.4.b. Subsection b. below sets forth certain defined terms used in this Section 201.2. Subsection c. below establishes basic standards and procedures for performance of the appraisals required by this Section 201.2. Subsections d. and e. below provide conditions and standards for the conduct of two different methods of appraisal to be prepared and applied in determining the Purchase Price for each Developer Parcel. Subsection e. below sets forth the procedure for determining the Purchase Price for each Developer Parcel, taking into account the results of the two different methods of appraisal. Subsection f. below provides for arbitration of disputes arising under this Section 201.2.

a. Special Definitions. The terms defined below shall have the following meanings in connection with the interpretation and implementation of this Section 201.2 and this Agreement:

(1) "Appraiser" has the meaning given in subsection b. below.

(2) "Carry-forward Balance" for a given Developer Parcel means the amount, if any, determined as follows:

(A) If the Preliminary Purchase Price for the Most Recently Conveyed Developer Parcel (determined in accordance with subsection e.(3) below) was the Method B Appraisal Amount (Adjusted), then the Carry-forward Balance is zero dollars ($0); and

(B) If the Preliminary Purchase Price for the Most Recently Conveyed Developer Parcel (determined in accordance with subsection e.(3) below) was the Method A Appraisal Amount (Final), then the Carry-forward Balance shall be determined as follows:

(i) First, the "Applied Investment Amount" for the Most Recently Conveyed Developer Parcel shall be determined. The Applied Investment Amount shall equal the Method B Appraisal Amount (Unadjusted) for the Most Recently Conveyed Developer Parcel less the Method A Appraisal Amount (Final) for the Most Recently Conveyed Developer Parcel.

(ii) Second, the Carry-forward Balance shall be determined. The Carry-forward Balance shall equal the Developer Investment for the Most Recently Conveyed Developer Parcel (determined in accordance with subsection e.(1) below) less the Applied Investment Amount (determined in accordance with clause (i) above in this definition).

(3) "Certified Statement" for a given Developer Parcel means a statement certified by a managing member of the Developer and submitted to the City within fifteen (15) days after the Reporting Date for such Developer Parcel, setting forth the Developer Investment for the Reporting Period for the given Developer Parcel, and including the following:

(A) The Carry-forward Balance applicable to the Developer Parcel (as defined and determined pursuant to definition (2) above), if any, together with documentation of the calculation made in determining such Carry-forward Balance;

(B) The Third Party Costs for the Developer Parcel (as defined and determined pursuant to definition (26) below), stated both in the aggregate and on a monthly basis throughout the Reporting Period as expended, with supporting invoices or other documentation of the expenditure of such Third Party Costs;

(C) The General and Administration Costs for the Developer Parcel (as defined and determined pursuant to definition (8) below), stated both in the aggregate and on a monthly basis throughout the Reporting Period as incurred, with supporting documentation of the basis for determining such costs;

(D) The Interest Amount for the Developer Parcel (as defined and determined pursuant to definition (9) below), stated both in the aggregate and on a monthly basis throughout the Reporting Period as imputed to be incurred, together with documentation of the calculations made in determining the Interest Amount;

(E) The Developer Return Amount for the Developer Parcel (as defined and determined pursuant to definition (6) below), together with the calculation made in determining the Developer Return Amount, and, in the case of a Residential Parcel, a statement of the Estimated Gross Residential Unit Sales Proceeds and a copy of the Residential Market Report upon which the amount of the Estimated Gross Residential Unit Sales Proceeds has been determined.

(F) The Developer Investment for the Developer Parcel, consisting of the sum of the amounts set forth in items (A) through (E) above.

The names of individuals and firms contained in each Certified Statement shall be treated by the City on a confidential basis as proprietary information and, to the maximum extent permitted by law, shall not be disclosed to any third party.

(4) "Commercial Parcel" means a Developer Parcel that will be developed to contain commercial uses, but no residential dwelling units. As of the Third Restatement, the Commercial Parcels include Developer Parcels B1, B2, C1, L2, L4, S, T2, and T3.

(5) "Developer Investment" for a given Developer Parcel means the sum of the following amounts incurred during or otherwise imputed or deemed applicable to the Reporting Period for the given Developer Parcel, as shown and documented in the Certified Statement approved or deemed approved by the City pursuant to subsection e.(1) below:

(A) the Carry Forward Balance (as defined and determined pursuant to definition (2) above), if any; plus

(B) the Third Party Costs (as defined and determined pursuant to definition (26) below); plus

(C) the General and Administration Costs (as defined and determined pursuant to definition (8) below); plus

(D) the Interest Amount (as defined and determined pursuant to definition (9) below); plus

(E) the Developer Return Amount (as defined and determined pursuant to definition (6) below).

(6) "Developer Return Amount" for a given Developer Parcel means:

(A) With respect to a Developer Parcel that is a Residential Parcel, an amount equal to the lesser of:

(i) an amount equal to the Estimated Gross Residential Unit Sales Proceeds for such Residential Parcel multiplied by fifteen percent (15%); or

(ii) an amount that yields a twenty-five percent (25%) internal rate of return on the Developer Capital Costs for the Developer Parcel, taking into account the amounts and timing of all such Developer Capital Costs. The "Developer Capital Costs" for a given Developer Parcel means the sum of the amounts incurred during or otherwise imputed or deemed applicable to the Reporting Period for the given Developer Parcel for the following items listed in the definition of Developer Investment contained in definition (5) above: (A) (Carry-forward Balance, if any), (B) (Third Party Costs), and (C) (General and Administration Costs). The detailed methodology for calculating such internal rate of return amount for a given Developer Parcel is set forth in Operating Memorandum No. 3 dated as of May 14, 2007, which is incorporated in this Fourth Restated Agreement pursuant to Section 101;

(B) With respect to a Developer Parcel that is a Commercial Parcel, an amount equal to the Method B Appraisal Amount (Unadjusted) for such Developer Parcel multiplied by thirty-three percent (33%); and

(C) With respect to a Developer Parcel that is a Mixed Use Parcel, an amount equal to the sum of:

(i) With respect to the residential portion of such Mixed Use Parcel, an amount calculated under subparagraph (A) above, multiplied by a ratio, the numerator of which is the gross square footage of the building area to be developed on such Developer Parcel that is intended to be devoted primarily to residential use and the denominator of which is the total gross square footage of the building area to be developed on such Developer Parcel; plus

(ii) With respect to the commercial portion of such Mixed Use Parcel, an amount calculated under subparagraph (B) above, multiplied by a ratio, the numerator of which is the gross square footage of the building area to be developed on such Developer Parcel that is intended to be devoted primarily to commercial use and the denominator of which is the total gross square footage of the building area to be developed on such Developer Parcel.

In allocating square footage between square footage that is primarily for residential use or primarily for commercial use, one hundred percent (100%) of the total gross square footage of the building area to be developed on the applicable Developer Parcel shall be allocated to one category or the other.

(7) "Estimated Gross Residential Unit Sales Proceeds" for a given Residential Parcel or Mixed Use Parcel means the gross proceeds (without any deductions) estimated to be obtained from the sale of all the residential units in the Residential Parcel or Mixed Use Parcel, as determined pursuant to and set forth in a Residential Market Report for such Residential Parcel or Mixed Use Parcel.

(8) "General and Administration Costs" for a given Developer Parcel means, except as otherwise provided below, the costs attributable to services provided by the Developer's in-house personnel related to the Project (and not limited to the applicable Developer Parcel) during the Reporting Period for the given Developer Parcel, as reported in the Certified Statement for such Developer Parcel. Such attributable costs shall be determined by multiplying the estimated Eligible Hours (as defined below) devoted by the Developer's in-house personnel times a commercially reasonable hourly rate that is based on salary, labor overhead and an allocation for overhead support. "Eligible Hours" means all time (stated on an hourly basis) devoted by the Developer's in-house personnel to the Project (A) prior to the Original Execution Date in connection with preparation, conduct of the public participation process for, approval and modification of the Waterfront Master Plan, the Plan for Public Spaces, and related planning studies and documents, and (B) following the Original Execution Date. Eligible Hours shall not include (i) the allocable portion of the time devoted by Joseph Callahan and Robert Silva prior to the Original Execution Date for matters other than preparation, conduct of the public participation process for, approval and modification of the Waterfront Master Plan, the Plan for Public Spaces, and related planning studies and documents (i.e., Eligible Hours shall not include the time of such personnel related to other matters in connection with the ERN or in connection with negotiation of the Original Agreement between May and October 2000), or (ii) the time of Ernest Lampkin prior to the Original Execution Date.

(9) "Interest Amount" for a given Developer Parcel means the sum of the following imputed interest amounts:

(A) Imputed interest on the Carry-forward Balance, if any, calculated by applying the Interest Rate to the Carry-forward Balance from the first day of the Reporting Period to the end of the Reporting Period; plus

(B) Imputed interest on the Third Party Costs, calculated by applying the Interest Rate to each monthly portion of the Third Party Costs (as shown in the Certified Statement) from the end of the month in which such monthly portion of the Third Party Costs was paid to the end of the Reporting Period; plus

(C) Imputed interest on the General and Administration Costs, calculated by applying the Interest Rate to each monthly portion of the General and Administration Costs (as shown in the Certified Statement) from the end of the month in which such monthly portion of the General and Administration Costs was incurred to the end of the Reporting Period.

(10) "Interest Rate" means a variable interest rate applicable from time to time equal to the prime rate of interest charged by the Bank of America N.A. from time to time plus two percent (2%).

(11) "Method A Appraisal (Baseline)", as further defined in subsection b. below, means an appraisal for a given Developer Parcel prepared every two (2) years in accordance with the conditions and standards set forth in subsection c. below.

(12) "Method A Appraisal (Final)", as further defined in subsection b. below, means an appraisal for a given Developer Parcel prepared in accordance with the conditions and standards set forth in subsection c. below following the Unit Plan Approval Date for the Developer Parcel.

(13) "Method A Appraisal Amount (Final)" for a given Developer Parcel means the fair market value for the Developer Parcel (stated on a per square foot basis) as set forth in the Method A Appraisal (Final).

(14) "Method B Appraisal (Unadjusted)", as further defined in subsection b. below, means the appraisal for a given Developer Parcel prepared in accordance with the conditions and standards set forth in subsection d. below following the Unit Plan Approval Date for the Developer Parcel.

(15) "Method B Appraisal Amount (Unadjusted)" for a given Developer Parcel means the fair market value for the Developer Parcel (stated on a per square foot basis) as set forth in the Method B Appraisal (Unadjusted).

(16) "Method B Appraisal Amount (Adjusted)" for a given Developer Parcel is further defined in subsection e.(2) below, and equals the Method B Appraisal Amount (Unadjusted) for the Developer Parcel (determined in accordance with subsection d. below) less the Developer Investment for the Developer Parcel (determined in accordance with subsection e.(1) below).

(17) "Mixed Use Parcel" means a Developer Parcel that will be developed to contain for-sale residential dwelling units and commercial uses. As of the Third Restatement, the Mixed Use Parcels include (or may include) Developer Parcels J1, J2, and L1.

(18) "Most Recently Conveyed Developer Parcel" for a given Developer Parcel means the Developer Parcel conveyed to the Developer by the City most recently prior to the given Developer Parcel.

(19) "Original Execution Date" means October 17, 2000, the date of execution of the original version of this Agreement.

(20) "Preliminary Purchase Price" for a given Developer Parcel has the meaning given in subsection e.(3) below.

(21) "Purchase Price" for a given Developer Parcel means the amount determined as set forth in subsection e.(4) below.

(22) "Reporting Date" for a given Developer Parcel means the date that is forty-five (45) days prior to the anticipated closing date for conveyance of the given Developer Parcel to the Developer by the City, as reasonably determined by the Developer.

(23) "Reporting Period" for a given Developer Parcel means:

(A) with respect to the first Developer Parcel to be conveyed by the City to the Developer, the period from May 20, 1997, through the Reporting Date for such first Developer Parcel to be conveyed; and

(B) with respect to each succeeding Developer Parcel to be conveyed by the City to the Developer, the period from the day following the end of the Reporting Period for the Most Recently Conveyed Developer Parcel through the Reporting Date for the Developer Parcel then about to be conveyed.

(24) "Residential Parcel" means a Developer Parcel that will be developed to contain for-sale residential dwelling units, but no commercial uses. As of this Fourth Restated Agreement, the only Residential Parcel is Developer Parcel A.

(25) "Residential Market Report" for a given Residential Parcel or Mixed Use Parcel means a report prepared by a qualified residential marketing consultant mutually acceptable to the parties containing an estimate of the Estimated Gross Residential Unit Sales Proceeds anticipated to be received from such Residential Parcel or Mixed Use Parcel, together with industry-standard supporting documentation and analysis.

(26) "Third Party Costs" for a given Developer Parcel means, except as otherwise provided below, the out-of-pocket pre-construction payments related to the Project (and not limited to the applicable Developer Parcel) made by the Developer to third-party persons or entities during the Reporting Period for the given Developer Parcel, as reported in the Certified Statement for such Developer Parcel, plus the amount of the Initial Deposit as set forth in Section 108.1, plus the Developer's Wetland Park Contribution as described in Section II.A.3 of the Scope of Development (Attachment No. 4) (but only to the extent the Total Developer Public Parks and Open Space Contribution (as defined in Section I.H of the Method of Financing (Attachment No. 6)) exceeds the amount of City park fee credits granted by the City to the Developer pursuant to Section 3.8 of the Development Agreement). Third Party Costs shall not include any payments made by the Developer for which the Developer is entitled to repayment by the City or a credit against Purchase Prices pursuant to Section 113.5, various provisions of the Scope of Development (Attachment No. 4), or any Operating Memorandum entered into pursuant to Section 709. Third Party Costs also shall not include any payments made prior to the Original Execution Date other than payments by the Developer made in connection with preparation, conduct of the public participation process for, approval and modification of the Waterfront Master Plan, the Plan for Public Spaces, and related planning studies and documents.

(27) "Unit Plan Approval Date" for a given Developer Parcel means the date the City grants final unappealable approval to the Unit Plan (and, if sought by the Developer, the vesting tentative map) for such Developer Parcel. If final unappealable approval is granted on separate dates, the Unit Plan Approval Date shall be the date the City grants final unappealable approval to the later to be approved of the Unit Plan and the vesting tentative map for such Developer Parcel.

(28) "Valuation Date" means:

(A) With respect to the Method A Appraisals (Baseline), June 1, 2007 and each succeeding second anniversary, as applicable (i.e., June 1, 2009, 2011, 2013, etc.).

(B) With respect to the Method A Appraisal (Final) and the Method B Appraisal (Unadjusted) for a given Developer Parcel, the Unit Plan Approval Date for such Developer Parcel.

b. Appraisal Process—In General. Each appraisal required pursuant to this Section 201.2 shall be performed by a qualified appraiser who is a California Certified General Appraiser and a Member of the Appraisal Institute and who is acceptable to both the City and the Developer (the "Appraiser"). The costs for each appraisal shall be shared equally between the Developer and the City. By Operating Memorandum No. 4 dated as of May 14, 2007, and incorporated in this Fourth Restated Agreement by Section 101, the RDA and the Developer provided the Appraiser with further appraisal instructions consistent with the general appraisal instructions provided in this Section 201.2. To the extent consistent with the standards, conditions, and instructions set forth in this Section 201.2 and any applicable executed Operating Memorandum, each appraisal shall be performed in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). The interest appraised in each appraisal shall be a fee simple interest in the applicable Developer Parcel.

Under the Prior Agreement, the RDA and the Developer retained Garland & Associates as the Appraiser to prepare an appraisal to determine the fair market value, as of the June 1, 2008 Valuation Date, of each Developer Parcel under the conditions and standards set forth in subsections c. below (each, a "Method A Appraisal (Baseline)"). The Method A Appraisals (Baseline) were delivered on or around June 30, 2008. The City and the Developer shall cause an Appraiser to prepare and deliver updated Method A Appraisals (Baseline) approximately every two (2) years beginning upon a date to be mutually established by the City and the Developer. The Method A Appraisals (Baseline) may set forth the fair market values of each Developer Parcel on a per square foot basis to the extent the precise square footage is not yet known.

Within five (5) days after the Unit Plan Approval Date for a Developer Parcel, the City and the Developer shall commission an Appraiser to prepare a final appraisal in accordance with the standards and conditions of subsection c. below (the "Method A Appraisal (Final)") and an appraisal in accordance with the standards and conditions set forth in subsection d. below (the "Method B Appraisal (Unadjusted)") for such Developer Parcel for simultaneous delivery to the parties within sixty (60) days after such commissioning. The Method A Appraisal (Final) and the Method B Appraisal (Unadjusted) shall set forth the respectively determined fair market values for the applicable Developer Parcel on a total dollar value basis taking into account the actual total square footage of the applicable Developer Parcel as determined from the approved Unit Plan.

Notwithstanding the preceding paragraph, in connection with Developer Parcels involving complex, multi-level construction that may require extensive pre-Unit Plan design and engineering efforts (e.g., Parcels J1, J2, and L1), the City and the Developer may mutually agree by Operating Memorandum pursuant to Section 709 to

commission and obtain the Method A Appraisal (Final) and the Method B Appraisal (Unadjusted) at an earlier date to accommodate financial planning needs, subject to any adjustment of such appraisals at the time of Unit Plan approval as may be set forth in such Operating Memorandum.

Each appraisal of a Developer Parcel shall include industry-standard information and analysis to support such current fair market value determination.

c. Method A Appraisal—Baseline and Final. For each Developer Parcel then being appraised (whether in connection with a Method A Appraisal (Baseline) or a Method A Appraisal (Final)), the selected Appraiser shall prepare and deliver to City and the Developer an appraisal determining the fair market value of such Developer Parcel as of the Valuation Date, applying the appraisal standards and conditions set forth below in this subsection c., the appraisal standards set forth in Operating Memorandum No. 4, and any other standards and conditions set forth in any Operating Memoranda executed by the City and the Developer and delivered to the Appraiser:

(1) Except as otherwise set forth below in this subsection c., the appraisal shall assume that the state and condition of development of the Developer Parcel being appraised and all other parcels comprising the Site and Former Parcel K is that as it existed on the Original Execution Date, such that, consistent with the method for determining fair market value set forth in California Code of Civil Procedure Section 1263.330, each determination of the fair market value shall not take into account any increase or decrease in value attributable to implementation of the Project itself on the Site, but may, as deemed relevant by the Appraiser, take into account then current general market conditions in the applicable market area;

(2) The appraisal shall assume that the applicable zoning and development entitlements shall be those that existed as of the Original Execution Date.

(A) The marketplace anticipation as of the Valuation Date of reasonably likely changes in zoning and general plan amendments, and accompanying regulatory agency approvals and agreements, necessary to allow alternative land uses, is to be considered in the appraisal, but in light of conditions affecting the likelihood of those changes and amendments as those conditions existed as of the Original Execution Date (as further described below). This is not to say that the applicable Developer Parcel is to be appraised as if the zoning and general plan land use designation had been changed from that existing as of the Original Execution Date, but the appraisal is to recognize the marketplace speculation on those potentials for alternative land uses.

(B) In recognizing such marketplace speculation, the appraisal is to take into account and discount for land developer risk the following factors: (i) the terms of this Agreement as of the Original Execution Date, which did not contain any assurances that the City would grant any changes in zoning and/or general plan land use designations with respect to the Site; (ii) the costs and risks as of the Original Execution Date of obtaining changes in zoning and general plan land use designations for the applicable Developer Parcel, including the prospects as of the Original Execution Date of overcoming any public concerns, expectations and opposition to the conversion of the applicable Developer Parcel from its then existing actual

land use(s), the need to complete the applicable CEQA and land use approval processes for such zoning and general plan land use amendments, and the prospect that, in order to obtain changes in zoning and general plan land use designations, the potential buyer might need to prepare and obtain master plan approvals from the City for all or portions of the Site in addition to the Developer Parcel being appraised; (iii) the public infrastructure costs related to the Site and the applicable Developer Parcel as of the Original Execution Date and the impact of such costs on the ability to obtain changes in zoning and general plan land use designation; and (iv) the costs and risks as of the Original Execution Date of obtaining necessary BCDC, SLC, Water Board, and other governmental regulatory approvals necessary to support any alternative land uses on the applicable Developer Parcel;

(3) With respect to Parcel J, the appraisal shall take into account the existence and value added by the extension of Georgia Street, and the RDA acquisition of the property formerly leased to GVRD;

(4) With respect to Parcel L4, the appraisal shall value the vertical subdivision Parcel L4 assuming and taking into account the value added by the existence of the L3 Public Garage and the L3 Public Garage Support Facilities for Parcel L4 (as described in Section III.A.4.d of the Scope of Development (Attachment No. 4));

(5) The appraisal shall assume that the Site contains no soil or other contamination for which remediation work to enable the intended use under this Agreement is required by any governmental or other regulatory agency with jurisdiction over such matters; and

(6) The appraisal shall take into account all then known or estimated direct and indirect costs related to on-site and off-site public and private improvements required to be constructed by the Developer for the applicable Developer Parcel, including, without limitation, subdivision improvement costs, permit and fees costs, other on- and off-site public improvement costs, and costs of construction of private improvements with respect to the applicable Developer Parcel.

d. Method B Appraisal (Unadjusted). For each Developer Parcel then being appraised, the Appraiser shall also prepare and deliver to the parties a Method B Appraisal (Unadjusted) determining the fair market value of such Developer Parcel as of the Valuation Date, applying the appraisal standards and conditions set forth below in this subsection d., the appraisal standards set forth in Operating Memorandum No. 4, and any other standards and conditions set forth in any Operating Memoranda executed by the City and the Developer and delivered to the Appraiser:

(1) Except as otherwise set forth below in this subsection d., the appraisal shall assume that the state and condition of development of the Developer Parcel being appraised and all other parcels comprising the Site and Former Parcel K is that as it existed on the Original Execution Date, such that, consistent with the method for determining fair market value set forth in California Code of Civil Procedure Section 1263.330, each determination of the fair market value shall not take into account any increase or decrease in value attributable to

implementation of the Project itself on the Site, but shall take into account then current general market conditions in the applicable market area;

(2) The appraisal shall assume that the applicable zoning and development entitlements shall be those that exist as of the Unit Plan Approval Date;

(3) With respect to Parcel J, the appraisal shall take into account the existence and value added by the extension of Georgia Street, and the RDA acquisition of the property formerly leased to GVRD;

(4) With respect to Parcel L4, the appraisal shall value the vertical subdivision Parcel L4 assuming and taking into account the value added by the existence of the L3 Public Garage and the L3 Public Garage Support Facilities for Parcel L4 (as described in Section III.A.4.d of the Scope of Development (Attachment No. 4));

(5) The appraisal shall assume that the Site contains no soil or other contamination for which remediation work to enable the intended use under this Agreement is required by any governmental or other regulatory agency with jurisdiction over such matters; and

(6) The appraisal shall take into account all known or estimated direct and indirect costs related to on-site and off-site public and private improvements required to be constructed by the Developer for the applicable Developer Parcel under the terms of this Agreement and the Project Approvals as of the Unit Plan Approval Date, including, without limitation, subdivision improvement costs, permit and fees costs, other on- and off-site public improvement costs (including, without limitation, park and open space improvement costs), and costs of construction of private improvements with respect to the applicable Developer Parcel; and

(7) The appraisal shall take into account all known or estimated limitations on revenues related to the development and use of the applicable Developer Parcel under the terms of this Agreement and the Project Approvals as of the Unit Plan Approval Date, including, without limitation, the terms of the Post Office Relocation Lease as further described in Section 201.6.a.(1)(B)(2) with respect to Parcel T2, and the requirement to use commercially reasonable efforts to lease the retail space in the Arcade Area of Parcel L4 for Category 1 Uses, as further defined and provided in Section III.A.4 of the Scope of Development (Attachment No. 4).

e. Purchase Price Determination. Prior to the closing for conveyance of each Developer Parcel, the City and the Developer shall determine the Purchase Price for such Developer Parcel as follows:

(1) First, the Developer Investment with respect to the Developer Parcel shall be determined by the parties as follows. Within fifteen (15) days after the Reporting Date for such Developer Parcel, the Developer shall submit to the City a Certified Statement setting forth the Developer Investment and required supporting documentation. The City shall approve or disapprove the Certified Statement within fifteen (15) days of receipt

thereof. If the City approves the Certified Statement or fails to disapprove the Certified Statement in writing within such fifteen (15) day period, then the Development Investment amount set forth in the Certified Statement shall constitute the Developer Investment with respect to the Developer Parcel. If the City disapproves the Certified Statement in writing within such fifteen (15) day period, it shall set forth with specificity the basis for such disapproval, and the parties shall meet and confer within five (5) days thereafter to seek in good faith to agree upon a modified Certified Statement. The Developer Investment amount set forth in any such agreed upon modified Certified Statement shall then constitute the Developer Investment with respect to the Developer Parcel. If the City and the Developer cannot agree upon a modified Certified Statement following such conference, then either party may present the matter for arbitration as further provided in subsection f. below.

(2) Second, the "Method B Appraisal Amount (Adjusted)" for the Developer Parcel shall be determined by the City and the Developer. The Method B Appraisal Amount (Adjusted) shall equal the Method B Appraisal Amount (Unadjusted) for the Developer Parcel (determined in accordance with subsection d. above) less the Developer Investment with respect to the Developer Parcel (determined in accordance with subsection e.(1) above).

(3) Third, the "Preliminary Purchase Price" for the Developer Parcel shall be determined by the City and the Developer. The Preliminary Purchase Price shall equal the greater of the Method A Appraisal Amount (Final) for the Developer Parcel (determined in accordance with subsection c. above) and the Method B Appraisal Amount (Adjusted) for the Developer Parcel (determined in accordance with subsection e.(2) above).

(4) Finally, the "Purchase Price" for the Developer Parcel shall be determined by the parties. The Purchase Price shall equal the Preliminary Purchase Price (determined in accordance with subsection e.(3) above) less the principal amount of assessments or other governmental charges that are a lien against the Developer Parcel payable after the closing for conveyance of such Developer Parcel, and also less the sum of all previously unapplied amounts that are specified to be credited against the Purchase Price pursuant to Section 113.5, various provisions of the Scope of Development (Attachment No. 4), or any Operating Memorandum entered into pursuant to Section 709; provided, however, that in no event shall the Purchase Price for a Developer Parcel be less than zero dollars ($0).

f. Arbitration of Disputes. Any dispute regarding the interpretation and implementation of this Section 201.2 (including, without limitation, a dispute regarding approval of a Certified Statement pursuant to subsection e.(1) above) shall be subject to resolution by arbitration in the manner provided in Section 706. The City and the Developer may agree by Operating Memorandum entered into pursuant to Section 709 to complete the closing for conveyance of a Developer Parcel by the City to the Developer prior to the outcome of any such arbitration and subject to an after-closing reconciliation of the Purchase Price based on the results of such arbitration. The City and the Developer shall not unreasonably withhold approval of such an arrangement to close pending the outcome of arbitration.

3. Parcel A. Parcel A is currently owned by the City. The Purchase Price to be paid by the Developer for Parcel A shall be the Purchase Price determined pursuant to Section 201.2.

4. B/C Ground Lease Parcels. The B/C Ground Lease Parcels are comprised of vacant land currently owned by the City, and are subject to tideland public trust requirements and use restrictions (the "Trust Requirements") established by applicable statutes, grants, and regulations of the California State Lands Commission (the "SLC").

a. Conveyance Method. In accordance with and subject to all the terms, covenants and conditions of this Agreement and the Trust Requirements, and within the time set forth in the Schedule of Performance (Attachment No. 3), the City shall convey, and the Developer shall accept conveyance of, a ground leasehold interest in each of the B/C Ground Lease Parcels pursuant to separate ground leases between the City and the Developer for each of the respective B/C Ground Lease Parcels (each such ground lease is referred to as a "Ground Lease"). Each Ground Lease shall:

(1) be consistent with the Trust Requirements;

(2) provide for development of the applicable B/C Ground Lease Parcel in accordance with the Scope of Development (Attachment No. 4);

(3) provide for use of the applicable B/C Ground Lease Parcel solely for uses permitted by applicable City land use permits and approvals and in a manner that satisfies the Trust Requirements;

(4) provide for ground rent payments for the applicable B/C Ground Lease Parcel determined as set forth in subsection b. below;

(5) provide for a leasehold term equal to the longest term permitted by the Trust Requirements (currently sixty-six (66) years);

(6) contain commercially reasonable terms that will support private debt and equity financing of the contemplated development on the applicable B/C Ground Lease Parcel;

(7) contain the provision regarding property tax payments required by Health and Safety Code Section 33675; and

(8) be in a form reasonably acceptable to the City and the Developer, which form shall be agreed upon within the time set forth in the Schedule of Performance (Attachment No. 3) and incorporated in this Agreement through an Operating Memorandum pursuant to Section 709.

If the City and the Developer are unable to agree upon the form of a Ground Lease within the time set forth in the Schedule of Performance (Attachment No. 3), then either party may submit the matter for arbitration in accordance with the provisions of

Section 706 to determine the form of the applicable Ground Lease or consistent with the terms of this Section 201.4.

At the request and cost of the Developer, the City shall reasonably cooperate with the Developer to seek SLC approval of any Ground Lease for the B/C Ground Lease Parcels in accordance with the procedures of Public Resources Code Section 6702.

b. Ground Rent Payments. Each Ground Lease shall provide for the Developer to make annual ground rent payments (the "Annual Rent Payments" or an "Annual Rent Payment") in advance for each year of the term of the Ground Lease, with the initial Annual Rent Payment to be made on the date that the Developer is entitled to possession of the applicable B/C Ground Lease Parcel (the "Possession Date"), and subsequent Annual Rent Payments to be made on each anniversary of the Possession Date (each, a "Rent Payment Date"). The amount of each Annual Rent Payment shall be determined as follows.

The Annual Rent Payment due on the Possession Date and on the next two Rent Payment Dates shall equal the Initial Annual Rent Payment Amount (as defined below). On each Rent Adjustment Date (as defined below), the Annual Rent Payment shall be increased to equal the Adjusted Annual Rent Payment Amount (as defined below). As used in this subsection b., the following terms have the meanings set forth below:

(1) "Initial Annual Rent Payment Amount" means an amount equal to the product of the Purchase Price for the applicable B/C Ground Lease Parcel determined pursuant to Section 201.2 multiplied by the Debt Constant Factor.

(2) "Debt Constant Factor" means the debt constant factor that yields level annual amortized loan payments for a loan with a term of twenty-five (25) years and an interest rate equal to the Designated Interest Rate.

(3) "Designated Interest Rate" means an interest rate equal to 1.5% above the current yield-to-maturity on 10-year United States Treasury bills as reported in the Wall Street Journal on the date that is ten (10) days prior to the Possession Date for the applicable Ground Lease.

(4) "Rent Adjustment Date" means the third (3rd) anniversary of the Possession Date for the applicable Ground Lease, and each succeeding third anniversary (i.e., the 3rd anniversary, 6th anniversary, 9th anniversary, 12th anniversary, etc. of the applicable Possession Date).

(5) "Adjusted Annual Rent Payment Amount" means an amount equal to the product of the Annual Rent Payment amount in effect immediately prior to determination of the Adjusted Annual Rent Payment Amount multiplied by the Adjustment Factor.

(6) "Adjustment Factor" means a ratio, the numerator of which is the CPI Index amount as of the applicable Rent Adjustment Date, and the denominator of which is the CPI Index amount as of the previous Rent Adjustment Date (or the Possession Date,

in connection with determination of the Adjusted Annual Rent Payment Amount for the first Rent Adjustment Date); provided, however, that in no event shall such ratio exceed 1.12.

(7) "CPI Index" means the Consumer Price Index for all Urban-Consumers (CPI-U): U.S. City Average, All Items (base year 1982-84 = 100) for the United States, published by the United States Department of Labor, Bureau of Labor Statistics. If the CPI Index has changed so that the base year differs from that used as of the Possession Date, the CPI shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the CPI Index is discontinued or revised during the term of the applicable Ground Lease, such other governmental index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the CPI Index had not been discontinued or revised.

In consultation with the Appraiser who prepared the Method A Appraisal (Final) and the Method B Appraisal (Unadjusted) for the applicable B/C Ground Lease Parcel, the City and the Developer may agree on such mutually acceptable modifications of the above-described formula for determining the Annual Rent Payments as will reasonably establish the fair rental value for the applicable B/C Ground Lease Parcels. If the City and the Developer are unable to agree upon the amount of any Annual Rent Payment, then either City or the Developer may submit the matter for arbitration in accordance with the provisions of Section 706 to determine the amount of any such disputed Annual Rent Payment consistent with the terms of this Section 201.4.b.

5. Parcel J. Parcel J consists of a portion of the land currently owned by the Successor Agency and improved with parking improvements known as City Parking Lot C and part of Marina Vista Park, and a portion of the land currently owned by the City and utilized as parking for City Hall and the JFK Library. In accordance with Section 112, the Successor Agency shall convey the portion of Parcel J it owns to the City. Within the time set forth in the Schedule of Performance (Attachment No. 3), the City shall cause termination of all leasehold interests encumbering Parcel J. Following such acquisition by the City, the City agrees to convey, and the Developer agrees to accept conveyance of, Parcel J for development in accordance with the Scope of Development (Attachment No. 4). As further provided in Section III.B of the Scope of Development (Attachment No. 4), Parcel J may be subdivided into two Developer Subparcels (each a "J Developer Subparcel"), and conveyed at separate times to the Developer upon satisfaction of the preconditions to the conveyance of each such J Developer Subparcel. The Purchase Price to be paid by the Developer for each J Developer Subparcel shall be the Purchase Price determined pursuant to Section 201.2.

6. Parcel L.

a. Acquisition and Relocation Status; USPS Relocation Strategy. As of the date of approval of this Fourth Restated Agreement, the City owns all of Parcel L in fee. A portion of Parcel L3 (the "USPS Leasehold Property") is leased by the City to the United States Postal Service (the "USPS") pursuant to an existing lease (the "USPS Lease"), and the USPS operates a post office and distribution facility (the "USPS Facility") on the USPS Leasehold Property. The City is negotiating to cause the relocation of the USPS Facility to alternate locations in Vallejo and the termination of the USPS Lease, so that the second phase of

the Vallejo Station public parking garage ("Phase B") can be constructed on the USPS Leasehold Property portion of Parcel L3. Exhibit B of the Schedule of Performance (Attachment No. 3) sets forth the RDA's strategy, as of December 1, 2011, for causing relocation of the USPS Facility and termination of the USPS Lease (the "RDA USPS Relocation Strategy"). Since that time, the City has continued to work with the USPS and to refine the RDA USPS Relocation Strategy. As used in this Fourth Restated Agreement "USPS Relocation Strategy" means the City's proposed strategy for relocation of the USPS Facility and termination of the USPS Lease as amended from time to time. If appropriate, the City's formal USPS Relocation Strategy shall be set forth and incorporated into the City/Developer Amendment to this Fourth Restated Agreement that is contemplated by Section 115.

b. Conveyance of Developer Parcels; Retention of Public Parking and Paseo Parcels. In accordance with and subject to all the terms, covenants and conditions of this Agreement, the City agrees to convey and the Developer agrees to accept conveyance of the following L Developer Parcels:

(1) Parcel L1. Following conveyance, Parcel L1 shall be developed in accordance with the Scope of Development (Attachment No. 4).

(2) Parcel L2. Following conveyance, Parcel L2 shall be developed in accordance with the Scope of Development (Attachment No. 4).

(3) Parcel L4, a vertical subdivision parcel to be established, and following conveyance to the Developer, to be developed in accordance with the Scope of Development (Attachment No. 4) and the Parcel L4 Operating Memorandum to be prepared and executed as further provided in Section III.A.4 of the Scope of Development.

The City shall retain title to the portion of Parcel L comprising Parcels L3 and L5, which are vertical subdivision parcels to be established and developed in accordance with the Scope of Development (Attachment No. 4).

c. Purchase Price for Developer Parcel L1. The Purchase Price to be paid by the Developer for Parcel L1 shall be the Purchase Price determined pursuant to Section 201.2.

d. Purchase Price for Developer Parcel L2. The Purchase Price to be paid by the Developer for Parcel L2 shall be the Purchase Price determined pursuant to Section 201.2.

e. Purchase Price for Developer Parcel L4. The Purchase Price for Developer Parcel L4 shall be the Purchase Price determined pursuant to Section 201.2.

B. [§202] Escrow.

The City agrees to open an escrow for conveyance of each Developer Parcel to the Developer with First American Title Company, or any other escrow company approved by the City and the Developer, as escrow agent (the "Escrow Agent"), in Vallejo, California, within

the time established in the Schedule of Performance (Attachment No. 3). Except as may mutually be agreed between the City and Developer, the close of escrow hereunder and conveyance of each Developer Parcel to the Developer shall occur within the times set forth in the Schedule of Performance (Attachment No. 3). The parties acknowledge and agree that the individual Developer Parcels to be conveyed by the City to the Developer may be conveyed to the Developer at separate times, and, as such, the provisions of this Agreement with respect to the conveyance of the Developer Parcels to the Developer shall apply to the extent applicable to the particular Developer Parcel(s) being conveyed at that time.

This Agreement constitutes the joint escrow instructions of the City and the Developer, and a duplicate original of this Agreement shall be delivered to the Escrow Agent upon the opening of escrow. The City and the Developer shall provide such additional escrow instructions as shall be necessary and consistent with this Agreement. The Escrow Agent hereby is empowered to act under this Agreement, and, upon indicating its acceptance of the provisions of this Section 202 in writing, delivered to the City and to the Developer within five (5) days after the opening of the escrow, shall carry out its duties as Escrow Agent hereunder.

Upon delivery of the grant deeds (or ground leases) for the applicable Developer Parcels pursuant to Section 209 of this Agreement, and upon satisfaction of the City's and Developer's conditions to closing, the Escrow Agent shall record such grant deeds (or ground leases), as applicable, when title to the Developer Parcels can be vested in the Developer in accordance with the terms and provision of this Agreement. The Escrow Agent shall buy, affix and cancel any transfer stamps required by law and pay any transfer tax required by law. Any insurance policies governing any Developer Parcels are not to be transferred.

The Developer shall pay in escrow to the Escrow Agent all fees, charges and costs relating to such escrow, including without limitation the following, promptly after the Escrow Agent has notified the Developer of the amount of such fees, charges and costs, but not earlier than ten (10) days prior to the date provided for herein for the close of escrow:

1. One-half (1/2) of the escrow fee;

2. The portion of the premium for the title insurance policy or special endorsements to be paid by the Developer, if any, as set forth in Section 211 of this Agreement;

3. Costs of drawing the grant deeds;

4. Recording fees;

5. Notary fees;

6. Ad valorem taxes, if any, described in Section 212 of this Agreement which are the responsibility of the Developer; and

7. Any transfer taxes.

The Developer shall also deposit with the Escrow Agent the Purchase Price for the Developer Parcels, or applicable portion thereof then being conveyed to the Developer, (or, with respect to the B/C Ground Lease Parcels or applicable portion thereof then being conveyed to the Developer, the applicable first year's Initial Annual Rent Payment Amount).

The City shall pay in escrow to the Escrow Agent the following, promptly after the Escrow Agent has notified the City of the amount of such fees, charges and costs, but not earlier than ten (10) days prior to the date provided for herein for the close of escrow:

1. One-half (1/2) of the escrow fee;

2. The premium for a C.L.T.A. standard title insurance policy to be paid by the City as set forth in Section 211 of this Agreement.

The City shall timely and properly execute, acknowledge and deliver the grant deeds in substantially the form established in Section 207 of this Agreement (or the Ground Leases with respect to the B/C Ground Lease Parcels) conveying to the Developer fee title to (or a sub-ground leasehold interest in) the Developer Parcels in the condition required by Section 208 of this Agreement, together with an estoppel certificate certifying that the Developer has completed all acts necessary to entitle the Developer to such conveyance, if such be the fact.

The Escrow Agent is authorized to:

1. Pay and charge the City and the Developer, respectively, for any fees, charges and costs payable under this Section 202 of this Agreement. Before such payments are made, the Escrow Agent shall notify and obtain approval (which approval shall not be unreasonably withheld) from the City and the Developer of the fees, charges and costs necessary to clear title and close the escrow;

2. Disburse funds and deliver the grant deeds (or memoranda of ground leases), and other documents to the parties entitled thereto when the conditions of this escrow have been fulfilled by the City and the Developer; and

3. Record the grant deeds (or memoranda of ground leases), and any other instruments delivered through this escrow, if necessary or proper, to vest fee title (or a ground leasehold interest) to the Developer Parcels, as applicable, in the Developer in accordance with the terms and provisions of this Agreement.

All funds received in this escrow shall be deposited by the Escrow Agent with other escrow funds of the Escrow Agent in a general escrow account or accounts with any state or national bank doing business in the State of California. Such funds may be transferred to any other such general escrow account or accounts. All disbursements shall be made by check of the Escrow Agent. All adjustments shall be made on the basis of a 30-day month.

If the escrow for a particular Developer Parcel is not in condition to close before the time for conveyance established in Section 209 of this Agreement, either party who then shall have fully performed the acts to be performed before the conveyance of title may, in writing,

terminate this Agreement in the manner and to the extent set forth in Section 510 or 511 hereof, as the case may be, and demand the return of its money, papers or documents. Thereupon all obligations and liabilities of the parties under this Agreement shall cease and terminate in the manner and to the extent set forth in Section 510 or 511 hereof, as the case may be. If neither the City nor the Developer shall have fully performed the acts to be performed before the time for conveyance established in Section 209, no termination or demand for return shall be recognized until ten (10) days after the Escrow Agent shall have mailed copies of such demand to the other party or parties at the address of its or their principal place or places of business. If any objections are raised within the 10-day period, the Escrow Agent is authorized to hold all money, papers and documents with respect to the affected Developer Parcel(s) until instructed in writing by both the City and the Developer or upon failure thereof by a court of competent jurisdiction. If no such demands are made, the escrow shall be closed as soon as possible. Nothing in this Section 202 shall be construed to impair or affect the rights or obligations of the City or the Developer to specific performance. Notwithstanding the foregoing, the time for conveyance established in Section 209 of this Agreement shall be extended so long as the party who has not fully performed the necessary acts for conveyance is working reasonably to satisfy the conditions for conveyance and diligently proceeds to complete all of such acts.

Any amendment of these escrow instructions shall be in writing and signed by both the City and the Developer. The City Manager, or the City Manager's designee, is authorized to execute any escrow instructions or amendments thereto on behalf of the City. At the time of any amendment, the Escrow Agent shall agree to carry out its duties as Escrow Agent under such amendment.

All communications from the Escrow Agent to the City or the Developer shall be directed to the addresses and in the manner established in Section 601 of this Agreement for notices, demands and communications between the City and the Developer.

The liability of the Escrow Agent under this Agreement is limited to performance of the obligations imposed upon it under Sections 202 to 213, both inclusive, of this Agreement.

Neither the City nor the Developer shall be liable for any real estate commissions or brokerage fees which may arise from this Agreement. The City and the Developer each represent that neither has engaged any broker, agent or finder in connection with this transaction, and each party shall hold the other harmless from any claims for any such commissions or fees.

C. [§203] Conveyance of Title and Delivery of Possession.

Provided that the Developer is not in default under this Agreement and all conditions precedent to such conveyance have occurred, and subject to any mutually agreed upon extensions of time, conveyance to the Developer of title to the respective Developer Parcels shall be completed on or prior to the date specified in the Schedule of Performance (Attachment No. 3). Said Schedule of Performance is subject to revision from time to time as mutually agreed upon in writing between the Developer and the City pursuant to Operating Memoranda, as described in Sections 604 and 709 hereof. The City and the Developer agree to perform all acts necessary to conveyance of title in sufficient time for title to be conveyed in accordance with the foregoing provisions.

Possession shall be delivered to the Developer concurrently with the conveyance of title, except that limited access may be permitted before conveyance of title as permitted in Section 216 of this Agreement. The Developer shall accept title and possession on or before the said date.

D. [§204] Conditions Precedent to Conveyance.

1. [§205] City's Conditions to Closing.

The following are conditions precedent, and shall be completed to the City's satisfaction or waived by the City (collectively, the "City's Conditions to Closing") prior to close of escrow for conveyance of any Developer Parcel, or any portion thereof, to the Developer:

a. Submission by the Developer and approval by the City of the Developer's evidence of financing adequate to finance the acquisition and development of the Developer Parcel(s) being conveyed, pursuant to Section 217 hereof;

b. Deposit into escrow by the Developer of the applicable Purchase Price (or initial year's Annual Rent Payment, as applicable) and all other documents and required sums necessary for close of escrow pursuant to Section 202 hereof;

c. Submission by the Developer and approval by the City of the Developer's Unit Plan for the applicable Developer Parcel(s), pursuant to Sections 304 and 305 hereof;

d. Submission by the Developer of evidence that the Developer is ready to proceed with demolition of the existing improvements and site preparation work;

e. Preparation and recordation of reciprocal easement agreements and/or covenants, conditions and restrictions ("REA/CC&Rs") required by the City with respect to the Developer Parcel, or portion thereof, to be developed for residential uses, as provided in Section 704 hereof; and

f. The Developer entity to which the applicable Developer Parcel(s) is being conveyed shall not be in default of this Agreement with respect to any Developer Parcel(s) previously conveyed to that Developer entity (it being expressly agreed by the City that this condition shall not apply to prevent conveyance to a Developer entity if a default exists under this Agreement with respect to a Developer Parcel(s) previously conveyed to an unrelated Transferee(s) in accordance with Section 315 hereof).

2. [§206] Developer's Conditions to Closing.

In addition to any other conditions set forth in this Agreement in favor of the Developer, the following are conditions precedent (the "Developer's Conditions to Closing"), and shall be completed to the Developer's satisfaction, or waived by the Developer, prior to close of

escrow for conveyance of any Developer Parcel, or applicable portion thereof, by the City to the Developer:

a. Subject to the provisions of Section 203 hereof, the City shall be ready to timely tender title to (or possession of) the Developer Parcel in the condition required for conveyance to the Developer hereunder;

b. The City shall have complied with all requirements of the escrow applicable to the City, including, without limitation, deposit into escrow of the applicable grant deed or Ground Lease, and all other documents and all sums, if any, necessary for the close of escrow pursuant to Section 208 hereof;

c. The Title Company (referenced in Section 211 hereof) shall be in the position to issue the Title Policy (as defined in Section 211) for the Developer Parcel;

d. Submission by the Developer and approval by the City of the Developer's Unit Plan, and, if requested by the Developer, a vesting tentative map, for such Developer Parcel being conveyed, in accordance with and pursuant to Sections 304 and 305 hereof;

e. The Developer shall determine the soil conditions of the Site and suitability of the soil conditions for the improvements to be constructed thereon, pursuant to Section 215 hereof;

f. The Developer shall have obtained financing adequate for the Developer's costs of acquisition of and construction of the improvements on the Developer Parcel being conveyed;

g. All required REA/CC&Rs required by the City shall have been prepared and recorded against those Developer Parcels, or portions thereof, to be developed for residential uses, as provided in Section 704 hereof; and

h. Procurement from the applicable regulatory agency of the notice pursuant to Health and Safety Code Section 25403.2 of immunity from specified hazardous materials actions with respect to the Developer Parcel, if applicable pursuant to Section 215.

E. [§207] Form of Grant Deeds and Ground Leases.

The City shall convey to the Developer title to the respective Developer Parcels in the condition provided in Section 208 of this Agreement by grant deeds in substantially the form set forth in Attachment No. 5 and incorporated herein by reference or, with respect to the B/C Ground Lease Parcels, by Ground Leases in forms to be prepared as set forth in Section 201.4.

F. [§208] Condition of Title.

Within the time set forth in the Schedule of Performance (Attachment No. 3), the City shall submit to the Developer for review and approval a preliminary title report, together

with a copy of all underlying documents referred to therein (the "Preliminary Title Report") applicable to the entire Site (the "Initial Title Review Period"). In addition, within the times set forth in the Schedule of Performance (Attachment No. 3) and prior to the conveyance of the respective Developer Parcels, the City shall submit to the Developer for review and approval a preliminary title report, applicable to the respective Developer Parcels (the "Subsequent Title Review Period"). The Developer shall approve or disapprove the Preliminary Title Report for the entire Site or an applicable Developer Parcel within the Initial Title Review Period or the Subsequent Title Review Period for that Developer Parcel, respectively. Failure by the Developer to disapprove within such time shall be deemed an approval.

If the Developer disapproves a Preliminary Title Report, it shall specify the exception(s) to title contained in the Preliminary Title Report that it finds unacceptable and that would need to be removed in order for the Developer to be willing to accept conveyance of the applicable Developer Parcel (the "Unacceptable Title Exceptions"). The City and the Developer shall confer within fifteen (15) days after the City's receipt of the disapproval of the Preliminary Title Report to seek in good faith to agree upon a method to remove the Unacceptable Title Exceptions, and any such agreement shall be set forth in an Operating Memorandum executed in accordance with Section 709. Thereafter, the City and the Developer shall perform their respective obligations under such Operating Memorandum to cause removal of such Unacceptable Title Exceptions.

If the Developer disapproves a Preliminary Title Report as a result of the existence of Unacceptable Title Exceptions and the City and the Developer do not enter into an Operating Memorandum to remove such Unacceptable Title Exceptions within thirty (30) days after the City's receipt of such disapproval (or such longer period as the City and the Developer may agree upon in writing), the Developer may elect to terminate this Agreement in accordance with Section 510 hereof with respect to the affected Developer Parcel(s) only, or may elect to proceed with the acquisition of the Developer Parcel(s) without removal of the Unacceptable Title Exceptions. The City agrees that it will not cause, permit or suffer any liens, encumbrances or other matters affecting title to the Developer Parcels (or applicable portion thereof being conveyed) after the date of the Preliminary Title Report unless approved in writing by the Developer, which approval shall not be unreasonably withheld.

The City and the Developer acknowledge that, on July 13, 2007, the Developer timely submitted to the RDA a notice of Unacceptable Title Exceptions for the Initial Title Review with respect to all parcels within the Site. Notwithstanding the deadlines set forth above in this Section 208, the City and the Developer shall confer within the period to be set forth in City/Developer Amendment to this Fourth Restated Agreement to seek to execute a mutually acceptable Operating Memorandum to address such Unacceptable Title Exceptions.

The City shall convey to the Developer good and marketable fee simple title to (or, in connection with the B/C Ground Lease Parcels, good and marketable ground leasehold interest in) the respective Developer Parcels free and clear of all recorded liens, encumbrances, assessments, leases and taxes (including Unacceptable Title Exceptions to be removed pursuant to an Operating Memorandum), except as are specifically set forth in this Agreement and other easements and matters of record reflected in the Preliminary Title Report approved by the Developer, or which have been otherwise approved by the Developer in writing.

Notwithstanding any other provision of this Agreement, the City shall cause termination of any leasehold interest on a Developer Parcel prior to conveyance of the Developer Parcel to the Developer.

G. [§209] Time for and Place of Delivery of Grant Deeds and Ground Leases.

Subject to any mutually agreed upon extensions of time, the City shall deposit the grant deeds for the respective Developer Parcels, and the Ground Leases for the B/C Ground Lease Parcels, as applicable, with the Escrow Agent on or before the date established for the conveyance of each Developer Parcel in the Schedule of Performance (Attachment No. 3).

H. [§210] Recordation of Deeds and Lease Memoranda.

The Escrow Agent shall file the grant deeds (or a memorandum of lease with respect to the B/C Ground Lease Parcels) for recordation among the land records in the Office of the County Recorder of Solano County and shall deliver to the Developer title insurance policies insuring title in conformity with Section 211 of this Agreement.

I. [§211] Title Insurance.

Concurrently with recordation of the grant deed (or memoranda of leases with respect to the B/C Ground Lease Parcels) for each Developer Parcel to be conveyed by the City, First American Title Company, or some other title insurance company satisfactory to the City and the Developer having equal or greater financial responsibility ("Title Company"), shall provide and deliver to the Developer, a title insurance policy issued by the Title Company (the "Title Policy") insuring that the fee title to the respective Developer Parcels (or the ground leasehold interest with respect to the B/C Ground Lease Parcels) is vested in the Developer in the condition required by Section 208 of this Agreement. The Title Company shall provide the City with a copy of the title insurance policy and the title insurance policy shall be in the amount requested by the Developer.

The City shall pay only for that portion of the title insurance premium attributable to a C.L.T.A. standard form policy of title insurance in the amount of the Preliminary Purchase Price (prior to deduction of any Purchase Price credits) for each Developer Parcel being conveyed. The Developer shall pay for all other premiums for title insurance coverage or special endorsements that it may request.

The Title Company shall, if requested by the Developer, provide the Developer with an endorsement to insure the amount of the Developer's estimated development costs of the improvements to be constructed upon the applicable Developer Parcel(s). The Developer shall pay the entire premium for all title insurance policies, including any increase in coverage and special endorsements that may be requested by it.

J. [§212] Taxes and Assessments.

Ad valorem taxes and assessments, if any are imposed on the City, on the Developer Parcels, and taxes upon this Agreement or any rights hereunder, levied, assessed or

imposed for any period commencing prior to conveyance of title to the Developer shall be paid for by the City. All ad valorem taxes and assessments levied or imposed on the Developer Parcels for any period commencing after closing of the escrow for conveyance of title to the Developer shall be paid by the Developer.

K. [§213] Conveyance Free of Possession.

Except as otherwise provided in the Scope of Development (Attachment No. 4), the Developer Parcels shall be conveyed free of any possession or right of possession by any person except that of the Developer and the easements and matters of record.

L. [§214] Zoning of the Site.

The zoning of the Site permits the development of the Site and construction of the improvements in accordance with the provisions of this Agreement.

M. [§215] Condition of the Site.

1. Overview; Parcel A. Prior investigations of the Site by the RDA has revealed contamination on Parcels A. The RDA provided the Developer with information regarding Parcel A. Neither the Successor Agency nor the City shall be responsible for any corrective action to remediate any contamination on Parcel A.

2. Other Developer Parcels. Except as set forth herein with respect to Parcels A or in Phase 1 or Phase 2 environmental assessment reports separately prepared by the Developer, the City represents that, to its best knowledge, no other portions of the Site contain or have contained soil or groundwater contamination requiring remediation work in order to permit such other portions of the Site to be developed and used in the manner contemplated in this Agreement and that it has made available to Developer copies of all information, studies and reports in its possession with respect to any contamination on the Site.

Except as otherwise set forth in an Operating Memorandum described below in this Section 215.2, or in Section 215.3, or in the Scope of Development (Attachment No. 4), the Developer Parcels shall be conveyed from the City to the Developer in an "as is" condition. The City shall not be responsible for any items of site work within the Developer Parcels except those described in an Operating Memorandum, and those which are listed in the Scope of Development as the City's responsibilities.

The Developer shall have the right, within the time set forth in the Schedule of Performance (Attachment No. 3) to conduct or cause to be conducted any and all soils or groundwater tests and analyses, engineering studies, environmental audits, and any other tests or analyses of the Developer Parcels required by the Developer at its sole and absolute discretion to determine the presence of uncompacted fill, the condition of the soil or groundwater, the geology, seismology, hydrology or other similar matters on, under or affecting the respective Developer Parcels, the condition of any buildings or improvements located thereon, the presence or absence of any hazardous or toxic substances, wastes or materials, and the suitability of the respective Developer Parcels for the Developer's contemplated use

(collectively, the "Parcel Conditions"). It shall be the sole responsibility of the Developer to investigate and determine the Parcel Conditions of the respective Developer Parcels and the suitability of such Parcel Conditions for the improvements to be constructed by the Developer.

If the Developer determines that any Parcel Conditions are such as to make the development of any particular Developer Parcel(s) economically infeasible, it shall notify the City, specifying such condition(s) (the "Unacceptable Physical Conditions") and, if possible, the corrective action(s) it reasonably believes would need to be completed to remediate such Unacceptable Physical Conditions so that development of the particular Developer Parcel(s) could proceed in an economically feasible manner. The City and the Developer shall confer within fifteen (15) days after the City's receipt of such notice to seek in good faith to agree upon a method to remediate the Unacceptable Physical Conditions, and any such agreement shall be set forth in an Operating Memorandum executed in accordance with Section 709. Thereafter, the City and the Developer shall perform their respective obligations under such Operating Memorandum to cause remediation of such Unacceptable Physical Conditions.

If the Developer delivers a notice of the existence of Unacceptable Physical Conditions and the parties do not enter into an Operating Memorandum to remediate such Unacceptable Physical Conditions within thirty (30) days after the City's receipt of such notice (or such longer period as the parties may agree upon in writing), or if the Developer cannot determine with a reasonable degree of certainty the costs to remediate any Unacceptable Physical Conditions, the Developer may elect to terminate this Agreement in accordance with Section 510 hereof with respect to the entire Site or the affected Developer Parcel(s) only, or may elect to proceed with the acquisition of the Developer Parcel(s) without removal of the Unacceptable Physical Conditions and/or despite such uncertainty about costs of remediation.

If the Developer does not provide the City with a notice of Unacceptable Physical Conditions for a particular Developer Parcel within the time set forth in the Schedule of Performance (Attachment No. 3), then thereafter, if the Parcel Conditions are not in all respects entirely suitable for the use or uses to which the particular Developer Parcel will be put, then it is the sole responsibility and obligation of the Developer to take such action as may be necessary to place the Parcel Conditions of the particular Developer Parcel in a condition suitable for the development of the particular Developer Parcel.

3. Previously Submitted Unacceptable Physical Conditions Notice. The City and the Developer acknowledge that the Developer timely submitted an Unacceptable Physical Conditions notice to the RDA on July 13, 2007, with respect to Parcels J and L. Notwithstanding the deadlines set forth in Section 215.2 above, the City and the Developer shall confer within the period to be set forth in the City/Developer Amendment to this Fourth Restated Agreement to seek to execute a mutually acceptable Operating Memorandum to address such Unacceptable Physical Conditions.

4. Hazardous Materials Release Cleanup. The City and the Developer intend that remediation work undertaken pursuant to an Operating Memorandum executed under Section 215.2 or 215.3 (a "Remediation Operating Memorandum") shall be undertaken and completed in such a manner as to entitle the City to receive the written acknowledgment of immunity pursuant to Health and Safety Code Section 25403.2. The City and the Developer

intend and the City shall use good faith efforts to assure that, upon remediation in accordance with a Remediation Operating Memorandum, the Developer, the Developer's successors-in-interest and lenders with respect to such Developer Parcels shall be beneficiaries of the immunities contained in Health and Safety Code Section 25403.2 relating to such remediation work. The City and the Developer understand and acknowledge that, to the extent any remedial work is undertaken pursuant to Health and Safety Code Section 25403 et seq., the City may in its discretion employ the provisions set forth therein in connection with efforts to require responsible parties to perform and/or contribute funds to the remediation. The performance of any remediation actions by the City pursuant to Section 215 is designed to place the applicable Developer Parcels in the condition upon which the Purchase Prices for such Developer Parcels are determined in accordance with Section 201.2.

N. [§216] Preliminary Work by the Developer.

Prior to the conveyance of title to the respective Developer Parcels from the City, representatives of the Developer shall have the right of access to the Site, or those portions owned by or under the control of the City, at all reasonable times for the purpose of obtaining data and making surveys and tests necessary to carry out this Agreement. The City shall take all reasonable actions as may be necessary to allow the Developer such access to the Site for purposes of determining the condition of the Site. With respect to those portions of the Developer Parcels which are not then owned by the City, the City shall cooperate with the Developer in an effort to obtain any approvals and authorizations necessary for the Developer to gain access to those portions of the Developer Parcels as provided in this Section 216; provided, however, that the Developer acknowledges and agrees that any such approvals and authorizations may be beyond the control of the City and access may be delayed until such time as the City obtains the authority for access to those portions of the Developer Parcels; and provided further, however, that the City shall use diligent good faith efforts to obtain such access, including seeking court orders if deemed necessary by the City in its reasonable judgment to enable timely access to portions of the Developer Parcels not owned by the City. Prior to any access pursuant to this Section 216, the Developer shall give reasonable notice to the City, and any such access shall not interfere with the activities of the City or others having access rights to the Developer Parcels. The Developer shall indemnify and hold the City harmless for any injury or damages arising out of the right of access or any activity pursuant to this Section 216. The Developer shall have access to all data and information on the Site available to the City, but without warranty or representation by the City as to the completeness, correctness or validity of such data and information.

Any preliminary work undertaken on the Site by the Developer prior to conveyance of title to the Developer Parcels shall be done only after written consent of the City, and others with jurisdiction or control over the Developer Parcels, as the case may be, and at the sole expense of the Developer (but subject to reimbursement or credit as may be otherwise specifically provided in this Agreement or an Operating Memorandum). The City shall not refuse to consent to any tests reasonably necessary to accomplish the purposes of this Agreement by the Developer. The Developer shall indemnify, save and protect the City against any claims resulting from such preliminary work, access or use of the Site. Copies of data, surveys and tests obtained or made by the Developer on the Site shall be filed with the City, but without warranty or representation by the Developer as to the completeness, correctness or validity of such data,

surveys and tests. Any preliminary work by the Developer shall be undertaken only after securing any necessary permits from the appropriate governmental agencies.

Without limiting the generality of the foregoing portions of this Section and subject to compliance with the terms of the Section 404 Permit at any time, including prior to the processing of an application for a Unit Plan for Parcel A, and upon execution of a right-of-entry agreement, license agreement or other similar agreement reasonably acceptable to the City and the Developer, the Developer shall have the right to enter upon Parcel A and to place thereon clean fill for purposes of surcharging that parcel, provided the final grades are consistent with the maximum building finish floor elevations set forth in Section II.A.1 of the Scope of Development (Attachment No. 4).

O. [§217] Submission of Evidence of Financing.

The financing of the acquisition and development of the respective Developer Parcels shall be subject to the approval of the City, which approval will not be unreasonably withheld and which approval or disapproval shall be limited to the issue of the creditworthiness of the provider of such financing.

No later than the time specified in the Schedule of Performance (Attachment No. 3), the Developer shall have secured financing necessary to assure acquisition and development of applicable Developer Parcel(s) in accordance with the provisions of this Agreement.

P. [§218] Cooperation With Subdivision.

The City, as owner of applicable portions of the Site, shall reasonably cooperate with and assist the Developer, as applicant for various subdivisions and/or lot line adjustments of the Site contemplated by this Agreement and the Project Approvals, and shall execute such documents and consents and take such other actions as are reasonably required to enable the Developer to apply for and obtain approval, filing, and recordation of such subdivisions and/or lot line adjustments; provided, however, that nothing in this Agreement shall affect or limit the City's municipal authority to grant or deny such applications.

3. [§300] DEVELOPMENT OF THE SITE.

A. [§301] Development of the Site by the Developer.

1. [§302] Scope of Development.

The Site shall be developed as provided in the Scope of Development (Attachment No. 4).

2. [§303] [Intentionally Omitted].

3. [§304] Unit Plans and Related Documents.

The Developer shall prepare and submit to the City a Unit Plan, in accordance with Section 16.116.070 et seq. of the Vallejo Municipal Code and any applicable

provisions of this Agreement (with particular reference to the Scope of Development (Attachment No. 4)) and the Settlement Agreement, for each Developer Parcel within the times established in the Schedule of Performance (Attachment No. 3). At the Developer's election, a Unit Plan submission may be accompanied by a Developer application for a vesting tentative map for the applicable Developer Parcel, which application shall be reviewed and processed in accordance with normal City procedures (subject to the terms of the Development Agreement). Any necessary surveys required for the preparation of the Unit Plan or vesting tentative map shall be prepared by the Developer concurrently with the Unit Plan. All Unit Plans shall conform to this Agreement, including the Scope of Development (Attachment No. 4). The Developer may, at its election, apply for, seek approval of, and obtain recordation of a master subdivision or lot line adjustment with respect to one or more Developer Parcels prior to applying for or obtaining a Unit Plan with respect to such Developer Parcel(s).

The Developer shall also prepare and submit to the City for its approval one or more final subdivision maps, as necessary, to cause subdivision of the applicable Developer Parcels as envisioned by this Agreement, including the Scope of Development (Attachment No. 4). Such final subdivision map(s) shall be prepared and submitted within the times established in the Schedule of Performance (Attachment No. 3), subject to extensions as are authorized herein or as mutually agreed to by the parties hereto.

As further provided below, the City shall consider approval or disapproval of the Unit Plan (and, if applicable, the vesting tentative map and final subdivision map(s)) for each Developer Parcel within the times established in the Schedule of Performance (Attachment No. 3) and in a manner consistent with this Agreement, including the Scope of Development (Attachment No. 4), and the Project Approvals, including the Development Agreement. The Developer and the City mutually agree that following consideration by the City Planning Commission or Design Review Board of a Unit Plan for any major project (as determined by the Development Services Director) for any Developer Parcel, the Developer and the City shall file a timely appeal of the decision of the Planning Commission or the Design Review Board, as applicable, in order for the City Council to consider approval or disapproval of such Unit Plan as authorized by the Vallejo Municipal Code. The City shall pay any appeal fee related to the Project.

During the preparation of all Unit Plans, City staff and the Developer shall hold regular progress meetings and shall regularly consult with each other to coordinate the preparation of, submission to, and review of such plans and related documents by the City. The City and the Developer shall communicate and consult informally as frequently as is necessary to insure that the formal submittal of any documents to the City can receive prompt and speedy consideration.

In accordance with the procedures set forth in Section 16.116.070 et seq. of the Vallejo Municipal Code, the Developer shall be notified by the City if the Unit Plan application is complete or not. If the Unit Plan application is not complete, the City shall notify the Developer of the reason such packet is incomplete and what element is missing or what action must be taken by the Developer for the City to accept such packet as complete.

In general, the Schedule of Performance (Attachment No. 3) for each Developer Parcel establishes the following procedure that the City implement in connection with Design Review Board and the City Council consideration of the Unit Plan for any major project on a Developer Parcel that will ultimately be appealed to the City Council for City Council's consideration of approval:

a. Upon submittal by the Developer of a complete application (a "Complete Application") for such Unit Plan and any accompanying vesting tentative map (following performance of the staff/Developer consultation process and the City notification process described in the preceding paragraphs), the City shall schedule an initial hearing before the Design Review Board (the "Study Session") to take place within thirty (30) days after City receipt of such Complete Application. At the Study Session, the Developer shall present the proposed Unit Plan (and any accompanying vesting tentative map) and shall receive any comments from the Design Review Board, City staff, and members of the public.

b. After the Developer assimilates comments from the Study Session and submits any proposed modifications to the Complete Application (a "Revised Application"), the City shall schedule a subsequent hearing before the Design Review Board (the "Action Session") to take place within thirty (30) days after City receipt of such Revised Application. At the Action Session, the Developer shall present the Revised Application, the Design Review Board shall receive any comments from City staff and members of the public, and the Design Review Board shall make its final recommendation/decision regarding the Revised Application.

c. The Developer and the City shall file a timely appeal (as further provided above) of the final recommendation/decision of the Design Review Board on the Revised Application, and the City shall schedule a City Council hearing on such appeal to take place within thirty (30) days after the Design Review Board's Action Session. After concluding the hearing, the City Council shall approve or disapprove the Revised Application for the Unit Plan and any accompanying vesting tentative map.

If any revisions or corrections of Unit Plans previously approved by the City shall be required by any government official, agency, department or bureau having jurisdiction, or any lending institution involved in financing, the Developer and the City shall cooperate in efforts to obtain a waiver of such requirements or to develop a mutually acceptable alternative.

4. [§305] City Approval of Unit Plans and Related Documents.

Subject to the terms of this Agreement and the Development Agreement, the City shall have the right of architectural and site planning review of all plans and drawings, including any changes therein. The Developer shall submit plans and submissions to the City in compliance with the City's requirements for review and approval of Units Plans (Section 16.116.070 et seq. of the Vallejo Municipal Code). In addition, the Developer shall be obligated to submit plans and submissions for special development permits or building permits to City departments or other public agencies.

If the Developer desires to make any substantial change in the construction drawings after their approval by the City, the Developer shall submit the proposed change to the City for its approval. If the construction drawings, as modified by the proposed change, conform to the requirements of Section 304 of this Agreement and the approvals previously granted by the City under this Section 305 and the Scope of Development (Attachment No. 4), the City shall not unreasonably withhold its approval of the proposed change and shall notify the Developer in writing within thirty (30) days after submission of a complete packet to the City. Such change in the construction plans shall, in any event, be deemed approved by the City unless rejected, in whole or in part, by written notice thereof by the City to the Developer setting forth in detail the reasons therefor, and such rejection shall be made within the said 30-day period.

5. [§306] Cost of Development.

The costs of developing the improvements on the Site shall be borne by the City and the Developer as set forth in this Agreement, including the Scope of Development (Attachment No. 4) and the Method of Financing (Attachment No. 6).

6. [§307] Construction Schedule.

After the conveyance of title to the respective Developer Parcels to the Developer, the Developer shall promptly begin and thereafter diligently prosecute to completion the development as provided for under this Agreement, including the Schedule of Performance (Attachment No. 3).

The City Manager or the City Manager's designee is authorized to approve any changes to the Schedule of Performance (Attachment No. 3) on behalf of the City, as further provided in Sections 604 and 709.

During the periods of construction, but not more frequently than once a month, the Developer shall submit to the City a written progress report of the construction if requested by the City. The report shall be in such form and detail as may reasonably be required by the City and shall, if requested by the City, include a reasonable number of construction photographs taken since the last report submitted by the Developer.

7. [§308] Bodily Injury, Property Damage and Workers' Compensation Insurance.

Prior to the commencement of construction on the Site or any portion thereof, the Developer shall furnish or cause to be furnished to the City duplicate originals or appropriate certificates of commercial general liability insurance in the amount of at least $1,000,000 combined single limit for bodily injury and property damage and $2,000,000 general aggregate limit, naming the City as an additional insured. The Developer shall also furnish or cause to be furnished to the City evidence satisfactory to the City that any contractor with whom it has contracted for the performance of work on the Site carries workers' compensation insurance as required by law. The obligations set forth in this Section 308 shall remain in effect

only until a Final Certificate of Completion has been issued covering the entire Site as hereinafter provided in Section 323 hereof.

The policies or certificates required herein shall provide that, not less than thirty (30) days prior to cancellation or any material change in the policy, notices of such cancellation or material change shall be given to the City Manager at the address set forth in Section 601 hereof, by registered mail, return receipt requested. If at any time any of said policies shall be unsatisfactory to the City, at the City's reasonable discretion, as to form or substance or if a company issuing such policy shall be unsatisfactory to the City, at the City's reasonable discretion, the Developer shall promptly obtain a new policy, submit the same to the City Manager for approval, which shall not be unreasonably withheld, and submit a certificate thereof as hereinabove provided. Upon failure of the Developer to furnish, deliver or maintain such insurance and certificates as above provided the City may deliver a notice of default in accordance with the first sentence of Section 501 and thereafter exercise the rights and remedies provided in Section 500 et seq. hereof if such default is not timely cured. Failure of the Developer to obtain and/or maintain any required insurance shall not relieve the Developer from any liability under this Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations of the Developer concerning indemnification. The Workers' Compensation insurer shall agree to waive all rights of subrogation against the City, and its agents, officers, employees and volunteers, for losses arising from work performed by the Developer for the City. The Developer's insurance policy(ies) shall include provisions that the coverage is primary as respects the City; shall include no special limitations to coverage provided to additional insureds; and shall be placed with insurer(s) with acceptable Best's rating of A VII or better or with approval of the City Manager and shall be a California-admitted carrier(s).

8. [§309] City and Other Governmental Agency Permits.

Before commencement of construction or development of any buildings, structures or other work of improvement upon the Developer Parcels (unless such construction, development or work is to be commenced before the conveyance of title), the Developer shall, at its own expense, secure or cause to be secured any and all permits which may be required by the City, Vallejo Sanitation and Flood Control District ("VSFCD"), San Francisco Bay Conservation and Development Commission ("BCDC"), California State Department of Transportation, or any other governmental agency affected by such construction, development or work. The City shall provide reasonable cooperation to the Developer in securing these permits, including acting as the "lead agency" in any instances where a public agency is required to be the lead agency in obtaining such permits, provided that the City shall have no obligation to incur out-of-pocket expenses to third parties in connection with such cooperation. Prior to commencement of construction or development of the Developer Parcels, the Developer shall also provide performance and payments bonds in the amount of one hundred percent (100%) of the construction contract. The Developer may propose alternative forms of security, such as letters of credit or completion guarantees for the approval of the City, which approval shall not be unreasonably withheld.

Notwithstanding the foregoing, the City shall be responsible for obtaining a Section 404 Permit from the U. S. Army Corps of Engineers (the "Section 404 Permit")

relating to Parcel A (the Mariner's Cove Site) within the time set forth in the Schedule of Performance (Attachment No. 3).

In addition, before commencement of construction or development of any buildings, structures or other works of improvement upon the City Parcels, the City shall, without expense to the Developer, secure or cause to be secured any and all permits which may be required by the City, VSFCD, BCDC, California State Department of Transportation, or any other governmental agency affected by such construction, development or work. The Developer shall provide reasonable cooperation to the City in securing such permits, provided that the Developer shall have no obligation to incur out-of-pocket expenses to third parties in connection with such cooperation.

9. [§310] Rights of Access.

For the purposes of assuring compliance with this Agreement, representatives of the City shall have the reasonable right of access to the Site without charges or fees and at normal construction hours during the period of construction for the purposes of this Agreement, including, but not limited to, the inspection of the work being performed in constructing the improvements. Such representatives of the City shall be those who are so identified in writing by the City Manager. The City shall indemnify the Developer, its partners, shareholders, officers and employees, and hold it harmless from any damage caused or liability arising out of this right to access.

10. [§311] Local, State and Federal Laws.

The Developer shall carry out the construction of the improvements in conformity with all applicable laws, including all applicable federal and state labor standards.

The Developer shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the City) the City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure of Developer or its contractors to pay prevailing wages if and to the extent required by law or to comply with the other applicable provisions of Labor Code Sections 1720 et seq. and implementing regulation of the Department of Industrial Relations in connection with construction of the improvements on the Site. The indemnity provided for in this Section 311 is expressly limited as follows: (1) the indemnity does not include any improvements where the City has represented in a writing to the Developer that such improvements are not, or should not be considered, public works under Labor Code Section 1720 et seq.; and (2) the indemnity does not include any improvements where the City contracted for the work directly.

11. [§312] Anti-discrimination During Construction.

The Developer, for itself and its successors and assigns, agrees that in the construction of the improvements provided for in this Agreement, the Developer will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, marital status, physical handicap, sexual orientation, ancestry or national origin.

B. [§313] Responsibilities of the City.

The City, without expense to the Developer or assessment or claim against the Site, shall perform all work specified herein and in the Scope of Development (Attachment No. 4) for the City to perform within the times specified in the Schedule of Performance (Attachment No. 3). In addition, the City shall grant such public utility easements over property owned by the City as are reasonably necessary to implement the Project in accordance with this Agreement and the Project Approvals.

C. [§314] Taxes, Assessments, Encumbrances and Liens.

The Developer shall pay when due all real estate taxes and assessments assessed and levied on the Developer Parcels for any period subsequent to conveyance of title to or delivery of possession of the Developer Parcels. Prior to the issuance of a Partial Certificate of Completion for a particular Developer Parcel, the Developer shall not place or allow to be placed on that Developer Parcel any mortgage, trust deed, encumbrance or lien unauthorized by this Agreement, and the Developer shall remove or have removed any levy or attachment made on a particular Developer Parcel that is not specifically authorized by this Agreement, or shall assure the satisfaction thereof, within a reasonable time, but in any event prior to a sale thereunder. Nothing herein contained shall be deemed to prohibit the Developer from contesting the validity or amounts of any tax, assessment, encumbrance or lien, nor to limit the remedies available to the Developer in respect thereto; provided, however, that prior to commencing any such contest, the City, in its reasonable discretion, may require the Developer to post bond in an amount sufficient to cover the tax, assessment, encumbrance or lien, or such portion thereof, to be contested and shall thereafter proceed in good faith to contest the validity or amount of such tax, assessment, encumbrance or lien. The prohibitions of this Section 314 shall not apply with respect to a particular Developer Parcel following issuance of a Partial Certificate of Completion for that Developer Parcel.

The Developer understands that under certain conditions, its control of the Developer Parcels or portion thereof under this Agreement may give rise to the imposition of a possessory interest tax on said property, and in such event, the Developer agrees to pay when due any such possessory interest tax.

D. [§315] Prohibition Against Transfer of Developer Parcels, the Buildings or Structures Thereon and Assignment of Agreement.

Prior to the issuance by the City of a Partial Certificate of Completion pursuant to Section 323 with respect to a particular Developer Parcel or Parcels, the Developer shall not, except as expressly permitted by this Agreement, complete a Transfer with respect to the applicable Developer Parcel(s) without the prior written approval of the City. For purposes of this Agreement, "Transfer" means any sale, transfer, conveyance, assignment, or lease of (i) this Agreement, including the rights of the Developer to receive a conveyance of the applicable Developer Parcel(s), and/or (ii) the applicable Developer Parcel(s) and the buildings and improvements thereon.

The City agrees not to unreasonably withhold its approval of any Transfer under this Section 315 so long as: (i) the City reasonably determines that any such Transfer shall in no way diminish the City's rights under this Agreement; (ii) Developer shall not be in default of this Agreement with respect to the Developer Parcels subject to such Transfer; (iii) such Transfer in no way diminishes Developer's ability to perform under this Agreement with respect to the Developer Parcel(s) not subject to the Transfer; (iv) at the time of such Transfer, the transferee (a "Transferee") must have agreed to take title to the applicable Developer Parcel(s) subject to this Agreement, and shall have executed an assignment and assumption agreement in form and content satisfactory to the City, assuming all of the obligations of the Developer with respect to the applicable Developer Parcel(s), and agreeing to be subject to all the conditions and restrictions to which the Developer is subject with respect to the applicable Developer Parcel(s); and (v) the proposed Transferee shall have the qualifications and financial responsibility necessary and adequate, as may be reasonably determined by the City, to fulfill the obligations undertaken in this Agreement by the Developer with respect to the applicable Developer Parcel(s). The City Manager, or the City Manager's designee, on behalf of the City, shall approve or disapprove (stating in writing with specificity the reasons for any disapproval) a Transfer requested by the Developer within thirty (30) days after the Developer submits such request and supporting documentation reasonably sufficient to enable the City Manager to determine the compliance of the requested Transfer with the objective criteria set forth in the preceding sentence.

Upon City approval of a Transfer, CALLAHAN PROPERTY COMPANY, INC., as the Developer under this Fourth Restated Agreement, shall have no further obligations under this Agreement with respect to the Developer Parcel(s) to which the Transfer applies, and the term "Developer", as used in this Agreement with respect to the Developer Parcel(s) to which the Transfer applies, shall mean and refer to the Transferee.

Notwithstanding the foregoing and subject to the provisions of Section 107 hereof, any Transfer by the Developer for purposes of obtaining financing to develop a Developer Parcel or Parcels is permitted without prior City approval so long as CALLAHAN PROPERTY COMPANY, INC., or an affiliate thereof, or an approved Transferee maintains control and management of the Developer Parcel(s) to which the Transfer for the purposes of obtaining financing applies.

The prohibition against Transfers shall not apply subsequent to the issuance of the Partial Certificate of Completion for any Developer Parcel. The prohibition against Transfers also shall not apply and shall not be deemed to prevent, prohibit or restrict (i) the granting of easements or permits to facilitate the development of the Site, (ii) the leasing or preleasing of any part or parts of a building or structure for occupancy when said improvements are completed, or (iii) the sale of residential units within a building or structure for occupancy upon completion. This prohibition shall not be deemed to prevent, prohibit or restrict the leasing of the Hotel Improvements to a Hotel Operator, or any portion of the Project to a prospective tenant or user, prior to construction of any such improvements on a Developer Parcel.

E. [§316] Security Financing; Rights of Holders.

1. [§317] No Encumbrances Except Mortgages, Deeds of Trust, Sales and Leases-Back or Other Financing for Development.

Notwithstanding Sections 314 and 315 of this Agreement, mortgages, deeds of trust, sales and leases-back or any other form of conveyance required for any reasonable method of financing are permitted with respect to a particular Developer Parcel before issuance of a Partial Certificate of Completion for that Developer Parcel but only for the purpose of securing loans of funds to be used for financing the acquisition of the Developer Parcel and/or the construction of improvements on the Developer Parcel and any other expenditures necessary and appropriate to develop the Developer Parcel under this Agreement. The Developer shall notify the City in advance of any mortgage, deed of trust, sale and leaseback or other form of conveyance for financing if the Developer proposes to enter into the same before issuance of a Partial Certificate of Completion with respect to the applicable Developer Parcel. The Developer shall not enter into any such conveyance for financing without the prior written approval of the City (unless such lender shall be one of the ten (10) largest banking institutions doing business in the State of California, or one of the ten (10) largest insurance lending institutions in the United States qualified to do business in the State of California), which approval the City agrees to give if any such conveyance is given to a responsible financial or lending institution or other creditworthy person or entity. Such lender shall be deemed approved unless rejected in writing by the City within ten (10) days after notice thereof to the City by the Developer. In any event, the Developer shall promptly notify the City of any mortgage, deed of trust, sale and lease-back or other financing conveyance, encumbrance or lien that has been created or attached thereto prior to completion of the construction of the improvements on a Developer Parcel whether by voluntary act of the Developer or otherwise. The words "mortgage" and "deed of trust," as used herein, include all other appropriate modes of financing real estate acquisition, construction and land development.

2. [§318] Holder Not Obligated to Construct Improvements.

The holder of any mortgage, deed of trust or other security interest authorized by this Agreement shall in no way be obligated by the provisions of this Agreement to construct or complete the improvements or to guarantee such construction or completion, nor shall any covenant or any other provision in the grant deed for a Developer Parcel be construed so to obligate such holder. Nothing in this Agreement shall be deemed to construe, permit or authorize any such holder to devote a Developer Parcel to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by this Agreement.

3. [§319] Notice of Default to Mortgage, Deed of Trust or Other Security Interest Holders; Right to Cure.

Whenever the City shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer in completion of construction of the improvements, the City shall at the same time deliver a copy of such notice or demand to each holder of record of any mortgage, deed of trust or other security interest authorized by this

Agreement who has previously made a written request to the City therefor. Each such holder shall (insofar as the rights of the City are concerned) have the right, at its option, within ninety (90) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default and to add the cost thereof to the security interest debt and the lien on its security interest. In the event there is more than one such holder, the right to cure or remedy a breach or default of the Developer under this Section 319 shall be exercised by the holder first in priority or as the holders may otherwise agree among themselves, but there shall be only one exercise of such right to cure and remedy a breach or default of the Developer under this Section 319. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the improvements (beyond the extent necessary to conserve or protect the improvements or construction already made) without first having expressly assumed the Developer's obligations to the City by written agreement satisfactory to the City. The holder in that event must agree to complete, in the manner provided in this Agreement, the improvements to which the lien or title of such holder relates and submit evidence satisfactory to the City that it has the qualifications and financial responsibility necessary to perform such obligations. Any such holder properly completing such improvements shall be entitled, upon written request made to the City, to the applicable Certificate of Completion from the City.

4. [§320] <u>Failure of Holder to Complete Improvements</u>.

On a parcel by parcel basis, in any case where, six (6) months after default by the Developer in completion of construction of improvements under this Agreement, the holder of any mortgage, deed of trust or other security interest creating a lien or encumbrance upon a Developer Parcel has not exercised the option to construct, or if it has exercised the option and has not proceeded diligently with construction, the City may purchase the mortgage, deed of trust or other security interest by payment to the holder of the amount of the unpaid debt, plus any accrued and unpaid interest. If the ownership of a particular Developer Parcel has vested in the holder, the City, if it so desires, shall be entitled to a conveyance of the particular Developer Parcel from the holder to the City upon payment to the holder of an amount equal to the sum of the following:

a. The unpaid mortgage, deed of trust or other security interest debt at the time title became vested in the holder (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings);

b. All expenses with respect to foreclosure;

c. The net expenses, if any (exclusive of general overhead), incurred by the holder as a direct result of the subsequent management of the particular Developer Parcel Site;

d. The costs of any authorized improvements made by such holder; and

e. An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage or deed of trust debt and such debt had continued in existence to the date of payment by the City.

[§321] Notice of Default to City; Right of City to Cure Mortgage, Deed of Trust or Other Security Interest Default.

Whenever any holder of any mortgage, deed of trust or other security interest with respect to a particular Development Parcel shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer, such holder shall at the same time deliver a copy of such notice or demand to the City.

In the event of a default or breach by the Developer of a mortgage, deed of trust or other security interest with respect to a particular Developer Parcel prior to the completion of development, and the holder has not exercised its option to complete the development, the City may cure the default prior to completion of any foreclosure. In such event, the City shall be entitled to reimbursement from the Developer of all costs and expenses incurred by the City in curing the default. The City shall also be entitled to a lien upon the particular Developer Parcel to the extent of such costs and disbursements. Any such lien shall be subject to mortgages, deeds of trust or other security interests executed for the sole purpose of obtaining funds to purchase and develop the particular Developer Parcel as authorized herein.

[§322] Right of the City to Satisfy Other Liens on the Site After Title Passes.

After the conveyance of title and prior to the issuance of a Partial Certificate of Completion for construction and development of a particular Developer Parcel, and after the Developer has had a reasonable time to cure or satisfy any liens or encumbrances on that Developer Parcel, which period of time shall be the shorter of any period set by law or the cure period set forth in Section 501 hereof, the City shall have the right to satisfy any such liens or encumbrances; provided, however, that nothing in this Agreement shall prevent the Developer from challenging or contesting any tax, assessment, lien or charge so long as the Developer pays or makes provision for the payment of any such tax, assessment, lien or charge and thereafter in good faith contests the validity or amount thereof.

F. [§323] Certificate of Completion.

Upon the completion of construction and development of any Developer Parcel by the Developer, the Developer shall send a written request to the City and the City shall furnish the Developer with a "Partial Certificate of Completion" for such Developer Parcel in form suitable for recording in the Official Records of Solano County, California. The Partial Certificate of Completion shall be, and shall so state, conclusive determination of satisfactory completion of the construction of such Developer Parcel as required by this Agreement. The issuance of Partial Certificates of Completion for portions of the Site shall have no effect on the remainder of the Site not covered by such Partial Certificates of Completion.

Promptly after completion of all construction and development to be completed by the Developer upon the Site, the City shall furnish the Developer with a "Final Certificate of

Completion" upon written request therefor by the Developer. Such Final Certificate of Completion shall be in such form as to permit it to be recorded in the Office of the County Recorder of Solano County.

A Certificate of Completion shall be, and shall so state, conclusive determination of satisfactory completion of the construction required by this Agreement upon the Site, or a specified Developer Parcel, as the case may be, and of full compliance with the terms hereof. After issuance of such Certificate of Completion, any person or entity then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Site, or the specified Developer Parcel, covered by said Certificate of Completion shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement, except that such person or entity shall be bound by any covenants contained in the REA/CC&Rs and any deed, lease, mortgage, deed of trust, contract or other instrument of transfer in accordance with the provisions of Sections 401-405 of this Agreement. Except as otherwise provided herein, after the issuance of a Certificate of Completion for the Site, neither the City nor any other person shall have any rights, remedies or controls with respect to the Site that it would otherwise have or be entitled to exercise under this Agreement as a result of a default in or breach of any provision of this Agreement, and the respective rights and obligations of the City and the Developer with reference to the Site shall be as set forth in the grant deeds of the Developer Parcels from the City to the Developer (or the Ground Leases with respect to the B/C Ground Lease Parcels), which shall be in accordance with the provisions of Sections 401-405 of this Agreement, and the REA/CC&Rs, referred to in Section 704 hereof.

The City shall not unreasonably withhold any Certificate of Completion. If the City refuses or fails to furnish a Certificate of Completion for the Site, or any portion thereof, after written request from the Developer, the City shall, within ten (10) days of the next scheduled City Council meeting after such written request, provide the Developer with a written statement of the reasons the City refused or failed to furnish a Certificate of Completion. The statement shall also contain the City's opinion of the action the Developer must take to obtain a Certificate of Completion. If the reason for such refusal is confined to the immediate unavailability of specific items or materials for minor work or landscaping, the City will issue its Certificate of Completion upon the posting of a bond by the Developer with the City in an amount representing a fair value of the work not yet completed. If the City shall have failed to provide such written statement within said 10-day period after such City meeting, the Developer shall be deemed entitled to the Certificate of Completion.

Such Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any holder of a mortgage or any insurer of a mortgage securing money loaned to finance the improvements or any part thereof. Such Certificate of Completion is not notice of completion as referred to in California Civil Code Section 3093.

4. [§400] USE OF THE SITE.

A. [§401] Uses.

The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest that during construction and thereafter, the Developer, its successors and assignees shall devote the Developer Parcels to the uses specified in the Redevelopment Plans, the grant deeds, the Ground Leases (with respect to the B/C Ground Lease Parcels), and this Agreement for the periods of time specified therein. The foregoing covenant shall run with the land.

B. [§402] Obligation to Refrain From Discrimination.

The Developer covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Developer Parcels, nor shall the Developer itself or any person claiming under or through it 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, subtenants, sublessees or vendees of the Developer Parcels. The foregoing covenants shall run with the land.

C. [§403] Form of Nondiscrimination and Nonsegregation Clauses.

The Developer shall refrain from restricting the rental, sale or lease of the Developer Parcels on the basis of race, color, creed, religion, sex, marital status, physical handicap, sexual orientation, ancestry or national origin of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

1. In Deeds:

"(a) Grantee herein covenants by and for itself, its successors 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) and (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 property herein conveyed, nor shall the grantee or any person claiming under or through the grantee, 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 property herein conveyed. The foregoing covenant shall run with the land.

(b) Notwithstanding paragraph (a), with respect to familial status, paragraph (a) 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 paragraph (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code,

relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (a)."

2. In Leases:

"(a) Lessee herein covenants by and for itself, its successors 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) and (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 or any person claiming under or through the lessee, 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.

(b) Notwithstanding paragraph (a), with respect to familial status, paragraph (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 paragraph (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (a)."

3. In Contracts:

"(a) There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (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 property nor shall the transferee or any person claiming under or through the transferee 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, subtenants, sublessees or vendees of the land.

(b) Notwithstanding paragraph (a), with respect to familial status, paragraph (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 paragraph (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (a)."

D. [§404] Effect and Duration of Covenants.

Except as otherwise provided, the covenants contained in this Agreement and the grant deeds shall remain in effect until the deadlines for effectiveness of the Redevelopment Plans, as such Redevelopment Plans may be amended pursuant to this Agreement. The covenants against discrimination shall remain in effect in perpetuity. The covenants established in this Agreement and the grant deeds shall, without regard to technical classification and designation, be binding for the benefit and in favor of the City, its successors and assigns, and any successor in interest to the Site or any part thereof.

The City is deemed the beneficiary of the terms and provisions of this Agreement and of the covenants running with the land for and in its own rights and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided. This Agreement and the covenants shall run in favor of the City without regard to whether the City has been, remains or is an owner of any land or interest therein in the Developer Parcels, or in the applicable Project Area. The City shall have the right, if this Agreement or the covenants are breached, to exercise all rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and the covenants may be entitled.

E. [§405] Rights of Access — Public Improvements and Facilities.

The City, at its sole risk and expense, reserves the right to enter the Site or any part thereof at all reasonable times and with as little interference as possible for the purposes of construction, reconstruction, maintenance, repair or service of any public improvements or public facilities located on the Site. Any such entry shall be made only after reasonable notice to the Developer, and the City shall indemnify and hold the Developer, its partners, shareholders, officers and employees, harmless from any claims or liabilities pertaining to any entry. Any damage or injury to the Site resulting from such entry shall be promptly repaired at the sole expense of the City.

5. [§500] DEFAULTS, REMEDIES AND TERMINATION.

A. [§501] Defaults – General.

Subject to the extensions of time set forth in Section 604, failure or delay by a party to perform any obligation of such party under this Agreement constitutes a default under this Agreement; provided, however, that no party shall be deemed to be in default under this Agreement unless and until such party has received notice of default as provided in the following paragraph and the applicable cure period has expired without a cure being effected. The party who so fails or delays must promptly commence to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy with reasonable diligence or within the time specifically set forth in this Agreement, and during any period of curing shall not be in default.

The injured party shall give written notice of default to the party in default specifying the default complained of by the injured party. Except as required to protect against

further damages and except as otherwise expressly provided in Sections 507 and 508 of this Agreement, the injured party may not institute proceedings against the party in default during the applicable cure period set forth in the preceding paragraph.

Except as otherwise expressly provided in Section 512 of this Agreement, any failure or delay by a party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies or deprive such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

B. [§502] Legal Actions.

1. [§503] Institution of Legal Actions.

Subject to and after the applicable notice and cure periods and subject to any limitations on remedies set forth in this Agreement, in addition to any other rights or remedies, a party may institute legal action to cure, correct or remedy any default, or recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of Solano, State of California, in an appropriate municipal court in that County.

2. [§504] Applicable Law.

The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

3. [§505] Acceptance of Service of Process.

In the event that any legal action is commenced by the Developer against the City, service of process on the City shall be made by personal service upon the City Manager or in such other manner as may be provided by law.

In the event that any legal action is commenced by the City against the Developer, service of process on the Developer shall be made by personal service upon the Developer or in such other manner as may be provided by law and shall be valid whether made within or without the State of California.

C. [§506] Rights and Remedies are Cumulative.

Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by the other party.

D. [§507] Damages.

If a party defaults with regard to any of the provisions of this Agreement, the nondefaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured or the cure is not being diligently prosecuted to completion by the defaulting party within forty-five (45) days after service of the notice of default, and provided that the nondefaulting party has not terminated and does not terminate this Agreement (with respect to a particular Developer Parcel or the Site, as applicable) in connection with such default, the defaulting party shall be liable to the nondefaulting party for any damages caused by such default, subject to any limitations on damages set forth in this Agreement (including, without limitation, the liquidated damages provisions of Section 511). Such damages shall not include either future property taxes or anticipated return on investment which the proposed development could have generated.

E. [§508] Specific Performance.

If a party defaults under any of the provisions of this Agreement, the nondefaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured or is not being diligently prosecuted to completion by the defaulting party within forty-five (45) days of service of the notice of default and provided that the nondefaulting party has not terminated and does not terminate this Agreement (with respect to a particular Developer Parcel or the Site, as applicable) in connection with such default, the nondefaulting party, at its option, may institute an action for specific performance of the terms of this Agreement; provided, however, that this Section 508 shall not apply with respect to the failure of a party to acquire all or a portion of the Developer Parcels from third parties. The City and the Successor Agency shall not be deemed to be a "third parties" for purposes of the preceding sentence.

F. [§509] Remedies and Rights of Termination Prior to Conveyance of the Developer Parcels to the Developer.

1. [§510] Termination by the Developer.

In the event that prior to conveyance of title to a particular Developer Parcel to the Developer:

a. The City does not tender conveyance of a Developer Parcel or possession thereof in the manner and condition and by the date provided in this Agreement, and any such failure is not cured within forty-five (45) days after written demand by the Developer; or

b. The City is unable or, for any reason, does not acquire a Developer Parcel, if the Developer Parcel is to be acquired by the City, and any such failure is not cured within forty-five (45) days after written demand by the Developer; or

c. [Intentionally Omitted]; or

d. [Intentionally Omitted]; or

e. The Developer's Conditions to Closing set forth in Section 206 of this Agreement have not been either satisfied or waived by the Developer prior to the close of escrow, or such earlier date as set forth in Section 206, for conveyance of a Developer Parcel to the Developer; or

f. The Developer notified the RDA or notifies the City of Unacceptable Physical Conditions and the parties do not enter into an Operating Memorandum to remediate such Unacceptable Physical Conditions as provided in Section 215.2 or 215.3; or

g. [Intentionally Omitted]; or

h. [Intentionally Omitted]; or

i. The Developer, despite its good faith reasonable efforts, is unable to obtain a binding commitment from a Hotel Operator as required by Section 705 hereof; or

j. The City is in breach or default with respect to any other obligation of the City under this Agreement, and such breach or default is not cured within 45 days, or the City does not in good faith commence to cure such default within such 45 days;

k. [Intentionally Omitted]; or

l. The Developer or the City, as applicable, after diligent efforts, is unable to obtain any governmental approval for a Developer Parcel, including without limitation any land use or design approvals or any resources or regulatory agency approvals required under this Agreement (including, without limitation, any applicable hazardous materials immunity as further described in Section 206.h); or

m. The City, despite its good faith reasonable efforts, is unable to obtain any governmental approval for which it is responsible under this Agreement with respect to a Developer Parcel or any other portion of the Site; or

n. The Developer (1) furnishes evidence satisfactory to the City that the Developer, after and despite diligent efforts, has been unable to obtain firm and binding commitments for financing the acquisition of a Developer Parcel and for financing the development of the improvements to be constructed on such Developer Parcel within the time established therefor in the Schedule of Performance (Attachment No. 3), or (2) submits evidence of financing or other documents with respect to a Developer Parcel pursuant to Section 217 hereof within the time established therefor in the Schedule of Performance, but the City does not approve such evidence and Developer does not submit satisfactory evidence of financing within forty-five (45) days of being notified that the City has not approved such evidence; or

o. The Developer disapproves a Preliminary Title Report for a Developer Parcel and the parties do not subsequently enter into an Operating Memorandum to remove all Unacceptable Title Exceptions as provided in Section 208 hereof;

then this Agreement may, at the option of the Developer, be terminated by written notice thereof to the City; provided, however, that such termination shall be effective only with respect to those Developer Parcels which have not yet been conveyed to the Developer, and shall not affect those Developer Parcels or portions of the Site, if any, which have already been conveyed to the Developer so long as the Developer is not in default under this Agreement with respect to such parcels or portions of the Site; and provided, further, however, if, in the Developer's determination, the event described above leading to the Developer's right to terminate applies only to a certain Developer Parcel or Parcels, the Developer may terminate this Agreement only with respect to such Developer Parcel(s) specified by the Developer and this Agreement shall thereafter remain in effect for all other Developer Parcels and portions of the Site regardless of whether or not the Developer Parcels for which this Agreement will remain in effect have yet been conveyed to the Developer (but subject to the Developer's right to subsequently terminate this Agreement under this Section 510 for one or more additional Developer Parcels if an event described above subsequently occurs); and provided, further, however, that the City shall continue to perform all of its obligations under this Agreement that are reasonably related to the Developer Parcels and all other portions of the Site for which this Agreement has not been terminated; and provided, finally, however, that the terms of the following paragraph of this Section 510 shall supersede the foregoing and control the Developer's right to terminate this Agreement to the extent of any inconsistency with the foregoing. Upon a termination pursuant to this Section 510, neither the City nor the Developer shall have any further rights against or liability to the other under this Agreement with respect to those Developer Parcels or portions of the Site affected by such termination, and the City shall return any unexpended portion of the Additional Deposit (including interest earned thereon) to the Developer as provided in Section 113.5. If and only if the Developer does not elect to terminate this Agreement with respect to a particular Developer Parcel or the Site, as applicable, pursuant to the provisions of this Section 510, the Developer may exercise its rights under Sections 507 and 508 hereof.

Notwithstanding the foregoing terms of this Section 510, the Developer's obligations with respect to purchase of the Developer Parcels and development of private and public improvements in the Northern Waterfront Area shall be separate and independent of the performance by the City of any obligations, or the satisfaction of any other conditions to performance, under this Agreement with respect to the conveyance of property and development of improvements within the Central Waterfront Area; and neither a failure by the City to perform its obligations, or the failure of any other conditions of performance, with respect to the conveyance of property and development of improvements within the Central Waterfront Area shall relieve the Developer of its obligations with respect to the conveyance of property and development of improvements within the Northern Waterfront Area (upon satisfaction of all other conditions set forth in this Agreement for purchase of the Developer Parcels and development of private and public improvements in the Northern Waterfront Area), or serve as a basis for termination of this Agreement by the Developer with respect to the purchase of the Developer Parcels and development of private and public improvements in the Northern Waterfront Area.

2. [§511] Termination by the City. In the event that prior to conveyance of title to a particular Developer Parcel to the Developer:

a. The Developer transfers or assigns or attempts to transfer or assign this Agreement or any rights herein or in the Site or the buildings or improvements thereon in violation of this Agreement and the Developer has not cured such violation within 45 days after the date of written demand by the Agency to the Developer; or

b. There is any significant change in the ownership or identity of the Developer or the parties in control of the Developer or the degree thereof in violation of the provisions of Section 107 hereof and the Developer has not cured such violation within 45 days after the date of written demand by the City to the Developer; or

c. The Developer does not submit evidence that it has diligently and in good faith attempted to obtain financing for the acquisition and development of a Developer Parcel, and such failure is not cured within 45 days after the date of written demand by the City to the Developer; or

d. The Developer (1) furnishes evidence satisfactory to the City that the Developer, after and despite diligent efforts, has been unable to obtain firm and binding commitments for acquisition of a Developer Parcel and financing the improvements to be constructed on the such Developer parcel within the time established therefor in the Schedule of Performance (Attachment No. 3), or (2) submits evidence of financing or other documents with respect to a Developer Parcel pursuant to Section 217 hereof within the time established therefor in the Schedule of Performance, but the City does not approve such documents and the Developer does not submit satisfactory evidence of financing within forty-five (45) days of being notified that the City has not approved such evidence; or

e. The City is unable, after and despite diligent efforts, to retain ownership of one or more Developer Parcels at any time prior to the required disposition to the Developer; provided, however, that the City may terminate this Agreement with respect to the non-retained Developer Parcel(s) only; or

f. The Developer fails to submit to the City a Unit Plan or any other required plans and specifications with respect to a Developer Parcel as required by this Agreement, and such failure is not cured within 45 days after the date of written demand by the City to the Developer; or

g. The Developer does not take title to a Developer Parcel under tender of conveyance by the City pursuant to this Agreement, and such failure is not cured within 45 days after the date of written demand by the City to the Developer; or

h. [Intentionally Omitted]; or

i. [Intentionally Omitted]; or

j. [Intentionally Omitted]; or

k. The City is unable, after and despite diligent efforts, to issue bonds or obtain other financing to finance the construction of the L3 Public Garage within the time

established therefor in the Schedule of Performance (Attachment No. 3), provided, however, that at the request of either party, the right to terminate this Agreement for such cause under this subsection k. shall be suspended for a period of sixty (60) days following the date it is determined that the City is unable to obtain such financing for the parties to explore and attempt to negotiate in good faith an alternative development approach and appropriate amendments to this Agreement in lieu of termination, and provided further than the City may terminate this Agreement with respect to Parcel L only; or

l. The City's Conditions to Closing set forth in Section 205 of this Agreement have not been either satisfied or waived by the City prior to the close of escrow for conveyance of a Developer Parcel to the Developer; or

m. The Developer does not make the Additional Deposit (or a portion thereof) in the amount and at the time required under Section 113 and such failure is not cured within 15 days of written notice thereof from the City; or

n. The Developer is in breach or default with respect to any other obligation of the Developer under this Agreement, and such breach or default is not cured within 45 days or the Developer does not in good faith commence to cure such default within such 45 days; or

o. The parties are unable to agree upon a Parcel L4 Operating Memorandum pursuant to Section III.A.4 of the Scope of Development (Attachment No. 4), in which event the City's termination right shall be limited to termination of this Agreement with respect to Parcel L4 only;

then this Agreement, and any rights of the Developer or any assignee or transferee in this Agreement pertaining thereto or arising therefrom with respect to the City may, at the option of the City, be terminated by the City by written notice thereof to the Developer; provided, however, that such termination shall be effective only with respect to those Developer Parcels which have not yet been conveyed to the Developer, and shall not apply to those Developer Parcels or portions of the Site, if any, which have already been conveyed to the Developer so long as the Developer is not in default under this Agreement with respect to such parcels or portions of the Site; and provided, further, however, if the City terminates this Agreement as a result of an event described in subsections d., e., h., j., k., l. or o. above, then the Developer may elect to cause such termination to apply only to those Developer Parcel(s) to which it determines the terminating event applies and this Agreement shall thereafter remain in effect for all other Developer Parcels and portions of the Site regardless of whether or not the Developer Parcels for which this Agreement will remain in effect have yet been conveyed to the Developer; and provided, further, however, that the City shall continue to perform all of its obligations under this Agreement that are reasonably related to the Developer Parcels and all other portions of the Site for which this Agreement has not been terminated. If and only if, the City does not elect to terminate this Agreement with respect to a particular Developer Parcel or the Site, as applicable, pursuant to the provisions of this Section 511, the City may exercise its rights under Sections 507 and 508 hereof.

In the event of termination pursuant to subsection d., e., h., j., k., l. or o. of this Section 511, neither the City nor the Developer shall have any further rights against or liability to the other under this Agreement with respect to the Developer Parcels and the portions of the Site to which the termination applies, and the City shall return any unexpended portion of the Additional Deposit (including interest earned thereon) to the Developer as provided in Section 113.5.

IN THE EVENT OF TERMINATION UNDER SUBPARAGRAPH a., b., c., f., g., m. or n. OF THIS SECTION 511 IN CONNECTION WITH A DEVELOPER DEFAULT, THEN THE WORK PRODUCT PAID FOR WITH THE INITIAL DEPOSIT AND ANY EXPENDED PORTION OF THE ADDITIONAL DEPOSIT, TOGETHER WITH THE CASH AMOUNT OF ANY UNEXPENDED PORTION OF THE ADDITIONAL DEPOSIT (INCLUDING INTEREST EARNED THEREON), MAY BE RETAINED BY THE CITY AS LIQUIDATED DAMAGES FOR SUCH DEVELOPER DEFAULT AND AS THE CITY'S PROPERTY WITHOUT ANY DEDUCTION, OFFSET OR RECOUPMENT WHATSOEVER.

IF THE DEVELOPER SHOULD DEFAULT UPON ITS OBLIGATIONS AS DESCRIBED ABOVE UNDER SUBPARAGRAPH a., b., c., f., g., m. or n. OF THIS SECTION 511, MAKING IT NECESSARY FOR THE CITY TO TERMINATE THIS AGREEMENT AND TO PROCURE ANOTHER PARTY OR PARTIES TO REDEVELOP THE SITE (OR THE APPLICABLE DEVELOPER PARCELS, AS THE CASE MAY BE) IN SUBSTANTIALLY THE MANNER AND WITHIN THE PERIOD THAT THE SITE (OR THE APPLICABLE DEVELOPER PARCELS, AS THE CASE MAY BE) WOULD BE REDEVELOPED UNDER THE TERMS OF THIS AGREEMENT, THEN THE DAMAGES SUFFERED BY THE CITY BY REASON THEREOF WOULD BE UNCERTAIN. SUCH DAMAGES WOULD INVOLVE SUCH VARIABLE FACTORS AS THE CONSIDERATION WHICH SUCH PARTY WOULD PAY FOR THE SITE (OR THE APPLICABLE DEVELOPER PARCELS, AS THE CASE MAY BE); THE EXPENSES OF CONTINUING THE OWNERSHIP AND CONTROL OF THE SITE (OR THE APPLICABLE DEVELOPER PARCELS, AS THE CASE MAY BE); OF INTERESTING PARTIES AND NEGOTIATING WITH SUCH PARTIES; POSTPONEMENT OF TAX REVENUES THEREFROM TO THE COMMUNITY; AND THE FAILURE OF THE CITY TO EFFECT ITS PURPOSES AND OBJECTIVES WITHIN A REASONABLE TIME, RESULTING IN ADDITIONAL IMMEASURABLE DAMAGE AND LOSS TO THE CITY AND THE COMMUNITY. IT IS IMPRACTICABLE AND EXTREMELY DIFFICULT TO FIX THE AMOUNT OF SUCH DAMAGES TO THE CITY, BUT THE PARTIES ARE OF THE OPINION, UPON THE BASIS OF ALL INFORMATION AVAILABLE TO THEM, THAT SUCH DAMAGES WOULD APPROXIMATELY EQUAL THE VALUE OF THE APPLICABLE WORK PRODUCT THERETOFORE ACQUIRED BY THE CITY FROM EXPENDITURES OF THE INITIAL DEPOSIT AND THE ADDITIONAL DEPOSIT, TOGETHER WITH ANY UNEXPENDED PORTION OF THE ADDITIONAL DEPOSIT SET FORTH ABOVE IN THIS SECTION 511 AND HELD BY THE CITY AT THE TIME OF THE DEFAULT OF THE DEVELOPER, AND THE APPLICABLE UNEXPENDED AMOUNTS OR PORTIONS OF SUCH ADDITIONAL DEPOSIT AS SET FORTH ABOVE IN THIS SECTION 511 SHALL BE

PAID TO THE CITY UPON ANY SUCH OCCURRENCE AND, TOGETHER WITH THE ABOVE DESCRIBED WORK PRODUCT, SHALL CONSTITUTE THE TOTAL OF ALL LIQUIDATED DAMAGES FOR THE APPLICABLE DEVELOPER DEFAULT(S) SET FORTH UNDER SUBPARAGRAPH a., b., c., f., g., m. or n. OF THIS SECTION 511, AND NOT AS A PENALTY. SUCH LIQUIDATED DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY OF THE CITY WITH RESPECT TO THE APPLICABLE DEVELOPER DEFAULT(S) SET FORTH ABOVE UNDER SUBPARAGRAPH a., b., c., f., g., m. or n. OF THIS SECTION 511. NOTWITHSTANDING THE FOREGOING, IN THE EVENT THAT THIS PARAGRAPH SHOULD BE HELD TO BE VOID FOR ANY REASON, THE CITY SHALL BE ENTITLED TO THE FULL EXTENT OF DAMAGES OTHERWISE PROVIDED BY LAW, AS LIMITED BY SECTION 507 HEREOF.

THE DEVELOPER AND THE CITY SPECIFICALLY ACKNOWLEDGE THIS LIQUIDATED DAMAGES PROVISION BY THEIR SIGNATURES HERE:

DEVELOPER:	**CITY:**
By: __________________________	**By: __________________________**
By: __________________________	

In no event shall either the City or the Developer terminate this Agreement based on the default of the other party without first having provided the other party with a notice of default and the other party having had the opportunity to cure said default subject to the provisions of this Agreement. In the event that either the City or Developer provides notice of intent to terminate this Agreement, the other party shall have thirty (30) days to provide a notice of default to the terminating party, or thereafter be deemed to have waived its right to claim that the terminating party was in default of this Agreement.

G. [§512] Special Termination Provisions.

In no event shall either the City or the Developer terminate this Agreement with respect to a particular Developer Parcel or the Site based on the default of the other party without first having provided the other party with a notice of default with respect to the particular Developer Parcel or the Site, as applicable, and the other party having had the opportunity to cure said default subject to the provisions of this Agreement. In the event that either the City or the Developer provides notice of intent to terminate this Agreement with respect to a particular Developer Parcel or the Site, as applicable, the other party shall have thirty (30) days to provide a notice of default to the terminating party, or thereafter be deemed to have waived its right to claim that the terminating party was in default of this Agreement with respect to the particular Developer Parcel or the Site, as applicable.

H. [§513] Option to Repurchase, Reenter and Repossess.

The City shall have the right at its option to repurchase, reenter and take possession of a particular Developer Parcel, or any portion thereof, with all improvements thereon, if after conveyance of title to that particular Developer Parcel, and prior to the issuance of the Partial Certificate of Completion for that particular Developer Parcel, the Developer shall:

1. Fail to proceed with the construction of the improvements for that particular Developer Parcel as required by this Agreement for a period of three (3) months after written notice thereof from the City; or

2. Abandon or substantially suspend construction of the improvements for that particular Developer Parcel, for a period of three (3) months after written notice of such abandonment or suspension from the City; or

3. Transfer or suffer any involuntary transfer of that particular Developer Parcel, or any part thereof in violation of this Agreement;

provided, however, that for purposes of items 1 and 2, above, the City may not exercise its right under this Section 513 so long as the Developer is diligently and in good faith pursuing a remedy to correct such failure to proceed or abandonment or suspension of construction.

Such right to repurchase, reenter and repossess, to the extent provided in this Agreement, shall be subordinate and subject to and be limited by and shall not defeat, render invalid or limit:

1. Any mortgage, deed of trust or other security instrument permitted by this Agreement; or

2. Any rights or interests provided in this Agreement for the protection of the holder of such mortgages, deeds of trust or other security instruments; or

3. The rights of the Hotel Operator under the Hotel Operating Agreement.

Such right to repurchase, reenter or repossess shall not apply to any Developer Parcel except the Developer Parcel for which an event described in the first sentence of this Section 513 has occurred.

To exercise its right to repurchase, reenter and take possession with respect to a Developer Parcel or portion thereof, for which an event described in the first sentence of this Section 513 has occurred, the City shall pay to the Developer in cash an amount equal to:

1. The Purchase Price for that particular Developer Parcel, or portion thereof, actually paid by the Developer; plus

2. All costs incurred by the Developer after the date of this Agreement for the on-site labor and materials for the construction of the improvements existing on that particular Developer Parcel or such portion thereof, at the time of the repurchase, reentry and repossession; plus

3. All architectural, engineering, consultant and legal fees and costs incurred by the Developer in connection with the acquisition and development of that particular Developer Parcel, or portion thereof, provided, however, that the Developer first shall deliver to the City copies of all of the Developer's plans, studies and tests prepared and performed in connection with the acquisition and development of that particular Developer Parcel; less

4. Any gains or income withdrawn or made by the Developer from that particular Developer Parcel, or portion thereof, or the improvements thereon.

I. [§514] Right of Reverter.

The City shall have the additional right, at its option, to reenter and take possession of a particular Developer Parcel, or any portion thereof, with all improvements thereon and revest in the City the estate theretofore conveyed to the Developer, if after conveyance of title to that particular Developer Parcel, or portion thereof, and prior to issuance of the Partial Certificate of Completion for that particular Developer Parcel, the Developer shall:

1. Fail to proceed with the construction of the improvements for that particular Developer Parcel as required by this Agreement for a period of three (3) months after written notice thereof from the City;

2. Abandon or substantially suspend construction of the improvements for that particular Developer Parcel for a period of three (3) months after written notice of such abandonment or suspension from the City; or

3. Transfer or suffer any involuntary transfer of that particular Developer Parcel or any part thereof in violation of this Agreement;

provided, however, that for purposes of items 1 and 2, above, the City may not exercise its right under this Section 514 so long as the Developer is diligently and in good faith pursuing a remedy to correct such failure to proceed or abandonment or suspension of construction.

Such right to reenter, repossess and revest to the extent provided in this Agreement shall be subordinate and subject to and be limited by and shall not defeat, render invalid or limit:

1. Any mortgage, deed of trust or other security instrument permitted by this Agreement; or

2. any rights or interest provided in this Agreement for the protection of the holder of such mortgages, deeds of trust or other security instruments; or

3. The rights of the Hotel Operator under the Hotel Operating Agreement.

Such right to reenter, repossess and revest shall not apply to any Developer Parcel except the Developer Parcel for which an event described in the first sentence of this Section 514 has occurred.

The grant deeds conveying the respective Developer Parcels shall contain appropriate reference and provision to give effect to the City's right, as set forth in this Section 514 under specified circumstances prior to the issuance of the Partial Certificate of Completion for each respective Developer Parcel to reenter and take possession of a particular Developer Parcel with all improvements thereon and to terminate and revest in the City the estate conveyed to the Developer, subject to the limitations and conditions set forth in this Section 514.

Upon the revesting in the City of title to a particular Developer Parcel or any part thereof as provided in this Section 514, the City shall, pursuant to its responsibilities under state law, use its best efforts to resell the particular Developer Parcel or part thereof as soon and in such manner as the City shall find feasible and consistent with the objectives of such law and of the Redevelopment Plans to a qualified and responsible party or parties (as determined by the City) who will assume the obligation of making or completing the improvements, or such other improvements in their stead, as shall be satisfactory to the City and in accordance with the uses specified for that particular Developer Parcel or part thereof in the Redevelopment Plans. Upon such resale of the particular Developer Parcel, the proceeds thereof shall be applied:

1. First, to reimburse the City for all costs and expenses incurred by the City directly associated with the recapture, management and resale of the Developer Parcel, or part thereof and not previously reimbursed to the City or received by the City (but less any income derived by the City from the particular Developer Parcel or part thereof in connection with such management); all taxes, assessments and water and sewer charges with respect to the particular Developer Parcel or part thereof (or, in the event the particular Developer Parcel is exempt from taxation or assessment or such charges during the period of ownership, then such taxes, assessments or charges [as determined by the County assessing official] as would have been payable if the particular Developer Parcel were not so exempt); any payments made or necessary to be made to discharge or prevent from attaching or being made any subsequent encumbrances or liens with respect to the particular Developer Parcel due to obligations, defaults or acts of the Developer; any expenditures made or obligations incurred with respect to the making or completion of the improvements or any part thereof on the particular Developer Parcel or part thereof; and any amounts otherwise owing the City by the Developer with respect to the particular Developer Parcel; and

2. Second, to reimburse the Developer up to the amount equal to the sum of: (a) the Purchase Price for the particular Developer Parcel, or part thereof; plus (b) the costs incurred by the Developer for the development of the particular Developer Parcel, or part thereof, and for the improvements existing on the particular Developer Parcel, or part thereof, at the time of the reentry and repossession; plus (c) all architectural, engineering, consultant and legal fees and costs incurred by the Developer in connection with the acquisition and development of the particular Developer Parcel, or part thereof, provided, however, that the

Developer first shall deliver to the City copies of all of the Developer's plans, studies and tests prepared and performed in connection with the acquisition and development of the particular Development Parcel; less (d) any gains or income withdrawn or made by the Developer from the particular Developer Parcel, or part thereof, or the improvements thereon.

Any balance remaining after such reimbursements shall be retained by the City as its property.

To the extent that the rights established in this Section involve a forfeiture, it must be strictly interpreted against the City, the party for whose benefit it is created. The rights established in this Section are to be interpreted in light of the fact that the City will convey the respective Developer Parcels to the Developer for development and not for speculation in undeveloped land.

6. [§600] GENERAL PROVISIONS.

A. [§601] Notices, Demands and Communications Between the Parties.

Formal notices, demands and communications among the parties, as required by this Agreement, must be in writing and may be delivered either by telefacsimile (with original forwarded by regular U. S. Mail), by registered or certified mail, postage prepaid, return receipt requested, or by Federal Express or other similar courier promising overnight delivery. If given by facsimile transmission, a notice or communication shall be deemed to have been given and received upon actual physical receipt of the entire document by the receiving party's facsimile machine. Notices transmitted by facsimile after 5:00 p.m. on a normal business day or on a Saturday, Sunday or holiday shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Such notices or communications shall be sent to the parties to the following addresses:

To the Successor Agency:

Successor Agency to the Redevelopment Agency of the City of Vallejo
555 Santa Clara Street
Vallejo, CA 94590
Attn: Executive Director

To the City:
City of Vallejo
555 Santa Clara Street
Vallejo, CA 94590
Attn: City Manager

with a copy to:
City of Vallejo
555 Santa Clara Street
Vallejo, CA 94590
Attn: Economic Development Director

To the Developer:
Callahan Property Company, Inc.
5674 Stoneridge Drive, #212
Pleasanton, CA 94588
Attn: Joseph W. Callahan, Jr.

Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time-to-time designate by mail.

B. [§602] Conflicts of Interest.

No member, official or employee of the Successor Agency or City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

The Developer warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement.

C. [§603] Nonliability of Successor Agency or City Officials and Employees.

No member, official, employee or agent of the Successor Agency or City shall be personally liable to the Developer in the event of any default or breach by the Successor Agency or the City or for any amount which may become due to the Developer or on any obligations under the terms of this Agreement.

D. [§604] Enforced Delay; Extension of Times of Performance.

In addition to the specific provisions of this Agreement, performance by any party hereunder shall not be deemed to be in default (and the times for performance under this Agreement shall be extended as provided below) where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability to secure

necessary labor, materials or tools; delays of any contractor, subcontractor, architect, engineer, or other service provider or supplier; acts of another party; delays due to existence and remediation of hazardous materials or contaminants, or other soils conditions on the Site which prevents Developer from performing its obligations under and within the manner and time set forth in this Agreement; acts or the failure to act of any public or governmental agency or entity (except that acts or the failure to act of the City or Successor Agency shall not excuse performance by the City of the Successor Agency, respectively); bankruptcy of any contractor, subcontractor or other provider other than the Developer; the filing of any court action to set aside or modify this Agreement or any of the Project Approvals; or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any such cause shall not necessarily be calculated on a day-for-day basis, but shall be for that period of delay caused by such enforced delay as reasonably determined by the City and Developer. If, however, notice by the party claiming such extension is sent to the other parties more than thirty (30) days after the commencement of the cause, the period shall commence to run only thirty (30) days prior to the giving of such notice.

Times of performance under this Agreement may also be extended in writing through Operating Memoranda executed by the City and the Developer. The City Manager, or the City Manager's designee, is authorized to approve any such extension on behalf of the City. The City and the Developer understand and agree that development of this multiphased Project involves numerous actions, both within and outside their direct control, and that flexibility will be necessary in adjusting to evolving circumstances that may delay or modify the means of performance under this Agreement. Therefore, the City and the Developer will consider in good faith requests for extensions of time for performance or modifications in the means of performance that are reasonably required in order to achieve the parties' mutual objective to complete the Project in the face of such evolving circumstances and the need for independent actions by third parties.

E. [§605] Inspection of Books and Records.

The City has the right, upon not less than seventy-two (72) hours prior written notice from the City Manager, or the City Manager's designee, at all reasonable times, to inspect the books and records of the Developer pertaining to the Site as pertinent to the purposes of this Agreement, except for the Developer's proprietary information, notes, memoranda and financial analyses, whether or not such information pertains to the Site, and the Developer's financial records not specifically related to the Site. The City covenants and agrees to keep and hold as proprietary any information (identified in writing by the Developer as confidential) of the Developer, delivered to or inspected by the City pursuant to the terms of this Agreement. Such information which the Developer has identified in writing as confidential or proprietary shall not be disclosed by the City except as may be required by law, except to its authorized officers, agents and employees on a confidential basis, to the extent necessary in connection with any approval required under this Agreement.

The Developer also has the right, upon not less than seventy-two (72) hours prior written notice, at all reasonable times, to inspect the books and records of the City pertaining to the Site and the City MOF Funds (as defined and described in Section I.E.1 of the Method of Financing (Attachment No. 6)) as pertinent to the purposes of this Agreement.

F. [§606] Plans and Data.

Where the Developer does not proceed with the purchase and development of a particular Developer Parcel, and when this Agreement with respect to that Developer Parcel is terminated pursuant to subparagraph a., b., c., f., g., m. or n. of Section 511 hereof, the Developer shall, to the extent legally permissible, deliver to the City any and all plans and data concerning the particular Developer Parcel to the extent such plans and data have been paid for, and the City or any other person or entity designated by the City shall be free to use such plans and data, including plans and data previously delivered to the City, for any reason whatsoever without cost or liability therefor to the Developer or any other person.

G. [§607] Approvals and Consents by the Parties.

Except as otherwise provided for herein to the contrary, neither the City nor the Developer shall unreasonably withhold or delay any approvals or consents required to be given or otherwise provided for herein.

H. [§608] Attorneys' Fees.

In the event that suit is brought for the enforcement of this Agreement or any provision contained herein or as the result of any alleged breach thereof, the prevailing party to such suit shall be entitled to be paid reasonable attorneys' fees by the losing party.

I. [§609] Representations of the Parties.

Each party represents to the other parties that: (i) it has the authority to enter into this Agreement; (ii) it has taken all necessary action for the valid execution and delivery of this Agreement; and (iii) this Agreement is legally binding on the representative party.

J. [§610] Changes in Law.

In the event of a future change in the Dissolution Act or other state or federal law or regulation, the effect of which is to materially affect or impair the ability of a party to perform, fund, or observe obligations or rights under this Agreement or the Project Approvals, the parties shall confer in good faith to seek a mutually acceptable modification to this Agreement and/or the Project Approvals that provides, under the circumstances of such change in law or regulation, for the performance, funding, and observance of each party's obligations and rights in a manner as closely as possible comparable to the performance, funding, and observance that was intended under this Agreement and the Project Approvals prior to such change in law or regulation.

7. [§700] SPECIAL PROVISIONS.

A. [§701] Amendment of Redevelopment Plans.

By ordinances approved on November 28, 2006, the City Council adopted amendments to the Redevelopment Plans and approval of a merged Redevelopment Plan to, among other things, merge the Marina Vista Redevelopment Project, the Waterfront

Redevelopment Project, and the adjacent Vallejo Central Redevelopment Project (the "2006 Plan Amendments/Merger").

The City agrees that no amendment to the Redevelopment Plans, other than the 2006 Plan Amendments/Merger, which changes the uses or development permitted on the Site or changes the restrictions or controls that apply to the Site or otherwise directly affects the development or use of the Site shall be made or become effective without the prior written consent of the Developer. Amendments to the Redevelopment Plans applying to other property in the Redevelopment Project Areas shall not require the consent of the Developer.

B. [§702] Submission of Documents for Approval.

Whenever this Agreement requires a party to submit plans, drawings or other documents to the other party (the "Approving Party") for approval, which shall be deemed approved if not acted on by the Approving Party within a specified time as provided in the Schedule of Performance (Attachment No. 3) or as otherwise provided in this Agreement, said plans, drawings or other documents shall be accompanied by a letter stating that they are being submitted and will be deemed approved unless rejected by the Approving Party within the stated time. If there is no time specified herein, either in the Schedule of Performance or elsewhere in this Agreement, for such Approving Party action, the submitting party may submit a letter requiring approval or rejection of documents within thirty (30) days after submission to the Approving Party or such documents shall be deemed approved.

C. [§703] Amendments to this Agreement.

The Developer and the City agree to mutually consider reasonable requests for amendments to this Agreement which may be made by any of the parties hereto, lending institutions, or bond counsel or financial consultants to the City, provided such requests are consistent with this Agreement and would not substantially alter the basic business terms included herein. Any requests made pursuant to this Section 703 shall be made in writing.

As further provided in Section 115, the City and the Developer intend to consider in good faith further amendments to this Fourth Restated Agreement in the form of the potential City/Developer Amendment. Any City/Developer Amendment (and any other future amendment to this Fourth Restated Agreement or a previously approved City/Developer Amendment) shall not require approval or execution by the Successor Agency to become effective, so long as the City/Developer Amendment or other future amendment in no way: (1) affects the Retained Successor Agency Obligations; or (2) imposes any other obligations upon the Successor Agency.

D. [§704] Reciprocal Easement and Access Agreement; Covenants, Conditions and Restrictions.

Within the times set forth in the Schedule of Performance (Attachment No. 3), the Developer shall prepare and execute any reciprocal easement agreements and/or declaration of covenants, conditions and restrictions (the "REA/CC&Rs") relating to the residential portions of the Project. The REA/CC&Rs shall be in such form and content as may be acceptable to the

City, and shall be recorded against those portions of the Developer Parcels to be developed with residential uses.

E. [§705] Operating Agreements with Respect to Hotel Improvements.

The Developer shall enter into a lease or other operating agreement (the "Hotel Operating Agreement") with a Hotel Operator in form and content satisfactory to the City, for the operation and maintenance of the Hotel Improvements; provided, however, that the Developer, at its election, may enter into a separate lease or operating agreement with persons or entities other than the Hotel Operator for those portions of the Hotel Improvements constituting the restaurant and/or the conference center (a "Restaurant Operating Agreement" or a "Conference Center Operating Agreement", as applicable). The City shall provide its written approval or reasons for disapproval of any proposed Hotel Operating Agreement, Restaurant Operating Agreement and/or Conference Center Operating Agreement within thirty (30) days after receipt of the proposed agreement.

F. [§706] Arbitration of Specified Disputes.

1. Scope of Obligation To Arbitrate. The following disputes and matters under this Agreement are subject to final and binding arbitration as provided in this Section 706:

a. Disputes and matters regarding the form of a Ground Lease to be prepared pursuant to Section 201.4.a or the amount of Annual Rent Payments determined in accordance with Section 201.4.b;

b. Disputes and matters regarding the form of the Parcel C2 REA or the Parcel E/F REA to be prepared pursuant to Section II.C.2 and II.C.5, respectively, of the Scope of Development (Attachment No. 4);

c. Disputes and matters regarding approval of Design Plans or Modified Design Plans for the Northern Waterfront Public Park and Open Space Improvements pursuant to Section II.C.3 of the Scope of Development (Attachment No. 4);

d. Disputes and matters related to the determination of the Purchase Price for any Developer Parcel pursuant to Section 201.2; and

e. Such other disputes and matters as the parties, each in the exercise of its sole discretion, mutually agree in writing to submit to arbitration.

This arbitration provision is expressly limited to the above specified disputes and matters. The Arbitrator shall dismiss any dispute or matter submitted to him/her for determination if such determination is not expressly authorized in this Section 706.1 or in another written agreement executed by both parties. This arbitration provision shall not apply to any matter involving the Successor Agency, and all references in this section to a "party" or "parties" shall refer exclusively to the City and the Developer, as applicable.

2. Precursor To Arbitration. Before initiating arbitration, a party shall provide written notice to the other party of the existence of a dispute or matter that is eligible for and may require arbitration, stating with specificity the nature of the dispute or matter. Within ten (10) days after such notice, the parties shall confer in good faith to seek a mutually acceptable resolution to such dispute or matter. If the parties are unable to resolve the dispute or matter in this manner, then either party may initiate formal arbitration proceedings as set forth below.

3. Arbitration Procedure. A party shall initiate arbitration by written notice to the other party. The date such notice is given shall be the "Initiation Date." Except as expressly modified in this Section 706, the arbitration proceeding shall be conducted by a single arbitrator (the "Arbitrator") in accordance with the provisions of Section 1280 et seq. of the California Code of Civil Procedure, as amended or replaced by any successor sections (the "CCP"). Unless the parties mutually agree otherwise, the Arbitrator shall be selected by mutual agreement of the parties from a panel provided by the San Francisco office of the American Arbitration Association (the "AAA"), and if the parties cannot so agree within fifteen (15) days after the Initiation Date, or if the AAA does not offer a selection of potential arbitrators having the requisite qualifications, either party may apply to the Solano County Superior Court for the appointment of the Arbitrator. If the dispute primarily involves design and construction matters, the Arbitrator shall have at least ten (10) years' experience in the resolution of construction disputes (or such other or additional qualifications as the parties may agree upon). If the dispute primarily involves any other matters, the Arbitrator shall have at least ten (10) years' experience in the resolution of commercial real estate disputes (or such other or additional qualifications as the parties may agree upon).

The date on which the Arbitrator is selected or appointed is referred to as the "Selection Date". The Arbitrator shall set the matter for hearing within forty-five (45) days after the Selection Date, and shall try any and all issues of law or fact that are the subject of the arbitration, and report a statement of decision upon them, if possible, within sixty (60) days of the Selection Date.

The parties to the arbitration shall bear equally all fees and costs assessed by the Arbitrator, and shall each bear their own costs and attorneys' fees in the arbitration proceeding, except as the Arbitrator may otherwise award attorneys' fees consistent with the provisions of Section 608.

No discovery shall be permitted in connection with the arbitration except that each of the parties to the arbitration shall, no later than fifteen (15) days after the Selection Date, provide the other party or parties with copies of all documents which it believes supports its claims, defenses, or positions with respect to the arbitration. No later than fifteen (15) days prior to the arbitration hearing, each of the parties to the arbitration may, if it desires, submit an arbitration brief not to exceed fifteen (15) pages, not including exhibits. Such brief and exhibits shall be served upon the opposing party or its counsel of record. No reply brief shall be permitted.

The arbitration hearing shall be limited to eight (8) hours in length. Each side shall have no more than four (4) hours to present its case. In calculating the four (4) hours

of presentation time, all oral presentations of a party shall be included (including without limitation cross-examination of an opposing witness, addressing questions from the arbitrator, and argument). Upon completion of each party's presentation, the arbitration hearing will be closed.

The parties to the arbitration shall execute all documents necessary to submit the dispute to arbitration pursuant to this Section 706 in conformity with the procedures set forth in this Section 706.

The following time periods set forth in the CCP shall be shortened as follows: Section 1288 - four years to 90 days, and 100 days to 30 days; Section 1288.2 - 100 days to 30 days. The Arbitrator shall be required to determine all issues in accordance with the existing case law and the statutory laws of the United States and the State of California. The Arbitrator shall be empowered to: (1) enter equitable as well as legal relief; (2) provide all temporary and/or provisional remedies; and (3) enter equitable orders that will be binding upon the parties. The Arbitrator shall issue a single written decision at the close of the arbitration proceeding which shall dispose of all of the claims of the parties that are subject of the arbitration, and an order or judgment upon that decision may be obtained by either party in a court of competent jurisdiction. The parties expressly reserve their appeal rights under CCP Sections 1294(b), (c) and (d).

4. Notice. BY INITIALING IN THIS SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THIS "ARBITRATION OR SPECIFIED DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THIS SECTION 706. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS SECTION 706, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THE ARBITRATION PROVISIONS OF THIS SECTION 706 IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS SET FORTH IN THIS SECTION 706 TO NEUTRAL ARBITRATION.

DEVELOPER: ___________ CITY: _______________

G. [§707] Affordable Housing Funds.

[Intentionally Omitted.]

H. [§708] City Approval.

Whenever this Agreement calls for or permits City approval, consent, or waiver, the written approval, consent, or waiver of the City Manager, or the City Manager's designee, shall constitute the approval, consent, or waiver of the City, without further authorization required from the City Council unless required by law.

I. [§709] Operating Memoranda.

The City and Developer acknowledge that the provisions of this Agreement require a close degree of cooperation, and that new information and future events may demonstrate that changes are appropriate with respect to the details of performance of the City and Developer under this Agreement. The City and Developer desire, therefore, to retain a certain degree of flexibility with respect to the details of performance of those items covered in general terms under this Agreement. If and when, from time to time during the term of this Agreement, the City and Developer find that non-substantive refinements or adjustments regarding details of performance are necessary or appropriate, they may effectuate such refinements or adjustments through a memorandum (individually, and "Operating Memorandum", and collectively, "Operating Memoranda") approved by the parties which, after execution, shall be attached to this Agreement as addenda and become a part hereof. This Agreement describes some, but not all, of the circumstances in which the preparation and execution of Operating Memoranda may be appropriate. No Operating Memorandum shall affect the rights or obligations of the Successor Agency set forth in this Fourth Restated Agreement.

Operating Memoranda may be executed on the City's behalf by its City Manager, or the City Manager's designee. Operating Memoranda shall not require prior notice or hearing, and shall not constitute an amendment to this Agreement. Both the City Council and the Housing and Redevelopment Commission shall be provided with a copy of any executed Operating Memorandum.

Any substantive or significant modifications to the terms and conditions of performance under this Agreement shall be processed as an amendment of this Agreement in accordance with Section 800 hereof, and must be approved by the City Council.

J. [§710] Legal Action; Indemnification.

In the event legal action is commenced by a third party or parties, the effect of which is to directly or indirectly challenge or compromise the enforceability, validity, or legality of this Agreement and/or the power of the City to enter into this Agreement or perform its obligations hereunder, either the City or the Developer may, but shall have no obligation to defend such action. Upon commencement of such action, the City and the Developer shall meet in good faith and seek to establish a mutually acceptable method of defending such action.

The Developer hereby agrees to defend, indemnify and hold harmless the City and its elected and appointed representatives, officers, agents and employees from any liability for any claims suits, actions, causes of action, loss, expense, damage or injury of any kind, in law

or equity, arising in any manner out of, pertaining to, or incident to the approval of this Fourth Restated Agreement or its activities conducted pursuant to it and/or the issuance of any permit or entitlement in connection with the making of this Fourth Restated Agreement, excepting suits or actions brought by the Developer for default of the Fourth Restated Agreement or to the extent arising from the gross negligence or willful misconduct of the City, its elected and appointed representatives, officers, agents, or employees.

K. [§711] Master Labor Agreement.

The parties hereby acknowledge that the Developer has voluntarily entered into a Master Labor Agreement (the "MLA") with the Napa Solano Building and Construction Trades Council (the "Trades Council") and its affiliated local trade unions, and that the MLA applies to the private improvements to be constructed on the Developer Parcels. The City further understands that any assignee or transferee of the Developer shall assume the MLA, in whole or in part, as provided in the MLA, in connection with a permitted assignment or transfer of a Developer Parcel or this Agreement. This acknowledgement shall be included in the Fourth Restated Agreement Memorandum to be recorded pursuant to Section 712.

L. [§712] Recordation of Fourth Restated Agreement.

Within ten (10) days after the later to occur of the Effective Date or acquisition by the City of fee title to each Developer Parcel or portion thereof, the City shall cause a memorandum of this Fourth Restated Agreement (the "Fourth Restated Agreement Memorandum"), in the form attached to this Agreement as Attachment No. 7, to be recorded against the property described in Section 1.4 of the Development Agreement in the land records of Solano County as a covenant and restriction that runs with the land and is binding on successors in title to each Developer Parcel. The City, the Successor Agency, and the Developer each consent to such recordation of the Fourth Restated Agreement Memorandum, and to the performance of the same actions with respect to the Fourth Restated Agreement Memorandum as are set forth in Section 1.4 of the Development Agreement with respect to the Development Agreement. The parties intend that, upon recordation, the Fourth Restated Agreement Memorandum will amend and supersede any recorded memoranda with respect to the Prior Agreement. The Developer acknowledges and agrees that the existence of the lien and encumbrance of the Fourth Restated Agreement Memorandum in a Preliminary Title Report (as defined in Section 208) with respect to any Developer Parcel shall not constitute an Unacceptable Title Exception (as defined in Section 208) or constitute a basis for the Developer to disapprove a Preliminary Title Report pursuant to Section 208.

Promptly following the Agreement Termination Date (as defined below) with respect to a particular Developer Parcel, the City and the Developer shall cooperate to cause reconveyance and removal of the lien and encumbrance of the Fourth Restated Agreement Memorandum and any memoranda with respect to the Prior Agreement from title to the applicable Developer Parcel through execution and recordation of a quitclaim deed or other instrument recordable in the official records of Solano County and reasonable acceptable to the City and the Developer. As used herein, "Agreement Termination Date" means, with respect to a particular Developer Parcel, the occurrence of either of the following:

1. Issuance of a Partial Certificate of Completion for the Developer Parcel by the City pursuant to Section 323; or

2. Termination of this Agreement with respect to the Developer Parcel without conveyance of the Developer Parcel by the City.

8. [§800] ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS.

This Agreement is executed in four (4) duplicate originals, each of which is deemed to be an original. This Agreement comprises pages 1 through ___, inclusive, and Attachment Nos. 1 through 9, attached hereto and incorporated herein by reference, all of which constitute the entire understanding and agreement of the parties.

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

All waivers of the provisions of this Agreement must be in writing and signed by the City Manager, or City Manager's designee, on behalf of the City and/or by the Developer, as applicable. All amendments hereto must be in writing, approved by the City Council, and signed by the appropriate authorities of the City and the Developer; provided, however, the City and the Developer may enter into Operating Memoranda without formal amendment of this Agreement for the purposes, in the manner, and with the effect set forth in Section 709 hereof. Any City/Developer Amendment (and any other future amendment to this Fourth Restated Agreement or a previously approved City/Development Amendment) shall not require approval or execution by the Successor Agency to become effective, so long as the City/Developer Amendment or other future amendment in no way: (1) affects the Retained Successor Agency Obligations; or (2) imposes any other obligations upon the Successor Agency.

9. [§900] TIME FOR ACCEPTANCE OF AGREEMENT.

This Agreement, when executed by the Developer and delivered to the City and the Successor Agency, must be authorized, executed and delivered by the City and the Successor Agency within ten (10) days after the date of signature by the Developer or this Agreement shall be void, except to the extent that the Developer shall consent in writing to further extensions of time for the authorization, execution and delivery of this Agreement.

By execution below, the parties hereby approve this Fourth Restated Agreement as of December 16, 2013. The parties further acknowledge and agree that this Fourth Restated Agreement shall be binding on the parties as of the Effective Date; provided, however, that if this Fourth Restated Agreement is determined to be invalid, void, ineffective, or otherwise unenforceable by a final non-appealable judgment of a court of competent jurisdiction, the Prior Agreement, as previously amended, shall thereupon be deemed to be in effect and binding upon the parties as of the effective date of such final non-appealable judgment. Nothing in this Fourth Restated Agreement shall modify or affect the initial execution date of the Prior Agreement as of October 17, 2000.

DEVELOPER:

CALLAHAN PROPERTY COMPANY, INC.,
a California corporation

By: ______________________________
Joseph W. Callahan, Jr., President

SUCCESSOR AGENCY:

SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF VALLEJO, a public entity

By: ______________________________
Daniel E. Keen, City Manager on behalf of the Successor Agency

APPROVED AS TO FORM:

____
Claudia Quintana, Successor Agency Counsel

ATTEST:

____
Dawn G. Abrahamson, Agency Secretary

CITY:

THE CITY OF VALLEJO, a public body, corporate and politic

By: ______________________________
Daniel E. Keen, City Manager

APPROVED AS TO FORM:

____
Claudia Quintana, City Attorney

ATTEST:

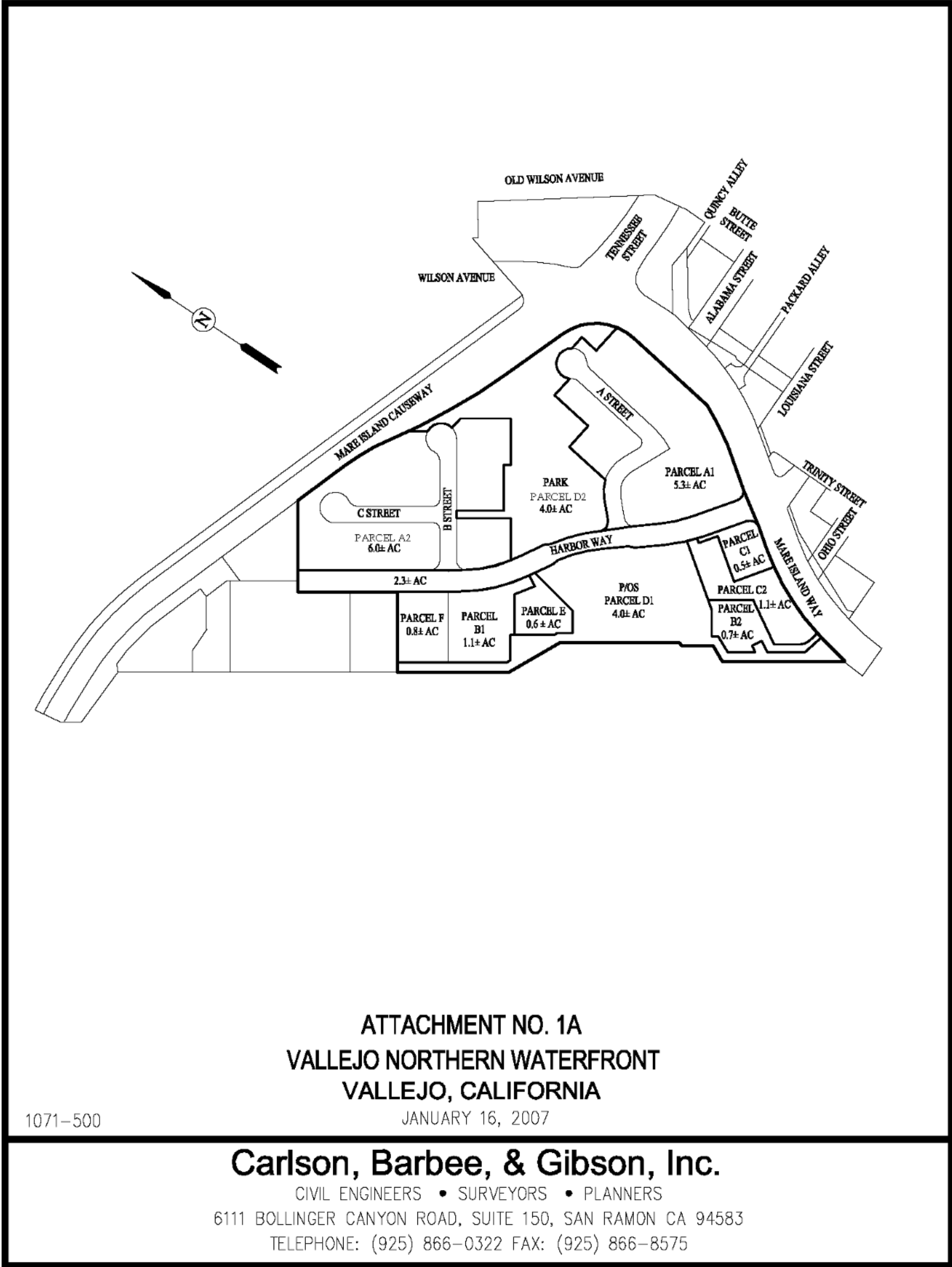
____
Dawn G. Abrahamson, City Clerk

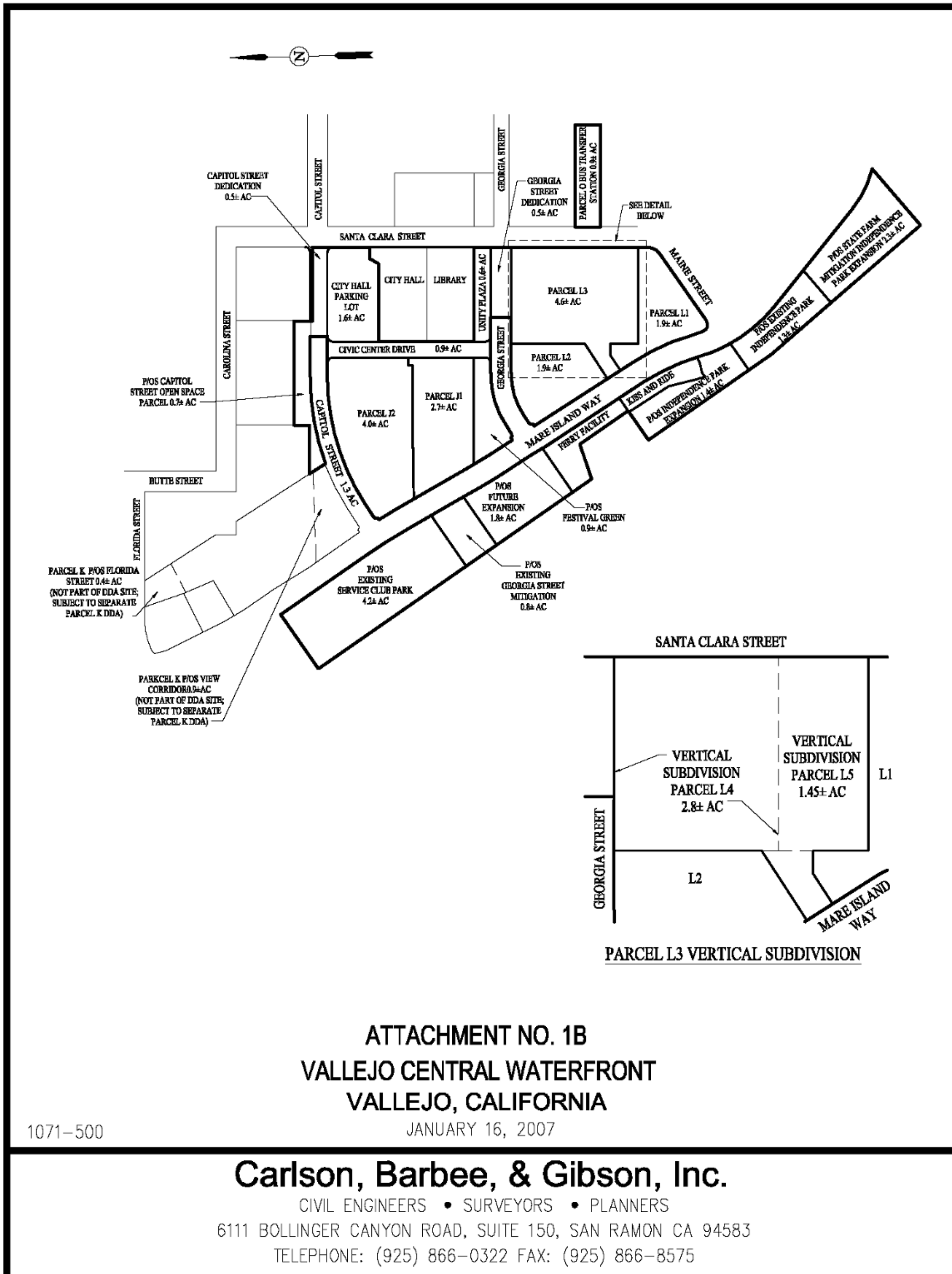
ATTACHMENT NO. 1

MAPS OF THE SITE

This Attachment No. 1 consist of three Area maps as follows:

Attachment No. 1A	Northern Waterfront Area
Attachment No. 1B	Central Waterfront Area


OLD WILSON AVENUE
WILSON AVENUE
TENNESSEE STREET
QUINCY ALLEY
BUTTE STREET
ALABAMA STREET
PACKARD ALLEY
LOUISIANA STREET
TRINITY STREET
OHIO STREET
MARE ISLAND WAY
MARE ISLAND CAUSEWAY
N
A STREET
PARCEL A1
5.3± AC
PARK
PARCEL D2
4.0± AC
C STREET
B STREET
PARCEL A2
6.0± AC
HARBOR WAY
2.3± AC
PARCEL C1
0.5± AC
PARCEL C2
1.1± AC
PARCEL B2
0.7± AC
P/OS
PARCEL D1
4.0± AC
PARCEL E
0.6 ± AC
PARCEL F
0.8± AC
PARCEL B1
1.1± AC
ATTACHMENT NO. 1A
VALLEJO NORTHERN WATERFRONT
VALLEJO, CALIFORNIA
1071-500
JANUARY 16, 2007
Carlson, Barbee, & Gibson, Inc.
CIVIL ENGINEERS • SURVEYORS • PLANNERS
6111 BOLLINGER CANYON ROAD, SUITE 150, SAN RAMON CA 94583
TELEPHONE: (925) 866-0322 FAX: (925) 866-8575
G:\1071-500\ACAD\DDA\ATTACHMENT 1A



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675\03\1431509.2

ATTACHMENT NO. 2

LEGAL DESCRIPTION OF THE DEVELOPER PARCELS

[To be inserted from time to time as provided in Section 106]

ATTACHMENT NO. 3

SCHEDULE OF PERFORMANCE

The following is an updated Schedule of Performance that was approved pursuant to Operating Memorandum No. 5, which was prepared and executed under authority of the Third Restatement of this Agreement dated as of February 27, 2007 (the "Third Restatement"), but has deleted the steps associated with the removal of the Southern Waterfront Area from the Site.

It is the City's and the Developer's intent that this Schedule of Performance will be comprehensively updated through the City/Developer Amendment described in Section 115.

As used in this Schedule of Performance, "Implementation Agreement" means the Implementation Agreement entered into by the Agency and the Developer as of March 8, 2011 in furtherance of this Agreement.

The action items described below constitute a summary only of the responsibilities and obligations of the parties under this Agreement. Reference is made to the operative sections of this Agreement (typically indicated in parentheses at the end of each Action item) or the Implementation Agreement (also typically indicated in parenthesis at the end of certain Action items, preceded by the prefix "Implementation Agreement") for a complete statement of the parties' respective responsibilities and obligations. Except as otherwise provided in the following sentence, to the extent of any conflict between the terms of this Schedule of Performance and the operative provisions of this Agreement (including the other Attachments hereto and the Implementation Agreement), the operative provisions of this Agreement and the Implementation Agreement shall control. To the extent of any inconsistency between the deadline for performance of an action set forth in this Schedule of Performance and the Implementation Agreement, the deadline for performance set forth in this Schedule of Performance shall control as a more recent reflection of the parties' intention taking into account events and circumstances occurring and arising since execution of the Implementation Agreement.

Section A of this Schedule of Performance sets forth action items related to the Site and the Project in general. Sections B, C, and D address action items related to disposition and development of the Northern Waterfront Area, the Southern Waterfront Area, and the Central Waterfront Area, respectively.

The schedule for actions related to property acquisition and relocation, procurement of funding, design, and commencement and completion of construction of the Vallejo Station Garage (referred to in this Agreement as the L3 Public Garage, and consisting of the Phase A and Phase B elements as further described in the Scope of Development), with particular reference to Items 14(b)(1), and 94-157 of this Schedule of Performance, are dependent in large part upon the Vallejo Station Master Schedule (the "Vallejo Station Master Schedule") in effect from time to time, as prepared and periodically updated by the Vallejo Station Project Management Team comprised of representatives of the City, the Developer, and the City's consultants, Gray Bowen Associates and Harris & Associates. The Vallejo Station Master Schedule includes the USPS

Relocation Strategy, as it may be amended from time to time. The parties agree that this Schedule of Performance may be further revised, through execution of an Operating Memorandum as provided in Section 604 and 709 of the Agreement, as a result of changes in the Vallejo Station Master Schedule

Where an action has been completed as of the date of Operating Memorandum No. 5 (December 1, 2011), such completion is noted below, with the approximate date of completion (where available). Where an action has been completed through execution of an Operating Memorandum, the Operating Memorandum number is provided for reference.

It should be noted that several other documents also inform this Schedule of Performance and provide additional milestone actions and timelines with respect to implementation of the Project. Those documents include the following and any amendments thereto:

- The Development Agreement;
- The Settlement Agreement;
- The EIR and the Mitigation Monitoring and Reporting Program accompanying the EIR; and
- The MLA

Action	Date
A. GENERAL	
1. Execution and Delivery of Third Restatement. The Developer shall execute and deliver the Third Restatement of this Agreement to the City.	Completed. (April 13, 2007.)
2. Execution of Third Restatement by City. The RDA and City Council shall hold a public hearing to authorize execution of the Third Restatement of this Agreement by the RDA, and, if so authorized, the RDA shall execute and deliver this Agreement to the Developer. (Section 900)	Completed. (April 13, 2007)
3. Settlement-Related Ordinances; Action Dismissal. (a) The City shall consider the Settlement-Related Ordinances for adoption. (b) The Settlement-Related Ordinances shall become effective and the Action Dismissal Date shall occur. (Section 102)	(a) Completed. (February 27 and March 13, 2007) (b) Completed. (April 13, 2007)
4. Memorandum of DDA Third Restatement Recordation. The RDA or City shall cause recordation of the Memorandum of DDA Third Restatement. (Section 712)	(a) Completed. (b) Within 10 days after acquisition for Developer Parcels or portions thereof subsequently acquired by the City.
5. Action Dismissal Date Operating Memorandum. The parties shall execute an Operating Memorandum setting forth the Action Dismissal Date. (Section 102.2)	Completed. Operating Memorandum No. 1. (December 13, 2007)
6. Completion of Acquisition of Site. The City shall complete acquisition of the applicable parcels comprising the Site (or if applicable, shall obtain orders for immediate possession), and shall complete relocation of all tenants and occupants. (Sections 201.1 and 208)	On a schedule to allow for conveyance of the Developer Parcels to the Developer and construction of the improvements pursuant to this Agreement.
7. Internal Return Methodology Operating Memorandum. The parties shall execute an Operating Memorandum setting forth the internal rate of return methodology in connection with the Method B Appraisal calculations. (Section 201.1.a.(6)(A)(ii))	Completed. Operating Memorandum No. 3. (December 13, 2007)

Action	Date
8. Additional Appraisal Instructions Operating Memorandum. The parties shall execute an Operating Memorandum setting forth mutually acceptable additional appraisal instructions. (Section 201.1.b)	Completed. Operating Memorandum No. 4. (December 13, 2007)
9. Appraisal of Developer Parcels. The Method A Appraisals (Baseline), Method A Appraisals (Final), and Method B Appraisals (Unadjusted) shall be prepared and delivered to the parties. (Section 201.2)	At the times specified in Section 201.2.b. Parties acknowledge completion and acceptance of the most recent Method A Appraisal (Baseline) dated as of June 30, 2008.
10. Opening of Escrow. The RDA shall open an escrow account(s) for conveyance of the Developer Parcels to the Developer. (Section 202)	Completed.
11. Submission-Preliminary Title Reports. The RDA shall submit to the Developer Preliminary Title Reports for the Developer Parcels for Initial Title Review. (Section 208)	Completed. (May 14, 2007)
12. Approval-Preliminary Title Report. (a) The Developer shall approve or disapprove the Preliminary Title Reports. (b) If the Developer disapproves, the parties shall seek to prepare an Operating Memorandum to address Unacceptable Title Exceptions. (Section 208; Implementation Agreement, Section 8)	(a) Completed through submittal of document setting forth specified Unacceptable Title Conditions. (July 13, 2007) (b) By September 8, 2011.
13. Developer Parcel Legal Description Operating Memoranda. The parties shall execute an Operating Memorandum setting forth the legal description for each Developer Parcel. (Section 104)	Upon establishment of each Developer Parcel as a legal parcel.

Action	Date
14. Physical Conditions Investigation For Developer Parcels Other Than Parcels S and T. (a) The Developer shall conduct any geotechnical and structural investigation and soils tests it determines necessary, and determine whether the Parcel Conditions are suitable and whether it wishes to proceed with acquisition of the Developer Parcels (other than Parcels S and T). (b) If the Developer determines there are Unacceptable Physical Conditions, the parties shall seek to prepare an Operating Memorandum to address such Unacceptable Physical Conditions. (Section 215.3)	(a) Completed (July 13, 2007) for Developer Parcels (or portions thereof) then owned by the RDA or the City. (The July 13, 2007 submittal from the Developer specified potential Unacceptable Physical Conditions with respect to Parcels J and L only.) Within 90 days after access is obtained for Developer Parcels (or portions thereof) not currently owned by the Agency or the City. (b) Within the time specified in Section 215.3, with a mutually agreed extension to the following dates: (1) for Unacceptable Physical Conditions affecting Parcel L, as set forth in Vallejo Station Master Schedule; and (2) with respect to Unacceptable Physical Conditions affecting Parcel J, the date that is 120 days after the submittal of the Unit Plan for the first-to-be developed J Developer Subparcel.
15. LLMD Formation. The City shall take all steps necessary to cause formation and effectiveness of the LLMD. (Method of Financing Section I.D)	Prior to sale of the initial residential unit within Parcel A.
16. Additional Deposit. The Developer shall pay the Initial Deposit to the RDA. (Section 108.2)	(a) Completed with respect to initial $200,000. (April 18, 2007) (b) Remaining $300,000 at the close of escrow for the first Developer Parcel to be conveyed.
17. Additional Deposit Expenditure Operating Memoranda. The parties shall execute an Operating Memorandum setting forth a budget for expenditure of (a) the initial $200,000 portion of the Additional Deposit, and (b) the balance of the Additional Deposit. (Scope of Development Section IV.A.9.a)	(a) Completed. Operating Memorandum No. 2 (February 29, 2008) and Operating Memorandum No. 2A (August 1, 2009) (b) Prior to expenditure of any of the balance of the Additional Deposit.
18. Submission-Certificates of Insurance. The Developer shall furnish to the City duplicate originals or appropriate certificates of bodily injury and property damage insurance policies. (Section 308)	Prior to the date set forth herein for commencement of construction of the improvements on the Site.

Action	Date
19. Issuance-Certificates of Completion. The City shall furnish the Developer with Partial or Final Certificates of Completion, as applicable. (Section 323)	Promptly after completion of all construction required for any Developer Parcel or portion of the Project to be completed by the Developer on the Site and upon written request therefor by the Developer.

B. NORTHERN WATERFRONT

PARCEL A

Action	Date
20. Section 404 Permit. (a) The City shall obtain a Section 404 Permit (and extension thereto) from the U. S. Army Corps of Engineers relating to Parcel A. (Section 309) (b) The Developer shall complete the Section 404 Permit Site Work to perfect the Section 404 Permit. (Scope of Development Section 11.A.4)	(a) Completed, with respect to initial Section 404 Permit. By April 2, 2012 with respect to proposed extension of the Section 404 Permit. (b) Prior to the expiration date of the extended Section 404 Permit.
20A. Northern Waterfront Boundary Parcel. The parties shall cause recordation of all documents necessary to create legal parcels setting the outer boundaries of an approximately 34-acre area comprising the Northern Waterfront parcels under this Agreement and related parcels to the north along Harbor Way. (Implementation Agreement, Section 5)	(a) By July 8, 2012.
21. Parcel A Exchange Agreement Amendment. The parties shall prepare and use good faith efforts to obtain City and SLC approval of the Parcel A Exchange Agreement Amendment. (Scope of Development Section II.D.1; Implementation Agreement, Section 5)	By December 8, 2012.
22. Public Workshops Regarding Parcel A Townhouse Architectural Design. The Developer shall sponsor, advertise, notice and conduct at least two public workshops on Parcel A townhouse architectural design. (Scope of Development Section II.A.1)	Prior to submission of an application for the Parcel A Unit Plan.

Action	Date
23. Submission-Unit Plan For Parcel A and Vesting Tentative Map for Northern Water-front Area. The Developer shall prepare and submit to the City a Complete Application for a Unit Plan for Parcel A and a vesting tentative map for the Northern Waterfront Area, including any necessary survey. (Section 304)	By a date to be determined by the parties taking into account applicable market conditions, with the goal of making such determination by December 31, 2012.
24. Approval-Unit Plan and Vesting Tentative Map. The City shall conduct all architectural and site planning review and shall approve or disapprove the Unit Plan for Parcel A and vesting tentative map for the Northern Waterfront Area, including any necessary survey, in accordance with the following milestone actions: (a) the Design Review Board shall conduct a Study Session on the Complete Application; (b) the Developer shall submit a Revised Application; (c) the Design Review Board shall conduct an Action Session and make its final recommendation/decision on the Revised Application; and (d) the City Council shall conduct a hearing (on appeal) regarding the Design Review Board's recommendation/ decision and shall approve or disapprove the Revised Application. (Section 304)	(a) Within 30 days after City receipt of the Complete Application. (b) Within 30 days after the Design Review Board's Study Session, subject to extension by mutual agreement. (c) Within 30 days after City receipt of the Revised Application. (d) Within 30 days after the Design Review Board's Action Session.
25. Submission-Updated Preliminary Title Report. The City shall submit to the Developer an updated Preliminary Title Report for Parcel A, if necessary. (Section 208)	Within 30 days after submittal by the Developer of a Complete Application for the Unit Plan and vesting tentative map.
26. Approval-Updated Preliminary Title Report. (a) The Developer shall approve or disapprove the updated Preliminary Title Report for Parcel A. (b) If Developer disapproves, the parties shall seek to prepare an Operating Memorandum to address Unacceptable Title Exceptions. (Section 208)	(a) Within 30 days after submittal by the City. (b) Within the time specified in Section 208.
27. Submission-Evidence of Financing. The Developer shall submit to the City Developer's evidence of financing for acquisition and development of Parcel A. (Section 217)	Within 30 days after City approval of the Unit Plan and Vesting tentative map.

Action	Date
28. Approval-Evidence of Financing. The City shall approve or disapprove the Developer's evidence of financing for acquisition and development of Parcel A. (Section 217)	Within 30 days after receipt thereof.
29. Submission and Approval-Subdivision of Northern Waterfront Area. (a) The Developer shall submit an application for any final subdivision or parcel map(s) required for development of the Northern Waterfront Area. (b) The City shall grant or deny all required approvals for final subdivision or parcel map(s) for the Northern Waterfront Area. (Section 304)	(a) Within 120 days after City approval of the vesting tentative map for the Northern Waterfront Area. (b) Within 30 days after submittal by the Developer.
30. BCDC Permit Amendment. The parties shall (a) submit an application for and (b) use good faith efforts to obtain any BCDC permit amendments for construction of improvements in the Northern Waterfront Area. (Scope of Development Section II.D.2)	(a) Within 30 days after City approval of the vesting tentative map for the Northern Waterfront Area. (b) Prior to the close of escrow for Parcel A.
31. Deposit of Grant Deed for Parcel A. The City shall acquire Parcel A from the City and shall deposit the grant deed for Parcel A into escrow. (Section 202, 208)	Prior to the close of escrow.
32. Satisfaction of All Conditions Precedent to Conveyance. All conditions precedent to conveyance of Parcel A have either been satisfied or waived. (Sections 205, 206)	Prior to the close of escrow.
33. Residential REA/CC&Rs. The Developer shall prepare, obtain City approval of, and record REA/CC&Rs as applicable for Parcel A. (Section 704)	Prior to issuance of a building permit for the applicable residential improvements.
34. Close of Escrow. Fee title to Parcel A shall be conveyed to the Developer. (Section 203)	Within 60 days after recordation of final subdivision map(s) and evidence of financing, but not later than two years after submission of the Parcel A Unit Plan application pursuant to Item 23 above.

Action	Date
35. Governmental Permits. The Developer shall obtain any and all required City and other governmental agency permits that the Developer is responsible to obtain under this Agreement for the development of the applicable improvements on Parcel A. (Section 309)	Prior to the date set forth herein for the commencement of construction of the applicable improvements on Parcel A.
35A. SWPPP Permit. To facilitate completion of Parcel A surcharging (Item 35B) in a manner that maximizes benefit to the Project, the parties shall take the following steps to obtain Water Board approval of a Storm Water Pollution Prevention Plan and an accompanying permit (collectively, the "SWPPP Approval") to place soil on Parcel A, including soil from Project activities related to the Central Waterfront (i.e., Phase B Garage and/or Parcel LI excavations) or other locations determined by the City:	
(a) The Developer shall submit to the City the engineering work necessary to prepare an application for the SWPPP Approval;	(a) By December 31, 2011
(b) The City shall submit an application to the Water Board for the SWPPP Approval; and	(b) By March 31, 2012
(c) The City shall use diligent good faith efforts to obtain the SWPPP Approval from the Water Board.	(c) By June 30, 2012
35B. Parcel A Surcharging. The Developer shall perform and complete any required surcharging for Parcel A. (Section 216)	Prior to the date for commencement of construction of Developer Parcel public improvements for the first phase of Parcel A, as set forth in Item 36 below.
36. Commencement of Construction-Developer Parcel Public Improvements for First Phase of Parcel A. The Developer shall commence demolition and construction of the Developer Parcel Public Improvements for the first phase of Parcel A. (Section 307)	Within 30 days after close of escrow for conveyance of Parcel A to the Developer; provided that, if weather does not reasonably permit commencement at this time, then commencement shall occur as soon as weather does reasonably permit.

Action	Date
37. Completion of Construction-Developer Parcel Public Improvements for First Phase of Parcel A. The Developer shall complete demolition and construction of the Developer Parcel Public Improvements for the first phase of Parcel A.	Within 18 months after commencement thereof by the Developer.
38. Completion of Developer Parcel Public Improvements and Private Development for Parcel A. Developer shall complete construction of all Developer Parcel Public Improvements for Parcels A, B and C and all private improvements for Parcel A.	No later than 4 years after City approval of the final subdivision map(s) for the Northern Waterfront Area (see Item 29(b) above).
B/C GROUND LEASE PARCELS	
39. Forms of Leases. The parties shall agree on the forms of the Ground Lease for each of the B/C Ground Lease Parcels. (Section 201.4)	Within 90 days after the close of escrow for Parcel A.
40. Completion of Building Pads. The Developer shall complete rough grading and provision of utilities to create building pads for the B/C Ground Lease Parcels.	Within 2 years after substantial completion of construction of realigned Harbor Way pursuant to Item 57.
41. Submission-Unit Plans for B/C Ground Lease Parcels. (a) The Developer shall prepare and submit to the City a Complete Application for a Unit Plan for the first-to-be developed B/C Ground Lease Parcel. (b) The Developer shall prepare and submit to the City a Complete Application for a Unit Plan for each later developed B/C Ground Lease Parcel. (Section 304)	(a) Within 1 year after completion of the Northern Waterfront Public Park and Open Space Improvements pursuant to Item 56. (b) Within a time period to enable conveyance and completion of construction of the applicable B/C Ground Lease Parcel by the deadline set forth in Item 52.
42. Approval-Unit Plans. The City shall conduct all architectural and site planning review and approve or disapprove the Unit Plan, including any necessary survey, for the applicable B/C Ground Lease Parcel, in accordance with the following milestone actions: (a) the Design Review Board shall conduct a Study Session on the Complete Application; (b) the Developer shall submit a Revised Application; (c) the Design Review Board shall conduct an Action Session and make its final recommendation/decision on the Revised Application; and (d) the City Council shall conduct a hearing (on appeal) regarding the Design Review Board's recommendation/ decision	(a) Within 30 days after City receipt of the Complete Application. (b) Within 30 days after the Design Review Board's Study Session, subject to extension by mutual agreement. (c) Within 30 days after City receipt of the Revised Application. (d) Within 30 days after the Design Review Board's Action Session.

Action	Date
and shall approve or disapprove the Revised Application. (Section 304)	
43. Submission-Updated Preliminary Title Report. The City shall submit to the Developer an updated Preliminary Title Report for the applicable B/C Ground Lease Parcel, if necessary. (Section 208)	Within 30 days after approval of the Unit Plan for the applicable B/C Ground Lease Parcel.
44. Approval-Updated Preliminary Title Report. (a) The Developer shall approve or disapprove the updated Preliminary Title Report for the applicable B/C Ground Lease Parcel. (b) If the Developer disapproves, the parties shall seek to prepare an Operating Memorandum to address Unacceptable Title Exceptions. (Section 208)	(a) Within 30 days after submittal by the City. (b) Within the time specified in Section 208.
45. Submission-Evidence of Financing. The Developer shall submit to the City Developer's evidence of financing for lease and development of the applicable B/C Ground Lease Parcel. (Section 217)	Within 30 days after approval of the Unit Plan for the applicable B/C Ground Lease Parcel.
46. Approval – Evidence of Financing. The City shall approve or disapprove the Developer's evidence of financing for lease and development of the applicable B/C Ground Lease Parcel. (Section 217)	Within 30 days after receipt thereof.
47. Lease With City; Deposit of Sub-Lease for B/C Ground Lease Parcels. The City shall deposit the Ground Lease for the applicable B/C Ground Lease Parcel into escrow. (Section 202, 208)	Prior to the close of escrow for the applicable B/C Ground Lease Parcel.
48. Satisfaction of All Conditions Precedent to Conveyance. All conditions precedent to conveyance of the applicable B/C Ground Lease Parcel have either been satisfied or waived. (Sections 205, 206)	Prior to the close of escrow for the applicable B/C Ground Lease Parcel.
49. Close of Escrow. The Ground Lease shall be executed and the sub-ground leasehold interest in the applicable B/C Ground Lease Parcel shall be conveyed to the Developer. (Section 203)	Within 30 days after satisfaction of all conditions precedent to the conveyance for the applicable B/C Ground Lease Parcel.

Action	Date
50. Governmental Permits. The Developer shall obtain any and all required City and other governmental City permits that the Developer is responsible to obtain under this Agreement for the development of the applicable B/C Ground Lease Parcel. (Section 309)	Prior to the date set forth herein for the commencement of construction of the improvements on the applicable B/C Ground Lease Parcel.
51. Commencement of Construction-B/C Ground Lease Parcels. The Developer shall commence demolition and construction of the improvements on the first-to-be developed B/C Ground Lease Parcels. (Section 307)	Within 30 days after close of escrow for conveyance of the first-to-be developed B/C Ground Lease Parcel.
52. Completion of Construction-B/C Ground Lease Parcels. The Developer shall complete construction of the improvements on the B/C Ground Lease Parcels.	For the first-to-be developed B/C Ground Lease Parcel, within 12 months after commencement of construction. For final construction of all improvements on the B/C Ground Lease Parcels, no later than 6 years after the City approval of the final subdivision map(s) for the Northern Waterfront Area (see Item 29(b) above).

NORTHERN WATERFRONT PUBLIC IMPROVEMENTS

Action	Date
53. Public Participation Design Process; Concept Design and Preliminary Budget. The RDA and the City shall (a) commence and (b) complete the public participation design process and shall (c) prepare the Concept Design and Preliminary Budget for the Northern Waterfront Public Parks and Open Space Improvements. (Scope of Development Section II.C.3)	(a) Commenced. (January 2008) (b) Completed. (September 2008) (c) By not later than Developer's submission of the Parcel A Unit Plan application pursuant to Item 23 above.
54. Submission-Detailed Plans and Construction Cost Estimate. The Developer shall submit to the City the Detailed Plans and the Construction Cost Estimate for the Northern Waterfront Public Parks and Open Space Improvements. (Scope of Development Section 11.C.3)	Prior to the second public workshop regarding Parcel A townhouse architectural design called for in Item 22 above.
55. Approval-Detailed Plans or Modified Detail Plans. The City shall approve the Detailed Plans submitted by the Developer or specify the form of Modified Detailed Plans for the Northern Waterfront Public Parks and Open Space Improvements. (Scope of Development Section	Within 3 months after the Developer submits the Detailed Plans and the Construction Cost Estimate for the Northern Waterfront Public Parks and Open Space Improvements.

Action	Date
II.C.3)	
56. Construction of Northern Waterfront Public Park and Open Space Improvements. The Developer shall complete construction of the Northern Waterfront Public Park and Open Space Improvements (subject to subsequent grow-in of landscaping features and improvements). (Scope of Development Section II.C.3)	Prior to issuance of a certificate of occupancy for the 140th residential unit on Parcel A.
57. Construction of Harbor Way. The Developer shall substantially complete the construction of realigned Harbor Way. (Scope of Development Section II.C.1)	Prior to issuance of the first certificate of occupancy for a residential unit within Parcel A.
58. Construction of Wetland Park. The Developer shall complete construction of the Wetland Park (subject to subsequent growing-in of landscaping features and improvements), and cease all staging activities. (Scope of Development Section II.A.3)	At the earlier of either: (a) one full construction season after the Wetland Park area is no longer needed for construction staging as provided in Section II.A.3 of the Scope of Development (Attachment No. 4), or (b) one full construction season after the issuance of the certificate of occupancy for the 140th residential unit on Parcel A.
59. Form of REAs. The parties shall agree upon the forms of the Parcel C2 REA and the Parcel E/F REA. (Scope of Development Section II.C.2 and 5)	Concurrently with approval of the forms of the Ground Leases as provided in Item 39 (i.e., within 90 days after close of escrow for Parcel A).
60. Construction of Parcel C2 and Parcel E/F Parking Lots. The Developer shall complete construction of the reconfigured Parcel C2 and Parcel E/F parking lots. (Scope of Development Sections II.C.2 and 5)	Prior to issuance of a certificate of occupancy for the 140th residential unit on Parcel A.
61. Construction of Mare Island Causeway and Mare Island Way Widening Improvements. The City shall cause Lennar or other entity to complete the Mare Island Causeway and Mare Island Way Widening Improvements. (Scope of Development Section II.D.3)	At the time required for completion pursuant to the Lennar Project Documents.

Action	Date
D. CENTRAL WATERFRONT	
POST OFFICE SITE/RESTAURANT SITE ACQUISITION AND RELOCATION	
62. Voluntary Acquisition. The RDA shall seek voluntary acquisition of, and acquire fee title to, the Post Office Site and the Restaurant Site. (Sections 201.6.a and b)	Completed.
63. Resolution of Necessity. If voluntary acquisition is not feasible, the RDA or the City shall schedule and conduct a hearing and consider adoption of a resolution of necessity for condemnation of the Post Office Site and/or the Restaurant Site. (Sections 201.6.a and b)	Not applicable due to completion of voluntary acquisition.
64. Filing of Action and Order For Possession. If a resolution of necessity is approved, the City shall file the condemnation action, including a request for order of immediate possession, for the Post Office Site and/or the Restaurant Site. (Sections 201.6.a and b)	Not applicable due to completion of voluntary acquisition.
65. Order of Possession. The City shall obtain possession of the Post Office Site and/or Restaurant Site under order of possession. (Sections 201.6.a and b)	Not applicable due to completion of voluntary acquisition.
66. Relocation of Restaurant Site Business. The City shall cause relocation of the business from the Restaurant Site, if applicable. (Section 208)	Completed.
PARCEL L	
67. Secure Financing for the L3 Public Garage/ Public Paseo.	
For Phase A: The RDA and City shall secure financing for (a) the design and (b) construction of Phase A of the L3 Public Garage and the public paseo improvements on Parcel L5.	(a) Completed. (b) As set forth in Vallejo Station Master Schedule.

Action	Date
For Phase B: The City shall secure financing for (a) the design and (b) construction of Phase B of the L3 Public Garage.	(a) As set forth in Vallejo Station Master Schedule (b) As set forth in Vallejo Station Master Schedule.
68. Design and Construction of L3 Public Garage/Public Paseo.	
For Phase A: The City shall (a) complete design, (b) commence demolition and substantial construction, and (c) complete construction of Phase A of the L3 Public Garage and the public paseo improvements on Parcel L5. (Scope of Development Sections II.A.3 and 5)	(a) As set forth in Vallejo Station Master Schedule. (b) As set forth in Vallejo Station Master Schedule. (c) As set forth in Vallejo Station Master Schedule.
For Phase B: The City shall (a) complete design, (b) commence demolition and substantial construction, and (c) complete construction of Phase B of the L3 Public Garage. (Scope of Development Sections II.A.3)	(a) As set forth in Vallejo Station Master Schedule. (b) As set forth in Vallejo Station Master Schedule. (c) As set forth in Vallejo Station Master Schedule.
69A. Refined Uses for Parcels L1 and L2. The City and the Developer shall determine the most viable uses for Parcels L1 and L2 under revised physical and economic conditions. (Implementation Agreement, Section 6.d)	By March 8, 2012.
69B. Subdivision To Create Parcels L1-L3. The City and the Developer shall cooperate to cause the preparation, approval and recordation of a minor subdivision map to create Parcels L1, L2, and L3 as separate legal parcels, as required for STIP grant funding for the L3 Public Garage.	As set forth in Vallejo Station Master Schedule.
69C. Parcel L4 Operating Memorandum; Creation of Parcels L4 and L5; Approval of Vallejo Station REA. The parties shall negotiate and execute the Parcel L4 Operating Memorandum, establishing procedures for the creation of Parcels L4 and L5 as vertical subdivision parcels above Parcel L3, and approving the Vallejo Station REA for the operation of Parcels L3, L4 and L5. (Scope of Development Section III.A.4)	Prior to execution of the construction contract for Phase B of the L3 Public Garage.

Action	Date
70. Public Workshops Regarding Architecture. The Developer shall sponsor, advertise, notice and conduct at least two public workshops on architectural design. (Scope of Development Section III)	Prior to submission of any Unit Plan application for Parcel L.
71. Hotel Improvements Description and Feasibility Study. The Developer shall submit to the City a description and feasibility study with respect to the Hotel Improvements on Parcel L4, and the study shall be presented to the City Council at a regularly noticed public hearing. (Scope of Development Section III.A.4)	Prior to submission of a Unit Plan application for Parcel L4.
72. Submission-Unit Plan. (a) The Developer shall prepare and submit to the City a Complete Application for a Unit Plan for the first-to-be developed L Developer Parcel. (b) The Developer shall prepare and submit to the City a Complete Application for a Unit Plan for each later developed L Developer Parcel. (Section 304)	(a) By a date to be determined by the parties taking into account applicable market conditions and evolving parking plans for the Central Waterfront, with the goal of making such determination by December 31, 2012. (b) Within a time period to enable conveyance and completion of the applicable L Developer Parcel by the deadline set forth in Item 88.
73. Approval-Unit Plan. The City shall conduct all architectural and site planning review and approve or disapprove the Unit Plan, including any necessary survey for the applicable L Developer Parcel, in accordance with the following milestone actions: (a) the Design Review Board shall conduct a Study Session on the Complete Application; (b) the Developer shall submit a Revised Application; (c) the Design Review Board shall conduct an Action Session and make its final recommendation./decision on the Revised Application; and (d) the City Council shall conduct a hearing (on appeal) regarding the Design Review Board's recommendation/ decision and shall approve or disapprove the Revised Application. (Section 304)	(a) Within 30 days after City receipt of the Complete Application. (b) Within 30 days after the Design Review Board's Study Session, subject to extension by mutual agreement. (c) Within 30 days after City receipt of the Revised Application. (d) Within 30 days after the Design Review Board's Action Session.
74. Submission-Updated Preliminary Title Report. The City shall submit to the Developer an updated Preliminary Title Report for the applicable L Developer Parcel, if necessary. (Section 208)	Within 30 days after approval of the Unit Plan for the applicable L Developer Parcel.
75. Approval-Updated Preliminary Title Report. (a)	(a) Within 30 days after submittal by the City.

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Action	Date
The Developer shall approve or disapprove the updated Preliminary Title Report for the applicable L Developer Parcel. (b) If the Developer disapproves, the parties shall seek to prepare an Operating Memorandum to address Unacceptable Title Exceptions. (Section 208)	(b) Within the time specified in Section 208.
76. Submission-Evidence of Financing. The Developer shall submit to the City Developer's evidence of financing for acquisition and development of the applicable L Developer Parcel. (Section 217)	Within 30 days after approval of the Unit Plan for the applicable L Developer Parcel.
77. Approval-Evidence of Financing. The City shall approve or disapprove the Developer's evidence of financing for acquisition and development of the applicable L Developer Parcel. (Section 217)	Within 30 days after receipt thereof.
78. **[Intentionally Omitted]**	
79. **[Intentionally Omitted]**	
80. Deposit of Grant Deed. The City shall deposit the grant deed for the applicable L Developer Parcel. (Section 202, 208)	Prior to the close of escrow for the applicable L Developer Parcel.
81. Satisfaction of All Conditions Precedent to Conveyance. All conditions precedent to conveyance for the applicable L Developer Parcel have either been satisfied or waived. (Sections 205, 206)	Prior to the close of escrow for the applicable L Developer Parcel.
82. Residential REA/CC&Rs. If Parcel L1 will contain residential uses, the Developer shall prepare, obtain City approval of, and record REA/CC&Rs as applicable for Parcel L1. (Section 704)	Prior to or concurrently with close of escrow for the conveyance of Parcel L1 to the Developer.
83. Vallejo Station REA. The parties shall cause recordation of the Vallejo Station REA against the applicable subparcels within Parcel L. (Scope of Development Section III.A.4)	Concurrently with the close of escrow for conveyance of Parcel L4.

Action	Date
84. Hotel Operating Agreement. The Developer shall enter into the Hotel Operating Agreement with the Hotel Operator. (Section 705)	Prior to the close of escrow for Parcel L4.
85. Close of Escrow. Fee title to the applicable L Developer Parcel shall be conveyed to the Developer. (Section 203)	(a) For the first-to-be developed L Developer Parcel, within 30 days after satisfaction of all conditions precedent to conveyance. (b) For each later developed L Developer Parcel, within 30 days after satisfaction of all conditions precedent to conveyance for the applicable L Developer Parcel.
86. Governmental Permits. The Developer shall obtain any and all required City and other governmental City permits that the Developer is responsible to obtain under this Agreement for the development of the applicable L Developer Parcel. (Section 309)	Prior to the date set forth herein for the commencement of construction on the applicable L Developer Parcel.
87. Commencement of Construction-L Developer Parcels. The Developer shall commence demolition and construction on the applicable L Developer Parcel. (Section 307)	Within 30 days after close of escrow for conveyance of the applicable L Developer Parcel to the Developer.
88. Completion of Construction-L Developer Parcels. The Developer shall complete construction of the improvements on the applicable L Developer Parcel.	Within 24 months after commencement thereof, but in any event by the later to occur of: (a) the 10th anniversary of the Action Dismissal Date; or (b) the 8th anniversary of completion of construction of Phase B of the L3 Public Garage.
89. Retail Tenanting Of Arcade Area. The Developer shall use commercially reasonable efforts to lease the Arcade Area in Parcel L4 for Category 1 Uses. (Scope of Development Section III.A.4)	For a period ending no earlier than 12 months from the date of completion of the retail building shell.

PARCEL J

Action	Date
90. A. Parcel J Development Style. The Developer shall notify the City if it desires to pursue a "Texas wrap" style development for Parcel J. (Implementation Agreement, Section 6.a)	Completed.

Action	Date
90B. Central Waterfront PDMP and Scope of Development Amendments. The parties shall prepare and present for consideration of approval amendments to the PDMP and the Scope of Development to reflect current planning for development of Parcels J and L.	By June 30, 2012.
90C. Confer Re: Capital Street Second Segment. The parties shall confer regarding Capital Street Second Segment construction in connection with Parcel J development. (Implementation Agreement, Section 6.e)	Completed.
90D. Design for Capital Street Second Segment. The City shall complete design work for the Capitol Street Second Segment. (Implementation Agreement, Section 6.e)	By April 30, 2012.
90E. Funding for Capital Street Second Segment. The City shall obtain all funding for the Capitol Street Second Segment (Implementation Agreement, Section 6.e)	By December 31, 2012.
91. Public Workshops Regarding Architecture. The Developer shall sponsor, advertise, notice and conduct at least two public workshops on architectural design. (Scope of Development Section III)	Prior to submission of any Unit Plan application for the Parcel J.
92. Study Regarding Removal of Civic Center Drive/Georgia Street Intersection. The Developer and the City shall complete and submit the study of the possibility of removing the intersection of Civic Center Drive and Georgia Street. (Scope of Development Section III.B)	By not later than the date required for the submittal of the Unit Plan for the first-to-be developed J Developer Subparcel pursuant to Item 94A.
93. Parcel J Boundary Parcel. The parties shall cause recordation of all documents necessary to create Parcel J as a legal parcel.	Within 6 months after completion of the study described in Item 92 above.

Action	Date
94A. Submission-Unit Plan and Vesting Tentative Map. (a) The Developer shall prepare and submit to the City a Complete Application for a vesting tentative map for Parcel J and a Unit Plan for the first-to-be developed J Developer Subparcel. (b) The Developer shall prepare and submit to the City a Complete Application for a Unit Plan for the later developed J Developer Subparcel. (Section 304; Implementation Agreement, Section 6.a)	(a) Within 60 days after the last to occur of: (1) the opening to the public of Phase A of the L3 Public Garage; (2) the relocation of all surface public parking from Parcel J to Parcel L or other location; and (3) City procurement and commitment of all funding for the Capital Street Second Segment. (b) Within a time period to enable conveyance and completion of construction of the later developed J Developer Subparcel by the deadline set forth in Item 107.
94. Approval-Unit Plan and Vesting Tentative Map. The City shall conduct all architectural and site planning review and approve or disapprove the Unit Plan and vesting tentative map (if applicable), including any necessary survey, for the applicable J Developer Subparcel, in accordance with the following milestone actions: (a) the Design Review Board shall conduct a Study Session on the Complete Application; (b) the Developer shall submit a Revised Application; (c) the Design Review Board shall conduct an Action Session and make its final recommendation/ decision on the Revised Application; and (d) the City Council shall conduct a hearing (on appeal) regarding the Design Review Board's recommendation/ decision and shall approve or disapprove the Revised Application. (Section 304)	(a) Within 30 days after City receipt of the Complete Application. (b) Within 30 days after the Design Review Board's Study Session, subject to extension by mutual agreement. (c) Within 30 days after City receipt of the Revised Application. (d) Within 30 days after the Design Review Board's Action Session.
95. Submission-Updated Preliminary Title Report. The City shall submit to the Developer an updated Preliminary Title Report for the applicable J Developer Subparcel, if necessary. (Section 208)	Within 30 days after approval of the Unit Plan for the applicable J Developer Subparcel.
96. Approval-Updated Preliminary Title Report. (a) The Developer shall approve or disapprove the updated Preliminary Title Report for the applicable J Developer Subparcel. (b) If the Developer disapproves, the parties shall seek to prepare an Operating Memorandum to address Unacceptable Title Exceptions. (Section 208)	(a) Within 30 days after submittal by the City. (b) Within the time specified in Section 208.

Action	Date
97. Submission-Evidence of Financing. The Developer shall submit to the City Developer's evidence of financing for acquisition and development of the applicable J Developer Subparcel. (Section 217)	Within 30 days after approval of the Unit Plan for the applicable J. Developer Subparcel.
98. Approval-Evidence of Financing. The City shall approve or disapprove the Developer's evidence of financing for acquisition and development of the applicable J Developer Subparcel. (Section 217)	Within 30 days after receipt thereof.
99. Submission and Approval-Subdivision of Parcel J. (a) The Developer shall submit an application for final subdivision and parcel maps for Parcel J. (b) The City shall grant or deny all required approvals for final subdivision and parcel maps for Parcel J.	(a) Within 90 days after approval of the Unit Plan and vesting tentative map in connection with the first-to-be developed J Developer Subparcel. (b) Within 30 days after submittal by the Developer.
100. A. **[Intentionally Omitted]**	
101. Deposit of Grant Deed. The City shall deposit the grant deed for the applicable J Developer Subparcel into escrow. (Sections 202, 208)	Prior to the close of escrow for the applicable J Developer Subparcel.
102. Satisfaction of All Conditions Precedent to Conveyance. All conditions precedent to conveyance for the applicable J Developer Subparcel have either been satisfied or waived. (Sections 205, 206)	Prior to the close of escrow for the applicable J Developer Subparcel.
103. Residential REA/CC&Rs. The Developer shall prepare, obtain City approval of, and record REA/CC&Rs as applicable for each J Developer Subparcel. (Section 704)	Prior to or concurrently with close of escrow for the conveyance of the applicable J Developer Subparcel to the Developer.
104. Close of Escrow. Fee title to the applicable J Developer Subparcel shall be conveyed to the Developer. (Section 203)	Within 30 days after satisfaction of all conditions precedent to conveyance for the applicable J Developer Subparcel.
105. Governmental Permits. The Developer shall obtain any and all required City and other governmental agency permits that the Developer is responsible to obtain under this Agreement for the development of the applicable J Developer Subparcel. (Section 309)	Prior to the date set forth herein for the commencement of construction of the improvements on the applicable J Developer Subparcel.

Action	Date
106. Commencement of Construction – Parcel J. The Developer shall commence demolition and construction of the improvements on Parcel J. (Section 307)	Within 30 days after close of escrow for conveyance of the first-to-be developed J Developer Subparcel.
107. Completion of Construction-Parcel J. The Developer shall complete construction of the improvements on Parcel J.	For construction on the first-to-be developed J Developer Subparcel, within 24 months after commencement thereof. For the final phase of construction on Parcel J, by the later to occur of: (a) the 10th anniversary of the Action Dismissal Date; or (b) the 8th anniversary of completion of construction of the later to be completed of the City Hall Garage Required Elements or Phase B of the L3 Public Garage.

CENTRAL WATERFRONT PUBLIC IMPROVEMENTS

Action	Date
108. Parcel O Bus Transfer Center. The RDA and the City shall (a) issue a request for services for design, and (b) cause completion of the Bus Transfer Center on Parcel O. (Scope of Development Section III.C.1)	(a) Completed. (b) Completed.
109. Other Transit-Related Improvements. The City shall cause completion of the Other Transit-Related Improvements (i.e., regional bus turnouts and Kiss & Ride parking Improvements). (Scope of Development Section III.C.2)	By the time required for completion of Phase A of the L3 Public Garage.
110. Central Waterfront Public Street Improvements. The City shall cause completion of the Central Waterfront Public Street Improvements. (Scope of Development Section III.C.3)	(a) By the time required for completion of Phase A of the L3 Garage, for the Mare Island Way modifications and the reconfiguration of Maine Street. (b) By the time required for, and as part of, completion of construction of the City Hall Garage Required Elements pursuant to Item 112, for the Capitol Street Second Segment.

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Action	Date
111. Central Waterfront Public Parks and Open Space Improvements. The City shall cause completion of (a) design of the Central Waterfront Public Parks and Open Space Improvements, (b) construction of the Festival Green parcel improvements, and (c) construction of the balance of Central Waterfront Public Parks and Open Space Improvements. (Scope of Development Section III.C.4)	(a) Within one year after formation of the LLMD that contains, at a minimum, the Waterfront Site. (b) Within 1 year after the time required for completion of Phase B of the L3 Public Garage pursuant to Item 68. (c) Within 2 years after the time required for completion of Phase B of the L3 Public Garage pursuant to Item 68.
112. City Hall Garage Required Elements. The City shall (a) obtain funding for, (b) design, (c) commence substantial construction of, and (d) complete construction of the City Hall Garage Required Elements. (Scope of Development Section III.C.5 and Method of Financing Section III.D)	(a) Concurrently with obtaining funding for Phase B of the L3 Public Garage pursuant to Item 68. (b) Within a time period to enable commencement of construction as set forth in (c) below. (c) Within 60 days after substantial completion of Phase B of the L3 Public Garage. (d) Within 12 months after the required commencement date as set forth in (c) above.
113. Phase II Element of City Hall Garage. The City shall design and construct the Phase II Element of the City Hall Garage. (Scope of Development Section III.C.5 and Method of Financing Section III.D)	Within a time period determined by the City to accommodate parking needs for additional ferry service.

ATTACHMENT NO. 4

SCOPE OF DEVELOPMENT

I. GENERAL

A. Basic Development Standards.

1. General. The Developer and the RDA agree that the Site shall be developed and improved in accordance with the provisions of this Agreement, the plans, drawings and related documents approved by the City pursuant hereto, and the Project Approvals (as defined and described in Section 104.2). The provisions of this Agreement, including the Scope of Development, are intended to be consistent with the Project Approvals. In the event of any express conflict between the provisions of this Agreement, including the Scope of Development, and the Project Approvals, the provisions of the Project Approvals shall control to the extent of such conflict.

The Developer, its supervising architect, engineer and contractor, shall work with RDA and City staff to coordinate the overall design, architecture and color of the improvements on the Site.

2. Water Conservation Measures. In connection with the initial construction of the Project, water conservation measures shall be incorporated into residential and commercial structures by the City and CDV in accordance with the following:

a. Residential Indoor Water Conservation Measures: All minimum Building Code and Water Division requirements for indoor water conservation in effect at the time of the effective date of the Settlement Agreement shall be exceeded by no less than twenty percent (20%).

b. Commercial Indoor Water Conservation Measures: Any and all indoor fixtures shall at a minimum be installed as motion sensory devices with technology equivalent to or better than those devices available on the commercial market as of the effective date of the Settlement Agreement.

c. Commercial Outdoor Water Conservation Measures: All landscaping initially installed on private development shall use climate sensitive irrigation controls which aim to minimize or eliminate irrigation during cloudy and/or rainy days.

All landscaping initially installed on private development shall be planted in hydrozones. Hydrozones create an irrigation pattern that groups drought tolerant plants on separate irrigation loops from high water users; such as turf.

d. Public Rights-of-Way Water Conservation Measures: All landscaping initially installed by the City in the Project's public-rights-of-way, including

thoroughfare medians and public sidewalks, shall maximize the use of drought tolerant and California Native Plants and shall use climate sensitive irrigation controls that aim to minimize or eliminate irrigation during cloudy and/or rainy days. The City shall continue to use good faith, best efforts to implement these same (or improved) water conservation measures in connection with its ongoing and future maintenance of such landscaping.

3. Green Building Design Measures. The Developer will actively pursue the integration of green building materials, green construction methods and green site preparation in all Unit Plan applications, where application of such methods and materials integrate with or seamlessly replace more traditional methods as described in the Waterfront Design Guidelines under Chapter III, Waterfront District Guidelines, Section A, 2.1 "Green Site and Building Design". The Developer will discuss the use of green building design measures and methods pursuant to the Design Guidelines at the community design workshops called for in Sections II.A.1 and III below. The Developer's architect will prepare written materials describing the extent to which a Unit Plan application employs the techniques and methods set forth in the Waterfront Design Guidelines (Chapter III, Section A, 2.1, "Green Site and Building Design"). Where such activities would compromise the feasibility of a Unit Plan application or reduce the marketability of the ultimate land use, the Developer will not be required to accommodate such methods. In this event, the Developer's architect or engineer shall furnish the Coalition with written documentation showing the infeasibility. Since green building design is a voluntary practice and not a requirement of the Vallejo Building or other Codes, the Developer will not be considered in breach of this or any other clause of this Agreement if incorporation of these concepts, techniques, and methods cannot be attained.

B. The Project.

The entire Site is comprised of real property, a portion of which is owned by or to be acquired by the City and a portion of which is to be conveyed to the Developer, as more particularly described in Sections 106 and 201. As part of the planning process and development contemplated by this Agreement, some of the parcels comprising the Site will be created or reconfigured in order to create the specific parcels referenced herein.

It is the intent of the parties that the Site shall be developed as a master planned mixed-use development, including residential, commercial, hotel, conference center, light industrial and retail uses, public and private parking areas, open space and park uses, as more fully defined and described in Section 101 (the "Project").

C. Organization of Scope of Development.

Parts II and III of this Scope of Development set forth, by Area (North Waterfront and Central Waterfront, respectively), the proposed development of the Project on the Site, including various actions of the City and Developer to prepare the Site for development, a description of the various private and public parcels, the intended owner of each parcel, the intended use and development of each parcel, the roles and responsibilities of the City and Developer in causing design, construction and funding of the intended use and development, and other pertinent

information to guide the development by the parties of each parcel and the related public improvements. Part IV addresses alternative construction management methods.

Attachments to this Attachment No. 4 referred to in the text below are set forth at the end of this Attachment No. 4.

II. NORTHERN WATERFRONT

Public and private redevelopment of the Northern Waterfront Area under this Agreement (with particular reference to the shoreline area west of Harbor Way) will be undertaken to reinforce and assure mutually compatible use of the area by users and tenants of the adjacent City Marina, and public and private users of the development parcels under this Agreement.

Section II.A. below sets forth the scope of development for Developer Parcel A and City Parcel D2 (containing the Wetland Park, as further described below) and related off-site pedestrian-oriented improvements, because the design and development of these two parcels and related improvements are integrally related and best described together. Section II.B below sets forth the scope of development for the other Developer Parcels within the Northern Waterfront Area. Section II.C below addresses the scope of development for the public parcels and improvements in the Northern Waterfront Area (other than City Parcel D2). Section II.D below describes responsibilities for certain actions of Area-wide benefit. Section II.E below sets forth the Developer's independent obligation to perform the tasks and responsibilities assigned to the Developer under this Agreement with respect to the Northern Waterfront Area.

A. Developer Parcel A and City Parcel D2 (Wetland Park).

1. Overview of Development.

Parcel A (consisting of subparcels A1 and A2) is an approximately 11.3-acre parcel. Upon satisfaction of all applicable pre-disposition requirements set forth in this Agreement, the City shall convey fee title to Parcel A to the Developer for the Purchase Price set forth in Section 201.3.

Parcel D2 is an approximately 4.0-acre parcel bounded by Parcel A to the north and south. Parcel D2 is to be owned by the City and developed by the Developer as provided below. The City shall enter into a right-of-entry agreement or other similar access agreement with the Developer, in form reasonably acceptable to the City and the Developer, granting the Developer a right-of-entry onto Parcel D2 for construction staging for development of Parcel A and for development of the Wetland Park in the manner set forth below.

The Developer, at its cost (subject to a cost cap on specified related off-site improvements as further provided in Section II.C.3 below) and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for the development of Parcel A, Parcel D2 and the related off-site improvements described below,

and shall design and develop Parcel A, Parcel D2 and the related off-site improvements generally as follows and as more fully provided in the Project Approvals:

The residential development on Parcel A (as depicted in Attachment No. 4-1A) shall consist of a townhouse project with no more than 175 dwelling units distributed among two clustered neighborhoods. A 4.0 acre public wetland park (the "Wetland Park") shall be created on Parcel D2, a central location between the two townhouse neighborhoods on Parcel A (referred to as the "Northern Residential Neighborhood" adjacent to the Mare Island Causeway and the existing restaurant known as Zio Fraedo's, and the "Southern Residential Neighborhood" adjacent to Mare Island Way). The dwelling units on Parcel A shall be distributed among multiple buildings, comprised of traditional townhouses with stacked flats to be located at one or both ends of each building. Each building will provide grade level end units. The current site plan configuration for the development of Parcel A provides for a total of 30 buildings consisting of 15 six-plexes, 8 seven-plexes, 4 five-plexes, and 3 three-plexes. The number of buildings and the mix of the types of units (as depicted in Attachment No. 4-1A) may be reasonably modified during the Unit Plan review process.

All streets located within the residential development area of Parcel A (as depicted on Attachment No.4-1A) shall be public streets with a maximum 36 foot curb-to-curb distance and which allow for two-way traffic and parallel parking on each side of the street. The parking ratio for the residential development area of Parcel A shall not exceed 2.5 spaces per unit, and each unit shall be provided with a two car garage (including tandem garage spaces) with the remaining required parking spaces located on the interior public streets of the residential development area and Harbor Way adjacent to the Northern Residential Neighborhood.

To decrease the overall visual impact of the residential development on Parcel A, the taller pitched roof buildings shall be located in the Northern Residential Neighborhood with the lower pitched roof buildings located in the Southern Residential Neighborhood. Heights of the residential buildings shall not exceed 45 feet in the Northern Residential Neighborhood and 38 feet in the Southern Residential Neighborhood. Height measurements shall be calculated in accordance with the Project Approvals, which provide that the building heights in Parcel A shall be measured from the street or alley curb perpendicular to the midpoint of the street or alley to the ridge of the roof structure. Chimneys shall not be subject to this height measurement and shall be allowed to exceed the height limit.

Maximum building finish floor elevations (finish floor is the level of the surface of the concrete garage floor) shall be equal to or lower than the adjacent top of curb elevations along Mare Island Way and Mare Island Causeway. The measuring point will be taken from the street curb perpendicular to the midpoint of the building side that faces the street curb. Generally, building finish floor elevations will decrease away from Mare Island Way and Mare Island Causeway allowing the storm water runoff from the drainage area to enter the Wetland Park.

Prior to submitting a Unit Plan application for the residential development of Parcel A, and in consultation with the City, the Developer shall sponsor, advertise (in the Vallejo *Times Herald*), and provide appropriate and reasonable public notice of, two (2) public

community design workshops regarding the townhouse architectural design. The Coalition (as defined in the History and Background (Attachment No. 9)) shall be provided with mailed notice of these meetings in accordance with the Settlement Agreement (as defined in the History and Background (Attachment No. 9)).

Parcel A buildings shall have an equivalent level of architectural quality and articulation as that depicted in Attachment No. 4-1B.

The Developer shall provide in the REA/CC&Rs recorded in connection with the residential development of Parcel A (as further described in Section 704), or similar purchaser notification documentation, notification to future residents that public events including, but not limited to, an annual Jazz Festival, may occur on the Promenade Park (as described in Section II.C.3 below) and the Wetland Park.

2. Accessibility and Circulation. The site plan for the residential development area of Parcel A shall include public access through the new residential neighborhoods to the Wetland Park from Mare Island Way and the north end of Harbor Way. The public access points into the residential neighborhood are depicted in Attachment No. 4-1C. The design will invite pedestrians to walk through the new residential neighborhoods to the Wetland Park from the adjacent Mare Island Way and the Mare Island Causeway sidewalks.

A pedestrian pathway will be provided along the southern sidewalk of the Mare Island Causeway in approximately the same location as the existing pathway. The pathway will provide a connection from the Mare Island Causeway, through the residential neighborhood, crossing Harbor Way and marina parking in the proximity of Parcel B1, to the waterfront promenade and will be enhanced with paving and a stop sign or other traffic control mechanism at intersections with vehicle thoroughfares (as depicted in Attachment No. 4-1C).

The existing pedestrian pathway located under the Mare Island Causeway Bridge shall be improved with a new pathway surface, fencing, landscaping, and bollard lights to be operated in coordination with the Mare Island Causeway lights (as depicted in Attachment No. 4-1D) (the "Mare Island Causeway Underpass Pathway Improvements").

A three (3)-hour parking time limit (for daytime hours, seven (7) days a week) shall be included for the on-street parking spaces located along the west side of Harbor Way and any street abutting the Wetland Park.

3. Wetland Park on Parcel D2. The Wetland Park on Parcel D2 shall be centrally located and consist of a minimum of 4.0 contiguous acres, with approximately 1.5 to 1.7 acres comprised of vegetated swales, wetland terraces, and a tidal pond connected to the Mare Island Straight. The 4.0 acre size shall not be reduced to accommodate any non-Park use, including but not limited to the residential development described in Section II.A.1 above, parking, public and private streets, and "paseos" or perimeters of the private development that are not contiguous to the Wetland Park open space. Emergency vehicle-only access will be constructed of grasscrete or similar material and will be located as depicted in Attachment No. 4-1A. Attachment No. 4-1E provides a conceptual plan for the Wetland Park on Parcel D2.

The Wetland Park on Parcel D2 will create a visual amenity with interpretive features, provide for passive recreation, and re-create a naturalistic drainage system. It will connect visually and functionally with the surrounding residences and the Promenade Park. An observation area will contain interpretive features, that will explain the wetland system, cleansing of stormwater, and tidal pond/brackish water ecology. The swale system will be surrounded by a series of meadows, usable for informal or passive recreation, and connected by a network of paths and bridges. The open space, while not formally programmed, will provide a variety of spaces for individuals and groups to relax and enjoy the natural surroundings. The surrounding residences will be connected to the open space by greenways or paseos. Evergreen planting and berms will screen the townhouse neighborhoods.

Planting in the Wetland Park on Parcel D2 will include trees, shrubs and grasses along the swales, informal clusters of canopy trees edging the meadows, evergreen screening, and street trees along Mare Island Way, Harbor Way, and the internal streets of the residential neighborhoods in Parcel A. The swales will range from ten (10) feet to forty (40) feet in width including vegetated buffer areas adjacent to the swales. At its narrowest, between the two townhouse neighborhoods in Parcel A, the Wetland Park will be a minimum of 120 feet wide.

In summary, the key components of the Wetland Park on Parcel D2 will be: (a) a corridor of swales and a tidal pond; (b) open meadows for passive and informal use; (c) interpretive elements; (d) paths, bridges, and seating; (e) screening of surrounding development; (f) an at-grade pedestrian and visual link to the Promenade Park; and (g) tidal function highlighting the connection to the Bay system.

The Wetland Park on Parcel D2 and the Promenade Park on Parcel D2 shall be connected via landscaping and paving features to create a visual corridor from the Mare Island Causeway to the Mare Island Strait. The parking along Harbor Way in the area between these two parks shall be reduced by twelve (12) spaces as depicted in Attachment No. 4-1A.

Upon completion of construction of the Wetland Park on Parcel D2 by the Developer, the Wetland Park shall be dedicated in fee to the City for park purposes and maintained by the City using assessments generated by the LLMD, or other similar funding mechanism, as provided for in this Agreement (with particular reference to the Method of Financing (Attachment No. 6)) and subject to the City's annual budgetary process.

Parcel D2 may be used by the Developer for construction staging during the initial site preparation for the development of Parcel A (estimated to occur over 18 to 24 months) and during the construction of the Northern and Southern Residential Neighborhoods (each of which is estimated to occur over an additional 12 to 18 months). The Developer shall complete construction of the Wetland Park, and cease all staging activities, within the time set forth in the Schedule of Performance (Attachment No. 3).

The Developer shall provide a guarantee to the City for the completion of the Wetland Park on Parcel D2 through a performance bond or other equivalent form of security specified in the Vallejo Municipal Code as may be acceptable to the City and the City.

Upon completion of the Wetland Park, the Developer shall provide the City with a certified statement, accompanied by reasonable supporting information, setting forth the total out-of-pocket costs paid by the Developer in connection with the design and construction of the Wetland Park (the "Developer's Wetland Park Contribution").

4. Section 404 Permit Work. The RDA obtained the necessary Section 404 Permit from the U.S. Army Corps of Engineers to enable the Developer to conduct necessary grading activities on Parcel A and Parcel D2. The parties shall cooperate to obtain any needed time extension for the Section 404 Permit within a time frame to be established in the City/Developer Amendment described in Section 115 of this Fourth Restated Agreement. The Developer shall perform the grading work in compliance with the Section 404 Permit (the "Section 404 Permit Work") within the time set forth in the Schedule of Performance (Attachment No. 3).

5. Developer Parcel Public Improvements. The City and the Developer anticipate that the development of Parcel A shall be accomplished in sub-phases. Prior to or concurrently with the development of each sub-phase, the Developer shall commence and complete the Developer Parcel Public Improvements (as such term is defined in the Method of Financing (Attachment No. 6) required for such sub-phase of private development on Parcel A. The Developer shall dedicate the improved public streets within Parcel A and, to the extent required under applicable City ordinances and rules, the improvements comprising the Wetland Park on Parcel D2, in accordance with the terms and requirements of the Project Approvals.

B. Other Developer Parcels (B1, B2, and C1).

The following Developer Parcels within the Northern Waterfront Area shall be conveyed by the City to the Developer by ground lease in accordance with the terms of this Agreement, and shall be developed by the Developer in accordance with the following general terms and conditions.

1 Developer Parcels B1 and B2.

Parcel B1 is an approximately 1.1-acre building pad parcel, and Parcel B2 is an approximately 0.7-acre building pad parcel. Upon satisfaction of all applicable pre-disposition requirements set forth in this Agreement, the City shall enter into a Ground Lease with the Developer for each of Parcels B1 and B2 in the manner provided in Section 201.4. The City and Developer acknowledge and agree that the ground lease conveyances for Parcels B1 and B2 may occur at separate times.

The Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for development of Parcels B1 and B2, and shall design and construct a single-story commercial structure for

retail and/or restaurant use, together with related private landscaping, on each of Parcels B1 and B2 in accordance with the Project Approvals. The combined square footage of the two commercial structures on Parcels B1 and B2 shall not exceed 12,000 square feet; provided, however, that the combined square footage of the two commercial structures on Parcels B1 and B2 may exceed 12,000 square feet if there is a corresponding reduction in the square footage of the commercial structure on Parcel C1, such that the combined square footage of all the commercial structures on Parcels B1, B2 and C1 does not exceed 22,000 square feet. The use of the commercial structures shall be oriented to water-related and recreational uses, including a possible use of the structure on Parcel B1 for the sale and rental of recreational equipment, and a possible full-service restaurant use for the structure on Parcel B2.

Parcel B1 and the development thereon shall be entitled to parking rights and easements with respect to the parking to be provided on Parcels E and F and related parking areas in accordance with the Parcel E/F REA, as further described in Section II.C.5 below. Parcel B2 and the development thereon shall be entitled to parking rights and easements with respect to the parking to be provided on Parcel C2 in accordance with the Parcel C2 REA, as further described in Section II.C.2 below.

2. Developer Parcel C1.

Parcel C1 is an approximately 0.5-acre building pad parcel. Upon satisfaction of all applicable pre-disposition requirements set forth in this Agreement, the City shall enter into a Ground Lease with the Developer for Parcel C1 in the manner provided in Section 201.4.

The Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for development of Parcel C1, and shall design and construct a single-story commercial structure for water-oriented commercial use, together with related private landscaping, within Parcel C1 in accordance with the Project Approvals. The square footage of such commercial structure on Parcel C1 shall not exceed 10,000 square feet; provided, however, that the square footage of the commercial structure on Parcel C1 may exceed 10,000 square feet if there is a corresponding reduction in the combined square footage of the commercial structures on Parcels B1 and B2, such that the combined square footage of all the commercial structures on Parcels B1, B2, and C1 does not exceed 22,000 square feet. Permitted uses on Parcel C1 shall include marina-serving retail, sale and rental of recreational equipment, a full-service restaurant, and other water-oriented uses.

Parcel C1 and the development thereon shall be entitled to parking rights and easements with respect to the parking to be provided on Parcel C2 in accordance with the Parcel C2 REA, as further described in Section II.C.2 below.

C. Public Facilities and Improvements

The following City Parcels and associated public improvements shall be developed in accordance with the following general terms and conditions.

1. Harbor Way.

The Harbor Way Parcel is an approximately 2.3-acre parcel to be owned by the City as the right-of-way for the relocated and realigned Harbor Way, a public street. Without cost to the Developer and in a manner consistent with approved vesting tentative map for the Northern Waterfront Area, the City shall:

a. abandon those portions of the current Harbor Way right-of-way that will no longer comprise a portion of the realigned Harbor Way;

b. contribute those portions of any property owned by the City that are needed as right-of-way for the realigned Harbor Way and obtain clearance of any encumbrances from such property that may prevent or impair development and use of Harbor Way as contemplated by this Agreement and the Project Approvals; and

c. obtain title to any portions of the right-of-way for the realigned Harbor Way not currently owned by the City, clear of any encumbrances that may prevent or impair development and use of Harbor Way as contemplated by this Agreement and the Project Approvals.

The Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3 of the Amended DDA), shall design and construct street and utility improvements to cause the relocation and realignment of the public street and utilities to the area within the right-of-way of the Harbor Way Parcel, together with reconstruction of the intersection of such realigned Harbor Way with Mare Island Way, in accordance with the Project Approvals. The Developer shall bear no costs or expenses with respect to acquisition of the Harbor Way Parcel.

2. Parcel C2.

Parcel C2 is an approximately 1.1-acre parcel to be owned by the City to serve as public parking lot between the commercial pad developments on Parcels B2 and C1. The Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall design and reconstruct a surface parking lot and access driveway within Parcel C2 in accordance with the Project Approvals.

By Operating Memorandum, the City and the Developer shall agree upon the form of a reciprocal easement agreement to be executed and recorded against Parcels B2, C1, and C2 at the time of closing of the ground lease conveyance for the first to be conveyed of Parcels B2 or C1 (the "Parcel C2 REA"). Among other commercially reasonable terms, the Parcel C2 REA shall grant parking and access rights and easements over Parcel C2 and the

improvement thereon to the tenants, subtenants, employees, occupants, patrons and other users of Parcels B2 and C1 and the improvements thereon, in order to make the private development and use of Parcels B2 and C1 commercially feasible. The Parcel C2 REA shall also grant such parking rights and easements over Parcel C2 and the improvements thereon to the users and tenants of the adjacent City Marina. In preparing the Parcel C2 REA, the City and the Developer shall reasonably cooperate with the tenants of the adjacent City Marina who will also be benefited by the Parcel C2 REA.

The Parcel C2 REA shall provide for the Developer or the tenants of the improvements on Parcels B2 and C1 to pay to the LLMD (as described and defined in Section I.D of the Method of Financing (Attachment No. 6)) common area maintenance charges to cover a portion of the costs of operation and maintenance of the Parcel C2 parking lot commensurate with the portion of the overall benefit of such parking lot received by Parcel B2 and Parcel C1, respectively, in relation to all users of such parking lot. The City or the LLMD (as described and defined in Section I.D of the Method of Financing (Attachment No. 6)) shall be responsible for the operation and maintenance of the improvements on Parcel C2.

If the City and the Developer are unable to agree upon the form of the Parcel C2 REA by the time the Developer is otherwise entitled to conveyance of the ground leasehold interest for the first to be developed of Parcels B2 or C1, then either the City and the Developer may submit the matter for arbitration in accordance with the provisions of Section 706 to determine the form of the Parcel C2 REA consistent with the terms of this Section II.C.2.

3. Parcel D1.

Parcel D1 is an approximately 4.0-acre parcel to be owned by the City to serve as a public park (sometimes referred to as the "Promenade Park") for the Northern Waterfront Area (and the entire Vallejo community) on the west side of Harbor Way adjacent to the waterfront. Attachment No. 4-1F provides a conceptual plan for the Promenade Park on Parcel D1, which is subject to review and refinement pursuant to the public design process described below.

The Developer, at its cost (subject to the limitation set forth below) and in accordance with the Schedule of Performance (Attachment No. 3), shall construct the Promenade Park on Parcel D1 and related public park and open space improvements in accordance with the Project Approvals, and in accordance with a design for such park and related open spaces to be developed as follows:

a. The City shall conduct a public participation process, and from such public participation process shall prepare a conceptual design (the "Conceptual Design") for public park and open space improvements on Parcel D1 and the public promenade along the waterfront within the Northern Waterfront Area (collectively, the "Northern Waterfront Public Park and Open Space Improvements"). As used herein, the term "Northern Waterfront Public Park and Open Space Improvements" shall consist of: (i) the Promenade Park improvements on Parcel D1; (ii) the Mare Island Causeway Underpass Pathway Improvements, as further described in Section II.A.2 above; (iii) the multipurpose switchback trail ramp providing direct

access between the southern sidewalk of Mare Island Causeway and the existing promenade/trail along the water's edge, as further provided in the subsection entitled "Multi-purpose Trail Ramp from Causeway to Promenade Extension" within Section III.D.2.3.4.A of the Waterfront Design Guidelines accompanying the Planned Development Master Plan; and (iv) such other public park and open space improvements and features in the vicinity of the water's edge along the Northern Waterfront Area as may be included in the Conceptual Design. As used herein, the term "Northern Waterfront Public Park and Open Space Improvements" does not include the Wetland Park improvements as further described in Section II.A.3 above. At the time it completes the Conceptual Design, the City, in cooperation with the Developer, shall also prepare an estimated budget for performance of the design tasks described in this subsection a. and subsection b. below, and for actual construction of the Northern Waterfront Public Park and Open Space Improvements in accordance with such Conceptual Design (the "Preliminary Budget").

b. Based on the Conceptual Design, the Developer shall prepare, for approval by the City, detailed plans and specifications (the "Detailed Plans") and a detailed cost estimate (the "Construction Cost Estimate"), including a reasonable construction contingency, for the construction of the Northern Waterfront Public Park and Open Space Improvements.

c. The City shall approve the Detailed Plans if they are materially consistent with the Concept Design and if the construction cost set forth in the Construction Cost Estimate, together with the costs incurred for performance of the tasks described in subsections a. and b. above (collectively, the "Design/Construction Costs"), do not exceed the total amount set forth in the Preliminary Budget. If the Detailed Plans are materially consistent with the Concept Design, but the Design/Construction Costs exceed the total amount set forth in the Preliminary Budget, the City, in consultation with the Developer, shall either approve the Detailed Plans notwithstanding such excess cost or specify modifications to the Detailed Plans (the "Modified Detailed Plans") that will enable the Design/Construction Costs to be within the total amount of the Preliminary Budget, or such other total amount as is then acceptable to the City, in consultation with the Developer.

If the City and the Developer are unable to agree upon the form of mutually acceptable Design Plans or Modified Design Plans within the time provided in the Schedule of Performance (Attachment No. 3), then either party may submit the matter for arbitration in accordance with the provisions of Section 706 to determine the form of the Design Plans or Modified Design Plans consistent with the terms of this Section II.C.3.

The Developer shall construct the Northern Waterfront Public Park and Open Space Improvements on Parcel D1 (and other applicable parcels and areas within the Northern Waterfront Area) in accordance with the Design Plans or the Modified Design Plans approved by the City, and shall pay, when due, the soft and hard costs of design and construction of the Northern Waterfront Public Park and Open Space Improvements on Parcel D1 (and other applicable parcels and areas within the Northern Waterfront Area), including the design tasks described in subsections a. and b. above; provided, however, that the maximum amount payable by the Developer for the design and construction of the Northern Waterfront Public Park and Open Space Improvements on Parcel D1 and other applicable parcels and areas within the Northern Waterfront Area shall be ONE MILLION SIX HUNDRED TWENTY-NINE

THOUSAND ONE HUNDRED FIFTY DOLLARS ($1,629,150). The amount actually expended by the Developer for this purpose, as reviewed and approved by the City, is referred to as the "Developer's Northern Waterfront Public Park and Open Space Contribution." The City shall pay, when due, any costs of design and construction of the Northern Waterfront Public Park and Open Space Improvements on Parcel D1 (and other applicable parcels and areas within the Northern Waterfront Area) in excess of the Developer's Northern Waterfront Public Park and Open Space Contribution.

The City or the LLMD (as described and defined in Section I.D of the Method of Financing (Attachment No. 6)) shall be responsible for the ongoing operation and maintenance of the improvements on Parcel D1.

4. Parcel D2.

Parcel D2 is an approximately 4.0-acre parcel to be owned by the City and developed by the Developer to serve as the Wetland Park, as fully set forth in Section II.A.3 above.

The City or the LLMD (as described and defined in Section I.D of the Method of Financing (Attachment No. 6)) shall be responsible for the ongoing operation and maintenance of the improvements on Parcel D2, as further described in Section II.A.3.

5. Parcel E, Parcel F, and Related Parking Areas.

Parcel E is an approximately 0.6-acre parcel and Parcel F (formerly known as "Jazz Festival Green") is an approximately 0.8-acre parcel to be owned by the City to serve as a public parking lot in the vicinity of the commercial pad development on Parcel B1 and the Promenade Park on Parcel D1. The Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for, and shall design and construct or reconstruct, as applicable, a surface parking lot and access driveway within Parcel E and Parcel F in accordance with the Project Approvals.

In order to facilitate the reconfiguration of parking in the Northern Waterfront Area west of Harbor Way generally in the manner shown on Attachment No. 4-1A, the City may seek lease amendments (the "Parking-Related Lease Amendments") with Zio Fraedo's, the Sardine Can, and other tenants on the parcels north of Parcel F (the "Related Parking Areas"). The parties cannot predict whether the Parking-Related Lease Amendments will be obtained. Failure to obtain such Parking-Related Lease Amendments shall not be grounds for reducing the size of the Promenade Park on Parcel D1 or the Wetland Park on Parcel D2. If the Parking-Related Lease Amendments are obtained by the City, the Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for, and shall resurface and re-stripe the parking lots and any access driveway(s) within the Related Parking Areas in a manner generally consistent with the reconfiguration of parking on such Related Parking Areas shown in Attachment No. 4-1A.

By Operating Memorandum, the City and the Developer shall agree upon the form of a reciprocal easement agreement to be executed and recorded against Parcels B1, D1, E, F and the Related Parking Areas (if the Parking-Related Lease Amendments are obtained) at the time of closing of the ground lease conveyance for Parcel B1 (the "Parcel E/F REA"). Among other commercially reasonable terms, the Parcel E/F REA shall grant parking and access rights and easements over Parcels E and F (and the Related Parking Areas if the Parking-Related Lease Amendments are obtained), and the improvements thereon to the tenants, subtenants, employees, occupants, patrons and other users of Parcel B1 and the improvements thereon, in order to make the private development and use of Parcel B1 commercially feasible. The Parcel E/F REA shall also grant such parking rights and easements to the users and tenants of the adjacent City Marina. In preparing the Parcel E/F REA, the City and the Developer shall reasonably cooperate with the tenants of the adjacent City Marina who will also be benefited by the Parcel E/F REA.

The Parcel E/F REA shall provide for the Developer or the tenants of the improvements on Parcel B1 to pay to the LLMD (as described and defined in Section I.D of the Method of Financing (Attachment No. 6)) common area maintenance charges to cover a portion of the costs of operation and maintenance of the parking lot on Parcels E and F (and the Related Parking Areas if the Parking-Related Lease Amendments are obtained) commensurate with the portion of the overall benefit of such parking lot received by Parcel B1 in relation to all users of such parking lot. The City or the LLMD (as described and defined in Section I.D of the Method of Financing (Attachment No. 6)) shall be responsible for the operation and maintenance of the improvements on Parcels E and F (and the Related Parking Areas if the Parking-Related Lease Amendments are obtained)

If the City and the Developer are unable to agree upon the form of the Parcel E/F REA by the time the Developer is otherwise entitled to conveyance of the ground leasehold interest for Parcels B1, then either the City or the Developer may submit the matter for arbitration in accordance with the provisions of Section 706 to determine the form of the Parcel E/F REA consistent with the terms of this Section II.B.5.

D. Area-Wide Actions.

The following additional terms shall apply to the development of the Northern Waterfront Area pursuant to this Agreement.

1. State Lands Commission Action.

A small portion of Parcel A, in the vicinity of Mare Island Way and Mare Island Causeway, is within the boundary of the current State tidelands public trust administered by the SLC. While the tidelands public trust area within Parcel A encroaches only on land to be devoted to private streets and landscaped open space (and does not affect land intended for residential units), the City and the Developer desire to free the entirety of Parcel A from such tidelands public trust designation. To that end, the City, in cooperation with the Developer and at the Developer's cost, shall perform the following actions, within the time set forth in the Schedule of Performance (Attachment No. 3), to obtain SLC approval of a minor amendment to

the existing settlement and exchange agreement with the SLC (the "Parcel A Exchange Agreement Amendment"), whereby in exchange for the release of public trust designation from Parcel A, the City will make available for public trust designation a greater amount of land to the west of Parcel A (including portions of Parcel D1 that are to be developed as the Promenade Park and open space, as described in Section II.C.3 above):

a. Preparation of a proposed Parcel A Exchange Agreement Amendment, and necessary documentation, including an appraisal, legal descriptions of the proposed exchange properties, and other documents, to support City Council and SLC approval;

b. Presentation of the proposed Parcel A Exchange Agreement Amendment and supporting documentation to the City Council for consideration of approval; and

c. If approved by the City Council, presentation of the proposed Parcel A Exchange Agreement Amendment and supporting documentation to the SLC for consideration of approval.

2. Bay Conservation and Development Commission Approvals.

It is anticipated that the private and public development of Northern Waterfront Area within BCDC jurisdiction may require minor administrative amendments to existing BCDC development permits. In accordance with the Schedule of Performance (Attachment No. 3), and at the Developer's cost, the City and the Developer shall cooperate to apply for and obtain any administrative amendments required from BCDC with respect to the applicable current BCDC development permits for the Northern Waterfront Area.

Without limiting the generality of the foregoing paragraph, the City and the Developer acknowledge that the City and the Developer may be required to seek an amendment of BCDC permit no. 1-86, as amended through Amendment No. 11, in order to accommodate a reconfiguration of the parking in the Northern Waterfront Area generally in the manner shown on Attachment No. 4-1A. The City and the Developer shall work cooperatively and in good faith to urge BCDC to agree to the reduction in parking required by the BCDC permit. The City and the Developer cannot predict whether any required amendments to BCDC permit no. 1-86 will be obtained. Failure to obtain such amendments shall not be grounds for reducing the size of the Wetland Park on Parcel D2 or the Promenade Park on Parcel D1.

3. Mare Island Causeway and Mare Island Way Widening Improvements.

The City shall implement the applicable requirements of the Mare Island Specific Plan (as may be amended), the Development Agreement (as may be amended) between the City and Lennar Mare Island, LLC ("Lennar"), and related environmental mitigation measures (collectively, the "Lennar Project Documents"), in turn to cause Lennar to complete the design and construction of certain improvements related to the widening of Mare Island Causeway and Mare Island Way (the "Widening Improvements") at the time and in the manner set forth in the Lennar Project Documents. The City shall assure that the Widening

Improvements, and the right-of-way required in connection therewith, shall not encroach across the intended boundary line for Parcel A adjacent to Mare Island Causeway and Mare Island Way as set forth in the boundary line diagram contained in Attachment No. 8 of this Agreement.

4. Parking Lots Landscaping.

The parking lots in the Northern Waterfront Area shall include landscaping as required by the Project Approvals.

E. Independent Obligation.

As more fully set forth in Section 510, the Developer's obligations with respect to purchase of the Developer Parcels and development of private and public improvements in the Northern Waterfront Area shall be separate and independent of the performance by the City of any obligations, or the satisfaction of any other conditions to performance, under this Agreement with respect to the conveyance of property and development of improvements within the Central Waterfront Area; and neither a failure by the City to perform its obligations, or the failure of any other conditions of performance, with respect to the conveyance of property and development of improvements within the Central Waterfront Area shall relieve the Developer of its obligations with respect to the conveyance of property and development of improvements within the Northern Waterfront Area (upon satisfaction of all other conditions set forth in this Agreement for purchase of the Developer Parcels and development of private and public improvements in the Northern Waterfront Area), or serve as a basis for termination of this Agreement by the Developer with respect to the purchase of the Developer Parcels and development of private and public improvements in the Northern Waterfront Area.

III. CENTRAL WATERFRONT

Public and private redevelopment of the Central Waterfront Area under this Agreement will be undertaken to create Vallejo Station as a vibrant multi-modal transit center, to provide high intensity residential and commercial uses in the immediate vicinity of Vallejo Station, and to establish a strong, pedestrian-oriented linkage between the Downtown area and the Central Waterfront.

Section III.A below sets forth the scope of development for Parcel L (the core of the Vallejo Station development), while Section III.B addresses the scope of development for Parcel J. Section III.C below outlines the scope of development for the public parcels and improvements in the Central Waterfront Area. Following are standards and procedures of general applicability to the design and development of various parcels and improvements in the Central Waterfront Area.

The architecture in the Central Waterfront Area must be sensitive to the pedestrian scale and the nature of the waterfront experience. People arriving on the ferry, walking, or driving in from the surrounding areas should see highly articulated and well-defined architecture spanning the Mare Island Way street frontage from Capitol Street to Maine Street. Georgia Street is the

retail commercial spine of the downtown and special care should be taken in defining the architectural treatment of this gateway to give it the emphasis it needs while maintaining an inviting and attractive appeal to the pedestrian.

Articulation and terracing of building massing shall be the primary ways to achieve the necessary architectural variation in massing. Emphasis shall be placed on designing highly articulated (both horizontally and vertically) and well-detailed buildings fronting all streets in the Central Waterfront Area. The primary goal of terracing and articulation is to avoid blank, minimally articulated building walls fronting Mare Island Way, Georgia Street, Santa Clara Street, and Maine Street and to avoid building facades on Mare Island Way that have only one continuous minimum setback without terracing of the building massing. This articulation shall apply to all levels fronting on all streets in the Central Waterfront Area, regardless of building height. The articulation and terracing in the building massing should be large enough to allow the residential or office uses on the upper floors to use this space as an outdoor terrace when appropriate for the associated use, in order to increase activity along these important building facades. Curvilinear buildings are not appropriate in the Central Waterfront Area, although curvilinear design features such as turrets and window details are acceptable. Attachment No. 4-2A depicts examples of developments that reflect this type of articulation and terracing.

Building heights generally shall step down in a westerly direction from Santa Clara Street to Mare Island Way, as depicted on Attachments No. 4-2B, 2C, 2D, and 2F, and as fully described in the Project Approvals (with particular reference to the Planned Development Master Plan and Waterfront Design Guidelines). Specific standards and requirements regarding building height limits (and the measurement of such height limits), as well as building setbacks, shall be those set forth in the Project Approvals (with particular reference to the Planned Development Master Plan and the Waterfront Design Guidelines).

The Unit Plan applications submitted for Parcel J and Parcel L shall each provide that no less than 20 percent of such parcel's surface area shall be public or private open space. Public and private open space shall include sidewalks, public plazas, public and private landscaped areas, private courtyards, pedestrian alleys, or such other equivalent spaces.

Prior to the submittal by the Developer of any Unit Plan application(s) for Parcels J and L, and in consultation with the City, the Developer shall sponsor, advertise (in the Vallejo *Times Herald*), and provide reasonable and appropriate public notice of a minimum of two (2) public community design workshops regarding architecture, including the L3 Public Garage (commonly referred to as the Vallejo Station garage) entrances. The Coalition shall be provided with mailed notice of these meetings in accordance with the Settlement Agreement.

To support long-term City financing of the L3 Public Garage (as described in Section III.A.3 below), the Schedule of Performance (Attachment No. 3) requires the Developer to acquire the first-to-be developed L Developer Parcel not later than twelve (12) months after commencement of substantial construction of the L3 Public Garage.

As used below in connection with retail/commercial uses for Parcels J and L, the following terms have the following meanings:

"Category 1 Uses" means those permitted and conditionally permitted uses set forth in the column entitled "Parcel J1 (Frontage on Festival Green) and Parcel L2" in Table 3 of the Planned Development Master Plan (as amended by the Settlement-Related Amendments).

"Category 2 Uses" means those permitted and conditionally permitted uses set forth in the column entitled "Parcels L1 and L4" in Table 3 of the Planned Development Master Plan (as amended by the Settlement-Related Amendments).

A. Parcel L (Vallejo Station)

The L Developer Parcels (Parcels L1, L2, and L4) shall be conveyed by the City to the Developer in fee in accordance with the terms of this Agreement, and shall be developed by the Developer in accordance with the following general terms and conditions. In addition, Parcels L3 and L5 shall be owned by the City and developed by the City in accordance with the following general terms and conditions.

The City evaluated the feasibility of alternative strategies and opportunities for implementation of the Vallejo Station project on Parcel L, and determined that a two-phase approach for construction of the L3 Public Garage will be implemented. The City and the Developer shall consider in good faith any proposed change in the scope, timing, phasing and funding of development of Vallejo Station resulting from such determination, with the objective of achieving the most timely and cost effective development of Vallejo Station that accomplishes as nearly as possible the planning and financial objectives of the parties as reflected in the current scope, timing, phasing and funding of such development. Any mutually acceptable modifications to the scope, timing, phasing and/or funding of the Vallejo Station project on Parcel L shall be set forth in a mutually acceptable Operating Memorandum executed in accordance with Section 709 and, as needed, in a mutually acceptable amendment to the Planned Development Master Plan (including accompanying Waterfront Design Guidelines).

1. Parcel L1.

Parcel L1 is an approximately 1.9 acre parcel. Upon satisfaction of all applicable pre-disposition requirements set forth in this Agreement, the City shall convey fee title to Parcel L1 to the Developer for the Purchase Price set forth in Section 201.6.

The Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for the development of Parcel L1, and shall design and construct a mixed-use residential/commercial structure on Parcel L1 in accordance with the Project Approvals. The Parcel L1 improvements shall consist of up to 140-condominium units as flats, approximately 241 parking spaces in a two-level garage, and up to 14,000 square feet of retail commercial space fronting Mare Island Way at the Maine Street intersection.

Uses on the ground floor of the building on Parcel L1 fronting on Mare Island Way shall be Category 2 Uses.

2. Parcel L2.

Parcel L2 is also an approximately 1.9 acre parcel. Upon satisfaction of all applicable pre-disposition requirements set forth in this Agreement, the City shall convey fee title to Parcel L2 to the Developer for the Purchase Price set forth in Section 201.6.

The Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for the development of Parcel L2, and shall design and construct a two and three-story office/commercial structure on Parcel L2 in accordance with the Project Approvals. The Parcel L2 improvements shall consist of up to 63,000 square feet of office/commercial space above one level of subterranean parking containing approximately 215 parking spaces.

Uses on the ground floor of Parcel L2 shall be Category 1 Uses.

At the corner of Mare Island Way and Georgia Street, a set back of the building on Parcel L2 shall be provided to create a public open space area of no less than 1,900 square feet (as depicted in Attachment No. 4- 2E), which may include outdoor seating.

3. Parcel L3.

Parcel L3 is a parcel of space with a footprint of approximately 4.6 acres occupying the lower levels of a vertical subdivision that will also include Parcels L4 and L5 (with a combined footprint of approximately 4.25 acres) at upper levels above the parking garage structure to be developed on Parcel L3 (the "L3 Public Garage", commonly referred to as the Vallejo Station Garage). Parcel L3 shall be owned and operated by the City.

The City, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for the development of the L3 Public Garage, and shall design and construct the L3 Public Garage within Parcel L3 in accordance with the Project Approvals and designs approved by the City. The L3 Public Garage shall consist of a two-level public parking structure containing approximately 1,190 parking spaces, related off-site public improvements, and support columns, utilities, and a podium deck to support the development of the public paseo and related public improvements atop the garage structure within vertical subdivision Parcel L5 (as further described in Section III.A.5 below).

If agreed by the City and the Developer pursuant to a Parcel L4 Operating Memorandum (as provided in Section III.A.4 below), or if independently elected by the City, the L3 Public Garage shall also contain support columns, utilities, and a podium deck (the "L3 Public Garage Support Facilities For Parcel L4") to support the private development contemplated within vertical subdivision Parcel L4 (as further described in Section III.A.4 below).

The City shall pay the costs of design and construction of the L3 Public Garage using Vallejo Station Funds and other City MOF Funds (as defined and described in Section I.E.1 of the Method of Financing (Attachment No. 6)), as necessary.

4. Parcel L4.

Parcel L4 is a parcel of space with a footprint of approximately 2.8 acres atop the podium deck of the L3 Public Garage. Parcel L4 will be a part of the vertical subdivision that will also include Parcels L3 and L5.

Within the time set forth in the Schedule of Performance (Attachment No. 3), the City and the Developer shall seek to negotiate and execute an Operating Memorandum in accordance with Section 709 (the "Parcel L4 Operating Memorandum") containing the following:

a. The precise dimensions of Parcels L3, L4, and L5, based on engineered plans prepared by the City for the L3 Public Garage and in sufficient detail to process a subdivision map establishing the vertical subdivision of Parcels L3, L4, and L5;

b. The procedures to be followed and the roles and responsibilities of the City and the Developer to accomplish the vertical subdivision creating Parcels L3, L4, and L5 in accordance with applicable legal requirements;

c. The form of a Reciprocal Easement and Joint Facilities Operation and Maintenance Agreement (the "Vallejo Station REA") granting to Parcel L4 necessary easement rights with respect to the L3 Public Garage Support Facilities For Parcel L4, and setting forth various joint and several construction, operation, maintenance and use rights and responsibilities with respect to the complex of interrelated structures to be developed on Parcels L3, L4, and L5; and

d. Such other matters as the City and the Developer mutually determine will facilitate the timely and cost effective construction, operation, maintenance and use of the complex of interrelated structures to be developed on Parcels L3, L4, and L5.

If, despite good faith efforts, the City and the Developer are unable to execute a mutually acceptable Parcel L4 Operating Memorandum within the allotted time, then:

e. The City may terminate this Agreement with respect to Parcel L4 only and the Developer shall have no further rights to acquire or develop Parcel L4;

f. Following termination of this Agreement with respect to Parcel L4, the City, at its discretion, may cause construction of the L3 Public Garage with or without the L3 Public Garage Support Facilities For Parcel L4; and

g. If the City does include the L3 Public Garage Support Facilities For Parcel L4, then it will be free to market and convey Parcel L4 at the time, in the manner, at

the price, and for such use (consistent with then applicable City land use standards and requirements) as the City may determine.

If the City and the Developer execute a Parcel L4 Operating Memorandum, then, upon satisfaction of all applicable pre-disposition requirements set forth in this Agreement, the City shall convey fee title to Parcel L4 to the Developer for the Purchase Price set forth in Section 201.6. In connection with such conveyance, the City and the Developer shall cause recordation of the Vallejo Station REA in substantially the form provided in the Parcel L4 Operating Memorandum.

Upon acquisition, the Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for the development of Parcel L4, and shall design and construct within Parcel L4 a mixed-use structure atop the L3 Public Garage at the level of Santa Clara Street. The Parcel L4 improvements shall be designed and constructed in accordance with the Project Approvals and any applicable terms of the Parcel L4 Operating Memorandum. The Parcel L4 improvements shall consist of a two and four story building containing the following elements:

(1) up to approximately 6,000 square feet of retail/commercial space on the first level of the building along the frontage of Santa Clara Street;

(2) up to approximately 14,000 square feet of retail/commercial space in an arcade area fronting on Georgia Street (the "Arcade Area");

(3) an additional 200,000 square foot hotel/restaurant/conference center complex above the first level of the building, including a hotel of up to 200 rooms on the second to fourth levels (the "Hotel Improvements"), and a two-level restaurant and conference center facility of up to 32,000 square feet; and

(4) a private parking garage on the first two levels of the building containing approximately 172 spaces to serve the uses described in items (1) and (2) above.

Prior to the submission of a Unit Plan application for the Hotel Improvements, the Developer shall submit to the City a description of the features of the Hotel Improvements and a market and feasibility study, prepared by an expert consultant, to identify the feasible hotel/conference market for the site and the amenities necessary to attract a high quality hotel operator. The Developer shall provide notice to the Coalition of the process for the selection of the consultant and provide an opportunity for pre-selection comments from the Coalition on the consultant. The consultant selected shall have experience in hotel/conference center marketing and feasibility studies. The study shall be presented to the City Council at a regularly noticed public hearing. A copy of the study shall be provided to the Coalition as specified in the Settlement Agreement.

Upon completion of the Hotel Improvements, the Developer shall have the option to sell or lease Parcel L4 (or a portion thereof) to a hotel operator (the "Hotel Operator") and, at the Developer's election, to a separate operator or operators for the restaurant and/or

conference center who shall thereafter own and/or operate and maintain the Parcel L4 improvements (or the applicable portion thereof) in accordance with this Agreement and the provision of the Hotel Operating Agreement (and the Restaurant Operating Agreement and/or Conference Center Operating Agreement, as applicable) to be entered into pursuant to Section 705 of this Agreement. The Developer may also Transfer Parcel L4 (or subdivided portions thereof and the improvements thereon) as otherwise permitted in this Agreement for Transfers of the Developer Parcels (including procurement of City approval where such approval is required under applicable provisions of this Agreement).

As further described below, uses in the Arcade Area shall be Category 1 Uses or Category 2 Uses. The Developer shall, for a time period ending no earlier than twelve (12) months from the date of completion of the retail building shell, use good faith and commercially reasonable efforts to lease the Arcade Area space to tenants occupying their space for Category 1 Uses ("Category 1 Tenants"). If at the expiration of this twelve (12) month period, the Developer has been unable to fully lease the available Arcade Area space to Category 1 Tenants, the Developer shall be free to pursue tenants and to lease any remaining unleased Arcade Area space to tenants occupying their space for Category 2 Uses.

Uses on the first level of the building on Parcel L4 along the frontage of Santa Clara Street shall be Category 2 Uses.

5. Parcel L5.

Parcel L5 is a parcel of space with a footprint of approximately 1.45 acres atop the podium deck of the L3 Public Garage. Parcel L5 will be a part of the vertical subdivision that will also include Parcels L3 and L4. Parcel L5 will be owned and operated by the City.

The City, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for the development of Parcel L5, and shall design and construct on Parcel L5 a public paseo connecting the Bus Transfer Station to be developed on Parcel O with the Ferry Facility, together with surface parking spaces and related landscaping and amenities. The Parcel L5 improvements shall be designed and constructed in accordance with the Project Approvals and designs approved by the City. The City shall pay the costs of design and construction of the Parcel L5 improvements using Vallejo Station Funds and other City MOF Funds (as defined and described in Section I.E.1 of the Method of Financing (Attachment No. 6)), as necessary.

The City and the Developer acknowledge that, in accordance with the Settlement Agreement, the City shall delay installation of the planned northern row of parking along the pedestrian paseo within Parcel L5 until, in the City's determination, the conference center or other uses in "Zone Two" (as such zone is shown in Attachment No. 4-2D) require such additional parking spaces. Notwithstanding such delay, the City shall be responsible for the cost of installing such parking spaces, as required above. Notwithstanding the above, in the event a phased approach is adopted for the construction of the L3 Public Garage, the City may

reconfigure the parking adjacent to the paseo, maintaining a minimum eighteen foot (18') pedestrian paseo, until the second phase of the L3 Public Garage construction is completed.

B. Parcel J.

The J Developer Subparcels (Parcels J1 and J2) shall be conveyed by the City to the Developer in fee in accordance with the terms of this Agreement, and shall be developed by the Developer in accordance with the following general terms and conditions.

Parcels J1 and J2 are parcels of approximately 2.7 acres and 4.1 acres, respectively. Upon satisfaction of all applicable pre-disposition requirements set forth in this Agreement, the City shall convey fee title to Parcels J1 and J2 to the Developer (either concurrently or at separate times as determined by the Developer) for the Purchase Price(s) set forth in Section 201.5.

The Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for the development of Parcels J1 and J2 and Civic Center Drive, and shall design and construct Civic Center Drive and a total of up to 286 residential units in two to four level buildings constructed on top of one story podium garage structures, half below and half above grade. The development of Parcel J will occur in two phases on the two J Developer Subparcels. The units will be stacked flat residential condominiums containing one, two, and three-bedrooms. The garage structures will provide off-street secure, resident parking for approximately 516 vehicles, as well as residential unit storage space, a utility room, stairwells, and elevator areas. The development will include extensive at-grade perimeter landscaping and private recreation and landscaping on the podium decks. Consistent with the Project Approvals, the development of Parcel J1 includes approximately 25,000 square feet of ground floor Category 1 Uses fronting on the Mare Island Way and Festival Green edges of the parcel.

Prior to the Developer's submittal of any Unit Plan application for Parcel J, the Developer and the City shall study the possibility of removing the intersection of Civic Center Drive and Georgia Street. The City shall obtain an independent opinion from a qualified traffic engineer regarding whether the intersection's level of service (the "LOS") anticipated in the EIR for the Project can be maintained without the extension of Civic Center Drive through Festival Green to Georgia Street. The City shall provide notice to the Coalition of the process for the selection of the traffic engineer and provide for pre-selection comments from the Coalition on the traffic engineer proposed for selection. The City shall conduct a pre-study meeting to solicit comments from interested parties, including the Coalition, regarding the scope of the study. The Developer shall fund the cost of this study. In the event it is determined that such LOS cannot be maintained, and Civic Center Drive is to be extended through Festival Green to Georgia Street, the traffic engineering study also shall include an analysis of possible measures (such as removable bollards) to prevent bisecting the public park on the Festival Green Parcel and the adjacent pedestrian area during non-peak traffic times.

The City and the Developer acknowledge that Parcel J contains certain veteran's memorial plaques. The Developer shall coordinate with the City regarding the relocation of such plaques.

Notwithstanding the Schedule of Performance, the Developer, at the City's discretion, may acquire and develop Parcel J prior to completion of the L3 Public Garage, provided alternative parking for ferry users shall be provided for during construction of the L3 Public Garage.

C. Public Facilities and Improvements

The following City Parcels and associated public improvements shall be developed in accordance with the following general terms and conditions.

1. Parcel O (Bus Transfer Center).

Parcel O is an approximately 0.9-acre parcel. Parcel O will be owned and operated by the City as part of Vallejo Station.

The City, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for, and shall design and construct, a new Bus Transfer Center on Parcel O in accordance with the Project Approvals and designs approved by the City. The new Bus Transfer Center will include up to 12 bus bays, covered passenger waiting areas, seating, lighting, landscaping, and a 10,000 square foot transit office (including a ticket/pass office, a public information booth, and facilities for bus drivers). The City shall fund and perform any required site preparation and site remediation in connection with development of the new Bus Transfer Center. Also in connection with development of the new Bus Transfer Center, the City shall fund and cause reconfiguration of parking on nearby existing City Parking Lots F and G. The City shall pay the costs of design, site preparation/remediation, and construction of the new Bus Transfer Center improvements and related reconfigured public parking improvements using Vallejo Station Funds and other City MOF Funds (as defined and described in the Section I.E.1 of the Method of Financing (Attachment No. 6)), as necessary.

2. Other Transit-Related Improvements.

The City, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for, and shall design and construct, the following additional transit-related public improvements related to the Vallejo Station development (the "Other Transit-Related Improvements"):

a. Improvements to and expansion of the regional bus stops on Mare Island Way adjacent to the Ferry Facility; and

b. Improvement to and expansion of the existing pick-up/drop-off ("Kiss-and-Ride") area in the Kiss and Ride Parcel.

The Other Transit-Related Improvements shall be designed and constructed in accordance with the Project Approvals and designs approved by the City. The City shall fund and perform any required site preparation and site remediation in connection with provision of the Other Transit-Related Improvements. The City shall pay the costs of design, site preparation/remediation, and construction of the Other Transit Related Improvements using Vallejo Station Funds and other City MOF Funds (as defined and described in Section I.E.1 of the Method of Financing (Attachment No. 6)), as necessary.

3. Public Streets.

The City and the Developer acknowledge and agree that: (a) Capitol Street between Mare Island Way and Civic Center Drive has been fully improved pursuant to a separate disposition and development agreement (the "Parcel K DDA") between the RDA and CPC; and (b) the Developer has completed all of its obligations toward the improvements on the Georgia Street Parcel and the Georgia Street Dedication Parcel in accordance with the intended scope of development for such improvements, and all aspects of the Georgia Street extension improvements have been satisfactorily completed.

Except as otherwise provided below, the City, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for the development of, and shall design and construct, the following public street improvements (the "Central Waterfront Public Street Improvements"):

a. Modifications to Mare Island Way to complete the landscaped median and other sidewalk and crosswalk improvements (as part of the Vallejo Station development);

b. Reconfiguration of Maine Street between its intersection with Mare Island Way and Santa Clara Street from four travel lanes to three travel lanes, and extension of the northerly curb line approximately six feet to the south (as part of the Vallejo Station development); and

c. Extension of Capitol Street between Santa Clara Street and its current terminus at Civic Center Drive, including provision of on-street parallel parking (the "Capitol Street Second Segment").

The Central Waterfront Public Street Improvements shall be designed and constructed in accordance with the Project Approvals and designs approved by the City. The City shall fund and perform any required site preparation and site remediation in connection with provision of the Central Waterfront Public Street Improvements. The City shall pay the costs of design, site preparation/remediation, and construction of the Central Waterfront Public Street Improvements using Vallejo Station Funds and other City MOF Funds (as defined and described in Section I.E.1 of the Method of Financing (Attachment No. 6)), as necessary.

Notwithstanding the foregoing, the Developer shall be responsible for the design and construction of the Capitol Street Second Segment in accordance with design plans and specifications to be prepared by the Developer and approved by the City. The construction of the Capitol Street Second Segment shall be subject to all bidding requirements and prevailing wage requirements applicable to such improvements. The City shall be responsible for all costs directly associated with the design and construction of the Capitol Street Second Segment. The City shall use best efforts to obtain and make available all funding to pay for the Capitol Street Second Segment within a timeframe that will enable the Capitol Street Second Segment to be constructed by the date set forth in the Schedule of Performance (Attachment No. 3). Section III.D of the Method of Financing (Attachment No. 6) sets forth a process to be implemented by the City and the Developer in the event the City reasonably determines that it will not have sufficient City MOF Funds (as defined and described in Section I.E.1 of the Method of Financing) available within the necessary timeframe to complete construction of the City Hall Garage Required Elements (which include the Capitol Street Second Segment) by the date set forth in the Schedule of Performance. In no event shall the Developer be obligated to commence design and construction of the Capitol Street Second Segment until the City reasonably demonstrates the availability of sufficient City MOF Funds to pay all costs directly associated with such design and construction.

4. Public Parks and Open Spaces.

The City, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for the development of, and shall design and construct public park and open space improvements and amenities on, the following publicly-owned parcels in the Central Waterfront Area (the "Central Waterfront Public Parks and Open Space Improvements"):

a. The approximately 4.2-acre Existing Service Club Park Parcel;

b. The approximately 0.8-acre Existing Georgia Street Mitigation Parcel;

c. The approximately 1.8-acre Future Expansion Parcel;

d. The approximately 1.4-acre Independence Park Expansion Parcel;

e. The approximately 1.3-acre Existing Independence Park Parcel;

f. The approximately 2.3-acre State Farm Mitigation Independence Park Parcel;

g. The Ferry Facility Parcel;

h. The Kiss and Ride Parcel;

i. The approximately 0.6-acre Unity Plaza Parcel;

j. The approximately 0.9-acre Festival Green Parcel; and

k. The approximately 0.7-acre Capitol Street Open Space Parcel.

The Central Waterfront Public Parks and Open Space Improvements shall be designed and constructed in accordance with the Project Approvals and designs approved by the City. The City shall fund and perform any required site preparation and site remediation in connection with provision of the Central Waterfront Public Parks and Open Space Improvements. Also as part of the Central Waterfront Public Parks and Open Space Improvements, the City shall acquire the Wharf lease (within the Existing Service Club Park Parcel) and the Dentist Office lease (within the Independence Park Expansion Parcel), and shall design and construct public park and open space improvements on the parcels formerly encumbered by the Wharf lease and Dentist Office lease. The City shall pay the costs of design, site preparation/remediation, lease acquisition, and construction of the Central Waterfront Public Parks and Open Space Improvements using Vallejo Station Funds and other City MOF Funds (as defined and described in Section I.E.1 of the Method of Financing (Attachment No. 6)), as necessary.

The City or the LLMD (as described and defined in Section I.D of the Method of Financing (Attachment No. 6) shall be responsible for the ongoing operation and maintenance of the Central Waterfront Public Park and Open Space Improvements.

5. <u>City Hall Garage</u>.

In accordance with the Schedule of Performance (Attachment No. 3), the City shall obtain all necessary Project Approvals for the development of, and shall design and construct, a public parking structure (the "City Hall Garage") on the City Hall Parking Lot Parcel. The City Hall Garage shall be constructed in two phases as follows:

a. The "Phase I Element" will consist of approximately 400 parking spaces within two parking levels, one level below the grade of Santa Clara Street and one level at the grade of Santa Clara Street. The Phase I Element of the City Hall Garage will replace City Hall parking lost as a result of private development of Parcel J in the manner provided in Section III.B above.

b. The "Phase II Element" will consist of approximately 200 parking spaces within a third level to be constructed approximately 12 feet above the grade of Santa Clara Street. The Phase II Element of the City Hall Garage will serve parking demand for the Bay Link ferry service if and when a fourth ferry is placed in service.

The City Hall Parking Garage shall be designed and constructed in accordance with the Project Approvals and designs approved by the City. The City shall perform any required site preparation and site remediation in connection with construction of the City Hall Parking Garage. The City shall pay the costs of design, site preparation/ remediation, and

construction of the City Hall Garage in the manner set forth in the Section III. of the Method of Financing (Attachment No. 6).

IV. CONSTRUCTION MANAGEMENT

The City agrees that, upon a request by the Developer, the City will consider, on a case by case basis, approving Developer to act as construction manager for other portions of the public improvements elements of the Project; provided any such further authorizations shall be conditioned upon the City determining, in its reasonable judgment, that such authorization would be mutually beneficial to both parties, and the City's ability to make all appropriate findings with respect to such public improvements. To the extent the Developer acts as construction manager for any public improvements elements, such management activities shall be undertaken pursuant to an Operating Memorandum in accordance with Section 709 to be entered into between the City and Developer, in form and content satisfactory to the City, which shall provide for, among other things, that all work undertaken with respect to the public improvements shall be subject to a competitive bidding process approved by the City and shall comply with all applicable state labor provisions, and for monitoring of the work in progress and the costs of such work.

List of Attachments To Attachment No. 4

1A: Mariner's Cove Preliminary Site Plan

1B: Mariner's Cove Prototypical Architectural Level of Detail and Articulation

1C: Mariner's Cove Open Space Access Points

1D: Mariner's Cove Promenade Improvements Under Mare Island Causeway Bridge

1E: Mariner's Cove Conceptual Wetland Park Plan

1F: Mariner's Cove Conceptual Promenade Park Plan

2A: Central Waterfront Prototypical Architectural Level of Detail and Articulation

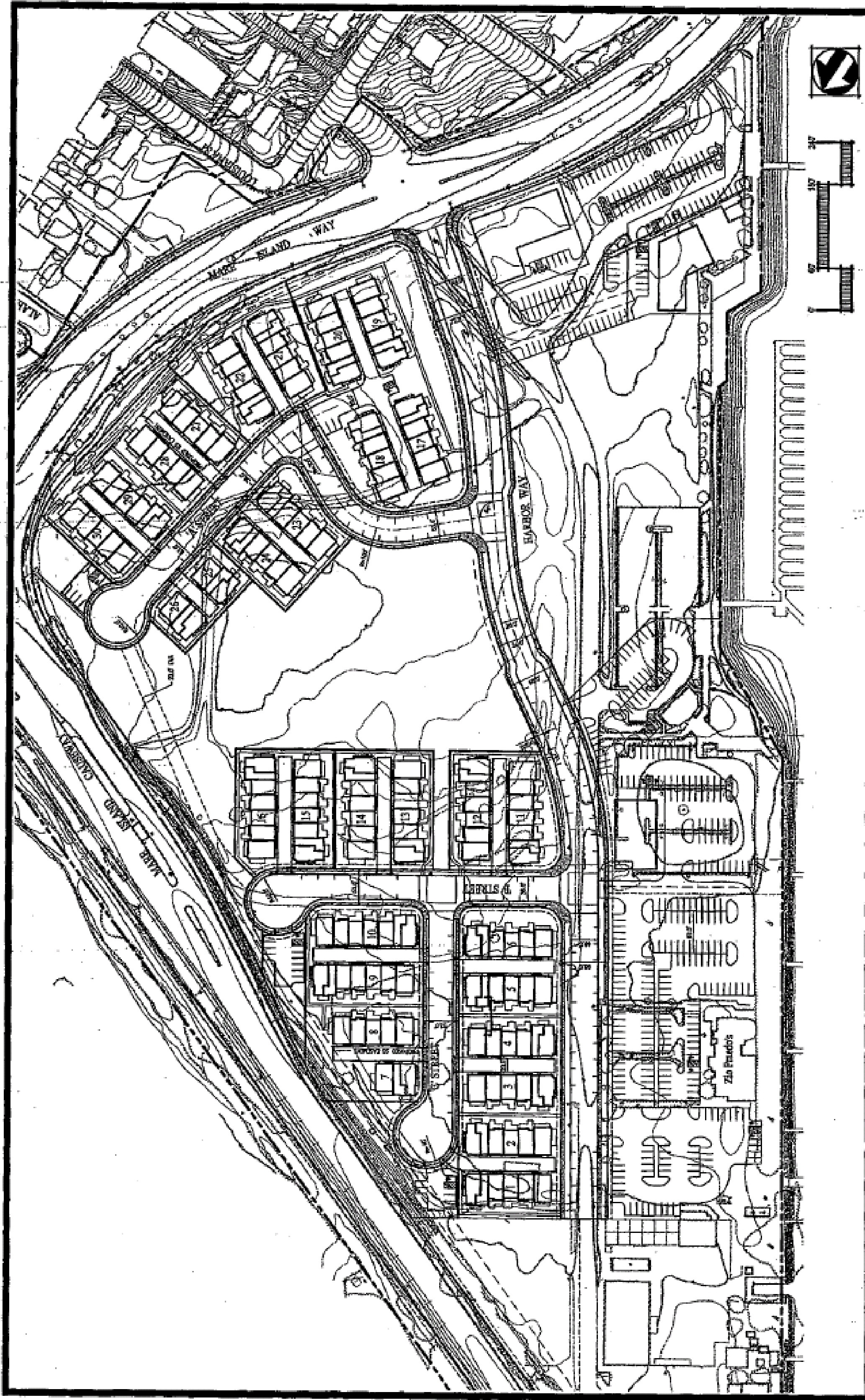
2B: Parcel L-Vallejo Station, Height Zone Diagram, Mare Island Way and Maine Street View

2C: Parcel L-Vallejo Station, Height Zone Diagram, Santa Clara and Georgia Street View

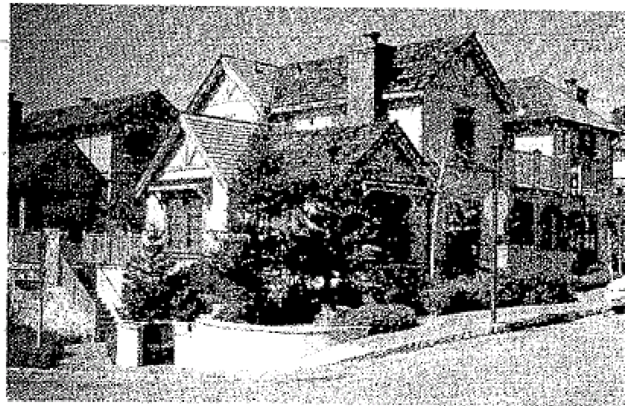
2D: Parcel L-Vallejo Station, Height Zone Diagram, Plan View

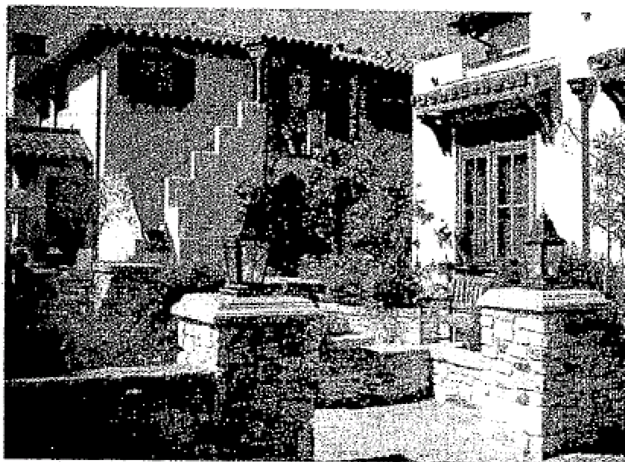
2E: Corner Plaza Diagram, Mare Island Way and Georgia Street

2F Prototypical Top Plate Location



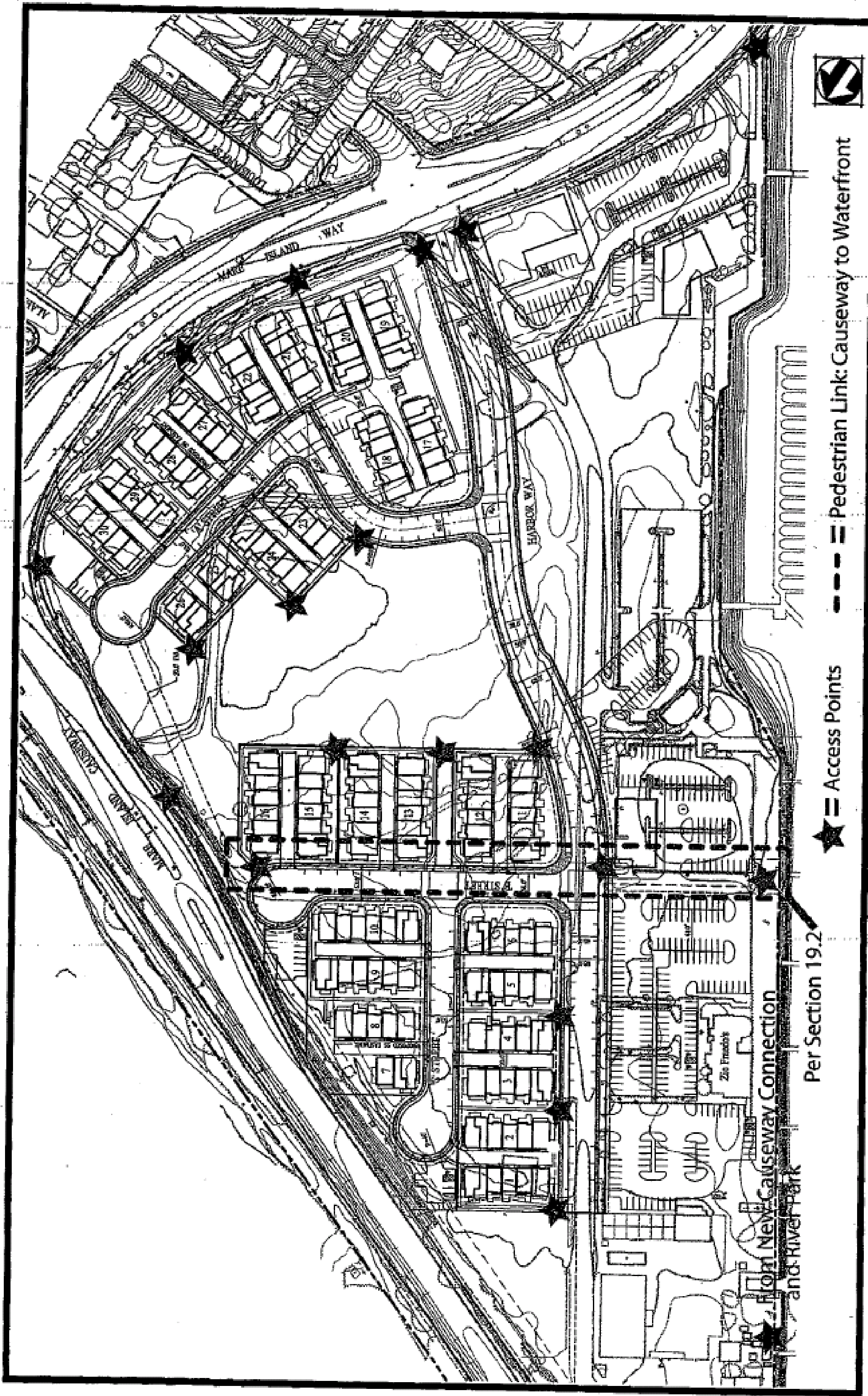
Attachment 1A
Mariner's Cove Preliminary Site Plan





Attachment 1B

Mariner's Cove Prototypical Architectural Level Of Detail And Articulation



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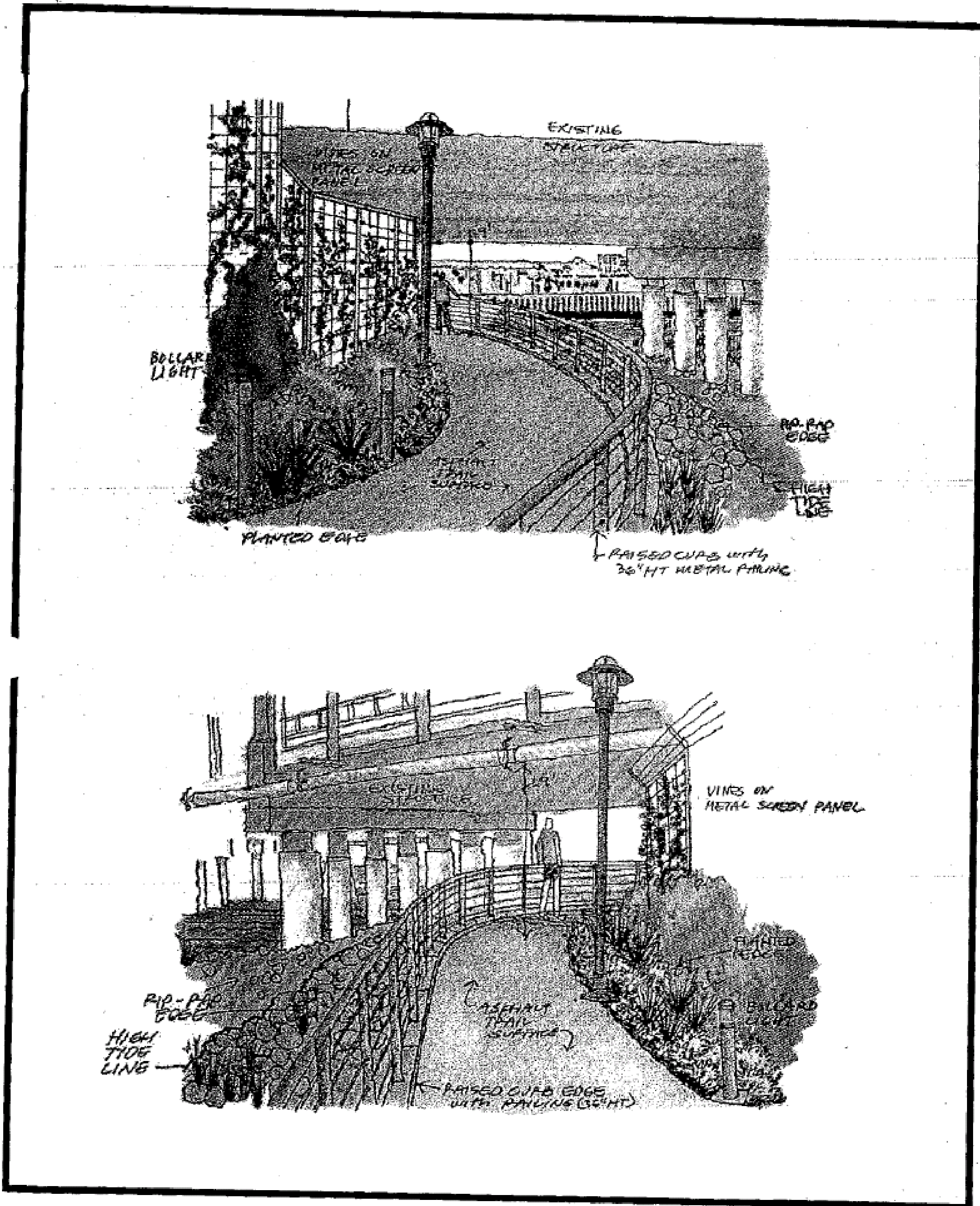
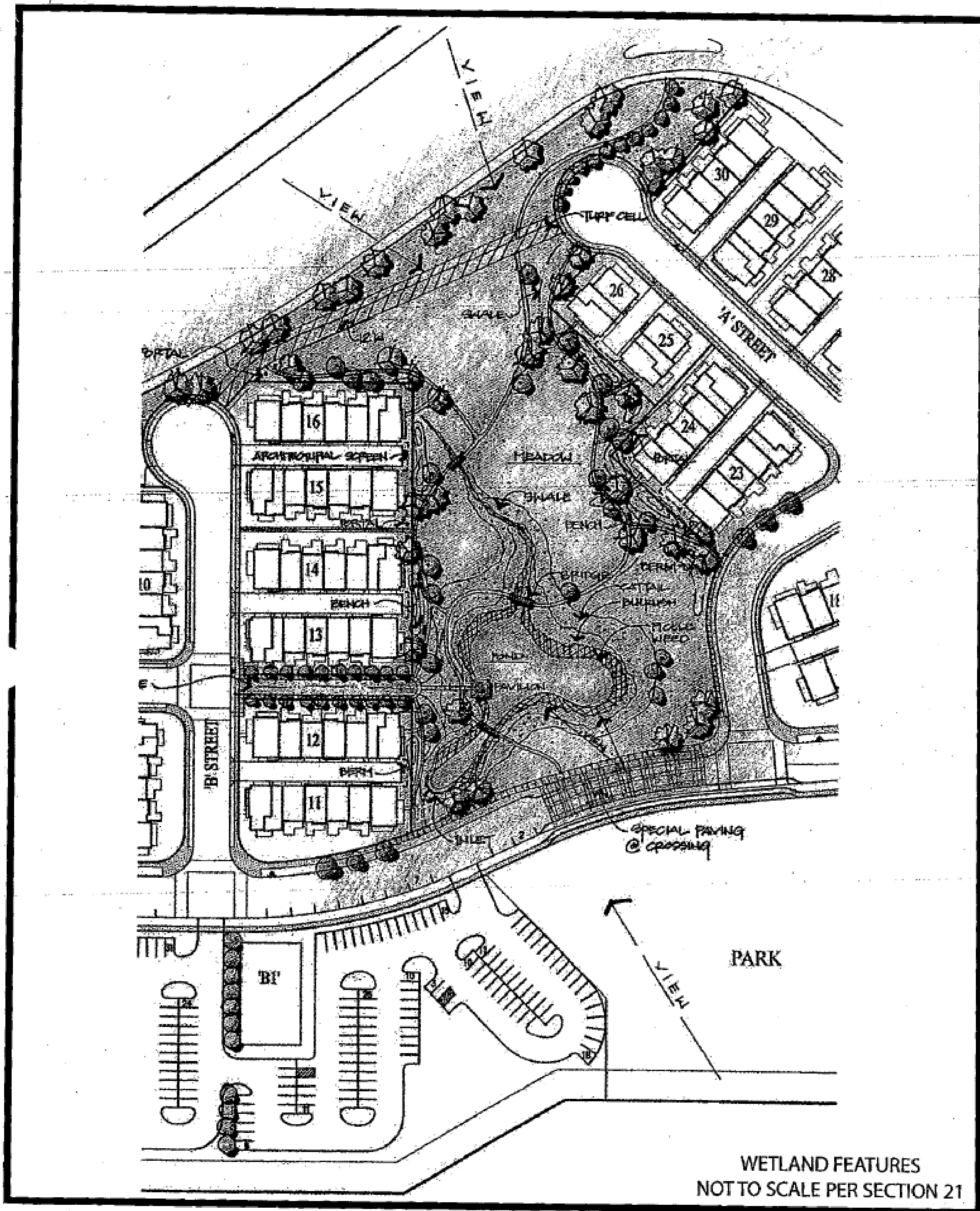
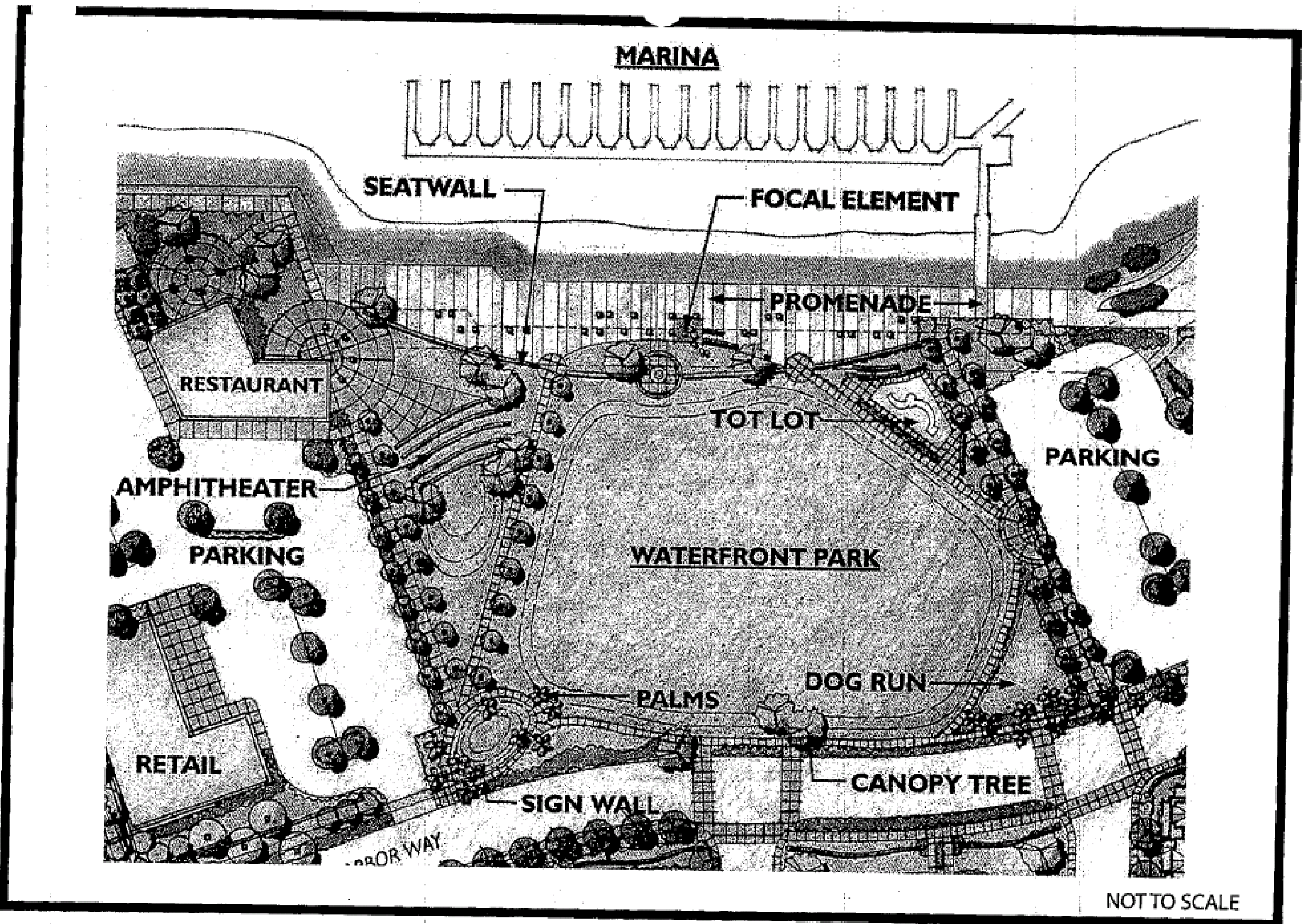


Attachment 1D

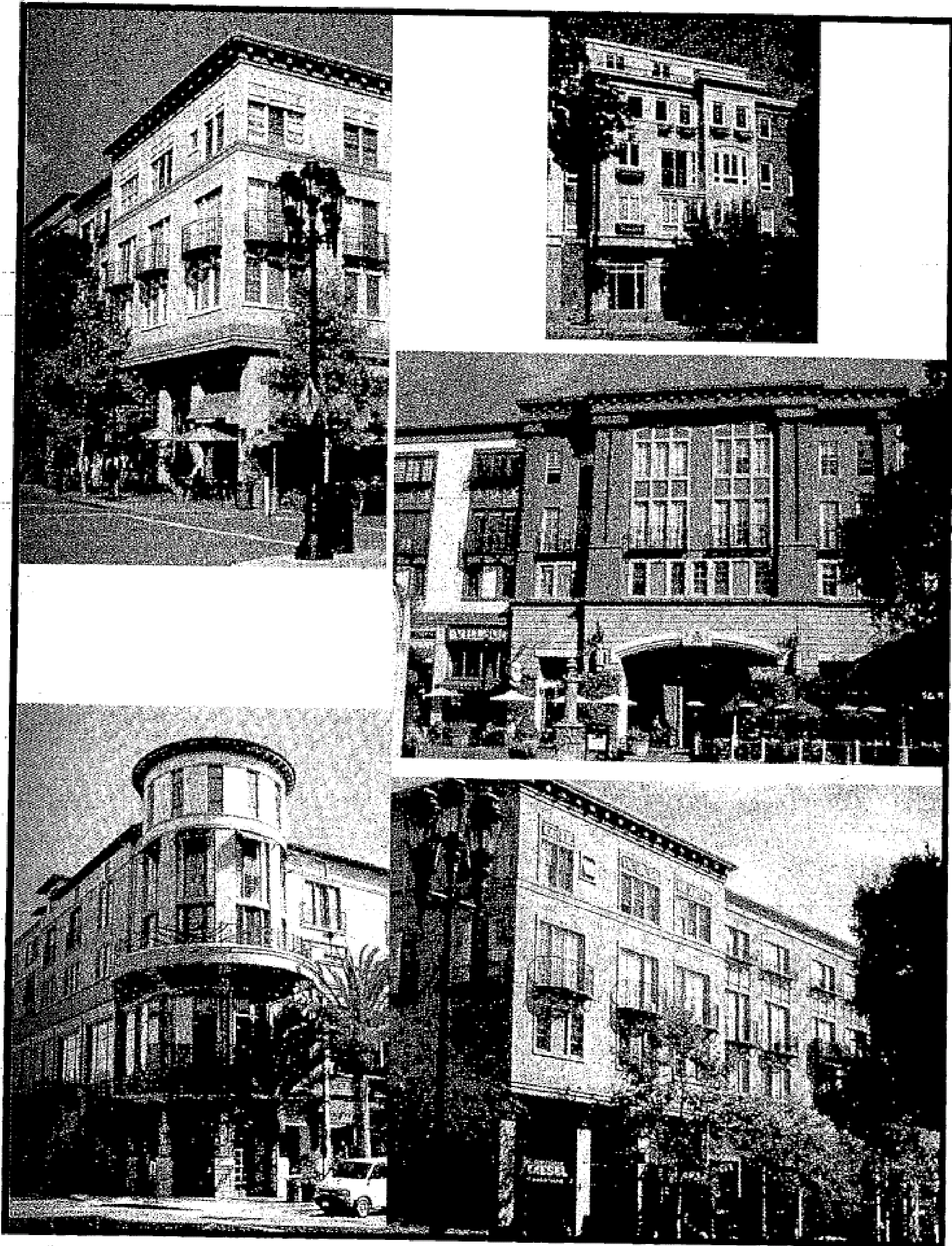
Mariner's Cove Promenade Improvements
Under Mare Island Causeway Bridge



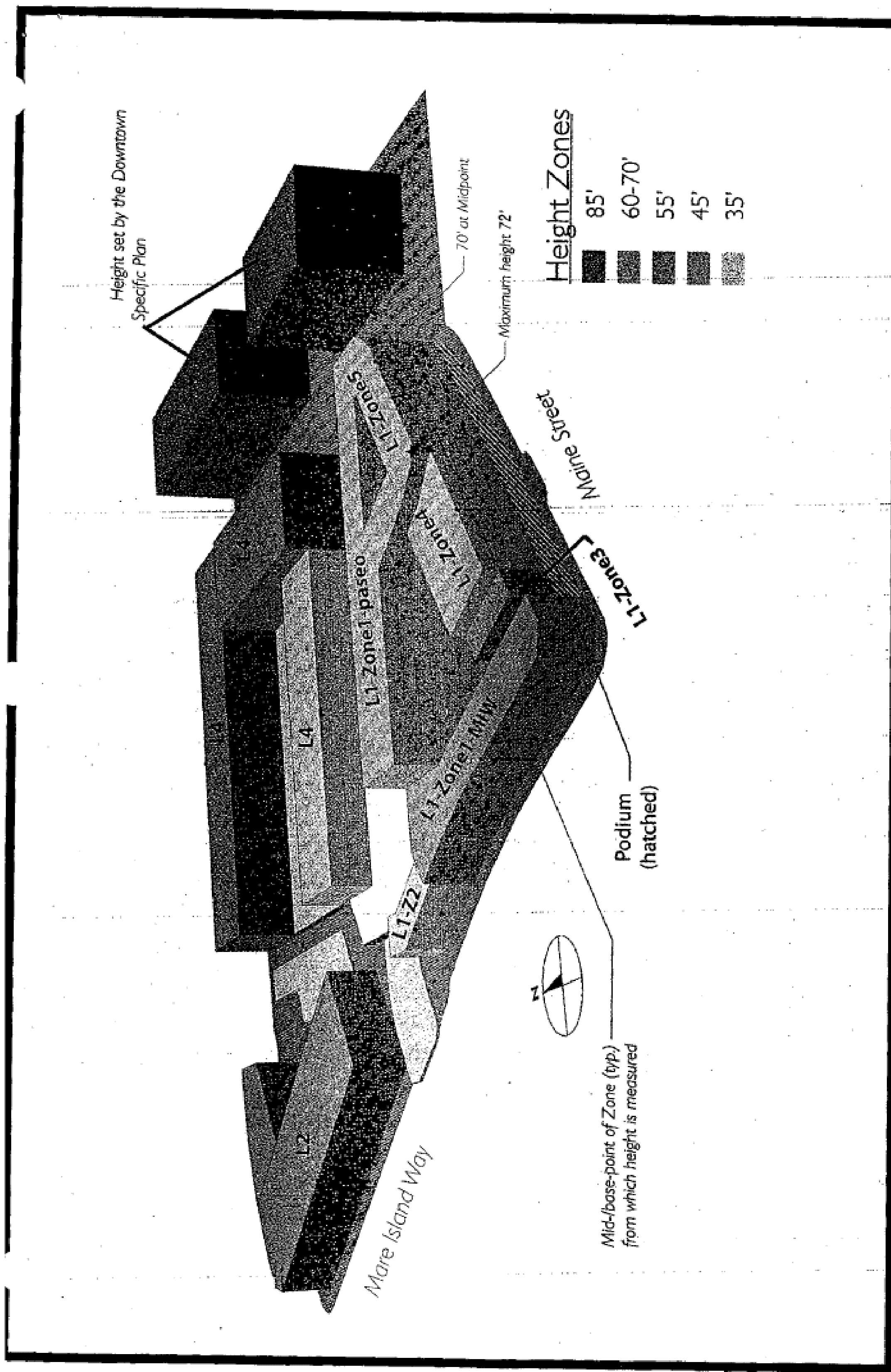
Attachment 1E
Mariner's Cove Conceptual
Wetland Park Plan



Attachment 1F
Mariner's Cove Conceptual Promenade Park Plan



Attachment 2A
Central Waterfront Prototypical Architectural
Level Of Detail And Articulation



Attachment 2B
Parcel L - Vallejo Station, Height Zone Diagram
Mare Island Way & Maine Street View

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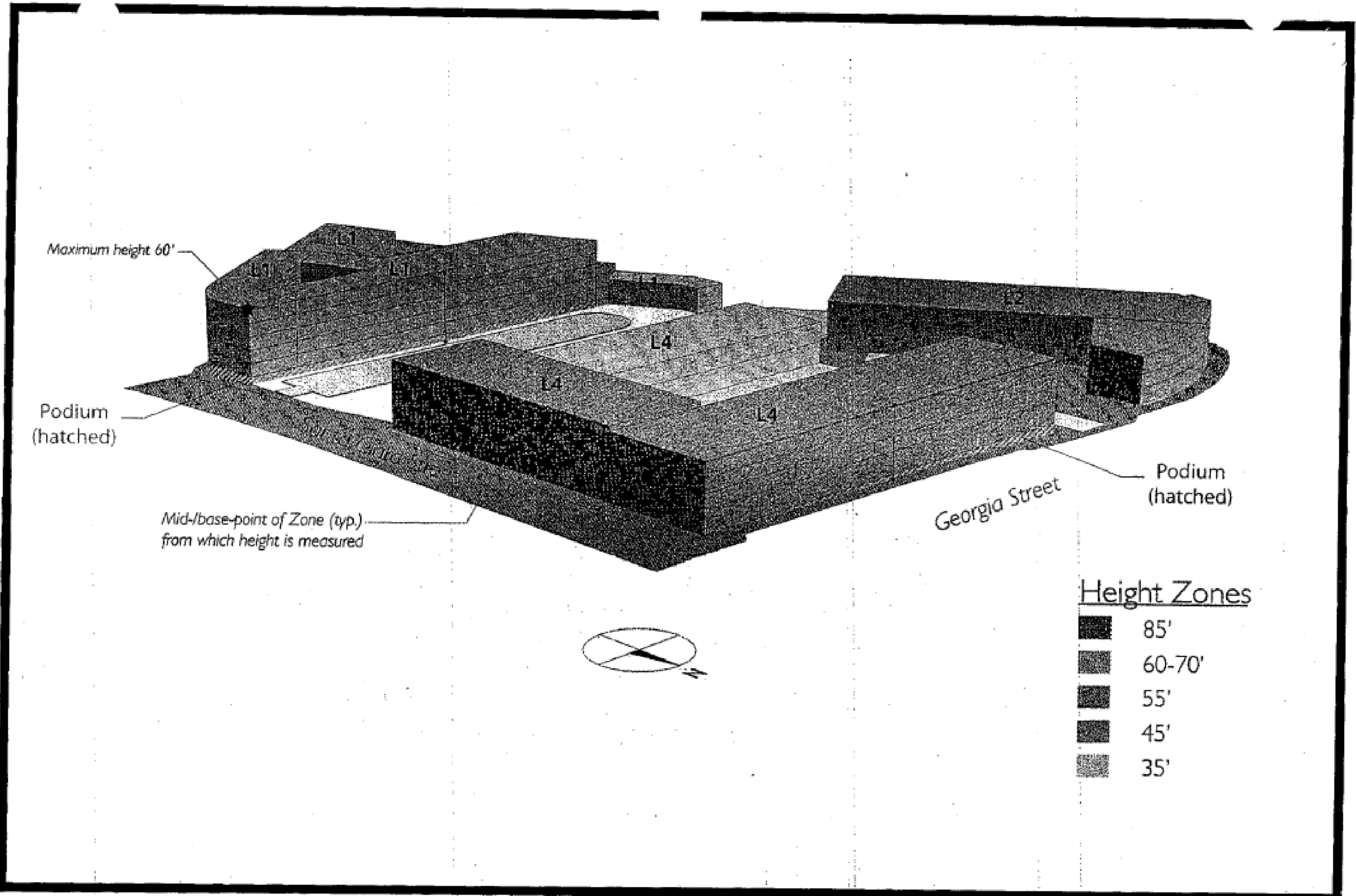

Attachment 2C
Parcel L - Vallejo Station, Height Zone Diagram

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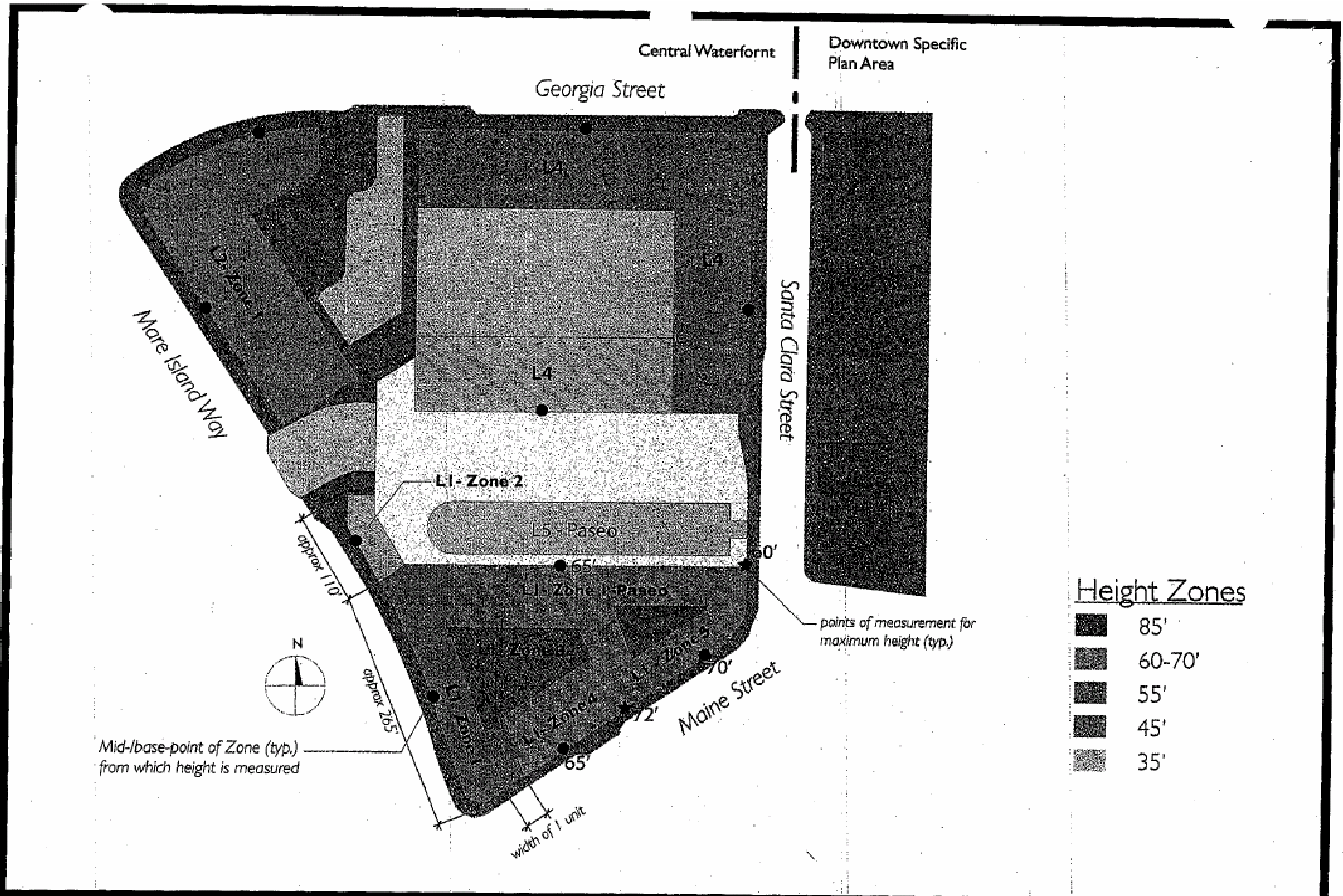

Attachment 2D
Parcel L - Vallejo Station, Height Zone Diagram
Plan View

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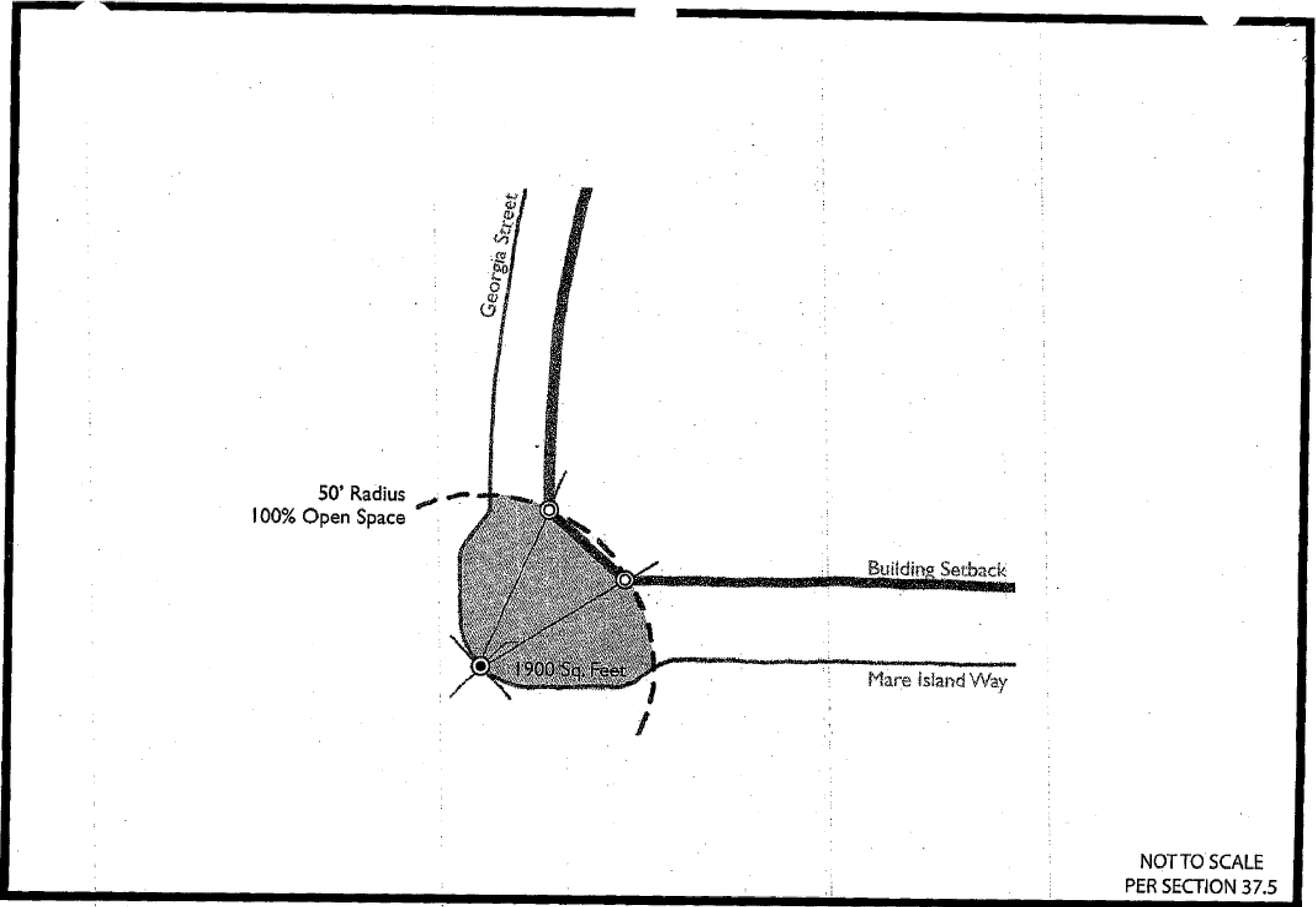
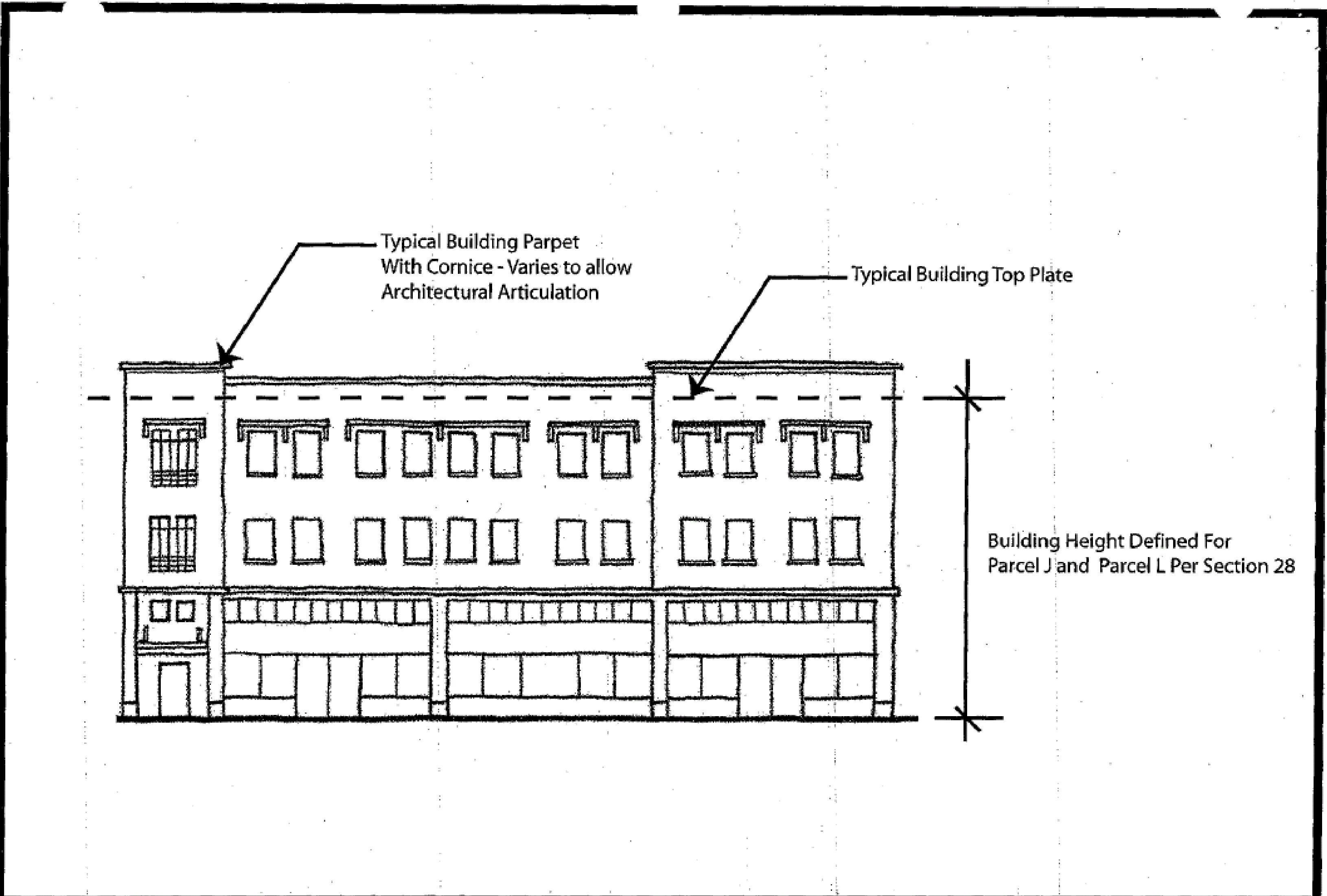


Attachment 2E
Corner Plaza Diagram
Mare Island Way & Georgia Street



Attachment 2F
Prototypical Top Plate Location

ATTACHMENT NO. 5

FORM OF GRANT DEED

Recording Requested by:
City of Vallejo

After Recordation, Mail to:

____
____
____

GRANT DEED

For valuable consideration, the receipt of which is hereby acknowledged,

THE CITY OF VALLEJO, a municipal corporation of the State of California (herein called "Grantor"), acting to carry out the Redevelopment Plan for the Waterfront Redevelopment Project and the Redevelopment Plan for the Marina Vista Redevelopment Project (collectively, the "Redevelopment Plans"), hereby grants to CALLAHAN PROPERTY COMPANY, INC., a California corporation (herein called "Grantee"), the real property (the "Developer Parcel") legally described in the document attached hereto, labeled Exhibit A, and incorporated herein by this reference.

1. The Developer Parcel is conveyed subject to the Redevelopment Plans and pursuant to a Fourth Amended and Restated Disposition and Development Agreement (the "DDA") executed as of December __, 2013, by and between the Grantor and the Grantee. Capitalized terms used but not defined in this Grant Deed shall have the meanings given in the DDA. The Developer Parcel is also conveyed subject to REA/CC&R's and other easements of record. ***[Note: The preceding sentence to appear only in grant deeds for Developer Parcels containing residential uses per Section 704 of the DDA.]***

2. The Grantee hereby covenants and agrees, for itself and its successors and assigns, that during construction and thereafter, the Grantee shall not use the Developer Parcel for other than the uses specified in the Redevelopment Plans.

3. Prior to the issuance of a Partial Certificate of Completion for the Developer Parcel by the Grantor as provided in the DDA, the Grantee shall not, except as permitted by the DDA, sell, transfer, convey, assign or lease the whole or any part of the Developer Parcel without the prior written approval of the Grantor. This prohibition shall not apply subsequent to the issuance of the Partial Certificate of Completion with respect to the improvements upon the Developer Parcel. This prohibition shall not be deemed to prevent the granting of easements or

permits to facilitate the development of the Developer Parcel or to prohibit or restrict the leasing or preleasing of any part or parts of a building or structure for occupancy when said improvements are completed.

4. Prior to the issuance of a Partial Certificate of Completion for the Developer Parcel, the Grantor shall have the additional right, at its option, to repurchase, reenter and take possession of the Developer Parcel hereby conveyed, or such portion thereof, with all improvements thereon, subject to and in accordance with the provisions of Section 513 of the DDA.

5. Prior to the issuance of a Partial Certificate of Completion for the Developer Parcel, the Grantor shall have the right, at its option, to reenter and take possession of the Site hereby conveyed, or such portion thereof, with all improvements thereon, and revest in the Grantor the estate conveyed to the Grantee, subject to and in accordance with the provisions of Section 514 of the DDA.

6. The Grantee covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, physical handicap, sexual orientation, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Developer Parcel, nor shall the Grantee itself or any person claiming under or through it 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, subtenants, sublessees or vendees in the Developer Parcel.

All deeds, leases or contracts made relative to the Developer Parcel, the improvements thereon or any part thereof, shall contain or be subject to substantially the following nondiscrimination clauses:

a. In Deeds:

"(1) Grantee herein covenants by and for itself, its successors 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) and (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 property herein conveyed, nor shall the grantee or any person claiming under or through the grantee, 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 property herein conveyed. The foregoing covenant shall run with the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (a) 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 paragraph (1) shall

be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

b. In Leases:

"(1) Lessee herein covenants by and for itself, its successors 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) and (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 or any person claiming under or through the lessee, 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.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (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 paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

c. In Contracts:

"(1) There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (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 property nor shall the transferee or any person claiming under or through the transferee 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, subtenants, sublessees or vendees of the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (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 paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

7. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Grant Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust or other financing or security instrument permitted by the DDA; provided, however, that any successor of Grantee to the Developer Parcel shall be bound by such remaining covenants, conditions, restrictions, limitations and provisions, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

8. Except as otherwise provided, the covenants contained in paragraph 2 of this Grant Deed shall remain in effect until the deadline for effectiveness of the Redevelopment Plans; the covenants against discrimination contained in paragraph 6 of this Grant Deed shall remain in perpetuity; and the covenants contained in paragraphs 3, 4 and 5 shall remain in effect until issuance of a Partial Certificate of Completion for the Developer Parcel pursuant to Section 323 of the DDA.

9. The covenants contained in paragraphs 2, 3, 4, 5, and 6 of this Grant Deed shall be binding for the benefit of the Grantor, its successors and assigns, the City of Vallejo and any successor in interest to the Developer Parcel or any part thereof, and such covenants shall run in favor of the Grantor and such aforementioned parties for the entire period during which such covenants shall be in force and effect, without regard to whether the Grantor is or remains an owner of any land or interest therein to which such covenants relate. The Grantor and such aforementioned parties, in the event of any breach of any such covenants, shall have the right to exercise all of the rights and remedies, and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of such breach. The covenants contained in this Grant Deed shall be for the benefit of and shall be enforceable only by the Grantor, its successors and such aforementioned parties.

10. In the event of any express conflict between this Grant Deed or the DDA, the provisions of the DDA shall control.

11. Any amendments to the Redevelopment Plans which change the uses or development permitted on the Site or change the restrictions or controls that apply to the Site or otherwise affect the Site shall require the written consent of the Grantee. Amendments to the Redevelopment Plans applying to other property in the Project Area shall not require the consent of the Grantee.

IN WITNESS WHEREOF, the Grantor and Grantee have caused this instrument to be executed on their behalf by their respective officers thereunto duly authorized, this _ day of ________________________, 20__.

DEVELOPER:

CALLAHAN PROPERTY COMPANY, INC.,
a California corporation

By: ______________________________________
Joseph W. Callahan, Jr., President

CITY:

THE CITY OF VALLEJO, a public body, corporate and politic

By: ________________________________
Daniel E. Keen, City Manager

APPROVED AS TO FORM:

____
Claudia Quintana, City Attorney

ATTEST:

____
Dawn G. Abrahamson, City Clerk

EXHIBIT A

LEGAL DESCRIPTION OF THE DEVELOPER PARCEL

[TO BE INSERTED]

ACKNOWLEDGMENTS

ATTACHMENT NO. 6

METHOD OF FINANCING

I. GENERAL

A. Overview.

The implementation of this Agreement and the Project Approvals will require significant private and public investment. This "Method of Financing", in conjunction with other provisions of this Agreement, sets forth generally the City and Developer financing obligations for acquisition and development of the Site, including the Developer Parcels and the City Parcels. The specific level of investment by the Developer and the City will be a function of a variety of factors including, but not limited to, market conditions, ability to obtain grant funds, and commitment by the City to finance capital projects. The City and the Developer also acknowledge and agree that future Project Approvals will likely result in a refinement and greater specification of the types of improvements that will be required as part of the Project and therefore will modify this Method of Financing. Therefore, until such time as this Fourth Restated Agreement is amended pursuant to Section 115, the obligations of the City and Developer to fund any specific improvements specified herein are suspended. When and as deemed appropriate by the parties, modifications of this Method of Financing will be reflected in an Operating Memorandum, in accordance with the provisions of Section 709 hereof.

The balance of this Part I addresses general issues affecting the overall financing of development of the Project. Parts II and III address the specific financing responsibilities of the Developer and the City for the Northern Waterfront Area and the Central Waterfront Area, respectively.

B. Initial Acquisition

Subject to available funding and the City's discretion to allocate such funding in its budget, the City shall be responsible for financing the initial acquisition of the Site, to the extent not already owned by the City.

C. Public Financing Districts

Subject to applicable legal requirements, upon the request of the Developer, the City shall consider, in good faith, the formation of one or more assessment districts, community facilities districts, or other similar public financing districts (collectively, "Public Financing Districts") for the purpose of issuing bonded indebtedness or otherwise obtain assessments or special taxes to pay the costs of design and development of on-site public improvements (such as streets and infrastructure within a subdivided Developer Parcel to be constructed by the Developer and dedicated to the City or other public entity) and off-site public improvements normally required by the City to be provided by the property owner in connection with private development (collectively, the "Developer Parcel Public Improvements"), to the maximum

extent permitted by law. Such good faith consideration shall include scheduling and conduct of all hearings, elections and other proceedings necessary for the formation of such requested Public Financing District(s) and the issuance of bonded indebtedness or other indebtedness of any such formed Public Financing District(s). The costs of formation and issuance of indebtedness of such Public Financing District(s) shall be borne by the Developer (or financed through such indebtedness), and the obligations of such Public Financing District(s) shall be payable solely from assessments or special taxes imposed upon one or more of the Developer Parcels following conveyance to the Developer, and not from any funds, revenues or properties of the City, or any other public entity without the express prior consent of the City or other public entity, as applicable, in their sole discretion.

D. Landscaping and Lighting Maintenance District

Subject to applicable legal requirements, the Developer and the City shall cooperate to form, a landscaping and lighting maintenance district (an "LLMD") in accordance with the provisions of the Landscaping and Lighting Act of 1972 (California Streets and Highways Code Section 22500 et seq.) and in accordance with the criteria, standards and procedures set forth below in this Section I.D (as this Section may be modified pursuant to the terms of an Operating Memorandum entered into pursuant to the provisions of Section 709 hereof).

The LLMD shall be formed consistent with the following criteria and standards:

1. The LLMD shall be formed to fund the normal operating and maintenance costs incurred by the City or the LLMD in connection with the landscaping, lighting, park, recreation, and open space facilities located within the publicly-owned right-of-way and parcels within the Site. Subject to applicable legal requirements, the LLMD may be expanded or merged with other landscaping, lighting and maintenance districts (as so expanded or merged, an "Expanded LLMD") to include additional parcels that are specially benefited by public improvements and facilities within the Site and/or to additionally fund the normal operating and maintenance costs incurred by the City or the Expanded LLMD in connection with the landscaping, lighting, park, recreation, and open space facilities within publicly-owned right-of-way and parcels outside the Site but within the boundaries of the Expanded LLMD. The Developer's cooperation and support for the LLMD is predicated upon the City's stated intention to cause eventual formation of an Expanded LLMD that covers the maximum specially benefited area so as to equalize and apportion the LLMD burden over time across the largest legally benefited area, thereby reducing over time the burden initially imposed on the Developer Parcels; provided, however, that if the attempt to form an Expanded LLMD results in a legal challenge to timely formation or in a failure to obtain the required voter approval, then the LLMD shall be scaled-back and formed or maintained just to comprise the Site and the landscaping, lighting, park, recreation and open space facilities within the publicly-owned right-of-way and parcels within the Site.

2. The LLMD shall include, for purposes of assessment of specially benefited parcels, all of the Developer Parcels and the other parcels within the Site, whether publicly or privately-owned (but only to the extent such other parcels are specially benefited and required by applicable law to be included in the LLMD). If the LLMD is made part of an

Expanded LLMD, the Expanded LLMD shall additionally include, for purpose of assessment of specially benefited parcels, all other parcels (whether privately or publicly-owned) that are specially benefited by the landscaping, lighting, park, recreation and open space parcels within publicly-owned right-of-way and parcels within the boundaries of the Expanded LLMD.

3. Assessments of the LLMD or the Expanded LLMD, as applicable, shall be spread among the Developer Parcels and the other parcels subject to assessment in accordance with the special benefit received by each assessed parcel as determined in accordance with applicable legal requirements and procedures; provided, that, in no event shall the annual assessments applicable to the Developer Parcels pursuant to the LLMD or the Expanded LLMD, as applicable, exceed the following amounts:

a. $300 for a single-family residential unit (attached or detached);

b. $200 for a residential condominium unit or a multifamily residential unit; and

c. Twenty cents per square foot of gross building area for improved commercial and industrial land.

Notwithstanding the foregoing, the rate and method of apportionment shall allow for annual adjustments to the above maximum assessments beginning on July 1, 2008, and each July 1 thereafter during the life of the LLMD or the Expanded LLMD, whichever is applicable, by a percentage equal to the Consumer Price Index – All Urban Consumers ("CPI-U") for the San Francisco-Oakland-San Jose area (1982-84=100). In addition, the parties understand and agree that, over the life of the LLMD or Expanded LLMD, as applicable, the methodology for calculating the assessments throughout the district shall be periodically evaluated as additional units within the LLMD or Expanded LLMD are constructed so that per unit assessments may be reduced to ensure that such assessments are fairly allocated within the district.

4. The LLMD and any Expanded LLMD shall be formed in accordance with all applicable legal requirements and procedures for such formation.

The Developer shall cooperate, and shall be deemed to have cooperated, in the formation of the LLMD or an Expanded LLMD for purposes of this Section I.D by casting any ballot and/or executing any petition required by law with respect to the Developer Parcels (or any portion thereof with respect to which the Developer is entitled to cast a ballot and/or execute a petition) necessary to support formation of the LLMD or an Expanded LLMD meeting the criteria and standards set forth above in this Section I.D. Any protest lodged by the Developer with respect to the allocation of assessments among parcels within the LLMD or an Expanded LLMD, as opposed to the formation of the LLMD or an Expanded LLMD itself, shall not constitute a failure of cooperation by the Developer in the formation of the LLMD or an Expanded LLMD for purposes of this Section I.D.

The City shall take all procedurals actions necessary in accordance with all applicable legal requirements to cause formation and effectiveness of the LLMD or an Expanded LLMD by not later than the deadline set forth in the Schedule of Performance (Attachment No. 3). If the LLMD is not formed despite the City's diligent good faith efforts to form or cause the City to form the LLMD, then the City shall fund to the maximum extent permitted by applicable law and subject to the City's annual budgetary process, the operation and maintenance of those public improvements that are described in the Scope of Development (Attachment No. 4) to be funded by the LLMD.

E. City Funding

1. Possible Funding Sources; City MOF Funds.

In addition to the application by the City of the Required City Funds (as defined and described in Section I.E.2. below), the funds to finance the City's obligations under this Agreement may include, but shall not be limited to, the following: available, budgeted City funds; bond financing; City capital improvement funds, transient occupancy tax and other City tax revenues or fees; state and federal transportation funds, including, without limitation, state and federal funding for the Vallejo Station transit facilities (the "Vallejo Station Funds"); state and federal park and recreation funds; and other public and private grant funds, if available. The City retains discretion to determine how to spend available funds, and shall not be obligated to use any funding that is not specifically allocated for this purpose in the City’s budget and approved by City Council resolution.

The funds available to the City from time to time and allocated to pay costs of the Project, including the Required City Funds, are collectively referred to in this Agreement as the "City Method of Financing Funds" or simply, the "City MOF Funds." Notwithstanding any other provision of this Fourth Restated Agreement, the City's obligation to fund and complete public improvements and site preparation work under this Method of Financing shall be strictly limited to the City MOF Funds, including the Required City Funds, available to the City from time to time.

2. Required City Funds.

The City shall, at a minimum, apply the following funds (the "Required City Funds") to finance the City's obligations under this Agreement: all amounts actually paid to the City from the Developer constituting the Purchase Prices and the Annual Rent Payments for the Developer Parcels within the Site.

3. City Budgets.

The City shall reasonably confer with the Developer, and shall consider in good faith the Developer's input, in connection with preparation of the portions of the City's annual budgets, and any periodic amendments to such budgets that affect the Project, with the objective of allocating City MOF Funds in a manner consistent with the City's funding obligations for the Project pursuant to this Agreement and the City's other funding commitments.

4. [Intentionally Omitted.]

F. Developer Funding

The financing mechanisms of the Developer to meet its obligations pursuant to this Agreement may include, but are not limited to, equity financing, debt financing, assessment district financing (as further set forth in Section I.C above) and other methods of financing as may be necessary to finance the Developer's obligations.

G. Other Financial Incentives

The City shall consider in good faith a Developer request that the City provide financial or other incentives to enable the highest quality and most timely private development of the Developer Parcels within the Site; provided however, that the Developer shall provide evidence to the City that any such incentive is necessary and further provided that the provision of any such financial or other incentives shall be determined in the sole discretion of the City.

H. Park Fee Credits

As provided in Section 3.8 of the Development Agreement, the City will grant a credit against City park fees otherwise due with respect to development of the Developer Parcels within the Site pursuant to Chapter 3.18 of the Vallejo Municipal Code in an amount equal to the lesser of (1) the total amount of such City park fees otherwise due with respect to development of the Developer Parcels within the Site, or (2) the Total Developer Public Parks and Open Space Contribution.

As used herein, the "Total Developer Public Parks and Open Space Contribution" means the sum of:

1. The Developer's Northern Waterfront Public Parks and Open Space Contribution (up to $1,629,150, as provided in Section II.C.3 of the Scope of Development (Attachment No. 4)); plus

2. The Developer's Wetland Park Contribution (as described in Section II.A.3 of the Scope of Development).

II. NORTHERN WATERFRONT FINANCING

A. Developer Responsibility.

Except as provided in Section II.B below, the Developer, or its assignee, shall be responsible for financing all costs associated with the private and public development of the Northern Waterfront Area, including all Developer Parcel Public Improvements in the Northern Waterfront Area, as further described in Part II of the Scope of Development (Attachment No. 4). In addition to the payment of the Purchase Price and Annual Rent Payments for the

applicable Developer Parcels and the cost of the related Developer Parcel Public Improvements, as set forth in this Agreement, the Developer's financial responsibility shall include, but not be limited to, payment of costs related to site planning, entitlements, permits, fees, and private on site improvements for all of the Northern Waterfront Area (except as otherwise provided in Section II.B below).

B. City Responsibility

The City shall have no financial responsibility under this Agreement with respect to the Northern Waterfront Area other than:

1. The costs to deliver the applicable Developer Parcels in the condition specified in this Agreement upon which the Purchase Prices and Annual Rent Payments for the applicable Developer Parcels are determined in connection with Section 201; and

2. Any costs for the Northern Waterfront Public Park and Open Space Improvements required to be made after the maximum amount of the Developer's Northern Waterfront Public Park and Open Space Contribution has been expended, as further provided in Section II.C.3 of the Scope of Development (Attachment No. 4).

In addition, the City shall assure that Lennar pays for performance of the Mare Island Causeway and Mare Island Way Widening Improvements as provided in Section II.D.3 of the Scope of Development (Attachment No. 4).

III. CENTRAL WATERFRONT FINANCING

A. Developer Responsibility—In General.

The Developer, or its assignee, shall be responsible for financing all costs associated with the development of the Developer Parcels within the Central Waterfront Area, including all Developer Parcel Public Improvements related to the Central Waterfront Area. In addition to the payment of the Purchase Price for Parcel J (including any J Developer Subparcels), and the L Developer Parcels, and the cost of the related Developer Parcel Public Improvements, as set forth in this Agreement, the Developer's financial responsibility shall include, but not be limited to, payment of costs related to site planning, entitlements, permits, fees, and private on site improvements related to the Developer Parcels and Developer Parcel Public Improvements within the Central Waterfront Area.

B. City Responsibility—In General.

Except as otherwise provided in Section III.C below, the City shall pay all costs to deliver the Central Waterfront Area Developer Parcels in the condition specified in this Agreement upon which the Purchase Prices for the applicable Developer Parcels are determined in connection with Section 201.

Except as otherwise provided in Section III.D below, the City shall be responsible for funding the enhancement of the City Parcels and related public improvements in the Central Waterfront Area including, without limitation:

1. The L3 Public Garage on Parcel L3, as provided in Section III.A.3 of the Scope of Development (Attachment No. 4);

2. The public paseo and associated improvements on Parcel L5, as provided in Section III.A.5 of the Scope of Development (Attachment No. 4);

3. The Bus Transfer Center on Parcel O, as provided in Section III.C.1 of the Scope of Development (Attachment No. 4);

4. The Other Transit-Related Improvements, as provided in Section III.C.2 of the Scope of Development (Attachment No. 4);

5. The Central Waterfront Public Street Improvements, as provided in Section III.C.3 of the Scope of Development (Attachment No. 4); and

6. The Central Waterfront Public Parks and Open Space Improvements, as provided in Section III.C.4 of the Scope of Development (Attachment No. 4).

C. Vallejo Station Post Office Relocation.

The City and the Developer shall participate in funding the costs of relocating the current Post Office facility from the Post Office Site within Parcel L in the manner provided in the USPS Relocation Strategy described in Section 201.6.a, as such strategy may be revised from time to time.

D. City Hall Garage and Related Improvements.

Subject to the further provisions of this Section III.D, the City shall be solely responsible for the ultimate payment of all costs of design and construction of the City Hall Garage and of the Capitol Street Second Segment necessary to provide access to the City Hall Garage. To meet this funding obligation, the City shall apply City MOF Funds (as defined and described in Section I.E.1 above) available for such purpose.

Notwithstanding the funding obligation set forth above, if the City reasonably determines that, at the time the City is otherwise required to commence performance and funding of the design and construction of the Phase 1 Element of the City Hall Garage and the Capitol Street Second Segment (together, the "City Hall Garage Required Elements") in accordance with Item 112 of the Schedule of Performance (Attachment No. 3), it will not yet have available sufficient funds to pay the full costs of design and construction of the City Hall Garage Required Elements, the City shall so notify the Developer. The City and the Developer shall then negotiate in good faith for a period of sixty (60) days (or longer as they may mutually agree) to seek to agree upon the terms of an Operating Memorandum whereby the Developer would agree

to advance a specified portion of the costs of the design and/or construction of the City Hall Garage Required Elements and the City would agree to repay the Developer for such advance at a specified time and on specified terms (a "City Hall Garage Required Elements Operating Memorandum").

If the City and the Developer execute a City Hall Garage Required Elements Operating Memorandum in accordance with Section 709, then the terms of such City Hall Garage Required Elements Operating Memorandum shall control the City and the Developer obligations with respect to the portion of the costs of design and/or construction of the City Hall Garage Required Elements to be advanced by the Developer (subject to City repayment), and the City shall remain responsible for initial payment of all remaining portions of the cost of design and construction of the City Hall Garage Required Elements.

If the City and the Developer are unable to agree upon a City Hall Garage Required Elements Operating Memorandum within the negotiating period set forth above, then commencement of the design and/or construction of the City Hall Garage Required Elements shall be postponed until the earliest date upon which the City reasonably has available sufficient City MOF Funds in accordance with the requirements of this Method of Financing to pay the costs of design and construction of the City Hall Garage Required Elements.

E. Downtown Property Based Improvement District ("PBID").

The City shall use best efforts to include Parcels J and L in the proposed PBID. In conjunction with the formation of the LLMD or the Expanded LLMD, the City shall work cooperatively with the Developer and the developer of the Downtown project and to use best efforts to provide that both the PBID and the LLMD (or Expanded LLMD) function effectively, do not overlap in responsibilities, and are not overly burdensome to present and future property owners.

ATTACHMENT NO. 7

FORM OF FOURTH RESTATED AGREEMENT MEMORANDUM

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Vallejo
555 Santa Clara Street
Vallejo, CA 94590
Attn: City Manager

No fee for recording pursuant to
Government Code Section 27383

(Space Above This Line For Recorder's Use)

MEMORANDUM OF FOURTH AMENDED AND RESTATED
DISPOSITION AND DEVELOPMENT AGREEMENT

THIS MEMORANDUM OF FOURTH AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT (the "Memorandum") is made as of ___________, 2013, by and between the City of Vallejo, a municipal corporation (the "City"), and Callahan Property Company, Inc., a California corporation (the "Developer").

This Memorandum confirms that the City and the Developer have entered into a Fourth Amended and Restated Disposition and Development Agreement as of December ___, 2013 (the "DDA"), providing for the acquisition, disposition and development of certain real property (the "Site") included within the boundaries of the Redevelopment Plans for the Waterfront Redevelopment Project and the Marina Vista Redevelopment Project, and construction in phases of a master planned mixed-use development, including residential, commercial, retail and open space and park uses (collectively, the "Project," as further defined in Section 102 of the DDA). Capitalized terms used but not defined in this Memorandum shall have the meanings given in the DDA. Included within the Site are the Developer Parcel(s) described in the attached Exhibit A.

Among other matters, the DDA states as follows:

> *"The parties hereby acknowledge that the Developer has voluntarily entered into a Master Labor Agreement (the "MLA") with the Napa Solano Building and Construction Trades Council (the "Trades Council") and its affiliated local trade unions, and that the MLA applies to the private improvements to be constructed on the Developer Parcels. The City further understands that any assignee or transferee of the Developer shall assume the MLA, in whole or in part, as provided in the MLA, in connection with a permitted assignment or transfer of a Developer Parcel or this Agreement."*

This Memorandum is prepared for the purpose of recordation, and it in no way modifies the provisions of the DDA. This Memorandum amends and supersedes in its entirety that certain Memorandum of Disposition and Development Agreement dated as of October 27, 2005 and recorded in the Official Records of the County of Solano as Document No. 200700002114, and that certain Memorandum of DDA Third Restatement dated as of _______, 2007 and recorded in the Official Records of the County of Solano as Document No. _________.

IN WITNESS WHEREOF, the parties hereto have entered into this Memorandum as of the date first above written.

DEVELOPER:

CALLAHAN PROPERTY COMPANY, INC.,
a California corporation

By: ____________________________________
Joseph W. Callahan, Jr., President

CITY:

THE CITY OF VALLEJO, a public body, corporate and politic

By: ______________________________
Daniel E. Keen, City Manager

APPROVED AS TO FORM:

____
Claudia Quintana, City Attorney

ATTEST:

____
Dawn G. Abrahamson, City Clerk

STATE OF CALIFORNIA)
)
COUNTY OF __________________)

On ____________________, before me, ___________________________, Notary Public, personally appeared ____, 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.

____
Name: ________________________________
Notary Public

STATE OF CALIFORNIA)
)
COUNTY OF __________________)

On ____________________, before me, ___________________________, Notary Public, personally appeared ____, 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.

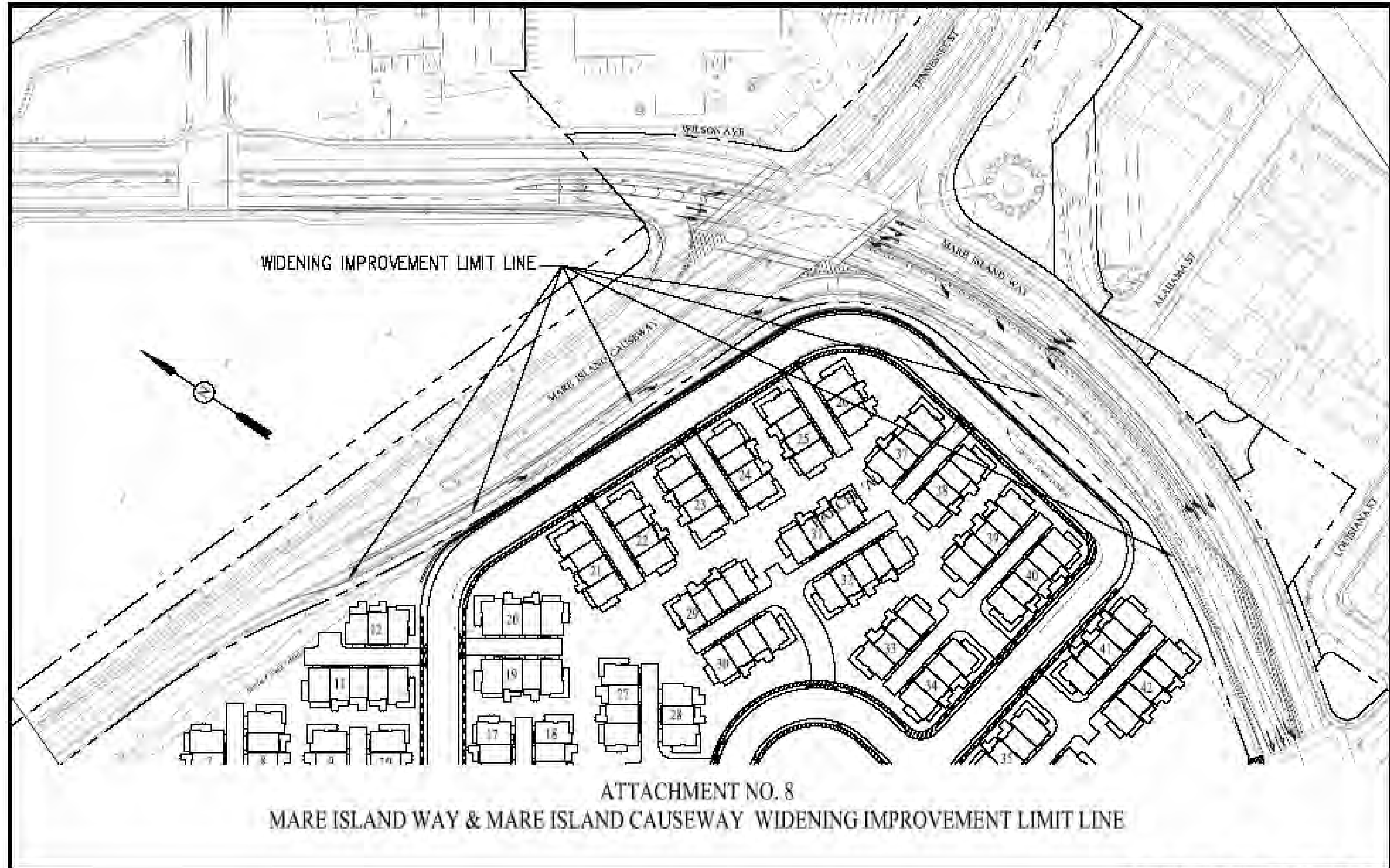
____
Name: ________________________________
Notary Public

EXHIBIT A TO MEMORANDUM OF DDA

Legal Description of the Applicable Developer Parcel(s)

ATTACHMENT NO. 8

DIAGRAM OF PARCEL A BOUNDARY LINE FOR PURPOSES OF DESIGNING MARE ISLAND CAUSEWAY/MARE ISLAND WAY WIDENING IMPROVEMENTS



ATTACHMENT NO. 9

HISTORY AND BACKGROUND REGARDING PRIOR AGREEMENT AND CURRENT APPROVALS

This Attachment is provided to facilitate the implementation of the Fourth Restated Agreement and any subsequent amendments thereto by describing the history and background of (1) the Prior Agreement which is being amended, restated and superseded by the Fourth Restated Agreement, and (2) the Current Approvals that, subject to further amendment to comprise the Project Approvals, provide the City's land use controls for implementation of the Project on the Site. The following history and background is based on the Recitals to the Third Restatement of the Prior Agreement (as further described below), as updated in connection with preparation of this Fourth Restated Agreement. Capitalized terms used but not defined in this Attachment have the meanings given in the Fourth Restated Agreement of which this Attachment is a part.

A. The RDA and Callahan/DeSilva Vallejo, LLC ("CDV"), the Developer's predecessor in interest, initially executed the Prior Agreement as of October 17, 2000 to implement a program of public and private revitalization of the Vallejo Waterfront area (the "Prior Project," as further defined and described in Section 101 and the Scope of Development (Attachment No. 4) of the Prior Agreement) within a strategic site adjacent to the Waterfront area and Vallejo's commercial Downtown area (the "Prior Site," as further defined and described in Sections 101 and 104 of the Prior Agreement). (As further explained in Sections 103 and 106 of this Fourth Restated Agreement, the Prior Site included the Southern Waterfront Area, which has been deleted from the Site that is the subject of the Fourth Restated Agreement.) The RDA and CDV initially executed the Prior Agreement in recognition of the accomplishment of the following milestone actions:

1. On August 13, 1996, the RDA authorized its Executive Director to seek proposals from qualified developers for the development of available parcels within the Marina Vista and Waterfront Redevelopment Project Areas. A request for qualifications was issued on January 2, 1997, and distributed to more than 130 developers. Four proposals were submitted in response to the request for qualifications. A Waterfront Developer Review Panel (the "WDRP") was established that included staff and representatives of the community to review the qualifications statements and visit projects of the proposed developers. Following this process, the WDRP recommended that the RDA approve The DeSilva Group ("DeSilva") as the Master Waterfront Developer. The RDA approved DeSilva as the Master Waterfront Developer on April 15, 1997, and directed DeSilva to formulate a community-based Waterfront Master Plan.

2. In May 1997, the RDA approved an Exclusive Right to Negotiate Agreement ("ERN") with DeSilva, which required DeSilva to develop the Waterfront Master Plan and then proceed to negotiate a Disposition and Development Agreement. DeSilva subsequently teamed with Callahan Property Company ("CPC") to form CDV (sometimes, herein referred to as the "Prior Developer"), which served as the developer under the Prior Agreement, until CDV assigned and CPC alone assumed that role, as further provided in Recital E of this Fourth Restated Agreement.

3. At the outset of the Waterfront public planning process, the Prior Developer, in conjunction with the City, held Public Planning Workshops, outreach meetings and presentations to City commissions and boards. In addition, the City's Community Development Department sent letters to neighborhood and community organizations inviting participation in outreach meeting and public workshops, and the public workshops were also advertised in a local newspaper, on a local cable television channel and through handouts and flyers.

4. As a result of this public planning process, DeSilva prepared a Waterfront Master Plan, which was accepted by the RDA on April 20, 1999, subject to certain conditions, including without limitation negotiations of a final disposition and development agreement with the RDA and completion of the environmental review process. The primary goal of the Waterfront Master Plan was to incorporate mixed land uses which are pedestrian-friendly and which will allow the Waterfront and Downtown areas to evolve into the social, cultural and entertainment hub of the City.

5. Following acceptance of the Waterfront Master Plan, the RDA retained an Urban Land Institute (ULI) Advisory Panel, which convened in Vallejo in June 1999, to review the Waterfront Master Plan. The RDA accepted the Panel's report at its meeting on August 24, 1999. On March 28, 2000, modifications to the Waterfront Master Plan were accepted by the RDA.

6. Through a competitive process, the City and the Waterfront Downtown Design Advisory Committee selected the firm of Wallace Roberts & Todd, Inc. ("WRT") as the landscape architect to provide design concepts and plans for the public spaces within the Waterfront Master Plan area. Through an extensive public participation process, WRT prepared and the RDA approved the Vallejo Waterfront Downtown Master Plan for Public Spaces, by action of September 19, 2000 (the "Plan for Public Spaces").

B. The Prior Agreement was comprehensively updated (the "Second Restatement"), approved by the RDA on October 27, 2005, to reflect progress made and further planning and financial agreements reached by the RDA and the Prior Developer from the time of the initial execution of the Prior Agreement in October 2000 through the date of the Second Restatement. Among the milestone actions leading to the Second Restatement of this Agreement were the following:

1. The Georgia Street Extension element of the Prior Project was satisfactorily completed, with the Prior Developer serving as the project manager for such completion.

2. Former Developer Parcel K ("Former Parcel K") was removed from the Prior Site that was the subject of the originally executed Prior Agreement and was satisfactorily developed as an office facility for the State Farm Electronic Claims Center pursuant to a separate disposition and development agreement between the RDA and CPC, a member of the Prior Developer. As part of the separate development of Former Parcel K, CPC served as the RDA's project manager for completion of the segment of Capitol Street between Mare Island Way and Civic Center Drive.

3. Former Parcels N and V were removed from the Prior Site and were made part of the development under a separate disposition and development agreement entered into between the RDA and Triad Downtown Vallejo, LLC. Former Parcel U (the Boat Launch relocation parcel) was also removed from the Prior Site.

4. On December 11, 2002, the City and the RDA circulated an initial draft environmental impact report (the "IDEIR"), in accordance with the California Environmental Quality Act and applicable state and local guidelines ("CEQA"). The IDEIR evaluated the potential environmental effects of the Prior Project as envisioned under the Prior Agreement as initially executed and amended prior to the Second Restatement. Extensive comments were received on the IDEIR. During preparation of responses to those comments, the City and the RDA decided that a revised draft environmental impact report (the "RDEIR") should be prepared and circulated in accordance with CEQA for reasons set forth in the Introduction to the RDEIR. In connection with preparation of the RDEIR, and as detailed therein, the RDA, the Prior Developer, and the City made various revisions to the Prior Project scope and description. These revisions reconfigured and scaled-back the Prior Project from that originally envisioned when this Agreement was initially executed in October, 2000, and responded to public concerns and changed circumstances with respect to surrounding developments in the Downtown area and at Mare Island.

5. The City and the RDA circulated the RDEIR (State Clearing House No. 2000052073) on June 10, 2005. On October 3, 2005, the City and the RDA circulated a document containing responses to comments received on the RDEIR and other information required by CEQA (including a Mitigation Monitoring and Reporting Program), which together with the RDEIR constitutes the "EIR" for the Prior Project and the Project.

6. In connection with preparation of the EIR and the Second Restatement of the Prior Agreement, the RDA, the Prior Developer, and the City prepared the following series of land use approvals and entitlements for the Prior Project, for consideration of approval by the City concurrently with consideration of approval of the Second Restatement, (together with the EIR, the following documents and approvals are collectively referred to as the "2005 Approvals"):

d. An Amendment to the City's General Plan (#00-001, referred to as the "General Plan Amendment") to include revised and updated land use and urban design goals, policies and map designations for the Site and the Project;

e. An Amendment to the City's Zoning Ordinance (#03-0003) to provide for zoning consistent with the General Plan Amendment;

f. A Planned Development Master Plan for the Site (#00-0022, referred to as the "Planned Development Master Plan"), which includes as an attached and incorporated element the Waterfront Design Guidelines, prepared jointly by the RDA and Developer; and

g. A development agreement (#05-0008, referred to as the "Initial Development Agreement") pursuant to Government Code Section 65864 et seq., between the City and the Developer pertaining to all of the Developer Parcels identified in Section 104 of the Prior Agreement.

The 2005 Approvals incorporated refined concepts and designs from previous planning and policy documents for the Waterfront area, including the Waterfront Master Plan and the Plan For Public Spaces (as described in Recital A above).

C. On October 25 and 27, and November 15, 2005, the City Council and the RDA:

1. Conducted public hearings on the Prior Project, the Second Restatement of the Prior Agreement, and the 2005 Approvals;

2. Certified the EIR and made the required CEQA findings; and

3. Approved the Second Restatement of the Prior Agreement and the 2005 Approvals.

As a result of these actions, the Second Restatement of the Prior Agreement became fully effective by its terms on December 15, 2005.

D. On or about December 2, 2005, the Vallejo Waterfront Coalition, an unincorporated association (the "Coalition") filed a Petition for Writ of Mandate And Complaint for Injunctive Relief in the Solano County Superior Court, captioned *Vallejo Waterfront Coalition v. City of Vallejo, et al.*; Case No. FCS 027048 (the "Action"). On or about January 12, 2006, the Coalition filed a First Amended Petition, etc. in the Action. Beginning on or about January 20, 2006, the RDA, the City, the Prior Developer, and the Coalition engaged in settlement negotiations to resolve the Action and reached an agreement to do so on the terms and conditions stated in that certain Settlement and Release Agreement entered into as of November 28, 2006 (the "Settlement Agreement").

E. On November 28, 2006, the City Council and the RDA approved the Settlement Agreement in the form previously executed by the Prior Developer and the Coalition. The City and the RDA thereafter duly executed the Settlement Agreement.

F. On February 27, 2007, following conduct of duly noticed public hearings as required by law, the City Council and the RDA took the following actions

1. The City Council and the RDA approved an addendum (the "EIR Addendum") to the EIR that evaluated the impacts of the Prior Project as modified by the Settlement-Related Amendments (as defined below), and a third amendment and restatement of the Prior Agreement, as further described in Section H below (the "Third Restatement");

2. The City Council and the RDA approved the Third Restatement; and

3. The City Council introduced and conducted the first reading of ordinances (collectively, the "Settlement-Related Ordinances") to approve certain amendments to the

Planned Development Master Plan and the accompanying Waterfront Design Guidelines and certain amendments to the Initial Development Agreement, to implement specified terms of the Settlement Agreement (collectively, the "Settlement-Related Amendments").

G. In accordance with the Settlement Agreement, the Action was dismissed by the parties thereto on April 13, 2007 (the "Action Dismissal Date"), thirty-one (31) days after the March 13, 2007 second reading and approval by the City Council of the Settlement-Related Ordinances enacting the Settlement-Related Amendments. As of the Action Dismissal Date, the Third Restatement of the Prior Agreement and the Settlement Related-Amendments to the 2005 Approvals took effect.

H. Through the Third Restatement of the Prior Agreement, the parties modified the Prior Agreement to:

1. Implement the terms of the Settlement Agreement by conforming the terms of the Prior Agreement to the relevant provisions of the Settlement Agreement, the Settlement-Related Ordinances, and the Settlement Related Amendments;

2. Set forth the financial arrangements between the parties with respect to their respective expenditures in connection with the satisfactory disposition of the Action through approval of the Settlement Agreement and related actions;

3. Update both the Schedule of Performance (Attachment No. 3) and performance dates contained throughout the main text of the Prior Agreement to reflect the tolling of obligations under the Prior Agreement during the pending Action, as well as Prior Project circumstances; and

4. Make other conforming and minor updating changes to reflect changed circumstances for performance of the Prior Project since the Prior Agreement had last been amended through the Second Amendment.

I. Since the effectiveness of the Third Restatement of the Prior Agreement, there have been several significant changes in circumstances outside the control of the parties to the Prior Agreement which seriously affected the timing and sequence of development as envisioned in the Prior Agreement. These changed circumstances include, but are not limited to, the following:

1. A significant downturn in the housing and commercial real estate market, as well as the unavailability of financing, particularly in California. As a result, the development of the Northern Waterfront Area, which was the area proposed to be developed first under the Prior Agreement, became temporarily economically unfeasible;

2. Due to financing constraints, the Vallejo Station parking structure on Parcel L is being constructed by the City in two phases. Construction of the first phase ("Phase A") is now complete, but the timing for construction of the second phase (the "Phase B" is unknown at this time. This phasing of construction necessarily delayed the development of the other parcels on Parcel L by the Prior Developer and the RDA, as contemplated under the Prior

Agreement. In addition, the construction of the Vallejo Station parking structure has affected the configuration and size of certain of the remaining Parcel L sub-parcels.

3. The USPS facility (as further described in Section I.4. below) remains in operation on the land slated for development of Phase B of the garage. That phasing, in turn, requires that the top deck of the Phase A garage and the balance of Parcels L-1 and L-2 must be utilized in their entirety to provide the required 1200 parking spaces to support the WETA Bay Links ferry service. Consequently, Parcel L-1, L-2 and L-4 will not be available for private development until completion of both phases of the Vallejo Station garage following relocation of the USPS facility to a new site. There is currently no firm schedule for the USPS relocation, as further described in Section I.4. below. Parcels J-1 and J-2 are planned to be cleared of surface parking and readied for private development upon consolidation of all ferry parking on Parcel L, which is not likely to occur for some time.

4. A United States Post Office ("USPS") facility is located on the portion of Parcel L that will be occupied by Phase B of the Vallejo Station parking structure. The City has acquired fee title to the land on which the facility is located. Under the Prior Agreement, the Post Office facility is proposed to be relocated to the Southern Waterfront Area. However, since February 2007, the Post Office has determined it does not wish to have a facility in the Southern Waterfront Area or anywhere else on the Prior Site.

5. Recent and current economic and market circumstances constrained and continue to limit both public and private financing options for the RDA (now the City) and the Developer.

6. The dissolution and wind down of the RDA as described in the Recitals of this Fourth Restated Agreement have added additional layers of uncertainty, complexity and delay in the development of the Project on the Site.

In light of all of the above conditions and circumstances, the City, the Developer and the Successor City have determined that the execution of this Fourth Restated Agreement represents the best initial step toward future development of the Project on the Site. Further, to address the above significant changes in circumstances, the City and the Developer have commited to seek further amendments to this Fourth Restated Agreement in the form of the City/Developer Amendment, as described in Section 115 of this Fourth Restated Agreement.

J. For the reasons and in the manner set forth in Section I above and the Recitals to this Fourth Restated Agreement, the Third Restatement of the Prior Agreement is further amended and restated in its entirety by this Fourth Restated Agreement. As a result, the Prior Project on the Prior Site is superseded by the Project on the Site, as set forth in this Fourth Restated Agreement.

K. As a result of the foregoing history and background, the current City land use entitlements and controls that apply to the Project on the Site that is the subject of this Fourth Restated Agreement consist of the following documents (to the extent they apply to the revised and reduced Site described in Section 106 of this Fourth Restated Agreement):

1. The 2005 Approvals as modified by the Settlement-Related Amendments; and

2. The EIR and the EIR Addendum.

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Style Name: Default Style	
Original DMS:iw://iManage/iManage/8382492/1	
Modified DMS: iw://iManage/iManage/8382492/2	
Changes:	
Add	43
~~Delete~~	79
~~Move From~~	3
Move To	3
Table Insert	0
~~Table Delete~~	99
Table moves to	0
~~Table moves from~~	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format Changes	0
Total Changes:	227

Attachment 5

~~EXECUTION~~Version for 12/16/13 Action

FOURTH AMENDED AND RESTATED
DISPOSITION AND DEVELOPMENT AGREEMENT
(INCLUDING ASSIGNMENT OF SUCCESSOR AGENCY RIGHTS AND OBLIGATIONS)

By and ~~Between~~Among

CITY OF VALLEJO,

SUCCESSOR AGENCY TO THE
REDEVELOPMENT AGENCY OF
THE CITY OF VALLEJO

and

CALLAHAN ~~/ DeSILVA VALLEJO, LLC~~PROPERTY COMPANY, INC.

Waterfront Redevelopment Project /
Marina Vista Redevelopment Project

Executed as of October 17, 2000

Amended and Restated (First) as of October 1, 2002

Amended as of October 24, 2003

Amended as of August 24, 2004

Amended and Restated (Second) as of October 27, 2005

Amended and Restated (Third) as of February 27, 2007

Amended and Restated (Fourth) as of December 16, 2013

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FOURTH AMENDED AND RESTATED
DISPOSITION AND DEVELOPMENT AGREEMENT
(INCLUDING ASSIGNMENT OF SUCCESSOR AGENCY
RIGHTS AND OBLIGATIONS)

THIS FOURTH AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT (this "Agreement"), initially executed as of October 17, 2000, as amended and restated as of October 1, 2002, as further amended as of October 24, 2003, and August 24, 2004, as amended and restated for a second time as of October 27, 2005 (the "Second Restatement"), and as hereby fully amended and restated for a third time as of February 27, 2007 (the "Third Restatement") is entered into by and between theINCLUDING ASSIGNMENT OF SUCCESSOR AGENCY RIGHTS AND OBLIGATIONS) (this "Fourth Restated Agreement" or this "Agreement"), initially executed and previously amended as detailed in Recital A below, is entered into as of December 16, 2013 by and among the CITY OF VALLEJO, a municipal corporation (the "City"), the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF VALLEJO, a public entity (the "Successor Agency"), and CALLAHAN / DeSILVA VALLEJO, LLCPROPERTY COMPANY, INC., a California limited liability companycorporation (the "Developer"). The City, the Successor Agency, and the Developer are sometimes collectively referred to in this Agreement as the "Parties" or "parties", and individually as a "Party" or "party.". The parties have entered into this Fourth Restated Agreement on the basis of the following facts, understandings and intentions:

RECITALS

A. The parties initially executed this{ Agreement as of October 17, 2000 to implement a program of public and private revitalization of the Vallejo Waterfront area (the "}Project," as further defined and described in Section 101 and the Scope of Development (Attachment No. 4)) within a strategic site adjacent to the Waterfront area and Vallejo's commercial Downtown area (the "Site," as further defined and described in Sections 101 and 104). The parties initially executed this{ Agreement in recognition of the accomplishment of the following milestone actions:}Redevelopment Agency of the City of Vallejo (the "RDA"), and Callahan[/DeSilva] Vallejo, LLC ("CDV") entered into a [Disposition and Development Agreement]with the Agencyfor the Vallejo Waterfront Project[, executed as of October 17, 2000, as amended and restated as of October 1, 2002, as further amended by an Amendment entered into as of October 24, 2003, as further amended by a Second Amendment entered into as of July 20, 2004, as further amended and restated for a second time as of October 27,]2005, as further amended and restated for a third time as of February 27, 2007, as further implemented by an Implementation Agreement entered into as of March 8, 2011, and as further implemented by Operating Memorandum No. 1 entered into as of April 13, 2007, Operating Memorandum No. 2 entered into as of February 29, 2008, Operating Memorandum No. 2A entered into as of August 1, 2009, Operating Memorandum No. 3 entered into as of May 14, 2007, Operating Memorandum No. 4 entered into as of May 14, 2007, Operating Memorandum No. 5 entered into as of December 1, 2011, and Operating Memorandum No. 6 entered into as of December 1, 20011 (collectively, the "Prior Agreement").

B. The Prior Agreement provides for the acquisition, disposition and development of certain real property included within the boundaries of the Redevelopment Plans for the Waterfront Redevelopment Project and[the Marina Vista Redevelopment Project], and

construction in phases of a master planned mixed-use development, including residential, commercial, retail and open space and park uses. Pursuant to the Prior Agreement, the RDA agreed to convey certain property located within the site that is the subject of the Prior Agreement to the Developer, and the Developer agreed to construct on the conveyed real property a mixed-use development as fully set forth in the Prior Agreement. In addition, pursuant to the Prior Agreement, the RDA agreed to fund and cause construction of specified public improvements and performance of certain site improvements and hazardous materials remediation, and for those purposes to pledge certain specified funds, including, without limitation, land disposition proceeds and a portion of the tax increment revenue generated by the redevelopment of the site, to help pay for the RDA's obligations under the Prior Agreement.

C. Attachment No. 9 of this Fourth Restated Agreement provides a brief history and background of the evolution of the Prior Agreement and its intended purposes (the "History and Background").

D. As more fully described in the History and Background (Attachment No. 9), accompanying the Prior Agreement, the City has approved a series of land use entitlements to guide the development of the site (collectively the "Current Approvals"), including, without limitation, a General Plan amendment, a Zoning Ordinance amendment, a Planned Development Master Plan and accompanying[Waterfront Design Guidelines,]and a First Amended and Restated Development Agreement dated as of April 12, 2007 between the City and the Developer pursuant to Government Code Section 65864 et seq. (the "Development Agreement").

E. As permitted by the Prior Agreement, pursuant to an Assignment and Assumption Agreement among CDV, the Developer, the RDA and the City, dated as of December 20, 2011, CDV assigned all of its right, title and interest in, and obligations and covenants under the Prior Agreement to the Developer, the Developer accepted and assumed such assignment, and the RDA and the City approved such assignment, making Callahan Property, Inc. the "Developer" under and in accordance with all the terms and provisions of the Prior Agreement.

F. Pursuant to ABx1 26 enacted June 28, 2011 (as found constitutional and as partially reformed by the California Supreme Court in the decision of *California Redevelopment Association v. Matosantos* issued December 29, 2011, and as amended by AB 1484 enacted June 27, 2012, the "Dissolution Act"):

{ ~~1. On August 13, 1996, the~~ }~~Agency authorized the~~{ ~~Executive Director to seek proposals from qualified developers for the development of available parcels within the Marina Vista and Waterfront Redevelopment Project Areas. A request for qualifications was issued on January 2, 1997, and distributed to more than 130 developers. Four proposals were submitted in response to the request for qualifications. A Waterfront Developer Review Panel (the "WDRP") was established that included staff and representatives of the community to review the qualifications statements and visit projects of the proposed developers. Following this process, the WDRP recommended that the~~ }~~Agency~~{ ~~approve The DeSilva Group (~~}~~"DeSilva"~~{~~) as the Master Waterfront Developer. The~~ }~~Agency~~{ ~~approved DeSilva as the Master Waterfront Developer on April 15, 1997, and directed DeSilva to formulate a community-based Waterfront Master Plan.~~ }

1. }The RDA, along with all other redevelopment agencies in the State of California, was dissolved as of February 1, 2012;

{~~2. In May 1997, the~~} ~~Agency~~{ ~~approved an Exclusive Right to Negotiate Agreement (~~}~~"ERN"~~{~~) with DeSilva, which required DeSilva to develop the Waterfront Master Plan and then proceed to negotiate a Disposition and Development Agreement. DeSilva subsequently teamed with Callahan Property Company ("CPC") to form~~ }~~the limited liability company which is the Developer under this Agreement.~~

2. The City, acting in a separate capacity and in the form of a separate legal entity, elected to serve as the successor agency (the "Successor Agency") to the RDA for purposes of fulfilling the enforceable obligations (as further defined in the Dissolution Act, "Enforceable Obligations") of the dissolved RDA and unwinding the affairs of the dissolved RDA;

~~3. Since beginning the Waterfront public planning process, the~~{ ~~Developer, in conjunction with the City~~} ~~of Vallejo (the "City"), has~~{ ~~held Public Planning Workshops, outreach meetings and presentations to City commissions and boards. In addition, the City~~}~~'~~{~~s Community Development Department sent letters to neighborhood and community organizations inviting participation in outreach meeting and public workshops, and the public workshops were also advertised in a local newspaper, on a local cable television channel and through handouts and flyers.~~}

3. }An oversight board (the "Oversight Board") has been selected and convened to oversee, direct and approve specified actions of the Successor Agency; and

{~~4. As a result of this public planning process, DeSilva prepared a Waterfront Master Plan, which was accepted by the~~ }~~Agency~~{ ~~on April 20, 1999, subject to certain conditions, including without limitation negotiations of a final~~ }{~~Disposition and Development Agreement~~ }~~with the Agency~~{ ~~and completion of the environmental review process. The primary goal of the Waterfront Master Plan~~ }~~is~~{ ~~to incorporate mixed land uses which are pedestrian-friendly and which will allow the Waterfront and Downtown areas to evolve into the social, cultural and entertainment hub of the City.~~}

4. }The California Department of Finance (the "DOF") has been assigned to review the actions of the Oversight Board.

{~~5. Following acceptance of the Waterfront Master Plan, the~~ }~~Agency~~{ ~~retained an Urban Land Institute (ULI) Advisory Panel, which convened in Vallejo in June 1999, to review the Waterfront Master Plan. The~~ }~~Agency accepted the Panel'~~{~~s report at its meeting on August 24, 1999. On March 28, 2000, modifications to the Waterfront Master Plan were accepted by the~~ }~~Agency~~{~~.~~}

G. }The Successor Agency has treated as Enforceable Obligations the obligations of the dissolved RDA under the Prior Agreement, including, without limitation, the obligations to convey specified parcels to the Developer in accordance with specified terms and conditions, to fund and cause construction of various public improvements, and to fund and complete certain property remediation and site preparation duties. Accordingly, the Successor Agency has placed certain of the dissolved RDA's funding obligations under the Prior Agreement on each six-month recognized obligation payment schedule (each, a "ROPS") prepared by the Successor Agency and submitted to the Oversight Board and the DOF for review and approval, with the purpose of obtaining the appropriate funds to pay such Prior Agreement obligations from the funds to be distributed by the Solano County Auditor-Controller (the "Auditor-Controller") in accordance

with Health and Safety Code Section 34183(a)(2) from the Redevelopment Property Tax Trust Fund (the "RPTTF", as further described in Health and Safety Code Section 34170(b)).

{6. Through a competitive process, the City and the Waterfront Downtown Design Advisory Committee selected the firm of Wallace Roberts & Todd, Inc. (}"WRT"{) as the landscape architect to provide design concepts and plans for the public spaces within the Waterfront Master Plan area. Through an extensive public participation process, WRT prepared and the }Agency{ approved the Vallejo Waterfront Downtown Master Plan for Public Spaces, by action of September 19, 2000 (the "Plan for Public Spaces"). }

H. }In connection with the processing of its ROPS for the period January 1 through June 30, 2013 ("ROPS III"), the DOF wrote to the Successor Agency on October 19, 2012, disapproving several line items related to Prior Agreement obligations of the RDA on the basis that such items did not constitute Enforceable Obligations. The Successor Agency requested a "meet and confer" session with the DOF that was subsequently held on November 27, 2012 to seek a reversal of the DOF's determination that such disapproved Prior DDA obligations did not constitute Enforceable Obligations. By letter of December 18, 2012, the DOF informed the Successor Agency that it was temporarily removing its disapproval of the subject Prior Agreement obligations, but indicated several reservations about the long-term viability of implementing the Prior Agreement under the terms and limitations of the Dissolution Act.

{ B. }This Agreement was comprehensively updated through the Second Restatement, approved by the Agency on October 27, 2005, {to reflect progress made and further planning and financial agreements reached by the }Agency and the Developer from the time of the initial execution of this Agreement{ through the date of the Second Restatement. Among the milestone actions leading to the Second Restatement of this Agreement were the following:}

I. }Following informal consultations with the DOF and the Oversight Board, the parties determined it would be in their long-term best interest and that of the taxing entities to seek a renegotiation of the Prior Agreement to simplify and modify its terms in a mutually acceptable manner as authorized by Health and Safety Code Section 34181(e), which states:

{ 1. The Georgia Street Extension element of the}{ Project was satisfactorily completed} by the parties, with the{ Developer serving as the project manager for such completion.}

> *34181. The oversight board shall direct the successor agency to do all of the following:...(e) Determine whether any contracts, agreements, or other[arrangements between the]dissolved redevelopment agency and any private parties should be terminated or renegotiated to reduce liabilities and increase net revenues to the taxing entities, and present proposed termination or amendment agreements to the oversight board for its approval. The board may approve any amendments to or early termination of those agreements if it finds that amendments or early termination would be in the best interests of the taxing entities.*

{ 2. Former Developer Parcel K ("Former Parcel K") was removed from the }Site that is the subject of this{ Agreement and was satisfactorily developed as an office facility for the State Farm Electronic Claims Center pursuant to a separate disposition and development agreement between the }Agency{ and CPC, a member of the }{Developer. As part of the separate

development of Former Parcel K, CPC served as the }Agency{'s project manager for completion of the segment of Capitol Street between Mare Island Way and Civic Center Drive.}

J. }As a result, the parties have prepared amendments to the Prior Agreement (the "Amendments") in the form of this Fourth Restated Agreement, pursuant to which the following primary objectives are achieved:

{ 3. Former Parcels N and V were removed from the }Site that is the subject of this Agreement{ and were made part of the development under a separate disposition and development agreement entered into between the} Agency{ and Triad Downtown Vallejo, LLC. Former Parcel U (the Boat Launch relocation parcel) was also removed from the }Site that is the subject of this Agreement{.}

1. }With one limited exception set forth in Section 114, all obligations of the RDA/Successor Agency to receive and apply RPTTF funds to pay the RDA's obligations under the Prior Agreement are eliminated, thereby substantially increasing the receipt of property taxes by the affected taxing entities.

{ 4. On December 11, 2002, the City and the }Agency{ circulated an initial draft environmental impact report (the "IDEIR"), in accordance with the California Environmental Quality Act and applicable state and local guidelines ("CEQA"). The IDEIR evaluated the potential environmental effects of the }Project as envisioned under this Agreement as initially executed and amended prior to the Second Restatement of this Agreement{. Extensive comments were received on the IDEIR. During preparation of responses to those comments, the City and the }Agency{ decided that a revised draft environmental impact report (the "RDEIR") should be prepared and circulated in accordance with CEQA for reasons set forth in the Introduction to the RDEIR. In connection with preparation of the RDEIR, and as detailed therein, the }parties and the City made various revisions to the{ Project scope and description. These revisions reconfigured and scaled-back the }{Project from that originally envisioned when this Agreement was initially executed in October, 2000, and responded to public concerns and changed circumstances with respect to surrounding developments in the Downtown area and at Mare Island.}

2. }As fully provided in Section 103, all rights and obligations of the parties under the Prior Agreement regarding the Southern Waterfront area are deleted, thereby eliminating substantial remediation and public improvement obligations of the RDA/Successor Agency with respect to that major area, and freeing up over half of the private development acreage (approximately 27 acres) from the Prior Agreement's obligation to convey to the Developer, and instead making that Southern Waterfront land available for liquidation and disposition by the Successor Agency and the City in a manner that could generate additional property sale proceeds to the taxing entities.

{ 5. The City and the }Agency{ circulated the RDEIR (State Clearing House No. 2000052073) on June 10, 2005. On October 3, 2005, the City and the }Agency{ circulated a document containing responses to comments received on the RDEIR and other information required by CEQA}, which together with the RDEIR constitutes the "EIR" for the Project.

3. As further provided in Section 111, virtually all of the Successor Agency's rights and obligations under the Prior Agreement (as modified by this Fourth Restated Agreement) are assigned to the City, and the Successor Agency's ownership of Parcel J will be granted to the City for further disposition by the City in accordance with this Fourth Restated Agreement,

thereby relieving the Successor Agency of substantial obligations for the benefit of the taxing entities.

6. In connection with preparation of the EIR and the Second Restatement of this Agreement, the parties and the City prepared the following series of land use approvals and entitlements for the revised{ Project, for consideration of approval by the City concurrently with consideration of approval of the Second Restatement} of this Agreement (together with the EIR, the following documents and approvals are collectively referred to as the "Required Approvals"):

4. As further provided in the Method of Financing (Attachment No. 6), the City's obligation to fund and complete the public improvements that it will assume under this Fourth Restated Agreement will be strictly limited to grant funds it has obtained or may obtain, the sale proceeds from the disposition of the development parcels to the Developer, and any other funding sources mutually agreed by the City and the Developer.

a. An Amendment to the City'{s General Plan (#00-001, referred to as the "General Plan Amendment") to include revised and updated land use and urban design goals, policies and map designations for the Site and the Project;}

5. }As a result of the elimination of future obligations on the part of the Successor Agency under this Fourth Restated Agreement, the City and the Developer may: (a) make future amendments to this Fourth Restated Agreement without the approval of the Successor Agency, the Oversight Board and/or the DOF, so long as such future amendments in (i) no way affect the Retained Successor Agency Obligations or (ii) impose any other obligations upon the Successor Agency as further provided in Sections 111, 115, 703, and 800; and (b) implement the terms of this Fourth Restated Agreement (as may be subsequently amended) without further oversight, approval or other involvement of the Successor Agency, the Oversight Board and/or the DOF and outside the purview and jurisdiction of the Dissolution Act.

b. {An Amendment to the City}'{s Zoning Ordinance (#03-0003) to provide for zoning consistent with the General Plan Amendment;}

K. }The Amendments to the Prior Agreement set forth in this Fourth Restated Agreement have the overall purpose and effect of reducing liabilities and increasing net revenues to the affected taxing entities (as further defined in Health and Safety Code Section 33354.2, the "Taxing Entities") and will be in the best interests of the Taxing Entities, thereby satisfying the requirements cited above in Health and Safety Code Section 34181(e) for approval of this Fourth Restated Agreement by the Oversight Board and the DOF, and execution of this Fourth Restated Agreement by the Successor Agency following such approvals.

c. {A Planned Development Master Plan for the Site (#00-0022, referred to as the "Planned Development Master Plan"), which includes as an attached and incorporated element the}{ Waterfront Design Guidelines, }{prepared jointly by the }Agency{ and Developer; and}

L. }The History and Background (Attachment No. 9) sets forth the procedures and documents used in connection with the Prior Agreement (the "Prior Agreement CEQA Documentation") to accomplish compliance with the requirements of the California Environmental Quality Act and accompanying state and local implementing guidelines ("CEQA"). Approval and execution of this Fourth Restated Agreement are exempt from the requirements of CEQA on the following bases:

d. {A development agreement (#05-0008, referred to as the "}Development Agreement") pursuant to Government Code Section 65864 et seq., between the City and the Developer pertaining to all of the Developer Parcels identified in Section 104 of this Agreement.

1. The Amendments to the Prior Agreement contained in this Fourth Restated Agreement do not contain any changes in the underlying physical activities or the resulting environmental impacts from the project previously set forth in the Prior Agreement and evaluated in the Prior Agreement CEQA Documentation;

The Required{ Approvals incorporated refined concepts and designs from previous planning and policy documents for the Waterfront area, including the Waterfront Master Plan and the Plan For Public Spaces (as described in Recital A above).}

2. } Instead, such Amendments comprise "government fiscal activities which do not involve any commitment to a specific project which may result in a potentially significant physical impact on the environment," thereby rendering this Fourth Restated Agreement exempt from the requirements of CEQA pursuant to State CEQA guidelines Section 15378(b)(4);

{ C. On October 25 and 27, and November 15, 2005, the City Council and the }Agency{: }

3. }Further, this Fourth Restated Agreement and the Amendments to the Prior Agreement incorporated herein meet the "common sense exemption" to the requirements of CEQA set forth in State CEQA guidelines Section 15061(b)(3), in that "it can be seen with certainty that there is no possibility that the activity in question may have a significant impact on the environment"; and

{ 1. Conducted public hearings on the }revised{ Project, the Second Restatement of }this Agreement, and the Required{ Approvals;}

{ 2. Certified the EIR and made the required CEQA findings; and }

4. }This Fourth Restated Agreement is categorically exempt under State CEQA guidelines Section 15321, in that the Amendments incorporated in this Fourth Restated Agreement are implemented as actions by regulatory agencies to enforce or revoke a permit, license, or entitlement for use adopted by the agency, including, but not limited to, an administrative decision or order enforcing or revoking the permit, license, or entitlement for use or "enforcing the general rule, standard, or objective." The Amendments, which involve in part revoking the Developer's right to develop the Southern Waterfront and to receive RPTTF funds, have been presented for approval to the Successor Agency, the City, the Oversight Board, and the DOF to enforce the general rule stated in the above cited Health and Safety Code Section 34181(e) that existing Enforceable Obligations should be amended to minimize liabilities, and maximize revenues to the Taxing Entities.

{ 3. Approved the Second Restatement of }this Agreement and the Required{ Approvals.}

M. }This Fourth Restated Agreement requires Oversight Board approval and accompanying DOF review for the following reasons:

{ As a result of these actions, the Second Restatement of} this{ Agreement became fully effective by its terms on December 15, 2005.}

1. }As an agreement partly between the Successor Agency and the City, this Fourth Restated Agreement requires Oversight Board approval and direction pursuant to Health and Safety Code Section 34180(h);

{D. On or about December 2, 2005, the Vallejo Waterfront Coalition, an unincorporated association (the "Coalition") filed a Petition for Writ of Mandate And Complaint for Injunctive Relief in the Solano County Superior Court, captioned *Vallejo Waterfront Coalition v. City of Vallejo, et al*.; Case No. FCS 027048 (the "Action"). On or about January 12, 2006, the Coalition filed a First Amended Petition, etc. in the Action. Beginning on or about January 20, 2006, the }Agency, the City, the{ Developer, and the Coalition} have{ engaged in settlement negotiations to resolve the Action and }have {reached an agreement to do so on the terms and conditions stated in that certain Settlement and Release Agreement entered into as of November 28, 2006 (the "Settlement Agreement"). }

{E. On November 28, 2006, the City Council and the }Agency approved the Settlement Agreement in the form previously executed by the Developer and the Coalition. The City and the Agency{ thereafter duly executed the Settlement Agreement.}

{F. On February 27, 2007, following conduct of duly noticed public hearings as required by law, the City Council and the }Agency took the following actions

1. The City Council and the Agency approved an addendum to the EIR that evaluated the impacts of the Project as modified by the Settlement-Related Amendments (as defined below), and the Third Restatement of this Agreement (the "EIR Addendum");

2. The City Council and the Agency approved the Third Restatement of this Agreement{; and}

{ 3. The City Council introduced and conducted the first reading of ordinances (collectively, the "Settlement-Related Ordinances") to approve certain amendments to the Planned Development Master Plan and the accompanying Waterfront Design Guidelines and certain amendments to the }{Development Agreement, to implement specified terms of the Settlement Agreement (collectively, the "Settlement-Related Amendments"). }

{G. }The Settlement Agreement provides for the Action to be dismissed by the parties thereto within thirty-one (31) days after the second reading and approval of the Settlement-Related Ordinances enacting the Settlement-Related Amendments, which second reading is currently scheduled for consideration by the City Council on March 13, 2007. The date that the Action is dismissed is referred to as the "Action Dismissal Date."

H. Through the Third Restatement of this Agreement, the parties intend to modify the{ Agreement to:}

{ 1. Implement the terms of the Settlement Agreement by conforming the terms of }this{ Agreement to the relevant provisions of the Settlement Agreement, the Settlement-Related Ordinances, and the Settlement Related Amendments;}

{ 2. Set forth the financial}{ arrangements between the }{parties with respect to their respective expenditures in connection with the satisfactory disposition of the Action through approval of the Settlement Agreement and related actions;}

{ 3. Update both the Schedule of Performance (Attachment No. 3) and performance dates contained throughout the main text of }this{ Agreement to reflect the tolling of obligations under }this{ Agreement during the pending Action, as well as }current{ Project circumstances; and}

{ 4. Make other conforming and minor updating changes to reflect changed circumstances for performance of the }Project since this Agreement was last amended through the Second Amendment.

I. The revised Project contemplated by the parties and the City for implementation pursuant to this Agreement (as amended by the Third Restatement) and the Amended Required Approvals (as defined in Section 102.5), consists of a comprehensive and coordinated public and private development effort to revitalize Vallejo's Waterfront area and to link the Waterfront area to the Downtown area. The Project includes, as a central component, development of a major new transit center for ferry and bus users within Parcels L and O of the Site to be known as "Vallejo Station."

2. As an agreement providing for disposition of a Successor Agency parcel (Parcel J, as more fully provided in Section 112), this Fourth Restated Agreement requires Oversight Board approval and direction pursuant to Health and Safety Code Section 34181(a); and

J. The fundamental objectives of the revised Project to be undertaken pursuant to this Agreement (as amended by the Third Restatement) and the Amended Required Approvals are to revitalize the Waterfront and Downtown areas by intensifying land uses in certain areas, to expand designated public open space areas from approximately 11 acres to approximately 31 acres, to create Vallejo Station as a multimodal transportation facility serving regional and local transit needs, and to enhance public access to the Waterfront and the Waterfront Promenade area. The revised Project includes up to 587,000 gross square feet of commercial building space (and associated parking), up to 1,251 residential units (and associated parking), the Vallejo Station multimodal transportation facility (including an approximately 1,190 space parking garage for ferry patrons and a new bus transfer center), the development of approximately 20 acres of net new public park and open space, and the preservation of approximately 11 acres of existing public park and open space (as further specified in Table 2-3 of the RDEIR, as updated in the EIR Addendum).

3. As an agreement effectuating a renegotiation of the Prior Agreement with a private party (the Developer), this Fourth Restated Agreement requires Oversight Board approval and direction pursuant to Health and Safety Code Section 34181(e).

As a result, this Fourth Restated Agreement will become effective only upon approval and direction of the Oversight Board and completion of certain other actions pursuant to the Dissolution Act as further provided in Section 101.

AGREEMENT

The City, the Successor Agency and the Developer agree as follows:

1. [§100] SUBJECT OF AGREEMENT.

A. [§101] Effectiveness of This Fourth Restated Agreement.

This Fourth Restated Agreement shall become effective only upon satisfaction of the following conditions:

1. Approval of this Fourth Restated Agreement and direction by the Oversight Board for the Successor Agency to execute and implement this Fourth Restated Agreement pursuant to Health and Safety Code Section 34180(h) (the "Oversight Board Action"); and

2 Notification to the DOF of the Oversight Board Action and effectiveness of the Oversight Board Action in accordance with the provisions of Health and Safety Code Section 34179(h).

The date upon which the above conditions are first satisfied is referred to as the "Effective Date". On and after the Effective Date, this Fourth Restated Agreement shall amend, restate and supersede the Prior Agreement, and shall include and incorporate Operating Memoranda Nos. 1, 3, 4 and 5 that formed a part of the Prior Agreement, as further described in Recital A. As of the Effective Date, Operating Memoranda Nos. 2, 2A and 6 (which addressed matters related exclusively to the Southern Waterfront area) shall be terminated and of no further force or effect. Pending the Effective Date, the Prior Agreement shall remain in effect and control the rights and obligation of the parties.

B. ~~A. [§101]~~[§102] Purpose of ~~this~~This Fourth Restated Agreement.

~~The purpose of this Agreement is~~As further described in Recital J and K, the Amendments to the Prior Agreement incorporated in this Fourth Restated Agreement are intended to serve several related primary purposes including: (a) to eliminate the obligations of the Successor Agency under this Fourth Restated Agreement (except as expressly provided in Section 111) for the benefit of the Taxing Entities; (b) to remove the Southern Waterfront from the terms of this Fourth Restated Agreement; and (c) to authorize the City and the Developer to proceed with the continued implementation of this Fourth Restated Agreement (as may be further amended) without further oversight, approval or other involvement of the Successor Agency, the Oversight Board and/or the DOF and outside the purview and jurisdiction of the Dissolution Act.

In turn, it is the intent that the City and the Developer will then continue under this Fourth Restated Agreement to effectuate the respective Redevelopment Plans (collectively, the "Redevelopment Plans") for the Waterfront Redevelopment Project and the Marina Vista Redevelopment Project (collectively, the "Redevelopment Projects") by providing for the acquisition, disposition and development of certain real property consisting of approximately ~~92~~54 acres (the "Site") included within the boundaries of the Redevelopment Projects (the "Redevelopment Project Areas"). It is the intent of the Parties that the Site shall be developed as a master planned mixed-use development, including residential, commercial, retail, hotel,

conference center, and open space and park uses. All predisposition activities, property acquisitions and dispositions, demolition and public or private improvements of any nature on any portion of the Site, and all other activities in furtherance of the development of the Site pursuant to this Agreement and the Project Approvals (as defined in Section 102.5104.2) are collectively referred to in this Agreement as the “"Project.”"

The development of the Site pursuant to this Agreement and the fulfillment generally of this Agreement are in the vital and best interests of the City of Vallejo, California, and the health, safety, morals and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state and local laws and requirements.

As fully set forth in the Scope of Development (Attachment No. 4) and the Method of Financing (Attachment No. 6), the Project and the Site are proposed to be developed in threetwo separate and independent geographic elements or areas (each, an "Area"), as follows:

1. The "Northern Waterfront" or "Northern Waterfront Area", generally as shown in the Map of the Site for the Northern Waterfront (Attachment No. 1A); and

2. The "Central Waterfront" or "Central Waterfront Area", generally as shown in the Map of the Site for the Central Waterfront (Attachment No. 1B); and.

3. The "As fully set forth in Section 103, the Southern Waterfront" or "/Southern Waterfront Area", generally as shown in the Map of the Site for the Southern Waterfront (Attachment No. 1C). is no longer a portion of the Site under this Fourth Restated Agreement.

C. [§103] Removal of Southern Waterfront From Site.

Upon the Effective Date, the Southern Waterfront/Southern Waterfront Area, as referenced in Sections 101 and 104 and depicted in Attachment No. 1C of the Prior Agreement, shall no longer constitute a portion of the Site for any purpose under this Fourth Restated Agreement. Upon the Effective Date, none of the parties shall have any further rights or obligations pursuant to this Fourth Restated Agreement with respect to the Southern Waterfront/Southern Waterfront Area. It is the parties' express understanding and intent that, upon the Effective Date, the future disposition and development of the Southern Waterfront/Southern Waterfront Area shall be solely controlled by the Long-Range Property Management Plan and related implementation documents to be prepared by the Successor Agency and approved by the Oversight Board and the DOF in accordance with the Health and Safety Code Section 34191.5, and not in any way by this Fourth Restated Agreement. Following the Effective Date, the Developer shall execute and deliver such instruments in recordable form, including without limitation quit claim deeds, as may be reasonably requested by the City or the Successor Agency to effectuate the purpose and intent of this Section 103. The City or the Successor Agency shall be responsible for causing the recordation of any such instruments delivered by the Developer.

D. B. [§102104] The Redevelopment Plans; Effectiveness of Agreement; Project Approvals.

1. Redevelopment Plans. A portion of the Site is included within the Waterfront Redevelopment Project Area, and a portion of the Site is included within the Marina Vista Redevelopment Project Area. The Redevelopment Plan for the Waterfront Redevelopment Project was originally approved and adopted by the City Council of the City of Vallejo (the ""City Council"") on December 26, 1973, by Ordinance No. 206 N.C. (2d). The Redevelopment Plan for the Marina Vista Redevelopment Project was originally adopted by the City Council on January 18, 1960, by Ordinance No. 372 N. C. as the Urban Renewal Plan for the Marina Vista, and was subsequently amended and superseded in its entirety by the adoption of the Redevelopment Plan by Ordinance Nos. 274 N. C. (2d) and 275 N. C. (2d) on May 5, 1975. This Agreement is subject to the provisions of the Redevelopment Plans, as such Redevelopment Plans have been amended to date. The Redevelopment Plans, as they now exist and as they may be subsequently amended pursuant to this Section and Section 701, are incorporated herein by reference and made a part hereof as though fully set forth herein.

By ordinances approved on November 28, 2006, the City Council adopted amendments to the Redevelopment Plans and approved a merged Redevelopment Plan to, among other things, merge the Marina Vista Redevelopment Project, the Waterfront Redevelopment Project, and the adjacent Vallejo Central Redevelopment Project, as more fully set forth in Section 701 hereof.

2. Effectiveness of Third Restatement of This Agreement. Except as otherwise provided in Sections 102.6 and 110, the Third Restatement of this Agreement shall become effective on the Action Dismissal Date, as defined in Recital G. Within thirty (30) days after the Action Dismissal Date, the parties shall memorialize such date through execution of an Operating Memorandum pursuant to Section 709. Unless otherwise provided by applicable law or otherwise determined by a court of competent jurisdiction, so long as the Action has been dismissed, the filing of a legal action challenging the approval of the EIR Addendum, the Third Restatement of this Agreement, the Settlement Agreement, the Settlement-Related Ordinances and/or the Settlement-Related Amendments shall not be deemed to render the Third Restatement of this Agreement non-effective. Pending the Action Dismissal Date, the Second Restatement of this Agreement shall remain in effect and control the rights and obligations of the parties.

3. Efforts To Obtain Required Approvals and Settlement-Related Ordinances/Amendments. In furtherance of the Agency's obligations under this Agreement, and with the assistance of Developer funding as described in Sections 109.1 and 109.2, the Required Approvals were obtained as further described in Recital C of this Agreement.

The Agency, at its sole cost and in cooperation with the Developer, shall use its best efforts to cause the City to approve the second reading of and adopt the Settlement-Related Ordinances to enact the Settlement-Related Amendments to the Required Approvals in a manner consistent with the Settlement Agreement, and to obtain effectiveness of the Settlement-Related Ordinances and the Settlement-Related Amendments to the Required Approvals by not later than April 12, 2007. Without the prior written approval of the Developer, which may be granted or denied by the Developer in its sole discretion (notwithstanding the provisions of Section 607), the

Agency shall have no right to terminate this Agreement, or any part hereof, for failure of the City Council to approve second reading of and adopt the Settlement-Related Ordinances in a manner consistent with the Settlement Agreement or for failure of the Settlement-Related Ordinances and the Settlement-Related Amendments to the Required Approvals to become effective following the applicable referendum period by April 12, 2007, or any later date.

4. Failure of Settlement-Related Ordinances/Amendments to Become Effective. If the City Council does not approve second reading of and adopt the Settlement-Related Ordinances to enact the Settlement-Related Amendments to the Required Approvals in a manner consistent with the Settlement Agreement, or if, following approval and adoption, both of the Settlement-Related Ordinances and the Settlement-Related Amendments to the Required Approvals do not become effective in accordance with applicable law by April 12, 2007 (collectively, a "Settlement Failure Event"), then the provisions of this Section 102.4 shall apply.

a. Upon a Settlement Failure Event, the Developer may terminate this Agreement pursuant to Section 510 hereof.

b. If the Developer notifies the Agency that it does not intend to exercise the termination right set forth in subsection a. above, the parties shall meet and confer in good faith for such period as is reasonably necessary to agree upon a modification of the Settlement-Related Ordinances and the Settlement-Related Amendments to the Required Approvals for resubmission to the City Council that accomplishes, as nearly as possible under the applicable circumstances of the previous failure of the Settlement-Related Ordinances and the Settlement-Related Amendments to the Required Approvals to be approved and/or become effective, the physical and economic outcomes contemplated by the parties, the City and the Coalition as envisioned by execution of the Settlement Agreement. The Agency, at its sole cost and in cooperation with the Developer, shall use best efforts to expeditiously prepare and submit, and to cause the City Council to consider, adopt and approve such mutually agreed modified Settlement-Related Ordinances and Settlement-Related Amendments to the Required Approvals, including as necessary, preparing and paying the costs of any amendments to the EIR Addendum or any other required CEQA document.

5. Project Approvals. The Required Approvals, as proposed to be amended by the Settlement-Related Amendments, are referred to in this Agreement as the "Amended Required Approvals," and include all conditions of approval in connection with Amended Required Approvals and the EIR Mitigation Monitoring and Reporting Program{. As used throughout this Agreement, "Project Approvals" has the precise meaning given in the Development Agreement, and consists generally of the }Amended Required Approvals, any subsequent amendments to the Amended Required Approvals, and any additional land use approvals{, entitlements, Unit Plans, subdivision maps, permits, and amendments thereto that may hereafter be issued or granted by the City in connection with implementation of the Project on the Site.}

6. Immediate Effectiveness. The provisions of this Section 102 are expressly made immediately effective upon execution of the Third Restatement of this Agreement, and shall apply prior to and pending the Action Dismissal Date.2. Project Approvals. Development of

the Project on the Site pursuant to this Fourth Restated Agreement shall be governed by the terms hereof (and any subsequent amendments to this Fourth Restated Agreement) and the Project Approvals[. As used throughout this Agreement, "Project Approvals" has the precise meaning given in the Development Agreement, and consists generally of the]Current Approvals (as defined in Recital D and more fully described in the History and Background (Attachment No. 9)), any subsequent amendments to the Current Approvals, and any additional land use approvals, conditions[, entitlements, Unit Plans, subdivision maps, permits, and amendments thereto that may hereafter be issued or granted by the City in connection with implementation of the Project on the Site.]

E. C. [§103105] The Redevelopment Project Areas.

The Redevelopment Project Areas are located in the City of Vallejo, California, and the exact boundaries thereof are specifically described in the respective Redevelopment Plans.

F. D. [§104106] The Site.

The Site that is the subject of this Agreement is that certain real property shown on the Maps of the Site (Attachment No. 1), which attachment is incorporated herein by reference. Attachment No. 1 consists of three diagrammatic Area maps as follows:

Attachment No. 1A	Northern Waterfront Area
Attachment No. 1B	Central Waterfront Area

Attachment No. 1C As fully set forth in Section 103, the Southern Waterfront/Southern Waterfront Area is no longer a portion of the Site under this Fourth Restated Agreement.

The Maps of the Site (Attachment No. 1) show the currently anticipated configuration of the public and private parcels within the Site as they are described below in this Section 104106 and as they are intended to be subdivided (or re-subdivided) and developed in accordance with this Agreement and the Amended RequiredProject Approvals.

As planning of the Project proceeds pursuant to this Agreement, and as applicable subdivision maps are processed for various portions of the Site in accordance with the Amended Required Project Approvals, the precise configuration and legal description of the Developer Parcels within the Site shall be determined by the parties. Upon creation of each legal parcel constituting a Developer Parcel under this Agreement, a final legal description shall be prepared by the Developer, subject to AgencyCity review and approval, and attached to this Agreement by Operating Memorandum pursuant to Section 709, and made a part hereof at such time as the applicable final map creating each Developer Parcel is recorded with the County Recorder of Solano County.

The Site consists of certain parcels to be conveyed to the Developer pursuant to this Agreement (referred to collectively as the “"Developer Parcels”"), and certain parcels that are currently owned by or are intended to be acquired and owned by the City or the Agency in connection with implementation of this Agreement and the Project Approvals (referred to

collectively as the "City/Agency Parcels"), all as generally depicted on the Maps of the Site (Attachment No. 1) and described below.

1. Developer Parcels. The Developer Parcels consist of the following parcels and subparcels, organized by Area.

a. Northern Waterfront. The Developer Parcels within the Northern Waterfront Area consist of the following parcels and subparcels as shown on Attachment No. 1A: Parcel A (consisting of subparcels A1 and A2), Parcel B1, Parcel B2, and Parcel C1.

b. Central Waterfront. The Developer Parcels within the Central Waterfront Area consist of the following parcels and subparcels as shown on Attachment No. 1B: Parcel J (consisting of subparcels J1 and J2), Parcel L1, Parcel L2, and Parcel L4. Parcels L1, L2, and L4 are sometimes collectively referred to as the "L Developer Parcels."

c. Southern Waterfront. The Developer Parcels within the Southern Waterfront Area consist of the following parcels and subparcels as shown on Attachment No. 1C: Parcel S and Parcel T (consisting of subparcels T1, T2, and T3).

2. City/Agency Parcels. The City/Agency Parcels consist of the following parcels and public streets, organized by Area.

a. Northern Waterfront. The City/Agency Parcels within the Northern Waterfront Area consist of the following parcels, and public streets as shown on Attachment No. 1A: Parcel C2, Parcel D1, Parcel D2, Parcel E, Parcel F, and Harbor Way.

b. Central Waterfront. The City/Agency parcels within the Central Waterfront Area consist of the following parcels and public streets as shown on Attachment No. 1B: Parcel L3, Parcel L5, Parcel O, the City Hall Parking Lot parcel, Capitol Street and Capitol Street Dedication, Georgia Street and Georgia Street Extension, Civic Center Drive, Unity Plaza, the Capitol Street Open Space parcel, the Festival Green parcel, the Existing Service Club Park parcel, the Existing Georgia Street Mitigation parcel, the Ferry Facility parcel, the Kiss and Ride parcel, the Independence Park parcel, the Future Expansion parcel, the Independence Park Expansion parcel, and the State Farm Mitigation Independence Park parcel.

c. Southern Waterfront. The City/Agency Parcels within the Southern Waterfront Area consist of the following parcels and public streets as shown on Attachment No. 1C: the S Open Space Parcel, the T Open Space parcel, the Boat Launch parcel, Marin Street Extension, Solano Avenue Extension, and Kaiser Place.

G. E. [§105][§107] Parties to this Agreement.

1. [§106108] The Successor Agency.

The Successor Agency is a public body, corporate and politic,entity exercising governmental functions and powers and organized and existing under the Community Redevelopment Law of the State of California (Dissolution Act, with particular reference to

Health and Safety Code Section ~~33000 et seq.).~~ 34173. The office of the Successor Agency is located at 555 Santa Clara Street, Vallejo, CA 94590.~~"~~ "Successor Agency," as used in this Agreement, includes the Successor Agency to the Redevelopment Agency of the City of Vallejo and any assignee of or successor to its rights, powers and responsibilities.

2. [§109] The City.

The City is a California municipal corporation and charter city. The office of the City is located at 555 Santa Clara Street, Vallejo, CA 94590. "City," as used in this Agreement, includes the City of Vallejo and any assignee of or successor to its rights, powers and responsibilities.

3. ~~2. [§107]~~[§110] The Developer.

The Developer is Callahan ~~/ DeSilva Vallejo, LLC, a California limited liability company, whose members are De Silva Group, Inc., a California corporation and Callahan~~ Property Company, Inc., a California corporation. The~~ principal~~ office of the Developer is ~~11555 Dublin Boulevard, Dublin, CA 94568.~~located at 5674 Stoneridge Drive #212, Pleasanton, CA 94588.

The qualifications and identity of the Developer are of particular concern to the City~~ and the Agency~~, and it is because of such qualifications and identity that the ~~Agency~~City has entered into this Agreement with the Developer. Subject to the provisions of Section 315 hereof and any other provision of this Agreement (including the attachments hereto) permitting an assignment or transfer, no voluntary or involuntary successor in interest of the Developer shall acquire any rights or powers under this Agreement except as expressly set forth herein. This Agreement may be terminated by the ~~Agency~~City pursuant to Section 511 hereof (with respect to the portions of the Site and the Project so specified in Section 511) if there is any significant change (voluntary or involuntary) in the membership, management or control of the Developer prior to the completion of the development of the Site as evidenced by the issuance of a Final Certificate of Completion therefor, except as expressly set forth in this Section ~~107,~~110, Section 315 hereof, or any other provision of this Agreement (including the attachments hereto) permitting an assignment or transfer of this Agreement.

Notwithstanding any other provision hereof, (a) the ~~membership ~~ownership percentages of the Developer may be adjusted between the ~~members~~owners of the Developer, and/or (b) the Developer may join and associate with other entities in joint ventures, partnerships (including limited partnerships) or otherwise for the purpose of developing the Site (or one or more Developer Parcels therein), provided that the Developer maintains management and control of such entities and remains fully responsible to the ~~Agency~~City as provided in this Agreement with respect to the Site. Upon any such change described in subparagraph (a) or (b) above, the Developer shall so notify the ~~Agency~~City of such change in writing to obtain the ~~Agency'~~City's approval, which consent shall not be unreasonably withheld and shall be deemed granted unless disapproved in writing (stating with specificity the reasons for such disapproval) within fifteen (15) days of ~~Agency'~~City's receipt of such notice. Wherever the term ~~"~~"Developer~~"~~" is used herein, such term shall include any permitted nominee or assignee as herein provided. Upon request of the Developer, the ~~Agency~~City shall provide written confirmation in form reasonably

acceptable to the Developer that it has approved, if such be the case, any change in membership ownership percentages described in (a) above is in compliance with this Agreement, or any entity formed in accordance with (b) above for all or a portion of the Site is in compliance with this Agreement and is recognized as the Developer under this Agreement for the applicable portion(s) of the Site.

Except as otherwise provided in this Section 107,110, Section 315, and any other provision of this Agreement (including the attachments hereto) permitting an assignment or transfer of this Agreement, the Developer shall not assign all or any part of this Agreement without the prior written approval of the AgencyCity.

H. [§111] Assignment of Successor Agency Rights and Obligations; Retained Obligations.

1. Assignment By Successor Agency. Upon dissolution of the RDA, the RDA's rights and obligations under the Prior Agreement were transferred by operation of the Dissolution Act to the Successor Agency and became the rights and obligations of the Successor Agency. Except as otherwise expressly set forth in Section 111.2 below, effective upon the Effective Date, the Successor Agency assigns and delegates to the City the Successor Agency's and the RDA's rights and obligations under the Prior Agreement to the extent such rights and obligations have been carried forward to and remain in this Fourth Restated Agreement. The rights and obligations assigned by the Successor Agency, expressly excluding the obligations described in Section 111.2 below, are referred to as the "Successor Agency's Assigned Rights and Obligations."

2. Retained Successor Agency Obligations. The Successor Agency does not assign the following express obligations, and the following obligations shall be the responsibility and obligation of the Successor Agency under this Fourth Restated Agreement (collectively, the "Retained Successor Agency Obligations"):

a. The obligation of the Successor Agency to transfer Parcel J to the City and execute other instruments in accordance with Section 112;

b. The obligation of the Successor Agency to treat the Additional Deposit First Portion Fund Balance in accordance with Section 113.3; and

c. The obligation to seek and apply RPTTF funds and other available funds to reimburse specified previous Developer advances of funds in accordance with Section 114.

Upon fulfillment of the Retained Successor Agency Obligations, the Successor Agency shall have no further obligations under this Fourth Restated Agreement and shall no longer be deemed a party hereto. No future amendment of this Fourth Restated Agreement shall (1) affect in any way the Retained Successor Agency Obligations or (2) impose any other obligations upon the Successor Agency, without the written approval of the Successor Agency and the approval of the Oversight Board and the DOF.

3. Acceptance and Assumption By City. Effective upon the Effective Date, the City accepts the above assignment and assumes the Successor Agency's Assigned Rights and Obligations. In so doing, the City expressly agrees for the benefit of the Developer to perform and observe all obligations and covenants of the Successor Agency and RDA set forth in the Prior Agreement to the extent such obligations and covenants have been carried forward to and remain in this Fourth Restated Agreement. To that end, wherever the term "Agency", referring to the RDA, appeared in a provision of the Prior Agreement that has been carried forward into this Fourth Restated Agreement, that term has been modified to instead refer to the "City" as the party entitled to or responsible for such right or obligation in this Fourth Restated Agreement.

I. [§112] Conveyance of Parcel J To City; Release of Property Interests.

Promptly following the Effective Date, the Successor Agency shall convey its fee title interest in and to Parcel J to the City. The conveyance shall be made by grant deed reasonably acceptable to the parties. Title to Parcel J at the time of such conveyance shall be subject only to those conditions and[exceptions set forth in]that certain preliminary title report of November 1, 2013 issued by First American Title Company (Order Number 0131-615378ala). The costs of the conveyance of Parcel J, including the cost of any title insurance policy obtained by the City, shall be borne by the City and the Developer.

Upon request by the City or the Developer, the Successor Agency shall execute any instrument reasonably required to evidence that neither the Successor Agency nor the dissolved RDA has any right, title or interest in and to any other portion of the Site under the Prior Agreement, this Fourth Restated Agreement, or any law or regulation.

F.

J. [§108113] Deposit.

The Developer has made or shall make the following deposits to the AgencyRDA or the City as specified below.

1. Initial Deposit. The parties acknowledge and agree that:

a. Prior to or simultaneously with the initial execution of thisthe Prior Agreement by the AgencyRDA, the Developer delivered for the benefit of the AgencyRDA a deposit of cash or certified check in the amount of FIVE HUNDRED THOUSAND DOLLARS ($500,000) (the "Initial Deposit") as security for the performance of the obligations of the Developer under thisthe Prior Agreement;

b. The Initial Deposit (and interest earned thereon) has beenwas used by the AgencyRDA in accordance with the terms of thisthe Prior Agreement to pay for costs incurred by the AgencyRDA, from time to time, in the preparation of thisthe Prior Agreement and the RequiredCurrent Approvals; and

c. The parties have fully satisfied their respective obligations under thisthe Prior Agreement with respect to the Initial Deposit.

2. Additional Deposit. The Developer delivered to the RDA under the Prior Agreement or shall deliver for the benefit of the ~~Agency~~City an additional deposit of cash or certified check in the amount of FIVE HUNDRED THOUSAND DOLLARS ($500,000) (the "Additional Deposit") as follows:

a. A TWO HUNDRED THOUSAND DOLLAR ($200,000) portion of the Additional Deposit ~~shall be~~was delivered to the ~~Agency within five (5) days after the Action Dismissal Date~~RDA in April 2007 (the "Additional Deposit First Portion"); and

b. The remaining THREE HUNDRED THOUSAND DOLLAR ($300,000) portion of the Additional Deposit shall be delivered to the ~~Agency~~City at the time of and as a condition of closing for the conveyance of the first Developer Parcel ~~A~~or Sub-Parcel by the ~~Agency~~City to the Developer (the "Additional Deposit Second Portion").

3. Treatment of Additional Deposit First Portion Fund Balance. As of the date of approval of this Fourth Restated Agreement by the City and the Successor Agency, the RDA and the Successor Agency have expended for eligible costs under the Prior Agreement all but FORTY-FIVE THOUSAND TWO DOLLARS ($45,002) of the Additional Deposit First Portion (such unexpended balance is referred to as the "Additional Deposit First Portion Fund Balance"). The Additional Deposit First Portion Fund Balance constitutes restricted funds held by the Successor Agency under the terms of the Prior Agreement and this Fourth Restated Agreement. As soon as practical and permitted under the Dissolution Act, the Successor Agency shall obtain any necessary approval to allow the distribution of the Additional Deposit First Portion Fund Balance to the City, and promptly upon the receipt of any necessary approval shall distribute the Additional Deposit First Portion Fund Balance to the City.

4. Expenditure of Additional Deposit. From time to time as appropriate, the City and the Developer shall enter into one or more Operating Memoranda in accordance with Section 709 specifying the expenditure and use to perform mutually acceptable tasks under this Fourth Restated Agreement of the Additional Deposit First Portion Fund Balance and the Additional Deposit Second Portion that are received by the City. The Additional Deposit First Portion Fund Balance and the Additional Deposit Second Portion received by the City shall thereupon be expended and used in the manner provided in such Operating Memoranda.

~~The Agency shall use the Additional Deposit, and any interest earned thereon, to pay costs of the Southern Waterfront Soft Cost Work, as defined and described in Section IV.A.9 of the Scope of Development (Attachment No. 4)~~5. Credit Toward Future Developer Parcel Purchase Prices. The Additional Deposit (including interest earned thereon) shall be credited toward the Purchase Price to be paid to the ~~Agency~~City by the Developer for ~~Parcels S and T~~the first Developer Parcel(s) or Sub-Parcel(s) acquired by the Developer after the Developer Parcel for which the Developer deposits the Additional Deposit Second Portion, with such credit applied to each subsequent closing ~~for portions of Parcels S and T~~of a Developer Parcel or Sub-Parcel in chronological order until the credit is fully used. If this Agreement is terminated by the Developer pursuant to Section 510 or by the ~~Agency~~City pursuant to subsection d., h., j., k., l., or o. of Section 511, any unexpended portion of the Additional Deposit (including interest earned thereon) then held by the City shall be returned by the ~~Agency~~City to the Developer as provided therein.

K. ~~G.~~ [§~~109~~114] EIR Preparation and Planning Studies.

~~1. Actions To Date. Through the Third Restatement of this Agreement, the parties acknowledge and agree that the Developer has~~ 1. Developer Advances. The Developer advanced, on the ~~Agency~~RDA's behalf and in fulfillment of the ~~Agency~~RDA's obligations under ~~this~~the Prior Agreement, various costs of preparation of the EIR (as defined and described in the History and Background (Attachment No. 9)) and other planning studies and reports necessary for preparation of the ~~Required~~Current Approvals, a portion of which Developer prior advances, in the aggregate amount of SIX HUNDRED TWENTY-EIGHT THOUSAND SEVENTY-SEVEN DOLLARS ($628,077), shall be subject to reimbursement as provided in Section ~~109.2~~114.2 below (the "Total Reimbursable Developer Advance"). The remaining prior Developer advances to pay costs of preparation of the EIR and other planning studies and reports shall not be subject to reimbursement by the Successor Agency or the City to the Developer.

~~2. Reimbursement To Developer. Upon receipt of available tax increment revenue generated from the Waterfront Redevelopment Project Area and/or~~{~~the Marina Vista Redevelopment Project~~}~~Area (but not the Vallejo Central Redevelopment Project Area) or receipt of other available governmental grants or public funds from which the Total Reimbursable Developer Advance may be reimbursed, the Agency shall promptly reimburse to the Developer the Total Reimbursable Developer Advance. Any portion of the Total Reimbursable Developer Advance that has not been reimbursed by the Agency to the Developer at the time of the close of escrow for Parcel A shall be credited toward the Purchase Price otherwise payable by the Developer for Parcel A (or, to the extent that other credits earned by the Developer for Parcel A pursuant to this Agreement are already sufficient to pay the Purchase Price for Parcel A, the unreimbursed portion of the Total Reimbursable Developer Advance shall be credited at the applicable close of escrow toward the Purchase Price otherwise payable by the Developer for the next Developer Parcel(s) to be purchased by the Developer).~~ 2. Reimbursement To Developer. The Total Reimbursable Developer Advance has been and will be paid to the Developer as follows:

a. A ONE HUNDRED TWENTY-SIX THOUSAND FIVE HUNDRED FIFTY-FOUR DOLLAR ($126,554) portion of the Total Reimbursable Developer Advance was paid by the Successor Agency to the Developer in August 2013 from RPTTF funds received by the Successor Agency pursuant to the Recognized Obligation Payment Schedule for the period from July through December 2013.

~~3. Immediate Effectiveness. The provisions of this Section 109 are expressly made immediately effective upon execution of the Third Restatement of this Agreement, and shall apply prior to and pending the Action Dismissal Date.~~b. An additional TWO HUNDRED FORTY-FOUR THOUSAND FOUR HUNDRED SIXTY-EIGHT DOLLAR ($244,468) portion of the Total Reimbursable Developer Advance was placed by the Successor Agency on its Recognized Obligation Payment Schedule for the period from January through June 2014 approved by the Oversight Board in September 2013 (the "ROPS 13-14B Reimbursement Payment"). The ROPS 13-14B Reimbursement Payment has also been approved by the DOF by

letter to the Successor Agency of November 1, 2013, so that as of January 2, 2014 the Successor Agency will have both the authority and all the required funds, including RPTTF funds, to pay the ROPS 13-14B Reimbursement Payment to the Developer. To the extent it has not already done so, upon the Effective Date the Successor Agency shall immediately pay the ROPS 13-14B Reimbursement Payment to the Developer. Following payment of the ROPS 13-14B Reimbursement Payment, the remaining unreimbursed balance of the Total Reimbursable Developer Advance will have been reduced to TWO HUNDRED FIFTY-SEVEN THOUSAND FIFTY-FIVE DOLLARS ($257,055) (the "Unreimbursed Developer Advance Balance").

H. [§110] Defense and Settlement of Action

This section sets forth the financial responsibilities of the parties and the City in connection with their defense of the Action, including all activities undertaken by the parties and the City related to defense and settlement of the Action (the "Defense and Settlement Activities").

c. On each succeeding Recognized Obligation Payment Schedule (a "Future ROPS"), beginning with the Future ROPS for the period July through December 2014, the Successor Agency shall request, in connection with the Enforceable Obligation designated as "Item 12" within the Future ROPS, an amount that will cause the Unreimbursed Developer Advance Balance to be fully paid as expeditiously as possible, taking into account the amount of available RPTTF funds and the Successor Agency's other enforceable obligations for the applicable Future ROPS period. The Successor Agency shall diligently seek approval of such Item 12 on each Future ROPS by the Oversight Board and the DOF. Thereafter, the Successor Agency shall promptly pay the Developer the amounts of RPTTF it receives, or such other amounts as it is authorized to expend, for Item 12 on each approved Future ROPS, until the Successor Agency has paid the Unreimbursed Developer Advance Balance in full, hence causing the Developer to have received the entire Total Reimbursable Developer Advance in accordance with this Section 114.2.

1. City and Agency Costs. The City and/or the Agency, as applicable, shall pay the costs of the City Attorney's Office, the Agency's special counsel McDonough, Holland & Allen, and City/Agency staff in formulating and implementing the Defense and Settlement Activities. The Agency shall pay the costs to meet its obligations as set forth in Section 102.3 and 102.4.3. Expenditure of Reimbursed Developer Advance. From time to time as appropriate, the City and the Developer shall enter into one or more Operating Memoranda in accordance with Section 709 specifying the expenditure and use to perform mutually acceptable tasks under this Fourth Restated Agreement of the amounts received by the Developer pursuant to Section 114.2 above. The Developer shall thereupon spend and use the amounts it receives pursuant to Section 114.2 in the manner provided in such Operating Memoranda.

2.

L. [§115] City and Developer CostsConsultations Regarding Further Amendments.

For a period of one (1) year (which may be mutually extended by the parties) from the Effective Date, the City and the Developer shall confer in good faith to seek a mutually acceptable further amendment of this Fourth Restated Agreement (the "City/Developer Amendment") and any mutually acceptable amendments to the Current Approvals, in order to

better reflect the approach for moving forward with development of the Site under current and foreseeable statutory, planning, financial, and real estate market conditions. It is anticipated that, among other matters, the City/Developer DDA Amendment will include a comprehensive update of the Schedule of Performance (Attachment No. 3), the Scope of Development (Attachment No. 4), and the Method of Financing (Attachment No. 6).

a. Basic Costs. The Developer shall pay the costs of the Developer's in-house staff and any outside consultants, advisors, and attorneys employed by the Developer in formulating and implementing the Defense and Settlement Activities, and such costs shall constitute General and Administration Costs within the meaning of Section 201.2(a)(8) or Third Party Costs within the meaning of Section 201.2(a)(26), as applicable.

Any proposed City/Developer Amendment, and any accompanying amendments to the Current Approvals, shall be prepared, considered for approval, and executed, and shall become effective in accordance with all applicable laws, rules and regulations. Any City/Developer Amendment (and any other future amendment to this Fourth Restated Agreement or a previously approved City/Developer Amendment) shall not require approval or execution by the Successor Agency to become effective, so long as the City/Developer Amendment or other future amendment in no way (1) affects the Retained Successor Agency Obligations or (2) imposes any other obligations upon the Successor Agency.

b. Special Cost Advance. In addition, the Developer shall advance on behalf of the parties and the City payment of the attorneys fees and costs of the Coalition in the amount specified to be paid by the Developer pursuant to the Settlement Agreement (the "Developer's Advance For Coalition Attorneys Fees/Costs"). Fifty percent (50%) of the Developer's Advance for Coalition Attorneys Fees/Costs shall be subtracted from the Preliminary Purchase Price as a credit toward determination of the Purchase Price for Parcel A in accordance with Section 201.2.e.(4). The remaining fifty percent (50%) of the Developer's Advance For Coalition Attorneys Fees/Costs shall be considered and treated as Third Party Costs within the meaning of Section 201.2(a)(26).

For the reasons specified in the History and Background (Attachment No. 9), the parties acknowledge and agree that amendments of the type described in this Section 115 are necessary and appropriate. For those same reasons, and by operation of Section 604, the parties further acknowledge and agree that none of the parties are in default under the Prior Agreement or this Fourth Restated Agreement as of the Effective Date, and none of the parties has a basis for termination or exercise of any other remedies pursuant to Part 500 of this Fourth Restated Agreement as of the Effective Date.A failure to negotiate an amendment in good faith pursuant to this Section 115 arising after the Effective Date shall constitute a default under Section 500. The City's and the Developer's obligations to perform the tasks set forth in the Schedule of Performance (Attachment No. 3) are tolled and suspended pending approval, execution, and effectiveness of the City/Developer Amendment.

3. Immediate Effectiveness. The provisions of this Section 110 are expressly made immediately effective upon execution of the Third Restatement of this Agreement, and shall apply prior to and pending the Action Dismissal Date.

2. [§200] DISPOSITION OF THE DEVELOPER PARCELS.

A. [§201] Acquisition of the Site; Disposition of the Developer Parcels.

1. Basic Obligation; Organization of Section. In accordance with and subject to all the terms, covenants and conditions of this Agreement, the AgencyCity and the Developer shall cooperate to acquire the real properties comprising the Site (and, to the extent not already owned by the Agency) from the City and certain other third party ownersCity. The AgencyCity agrees to sell or ground lease, as applicable, to the Developer those Developer Parcels owned or to be acquired pursuant to this Agreement by the AgencyCity on the terms and for the amounts set forth herein. Developer Parcels B1, B2, and C1 (collectively, the "B/C Ground Lease Parcels," and individually, a "B/C Ground Lease Parcel") shall be conveyed to the Developer by ground lease or sub-ground lease, as further provided in Section 201.4. All of the other Developer Parcels shall be conveyed to the Developer in fee simple.

Section 201.2 sets forth the method for determination of the Purchase Price for the Developer Parcels to be conveyed in fee to the Developer. Sections 201.3 through 201.8201.6 set forth the terms for acquisition and conveyance of each of the respective Developer Parcels.

2. Consideration For Conveyances. The purchase price (the “"Purchase Price,”" as further defined in subsection e.(4) below) for each of the Developer Parcels to be conveyed in fee from the AgencyCity to the Developer shall be determined as set forth in this Section 201.2. The ground rent payments for each of the B/C Ground Lease Parcels shall be based upon the corresponding Purchase Price for each of the B/C Ground Lease Parcels, determined as set forth in this Section 201.2, and converted into annualized ground rent payments in the manner set forth in Section 201.4.b. Subsection b. below sets forth certain defined terms used in this Section 201.2. Subsection c. below establishes basic standards and procedures for performance of the appraisals required by this Section 201.2. Subsections d. and e. below provide conditions and standards for the conduct of two different methods of appraisal to be prepared and applied in determining the Purchase Price for each Developer Parcel. Subsection e. below sets forth the procedure for determining the Purchase Price for each Developer Parcel, taking into account the results of the two different methods of appraisal. Subsection f. below provides for arbitration of disputes arising under this Section 201.2.

a. Special Definitions. The terms defined below shall have the following meanings in connection with the interpretation and implementation of this Section 201.2 and this Agreement:

(1) "Appraiser" has the meaning given in subsection b. below.

(2) "Carry-forward Balance" for a given Developer Parcel means the amount, if any, determined as follows:

(A) If the Preliminary Purchase Price for the Most Recently Conveyed Developer Parcel (determined in accordance with subsection e.(3) below) was

the Method B Appraisal Amount (Adjusted), then the Carry-forward Balance is zero dollars ($0); and

(B) If the Preliminary Purchase Price for the Most Recently Conveyed Developer Parcel (determined in accordance with subsection e.(3) below) was the Method A Appraisal Amount (Final), then the Carry-forward Balance shall be determined as follows:

(i) First, the "Applied Investment Amount" for the Most Recently Conveyed Developer Parcel shall be determined. The Applied Investment Amount shall equal the Method B Appraisal Amount (Unadjusted) for the Most Recently Conveyed Developer Parcel less the Method A Appraisal Amount (Final) for the Most Recently Conveyed Developer Parcel.

(ii) Second, the Carry-forward Balance shall be determined. The Carry-forward Balance shall equal the Developer Investment for the Most Recently Conveyed Developer Parcel (determined in accordance with subsection e.(1) below) less the Applied Investment Amount (determined in accordance with clause (i) above in this definition).

(3) "Certified Statement" for a given Developer Parcel means a statement certified by a managing member of the Developer and submitted to the ~~Agency~~City within fifteen (15) days after the Reporting Date for such Developer Parcel, setting forth the Developer Investment for the Reporting Period for the given Developer Parcel, and including the following**:**

(A) The Carry-forward Balance applicable to the Developer Parcel (as defined and determined pursuant to definition (2) above), if any, together with documentation of the calculation made in determining such Carry-forward Balance;

(B) The Third Party Costs for the Developer Parcel (as defined and determined pursuant to definition (26) below), stated both in the aggregate and on a monthly basis throughout the Reporting Period as expended, with supporting invoices or other documentation of the expenditure of such Third Party Costs;

(C) The General and Administration Costs for the Developer Parcel (as defined and determined pursuant to definition (8) below), stated both in the aggregate and on a monthly basis throughout the Reporting Period as incurred, with supporting documentation of the basis for determining such costs;

(D) The Interest Amount for the Developer Parcel (as defined and determined pursuant to definition (9) below), stated both in the aggregate and on a monthly basis throughout the Reporting Period as imputed to be incurred, together with documentation of the calculations made in determining the Interest Amount;

(E) The Developer Return Amount for the Developer Parcel (as defined and determined pursuant to definition (6) below), together with the calculation

made in determining the Developer Return Amount, and, in the case of a Residential Parcel, a statement of the Estimated Gross Residential Unit Sales Proceeds and a copy of the Residential Market Report upon which the amount of the Estimated Gross Residential Unit Sales Proceeds has been determined.

(F) The Developer Investment for the Developer Parcel, consisting of the sum of the amounts set forth in items (A) through (E) above.

The names of individuals and firms contained in each Certified Statement shall be treated by the ~~Agency~~City on a confidential basis as proprietary information and, to the maximum extent permitted by law, shall not be disclosed to any third party.

(4) "Commercial Parcel" means a Developer Parcel that will be developed to contain commercial uses, but no residential dwelling units. As of the Third Restatement, the Commercial Parcels include Developer Parcels B1, B2, C1, L2, L4, S, T2, and T3.

(5) "Developer Investment" for a given Developer Parcel means the sum of the following amounts incurred during or otherwise imputed or deemed applicable to the Reporting Period for the given Developer Parcel, as shown and documented in the Certified Statement approved or deemed approved by the ~~Agency~~City pursuant to subsection e.(1) below:

(A) the Carry Forward Balance (as defined and determined pursuant to definition (2) above), if any; plus

(B) the Third Party Costs (as defined and determined pursuant to definition (26) below); plus

(C) the General and Administration Costs (as defined and determined pursuant to definition (8) below); plus

(D) the Interest Amount (as defined and determined pursuant to definition (9) below); plus

(E) the Developer Return Amount (as defined and determined pursuant to definition (6) below).

(6) "Developer Return Amount" for a given Developer Parcel means:

(A) With respect to a Developer Parcel that is a Residential Parcel, an amount equal to the lesser of:

(i) an amount equal to the Estimated Gross Residential Unit Sales Proceeds for such Residential Parcel multiplied by fifteen percent (15%); or

(ii) an amount that yields a twenty-five percent (25%) internal rate of return on the Developer Capital Costs for the Developer Parcel, taking into account the amounts and timing of all such Developer Capital Costs. The "Developer Capital Costs" for a given Developer Parcel means the sum of the amounts incurred during or otherwise imputed or deemed applicable to the Reporting Period for the given Developer Parcel for the following items listed in the definition of Developer Investment contained in definition (5) above: (A) (Carry-forward Balance, if any), (B) (Third Party Costs), and (C) (General and Administration Costs). The detailed methodology for calculating such internal rate of return amount for a given Developer Parcel ~~shall be~~is set forth in ~~an~~ Operating Memorandum ~~to be executed~~No. 3 dated as of May 14, 2007, which is incorporated in this Fourth Restated Agreement pursuant to Section ~~709 within thirty (30) days after the Action Dismissal Date~~101;

(B) With respect to a Developer Parcel that is a Commercial Parcel, an amount equal to the Method B Appraisal Amount (Unadjusted) for such Developer Parcel multiplied by thirty-three percent (33%); and

(C) With respect to a Developer Parcel that is a Mixed Use Parcel, an amount equal to the sum of:

(i) With respect to the residential portion of such Mixed Use Parcel, an amount calculated under subparagraph (A) above, multiplied by a ratio, the numerator of which is the gross square footage of the building area to be developed on such Developer Parcel that is intended to be devoted primarily to residential use and the denominator of which is the total gross square footage of the building area to be developed on such Developer Parcel; plus

(ii) With respect to the commercial portion of such Mixed Use Parcel, an amount calculated under subparagraph (B) above, multiplied by a ratio, the numerator of which is the gross square footage of the building area to be developed on such Developer Parcel that is intended to be devoted primarily to commercial use and the denominator of which is the total gross square footage of the building area to be developed on such Developer Parcel.

In allocating square footage between square footage that is primarily for residential use or primarily for commercial use, one hundred percent (100%) of the total gross square footage of the building area to be developed on the applicable Developer Parcel shall be allocated to one category or the other.

(7) "Estimated Gross Residential Unit Sales Proceeds" for a given Residential Parcel or Mixed Use Parcel means the gross proceeds (without any deductions) estimated to be obtained from the sale of all the residential units in the Residential Parcel or Mixed Use Parcel, as determined pursuant to and set forth in a Residential Market Report for such Residential Parcel or Mixed Use Parcel.

(8) "General and Administration Costs" for a given Developer Parcel means, except as otherwise provided below, the costs attributable to services provided by the Developer's in-house personnel related to the Project (and not limited to the applicable

Developer Parcel) during the Reporting Period for the given Developer Parcel, as reported in the Certified Statement for such Developer Parcel. Such attributable costs shall be determined by multiplying the estimated Eligible Hours (as defined below) devoted by the Developer's in-house personnel times a commercially reasonable hourly rate that is based on salary, labor overhead and an allocation for overhead support. "Eligible Hours" means all time (stated on an hourly basis) devoted by the Developer's in-house personnel to the Project (A) prior to the Original Execution Date in connection with preparation, conduct of the public participation process for, approval and modification of the Waterfront Master Plan, the Plan for Public Spaces, and related planning studies and documents, and (B) following the Original Execution Date. Eligible Hours shall not include (i) the allocable portion of the time devoted by Joseph Callahan and Robert Silva prior to the Original Execution Date for matters other than preparation, conduct of the public participation process for, approval and modification of the Waterfront Master Plan, the Plan for Public Spaces, and related planning studies and documents (i.e., Eligible Hours shall not include the time of such personnel related to other matters in connection with the ERN or in connection with negotiation of the Original Agreement between May and October 2000), or (ii) the time of Ernest Lampkin prior to the Original Execution Date.

(9) "Interest Amount" for a given Developer Parcel means the sum of the following imputed interest amounts:

(A) Imputed interest on the Carry-forward Balance, if any, calculated by applying the Interest Rate to the Carry-forward Balance from the first day of the Reporting Period to the end of the Reporting Period; plus

(B) Imputed interest on the Third Party Costs, calculated by applying the Interest Rate to each monthly portion of the Third Party Costs (as shown in the Certified Statement) from the end of the month in which such monthly portion of the Third Party Costs was paid to the end of the Reporting Period; plus

(C) Imputed interest on the General and Administration Costs, calculated by applying the Interest Rate to each monthly portion of the General and Administration Costs (as shown in the Certified Statement) from the end of the month in which such monthly portion of the General and Administration Costs was incurred to the end of the Reporting Period.

(10) "Interest Rate" means a variable interest rate applicable from time to time equal to the prime rate of interest charged by the Bank of America N.A. from time to time plus two percent (2%).

(11) "Method A Appraisal (Baseline)", as further defined in subsection b. below, means an appraisal for a given Developer Parcel prepared every two (2) years in accordance with the conditions and standards set forth in subsection c. below.

(12) "Method A Appraisal (Final)", as further defined in subsection b. below, means an appraisal for a given Developer Parcel prepared in accordance with the conditions and standards set forth in subsection c. below following the Unit Plan Approval Date for the Developer Parcel.

(13) "Method A Appraisal Amount (Final)" for a given Developer Parcel means the fair market value for the Developer Parcel (stated on a per square foot basis) as set forth in the Method A Appraisal (Final).

(14) "Method B Appraisal (Unadjusted)", as further defined in subsection b. below, means the appraisal for a given Developer Parcel prepared in accordance with the conditions and standards set forth in subsection d. below following the Unit Plan Approval Date for the Developer Parcel.

(15) "Method B Appraisal Amount (Unadjusted)" for a given Developer Parcel means the fair market value for the Developer Parcel (stated on a per square foot basis) as set forth in the Method B Appraisal (Unadjusted).

(16) "Method B Appraisal Amount (Adjusted)" for a given Developer Parcel is further defined in subsection e.(2) below, and equals the Method B Appraisal Amount (Unadjusted) for the Developer Parcel (determined in accordance with subsection d. below) less the Developer Investment for the Developer Parcel (determined in accordance with subsection e.(1) below).

(17) "Mixed Use Parcel" means a Developer Parcel that will be developed to contain for-sale residential dwelling units and commercial uses. As of the Third Restatement, the Mixed Use Parcels include (or may include) Developer Parcels J1, J2, and L1.

(18) "Most Recently Conveyed Developer Parcel" for a given Developer Parcel means the Developer Parcel conveyed to the Developer by the ~~Agency~~City most recently prior to the given Developer Parcel.

(19) "Original Execution Date" means October 17, 2000, the date of execution of the original version of this Agreement.

(20) "Preliminary Purchase Price" for a given Developer Parcel has the meaning given in subsection e.(3) below.

(21) "Purchase Price" for a given Developer Parcel means the amount determined as set forth in subsection e.(4) below.

(22) "Reporting Date" for a given Developer Parcel means the date that is forty-five (45) days prior to the anticipated closing date for conveyance of the given Developer Parcel to the Developer by the ~~Agency~~City, as reasonably determined by the Developer.

(23) "Reporting Period" for a given Developer Parcel means:

(A) with respect to the first Developer Parcel to be conveyed by the ~~Agency~~City to the Developer, the period from May 20, 1997, through the Reporting Date for such first Developer Parcel to be conveyed; and

(B) with respect to each succeeding Developer Parcel to be conveyed by the ~~Agency~~City to the Developer, the period from the day following the end of the Reporting Period for the Most Recently Conveyed Developer Parcel through the Reporting Date for the Developer Parcel then about to be conveyed.

(24) "Residential Parcel" means a Developer Parcel that will be developed to contain for-sale residential dwelling units, but no commercial uses. As of ~~the Third Restatement~~this Fourth Restated Agreement, the only Residential ~~Parcels include~~Parcel is Developer ~~Parcels A and T1.~~Parcel A.

(25) "Residential Market Report" for a given Residential Parcel or Mixed Use Parcel means a report prepared by a qualified residential marketing consultant mutually acceptable to the parties containing an estimate of the Estimated Gross Residential Unit Sales Proceeds anticipated to be received from such Residential Parcel or Mixed Use Parcel, together with industry-standard supporting documentation and analysis.

(26) "Third Party Costs" for a given Developer Parcel means, except as otherwise provided below, the out-of-pocket pre-construction payments related to the Project (and not limited to the applicable Developer Parcel) made by the Developer to third-party persons or entities during the Reporting Period for the given Developer Parcel, as reported in the Certified Statement for such Developer Parcel, plus the amount of the Initial Deposit as set forth in Section 108.1, plus the Developer's Wetland Park Contribution as described in Section II.A.3 of the Scope of Development (Attachment No. 4) (but only to the extent the Total Developer Public Parks and Open Space Contribution (as defined in Section I.H of the Method of Financing (Attachment No. 6)) exceeds the amount of City park fee credits granted by the City to the Developer pursuant to Section 3.8 of the Development Agreement). Third Party Costs shall not include any payments made by the Developer for which the Developer is entitled to repayment by the ~~Agency~~City or a credit against Purchase Prices pursuant to Section ~~108.2, 109.2, 110.2., 201.6.a,~~113.5, various provisions of the Scope of Development (Attachment No. 4), or any Operating Memorandum entered into pursuant to Section 709. Third Party Costs also shall not include any payments made prior to the Original Execution Date other than payments by the Developer made in connection with preparation, conduct of the public participation process for, approval and modification of the Waterfront Master Plan, the Plan for Public Spaces, and related planning studies and documents.

(27) "Unit Plan Approval Date" for a given Developer Parcel means the date the City grants final unappealable approval to the Unit Plan (and, if sought by the Developer, the vesting tentative map) for such Developer Parcel. If final unappealable approval is granted on separate dates, the Unit Plan Approval Date shall be the date the City grants final unappealable approval to the later to be approved of the Unit Plan and the vesting tentative map for such Developer Parcel.

(28) "Valuation Date" means:

(A) With respect to the Method A Appraisals (Baseline), June 1, 2007 and each succeeding second anniversary, as applicable (i.e., June 1, 2009, 2011, 2013, etc.).

(B) With respect to the Method A Appraisal (Final) and the Method B Appraisal (Unadjusted) for a given Developer Parcel, the Unit Plan Approval Date for such Developer Parcel.

b. Appraisal Process—In General. Each appraisal required pursuant to this Section 201.2 shall be performed by a qualified appraiser who is a California Certified General Appraiser and a Member of the Appraisal Institute and who is acceptable to both the ~~Agency~~City and the Developer (the "Appraiser"). The costs for each appraisal shall be shared equally between the Developer and the ~~Agency~~City. By Operating Memorandum ~~prepared and executed in accordance with Section 709 and within thirty (30) days after the Action Dismissal Date, the parties shall provide~~No. 4 dated as of May 14, 2007, and incorporated in this Fourth Restated Agreement by Section 101, the RDA and the Developer provided the Appraiser with further appraisal instructions consistent with the general appraisal instructions provided in this Section 201.2. To the extent consistent with the standards, conditions, and instructions set forth in this Section 201.2 and any applicable executed Operating Memorandum, each appraisal shall be performed in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). {~~To the extent of any inconsistency between the~~ }~~standards, conditions, and instructions of this Section 201.2 or any applicable executed Operating Memorandum and those of USPAP, the standards, conditions, and instructions of this Section 201.2 and any applicable executed Operating Memorandum shall control.~~ The interest appraised in each appraisal shall be a fee simple interest in the applicable Developer Parcel.

~~As of~~Under the ~~Third Restatement, the parties have~~Prior Agreement, the RDA and the Developer retained Garland & Associates as the Appraiser to prepare an appraisal to determine the fair market value, as of the June 1, ~~2007~~2008 Valuation Date, of each Developer Parcel under the conditions and standards set forth in subsections c. below (each, a "Method A Appraisal (Baseline)"). The~~ parties anticipate that such~~ Method A Appraisals (Baseline) ~~will be~~were delivered on or around June ~~15, 2007.~~30, 2008. The ~~parties~~City and the Developer shall cause an Appraiser to prepare and deliver updated Method A Appraisals (Baseline) ~~on or about each succeeding second (2nd) anniversary of the delivery of the initial Method A Appraisals (Baseline)~~approximately every two (2) years beginning upon a date to be mutually established by the City and the Developer. The Method A Appraisals (Baseline) may set forth the fair market values of each Developer Parcel on a per square foot basis to the extent the precise square footage is not yet known.

Within five (5) days after the Unit Plan Approval Date for a Developer Parcel, the ~~parties~~City and the Developer shall commission an Appraiser to prepare a final appraisal in accordance with the standards and conditions of subsection c. below (the "Method A Appraisal (Final)") and an appraisal in accordance with the standards and conditions set forth in subsection d. below (the "Method B Appraisal (Unadjusted)") for such Developer Parcel for simultaneous delivery to the parties within sixty (60) days after such commissioning. The Method A Appraisal (Final) and the Method B Appraisal (Unadjusted) shall set forth the respectively determined fair market values for the applicable Developer Parcel on a total dollar

value basis taking into account the actual total square footage of the applicable Developer Parcel as determined from the approved Unit Plan.

Notwithstanding the preceding paragraph, in connection with Developer Parcels involving complex, multi-level construction that may require extensive pre-Unit Plan design and engineering efforts (e.g., Parcels J1, J2, and L~~1, and T~~1), the ~~parties~~City and the Developer may mutually agree by Operating Memorandum pursuant to Section 709 to commission and obtain the Method A Appraisal (Final) and the Method B Appraisal (Unadjusted) at an earlier date to accommodate financial planning needs, subject to any adjustment of such appraisals at the time of Unit Plan approval as may be set forth in such Operating Memorandum.

Each appraisal of a Developer Parcel shall include industry-standard information and analysis to support such current fair market value determination.

c. Method A Appraisal—Baseline and Final. For each Developer Parcel then being appraised (whether in connection with a Method A Appraisal (Baseline) or a Method A Appraisal (Final)), the selected Appraiser shall prepare and deliver to City and the ~~parties~~Developer an appraisal determining the fair market value of such Developer Parcel as of the Valuation Date, applying the appraisal standards and conditions set forth below in this subsection c., the appraisal standards set forth in Operating Memorandum No. 4, and any other standards and conditions set forth in any Operating Memoranda executed by the ~~parties~~City and the Developer and delivered to the Appraiser:

(1) Except as otherwise set forth below in this subsection c., the appraisal shall assume that the state and condition of development of the Developer Parcel being appraised and all other parcels comprising the Site and Former Parcel K is that as it existed on the Original Execution Date, such that, consistent with the method for determining fair market value set forth in California Code of Civil Procedure Section 1263.330, each determination of the fair market value shall not take into account any increase or decrease in value attributable to implementation of the Project itself on the Site, but may, as deemed relevant by the Appraiser, take into account then current general market conditions in the applicable market area;

(2) The appraisal shall assume that the applicable zoning and development entitlements shall be those that existed as of the Original Execution Date.

(A) The marketplace anticipation as of the Valuation Date of reasonably likely changes in zoning and general plan amendments, and accompanying regulatory agency approvals and agreements, necessary to allow alternative land uses, is to be considered in the appraisal, but in light of conditions affecting the likelihood of those changes and amendments as those conditions existed as of the Original Execution Date (as further described below). This is not to say that the applicable Developer Parcel is to be appraised as if the zoning and general plan land use designation had been changed from that existing as of the Original Execution Date, but the appraisal is to recognize the marketplace speculation on those potentials for alternative land uses.

(B) In recognizing such marketplace speculation, the appraisal is to take into account and discount for land developer risk the following factors: (i) the

terms of this Agreement as of the Original Execution Date, which did not contain any assurances that the City would grant any changes in zoning and/or general plan land use designations with respect to the Site; (ii) the costs and risks as of the Original Execution Date of obtaining changes in zoning and general plan land use designations for the applicable Developer Parcel, including the prospects as of the Original Execution Date of overcoming any public concerns, expectations and opposition to the conversion of the applicable Developer Parcel from its then existing actual land use(s), the need to complete the applicable CEQA and land use approval processes for such zoning and general plan land use amendments, and the prospect that, in order to obtain changes in zoning and general plan land use designations, the potential buyer might need to prepare and obtain master plan approvals from the City for all or portions of the Site in addition to the Developer Parcel being appraised; (iii) the public infrastructure costs related to the Site and the applicable Developer Parcel as of the Original Execution Date and the impact of such costs on the ability to obtain changes in zoning and general plan land use designation; and (iv) the costs and risks as of the Original Execution Date of obtaining necessary BCDC, SLC, Water Board, and other governmental regulatory approvals necessary to support any alternative land uses on the applicable Developer Parcel;

(3) With respect to Parcel J, the appraisal shall take into account the existence and value added by the extension of Georgia Street, and the ~~Agency~~RDA acquisition of the property formerly leased to GVRD;

(4) With respect to Parcel L4, the appraisal shall value the vertical subdivision Parcel L4 assuming and taking into account the value added by the existence of the L3 Public Garage and the L3 Public Garage Support Facilities for Parcel L4 (as described in Section III.A.4.d of the Scope of Development (Attachment No. 4));

(5) The appraisal shall assume that the Site contains no soil or other contamination for which remediation work to enable the intended use under this Agreement is required by any governmental or other regulatory agency with jurisdiction over such matters; and

(6) The appraisal shall take into account all then known or estimated direct and indirect costs related to on-site and off-site public and private improvements required to be constructed by the Developer for the applicable Developer Parcel, including, without limitation, subdivision improvement costs, permit and fees costs, other on- and off-site public improvement costs, and costs of construction of private improvements with respect to the applicable Developer Parcel.

d. Method B Appraisal (Unadjusted). For each Developer Parcel then being appraised, the Appraiser shall also prepare and deliver to the parties a Method B Appraisal (Unadjusted) determining the fair market value of such Developer Parcel as of the Valuation Date, applying the appraisal standards and conditions set forth below in this subsection d., the appraisal standards set forth in Operating Memorandum No. 4, and any other standards and conditions set forth in any Operating Memoranda executed by the ~~parties~~City and the Developer and delivered to the Appraiser:

(1) Except as otherwise set forth below in this subsection d., the appraisal shall assume that the state and condition of development of the Developer Parcel being appraised and all other parcels comprising the Site and Former Parcel K is that as it existed on the Original Execution Date, such that, consistent with the method for determining fair market value set forth in California Code of Civil Procedure Section 1263.330, each determination of the fair market value shall not take into account any increase or decrease in value attributable to implementation of the Project itself on the Site, but shall take into account then current general market conditions in the applicable market area;

(2) The appraisal shall assume that the applicable zoning and development entitlements shall be those that exist as of the Unit Plan Approval Date;

(3) With respect to Parcel J, the appraisal shall take into account the existence and value added by the extension of Georgia Street, and the ~~Agency~~RDA acquisition of the property formerly leased to GVRD;

(4) With respect to Parcel L4, the appraisal shall value the vertical subdivision Parcel L4 assuming and taking into account the value added by the existence of the L3 Public Garage and the L3 Public Garage Support Facilities for Parcel L4 (as described in Section III.A.4.d of the Scope of Development (Attachment No. 4));

(5) The appraisal shall assume that the Site contains no soil or other contamination for which remediation work to enable the intended use under this Agreement is required by any governmental or other regulatory agency with jurisdiction over such matters; and

(6) The appraisal shall take into account all known or estimated direct and indirect costs related to on-site and off-site public and private improvements required to be constructed by the Developer for the applicable Developer Parcel under the terms of this Agreement and the Project Approvals as of the Unit Plan Approval Date, including, without limitation, subdivision improvement costs, permit and fees costs, other on- and off-site public improvement costs (including, without limitation, park and open space improvement costs), and costs of construction of private improvements with respect to the applicable Developer Parcel; and

(7) The appraisal shall take into account all known or estimated limitations on revenues related to the development and use of the applicable Developer Parcel under the terms of this Agreement and the Project Approvals as of the Unit Plan Approval Date, including, without limitation, the terms of the Post Office Relocation Lease as further described in Section 201.6.a.(1)(B)(2) with respect to Parcel T2, and the requirement to use commercially reasonable efforts to lease the retail space in the Arcade Area of Parcel L4 for Category 1 Uses, as further defined and provided in Section III.A.4 of the Scope of Development (Attachment No. 4).

e. Purchase Price Determination. Prior to the closing for conveyance of each Developer Parcel, the ~~parties~~City and the Developer shall determine the Purchase Price for such Developer Parcel as follows:

(1) First, the Developer Investment with respect to the Developer Parcel shall be determined by the parties as follows. Within fifteen (15) days after the Reporting Date for such Developer Parcel, the Developer shall submit to the ~~Agency~~City a Certified Statement setting forth the Developer Investment and required supporting documentation. The ~~Agency~~City shall approve or disapprove the Certified Statement within fifteen (15) days of receipt thereof. If the ~~Agency~~City approves the Certified Statement or fails to disapprove the Certified Statement in writing within such fifteen (15) day period, then the Development Investment amount set forth in the Certified Statement shall constitute the Developer Investment with respect to the Developer Parcel. If the ~~Agency~~City disapproves the Certified Statement in writing within such fifteen (15) day period, it shall set forth with specificity the basis for such disapproval, and the parties shall meet and confer within five (5) days thereafter to seek in good faith to agree upon a modified Certified Statement. The Developer Investment amount set forth in any such agreed upon modified Certified Statement shall then constitute the Developer Investment with respect to the Developer Parcel. If the ~~parties~~City and the Developer cannot agree upon a modified Certified Statement following such conference, then either party may present the matter for arbitration as further provided in subsection f. below.

(2) Second, the "Method B Appraisal Amount (Adjusted)" for the Developer Parcel shall be determined by the ~~parties~~City and the Developer. The Method B Appraisal Amount (Adjusted) shall equal the Method B Appraisal Amount (Unadjusted) for the Developer Parcel (determined in accordance with subsection d. above) less the Developer Investment with respect to the Developer Parcel (determined in accordance with subsection e.(1) above).

(3) Third, the "Preliminary Purchase Price" for the Developer Parcel shall be determined by the ~~parties~~City and the Developer. The Preliminary Purchase Price shall equal the greater of the Method A Appraisal Amount (Final) for the Developer Parcel (determined in accordance with subsection c. above) and the Method B Appraisal Amount (Adjusted) for the Developer Parcel (determined in accordance with subsection e.(2) above).

(4) Finally, the "Purchase Price" for the Developer Parcel shall be determined by the parties. The Purchase Price shall equal the Preliminary Purchase Price (determined in accordance with subsection e.(3) above) less the principal amount of assessments or other governmental charges that are a lien against the Developer Parcel payable after the closing for conveyance of such Developer Parcel, and also less the sum of all previously unapplied amounts that are specified to be credited against the Purchase Price pursuant to Section ~~108.2, 109.2, 110.2.b, 201.6.a,~~113.5, various provisions of the Scope of Development (Attachment No. 4), or any Operating Memorandum entered into pursuant to Section 709; provided, however, that in no event shall the Purchase Price for a Developer Parcel be less than zero dollars ($0).

f. Arbitration of Disputes. Any dispute regarding the interpretation and implementation of this Section 201.2 (including, without limitation, a dispute regarding approval of a Certified Statement pursuant to subsection e.(1) above) shall be subject to resolution by arbitration in the manner provided in Section 706. The ~~parties~~City and the Developer may agree by Operating Memorandum entered into pursuant to Section 709 to complete the closing for conveyance of a Developer Parcel by the ~~Agency~~City to the Developer prior to the outcome of any such arbitration and subject to an after-closing reconciliation of the Purchase Price based on the

results of such arbitration. The partiesCity and the Developer shall not unreasonably withhold approval of such an arrangement to close pending the outcome of arbitration.

3. Parcel A. Parcel A is currently owned by the City. In accordance with and subject to all the terms, covenants and conditions of this Agreement and within the time set forth in the Schedule of Performance (Attachment No. 3), the Agency agrees to acquire from the City and convey in fee, and Developer agrees to accept conveyance of, Parcel A for development in accordance with the Scope of Development (Attachment No. 4). The Purchase Price to be paid by the Developer for Parcel A shall be the Purchase Price determined pursuant to Section 201.2.

4. B/C Ground Lease Parcels. The B/C Ground Lease Parcels are comprised of vacant land currently owned by the City, and are subject to tideland public trust requirements and use restrictions (the "Trust Requirements") established by applicable statutes, grants, and regulations of the California State Lands Commission (the "SLC").

a. [Conveyance Method. In accordance with and subject to all the terms, covenants and conditions of this Agreement and the Trust Requirements, and within the time set forth in the Schedule of Performance (Attachment No. 3)]:

(1) The Agency shall acquire from the City a ground leasehold interest in each of the B/C Ground Lease Parcels pursuant to separate ground leases between the Agency and the City for each of the respective B/C Ground Lease Parcels (each such ground lease is referred to as a "City/Agency Ground Lease"). Each City/Agency Ground Lease shall:

(A) be consistent with the Trust Requirements and the terms of the applicable Agency/Developer Sub-Ground Lease (as described below);

(B) provide the Developer and its lender(s) with third-party beneficiary rights to cure any Agency default and with the reasonable opportunity to enter into a direct ground lease with the City in the event of an Agency default; and

(C) be in a form reasonably acceptable to the Agency, the City and the Developer, which form shall be agreed upon within the time set forth in the Schedule of Performance (Attachment No. 3) and incorporated in this Agreement through an Operating Memorandum pursuant to Section 709.

a. (2) The Agency[Conveyance Method. In accordance with and subject to all the terms, covenants and conditions of this Agreement and the Trust Requirements, and within the time set forth in the Schedule of Performance (Attachment No. 3)], the City shall convey, and the Developer shall accept conveyance of, a sub-ground leasehold interest in each of the B/C Ground Lease Parcels pursuant to separate sub-ground leases between the AgencyCity and the Developer for each of the respective B/C Ground Lease Parcels (each such sub-ground lease is referred to as an "Agency/Developer Sub-a "Ground Lease"). Each Agency/Developer Sub-Ground Lease shall:

(1) (A) be consistent with the Trust Requirements;

(2) ~~(B)~~ provide for development of the applicable B/C Ground Lease Parcel in accordance with the Scope of Development (Attachment No. 4);

(3) ~~(C)~~ provide for use of the applicable B/C Ground Lease Parcel solely for uses permitted by applicable City land use permits and approvals and in a manner that satisfies the Trust Requirements;

(4) ~~(D)~~ provide for ground rent payments for the applicable B/C Ground Lease Parcel determined as set forth in subsection b. below;

(5) ~~(E)~~ provide for a leasehold term equal to the longest term permitted by the Trust Requirements (currently sixty-six (66) years);

(6) ~~(F)~~ contain commercially reasonable terms that will support private debt and equity financing of the contemplated development on the applicable B/C Ground Lease Parcel;

(7) ~~(G) contain provisions required by the California Community Redevelopment Law for leases of the nature of the applicable Agency/Developer Sub-Ground Lease, including the provision regarding non-discrimination required by Health and Safety Code Section 33436(b) and~~contain the provision regarding property tax payments required by Health and Safety Code Section 33675; and

(8) ~~(H)~~ be in a form reasonably acceptable to the ~~Agency~~City and the Developer, which form shall be agreed upon within the time set forth in the Schedule of Performance (Attachment No. 3) and incorporated in this Agreement through an Operating Memorandum pursuant to Section 709.

If the ~~parties~~City and the Developer are unable to agree upon the form of a ~~City/Agency Ground Lease or an Agency/Developer Sub-~~Ground Lease within the time set forth in the Schedule of Performance (Attachment No. 3), then either party may submit the matter for arbitration in accordance with the provisions of Section 706 to determine the form of the applicable ~~City/Agency~~ Ground Lease or ~~Agency/Developer Sub-Ground Lease~~ consistent with the terms of this Section 201.4.

~~If requested by the Developer, the Agency shall consider in good faith, and shall cause the City to consider in good faith, an alternative conveyance method whereby, consistent with the Trust Requirements and all applicable law, the City would directly convey a ground leasehold interest in one or more of the B/C Ground Lease Parcels pursuant to a ground lease or ground leases directly between the City and the Developer containing terms comparable to those to be contained in the applicable Agency/Developer Sub-Ground Lease (each, a "City/Developer Ground Lease"). The Agency shall reasonably cooperate with the City to prepare and cause approval and execution of any such requested City/Developer Ground Lease.~~

At the request and cost of the Developer, ~~the Agency shall reasonably cooperate, and shall cause~~ the City ~~to~~shall reasonably cooperate~~,~~ with the Developer to

seek SLC approval of any ~~City/Agency Ground Lease, Agency/Developer Sub-Ground Lease, or City/Developer~~ Ground Lease for the B/C Ground Lease Parcels in accordance with the procedures of Public Resources Code Section 6702.

b. Ground Rent Payments. Each ~~Agency/Developer Sub-~~Ground Lease shall provide for the Developer to make annual ground rent payments (the "Annual Rent Payments" or an "Annual Rent Payment") in advance for each year of the term of the ~~Agency/Developer Sub-~~Ground Lease, with the initial Annual Rent Payment to be made on the date that the Developer is entitled to possession of the applicable B/C Ground Lease Parcel (the "Possession Date"), and subsequent Annual Rent Payments to be made on each anniversary of the Possession Date (each, a "Rent Payment Date"). The amount of each Annual Rent Payment shall be determined as follows.

The Annual Rent Payment due on the Possession Date and on the next two Rent Payment Dates shall equal the Initial Annual Rent Payment Amount (as defined below). On each Rent Adjustment Date (as defined below), the Annual Rent Payment shall be increased to equal the Adjusted Annual Rent Payment Amount (as defined below). As used in this subsection b., the following terms have the meanings set forth below:

(1) "Initial Annual Rent Payment Amount" means an amount equal to the product of the Purchase Price for the applicable B/C Ground Lease Parcel determined pursuant to Section 201.2 multiplied by the Debt Constant Factor.

(2) "Debt Constant Factor" means the debt constant factor that yields level annual amortized loan payments for a loan with a term of twenty-five (25) years and an interest rate equal to the Designated Interest Rate.

(3) "Designated Interest Rate" means an interest rate equal to 1.5% above the current yield-to-maturity on 10-year United States Treasury bills as reported in the Wall Street Journal on the date that is ten (10) days prior to the Possession Date for the applicable ~~Agency/Developer Sub-~~Ground Lease.

(4) "Rent Adjustment Date" means the third (3rd) anniversary of the Possession Date for the applicable ~~Agency/Developer Sub-~~Ground Lease, and each succeeding third anniversary (i.e., the 3rd anniversary, 6th anniversary, 9th anniversary, 12th anniversary, etc. of the applicable Possession Date).

(5) "Adjusted Annual Rent Payment Amount" means an amount equal to the product of the Annual Rent Payment amount in effect immediately prior to determination of the Adjusted Annual Rent Payment Amount multiplied by the Adjustment Factor.

(6) "Adjustment Factor" means a ratio, the numerator of which is the CPI Index amount as of the applicable Rent Adjustment Date, and the denominator of which is the CPI Index amount as of the previous Rent Adjustment Date (or the Possession Date, in connection with determination of the Adjusted Annual Rent Payment Amount for the first Rent Adjustment Date); provided, however, that in no event shall such ratio exceed 1.12.

(7) "CPI Index" means the Consumer Price Index for all Urban-Consumers (CPI-U): U.S. City Average, All Items (base year 1982-84 = 100) for the United States, published by the United States Department of Labor, Bureau of Labor Statistics. If the CPI Index has changed so that the base year differs from that used as of the Possession Date, the CPI shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the CPI Index is discontinued or revised during the term of the applicable ~~Agency/Developer Sub-~~Ground Lease, such other governmental index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the CPI Index had not been discontinued or revised.

In consultation with the Appraiser who prepared the Method A Appraisal (Final) and the Method B Appraisal (Unadjusted) for the applicable B/C Ground Lease Parcel, the ~~parties~~City and the Developer may agree on such mutually acceptable modifications of the above-described formula for determining the Annual Rent Payments as will reasonably establish the fair rental value for the applicable B/C Ground Lease Parcels. If the ~~parties~~City and the Developer are unable to agree upon the amount of any Annual Rent Payment, then either ~~party~~City or the Developer may submit the matter for arbitration in accordance with the provisions of Section 706 to determine the amount of any such disputed Annual Rent Payment consistent with the terms of this Section 201.4.b.

5. Parcel J. Parcel J consists of a portion of the land currently owned by the Successor Agency and improved with parking improvements known as City Parking Lot C and part of Marina Vista Park, and a portion of the land currently owned by the City and utilized as parking for City Hall and the JFK Library. In accordance with Section 112, the Successor Agency shall convey the portion of Parcel J it owns to the City. Within the time set forth in the Schedule of Performance (Attachment No. 3), the ~~Agency shall acquire that portion of Parcel J owned by the City, and~~City shall cause termination of all leasehold interests encumbering Parcel J. Following such acquisition by the ~~Agency~~City, the ~~Agency~~City agrees to convey, and the Developer agrees to accept conveyance of, Parcel J for development in accordance with the Scope of Development (Attachment No. 4). As further provided in Section III.B of the Scope of Development (Attachment No. 4), Parcel J may be subdivided into two Developer Subparcels (each a "J Developer Subparcel"), and conveyed at separate times to the Developer upon satisfaction of the preconditions to the conveyance of each such J Developer Subparcel. The Purchase Price to be paid by the Developer for each J Developer Subparcel shall be the Purchase Price determined pursuant to Section 201.2.

6. Parcel L.

a. Acquisition and Relocation ~~with Respect To Post Office Site. As further provided in Section 201.6.c, the City and the Agency currently own all of Parcel L except for a parcel owned by the Hilf Trust (the "Post Office Site Owner") and leased to the United States Postal Service (the "USPS") under a long-term lease for operation of a post office facility (the "Post Office Site"), and a parcel owned by Jack Higgins (the "Restaurant Site Owner") and used by a tenant as a place of business for a restaurant (the "Restaurant Site"). This Section 201.6.a sets forth terms for acquisition of the Post Office Site and relocation of the current post office facility from the Post Office Site. Section 201.6.b sets forth terms for acquisition of the Restaurant Site~~

and relocation of the business from the Restaurant Site.Status; USPS Relocation Strategy. As of the date of approval of this Fourth Restated Agreement, the City owns all of Parcel L in fee. A portion of Parcel L3 (the "USPS Leasehold Property") is leased by the City to the United States Postal Service (the "USPS") pursuant to an existing lease (the "USPS Lease"), and the USPS operates a post office and distribution facility (the "USPS Facility") on the USPS Leasehold Property. The City is negotiating to cause the relocation of the USPS Facility to alternate locations in Vallejo and the termination of the USPS Lease, so that the second phase of the Vallejo Station public parking garage ("Phase B") can be constructed on the USPS Leasehold Property portion of Parcel L3. Exhibit B of[the Schedule of Performance (Attachment No. 3)]sets forth the RDA's strategy, as of December 1, 2011, for causing relocation of the USPS Facility and termination of the USPS Lease (the "RDA USPS Relocation Strategy"). Since that time, the City has continued to work with the USPS and to refine the RDA USPS Relocation Strategy. As used in this Fourth Restated Agreement "USPS Relocation Strategy" means the City's proposed strategy for relocation of the USPS Facility and termination of the USPS Lease as amended from time to time. If appropriate, the City's formal USPS Relocation Strategy shall be set forth and incorporated into the City/Developer Amendment to this Fourth Restated Agreement that is contemplated by Section 115.

(1) Acquisition of Post Office Site. Within the time sets forth in{ the Schedule of Performance (Attachment No. 3) }and in accordance with all applicable legal requirements, the Agency shall take the following actions at its cost, using federal funds available for implementation of the Vallejo Station development ("Vallejo Station Funds"):

(A) The Agency shall seek to acquire fee title to the Post Office Site from the Post Office Site Owner by voluntary agreement. To that end, the Agency shall deliver a written offer to the Post Office Site Owner following consultation with the Developer regarding such written offer. The Agency shall use reasonable efforts to acquire the Post Office Site by negotiation at a purchase price consistent with the acquisition budget for the use of Vallejo Station Funds, and shall make good faith efforts to condition such negotiated purchase on either the ability to negotiate the purchase or the passage of a resolution of necessity with respect to the Restaurant Site.

(B) If the Agency is unable to acquire the Post Office Site by negotiation within the time set forth in the Schedule of Performance (Attachment No. 3), the Agency shall or shall cause the City to consider the adoption of a Resolution of Necessity for acquisition of the Post Office Site by eminent domain. If the Agency or the City elects to adopt the Resolution of Necessity, the Agency or the City, as applicable, shall proceed promptly to acquire the Post Office Site by eminent domain and shall file an order for immediate possession with respect to the Post Office Site. The Developer acknowledges that discretion is vested in the Agency and the City to determine whether or not the statutory conditions set forth in Code of Civil Procedure Section 1245.230 are met in order to entitle a governmental agency to adopt a resolution of necessity. Nothing in this Agreement shall obligate the Agency or the City to make the findings required by Code of Civil Procedure Section 1245.230 or adopt the Resolution of Necessity for the Post Office Site. If the Agency and the City fail to adopt the Resolution of Necessity for the Post Office Site by the time set forth in the Schedule of Performance (Attachment No. 3), or if the Agency or the City adopts the Resolution of Necessity but, after good faith efforts, is unable to proceed with acquisition of the Post Office Site by eminent domain within the time set forth in the

Schedule of Performance (Attachment No. 3), the exclusive remedy of Developer shall be to terminate this Agreement pursuant to Section 510 with respect to Parcel J and/or L only, as the Developer may elect. Upon any such termination of this Agreement with respect to Parcel L (so that relocation of the Post Office facility to Parcel T2 as described below is not necessary), the parties shall negotiate in good faith to achieve a mutually acceptable modification of this Agreement and the Project Approvals to enable an appropriate alternative private development of Parcel T2.

(2) Relocation of USPS To Post Office Relocation Facility. The parties' intention is to negotiate with the USPS the termination of its current lease for the Post Office Site and the relocation of the current USPS facility from the Post Office Site to a new Post Office facility to be developed on Parcel T2 (the "Post Office Relocation Facility") by the Developer in accordance with this Agreement and the Project Approvals for Parcel T2, and in accordance with the terms of a new, commercially reasonable and financible lease between the Developer and the USPS (the "Post Office Relocation Facility Lease"). The parties shall make good faith and commercially reasonable efforts to negotiate a relocation agreement with the USPS that includes a long-term continued retail presence for the U.S. Postal Service in the Downtown or the Central Waterfront Area as close as possible to the existing location. The parties acknowledge that the USPS has exclusive authority to determine the location of postal facilities.

The Schedule of Performance (Attachment No. 3) includes a schedule of actions to accomplish the relocation of the USPS operation off of the Parcel L Post Office Site and into the newly completed Post Office Relocation Facility on Parcel T2 by February 2009, to enable timely commencement of construction of the Vallejo Station public garage on Parcel L3 (the "L3 Public Garage") by that time. The parties acknowledge and agree that accomplishment of such a schedule for relocation of the USPS facility will require fast-tracking of the normal USPS process for the location of new postal facilities; that, based on prior discussions with the USPS, there is reason to believe that such a fast-track process may be feasible; but that, if, despite the parties' good faith efforts, such fast-tracking of the USPS relocation process proves not to be completely feasible, the parties shall make necessary modifications to the Schedule of Performance (Attachment No. 3), through execution of an Operating Memorandum pursuant to Section 709, to reflect future conditions.

To accomplish the intended relocation of the USPS facility from the Post Office Site, the parties shall cooperate to achieve the following preliminary steps within the times set forth in the Schedule of Performance (Attachment No. 3) (some of these actions relate to the physical development of the Post Office Relocation Facility on Parcel T2 within the Southern Waterfront Area); provided, however, that the parties' obligations to perform the following steps (other than negotiation and execution of a Post Office Budget LOI Operating Memorandum, as described and defined below) shall be contingent on prior acquisition of, or adoption of a resolution of necessity with respect to, the Post Office Site by the Agency or the City:

(A) The parties shall jointly seek to negotiate with, and obtain USPS approval of, a letter of intent (a "Post Office LOI") establishing business terms for the termination of the current USPS lease of premises at the Post Office Site and for the new Post Office Relocation Facility Lease. To that end, the parties shall jointly work with the USPS to prepare preliminary plans and specifications, a building program, geotechnical design

recommendations, a preliminary development proforma, a general contractor cost estimate and other documents related to the Post Office Relocation Facility that are reasonably required to complete negotiations of the Post Office LOI, and to obtain USPS approval of the location of the Post Office Relocation Facility and of the Developer as the developer and landlord for the Post Office Relocation Facility. The parties shall also complete the steps described in Section 208 to determine that title to Parcel T2 will be in a condition mutually satisfactory to the parties and to the USPS.

Within 90 days after the Action Dismissal Date, the parties shall seek to negotiate and execute an Operating Memorandum in accordance with Section 709 (the "Post Office LOI Budget Operating Memorandum") establishing a budget and an allocation of costs for completion of the actions described in this subparagraph (A), based on the following funding principles:

(i) Vallejo Station Funds and Agency MOF Funds (as defined and described in Section I.E.1 of the Method of Financing (Attachment No. 6)) shall be used to the maximum extent they are available and eligible for such use; and

(ii) To the extent the Developer agrees to advance funds for use within the scope and amount of the budget set forth in the Post Office LOI Budget Operating Memorandum or any amendment thereto, the Developer shall be entitled to a credit against the Purchase Price payable by the Developer for Developer Parcels S and T, with such credit applied to each closing for portions of Developer Parcels S and T in chronological order until the credit is fully used.

Upon execution of the Post Office LOI Budget Operating Memorandum (or any amendment thereto), the parties shall adhere to the budget contained therein in connection with the expenditure of funds to accomplish the tasks set forth in this subparagraph (A).

(B) Within 30 days after USPS approval of the Post Office LOI, the parties shall seek to negotiate and execute a further Operating Memorandum in accordance with Section 709 (the "Post Office Development Budget Operating Memorandum") establishing a budget and an allocation of costs for completion of the additional pre-construction actions described in subparagraphs (C) and (E) below together with the actual construction of Post Office Relocation Facility, based on the following funding principles:

(i) Vallejo Station Funds and Agency MOF Funds (as defined and described in Section I.E.1 of the Method of Financing (Attachment No. 6)) shall be used to the maximum extent they are available and eligible for such use;

(ii) Private debt and equity funds to be obtained by the Developer shall next be applied in an amount that can reasonably be obtained based on the Post Office LOI business terms for the Post Office Relocation Facility Lease; and

(iii) Any shortfall in budgeted costs remaining after applying the funds described in clauses (i) and (ii) above shall be filled from contributions of

the parties in amounts and subject to funding terms to be negotiated and set forth in the Post Office Development Budget Operating Memorandum.

(C) Following USPS approval of the Post Office LOI and the execution of the Post Office Development Budget Operating Memorandum, the parties shall jointly work to implement the following pre-construction activities using funds as set forth in the Post Office Development Budget Operating Memorandum:

(i) Preparation, in cooperation with the USPS, of design development-level architectural, structural, civil engineering, and landscaping plans and specifications for the Post Office Relocation Facility, and procurement of USPS approval of such design development-level plans and specifications;

(ii) Negotiation, preparation, and procurement of USPS approval of the Post Office Facility Relocation Lease, based on the terms of the Post Office LOI;

(iii) Preparation, in cooperation with the USPS, of final working drawings and final plans and specifications necessary for construction of the Post Office Relocation Facility, and procurement of USPS approval of such working drawings, plans and specifications;

(iv) Procurement of all building and grading permits necessary for construction of the Post Office Relocation Facility; and

(v) Negotiation of the terms for relocation of any existing tenant(s) from Parcel T2 and for revised access to the adjacent Kiewitt property (collectively, the "Parcel T2 Relocation Obligations").

(D) At its cost, the Developer shall use diligent good faith efforts to complete the following additional pre-construction activities:

(i) Preparation, processing, and procurement of City approval of a Unit Plan, tentative tract map, and public improvement plans for the required extension of Solano Avenue in connection with construction of the Post Office Relocation Facility on Parcel T2;

(ii) Recordation of a final parcel map establishing Parcel T2 as a legal parcel and dedicating the required Solano Avenue right-of-way; and

(iii) Procurement of private debt and equity funds for development of the Post Office Relocation Facility as contemplated by the Post Office Development Budget Operating Memorandum.

(E) Using funds as set forth in the Post Office Development Budget Operating Memorandum, the Agency shall perform the Parcel T2 Relocation Obligations.

(F) Upon completion of the foregoing actions, and satisfaction of the requirements set forth in this Agreement for conveyance of a Developer Parcel, the Agency shall sell to the Developer, and the Developer shall purchase from the Agency, Developer Parcel T2 for the Purchase Price and pursuant to the conveyance terms set forth in this Agreement, with particular reference to Section 201.8.

(G) Using funds as set forth in the Post Office Development Budget Operating Memorandum, the Developer shall engage a general contractor to construct and equip the Post Office Relocation Facility and required off-site public improvements (including the required extension of Solano Avenue) in accordance with this Agreement, the Project Approvals, and the Post Office Relocation Facility Lease. Upon completion of construction and in accordance with the terms of the Post Office Relocation Facility Lease, the parties and the USPS shall cause the relocation of fixtures and equipment, as applicable, from the Post Office Site and all other actions necessary to cause the USPS to relocate from and permanently vacate the Post Office Site and move into the completed Post Office Relocation Facility on Parcel T2.

Upon the occurrence of any of the following events (each a "Post Office Relocation Termination Event"), either party may terminate this Agreement with respect to Parcel L (as further provided in Sections 510 and 511), and thereafter the parties shall negotiate in good faith to achieve a mutually acceptable modification of this Agreement and the Project Approvals to enable an appropriate alternative private development of Parcel T2:

(H) Failure within the scheduled time period of the parties to agree upon and execute the Post Office LOI Budget Operating Memorandum;

(I) Failure within the scheduled time period of the USPS to approve a Post Office LOI, the Post Office Relocation Facilities Lease, or any other plans, specifications and documents required to be approved by the USPS in connection with the proposed relocation of its current facilities from the Parcel L Post Office Site; or

(J) Failure within the scheduled time period of the parties to agree upon and execute the Post Office Development Budget Operating Memorandum; or

(K) Failure within the scheduled time period, and despite commercially reasonable good faith efforts, of the Developer to obtain private debt and equity funds for development of the Post Office Relocation Facility as contemplated by the Post Office Development Budget Operating Memorandum.

b. Acquisition and Relocation With Respect to Restaurant Site. Within the time sets forth in the Schedule of Performance (Attachment No. 3) and in accordance

with all applicable legal requirements, the Agency shall take the following actions at its cost, using Vallejo Station Funds:

(1) The Agency shall seek to acquire fee title to the Restaurant Site from the Restaurant Site Owner by voluntary agreement. To that end, the Agency shall deliver a written offer to the Restaurant Site Owner following consultation with the Developer regarding such written offer. The Agency shall use reasonable efforts to acquire the Restaurant Site by negotiation at a purchase price consistent with the acquisition budget for the use of Vallejo Station Funds, and shall make good faith efforts to condition such negotiated purchase on either the ability to negotiate the purchase or the passage of a resolution of necessity with respect to the Post Office Site.

(2) If the Agency is unable to acquire the Restaurant Site by negotiation within the time set forth in the Schedule of Performance (Attachment No. 3), the Agency shall or shall cause the City to consider the adoption of a Resolution of Necessity for acquisition of the Restaurant Site by eminent domain. If the Agency or the City elects to adopt the Resolution of Necessity, the Agency or the City, as applicable, shall proceed promptly to acquire the Restaurant Site by eminent domain and shall file an order for immediate possession with respect to the Restaurant Site. The Developer acknowledges that discretion is vested in the Agency and the City to determine whether or not the statutory conditions set forth in Code of Civil Procedure Section 1245.230 are met in order to entitle a governmental agency to adopt a resolution of necessity. Nothing in this Agreement shall obligate the Agency or the City to make the findings required by Code of Civil Procedure Section 1245.230 or adopt the Resolution of Necessity for the Restaurant Site. If the Agency and the City fail to adopt the Resolution of Necessity for the Restaurant Site by the time set forth in the Schedule of Performance (Attachment No. 3), or if the Agency or the City adopts the Resolution of Necessity but, after good faith efforts, is unable to proceed with acquisition of the Restaurant Site by eminent domain within the time set forth in the Schedule of Performance (Attachment No. 3), the exclusive remedy of Developer shall be to terminate this Agreement pursuant to Section 510 with respect to Parcel J and/or L only, as the Developer may elect. Upon any such termination of this Agreement with respect to Parcel L (so that relocation of the Post Office facility to Parcel T2 as described above is not necessary), the parties shall negotiate in good faith to achieve a mutually acceptable modification of this Agreement and the Project Approvals to enable an appropriate alternative private development of Parcel T2.

(3) In connection with the acquisition of the Restaurant Site, the Agency shall complete the relocation of the restaurant business from the Restaurant Site in accordance with any voluntarily agreed terms, and all applicable statutory relocation requirements.

c. Acquisition of Portion of Parcel L (City/Agency Site). The City/Agency portion of Parcel L (the "City/Agency Site") consists of the balance of Parcel L (other than the Post Office Site and the Restaurant Site), including a portion of the land currently owned by the Agency and improved with parking improvements, and a portion of the land currently owned by the City and utilized as parking. Within the time set forth in the Schedule of Performance (Attachment No. 3), the Agency shall acquire that portion of Parcel L owned by the City.

b. d. Conveyance of Developer Parcels; Retention of Public Parking and Paseo Parcels. In accordance with and subject to all the terms, covenants and conditions of this Agreement, the AgencyCity agrees to convey and the Developer agrees to accept conveyance of the following L Developer Parcels:

(1) Parcel L1, consisting of land currently entirely within the City/Agency Site.1. Following conveyance, Parcel L1 shall be developed in accordance with the Scope of Development (Attachment No. 4).

(2) Parcel L2, consisting of land almost entirely within the City/Agency Site.2. Following conveyance, Parcel L2 shall be developed in accordance with the Scope of Development (Attachment No. 4).

(3) Parcel L4, a vertical subdivision parcel to be established, and following conveyance to the Developer, to be developed in accordance with the Scope of Development (Attachment No. 4) and the Parcel L4 Operating Memorandum to be prepared and executed as further provided in Section III.A.4 of the Scope of Development.

The AgencyCity shall retain title to or transfer to the City the portion of Parcel L comprising Parcels L3 and L5, which are vertical subdivision parcels to be established and developed in accordance with the Scope of Development (Attachment No. 4).

c. e. Purchase Price for Developer Parcel L1. The Purchase Price to be paid by the Developer for Parcel L1 shall be the Purchase Price determined pursuant to Section 201.2.

d. f. Purchase Price for Developer Parcel L2. The Purchase Price to be paid by the Developer for Parcel L2 shall be the Purchase Price determined pursuant to Section 201.2.

e. g. Purchase Price for Developer Parcel L4. The Purchase Price for Developer Parcel L4 shall be the Purchase Price determined pursuant to Section 201.2.

7. Parcel S. Parcel S consists of real property, a portion of which is currently owned by the Agency and is improved with marine sales and bait shop uses, and is subject to agreements with the operators of those uses, and a portion of which is currently owned by the City and is improved for storage uses, and is subject to agreements with individual tenants utilizing the storage areas on the property. Within the time set forth in the Schedule of Performance (Attachment No. 3), the Agency shall terminate the existing agreements with the marine sales and bait shop operators, shall cause the City to terminate the existing agreements with the storage tenants, and shall acquire from the City that portion of Parcel S currently owned by the City. Following such acquisition by the Agency, the Agency agrees to convey, and the Developer agrees to accept conveyance of, Parcel S for development in accordance with the Scope of Development (Attachment No. 4). The Purchase Price to be paid by the Developer for Parcel S shall be the Purchase Price determined pursuant to Section 201.2.

~~8. Parcel T. Parcel T consists of property currently owned by the Agency and occupied by certain tenants. Within the time set forth in the Schedule of Performance (Attachment No. 3), the Agency shall terminate any existing occupancy agreements and cause relocation of existing occupants from Parcel T. In accordance with and subject to all the terms, covenants and conditions of this Agreement, the Agency agrees to convey, and the Developer agrees to accept conveyance of, Parcel T for development in accordance with the Scope of Development (Attachment No. 4). As further provided in Section IV.B of the Scope of Development (Attachment No. 4), Parcel T may be subdivided into between three and five Developer subparcels (each a "T Developer Subparcel"), and conveyed at separate times to the Developer upon satisfaction of the preconditions to the conveyance of each T Developer Subparcel. The Purchase Price to be paid by the Developer for each T Developer Subparcel shall be the Purchase Price determined pursuant to Section 201.2.~~

B. [§202] Escrow.

The ~~Agency~~City agrees to open an escrow for conveyance of each Developer Parcel to the Developer with First American Title Company, or any other escrow company approved by the ~~Agency~~City and the Developer, as escrow agent (the "Escrow Agent"), in Vallejo, California, within the time established in the Schedule of Performance (Attachment No. 3). Except as may mutually be agreed between the ~~Agency~~City and Developer, the close of escrow hereunder and conveyance of each Developer Parcel to the Developer shall occur within the times set forth in the Schedule of Performance (Attachment No. 3). The parties acknowledge and agree that the individual Developer Parcels to be conveyed by the ~~Agency~~City to the Developer may be conveyed to the Developer at separate times, and, as such, the provisions of this Agreement with respect to the conveyance of the Developer Parcels to the Developer shall apply to the extent applicable to the particular Developer Parcel(s) being conveyed at that time.

This Agreement constitutes the joint escrow instructions of the ~~Agency~~City and the Developer, and a duplicate original of this Agreement shall be delivered to the Escrow Agent upon the opening of escrow. The ~~Agency~~City and the Developer shall provide such additional escrow instructions as shall be necessary and consistent with this Agreement. The Escrow Agent hereby is empowered to act under this Agreement, and, upon indicating its acceptance of the provisions of this Section 202 in writing, delivered to the ~~Agency~~City and to the Developer within five (5) days after the opening of the escrow, shall carry out its duties as Escrow Agent hereunder.

Upon delivery of the grant deeds (or ground leases) for the applicable Developer Parcels pursuant to Section 209 of this Agreement, and upon satisfaction of the ~~Agency'~~City's and Developer~~'~~'s conditions to closing, the Escrow Agent shall record such grant deeds (or ground leases), as applicable, when title to the Developer Parcels can be vested in the Developer in accordance with the terms and provision of this Agreement. The Escrow Agent shall buy, affix and cancel any transfer stamps required by law and pay any transfer tax required by law. Any insurance policies governing any Developer Parcels are not to be transferred.

The Developer shall pay in escrow to the Escrow Agent all fees, charges and costs relating to such escrow, including without limitation the following, promptly after the Escrow Agent has notified the Developer of the amount of such fees, charges and costs, but not earlier than ten (10) days prior to the date provided for herein for the close of escrow:

1. One-half (1/2) of the escrow fee;

2. The portion of the premium for the title insurance policy or special endorsements to be paid by the Developer, if any, as set forth in Section 211 of this Agreement;

3. Costs of drawing the grant deeds;

4. Recording fees;

5. Notary fees;

6. Ad valorem taxes, if any, described in Section 212 of this Agreement which are the responsibility of the Developer; and

7. Any transfer taxes.

The Developer shall also deposit with the Escrow Agent the Purchase Price for the Developer Parcels, or applicable portion thereof then being conveyed to the Developer, (or, with respect to the B/C Ground Lease Parcels or applicable portion thereof then being conveyed to the Developer, the applicable first year's Initial Annual Rent Payment Amount).

The ~~Agency~~City shall pay in escrow to the Escrow Agent the following, promptly after the Escrow Agent has notified the ~~Agency~~City of the amount of such fees, charges and costs, but not earlier than ten (10) days prior to the date provided for herein for the close of escrow:

1. One-half (1/2) of the escrow fee;

2. The premium for a C.L.T.A. standard title insurance policy to be paid by the ~~Agency~~City as set forth in Section 211 of this Agreement.

The ~~Agency~~City shall timely and properly execute, acknowledge and deliver the grant deeds in substantially the form established in Section 207 of this Agreement (or the ~~Agency/Developer Sub-~~Ground Leases with respect to the B/C Ground Lease Parcels) conveying to the Developer fee title to (or a sub-ground leasehold interest in) the Developer Parcels in the condition required by Section 208 of this Agreement, together with an estoppel certificate certifying that the Developer has completed all acts necessary to entitle the Developer to such conveyance, if such be the fact.

The Escrow Agent is authorized to:

1. Pay and charge the ~~Agency~~City and the Developer, respectively, for any fees, charges and costs payable under this Section 202 of this Agreement. Before such payments are made, the Escrow Agent shall notify and obtain approval (which approval shall not be unreasonably withheld) from the ~~Agency~~City and the Developer of the fees, charges and costs necessary to clear title and close the escrow;

2. Disburse funds and deliver the grant deeds (or memoranda of ground leases), and other documents to the parties entitled thereto when the conditions of this escrow have been fulfilled by the ~~Agency~~City and the Developer; and

3. Record the grant deeds (or memoranda of ground leases), and any other instruments delivered through this escrow, if necessary or proper, to vest fee title (or a ground leasehold interest) to the Developer Parcels, as applicable, in the Developer in accordance with the terms and provisions of this Agreement.

All funds received in this escrow shall be deposited by the Escrow Agent with other escrow funds of the Escrow Agent in a general escrow account or accounts with any state or national bank doing business in the State of California. Such funds may be transferred to any other such general escrow account or accounts. All disbursements shall be made by check of the Escrow Agent. All adjustments shall be made on the basis of a 30-day month.

If the escrow for a particular Developer Parcel is not in condition to close before the time for conveyance established in Section 209 of this Agreement, either party who then shall have fully performed the acts to be performed before the conveyance of title may, in writing, terminate this Agreement in the manner and to the extent set forth in Section 510 or 511 hereof, as the case may be, and demand the return of its money, papers or documents. Thereupon all obligations and liabilities of the parties under this Agreement shall cease and terminate in the manner and to the extent set forth in Section 510 or 511 hereof, as the case may be. If neither the ~~Agency~~City nor the Developer shall have fully performed the acts to be performed before the time for conveyance established in Section 209, no termination or demand for return shall be recognized until ten (10) days after the Escrow Agent shall have mailed copies of such demand to the other party or parties at the address of its or their principal place or places of business. If any objections are raised within the 10-day period, the Escrow Agent is authorized to hold all money, papers and documents with respect to the affected Developer Parcel(s) until instructed in writing by both the ~~Agency~~City and the Developer or upon failure thereof by a court of competent jurisdiction. If no such demands are made, the escrow shall be closed as soon as possible. Nothing in this Section 202 shall be construed to impair or affect the rights or obligations of the ~~Agency~~City or the Developer to specific performance. Notwithstanding the foregoing, the time for conveyance established in Section 209 of this Agreement shall be extended so long as the party who has not fully performed the necessary acts for conveyance is working reasonably to satisfy the conditions for conveyance and diligently proceeds to complete all of such acts.

Any amendment of these escrow instructions shall be in writing and signed by both the ~~Agency~~City and the Developer. The ~~Agency's Executive Director, or his~~City Manager, or the City Manager's designee, is authorized to execute any escrow instructions or amendments thereto on behalf of the ~~Agency~~City. At the time of any amendment, the Escrow Agent shall agree to carry out its duties as Escrow Agent under such amendment.

All communications from the Escrow Agent to the ~~Agency~~City or the Developer shall be directed to the addresses and in the manner established in Section 601 of this Agreement for notices, demands and communications between the ~~Agency~~City and the Developer.

The liability of the Escrow Agent under this Agreement is limited to performance of the obligations imposed upon it under Sections 202 to 213, both inclusive, of this Agreement.

Neither the ~~Agency~~City nor the Developer shall be liable for any real estate commissions or brokerage fees which may arise from this Agreement. The ~~Agency~~City and the Developer each represent that neither has engaged any broker, agent or finder in connection with this transaction, and each party shall hold the other harmless from any claims for any such commissions or fees.

C. [§203] Conveyance of Title and Delivery of Possession.

Provided that the Developer is not in default under this Agreement and all conditions precedent to such conveyance have occurred, and subject to any mutually agreed upon extensions of time, conveyance to the Developer of title to the respective Developer Parcels shall be completed on or prior to the date specified in the Schedule of Performance (Attachment No. 3). Said Schedule of Performance is subject to revision from time to time as mutually agreed upon in writing between the Developer and the ~~Agency~~City pursuant to Operating Memoranda, as described in Sections 604 and 709 hereof. The ~~Agency~~City and the Developer agree to perform all acts necessary to conveyance of title in sufficient time for title to be conveyed in accordance with the foregoing provisions.

Possession shall be delivered to the Developer concurrently with the conveyance of title, except that limited access may be permitted before conveyance of title as permitted in Section 216 of this Agreement. The Developer shall accept title and possession on or before the said date.

~~Notwithstanding the provisions of this Agreement requiring the Agency to acquire title to the Site prior to the time set for conveyance of the Developer Parcels in the Schedule of Performance (Attachment No. 3) and to deposit the grant deeds in escrow prior to such time, if, at or prior to the time set forth in the Schedule of Performance for conveyance of the portion of Parcel L that comprises a Developer Parcel, the Agency has not obtained title to the necessary portion of Parcel L but has obtained a judicial order authorizing the Agency to take possession thereof and, upon the further mutual agreement of the parties:~~

~~1. The Agency deposits a copy of the order in escrow;~~

~~2. Upon request of the Title Company, the Agency delivers an executed agreement indemnifying the Title Company against claims arising out of any property for which the Agency has obtained a judicial order authorizing the Agency to take possession;~~

~~3. The Agency delivers exclusive possession of the property involved to the Developer by a written lease or other document reasonably approved as a means of effectuating this Agreement by the Agency and the Developer, on or prior to the time set for conveyance thereof;~~

~~4. The right of possession which the Developer acquires from the Agency is such that the Title Company commits to issue a policy or policies of title insurance as set forth in~~

Section 218 and which enables the Developer to obtain financing for the development of such Developer Parcel;

5. The Agency diligently proceeds with the eminent domain action until a final judgment is rendered, and the Agency forthwith deposits the grant deed to such property in the escrow provided herein; and

6. All occupants have been relocated from the property involved or are subject to the order of immediate possession requiring them to surrender possession of the property,

then the Developer shall not terminate this Agreement under the provisions of Section 510 but shall accept such right of possession and shall proceed with the development of the portion of Parcel L that comprises a Developer Parcel. In such event, the escrow provided in Section 202 with respect to such Developer Parcel shall remain open until the grant deeds to the property involved can be deposited therein in accordance with this Section 203.

The Agency shall cooperate with the Developer and the Title Company to seek to procure issuance of a policy or policies of title insurance as described in paragraph 4 above, and in that regard, agrees that it shall provide the indemnification agreement described in paragraph 2 above in a form approved by the Agency and its legal counsel.

D. [§204] Conditions Precedent to Conveyance.

1. [§205] Agency'City's Conditions to Closing.

The following are conditions precedent, and shall be completed to the Agency'City's satisfaction or waived by the AgencyCity (collectively, the “Agency'"City's Conditions to Closing”") prior to close of escrow for conveyance of any Developer Parcel, or any portion thereof, to the Developer:

a. Approval, adoption and effectiveness of the Settlement-Related Ordinances enacting the Settlement-Related Amendments to the Required Approvals;

a. b. Submission by the Developer and approval by the AgencyCity of the Developer''s evidence of financing adequate to finance the acquisition and development of the Developer Parcel(s) being conveyed, pursuant to Section 217 hereof;

c. Completion of acquisition of the applicable Developer Parcel by the Agency (or, if applicable, filing of orders for immediate possession);

b. d. Deposit into escrow by the Developer of the applicable Purchase Price (or initial year's Annual Rent Payment, as applicable) and all other documents and required sums necessary for close of escrow pursuant to Section 202 hereof;

c. e. Submission by the Developer and approval by the City of the Developer''s Unit Plan for the applicable Developer Parcel(s), pursuant to Sections 304 and 305 hereof;

d. ~~f.~~ Submission by the Developer of evidence that the Developer is ready to proceed with demolition of the existing improvements and site preparation work;

e. ~~g.~~ Preparation and recordation of reciprocal easement agreements and/or covenants, conditions and restrictions (~~“~~"REA/CC&Rs~~”~~") required by the ~~Agency and/or~~ City with respect to the Developer Parcel, or portion thereof, to be developed for residential uses, as provided in Section 704 hereof; and

f. ~~h.~~ The Developer entity to which the applicable Developer Parcel(s) is being conveyed shall not be in default of this Agreement with respect to any Developer Parcel(s) previously conveyed to that Developer entity (it being expressly agreed by the ~~Agency~~City that this condition shall not apply to prevent conveyance to a Developer entity if a default exists under this Agreement with respect to a Developer Parcel(s) previously conveyed to an unrelated Transferee(s) in accordance with Section 315 hereof).

2. [§206] Developer~~’~~'s Conditions to Closing.

In addition to any other conditions set forth in this Agreement in favor of the Developer, the following are conditions precedent (the "Developer's Conditions to Closing"), and shall be completed to the Developer~~’~~'s satisfaction, or waived by the Developer, prior to close of escrow for conveyance of any Developer Parcel, or applicable portion thereof, by the ~~Agency~~City to the Developer:

a. Subject to the provisions of Section 203 hereof, the ~~Agency~~City shall be ready to timely tender title to (or possession of) the Developer Parcel in the condition required for conveyance to the Developer hereunder;

b. The ~~Agency~~City shall have complied with all requirements of the escrow applicable to the ~~Agency~~City, including, without limitation, deposit into escrow of the applicable grant deed or ~~Agency/City Sub~~ Ground Lease, and all other documents and all sums, if any, necessary for the close of escrow pursuant to Section 208 hereof;

c. The Title Company (referenced in Section 211 hereof) shall be in the position to issue the Title Policy (as defined in Section 211) for the Developer Parcel;

~~d. Completion of acquisition of the Developer Parcel (or, if applicable, filing of orders for immediate possession);~~

d. ~~e.~~ Submission by the Developer and approval by the City of the Developer~~’~~'s Unit Plan, and, if requested by the Developer, a vesting tentative map, for such Developer Parcel being conveyed, in accordance with and pursuant to Sections 304 and 305 hereof;

e. ~~f.~~ The Developer shall determine the soil conditions of the Site and suitability of the soil conditions for the improvements to be constructed thereon, pursuant to Section ~~215.3~~215 hereof;

f. ~~g.~~ The Developer shall have obtained financing adequate for the Developer~~'~~'s costs of acquisition of and construction of the improvements on the Developer Parcel being conveyed;

g. ~~h.~~ All required REA/CC&Rs required by the ~~Agency and/or~~ City shall have been prepared and recorded against those Developer Parcels, or portions thereof, to be developed for residential uses, as provided in Section 704 hereof~~;~~

~~i. Approval, adoption and effectiveness of the Settlement-Related Ordinances enacting the Settlement-Related Amendments to the Required Approvals~~; and

h. ~~j.~~ Procurement from the applicable regulatory agency of the notice pursuant to Health and Safety Code Section ~~33459.3(c) (the Polanco Act Immunity)~~25403.2 of immunity from specified hazardous materials actions with respect to the Developer Parcel, if applicable pursuant to Section 215.

E. [§207] Form of Grant Deeds and Ground Leases.

The ~~Agency~~City shall convey to the Developer title to the respective Developer Parcels in the condition provided in Section 208 of this Agreement by grant deeds in substantially the form set forth in Attachment No. 5 and incorporated herein by reference or, with respect to the B/C Ground Lease Parcels, by ~~Agency/Developer Sub-~~Ground Leases in forms to be prepared as set forth in Section 201.4.

F. [§208] Condition of Title.

Within the time set forth in the Schedule of Performance (Attachment No. 3), the ~~Agency~~City shall submit to the Developer for review and approval a preliminary title report, together with a copy of all underlying documents referred to therein (the ~~"~~"Preliminary Title Report~~"~~") applicable to the entire Site (the ~~"~~"Initial Title Review Period~~"~~"). In addition, within the times set forth in the Schedule of Performance (Attachment No. 3) and prior to the conveyance of the respective Developer Parcels, the ~~Agency~~City shall submit to the Developer for review and approval a preliminary title report, applicable to the respective Developer Parcels (the ~~"~~"Subsequent Title Review Period~~"~~"). The Developer shall approve or disapprove the Preliminary Title Report for the entire Site or an applicable Developer Parcel within the Initial Title Review Period or the Subsequent Title Review Period for that Developer Parcel, respectively. Failure by the Developer to disapprove within such time shall be deemed an approval.

If the Developer disapproves a Preliminary Title Report, it shall specify the exception(s) to title contained in the Preliminary Title Report that it finds unacceptable and that would need to be removed in order for the Developer to be willing to accept conveyance of the applicable Developer Parcel (the "Unacceptable Title Exceptions"). The ~~parties~~City and the Developer shall confer within fifteen (15) days after the ~~Agency~~City's receipt of the disapproval of the Preliminary Title Report to seek in good faith to agree upon a method to remove the Unacceptable Title Exceptions, and any such agreement shall be set forth in an Operating Memorandum executed in accordance with Section 709. Thereafter, the ~~parties~~City and the

Developer shall perform their respective obligations under such Operating Memorandum to cause removal of such Unacceptable Title Exceptions.

If the Developer disapproves a Preliminary Title Report as a result of the existence of Unacceptable Title Exceptions and the ~~parties~~City and the Developer do not enter into an Operating Memorandum to remove such Unacceptable Title Exceptions within thirty (30) days after the ~~Agency~~City's receipt of such disapproval (or such longer period as the ~~parties~~City and the Developer may agree upon in writing), the Developer may elect to terminate this Agreement in accordance with Section 510 hereof with respect to the affected Developer Parcel(s) only, or may elect to proceed with the acquisition of the Developer Parcel(s) without removal of the Unacceptable Title Exceptions. The ~~Agency~~City agrees that it will not cause, permit or suffer any liens, encumbrances or other matters affecting title to the Developer Parcels (or applicable portion thereof being conveyed) after the date of the Preliminary Title Report unless approved in writing by the Developer, which approval shall not be unreasonably withheld.

The ~~Agency~~City and the Developer acknowledge that, on July 13, 2007, the Developer timely submitted to the RDA a notice of Unacceptable Title Exceptions for the Initial Title Review with respect to all parcels within the Site. Notwithstanding the deadlines set forth above in this Section 208, the City and the Developer shall confer within the period to be set forth in City/Developer Amendment to this Fourth Restated Agreement to seek to execute a mutually acceptable Operating Memorandum to address such Unacceptable Title Exceptions.

The City shall convey to the Developer good and marketable fee simple title to (or, in connection with the B/C Ground Lease Parcels, good and marketable ~~sub-~~ground leasehold interest in) the respective Developer Parcels free and clear of all recorded liens, encumbrances, assessments, leases and taxes (including Unacceptable Title Exceptions to be removed pursuant to an Operating Memorandum), except as are specifically set forth in this Agreement and other easements and matters of record reflected in the Preliminary Title Report approved by the Developer, or which have been otherwise approved by the Developer in writing.

Notwithstanding any other provision of this Agreement, the ~~Agency~~City shall cause termination of any leasehold interest on a Developer Parcel ~~(other than the City/Agency Ground Leases with respect to the B/C Ground Lease Parcels)~~ prior to conveyance of the Developer Parcel to the Developer.

G. [§209] Time for and Place of Delivery of Grant Deeds and Ground Leases.

Subject to any mutually agreed upon extensions of time, the ~~Agency~~City shall deposit the grant deeds for the respective Developer Parcels, and the ~~Agency/Developer Sub-~~Ground Leases for the B/C Ground Lease Parcels, as applicable, with the Escrow Agent on or before the date established for the conveyance of each Developer Parcel in the Schedule of Performance (Attachment No. 3).

H. [§210] Recordation of Deeds and Lease Memoranda.

The Escrow Agent shall file the grant deeds (or a memorandum of lease with respect to the B/C Ground Lease Parcels) for recordation among the land records in the Office of

the County Recorder of Solano County and shall deliver to the Developer title insurance policies insuring title in conformity with Section 211 of this Agreement.

I. [§211] Title Insurance.

Concurrently with recordation of the grant deed (or memoranda of leases with respect to the B/C Ground Lease Parcels) for each Developer Parcel to be conveyed by the ~~Agency~~City, First American Title Company, or some other title insurance company satisfactory to the ~~Agency~~City and the Developer having equal or greater financial responsibility ("Title Company"), shall provide and deliver to the Developer, a title insurance policy issued by the Title Company (the ~~“~~"Title Policy~~”~~") insuring that the fee title to the respective Developer Parcels (or the ~~sub-~~ground leasehold interest with respect to the B/C Ground Lease Parcels) is vested in the Developer in the condition required by Section 208 of this Agreement. The Title Company shall provide the ~~Agency~~City with a copy of the title insurance policy and the title insurance policy shall be in the amount requested by the Developer.

The ~~Agency~~City shall pay only for that portion of the title insurance premium attributable to a C.L.T.A. standard form policy of title insurance in the amount of the Preliminary Purchase Price (prior to deduction of any Purchase Price credits) for each Developer Parcel being conveyed. The Developer shall pay for all other premiums for title insurance coverage or special endorsements that it may request.

The Title Company shall, if requested by the Developer, provide the Developer with an endorsement to insure the amount of the Developer's estimated development costs of the improvements to be constructed upon the applicable Developer Parcel(s). The Developer shall pay the entire premium for all title insurance policies, including any increase in coverage and special endorsements that may be requested by it.

J. [§212] Taxes and Assessments.

Ad valorem taxes and assessments, if any are imposed on the ~~Agency~~City, on the Developer Parcels, and taxes upon this Agreement or any rights hereunder, levied, assessed or imposed for any period commencing prior to conveyance of title to the Developer shall be paid for by the ~~Agency~~City. All ad valorem taxes and assessments levied or imposed on the Developer Parcels for any period commencing after closing of the escrow for conveyance of title to the Developer shall be paid by the Developer.

K. [§213] Conveyance Free of Possession.

Except as otherwise provided in the Scope of Development (Attachment No. 4), the Developer Parcels shall be conveyed free of any possession or right of possession by any person except that of the Developer and the easements and matters of record.

L. [§214] Zoning of the Site.

~~As provided and subject to the~~{ ~~exceptions set forth in~~ }~~Section 102 hereof, this Agreement is conditioned upon, and the obligations of the Parties hereunder are specifically contingent upon, among other things, the City approval and subsequent effectiveness following~~

~~expiration of the applicable referendum period of the Settlement-Related Ordinances enacting the Settlement-Related Amendments to the Required Approvals. Upon approval and effectiveness of such Settlement-Related Ordinances enacting the Settlement-Related Amendments to the Required Approvals, the zoning of the Site will be such as to permit~~The zoning of the Site permits the development of the Site and construction of the improvements in accordance with the provisions of this Agreement.~~ The Agency and Developer shall cooperate and use best efforts to obtain such approvals from the City, and further to obtain or cause the issuance of any other approvals and permits necessary for the use, operation and maintenance of the improvements, including without limitation the joint use of parking facilities, in accordance with the provisions of this Agreement.~~

M. [§215] Condition of the Site.

1. ~~1.~~ Overview; Parcel A. Prior investigations of the Site by the ~~Agency have~~RDA has revealed contamination on Parcels A~~, S and T~~. The ~~Agency has~~RDA provided the Developer with information regarding Parcel A~~ and~~. Neither the Successor Agency nor the City shall~~ not~~ be responsible for any corrective action to remediate any contamination on Parcel A.

~~2. Parcels S and T. The parties shall cause remediation of contamination with respect to Parcels S and T in accordance with Section IV.A of the Scope of Development (Attachment No. 4).~~

~~The parties intend that such remediation work shall be undertaken and completed in such a manner as to entitle the Agency{ to receive the written acknowledgment of immunity pursuant to Health and Safety Code Section }33459.3(c). The parties intend and the Agency{ shall use good faith efforts to assure that, upon }acquisition of Parcels S and T by the Developer{, the Developer, the Developer's successors-in-interest and lenders with respect to such Developer Parcels shall be beneficiaries of the immunities contained in Health and Safety Code Section }33459.3(e){ relating to such remediation work} ("Polanco Act Immunity"). The parties{ understand and acknowledge that, to the extent any remedial work is undertaken pursuant to Health and Safety Code Section }33459, et seq., the Agency{ may in its discretion employ the provisions set forth therein in connection with efforts to require responsible parties to perform and/or contribute funds to the remediation. The performance of any remediation actions by the }Agency pursuant to this Section 215.2 is designed to place Parcels S and T in the condition upon which the Purchase Prices for such Developer Parcels are determined in accordance with Section 201.2.~~

2. ~~3.~~ Other Developer Parcels. Except as set forth herein with respect to Parcels A~~, S and T~~ or in Phase 1 or Phase 2 environmental assessment reports separately prepared by the Developer, the ~~Agency~~City represents that, to its best knowledge, no other portions of the Site contain or have contained soil or groundwater contamination requiring remediation work in order to permit such other portions of the Site to be developed and used in the manner contemplated in this Agreement and that it has made available to Developer copies of all information, studies and reports in its possession with respect to any contamination on the Site.

Except as otherwise set forth~~ in Section 215.2 above with respect to Parcels S and T,~~ in an Operating Memorandum described below in this Section 215.2, or in Section 215.3, or in the Scope of Development (Attachment No. 4), the Developer Parcels shall be conveyed from the ~~Agency~~City to the Developer in an "as is" condition. The ~~Agency~~City shall not be responsible for any items of site work within the Developer Parcels except those described ~~above in Section 215.2 with respect to Parcels S and T, those described~~ in an Operating Memorandum, and those which are listed in the Scope of Development as the ~~Agency~~City's responsibilities.

The Developer shall have the right, within the time set forth in the Schedule of Performance (Attachment No. 3) to conduct or cause to be conducted any and all soils or groundwater tests and analyses, engineering studies, environmental audits, and any other tests or analyses of the Developer Parcels required by the Developer at its sole and absolute discretion to determine the presence of uncompacted fill, the condition of the soil or groundwater, the geology, seismology, hydrology or other similar matters on, under or affecting the respective Developer Parcels, the condition of any buildings or improvements located thereon, the presence or absence of any hazardous or toxic substances, wastes or materials, and the suitability of the respective Developer Parcels for the Developer~~’~~'s contemplated use (collectively, the "Parcel Conditions"). It shall be the sole responsibility of the Developer to investigate and determine the Parcel Conditions of the respective Developer Parcels~~ (other than Parcels S and T)~~ and the suitability of such Parcel Conditions for the improvements to be constructed by the Developer.

If the Developer determines that any Parcel Conditions are such as to make the development of any particular Developer Parcel(s) economically infeasible, it shall notify the ~~Agency~~City, specifying such condition(s) (the "Unacceptable Physical Conditions") and, if possible, the corrective action(s) it reasonably believes would need to be completed to remediate such Unacceptable Physical Conditions so that development of the particular Developer Parcel(s) could proceed in an economically feasible manner. The ~~parties~~City and the Developer shall confer within fifteen (15) days after the ~~Agency~~City's receipt of such notice to seek in good faith to agree upon a method to remediate the Unacceptable Physical Conditions, and any such agreement shall be set forth in an Operating Memorandum executed in accordance with Section 709. ~~At the request of the Developer, an Operating Memorandum shall contain provisions substantially similar to those set forth in the second paragraph of Section 215.2 (in connection with Parcels S and T) related to Agency actions to procure Polanco Act Immunity with respect to remediation of the applicable Developer Parcel. Thereafter, the parties~~Thereafter, the City and the Developer shall perform their respective obligations under such Operating Memorandum to cause remediation of such Unacceptable Physical Conditions.

If the Developer delivers a notice of the existence of Unacceptable Physical Conditions and the parties do not enter into an Operating Memorandum to remediate such Unacceptable Physical Conditions within thirty (30) days after the ~~Agency~~City's receipt of such notice (or such longer period as the parties may agree upon in writing), or if the Developer cannot determine with a reasonable degree of certainty the costs to remediate any Unacceptable Physical Conditions, the Developer may elect to terminate this Agreement in accordance with Section 510 hereof with respect to the entire Site or the affected Developer Parcel(s) only, or may elect to proceed with the acquisition of the Developer Parcel(s) without removal of the Unacceptable Physical Conditions and/or despite such uncertainty about costs of remediation.

Except with respect to Parcels S and T, ifIf the Developer does not provide the AgencyCity with a notice of Unacceptable Physical Conditions for a particular Developer Parcel within the time set forth in the Schedule of Performance (Attachment No. 3), then thereafter, if the Parcel Conditions are not in all respects entirely suitable for the use or uses to which the particular Developer Parcel will be put, then it is the sole responsibility and obligation of the Developer to take such action as may be necessary to place the Parcel Conditions of the particular Developer Parcel in a condition suitable for the development of the particular Developer Parcel.

3. Previously Submitted Unacceptable Physical Conditions Notice. The City and the Developer acknowledge that the Developer timely submitted an Unacceptable Physical Conditions notice to the RDA on July 13, 2007, with respect to Parcels J and L. Notwithstanding the deadlines set forth in Section 215.2 above, the City and the Developer shall confer within the period to be set forth in the City/Developer Amendment to this Fourth Restated Agreement to seek to execute a mutually acceptable Operating Memorandum to address such Unacceptable Physical Conditions.

4. Hazardous Materials Release Cleanup. The City and the Developer intend that remediation work undertaken pursuant to an Operating Memorandum executed under Section 215.2 or 215.3 (a "Remediation Operating Memorandum") shall be undertaken and completed in such a manner as to entitle the City[to receive the written acknowledgment of immunity pursuant to Health and Safety Code Section]33459.3(c). The parties intend and the Agency25403.2. The City and the Developer intend and the City[shall use good faith efforts to assure that, upon]acquisition of Parcels S and T by the Developerremediation in accordance with a Remediation Operating Memorandum[, the Developer, the Developer's successors-in-interest and lenders with respect to such Developer Parcels shall be beneficiaries of the immunities contained in Health and Safety Code Section]33459.3(e)25403.2[relating to such remediation work]. The City and the Developer[understand and acknowledge that, to the extent any remedial work is undertaken pursuant to Health and Safety Code Section]33459, et seq., the Agency25403 et seq., the City[may in its discretion employ the provisions set forth therein in connection with efforts to require responsible parties to perform and/or contribute funds to the remediation. The performance of any remediation actions by the]City pursuant to Section 215 is designed to place the applicable Developer Parcels in the condition upon which the Purchase Prices for such Developer Parcels are determined in accordance with Section 201.2.

N. [§216] Preliminary Work by the Developer.

Prior to the conveyance of title to the respective Developer Parcels from the AgencyCity, representatives of the Developer shall have the right of access to the Site, or those portions owned by or under the control of the Agency or City, at all reasonable times for the purpose of obtaining data and making surveys and tests necessary to carry out this Agreement. The AgencyCity shall take all reasonable actions as may be necessary to allow the Developer such access to the Site for purposes of determining the condition of the Site. With respect to those portions of the Developer Parcels which are not then owned by the Agency or City, the AgencyCity shall cooperate with the Developer in an effort to obtain any approvals and authorizations necessary for the Developer to gain access to those portions of the Developer Parcels as provided in this Section 216; provided, however, that the Developer acknowledges and

agrees that any such approvals and authorizations may be beyond the control of the ~~Agency~~City and access may be delayed until such time as the ~~Agency~~City obtains the authority for access to those portions of the Developer Parcels; and provided further, however, that the ~~Agency~~City shall use diligent good faith efforts to obtain such access, including seeking court orders if deemed necessary by the ~~Agency~~City in its reasonable judgment to enable timely access to portions of the Developer Parcels not owned by the~~ Agency or~~ City. Prior to any access pursuant to this Section 216, the Developer shall give reasonable notice to the ~~Agency~~City, and any such access shall not interfere with the activities of the ~~Agency~~City or others having access rights to the Developer Parcels. The Developer shall indemnify and hold the ~~Agency and~~ City harmless for any injury or damages arising out of the right of access or any activity pursuant to this Section 216. The Developer shall have access to all data and information on the Site available to the ~~Agency~~City, but without warranty or representation by the ~~Agency~~City as to the completeness, correctness or validity of such data and information.

Any preliminary work undertaken on the Site by the Developer prior to conveyance of title to the Developer Parcels shall be done only after written consent of the ~~Agency~~City, and others with jurisdiction or control over the Developer Parcels, as the case may be, and at the sole expense of the Developer (but subject to reimbursement or credit as may be otherwise specifically provided in this Agreement or an Operating Memorandum). The ~~Agency~~City shall not refuse to consent to any tests reasonably necessary to accomplish the purposes of this Agreement by the Developer. The Developer shall indemnify, save and protect the ~~Agency~~City against any claims resulting from such preliminary work, access or use of the Site. Copies of data, surveys and tests obtained or made by the Developer on the Site shall be filed with the ~~Agency~~City, but without warranty or representation by the Developer as to the completeness, correctness or validity of such data, surveys and tests. Any preliminary work by the Developer shall be undertaken only after securing any necessary permits from the appropriate governmental agencies.

Without limiting the generality of the foregoing portions of this Section and subject to compliance with the terms of the Section 404 Permit~~,~~ at any time~~ following the Action Dismissal Date~~, including prior to the processing of an application for a Unit Plan for Parcel A, and upon execution of a right-of-entry agreement, license agreement or other similar agreement reasonably acceptable to the ~~Agency~~City and the Developer, the Developer shall have the right to enter upon Parcel A and to place thereon clean fill for purposes of surcharging that parcel, provided the final grades are consistent with the maximum building finish floor elevations set forth in Section II.A.1 of the Scope of Development (Attachment No. 4).

O. [§217] Submission of Evidence of Financing.

The financing of the acquisition and development of the respective Developer Parcels shall be subject to the approval of the ~~Agency~~City, which approval will not be unreasonably withheld and which approval or disapproval shall be limited to the issue of the creditworthiness of the provider of such financing.

No later than the time specified in the Schedule of Performance (Attachment No. 3), the Developer shall have secured financing necessary to assure acquisition and development of applicable Developer Parcel(s) in accordance with the provisions of this Agreement.

P. [§218] Cooperation With Subdivision.

The AgencyCity, as owner of applicable portions of the Site, shall reasonably cooperate with and assist the Developer, as applicant for various subdivisions and/or lot line adjustments of the Site contemplated by this Agreement and the Project Approvals, and shall execute such documents and consents and take such other actions as are reasonably required to enable the Developer to apply for and obtain approval, filing, and recordation of such subdivisions and/or lot line adjustments; provided, however, that nothing in this Agreement shall affect or limit the City's municipal authority to grant or deny such applications.

3. [§300] DEVELOPMENT OF THE SITE.

A. [§301] Development of the Site by the Developer.

1. [§302] Scope of Development.

The Site shall be developed as provided in the Scope of Development (Attachment No. 4).

2. [§303] [Intentionally Omitted].

3. [§304] Unit Plans and Related Documents.

The Developer shall prepare and submit to the City a Unit Plan, in accordance with Section 16.116.070 et seq. of the Vallejo Municipal Code and any applicable provisions of this Agreement (with particular reference to the Scope of Development (Attachment No. 4)) and the Settlement Agreement, for each Developer Parcel within the times established in the Schedule of Performance (Attachment No. 3). At the Developer'[']s election, a Unit Plan submission may be accompanied by a Developer application for a vesting tentative map for the applicable Developer Parcel, which application shall be reviewed and processed in accordance with normal City procedures (subject to the terms of the Development Agreement). Any necessary surveys required for the preparation of the Unit Plan or vesting tentative map shall be prepared by the Developer concurrently with the Unit Plan. All Unit Plans shall conform to this Agreement, including the Scope of Development (Attachment No. 4). The Developer may, at its election, apply for, seek approval of., and obtain recordation of a master subdivision or lot line adjustment with respect to one or more Developer Parcels prior to applying for or obtaining a Unit Plan with respect to such Developer Parcel(s).

The Developer shall also prepare and submit to the City for its approval one or more final subdivision maps, as necessary, to cause subdivision of the applicable Developer Parcels as envisioned by this Agreement, including the Scope of Development (Attachment No. 4). Such final subdivision map(s) shall be prepared and submitted within the times established in the Schedule of Performance (Attachment No. 3), subject to extensions as are authorized herein or as mutually agreed to by the parties hereto.

As further provided below, the Agency shall cause the City toshall consider approval or disapproval of the Unit Plan (and, if applicable, the vesting tentative map and final

subdivision map(s)) for each Developer Parcel within the times established in the Schedule of Performance (Attachment No. 3) and in a manner consistent with this Agreement, including the Scope of Development (Attachment No. 4), and the ~~Amended Required~~Project Approvals, including the Development Agreement. The Developer and the ~~Agency~~City mutually agree that following consideration by the City Planning Commission or Design Review Board of a Unit Plan for any major project (as determined by the Development Services Director) for any Developer Parcel, the Developer and the ~~Agency~~City shall file a timely appeal of the decision of the Planning Commission or the Design Review Board, as applicable, in order for the City Council to consider approval or disapproval of such Unit Plan as authorized by the Vallejo Municipal Code. The ~~Agency~~City shall pay any appeal fee related to the Project.

During the preparation of all Unit Plans, ~~Agency and~~ City staff and the Developer shall hold regular progress meetings and shall regularly consult with each other to coordinate the preparation of, submission to, and review of such plans and related documents by the City. The ~~Agency, the~~ City and the Developer shall communicate and consult informally as frequently as is necessary to insure that the formal submittal of any documents to the City can receive prompt and speedy consideration.

In accordance with the procedures set forth in Section 16.116.070 et seq. of the Vallejo Municipal Code, the Developer shall be notified by the City if the Unit Plan application is complete or not. If the Unit Plan application is not complete, the City shall notify the Developer of the reason such packet is incomplete and what element is missing or what action must be taken by the Developer for the City to accept such packet as complete.

In general, the Schedule of Performance (Attachment No. 3) for each Developer Parcel establishes the following procedure that the ~~Agency shall cause the~~ City ~~to~~ implement in connection with Design Review Board and the City Council consideration of the Unit Plan for any major project on a Developer Parcel that will ultimately be appealed to the City Council for City Council's consideration of approval:

a. Upon submittal by the Developer of a complete application (a "Complete Application") for such Unit Plan and any accompanying vesting tentative map (following performance of the staff/Developer consultation process and the City notification process described in the preceding paragraphs), the City shall schedule an initial hearing before the Design Review Board (the "Study Session") to take place within thirty (30) days after City receipt of such Complete Application. At the Study Session, the Developer shall present the proposed Unit Plan (and any accompanying vesting tentative map) and shall receive any comments from the Design Review Board, City staff, and members of the public.

b. After the Developer assimilates comments from the Study Session and submits any proposed modifications to the Complete Application (a "Revised Application"), the City shall schedule a subsequent hearing before the Design Review Board (the "Action Session") to take place within thirty (30) days after City receipt of such Revised Application. At the Action Session, the Developer shall present the Revised Application, the Design Review Board shall receive any comments from City staff and members of the public, and the Design Review Board shall make its final recommendation/decision regarding the Revised Application.

c. The Developer and the ~~Agency~~City shall file a timely appeal (as further provided above) of the final recommendation/decision of the Design Review Board on the Revised Application, and the City shall schedule a City Council hearing on such appeal to take place within thirty (30) days after the Design Review Board's Action Session. After concluding the hearing, the City Council shall approve or disapprove the Revised Application for the Unit Plan and any accompanying vesting tentative map.

~~By signing the Third Restatement of this Agreement, the City acknowledges and agrees to implement the foregoing procedure in connection with Design Review Board and City Council consideration of Unit Plans for any major project in a Developer Parcel.~~ If any revisions or corrections of Unit Plans previously approved by the City shall be required by any government official, agency, department or bureau having jurisdiction, or any lending institution involved in financing, the Developer and the ~~Agency~~City shall cooperate in efforts to obtain a waiver of such requirements or to develop a mutually acceptable alternative.

4. [§305] ~~Agency~~City Approval of Unit Plans and Related Documents.

Subject to the terms of this Agreement and the Development Agreement, the~~ Agency and~~ City shall have the right of architectural and site planning review of all plans and drawings, including any changes therein. The~~ Agency agrees that the~~ Developer ~~need~~shall submit plans and submissions ~~only ~~to the City~~,~~ in compliance with the City~~'~~'s requirements for review and approval of Units Plans (Section 16.116.070 et seq. of the Vallejo Municipal Code)~~, and approval by the City of such plans shall be deemed an approval by the Agency and shall satisfy the requirements under this Section 305.~~. In addition, the Developer shall be obligated to submit plans and submissions for special development permits or building permits to City departments or other public agencies.

If the Developer desires to make any substantial change in the construction drawings after their approval by the City, the Developer shall submit the proposed change to the City for its approval. If the construction drawings, as modified by the proposed change, conform to the requirements of Section 304 of this Agreement and the approvals previously granted by the City under this Section 305 and the Scope of Development (Attachment No. 4), the City shall not unreasonably withhold its approval of the proposed change and shall notify the Developer in writing within thirty (30) days after submission of a complete packet to the City. Such change in the construction plans shall, in any event, be deemed approved by the City unless rejected, in whole or in part, by written notice thereof by the City to the Developer setting forth in detail the reasons therefor, and such rejection shall be made within the said 30-day period.

5. [§306] Cost of Development.

The costs of developing the improvements on the Site shall be borne by the ~~parties~~City and the Developer as set forth in this Agreement, including the Scope of Development (Attachment No. 4) and the Method of Financing (Attachment No. 6).

6. [§307] Construction Schedule.

After the conveyance of title to the respective Developer Parcels to the Developer, the Developer shall promptly begin and thereafter diligently prosecute to completion the development as provided for under this Agreement, including the Schedule of Performance (Attachment No. 3).

The ~~Agency’s Executive Director or his~~City Manager or the City Manager's designee is authorized to approve any changes to the Schedule of Performance (Attachment No. 3) on behalf of the ~~Agency~~City, as further provided in Sections 604 and 709.

During the periods of construction, but not more frequently than once a month, the Developer shall submit to the ~~Agency~~City a written progress report of the construction if requested by the ~~Agency~~City. The report shall be in such form and detail as may reasonably be required by the ~~Agency~~City and shall, if requested by the ~~Agency~~City, include a reasonable number of construction photographs taken since the last report submitted by the Developer.

7. [§308] Bodily Injury, Property Damage and Workers~~’~~' Compensation Insurance.

Prior to the commencement of construction on the Site or any portion thereof, the Developer shall furnish or cause to be furnished to the ~~Agency~~City duplicate originals or appropriate certificates of commercial general liability insurance in the amount of at least $1,000,000 combined single limit for bodily injury and property damage and $2,000,000 general aggregate limit, naming the ~~Agency~~City as an additional insured. The Developer shall also furnish or cause to be furnished to the ~~Agency~~City evidence satisfactory to the ~~Agency~~City that any contractor with whom it has contracted for the performance of work on the Site carries workers' compensation insurance as required by law. The obligations set forth in this Section 308 shall remain in effect only until a Final Certificate of Completion has been issued covering the entire Site as hereinafter provided in Section 323 hereof.

The policies or certificates required herein shall provide that, not less than thirty (30) days prior to cancellation or any material change in the policy, notices of such cancellation or material change shall be given to the ~~Executive Director of the Agency~~City Manager at the address set forth in Section 601 hereof, by registered mail, return receipt requested. If at any time any of said policies shall be unsatisfactory to the ~~Agency~~City, at the ~~Agency’~~City's reasonable discretion, as to form or substance or if a company issuing such policy shall be unsatisfactory to the ~~Agency~~City, at the ~~Agency’~~City's reasonable discretion, the Developer shall promptly obtain a new policy, submit the same to the ~~Executive Director~~City Manager for approval, which shall not be unreasonably withheld, and submit a certificate thereof as hereinabove provided. Upon failure of the Developer to furnish, deliver or maintain such insurance and certificates as above provided the ~~Agency~~City may deliver a notice of default in accordance with the first sentence of Section 501 and thereafter exercise the rights and remedies provided in Section 500 et seq. hereof if such default is not timely cured. Failure of the Developer to obtain and/or maintain any required insurance shall not relieve the Developer from any liability under this Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations of the Developer concerning indemnification. The Workers~~’~~'

Compensation insurer shall agree to waive all rights of subrogation against the ~~Agency~~City, and its agents, officers, employees and volunteers, for losses arising from work performed by the Developer for the ~~Agency~~City. The Developer~~’~~'s insurance policy(ies) shall include provisions that the coverage is primary as respects the ~~Agency~~City; shall include no special limitations to coverage provided to additional insureds; and shall be placed with insurer(s) with acceptable Best~~’~~'s rating of A VII or better or with approval of the ~~Executive Director~~City Manager and shall be a California-admitted carrier(s).

8. [§309] City and Other Governmental Agency Permits.

~~Except as provided below and in Section IV.A of the Scope of Development (Attachment No. 4), before~~Before commencement of construction or development of any buildings, structures or other work of improvement upon the Developer Parcels (unless such construction, development or work is to be commenced before the conveyance of title), the Developer shall, at its own expense, secure or cause to be secured any and all permits which may be required by the City, Vallejo Sanitation and Flood Control District (~~“~~"VSFCD~~”~~"), San Francisco Bay Conservation and Development Commission (~~“~~"BCDC~~”~~"), California State Department of Transportation, or any other governmental agency affected by such construction, development or work. The ~~Agency~~City shall provide reasonable cooperation to the Developer in securing these permits, including acting as the ~~“~~"lead agency~~”~~" in any instances where a public agency is required to be the lead agency in obtaining such permits, provided that the ~~Agency~~City shall have no obligation to incur out-of-pocket expenses to third parties in connection with such cooperation. Prior to commencement of construction or development of the Developer Parcels, the Developer shall also provide performance and payments bonds in the amount of one hundred percent (100%) of the construction contract. The Developer may propose alternative forms of security, such as letters of credit or completion guarantees for the approval of the ~~Agency~~City, which approval shall not be unreasonably withheld.

Notwithstanding the foregoing, the ~~Agency~~City shall be responsible for obtaining a Section 404 Permit from the U. S. Army Corps of Engineers (the "Section 404 Permit") relating to Parcel A (the Mariner~~’~~'s Cove Site) within the time set forth in the Schedule of Performance (Attachment No. 3). ~~Through the Second Restatement of this Agreement, the parties acknowledge and agree that the Agency has satisfied the requirement of the previous sentence through procurement of the Section 404 Permit dated February 13, 2003. In addition, the Agency shall use best reasonable efforts to complete and enter into a settlement and exchange agreement with the SLC relating to Parcels S and T within the time set forth in the Schedule of Performance (Attachment No. 3), and in the manner more fully set forth in Section IV.A of the Scope of Development (Attachment No. 4).~~

In addition, before commencement of construction or development of any buildings, structures or other works of improvement upon the City~~/Agency~~ Parcels, the ~~Agency~~City shall, without expense to the Developer, secure or cause to be secured any and all permits which may be required by the City, VSFCD, BCDC, California State Department of Transportation, or any other governmental agency affected by such construction, development or work. The Developer shall provide reasonable cooperation to the ~~Agency~~City in securing such permits, provided that the Developer shall have no obligation to incur out-of-pocket expenses to third parties in connection with such cooperation.

9. [§310] Rights of Access.

For the purposes of assuring compliance with this Agreement, representatives of the ~~Agency~~City shall have the reasonable right of access to the Site without charges or fees and at normal construction hours during the period of construction for the purposes of this Agreement, including, but not limited to, the inspection of the work being performed in constructing the improvements. Such representatives of the ~~Agency~~City shall be those who are so identified in writing by the ~~Executive Director of the Agency~~City Manager. The ~~Agency~~City shall indemnify the Developer, its partners, shareholders, officers and employees, and hold it harmless from any damage caused or liability arising out of this right to access.

10. [§311] Local, State and Federal Laws.

The Developer shall carry out the construction of the improvements in conformity with all applicable laws, including all applicable federal and state labor standards.

The Developer shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the ~~Agency~~City) the ~~Agency~~City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure of Developer or its contractors to pay prevailing wages if and to the extent required by law or to comply with the other applicable provisions of Labor Code Sections 1720 et seq. and implementing regulation of the Department of Industrial Relations in connection with construction of the improvements on the Site. The indemnity provided for in this Section 311 is expressly limited as follows: (1) the indemnity does not include any improvements where the City~~ or the Agency~~ has represented in a writing to the Developer that such improvements are not, or should not be considered, public works under Labor Code Section 1720 et seq.; and (2) the indemnity does not include any improvements where the City~~ or the Agency~~ contracted for the work directly.

11. [§312] Anti-discrimination During Construction.

The Developer, for itself and its successors and assigns, agrees that in the construction of the improvements provided for in this Agreement, the Developer will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, marital status, physical handicap, sexual orientation, ancestry or national origin.

B. [§313] Responsibilities of the ~~Agency~~City.

The ~~Agency~~City, without expense to the Developer or assessment or claim against the Site, shall perform all work specified herein and in the Scope of Development (Attachment No. 4) for the ~~Agency~~City to perform within the times specified in the Schedule of Performance (Attachment No. 3). In addition, the ~~Agency~~City shall grant such public utility easements over property owned by the ~~Agency~~City as are reasonably necessary to implement the Project in accordance with this Agreement and the Project Approvals.

C. [§314] Taxes, Assessments, Encumbrances and Liens.

The Developer shall pay when due all real estate taxes and assessments assessed and levied on the Developer Parcels for any period subsequent to conveyance of title to or delivery of possession of the Developer Parcels. Prior to the issuance of a Partial Certificate of Completion for a particular Developer Parcel, the Developer shall not place or allow to be placed on that Developer Parcel any mortgage, trust deed, encumbrance or lien unauthorized by this Agreement, and the Developer shall remove or have removed any levy or attachment made on a particular Developer Parcel that is not specifically authorized by this Agreement, or shall assure the satisfaction thereof, within a reasonable time, but in any event prior to a sale thereunder. Nothing herein contained shall be deemed to prohibit the Developer from contesting the validity or amounts of any tax, assessment, encumbrance or lien, nor to limit the remedies available to the Developer in respect thereto; provided, however, that prior to commencing any such contest, the ~~Agency~~City, in its reasonable discretion, may require the Developer to post bond in an amount sufficient to cover the tax, assessment, encumbrance or lien, or such portion thereof, to be contested and shall thereafter proceed in good faith to contest the validity or amount of such tax, assessment, encumbrance or lien. The prohibitions of this Section 314 shall not apply with respect to a particular Developer Parcel following issuance of a Partial Certificate of Completion for that Developer Parcel.

The Developer understands that under certain conditions, its control of the Developer Parcels or portion thereof under this Agreement may give rise to the imposition of a possessory interest tax on said property, and in such event, the Developer agrees to pay when due any such possessory interest tax.

D. [§315] Prohibition Against Transfer of Developer Parcels, the Buildings or Structures Thereon and Assignment of Agreement.

Prior to the issuance by the ~~Agency~~City of a Partial Certificate of Completion pursuant to Section 323 with respect to a particular Developer Parcel or Parcels, the Developer shall not, except as expressly permitted by this Agreement, complete a Transfer with respect to the applicable Developer Parcel(s) without the prior written approval of the ~~Agency~~City. For purposes of this Agreement, "Transfer" means any sale, transfer, conveyance, assignment, or lease of (i) this Agreement, including the rights of the Developer to receive a conveyance of the applicable Developer Parcel(s), and/or (ii) the applicable Developer Parcel(s) and the buildings and improvements thereon.

The ~~Agency~~City agrees not to unreasonably withhold its approval of any Transfer under this Section 315 so long as : (i) the ~~Agency~~City reasonably determines that any such Transfer shall in no way diminish the ~~Agency'~~City's rights under this Agreement; (ii) Developer shall not be in default of this Agreement with respect to the Developer Parcels subject to such Transfer; (iii) such Transfer in no way diminishes Developer~~'~~'s ability to perform under this Agreement with respect to the Developer Parcel(s) not subject to the Transfer; (iv) at the time of such Transfer, the transferee (a "Transferee") must have agreed to take title to the applicable Developer Parcel(s) subject to this Agreement, and shall have executed an assignment and assumption agreement in form and content satisfactory to the ~~Agency~~City, assuming all of the obligations of the Developer with respect to the applicable Developer Parcel(s), and agreeing to be

subject to all the conditions and restrictions to which the Developer is subject with respect to the applicable Developer Parcel(s); and (v) the proposed Transferee shall have the qualifications and financial responsibility necessary and adequate, as may be reasonably determined by the ~~Agency~~City, to fulfill the obligations undertaken in this Agreement by the Developer with respect to the applicable Developer Parcel(s). The ~~Agency Executive Director, or his~~City Manager, or the City Manager's designee, on behalf of the ~~Agency~~City, shall approve or disapprove (stating in writing with specificity the reasons for any disapproval) a Transfer requested by the Developer within thirty (30) days after the Developer submits such request and supporting documentation reasonably sufficient to enable the ~~Agency Executive Director~~City Manager to determine the compliance of the requested Transfer with the objective criteria set forth in the preceding sentence.

Upon ~~Agency~~City approval of a Transfer, CALLAHAN~~/DESILVA VALLEJO, LLC~~ PROPERTY COMPANY, INC., as the ~~initial~~ Developer under this Fourth Restated Agreement, shall have no further obligations under this Agreement with respect to the Developer Parcel(s) to which the Transfer applies, and the term "Developer", as used in this Agreement with respect to the Developer Parcel(s) to which the Transfer applies, shall mean and refer to the Transferee.

Notwithstanding the foregoing and subject to the provisions of Section 107 hereof, any Transfer by the Developer for purposes of obtaining financing to develop a Developer Parcel or Parcels is permitted without prior ~~Agency~~City approval so long as CALLAHAN~~/DESILVA VALLEJO, LLC~~ PROPERTY COMPANY, INC., or an affiliate thereof, or an approved Transferee maintains control and management of the Developer Parcel(s) to which the Transfer for the purposes of obtaining financing applies.

The prohibition against Transfers shall not apply subsequent to the issuance of the Partial Certificate of Completion for any Developer Parcel. The prohibition against Transfers also shall not apply and shall not be deemed to prevent, prohibit or restrict (i) the granting of easements or permits to facilitate the development of the Site, (ii) the leasing or preleasing of any part or parts of a building or structure for occupancy when said improvements are completed, or (iii) the sale of residential units within a building or structure for occupancy upon completion. This prohibition shall not be deemed to prevent, prohibit or restrict the leasing of the Hotel Improvements to a Hotel Operator, or any portion of the Project to a prospective tenant or user, prior to construction of any such improvements on a Developer Parcel.

E. [§316] Security Financing; Rights of Holders.

1. [§317] No Encumbrances Except Mortgages, Deeds of Trust, Sales and Leases-Back or Other Financing for Development.

Notwithstanding Sections 314 and 315 of this Agreement, mortgages, deeds of trust, sales and leases-back or any other form of conveyance required for any reasonable method of financing are permitted with respect to a particular Developer Parcel before issuance of a Partial Certificate of Completion for that Developer Parcel but only for the purpose of securing loans of funds to be used for financing the acquisition of the Developer Parcel and/or the construction of improvements on the Developer Parcel and any other expenditures necessary and appropriate to develop the Developer Parcel under this Agreement. The Developer shall notify the ~~Agency~~City

in advance of any mortgage, deed of trust, sale and leaseback or other form of conveyance for financing if the Developer proposes to enter into the same before issuance of a Partial Certificate of Completion with respect to the applicable Developer Parcel. The Developer shall not enter into any such conveyance for financing without the prior written approval of the ~~Agency~~City (unless such lender shall be one of the ten (10) largest banking institutions doing business in the State of California, or one of the ten (10) largest insurance lending institutions in the United States qualified to do business in the State of California), which approval the ~~Agency~~City agrees to give if any such conveyance is given to a responsible financial or lending institution or other creditworthy person or entity. Such lender shall be deemed approved unless rejected in writing by the ~~Agency~~City within ten (10) days after notice thereof to the ~~Agency~~City by the Developer. In any event, the Developer shall promptly notify the ~~Agency~~City of any mortgage, deed of trust, sale and lease-back or other financing conveyance, encumbrance or lien that has been created or attached thereto prior to completion of the construction of the improvements on a Developer Parcel whether by voluntary act of the Developer or otherwise. The words "mortgage" and "deed of trust," as used herein, include all other appropriate modes of financing real estate acquisition, construction and land development.

2. [§318] Holder Not Obligated to Construct Improvements.

The holder of any mortgage, deed of trust or other security interest authorized by this Agreement shall in no way be obligated by the provisions of this Agreement to construct or complete the improvements or to guarantee such construction or completion, nor shall any covenant or any other provision in the grant deed for a Developer Parcel be construed so to obligate such holder. Nothing in this Agreement shall be deemed to construe, permit or authorize any such holder to devote a Developer Parcel to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by this Agreement.

3. [§319] Notice of Default to Mortgage, Deed of Trust or Other Security Interest Holders; Right to Cure.

Whenever the ~~Agency~~City shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer in completion of construction of the improvements, the ~~Agency~~City shall at the same time deliver a copy of such notice or demand to each holder of record of any mortgage, deed of trust or other security interest authorized by this Agreement who has previously made a written request to the ~~Agency~~City therefor. Each such holder shall (insofar as the rights of the ~~Agency~~City are concerned) have the right, at its option, within ninety (90) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default and to add the cost thereof to the security interest debt and the lien on its security interest. In the event there is more than one such holder, the right to cure or remedy a breach or default of the Developer under this Section 319 shall be exercised by the holder first in priority or as the holders may otherwise agree among themselves, but there shall be only one exercise of such right to cure and remedy a breach or default of the Developer under this Section 319. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the improvements (beyond the extent necessary to conserve or protect the improvements or construction already made) without first having expressly assumed the Developer's obligations to the ~~Agency~~City by written agreement satisfactory to the ~~Agency~~City. The holder in that event must agree to complete, in the manner

provided in this Agreement, the improvements to which the lien or title of such holder relates and submit evidence satisfactory to the ~~Agency~~City that it has the qualifications and financial responsibility necessary to perform such obligations. Any such holder properly completing such improvements shall be entitled, upon written request made to the ~~Agency~~City, to the applicable Certificate of Completion from the ~~Agency~~City.

4. [§320] Failure of Holder to Complete Improvements.

On a parcel by parcel basis, in any case where, six (6) months after default by the Developer in completion of construction of improvements under this Agreement, the holder of any mortgage, deed of trust or other security interest creating a lien or encumbrance upon a Developer Parcel has not exercised the option to construct, or if it has exercised the option and has not proceeded diligently with construction, the ~~Agency~~City may purchase the mortgage, deed of trust or other security interest by payment to the holder of the amount of the unpaid debt, plus any accrued and unpaid interest. If the ownership of a particular Developer Parcel has vested in the holder, the ~~Agency~~City, if it so desires, shall be entitled to a conveyance of the particular Developer Parcel from the holder to the ~~Agency~~City upon payment to the holder of an amount equal to the sum of the following:

a. The unpaid mortgage, deed of trust or other security interest debt at the time title became vested in the holder (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings);

b. All expenses with respect to foreclosure;

c. The net expenses, if any (exclusive of general overhead), incurred by the holder as a direct result of the subsequent management of the particular Developer Parcel Site;

d. The costs of any authorized improvements made by such holder; and

e. An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage or deed of trust debt and such debt had continued in existence to the date of payment by the ~~Agency~~City.

~~5.~~ {~~[§321] Notice of Default to~~ }~~Agency; Right of Agency to Cure~~
[[§321]Notice of Default to]City; Right of City to Cure
Mortgage, Deed of Trust or Other Security Interest Default.

Whenever any holder of any mortgage, deed of trust or other security interest with respect to a particular Development Parcel shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer, such holder shall at the same time deliver a copy of such notice or demand to the ~~Agency~~City.

In the event of a default or breach by the Developer of a mortgage, deed of trust or other security interest with respect to a particular Developer Parcel prior to the completion of development, and the holder has not exercised its option to complete the development, the ~~Agency~~City may cure the default prior to completion of any foreclosure. In such event, the ~~Agency~~City shall be entitled to reimbursement from the Developer of all costs and expenses incurred by the ~~Agency~~City in curing the default. The ~~Agency~~City shall also be entitled to a lien upon the particular Developer Parcel to the extent of such costs and disbursements. Any such lien shall be subject to mortgages, deeds of trust or other security interests executed for the sole purpose of obtaining funds to purchase and develop the particular Developer Parcel as authorized herein.

~~F.~~ [§322] Right of the ~~Agency~~City to Satisfy Other Liens on the Site After Title Passes. ~~Passes~~

After the conveyance of title and prior to the issuance of a Partial Certificate of Completion for construction and development of a particular Developer Parcel, and after the Developer has had a reasonable time to cure or satisfy any liens or encumbrances on that Developer Parcel, which period of time shall be the shorter of any period set by law or the cure period set forth in Section 501 hereof, the ~~Agency~~City shall have the right to satisfy any such liens or encumbrances; provided, however, that nothing in this Agreement shall prevent the Developer from challenging or contesting any tax, assessment, lien or charge so long as the Developer pays or makes provision for the payment of any such tax, assessment, lien or charge and thereafter in good faith contests the validity or amount thereof.

F. ~~G.~~ [§323] Certificate of Completion.

Upon the completion of construction and development of any Developer Parcel by the Developer, the Developer shall send a written request to the ~~Agency~~City and the ~~Agency~~City shall furnish the Developer with a "Partial Certificate of Completion" for such Developer Parcel in form suitable for recording in the Official Records of Solano County, California. The Partial Certificate of Completion shall be, and shall so state, conclusive determination of satisfactory completion of the construction of such Developer Parcel as required by this Agreement. The issuance of Partial Certificates of Completion for portions of the Site shall have no effect on the remainder of the Site not covered by such Partial Certificates of Completion.

Promptly after completion of all construction and development to be completed by the Developer upon the Site, the ~~Agency~~City shall furnish the Developer with a "Final Certificate of Completion" upon written request therefor by the Developer. Such Final Certificate of Completion shall be in such form as to permit it to be recorded in the Office of the County Recorder of Solano County.

A Certificate of Completion shall be, and shall so state, conclusive determination of satisfactory completion of the construction required by this Agreement upon the Site, or a specified Developer Parcel, as the case may be, and of full compliance with the terms hereof. After issuance of such Certificate of Completion, any ~~party~~person or entity then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Site, or the specified Developer Parcel, covered by said Certificate of Completion shall not (because of such ownership,

purchase, lease or acquisition) incur any obligation or liability under this Agreement, except that such ~~party~~person or entity shall be bound by any covenants contained in the REA/CC&Rs and any deed, lease, mortgage, deed of trust, contract or other instrument of transfer in accordance with the provisions of Sections 401-405 of this Agreement. Except as otherwise provided herein, after the issuance of a Certificate of Completion for the Site, neither the ~~Agency~~City nor any other person shall have any rights, remedies or controls with respect to the Site that it would otherwise have or be entitled to exercise under this Agreement as a result of a default in or breach of any provision of this Agreement, and the respective rights and obligations of the ~~parties~~City and the Developer with reference to the Site shall be as set forth in the grant deeds of the Developer Parcels from the ~~Agency~~City to the Developer (or the ~~Agency/Developer Sub-~~Ground Leases with respect to the B/C Ground Lease Parcels), which shall be in accordance with the provisions of Sections 401-405 of this Agreement, and the REA/CC&Rs, referred to in Section 704 hereof.

The ~~Agency~~City shall not unreasonably withhold any Certificate of Completion. If the ~~Agency~~City refuses or fails to furnish a Certificate of Completion for the Site, or any portion thereof, after written request from the Developer, the ~~Agency~~City shall, within ten (10) days of the next scheduled ~~Agency~~City Council meeting after such written request, provide the Developer with a written statement of the reasons the ~~Agency~~City refused or failed to furnish a Certificate of Completion. The statement shall also contain the ~~Agency~~City's opinion of the action the Developer must take to obtain a Certificate of Completion. If the reason for such refusal is confined to the immediate unavailability of specific items or materials for minor work or landscaping, the ~~Agency~~City will issue its Certificate of Completion upon the posting of a bond by the Developer with the ~~Agency~~City in an amount representing a fair value of the work not yet completed. If the ~~Agency~~City shall have failed to provide such written statement within said 10-day period after such ~~Agency~~City meeting, the Developer shall be deemed entitled to the Certificate of Completion.

Such Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any holder of a mortgage or any insurer of a mortgage securing money loaned to finance the improvements or any part thereof. Such Certificate of Completion is not notice of completion as referred to in California Civil Code Section 3093.

4. [§400] USE OF THE SITE.

A. [§401] Uses.

The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest that during construction and thereafter, the Developer, its successors and assignees shall devote the Developer Parcels to the uses specified in the Redevelopment Plans, the grant deeds, the ~~Agency/Developer Sub-~~Ground Leases (with respect to the B/C Ground Lease Parcels), and this Agreement for the periods of time specified therein. The foregoing covenant shall run with the land.

B. [§402] Obligation to Refrain From Discrimination.

The Developer covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Developer Parcels, nor shall the Developer itself or any person claiming under or through it 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, subtenants, sublessees or vendees of the Developer Parcels. The foregoing covenants shall run with the land.

C. [§403] Form of Nondiscrimination and Nonsegregation Clauses.

The Developer shall refrain from restricting the rental, sale or lease of the Developer Parcels on the basis of race, color, creed, religion, sex, marital status, physical handicap, sexual orientation, ancestry or national origin of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

1. In Deeds:

~~1. In deeds: "The grantee~~ "(a) Grantee herein covenants by and for ~~himself or herself, his or her heirs, executors, administrators~~itself, its successors 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 ~~race, color, creed, religion, sex, marital status, physical handicap, sexual orientation, national origin or ancestry~~any basis listed in subdivision (a) and (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~~property herein conveyed, nor shall the grantee ~~himself or herself,~~ or any person claiming under or through ~~him or her~~the grantee, 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, subtenants, sublessees or vendees in the ~~premises~~property herein conveyed. The foregoing ~~covenants~~covenant shall run with the land.

(b) Notwithstanding paragraph (a), with respect to familial status, paragraph (a) 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 paragraph (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (a)."

2. In Leases:

~~2. In leases: "The lessee~~ "(a) Lessee herein covenants by and for ~~himself or herself, his or her heirs, executors, administrators~~itself, its successors 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~~them, that there shall be no discrimination against or segregation of, any person or group of persons on account of ~~race, color, creed, religion, sex, marital status, physical handicap, sexual orientation, national origin or ancestry,~~any basis listed in subdivision (a) and (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~~the lessee, 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, ~~sublessees~~ or vendees in the premises herein leased.

(b) Notwithstanding paragraph (a), with respect to familial status, paragraph (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 paragraph (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (a)."

3. In Contracts:

~~3. In contracts:~~ "(a) There shall be no discrimination against or segregation of, any person or group of persons on account of ~~race, color, creed, religion, sex, marital status, physical handicap, sexual orientation, national origin or ancestry~~any basis listed in subdivision (a) and (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,~~property nor shall the transferee ~~himself or herself,~~ or any person claiming under or through ~~him or her,~~the transferee 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, subtenants, sublessees or vendees of the land.

(b) Notwithstanding paragraph (a), with respect to familial status, paragraph (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 paragraph (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (a)."

D. [§404] Effect and Duration of Covenants.

Except as otherwise provided, the covenants contained in this Agreement and the grant deeds shall remain in effect until the deadlines for effectiveness of the Redevelopment Plans, as such Redevelopment Plans may be amended pursuant to this Agreement. The covenants against

discrimination shall remain in effect in perpetuity. The covenants established in this Agreement and the grant deeds shall, without regard to technical classification and designation, be binding for the benefit and in favor of the ~~Agency~~City, its successors and assigns, ~~the City~~ and any successor in interest to the Site or any part thereof.

The ~~Agency~~City is deemed the beneficiary of the terms and provisions of this Agreement and of the covenants running with the land for and in its own rights and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided. This Agreement and the covenants shall run in favor of the ~~Agency~~City without regard to whether the ~~Agency~~City has been, remains or is an owner of any land or interest therein in the Developer Parcels, or in the applicable Project Area. The ~~Agency~~City shall have the right, if this Agreement or the covenants are breached, to exercise all rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and the covenants may be entitled.

E. [§405] Rights of Access — Public Improvements and Facilities.

The ~~Agency, for itself and for the~~ City, at ~~their~~its sole risk and expense, reserves the right to enter the Site or any part thereof at all reasonable times and with as little interference as possible for the purposes of construction, reconstruction, maintenance, repair or service of any public improvements or public facilities located on the Site. Any such entry shall be made only after reasonable notice to the Developer, and ~~the Agency or~~ the City shall indemnify and hold the Developer, its partners, shareholders, officers and employees, harmless from any claims or liabilities pertaining to any entry. Any damage or injury to the Site resulting from such entry shall be promptly repaired at the sole expense of the ~~Agency or~~ City.

5. [§500] DEFAULTS, REMEDIES AND TERMINATION.

A. [§501] Defaults – General.

Subject to the extensions of time set forth in Section 604, failure or delay by ~~either~~a party to perform any obligation of such party under this Agreement constitutes a default under this Agreement; provided, however, that no party shall be deemed to be in default under this Agreement unless and until such party has received notice of default as provided in the following paragraph and the applicable cure period has expired without a cure being effected. The party who so fails or delays must promptly commence to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy with reasonable diligence or within the time specifically set forth in this Agreement, and during any period of curing shall not be in default.

The injured party shall give written notice of default to the party in default specifying the default complained of by the injured party. Except as required to protect against further damages and except as otherwise expressly provided in Sections 507 and 508 of this Agreement, the injured party may not institute proceedings against the party in default during the applicable cure period set forth in the preceding paragraph.

Except as otherwise expressly provided in Section 512 of this Agreement, any failure or delay by ~~either~~a party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies or deprive such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

B. [§502] Legal Actions.

1. [§503] Institution of Legal Actions.

Subject to and after the applicable notice and cure periods and subject to any limitations on remedies set forth in this Agreement, in addition to any other rights or remedies, ~~either~~a party may institute legal action to cure, correct or remedy any default, or recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of Solano, State of California, in an appropriate municipal court in that County.

2. [§504] Applicable Law.

The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

3. [§505] Acceptance of Service of Process.

In the event that any legal action is commenced by the Developer against the ~~Agency~~City, service of process on the ~~Agency~~City shall be made by personal service upon the ~~Executive Director of the Agency~~City Manager or in such other manner as may be provided by law.

In the event that any legal action is commenced by the ~~Agency~~City against the Developer, service of process on the Developer shall be made by personal service upon the Developer or in such other manner as may be provided by law and shall be valid whether made within or without the State of California.

C. [§506] Rights and Remedies are Cumulative.

Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by the other party.

D. [§507] Damages.

If ~~the Developer or the Agency~~a party defaults with regard to any of the provisions of this Agreement, the nondefaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured or the cure is not being diligently prosecuted to

completion by the defaulting party within forty-five (45) days after service of the notice of default, and provided that the nondefaulting party has not terminated and does not terminate this Agreement (with respect to a particular Developer Parcel or the Site, as applicable) in connection with such default, the defaulting party shall be liable to the nondefaulting party for any damages caused by such default, subject to any limitations on damages set forth in this Agreement (including, without limitation, the liquidated damages provisions of Section 511). Such damages shall not include either future property taxes or anticipated return on investment which the proposed development could have generated.

E. [§508] Specific Performance.

If ~~the Developer or the Agency~~a party defaults under any of the provisions of this Agreement, the nondefaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured or is not being diligently prosecuted to completion by the defaulting party within forty-five (45) days of service of the notice of default and provided that the nondefaulting party has not terminated and does not terminate this Agreement (with respect to a particular Developer Parcel or the Site, as applicable) in connection with such default, the nondefaulting party, at its option, may institute an action for specific performance of the terms of this Agreement; provided, however, that this Section 508 shall not apply with respect to the failure of a party to acquire all or a portion of the Developer Parcels from third parties. The City and the Successor Agency shall not be deemed to be a "third ~~party~~parties" for purposes of the preceding sentence.

F. [§509] Remedies and Rights of Termination Prior to Conveyance of the Developer Parcels to the Developer.

1. [§510] Termination by the Developer.

In the event that prior to conveyance of title to a particular Developer Parcel to the Developer:

a. The ~~Agency~~City does not tender conveyance of a Developer Parcel or possession thereof in the manner and condition and by the date provided in this Agreement, and any such failure is not cured within forty-five (45) days after written demand by the Developer; or

b. The ~~Agency~~City is unable or, for any reason, does not acquire a Developer Parcel, if the Developer Parcel is to be acquired by the ~~Agency~~City, and any such failure is not cured within forty-five (45) days after written demand by the Developer; or

c. ~~There occurs a Post Office Relocation Termination Event pursuant to Section 201.6.a.(2), in which event the Developer's termination right shall be limited to termination of this Agreement with respect to Parcel L only; or~~[Intentionally Omitted]; or

d. ~~After efforts to acquire property, including the use of the procedures set forth in Article 1 [commencing with Section 1245.010] of Chapter 4 of Title 7 of the California Code of Civil Procedure have been unsuccessful, the Agency or the City, as applicable, elects not to adopt a resolution of necessity (pursuant to Article 2 [commencing with Section 1245.210] of~~

~~Chapter 4 of Title 7 of the California Code of Civil Procedure) to acquire the Post Office Site and/or the Restaurant Site by eminent domain, it being expressly understood that the Agency and the City have reserved their discretion to approve or disapprove any such resolution of necessity and that the Developer's exclusive remedy for the failure of the Agency to adopt a resolution of necessity shall be the termination of this Agreement with respect to Parcel L and/or J only pursuant to this Section 510; or~~[Intentionally Omitted]; or

e. The Developer~~'~~'s Conditions to Closing set forth in Section 206 of this Agreement have not been either satisfied or waived by the Developer prior to the close of escrow, or such earlier date as set forth in Section 206, for conveyance of a Developer Parcel to the Developer; or

f. The Developer notified the RDA or notifies the ~~Agency~~City of Unacceptable Physical Conditions and the parties do not enter into an Operating Memorandum to remediate such Unacceptable Physical Conditions as provided in Section 215.2 or 215.3; or

g. ~~There occurs a Settlement Failure Event pursuant to Section 102.4; or~~[Intentionally Omitted]; or

h. ~~There occurs a Developer Southern Waterfront Termination Event pursuant to Section IV.A.5.d of the Scope of Development (Attachment No. 4), in which event the Developer's termination right shall be to terminate this Agreement with respect to the Contaminated Area within the Southern Waterfront Area only and the further rights set forth in Section IV.A.9.d of the Scope of Development shall also apply; or~~[Intentionally Omitted]; or

i. The Developer, despite its good faith reasonable efforts, is unable to obtain a binding commitment from a Hotel Operator as required by Section 705 hereof; or

j. The ~~Agency~~City is in breach or default with respect to any other obligation of the ~~Agency~~City under this Agreement, and such breach or default is not cured within 45 days, or the ~~Agency~~City does not in good faith commence to cure such default within such 45 days;

k. [Intentionally Omitted]; or

l. The Developer or the ~~Agency~~City, as applicable, after diligent efforts, is unable to obtain any governmental approval for a Developer Parcel, including without limitation any land use or design approvals or any resources or regulatory agency approvals required under this Agreement (including, without limitation, any applicable ~~Polanco Act Immunity~~hazardous materials immunity as further described in Section 206.~~j~~h); or

m. The ~~Agency~~City, despite its good faith reasonable efforts, is unable to obtain any governmental approval for which it is responsible under this Agreement with respect to a Developer Parcel or any other portion of the Site; or

n. The Developer (1) furnishes evidence satisfactory to the ~~Agency~~City that the Developer, after and despite diligent efforts, has been unable to obtain firm

and binding commitments for financing the acquisition of a Developer Parcel and for financing the development of the improvements to be constructed on such Developer Parcel within the time established therefor in the Schedule of Performance (Attachment No. 3), or (2) submits evidence of financing or other documents with respect to a Developer Parcel pursuant to Section 217 hereof within the time established therefor in the Schedule of Performance, but the ~~Agency~~City does not approve such evidence and Developer does not submit satisfactory evidence of financing within forty-five (45) days of being notified that the ~~Agency~~City has not approved such evidence; or

o. The Developer disapproves a Preliminary Title Report for a Developer Parcel and the parties do not subsequently enter into an Operating Memorandum to remove all Unacceptable Title Exceptions as provided in Section 208 hereof;

then this Agreement may, at the option of the Developer, be terminated by written notice thereof to the ~~Agency~~City; provided, however, that such termination shall be effective only with respect to those Developer Parcels which have not yet been conveyed to the Developer, and shall not affect those Developer Parcels or portions of the Site, if any, which have already been conveyed to the Developer so long as the Developer is not in default under this Agreement with respect to such parcels or portions of the Site; and provided, further, however, if, in the Developer's determination, the event described above leading to the Developer's right to terminate applies only to a certain Developer Parcel or Parcels, the Developer may terminate this Agreement only with respect to such Developer Parcel(s) specified by the Developer and this Agreement shall thereafter remain in effect for all other Developer Parcels and portions of the Site regardless of whether or not the Developer Parcels for which this Agreement will remain in effect have yet been conveyed to the Developer (but subject to the Developer's right to subsequently terminate this Agreement under this Section 510 for one or more additional Developer Parcels if an event described above subsequently occurs); and provided, further, however, that the ~~Agency~~City shall continue to perform all of its obligations under this Agreement that are reasonably related to the Developer Parcels and all other portions of the Site for which this Agreement has not been terminated; and provided, finally, however, that the terms of the following paragraph of this Section 510 shall supersede the foregoing and control the Developer's right to terminate this Agreement to the extent of any inconsistency with the foregoing. Upon a termination pursuant to this Section 510, neither the ~~Agency~~City nor the Developer shall have any further rights against or liability to the other under this Agreement with respect to those Developer Parcels or portions of the Site affected by such termination, and the ~~Agency~~City shall return any unexpended portion of the Additional Deposit (including interest earned thereon) to the Developer as provided in Section ~~108.2.~~113.5. If and only if the Developer does not elect to terminate this Agreement with respect to a particular Developer Parcel or the Site, as applicable, pursuant to the provisions of this Section 510, the Developer may exercise its rights under Sections 507 and 508 hereof.

Notwithstanding the foregoing terms of this Section 510, the Developer's obligations with respect to purchase of the Developer Parcels and development of private and public improvements in the Northern Waterfront Area shall be separate and independent of the performance by the ~~Agency~~City of any obligations, or the satisfaction of any other conditions to performance, under this Agreement with respect to the conveyance of property and development of improvements within the Central Waterfront Area~~ or the Southern Waterfront Area~~; and neither a failure by the ~~Agency~~City to perform its obligations, or the failure of any other conditions of performance, with respect to the conveyance of property and development of improvements within

the Central~~ Waterfront Area or the Southern~~ Waterfront Area shall relieve the Developer of its obligations with respect to the conveyance of property and development of improvements within the Northern Waterfront Area (upon satisfaction of all other conditions set forth in this Agreement for purchase of the Developer Parcels and development of private and public improvements in the Northern Waterfront Area), or serve as a basis for termination of this Agreement by the Developer with respect to the purchase of the Developer Parcels and development of private and public improvements in the Northern Waterfront Area. ~~Also, notwithstanding the foregoing terms of this Section 510, the Developer's obligations with respect to purchase of the Developer Parcels and development of private and public improvements in the Southern Waterfront Area shall be separate and independent of the performance by the Agency of any obligations, or the satisfaction of any other conditions to performance, under this Agreement with respect to the conveyance of property and development of improvements within the Central Waterfront Area or the Northern Waterfront Area; and neither a failure by the Agency to perform its obligations, or the failure of any other conditions of performance, with respect to the conveyance of property and development of improvements within the Central Waterfront Area or the Northern Waterfront Area shall relieve the Developer of its obligations with respect to the conveyance of property and development of improvements within the Southern Waterfront Area (upon satisfaction of all other conditions set forth in this Agreement for purchase of the Developer Parcels and development of private and public improvements in the Southern Waterfront Area), or serve as a basis for termination of this Agreement by the Developer with respect to the purchase of the Developer Parcels and development of private and public improvements in the Southern Waterfront Area.~~

2. [§511] Termination by the ~~Agency~~City. In the event that prior to conveyance of title to a particular Developer Parcel to the Developer:

a. The Developer transfers or assigns or attempts to transfer or assign this Agreement or any rights herein or in the Site or the buildings or improvements thereon in violation of this Agreement and the Developer has not cured such violation within 45 days after the date of written demand by the Agency to the Developer; or

b. There is any significant change in the ownership or identity of the Developer or the parties in control of the Developer or the degree thereof in violation of the provisions of Section 107 hereof and the Developer has not cured such violation within 45 days after the date of written demand by the ~~Agency~~City to the Developer; or

c. The Developer does not submit evidence that it has diligently and in good faith attempted to obtain financing for the acquisition and development of a Developer Parcel, and such failure is not cured within 45 days after the date of written demand by the ~~Agency~~City to the Developer; or

d. The Developer (1) furnishes evidence satisfactory to the ~~Agency~~City that the Developer, after and despite diligent efforts, has been unable to obtain firm and binding commitments for acquisition of a Developer Parcel and financing the improvements to be constructed on the such Developer parcel within the time established therefor in the Schedule of Performance (Attachment No. 3), or (2) submits evidence of financing or other documents with respect to a Developer Parcel pursuant to Section 217 hereof within the time established therefor in the Schedule of Performance, but the ~~Agency~~City does not approve such documents and the

Developer does not submit satisfactory evidence of financing within forty-five (45) days of being notified that the ~~Agency~~City has not approved such evidence; or

e. {~~[Intentionally Omitted]; or~~}The City is unable, after and despite diligent efforts, to retain ownership of one or more Developer Parcels at any time prior to the required disposition to the Developer; provided, however, that the City may terminate this Agreement with respect to the non-retained Developer Parcel(s) only; or

f. The Developer fails to submit to the City a Unit Plan or any other required plans and specifications with respect to a Developer Parcel as required by this Agreement, and such failure is not cured within 45 days after the date of written demand by the ~~Agency~~City to the Developer; or

g. The Developer does not take title to a Developer Parcel under tender of conveyance by the ~~Agency~~City pursuant to this Agreement, and such failure is not cured within 45 days after the date of written demand by the ~~Agency~~City to the Developer; or

h. ~~There occurs a Post Office Relocation Termination Event pursuant to Section 201.6.a.(2), in which event the Agency's termination right shall be limited to termination of this Agreement with respect to Parcel L only; or~~[[Intentionally Omitted]; or]

i. [Intentionally Omitted]; or

j. ~~After efforts to acquire property, including the use of the procedures set forth in Article 1 [commencing with Section 1245.010] of Chapter 4 of Title 7 of the California Code of Civil Procedure have been unsuccessful, the Agency or the City, as applicable, elects not to adopt a resolution of necessity (pursuant to Article 2 [commending with Section 1245.210] of Chapter 4 of Title 7 of the California Code of Civil Procedure) to acquire the Post Office Site and/or the Restaurant Site by eminent domain (it being expressly understood that the Agency and the City have reserved their discretion to approve or disapprove any such resolution of necessity), in which case the Agency may terminate this Agreement with respect to Parcel L only; or~~[Intentionally Omitted]; or

k. The~~ Agency or~~ City is unable, after and despite diligent efforts, to issue bonds or obtain other financing to finance the construction of the L3 Public Garage within the time established therefor in the Schedule of Performance (Attachment No. 3), provided, however, that at the request of either party, the right to terminate this Agreement for such cause under this subsection k. shall be suspended for a period of sixty (60) days following the date it is determined that the~~ Agency or~~ City is unable to obtain such financing for the parties to explore and attempt to negotiate in good faith an alternative development approach and appropriate amendments to this Agreement in lieu of termination, and provided further than the ~~Agency~~City may terminate this Agreement with respect to Parcel L only; or

l. The ~~Agency'~~City's Conditions to Closing set forth in Section 205 of this Agreement have not been either satisfied or waived by the ~~Agency~~City prior to the close of escrow for conveyance of a Developer Parcel to the Developer; or

m. The Developer does not make the Additional Deposit (or a portion thereof) in the amount and at the time required under Section ~~108.2~~113 and such failure is not cured within 15 days of written notice thereof from the ~~Agency~~City; or

n. The Developer is in breach or default with respect to any other obligation of the Developer under this Agreement, and such breach or default is not cured within 45 days or the Developer does not in good faith commence to cure such default within such 45 days; or

o. The parties are unable to agree upon a Parcel L4 Operating Memorandum pursuant to Section III.A.4 of the Scope of Development (Attachment No. 4), in which event the ~~Agency~~City's termination right shall be limited to termination of this Agreement with respect to Parcel L4 only;

then this Agreement, and any rights of the Developer or any assignee or transferee in this Agreement pertaining thereto or arising therefrom with respect to the ~~Agency~~City may, at the option of the ~~Agency~~City, be terminated by the ~~Agency~~City by written notice thereof to the Developer; provided, however, that such termination shall be effective only with respect to those Developer Parcels which have not yet been conveyed to the Developer, and shall not apply to those Developer Parcels or portions of the Site, if any, which have already been conveyed to the Developer so long as the Developer is not in default under this Agreement with respect to such parcels or portions of the Site; and provided, further, however, if the ~~Agency~~City terminates this Agreement as a result of an event described in subsections d., e., h., j., k., l. or o. above, then the Developer may elect to cause such termination to apply only to those Developer Parcel(s) to which it determines the terminating event applies and this Agreement shall thereafter remain in effect for all other Developer Parcels and portions of the Site regardless of whether or not the Developer Parcels for which this Agreement will remain in effect have yet been conveyed to the Developer; and provided, further, however, that the ~~Agency~~City shall continue to perform all of its obligations under this Agreement that are reasonably related to the Developer Parcels and all other portions of the Site for which this Agreement has not been terminated. If and only if, the ~~Agency~~City does not elect to terminate this Agreement with respect to a particular Developer Parcel or the Site, as applicable, pursuant to the provisions of this Section 511, the ~~Agency~~City may exercise its rights under Sections 507 and 508 hereof.

In the event of termination pursuant to subsection d., e., h., j., k., l. or o. of this Section 511, neither the ~~Agency~~City nor the Developer shall have any further rights against or liability to the other under this Agreement with respect to the Developer Parcels and the portions of the Site to which the termination applies, and the ~~Agency~~City shall return any unexpended portion of the Additional Deposit (including interest earned thereon) to the Developer as provided in Section ~~108.2.~~113.5.

IN THE EVENT OF TERMINATION UNDER SUBPARAGRAPH a., b., c., f., g., m. or n. OF THIS SECTION 511 IN CONNECTION WITH A DEVELOPER DEFAULT, THEN THE WORK PRODUCT PAID FOR WITH THE INITIAL DEPOSIT AND ANY EXPENDED PORTION OF THE ADDITIONAL DEPOSIT, TOGETHER WITH THE CASH AMOUNT OF ANY UNEXPENDED PORTION OF THE ADDITIONAL DEPOSIT (INCLUDING INTEREST EARNED THEREON), MAY BE

RETAINED BY THE ~~AGENCY~~CITY AS LIQUIDATED DAMAGES FOR SUCH DEVELOPER DEFAULT AND AS THE ~~AGENCY'~~CITY'S PROPERTY WITHOUT ANY DEDUCTION, OFFSET OR RECOUPMENT WHATSOEVER.

IF THE DEVELOPER SHOULD DEFAULT UPON ITS OBLIGATIONS AS DESCRIBED ABOVE UNDER SUBPARAGRAPH a., b., c., f., g., m. or n. OF THIS SECTION 511, MAKING IT NECESSARY FOR THE ~~AGENCY~~CITY TO TERMINATE THIS AGREEMENT AND TO PROCURE ANOTHER PARTY OR PARTIES TO REDEVELOP THE SITE (OR THE APPLICABLE DEVELOPER PARCELS, AS THE CASE MAY BE) IN SUBSTANTIALLY THE MANNER AND WITHIN THE PERIOD THAT THE SITE (OR THE APPLICABLE DEVELOPER PARCELS, AS THE CASE MAY BE) WOULD BE REDEVELOPED UNDER THE TERMS OF THIS AGREEMENT, THEN THE DAMAGES SUFFERED BY THE ~~AGENCY~~CITY BY REASON THEREOF WOULD BE UNCERTAIN. SUCH DAMAGES WOULD INVOLVE SUCH VARIABLE FACTORS AS THE CONSIDERATION WHICH SUCH PARTY WOULD PAY FOR THE SITE (OR THE APPLICABLE DEVELOPER PARCELS, AS THE CASE MAY BE); THE EXPENSES OF CONTINUING THE OWNERSHIP AND CONTROL OF THE SITE (OR THE APPLICABLE DEVELOPER PARCELS, AS THE CASE MAY BE); OF INTERESTING PARTIES AND NEGOTIATING WITH SUCH PARTIES; POSTPONEMENT OF TAX REVENUES THEREFROM TO THE COMMUNITY; AND THE FAILURE OF THE ~~AGENCY~~CITY TO EFFECT ITS PURPOSES AND OBJECTIVES WITHIN A REASONABLE TIME, RESULTING IN ADDITIONAL IMMEASURABLE DAMAGE AND LOSS TO THE ~~AGENCY~~CITY AND THE COMMUNITY. IT IS IMPRACTICABLE AND EXTREMELY DIFFICULT TO FIX THE AMOUNT OF SUCH DAMAGES TO THE ~~AGENCY~~CITY, BUT THE PARTIES ARE OF THE OPINION, UPON THE BASIS OF ALL INFORMATION AVAILABLE TO THEM, THAT SUCH DAMAGES WOULD APPROXIMATELY EQUAL THE VALUE OF THE APPLICABLE WORK PRODUCT THERETOFORE ACQUIRED BY THE ~~AGENCY~~CITY FROM EXPENDITURES OF THE INITIAL DEPOSIT AND THE ADDITIONAL DEPOSIT, TOGETHER WITH ANY UNEXPENDED PORTION OF THE ADDITIONAL DEPOSIT SET FORTH ABOVE IN THIS SECTION 511 AND HELD BY THE ~~AGENCY~~CITY AT THE TIME OF THE DEFAULT OF THE DEVELOPER, AND THE APPLICABLE UNEXPENDED AMOUNTS OR PORTIONS OF SUCH ADDITIONAL DEPOSIT AS SET FORTH ABOVE IN THIS SECTION 511 SHALL BE PAID TO THE ~~AGENCY~~CITY UPON ANY SUCH OCCURRENCE AND, TOGETHER WITH THE ABOVE DESCRIBED WORK PRODUCT, SHALL CONSTITUTE THE TOTAL OF ALL LIQUIDATED DAMAGES FOR THE APPLICABLE DEVELOPER DEFAULT(S) SET FORTH UNDER SUBPARAGRAPH a., b., c., f., g., m. or n. OF THIS SECTION 511, AND NOT AS A PENALTY. SUCH LIQUIDATED DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY OF THE ~~AGENCY~~CITY WITH RESPECT TO THE APPLICABLE DEVELOPER DEFAULT(S) SET FORTH ABOVE UNDER SUBPARAGRAPH a., b., c., f., g., m. or n. OF THIS SECTION 511. NOTWITHSTANDING THE FOREGOING, IN THE EVENT THAT THIS PARAGRAPH SHOULD BE HELD TO BE VOID FOR ANY REASON, THE ~~AGENCY~~CITY SHALL BE ENTITLED TO THE FULL EXTENT OF DAMAGES OTHERWISE PROVIDED BY LAW, AS LIMITED BY SECTION 507 HEREOF.

THE DEVELOPER AND THE ~~AGENCY~~CITY SPECIFICALLY ACKNOWLEDGE THIS LIQUIDATED DAMAGES PROVISION BY THEIR SIGNATURES HERE:

DEVELOPER:	**~~AGENCY~~CITY:**
By: ______________________	**By:** ______________________
By: ______________________	

In no event shall either the ~~Agency~~City or the Developer terminate this Agreement based on the default of the other party without first having provided the other party with a notice of default and the other party having had the opportunity to cure said default subject to the provisions of this Agreement. In the event that either the ~~Agency~~City or Developer provides notice of intent to terminate this Agreement, the other party shall have thirty (30) days to provide a notice of default to the terminating party, or thereafter be deemed to have waived its right to claim that the terminating party was in default of this Agreement.

G. [§512] Special Termination Provisions.

In no event shall either the ~~Agency~~City or the Developer terminate this Agreement with respect to a particular Developer Parcel or the Site based on the default of the other party without first having provided the other party with a notice of default with respect to the particular Developer Parcel or the Site, as applicable, and the other party having had the opportunity to cure said default subject to the provisions of this Agreement. In the event that either the ~~Agency~~City or the Developer provides notice of intent to terminate this Agreement with respect to a particular Developer Parcel or the Site, as applicable, the other party shall have thirty (30) days to provide a notice of default to the terminating party, or thereafter be deemed to have waived its right to claim that the terminating party was in default of this Agreement with respect to the particular Developer Parcel or the Site, as applicable.

H. [§513] Option to Repurchase, Reenter and Repossess.

The ~~Agency~~City shall have the right at its option to repurchase, reenter and take possession of a particular Developer Parcel, or any portion thereof, with all improvements thereon, if after conveyance of title to that particular Developer Parcel, and prior to the issuance of the Partial Certificate of Completion for that particular Developer Parcel, the Developer shall:

1. Fail to proceed with the construction of the improvements for that particular Developer Parcel as required by this Agreement for a period of three (3) months after written notice thereof from the ~~Agency~~City; or

2. Abandon or substantially suspend construction of the improvements for that particular Developer Parcel, for a period of three (3) months after written notice of such abandonment or suspension from the ~~Agency~~City; or

3. Transfer or suffer any involuntary transfer of that particular Developer Parcel, or any part thereof in violation of this Agreement;

provided, however, that for purposes of items 1 and 2, above, the ~~Agency~~City may not exercise its right under this Section 513 so long as the Developer is diligently and in good faith pursuing a remedy to correct such failure to proceed or abandonment or suspension of construction.

Such right to repurchase, reenter and repossess, to the extent provided in this Agreement, shall be subordinate and subject to and be limited by and shall not defeat, render invalid or limit:

1. Any mortgage, deed of trust or other security instrument permitted by this Agreement; or

2. Any rights or interests provided in this Agreement for the protection of the holder of such mortgages, deeds of trust or other security instruments; or

3. The rights of the Hotel Operator under the Hotel Operating Agreement.

Such right to repurchase, reenter or repossess shall not apply to any Developer Parcel except the Developer Parcel for which an event described in the first sentence of this Section 513 has occurred.

To exercise its right to repurchase, reenter and take possession with respect to a Developer Parcel or portion thereof, for which an event described in the first sentence of this Section 513 has occurred, the ~~Agency~~City shall pay to the Developer in cash an amount equal to:

1. The Purchase Price for that particular Developer Parcel, or portion thereof, actually paid by the Developer; plus

2. All costs incurred by the Developer after the date of this Agreement for the on-site labor and materials for the construction of the improvements existing on that particular Developer Parcel or such portion thereof, at the time of the repurchase, reentry and repossession; plus

3. All architectural, engineering, consultant and legal fees and costs incurred by the Developer in connection with the acquisition and development of that particular Developer Parcel, or portion thereof, provided, however, that the Developer first shall deliver to the ~~Agency~~City copies of all of the Developer~~'~~'s plans, studies and tests prepared and performed in connection with the acquisition and development of that particular Developer Parcel; less

4. Any gains or income withdrawn or made by the Developer from that particular Developer Parcel, or portion thereof, or the improvements thereon.

I. [§514] Right of Reverter.

The ~~Agency~~City shall have the additional right, at its option, to reenter and take possession of a particular Developer Parcel, or any portion thereof, with all improvements thereon and revest in the ~~Agency~~City the estate theretofore conveyed to the Developer, if after conveyance of title to that particular Developer Parcel, or portion thereof, and prior to issuance of the Partial Certificate of Completion for that particular Developer Parcel, the Developer shall:

1. Fail to proceed with the construction of the improvements for that particular Developer Parcel as required by this Agreement for a period of three (3) months after written notice thereof from the ~~Agency~~City;

2. Abandon or substantially suspend construction of the improvements for that particular Developer Parcel for a period of three (3) months after written notice of such abandonment or suspension from the ~~Agency~~City; or

3. Transfer or suffer any involuntary transfer of that particular Developer Parcel or any part thereof in violation of this Agreement;

provided, however, that for purposes of items 1 and 2, above, the ~~Agency~~City may not exercise its right under this Section 514 so long as the Developer is diligently and in good faith pursuing a remedy to correct such failure to proceed or abandonment or suspension of construction.

Such right to reenter, repossess and revest to the extent provided in this Agreement shall be subordinate and subject to and be limited by and shall not defeat, render invalid or limit:

1. Any mortgage, deed of trust or other security instrument permitted by this Agreement; or

2. any rights or interest provided in this Agreement for the protection of the holder of such mortgages, deeds of trust or other security instruments; or

3. The rights of the Hotel Operator under the Hotel Operating Agreement.

Such right to reenter, repossess and revest shall not apply to any Developer Parcel except the Developer Parcel for which an event described in the first sentence of this Section 514 has occurred.

The grant deeds conveying the respective Developer Parcels shall contain appropriate reference and provision to give effect to the ~~Agency~~City's right, as set forth in this Section 514 under specified circumstances prior to the issuance of the Partial Certificate of Completion for each respective Developer Parcel to reenter and take possession of a particular Developer Parcel with all improvements thereon and to terminate and revest in the ~~Agency~~City the estate conveyed to the Developer, subject to the limitations and conditions set forth in this Section 514.

Upon the revesting in the ~~Agency~~City of title to a particular Developer Parcel or any part thereof as provided in this Section 514, the ~~Agency~~City shall, pursuant to its responsibilities under state law, use its best efforts to resell the particular Developer Parcel or part thereof as soon and in such manner as the ~~Agency~~City shall find feasible and consistent with the objectives of such law and of the Redevelopment Plans to a qualified and responsible party or parties (as determined by the ~~Agency~~City) who will assume the obligation of making or completing the improvements, or such other improvements in their stead, as shall be satisfactory to the ~~Agency~~City and in accordance with the uses specified for that particular Developer Parcel or part thereof in the Redevelopment Plans. Upon such resale of the particular Developer Parcel, the proceeds thereof shall be applied:

1. First, to reimburse ~~the Agency on its own behalf or on behalf of~~ the City for all costs and expenses incurred by the ~~Agency~~City directly associated with the recapture, management and resale of the Developer Parcel, or part thereof and not previously reimbursed to the ~~Agency~~City or received by the ~~Agency~~City (but less any income derived by the ~~Agency~~City from the particular Developer Parcel or part thereof in connection with such management); all taxes, assessments and water and sewer charges with respect to the particular Developer Parcel or part thereof (or, in the event the particular Developer Parcel is exempt from taxation or assessment or such charges during the period of ownership, then such taxes, assessments or charges [as determined by the County assessing official] as would have been payable if the particular Developer Parcel were not so exempt); any payments made or necessary to be made to discharge or prevent from attaching or being made any subsequent encumbrances or liens with respect to the particular Developer Parcel due to obligations, defaults or acts of the Developer; any expenditures made or obligations incurred with respect to the making or completion of the improvements or any part thereof on the particular Developer Parcel or part thereof; and any amounts otherwise owing the ~~Agency~~City by the Developer with respect to the particular Developer Parcel; and

2. Second, to reimburse the Developer up to the amount equal to the sum of: (a) the Purchase Price for the particular Developer Parcel, or part thereof; plus (b) the costs incurred by the Developer for the development of the particular Developer Parcel, or part thereof, and for the improvements existing on the particular Developer Parcel, or part thereof, at the time of the reentry and repossession; plus (c) all architectural, engineering, consultant and legal fees and costs incurred by the Developer in connection with the acquisition and development of the particular Developer Parcel, or part thereof, provided, however, that the Developer first shall deliver to the ~~Agency~~City copies of all of the Developer~~’~~'s plans, studies and tests prepared and performed in connection with the acquisition and development of the particular Development Parcel; less (d) any gains or income withdrawn or made by the Developer from the particular Developer Parcel, or part thereof, or the improvements thereon.

Any balance remaining after such reimbursements shall be retained by the ~~Agency~~City as its property.

To the extent that the rights established in this Section involve a forfeiture, it must be strictly interpreted against the ~~Agency~~City, the party for whose benefit it is created. The rights established in this Section are to be interpreted in light of the fact that the ~~Agency~~City will convey the respective Developer Parcels to the Developer for development and not for speculation in undeveloped land.

6. [§600] GENERAL PROVISIONS.

A. [§601] Notices, Demands and Communications Between the Parties.

Formal notices, demands and communications betweenamong the Agency and the Developerparties, as required by this Agreement, must be in writing and may be delivered either by telefacsimile (with original forwarded by regular U. S. Mail), by registered or certified mail, postage prepaid, return receipt requested, or by Federal Express or other similar courier promising overnight delivery. If given by facsimile transmission, a notice or communication shall be deemed to have been given and received upon actual physical receipt of the entire document by the receiving party’'s facsimile machine. Notices transmitted by facsimile after 5:00 p.m. on a normal business day or on a Saturday, Sunday or holiday shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Such notices or communications shall be sent to the parties to the following addresses:

To the Successor Agency:
Executive Director
Successor Agency to the Redevelopment Agency of the City of Vallejo
555 Santa Clara Street
Vallejo, CA 94590
Attn: [Executive Director]

To the City:
City Manager
City of Vallejo
555 Santa Clara Street
Vallejo, CA 94590
Attn: City Manager

with a copy to:
Economic Development Manager
City of Vallejo
555 Santa Clara Street
Vallejo, CA 94590
Attn: Economic Development Director

To the Developer:

Callahan / DeSilva Vallejo, LLCProperty Company, Inc.
11555 Dublin Boulevard
5674 Stoneridge Drive, #212
Dublin, CA 94568Pleasanton, CA 94588
Attn: James SummersJoseph W. Callahan, Jr.

Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time-to-time designate by mail.

B. [§602] Conflicts of Interest.

No member, official or employee of the Successor Agency or City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

The Developer warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement.

C. [§603] Nonliability of Successor Agency or City Officials and Employees.

No member, official, employee or agent of the Successor Agency or City shall be personally liable to the Developer in the event of any default or breach by the Successor Agency or the City or for any amount which may become due to the Developer or on any obligations under the terms of this Agreement.

D. [§604] Enforced Delay; Extension of Times of Performance.

In addition to the specific provisions of this Agreement, performance by any party hereunder shall not be deemed to be in default (and the times for performance under this Agreement shall be extended as provided below) where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor, architect, engineer, or other service provider or supplier; acts of another party; delays due to existence and remediation of hazardous materials or contaminants, or other soils conditions on the Site which prevents Developer from performing its obligations under and within the manner and time set forth in this Agreement; acts or the failure to act of any public or governmental agency or entity (except that acts or the failure to act of the City or Successor Agency shall not excuse performance by the City of the Successor Agency, respectively); bankruptcy of any contractor, subcontractor or other provider other than the Developer; the filing of any court action to set aside or modify this Agreement or any of the Project Approvals; or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any such cause shall not necessarily be calculated on a day-for-day basis, but shall be for that period of delay

caused by such enforced delay as reasonably determined by the ~~Agency~~City and Developer. If, however, notice by the party claiming such extension is sent to the other parties more than thirty (30) days after the commencement of the cause, the period shall commence to run only thirty (30) days prior to the giving of such notice.

Times of performance under this Agreement may also be extended in writing through Operating Memoranda executed by the ~~Agency~~City and the Developer. The ~~Agency’s Executive Director, or his~~City Manager, or the City Manager's designee, is authorized to approve any such extension on behalf of the ~~Agency~~City. The ~~parties~~City and the Developer understand and agree that development of this multiphased Project involves numerous actions, both within and outside their direct control, and that flexibility will be necessary in adjusting to evolving circumstances that may delay or modify the means of performance under this Agreement. Therefore, ~~each party~~the City and the Developer will consider in good faith requests for extensions of time for performance or modifications in the means of performance that are reasonably required in order to achieve the parties' mutual objective to complete the Project in the face of such evolving circumstances and the need for independent actions by third parties.

E. [§605] Inspection of Books and Records.

The ~~Agency~~City has the right, upon not less than seventy-two (72) hours prior written notice from the ~~Agency’s Executive Director or his~~City Manager, or the City Manager's designee, at all reasonable times, to inspect the books and records of the Developer pertaining to the Site as pertinent to the purposes of this Agreement, except for the Developer~~’~~'s proprietary information, notes, memoranda and financial analyses, whether or not such information pertains to the Site, and the Developer~~’~~'s financial records not specifically related to the Site. The ~~Agency~~City covenants and agrees to keep and hold as proprietary any information (identified in writing by the Developer as confidential) of the Developer, delivered to or inspected by the ~~Agency~~City pursuant to the terms of this Agreement. Such information which the Developer has identified in writing as confidential or proprietary shall not be disclosed by the ~~Agency~~City except as may be required by law, except to its authorized officers, agents and employees on a confidential basis, to the extent necessary in connection with any approval required under this Agreement.

The Developer also has the right, upon not less than seventy-two (72) hours prior written notice, at all reasonable times, to inspect the books and records of the ~~Agency~~City pertaining to the Site and the ~~Agency~~City MOF Funds (as defined and described in Section I.E.1 of the Method of Financing (Attachment No. 6)) as pertinent to the purposes of this Agreement.

F. [§606] Plans and Data.

Where the Developer does not proceed with the purchase and development of a particular Developer Parcel, and when this Agreement with respect to that Developer Parcel is terminated pursuant to subparagraph a., b., c., f., g., m. or n. of Section 511 hereof, the Developer shall, to the extent legally permissible, deliver to the ~~Agency~~City any and all plans and data concerning the particular Developer Parcel to the extent such plans and data have been paid for, and the ~~Agency~~City or any other person or entity designated by the ~~Agency~~City shall be free to use

such plans and data, including plans and data previously delivered to the ~~Agency~~City, for any reason whatsoever without cost or liability therefor to the Developer or any other person.

G. [§607] Approvals and Consents by the Parties.

Except as otherwise provided for herein to the contrary, neither the ~~Agency~~City nor the Developer shall unreasonably withhold or delay any approvals or consents required to be given or otherwise provided for herein.

H. [§608] Attorneys~~’~~' Fees.

In the event that suit is brought for the enforcement of this Agreement or any provision contained herein or as the result of any alleged breach thereof, the prevailing party to such suit shall be entitled to be paid reasonable attorneys~~’~~' fees by the losing party.

I. [§609] Representations of the Parties.

~~The Agency and Developer each~~Each party represents to the other parties that : (i) it has the authority to enter into this Agreement~~,~~; (ii) it has taken all necessary action for the valid execution and delivery of this Agreement~~,~~; and (iii) this Agreement is legally binding on the representative party.

J. [§610] Changes in Law.

In the event of a future change in the ~~California Community Redevelopment~~Dissolution Act or other state or federal law or regulation, the effect of which is to materially affect or impair the ability of ~~one or both parties~~a party to perform, fund, or observe obligations or rights under this Agreement or the Project Approvals, the parties shall confer in good faith to seek a mutually acceptable modification to this Agreement and/or the Project Approvals that provides, under the circumstances of such change in law or regulation, for the performance, funding, and observance of each party's obligations and rights in a manner as closely as possible comparable to the performance, funding, and observance that was intended under this Agreement and the Project Approvals prior to such change in law or regulation.

7. [§700] SPECIAL PROVISIONS.

A. [§701] Amendment of Redevelopment Plans.

By ordinances approved on November 28, 2006, the City Council adopted amendments to the Redevelopment Plans and approval of a merged Redevelopment Plan to, among other things, merge the Marina Vista Redevelopment Project, the Waterfront Redevelopment Project, and the adjacent Vallejo Central Redevelopment Project (the "2006 Plan Amendments/Merger").

~~With the exception of the Total Reimbursable Developer Advance paid for by the Developer as provided in Section 109 hereof, the Agency shall be responsible for all costs and expenses necessary to prepare and process for approval all the necessary documents and take all actions necessary for the approval of such 2006 Plan Amendments/Merger; provided, however,~~

~~the parties understand and agree that final approval of any such 2006 Plan Amendments/Merger is dependent upon the passage of the applicable referendum period without a successful referendum to defeat the 2006 Plan Amendments/Merger, which occurrence is beyond the control of the Agency. The Developer agrees that it will cooperate with the Agency and will not object to the 2006 Plan Amendments/Merger, nor will Developer challenge any approvals relating to the 2006 Plan Amendments/Mergers. By execution of the Third Restatement of this Agreement, the parties acknowledge and agree that they have performed their respective obligations under this Section with respect to the 2006 Plan Amendments/Merger. Except as provided above, pursuant to the provisions of the Redevelopment Plan for modification or amendment thereof, the Agency~~The City agrees that no amendment to the Redevelopment Plans, other than the 2006 Plan Amendments/Merger, which changes the uses or development permitted on the Site or changes the restrictions or controls that apply to the Site or otherwise directly affects the development or use of the Site shall be made or become effective without the prior written consent of the Developer. Amendments to the Redevelopment Plans applying to other property in the Redevelopment Project Areas shall not require the consent of the Developer.

B. [§702] Submission of Documents for Approval.

Whenever this Agreement requires a party to submit plans, drawings or other documents to the other party (the "Approving Party") for approval, which shall be deemed approved if not acted on by the Approving Party within a specified time as provided in the Schedule of Performance (Attachment No. 3) or as otherwise provided in this Agreement, said plans, drawings or other documents shall be accompanied by a letter stating that they are being submitted and will be deemed approved unless rejected by the Approving Party within the stated time. If there is no time specified herein, either in the Schedule of Performance or elsewhere in this Agreement, for such Approving Party action, the submitting party may submit a letter requiring approval or rejection of documents within thirty (30) days after submission to the Approving Party or such documents shall be deemed approved.

C. [§703] Amendments to this Agreement.

The Developer and the ~~Agency~~City agree to mutually consider reasonable requests for amendments to this Agreement which may be made by any of the parties hereto, lending institutions, or bond counsel or financial consultants to the ~~Agency~~City, provided such requests are consistent with this Agreement and would not substantially alter the basic business terms included herein. Any requests made pursuant to this Section 703 shall be made in writing.

As further provided in Section 115, the City and the Developer intend to consider in good faith further amendments to this Fourth Restated Agreement in the form of the potential City/Developer Amendment. Any City/Developer Amendment (and any other future amendment to this Fourth Restated Agreement or a previously approved City/Developer Amendment) shall not require approval or execution by the Successor Agency to become effective, so long as the City/Developer Amendment or other future amendment in no way: (1) affects the Retained Successor Agency Obligations; or (2) imposes any other obligations upon the Successor Agency.

D. [§704] Reciprocal Easement and Access Agreement; Covenants, Conditions and Restrictions.

Within the times set forth in the Schedule of Performance (Attachment No. 3), the Developer shall prepare and execute any reciprocal easement agreements and/or declaration of covenants, conditions and restrictions (the ~~“~~"REA/CC&Rs~~”~~") relating to the residential portions of the Project. The REA/CC&Rs shall be in such form and content as may be acceptable to the ~~Agency~~City, and shall be recorded against those portions of the Developer Parcels to be developed with residential uses.

E. [§705] Operating Agreements with Respect to Hotel Improvements.

The Developer shall enter into a lease or other operating agreement (the ~~“~~"Hotel Operating Agreement~~”~~") with a Hotel Operator in form and content satisfactory to the ~~Agency~~City, for the operation and maintenance of the Hotel Improvements; provided, however, that the Developer, at its election, may enter into a separate lease or operating agreement with persons or entities other than the Hotel Operator for those portions of the Hotel Improvements constituting the restaurant and/or the conference center (a "Restaurant Operating Agreement" or a "Conference Center Operating Agreement", as applicable). The ~~Agency~~City shall provide its written approval or reasons for disapproval of any proposed Hotel Operating Agreement, Restaurant Operating Agreement and/or Conference Center Operating Agreement within thirty (30) days after receipt of the proposed agreement.

F. [§706] Arbitration of Specified Disputes .

1. Scope of Obligation To Arbitrate. The following disputes and matters under this Agreement are subject to final and binding arbitration as provided in this Section 706:

a. Disputes and matters regarding the form of a ~~City/Agency Ground Lease or an Agency/Developer Sub-~~Ground Lease to be prepared pursuant to Section 201.4.a or the amount of Annual Rent Payments determined in accordance with Section 201.4.b;

b. Disputes and matters regarding the form of the Parcel C2 REA or the Parcel E/F REA to be prepared pursuant to Section II.C.2 and II.C.5, respectively, of the Scope of Development (Attachment No. 4);

c. Disputes and matters regarding approval of Design Plans or Modified Design Plans for the Northern ~~Waterfront Public Park and Open Space Improvements or the Southern~~ Waterfront Public Park and Open Space Improvements pursuant to Section II.C.3 ~~and IV.C.2, respectively,~~ of the Scope of Development (Attachment No. 4);

~~d. Disputes and matters regarding the form of the Southern Waterfront Soft Cost Work Operating Memorandum to be prepared pursuant to Section IV.A.9.b of the Scope of Development (Attachment No. 4);~~

d. ~~e.~~ Disputes and matters related to the determination of the Purchase Price for any Developer Parcel pursuant to Section 201.2; and

e. ~~f.~~ Such other disputes and matters as the parties, each in the exercise of its sole discretion, mutually agree in writing to submit to arbitration.

This arbitration provision is expressly limited to the above specified disputes and matters. The Arbitrator shall dismiss any dispute or matter submitted to him/her for determination if such determination is not expressly authorized in this Section 706.1 or in another written agreement executed by both parties. This arbitration provision shall not apply to any matter involving the Successor Agency, and all references in this section to a "party" or "parties" shall refer exclusively to the City and the Developer, as applicable.

2. Precursor To Arbitration. Before initiating arbitration, a party shall provide written notice to the other party of the existence of a dispute or matter that is eligible for and may require arbitration, stating with specificity the nature of the dispute or matter. Within ten (10) days after such notice, the parties shall confer in good faith to seek a mutually acceptable resolution to such dispute or matter. If the parties are unable to resolve the dispute or matter in this manner, then either party may initiate formal arbitration proceedings as set forth below.

3. Arbitration Procedure. A party shall initiate arbitration by written notice to the other party. The date such notice is given shall be the "Initiation Date." Except as expressly modified in this Section 706, the arbitration proceeding shall be conducted by a single arbitrator (the "Arbitrator") in accordance with the provisions of Section 1280 et seq. of the California Code of Civil Procedure, as amended or replaced by any successor sections (the "CCP"). Unless the parties mutually agree otherwise, the Arbitrator shall be selected by mutual agreement of the parties from a panel provided by the San Francisco office of the American Arbitration Association (the "AAA"), and if the parties cannot so agree within fifteen (15) days after the Initiation Date, or if the AAA does not offer a selection of potential arbitrators having the requisite qualifications, either party may apply to the Solano County Superior Court for the appointment of the Arbitrator. If the dispute primarily involves design and construction matters, the Arbitrator shall have at least ten (10) years' experience in the resolution of construction disputes (or such other or additional qualifications as the parties may agree upon). If the dispute primarily involves any other matters, the Arbitrator shall have at least ten (10) years' experience in the resolution of commercial real estate disputes (or such other or additional qualifications as the parties may agree upon).

The date on which the Arbitrator is selected or appointed is referred to as the "Selection Date". The Arbitrator shall set the matter for hearing within forty-five (45) days after the Selection Date, and shall try any and all issues of law or fact that are the subject of the arbitration, and report a statement of decision upon them, if possible, within sixty (60) days of the Selection Date.

The parties to the arbitration shall bear equally all fees and costs assessed by the Arbitrator, and shall each bear their own costs and attorneys' fees in the arbitration proceeding, except as the Arbitrator may otherwise award attorneys' fees consistent with the provisions of Section 608.

No discovery shall be permitted in connection with the arbitration except that each of the parties to the arbitration shall, no later than fifteen (15) days after the Selection

Date, provide the other party or parties with copies of all documents which it believes supports its claims, defenses, or positions with respect to the arbitration. No later than fifteen (15) days prior to the arbitration hearing, each of the parties to the arbitration may, if it desires, submit an arbitration brief not to exceed fifteen (15) pages, not including exhibits. Such brief and exhibits shall be served upon the opposing party or its counsel of record. No reply brief shall be permitted.

The arbitration hearing shall be limited to eight (8) hours in length. Each side shall have no more than four (4) hours to present its case. In calculating the four (4) hours of presentation time, all oral presentations of a party shall be included (including without limitation cross-examination of an opposing witness, addressing questions from the arbitrator, and argument). Upon completion of each party's presentation, the arbitration hearing will be closed.

The parties to the arbitration shall execute all documents necessary to submit the dispute to arbitration pursuant to this Section 706 in conformity with the procedures set forth in this Section 706.

The following time periods set forth in the CCP shall be shortened as follows: Section 1288 - four years to 90 days, and 100 days to 30 days; Section 1288.2 - 100 days to 30 days. The Arbitrator shall be required to determine all issues in accordance with the existing case law and the statutory laws of the United States and the State of California. The Arbitrator shall be empowered to: (1) enter equitable as well as legal relief; (2) provide all temporary and/or provisional remedies; and (3) enter equitable orders that will be binding upon the parties. The Arbitrator shall issue a single written decision at the close of the arbitration proceeding which shall dispose of all of the claims of the parties that are subject of the arbitration, and an order or judgment upon that decision may be obtained by either party in a court of competent jurisdiction. The parties expressly reserve their appeal rights under CCP Sections 1294(b), (c) and (d).

4. Notice. BY INITIALING IN THIS SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THIS "ARBITRATION OR SPECIFIED DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THIS SECTION 706. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS SECTION 706, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THE ARBITRATION PROVISIONS OF THIS SECTION 706 IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS SET FORTH IN THIS SECTION 706 TO NEUTRAL ARBITRATION.

DEVELOPER: ___________ ~~AGENCY~~CITY: ________________

~~DEVELOPER: ___________~~

G. [§707] Affordable Housing Funds.

~~To the extent the Developer constructs and/or renovates residential units outside of the Redevelopment Project Areas, the Developer may submit a request to the Agency to use funds from the Agency's Low and Moderate Income Housing Fund to assist with such construction and/or renovation. The Agency agrees to consider, in good faith, any such request by the Developer to the extent such construction and/or renovation complies with the Agency's affordable housing programs, and appropriate affordability covenants and restrictions are recorded against any such residential units.~~[Intentionally Omitted.]

H. [§708] ~~Agency~~City Approval.

Whenever this Agreement calls for or permits ~~Agency~~City approval, consent, or waiver, the written approval, consent, or waiver of the ~~Agency Executive Director, or his~~City Manager, or the City Manager's designee, shall constitute the approval, consent, or waiver of the ~~Agency~~City, without further authorization required from the ~~Agency Board~~City Council unless required by law.

I. [§709] Operating Memoranda.

The ~~parties~~City and Developer acknowledge that the provisions of this Agreement require a close degree of cooperation, and that new information and future events may demonstrate that changes are appropriate with respect to the details of performance of the ~~parties~~City and Developer under this Agreement. The ~~parties~~City and Developer desire, therefore, to retain a certain degree of flexibility with respect to the details of performance of those items covered in general terms under this Agreement. If and when, from time to time during the term of this Agreement, the ~~parties~~City and Developer find that non-substantive refinements or adjustments regarding details of performance are necessary or appropriate, they may effectuate such refinements or adjustments through a memorandum (individually, and "Operating Memorandum", and collectively, "Operating Memoranda") approved by the parties which, after execution, shall be attached to this Agreement as addenda and become a part hereof. This Agreement describes some, but not all, of the circumstances in which the preparation and execution of Operating Memoranda may be appropriate. No Operating Memorandum shall affect the rights or obligations of the Successor Agency set forth in this Fourth Restated Agreement.

Operating Memoranda may be executed on the ~~Agency~~City's behalf by its ~~Executive Director, or his~~City Manager, or the City Manager's designee. Operating Memoranda shall not require prior notice or hearing, and shall not constitute an amendment to this Agreement. Both the ~~Agency~~City Council and the Housing and Redevelopment Commission shall be provided with a copy of any executed Operating Memorandum.

Any substantive or significant modifications to the terms and conditions of performance under this Agreement shall be processed as an amendment of this Agreement in accordance with Section 800 hereof, and must be approved by the ~~Agency Board~~City Council.

J. [§710] Legal Action; Indemnification.

In the event legal action is commenced by a third party or parties, the effect of which is to directly or indirectly challenge or compromise the enforceability, validity, or legality of this Agreement and/or the power of the ~~Agency~~City to enter into this Agreement or perform its obligations hereunder, either the ~~Agency~~City or the Developer may, but shall have no obligation to defend such action. Upon commencement of such action, the ~~Agency~~City and the Developer shall meet in good faith and seek to establish a mutually acceptable method of defending such action.

The Developer hereby agrees to defend, indemnify and hold harmless the City and its elected and appointed representatives, officers, agents and employees from any liability for any claims suits, actions, causes of action, loss, expense, damage or injury of any kind, in law or equity, arising in any manner out of, pertaining to, or incident to the approval of this Fourth Restated Agreement or its activities conducted pursuant to it and/or the issuance of any permit or entitlement in connection with the making of this Fourth Restated Agreement, excepting suits or actions brought by the Developer for default of the Fourth Restated Agreement or to the extent arising from the gross negligence or willful misconduct of the City, its elected and appointed representatives, officers, agents, or employees.

K. [§711] Master Labor Agreement.

The parties hereby acknowledge that the Developer has voluntarily entered into a Master Labor Agreement (the "MLA") with the Napa Solano Building and Construction Trades Council (the "Trades Council") and its affiliated local trade unions, and that the MLA applies to the private improvements to be constructed on the Developer Parcels. The ~~Agency~~City further understands that any assignee or transferee of the Developer shall assume the MLA, in whole or in part, as provided in the MLA, in connection with a permitted assignment or transfer of a Developer Parcel or this Agreement. This acknowledgement shall be included in the ~~Original DDA~~Fourth Restated Agreement Memorandum ~~and the Memorandum of DDA Third Restatement recorded or~~ to be recorded pursuant to Section 712.

L. [§712] Recordation of ~~Original DDA Memorandum and Memorandum of DDA Third Restatement~~Fourth Restated Agreement.

~~In connection with the Second Restatement of this Agreement, the parties caused to be recorded a Memorandum of Disposition and Development Agreement dated as of October 27, 2005 (the "Original DDA Memorandum").~~ Within ten (10) days after the later to occur of the ~~Action Dismissal~~Effective Date or acquisition by the ~~Agency or~~ City of fee title to each Developer Parcel or portion thereof, the ~~Agency~~City shall cause a memorandum of this ~~Third Restatement of this~~Fourth Restated Agreement (the "Fourth Restated Agreement Memorandum ~~of DDA Third Restatement~~"), in the form attached to this Agreement as Attachment No. 7, to be recorded against the property described in Section 1.4 of the Development Agreement in the land records of Solano County as a covenant and restriction that runs with the land and is binding on successors in title to each Developer Parcel. The City, the Successor Agency, and the Developer each consent to such recordation of the Fourth Restated Agreement Memorandum ~~of DDA Third Restatement~~, and to the performance of the same actions with respect to the Fourth Restated Agreement Memorandum ~~of DDA Third Restatement~~ as are set forth in Section 1.4 of the Development Agreement with

respect to the Development Agreement. The parties intend that, upon recordation, the Fourth Restated Agreement Memorandum~~ of DDA Third Restatement~~ will amend and supersede ~~the Original DDA Memorandum~~any recorded memoranda with respect to the Prior Agreement. The Developer acknowledges and agrees that the existence of the lien and encumbrance of the ~~Original DDA~~Fourth Restated Agreement Memorandum~~ or the Memorandum of DDA Third Restatement~~ in a Preliminary Title Report (as defined in Section 208) with respect to any Developer Parcel shall not constitute an Unacceptable Title Exception (as defined in Section 208) or constitute a basis for the Developer to disapprove a Preliminary Title Report pursuant to Section 208.

Promptly following the Agreement Termination Date (as defined below) with respect to a particular Developer Parcel, the ~~Agency~~City and the Developer shall cooperate to cause reconveyance and removal of the lien and encumbrance of the ~~Original DDA~~Fourth Restated Agreement Memorandum and ~~the Memorandum of DDA Third Restatement~~any memoranda with respect to the Prior Agreement from title to the applicable Developer Parcel through execution and recordation of a quitclaim deed or other instrument recordable in the official records of Solano County and reasonable acceptable to the ~~Agency~~City and the Developer. As used herein, "Agreement Termination Date" means, with respect to a particular Developer Parcel, the occurrence of either of the following:

1. Issuance of a Partial Certificate of Completion for the Developer Parcel by the ~~Agency~~City pursuant to Section 323; or

2. Termination of this Agreement with respect to the Developer Parcel without conveyance of the Developer Parcel by the ~~Agency~~City.

8. [§800] ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS.

This Agreement is executed in four (4) duplicate originals, each of which is deemed to be an original. This Agreement comprises pages 1 through ~~85,~~___, inclusive, and Attachment Nos. 1 through ~~8,~~9, attached hereto and incorporated herein by reference, all of which constitute the entire understanding and agreement of the parties.

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

All waivers of the provisions of this Agreement must be in writing and signed by the ~~Executive Director~~City Manager, or ~~his~~City Manager's designee, on behalf of the ~~Agency~~City and/or by the Developer, as applicable. All amendments hereto must be in writing, approved by the ~~Agency Board~~City Council, and signed by the appropriate authorities of the ~~Agency~~City and the Developer; provided, however, the ~~parties~~City and the Developer may enter into Operating Memoranda without formal amendment of this Agreement for the purposes, in the manner, and with the effect set forth in Section 709 hereof. Any City/Developer Amendment (and any other future amendment to this Fourth Restated Agreement or a previously approved City/Development Amendment) shall not require approval or execution by the Successor Agency to become effective, so long as the City/Developer Amendment or other future amendment in no way: (1)

affects the Retained Successor Agency Obligations; or (2) imposes any other obligations upon the Successor Agency.

9. [§900] TIME FOR ACCEPTANCE OF AGREEMENT BY AGENCY.

This Agreement, when executed by the Developer and delivered to the City and the Successor Agency, must be authorized, executed and delivered by the City and the Successor Agency within ten (10) days after the date of signature by the Developer or this Agreement shall be void, except to the extent that the Developer shall consent in writing to further extensions of time for the authorization, execution and delivery of this Agreement. The effective date of this Agreement is the date when this Agreement has been signed by the Agency. Through the Third Restatement of this Agreement, the Parties acknowledge and agree that this Agreement in its initial form (the "Original Agreement") was initially fully executed and became effective in accordance with its terms as of October 17, 2000.

By execution below, the parties hereby approve the Third Restatement of this Fourth Restated Agreement as of February 27, 2007.December 16, 2013. The parties further acknowledge and agree that thethis Fourth Restated Agreement as amended and restated by the Third Restatement shall be binding on the parties as of the Action DismissalEffective Date; provided, however, that if the Third Restatementthis Fourth Restated Agreement is determined to be invalid, void, ineffective, or otherwise unenforceable by a final non-appealable judgment of a court of competent jurisdiction, the OriginalPrior Agreement, as previously amended, shall thereupon be deemed to be in effect and binding upon the parties as of the effective date of such final non-appealable judgment. Nothing in the Third Restatementthis Fourth Restated Agreement shall modify or affect the initial execution date of thisthe Prior Agreement as of October 17, 2000.

AGENCY:

REDEVELOPMENT AGENCY

THE CITY OF VALLEJO

Joseph M. Tanner
Executive Director

DEVELOPER:

CALLAHAN/DeSILVA VALLEJO, LLC, PROPERTY COMPANY, INC., a California limited liability company

By: The DeSilva Group, Inc.,
By: ______________________ a California corporation, Member

By: ______________________
Ernest D. Lampkin

By: ______________________
Joseph W. Callahan, Jr., President

SUCCESSOR AGENCY:

SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF VALLEJO, a public entity

By: ______________________
Daniel E. Keen, City Manager on behalf of the Successor Agency
Vice President

APPROVED AS TO FORM:

By: Joseph W. Callahan, Jr.,

Frederick G. Soley an individual, Member

Claudia Quintana, Successor Agency Counsel

By: ______________________________

ATTEST: Joseph W. Callahan, Jr.

Allison Villarante

Dawn G. Abrahamson, Agency Secretary

APPROVED AS TO INSURANCE ________________________

REQUIREMENTS: CITY:

THE CITY OF VALLEJO, a public body, corporate and politic

Will Venski
Risk Manager, City of Vallejo

ACKNOWLEDGEMENT AND ACCEPTANCE BY
CITY OF VALLEJO OF UNIT PLAN PROCESSING METHOD
SET FORTH IN SECTION 304:____________________

By: ______________________________
Joseph M. Tanner

Daniel E. Keen, City Manager

APPROVED AS TO FORM:

____
Claudia Quintana, City Attorney

ATTEST:

____
Dawn G. Abrahamson, City Clerk

ATTACHMENT NO. 1

MAPS OF THE SITE

This Attachment No. 1 consist of three Area maps as follows:

Attachment No. 1A	Northern Waterfront Area
Attachment No. 1B	Central Waterfront Area
~~Attachment No. 1C~~	~~Southern Waterfront Area~~

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ATTACHMENT NO. 2

LEGAL DESCRIPTION OF THE DEVELOPER PARCELS

[To be inserted from time to time as provided in Section ~~104~~106]

ATTACHMENT NO. 3

SCHEDULE OF PERFORMANCE

The following is an updated Schedule of Performance that was approved pursuant to Operating Memorandum No. 5, which was prepared and executed under authority of the Third Restatement of this Agreement dated as of February 27, 2007 (the "Third Restatement"), but has deleted the steps associated with the removal of the Southern Waterfront Area from the Site.

It is the City's and the Developer's intent that this Schedule of Performance will be comprehensively updated through the City/Developer Amendment described in Section 115.

As used in this Schedule of Performance, "Implementation Agreement" means the Implementation Agreement entered into by the Agency and the Developer as of March 8, 2011 in furtherance of this Agreement.

The action items described below constitute a summary only of the responsibilities and obligations of the parties under this Agreement. Reference is made to the operative sections of this Agreement (typically indicated in parentheses at the end of each Action item) or the Implementation Agreement (also typically indicated in parenthesis at the end of certain Action items, preceded by the prefix "Implementation Agreement") for a complete statement of the parties' respective responsibilities and obligations. Except as otherwise provided in the following sentence, to the extent of any conflict between the terms of this Schedule of Performance and the operative provisions of this Agreement (including the other Attachments hereto and the Implementation Agreement), the operative provisions of this Agreement and the Implementation Agreement shall control. [To the extent of any inconsistency between the]deadline for performance of an action set forth in this Schedule of Performance and the Implementation Agreement, the deadline for performance set forth in this Schedule of Performance shall control as a more recent reflection of the parties' intention taking into account events and circumstances occurring and arising since execution of the Implementation Agreement.

Section A of this Schedule of Performance sets forth action items related to the Site and the Project in general. Sections B, C, and D address action items related to disposition and development of the Northern Waterfront Area, the Southern Waterfront Area, and the Central Waterfront Area, respectively.

The schedule for actions related to property acquisition and relocation, procurement of funding, design, and commencement and completion of construction of the Vallejo Station Garage (referred to in this Agreement as the L3 Public Garage, and consisting of the Phase A and Phase B elements as further described in the Scope of Development), with particular reference to Items 14(b)(1), and 94-157 of this Schedule of Performance, are dependent in large part upon the Vallejo Station Master Schedule (the "Vallejo Station Master Schedule") in effect from time to time, as prepared and periodically updated by the Vallejo Station Project Management Team comprised of representatives of the City, the Developer, and the City's consultants, Gray Bowen Associates and Harris & Associates. The Vallejo Station Master Schedule includes the USPS Relocation Strategy, as it may be amended from time to time. The parties agree that this Schedule of

Performance may be further revised, through execution of an Operating Memorandum as provided in Section 604 and 709 of the Agreement, as a result of changes in the Vallejo Station Master Schedule

Where an action has been completed as of the date of Operating Memorandum No. 5 (December 1, 2011), such completion is noted below, with the approximate date of completion (where available). Where an action has been completed through execution of an Operating Memorandum, the Operating Memorandum number is provided for reference.

It should be noted that several other documents also inform this Schedule of Performance and provide additional milestone actions and timelines with respect to implementation of the Project. Those documents include the following and any amendments thereto:

- The Development Agreement;
- The Settlement Agreement;
- The EIR and the Mitigation Monitoring and Reporting Program accompanying the EIR; and
- The MLA

Action	Date
A. GENERAL	
1. Execution and Delivery of Third Restatement. The Developer shall execute and deliver the Third Restatement of this Agreement to the City.	Completed. (April 13, 2007.)
2. Execution of Third Restatement by City. The RDA and City Council shall hold a public hearing to authorize execution of the Third Restatement of this Agreement by the RDA, and, if so authorized, the RDA shall execute and deliver this Agreement to the Developer. (Section 900)	Completed. (April 13, 2007)
3. Settlement-Related Ordinances; Action Dismissal. (a) The City shall consider the Settlement-Related Ordinances for adoption. (b) The Settlement-Related Ordinances shall become effective and the Action Dismissal Date shall occur. (Section 102)	(a) Completed. (February 27 and March 13, 2007) (b) Completed. (April 13, 2007)
4. Memorandum of DDA Third Restatement Recordation. The RDA or City shall cause recordation of the Memorandum of DDA Third Restatement. (Section 712)	(a) Completed. (b) Within 10 days after acquisition for Developer Parcels or portions thereof subsequently acquired by the City.
5. Action Dismissal Date Operating Memorandum. The parties shall execute an Operating Memorandum setting forth the Action Dismissal Date. (Section 102.2)	Completed. Operating Memorandum No. 1. (December 13, 2007)
6. Completion of Acquisition of Site. The City shall complete acquisition of the applicable parcels comprising the Site (or if applicable, shall obtain orders for immediate possession), and shall complete relocation of all tenants and occupants. (Sections 201.1 and 208)	On a schedule to allow for conveyance of the Developer Parcels to the Developer and construction of the improvements pursuant to this Agreement.
7. Internal Return Methodology Operating Memorandum. The parties shall execute an Operating Memorandum setting forth the internal rate of return methodology in connection with the Method B Appraisal calculations. (Section 201.1.a.(6)(A)(ii))	Completed. Operating Memorandum No. 3. (December 13, 2007)

Action	Date
8. Additional Appraisal Instructions Operating Memorandum. The parties shall execute an Operating Memorandum setting forth mutually acceptable additional appraisal instructions. (Section 201.1.b)	Completed. Operating Memorandum No. 4. (December 13, 2007)
9. Appraisal of Developer Parcels. The Method A Appraisals (Baseline), Method A Appraisals (Final), and Method B Appraisals (Unadjusted) shall be prepared and delivered to the parties. (Section 201.2)	At the times specified in Section 201.2.b. Parties acknowledge completion and acceptance of the most recent Method A Appraisal (Baseline) dated as of June 30, 2008.
10. Opening of Escrow. The RDA shall open an escrow account(s) for conveyance of the Develop-er Parcels to the Developer. (Section 202)	Completed.
11. Submission-Preliminary Title Reports. The RDA shall submit to the Developer Preliminary Title Reports for the Developer Parcels for Initial Title Review. (Section 208)	Completed. (May 14, 2007)
12. Approval-Preliminary Title Report. (a) The Developer shall approve or disapprove the Preliminary Title Reports. (b) If the Developer disapproves, the parties shall seek to prepare an Operating Memorandum to address Unacceptable Title Exceptions. (Section 208; Implementation Agreement, Section 8)	(a) Completed through submittal of document setting forth specified Unacceptable Title Conditions. (July 13, 2007) (b) By September 8, 2011.
13. Developer Parcel Legal Description Operating Memoranda. The parties shall execute an Operating Memorandum setting forth the legal description for each Developer Parcel. (Section 104)	Upon establishment of each Developer Parcel as a legal parcel.

Action	Date
14. Physical Conditions Investigation For Developer Parcels Other Than Parcels S and T. (a) The Developer shall conduct any geotechnical and structural investigation and soils tests it determines necessary, and determine whether the Parcel Conditions are suitable and whether it wishes to proceed with acquisition of the Developer Parcels (other than Parcels S and T). (b) If the Developer determines there are Unacceptable Physical Conditions, the parties shall seek to prepare an Operating Memorandum to address such Unacceptable Physical Conditions. (Section 215.3)	(a) Completed (July 13, 2007) for Developer Parcels (or portions thereof) then owned by the RDA or the City. (The July 13, 2007 submittal from the Developer specified potential Unacceptable Physical Conditions with respect to Parcels J and L only.) Within 90 days after access is obtained for Developer Parcels (or portions thereof) not currently owned by the Agency or the City. (b) Within the time specified in Section 215.3, with a mutually agreed extension to the following dates: (1) for Unacceptable Physical Conditions affecting Parcel L, as set forth in Vallejo Station Master Schedule; and (2) with respect to Unacceptable Physical Conditions affecting Parcel J, the date that is 120 days after the submittal of the Unit Plan for the first-to-be developed J Developer Subparcel.
15. LLMD Formation. The City shall take all steps necessary to cause formation and effectiveness of the LLMD. (Method of Financing Section I.D)	Prior to sale of the initial residential unit within Parcel A.
16. Additional Deposit. The Developer shall pay the Initial Deposit to the RDA. (Section 108.2)	(a) Completed with respect to initial $200,000. (April 18, 2007) (b) Remaining $300,000 at the close of escrow for the first Developer Parcel to be conveyed.
17. Additional Deposit Expenditure Operating Memoranda. The parties shall execute an Operating Memorandum setting forth a budget for expenditure of (a) the initial $200,000 portion of the Additional Deposit, and (b) the balance of the Additional Deposit. (Scope of Development Section IV.A.9.a)	(a) Completed. Operating Memorandum No. 2 (February 29, 2008) and Operating Memorandum No. 2A (August 1, 2009) (b) Prior to expenditure of any of the balance of the Additional Deposit.
18. Submission-Certificates of Insurance. The Developer shall furnish to the City duplicate originals or appropriate certificates of bodily injury and property damage insurance policies. (Section 308)	Prior to the date set forth herein for commencement of construction of the improvements on the Site.

Action	Date
19. Issuance-Certificates of Completion. The City shall furnish the Developer with Partial or Final Certificates of Completion, as applicable. (Section 323)	Promptly after completion of all construction required for any Developer Parcel or portion of the Project to be completed by the Developer on the Site and upon written request therefor by the Developer.

B. NORTHERN WATERFRONT

PARCEL A

Action	Date
20. Section 404 Permit. (a) The City shall obtain a Section 404 Permit (and extension thereto) from the U. S. Army Corps of Engineers relating to Parcel A. (Section 309) (b) The Developer shall complete the Section 404 Permit Site Work to perfect the Section 404 Permit. (Scope of Development Section 11.A.4)	(a) Completed, with respect to initial Section 404 Permit. By April 2, 2012 with respect to proposed extension of the Section 404 Permit. (b) Prior to the expiration date of the extended Section 404 Permit.
20A. Northern Waterfront Boundary Parcel. The parties shall cause recordation of all documents necessary to create legal parcels setting the outer boundaries of an approximately 34-acre area comprising the Northern Waterfront parcels under this Agreement and related parcels to the north along Harbor Way. (Implementation Agreement, Section 5)	(a) By July 8, 2012.
21. Parcel A Exchange Agreement Amendment. The parties shall prepare and use good faith efforts to obtain City and SLC approval of the Parcel A Exchange Agreement Amendment. (Scope of Development Section II.D.1; Implementation Agreement, Section 5)	By December 8, 2012.
22. Public Workshops Regarding Parcel A Townhouse Architectural Design. The Developer shall sponsor, advertise, notice and conduct at least two public workshops on Parcel A townhouse architectural design. (Scope of Development Section II.A.1)	Prior to submission of an application for the Parcel A Unit Plan.

Action	Date
23. Submission-Unit Plan For Parcel A and Vesting Tentative Map for Northern Water-front Area. The Developer shall prepare and submit to the City a Complete Application for a Unit Plan for Parcel A and a vesting tentative map for the Northern Waterfront Area, including any necessary survey. (Section 304)	By a date to be determined by the parties taking into account applicable market conditions, with the goal of making such determination by December 31, 2012.
24. Approval-Unit Plan and Vesting Tentative Map. The City shall conduct all architectural and site planning review and shall approve or disapprove the Unit Plan for Parcel A and vesting tentative map for the Northern Waterfront Area, including any necessary survey, in accordance with the following milestone actions: (a) the Design Review Board shall conduct a Study Session on the Complete Application; (b) the Developer shall submit a Revised Application; (c) the Design Review Board shall conduct an Action Session and make its final recommendation/decision on the Revised Application; and (d) the City Council shall conduct a hearing (on appeal) regarding the Design Review Board's recommendation/ decision and shall approve or disapprove the Revised Application. (Section 304)	(a) Within 30 days after City receipt of the Complete Application. (b) Within 30 days after the Design Review Board's Study Session, subject to extension by mutual agreement. (c) Within 30 days after City receipt of the Revised Application. (d) Within 30 days after the Design Review Board's Action Session.
25. Submission-Updated Preliminary Title Report. The City shall submit to the Developer an updated Preliminary Title Report for Parcel A, if necessary. (Section 208)	Within 30 days after submittal by the Developer of a Complete Application for the Unit Plan and vesting tentative map.
26. Approval-Updated Preliminary Title Report. (a) The Developer shall approve or disapprove the updated Preliminary Title Report for Parcel A. (b) If Developer disapproves, the parties shall seek to prepare an Operating Memorandum to address Unacceptable Title Exceptions. (Section 208)	(a) Within 30 days after submittal by the City. (b) Within the time specified in Section 208.
27. Submission-Evidence of Financing. The Developer shall submit to the City Developer's evidence of financing for acquisition and development of Parcel A. (Section 217)	Within 30 days after City approval of the Unit Plan and Vesting tentative map.

Action	Date
28. Approval-Evidence of Financing. The City shall approve or disapprove the Developer's evidence of financing for acquisition and development of Parcel A. (Section 217)	Within 30 days after receipt thereof.
29. Submission and Approval-Subdivision of North-ern Waterfront Area. (a) The Developer shall submit an application for any final subdivision or parcel map(s) required for development of the Northern Waterfront Area. (b) The City shall grant or deny all required approvals for final subdivision or parcel map(s) for the Northern Waterfront Area. (Section 304)	(a) Within 120 days after City approval of the vesting tentative map for the Northern Waterfront Area. (b) Within 30 days after submittal by the Developer.
30. BCDC Permit Amendment. The parties shall (a) submit an application for and (b) use good faith efforts to obtain any BCDC permit amendments for construction of improvements in the Northern Waterfront Area. (Scope of Development Section II.D.2)	(a) Within 30 days after City approval of the vesting tentative map for the Northern Waterfront Area. (b) Prior to the close of escrow for Parcel A.
31. Deposit of Grant Deed for Parcel A. The City shall acquire Parcel A from the City and shall deposit the grant deed for Parcel A into escrow. (Section 202, 208)	Prior to the close of escrow.
32. Satisfaction of All Conditions Precedent to Conveyance. All conditions precedent to conveyance of Parcel A have either been satisfied or waived. (Sections 205, 206)	Prior to the close of escrow.
33. Residential REA/CC&Rs. The Developer shall prepare, obtain City approval of, and record REA/CC&Rs as applicable for Parcel A. (Section 704)	Prior to issuance of a building permit for the applicable residential improvements.
34. Close of Escrow. Fee title to Parcel A shall be conveyed to the Developer. (Section 203)	Within 60 days after recordation of final subdivision map(s) and evidence of financing, but not later than two years after submission of the Parcel A Unit Plan application pursuant to Item 23 above.

Action	Date
35. Governmental Permits. The Developer shall obtain any and all required City and other governmental agency permits that the Developer is responsible to obtain under this Agreement for the development of the applicable improvements on Parcel A. (Section 309)	Prior to the date set forth herein for the commencement of construction of the applicable improvements on Parcel A.
35A. SWPPP Permit. To facilitate completion of Parcel A surcharging (Item 35B) in a manner that maximizes benefit to the Project, the parties shall take the following steps to obtain Water Board approval of a Storm Water Pollution Prevention Plan and an accompanying permit (collectively, the "SWPPP Approval") to place soil on Parcel A, including soil from Project activities related to the Central Waterfront (i.e., Phase B Garage and/or Parcel LI excavations) or other locations determined by the City:	
(a) The Developer shall submit to the City the engineering work necessary to prepare an application for the SWPPP Approval;	(a) By December 31, 2011
(b) The City shall submit an application to the Water Board for the SWPPP Approval; and	(b) By March 31, 2012
(c) The City shall use diligent good faith efforts to obtain the SWPPP Approval from the Water Board.	(c) By June 30, 2012
35B. Parcel A Surcharging. The Developer shall perform and complete any required surcharging for Parcel A. (Section 216)	Prior to the date for commencement of construction of Developer Parcel public improvements for the first phase of Parcel A, as set forth in Item 36 below.
36. Commencement of Construction-Developer Parcel Public Improvements for First Phase of Parcel A. The Developer shall commence demolition and construction of the Developer Parcel Public Improvements for the first phase of Parcel A. (Section 307)	Within 30 days after close of escrow for conveyance of Parcel A to the Developer; provided that, if weather does not reasonably permit commencement at this time, then commencement shall occur as soon as weather does reasonably permit.

Action	Date
37. Completion of Construction-Developer Parcel Public Improvements for First Phase of Parcel A. The Developer shall complete demolition and construction of the Developer Parcel Public Improvements for the first phase of Parcel A.	Within 18 months after commencement thereof by the Developer.
38. Completion of Developer Parcel Public Improvements and Private Development for Parcel A. Developer shall complete construction of all Developer Parcel Public Improvements for Parcels A, B and C and all private improvements for Parcel A.	No later than 4 years after City approval of the final subdivision map(s) for the Northern Waterfront Area (see Item 29(b) above).

B/C GROUND LEASE PARCELS

Action	Date
39. Forms of Leases. The parties shall agree on the forms of the Ground Lease for each of the B/C Ground Lease Parcels. (Section 201.4)	Within 90 days after the close of escrow for Parcel A.
40. Completion of Building Pads. The Developer shall complete rough grading and provision of utilities to create building pads for the B/C Ground Lease Parcels.	Within 2 years after substantial completion of construction of realigned Harbor Way pursuant to Item 57.
41. Submission-Unit Plans for B/C Ground Lease Parcels. (a) The Developer shall prepare and submit to the City a Complete Application for a Unit Plan for the first-to-be developed B/C Ground Lease Parcel. (b) The Developer shall prepare and submit to the City a Complete Application for a Unit Plan for each later developed B/C Ground Lease Parcel. (Section 304)	(a) Within 1 year after completion of the Northern Waterfront Public Park and Open Space Improvements pursuant to Item 56. (b) Within a time period to enable conveyance and completion of construction of the applicable B/C Ground Lease Parcel by the deadline set forth in Item 52.
42. Approval-Unit Plans. The City shall conduct all architectural and site planning review and approve or disapprove the Unit Plan, including any necessary survey, for the applicable B/C Ground Lease Parcel, in accordance with the following milestone actions: (a) the Design Review Board shall conduct a Study Session on the Complete Application; (b) the Developer shall submit a Revised Application; (c) the Design Review Board shall conduct an Action Session and make its final recommendation/decision on the Revised Application; and (d) the City Council shall conduct a hearing (on appeal) regarding the Design Review	(a) Within 30 days after City receipt of the Complete Application. (b) Within 30 days after the Design Review Board's Study Session, subject to extension by mutual agreement. (c) Within 30 days after City receipt of the Revised Application. (d) Within 30 days after the Design Review Board's Action Session.

Action	Date
Board's recommendation/ decision and shall approve or disapprove the Revised Application. (Section 304)	
43. Submission-Updated Preliminary Title Report. The City shall submit to the Developer an updated Preliminary Title Report for the applicable B/C Ground Lease Parcel, if necessary. (Section 208)	Within 30 days after approval of the Unit Plan for the applicable B/C Ground Lease Parcel.
44. Approval-Updated Preliminary Title Report. (a) The Developer shall approve or disapprove the updated Preliminary Title Report for the applicable B/C Ground Lease Parcel. (b) If the Developer disapproves, the parties shall seek to prepare an Operating Memorandum to address Unacceptable Title Exceptions. (Section 208)	(a) Within 30 days after submittal by the City. (b) Within the time specified in Section 208.
45. Submission-Evidence of Financing. The Developer shall submit to the City Developer's evidence of financing for lease and development of the applicable B/C Ground Lease Parcel. (Section 217)	Within 30 days after approval of the Unit Plan for the applicable B/C Ground Lease Parcel.
46. Approval – Evidence of Financing. The City shall approve or disapprove the Developer's evidence of financing for lease and development of the applicable B/C Ground Lease Parcel. (Section 217)	Within 30 days after receipt thereof.
47. Lease With City; Deposit of Sub-Lease for B/C Ground Lease Parcels. The City shall deposit the Ground Lease for the applicable B/C Ground Lease Parcel into escrow. (Section 202, 208)	Prior to the close of escrow for the applicable B/C Ground Lease Parcel.
48. Satisfaction of All Conditions Precedent to Conveyance. All conditions precedent to conveyance of the applicable B/C Ground Lease Parcel have either been satisfied or waived. (Sections 205, 206)	Prior to the close of escrow for the applicable B/C Ground Lease Parcel.
49. Close of Escrow. The Ground Lease shall be executed and the sub-ground leasehold interest in the applicable B/C Ground Lease Parcel shall be conveyed to the Developer. (Section 203)	Within 30 days after satisfaction of all conditions precedent to the conveyance for the applicable B/C Ground Lease Parcel.

Action	Date
50. Governmental Permits. The Developer shall obtain any and all required City and other governmental City permits that the Developer is responsible to obtain under this Agreement for the development of the applicable B/C Ground Lease Parcel. (Section 309)	Prior to the date set forth herein for the commencement of construction of the improvements on the applicable B/C Ground Lease Parcel.
51. Commencement of Construction-B/C Ground Lease Parcels. The Developer shall commence demolition and construction of the improvements on the first-to-be developed B/C Ground Lease Parcels. (Section 307)	Within 30 days after close of escrow for conveyance of the first-to-be developed B/C Ground Lease Parcel.
52. Completion of Construction-B/C Ground Lease Parcels. The Developer shall complete construction of the improvements on the B/C Ground Lease Parcels.	For the first-to-be developed B/C Ground Lease Parcel, within 12 months after commencement of construction. For final construction of all improvements on the B/C Ground Lease Parcels, no later than 6 years after the City approval of the final subdivision map(s) for the Northern Waterfront Area (see Item 29(b) above).

NORTHERN WATERFRONT PUBLIC IMPROVEMENTS

Action	Date
53. Public Participation Design Process; Concept Design and Preliminary Budget. The RDA and the City shall (a) commence and (b) complete the public participation design process and shall (c) prepare the Concept Design and Preliminary Budget for the Northern Waterfront Public Parks and Open Space Improvements. (Scope of Development Section II.C.3)	(a) Commenced. (January 2008) (b) Completed. (September 2008) (c) By not later than Developer's submission of the Parcel A Unit Plan application pursuant to Item 23 above.
54. Submission-Detailed Plans and Construction Cost Estimate. The Developer shall submit to the City the Detailed Plans and the Construction Cost Estimate for the Northern Waterfront Public Parks and Open Space Improvements. (Scope of Development Section 11.C.3)	Prior to the second public workshop regarding Parcel A townhouse architectural design called for in Item 22 above.
55. Approval-Detailed Plans or Modified Detail Plans. The City shall approve the Detailed Plans submitted by the Developer or specify the form of Modified Detailed Plans for the Northern Waterfront Public Parks and Open Space Improvements. (Scope of Development Section	Within 3 months after the Developer submits the Detailed Plans and the Construction Cost Estimate for the Northern Waterfront Public Parks and Open Space Improvements.

Action	Date
II.C.3)	
56. Construction of Northern Waterfront Public Park and Open Space Improvements. The Developer shall complete construction of the Northern Waterfront Public Park and Open Space Improvements (subject to subsequent grow-in of landscaping features and improvements). (Scope of Development Section II.C.3)	Prior to issuance of a certificate of occupancy for the 140th residential unit on Parcel A.
57. Construction of Harbor Way. The Developer shall substantially complete the construction of realigned Harbor Way. (Scope of Development Section II.C.1)	Prior to issuance of the first certificate of occupancy for a residential unit within Parcel A.
58. Construction of Wetland Park. The Developer shall complete construction of the Wetland Park (subject to subsequent growing-in of landscaping features and improvements), and cease all staging activities. (Scope of Development Section II.A.3)	At the earlier of either: (a) one full construction season after the Wetland Park area is no longer needed for construction staging as provided in Section II.A.3 of the Scope of Development (Attachment No. 4), or (b) one full construction season after the issuance of the certificate of occupancy for the 140th residential unit on Parcel A.
59. Form of REAs. The parties shall agree upon the forms of the Parcel C2 REA and the Parcel E/F REA. (Scope of Development Section II.C.2 and 5)	Concurrently with approval of the forms of the Ground Leases as provided in Item 39 (i.e., within 90 days after close of escrow for Parcel A).
60. Construction of Parcel C2 and Parcel E/F Parking Lots. The Developer shall complete construction of the reconfigured Parcel C2 and Parcel E/F parking lots. (Scope of Development Sections II.C.2 and 5)	Prior to issuance of a certificate of occupancy for the 140th residential unit on Parcel A.
61. Construction of Mare Island Causeway and Mare Island Way Widening Improvements. The City shall cause Lennar or other entity to complete the Mare Island Causeway and Mare Island Way Widening Improvements. (Scope of Development Section II.D.3)	At the time required for completion pursuant to the Lennar Project Documents.

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Action	Date

D. CENTRAL WATERFRONT

POST OFFICE SITE/RESTAURANT SITE ACQUISITION AND RELOCATION

62. Voluntary Acquisition. The RDA shall seek voluntary acquisition of, and acquire fee title to, the Post Office Site and the Restaurant Site. (Sections 201.6.a and b)	Completed.
63. Resolution of Necessity. If voluntary acquisition is not feasible, the RDA or the City shall schedule and conduct a hearing and consider adoption of a resolution of necessity for condemnation of the Post Office Site and/or the Restaurant Site. (Sections 201.6.a and b)	Not applicable due to completion of voluntary acquisition.
64. Filing of Action and Order For Possession. If a resolution of necessity is approved, the City shall file the condemnation action, including a request for order of immediate possession, for the Post Office Site and/or the Restaurant Site. (Sections 201.6.a and b)	Not applicable due to completion of voluntary acquisition.
65. Order of Possession. The City shall obtain possession of the Post Office Site and/or Restaurant Site under order of possession. (Sections 201.6.a and b)	Not applicable due to completion of voluntary acquisition.
66. Relocation of Restaurant Site Business. The City shall cause relocation of the business from the Restaurant Site, if applicable. (Section 208)	Completed.

PARCEL L

67. Secure Financing for the L3 Public Garage/ Public Paseo.	
For Phase A: The RDA and City shall secure financing for (a) the design and (b) construction of Phase A of the L3 Public Garage and the public paseo improvements on Parcel L5.	(a) Completed. (b) As set forth in Vallejo Station Master Schedule.

Action	Date
For Phase B: The City shall secure financing for (a) the design and (b) construction of Phase B of the L3 Public Garage.	(a) As set forth in Vallejo Station Master Schedule (b) As set forth in Vallejo Station Master Schedule.
68. Design and Construction of L3 Public Garage/Public Paseo.	
For Phase A: The City shall (a) complete design, (b) commence demolition and substantial construction, and (c) complete construction of Phase A of the L3 Public Garage and the public paseo improvements on Parcel L5. (Scope of Development Sections II.A.3 and 5)	(a) As set forth in Vallejo Station Master Schedule. (b) As set forth in Vallejo Station Master Schedule. (c) As set forth in Vallejo Station Master Schedule.
For Phase B: The City shall (a) complete design, (b) commence demolition and substantial construction, and (c) complete construction of Phase B of the L3 Public Garage. (Scope of Development Sections II.A.3)	(a) As set forth in Vallejo Station Master Schedule. (b) As set forth in Vallejo Station Master Schedule. (c) As set forth in Vallejo Station Master Schedule.
69A. Refined Uses for Parcels L1 and L2. The City and the Developer shall determine the most viable uses for Parcels L1 and L2 under revised physical and economic conditions. (Implementation Agreement, Section 6.d)	By March 8, 2012.
69B. Subdivision To Create Parcels L1-L3. The City and the Developer shall cooperate to cause the preparation, approval and recordation of a minor subdivision map to create Parcels L1, L2, and L3 as separate legal parcels, as required for STIP grant funding for the L3 Public Garage.	As set forth in Vallejo Station Master Schedule.
69C. Parcel L4 Operating Memorandum; Creation of Parcels L4 and L5; Approval of Vallejo Station REA. The parties shall negotiate and execute the Parcel L4 Operating Memorandum, establishing procedures for the creation of Parcels L4 and L5 as vertical subdivision parcels above Parcel L3, and approving the Vallejo Station REA for the operation of Parcels L3, L4 and L5. (Scope of Development Section III.A.4)	Prior to execution of the construction contract for Phase B of the L3 Public Garage.

Action	Date
70. Public Workshops Regarding Architecture. The Developer shall sponsor, advertise, notice and conduct at least two public workshops on architectural design. (Scope of Development Section III)	Prior to submission of any Unit Plan application for Parcel L.
71. Hotel Improvements Description and Feasibility Study. The Developer shall submit to the City a description and feasibility study with respect to the Hotel Improvements on Parcel L4, and the study shall be presented to the City Council at a regularly noticed public hearing. (Scope of Development Section III.A.4)	Prior to submission of a Unit Plan application for Parcel L4.
72. Submission-Unit Plan. (a) The Developer shall prepare and submit to the City a Complete Application for a Unit Plan for the first-to-be developed L Developer Parcel. (b) The Developer shall prepare and submit to the City a Complete Application for a Unit Plan for each later developed L Developer Parcel. (Section 304)	(a) By a date to be determined by the parties taking into account applicable market conditions and evolving parking plans for the Central Waterfront, with the goal of making such determination by December 31, 2012. (b) Within a time period to enable conveyance and completion of the applicable L Developer Parcel by the deadline set forth in Item 88.
73. Approval-Unit Plan. The City shall conduct all architectural and site planning review and approve or disapprove the Unit Plan, including any necessary survey for the applicable L Developer Parcel, in accordance with the following milestone actions: (a) the Design Review Board shall conduct a Study Session on the Complete Application; (b) the Developer shall submit a Revised Application; (c) the Design Review Board shall conduct an Action Session and make its final recommendation./decision on the Revised Application; and (d) the City Council shall conduct a hearing (on appeal) regarding the Design Review Board's recommendation/ decision and shall approve or disapprove the Revised Application. (Section 304)	(a) Within 30 days after City receipt of the Complete Application. (b) Within 30 days after the Design Review Board's Study Session, subject to extension by mutual agreement. (c) Within 30 days after City receipt of the Revised Application. (d) Within 30 days after the Design Review Board's Action Session.
74. Submission-Updated Preliminary Title Report. The City shall submit to the Developer an updated Preliminary Title Report for the applicable L Developer Parcel, if necessary. (Section 208)	Within 30 days after approval of the Unit Plan for the applicable L Developer Parcel.

Action	Date
75. Approval-Updated Preliminary Title Report. (a) The Developer shall approve or disapprove the updated Preliminary Title Report for the applicable L Developer Parcel. (b) If the Developer disapproves, the parties shall seek to prepare an Operating Memorandum to address Unacceptable Title Exceptions. (Section 208)	(a) Within 30 days after submittal by the City. (b) Within the time specified in Section 208.
76. Submission-Evidence of Financing. The Developer shall submit to the City Developer's evidence of financing for acquisition and development of the applicable L Developer Parcel. (Section 217)	Within 30 days after approval of the Unit Plan for the applicable L Developer Parcel.
77. Approval-Evidence of Financing. The City shall approve or disapprove the Developer's evidence of financing for acquisition and development of the applicable L Developer Parcel. (Section 217)	Within 30 days after receipt thereof.
78. **[Intentionally Omitted]**	
79. **[Intentionally Omitted]**	
80. Deposit of Grant Deed. The City shall deposit the grant deed for the applicable L Developer Parcel. (Section 202, 208)	Prior to the close of escrow for the applicable L Developer Parcel.
81. Satisfaction of All Conditions Precedent to Conveyance. All conditions precedent to conveyance for the applicable L Developer Parcel have either been satisfied or waived. (Sections 205, 206)	Prior to the close of escrow for the applicable L Developer Parcel.
82. Residential REA/CC&Rs. If Parcel L1 will contain residential uses, the Developer shall prepare, obtain City approval of, and record REA/CC&Rs as applicable for Parcel L1. (Section 704)	Prior to or concurrently with close of escrow for the conveyance of Parcel L1 to the Developer.
83. Vallejo Station REA. The parties shall cause recordation of the Vallejo Station REA against the applicable subparcels within Parcel L. (Scope of Development Section III.A.4)	Concurrently with the close of escrow for conveyance of Parcel L4.

Action	Date
84. Hotel Operating Agreement. The Developer shall enter into the Hotel Operating Agreement with the Hotel Operator. (Section 705)	Prior to the close of escrow for Parcel L4.
85. Close of Escrow. Fee title to the applicable L Developer Parcel shall be conveyed to the Developer. (Section 203)	(a) For the first-to-be developed L Developer Parcel, within 30 days after satisfaction of all conditions precedent to conveyance. (b) For each later developed L Developer Parcel, within 30 days after satisfaction of all conditions precedent to conveyance for the applicable L Developer Parcel.
86. Governmental Permits. The Developer shall obtain any and all required City and other governmental City permits that the Developer is responsible to obtain under this Agreement for the development of the applicable L Developer Parcel. (Section 309)	Prior to the date set forth herein for the commencement of construction on the applicable L Developer Parcel.
87. Commencement of Construction-L Developer Parcels. The Developer shall commence demo-lition and construction on the applicable L Developer Parcel. (Section 307)	Within 30 days after close of escrow for conveyance of the applicable L Developer Parcel to the Developer.
88. Completion of Construction-L Developer Parcels. The Developer shall complete construction of the improvements on the applicable L Developer Parcel.	Within 24 months after commencement thereof, but in any event by the later to occur of: (a) the 10th anniversary of the Action Dismissal Date; or (b) the 8th anniversary of completion of construction of Phase B of the L3 Public Garage.
89. Retail Tenanting Of Arcade Area. The Developer shall use commercially reasonable efforts to lease the Arcade Area in Parcel L4 for Category 1 Uses. (Scope of Development Section III.A.4)	For a period ending no earlier than 12 months from the date of completion of the retail building shell.

PARCEL J

Action	Date
90. A. Parcel J Development Style. The Developer shall notify the City if it desires to pursue a "Texas wrap" style development for Parcel J. (Implementation Agreement, Section 6.a)	Completed.

Action	Date
90B. Central Waterfront PDMP and Scope of Development Amendments. The parties shall prepare and present for consideration of approval amendments to the PDMP and the Scope of Development to reflect current planning for development of Parcels J and L.	By June 30, 2012.
90C. Confer Re: Capital Street Second Segment. The parties shall confer regarding Capital Street Second Segment construction in connection with Parcel J development. (Implementation Agreement, Section 6.e)	Completed.
90D. Design for Capital Street Second Segment. The City shall complete design work for the Capitol Street Second Segment. (Implementation Agreement, Section 6.e)	By April 30, 2012.
90E. Funding for Capital Street Second Segment. The City shall obtain all funding for the Capitol Street Second Segment (Implementation Agreement, Section 6.e)	By December 31, 2012.
91. Public Workshops Regarding Architecture. The Developer shall sponsor, advertise, notice and conduct at least two public workshops on architectural design. (Scope of Development Section III)	Prior to submission of any Unit Plan application for the Parcel J.
92. Study Regarding Removal of Civic Center Drive/Georgia Street Intersection. The Developer and the City shall complete and submit the study of the possibility of removing the intersection of Civic Center Drive and Georgia Street. (Scope of Development Section III.B)	By not later than the date required for the submittal of the Unit Plan for the first-to-be developed J Developer Subparcel pursuant to Item 94A.
93. Parcel J Boundary Parcel. The parties shall cause recordation of all documents necessary to create Parcel J as a legal parcel.	Within 6 months after completion of the study described in Item 92 above.

Action	Date
94A. Submission-Unit Plan and Vesting Tentative Map. (a) The Developer shall prepare and submit to the City a Complete Application for a vesting tentative map for Parcel J and a Unit Plan for the first-to-be developed J Developer Subparcel. (b) The Developer shall prepare and submit to the City a Complete Application for a Unit Plan for the later developed J Developer Subparcel. (Section 304; Implementation Agreement, Section 6.a)	(a) Within 60 days after the last to occur of: (1) the opening to the public of Phase A of the L3 Public Garage; (2) the relocation of all surface public parking from Parcel J to Parcel L or other location; and (3) City procurement and commitment of all funding for the Capital Street Second Segment. (b) Within a time period to enable conveyance and completion of construction of the later developed J Developer Subparcel by the deadline set forth in Item 107.
94. Approval-Unit Plan and Vesting Tentative Map. The City shall conduct all architectural and site planning review and approve or disapprove the Unit Plan and vesting tentative map (if applicable), including any necessary survey, for the applicable J Developer Subparcel, in accordance with the following milestone actions: (a) the Design Review Board shall conduct a Study Session on the Complete Application; (b) the Developer shall submit a Revised Application; (c) the Design Review Board shall conduct an Action Session and make its final recommendation/ decision on the Revised Application; and (d) the City Council shall conduct a hearing (on appeal) regarding the Design Review Board's recommendation/ decision and shall approve or disapprove the Revised Application. (Section 304)	(a) Within 30 days after City receipt of the Complete Application. (b) Within 30 days after the Design Review Board's Study Session, subject to extension by mutual agreement. (c) Within 30 days after City receipt of the Revised Application. (d) Within 30 days after the Design Review Board's Action Session.
95. Submission-Updated Preliminary Title Report. The City shall submit to the Developer an updated Preliminary Title Report for the applicable J Developer Subparcel, if necessary. (Section 208)	Within 30 days after approval of the Unit Plan for the applicable J Developer Subparcel.
96. Approval-Updated Preliminary Title Report. (a) The Developer shall approve or disapprove the updated Preliminary Title Report for the applicable J Developer Subparcel. (b) If the Developer disapproves, the parties shall seek to prepare an Operating Memorandum to address Unacceptable Title Exceptions. (Section 208)	(a) Within 30 days after submittal by the City. (b) Within the time specified in Section 208.

Action	Date
97. Submission-Evidence of Financing. The Developer shall submit to the City Developer's evidence of financing for acquisition and development of the applicable J Developer Subparcel. (Section 217)	Within 30 days after approval of the Unit Plan for the applicable J. Developer Subparcel.
98. Approval-Evidence of Financing. The City shall approve or disapprove the Developer's evidence of financing for acquisition and development of the applicable J Developer Subparcel. (Section 217)	Within 30 days after receipt thereof.
99. Submission and Approval-Subdivision of Parcel J. (a) The Developer shall submit an application for final subdivision and parcel maps for Parcel J. (b) The City shall grant or deny all required approvals for final subdivision and parcel maps for Parcel J.	(a) Within 90 days after approval of the Unit Plan and vesting tentative map in connection with the first-to-be developed J Developer Subparcel. (b) Within 30 days after submittal by the Developer.
100. A. **[Intentionally Omitted]**	
101. Deposit of Grant Deed. The City shall deposit the grant deed for the applicable J Developer Subparcel into escrow. (Sections 202, 208)	Prior to the close of escrow for the applicable J Developer Subparcel.
102. Satisfaction of All Conditions Precedent to Conveyance. All conditions precedent to conveyance for the applicable J Developer Subparcel have either been satisfied or waived. (Sections 205, 206)	Prior to the close of escrow for the applicable J Developer Subparcel.
103. Residential REA/CC&Rs. The Developer shall prepare, obtain City approval of, and record REA/CC&Rs as applicable for each J Developer Subparcel. (Section 704)	Prior to or concurrently with close of escrow for the conveyance of the applicable J Developer Subparcel to the Developer.
104. Close of Escrow. Fee title to the applicable J Developer Subparcel shall be conveyed to the Developer. (Section 203)	Within 30 days after satisfaction of all conditions precedent to conveyance for the applicable J Developer Subparcel.
105. Governmental Permits. The Developer shall obtain any and all required City and other governmental agency permits that the Developer is responsible to obtain under this Agreement for the development of the applicable J Developer Subparcel. (Section 309)	Prior to the date set forth herein for the commencement of construction of the improvements on the applicable J Developer Subparcel.

Action	Date
106. Commencement of Construction – Parcel J. The Developer shall commence demolition and construction of the improvements on Parcel J. (Section 307)	Within 30 days after close of escrow for conveyance of the first-to-be developed J Developer Subparcel.
107. Completion of Construction-Parcel J. The Developer shall complete construction of the improvements on Parcel J.	For construction on the first-to-be developed J Developer Subparcel, within 24 months after commencement thereof. For the final phase of construction on Parcel J, by the later to occur of: (a) the 10th anniversary of the Action Dismissal Date; or (b) the 8th anniversary of completion of construction of the later to be completed of the City Hall Garage Required Elements or Phase B of the L3 Public Garage.

CENTRAL WATERFRONT PUBLIC IMPROVEMENTS

Action	Date
108. Parcel O Bus Transfer Center. The RDA and the City shall (a) issue a request for services for design, and (b) cause completion of the Bus Transfer Center on Parcel O. (Scope of Development Section III.C.1)	(a) Completed. (b) Completed.
109. Other Transit-Related Improvements. The City shall cause completion of the Other Transit-Related Improvements (i.e., regional bus turnouts and Kiss & Ride parking Improvements). (Scope of Development Section III.C.2)	By the time required for completion of Phase A of the L3 Public Garage.
110. Central Waterfront Public Street Improvements. The City shall cause completion of the Central Waterfront Public Street Improvements. (Scope of Development Section III.C.3)	(a) By the time required for completion of Phase A of the L3 Garage, for the Mare Island Way modifications and the reconfiguration of Maine Street. (b) By the time required for, and as part of, completion of construction of the City Hall Garage Required Elements pursuant to Item 112, for the Capitol Street Second Segment.

Action	Date
111. Central Waterfront Public Parks and Open Space Improvements. The City shall cause completion of (a) design of the Central Waterfront Public Parks and Open Space Improvements, (b) construction of the Festival Green parcel improvements, and (c) construction of the balance of Central Waterfront Public Parks and Open Space Improvements. (Scope of Development Section III.C.4)	(a) Within one year after formation of the LLMD that contains, at a minimum, the Waterfront Site. (b) Within 1 year after the time required for completion of Phase B of the L3 Public Garage pursuant to Item 68. (c) Within 2 years after the time required for completion of Phase B of the L3 Public Garage pursuant to Item 68.
112. City Hall Garage Required Elements. The City shall (a) obtain funding for, (b) design, (c) commence substantial construction of, and (d) complete construction of the City Hall Garage Required Elements. (Scope of Development Section III.C.5 and Method of Financing Section III.D)	(a) Concurrently with obtaining funding for Phase B of the L3 Public Garage pursuant to Item 68. (b) Within a time period to enable commencement of construction as set forth in (c) below. (c) Within 60 days after substantial completion of Phase B of the L3 Public Garage. (d) Within 12 months after the required commencement date as set forth in (c) above.
113. Phase II Element of City Hall Garage. The City shall design and construct the Phase II Element of the City Hall Garage. (Scope of Development Section III.C.5 and Method of Financing Section III.D)	Within a time period determined by the City to accommodate parking needs for additional ferry service.

ATTACHMENT NO. 4

SCOPE OF DEVELOPMENT

I. GENERAL

A. Basic Development Standards.

1. General. The Developer and the AgencyRDA agree that the Site shall be developed and improved in accordance with the provisions of this Agreement, the plans, drawings and related documents approved by the AgencyCity pursuant hereto, and the Project Approvals (as defined and described in Section 102.5104.2). The provisions of this Agreement, including the Scope of Development, are intended to be consistent with the Project Approvals. In the event of any express conflict between the provisions of this Agreement, including the Scope of Development, and the Project Approvals, the provisions of the Project Approvals shall control to the extent of such conflict.

The Developer, its supervising architect, engineer and contractor, shall work with AgencyRDA and City staff to coordinate the overall design, architecture and color of the improvements on the Site.

2. Water Conservation Measures. In connection with the initial construction of the Project, water conservation measures shall be incorporated into residential and commercial structures by the City and CDV in accordance with the following:

a. Residential Indoor Water Conservation Measures: All minimum Building Code and Water Division requirements for indoor water conservation in effect at the time of the effective date of the Settlement Agreement shall be exceeded by no less than twenty percent (20%).

b. Commercial Indoor Water Conservation Measures: Any and all indoor fixtures shall at a minimum be installed as motion sensory devices with technology equivalent to or better than those devices available on the commercial market as of the effective date of the Settlement Agreement.

c. Commercial Outdoor Water Conservation Measures: All landscaping initially installed on private development shall use climate sensitive irrigation controls which aim to minimize or eliminate irrigation during cloudy and/or rainy days.

All landscaping initially installed on private development shall be planted in hydrozones. Hydrozones create an irrigation pattern that groups drought tolerant plants on separate irrigation loops from high water users; such as turf.

d. Public Rights-of-Way Water Conservation Measures: All landscaping initially installed by the City in the Project~~’~~'s public-rights-of-way, including thoroughfare medians and public sidewalks, shall maximize the use of drought tolerant and California Native Plants and shall use climate sensitive irrigation controls that aim to minimize or eliminate irrigation during cloudy and/or rainy days. The City shall continue to use good faith, best efforts to implement these same (or improved) water conservation measures in connection with its ongoing and future maintenance of such landscaping.

3. Green Building Design Measures. The Developer will actively pursue the integration of green building materials, green construction methods and green site preparation in all Unit Plan applications, where application of such methods and materials integrate with or seamlessly replace more traditional methods as described in the Waterfront Design Guidelines under Chapter III, Waterfront District Guidelines, Section A, 2.1 "Green Site and Building Design". The Developer will discuss the use of green building design measures and methods pursuant to the Design Guidelines at the community design workshops called for in Sections II.A.1 and III below. The Developer's architect will prepare written materials describing the extent to which a Unit Plan application employs the techniques and methods set forth in the Waterfront Design Guidelines (Chapter III, Section A, 2.1, "Green Site and Building Design"). Where such activities would compromise the feasibility of a Unit Plan application or reduce the marketability of the ultimate land use, the Developer will not be required to accommodate such methods. In this event, the Developer's architect or engineer shall furnish the Coalition with written documentation showing the infeasibility. Since green building design is a voluntary practice and not a requirement of the Vallejo Building or other Codes, the Developer will not be considered in breach of this or any other clause of this Agreement if incorporation of these concepts, techniques, and methods cannot be attained.

B. The Project.

The entire Site is comprised of real property, a portion of which is owned by or to be acquired by the~~ Agency or~~ City and a portion of which is to be conveyed to the Developer, as more particularly described in Sections ~~104~~106 and 201. As part of the planning process and development contemplated by this Agreement, some of the parcels comprising the Site will be created or reconfigured in order to create the specific parcels referenced herein.

It is the intent of the parties that the Site shall be developed as a master planned mixed-use development, including residential, commercial, hotel, conference center, light industrial and retail uses, public and private parking areas, open space and park uses, as more fully defined and described in ~~Recitals H and I, and~~ Section 101 (the ~~“~~"Project~~”~~").

C. Organization of Scope of Development.

Parts II~~, III,~~ and ~~IV~~III of this Scope of Development set forth, by Area (North Waterfront~~,~~ and Central~~ Waterfront, and South~~ Waterfront, respectively), the proposed development of the Project on the Site, including various actions of the ~~parties~~City and Developer to prepare the Site for development, a description of the various private and public parcels, the intended owner of each

parcel, the intended use and development of each parcel, the roles and responsibilities of the ~~parties~~City and Developer in causing design, construction and funding of the intended use and development, and other pertinent information to guide the development by the parties of each parcel and the related public improvements. Part ~~V~~IV addresses alternative construction management methods.

Attachments to this Attachment No. 4 referred to in the text below are set forth at the end of this Attachment No. 4.

II. NORTHERN WATERFRONT

Public and private redevelopment of the Northern Waterfront Area under this Agreement (with particular reference to the shoreline area west of Harbor Way) will be undertaken to reinforce and assure mutually compatible use of the area by users and tenants of the adjacent City Marina, and public and private users of the development parcels under this Agreement.

Section II.A. below sets forth the scope of development for Developer Parcel A and City~~/Agency~~ Parcel D2 (containing the Wetland Park, as further described below) and related off-site pedestrian-oriented improvements, because the design and development of these two parcels and related improvements are integrally related and best described together. Section II.B below sets forth the scope of development for the other Developer Parcels within the Northern Waterfront Area. Section II.C below addresses the scope of development for the public parcels and improvements in the Northern Waterfront Area (other than City~~/Agency~~ Parcel D2). Section II.D below describes responsibilities for certain actions of Area-wide benefit. Section II.E below sets forth the Developer's independent obligation to perform the tasks and responsibilities assigned to the Developer under this Agreement with respect to the Northern Waterfront Area.

A. Developer Parcel A and City~~/Agency~~ Parcel D2 (Wetland Park).

1. Overview of Development.

Parcel A (consisting of subparcels A1 and A2) is an approximately 11.3-acre parcel. Upon satisfaction of all applicable pre-disposition requirements set forth in this Agreement, the ~~Agency~~City shall convey fee title to Parcel A to the Developer for the Purchase Price set forth in Section 201.3.

Parcel D2 is an approximately 4.0-acre parcel bounded by Parcel A to the north and south. Parcel D2 is to be owned by the City and developed by the Developer as provided below. The ~~Agency~~City shall~~ cause the City to~~ enter into a right-of-entry agreement or other similar access agreement with the Developer, in form reasonably acceptable to the City and the Developer, granting the Developer a right-of-entry onto Parcel D2 for construction staging for development of Parcel A and for development of the Wetland Park in the manner set forth below.

The Developer, at its cost (subject to a cost cap on specified related off-site improvements as further provided in Section II.C.3 below) and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for the development of Parcel A, Parcel D2 and the related off-site improvements described below, and shall design and develop Parcel A, Parcel D2 and the related off-site improvements generally as follows and as more fully provided in the Project Approvals:

The residential development on Parcel A (as depicted in Attachment No. 4-1A) shall consist of a townhouse project with no more than 175 dwelling units distributed among two clustered neighborhoods. A 4.0 acre public wetland park (the "Wetland Park") shall be created on Parcel D2, a central location between the two townhouse neighborhoods on Parcel A (referred to as the "Northern Residential Neighborhood" adjacent to the Mare Island Causeway and the existing restaurant known as Zio Fraedo's, and the "Southern Residential Neighborhood" adjacent to Mare Island Way). The dwelling units on Parcel A shall be distributed among multiple buildings, comprised of traditional townhouses with stacked flats to be located at one or both ends of each building. Each building will provide grade level end units. The current site plan configuration for the development of Parcel A provides for a total of 30 buildings consisting of 15 six-plexes, 8 seven-plexes, 4 five-plexes, and 3 three-plexes. The number of buildings and the mix of the types of units (as depicted in Attachment No. 4-1A) may be reasonably modified during the Unit Plan review process.

All streets located within the residential development area of Parcel A (as depicted on Attachment No.4-1A) shall be public streets with a maximum 36 foot curb-to-curb distance and which allow for two-way traffic and parallel parking on each side of the street. The parking ratio for the residential development area of Parcel A shall not exceed 2.5 spaces per unit, and each unit shall be provided with a two car garage (including tandem garage spaces) with the remaining required parking spaces located on the interior public streets of the residential development area and Harbor Way adjacent to the Northern Residential Neighborhood.

To decrease the overall visual impact of the residential development on Parcel A, the taller pitched roof buildings shall be located in the Northern Residential Neighborhood with the lower pitched roof buildings located in the Southern Residential Neighborhood. Heights of the residential buildings shall not exceed 45 feet in the Northern Residential Neighborhood and 38 feet in the Southern Residential Neighborhood. Height measurements shall be calculated in accordance with the Project Approvals, which provide that the building heights in Parcel A shall be measured from the street or alley curb perpendicular to the midpoint of the street or alley to the ridge of the roof structure. Chimneys shall not be subject to this height measurement and shall be allowed to exceed the height limit.

Maximum building finish floor elevations (finish floor is the level of the surface of the concrete garage floor) shall be equal to or lower than the adjacent top of curb elevations along Mare Island Way and Mare Island Causeway. The measuring point will be taken from the street curb perpendicular to the midpoint of the building side that faces the street curb. Generally, building finish floor elevations will decrease away from Mare Island Way and Mare

Island Causeway allowing the storm water runoff from the drainage area to enter the Wetland Park.

Prior to submitting a Unit Plan application for the residential development of Parcel A, and in consultation with the City, the Developer shall sponsor, advertise (in the Vallejo *Times Herald*), and provide appropriate and reasonable public notice of, two (2) public community design workshops regarding the townhouse architectural design. The Coalition (as defined in the History and Background (Attachment No. 9)) shall be provided with mailed notice of these meetings in accordance with the Settlement Agreement. (as defined in the History and Background (Attachment No. 9)).

Parcel A buildings shall have an equivalent level of architectural quality and articulation as that depicted in Attachment No. 4-1B.

The Developer shall provide in the REA/CC&Rs recorded in connection with the residential development of Parcel A (as further described in Section 704), or similar purchaser notification documentation, notification to future residents that public events including, but not limited to, an annual Jazz Festival, may occur on the Promenade Park (as described in Section II.C.3 below) and the Wetland Park.

2. Accessibility and Circulation. The site plan for the residential development area of Parcel A shall include public access through the new residential neighborhoods to the Wetland Park from Mare Island Way and the north end of Harbor Way. The public access points into the residential neighborhood are depicted in Attachment No. 4-1C. The design will invite pedestrians to walk through the new residential neighborhoods to the Wetland Park from the adjacent Mare Island Way and the Mare Island Causeway sidewalks.

A pedestrian pathway will be provided along the southern sidewalk of the Mare Island Causeway in approximately the same location as the existing pathway. The pathway will provide a connection from the Mare Island Causeway, through the residential neighborhood, crossing Harbor Way and marina parking in the proximity of Parcel B1, to the waterfront promenade and will be enhanced with paving and a stop sign or other traffic control mechanism at intersections with vehicle thoroughfares (as depicted in Attachment No. 4-1C).

The existing pedestrian pathway located under the Mare Island Causeway Bridge shall be improved with a new pathway surface, fencing, landscaping, and bollard lights to be operated in coordination with the Mare Island Causeway lights (as depicted in Attachment No. 4-1D) (the "Mare Island Causeway Underpass Pathway Improvements").

A three (3)-hour parking time limit (for daytime hours, seven (7) days a week) shall be included for the on-street parking spaces located along the west side of Harbor Way and any street abutting the Wetland Park.

3. Wetland Park on Parcel D2. The Wetland Park on Parcel D2 shall be centrally located and consist of a minimum of 4.0 contiguous acres, with approximately 1.5 to 1.7

acres comprised of vegetated swales, wetland terraces, and a tidal pond connected to the Mare Island Straight. The 4.0 acre size shall not be reduced to accommodate any non-Park use, including but not limited to the residential development described in Section II.A.1 above, parking, public and private streets, and "paseos" or perimeters of the private development that are not contiguous to the Wetland Park open space. Emergency vehicle-only access will be constructed of grasscrete or similar material and will be located as depicted in Attachment No. 4-1A. Attachment No. 4-1E provides a conceptual plan for the Wetland Park on Parcel D2.

The Wetland Park on Parcel D2 will create a visual amenity with interpretive features, provide for passive recreation, and re-create a naturalistic drainage system. It will connect visually and functionally with the surrounding residences and the Promenade Park. An observation area will contain interpretive features, that will explain the wetland system, cleansing of stormwater, and tidal pond/brackish water ecology. The swale system will be surrounded by a series of meadows, usable for informal or passive recreation, and connected by a network of paths and bridges. The open space, while not formally programmed, will provide a variety of spaces for individuals and groups to relax and enjoy the natural surroundings. The surrounding residences will be connected to the open space by greenways or paseos. Evergreen planting and berms will screen the townhouse neighborhoods.

Planting in the Wetland Park on Parcel D2 will include trees, shrubs and grasses along the swales, informal clusters of canopy trees edging the meadows, evergreen screening, and street trees along Mare Island Way, Harbor Way, and the internal streets of the residential neighborhoods in Parcel A. The swales will range from ten (10) feet to forty (40) feet in width including vegetated buffer areas adjacent to the swales. At its narrowest, between the two townhouse neighborhoods in Parcel A, the Wetland Park will be a minimum of 120 feet wide.

In summary, the key components of the Wetland Park on Parcel D2 will be: (a) a corridor of swales and a tidal pond; (b) open meadows for passive and informal use; (c) interpretive elements; (d) paths, bridges, and seating; (e) screening of surrounding development; (f) an at-grade pedestrian and visual link to the Promenade Park; and (g) tidal function highlighting the connection to the Bay system.

The Wetland Park on Parcel D2 and the Promenade Park on Parcel D2 shall be connected via landscaping and paving features to create a visual corridor from the Mare Island Causeway to the Mare Island Strait. The parking along Harbor Way in the area between these two parks shall be reduced by twelve (12) spaces as depicted in Attachment No. 4-1A.

Upon completion of construction of the Wetland Park on Parcel D2 by the Developer, the Wetland Park shall be dedicated in fee to the City for park purposes and maintained by the City using assessments generated by the LLMD, or other similar funding mechanism, as provided for in this Agreement (with particular reference to the Method of Financing (Attachment No. 6)) and subject to the City's annual budgetary process.

Parcel D2 may be used by the Developer for construction staging during the initial site preparation for the development of Parcel A (estimated to occur over 18 to 24 months)

and during the construction of the Northern and Southern Residential Neighborhoods (each of which is estimated to occur over an additional 12 to 18 months). The Developer shall complete construction of the Wetland Park, and cease all staging activities, within the time set forth in the Schedule of Performance (Attachment No. 3).

The Developer shall provide a guarantee to the City ~~and the Agency~~ for the completion of the Wetland Park on Parcel D2 through a performance bond or other equivalent form of security specified in the Vallejo Municipal Code as may be acceptable to the City and the ~~Agency~~City.

Upon completion of the Wetland Park, the Developer shall provide ~~the Agency and~~ the City with a certified statement, accompanied by reasonable supporting information, setting forth the total out-of-pocket costs paid by the Developer in connection with the design and construction of the Wetland Park (the "Developer's Wetland Park Contribution").

4. Section 404 Permit Work. The ~~Agency has~~RDA obtained the necessary Section 404 Permit from the U.S. Army Corps of Engineers to enable the Developer to conduct necessary grading activities on Parcel A and Parcel D~~2 . The Section 404 Permit is in effect through December 31, 2009.~~2. The parties shall cooperate to obtain any needed time extension for the Section 404 Permit within a time frame to be established in the City/Developer Amendment described in Section 115 of this Fourth Restated Agreement. The Developer shall perform the grading work in compliance with the Section 404 Permit (the "Section 404 Permit Work") within the time set forth in the Schedule of Performance (Attachment No. 3).

5. Developer Parcel Public Improvements. The ~~parties~~City and the Developer anticipate that the development of Parcel A shall be accomplished in sub-phases. Prior to or concurrently with the development of each sub-phase, the Developer shall commence and complete the Developer Parcel Public Improvements (as such term is defined in the Method of Financing (Attachment No. 6) required for such sub-phase of private development on Parcel A. The Developer shall dedicate the improved public streets within Parcel A and, to the extent required under applicable City ordinances and rules, the improvements comprising the Wetland Park on Parcel D2, in accordance with the terms and requirements of the Project Approvals.

B. Other Developer Parcels (B1, B2, and C1).

The following Developer Parcels within the Northern Waterfront Area shall be conveyed by the ~~Agency~~City to the Developer by ground lease in accordance with the terms of this Agreement, and shall be developed by the Developer in accordance with the following general terms and conditions.

1 Developer Parcels B1 and B2.

Parcel B1 is an approximately 1.1-acre building pad parcel, and Parcel B2 is an approximately 0.7-acre building pad parcel. Upon satisfaction of all applicable pre-disposition requirements set forth in this Agreement, the ~~Agency~~City shall enter into a ~~City/Agency Ground~~

~~Lease with the City and an Agency/Developer Sub-~~Ground Lease with the Developer for each of Parcels B1 and B2 in the manner provided in Section 201.4. The ~~parties~~City and Developer acknowledge and agree that the ground lease conveyances for Parcels B1 and B2 may occur at separate times.

The Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for development of Parcels B1 and B2, and shall design and construct a single-story commercial structure for retail and/or restaurant use, together with related private landscaping, on each of Parcels B1 and B2 in accordance with the Project Approvals. The combined square footage of the two commercial structures on Parcels B1 and B2 shall not exceed 12,000 square feet; provided, however, that the combined square footage of the two commercial structures on Parcels B1 and B2 may exceed 12,000 square feet if there is a corresponding reduction in the square footage of the commercial structure on Parcel C1, such that the combined square footage of all the commercial structures on Parcels B1, B2 and C1 does not exceed 22,000 square feet. The use of the commercial structures shall be oriented to water-related and recreational uses, including a possible use of the structure on Parcel B1 for the sale and rental of recreational equipment, and a possible full-service restaurant use for the structure on Parcel B2.

Parcel B1 and the development thereon shall be entitled to parking rights and easements with respect to the parking to be provided on Parcels E and F and related parking areas in accordance with the Parcel E/F REA, as further described in Section II.C.5 below. Parcel B2 and the development thereon shall be entitled to parking rights and easements with respect to the parking to be provided on Parcel C2 in accordance with the Parcel C2 REA, as further described in Section II.C.2 below.

2. Developer Parcel C1.

Parcel C1 is an approximately 0.5-acre building pad parcel. Upon satisfaction of all applicable pre-disposition requirements set forth in this Agreement, the ~~Agency~~City shall enter into a ~~City/Agency Ground Lease with the City and an Agency/Developer Sub-~~Ground Lease with the Developer for Parcel C1 in the manner provided in Section 201.4.

The Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for development of Parcel C1, and shall design and construct a single-story commercial structure for water-oriented commercial use, together with related private landscaping, within Parcel C1 in accordance with the Project Approvals. The square footage of such commercial structure on Parcel C1 shall not exceed 10,000 square feet; provided, however, that the square footage of the commercial structure on Parcel C1 may exceed 10,000 square feet if there is a corresponding reduction in the combined square footage of the commercial structures on Parcels B1 and B2, such that the combined square footage of all the commercial structures on Parcels B1, B2, and C1 does not exceed 22,000 square feet. Permitted uses on Parcel C1 shall include marina-serving retail, sale and rental of recreational equipment, a full-service restaurant, and other water-oriented uses.

Parcel C1 and the development thereon shall be entitled to parking rights and easements with respect to the parking to be provided on Parcel C2 in accordance with the Parcel C2 REA, as further described in Section II.C.2 below.

C. Public Facilities and Improvements

The following City~~/Agency~~ Parcels and associated public improvements shall be developed in accordance with the following general terms and conditions.

1. Harbor Way.

The Harbor Way Parcel is an approximately 2.3-acre parcel to be owned by the City as the right-of-way for the relocated and realigned Harbor Way, a public street. Without cost to the Developer and in a manner consistent with approved vesting tentative map for the Northern Waterfront Area, the ~~Agency shall, or shall cause the~~ City ~~to~~shall:

a. abandon those portions of the current Harbor Way right-of-way that will no longer comprise a portion of the realigned Harbor Way;

b. contribute those portions of any property owned by ~~the Agency or~~ the City that are needed as right-of-way for the realigned Harbor Way and obtain clearance of any encumbrances from such property that may prevent or impair development and use of Harbor Way as contemplated by this Agreement and the Project Approvals; and

c. obtain title to any portions of the right-of-way for the realigned Harbor Way not currently owned by ~~the Agency or~~ the City, clear of any encumbrances that may prevent or impair development and use of Harbor Way as contemplated by this Agreement and the Project Approvals.

The Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3 of the Amended DDA), shall design and construct street and utility improvements to cause the relocation and realignment of the public street and utilities to the area within the right-of-way of the Harbor Way Parcel, together with reconstruction of the intersection of such realigned Harbor Way with Mare Island Way, in accordance with the Project Approvals. The Developer shall bear no costs or expenses with respect to acquisition of the Harbor Way Parcel.

2. Parcel C2.

Parcel C2 is an approximately 1.1-acre parcel to be owned by the City to serve as public parking lot between the commercial pad developments on Parcels B2 and C1. The Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall design and reconstruct a surface parking lot and access driveway within Parcel C2 in accordance with the Project Approvals.

By Operating Memorandum, the ~~Agency~~City and the Developer shall agree upon the form of a reciprocal easement agreement to be executed and recorded against Parcels B2, C1, and C2 at the time of closing of the ground lease conveyance for the first to be conveyed of Parcels B2 or C1 (the "Parcel C2 REA"). Among other commercially reasonable terms, the Parcel C2 REA shall grant parking and access rights and easements over Parcel C2 and the improvement thereon to the tenants, subtenants, employees, occupants, patrons and other users of Parcels B2 and C1 and the improvements thereon, in order to make the private development and use of Parcels B2 and C1 commercially feasible. The Parcel C2 REA shall also grant such parking rights and easements over Parcel C2 and the improvements thereon to the users and tenants of the adjacent City Marina. In preparing the Parcel C2 REA, the ~~parties~~City and the Developer shall reasonably cooperate with the tenants of the adjacent City Marina who will also be benefited by the Parcel C2 REA.

The Parcel C2 REA shall provide for the Developer or the tenants of the improvements on Parcels B2 and C1 to pay to the LLMD (as described and defined in Section I.D of the Method of Financing (Attachment No. 6)) common area maintenance charges to cover a portion of the costs of operation and maintenance of the Parcel C2 parking lot commensurate with the portion of the overall benefit of such parking lot received by Parcel B2 and Parcel C1, respectively, in relation to all users of such parking lot. The City or the LLMD (as described and defined in Section I.D of the Method of Financing (Attachment No. 6)) shall be responsible for the operation and maintenance of the improvements on Parcel C2.

If the ~~parties~~City and the Developer are unable to agree upon the form of the Parcel C2 REA by the time the Developer is otherwise entitled to conveyance of the ~~sub-~~ground leasehold interest for the first to be developed of Parcels B2 or C1, then either ~~party~~the City and the Developer may submit the matter for arbitration in accordance with the provisions of Section 706 to determine the form of the Parcel C2 REA consistent with the terms of this Section II.C.2.

3. Parcel D1.

Parcel D1 is an approximately 4.0-acre parcel to be owned by the City to serve as a public park (sometimes referred to as the "Promenade Park") for the Northern Waterfront Area (and the entire Vallejo community) on the west side of Harbor Way adjacent to the waterfront. Attachment No. 4-1F provides a conceptual plan for the Promenade Park on Parcel D1, which is subject to review and refinement pursuant to the public design process described below.

The Developer, at its cost (subject to the limitation set forth below) and in accordance with the Schedule of Performance (Attachment No. 3), shall construct the Promenade Park on Parcel D1 and related public park and open space improvements in accordance with the Project Approvals, and in accordance with a design for such park and related open spaces to be developed as follows:

a. The~~ Agency and the~~ City shall conduct a public participation process, and from such public participation process shall prepare a conceptual design (the

"Conceptual Design") for public park and open space improvements on Parcel D1 and the public promenade along the waterfront within the Northern Waterfront Area (collectively, the "Northern Waterfront Public Park and Open Space Improvements"). As used herein, the term "Northern Waterfront Public Park and Open Space Improvements" shall consist of: (i) the Promenade Park improvements on Parcel D1; (ii) the Mare Island Causeway Underpass Pathway Improvements, as further described in Section II.A.2 above; (iii) the multipurpose switchback trail ramp providing direct access between the southern sidewalk of Mare Island Causeway and the existing promenade/trail along the water's edge, as further provided in the subsection entitled "Multi-purpose Trail Ramp from Causeway to Promenade Extension" within Section III.D.2.3.4.A of the Waterfront Design Guidelines accompanying the Planned Development Master Plan; and (iv) such other public park and open space improvements and features in the vicinity of the water's edge along the Northern Waterfront Area as may be included in the Conceptual Design. As used herein, the term "Northern Waterfront Public Park and Open Space Improvements" does not include the Wetland Park improvements as further described in Section II.A.3 above. At the time it completes the Conceptual Design, ~~the Agency and~~ the City, in cooperation with the Developer, shall also prepare an estimated budget for performance of the design tasks described in this subsection a. and subsection b. below, and for actual construction of the Northern Waterfront Public Park and Open Space Improvements in accordance with such Conceptual Design (the "Preliminary Budget").

b. Based on the Conceptual Design, the Developer shall prepare, for approval by ~~the Agency and~~ the City, detailed plans and specifications (the "Detailed Plans") and a detailed cost estimate (the "Construction Cost Estimate"), including a reasonable construction contingency, for the construction of the Northern Waterfront Public Park and Open Space Improvements.

c. The ~~Agency and the~~ City shall approve the Detailed Plans if they are materially consistent with the Concept Design and if the construction cost set forth in the Construction Cost Estimate, together with the costs incurred for performance of the tasks described in subsections a. and b. above (collectively, the "Design/Construction Costs"), do not exceed the total amount set forth in the Preliminary Budget. If the Detailed Plans are materially consistent with the Concept Design, but the Design/Construction Costs exceed the total amount set forth in the Preliminary Budget, ~~the Agency and~~ the City, in consultation with the Developer, shall either approve the Detailed Plans notwithstanding such excess cost or specify modifications to the Detailed Plans (the "Modified Detailed Plans") that will enable the Design/Construction Costs to be within the total amount of the Preliminary Budget, or such other total amount as is then acceptable to ~~the Agency and~~ the City, in consultation with the Developer.

If the ~~parties~~City and the Developer are unable to agree upon the form of mutually acceptable Design Plans or Modified Design Plans within the time provided in the Schedule of Performance (Attachment No. 3), then either party may submit the matter for arbitration in accordance with the provisions of Section 706 to determine the form of the Design Plans or Modified Design Plans consistent with the terms of this Section II.C.3.

The Developer shall construct the Northern Waterfront Public Park and Open Space Improvements on Parcel D1 (and other applicable parcels and areas within the Northern Waterfront Area) in accordance with the Design Plans or the Modified Design Plans approved by~~ the Agency and~~ the City, and shall pay, when due, the soft and hard costs of design and construction of the Northern Waterfront Public Park and Open Space Improvements on Parcel D1 (and other applicable parcels and areas within the Northern Waterfront Area), including the design tasks described in subsections a. and b. above; provided, however, that the maximum amount payable by the Developer for the design and construction of the Northern Waterfront Public Park and Open Space Improvements on Parcel D1 and other applicable parcels and areas within the Northern Waterfront Area shall be ONE MILLION SIX HUNDRED TWENTY-NINE THOUSAND ONE HUNDRED FIFTY DOLLARS ($1,629,150). The amount actually expended by the Developer for this purpose, as reviewed and approved by the City, is referred to as the "Developer's Northern Waterfront Public Park and Open Space Contribution." The ~~Agency~~City shall pay, when due, any costs of design and construction of the Northern Waterfront Public Park and Open Space Improvements on Parcel D1 (and other applicable parcels and areas within the Northern Waterfront Area) in excess of the Developer's Northern Waterfront Public Park and Open Space Contribution.

The City or the LLMD (as described and defined in Section I.D of the Method of Financing (Attachment No. 6)) shall be responsible for the ongoing operation and maintenance of the improvements on Parcel D1.

4. Parcel D2.

Parcel D2 is an approximately 4.0-acre parcel to be owned by the City and developed by the Developer to serve as the Wetland Park, as fully set forth in Section II.A.3 above.

The City or the LLMD (as described and defined in Section I.D of the Method of Financing (Attachment No. 6)) shall be responsible for the ongoing operation and maintenance of the improvements on Parcel D2, as further described in Section II.A.3.

5. Parcel E, Parcel F, and Related Parking Areas.

Parcel E is an approximately 0.6-acre parcel and Parcel F (formerly known as "Jazz Festival Green") is an approximately 0.8-acre parcel to be owned by the City to serve as a public parking lot in the vicinity of the commercial pad development on Parcel B1 and the Promenade Park on Parcel D1. The Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for, and shall design and construct or reconstruct, as applicable, a surface parking lot and access driveway within Parcel E and Parcel F in accordance with the Project Approvals.

In order to facilitate the reconfiguration of parking in the Northern Waterfront Area west of Harbor Way generally in the manner shown on Attachment No. 4-1A, the City~~ and the Agency~~ may seek lease amendments (the "Parking-Related Lease Amendments") with Zio Fraedo's, the Sardine Can, and other tenants on the parcels north of Parcel F (the "Related

Parking Areas"). The parties cannot predict whether the Parking-Related Lease Amendments will be obtained. Failure to obtain such Parking-Related Lease Amendments shall not be grounds for reducing the size of the Promenade Park on Parcel D1 or the Wetland Park on Parcel D2. If the Parking-Related Lease Amendments are obtained by the City~~ and the Agency~~, the Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for, and shall resurface and re-stripe the parking lots and any access driveway(s) within the Related Parking Areas in a manner generally consistent with the reconfiguration of parking on such Related Parking Areas shown in Attachment No. 4-1A.

By Operating Memorandum, the ~~Agency~~City and the Developer shall agree upon the form of a reciprocal easement agreement to be executed and recorded against Parcels B1, D1, E, F and the Related Parking Areas (if the Parking-Related Lease Amendments are obtained) at the time of closing of the ground lease conveyance for Parcel B1 (the "Parcel E/F REA"). Among other commercially reasonable terms, the Parcel E/F REA shall grant parking and access rights and easements over Parcels E and F (and the Related Parking Areas if the Parking-Related Lease Amendments are obtained), and the improvements thereon to the tenants, subtenants, employees, occupants, patrons and other users of Parcel B1 and the improvements thereon, in order to make the private development and use of Parcel B1 commercially feasible. The Parcel E/F REA shall also grant such parking rights and easements to the users and tenants of the adjacent City Marina. In preparing the Parcel E/F REA, the ~~parties~~City and the Developer shall reasonably cooperate with the tenants of the adjacent City Marina who will also be benefited by the Parcel E/F REA.

The Parcel E/F REA shall provide for the Developer or the tenants of the improvements on Parcel B1 to pay to the LLMD (as described and defined in Section I.D of the Method of Financing (Attachment No. 6)) common area maintenance charges to cover a portion of the costs of operation and maintenance of the parking lot on Parcels E and F (and the Related Parking Areas if the Parking-Related Lease Amendments are obtained) commensurate with the portion of the overall benefit of such parking lot received by Parcel B1 in relation to all users of such parking lot. The City or the LLMD (as described and defined in Section I.D of the Method of Financing (Attachment No. 6)) shall be responsible for the operation and maintenance of the improvements on Parcels E and F (and the Related Parking Areas if the Parking-Related Lease Amendments are obtained)

If the ~~parties~~City and the Developer are unable to agree upon the form of the Parcel E/F REA by the time the Developer is otherwise entitled to conveyance of the ~~sub-~~ground leasehold interest for Parcels B1, then either ~~party~~the City or the Developer may submit the matter for arbitration in accordance with the provisions of Section 706 to determine the form of the Parcel E/F REA consistent with the terms of this Section II.B.5.

D. Area-Wide Actions.

The following additional terms shall apply to the development of the Northern Waterfront Area pursuant to this Agreement.

1. State Lands Commission Action.

A small portion of Parcel A, in the vicinity of Mare Island Way and Mare Island Causeway, is within the boundary of the current State tidelands public trust administered by the SLC. While the tidelands public trust area within Parcel A encroaches only on land to be devoted to private streets and landscaped open space (and does not affect land intended for residential units), the ~~parties~~City and the Developer desire to free the entirety of Parcel A from such tidelands public trust designation. To that end, the ~~Agency~~City, in cooperation with the Developer and at the Developer's cost, shall perform the following actions, within the time set forth in the Schedule of Performance (Attachment No. 3), to obtain SLC approval of a minor amendment to the existing settlement and exchange agreement with the SLC (the "Parcel A Exchange Agreement Amendment"), whereby in exchange for the release of public trust designation from Parcel A, the City will make available for public trust designation a greater amount of land to the west of Parcel A (including portions of Parcel D1 that are to be developed as the Promenade Park and open space, as described in Section II.C.3 above):

a. Preparation of a proposed Parcel A Exchange Agreement Amendment, and necessary documentation, including an appraisal, legal descriptions of the proposed exchange properties, and other documents, to support City Council and SLC approval;

b. Presentation of the proposed Parcel A Exchange Agreement Amendment and supporting documentation to the City Council for consideration of approval; and

c. If approved by the City Council, presentation of the proposed Parcel A Exchange Agreement Amendment and supporting documentation to the SLC for consideration of approval.

2. Bay Conservation and Development Commission Approvals.

It is anticipated that the private and public development of Northern Waterfront Area within BCDC jurisdiction may require minor administrative amendments to existing BCDC development permits. In accordance with the Schedule of Performance (Attachment No. 3), and at the Developer's cost, the ~~parties~~City and the Developer shall cooperate to apply for and obtain any administrative amendments required from BCDC with respect to the applicable current BCDC development permits for the Northern Waterfront Area.

Without limiting the generality of the foregoing paragraph, the ~~parties~~City and the Developer acknowledge that the ~~parties~~City and the Developer may be required to seek an amendment of BCDC permit no. 1-86, as amended through Amendment No. 11, in order to accommodate a reconfiguration of the parking in the Northern Waterfront Area generally in the manner shown on Attachment No. 4-1A. The ~~parties~~City and the Developer shall work cooperatively and in good faith to urge BCDC to agree to the reduction in parking required by the BCDC permit. The ~~parties~~City and the Developer cannot predict whether any required amendments to BCDC permit no. 1-86 will be obtained. Failure to obtain such amendments shall

not be grounds for reducing the size of the Wetland Park on Parcel D2 or the Promenade Park on Parcel D1.

3. Mare Island Causeway and Mare Island Way Widening Improvements.

The ~~Agency~~City shall ~~cause the City to~~ implement the applicable requirements of the Mare Island Specific Plan (as may be amended), the Development Agreement (as may be amended) between the City and Lennar Mare Island, LLC ("Lennar"), and related environmental mitigation measures (collectively, the "Lennar Project Documents"), in turn to cause Lennar to complete the design and construction of certain improvements related to the widening of Mare Island Causeway and Mare Island Way (the "Widening Improvements") at the time and in the manner set forth in the Lennar Project Documents. The ~~Agency shall or shall cause the~~ City ~~to~~shall assure that the Widening Improvements, and the right-of-way required in connection therewith, shall not encroach across the intended boundary line for Parcel A adjacent to Mare Island Causeway and Mare Island Way as set forth in the boundary line diagram contained in Attachment No. 8 of this Agreement.

4. Parking Lots Landscaping.

The parking lots in the Northern Waterfront Area shall include landscaping as required by the Project Approvals.

E. Independent Obligation.

As more fully set forth in Section 510, the Developer's obligations with respect to purchase of the Developer Parcels and development of private and public improvements in the Northern Waterfront Area shall be separate and independent of the performance by the ~~Agency~~City of any obligations, or the satisfaction of any other conditions to performance, under this Agreement with respect to the conveyance of property and development of improvements within the Central ~~Waterfront Area or the Southern~~ Waterfront Area; and neither a failure by the ~~Agency~~City to perform its obligations, or the failure of any other conditions of performance, with respect to the conveyance of property and development of improvements within the Central ~~Waterfront Area or the Southern~~ Waterfront Area shall relieve the Developer of its obligations with respect to the conveyance of property and development of improvements within the Northern Waterfront Area (upon satisfaction of all other conditions set forth in this Agreement for purchase of the Developer Parcels and development of private and public improvements in the Northern Waterfront Area), or serve as a basis for termination of this Agreement by the Developer with respect to the purchase of the Developer Parcels and development of private and public improvements in the Northern Waterfront Area.

III. CENTRAL WATERFRONT

Public and private redevelopment of the Central Waterfront Area under this Agreement will be undertaken to create Vallejo Station as a vibrant multi-modal transit center, to provide high

intensity residential and commercial uses in the immediate vicinity of Vallejo Station, and to establish a strong, pedestrian-oriented linkage between the Downtown area and the Central Waterfront.

Section III.A below sets forth the scope of development for Parcel L (the core of the Vallejo Station development), while Section III.~~C~~B addresses the scope of development for Parcel J. Section III.C below outlines the scope of development for the public parcels and improvements in the Central Waterfront Area. Following are standards and procedures of general applicability to the design and development of various parcels and improvements in the Central Waterfront Area.

The architecture in the Central Waterfront Area must be sensitive to the pedestrian scale and the nature of the waterfront experience. People arriving on the ferry, walking, or driving in from the surrounding areas should see highly articulated and well-defined architecture spanning the Mare Island Way street frontage from Capitol Street to Maine Street. Georgia Street is the retail commercial spine of the downtown and special care should be taken in defining the architectural treatment of this gateway to give it the emphasis it needs while maintaining an inviting and attractive appeal to the pedestrian.

Articulation and terracing of building massing shall be the primary ways to achieve the necessary architectural variation in massing. Emphasis shall be placed on designing highly articulated (both horizontally and vertically) and well-detailed buildings fronting all streets in the Central Waterfront Area. The primary goal of terracing and articulation is to avoid blank, minimally articulated building walls fronting Mare Island Way, Georgia Street, Santa Clara Street, and Maine Street and to avoid building facades on Mare Island Way that have only one continuous minimum setback without terracing of the building massing. This articulation shall apply to all levels fronting on all streets in the Central Waterfront Area, regardless of building height. The articulation and terracing in the building massing should be large enough to allow the residential or office uses on the upper floors to use this space as an outdoor terrace when appropriate for the associated use, in order to increase activity along these important building facades. Curvilinear buildings are not appropriate in the Central Waterfront Area, although curvilinear design features such as turrets and window details are acceptable. Attachment No. 4-2A depicts examples of developments that reflect this type of articulation and terracing.

Building heights generally shall step down in a westerly direction from Santa Clara Street to Mare Island Way, as depicted on Attachments No. 4-2B, 2C, 2D, and 2F, and as fully described in the Project Approvals (with particular reference to the Planned Development Master Plan and Waterfront Design Guidelines). Specific standards and requirements regarding building height limits (and the measurement of such height limits), as well as building setbacks, shall be those set forth in the Project Approvals (with particular reference to the Planned Development Master Plan and the Waterfront Design Guidelines).

The Unit Plan applications submitted for Parcel J and Parcel L shall each provide that no less than 20 percent of such parcel's surface area shall be public or private open space. Public and private open space shall include sidewalks, public plazas, public and private landscaped areas, private courtyards, pedestrian alleys, or such other equivalent spaces.

Prior to the submittal by the Developer of any Unit Plan application(s) for Parcels J and L, and in consultation with the City, the Developer shall sponsor, advertise (in the Vallejo *Times Herald*), and provide reasonable and appropriate public notice of a minimum of two (2) public community design workshops regarding architecture, including the L3 Public Garage (commonly referred to as the Vallejo Station garage) entrances. The Coalition shall be provided with mailed notice of these meetings in accordance with the Settlement Agreement.

To support long-term ~~Agency~~City financing of the L3 Public Garage (as described in Section III.A.3 below), the Schedule of Performance (Attachment No. 3) requires the Developer to acquire the first-to-be developed L Developer Parcel not later than twelve (12) months after commencement of substantial construction of the L3 Public Garage.

As used below in connection with retail/commercial uses for Parcels J and L, the following terms have the following meanings:

"Category 1 Uses" means those permitted and conditionally permitted uses set forth in the column entitled "Parcel J1 (Frontage on Festival Green) and Parcel L2" in Table 3 of the Planned Development Master Plan (as amended by the Settlement-Related Amendments).

"Category 2 Uses" means those permitted and conditionally permitted uses set forth in the column entitled "Parcels L1 and L4" in Table 3 of the Planned Development Master Plan (as amended by the Settlement-Related Amendments).

A. Parcel L (Vallejo Station)

The L Developer Parcels (Parcels L1, L2, and L4) shall be conveyed by the ~~Agency~~City to the Developer in fee in accordance with the terms of this Agreement, and shall be developed by the Developer in accordance with the following general terms and conditions. In addition, Parcels L3 and L5 shall be owned by the City~~ or the Agency~~ and developed by the ~~Agency~~City in accordance with the following general terms and conditions.

The City ~~and the Agency are studying~~evaluated the feasibility of alternative strategies and opportunities for implementation of the Vallejo Station project on Parcel L, ~~including a phased approach for parking in the Central Waterfront Area and Vallejo Station. The parties~~and determined that a two-phase approach for construction of the L3 Public Garage will be implemented. The City and the Developer shall consider in good faith any proposed change in the scope, timing, phasing and funding of development of Vallejo Station resulting from such ~~study of alternative strategies~~determination, with the objective of achieving the most timely and cost effective development of Vallejo Station that accomplishes as nearly as possible the planning and financial objectives of the parties as reflected in the current scope, timing, phasing and funding of such development. Any mutually acceptable modifications to the scope, timing, phasing and/or funding of the Vallejo Station project on Parcel L shall be set forth in a mutually acceptable Operating Memorandum executed in accordance with Section 709 and, as needed, in a mutually

acceptable amendment to the Planned Development Master Plan (including accompanying Waterfront Design Guidelines).

1. Parcel L1.

Parcel L1 is an approximately 1.9 acre parcel. Upon satisfaction of all applicable pre-disposition requirements set forth in this Agreement, the ~~Agency~~City shall convey fee title to Parcel L1 to the Developer for the Purchase Price set forth in Section 201.6.

The Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for the development of Parcel L1, and shall design and construct a mixed-use residential/commercial structure on Parcel L1 in accordance with the Project Approvals. The Parcel L1 improvements shall consist of up to 140-condominium units as flats, approximately 241 parking spaces in a two-level garage, and up to 14,000 square feet of retail commercial space fronting Mare Island Way at the Maine Street intersection.

Uses on the ground floor of the building on Parcel L1 fronting on Mare Island Way shall be Category 2 Uses.

2. Parcel L2.

Parcel L2 is also an approximately 1.9 acre parcel. Upon satisfaction of all applicable pre-disposition requirements set forth in this Agreement, the ~~Agency~~City shall convey fee title to Parcel L2 to the Developer for the Purchase Price set forth in Section 201.6.

The Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for the development of Parcel L2, and shall design and construct a two and three-story office/commercial structure on Parcel L2 in accordance with the Project Approvals. The Parcel L2 improvements shall consist of up to 63,000 square feet of office/commercial space above one level of subterranean parking containing approximately 215 parking spaces.

Uses on the ground floor of Parcel L2 shall be Category 1 Uses.

At the corner of Mare Island Way and Georgia Street, a set back of the building on Parcel L2 shall be provided to create a public open space area of no less than 1,900 square feet (as depicted in Attachment No. 4- 2E), which may include outdoor seating.

3. Parcel L3.

Parcel L3 is a parcel of space with a footprint of approximately 4.6 acres occupying the lower levels of a vertical subdivision that will also include Parcels L4 and L5 (with a combined footprint of approximately 4.25 acres) at upper levels above the parking garage

structure to be developed on Parcel L3 (the "L3 Public Garage", commonly referred to as the Vallejo Station Garage). Parcel L3 shall be owned and operated by the City~~ or the Agency~~.

The ~~Agency~~City, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for the development of the L3 Public Garage, and shall design and construct the L3 Public Garage within Parcel L3 in accordance with the Project Approvals and designs approved by the City. The L3 Public Garage shall consist of a two-level public parking structure containing approximately 1,190 parking spaces, related off-site public improvements, and support columns, utilities, and a podium deck to support the development of the public paseo and related public improvements atop the garage structure within vertical subdivision Parcel L5 (as further described in Section III.A.5 below).

If agreed by the ~~parties~~City and the Developer pursuant to a Parcel L4 Operating Memorandum (as provided in Section III.A.4 below), or if independently elected by the ~~Agency~~City, the L3 Public Garage shall also contain support columns, utilities, and a podium deck (the "L3 Public Garage Support Facilities For Parcel L4") to support the private development contemplated within vertical subdivision Parcel L4 (as further described in Section III.A.4 below).

The ~~Agency~~City shall pay the costs of design and construction of the L3 Public Garage using Vallejo Station Funds and other ~~Agency~~City MOF Funds (as defined and described in Section I.E.1 of the Method of Financing (Attachment No. 6)), as necessary.

4. Parcel L4.

Parcel L4 is a parcel of space with a footprint of approximately 2.8 acres atop the podium deck of the L3 Public Garage. Parcel L4 will be a part of the vertical subdivision that will also include Parcels L3 and L5.

Within the time set forth in the Schedule of Performance (Attachment No. 3), the ~~parties~~City and the Developer shall seek to negotiate and execute an Operating Memorandum in accordance with Section 709 (the "Parcel L4 Operating Memorandum") containing the following:

a. The precise dimensions of Parcels L3, L4, and L5, based on engineered plans prepared by the ~~Agency~~City for the L3 Public Garage and in sufficient detail to process a subdivision map establishing the vertical subdivision of Parcels L3, L4, and L5;

b. The procedures to be followed and the roles and responsibilities of the ~~parties~~City and the Developer to accomplish the vertical subdivision creating Parcels L3, L4, and L5 in accordance with applicable legal requirements;

c. The form of a Reciprocal Easement and Joint Facilities Operation and Maintenance Agreement (the "Vallejo Station REA") granting to Parcel L4 necessary easement rights with respect to the L3 Public Garage Support Facilities For Parcel L4, and setting forth various joint and several construction, operation, maintenance and use rights and

responsibilities with respect to the complex of interrelated structures to be developed on Parcels L3, L4, and L5; and

d. Such other matters as the ~~parties~~City and the Developer mutually determine will facilitate the timely and cost effective construction, operation, maintenance and use of the complex of interrelated structures to be developed on Parcels L3, L4, and L5.

If, despite good faith efforts, the ~~parties~~City and the Developer are unable to execute a mutually acceptable Parcel L4 Operating Memorandum within the allotted time, then:

e. The ~~Agency~~City may terminate this Agreement with respect to Parcel L4 only and the Developer shall have no further rights to acquire or develop Parcel L4;

f. Following termination of this Agreement with respect to Parcel L4, the ~~Agency~~City, at its discretion, may cause construction of the L3 Public Garage with or without the L3 Public Garage Support Facilities For Parcel L4; and

g. If the ~~Agency~~City does include the L3 Public Garage Support Facilities For Parcel L4, then it will be free to market and convey Parcel L4 at the time, in the manner, at the price, and for such use (consistent with then applicable City land use standards and requirements) as the ~~Agency~~City may determine.

If the ~~parties~~City and the Developer execute a Parcel L4 Operating Memorandum, then, upon satisfaction of all applicable pre-disposition requirements set forth in this Agreement, the ~~Agency~~City shall convey fee title to Parcel L4 to the Developer for the Purchase Price set forth in Section 201.6. In connection with such conveyance, the ~~parties~~City and the Developer shall cause recordation of the Vallejo Station REA in substantially the form provided in the Parcel L4 Operating Memorandum.

Upon acquisition, the Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for the development of Parcel L4, and shall design and construct within Parcel L4 a mixed-use structure atop the L3 Public Garage at the level of Santa Clara Street. The Parcel L4 improvements shall be designed and constructed in accordance with the Project Approvals and any applicable terms of the Parcel L4 Operating Memorandum. The Parcel L4 improvements shall consist of a two and four story building containing the following elements:

(1) up to approximately 6,000 square feet of retail/commercial space on the first level of the building along the frontage of Santa Clara Street;

(2) up to approximately 14,000 square feet of retail/commercial space in an arcade area fronting on Georgia Street (the "Arcade Area");

(3) an additional 200,000 square foot hotel/restaurant/conference center complex above the first level of the building, including a hotel of up to 200 rooms on the second to

fourth levels (the "Hotel Improvements"), and a two-level restaurant and conference center facility of up to 32,000 square feet; and

(4) a private parking garage on the first two levels of the building containing approximately 172 spaces to serve the uses described in items (1) and (2) above.

Prior to the submission of a Unit Plan application for the Hotel Improvements, the Developer shall submit to the City a description of the features of the Hotel Improvements and a market and feasibility study, prepared by an expert consultant, to identify the feasible hotel/conference market for the site and the amenities necessary to attract a high quality hotel operator. The Developer shall provide notice to the Coalition of the process for the selection of the consultant and provide an opportunity for pre-selection comments from the Coalition on the consultant. The consultant selected shall have experience in hotel/conference center marketing and feasibility studies. The study shall be presented to the City Council at a regularly noticed public hearing. A copy of the study shall be provided to the Coalition as specified in the Settlement Agreement.

Upon completion of the Hotel Improvements, the Developer shall have the option to sell or lease Parcel L4 (or a portion thereof) to a hotel operator (the ~~“~~"Hotel Operator~~”~~") and, at the Developer's election, to a separate operator or operators for the restaurant and/or conference center who shall thereafter own and/or operate and maintain the Parcel L4 improvements (or the applicable portion thereof) in accordance with this Agreement and the provision of the Hotel Operating Agreement (and the Restaurant Operating Agreement and/or Conference Center Operating Agreement, as applicable) to be entered into pursuant to Section 705 of this Agreement. The Developer may also Transfer Parcel L4 (or subdivided portions thereof and the improvements thereon) as otherwise permitted in this Agreement for Transfers of the Developer Parcels (including procurement of ~~Agency~~City approval where such approval is required under applicable provisions of this Agreement).

As further described below, uses in the Arcade Area shall be Category 1 Uses or Category 2 Uses. The Developer shall, for a time period ending no earlier than twelve (12) months from the date of completion of the retail building shell, use good faith and commercially reasonable efforts to lease the Arcade Area space to tenants occupying their space for Category 1 Uses ("Category 1 Tenants"). If at the expiration of this twelve (12) month period, the Developer has been unable to fully lease the available Arcade Area space to Category 1 Tenants, the Developer shall be free to pursue tenants and to lease any remaining unleased Arcade Area space to tenants occupying their space for Category 2 Uses.

Uses on the first level of the building on Parcel L4 along the frontage of Santa Clara Street shall be Category 2 Uses.

5. Parcel L5.

Parcel L5 is a parcel of space with a footprint of approximately 1.45 acres atop the podium deck of the L3 Public Garage. Parcel L5 will be a part of the vertical subdivision

that will also include Parcels L3 and L4. Parcel L5 will be owned and operated by the City~~ or the Agency~~.

The ~~Agency~~City, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for the development of Parcel L5, and shall design and construct on Parcel L5 a public paseo connecting the Bus Transfer Station to be developed on Parcel O with the Ferry Facility, together with surface parking spaces and related landscaping and amenities. The Parcel L5 improvements shall be designed and constructed in accordance with the Project Approvals and designs approved by the City. The ~~Agency~~City shall pay the costs of design and construction of the Parcel L5 improvements using Vallejo Station Funds and other ~~Agency~~City MOF Funds (as defined and described in Section I.E.1 of the Method of Financing (Attachment No. 6)), as necessary.

The ~~parties~~City and the Developer acknowledge that, in accordance with the Settlement Agreement, the City~~ and the Agency~~ shall delay installation of the planned northern row of parking along the pedestrian paseo within Parcel L5 until, in the City's determination, the conference center or other uses in "Zone Two" (as such zone is shown in Attachment No. 4-2D) require such additional parking spaces. Notwithstanding such delay, the City~~ or the Agency~~ shall be responsible for the cost of installing such parking spaces, as required above. Notwithstanding the above, in the event a phased approach is adopted for the construction of the L3 Public Garage, the City may reconfigure the parking adjacent to the paseo, maintaining a minimum eighteen foot (18') pedestrian paseo, until the second phase of the L3 Public Garage construction is completed.

B. Parcel J.

The J Developer Subparcels (Parcels J1 and J2) shall be conveyed by the ~~Agency~~City to the Developer in fee in accordance with the terms of this Agreement, and shall be developed by the Developer in accordance with the following general terms and conditions.

Parcels J1 and J2 are parcels of approximately 2.7 acres and 4.1 acres, respectively. Upon satisfaction of all applicable pre-disposition requirements set forth in this Agreement, the ~~Agency~~City shall convey fee title to Parcels J1 and J2 to the Developer (either concurrently or at separate times as determined by the Developer) for the Purchase Price(s) set forth in Section 201.5.

The Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for the development of Parcels J1 and J2 and Civic Center Drive, and shall design and construct Civic Center Drive and a total of up to 286 residential units in two to four level buildings constructed on top of one story podium garage structures, half below and half above grade. The development of Parcel J will occur in two phases on the two J Developer Subparcels. The units will be stacked flat residential condominiums containing one, two, and three-bedrooms. The garage structures will provide off-street secure, resident parking for approximately 516 vehicles, as well as residential unit storage space, a utility room, stairwells, and elevator areas. The development will include extensive at-grade perimeter landscaping and private recreation and landscaping on the podium decks. Consistent with the Project Approvals, the development of Parcel J1 includes

approximately 25,000 square feet of ground floor Category 1 Uses fronting on the Mare Island Way and Festival Green edges of the parcel.

Prior to the Developer's submittal of any Unit Plan application for Parcel J, the Developer and the City shall study the possibility of removing the intersection of Civic Center Drive and Georgia Street. The ~~Agency~~City shall ~~cause the City to~~ obtain an independent opinion from a qualified traffic engineer regarding whether the intersection's level of service (the "LOS") anticipated in the EIR for the Project can be maintained without the extension of Civic Center Drive through Festival Green to Georgia Street. The ~~Agency~~City shall ~~cause the City to~~ provide notice to the Coalition of the process for the selection of the traffic engineer and provide for pre-selection comments from the Coalition on the traffic engineer proposed for selection. The ~~Agency~~City shall ~~cause the City to~~ conduct a pre-study meeting to solicit comments from interested parties, including the Coalition, regarding the scope of the study. The Developer shall fund the cost of this study. In the event it is determined that such LOS cannot be maintained, and Civic Center Drive is to be extended through Festival Green to Georgia Street, the traffic engineering study also shall include an analysis of possible measures (such as removable bollards) to prevent bisecting the public park on the Festival Green Parcel and the adjacent pedestrian area during non-peak traffic times.

The ~~parties~~City and the Developer acknowledge that~~, as of the Action Dismissal Date,~~ Parcel J contains certain veteran's memorial plaques. The Developer shall coordinate with the ~~Agency~~City regarding the relocation of such plaques.

Notwithstanding the Schedule of Performance, the Developer, at the ~~Agency'~~City's discretion, may acquire and develop Parcel J prior to completion of the L3 Public Garage, provided alternative parking for ferry users shall be provided for during construction of the L3 Public Garage.

C. Public Facilities and Improvements

The following City~~/Agency~~ Parcels and associated public improvements shall be developed in accordance with the following general terms and conditions.

1. Parcel O (Bus Transfer Center).

Parcel O is an approximately 0.9-acre parcel. Parcel O will be owned and operated by the City ~~or the Agency~~ as part of Vallejo Station.

The ~~Agency~~City, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for, and shall design and construct, a new Bus Transfer Center on Parcel O in accordance with the Project Approvals and designs approved by the City. The new Bus Transfer Center will include up to 12 bus bays, covered passenger waiting areas, seating, lighting, landscaping, and a 10,000 square foot transit office (including a ticket/pass office, a public information booth, and facilities for bus drivers). The ~~Agency~~City shall fund and perform any required site preparation and site remediation in connection with development of the new Bus Transfer Center. Also in connection with

development of the new Bus Transfer Center, the ~~Agency~~City shall fund and cause reconfiguration of parking on nearby existing City Parking Lots F and G. The ~~Agency~~City shall pay the costs of design, site preparation/remediation, and construction of the new Bus Transfer Center improvements and related reconfigured public parking improvements using Vallejo Station Funds and other ~~Agency~~City MOF Funds (as defined and described in the Section I.E.1 of the Method of Financing (Attachment No. 6)), as necessary.

2. Other Transit-Related Improvements.

The ~~Agency~~City, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for, and shall design and construct, the following additional transit-related public improvements related to the Vallejo Station development (the "Other Transit-Related Improvements"):

a. Improvements to and expansion of the regional bus stops on Mare Island Way adjacent to the Ferry Facility; and

b. Improvement to and expansion of the existing pick-up/drop-off ("Kiss-and-Ride") area in the Kiss and Ride Parcel.

The Other Transit-Related Improvements shall be designed and constructed in accordance with the Project Approvals and designs approved by the City. The ~~Agency~~City shall fund and perform any required site preparation and site remediation in connection with provision of the Other Transit-Related Improvements. The ~~Agency~~City shall pay the costs of design, site preparation/remediation, and construction of the Other Transit Related Improvements using Vallejo Station Funds and other ~~Agency~~City MOF Funds (as defined and described in Section I.E.1 of the Method of Financing (Attachment No. 6)), as necessary.

3. Public Streets.

~~Through the Second Restatement of this Agreement, the parties~~The City and the Developer acknowledge and agree that: (a) Capitol Street between Mare Island Way and Civic Center Drive has been fully improved pursuant to a separate disposition and development agreement (the "Parcel K DDA") between the ~~Agency~~RDA and CPC~~, one of the principals of the Developer~~; and (b) the Developer has completed all of its obligations toward the improvements on the Georgia Street Parcel and the Georgia Street Dedication Parcel in accordance with the intended scope of development for such improvements, and all aspects of the Georgia Street extension improvements have been satisfactorily completed.

Except as otherwise provided below, the ~~Agency~~City, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for the development of, and shall design and construct, the following public street improvements (the "Central Waterfront Public Street Improvements"):

a. Modifications to Mare Island Way to complete the landscaped median and other sidewalk and crosswalk improvements (as part of the Vallejo Station development);

b. Reconfiguration of Maine Street between its intersection with Mare Island Way and Santa Clara Street from four travel lanes to three travel lanes, and extension of the northerly curb line approximately six feet to the south (as part of the Vallejo Station development); and

c. Extension of Capitol Street between Santa Clara Street and its current terminus at Civic Center Drive, including provision of on-street parallel parking (the "Capitol Street Second Segment").

The Central Waterfront Public Street Improvements shall be designed and constructed in accordance with the Project Approvals and designs approved by the City. The ~~Agency~~City shall fund and perform any required site preparation and site remediation in connection with provision of the Central Waterfront Public Street Improvements. The ~~Agency~~City shall pay the costs of design, site preparation/remediation, and construction of the Central Waterfront Public Street Improvements using Vallejo Station Funds and other ~~Agency~~City MOF Funds (as defined and described in Section I.E.1 of the Method of Financing (Attachment No. 6)), as necessary.

Notwithstanding the foregoing, the Developer shall be responsible for the design and construction of the Capitol Street Second Segment in accordance with design plans and specifications to be prepared by the Developer and approved by the City. The construction of the Capitol Street Second Segment shall be subject to all bidding requirements and prevailing wage requirements applicable to such improvements. The ~~Agency and/or the~~ City shall be responsible for all costs directly associated with the design and construction of the Capitol Street Second Segment. The ~~Agency~~City shall use best efforts to obtain and make available all funding to pay for the Capitol Street Second Segment within a timeframe that will enable the Capitol Street Second Segment to be constructed by the date set forth in the Schedule of Performance (Attachment No. 3). Section III.D of the Method of Financing (Attachment No. 6) sets forth a process to be implemented by the ~~parties~~City and the Developer in the event the ~~Agency~~City reasonably determines that it will not have sufficient ~~Agency~~City MOF Funds (as defined and described in Section I.E.1 of the Method of Financing) available within the necessary timeframe to complete construction of the City Hall Garage Required Elements (which include the Capitol Street Second Segment) by the date set forth in the Schedule of Performance. In no event shall the Developer be obligated to commence design and construction of the Capitol Street Second Segment until the ~~Agency~~City reasonably demonstrates the availability of sufficient ~~Agency~~City MOF Funds to pay all costs directly associated with such design and construction.

4. Public Parks and Open Spaces.

The ~~Agency~~City, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for the development

of, and shall design and construct public park and open space improvements and amenities on, the following publicly-owned parcels in the Central Waterfront Area (the "Central Waterfront Public Parks and Open Space Improvements"):

a. The approximately 4.2-acre Existing Service Club Park Parcel;

b. The approximately 0.8-acre Existing Georgia Street Mitigation Parcel;

c. The approximately 1.8-acre Future Expansion Parcel;

d. The approximately 1.4-acre Independence Park Expansion Parcel;

e. The approximately 1.3-acre Existing Independence Park Parcel;

f. The approximately 2.3-acre State Farm Mitigation Independence Park Parcel;

g. The Ferry Facility Parcel;

h. The Kiss and Ride Parcel;

i. The approximately 0.6-acre Unity Plaza Parcel;

j. The approximately 0.9-acre Festival Green Parcel; and

k. The approximately 0.7-acre Capitol Street Open Space Parcel.

The Central Waterfront Public Parks and Open Space Improvements shall be designed and constructed in accordance with the Project Approvals and designs approved by the City. The ~~Agency~~City shall fund and perform any required site preparation and site remediation in connection with provision of the Central Waterfront Public Parks and Open Space Improvements. Also as part of the Central Waterfront Public Parks and Open Space Improvements, the ~~Agency~~City shall acquire the Wharf lease (within the Existing Service Club Park Parcel) and the Dentist Office lease (within the Independence Park Expansion Parcel), and shall design and construct public park and open space improvements on the parcels formerly encumbered by the Wharf lease and Dentist Office lease. The ~~Agency~~City shall pay the costs of design, site preparation/remediation, lease acquisition, and construction of the Central Waterfront Public Parks and Open Space Improvements using Vallejo Station Funds and other ~~Agency~~City MOF Funds (as defined and described in Section I.E.1 of the Method of Financing (Attachment No. 6)), as necessary.

The City or the LLMD (as described and defined in Section I.D of the Method of Financing (Attachment No. 6) shall be responsible for the ongoing operation and maintenance of the Central Waterfront Public Park and Open Space Improvements.

5. City Hall Garage.

In accordance with the Schedule of Performance (Attachment No. 3), the ~~Agency~~City shall obtain all necessary Project Approvals for the development of, and shall design and construct, a public parking structure (the "City Hall Garage") on the City Hall Parking Lot Parcel. The City Hall Garage shall be constructed in two phases as follows:

a. The "Phase I Element" will consist of approximately 400 parking spaces within two parking levels, one level below the grade of Santa Clara Street and one level at the grade of Santa Clara Street. The Phase I Element of the City Hall Garage will replace City Hall parking lost as a result of private development of Parcel J in the manner provided in Section III.B above.

b. The "Phase II Element" will consist of approximately 200 parking spaces within a third level to be constructed approximately 12 feet above the grade of Santa Clara Street. The Phase II Element of the City Hall Garage will serve parking demand for the Bay Link ferry service if and when a fourth ferry is placed in service.

The City Hall Parking Garage shall be designed and constructed in accordance with the Project Approvals and designs approved by the City. The ~~Agency~~City shall perform any required site preparation and site remediation in connection with construction of the City Hall Parking Garage. The ~~Agency~~City shall pay the costs of design, site preparation/ remediation, and construction of the City Hall Garage in the manner set forth in the Section III. of the Method of Financing (Attachment No. 6).

~~IV. SOUTHERN WATERFRONT~~

~~Public and private redevelopment of the Southern Waterfront Area under this Agreement will be undertaken to remediate and redevelop a formerly blighted and obsolete industrial waterfront area for modern reuse, including significant public waterfront access. Redevelopment of the Southern Waterfront Area will also provide a relocation opportunity to move the Post Office facility from Parcel L, thereby freeing the land necessary for the Vallejo Station development in the Central Waterfront Area, as described in Section III above.~~

~~Section IV.A below sets forth the responsibilities and actions of the parties to prepare the Southern Waterfront Area for redevelopment under this Agreement. Section IV.B below outlines the scope of development for the Developer Parcels within the Southern Waterfront Area, while Section IV.C addresses the scope of development for the public parcels and improvements in the Southern Waterfront Area. Section IV.D below sets forth the Developer's independent obligation to perform the tasks and responsibilities assigned to the Developer under this Agreement with respect to the Southern Waterfront Area.~~

A. Preparatory Work

1. Purpose.

This Section IV.A outlines the proposed roles, responsibilities, and actions of the Agency and the Developer to prepare the Southern Waterfront Area to enable the contemplated private and public redevelopment of the Southern Waterfront Area consistent with the terms of this Agreement, including the scope of development set forth in Sections IV.B and IV.C below. As used in this Part IV, the Southern Waterfront Area consists of the parcels and public streets shown in Attachment No. 1C, including Parcel S, Parcel T, the S-Open Space Parcel, the T-Open Space parcel, the Boat Launch Parcel, Marin Street Extension, Solano Avenue Extension, and Kaiser Place.

Preparatory actions to enable development of the Southern Waterfront Area consist generally of the following (collectively, the "Southern Waterfront Preparatory Work"):

a. Remediation of identified currently existing hazardous materials contamination in, on, under or emanating from the Southern Waterfront Area (the "Southern Waterfront Remediation Work," as more fully described below); and

b. Actions to enable development of the Southern Waterfront Area consistent with applicable requirements of the SLC and BCDC (the "Southern Waterfront Regulatory Approvals Work," as more fully described below).

Additional pre-development steps to enable commencement of construction of the U.S. Postal Service Relocation Facility on Parcel T2 are described in Section 201.2, which addresses the relocation of the current U.S. Postal Service facility from its premises in Parcel L, so that development of the Vallejo Station project may commence on Parcel L in a timely manner.

2. Background.

The parties' agreement with respect to the performance and funding of the Southern Waterfront Preparatory Work is based, in part, on the following facts, purposes and intentions:

a. An area consisting of approximately the northern two-thirds of the Southern Waterfront Area (the "Contaminated Area") is characterized by soil gas, soil, and groundwater contamination conditions resulting from former uses of the Contaminated Area involving manufactured gas plant wastes, sand blast wastes, and fuel underground storage tanks. Although these contamination conditions do not pose immediate threat to public health or the environment, they require specified remediation to address regulatory concerns, and to enable private and public redevelopment as envisioned in this Agreement. These contamination conditions have been extensively identified and characterized, and are summarized in the RDEIR (see pages 3.9-10 through 3.9-13).

b. The area within the balance of the Southern Waterfront Area (approximately the southern one-third of the Southern Waterfront Area, or about 14 acres, and including all of Parcel T2) is not considered by the parties to be impacted by contaminants, and, subject to regulatory agency concurrence, can be made immediately available for redevelopment consistent with this Agreement, including construction of the Post Office Relocation Facility (the "Non-Contaminated Area").

c. The Regional Water Quality Control Water Board (the "Water Board") is the lead regulatory agency providing oversight for remediation of the Southern Waterfront Area, and has been actively involved with the City and the Agency for nearly a decade in the characterization of contamination conditions and the development of remediation work plans.

d. The City and the Agency are in advanced stages of settlement discussions with a former owner of the Southern Waterfront Area, the Pacific Gas & Electric Company ("PG&E"), intended to lead to a settlement of claims regarding the contamination conditions within the Southern Waterfront Area that would, among other matters, include settlement payments by PG&E to the City/Agency (the "Southern Waterfront Contamination Settlement Payments"). To further advance such settlement discussions, it is necessary that certain additional testing, remediation work plan scope refinements, and remediation budget estimating work be completed as soon as possible.

e. The City, the Agency and the SLC need to determine and agree upon the extent of public trust lands within the Southern Waterfront Area, and to memorialize such determination and agreement in a settlement and exchange agreement as contemplated by 2003 Senate Bill 296 (the "Southern Waterfront Area Exchange Agreement"), so that Parcels S and T may be developed free of any public trust restrictions.

f. The City and the Agency need to work with BCDC to cause BCDC to process and approve an amendment to the BCDC Bay Plan (a "BCDC Bay Plan Amendment"), and any permit amendments (the "BCDC Permit Amendments") necessary to enable the contemplated private and public development of the shoreline portions of the Southern Waterfront Area.

3. Overview of Roles and Actions.

The Southern Waterfront Preparatory Work shall be performed generally as follows:

a. The Agency, on behalf of itself and the City, shall be contractually responsible for completion of the Southern Waterfront Remediation Work in order to cause remediation of existing contaminants within the Southern Waterfront Area in a manner that is consistent with all regulatory requirements and that will enable the contemplated private and public redevelopment of the Southern Waterfront Area in accordance with this Agreement. The Southern Waterfront Remediation Work includes the following major components:

(1) Regulatory confirmation that the Non-Contaminated Area can be redeveloped without further investigation or remediation, as further described in Section IV.A.4 below;

(2) Completion of all pre-remediation tasks for the Contaminated Area, as further described in Section IV.A.5 below;

(3) Completion of actual physical remediation of the Contaminated Area and procurement of the appropriate closure document from the Water Board, as further described in Section IV.A.6 below (the "Physical Remediation Tasks"); and

(4) Conduct of any post-remediation monitoring required by the Water Board, as further described in Section IV.A.7 below.

To perform the tasks described in paragraphs (1) and (2) above in a timely and cost effective manner (and to assist in overseeing the Physical Remediation Tasks described in paragraph (3) above), the Agency shall engage the services of qualified professionals (collectively, the "Southern Waterfront Remediation Consultants"), including an environmental consultant, an environmental attorney, and a project coordinator/manager (who may be the environmental consultant or attorney serving an additional project coordination/management function). The Agency shall reasonably confer with the Developer regarding the selection and engagement of the Southern Waterfront Remediation Consultants.

b. The Agency shall also be contractually responsible for completion of the Southern Waterfront Regulatory Approvals Work so that Parcels S and T can be developed for private uses in the manner contemplated by this Agreement, as further described in Section IV.A.8 below. To perform these tasks, the Agency shall engage the services of qualified professionals to provide legal, engineering, appraisal, and other technical services (the "Southern Waterfront Regulatory Consultants"). The Agency shall reasonably confer with the Developer regarding the selection and engagement of any Southern Waterfront Regulatory Consultants.

c. The Developer shall cooperate with the Agency in the Agency's performance of the Southern Waterfront Preparatory Work. The Agency shall regularly consult with the Developer regarding the performance of the Southern Waterfront Preparatory Work, and shall consider in good faith the Developer's input regarding all such work.

d. By mutually acceptable Operating Memorandum entered into in accordance with Section 709, the parties may designate the Developer to serve as the Agency's project manager for various components of the Southern Waterfront Preparatory Work, including without limitation, as project manager to oversee performance of the Physical Remediation Tasks described in Section IV.A.6 below; provided, however, that in no event shall the Developer be deemed the "waste generator" in connection with the Southern Waterfront Remediation Work. Among other matters, any such mutually acceptable Operating Memorandum shall set forth the scope and timing of the Developer's project management duties and responsibilities, and the

amount, method and timing of compensation to be paid to the Developer for the designated project management services.

e. The Agency, in cooperation with the Developer, shall use diligent good faith efforts to cause completion of the Southern Waterfront Preparatory Work within the timeframe set forth in the Schedule of Performance (Attachment No. 3). In any event, the Agency must complete the Southern Waterfront Remediation Work and the Southern Waterfront Regulatory Approvals Work prior to and as a condition of the conveyance of various portions of Parcels S and T by the Agency to the Developer.

f. The various actions to complete the Southern Waterfront Preparatory Work shall be funded in the manner described in Section IV.A.9 below.

4. Regulatory Clearance For Non-Contaminated Area.

With the assistance and guidance of the Southern Waterfront Remediation Consultants, and in consultation with the Developer, the Agency shall complete the tasks necessary to obtain regulatory clearance for the Non-Contaminated Area, including the following primary tasks:

a. Preparation of all final testing and documentation to be submitted to the Water Board to confirm that the Non-Contaminated Area can be cleared for development without further investigation or remediation.

b. Procurement of the necessary Water Board clearance of the Non-Contaminated Area for intended redevelopment.

5. Pre-Remediation Actions For Contaminated Area.

With the assistance and guidance of the Southern Waterfront Remediation Consultants, and in consultation with the Developer, the Agency shall complete the tasks necessary to prepare for commencement of the Physical Remediation Tasks for the Contaminated Area, including the following primary pre-remediation tasks:

a. Preparation of tests, work plans, cost estimates, and other documentation necessary to achieve the various pre-remediation tasks for the Contaminated Area set forth below in this Section IV.A.5.

b. Completion of a satisfactory settlement agreement with PG&E, including:

(1) Performance of required additional testing related to possible contamination in a designated near-shore area adjacent to the Southern Waterfront Area to further inform the settlement discussions;

(2) preparation of a refined work scope for remediation of the Contaminated Area to be used to obtain remediation cost estimates necessary to enable the parties to complete the settlement and determine the amount of the Southern Waterfront Contamination Settlement Payments (the "Settlement Budget Work Scope"), and procurement of informal Water Board approval of the Settlement Budget Work Scope for this use;

(3) Procurement at the Agency's cost of one bid, and procurement at PG&E's cost of a second bid, from remediation contractors acceptable to the Agency and PG&E, for performance of the Physical Remediation Tasks, based on the Settlement Budget Work Scope; and

(4) Using the cost information obtained from the above tasks, final negotiation, approval and execution of the settlement agreement with PG&E.

c. Completion of testing necessary to characterize and prepare work plans for remediation of peripheral portions of the Contaminated Area that are outside the scope of the PG&E settlement agreement and the Southern Waterfront Contamination Settlement Payments.

d. Preparation, submittal, and procurement of approval from the Water Board of a remedial action plan, remedial design and implementation plan, risk assessment, health and safety plan, and/or other plans necessary to document the work program to complete remediation of the Contaminated Area (collectively, the "RAP"), including satisfaction of remediation standards for portions of the Southern Waterfront Area to be used for public parks and open space. In connection with the processing of the RAP, the Agency shall procure the written acknowledgement from the Water Board authorized by Health and Safety Code Section 333459.3(b), as the first step in obtaining the Polanco Act Immunity (as defined and described in Section 215.2). If the Developer reasonably determines that implementation of the approved RAP will not enable private and public development at commercially reasonable cost of the portions of the Southern Waterfront Area within the Contaminated Area as contemplated by this Agreement, or that the Polanco Act Immunity will not be available following remediation, then the Developer may terminate this Agreement with respect to the portions of the Southern Waterfront Area within the Contaminated Area (a "Developer Southern Waterfront Termination Event") in accordance with Section 510.

e. Solicitation, selection and engagement of a qualified remediation contractor (the "Southern Waterfront Remediation Contractor") to perform the Physical Remediation Tasks necessary to implement the RAP and obtain the appropriate closure document from the Water Board. Notice to proceed under the Southern Waterfront Remediation Contract may be conditioned on procurement of all necessary funding by the Agency. The Agency shall submit the proposed remediation contract with the Southern Waterfront Remediation Contractor (the "Southern Waterfront Remediation Contract") to the Developer for the Developer's input.

f. Procurement from an acceptable insurance provider of a 10-year pollution limited liability insurance policy for the Contaminated Area (the "Southern Waterfront

Pollution Risk Insurance"), naming the Agency and the Developer as primary insureds and in a form reasonably acceptable to both the Agency and the Developer. Procurement of the Pollution Risk Insurance may be conditioned upon giving of the notice to proceed under the Southern Waterfront Remediation Contract. In addition, the parties may mutually agree to investigate procurement of a commitment for a cost cap insurance policy (with an economically feasible self-insured retention/deductible) in connection with the Southern Waterfront Remediation Contract. Any agreement between the Agency and the Developer with respect to the procurement and payment of the premium for such a cost cap insurance policy may be set forth in a mutually acceptable Operating Memorandum.

g. Based on the foregoing actions, preparation of a remediation cost budget for completing the Physical Remediation Tasks (as further described in Section IV.A.6 below) with respect to the Contaminated Area (the "Physical Remediation Tasks Budget"). The Physical Remediation Tasks Budget shall be memorialized, and may be amended from time to time, through execution of Operating Memoranda in accordance with Section 709. The Physical Remediation Tasks Budget in effect from time to time shall guide the expenditure of funds by the Agency in connection with procurement of the Southern Waterfront Pollution Risk Insurance, performance of the Southern Waterfront Remediation Contract, continuing services of the Southern Waterfront Remediation Consultants, payment of Water Board and other regulatory agency costs, and payment of other costs related to completion of the Physical Remediation Tasks.

6. Remediation of Contaminated Area; Performance of Physical Remediation Tasks.

With the assistance and guidance of the Southern Waterfront Remediation Consultants, and in consultation with the Developer, the Agency shall cause completion of the Physical Remediation Tasks for the Contaminated Area, including the following primary tasks:

a. Supervision and oversight of performance and satisfactory completion by the Southern Waterfront Remediation Contractor of the Southern Waterfront Remediation Contract, including making all payments required pursuant to such contract.

b. Procurement of the necessary closure document from the Water Board indicating that:

(1) The Physical Remediation Tasks have been completed in accordance with the RAP;

(2) No further remediation work for the Contaminated Area is required in connection with the contamination conditions covered by the RAP;

(3) The Contaminated Area may be used and developed in the manner contemplated by this Agreement (subject only to use restrictions and monitoring requirements acceptable to the Agency and the Developer); and

(4) The Polanco Act Immunity is granted, as authorized by Health and Safety Code Section 333459.3(c).

7. Post-Remediation Monitoring.

In procuring the necessary Water Board closure document as described in Section IV.A.6.b above, the Agency shall seek to arrange that any required post-remediation monitoring functions will be conducted on the portions of the Southern Waterfront Area to remain in public ownership and control and not within Parcels S and T. If any post-remediation monitoring is required to occur on Parcels S and/or T, the Agency shall work with the Water Board and the Developer to arrange for such monitoring to occur on portions of Parcels S and/or T that do not impair the intended private development and use of Parcels S and T. The Agency shall be responsible for the timely and satisfactory conduct of any post-remediation monitoring required by the Water Board; provided, however, that if it is necessary for any such monitoring to occur on Parcels S and/or T, the parties shall agree by Operating Memorandum for the Agency to have necessary access rights to come onto Parcels S and/or T, as applicable, to perform such monitoring, or for the Developer or its successors to perform such monitoring on the Agency's behalf and at the Agency's expense.

8. Performance of Regulatory Approvals Work.

With the assistance and guidance of the Southern Waterfront Regulatory Consultants, and in consultation with the Developer, the Agency shall cause procurement of all agreements, approvals and permits or permit amendments from the SLC and BCDC necessary to enable private and public development of the Southern Waterfront Area in the manner contemplated by this Agreement, and to that end shall perform the following primary tasks:

a. Procurement of an executed and fully effective Southern Waterfront Area Exchange Agreement that, among other matters, establishes the legal boundaries of Parcels S and T that will be confirmed by the Southern Waterfront Area Exchange Agreement to be free of the tidelands public trust and the jurisdiction of the SLC, as well as the legal boundaries of the portions of the Southern Waterfront Area that will be subject to the tidelands public trust. Primary subtasks to obtain the Southern Waterfront Area Exchange Agreement, with a target completion date of September 2007, include the following:

(1) Preliminary actions to provide information and analysis from which to negotiate the terms of the proposed Southern Waterfront Area Exchange Agreement, including procurement of an appraisal of the "as is" value of the Southern Waterfront Area (based on appraisal instructions to be reviewed with SLC staff), consideration of remediation cost estimates established through the tasks described in Section IV.A.5 above to assist in determining the post-remediation value of lands within the Southern Waterfront Area proposed to be made part of the public trust, various title analyses pertaining to the extent of potential State interests in the Southern Waterfront Area (including a preliminary "work-up" of potential State claims and an assessment of historical maps, court cases, and legal authority), and a meeting with SLC

representatives to walk the site, and discuss development plans, proposed exchange parcels, and appraisal instructions.

(2) Negotiation of the proposed terms of the Southern Waterfront Area Exchange Agreement with SLC staff and general counsel, and preparation of the legal descriptions and plats of the final negotiated trust configuration (including the legal boundaries of Parcels S and T that will be free of the tidelands public trust); and

(3) Procurement of approval by the City Council and the SLC of the Southern Waterfront Area Exchange Agreement, and execution of the agreement.

b. Procurement of a BCDC Bay Plan Amendment to remove the "Water-Related Industry Priority Use Area" designation from the Southern Waterfront Area, and procurement of any necessary BCDC Permit Amendments to existing BCDC permits to reflect the proposed park and open space improvements to the portions of the Southern Waterfront Area that is within BCDC jurisdiction (together, the "BCDC Southern Waterfront Area Approvals"). Primary subtasks to obtain the BCDC Southern Waterfront Area Approvals, with a target completion date of September 2007, include the following:

(1) Determination of whether the BCDC Bay Plan Amendment should cover land in addition to the Southern Waterfront Area (e.g., the adjacent Kiewit site);

(2) Determination of any additional BCDC information requirements and preparation of the application for the BCDC Bay Plan Amendment;

(3) Procurement of BCDC staff approval of adequacy of the application;

(4) Procurement of City Council authorization to submit the BCDC Bay Plan Amendment application, and submission of the application;

(5) Procurement of BCDC approval of the BCDC Bay Plan Amendment to remove the "Water-Related Industry Priority Use Area" designation from the Southern Waterfront Area.

(6) Determination of any necessary BCDC Permit Amendments based on review of proposed improvements within the portion of the Southern Waterfront Area that is within BCDC jurisdiction;

(7) Preparation and submission of any necessary BCDC Permit Amendments;

(8) Procurement of BCDC approval of any necessary BCDC Permit Amendments.

The parties acknowledge that, as of the Action Dismissal Date, the necessary BCDC Bay Plan Amendment has been obtained.

9. Funding of Southern Waterfront Preparatory Work.

As used below, the term "Southern Waterfront Soft Cost Work" means performance of the Southern Waterfront Preparatory Work described in Section IV.A.4 (Regulatory Clearance for Non-Contaminated Area), Section IV.A.5 (Pre-Remediation Actions For Contaminated Area), and Section IV.A.8 (Regulatory Approvals Work).

a. Overview of Funding. Funding of up to FIVE HUNDRED THOUSAND DOLLARS ($500,000) of the Southern Waterfront Soft Cost Work shall be provided through use of the Additional Deposit to be provided by the Developer pursuant to Section 108.2 of this Agreement. The budget for use of the Additional Deposit to fund specific Southern Waterfront Soft Cost Work shall be set forth in one or more Operating Memoranda to be prepared and executed by the parties in accordance with Section 709. The Operating Memorandum for the initial Two Hundred Thousand Dollar ($200,000) portion of the Additional Deposit shall be prepared and executed within thirty (30) days after the Action Dismissal Date. The Additional Deposit shall be spent solely in accordance with the budget and terms set forth in an executed Operating Memorandum. The balance of the funding for the Southern Waterfront Soft Cost Work shall be provided by the parties in accordance with the terms of the Southern Waterfront Soft Cost Work Operating Memorandum, as further described in subsection b. below. The Physical Remediation Tasks shall be funded in accordance with the terms set forth in subsection c. below.

b. Southern Waterfront Soft Cost Work Operating Memorandum. Within ninety (90) days after the Action Dismissal Date, the parties shall negotiate and execute an Operating Memorandum in accordance with Section 709 (the "Southern Waterfront Soft Cost Work Operating Memorandum") establishing a budget and a mutually acceptable allocation of costs for completion of the Southern Waterfront Soft Cost Work (in excess of the costs to be covered by the Additional Deposit Amount as provided in Section 108.2 of the main text of this Agreement and subsection a. above), based on the following funding principles:

(1) Funds from PG&E and any other Agency MOF Funds (as defined and described in Section I.E.1 of the Method of Financing (Attachment No. 6)) available to pay costs of the Southern Waterfront Soft Cost Work shall be used to the maximum extent they are available and eligible for such use; and

(2) To the extent the Developer agrees to advance funds to pay for Southern Waterfront Soft Cost Work within the scope and amount of the budget set forth in the Southern Waterfront Soft Cost Work Operating Memorandum or any amendment thereto (the "Developer's Additional Soft Cost Advance"), the Developer shall be entitled to a credit against the Purchase Price payable by the Developer for Developer Parcels S and T, with such credit applied to each closing for portions of Developer Parcels S and T in chronological order until the credit is fully used.

By mutually agreed Operating Memoranda entered into from time to time, the parties may modify the Southern Waterfront Soft Cost budget and other terms of the Southern Waterfront Soft Cost Work Operating Memorandum. If the parties enter into a Southern Waterfront Soft Cost Work Operating Memorandum, the Agency shall thereafter pay the costs of the Southern Waterfront Soft Cost Work in accordance with the budget and other terms of the Southern Waterfront Soft Cost Work Operating Memorandum and any executed amendments thereto.

If the parties are unable to agree upon a Southern Waterfront Soft Cost Work Operating Memorandum within the negotiating period set forth above, then either party may submit the matter to arbitration in accordance with the provisions of Section 706 to determine the binding terms by which the Southern Waterfront Soft Cost Work will be funded in accordance with the funding principles set forth above. The determination of the arbitrator regarding the terms for funding the Southern Waterfront Soft Cost Work shall be set forth in an Operating Memorandum that the parties will execute and that will thereafter control the payment of costs for the Southern Waterfront Soft Cost Work.

c. Physical Remediation Tasks. Subject to the further provisions of this subsection, the Agency shall be solely responsible for the ultimate payment of all costs of the Physical Remediation Tasks. To meet this funding obligation, the Agency shall apply the Southern Waterfront Contamination Settlement Payments and other Agency MOF Funds (as defined and described in Section I.E.1 of the Method of Financing (Attachment No. 6)) available for such purpose.

Notwithstanding the funding obligation set forth above in this subsection, if the Agency reasonably determines that, at the time the Agency is otherwise required to commence performance and funding of the Physical Remediation Tasks, it will not yet have available sufficient funds to pay the full costs of the Physical Remediation Tasks as set forth in the Physical Remediation Tasks Budget prepared pursuant to Section IV.A.5.g above, the Agency shall so notify the Developer. The parties shall then negotiate in good faith for a period of sixty (60) days (or longer as they may mutually agree) to seek to agree upon the terms of an Operating Memorandum whereby the Developer would agree to advance a specified portion of the costs of the Physical Remediation Tasks and the Agency would agree to repay the Developer for such advance at a specified time and on specified terms (a "Southern Waterfront Physical Remediation Payments Operating Memorandum").

If the parties execute a Southern Waterfront Physical Remediation Payments Operating Memorandum in accordance with Section 709, then the terms of such Southern Waterfront Physical Remediation Payments Operating Memorandum shall control the parties' obligations with respect to the portion of the costs of the Physical Remediation Tasks to be advanced by the Developer (subject to Agency repayment), and the Agency shall remain responsible for initial payment of all remaining portions of the cost of the Physical Remediation Tasks.

If the parties are unable to agree upon a Southern Waterfront Physical Remediation Payments Operating Memorandum within the negotiating period set forth above, then commencement of the Physical Remediation Tasks shall be postponed until the earliest date upon which the Agency reasonably has available sufficient Southern Waterfront Contamination Settlement Payments and other Agency MOF Funds in accordance with the requirements of the Method of Financing (Attachment No. 6) to pay the costs of the Physical Remediation Tasks.

d. Treatment of Developer Soft Cost Contribution. As used below, the term "Developer Soft Cost Contribution" means the sum of the Additional Deposit made pursuant to Section 108.2 and any interest earned thereon (but only to the extent used by the Agency to pay costs of the Southern Waterfront Soft Cost Work), plus the Developer's Additional Soft Cost Advance, if any, as described in subsection b. above.

In the event of a Developer Southern Waterfront Termination (as described in Section IV.A.5.d above), the Agency shall repay to the Developer the Developer Soft Cost Contribution as follows:

(1) First, by crediting the amount of the Developer Soft Cost Contribution against the Purchase Price(s) payable by the Developer for succeeding Developer Parcels under this Agreement;

(2) Second, if the Developer Soft Cost Contribution is not fully repaid through the method described in subsection a. above, by repaying the Developer with the next available Agency MOF Funds (as defined and described in Section I.E.1 of the Method of Financing (Attachment No. 6)); and

(3) Third, if the Developer Soft Cost Contribution is not fully repaid through the methods described in paragraphs (1) and (2) above, by repaying the Developer from the land sale proceeds received by the Agency from a subsequent sale of any portion of the Southern Waterfront Area to an entity other than the Developer.

B. Developer Parcels

The following Developer Parcels within the Southern Waterfront Area shall be conveyed by the Agency to the Developer in fee in accordance with the terms of this Agreement, and shall be developed by the Developer in accordance with the following general terms and conditions.

1. Parcel S.

Parcel S is an approximately 2.6 acre parcel. Upon satisfaction of all applicable pre-disposition requirements set forth in this Agreement, the Agency shall convey fee title to Parcel S to the Developer for the Purchase Price set forth in Section 201.7.

The Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for the development of Parcel S, and shall design and construct a two-story commercial/office structure containing up to 46,000 square feet on Parcel S in accordance with the Project Approvals. As part of the improvement of Parcel S, the Developer shall reconfigure the existing parking lot to separate the newly reconfigured parking lot on Parcel S from the parking lot to remain on the adjacent Boat Launch Parcel.

Pursuant to a public trust easement or other occupancy arrangement to be agreed upon and set forth in an Operating Memorandum among the parties and the City in accordance with Section 709, easement/occupancy rights over applicable portions of Parcel S shall be granted to the users of the Boat Launch Parcel to provide access to the Boat Launch Parcel (at all times that the Boat Launch Parcel is open to the public) and to provide parking within the Parcel S parking lot (on weekends when the Boat Launch Parcel is open to the public).

2. Parcel T1.

Parcel T1 is an approximately 14.9 acre parcel. Upon satisfaction of all applicable pre-disposition requirements set forth in this Agreement, the Agency shall convey fee title to Parcel T1 to the Developer for the Purchase Price set forth in Section 201.8. At the Developer{'}s election, Parcel T1 may be divided into up to three subparcels (for each of the three separate residential buildings described below) and conveyed separately to the Developer at separate times.

The Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for the development of Parcel T1, and shall design and construct three condominium buildings containing up to a total of 650 units on Parcel T1 in accordance with the Project Approvals. The buildings will contain three and four-story condominium flats over one and two levels of parking (where the garage will be two levels, the lower level will be below grade, and the upper level will be partially below grade).

Promptly following the Action Dismissal Date, the parties shall cooperate in good faith to consider alternative programs for a meaningful affordable housing component related to the development of Parcel T1, providing for up to 9% of the residential units related to the Parcel T1 development being made available at affordable housing cost to moderate income households. Such alternatives may include the strategic use of funds deposited in the Agency's Low and Moderate Income Housing Fund, tax-exempt multifamily residential rental municipal bond proceeds, state and federal low income housing tax credit syndication funds, and funds from other state and federal affordable housing programs. Notwithstanding the foregoing, the affordable housing component shall be designed in a manner that will allow the Developer to achieve a financial return on Developer investment for Parcel T1 equal to what would otherwise be yielded if Parcel T1 were not to include an affordable housing component.

Within six (6) months after the Action Dismissal Date, the parties shall prepare and present to the Agency and the City Council a preliminary analysis of affordable housing alternatives related to the development of Parcel T1. The preliminary analysis shall include consideration of issues related to funding opportunities, site locations, potential joint ventures with non-profit affordable housing developers, and site constraints.

Within six (6) months prior to the submittal of a Unit Plan application for Parcel T1, the parties shall prepare and present a specific program that meets the criteria of this Section IV.B.2 for consideration by the Agency and the City Council. Upon Agency and City Council approval of a mutually acceptable specific program, the parties shall prepare any amendments to this Agreement and the Project Approvals (together with any necessary supporting CEQA documentation) to implement the mutually acceptable affordable housing component related to the development of Parcel T1 (or a mutually acceptable off-Site location).

The City and Agency shall bear the costs of their in-house staff and their legal counsel in connection with the above-described evaluation and design of an affordable housing component related to the development of Parcel T1. The Developer shall bear the costs of its in-house staff and its legal counsel, and shall advance the costs of any mutually agreed affordable housing consultants and other consultants, in connection with the above-described evaluation and design of an affordable housing component related to the development of Parcel T1, and the costs described in this sentence shall constitute General and Administration Costs within the meaning of Section 201.2(a)(26) or Third Party Costs within the meaning of Section 201.2(a)(26), as applicable.

3. Parcel T2.

Parcel T2 is an approximately 5.1-acre parcel. Upon satisfaction of all applicable pre-disposition requirements set forth in this Agreement, the Agency shall convey fee title to Parcel T2 to the Developer for the Purchase Price set forth in Section 201.8.

The Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for the development of Parcel T2, and shall design and construct the Post Office Relocation Facility on Parcel T2 in accordance with the Project Approvals. The Post Office Relocation Facility may contain up to 45,000 square feet of building space and associated parking and loading facilities.

4. Parcel T3.

Parcel T3 is an approximately 3.6-acre parcel. Upon satisfaction of all applicable pre-disposition requirements set forth in this Agreement, the Agency shall convey fee title to Parcel T3 to the Developer for the Purchase Price set forth in Section 201.8.

The Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for the development of Parcel T3, and shall design and construct up to 76,000 square feet of flex office/light industrial

space in one and two-story buildings, together with associated parking and loading facilities, on Parcel T3 in accordance with the Project Approvals.

C. Public Facilities and Improvements

The following City/Agency Parcels and associated public improvements shall be developed in accordance with the following general terms and conditions.

1. Public Streets.

The Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for, and shall design and construct, the following public street improvements (the "Southern Waterfront Public Street Improvements"):

a. Extension of Marin Street within an approximately 2.3-acre right-of-way parcel;

b. Extension of Solano Avenue within an approximately 1.2-acre right-of-way parcel;

c. Construction of Kaiser Place within an approximately 1.1-acre right-of-way parcel; and

d. Improvements to existing Curtola Parkway and Sonoma Boulevard adjacent to Parcels S and T.

2. S-Open Space and T-Open Space Parcels.

The S-Open Space Parcel and the T-Open Space Parcel (together, the "Southern Waterfront Public Open Space Parcels") together comprise an approximately 8.2-acre area to be owned by the City to serve as a public park and open space area for the Southern Waterfront Area. The Developer, at its cost (subject to the limitation set forth below) and in accordance with the Schedule of Performance (Attachment No. 3), shall construct public park and open space improvements on the Southern Waterfront Public Open Space Parcels (the "Southern Waterfront Public Park and Open Space Improvements") in accordance with the Project Approvals, and in accordance with a design for such park and related open spaces to be developed as follows:

a. Within the time set forth in the Schedule of Performance (Attachment No. 3), the Agency and the City shall conduct a public participation process, and from such public participation process shall prepare a conceptual design (the "Conceptual Design") for the Southern Waterfront Public Park and Open Space Improvements. At the time it completes the Conceptual Design, the Agency and the City, in cooperation with the Developer, shall also prepare an estimated budget for performance of the design tasks described in this subsection a. and

subsection b. below, and for actual construction of the Southern Waterfront Public Park and Open Space Improvements in accordance with such Conceptual Design (the "Preliminary Budget").

b. Based on the Conceptual Design, the Developer shall prepare, for approval by the Agency and the City, detailed plans and specifications (the "Detailed Plans") and a detailed cost estimate (the "Construction Cost Estimate"), including a reasonable construction contingency, for the construction of the Southern Waterfront Public Park and Open Space Improvements.

c. The Agency and the City shall approve the Detailed Plans if they are materially consistent with the Concept Design and if the construction cost set forth in the Construction Cost Estimate, together with the costs incurred for performance of the tasks described in subsections a. and b. above (collectively, the "Design/Construction Costs"), do not exceed the total amount set forth in the Preliminary Budget. If the Detailed Plans are materially consistent with the Concept Design, but the Design/Construction Costs exceed the total amount set forth in the Preliminary Budget, the Agency and the City, in consultation with the Developer, shall either approve the Detailed Plans notwithstanding such excess cost, or specify modifications to the Detailed Plans (the "Modified Detailed Plans") that will enable the Design/Construction Costs to be within the total amount of the Preliminary Budget, or such other total amount as is then acceptable to the Agency and the City, in consultation with the Developer.

If the parties are unable to agree upon the form of mutually acceptable Design Plans or Modified Design Plans within the time provided in the Schedule of Performance (Attachment No. 3), then either party may submit the matter for arbitration in accordance with the provisions of Section 706 to determine the form of the Design Plans or Modified Design Plans consistent with the terms of this Section IV.C.2.

The Developer shall construct the Southern Waterfront Public Park and Open Space Improvements on the Southern Waterfront Public Open Space Parcels in accordance with the Design Plans or the Modified Design Plans approved by the Agency and the City, and shall pay, when due, the soft and hard costs of design and construction of the Southern Waterfront Public Park and Open Space Improvements on the Southern Waterfront Public Open Space Parcels, including the design tasks described in subsections a. and b. above; provided, however, that the maximum amount payable by the Developer for the design and construction of the Southern Waterfront Public Park and Open Space Improvements shall equal the Maximum Contribution Amount (as defined and determined below); and provided, further, however, that the Developer{ shall not be obligated to }pay any soft or hard costs of design and construction of the Southern Waterfront Public Park and Open Space Improvements prior to City approval of the first Unit Plan for any portion of Parcel S or Parcel T (other than Parcel T2) (the "First S/T Unit Plan Approval"). If the Agency elects to pay for any of the design tasks described in subsection a. or b. above prior to the First S/T Unit Plan Approval, then the Agency shall submit to the Developer promptly following the First S/T Unit Plan Approval a certified statement from the Executive Director detailing the amount of funds paid by the Agency for such purpose, and the Developer shall pay the amount so certified by the Executive Director within thirty (30) days of receipt of such certified statement.

As used above, the "Maximum Contribution Amount" means the amount that is the product of THREE MILLION FIVE HUNDRED SEVENTY-ONE THOUSAND NINE HUNDRED TWENTY DOLLARS ($3,571,920) (reflecting the current dollar value of the Developer's maximum contribution toward soft and hard costs of design and construction of the Southern Waterfront Public Park and Open Space Improvements) multiplied by the Inflation Adjustment Factor (reflecting an adjustment to account for inflation to the time of commencement of Developer expenditures for the Southern Waterfront Public Park and Open Space Improvements). The "Inflation Adjustment Factor" means a ratio, the numerator of which is the CPI Index amount as of the date of the First S/T Unit Plan Approval, and the denominator of which is the CPI Index amount as of the Action Dismissal Date. "CPI" has the meaning given in Section 201.4.b.(7).

The amount actually expended by the Developer for the soft and hard costs of design and construction of the Southern Waterfront Public Park and Open Space Improvements, as reviewed and approved by the City, is referred to as the "Developer's Southern Waterfront Public Park and Open Space Contribution." The Agency shall pay, when due, any costs of design and construction of the Southern Waterfront Public Park and Open Space Improvements in excess of the Developer's Southern Waterfront Public Park and Open Space Contribution.

The City or the LLMD (as described and defined in Section I.D of the Method of Financing (Attachment No. 6)) shall be responsible for the ongoing operation and maintenance of the Southern Waterfront Public Park and Open Space Improvements on the Southern Waterfront Public Open Space Parcels.

3. Boat Launch Parcel.

The Boat Launch Parcel is an approximately 2.5 acre parcel to be owned and operated by the City as a continuing public boat launch facility. The Agency, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for, and shall design and construct, the following public improvements on the Boat Launch Parcel (the "Boat Launch Improvements"):

a. Improvements required following hazardous materials remediation of the Boat Launch Parcel necessary to return the public boat launch facilities on the parcel to functional conditions;

b. Reconfiguration of the parking lot and access ways; and

c. Construction of an approximately 3,500 square foot building, including public restrooms, a bait shop, and maritime supporting facilities.

The Boat Launch Improvements shall be designed and constructed in accordance with the Project Approvals and designs approved by the City. The Agency shall fund and perform any required site preparation in connection with provision of the Boat Launch

Improvements. The Agency shall pay the costs of design, site preparation, and construction of the Boat Launch Improvements using Agency MOF Funds (as defined and described in Section I.E.1 of the Method of Financing (Attachment No. 6)).

The parties shall cooperate with each other and with the California Department of Boating and Waterways to consider relocation of the Boat Launch and Boat Launch Improvements to the southern portion of the T-Open Space Parcel. The terms for any such mutually agreed relocation shall be set forth in an Operating Memorandum prepared and executed in accordance with Section 709.

D. Independent Obligation

As more fully set forth in Section 510, the Developer's obligations with respect to purchase of the Developer Parcels and development of private and public improvements in the Southern Waterfront Area shall be separate and independent of the performance by the Agency of any obligations, or the satisfaction of any other conditions to performance, under this Agreement with respect to the conveyance of property and development of improvements within the Central Waterfront Area or the Northern Waterfront Area; and neither a failure by the Agency to perform its obligations, or the failure of any other conditions of performance, with respect to the conveyance of property and development of improvements within the Central Waterfront Area or the Northern Waterfront Area shall relieve the Developer of its obligations with respect to the conveyance of property and development of improvements within the Southern Waterfront Area (upon satisfaction of all other conditions set forth in this Agreement for purchase of the Developer Parcels and development of private and public improvements in the Southern Waterfront Area), or serve as a basis for termination of this Agreement by the Developer with respect to the purchase of the Developer Parcels and development of private and public improvements in the Southern Waterfront Area.

V
IV. CONSTRUCTION MANAGEMENT

The AgencyCity agrees that, upon a request by the Developer, the AgencyCity will consider, on a case by case basis, approving Developer to act as construction manager for other portions of the public improvements elements of the Project; provided any such further authorizations shall be conditioned upon the AgencyCity determining, in its reasonable judgment, that such authorization would be mutually beneficial to both parties, and the Agency'City's ability to make all appropriate findings with respect to such public improvements. To the extent the Developer acts as construction manager for any public improvements elements, such management activities shall be undertaken pursuant to an Operating Memorandum in accordance with Section 709 to be entered into between the AgencyCity and Developer, in form and content satisfactory to the AgencyCity, which shall provide for, among other things, that all work undertaken with respect to the public improvements shall be subject to a competitive bidding process approved by the AgencyCity and shall comply with all applicable state labor provisions, and for monitoring of the work in progress and the costs of such work.

List of Attachments To Attachment No. 4

1A: Mariner's Cove Preliminary Site Plan

1B: Mariner's Cove Prototypical Architectural Level of Detail and Articulation

1C: Mariner's Cove Open Space Access Points

1D: Mariner's Cove Promenade Improvements Under Mare Island Causeway Bridge

1E: Mariner's Cove Conceptual Wetland Park Plan

1F: Mariner's Cove Conceptual Promenade Park Plan

2A: Central Waterfront Prototypical Architectural Level of Detail and Articulation

2B: Parcel L-Vallejo Station, Height Zone Diagram, Mare Island Way and Maine Street View

2C: Parcel L-Vallejo Station, Height Zone Diagram, Santa Clara and Georgia Street View

2D: Parcel L-Vallejo Station, Height Zone Diagram, Plan View

2E: Corner Plaza Diagram, Mare Island Way and Georgia Street

2F Prototypical Top Plate Location

ATTACHMENT NO. 5

FORM OF GRANT DEED

Recording Requested by:
~~Redevelopment Agency of the~~ City of Vallejo

After Recordation, Mail to:

____
____
____

GRANT DEED

For valuable consideration, the receipt of which is hereby acknowledged,

~~THE REDEVELOPMENT AGENCY OF~~ THE CITY OF VALLEJO, a ~~public body, corporate and politic,~~municipal corporation of the State of California (herein called "Grantor"), acting to carry out the Redevelopment Plan for the Waterfront Redevelopment Project and the Redevelopment Plan for the Marina Vista Redevelopment Project (collectively, the ~~“~~"Redevelopment Plans~~”), under the Community Redevelopment Law of the State of California~~"), hereby grants to CALLAHAN~~/DESILVA VALLEJO, LLC~~ PROPERTY COMPANY, INC., a California ~~limited liability company~~corporation (herein called "Grantee"), the real property (the "Developer Parcel") legally described in the document attached hereto, labeled Exhibit A, and incorporated herein by this reference.

1. The Developer Parcel is conveyed subject to the Redevelopment Plans and pursuant to a Fourth Amended and Restated Disposition and Development Agreement (the "DDA") ~~initially executed as of October 17, 2000, as amended and restated as of October 1, 2002, as further amended as of October 7, 2003, and August 24, 2004, as amended and restated for a second time as of October 27, 2005, and as amended and restated for a third time as of February 27, 2007,~~executed as of December __, 2013, by and between the Grantor and the Grantee. Capitalized terms used but not defined in this Grant Deed shall have the meanings given in the DDA. The Developer Parcel is also conveyed subject to REA/CC&R~~’~~'s and other easements of record. ***[Note: The preceding sentence to appear only in grant deeds for Developer Parcels containing residential uses per Section 704 of the DDA.]***

2. The Grantee hereby covenants and agrees, for itself and its successors and assigns, that during construction and thereafter, the Grantee shall not use the Developer Parcel for other than the uses specified in the Redevelopment Plans.

3. Prior to the issuance of a Partial Certificate of Completion for the Developer Parcel by the Grantor as provided in the DDA, the Grantee shall not, except as permitted by the DDA, sell, transfer, convey, assign or lease the whole or any part of the Developer Parcel without the prior written approval of the Grantor. This prohibition shall not apply subsequent to the issuance of the Partial Certificate of Completion with respect to the improvements upon the Developer Parcel. This prohibition shall not be deemed to prevent the granting of easements or permits to facilitate the development of the Developer Parcel or to prohibit or restrict the leasing or preleasing of any part or parts of a building or structure for occupancy when said improvements are completed.

4. Prior to the issuance of a Partial Certificate of Completion for the Developer Parcel, the Grantor shall have the additional right, at its option, to repurchase, reenter and take possession of the Developer Parcel hereby conveyed, or such portion thereof, with all improvements thereon, subject to and in accordance with the provisions of Section 513 of the DDA.

5. Prior to the issuance of a Partial Certificate of Completion for the Developer Parcel, the Grantor shall have the right, at its option, to reenter and take possession of the Site hereby conveyed, or such portion thereof, with all improvements thereon, and revest in the Grantor the estate conveyed to the Grantee, subject to and in accordance with the provisions of Section 514 of the DDA.

6. The Grantee covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, physical handicap, sexual orientation, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Developer Parcel, nor shall the Grantee itself or any person claiming under or through it 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, subtenants, sublessees or vendees in the Developer Parcel.

All deeds, leases or contracts made relative to the Developer Parcel, the improvements thereon or any part thereof, shall contain or be subject to substantially the following nondiscrimination clauses:

a. In Deeds:

~~a. In deeds: "The grantee~~"(1) Grantee herein covenants by and for ~~himself or herself, his or her heirs, executors, administrators,~~itself, its successors 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 ~~race, color, creed, religion, sex, marital status, physical handicap, sexual orientation, national origin or ancestry~~any basis listed in subdivision (a) and (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 ~~land~~property herein conveyed, nor shall the grantee ~~himself or herself,~~ or any person claiming under or through ~~him or her~~the grantee, 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, subtenants, sublessees or vendees in the landproperty herein conveyed. The foregoing covenantscovenant shall run with the land."

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (a) 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 paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

b. In leases: "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:In Leases:

"That(1) Lessee In leases: "The lessee[herein covenants by and for]itself, its successors[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 race, color, creed, religion, sex, marital status, physical handicap, sexual orientation, national origin or ancestryany basis listed in subdivision (a) and (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 landpremises herein leased, nor shall the lessee himself or herself, or any person claiming under or through him or herthe lessee, 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 landpremises herein leased.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (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 paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

c. In Contracts:

c. In contracts: "(1) There shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, physical handicap, sexual orientation, national origin or ancestryany basis listed in subdivision (a) and (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 ~~land,~~property nor shall the transferee ~~himself or herself,~~ or any person claiming under or through ~~him or her,~~the transferee 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, sublessees or vendees ~~in~~of the land.~~"~~

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (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 paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

7. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Grant Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust or other financing or security instrument permitted by the DDA; provided, however, that any successor of Grantee to the Developer Parcel shall be bound by such remaining covenants, conditions, restrictions, limitations and provisions, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

8. Except as otherwise provided, the covenants contained in paragraph 2 of this Grant Deed shall remain in effect until the deadline for effectiveness of the Redevelopment Plans; the covenants against discrimination contained in paragraph 6 of this Grant Deed shall remain in perpetuity; and the covenants contained in paragraphs 3, 4 and 5 shall remain in effect until issuance of a Partial Certificate of Completion for the Developer Parcel pursuant to Section 323 of the DDA.

9. The covenants contained in paragraphs 2, 3, 4, 5, and 6 of this Grant Deed shall be binding for the benefit of the Grantor, its successors and assigns, the City of Vallejo and any successor in interest to the Developer Parcel or any part thereof, and such covenants shall run in favor of the Grantor and such aforementioned parties for the entire period during which such covenants shall be in force and effect, without regard to whether the Grantor is or remains an owner of any land or interest therein to which such covenants relate. The Grantor and such aforementioned parties, in the event of any breach of any such covenants, shall have the right to exercise all of the rights and remedies, and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of such breach. The covenants contained in this Grant Deed shall be for the benefit of and shall be enforceable only by the Grantor, its successors and such aforementioned parties.

10. In the event of any express conflict between this Grant Deed or the DDA, the provisions of the DDA shall control.

11. Any amendments to the Redevelopment Plans which change the uses or development permitted on the Site or change the restrictions or controls that apply to the Site or

otherwise affect the Site shall require the written consent of the Grantee. Amendments to the Redevelopment Plans applying to other property in the Project Area shall not require the consent of the Grantee.

IN WITNESS WHEREOF, the Grantor and Grantee have caused this instrument to be executed on their behalf by their respective officers thereunto duly authorized, this ___ day of ________________________, 20__.

~~**GRANTOR:**~~

~~REDEVELOPMENT AGENCY OF THE CITY OF VALLEJO, "GRANTOR"~~

~~By: ________________________________~~
~~Chairman~~

~~By: ________________________________~~
~~Secretary~~

~~APPROVED:~~

~~By: ________________________________~~
~~Counsel for Grantor~~

~~The provisions of this Grant Deed are hereby approved and accepted.~~

DEVELOPER:

CALLAHAN ~~DESILVA VALLEJO, LLC,~~PROPERTY COMPANY, INC.,
~~a California limited liability company~~

~~By: The DeSilva Group, Inc.,~~
a California corporation~~, Member~~

~~By: ________________________________~~
~~Ernest D. Lampkin~~
~~Vice President~~

~~By: Joseph W. Callahan, Jr.,~~
~~an individual, Member~~

By: ______________________________

By: ____

Joseph W. Callahan, Jr., President

CITY:

THE CITY OF VALLEJO, a public body, corporate and politic

By: __________________________________

Daniel E. Keen, City Manager

APPROVED AS TO FORM:

____

Claudia Quintana, City Attorney

ATTEST:

____

Dawn G. Abrahamson, City Clerk

Attachment 5

EXHIBIT A

LEGAL DESCRIPTION OF THE DEVELOPER PARCEL

[TO BE INSERTED]

ACKNOWLEDGMENTS

ATTACHMENT NO. 6

METHOD OF FINANCING

I. GENERAL

A. Overview.

The implementation of this Agreement and the Project Approvals will require significant private and public investment. This ~~“~~"Method of Financing~~”~~", in conjunction with other provisions of this Agreement, sets forth generally the ~~Agency~~City and Developer financing obligations for acquisition and development of the Site, including the Developer Parcels and the City~~/Agency~~ Parcels. The specific level of investment by the Developer and the ~~Agency~~City will be a function of a variety of factors including, but not limited to, market conditions, ~~tax increment generated by the Project,~~ ability to obtain grant funds, and commitment by the City~~ of Vallejo~~ to finance capital projects. The ~~parties~~City and the Developer also acknowledge and agree that future Project Approvals will likely result in a refinement and greater specification of the types of improvements that will be required as part of the Project and therefore will modify this Method of Financing. Therefore, until such time as this Fourth Restated Agreement is amended pursuant to Section 115, the obligations of the City and Developer to fund any specific improvements specified herein are suspended. When and as deemed appropriate by the parties, modifications of this Method of Financing will be reflected in an Operating Memorandum, in accordance with the provisions of Section 709 hereof.

The balance of this Part I addresses general issues affecting the overall financing of development of the Project. Parts II~~, III,~~ and ~~IV~~III address the specific financing responsibilities of the Developer and the ~~Agency~~City for the Northern Waterfront Area~~,~~ and the Central~~ Waterfront Area, and the Southern~~ Waterfront Area, respectively.

B. Initial Acquisition

~~The Agency~~Subject to available funding and the City’s discretion to allocate such funding in its budget, the City shall be responsible for financing the initial acquisition of the Site, to the extent not already owned by the ~~Agency~~City.

C. Public Financing Districts

Subject to applicable legal requirements, upon the request of the Developer, the ~~Agency shall consider and shall cause the~~ City ~~to~~shall consider, in good faith, the formation of one or more assessment districts, community facilities districts, or other similar public financing districts (collectively, ~~“~~"Public Financing Districts~~”~~") for the purpose of issuing bonded indebtedness or otherwise obtain assessments or special taxes to pay the costs of design and development of on-site public improvements (such as streets and infrastructure within a subdivided Developer Parcel to be constructed by the Developer and dedicated to the City or other public entity) and off-site public improvements normally required by the City to be provided by

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the property owner in connection with private development (collectively, the ~~“~~"Developer Parcel Public Improvements~~”~~"), to the maximum extent permitted by law. Such good faith consideration shall include scheduling and conduct of all hearings, elections and other proceedings necessary for the formation of such requested Public Financing District(s) and the issuance of bonded indebtedness or other indebtedness of any such formed Public Financing District(s). The costs of formation and issuance of indebtedness of such Public Financing District(s) shall be borne by the Developer (or financed through such indebtedness), and the obligations of such Public Financing District(s) shall be payable solely from assessments or special taxes imposed upon one or more of the Developer Parcels following conveyance to the Developer, and not from any funds, revenues or properties of ~~the Agency,~~ the City, or any other public entity without the express prior consent of ~~the Agency,~~ the City or other public entity, as applicable, in their sole discretion.

D. Landscaping and Lighting Maintenance District

Subject to applicable legal requirements, the Developer and the ~~Agency~~City shall cooperate ~~to form, or to cause the City~~ to form, a landscaping and lighting maintenance district (an "LLMD") in accordance with the provisions of the Landscaping and Lighting Act of 1972 (California Streets and Highways Code Section 22500 et seq.) and in accordance with the criteria, standards and procedures set forth below in this Section I.D (as this Section may be modified pursuant to the terms of an Operating Memorandum entered into pursuant to the provisions of Section 709 hereof).

The LLMD shall be formed consistent with the following criteria and standards:

1. The LLMD shall be formed to fund the normal operating and maintenance costs incurred by the City or the LLMD in connection with the landscaping, lighting, park, recreation, and open space facilities located within the publicly-owned right-of-way and parcels within the Site. Subject to applicable legal requirements, the LLMD may be expanded or merged with other landscaping, lighting and maintenance districts (as so expanded or merged, an "Expanded LLMD") to include additional parcels that are specially benefited by public improvements and facilities within the Site and/or to additionally fund the normal operating and maintenance costs incurred by the City or the Expanded LLMD in connection with the landscaping, lighting, park, recreation, and open space facilities within publicly-owned right-of-way and parcels outside the Site but within the boundaries of the Expanded LLMD. The Developer's cooperation and support for the LLMD is predicated upon the City's stated intention to cause eventual formation of an Expanded LLMD that covers the maximum specially benefited area so as to equalize and apportion the LLMD burden over time across the largest legally benefited area, thereby reducing over time the burden initially imposed on the Developer Parcels; provided, however, that if the attempt to form an Expanded LLMD results in a legal challenge to timely formation or in a failure to obtain the required voter approval, then the LLMD shall be scaled-back and formed or maintained just to comprise the Site and the landscaping, lighting, park, recreation and open space facilities within the publicly-owned right-of-way and parcels within the Site.

2. The LLMD shall include, for purposes of assessment of specially benefited parcels, all of the Developer Parcels and the other parcels within the Site, whether publicly or

privately-owned (but only to the extent such other parcels are specially benefited and required by applicable law to be included in the LLMD). If the LLMD is made part of an Expanded LLMD, the Expanded LLMD shall additionally include, for purpose of assessment of specially benefited parcels, all other parcels (whether privately or publicly-owned) that are specially benefited by the landscaping, lighting, park, recreation and open space parcels within publicly-owned right-of-way and parcels within the boundaries of the Expanded LLMD.

3. Assessments of the LLMD or the Expanded LLMD, as applicable, shall be spread among the Developer Parcels and the other parcels subject to assessment in accordance with the special benefit received by each assessed parcel as determined in accordance with applicable legal requirements and procedures; provided, that, in no event shall the annual assessments applicable to the Developer Parcels pursuant to the LLMD or the Expanded LLMD, as applicable, exceed the following amounts:

a. $300 for a single-family residential unit (attached or detached);

b. $200 for a residential condominium unit or a multifamily residential unit; and

c. Twenty cents per square foot of gross building area for improved commercial and industrial land.

Notwithstanding the foregoing, the rate and method of apportionment shall allow for annual adjustments to the above maximum assessments beginning on July 1, 2008, and each July 1 thereafter during the life of the LLMD or the Expanded LLMD, whichever is applicable, by a percentage equal to the Consumer Price Index – All Urban Consumers ("CPI-U") for the San Francisco-Oakland-San Jose area (1982-84=100). In addition, the parties understand and agree that, over the life of the LLMD or Expanded LLMD, as applicable, the methodology for calculating the assessments throughout the district shall be periodically evaluated as additional units within the LLMD or Expanded LLMD are constructed so that per unit assessments may be reduced to ensure that such assessments are fairly allocated within the district.

4. The LLMD and any Expanded LLMD shall be formed in accordance with all applicable legal requirements and procedures for such formation.

The Developer shall cooperate, and shall be deemed to have cooperated, in the formation of the LLMD or an Expanded LLMD for purposes of this Section I.D by casting any ballot and/or executing any petition required by law with respect to the Developer Parcels (or any portion thereof with respect to which the Developer is entitled to cast a ballot and/or execute a petition) necessary to support formation of the LLMD or an Expanded LLMD meeting the criteria and standards set forth above in this Section I.D. Any protest lodged by the Developer with respect to the allocation of assessments among parcels within the LLMD or an Expanded LLMD, as opposed to the formation of the LLMD or an Expanded LLMD itself, shall not constitute a failure of cooperation by the Developer in the formation of the LLMD or an Expanded LLMD for purposes of this Section I.D.

The Agency City shall, or shall cause the City, to take all procedurals actions necessary in accordance with all applicable legal requirements to cause formation and effectiveness of the LLMD or an Expanded LLMD by not later than the deadline set forth in the Schedule of Performance (Attachment No. 3). If the LLMD is not formed despite the AgencyCity's diligent good faith efforts to form or cause the City to form the LLMD, then the AgencyCity shall fund or cause the City to fund, to the maximum extent permitted by applicable law and subject to the City's annual budgetary process, the operation and maintenance of those public improvements that are described in the Scope of Development (Attachment No. 4) to be funded by the LLMD.

E. AgencyCity Funding

1. Possible Funding Sources; AgencyCity MOF Funds.

In addition to the application by the AgencyCity of the Required AgencyCity Funds (as defined and described in Section I.E.2. below), the funds to finance the Agency'City's obligations under this Agreement may include, but shall not be limited to, the following: available Agency, budgeted City funds; future tax increment revenues and bond financing (as further described in Section I.E.4 below); City capital improvement funds, transient occupancy tax and other City tax revenues or fees; state and federal transportation funds, including, without limitation, state and federal funding for the Vallejo Station transit facilities (the "Vallejo Station Funds"); state and federal park and recreation funds; and other public and private grant funds, if available. The Agency may, from time to time, and as it deems appropriate in its sole discretion, seek contributions from the CityThe City retains discretion to determine how to spend available funds, and[shall not be obligated to]use any funding that is not specifically allocated for this purpose in the City's budget and approved by City Council resolution.

The funds available to the AgencyCity from time to time and allocated to pay costs of the Project, including the Required AgencyCity Funds, are collectively referred to in this Agreement as the "AgencyCity Method of Financing Funds" or simply, the "Agency MOF Funds."City MOF Funds." Notwithstanding any other provision of this Fourth Restated Agreement, the City's obligation to fund and complete public improvements and site preparation work under this Method of Financing shall be strictly limited to the City MOF Funds, including the Required City Funds, available to the City from time to time.

2. Required AgencyCity Funds.

Subject to the last sentence of this Section I.E.2, the AgencyThe City shall, at a minimum, apply the following funds (the “"Required AgencyCity Funds”") to finance the Agency'City's obligations under this Agreement: a. Allall amounts actually paid to the AgencyCity from the Developer constituting the Purchase Prices and the Annual Rent Payments for the Developer Parcels within the Site; and

b. The Net Developer Parcels Tax Increment Revenue.

As used herein, “Net Developer Parcels Tax Increment Revenue” means the tax increment revenue received by the Agency attributable to the increase in assessed valuation of

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~~each Developer Parcel within the Site following conveyance to the Developer less: (1) the portion of such tax increment revenue required to be set aside by the Agency pursuant to the provisions of Section 33334.2 of the Health and Safety Code; (2) a reasonable and proportionate share of the Agency's administrative expenses related to the Site; and (3) the portion of such tax increment revenue generated from Parcels A, B1, B2, and C1 which may be pledged to repay existing debt arising out of one or more loans between the City and the State of California, Department of Boating and Waterways. In addition and only if the parties mutually agree, the Required Agency Funds may be re-allocated for different purposes if such re-allocation would result in a greater benefit to the overall development or quality of the Project. The parties agree that the Required Agency Funds may be used to pay debt service on any indebtedness incurred by Agency to finance the cost of improvements under this Agreement~~.

3. ~~Agency~~City Budgets.

The ~~Agency~~City shall reasonably confer with the Developer, and shall consider in good faith the Developer's input, in connection with preparation of the portions of the ~~Agency~~City's annual budgets, ~~the Agency's periodic five-year implementation plans,~~ and any periodic amendments to such budgets ~~and implementation plans~~ that affect the Project, with the objective of allocating ~~Agency~~City MOF Funds in a manner consistent with the ~~Agency~~City's funding obligations for the Project pursuant to this Agreement and the ~~Agency~~City's other funding commitments.

4. ~~Bond Financing.~~ [Intentionally Omitted.]

~~In order to implement the Project to redevelop the Site, to satisfy its obligations under this Agreement, and to achieve the goals and objectives of the Redevelopment Plans, the Agency intends, from time to time, to issue bonded indebtedness secured by a pledge of all or a portion of the Net Developer Parcels Tax Increment Revenue and other tax increment revenue (as determined by the Agency) for the purpose of completing the redevelopment of the Project on the Site as expeditiously as possible.~~

F. Developer Funding

The financing mechanisms of the Developer to meet its obligations pursuant to this Agreement may include, but are not limited to, equity financing, debt financing, assessment district financing (as further set forth in Section I.C above) and other methods of financing as may be necessary to finance the Developer's obligations.

G. Other Financial Incentives

The ~~Agency~~City shall consider in good faith a Developer request that the ~~Agency~~City provide ~~or seek provision from the City of~~ financial or other incentives to enable the highest quality and most timely private development of the Developer Parcels within the Site; provided however, that the Developer shall provide evidence to the City ~~and/or Agency~~ that any such incentive is necessary and further provided that the provision of any such financial or other incentives shall be determined in the sole discretion of the ~~Agency or the~~ City~~, as applicable~~.

H. Park Fee Credits

As provided in Section 3.8 of the Development Agreement, the City will grant a credit against City park fees otherwise due with respect to development of the Developer Parcels within the Site pursuant to Chapter 3.18 of the Vallejo Municipal Code in an amount equal to the lesser of (1) the total amount of such City park fees otherwise due with respect to development of the Developer Parcels within the Site, or (2) the Total Developer Public Parks and Open Space Contribution.

As used herein, the "Total Developer Public Parks and Open Space Contribution" means the sum of:

1. The Developer's Northern Waterfront Public Parks and Open Space Contribution (up to $1,629,150, as provided in Section II.C.3 of the Scope of Development (Attachment No. 4)); plus

2. ~~The Developer's Southern Waterfront Public Parks and Open Space Contribution (up to $3,571,920 in current dollars and subject to an inflation adjustment, as provided in Section IV.C.2 of the Scope of Development); plus 3.~~ The Developer's Wetland Park Contribution (as described in Section II.A.3 of the Scope of Development).

~~The parties acknowledge that, through the above cited provisions of the Scope of Development (Attachment No. 4), the Developer has committed to a Total Developer Public Parks and Open Space Contribution well in excess of $5,201,070 (in current dollars), which in turn is an amount significantly in excess of the cumulative total of City park fees anticipated to be due in connection with development of all of the Developer Parcels on the Site.~~

II. NORTHERN WATERFRONT FINANCING

A. Developer Responsibility.

Except as provided in Section II.B below, the Developer, or its assignee, shall be responsible for financing all costs associated with the private and public development of the Northern Waterfront Area, including all Developer Parcel Public Improvements in the Northern Waterfront Area, as further described in Part II of the Scope of Development (Attachment No. 4). In addition to the payment of the Purchase Price and Annual Rent Payments for the applicable

Developer Parcels and the cost of the related Developer Parcel Public Improvements, as set forth in this Agreement, the Developer's financial responsibility shall include, but not be limited to, payment of costs related to site planning, entitlements, permits, fees, and private on site improvements for all of the Northern Waterfront Area (except as otherwise provided in Section II.B below).

B. ~~Agency~~City Responsibility

The ~~Agency~~City shall have no financial responsibility under this Agreement with respect to the Northern Waterfront Area other than:

1. The costs to deliver the applicable Developer Parcels in the condition specified in this Agreement upon which the Purchase Prices and Annual Rent Payments for the applicable Developer Parcels are determined in connection with Section 201; and

2. Any costs for the Northern Waterfront Public Park and Open Space Improvements required to be made after the maximum amount of the Developer's Northern Waterfront Public Park and Open Space Contribution has been expended, as further provided in Section II.C.3 of the Scope of Development (Attachment No. 4).

In addition, ~~the Agency shall or shall cause~~ the City ~~to~~shall assure that Lennar pays for performance of the Mare Island Causeway and Mare Island Way Widening Improvements as provided in Section II.D.3 of the Scope of Development (Attachment No. 4).

III. CENTRAL WATERFRONT FINANCING

A. Developer Responsibility—In General.

The Developer, or its assignee, shall be responsible for financing all costs associated with the development of the Developer Parcels within the Central Waterfront Area, including all Developer Parcel Public Improvements related to the Central Waterfront Area. In addition to the payment of the Purchase Price for Parcel J (including any J Developer Subparcels), and the L Developer Parcels, and the cost of the related Developer Parcel Public Improvements, as set forth in this Agreement, the Developer's financial responsibility shall include, but not be limited to, payment of costs related to site planning, entitlements, permits, fees, and private on site improvements related to the Developer Parcels and Developer Parcel Public Improvements within the Central Waterfront Area.

B. ~~Agency~~City Responsibility—In General.

Except as otherwise provided in Section III.C below, the ~~Agency~~City shall pay all costs to deliver the Central Waterfront Area Developer Parcels in the condition specified in this Agreement upon which the Purchase Prices for the applicable Developer Parcels are determined in connection with Section 201.

Except as otherwise provided in Section III.D below, the ~~Agency~~City shall be responsible for funding the enhancement of the City~~/Agency~~ Parcels and related public improvements in the Central Waterfront Area including, without limitation:

1. The L3 Public Garage on Parcel L3, as provided in Section III.A.3 of the Scope of Development (Attachment No. 4);

2. The public paseo and associated improvements on Parcel L5, as provided in Section III.A.5 of the Scope of Development (Attachment No. 4);

3. The Bus Transfer Center on Parcel O, as provided in Section III.C.1 of the Scope of Development (Attachment No. 4);

4. The Other Transit-Related Improvements, as provided in Section III.C.2 of the Scope of Development (Attachment No. 4);

5. The Central Waterfront Public Street Improvements, as provided in Section III.C.3 of the Scope of Development (Attachment No. 4); and

6. The Central Waterfront Public Parks and Open Space Improvements, as provided in Section III.C.4 of the Scope of Development (Attachment No. 4).

C. Vallejo Station Post Office Relocation.

The ~~parties~~City and the Developer shall participate in funding the costs of relocating the current Post Office facility from the Post Office Site within Parcel L in the manner provided in the USPS Relocation Strategy described in Section 201.6.a~~.(2)~~, as such strategy may be revised from time to time.

D. City Hall Garage and Related Improvements.

Subject to the further provisions of this Section III.D, the ~~Agency~~City shall be solely responsible for the ultimate payment of all costs of design and construction of the City Hall Garage and of the Capitol Street Second Segment necessary to provide access to the City Hall Garage. To meet this funding obligation, the ~~Agency~~City shall apply ~~Agency~~City MOF Funds (as defined and described in Section I.E.1 above) available for such purpose.

Notwithstanding the funding obligation set forth above, if the ~~Agency~~City reasonably determines that, at the time the ~~Agency~~City is otherwise required to commence performance and funding of the design and construction of the Phase 1 Element of the City Hall Garage and the Capitol Street Second Segment (together, the "City Hall Garage Required Elements") in accordance with Item ~~144~~112 of the Schedule of Performance (Attachment No. 3), it will not yet have available sufficient funds to pay the full costs of design and construction of the City Hall Garage Required Elements, the ~~Agency~~City shall so notify the Developer. The ~~parties~~City and the Developer shall then negotiate in good faith for a period of sixty (60) days (or longer as they may mutually agree) to seek to agree upon the terms of an Operating Memorandum

whereby the Developer would agree to advance a specified portion of the costs of the design and/or construction of the City Hall Garage Required Elements and the ~~Agency~~City would agree to repay the Developer for such advance at a specified time and on specified terms (a "City Hall Garage Required Elements Operating Memorandum").

If the ~~parties~~City and the Developer execute a City Hall Garage Required Elements Operating Memorandum in accordance with Section 709, then the terms of such City Hall Garage Required Elements Operating Memorandum shall control the ~~parties'~~City and the Developer obligations with respect to the portion of the costs of design and/or construction of the City Hall Garage Required Elements to be advanced by the Developer (subject to ~~Agency~~City repayment), and the ~~Agency~~City shall remain responsible for initial payment of all remaining portions of the cost of design and construction of the City Hall Garage Required Elements.

If the ~~parties~~City and the Developer are unable to agree upon a City Hall Garage Required Elements Operating Memorandum within the negotiating period set forth above, then commencement of the design and/or construction of the City Hall Garage Required Elements shall be postponed until the earliest date upon which the ~~Agency~~City reasonably has available sufficient ~~Agency~~City MOF Funds in accordance with the requirements of this Method of Financing to pay the costs of design and construction of the City Hall Garage Required Elements.

E. Downtown Property Based Improvement District ("PBID").

The~~ Agency and the~~ City shall use best efforts to include Parcels J and L in the proposed PBID. In conjunction with the formation of the LLMD or the Expanded LLMD, ~~the Agency shall and shall cause ~~the City ~~to~~shall work cooperatively with the Developer and the developer of the Downtown project and to use best efforts to provide that both the PBID and the LLMD (or Expanded LLMD) function effectively, do not overlap in responsibilities, and are not overly burdensome to present and future property owners.

~~IV. SOUTHERN WATERFRONT FINANCING~~

~~A. Developer Responsibility – In General~~

~~Except as provided in Sections IV.B and C below, the Developer, or its assignee, shall be responsible for financing all costs associated with the private and public development of the Southern Waterfront Area, including all Developer Parcel Public Improvements in the Southern Waterfront Area, as further described in Part IV of the Scope of Development (Attachment No. 4). In addition to the payment of the Purchase Price for the applicable Developer Parcels and the cost of the related Developer Parcel Public Improvements, as set forth in this Agreement, the Developer's financial responsibility shall include, but not be limited to, payment of costs related to site planning, entitlements, permits, fees, and private on site improvements for all of the Southern Waterfront Area (except as otherwise provided in Sections IV.B and C below).~~

B. Agency Responsibility - In General

The Agency shall have no financial responsibility under this Agreement with respect to the Southern Waterfront Area other than:

1. The costs to deliver the applicable Developer Parcels in the condition specified in this Agreement upon which the Purchase Prices for the applicable Developer Parcels are determined in connection with Section 201;

2. Any costs for the Southern Waterfront Public Park and Open Space Improvements required to be made after the maximum amount of the Developer's Southern Waterfront Public Park and Open Space Contribution has been expended, as further provided in Section IV.C.2 of the Scope of Development (Attachment No. 4);

3. The cost of the Boat Launch Improvements, as provided in Section IV.C.3 of the Scope of Development (Attachment No. 4); and

4. The Agency's share of the costs of the Southern Waterfront Preparatory Work, as further described in Section IV.C below.

C. Southern Waterfront Preparatory Work

The parties shall participate in funding the costs of the Southern Waterfront Preparatory Work (as described in Section IV.A of the Scope of Development) in the manner provided in Section IV.A.9 of the Scope of Development (Attachment No. 4).

ATTACHMENT NO. 7

FORM OF FOURTH RESTATED AGREEMENT MEMORANDUM ~~OF DDA THIRD RESTATEMENT~~

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

~~Redevelopment Agency of~~
~~The~~ City of Vallejo
555 Santa Clara Street
Vallejo, CA 94590
Attn: {~~Executive Director~~}City Manager

No fee for recording pursuant to
Government Code Section 27383

(Space Above This Line For Recorder's Use)

MEMORANDUM OF FOURTH AMENDED AND RESTATED
DISPOSITION AND DEVELOPMENT AGREEMENT
~~THIRD RESTATEMENT~~

THIS MEMORANDUM OF FOURTH AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT~~ THIRD RESTATEMENT~~ (the "Memorandum") is made as of ____________, ~~2007,~~2013, by and between the ~~Redevelopment Agency of the~~ City of Vallejo, a ~~public body, corporate and politic~~municipal corporation (the "~~Agency~~City"), and Callahan{~~/DeSilva~~}~~ Vallejo, LLC~~ Property Company, Inc., a California ~~limited liability company~~corporation (the "Developer").

This Memorandum confirms that the ~~Agency~~City and the Developer have entered into a Fourth Amended and Restated Disposition and Development Agreement{~~, executed as of October 17, 2000, as amended and restated as of October 1, 2002, as further amended by an Amendment entered into as of October 24, 2003, as further amended by a Second Amendment entered into as of July 20, 2004, as further amended and restated for a second time as of October 27,~~ }~~2005, and as further amended and restated for a third time as of February 27, 2007 (collectively,~~ as of December ___, 2013 (the "DDA"), providing for the acquisition, disposition and development of certain real property (the ~~"~~"Site~~"~~") included within the boundaries of the Redevelopment Plans for the Waterfront Redevelopment Project and the Marina Vista Redevelopment Project, and construction in phases of a master planned mixed-use development, including residential, commercial, retail and open space and park uses (collectively, the ~~"~~"Project,~~"~~" as further defined in Section ~~101~~102 of the DDA). Capitalized terms used but not defined in this Memorandum shall have the meanings given in the DDA. Included within the Site ~~is~~are the Developer Parcel(s) described in the attached Exhibit A.

Among other matters, the DDA states as follows:

"The parties hereby acknowledge that the Developer has voluntarily entered into a Master Labor Agreement (the "MLA") with the Napa Solano Building and Construction Trades Council (the "Trades Council") and its affiliated local trade unions, and that the MLA applies to the private improvements to be constructed on the Developer Parcels. The ~~Agency~~City further understands that any assignee or transferee of the Developer shall assume the MLA, in whole or in part, as provided in the MLA, in connection with a permitted assignment or transfer of a Developer Parcel or this Agreement."

This Memorandum is prepared for the purpose of recordation, and it in no way modifies the provisions of the DDA. This Memorandum amends and supersedes in its entirety that certain Memorandum of Disposition and Development Agreement dated as of October 27, 2005 and recorded in the Official Records of the County of Solano as Document No. ~~200700002114.~~200700002114, and that certain Memorandum of DDA Third Restatement dated as of ________, 2007 and recorded in the Official Records of the County of Solano as Document No. __________.

IN WITNESS WHEREOF, the parties hereto have entered into this Memorandum as of the date first above written.

~~**AGENCY:**~~

DEVELOPER:

CALLAHAN PROPERTY COMPANY, INC.,
a California corporation

~~REDEVELOPMENT AGENCY~~
~~THE CITY OF VALLEJO~~

~~CALLAHAN/DeSILVA VALLEJO, LLC~~
~~a California limited liability company~~

~~By: The DeSilva Group, Inc.~~

~~By:~~ ______________________________

~~Executive Director~~

~~Vice~~

By: ____________________________________
Joseph ~~M. Tanner~~ W. Callahan, Jr., President

~~By:~~ ______________________________
~~Ernest D. Lampkin~~

CITY:

THE CITY OF VALLEJO, a public body, corporate and politic

675\03\1431509.2with 358822.9
Redline - 1435355.1.DOCX

By: Joseph W. Callahan, Jr.,

Daniel E. Keen, City Manager

APPROVED AS TO FORM: an individual, Member

Claudia Quintana, City Attorney

By:

Frederick G. Soley Joseph W. Callahan, Jr.

Agency Counsel

ATTEST:

Dawn G. Abrahamson, City Clerk

Allison Villarante

Agency Secretary

STATE OF CALIFORNIA)
)
COUNTY OF ____________________)

On ____________________, 20__, before me, ______________________________, Notary Public, personally appeared ____, personally known to me (or, 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.

____

Name: ________________________________

_____________ Notary Public

Signature ____ (Seal)

STATE OF CALIFORNIA)
)
COUNTY OF ____________________)

On ____________________, 20__, before me, ______________________________, Notary Public, personally appeared ____, personally known to me (or, 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.

____

Name: ________________________________

____________ Notary Public
~~Signature~~ ______________________________________ ~~(Seal)~~

EXHIBIT A TO MEMORANDUM OF DDA

Legal Description of the Applicable Developer Parcel(s)

ATTACHMENT NO. 8

DIAGRAM OF PARCEL A BOUNDARY LINE
FOR PURPOSES OF DESIGNING
MARE ISLAND CAUSEWAY/MARE ISLAND WAY
WIDENING IMPROVEMENTS

ATTACHMENT NO. 9

HISTORY AND BACKGROUND
REGARDING PRIOR AGREEMENT
AND CURRENT APPROVALS

This Attachment is provided to facilitate the implementation of the Fourth Restated Agreement and any subsequent amendments thereto by describing the history and background of (1) the Prior Agreement which is being amended, restated and superseded by the Fourth Restated Agreement, and (2) the Current Approvals that, subject to further amendment to comprise the Project Approvals, provide the City's land use controls for implementation of the Project on the Site. The following history and background is based on the Recitals to the Third Restatement of the Prior Agreement (as further described below), as updated in connection with preparation of this Fourth Restated Agreement. Capitalized terms used but not defined in this Attachment have the meanings given in the Fourth Restated Agreement of which this Attachment is a part.

A. The RDA and Callahan/DeSilva Vallejo, LLC ("CDV"), the Developer's predecessor in interest, initially executed the Prior[Agreement as of October 17, 2000 to implement a program of public and private revitalization of the Vallejo Waterfront area (the "]Prior Project," as further defined and described in Section 101 and the Scope of Development (Attachment No. 4) of the Prior Agreement) within a strategic site adjacent to the Waterfront area and Vallejo's commercial Downtown area (the "Prior Site," as further defined and described in Sections 101 and 104 of the Prior Agreement). (As further explained in Sections 103 and 106 of this Fourth Restated Agreement, the Prior Site included the Southern Waterfront Area, which has been deleted from the Site that is the subject of the Fourth Restated Agreement.) The RDA and CDV initially executed the Prior[Agreement in recognition of the accomplishment of the following milestone actions:]

[1. On August 13, 1996, the]~~Agency authorized the~~RDA authorized its[Executive Director to seek proposals from qualified developers for the development of available parcels within the Marina Vista and Waterfront Redevelopment Project Areas. A request for qualifications was issued on January 2, 1997, and distributed to more than 130 developers. Four proposals were submitted in response to the request for qualifications. A Waterfront Developer Review Panel (the "WDRP") was established that included staff and representatives of the community to review the qualifications statements and visit projects of the proposed developers. Following this process, the WDRP recommended that the]~~Agency~~RDA[approve The DeSilva Group (]~~"DeSilva"~~"DeSilva"[) as the Master Waterfront Developer. The]~~Agency~~RDA[approved DeSilva as the Master Waterfront Developer on April 15, 1997, and directed DeSilva to formulate a community-based Waterfront Master Plan.]

[2. In May 1997, the]~~Agency~~ RDA[approved an Exclusive Right to Negotiate Agreement (]~~"ERN"~~"ERN"[) with DeSilva, which required DeSilva to develop the Waterfront Master Plan and then proceed to negotiate a Disposition and Development Agreement. DeSilva subsequently teamed with Callahan Property Company ("CPC") to form]CDV (sometimes, herein referred to as the "Prior Developer"), which served as the developer under the Prior Agreement, until CDV assigned and CPC alone assumed that role, as further provided in Recital E of this Fourth Restated Agreement.

3. At the outset of the Waterfront public planning process, the Prior[Developer, in conjunction with the City] of Vallejo (the "City"), has,[held Public Planning Workshops, outreach meetings and presentations to City commissions and boards. In addition, the City]''[s Community Development Department sent letters to neighborhood and community organizations inviting participation in outreach meeting and public workshops, and the public workshops were also advertised in a local newspaper, on a local cable television channel and through handouts and flyers.]

[4. As a result of this public planning process, DeSilva prepared a Waterfront Master Plan, which was accepted by the]AgencyRDA[on April 20, 1999, subject to certain conditions, including without limitation negotiations of a final]disposition and development agreement with the RDA[and completion of the environmental review process. The primary goal of the Waterfront Master Plan]iswas[to incorporate mixed land uses which are pedestrian-friendly and which will allow the Waterfront and Downtown areas to evolve into the social, cultural and entertainment hub of the City.]

[5. Following acceptance of the Waterfront Master Plan, the]AgencyRDA[retained an Urban Land Institute (ULI) Advisory Panel, which convened in Vallejo in June 1999, to review the Waterfront Master Plan. The]Agency accepted the Panel'RDA accepted the Panel'[s report at its meeting on August 24, 1999. On March 28, 2000, modifications to the Waterfront Master Plan were accepted by the]AgencyRDA[.]

[6. Through a competitive process, the City and the Waterfront Downtown Design Advisory Committee selected the firm of Wallace Roberts & Todd, Inc. (]"WRT""WRT"[) as the landscape architect to provide design concepts and plans for the public spaces within the Waterfront Master Plan area. Through an extensive public participation process, WRT prepared and the]AgencyRDA[approved the Vallejo Waterfront Downtown Master Plan for Public Spaces, by action of September 19, 2000 (the "Plan for Public Spaces").]

[B.]The Prior Agreement was comprehensively updated (the "Second Restatement"), approved by the RDA on October 27, 2005, [to reflect progress made and further planning and financial agreements reached by the]RDA and the Prior Developer from the time of the initial execution of the Prior Agreement in October 2000[through the date of the Second Restatement. Among the milestone actions leading to the Second Restatement of this Agreement were the following:]

[1. The Georgia Street Extension element of the] Prior[Project was satisfactorily completed] by the parties, with the, with the Prior[Developer serving as the project manager for such completion.]

[2. Former Developer Parcel K ("Former Parcel K") was removed from the]Site that is the subject of thisPrior Site that was the subject of the originally executed Prior[Agreement and was satisfactorily developed as an office facility for the State Farm Electronic Claims Center pursuant to a separate disposition and development agreement between the]AgencyRDA[and CPC, a member of the]Prior [Developer. As part of the separate development

Attachment 9

of Former Parcel K, CPC served as the]AgencyRDA['s project manager for completion of the segment of Capitol Street between Mare Island Way and Civic Center Drive.]

[3. Former Parcels N and V were removed from the]Site that is the subject of this AgreementPrior Site[and were made part of the development under a separate disposition and development agreement entered into between the] Agency RDA[and Triad Downtown Vallejo, LLC. Former Parcel U (the Boat Launch relocation parcel) was also removed from the]Site that is the subject of this AgreementPrior Site[.]

[4. On December 11, 2002, the City and the]AgencyRDA[circulated an initial draft environmental impact report (the "IDEIR"), in accordance with the California Environmental Quality Act and applicable state and local guidelines ("CEQA"). The IDEIR evaluated the potential environmental effects of the]Prior Project as envisioned under the Prior Agreement as initially executed and amended prior to the Second Restatement[. Extensive comments were received on the IDEIR. During preparation of responses to those comments, the City and the]AgencyRDA[decided that a revised draft environmental impact report (the "RDEIR") should be prepared and circulated in accordance with CEQA for reasons set forth in the Introduction to the RDEIR. In connection with preparation of the RDEIR, and as detailed therein, the]RDA, the Prior Developer, and the City made various revisions to the Prior[Project scope and description. These revisions reconfigured and scaled-back the]Prior [Project from that originally envisioned when this Agreement was initially executed in October, 2000, and responded to public concerns and changed circumstances with respect to surrounding developments in the Downtown area and at Mare Island.]

[5. The City and the]AgencyRDA[circulated the RDEIR (State Clearing House No. 2000052073) on June 10, 2005. On October 3, 2005, the City and the]AgencyRDA[circulated a document containing responses to comments received on the RDEIR and other information required by CEQA] (including a Mitigation Monitoring and Reporting Program), which together with the RDEIR constitutes the "EIR" for the Prior Project and the Project.

6. In connection with preparation of the EIR and the Second Restatement of the Prior Agreement, the RDA, the Prior Developer, and the City prepared the following series of land use approvals and entitlements for the Prior[Project, for consideration of approval by the City concurrently with consideration of approval of the Second Restatement], (together with the EIR, the following documents and approvals are collectively referred to as the "2005 Approvals"):

d. An Amendment to the City'[s General Plan (#00-001, referred to as the "General Plan Amendment") to include revised and updated land use and urban design goals, policies and map designations for the Site and the Project;]

e. [An Amendment to the City]''[s Zoning Ordinance (#03-0003) to provide for zoning consistent with the General Plan Amendment;]

f. [A Planned Development Master Plan for the Site (#00-0022, referred to as the "Planned Development Master Plan"), which includes as an attached and incorporated element the] Waterfront Design Guidelines, [prepared jointly by the]AgencyRDA[and Developer; and]

g. [A development agreement (#05-0008, referred to as the "]Initial Development Agreement") pursuant to Government Code Section 65864 et seq., between the City and the Developer pertaining to all of the Developer Parcels identified in Section 104 of the Prior Agreement.

The 2005[Approvals incorporated refined concepts and designs from previous planning and policy documents for the Waterfront area, including the Waterfront Master Plan and the Plan For Public Spaces (as described in Recital A above).]

[C. On October 25 and 27, and November 15, 2005, the City Council and the]AgencyRDA[:]

[1. Conducted public hearings on the]revisedPrior[Project, the Second Restatement of]this Agreement, and the Requiredthe Prior Agreement, and the 2005[Approvals;]

[2. Certified the EIR and made the required CEQA findings; and]

[3. Approved the Second Restatement of]this Agreement and the Requiredthe Prior Agreement and the 2005[Approvals.]

[As a result of these actions, the Second Restatement of] this the Prior[Agreement became fully effective by its terms on December 15, 2005.]

[D. On or about December 2, 2005, the Vallejo Waterfront Coalition, an unincorporated association (the "Coalition") filed a Petition for Writ of Mandate And Complaint for Injunctive Relief in the Solano County Superior Court, captioned *Vallejo Waterfront Coalition v. City of Vallejo, et al.*; Case No. FCS 027048 (the "Action"). On or about January 12, 2006, the Coalition filed a First Amended Petition, etc. in the Action. Beginning on or about January 20, 2006, the]Agency, the City, theRDA, the City, the Prior[Developer, and the Coalition] have[engaged in settlement negotiations to resolve the Action and]have [reached an agreement to do so on the terms and conditions stated in that certain Settlement and Release Agreement entered into as of November 28, 2006 (the "Settlement Agreement").]

[E. On November 28, 2006, the City Council and the]RDA approved the Settlement Agreement in the form previously executed by the Prior Developer and the Coalition. The City and the RDA[thereafter duly executed the Settlement Agreement.]

[F. On February 27, 2007, following conduct of duly noticed public hearings as required by law, the City Council and the]Agency took the following actionsRDA took the following actions

1. The City Council and the RDA approved an addendum (the "EIR Addendum") to the EIR that evaluated the impacts of the Prior Project as modified by the Settlement-Related Amendments (as defined below), and a third amendment and restatement of the Prior Agreement, as further described in Section H below (the "Third Restatement");

2. The City Council and the RDA approved the Third Restatement[; and]

[3. The City Council introduced and conducted the first reading of ordinances (collectively, the "Settlement-Related Ordinances") to approve certain amendments to the Planned Development Master Plan and the accompanying Waterfront Design Guidelines and certain amendments to the]Initial [Development Agreement, to implement specified terms of the Settlement Agreement (collectively, the "Settlement-Related Amendments").]

[G.]In accordance with the Settlement Agreement, the Action was dismissed by the parties thereto on April 13, 2007 (the "Action Dismissal Date"), thirty-one (31) days after the March 13, 2007 second reading and approval by the City Council of the Settlement-Related Ordinances enacting the Settlement-Related Amendments. As of the Action Dismissal Date, the Third Restatement of the Prior Agreement and the Settlement Related-Amendments to the 2005 Approvals took effect.

H. Through the Third Restatement of the Prior Agreement, the parties modified the Prior[Agreement to:]

[1. Implement the terms of the Settlement Agreement by conforming the terms of]~~this~~the Prior[Agreement to the relevant provisions of the Settlement Agreement, the Settlement-Related Ordinances, and the Settlement Related Amendments;]

[2. Set forth the financial] arrangements between the [parties with respect to their respective expenditures in connection with the satisfactory disposition of the Action through approval of the Settlement Agreement and related actions;]

[3. Update both the Schedule of Performance (Attachment No. 3) and performance dates contained throughout the main text of]~~this~~the Prior[Agreement to reflect the tolling of obligations under]~~this~~the Prior[Agreement during the pending Action, as well as]~~current~~Prior[Project circumstances; and]

[4. Make other conforming and minor updating changes to reflect changed circumstances for performance of the]Prior Project since the Prior Agreement had last been amended through the Second Amendment.

I. Since the effectiveness of the Third Restatement of the Prior Agreement, there have been several significant changes in circumstances outside the control of the parties to the Prior Agreement which seriously affected the timing and sequence of development as envisioned in the Prior Agreement. These changed circumstances include, but are not limited to, the following:

1. A significant downturn in the housing and commercial real estate market, as well as the unavailability of financing, particularly in California. As a result, the development of the Northern Waterfront Area, which was the area proposed to be developed first under the Prior Agreement, became temporarily economically unfeasible;

2. Due to financing constraints, the Vallejo Station parking structure on Parcel L is being constructed by the City in two phases. Construction of the first phase ("Phase A") is now complete, but the timing for construction of the second phase (the "Phase B" is unknown at

this time. This phasing of construction necessarily delayed the development of the other parcels on Parcel L by the Prior Developer and the RDA, as contemplated under the Prior Agreement. In addition, the construction of the Vallejo Station parking structure has affected the configuration and size of certain of the remaining Parcel L sub-parcels.

3. The USPS facility (as further described in Section I.4. below) remains in operation on the land slated for development of Phase B of the garage. That phasing, in turn, requires that the top deck of the Phase A garage and the balance of Parcels L-1 and L-2 must be utilized in their entirety to provide the required 1200 parking spaces to support the WETA Bay Links ferry service. Consequently, Parcel L-1, L-2 and L-4 will not be available for private development until completion of both phases of the Vallejo Station garage following relocation of the USPS facility to a new site. There is currently no firm schedule for the USPS relocation, as further described in Section I.4. below. Parcels J-1 and J-2 are planned to be cleared of surface parking and readied for private development upon consolidation of all ferry parking on Parcel L, which is not likely to occur for some time.

4. A United States Post Office ("USPS") facility is located on the portion of Parcel L that will be occupied by Phase B of the Vallejo Station parking structure. The City has acquired fee title to the land on which the facility is located. Under the Prior Agreement, the Post Office facility is proposed to be relocated to the Southern Waterfront Area. However, since February 2007, the Post Office has determined it does not wish to have a facility in the Southern Waterfront Area or anywhere else on the Prior Site.

5. Recent and current economic and market circumstances constrained and continue to limit both public and private financing options for the RDA (now the City) and the Developer.

6. The dissolution and wind down of the RDA as described in the Recitals of this Fourth Restated Agreement have added additional layers of uncertainty, complexity and delay in the development of the Project on the Site.

In light of all of the above conditions and circumstances, the City, the Developer and the Successor City have determined that the execution of this Fourth Restated Agreement represents the best initial step toward future development of the Project on the Site. Further, to address the above significant changes in circumstances, the City and the Developer have commited to seek further amendments to this Fourth Restated Agreement in the form of the City/Developer Amendment, as described in Section 115 of this Fourth Restated Agreement.

J. For the reasons and in the manner set forth in Section I above and the Recitals to this Fourth Restated Agreement, the Third Restatement of the Prior Agreement is further amended and restated in its entirety by this Fourth Restated Agreement. As a result, the Prior Project on the Prior Site is superseded by the Project on the Site, as set forth in this Fourth Restated Agreement.

K. As a result of the foregoing history and background, the current City land use entitlements and controls that apply to the Project on the Site that is the subject of this Fourth Restated Agreement consist of the following documents (to the extent they apply to the revised and reduced Site described in Section 106 of this Fourth Restated Agreement):

1. The 2005 Approvals as modified by the Settlement-Related Amendments; and

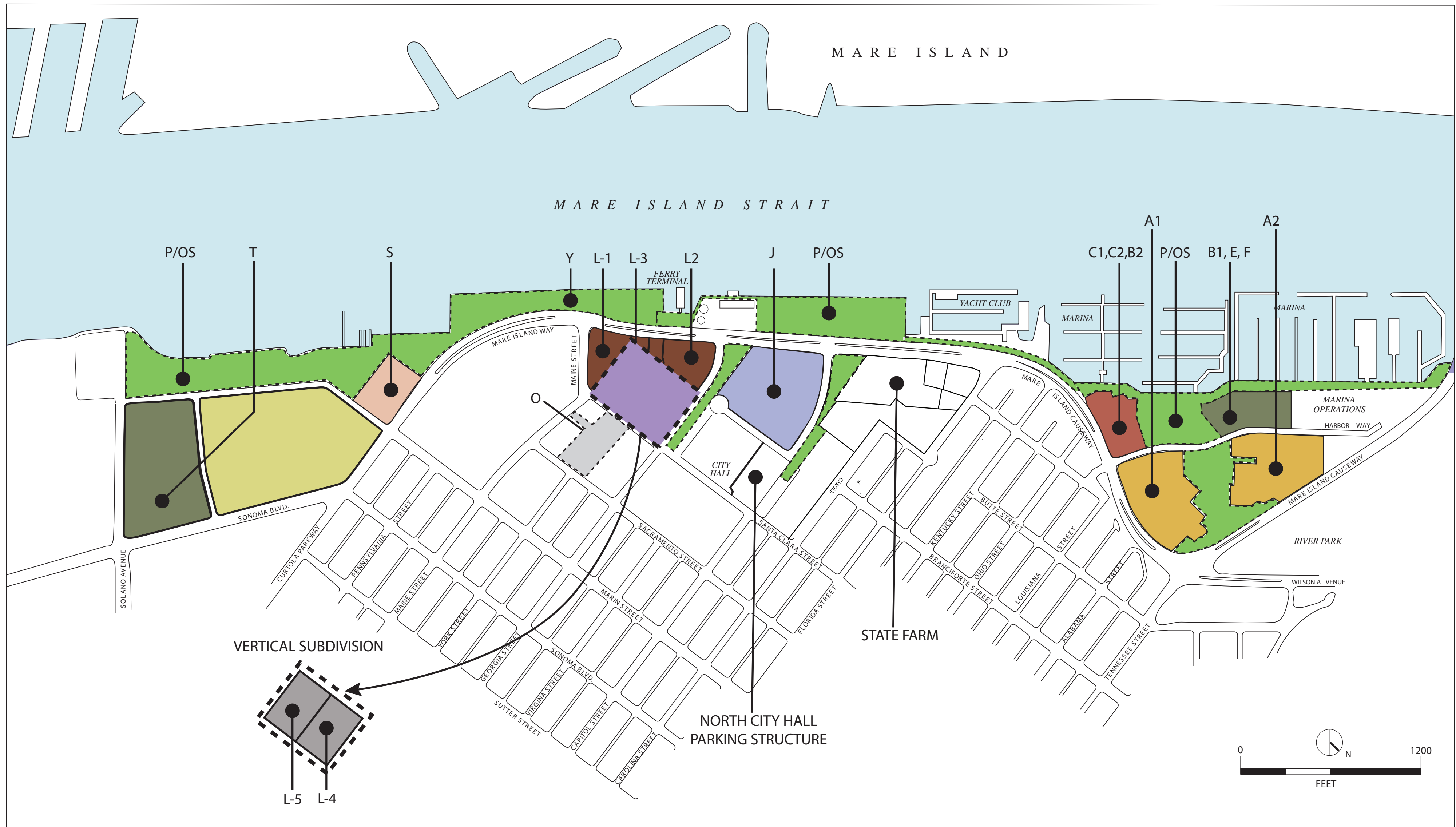
2. The EIR and the EIR Addendum.

Summary Report:
Litéra® Change-Pro 7.0.0.400 Document Comparison done on 11/22/2013 5:22:36 PM

Style Name: Default Style	
Original DMS:iw://iManage/iManage/8382492/1	
Modified DMS: iw://iManage/iManage/8382492/2	
Changes:	
Add	43
~~Delete~~	79
~~Move From~~	3
Move To	3
Table Insert	0
~~Table Delete~~	99
Table moves to	0
~~Table moves from~~	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format Changes	0
Total Changes:	227

-

Attachment 6



SOURCE: City of Vallejo

THE VALLEJO STATION PROJECT AND WATERFRONT PROJECT

Figure 1: PARCEL MAP

OVERSIGHT BOARD RESOLUTION NO. N.C.-_____

RESOLUTION OF THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY OF THE CITY OF VALLEJO APPROVING, AUTHORIZING AND DIRECTING THE EXECUTION OF A FOURTH AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT (INCLUDING ASSIGNMENT OF SUCCESSOR AGENCY RIGHTS AND OBLIGATIONS) BY AND AMONG THE CITY OF VALLEJO, SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF VALLEJO AND CALLAHAN PROPERTY COMPANY, INC., AND THE DISPOSITION OF SPECIFED PROPERTY AS SET FORTH THEREIN

WHEREAS, in carrying out the Redevelopment Plans for the Waterfront and Marina Vista Redevelopment Projects, both of which Redevelopment Projects were subsequently merged with the Vallejo Central Redevelopment Project Area and are a part of the Merged Waterfront/Downtown Redevelopment Project Area (the “Merged Redevelopment Project Areas”), the former REDEVELOPMENT AGENCY OF THE CITY OF VALLEJO (the "Redevelopment Agency") and CALLAHAN/DeSILVA VALLEJO, LLC (“CDV”) entered into that certain Disposition and Development, executed as of October 17, 2000 (the "Original DDA"), which Original DDA was amended and restated in its entirety as of October 1, 2002 (the "First Restatement"), and further amended by a First Amendment to Amended and Restated Disposition and Development Agreement, executed as of October 24, 2003, and a Second Amendment to Amended and Restated Disposition and Development Agreement, executed as of August 24, 2004, and further amended and restated in its entirety as of October 27, 2005 (the "Second Restatement"), and further amended and restated in its entirety for a third time as of February 27, 2007 (the “Third Restatement”), and as further implemented by an Implementation Agreement entered into as of March 8, 2011 (collectively, and together with various executed Operating Memoranda, the "DDA"), that provides for the phased acquisition, disposition and development of certain real property (the "Site"), and construction in phases of a master planned mixed-use development, including residential, commercial, retail and open space and park uses (collectively, the “Waterfront Project”) within the Merged Waterfront/Downtown Redevelopment Project Areas; and

WHEREAS, CDV’s entire interest in the DDA has been assigned to Callahan Property Company, Inc., a California corporation (“Developer”); and

WHEREAS, for descriptive purposes, the DDA separates the Waterfront Project into three subareas encompassing the Northern, Central and Southern sectors of the Site; and

WHEREAS, the Waterfront Project provides for approximately 43 acres of public improvements, including parking garages, street improvements, and park and open space improvements, with a major focus on the Vallejo Station multi-modal transit facility serving the Bay Link Ferry Terminal and a regional bus terminal; and

WHEREAS, the Waterfront Project also includes private development by the Developer of approximately 51 acres (the “Developer Parcels”) for a combination of high density

commercial, industrial, and residential uses to take advantage of the prime transit-oriented location of the project; and

WHEREAS, the DDA obligates the Redevelopment Agency to fund and complete a comprehensive set of public improvements, hazardous materials remediation, and other site improvements at a currently estimated remaining public cost of approximately $60 million, using property tax increment generated by the Waterfront Project, disposition proceeds received from the Developer for the purchase of the Developer Parcels, and other available public sector funds; and

WHEREAS, pursuant to AB 1X 26, enacted June 28, 2011 (as found constitutional and as partially reformed by the California Supreme Court in its decision in *California Redevelopment Association v. Matosantos* on December 29, 2011), and as amended by AB 1484, enacted June 27, 2012 (the "Dissolution Act"), the Redevelopment Agency, along with all other redevelopment agencies in the State, was dissolved as of February 1, 2012; and

WHEREAS, pursuant to the authority provided in Health and Safety Code Section 34173, as enacted by AB 1X 26, the City Council of the City of Vallejo (the "City") elected and determined that the City shall become the "successor agency" to the former Redevelopment Agency, and upon dissolution of the Redevelopment Agency under AB 1X 26, all authorities, rights, powers, duties and obligations previously vested with the former Redevelopment Agency, under the Community Redevelopment Law (Health and Safety Code Section 33000 et seq.), were vested in the Successor Agency to the Redevelopment Agency of the City of Vallejo (the "Successor Agency"), including the former Redevelopment Agency's rights, duties and obligations under the DDA; and

WHEREAS, pursuant to Health and Safety Code Section 34173(g), added by AB 1484, the Successor Agency has been designated as a separate public entity from the City; and

WHEREAS, also pursuant to the Dissolution Act, an Oversight Board (the "Oversight Board") has been selected to oversee, direct and approve specified actions of the Successor Agency; and

WHEREAS, the DDA is an "enforceable obligation" within the meaning and for the purposes of the Dissolution Act, and the Successor Agency is responsible for carrying out the obligations of the former Redevelopment Agency under the DDA; and

WHEREAS, all of the publicly-owned properties of the Site within the Northern subarea of the Waterfront Project are owned by the City; all of the publicly-owned properties of the Site within the Central subarea are also owned by the City with the exception of the property referred to as "Parcel J", identified on assessor parcel maps as two parcels, APN 55-160-600 and APN 55-160-610, and as further defined and described in the DDA, which is owned by the Successor Agency; and the majority of the publicly-owned properties of the Site within the Southern subarea are owned by the Successor Agency; and

WHEREAS, Health and Safety Code Section 34181(e) provides that the Oversight Board may direct the Successor Agency to determine whether any contracts, agreements, or other arrangements between the dissolved Redevelopment Agency and any private parties should be

terminated or renegotiated to reduce liabilities and increase net revenues to the taxing entities, and to present proposed termination or amendment agreements to the Oversight Board for its approval; and

WHEREAS, the Oversight Board may approve any amendments to or early termination of those agreements if it finds that amendments or early termination would be in the best interests of the taxing entities; and

WHEREAS, the Successor Agency and Developer have proposed certain amendments to the DDA to, among other things: (1) remove the Southern subarea, which includes all of the Successor Agency-owned parcels except one, from the terms of the DDA; (2) transfer the one remaining Successor Agency-owned parcel in the Central subarea (Parcel J) to the City, and enable the City and the Developer to flexibly develop the balance of the Site; (3) require the Successor Agency to list on its Recognized Obligation Payment Schedule ("ROPS) amounts to reimburse the Developer for its Developer Advance out of Redevelopment Property Tax Trust Fund ("RPTTF") distributions, until fully reimbursed, but otherwise relieve the Successor Agency of all future obligations to claim and expend RPTT under the DDA; and (4) assign all other of the Successor Agency's rights and obligations under the DDA to the City, all of which amendments are incorporated within a Fourth Amended and Restated Disposition and Development Agreement (Including Assignment of Successor Agency Rights and Obligations) ("Fourth Restatement"); and

WHEREAS, all of said amendments as set forth in the Fourth Restatement would (1) relieve the Successor Agency of approximately $60 million of public improvement and site preparation obligations under the DDA, (2) eliminate virtually all future allocations of RPTTF distributions to the Successor Agency related to the DDA, thereby freeing up considerable additional property tax revenues for the taxing entities, and (3) free up Successor Agency-owned property from conveyance under the DDA, and instead make these properties available for conveyance in accordance with a Long-Range Property Management Plan, required to be prepared by the Successor Agency pursuant to Health and Safety Code Section 34191.5, with resulting financial benefits for the taxing entities; and

WHEREAS, the City Council and the Successor Agency held a joint public hearing on December 16, 2013, in the City Council Chambers to consider and act on the Fourth Restatement, at which time the City Council and the Successor Agency approved execution of the Fourth Restatement and directed that the Fourth Restatement be presented to the Oversight Board for its consideration of approval; and

WHEREAS, the Fourth Restatement is subject to Oversight Board approval in compliance with the following statutes: (1) as an agreement partly between the Successor Agency and the City, the Fourth Restatement requires Oversight Board approval and direction pursuant to Health and Safety Code Section 34180(h); (2) as an agreement providing for disposition of a Successor Agency parcel (Parcel J), the Fourth Restatement requires Oversight Board approval and direction pursuant to Health and Safety Code Section 34181(a); and (3) as an agreement effectuating a renegotiation of the DDA with a private party (the Developer), the Fourth Restatement requires Oversight Board approval and direction pursuant to Health and Safety Code Section 34181(e); and

WHEREAS, in compliance with the requirements of the California Environmental Quality Act ("CEQA") the Redevelopment Agency and City previously prepared, certified and approved an Environmental Impact Report (the "EIR") for the Vallejo Station Project and the Vallejo Waterfront Project (SCH No. 2000052073), including the EIR Mitigation Monitoring and Reporting Program, and an addendum ("Addendum") to the certified Final Environmental Impact Report State Clearinghouse No. 2000052073, which Addendum was prepared in conjunction with the City's consideration and approval of amendments to the Planned Development Master Plan and Design Guidelines (the PDMP/DG) and the Development Agreement for the Waterfront Project; and

WHEREAS, in conjunction with the Fourth Restatement, the Successor Agency, Developer and City have cooperated in preparing a Notice of Exemption in accordance with CEQA; and

WHEREAS, notice of the Oversight Board's consideration of the Fourth Restatement, including the proposed disposition of Parcel J by the Successor Agency to the City pursuant to the Fourth Restatement, was duly published in the Vallejo Times Herald on December 8, 2013, in compliance with the requirement of Health and Safety Code Section 34181(f).

NOW, THEREFORE, THE OVERSIGHT BOARD TO THE SUCCESSOR AGENCY OF THE CITY OF VALLEJO DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

Section 2. The Oversight Board hereby finds that the amendment of the DDA, as set forth in the Fourth Restatement: (1) would significantly reduce the liabilities of the Successor Agency under the DDA; (2) would increase net revenues to the taxing entities; and (3) would be in the best interests of the taxing entities. These findings are based upon the facts and information contained in the Staff Report on this item, dated December 19, 2013, to Oversight Board from Mark Sawicki, Community & Economic Development Director for the City of Vallejo, regarding Consideration Of a Fourth Amended and Restated Disposition and Development Agreement Between the City of Vallejo; Successor Agency to the Former Redevelopment Agency of the City of Vallejo and Callahan Property Company, Inc., including all documents attached thereto or referenced therein, and other evidence and testimony presented prior to and at the Oversight Board's December 19, 2013 public meeting on the Fourth Restatement.

Section 3. The Oversight Board, finds and determines that the Waterfront Project, including the disposition and development of the Site and the changes incorporated in the Fourth Restatement, do not contain any changes in the underlying physical activities or the resulting environmental impacts as described in the Final Environmental Impact Report relating to the Vallejo Station Project and the Vallejo Waterfront Project, including the EIR Mitigation Monitoring and Reporting Program related thereto, certified by the former Redevelopment Agency by Resolution No. 05 - 22 and by the City Council by Resolution No. 05-354 N.C., both of which Resolutions were adopted on October 25, 2005 (SCH #2000052073), and an Addendum to the EIR, approved by the City Council by Resolution No. 07-26 N.C., which

Resolution was adopted on February 13, 2007 (collectively, the "EIR"), and that the Waterfront Project incorporates all applicable mitigation measures identified in Redevelopment Agency Resolution No. 05-22 and Council Resolution No. 05-354 N.C. The Oversight Board further finds that no additional environmental analysis is required for the Fourth Restatement for the following reasons:

a. The Fourth Restatement is not a project under State CEQA Guidelines Section 15378(b)(4) because it comprises "government fiscal activities which do not involve any commitment to a specific project which may result in a potentially significant physical impact on the environment" by removing the Southern Waterfront area as part of the DDA in order to minimize liabilities for the Successor Agency and maximize revenues to affected taxing entities, consistent with the objectives of Health and Safety Code section 34181(e) while involving no commitment to any specific project. The Fourth Restatement is also not a project under State CEQA Guidelines Section 15378(b)(5) as an "organizational or administrative activit[y] of government that will not result in direct or indirect physical changes in the environment" by assigning the obligations of the Successor Agency under the DDA to the City, which results in no direct or indirect physical changes in the environment; and

b. The Fourth Restatement is exempt under State CEQA Guidelines Section 15061(b)(3) because "it can be seen with certainty that there is no possibility that the activities in question may have a significant effect on the environment" under the analysis in *Muzzy Ranch Co. v. Solano County Airport Land Use Comm'n* (2007) 41 Cal. 4th 372, in that the Fourth Restatement simply incorporates and is consistent with the City's General Plan and the adopted Planned Development Master Plan and Design Guidelines and does not contain any changes to the underlying physical activities and so is consistent with a community plan, general plan, and zoning ordinance for which an environmental impact report was prepared and involves no environmental effects that were not analyzed in the prior EIR; and

c. The Fourth Restatement is categorically exempt under State CEQA Guidelines Section 15321(a)(2) which applies to actions by regulatory agencies to revoke an entitlement for use. The Fourth Restatement, which involves in part revoking the Developer's right to develop the South Waterfront and to receive RPTTF also will be presented for, and is subject to, approval by the Successor Agency, the Oversight Board and the state Department of Finance in furtherance of the intent of Health and Safety Code section 34181(e) that existing enforceable obligations should be amended to minimize liabilities of the Successor Agency and maximize revenues to affected taxing entities.

Section 4. Pursuant to Health and Safety Code Sections 34180(h), 34181(a), and 34181(e), the Oversight Board hereby approves the amendments to the DDA as set forth in the Fourth Restatement, in substantially the form provided with the staff report of December 19, 2013, which Fourth Restatement is incorporated herein by reference. The Oversight Board further approves the assumption by the City of the rights and obligations of the Successor Agency under the DDA, except for those Retained Successor Agency Obligations set forth in Section 111 of the Fourth Restatement. These approvals are subject to Department of Finance

review and approval in accordance with Health and Safety Code Section 34179(h) and shall become effective only as provided in that Code section. The Oversight Board hereby directs the Successor Agency Executive Director, in cooperation with the City staff, to take all actions as necessary to carry out the purposes of this Resolution, including without limitation forwarding the Fourth Restatement to the Department of Finance for review, and to provide all other information and evidence requested by the Department of Finance to consider approval of the Fourth Restatement.

Section 5. In accordance with Health and Safety Code Section 34181(a), to the extent allowed by law, and as directed under the DDA as amended through the Fourth Restatement, the Oversight Board authorizes and directs the transfer of Parcel J from the Successor Agency to the City, in order to enable the City to undertake and carry out its obligations under the DDA, as amended through the Fourth Restatement, including all attachments thereto and in compliance with all applicable law.

Section 6. Subject to review and approval of the Fourth Restatement by the Department of Finance in accordance with Health and Safety Code Section 34179(h), the Successor Agency Executive Director is hereby authorized to execute the Fourth Restatement on behalf of the Successor Agency, subject to any minor clarifying, conforming and technical changes as may be approved by Successor Agency's General Counsel. The Executive Director is further authorized to take such actions and execute such documents as may be necessary to carry out the obligations of the Successor Agency under the DDA, as amended through the Fourth Restatement, including without limitation conveyance of Parcel J by the Successor Agency to the City.

This resolution was adopted by those present and voting at a regular meeting of the Oversight Board to the Successor Agency of the City of Vallejo held on December 19, 2013, by the following vote:

AYES:
NOES:
ABSENT:
ABSTENTIONS:

____
Erin Hannigan, Chairperson

ATTEST: ____
Dawn Abrahamson, Secretary