

EXHIBIT L

Conditions of Approval

The following Conditions of Approval shall constitute a complete list of conditions of approval applicable to the Project, and shall be applied in the manner and at the time specified in this Exhibit L. Notwithstanding the foregoing, to the extent responsibility for any Condition of Approval has been modified through the Implementing Development Agreement ("Agreement"), the provisions of the Agreement shall control, and shall supersede the provisions of such Condition of Approval.

LEGEND: Police Dept. (PD)	Municipal Services (MS)
City Manager's Office (CM)	Planning (PL)
Fire District (FD)	City Attorney (CA)
Engineering (E)	Parks & Recreation (PARKS)
Building (B)	Planning Commission (PC)
Design Review Committee (DRC)	Public Works (PW)
East Bay Municipal Utility District (EBMUD)	
Contra Costa County Flood Control District (CCCFCDD)	

1. Notwithstanding any other condition imposed in this Exhibit L, in every instance where these conditions, or the performance of these conditions, requires the acquisition of property that is not owned by Owner, City and Owner shall use commercially reasonable efforts to acquire the property necessary for the improvement. If the owner of the necessary property is unwilling to sell the property, City and Owner may mutually agree to acquire the necessary property through the power of eminent domain, in which case Owner shall pay the costs of the eminent domain proceeding and property acquisition. If the City does not elect to acquire the necessary property, the condition shall be deemed satisfied.
2. Vesting Tentative Map No. 9290 is subject to the Waterfront District Master Plan, Historic Town Center, Transit Village and Hercules Point Sub-District Amendments prepared for Hercules Bayfront, LLC by Opticos Design, Inc. dated May 27, 2008, and any approved amendments, including Building Form Standards, Architectural Styles, Civic Space Standards, and Street and Circulation Standards. (PL)
3. A subdivider may elect to file a Final Map for all or part of the approved Vesting Tentative Map No. 9290, in which case each final map which constitutes a part, or unit, of the approved Vesting Tentative Map shall provide for the construction of such improvements as may be required to constitute a logical and orderly development of the whole subdivision by units. (Section 10-2.404, "Filing Final Maps" from Hercules Municipal Code)
4. The Final Vesting Tract Map(s) shall be in accordance with Vesting Tentative Map No. 9290 as approved, and the form and content shall be in conformity with the State of California Subdivision Map Act and City of Hercules Municipal Code, Article 4. "Final Map" including the requirements described and listed in the following:

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- A. Section 10-2.401, "Form and Content of Final Map",
 - B. Section 10-2.402, "Documents to Accompany Final Map",
 - C. Section 10-2.403, "Review of Final Map and Accompanying Documents," and
 - D. Section 10-2.404, "Filing Final Map". (PL, PW)
5. A Final Planned Development that is consistent with the Waterfront District Master Plan shall be submitted for all development exceeding 5 acres showing the following:
- A. Proposed off-street parking, including the location, number of stalls, dimensions, and circulation pattern;
 - B. Lot dimensions and all recorded easements;
 - C. Locations and dimensions of proposed bicycle, pedestrian and/or equestrian paths;
 - D. Details on the height, size, and location of proposed buildings;
 - E. Architectural elevations, schematic plans, and materials board for proposed buildings;
 - F. Areas proposed to be conveyed for parks, parkways, playgrounds, school sites, public or quasi-public buildings, and other such uses;
 - G. Areas proposed for any other uses to be established within the project;
 - H. Proposed location and elevations of buildings on land, including dimensions, the size of structure, height, setback, materials, and yard areas;
 - I. Proposed landscaping, walls, fencing, screening, trash collection areas, and usable open space areas;
 - J. If phasing is proposed, a construction schedule for the off-site improvements to be associated with each phase, the total number of acres in the proposed project and the number and percent thereof designated for various uses, and the number of dwelling units proposed by type of dwelling unit, for each phase;
 - K. A detailed grading plan showing cut/fill quantities, pad elevations, typical drainage pattern, top/toe of slope, retaining walls, with information as required by the City Engineer; and
 - L. Such additional and necessary information as may be required by the Planning Director and/or City Engineer.
6. All development less than five (5) acres shall require a Design Review permit subject to approval by the Planning Commission, in accordance with Exhibit K of the Agreement.
7. Development Rights Created. The approval of Vesting Tentative Map No. 9290 confers a vested right to proceed with development in substantial compliance with City's ordinances, policies and standards in effect at the date City determines the vesting tentative map is complete. The approval or conditional approval of Vesting Tentative Map No. 9290 shall confer a vested right to proceed with development in substantial compliance with the ordinances, policies and standards described in Section 66474.2 of the Government Code. However, if Section 66474.2 of the Government Code is repealed, the approval or conditional approval of Vesting Tentative Map No. 9290 shall confer a vested right to proceed with development in substantial compliance with the ordinances, policies, and

standards in effect at the time the vesting tentative map is approved or conditionally approved. (Section 10-2.3.106 of the Hercules Municipal Code) (PL)

8. Subject to Owner's² vested rights under the Agreement, the provisions of these conditions of approval shall not:
 - A. Limit City from imposing reasonable conditions on subsequently required approvals or permits necessary for the development and authorized by City's applicable ordinances, policies, and standards, and the Agreement.
 - B. Diminish or alter the type of conditions, which may be imposed by City on a development or City's power to protect against a condition dangerous to the public health or safety. (PL)
9. At any time prior to the expiration of Vesting Tentative Map No 9290, the subdivider, his or her successor, or his or her assignee, may apply for a modification to such map. A public hearing shall be held by the Planning Commission on any application involving a modification to Vesting Tentative Map No. 9290 or by the development related thereto following procedures set forth for the modification of tentative maps in Article 3.1, "Vesting Tentative Maps" of the Hercules Municipal Code. Approval of a modification to Vesting Tentative Map No. 9290 or development related thereto shall not be evaluated for compliance with City regulations, standards, and policies in effect at the time the request for the modification is deemed complete. (PL)
10. Rights conferred under Project Approvals (as defined in the Agreement) shall expire in accordance with Section 4 of the Agreement. The phasing of Vesting Tentative Map No. 9290 may be allowed to deviate from processing parcels in numerical, sequential order, and vary the sequencing of developing the individual parcels or lots.
11. 12. The phasing of Vesting Tentative Map No. 9290 may be allowed to deviate from processing parcels in numerical, sequential order, and vary the sequencing of developing the individual parcels or lots. Prior to recordation of final map(s) for development on Lots Nos. 27, 28, 29, and/or 30, a feasibility study shall be prepared to explore circulation options relative to the potential extension of Linus Pauling Drive. The feasibility study shall consider the financial feasibility and feasibility of any necessary right of way acquisition(s). Upon its completion, the feasibility study will be presented to the Planning Commission for consideration and recommendations for implementing a feasible option. Subject to Condition No. 1, Owner or successors shall be responsible for utility relocations and roadway improvements associated with the approved feasible option. If for any reason connecting Street A to Linus Pauling is infeasible Owner or successors shall be responsible for constructing a gated, all-weather, 20-ft-wide emergency vehicle access (EVA) capable of supporting 68,000 pounds in the alignment as shown on Vesting Tentative Map No. 9290.
12. Owner shall improve all neighborhood streets and utilities within the Project area that are not related to the ITC Project. Owner's obligation to implement neighborhood streets that are not related to the ITC Project shall not accrue until a funding agreement is mutually agreed upon between Owner and City. Such funding agreement shall in no event require

that City contribute more money, or the equivalent of money, than is required to perform this condition, and such agreement shall not convey to City any proprietary interest in Owner's overall project.

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13. Owner shall prepare urban design streetscape standards for the project's neighborhood streets that are not related to the ITC Project. Owner's obligation to prepare urban design streetscape standards for the project's neighborhood streets that are not related to the ITC Project shall not accrue until a funding agreement is mutually agreed upon between Owner and City. Such funding agreement shall in no event require that City contribute more money, or the equivalent of money, than is required to perform this condition, and such agreement shall not convey to City any proprietary interest in Owner's overall project.
 14. For each and every condition of approval of Vesting Tentative Map No. 9290, or any subsequent entitlement approval issued for the project, that requires the Owner to perform construction, alteration, demolition, installation, or repair work on a public work or improvement (as defined in Labor Code Section 1720), City shall contribute no more money, or the equivalent of money, to the overall project than is required to perform such public improvement work, and City shall maintain no proprietary interest in the overall project.
 - * 15. Owner shall be required to prepare a lighting plan as part of the project architectural and landscape plans, for City Community Development Department review and approval prior to the issuance of building permits. As an existing standard City condition of project design approval, the lighting plan shall be required to demonstrate definitively how lighting spillover and glare would be minimized to City satisfaction. (Mitigation Measure 4-3 of Bayfront EIR, State Clearinghouse #2009112058)
 - * 16. For all discretionary (e.g., requiring a permit) grading or construction activity associated with the project, require implementation of the following BAAQMD identified dust control measures by construction contractors, where applicable: (from Mitigation Measure 5-1, Bayfront EIR)

During all construction phases:

- Water all active construction areas as needed to prevent fugitive dust.
- Water, apply (non-toxic) soil binders, or cover stockpiles of debris, soil, sand, or other materials that can be blown by the wind.
- Cover all trucks hauling soil, sand, and other loose materials, or require all trucks to maintain at least two feet of freeboard.
- Pave, apply water, or apply (non-toxic) soil stabilizers as needed on all unpaved access roads, access roads, parking areas, and staging areas at construction sites.
- Sweep daily (with water sweepers) all active paved access roads, parking areas, and staging areas at construction sites, if visible soil material is carried onto adjacent public streets.
- Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas.
- Limit traffic speeds on unpaved roads to 15 miles per hour.

- Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- Replant vegetation in disturbed areas as quickly as possible.
- Consult with BAAQMD prior to demolition of any structures suspected to contain asbestos to ensure that demolition/construction work is conducted in accordance with BAAQMD rules and regulations.

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* 17. To control emissions by diesel-powered construction equipment used by construction contractors, where applicable:

- Develop a plan demonstrating that the off-road equipment (more than 50 horsepower) to be used in the construction projects (i.e., owned, leased, and subcontractor vehicles) would achieve a project-wide fleet average 20 percent NOx reduction and 45 percent PM reduction compared to the most recent CARB fleet average. Acceptable options for reducing emissions include the use of late model engines, low-emission diesel products, alternative fuels, engine retrofit technology, after-treatment products, add-on devices such as particulate filters, and/or other options as such become available.
- Limit grading to 6.5 acres per day or develop plans to demonstrate that average daily emissions during the grading period would not exceed 54 pounds of NOx per day.
- Ensure that visible emissions from all on-site diesel-powered construction equipment do not exceed 40 percent opacity for more than three minutes in any one hour. Any equipment found to exceed 40 percent opacity (or Ringelmann 2.0) shall be repaired or replaced immediately.
- The contractor shall install temporary electrical service whenever possible to avoid the need for independently powered equipment (e.g., compressors).
- Signs shall be posted to ensure that all diesel equipment and trucks standing idle for more than five minutes shall be turned off. This would include trucks waiting to deliver or receive soil, aggregate, or other bulk materials. Rotating drum concrete trucks may keep their engines running continuously.
- Properly tune and maintain equipment for low emissions.
- Post a publicly visible sign with the telephone number and person to contact at City regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.

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(from Mitigation Measure 5-1 of the Bayfront EIR)

* 18. To support the pedestrian, bicycle, and transit-oriented provisions included in the proposed project and reduce associated potential ROG1, NOx, and PM10 emissions, the Project shall also include the following measures:

- Develop and implement a comprehensive transportation demand management (TDM) plan that includes the following measures to further encourage alternative modes of transportation:

- a. Construct transit amenities, such as bus pull-outs, bus shelters, and kiosks that provide transit information (these should be coordinated with the ITC project);
- b. Work with 511 Contra Costa to provide transit incentives;
- c. Support/coordinate ridesharing, including preferential parking for car or van pools at office facilities;
- d. Provide bicycle amenities that include secure bicycle storage/parking for all uses and showers/lockers for commercial facilities;
- e. Consider a pricing strategy for non-residential parking places; and
- f. Work with Bay Area Car-Share programs to implement the program within the project.

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- * If commercially feasible, require that new buildings be energy efficient, by requiring Leadership in Energy and Environmental Design (LEED) certification, or demonstration of design to equivalent standards in terms of energy efficiency, that reduces energy consumption by at least 20 percent compared to typical new buildings.

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- * Provide exterior electrical outlets to encourage use of electric powered landscape equipment.

(from Mitigation Measure 5-2 of the Bayfront EIR; City / Owner shall each be responsible for their construction/building's compliance with this condition)

- 19. Implement the following measures to address project-related potential impacts on jurisdictional wetlands and waters:

- Where verified waters of the U.S. are present and cannot be avoided, authorization for project-related modifications to these features shall be obtained from the U.S. Army Corps of Engineers, Water Board, and California Department of Fish and game. All conditions required as part of the authorizations by the USACE, Water Board, and CDFG shall be implemented as part of the project. Consultation or incidental take permitting may be required under the California and federal Endangered Species Act. Owner for these project-related modification activities shall obtain all legally required permits or other authorizations from the United States Fish and Wildlife Service, NOAA Fisheries, and CDFG for the potential "take" of protected species under the Endangered Species Act.
- Prior to issuance of a grading permit for shared facilities construction that would potentially affect jurisdictional wetlands or waters, a consolidated Wetland Protection and Replacement Program shall be prepared by a qualified wetland specialist and approved by the jurisdictional agencies addressing the proposed onsite filling of scattered seasonal wetlands and depressions within shared facilities sites, including the Refugio Creek, and North Channel realignment and restoration related John Muir Parkway and Bayfront Boulevard extensions, and bay Trail extension. The Program shall include appropriate implementation measures for these construction activities to prevent inadvertent loss and degradation of jurisdictional waters to be protected, and replacement of jurisdictional waters to be protected, and replacement for those features eliminated or modified.
- Wetlands eliminated by offsite shared facilities construction shall be replaced at a minimum 1:1 replacement ratio and shall be established in suitable locations within protected open space areas. The wetland replacement component shall be replaced at a

minimum 1:1 replacement ratio and shall be established in suitable locations within protected open space areas. The wetland replacement component shall emphasize establishment of native brackish and freshwater marsh habitat to enhance existing habitat values, and shall preferably be consolidated with other existing wetlands to be retained as part of the ITC Project.

- All wetland features within or adjacent to construction areas to be protected shall be flagged by a qualified biologist prior to any grading, and initial onsite and project-related offsite construction activities shall be overseen by the qualified biologist, including installation of temporary protective fencing and silt fencing.
- The consolidated Wetland Protection and Replacement Program shall also define maintenance and long-term management responsibilities, monitoring requirements, and contingency measures. Monitoring shall be conducted by a qualified wetland specialist for a minimum of five years and continue until the success criteria are met.
- In addition, an offsite Stormwater Pollution Prevention Plan (SWPPP) shall be prepared and maintained for the Project addressing all water quality, sedimentation, and erosion aspects of the proposed project, as required with associated storm drainage storage, building elevation, and flood-proofing requirements.

(from Mitigation Measure 6-7 of the Bayfront EIR; City / Owner shared responsibility)

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20. Before development proceeds and as part of final development review, City shall ensure that the development complies with the most current City requirements for protection from flood hazards, consistent with Mitigation 11-4 in Chapter 11 (Hydrology and Water Quality) of the Bayfront EIR. These provisions would require compliance with associated storm drainage storage, building elevation, and flood-proofing requirements. In addition, if the City does not construct a shared Bay Trail facility retaining wall, the City shall require Applicant to construct a barrier adjacent to the railroad tracks, which would also act as a sea level rise protection wall. Project construction, including mitigation measures, shall not prevent or impede future construction of the Bay Trail and related retaining walls.
(from Mitigation Measure 7-1 of the Bayfront EIR).

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21. Prior to construction, construction personnel shall be briefed regarding what to do in the event buried cultural materials are encountered. In accordance with policies and programs of the Open Space/ Conservation Element of the Hercules General Plan (specifically, Policy 12a and Program 12a.2), if cultural materials are encountered, Owner shall retain a qualified archaeologist approved by City to monitor any demolition, excavation, or construction activities on the project site. The archaeologist shall have the authority to temporarily halt activities in the vicinity of a find if significant or potentially significant cultural resources are exposed and/or may be adversely affected by construction operations. Other procedures identified in Program 12a.2 shall be followed. If a significant cultural resource is identified through these procedures, City and Owner shall seek to avoid damaging effects on the resource. Preservation in place to maintain the relationship between the artifact(s) and the archaeological context is the preferred manner of mitigating impacts on an archaeological site. Preservation may be accomplished by:

- planning construction to avoid the archaeological site;
- incorporating the site within a park, green space, or other open space element;

- covering the site with a layer of chemically stable soil; or
- deeding the site into a permanent conservation easement.

When in-place mitigation is determined by City to be infeasible, a Data Recovery Plan, which makes provisions for adequate recovery of culturally or historically consequential information about the site, shall be prepared and adopted prior to any additional excavation being undertaken. Such studies shall be submitted to the California Historic Records Information System (CHRIS). If Native American artifacts are indicated, the studies shall also be submitted to the Native American Heritage Commission. Identified cultural resources shall be recorded on form DPR 422 (archaeological sites). Mitigation measures recommended by these two groups and required by City shall be undertaken, if necessary, prior to resumption of construction activities.

(from Mitigation Measure 8-1 of the Bayfront EIR)

22. In accordance with policies and programs of the *Land Use Element* of the Hercules General Plan (specifically, Policy 8A and Programs 8A.1 through 8A.3), Owner shall develop plans to preserve and rehabilitate the two historic buildings on the project site. Working with a qualified architectural historian approved by City, meeting the Secretary of the Interior's professional "Historic Architecture" standards published in the Code of Federal Regulations (36 CFR part 61), Owner shall, to City satisfaction, incorporate measures that would improve the affected resources in accordance with either of the following publications:

- The Secretary of the Interior's *Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings*; or
- The Secretary of the Interior's *Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings*.

Prior to issuance of building permits for the historic building sites, Owner shall prepare and submit a Historic American Buildings Survey (HABS), including large and medium format photographic documentation. City shall use the California Historic Building Code (CHBC) for reviewing and issuing building permits.

A qualified, City-approved architectural historian shall submit a report to City of Hercules Historical Architectural Review Board (HARB) finding conformance with the Secretary of the Interior's Standards. Pursuant to Chapter 20 of the Hercules Zoning Ordinance and the *Hercules Design Guidelines for Historic Preservation*, the City of Hercules HARB shall exercise its authority to review and approve/disapprove proposed alterations, enlargements, or rebuilding affecting the exteriors of the Administration and Clubhouse buildings, the landscaping associated with those buildings, and the site plans and proposed new buildings to be located within the Hercules Village Historic District portion of the project site (generally Blocks A and C2). (from Mitigation 8-2 of the Bayfront EIR)

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- * 23. City shall require Owner to carry out the following measures:

- a. *Education Program.* Owner shall implement a program that includes the following elements:
 - resource identification training procedures for construction personnel;

- spot-checks by a qualified paleontological monitor of all excavations deeper than seven feet below ground surface; and
- procedures for reporting discoveries and their geologic content.

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- b. *Procedures for Resources Encountered.* If subsurface paleontological resources are encountered, excavation shall halt in the vicinity of the resources, and the project paleontologist shall evaluate the resource and its stratigraphic context. The monitor shall be empowered to temporarily halt or redirect construction activities to ensure avoidance of adverse impacts on paleontological resources. During monitoring, if potentially significant paleontological resources are found, "standard" samples shall be collected and processed by a qualified paleontologist to recover micro-vertebrate fossils. If significant fossils are found and collected, they shall be prepared to a reasonable point of identification. Excess sediment or matrix shall be removed from the specimens to reduce the bulk and cost of storage. Itemized catalogs of material collected and identified shall be provided to a museum repository with the specimens. Significant fossils collected during this work, along with the itemized inventory of these specimens, shall be deposited in a museum repository for permanent curation and storage. A report documenting the results of the monitoring and salvage activities, and the significance of the fossils, if any, shall be prepared. The report and inventory, when submitted to the lead agency, shall signify the completion of the program to mitigate impacts on paleontological resources.

(from Mitigation 8-3 of the Bayfront EIR)

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24. Owner shall prepare a detailed, design-level geotechnical investigation performed by a City-approved licensed engineering geologist or geotechnical engineer. The investigation shall include analysis of project site seismic stability, differential settlement and liquefaction potential, and soil response characteristics with respect to ground acceleration, in accordance with current state requirements. The investigation shall be reviewed by a registered geologist acting on behalf of City (not by a third-party reviewer retained by the Owner). The detailed, design-level geotechnical investigation shall include the following:

- Seismic stability analysis of the existing on-site soil;
- Analysis of the potential for excessive total and differential settlements, and detailed results of the ongoing surcharge program and associated monitoring on portions of the project site;
- Evaluation of liquefaction potential through the performance of additional cone penetration tests, borings, and/or equivalent methods; and
- Determination of site-specific soil response characteristics and maximum credible ground acceleration for an earthquake recurrence interval specified by City.
- Recommendations from the investigation, including appropriate soil stabilization and foundation construction techniques, minimum setbacks around potentially unstable areas, and criteria for the compaction and treatment of on-site fills, shall be incorporated into the final project grading and foundation plans. In general, these recommendations are expected to include the following requirements:

- a. That all construction comply with most current edition of the International Building Code;
- b. That all project structural designs be based on proper estimates by the project geotechnical engineer of peak and maximum repeatable earthquake-induced ground surface accelerations expected to occur on the project site; and
- c. That excavations be adequately sloped or shored in order to minimize ground movements.

(from Mitigation Measure 9-1 of the Bayfront EIR)

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25. City shall require the preparation of a Preliminary Grading Plan and/or Preliminary Geotechnical Report prepared by a licensed geotechnical engineer, before approval of project grading permits. The project geotechnical engineer shall determine the extent of any necessary landslide and slope stability remediation and shall direct remediation activities during project construction to ensure that any existing or potential future landslides and unstable slopes are fully stabilized. Mitigation measures (e.g., soil replacement, setbacks, retaining walls and/or similar barriers shall be required if needed to protect against damage that might be caused by slope failure. Such mitigation measures shall comply with applicable provisions of Hercules General Plan Safety Element programs 2D.1 and 2D.2. The investigation shall be reviewed by a registered geologist acting on behalf of City (not by a third-party reviewer retained by Owner).

In addition, if the Project proceeds before the ITC Project, Owner shall ensure that the design of the Bay Trail and any associated retaining walls or similar barriers shall remediate any slope stability hazards identified in the detailed, design-level geotechnical investigation, through a combination of slope reduction, slope protection, and other geotechnical measures (e.g., retaining wall design, cut slopes) to the satisfaction of the City Engineer.

(from Mitigation Measure 9-2 of the Bayfront EIR)

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26. The detailed, design-level geotechnical investigation required at City discretion under Mitigation 9-1 shall include analysis of expansive soil hazards and recommend stabilization measures as appropriate. Once grading plans have been developed, the actual use of expansive soils in engineered fill construction shall be further evaluated and the location of primary borrow source areas for fills shall be determined. Additionally, supplemental field and laboratory testing of potential cut materials shall be completed. In addition to observing all cut and fill slope construction, the project geotechnical engineer shall inspect and certify that any expansive soils underlying individual building pads and all roadway subgrades have been either removed or amended in accordance with City-approved construction specifications. If expansive soils are not fully remediated on each lot and in the area of all public and private improvements at the time of site development, the project geotechnical engineer shall make site-specific recommendations for grading, drainage installation, foundation designs, the addition of soil amendments, and/or the use of imported, non-expansive fill materials, as may be required to fully mitigate the effects of weak or expansive soils and prevent future damage to project improvements. In addition, since proper drainage, in particular, can improve the performance of expansive soils by significantly reducing their tendency to shrink and swell, deed restrictions shall be imposed to prohibit significant modification of finished lot grades that would adversely affect site

drainage. The recommendations and restrictions identified above shall be reviewed by a City-retained registered geologist and, following his or her approval, be incorporated into a report to be included with each building permit application and with the plans for all public and common area improvements.

(from Mitigation Measure 9-3 of the Bayfront EIR)

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27. The detailed, design-level geotechnical investigation required at City discretion shall include analysis of the effects of grading plans on groundwater flow and recommend any necessary additional slope stabilization measures. On-site drainage systems shall be regularly maintained to ensure that storm water runoff is directed away from all slope areas.

(from Mitigation Measure 9-4 of the Bayfront EIR)

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28. If additional contaminants are encountered, the affected areas would be remediated to the standards applicable to the proposed development on that property. Owner shall comply with all applicable existing state and county-mandated site assessment, remediation, removal, and disposal requirements for soil, surface water and/or groundwater contamination. In particular, these include the requirements of Contra Costa County, the Regional Water Quality Control Board (RWQCB), and the California Department of Toxic Substances Control (DTSC). DTSC, as lead regulatory agency, would provide oversight of the clean-up.

(from Mitigation Measure 10-1 of the Bayfront EIR)

29. Ensure proper identification and removal of Asbestos-containing material (ACM), PCBs, and/or mercury requires the Owner to complete the following steps:

- a. Step 1. Thoroughly survey the existing structures for the presence of ACM, PCBs, and mercury. The survey shall be performed by a person who is properly certified by OSHA and has taken and passed an EPA-approved building inspector course.
- b. Step 2. Prepare a written Asbestos Abatement Plan describing activities and procedures for removal, handling, and disposal of these building elements using the appropriate procedures, work practices, and engineering controls.
- c. Step 3. Provide the asbestos survey findings, the written Asbestos Abatement Plan (if necessary), and notification of intent to the City of Hercules and Contra Costa Health Services Department at least ten days prior to commencement of work.
- d. Step 4. Remove any mercury-containing electrical equipment/plumbing prior to building renovation, in accordance with adopted regulations.
- e. (from Mitigation Measure 10-2 of the Bayfront EIR)

30. City Design Review and CalOSHA regulations shall be applied, and Owner shall implement the following procedures in accordance with these CalOSHA regulations:

- Notify the City of Hercules Building Division prior to starting work, describing the nature, location, and schedule of the work; and
- Post a sign at all work locations where lead containment is required, stating that lead-based paint abatement is in progress and public access is prohibited.

Lead abatement performance standards are included in the *Guidelines for Evaluation and Control of Lead-Based Paint Hazards* (U.S. Department of Housing and Urban Development). Accordingly, HEPA vacuums may be required for abrasive blasting, water blasting, scraping, or sanding. Burning, torching, and similar activities are prohibited. Following completion of lead-based paint abatement, all visible lead-based paint particles must be removed from the site.

The City of Hercules Building Division may inspect lead-based paint abatement activities at any time during construction. The Building Division is also responsible for addressing citizen complaints related to lead-based paint abatement activities and may issue a Notice of Violation, a Stop Work order, or a fine.

(from Mitigation Measure 10-3 of the Bayfront EIR)

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- * 31. Owner shall comply with all applicable current state, regional, and City water quality provisions and, in particular, comply with the process of development plan review established in City's storm water management and discharge control ordinance and associated NPDES permit issuance requirements instituted to address short-term and long-term water quality issues, including construction period activities.

Owner shall prepare to City satisfaction an updated Storm Water Pollution Prevention Plan (SWPPP) for the project site. Construction Best Management Practices (BMPs) shall include erosion control and dust control measures. To implement these measures, the construction contractors shall train all site employees in proper construction BMPs prior to beginning construction activity. In addition, Owner shall retain a construction manager familiar with national Pollution Discharge Elimination System (NPDES) permit requirements including applicable C.3 requirements to monitor construction activities. The site owners shall bear ultimate responsibility for compliance with the terms and conditions of the NPDES General Construction Activity Stormwater Permit.

(from Mitigation 11-1 of the Bayfront EIR)

32. Any project-related Refugio Creek dredging will require issuance of a Dredging/Dredge material Reuse/Disposal Permit from the U.S. Army Corps of Engineers (Corps). The Corps permit process typically requires completion of a sampling analysis of proposed dredged materials. A Sampling and Analysis Plan (SAP) detailing sediment sampling and analysis is typically submitted to the San Francisco Bay Dredged Material Management Office (DMMO). If the results of the SAP indicate that water quality will not be impacted by dredging, a consolidated Dredging/Dredge Material Reuse/Disposal permit can be issued by the Corps. The permit would cover both Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. If contaminated sediment is encountered, further sediment characterization and a sediment removal plan including upland disposal or beneficial reuse would be required by the Corps as a condition of permit issuance. (from Mitigation Measure 11-2 of the Bayfront EIR; City / Owner shared responsibility, subject to allocation of responsibility in the Agreement)

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- * 33. Pursuant to the federal Clean Water Act, the quality of storm water runoff discharging into creeks and sloughs is governed by the National Pollutant Discharge Elimination System (NPDES). NPDES permit issuance requires the preparation of a Stormwater Pollution Prevention Plan (SWPPP). As a condition of project approval, City shall ensure that Owner complies with applicable City storm water control plan and NPDES permit requirements

including applicable C.3 requirements.
(from Mitigation Measure 11-3 of the Bayfront EIR)

- MMRP* 34. Construct finished floor elevations at least one foot above the flood elevations as determined by FEMA, along with improvements to Refugio Creek and review of individual development proposals to ensure that future development does not contribute to increased downstream flows. These requirements are reflected in Hercules General Plan policies and City's flood damage prevention ordinance (Title 10, Chapter 7 of the Hercules Municipal Code).

Through its review of detailed storm drainage plans, City shall ensure that the project complies with (a) Hercules General Plan policies related to flood hazard protection including Open Space/Conservation Element policy 10A and program 10a.2, Safety Element policy 4B and program 4B.1, and Growth Management Element provisions related to flood control, and (b) all relevant provisions of City's flood damage prevention ordinance (Title 10, Chapter 7 of the Hercules Municipal Code)
(from Mitigation Measure 11-4 of the Bayfront EIR)

- MMRP 35. If the Project construction is ultimately proposed to commence prior to the adjacent ITC Project, as a requirement for issuing a building permit for Blocks G, K, L, M, N, O, Q, and R, Owner's civil engineer/hydrologist shall demonstrate to City Engineer satisfaction, including final hydrologic monitoring, that the proposed interim Project creek channel grading plan, with tie-in and without replacement of the existing downstream dog-leg and culverts, will adequately protect the structure and operation of the new Bayfront Bridge and Railroad Bridge against damage from the 100-year flood, and ensure that people and structures in surrounding existing neighborhoods (which cannot be raised) are protected from significant flood risk.
(from Mitigation Measure 11-5 of the Bayfront EIR)

- MMRP 36. Reduce project construction period noise impacts on nearby residences by incorporating conditions in project construction contract agreements that stipulate implementation of the following conventional construction-period noise abatement measures to the satisfaction of City:

- *Construction Plan.* Prepare a detailed construction plan identifying the schedule for major noise-generating construction activities. The construction plan shall identify a procedure for coordination with nearby noise-sensitive facilities so that construction activities and the event schedule can be scheduled to minimize noise disturbance.
- *Construction Scheduling.* Ensure that noise-generating construction activities are limited to between the hours of 7:00 AM to 5:00 PM, Monday through Friday, and 9:00 a.m. to 5:00 p.m. on weekends and holidays and are approved by written request to the Department of Public Works (based on planned civic activity in the area).
- *Construction Equipment Mufflers and Maintenance.* Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
- *Equipment Locations.* Locate stationary noise-generating equipment as far as possible from sensitive receptors when sensitive receptors adjoin or are near the construction site.

- *Construction Traffic.* Route all construction traffic to and from the construction sites via designated truck routes where possible. All construction traffic routes shall be approved by City.
- *Quiet Equipment Selection.* Use quiet construction equipment, particularly air compressors.
- *Temporary Barriers.* When possible, construct solid plywood fences around construction areas to shield residences, operational businesses, or noise-sensitive land uses.
- *Noise Disturbance Coordinator.* City may choose to require project designation of a "Noise Disturbance Coordinator" who would be responsible for responding to any local complaints about construction noise. The Disturbance Coordinator would determine the cause of the noise complaint (e.g., starting too early, bad muffler, etc.) and institute reasonable measures to correct the problem. Conspicuously post a telephone number for the Disturbance Coordinator at the construction site and include it in the notices sent to neighbors regarding the construction schedule. (The project sponsor should be responsible for designating a Noise Disturbance Coordinator, posting the phone number, and providing construction schedule notices. The Noise Disturbance Coordinator would work directly with an assigned staff member.)

(from Mitigation Measure 13-1 beginning of the Bayfront EIR)

- mmRP * 37. For all proposed buildings where the exterior noise level at the façade exceeds 60 dBA Ldn, project-specific acoustical analyses shall be conducted and measures taken as necessary to meet the requirements of the State Building Code (SBC). Building sound insulation requirements may include the provision of sound-rated windows and doors, and forced-air mechanical ventilation for residential units so that windows could be kept closed at the occupant's discretion to control noise. The specific determination of what treatments are necessary shall be conducted on a unit-by-unit basis. Results of the analysis, including the description of the necessary noise control treatments, shall be submitted to City, along with the associated building plans, for review and approval prior to issuance of a building permit.

The final requirements for building noise controls would be determined by City during the detailed design process, pursuant to SBC requirements. During the individual project design review process, a qualified Acoustical Engineer shall peer review and verify residential structure noise abatement specifications for all residential units proposed within 200 feet from the railroad tracks.

(from Mitigation Measure 13-2 of the Bayfront EIR)

38. The project design currently includes a retaining wall (as part of the ITC Project), which would also act as a noise barrier, along the railroad right-of-way (based on an acoustic analysis that has been performed in accordance with Title 24). The final design for the noise barrier (i.e., retaining wall or other noise barriers that might be equally effective) shall be reviewed during the subsequent acoustical analyses required for Title 24 compliance, and incorporated into the final acoustical report for the project design prior to issuance of building permits to reduce noise in outdoor residential activity areas to below 70 dBA Ldn. If the retaining wall is not built as part of the ITC Project prior to

development of Project outdoor use areas, Owner shall prepare, to City satisfaction, the acoustical analysis required for Title 24 compliance in order to identify location-specific measures that will reduce noise impacts on outdoor use areas to a less-than- significant level (*i.e.*, below 70 dBA Ldn). The retaining wall, or any other noise barriers as deemed necessary, shall be constructed according to the noise-attenuation specification identified in the acoustical analysis, subject to City review and approval.
(from Mitigation Measure 13-3 of the Bayfront EIR; City / Owner shared responsibility, subject to allocation of responsibility in the Agreement)

39. Owner's fair share responsibility toward the following improvements and intersection mitigation measures is fully satisfied by its payment of Development Impact Fees to City in accordance with the Agreement:

- Measure 16-2-1: To mitigate the project impact on intersection #2, San Pablo Avenue/John Muir Parkway, signalize the intersection of San Pablo Avenue/Tsushima Street, allowing full access to Tsushima Street, and provide a 150-foot minimum eastbound left-turn storage pocket. This mitigation measure is currently planned by the City of Hercules, but it is not currently fully funded. This signalization measure and new eastbound left-turn will decrease volumes along San Pablo Avenue through downtown Hercules by providing an alternative route.

- Measure 16-2-2: To mitigate the project impact on intersection #4, San Pablo Avenue/Sycamore Avenue, widen Sycamore Avenue between Willow Avenue and San Pablo Avenue from six-lane to a seven-lane cross-section, allowing a full block (Willow Avenue to San Pablo Avenue) of left-turn storage for vehicles turning from northbound Sycamore Avenue to westbound San Pablo Avenue. (This mitigation requirement is also identified in the recent City-certified New Town Center Project EIR.)

Implementation of this measure would result in acceptable LOS E operations during the AM peak hour, but the projected PM peak-hour delay would remain higher than under no-project conditions. No feasible additional mitigation has been identified for this project.

- Measure 16-2-3: To mitigate the project impact on intersection #3, San Pablo Avenue/Old Transit Center Driveway, implement Measures 16-2-1 and 16-2-2, plus the following additional measures:

(a) Add a second right-turn lane from northbound San Pablo Avenue to eastbound John Muir Parkway. The added second right-turn lane shall be extended south to the Old Transit Center Driveway intersection. (This mitigation requirement is also identified in the recent City-certified New Town Center Project EIR).

(b) Widen eastbound John Muir Parkway to four lanes from San Pablo Avenue to the SR 4 and I-80 ramps. This widened segment of John Muir Parkway would allow the two northbound San Pablo Avenue right-turn lanes to have exclusive receiving lanes serving the I-80 westbound on-ramp. The widening would also require widening of the I-80 westbound on-ramp from one to two lanes. (This mitigation requirement is also identified in the recent City-certified New Town Center Project EIR).

- Measure 16-2-4: To mitigate the project impact on intersection #6, Willow Avenue/Sycamore Avenue, implement Measures 16-2-2, which would reduce intersection delay at this intersection to below no-project levels.
- Measure 16-2-5: To mitigate the project impact on intersection #11, Sycamore Avenue/Tsushima Street, install a traffic signal at the intersection and construct a northbound right-turn lane to provide a northbound intersection approach with both a shared through/left-turn lane and a right-turn lane. (from Mitigation Measure 16-2 of the Bayfront EIR)

MMRP
16-3

- * 40. Owner shall establish and implement a Hercules Bayfront Project Transportation Demand Management Program that, at a minimum, incorporates all project-related property sales and leasing agreements, a requirement that all project homeowners associations and employees shall participate in the 511 Contra Costa Transportation Demand (TDM) Program.
(from Mitigation Measure 16-3 of the Bayfront EIR)
- * 41. The Creekside Trail, which is identified as a City Public Improvement and is the responsibility of City under the Agreement, shall be constructed per the Civic Space Standards of the Hercules Waterfront District Master Plan (HWDMP), including grading, paving, lighting, remediation of impacts associated with the work, landscape improvements, and storm water treatment constructed on Parcels 13 and 38. Work will include construction of a flashing crosswalk at the street crossing from the off-street Refugio Creek bike path, which would be activated by bicyclist to help ensure a safe crossing. Owner shall coordinate with City and WestCAT to determine whether facilities such as bus turnouts shall be incorporated into the project (such facilities are City responsibilities under the Agreement), and the preferred locations for such facilities. Agreement on these facilities shall be reached prior to the approval of the Final Map.
- * 42. Water main extensions will be required to serve the proposed development. When the development plans are finalized, the project sponsor should contact EBMUD's New Business Office and request a water service estimate to determine the costs and conditions of providing water service to the development. Engineering and installation of water mains and meters requires substantial lead time, which should be provided for in the project sponsor's development schedule. Once the property is subdivided, separate meters for each lot will be required. No water meters are allowed to be located in driveways. Due to EBMUD's limited water supply, all customers should plan for shortages in time of drought. (EBMUD)
- 43. EBMUD owns and operates an 8-inch water distribution pipeline in an EBMUD right of way (R/W 48822-B) located within the boundary of the project area (Main Street). This pipeline provides water service to the existing property. The integrity of this pipeline needs to be maintained at all times. Any proposed construction activity within the right of way would need to be coordinated with EBMUD and may require relocation of the pipeline and/or right of way. No buildings or structures shall be constructed in EBMUD's right of way unless specific approval is given by EBMUD. (EBMUD)
- * 44. Extensions of gas and/or electric facilities will be made in accordance with PG&E's and/or Hercules Municipal Utility (as applicable) gas and electric rules and regulations on file

with the State of California Public Utilities Commission at the time Owner applies for gas and/or electric services.

- *45. Buildings or portions of buildings or facilities exceeding thirty feet (30 ft) in height above the lowest level of fire department vehicle access shall be provided with approved fire apparatus access roads capable of accommodating fire department aerial apparatus. Aerial apparatus access roads shall have a minimum unobstructed horizontal width from curb face to curb face of not less than twenty-six feet (26 ft), inclusive of travel lanes and parking stalls, in the immediate vicinity of any building or portion of building more than thirty feet (30 ft) in height. At least one of the required access routes meeting this condition shall be located within a minimum of fifteen feet (15 ft) and a maximum of thirty feet (30 ft) from any building which meets or exceeds the above-mentioned height minimum and shall be positioned to one entire side of the building with the largest horizontal and vertical dimension and allowing access to each floor of the building.
- *46. Fire truck shall have access as demonstrated by a vehicle turn simulation and rolled curbs or other means of access may be used to accommodate vehicles turn path. Fire and emergency apparatus access to and within the proposed blocks shall meet the requirements of current California Fire Code, (CFC) Section 503 Fire Apparatus Access Roads.
- *47. Upon receipt of more detailed plans fire and life safety requirements such as fire sprinklers, fire department connections, fire hydrants, alarm systems, smoke control systems, gates, egress and exiting will be reviewed for individual streets, blocks, and buildings.
- *48. Buildings with underground parking structures shall comply with Chapter 5 of the CFC – Public-safety radio amplification systems. Except as otherwise provided, no person shall erect, construct, change the use of or provide an addition of more than 20% to any building or structure or any part thereof, or cause the same to be done, that fails to support adequate radio coverage of public safety agencies, including but not limited to firefighters and police officers. For purposes of this section, adequate radio coverage shall include all of the following:
 - a. A minimum signal strength of -95 dBm available in 90% of the area of each floor of the building when transmitted from the closest public safety communications system site;
 - b. A minimum signal strength of -95 dBm received at the closest public safety communications system site when transmitted from 90% of the area of each floor of the building;
 - c. The frequency range that must be supported shall be the current band of frequencies used by either the District or County communications systems;
 - d. A 100% reliability factor. When measuring the performance of a bi-directional amplifier, signal strength measurements are based on one input signal adequate to obtain a maximum continuous output level.
 - f. *Exception:* This section may not apply to buildings less than 20,000 square feet (465 m2) or of wood frame construction, or buildings classified as Group R-3 without underground parking structures.

- * 49. Buildings and structures that cannot support the required level of radio coverage shall be equipped with either a radiating cable system or an internal multiple antenna system with FCC type accepted bi-directional amplifiers as needed. If any part of the installed system or systems contains an electrically powered component, the system shall be capable of operating on an independent battery and/or generator system for a period of at least 12 hours without external power input. The battery system shall automatically charge in the presence of an external power input. If used, bi-directional amplifiers shall include filters to reduce adjacent frequency interference. These filters shall be tuned so that they will be 35 db below the communications system frequencies.
50. Subject to the provisions of the Agreement, Owner shall comply with all applicable sections of the City of Hercules Municipal Code relating to Subdivisions and the State of California Subdivision Map Act. (E)
51. Owner shall provide the Engineering Division with written evidence from the County Clerk's Office stating that the provisions of Sections 66492 and 66493 of the Subdivision Map Act have been met and satisfied prior to the approval of the final map. (E/MS)
- * 52. "Hercules Standard Drawings and Design Policy for Public Works," latest edition and modifications thereto by City, shall be the project specifications except as modified and approved by Vesting Tentative Map No. 9290, or the approved Waterfront District Master Plan and amendments thereto, or an approved Final Planned Development plan and noted as such on the approved improvement plans. Subject to Owner's vested rights under the Agreement, City reserves the right to upgrade, add to, or revise said specifications and plates and all other City ordinances, policies and standards. (E/MS)
53. Prior to the release of the final map for recordation, Owner shall provide the Engineering Division with a 100-scale base map in digital form for the purpose of updating their base map. The map shall also be drawn on 18-inch by 24-inch mylar and shall show the title block, north arrow, street names, tract number, boundaries and lot numbers. (E/MS)
- * 54. Prior to issuance of a building permit, the project sponsor shall secure approval by City and Fire District staff for a plan for addressing and identifying project buildings. Such a plan shall include directional signs and markings, as may be required by City or the Fire District. All unit numbers shall be illuminated. (PD/FD/PL/B)
- * 55. Prior to issuance of a building permit, Owner shall secure approval by City and Fire District staff of a lighting plan for the project. Such a plan shall provide lighting at all pedestrian and parking areas, and shall not cause glare at adjoining properties. On-site lighting shall be positioned and shielded, as needed, to avoid causing increased light or glare at adjacent properties. (B/PL/PD)
56. Vesting Tentative Map No. 9290 is granted for the property as described in the application, shown as "Hercules Bayfront Project," and shall not be transferable to properties outside the boundaries of Vesting Tentative Map No. 9290. (PL)
- * 57. Applicant agrees to defend and indemnify City against any Third Party Legal Challenge in accordance with the Agreement.
- * 58. All public and private site utilities, site improvements and grading and drainage are subject to applicable City approval processes. (PL/B)

- * 59. Owner shall pay all applicable plan check fees, processing fees, development fees, encroachment permit fees, and other miscellaneous applicable fees. (B)
- 60. A Preliminary Grading and Drainage Plan shall be submitted for review prior to approval of the Final Vesting Map. (E)
- * 61. A grading plan prepared by a registered civil engineer which incorporates all recommendations from soil engineering and engineering geology reports shall be reviewed and approved by Public Works prior to the issuance of the building permit. Building pad elevations and landscaping shall be shown on the grading plan. (E)
- * 62. Adequate drainage calculations and hydraulic design(s) shall be reviewed and approved by Public Works to insure that downstream areas and the site will drain to a safe point of discharge. (E)
- * 63. All improvements adjacent to the project site that are damaged during construction shall be removed and replaced as directed by the Engineering Inspector. (E)
- * 64. Any existing sewer and water service laterals to be used shall be inspected, tested, and repaired as necessary prior to connection, as determined by the Engineering Inspector. All existing water services shall comply with current Public Works standards or shall be upgraded to current standards. (E/FD)
- * 65. An on-site sewer plan shall be submitted for wherever existing lateral is larger than four inches in diameter. (E/FD)
- * 66. On-site water plans shall be submitted for wherever a separate loop or terminal line is required for fire hydrants and/or sprinkler system. All improvements plans, construction cost estimates, soils reports, geology reports and all pertinent engineering design calculations shall be submitted simultaneously. (FD)
- * 67. Construction drawings shall be submitted for review and approval by the Engineering staff and shall include the following: (E)
 - a. Site grading, drainage, utility and improvement plans.
 - b. Hydrology and hydraulic calculations for the site.
- * 68. Prior to construction the Engineering Division shall approve permits for the following: (E)
 - a. Grading
 - b. Encroachment
 - c. Industrial waste discharge
 - d. Sewer connection
- * 69. Owner or successors of the project shall comply with the National Pollutant Discharge Elimination System (NPDES).
 - a. Owner or project successors shall be required to comply with all rules, regulations and procedures of the National Pollutant Discharge Elimination System (NPDES) for municipal, construction, and industrial activities as promulgated by the California State Water Resources Control Board, or any of its Regional Water Quality Control Boards (San Francisco Bay-Region 11). (E)

- b.Improvement plans shall be reviewed to verify compliance with Provision C.3 of Contra Costa County's National Pollutant Discharge Elimination System (NPDES) Permit and the County's Stormwater Management and Discharge Control Ordinance (Section 1014).
- c.A final Stormwater Control Plan (SWCP) shall be submitted to and approved by the Public Works Department for consistency with Provision C.3 prior to recordation of any Final Map for Subdivision No. 9290. (E)
- d.For on-site stormwater retention and/or treatment, the property owner(s) shall enter into a standard Stormwater Management Facility Operation and Maintenance Agreement with the City of Hercules, in which the property owner(s) shall accept responsibility for construction, operation, and maintenance of the stormwater facilities and grant access to relevant public agencies for inspection of stormwater management facilities. Such an agreement shall be fully executed and recorded prior to recordation of a Final Map.
- e.For public stormwater treatment facilities, Owner shall design and construct elements consistent with the version of Provision C.3 effective the date the Vesting Tentative Map No. 9290 is approved. When accepted by the City of Hercules, City shall accept maintenance of the facilities.
- f. For regional stormwater treatment facilities, which may be constructed on City owned Property, and which may serve multiple private parcels and public rights of way, the property owner(s) shall participate in a financing mechanism in which the property owner(s) shall pay a fair-share contribution to pay for all land acquisition, construction, and maintenance costs associated with stormwater retention and treatment; provided, however, that the land acquisition price assessed against Owner shall be calculated at a rate equivalent to the per acre price for right of way lands set forth in the Landside PSA.
- g.Any proposed water quality features that are designed to retain water for longer than 72 hours shall be subject to the review of the Contra Costa Mosquito & Vector Control District. (E)
- h.Compliance shall include developing long-term best management practices (BMPs) for the reduction or elimination of storm water pollutants. The project design shall incorporate wherever feasible the following long-term BMPs in accordance with the Contra Costa Clean Water Program for the site's storm water drainage:
- Offer pavers for household driveways and/or walkways as an option to buyers.
 - Minimize the amount of directly connected impervious surface area.
 - Label all storm drains ("No Dumping, Drains to Creek") using approved markers.
 - Construct concrete driveway weakened plane joints at angles to assist in directing run-off to landscaped/pervious areas prior to entering the street curb and gutter.
 - Shallow roadside and on-site swales.
 - Distribute public information items regarding the Clean Water Program to buyers.
 - Other alternatives comparable to the above as approved by Public Works. (E)

- * 70. Owner shall coordinate with Public Works and arrange a pre-construction conference at least 48 hours prior to the proposed construction to discuss the scope and extent of removal and replacement of any existing broken curb, gutter, sidewalk, or asphalt paving (patch, repair and/or overlay), and construction of access ramp for the physically handicapped adjacent to the project site. (E)
- * 71. Curb cut widths and design shall conform to the City Code and current Public Works standards unless approved by the Planning Commission through Vesting Tentative Map No. 9290.
- * 72. All streets, curbs, gutters, sidewalks, street lights, parkways, and associated improvements shall be constructed per the City of Hercules Standard Drawings Book unless modified and approved by Vesting Tentative Map No. 9290, or the approved Waterfront District Master Plan (and amendments thereto), or an approved Final Planned Development plan. (E)
- * 73. On-site and off-site utility service shall be installed underground in accordance with the City Code. Utilities shall be undergrounded to the nearest suitable riser pole as determined by the appropriate utility company. (E)
- * 74. An Encroachment Permit shall be obtained for equipment driving over City property and over public easements. A cash deposit of \$1,000.00 shall be required to secure the repair of any damages and said deposit may be increased at the discretion of the City Engineer as necessary. (E)
- * 75. A Grading Permit application shall be submitted and approved by the City Engineer. (E)
- * 76. An Erosion Control Plan may be required should work occur during the rainy season. (E)
- * 77. All construction material/equipment shall be placed outside City's rights-of-way. This condition may be modified by an encroachment permit or construction easements identified on Vesting Tentative Map No. 9290. (E)
- * 78. Final Grading and Drainage Plans shall be designed to eliminate drainage from flowing across property lines. (E)
- * 79. Owner shall pay City the fees currently in effect at the time permits are issued for the construction of sewer connections, sewer usage, and sewer upgrades for construction of any building in any lot, except where separately provided for under an Implementation/Development Agreement.
- * 86. Prior to the scheduling of final maps before the City Council, the subdivider shall complete a Consent to Formation of Landscape Maintenance District form and submit it to the Public Works Director. By this action, the subdivider consents to the establishment of a maintenance district to assess properties in the subdivision for maintaining public landscape commensurate with the benefit to such properties. (E)
- * 80. 87. After irrigation and landscape installation but before final acceptance of the Landscape and Lighting Maintenance District Improvements by the City, a Landscape and Lighting Maintenance District Plan (LLMD) drawn at an approved scale shall be provided to the Public Works Division for review and approval. The plan shall clearly designate areas of maintenance responsibility boundaries relative to: (1) Landscape and Lighting Maintenance District; (2) Homeowners Association, if one is formed; (3) Private Areas; and/or (4) City Landscape Maintenance Responsibilities. The Public Works Division shall be provided

with one set electronic and one set of mylar (minimum 3 mil) original drawings. The Landscape and Lighting Maintenance District Improvement drawings shall accurately reflect all "As Built" conditions and shall become City's record drawings of the Landscape and Lighting Maintenance District Area Improvements. (E)

- * 81. Prior to the scheduling of final maps before the City Council, the subdivider shall create a homeowners association to maintain private landscaping and irrigation improvements within the residential and commercial and flex-unit portions of the subdivision. (MS, E)
- 82. Prior to the final map being recorded, Owner shall provide the Public Works Director with a copy of the Conditions, Covenants and Restrictions (CC&Rs) for the proposed residential and/or commercial condominiums for review and approval by the City Attorney, City Engineer, and Police Commander. All CC&Rs applicable to the subject property shall be consistent with the terms of this permit and the Hercules Municipal Code. Where a conflict exists between the CC&Rs and City regulations, City regulations shall prevail. (CA/E/PD)
- 83. Owner shall record with the Contra Costa County Recorder a "Notice of Land Use Restrictions and Conditions" in a form acceptable to the City Attorney's Office and City Manager's Office prior to the issuance of building permits or initiation of use. (CM, PL, CA)
- 84. All conditions of this permit including any off-tract and in-tract improvements, including building, paving, and landscape construction shall be completed prior to occupancy except as may be permitted by the Public Works or Municipal Services Director in consultation with other affected departments except that front yard landscaping must be completed within 30 days of dwelling unit occupancy. In the event early occupancy is permitted, Owner shall provide security or agreement to assure full completion of the project. (E/MS)
- * 85. No burning of combustible refuse or other flammable materials is permitted on the property. (FD/FD)
- * 86. A permit shall be obtained from the Rodeo-Hercules Fire Protection District for the handling, storage and use of all materials classified as flammable, combustible, radioactive, carcinogenic or otherwise potentially hazardous to human health. (FD/FD)
- * 87. Landscape planting shall be maintained in a flourishing manner and all irrigation systems shall be continuously maintained as required by City Code and as specified by the Planning Department. Failure to do so may result in the revocation of any related Design Review Permit or the initiation of legal action. (PL)
- * 88. A low water-use commercial landscape design and irrigation system shall be installed as approved by the Planning Department. Plans shall include a watering schedule. (PL)
- * 89. The landscape contractor shall provide a watering schedule to the building owner or manager prior to issuance of a certificate of occupancy. A copy of this schedule shall be provided to the Building Division. The schedule shall include automatic rain shut-off devices or instructions on how to override the system during rainy periods. (B)
- * 90. Owner/builder shall pay all applicable City of Hercules development impact fees at the time and in the manner specified in the Agreement.

- ~~91~~. All applicable sections of the Hercules Municipal Code or adopted Waterfront District Master Plan shall be complied with unless modified and approved through a Final Planned Development Plan review or the Agreement.

