

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Hercules Land Partners LP
114 Pacifica, Suite 100
Irvine, CA

Area Above Reserved for Recorder's Use

ENCROACHMENT EASEMENT AND AGREEMENT

STATE OF CALIFORNIA
CONTRA COSTA COUNTY
CITY OF HERCULES

THIS ENCROACHMENT EASEMENT AND AGREEMENT (this "***Easement***") is made, dated, and entered into as of the ____ day of _____, _____, by and between the City of Hercules, a California municipal corporation ("***City***"), and Hercules Land Partners a limited partner company ("***HLP***").

R E C I T A L S

A. City is the owner of that certain real property located in the City of Hercules and identified as Lot 26, John Muir Parkway, and Lot 39, Loop A, (collectively, "***Lots 26 & 39***"), which lots are a portion of "Parcel D" as said parcel is shown on that certain map entitled "Parcel Map MS 476-00," filed October 12, 2000, in Book 179 of Parcel Maps 38, 39, and 40 (179 PM 38) ("***Parcel D***"), in the office of the Contra Costa County Recorder; and

B. HLP is the owner of that certain real property located in the City of Hercules identified as Lots 29 & 30, which is also a portion of Parcel D, as more particularly described on **Exhibit A** attached hereto and incorporated herein by this reference (the "***HLP Lot***"), upon which the HLP's mixed-use building (the "***HLP Building***") shall be located; and

C. HLP desires to construct exterior overhead frontage structures of types that may include a building arcade or shopfront awning on the second floor and above on the HLP Building facing southwest towards Lot 26 and northwest towards Lot 39 (collectively, the "***HLP Overhead Structures***," and each individually a "***HLP Overhead Structure***"); and

D. Each HLP Overhead Structure will encroach onto Lots 26 & 39 as depicted on **Exhibit B** attached hereto and incorporated herein by this reference; and

E. To the extent applicable, each HLP Overhead Structure shall comply with revised building and inspection requirements for Exterior Elevated Elements ("EEE") as adopted by the California Building Standards Commission; and

F. City, as the owner of Lots 26 & 39, desires to grant certain easement rights over Lots 26 & 39 in order to allow HLP, as the owner of the HLP Lot, and any successor in interest to HLP, to install, maintain, repair, replace and use the HLP Overhead Structures; and

G. HLP, as the owner of the HLP Lot, desires to execute this Easement for the purpose of acknowledging the terms of its use of Lots 26 & 39 for the installation, maintenance, repair, replacement and use of the HLP Overhead Structures.

A G R E E M E N T

NOW, THEREFORE, in consideration of the premises; to enhance and protect the value of Lots 26 & 39 and the HLP Lot; and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City does hereby grant, bargain and convey unto HLP, its successors, heirs and assigns, the following easements, rights, covenants and undertakings pursuant to which Lots 26 & 39 and the HLP Lot shall be owned, conveyed, transferred, occupied and used:

1. Incorporation of Recitals. The foregoing Recitals A through F shall constitute an integral part of this Easement, and this Easement shall be construed in accordance therewith.

2. Establishment of HLP Overhead Structures Easement. City hereby grants, bargains, and conveys to HLP, as owner of the HLP Lot, a non-exclusive, perpetual right, privilege and easement to install the HLP Overhead Structures over Lots 26 & 39 in the locations shown on Exhibit B, attached hereto and incorporated herein by this reference (the “**HLP Overhead Structures Easement**”).

The HLP Overhead Structures Easement shall include, but not be limited to, the right of construction, maintenance, repair, use and operation of the HLP Overhead Structures by the owner of the HLP Lot within the portion of Lots 26 & 39 shown on Exhibit B. The HLP Overhead Structures shall be considered a portion of the HLP Building for *ad valorem* property tax purposes.

3. Maintenance of HLP Overhead Structures. The owner of the HLP Lot shall be solely responsible for the maintenance, repair and replacement of the HLP Overhead Structures which shall comply with revised building and inspection requirements for Exterior Elevated Elements adopted by the California Building Standards Commission, to the extent applicable. The City shall have the right to enter the building located upon the HLP Lot in order to inspect the HLP Overhead Structures after providing reasonable prior written notice to the owner of the HLP Lot, unless the City has reasonable cause to believe that a health or safety risk to Lots 26 & 39 is posed by the HLP Overhead Structures, in which case no prior notice shall be required, but City shall inform the owner of the HLP Lot thereof in writing as soon as reasonably possible thereafter. Should HLP fail to repair the HLP Overhead Structures within thirty (30) days after receipt of written notice (or such longer period of time as is reasonably necessary, so long as, to the reasonable satisfaction of the City, HLP promptly commences and diligently pursues the repair), or in the case of a health or safety risk to Lots 26 & 39, ten (10) days (or such longer period of time as is reasonably necessary, so long as, to the reasonable satisfaction of the City, HLP promptly commences and diligently pursues the repair), the City shall have the right to take reasonable measures to eliminate the health or safety risk posed to Lots 26 & 39. The owner of the HLP Lot shall be responsible for the actual, out-of-pocket costs of such measures, and the provisions of

Section 4 herein may also be applicable. Exercising this right shall not limit or waive any other rights or remedies the City may have under this Easement.

4. Insurance and Indemnification.

a. Insurance. The owner of the HLP Lot agrees to maintain, on a primary basis and at its sole expense, at all times during the life of this Agreement the following applicable coverages and limits. The requirements contained herein, as well as City's review or acceptance of insurance maintained by the owner of the HLP Lot, is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by the owner of the HLP Lot under this Agreement.

Commercial General Liability – Combined single limit of no less than \$1,000,000 each occurrence and \$2,000,000 aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability or Cross Liability. The owner of the HLP Lot shall endorse the City as an Additional Insured on the Commercial General Liability policy. The Additional Insured endorsement shall read 'City of Hercules as its interest may appear'.

Umbrella or Excess Liability – Annual Aggregate limits on Umbrella of Excess Liability policies shall not be less than the highest 'Each Occurrence' limit for required policies. The owner of the HLP Lot shall endorse City of Hercules as an 'Additional Insured' on the Umbrella or Excess Liability policy, unless the Certificate of Insurance states the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.

Certificate of Insurance – The owner of the HLP Lot shall provide a Certificate of Insurance to City evidencing that all coverages, limits and endorsements required by this Easement are maintained and in full force and effect. If the owner of the HLP Lot receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, the owner of the HLP Lot shall notify the City within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance. The Certificate Holder address should read:

City of Hercules
Attn: Planning Department
111 Civic Drive
Hercules, California 94547

b. Indemnification. To the maximum extent allowed by law, the owner of the HLP Lot shall defend, indemnify, and hold harmless Indemnitees (hereinafter defined) from and against all Charges (hereinafter defined) that arise in any manner from, in connection with, or out of this Easement as a result of acts or omissions of the owner of the HLP Lot or its contractors or anyone directly or indirectly employed by any of them, or, as determined by a court of law, anyone for whose acts any of the forenamed may be liable. In performing its duties described in the

preceding sentence, the owner of the HLP Lot shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City. Notwithstanding the foregoing, in no event shall the owner of the HLP Lot be required to defend, indemnify or hold harmless the Indemnities for any Charges arising directly as a result of the negligence or willful misconduct of any of the Indemnitees. As used in the preceding sentences of this paragraph: (i) "**Charges**" means claims, judgments, costs, damages, losses, demands, liabilities, fines, penalties, settlements and expenses included without limitation with interest and reasonable attorneys' fees assessed as part of any such item; and amounts for alleged violations of environmental laws, regulations, ordinances, rules, or orders, and (ii) "**Indemnitees**" means City and its officers, officials, agents, and employees, excluding the owner of the HLP Lot. Nothing in this Section 4(b) shall affect any warranties, rights or duties in favor of the City that are otherwise provided in or arise out of this Easement. This Section 4(b) is in addition to and shall be construed separately from any other indemnification provisions that may be in this Easement. This Section 4(b) shall remain in force despite termination of this Easement (whether by expiration of the term or otherwise).

5. Covenants Running with the Land. The HLP Overhead Structures Easement and the easements, rights, covenants and undertakings contained within this Easement shall run with the land and be appurtenant to, and for the benefit of, the owner of the HLP Lot and shall be a burden upon the title to Lots 26 & 39. Any conveyance of the HLP Lot or Lots 26 & 39, or any portions thereof, shall be subject to the HLP Overhead Structures Easement and the easements, rights, covenants and undertakings contained in this Easement, and, at the time of conveyance, the grantor in any deed of conveyance shall be relieved of future obligations thereafter arising by the owners of the lot or property interest so conveyed, but the grantor in any deed of conveyance shall not be relieved of obligations that are based on acts, omissions, or events that occurred before the time of conveyance. Any grantee of HLP or the City, as applicable, or their successors, heirs, or assigns, by recordation of a deed or other instrument of transfer or conveyance, shall be deemed to have assumed the obligations under this Easement with respect to such lot (Lot 26, Lot 39, and/or the HLP Lot, as the case may be).

6. Amendment and Termination. This Easement may be modified, amended or terminated only by written agreement of the owners of the HLP Lot and City, as the owner of Lots 26 & 39, and pursuant to City Council approval if required, and shall be duly acknowledged in a manner suitable for and effective upon recording in the Office of the Register of Deeds of Contra Costa County, California. In addition, should the HLP Overhead Structures be removed and not replaced by the owner of the HLP Lot (or its authorized agents) for a period of ten (10) consecutive years, this Easement shall be terminated upon recording a notice of termination in the Office of the Register of Deeds of Contra Costa County. This Section 6 is subject to Section 13 (Performance of Government Functions).

7. Governing Law. This Easement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflict of laws.

8. No Public Dedication; No Third Party Beneficiaries or Consents. This Easement is not intended, and shall not be construed: (a) as a dedication to the public of any interests in the HLP Overhead Structures described herein, (b) to give any member of the public, or any person, entity, or party other than as provided herein, any right whatsoever herein or therein or (c) to require any consent or other action of any other person, entity, or party other than as expressly provided herein to any amendment to or waiver of any provision of this Easement.

9. Severability. This Easement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Easement or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, but the extent of such invalidity or unenforceability does not destroy the basis of the bargain expressed herein, the remainder of this Easement and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

10. Compliance Certificate. Upon the written request of the owner of the HLP Lot or Lots 26 & 39, or the holder of any first lien deed of trust or first lien mortgage on any such parcel, any such owner shall execute, have acknowledged and deliver a certificate stating whether, to the knowledge of the signatory party, the requesting party is otherwise in compliance with this Easement.

11. Waiver. This Easement may not be waived orally or impliedly, but only by written document executed by the party against which such waiver is sought. Neither the failure of a party to complain of any violation of this Easement, regardless of how long such failure continues, nor the failure of a party to invoke (or the election by a party not to invoke) any right, remedy or recourse for a violation hereof, shall waive the rights, remedies and recourses of the party with respect to such violation. No waiver by a party of any provision of this Easement shall be deemed to be a waiver of any other provision hereof.

12. Rights Cumulative. All rights, powers and privileges conferred hereunder shall be cumulative and in addition to, and not to the exclusion of, those provided at law or in equity.

13. Performance of Government Functions. Nothing contained in this Easement shall be deemed or construed to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions, including the power of eminent domain.

14. Authority to Perform. City covenants that it has done nothing to impair title to Lots 26 & 39 in any manner that would impair, in part or in whole, the rights, covenants and undertakings under this Easement.

15. Counterparts. This Easement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which taken together shall be considered as one and the same instrument.

16. Headings. The paragraph headings in this Easement are for convenience only, and shall in no way define or limit the scope or content of this Easement, and shall not be considered in any construction or interpretation of this Easement or any part thereof.

17. Notice.

a. All notices and other communications required or permitted by this Easement shall be in writing and shall be given either by personal delivery, fax, or certified United States mail, return receipt requested, addressed as follows:

To the City:

City Manager
City of Hercules
111 Civic Drive
Hercules, California 94547
Fax: (510)799-2521

To HLP:

Hercules Land Partners LP
c/o Leducor Properties, Inc.
114 Pacifica, Suite 100
Irvine, California 92618

b. A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this Easement shall be deemed given at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

18. Confirmation of Grant of Easement. City as grantor hereby expressly grants to HLP as grantee the Overhead Structures Easement and all privileged and appurtenances thereunto.

<p>Attest:</p> <hr/> <p>City Clerk</p>	<p>CITY / GRANTOR :</p> <p>City of Hercules</p> <p>By:</p> <hr/> <p>David Biggs, City Manager</p>
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I, a Notary Public of _____ County, State of California certify that _____ (the “Signatory”) personally came before me this day and acknowledged that she is the City Clerk of the City of Hercules, California and that by authority duly given and as the act of said City, the foregoing instrument was signed in its name by the Mayor of the City of Hercules, California and attested by them as City Clerk to the City of Hercules, California.

Witness my hand and official stamp or seal, this the ____ day of _____, _____.

Print: Name: _____
[Note: Notary public must sign exactly as on notary seal]

(MUST BE FULLY LEGIBLE)

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	<p>HLP/GRANTEE:</p> <p>Hercules Land Partners LP a Delaware limited partnership</p> <p>By: Hercules Land Holdings Inc. its General Partner</p> <p>By: _____</p> <p>Patrick B. Patterson, Chief Operating Officer, Development</p>
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STATE OF CALIFORNIA

COUNTY OF _____

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:

Patrick B. Patterson, Senior Vice President

Date: _____ Official Signature of Notary: _____

Notary's printed or typed name: _____

My commission expires: _____

(MUST BE FULLY LEGIBLE)

(Notarial Stamp/Seal)

EXHIBIT "A"

LEGAL DESCRIPTION

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

BEING A PORTION OF PARCEL D AS DESCRIBED IN THAT PARCEL MAP RECORDED OCTOBER 12TH, 2000 IN BOOK 179 OF PARCEL MAPS, PAGES 38 THROUGH 40, CONTRA COSTA COUNTY RECORDS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST EASTERLY POINT OF PARCEL D AS SHOWN ON SAID MAP,

THENCE NORTH 37° 46' 59" WEST, ALONG THE NORTHEASTERLY LINE OF SAID PARCEL D A DISTANCE OF 105.34 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION;

THENCE LEAVING SAID NORTHEASTERLY LINE, SOUTH 49° 30' 00" WEST, 449.23 FEET;

THENCE NORTH 57° 47' 44" WEST, 109.14 FEET TO THE BEGINNING OF A TANGENT CURVE TO THE RIGHT;

THENCE ALONG SAID TANGENT CURVE HAVING A RADIUS OF 293.00 FEET, THROUGH A CENTRAL ANGLE OF 20° 00' 45", FOR AN ARC LENGTH OF 102.34 FEET TO A TANGENT LINE;

THENCE ALONG SAID TANGENT LINE NORTH 37° 46' 59" WEST, 35.48 FEET;

THENCE NORTH 52° 13' 01" EAST, 203.86 FEET TO THE BEGINNING OF A TANGENT CURVE TO THE LEFT;

THENCE ALONG SAID TANGENT CURVE HAVING A RADIUS OF 66.00 FEET, THROUGH A CENTRAL ANGLE OF 90° 00' 00", FOR AN ARC LENGTH OF 103.67 FEET TO A TANGENT LINE;

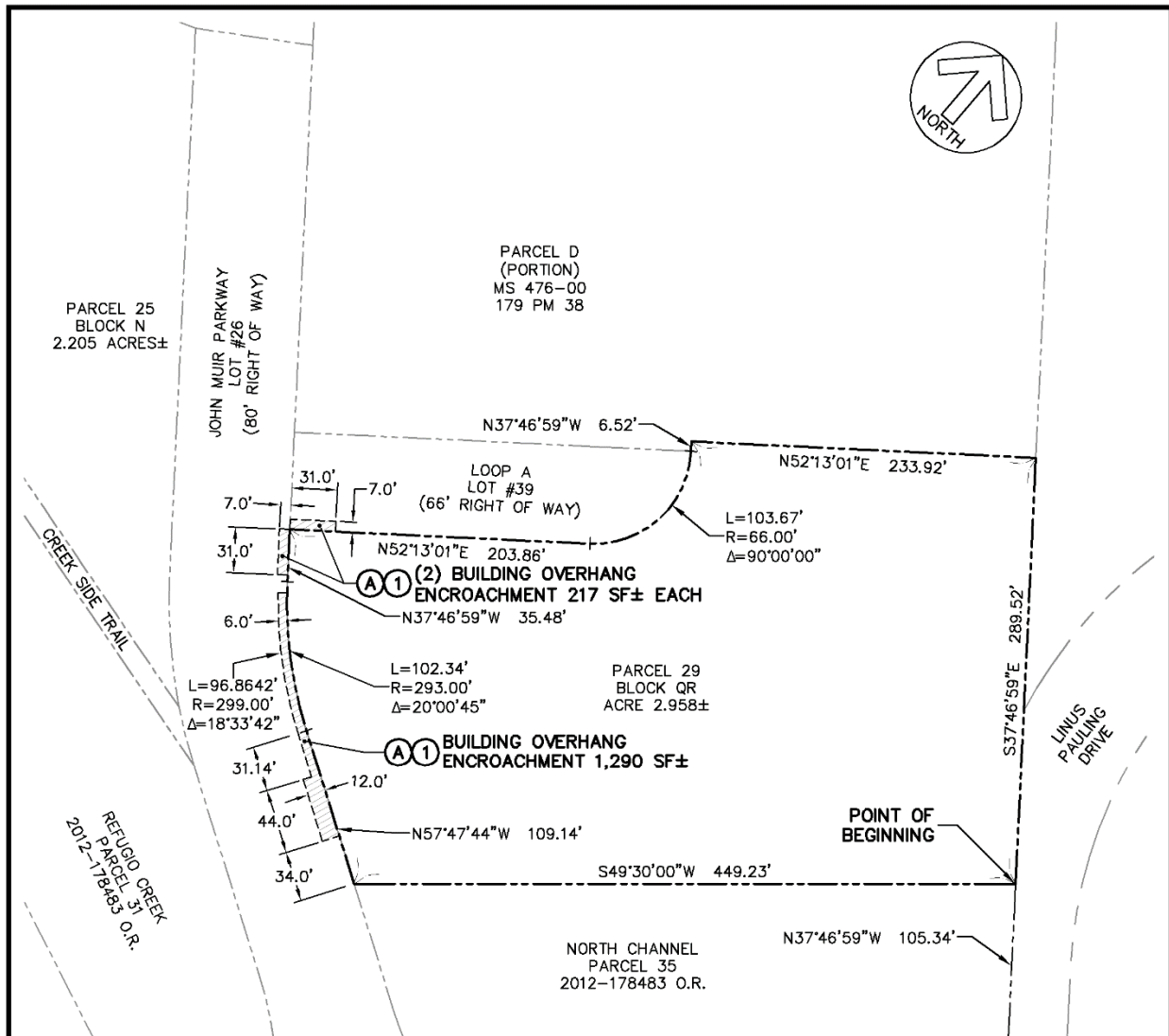
THENCE ALONG SAID TANGENT LINE NORTH 37° 46' 59" WEST, 6.52 FEET;

THENCE NORTH 52° 13' 01" EAST, 233.92 FEET;

THENCE SOUTH 37° 46' 59" EAST, 289.52 FEET TO THE POINT OF BEGINNING.

APN: 404-730-005-0 (Affects this and other property)

EXHIBIT "B"



BASIS OF BEARINGS

THE MONUMENT LINE OF BAYFRONT BOULEVARD, AS SHOWN ON THE MAP OF SUBDIVISION 8407, HERCULES VILLAGE, FILED DECEMBER 19, 2001, IN BOOK 437 OF MAPS AT PAGE 31. DISTANCES SHOWN ARE GROUND DISTANCES TO OBTAIN GRID DISTANCES MULTIPLY BY 0.999931. BEARINGS SHOWN HEREON CONFORM WITH CALIFORNIA COORDINATE SYSTEM, ZONE 3.

① OVERHEAD FRONTAGE STRUCTURE TYPES MAY INCLUDE:

GALLERY/ARCADE (10' MIN. CLEARANCE)
LOADING DOCK (UP TO FACE OF CURB)
SHOPFRONT AWNING (4' MIN. / 10' MAX.)

② ENCROACHMENTS

PRIMARY STREET (14' MAX.)
SECONDARY STREET (14' MAX.)
CIVIC SPACE (14' MAX.)
ENCROACHMENTS ARE NOT ALLOWED BEYOND A STREET CURB

LEGEND

E EAST
L LENGTH
N NORTH
R RADIUS
S SOUTH
SF SQUARE FEET
W WEST

EXHIBIT "B"

Parisi
CSW | DESIGN GROUP

1936 University Ave, Suite 250
Berkeley, CA 94704
510 343 6400
www.parisi-associates.com

TITLE EASEMENT EXHIBIT - FOR BUILDING

OVERHEAD STRUCTURES ENCROACHMENT

JOB NUMBER 18013

BY MV CHECKED AC DATE 10/19/2018

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