

SUBDIVISION AGREEMENT

SUBDIVISION. 9499 LANDS OF HERCULES LAND PARTNERS LP

THIS AGREEMENT is made and entered into this 13th day of November, (“Effective Date”) by and between Hercules Land Partners LP, a Delaware limited partnership (“Subdivider”) and the CITY OF HERCULES, a Municipal Corporation (“City”).

WITNESSETH

WHEREAS, Subdivider has presented to City a proposed final subdivision map for Hercules Land Partners LP - Subdivision No. 9499 (the “Final Map”; attached hereto as Exhibit A); and

WHEREAS, the Subdivision is subject to Design Review Permit #17-06 for development of blocks known as “Q and R” (the “Blocks Q and R Project”; approved April 16, 2018 by the Planning Commission in Resolution #18-05 and amended by the City Council on June 12, 2018 by Resolution #18-034 modifying condition #22 related to trash); and

WHEREAS, the Blocks Q and R Project includes a 4-story building (with some overhangs are allowed to be in the City right-of-way with an encroachment and easement agreement), onsite parking structure, utilities, podium landscape areas, and walls, plans for which were dated July 17, 2018 and are currently under review by the Contra Costa County Building Department and Fire District and shall be in conformity with the approved Design Review Permit #17-06 ; and

WHEREAS, Design Review Permit #17-06 contains 37 conditions of approval (the “COAs”) for the Blocks Q and R Project that are included in Exhibit B-1 and incorporated herein by reference; and

WHEREAS, Vesting Tentative Subdivision Map No. 9290, which includes the Final Map area, was approved by the City Council on March 13, 2012 by Resolution #12-029 and subject to conditions of approval for the overall Bayfront development, which conditions were modified and revised through the adoption of the Implementing Development Agreement (Exhibit L) by the City Council on March 13, 2012 to contain a total of 91 conditions shown in Exhibit B-2 and incorporated herein by reference (the “Bayfront COAs”);

WHEREAS, the Blocks Q and R Project is subject to both the COAs and the Bayfront COAs; and

WHEREAS, Subdivider has requested City to accept the dedications delineated and shown on the Final Map, and to approve the Final Map so that it may be recorded as required by law; and

WHEREAS, City requires as a condition precedent to its approval of the Final Map and acceptance of the dedications shown thereon that certain improvements be made, installed, and constructed by

Subdivider, and that Subdivider enter into an agreement with City for the making, installation, and construction of the improvements and related undertakings (the “Work”) as specified in the Improvement Plans for the subdivision prepared by Parisi CSW – Design Group Civil Engineers dated October 26, 2018 and currently under review to be approved by the City Engineer (on file with the City Engineer’s office and attached hereto as Exhibit D).

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Subdivider shall develop and improve said Tract No. 9499 in accordance with the Design Review Permit #17-06, the COAs, the Bayfront COAs, the Final Map, this Agreement, and the Improvement Plans submitted by Subdivider which were approved by or are in the process of being approved by the City Engineer. Subdivider shall complete the Work in a good and workmanlike manner and to the satisfaction of the City Engineer within twenty-four (24) months of the Effective Date. Upon written application made by the Subdivider, the City Engineer may, in his or her sole discretion, grant an extension of the time for which the Work must be completed if such extension is not detrimental to the public welfare. Any such extension or extensions shall not exceed eighteen (18) months. Any such application for extension shall fully state the grounds and the facts relied upon for the request.
2. Subdivider may only modify the Improvement Plans should unforeseen conditions occur, subject to the prior written approval of the City Engineer; in the event of such modifications, Subdivider shall pay plan checking fees therefore. City reserves the right to make reasonable modifications to the Improvement Plans whenever field conditions require such modifications. Should such field conditions arise requiring modifications to approved Improvement Plans, City shall consider proposed modifications in cooperation with Subdivider and work with Subdivider to implement any necessary design modifications.
3. Subdivider agrees to cause all Work to be made and constructed in the Subdivision to fully comply with the requirements of the following: the Subdivision Map Act of the State of California; the Hercules Municipal Code; the Improvement Plans; and the COAs and Bayfront COAs.
4. If Subdivider fails to do, perform, and complete the Work within the period of time herein set forth or any extensions thereof granted by City, or if delay in the construction or failure of or deterioration in any portion of the Work shall, in the opinion of the City Engineer, endanger property outside the boundaries of said Subdivision, City may at its option do, perform, complete, repair or maintain the Work or any part thereof and recover the full cost and expense thereof from Subdivider.
5. Subdivider shall, upon execution of this Agreement, provide satisfactory corporate surety bonds as follows: a labor and materials bond in the amount of **\$596,725**, and a performance bond in the amount of **\$596,725**, which represents the sum of the engineer’s costs estimates contained in Exhibit C - **\$596,725**. These bonds for public improvements shall comply with the requirements of the Subdivision Map Act of the State of California (Sections 66499.1 and 66499.2 of the Government Code) and be approved by the City.

6. The Subdivider shall repair any defects or failures and the causes therefore which may appear in any of the improvements in said tract within a period of one (1) year after acceptance of the Work. Subdivider shall provide a satisfactory corporate surety bond in an amount acceptable to the City Engineer, but not less than **\$89,509** (which equates to 15% of all engineer cost estimates in Exhibit C), for faithful performance of any required maintenance and repairs.
7. Subdivider shall maintain all Work, including any and all graded areas, shown on the approved Improvement Plans until such Work is accepted by the City. The maintenance bond furnished by Subdivider pursuant to Section 6 above shall not be released until such dedication and acceptance occurs. If such acceptance does not occur, Subdivider shall enter into a maintenance agreement with City for the permanent maintenance by Subdivider, at Subdivider's expense, of any such Work or portion thereof .
8. Subdivider will indemnify, defend, and hold harmless City, including its elected officials, officers, agents and employees (individually, an "Indemnitee," and collectively "Indemnites"), from and against any and all claims, demands, damages, liabilities, costs, and expenses of any kind, including, without limitation, court costs, attorneys' fees, expert witness fees, and costs of litigation, mediation, and arbitration (collectively, "Liability"), resulting from or arising out of the acts or omissions of Subdivider, its agents, employees, or representatives in performing the Work or obligations pursuant to this Agreement except such Liability caused by active negligence, sole negligence, or willful misconduct of an Indemnitee.
9. Upon completion of the Work, the City Council shall, by resolution duly passed and adopted, accept the Work. Periodic or progress inspections or approval shall not bind the City to accept the Work, nor waive any defect in the same nor any breach of this Agreement. Acceptance of any part or stage of the Work shall not be final until a written notice of final acceptance of the Work has been delivered to the Subdivider. Prior to City's final acceptance of the Work, Subdivider agrees that the use of any or all portions of the Work, including all streets and improvements, shall be at the sole and exclusive risk of Subdivider. Issuance of any occupancy permits by City for dwellings located within the Subdivision shall not be construed in any manner to be an acceptance or approval of any or all of the Work, including streets and improvements.
10. Prior to recordation of the Final Map, Subdivider shall pay the City **\$38,190** (which represents 6.4% of all engineer's cost estimates in Exhibit C) to cover the cost of inspection and plan checking.
11. Subdivider shall carry insurance at its sole cost and expense from the date of this Agreement to the date of acceptance of the improvements by City, insuring the City and its officers, employees and agents against loss or liability which may result from the performance of the work or any obligation to be performed under this Agreement, including all costs of defending any claim as a result thereof in the minimum amounts of \$1,000,000 for the death or injury of any one person in any one occurrence, \$2,000,000 for the death or injury of more

than one person in any one occurrence, and \$1,000,000 for damage to property in any one occurrence.

11.1 Prior to commencement of any Work or other obligation pursuant to this Agreement, Subdivider shall furnish proof of such insurance by delivering to City an insurance policy or policies or copies of same or certificates of insurance written by an insurer satisfactory to City and subject to approval as to form by the City Attorney. Such insurance shall state by its terms or endorsement upon the policy or policies that it shall not be cancelled except upon thirty (30) days prior written notice to City.

12. Pursuant to the COAs (specifically COAs 30.c and 11.a), prior to or concurrent with Subdivider's sale of either or both lots known as P and R (as described and depicted on Exhibit E hereto), Subdivider must grant and record a reciprocal parking and access easement and joint maintenance agreement. Subdivider hereby agrees to execute such a reciprocal parking and access easement and maintenance agreement in a form that substantially conforms to that included as Exhibit E hereto. In the event that Subdivider conveys both lots to a single owner, Exhibit E shall be modified as needed to establish the easement and maintenance agreement, which modified version shall be approved by the City prior to execution and recordation. In the event that Subdivider still owns both lots at the time that the Work is to be accepted by the City, Subdivider must enter into a further agreement with the City to execute the easement contemplated by COAs 30.c and 11.a and this paragraph 12.
13. In the event it becomes necessary for either party to bring action with respect to enforcement of the provisions of this Agreement, or the security therefor, the prevailing party in such action shall be rewarded reasonable attorneys' fees, as may be determined by the Court.
14. This Agreement shall not be assignable by Subdivider without the written consent of City.

IN WITNESS WHEREOF, said parties have executed this Agreement as of the day and year first hereinabove written.

Hercules Land Partners LP

By: Hercules Land Holdings Inc.,
General Partner

By _____
Name: Patrick B. Patterson
Title: Chief Operation Officer, Development

City of Hercules

David Biggs, City Manager

Approved as to Form

City Attorney

Exhibit A: Final Map for Subdivision 9499
Exhibit B-1: Conditions of Approval for Blocks Q&R
Exhibit B-2: Bayfront Project Conditions of Approval
Exhibit C: Engineer's Cost Estimates for Subdivision 9499
Exhibit D: Improvement Plans
Exhibit E: [Draft] Private Parking and Access Easement and Maintenance Agreement