

EXHIBIT J

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN
TO:

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

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

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DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF HERCULES,

and

HERCULES BAYFRONT, LLC

for

HERCULES WATERFRONT DISTRICT MASTER PLAN

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

Development Agreement

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

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

RECITALS

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

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

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

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

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

AGREEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Article III. Obligations of the Landowner.

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

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

Article IV. Obligations of the City.

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

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

Article V. Periodic Review of Compliance.

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

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

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

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

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

Article VI. Miscellaneous.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CITY:

City of Hercules,
a California municipal corporation

By: _____

Name: _____

Title: _____

LANDOWNER:

Hercules Bayfront, LLC
a Delaware limited liability Company

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

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

By: _____
James R. Anderson
Managing Member

DA EXHIBIT A

HERCULES BAYFRONT, LLC

LEGAL DESCRIPTION

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

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

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

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

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

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

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

PARCELS FOUR AND SIX AS SHOWN ON PARCEL MAP MSH-1 FILED APRIL 22, 1974, IN BOOK 33 OF PARCEL MAPS AT PAGE 16, CONTRA COSTA COUNTY RECORDS, DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHERLY CORNER OF SAID PARCEL 4 (33 PM 16): THENCE FROM SAID POINT OF BEGINNING ALONG THE EXTERIOR LINES OF SAID PARCEL 4, THE FOLLOWING COURSES:

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

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

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

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

HERCULES BAYFRONT, LLC

PROJECT SITE

