HOUSING & REDEVELOPMENT COMMISSION

February 7, 2007

SPECIAL MEETING

Council Chambers
Vallejo City Hall
555 Santa Clara Street

7:30 P.M.

AGENDA

1. Call to Order
2. Pledge of Allegiance
3. Roll Call
4. Approval of Agenda

   RECOMMENDATION: Approve the agenda as presented.

5. Approval of Minutes

   RECOMMENDATION: Approve the action minutes from the January 10, 2007 meeting.

Requests for disability-related modifications or accommodations, aids, or services may be made by a person with a disability to the Vallejo Economic Development Division office, located at 555 Santa Clara Street, no less than 72 hours prior to the meeting (as required by Section 202 of the Americans with Disabilities Act of 1990, and the federal rules and regulations adopted in implementation thereof). The Vallejo Economic Development Division may be contacted as follows: Telephone (707) 648-4444; Fax (707) 648-4499; or e-mail: alisa@ci.vallejo.ca.us.

The hearing impaired may call the California Relay Service at (800) 735-2922 without TTY/TDD or (800) 735-2929 with TTY/TDD.

I, Alisa Somera, do hereby certify that I caused a true copy of the above notice and agenda to be delivered to each of the members of the Housing and Redevelopment Commission at the time and manner prescribed by law and posted in an area freely accessible to members of the public on February 2, 2007.

Alisa M. Somera
Signature

6. Report of Presiding Officer and Members of the Commission

7. Secretary's Report

8. Council Liaison's Report

9. Communications and Presentations

   A. Letter from Clarence Turner to Joseph Tanner, Executive Director of the Vallejo Housing Authority, dated January 18, 2007

   B. 2006 Housing and Redevelopment Commission Resolutions

10. Community Forum

Anyone wishing to address the Commission on any matter not listed on the Agenda, but within the jurisdiction of the Commission to resolve, may step to the podium and state his/her name and address for the record.

11. Consent Calendar

None

12. Public Hearings

None

13. Administrative Items

   A. 3^{RD} AMENDED AND RESTATED WATERFRONT DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE REDEVELOPMENT AGENCY OF THE CITY OF VALLEJO AND CALLAHA/DESILVA VALLEJO LLC

On October 17, 2000 the Redevelopment Agency of the City of Vallejo (Agency) entered into a Disposition and Development Agreement (DDA) with Callahan/DeSilva Vallejo, LLC (Developer) for the acquisition, disposition and development of certain public and private parcels located within the boundaries of the Marina Vista Redevelopment Project Area, the Vallejo Central Project Area and the Vallejo Waterfront Redevelopment Project Area. The original DDA was amended and restated in its entirety as of October 1, 2002 (the "First Restatement"), and further amended by a First Amendment to Amended and Restated Disposition and Development Agreement, executed as of October 24, 2003, and a Second Amendment to Amended and Restated Disposition and Development Agreement, executed as of August 24, 2004, and further amended and restated in its entirety as of October 27, 2005 (the "Second Restatement") (all of the foregoing are collectively referred to herein as the "Existing DDA"). Since the Second Restatement, the Vallejo Waterfront Redevelopment Project Area and the Marina Vista Redevelopment Project Area have been merged with the

Vallejo Central Redevelopment Project Area and are a part of the Merged Waterfront/Downtown Redevelopment Project Area.

Following approval of the Second Restatement, the Vallejo Waterfront Coalition (the "Coalition") filed an action challenging certain aspects of the Project. The Agency, City, Developer and Coalition entered into settlement negotiations, and thereafter entered into a Settlement and Release Agreement as of November 28, 2006 (the "Settlement Agreement") to resolve the action.

The Agency and Developer have cooperated in the preparation of an Amended and Restated (Third) Disposition and Development Agreement (the "Third Restatement").

RECOMMENDATION: Adopt the attached resolution recommending to the City Council and the Redevelopment Agency approval of the Third Restatement.

B. RECOMMENDATIONS REGARDING INCLUSIONARY HOUSING

During the Housing and Redevelopment Commission's regular meeting in December 2006, Chair Abdul-Ghanee appointed an Ad Hoc Committee comprised of Commissioners Pitts and Platzer to formulate recommendations regarding inclusionary housing for the Commission to review and approve for presentation to the City Council. The Ad Hoc Committee has decided on three recommendations it wishes to provide.

RECOMMENDATION: Adopt the resolution supporting the following three recommendations to be presented to the City Council:

1. The creation and adoption of an inclusionary housing ordinance
2. Affordable housing set aside be not less than 15%
3. In-lieu fees be only allowed for fractional unit obligation

C. VALLEJO HOUSING AUTHORITY HOUSING CHOICE VOUCHER PROGRAM WAITING LIST

The Vallejo Housing Authority accepted applications for its Housing Choice Voucher Program waiting list from January 15th through January 19th. The Housing Authority received over 6,000 applications via the Internet and over 700 paper applications, which are now being processed by a consulting firm and will be integrated in VHA software. Waiting list applicants will be notified of status in April.

RECOMMENDATION: This is an informational item only and no further action is required.

14. Policy Items

None

15. Adjournment

HOUSING AND REDEVELOPMENT COMMISSION
555 Santa Clara Street
Vallejo, California 94590

COMMISSION MEETING ACTION MINUTES

JANUARY 10, 2007

A meeting of the Housing and Redevelopment Commission was held on the above date in the Council Chambers of Vallejo City Hall. The meeting was called to order at 7:30 p.m. by Chairperson Mustafa Abdul-Ghanee.

ROLL CALL

Present: Chairperson Abdul-Ghanee, Vice-Chair Verder-Aliga, Commissioners Brown, Platzer, Pitts, and Vance

Absent: Commissioner Chavez

Staff: Bonnie Robinson Lipscomb, Senior Community Development Analyst
Susan McCue, Economic Development Program Manager
Guy Ricca, Senior Community Development Analyst

1. APPROVAL OF AGENDA

AYES:	Chairperson Abdul-Ghanee, Vice-Chair Verder-Aliga, Commissioners Brown, Platzer, Pitts, and Vance
NOES:	None
ABSENT:	Commissioner Chavez
ABSTENTIONS:	None

2. APPROVAL OF DECEMBER 13, 2006 ACTION MINUTES

AYES:	Chairperson Abdul-Ghanee, Vice-Chair Verder-Aliga, Commissioners Brown, Platzer, Pitts, and Vance
NOES:	None
ABSENT:	Commissioner Chavez
ABSTENTIONS:	None

3. REPORT OF PRESIDING OFFICER AND MEMBERS OF THE COMMISSION

None

4. CONSENT CALENDAR

No items.

5. PUBLIC HEARING

No items.

6. ADMINISTRATIVE ITEMS

A. SECOND AMENDMENT TO THE TRIAD DOWNTOWN DISPOSITION AND DEVELOPMENT AGREEMENT; TERMINATION OF THE ASSIGNMENT AND ASSUMPTION AGREEMENT RELATIVE TO THE DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE REDEVELOPMENT AGENCY OF THE CITY OF VALLEJO AND TRIAD DOWNTOWN VALLEJO LLC; AND TERMINATION OF THE ASSIGNMENT AND ASSUMPTION AGREEMENT RELATIVE TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF VALLEJO AND TRIAD DOWNTOWN VALLEJO LLC

Presented by: Susan McCue, Economic Development Program Manager
Economic Development Division

On October 28, 2005, the Redevelopment Agency of the City of Vallejo ("Agency") entered into a Disposition and Development Agreement ("DDA") with Triad Downtown Vallejo LLC ("Triad") for the development of certain public and private parcels located within the boundaries of the Vallejo Central Redevelopment Project Area and the Marina Vista Redevelopment Project Area. The City of Vallejo entered into a Development Agreement ("DA") with Triad regarding the proposed development. On December 20, 2005, the Agency and City authorized the execution of the First Amendment to the Triad Downtown DDA, the execution of the Assignment and Assumption Agreement relative to the DDA between the Agency and Triad and the execution of the Assignment and Assumption Agreement relative to the DA between City and Triad.

As a result of the termination of the relationship between Triad and D.R. Horton, a Second Amendment to Triad Downtown DDA, termination of the Assignment and Assumption Agreement relative to the DDA between Agency and Triad, and termination of the Assignment and Assumption relative to the DA between City and Triad is necessary.

- ✓ This report went before the City Council and the Agency on January 9, 2007, prior to the HRC meeting but later than distribution of the Agenda to the Commission.
- ✓ The Commission was informed that the City Council and the Agency adopted the resolutions authorizing the execution of these Agreements.
- ✓ The Commission requested City staff provide the number of rental units to be built in the Triad project.

RECOMMENDATION: This was an informational item only and no further action was taken.

B. INFORMATIONAL REPORT ON FIVE YEAR AND ANNUAL PLANS

Presented by: Guy Ricca, Senior Community Development Analyst
Housing and Community Development Division

At the request of the Chairperson, this report was provided as an overview of five year and annual plans required by the U.S. Department of Housing and Urban Development (“HUD”).

✓ The Commission requested staff illuminate on the Five Year Plan goals, particularly specific strategies to accomplish these and how progress is being measured.

RECOMMENDATION: This was an informational item only and no further action was taken.

C. REDEVELOPMENT AGENCY ANNUAL REPORT FOR FISCAL YEAR 2005/2006

Presented by: Bonnie Robinson Lipscomb, Senior Community Development Analyst
Economic Development Division

On December 19, 2006 the City Council and the Redevelopment Agency of the City of Vallejo (“RDA”) both accepted the Redevelopment Agency’s Annual Report for Fiscal Year 2005/2006. This report was subsequently forwarded to the State Controller’s Office on December 28, 2006.

✓ The Commission requested staff provide a brief explanation of reconciliation statements and missing information from the Marina Vista statement.

✓ The Commission directed staff to place on the futures list a discussion of the various improvements completed and needed in the City’s redevelopment areas.

RECOMMENDATION: This was an informational item only and no further action was taken.

4. POLICY ITEMS

No items.

5. ADJOURNMENT

The meeting adjourned at 8:35 p.m.

RECEIVED
City of Vallejo
Housing and Community
Development Division

JAN 25 2007

Referred to ____________

January 18, 2007

Joseph M. Tanner.
Executive Director
Vallejo Housing Authority
555 Santa Clara Street
Vallejo, CA, 94590
Phone 707.648.4575
Fax 707.648.4426

In regards to: The Project Based Voucher Request for Proposal

Dear Joseph M. Tanner:

SUBJECT: DENIAL OF MY APPLICATION FOR PROJECT BASED VOUCHERS

On September 27, 2006, I submitted an application under the Project Based Voucher Request for Proposal for nine (9) project based vouchers. Meeting with Laura Simpson, I was informed that my request was denied due to the Housing Authority's preference to deal with owners of large numbers of units. Guy Ricca later informed me that there was no appeal to the decision. I'm writing to you because I feel that the Housing Authority Request for Proposal was created with specific intent to exclude owners of small numbers of units. I also feel that the denial of my application is unfair and an injustice to me, the Housing Authority, the City of Vallejo and the Department of Housing and Urban Development. My intentions are to express and hopefully rectify these concerns.

The Project Based Voucher Request for Proposal allowed for a maximum of 105 points. Per Laura Simpson, applicants who receive 55 points qualify to receive Project Based Vouchers. According to the rating sheet provided by Ms. Simpson, I received 45 points. If my application had been rated fairly, I would have received a minimum 55 points.

The unfairness in the rating of my application is as follows:

a. Under the "Public Purpose Relative to Local Needs" section, I received zero points because 75% of my units are restricted to low income. According to the rating sheet, I was entitled to receive 10 points.

b. I own all of my units, however I received no points for ownership experience.

An additional concern I have involves the idea that the Housing Authority's concentration of so many low income families in one area places a greater burden on police services and exacerbates gang problems which results in a negative effect on area schools.

Through the habitation of low income persons over a greater geographic area, the City derives greater benefit. Some of which are, reduced call for police enforcement and safer schools; the reduced drain on resources leaves more money to spend elsewhere.

I have owned rental housing in Vallejo for over twenty years, participating in the Section 8 Program for the entire time. Now that the community is issuing project based vouchers, HUD does not intend they go to large property owners who have already received substantial assistance in the development of their projects. HUD expects that every applicant will have an equal opportunity to receive project based vouchers.

RESOLUTION NO. 06-01

RECOMMEND ADOPTION OF THE REVISIONS TO CHAPTERS 7, 12, AND 18 OF THE ADMINISTRATIVE PLAN BY THE CITY OF VALLEJO HOUSING AUTHORITY BOARD

BE IT RESOLVED by the Housing and Redevelopment Commission of the City of Vallejo that Chapters Seven, Twelve, and Eighteen of the Housing Authority's Administrative Plan are hereby recommended for approval by the Vallejo Housing Authority.

ADOPTED by the Housing and Redevelopment Commission at a regular meeting held on March 8, 2006 by the following vote:

AYES:	Chairperson Urick, Vice-Chair Abdul-Ghanee, Commissioners Brown, Chavez, Platzer, Vance and Verder-Aliga
NOES:	None
ABSENT:	Commissioners Green and Puls
ABSTENTIONS:	None

MIKE URICK, Chairperson

ATTEST:

BONNIE ROBINSON LIPSCOMB
Senior Community Development Analyst
City of Vallejo

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RESOLUTION NO. 06-02

RECOMMENDING APPROVAL OF THE ANNUAL PLAN BY THE CITY OF VALLEJO HOUSING AUTHORITY BOARD OF COMMISSIONERS

BE IT RESOLVED by the Housing and Redevelopment Commission of the City of Vallejo as follows:

THAT WHEREAS, housing authorities are required by the U.S. Department of Housing and Urban Development (HUD) to prepare five-year and annual plans for their Housing Choice Voucher (Section 8 Existing) Program; and

WHEREAS, the Commission has reviewed the attached draft plan.

NOW, THEREFORE, BE IT RESOLVED that the Housing and Redevelopment Commission hereby recommends that the Vallejo Housing Authority approve the Annual Plan for Fiscal Year (FY) 2006/2007, (Exhibit "A" in the attached staff report).

BE IT FURTHER RESOLVED that the Commission recommends that the Vallejo Housing Authority authorize the Executive Director, or either of his designees, the Community Development Director, and the Housing and Community Development Manager, to prepare and submit a plan and a budget, and all related documents, regarding the Housing Choice Voucher Program, and any amendments or corrections as needed to such plan, budget, and documents, to HUD.

ADOPTED by the Housing and Redevelopment Commission at a regular meeting held on March 8, 2006 by the following vote:

AYES:	Chairperson Urick, Vice-Chair Abdul-Ghanee, Commissioners Brown, Chavez, Platzer, Vance and Verder-Aliga
NOES:	None
ABSENT:	Commissioners Green and Puls
ABSTENTIONS:	None

MIKE URICK, Chairperson

ATTEST:

BONNIE ROBINSON LIPSCOMB
Senior Community Development Analyst
City of Vallejo

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RESOLUTION NO. 06-03

RECOMMENDING ADOPTION OF THE REVISIONS TO THE JOINT POWERS AUTHORITY AND BY-LAWS OF CALIFORNIA AFFORDABLE HOUSING AGENCY (CALAHA) BY THE CITY OF VALLEJO HOUSING AUTHORITY BOARD

BE IT RESOLVED by the Housing and Redevelopment Commission of the City of Vallejo as follows:

THAT WHEREAS, the State of California Health and Safety Code and Government Code provide authorization for housing authorities to enter into Join Powers Agreements; and

WHEREAS, the Agency has been, and continues to be, a member agency of the Affordable Housing Agency (AHA); and

WHEREAS, the AHA Joint Powers Agreement (JPA) is in need of amendment to reflect the current administration of the AHA; and

WHEREAS, this Member Agency approves of and is willing to adopt the proposed amendments to the AHA JPA document, amended as of January 9, 2006.

NOW, THEREFORE, BE IT RESOLVED that the Commission hereby recommends to the Housing Authority Board the approval of the proposed amendments to the Affordable Housing Agency Joint Powers Agreement and approval of authorizing the Executive Director or his designee to sign and execute the AHA Joint Powers Agreement (amended January 9, 2006) on behalf of the Housing Authority of the City of Vallejo for necessary and appropriate activities and transactions of the Affordable Housing Agency.

ADOPTED by the Housing and Redevelopment Commission at a regular meeting held on March 8, 2006 by the following vote:

AYES:	Chairperson Urick, Vice-Chair Abdul-Ghanee, Commissioners Brown, Chavez, Platzer, Vance and Verder-Aliga
NOES:	None
ABSENT:	Commissioners Green and Puls
ABSTENTIONS:	None

Mike Urick

MIKE URICK, Chairperson

ATTEST:

BONNIE ROBINSON LIPSCOMB
Senior Community Development Analyst
City of Vallejo

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RESOLUTION NO. 06-04

RECOMMENDING ADOPTION OF THE REVISIONS TO THE HOUSING AUTHORITY ADMINISTRATIVE PLAN CHAPTER 25 BY THE VALLEJO HOUSING AUTHORITY

BE IT RESOLVED by the Housing and Redevelopment Commission of the City of Vallejo that Chapter Twenty Five of the Housing Authority's Administrative Plan is hereby recommended for approval by the Vallejo Housing Authority.

ADOPTED by the Housing and Redevelopment Commission at a regular meeting held on April 12, 2006 by the following vote:

AYES:	Chairperson Abdul-Ghanee, Vice-Chair Verder-Aliga, Commissioners Brown, Platzer, Puls, and Vance
NOES:	None
ABSENT:	Commissioner Chavez
ABSTENTIONS:	None

MUSTAFA ABDUL-GHANEE, Chairperson

ATTEST:

BONNIE ROBINSON LIPSCOMB
Senior Community Development Analyst
City of Vallejo

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RESOLUTION NO. 06-05

ADOPTION OF THE REVISIONS TO THE BY-LAWS OF THE HOUSING AND REDEVELOPMENT COMMISSION OF THE CITY OF VALLEJO

BE IT RESOLVED by the Vallejo Housing and Redevelopment Commission as follows:

WHEREAS, on April 7, 2006 an ordinance amending the Vallejo Municipal Code Chapter 2, Section 46.050 reducing the number of Housing and Redevelopment Commissioners from nine to seven members became effective; and

WHEREAS, the By-Laws of the Housing and Redevelopment Commission need to revised to reflect to reflect that a quorum for conducting business shall now be four instead of five members.

NOW, THEREFORE, BE IT RESOLVED by the Housing and Redevelopment Commission of the City of Vallejo that the attached By-Laws of the Housing and Redevelopment Commission of the City of Vallejo are adopted and supersede all previous Commission rules for the transaction of business and conduct of the Meetings for the Commission pursuant to the ordinance establishing the Housing and Redevelopment Commission (Ord. No. 276 N.C. (2d)) adopted by the Council of the City of Vallejo.

ADOPTED by the Housing and Redevelopment Commission at a regular meeting held on April 12, 2006 by the following vote:

AYES:	Chairperson Abdul-Ghanee, Vice-Chair Verder-Aliga, Commissioners Brown, Platzer, Puls, and Vance
NOES:	None
ABSENT:	Commissioner Chavez
ABSTENTIONS:	None

MUSTAFA ABDUL-GHANEE, Chairperson

ATTEST:

BONNIE ROBINSON LIPSCOMB
Senior Community Development Analyst
City of Vallejo

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RESOLUTION NO. 06-06

RECOMMENDING THE VALLEJO HOUSING AUTHORITY BOARD AUTHORIZE THE USE OF FUNDS TO REIMBURSE FAMILIES THAT WERE IMPACTED BY A REDUCTION IN PAYMENTS STANDARDS

BE IT RESOLVED by the Housing and Redevelopment Commission of the City of Vallejo:

THAT WHEREAS, the Housing and Redevelopment Commission of the City of Vallejo has reviewed the denial of a waiver request from HUD and the staff report dated April 12, 2006 recommending reimbursement of housing assistance to tenants by May 1, 2006; and

WHEREAS, staff has advised the Commission that appropriate funds are available in Fund 123 in the amount of $1,185,616.

NOW, THEREFORE, BE IT RESOLVED that the Commission hereby recommends to the Vallejo Housing Authority Board that they approve reimbursement to any family that received less subsidy than they were entitled to receive in accordance with 24 CFR Section 982.505(c)(3).

ADOPTED by the Housing and Redevelopment Commission at a regular meeting held on April 12, 2006 by the following vote:

AYES:	Chairperson Abdul-Ghanee, Vice-Chair Verder-Aliga, Commissioners Brown, Platzer, Puls, and Vance
NOES:	None
ABSENT:	Commissioner Chavez
ABSTENTIONS:	None

MUSTAFA ABDUL-GHANEE, Chairperson

ATTEST:

BONNIE ROBINSON LIPSCOMB
Senior Community Development Analyst
City of Vallejo

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RESOLUTION NO. 06-07

RECOMMENDING THE VALLEJO HOUSING AUTHORITY BOARD ADOPT THE REVISIONS TO THE JOINT POWERS AUTHORITY AND BY-LAWS OF THE CALIFORNIA AFFORDABLE HOUSING AGENCY (CalAHA)

BE IT RESOLVED by the Housing and Redevelopment Commission of the City of Vallejo:

THAT WHEREAS, the State of California Health and Safety Code and Government Code provide authorization for housing authorities to enter into Joint Powers Agreements; and

WHEREAS, the Agency has been, and continues to be, a member of the Affordable Housing Agency (AHA); and

WHEREAS, the AHA Joint Powers Agreement (JPA) is in need of amendment to reflect the current administration of the AHA; and

WHEREAS, this Member Agency approves of and is willing to adopt the proposed amendments to the to the AHA JPA document, amended as of January 9, 2006; and

WHEREAS, the Housing and Redevelopment Commission will annually approve an update on the activities and budget of the Affordable Housing Agency.

NOW, THEREFORE, BE IT RESOLVED that the Commission hereby recommends to the Housing Authority Board the approval of the proposed amendments to the Affordable Housing Agency Joint Powers Agreement and approval of authorizing the Executive Director or his designee to sign and execute the AHA Joint Powers Agreement (amended January 9, 2006) on behalf of the Housing Authority of the City of Vallejo for necessary and appropriate activities and transactions of the Affordable Housing Agency.

ADOPTED by the Housing and Redevelopment Commission at a regular meeting held on April 12, 2006 by the following vote:

AYES:	Chairperson Abdul-Ghanee, Vice-Chair Verder-Aliga, Commissioners Brown, Platzer, Puls, and Vance
NOES:	None
ABSENT:	Commissioner Chavez
ABSTENTIONS:	None

MUSTAFA ABDUL-GHANEE, Chairperson

ATTEST:

BONNIE ROBINSON LIPSCOMB
Senior Community Development Analyst
City of Vallejo

RESOLUTION NO. 06-08

RECOMMENDING ADOPTION OF THE PROPOSED BUDGET FOR FISCAL YEAR 2006/2007 TO THE VALLEJO HOUSING AUTHOIRTY BOARD

BE IT RESOLVED by the Housing and Redevelopment Commission of the City of Vallejo:

THAT WHEREAS, the Housing and Redevelopment Commission of the City of Vallejo has reviewed the proposed Housing Authority budget for Fiscal Year 2006/2007.

NOW THEREFORE BE IT RESOLVED, that the Commission hereby recommends to the Vallejo Housing Authority Board that they approve and adopt the proposed Fiscal Year 2006/2007 budget.

ADOPTED by the Housing and Redevelopment Commission of the City of Vallejo at a regular meeting held on June 14, 2006 by the following vote:

AYES:	Vice-Chair Verder-Aliga, Commissioners Brown, Platzer and Vance
NOES:	Chairperson Abdul-Ghanee
ABSENT:	Commissioners Chavez and Puls
ABSTENTIONS:	None

MUSTAFA ABDUL-GHANEE, Chairperson

ATTEST:

BONNIE ROBINSON LIPSCOMB
Senior Community Development Analyst
City of Vallejo

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RESOLUTION NO. 06-09

BE IT RESOLVED by the Housing and Redevelopment Commission of the City of Vallejo that Chapters Four and Twenty Four of the Housing Authority's Administrative Plan are hereby recommended for approval by the Vallejo Housing Authority Board.

NOW, THERFORE, BE IT FURTHER RESOLVED that the Housing and Redevelopment Commission of the City of Vallejo hereby recommends that Chapter Four of the Housing Authority's Administrative Plan contain the following two (2) revisions prior to the Housing Authority Board's approval:

1. Addition of language in an appropriate location in the chapter to specify that all Housing Choice Voucher applications be date and time stamped upon receipt by staff.

2. Modification to Section 4-III.C. to include an additional weighted preference for "Homeless families with children attending Vallejo schools."

ADOPTED by the Housing and Redevelopment Commission of the City of Vallejo at a regular meeting held on November 8, 2006 by the following vote:

AYES:	Chairperson Abdul-Ghanee, Vice-Chair Verder-Aliga, Commissioners Brown, Platzer, Pitts, and Vance
NOES:	None
ABSENT:	Commissioner Chavez
ABSTENTIONS:	None

MUSTAFA ABDUL-GHANEE, Chairperson

ATTEST:

BONNIE ROBINSON LIPSCOMB
Senior Community Development Analyst
City of Vallejo

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RESOLUTION NO. 06-10

RESOLUTION RECOMMENDING THE VALLEJO REDEVELOPMENT AGENCY APPROVE THE PROPOSED AMENDMENTS TO THE REDEVELOPMENT PLANS

BE IT RESOLVED by the Vallejo Housing and Redevelopment Commission as follows:

WHEREAS, the Housing and Redevelopment Commission has reviewed the Proposed Amendments to the Redevelopment Plans Including the Merger of the Vallejo Waterfront, Vallejo Central and Marina Vista Redevelopment Projects; and

WHEREAS, the proposed amendments and merger of the Project Areas described in the report will allow the Redevelopment Agency to proceed with both the Waterfront and Downtown projects which will significantly reduce blight and promote economic revitalization in all three Project Areas; and

WHEREAS, the proposed amendments and merger of the Project Areas in a joint meeting by the City Council and Redevelopment Agency on November 14, 2006; and,

NOW THEREFORE BE IT RESOLVED, the Housing and Redevelopment Commission recommends the Vallejo Redevelopment Agency approve the Proposed Amendments to the Redevelopment Plans Including the Merger of the Vallejo Waterfront, Vallejo Central and Marina Vista Redevelopment Projects.

ADOPTED by the Housing and Redevelopment Commission of the City of Vallejo at a regular meeting held on November 8, 2006 by the following vote:

AYES:	Chairperson Abdul-Ghanee, Vice-Chair Verder-Aliga, Commissioners Brown, Platzer, Pitts, and Vance
NOES:	None
ABSENT:	Commissioner Chavez
ABSTENTIONS:	None

MUSTAFA ABDUL-GHANEE, Chairperson

ATTEST:

BONNIE ROBINSON LIPSCOMB
Senior Community Development Analyst
City of Vallejo

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RESOLUTION NO. 06-11

BE IT RESOLVED by the Housing and Redevelopment Commission of the City of Vallejo that Chapter Twenty-Five of the Housing Authority's Administrative Plan, is hereby recommended for approval and adoption by the Vallejo Housing Authority.

BE IT FURTHER RESOLVED that the Housing and Redevelopment Commission of the City of Vallejo recommends adding the following wording related to tenant evictions in Chapter 25: "When an owner refuses to renew the lease without good cause, the Housing Authority shall provide the family with a tenant based voucher."

ADOPTED by the Housing and Redevelopment Commission of the City of Vallejo at a regular meeting held on December 13, 2006 by the following vote:

AYES:	Chairperson Abdul-Ghanee, Commissioners Chavez, Platzer, Pitts, and Vance
NOES:	None
ABSENT:	Vice-Chair Verder-Aliga and Commissioner Brown
ABSTENTIONS:	None

MUSTAFA ABDUL-GHANEE, Chairperson

ATTEST:

BONNIE ROBINSON LIPSCOMB
Senior Community Development Analyst
City of Vallejo

CITY OF VALLEJO

ADMIN ITEM 13A

Agenda Item No.

HOUSING AND REDEVELOPMENT COMMISSION **Date:** February 7, 2007

TO: Chairperson and Commissioners

FROM: Bonnie Robinson Lipscomb, Senior Community Development Analyst BRL
Susan McCue, Economic Development Program Manager SMc

SUBJECT: CONSIDERATION OF AN AMENDED AND RESTATED (THIRD) DISPOSITION AND DEVELOPMENT AGREEMENT (DDA) BETWEEN THE REDEVELOPMENT AGENCY OF THE CITY OF VALLEJO AND CALLAHAN DESILVA VALLEJO, LLC

BACKGROUND & DISCUSSION

On October 17, 2000 the Redevelopment Agency of the City of Vallejo (Agency) entered into a Disposition and Development Agreement (DDA) with Callahan/DeSilva Vallejo, LLC (Developer) for the acquisition, disposition and development of certain public and private parcels located within the boundaries of the Marina Vista Redevelopment Project Area, the Vallejo Central Project Area and the Vallejo Waterfront Redevelopment Project Area. The original DDA was amended and restated in its entirety as of October 1, 2002 (the "First Restatement"), and further amended by a First Amendment to Amended and Restated Disposition and Development Agreement, executed as of October 24, 2003, and a Second Amendment to Amended and Restated Disposition and Development Agreement, executed as of August 24, 2004, and further amended and restated in its entirety as of October 27, 2005 (the "Second Restatement") (all of the foregoing are collectively referred to herein as the "Existing DDA"). Since the Second Restatement, the Vallejo Waterfront Redevelopment Project Area and the Marina Vista Redevelopment Project Area have been merged with the Vallejo Central Redevelopment Project Area and are a part of the Merged Waterfront/Downtown Redevelopment Project Area.

Following approval of the Second Restatement, the Vallejo Waterfront Coalition (the "Coalition") filed an action challenging certain aspects of the Project. The Agency, City, Developer and Coalition entered into settlement negotiations, and thereafter entered into a Settlement and Release Agreement as of November 28, 2006 (the "Settlement Agreement") to resolve the action. The Settlement Agreement provides for the action to be dismissed by the parties within 31 days after the second reading and approval of the ordinances enacting the Settlement-Related Amendments (the "Action Dismissal Date").

The Agency and Developer have cooperated in the preparation of an Amended and Restated (Third) Disposition and Development Agreement (the "Third Restatement"), which modifies certain provisions of, and fully restates, the Existing DDA to reflect progress made since the approval of the Second Restatement, and the further planning and financial agreements reached by the Agency and the Developer to implement specified terms of the Settlement Agreement. Specifically, the Third Restatement is intended to: (1) implement the terms of the Settlement Agreement by conforming the terms of the DDA to the relevant provisions of the Settlement Agreement; (2) set forth the financial arrangements between the parties with respect to their respective expenditures in connection with the Settlement Agreement and related actions; (3) update both the Schedule of Performance (Attachment No. 3 to the DDA) and performance dates contained throughout the DDA to reflect the tolling of obligations under the DDA during the pending action, as well as current Project circumstances; and (4) make other conforming and minor updating changes to reflect changed circumstances for performance of the Project since the Second Restatement.

Third Restatement

The proposed Third Restatement contains the following substantive changes to the Existing DDA:

1) Section 109 EIR Preparation and Planning Studies.

   This section updates the costs spent to date on the EIR and related planning studies by the Developer and the method and timing by which the Agency will reimburse the Developer for costs incurred for the preparation of the EIR and related planning studies. To date, the Developer has advanced, on the Agency's behalf, approximately $628,077 for costs associated with the preparation of the EIR which are subject to reimbursement under the existing DDA and proposed Third Restatement. As approved under the Existing DDA, these costs shall be credited by the Agency against the purchase price for Parcel A.

2) Section 110 Defense and Settlement of Action

   This section sets forth the financial responsibilities of the parties and the City in connection with their defense of the Action, including all activities undertaken by the parties and the City related to defense and settlement of the action filed by the Waterfront Coalition. The Developer shall pay their own costs associated with the Defense and Settlement activities as will the City and/or Agency, as applicable. The Developer shall advance of behalf of all parties the attorney's fees and costs of the Coalition in the amount specified in the Settlement Agreement. Fifty percent of these costs (approximately $33,000) shall be credited by the Agency against the purchase price for Parcel A. The remaining fifty percent of the Developer's advance shall be considered and treated as Third Party Costs within the meaning of Section 201.2 (a)(26) (Method B Appraisal Calculation).

3) Section 304 Development of the Site; Unit Plans and Related Documents.

   This section includes additional language to reflect the modified procedure related to the submittal, review and processing of Unit Plan applications according to agreed upon terms in the Settlement Agreement.

4) Attachment No. 3 Schedule of Performance.

   The updated Schedule of Performance reflects changes to the dates for performance of certain actions and to reflect actions that have been performed or partially performed since that last amendment (Existing DDA). In particular, under the proposed Third Restatement, the Developer has up to two years to submit a Unit

Plan application and a vesting tentative map for the Northern Waterfront Area after the Action Dismissal Date of the Settlement Agreement.

The Schedule has further been updated to include the dates for performance of certain actions pertaining to the development of the Parks and Open Spaces, and, in particular, the development of the new Wetland Park, specific to terms and conditions contained in the Settlement Agreement.

Finally, the Schedule of Performance has been updated to include the schedule for actions pertaining to the development of an Affordable Housing Component for Parcel T1, located in the Southern Waterfront, as further described below.

5) Attachment No. 4 Scope of Development.

The Scope of Development has been updated to reflect the incorporation of Water Conservation Measures and Green Building Design Measures into the overall Project. It has been further updated to reflect the changes to the Central Waterfront and Northern Waterfront including the private development on Parcel A as well as the development of the public 4.0 acre Wetland Park on Parcel A to be designed and funded by the Developer. Under the proposed Third Restatement, Parcel F, the Jazz Festival Green, will be removed in order to accommodate the expanded public open space in the Northern Waterfront and to facilitate a reconfiguration of the required parking west of Harbor Way. The parties may be required to seek an amendment of the current Bay Conservation and Development Commission (BCDC) permit to accommodate a reconfiguration of the parking in the Northern Waterfront Area.

The development of all public open space will be subject to the public participation process which will commence upon the Action Dismissal Date. Under the Existing DDA, the Developer is obligated to make a contribution to the development of the Northern and Southern Waterfront Public Parks and Open Spaces in the combined amount of $5,201,070. The City and or Agency may elect to use a portion of these funds to conduct the public participation process.

Vallejo Station The proposed Third Restatement acknowledges that the City and the Redevelopment Agency are studying the feasibility of alternative strategies and opportunities for implementation of the Vallejo Station Project on Parcel L, including a phased approach for parking in the Central Waterfront Area and Vallejo Station. Under the proposed Third Restatement, the parties shall consider in good faith any proposed change in the scope, timing, phasing and funding of development of Vallejo Station resulting from such study of alternative strategies, with the objective of achieving the most timely and cost effective development of Vallejo Station that accomplishes as nearly as possible the planning and financial objectives of the parties as reflected in the current scope, timing, phasing and funding of such development. Any mutually acceptable modifications to the scope, timing, phasing and/or funding of the Vallejo Station project on Parcel L shall be set forth in a mutually acceptable Operating Memorandum executed in accordance with Section 709 and, as needed, in a mutually acceptable amendment to the Planned Development Master Plan.

Affordable Housing Component on Parcel TI The proposed Third Restatement defines the procedure and schedule by which the parties shall develop and present to the City Council and Agency an affordable housing program for Parcel TI (located in the Southern Waterfront). Specifically, within six months of the Action Dismissal Date, the parties shall present to the City Council and Redevelopment Agency a preliminary analysis of affordable housing alternatives providing up to 9% of the residential units related to the Parcel T1 development being made available at affordable housing cost to moderate income households. Within six months prior to the submittal of a Unit Plan application for Parcel T1, the parties shall prepare a specific program meeting the stated criteria above for consideration by the City Council and Agency. This process takes into consideration the high level of uncertainty and Developer risk associated with site development of Parcel T1 related to contamination from the former manufactured gas plant located on the site.

6) Attachment No. 6 Method of Financing.

The annual assessments under the Landscaping and Lighting Maintenance District (LLMD) established in the Existing DDA shall be annually adjusted, beginning in July 2008, by a percentage equal to the Consumer Price Index for the San Francisco-Oakland-San Jose Area. In addition, the methodology for calculating the assessments throughout the district shall be periodically evaluated as additional units within the LLMD are constructed so that per unit assessments may be reduced to ensure that the assessments are fairly allocated within the district.

Section 33433 and 33679 Third Supplemental Report

In compliance with Health and Safety Code Section 33433 and 33679 of the California Community Redevelopment Law (Health and Safety Code Section 33000 et seq.), outside counsel for the Agency has prepared a Third Supplemental Report (Attachment D) to provide certain information with respect to the proposed Third Restatement. The Third Supplemental Report supplements the Report prepared by the Agency at the time of approval by the Agency of the Original DDA (the "Original Report"), and the Supplemental Report prepared by the Agency at the time of approval by the Agency of the First Restatement (the "First Supplemental Report"), and the Supplemental Report prepared by the Agency at the time of approval by the Agency of the Second Restatement (the "Second Supplemental Report"), and addresses the changes made through the Third Restatement. All other terms and conditions not addressed in this Report remain unchanged and are as outlined in the DDA and as set out in the Original Report, the First Supplemental Report, and the Second Supplemental Report.

Project Benefits Under the Proposed Third Restatement

In addition to eliminating blighting conditions within the Project Areas (as more fully described in the Original Report on the DDA, development of the Waterfront Project pursuant to the proposed Third Restatement will provide the following benefits to the Project Areas:

1) Development of the project will create employment opportunities, including short term construction-related jobs, as well as long-term employment opportunities associated with the retail, commercial and office uses to be developed as part of the Waterfront Project;

2) In furtherance of the project, the Developer has entered into a Project Labor Agreement with the Napa-Solano Building and Construction Trades Council, and various union affiliates of the Council, to develop a cooperative effort to assure that the development of the private portions of the Waterfront Project will be built in an expeditious, high quality and cost effective manner without interruption or delays, utilizing a skilled workforce;

3) The proposed Third Restatement will further the Agency's goals and objectives to remediate the hazardous materials conditions existing on portions of the Site, to enable redevelopment and use of those contaminated areas;

4) The Waterfront Project consists of a comprehensive and coordinated public and private development effort to revitalize Vallejo's Waterfront Area and to link the Waterfront area to the Downtown area;

5) The Waterfront Project includes, as a central component, development of the major new transit center for ferry patrons and bus transfer center, to be known as "Vallejo Station," which will be a multimodal transportation facility serving regional and local transit needs; and

6) Development of the Project will intensify land uses in certain areas, and expand designated public open space areas, and enhance public access to the Waterfront and the Waterfront Promenade areas.

<u>FISCAL IMPACT</u>

There is no immediate fiscal impact to the General Fund by approving the Amended and Restated (Third) Disposition and Development Agreement between the Redevelopment Agency of the City of Vallejo and Callahan/DeSilva Vallejo, LLC. All developer fees (including water fees, impact fees and excise taxes) will be paid for by the Developer in conjunction with the issuance of building permits for the Project with the exception of the City park fees. The total Developer Public Parks and Open Space Contribution of $5,201,070 is significantly in excess of the cumulative total of City park fees anticipated to be due in connection with development of all Developer Parcels on the Site. As provided in Section 3.8 of the Development Agreement and in the Schedule of Performance, Scope of Development and the Method of Financing in the proposed Third Restatement, the Developer will receive a credit against City park fees otherwise due with respect to development of the Development Parcels within the Site.

Upon implementation, the proposed project will provide significant revenue benefits to the City from property taxes, property transfer taxes, sales tax revenues from residents, employees, and business to business transactions, use taxes, franchise taxes, transient occupancy taxes, business license taxes, motor vehicle in lieu fees and other permit fees. At build-out, the proposed project will generate annual net fiscal revenues substantially in excess of costs. As such, the proposed project will assist the City in meeting and sustaining its future fiscal responsibilities. The future revenue anticipated to be passed through to the City associated with the Waterfront Project is currently estimated to be between $6-7 million over the remaining terms of the combined Redevelopment Plans.

Implementation of the Waterfront Project pursuant to the proposed Third Restatement is estimated to result in increased assessed valuation in the Redevelopment Project Areas of approximately $580-$600 million. Over the life of the Redevelopment Plans, the Agency will receive approximately $76.3 million in net tax increment revenue resulting from the Waterfront Project. Net tax increment revenue is defined as tax increment revenue received by the Agency after deducting pass-through payments to taxing entities and the mandatory 20% set-aside payments to the Low and Moderate Income Housing Fund. The Agency will further receive approximately $27.4 million in tax increment revenue to be deposited into the Low and Moderate Income Housing Fund for the development of low and moderate income housing in Vallejo.

NEXT STEPS

On February 13, 2007, following conduct of duly noticed public hearings as required by law, the City Council and the Agency will consider or conduct the following actions:

1. The City Council and the Agency approval of an addendum to the EIR that evaluated the impacts of the Project as modified by the Settlement-Related Amendments (as defined below), and the Third Restatement of this Agreement (the "EIR Addendum");

2. The City Council and the Agency approval of the Third Restatement of this Agreement; and

3. The City Council will introduce and conduct the first reading of ordinances (collectively, the "Settlement-Related Ordinances") to approve certain amendments to the Planned Development Master Plan and the accompanying Waterfront Design Guidelines and certain amendments to the Development Agreement, to implement specified terms of the Settlement Agreement (collectively, the "Settlement-Related Amendments").

   The Settlement Agreement provides for the Action to be dismissed by the parties thereto within thirty-one (31) days after the second reading and approval of the Settlement-Related Ordinances enacting the Settlement-Related Amendments, which second reading is currently scheduled for consideration by the City Council on February 27, 2007.

RECOMMENDATION

Adopt the attached resolution recommending to the City Council and the Redevelopment Agency approval of the Third Restatement.

ENVIRONMENTAL REVIEW

A project level Environmental Impact Report (EIR) analyzing the environmental impacts of the proposed project was certified for the Waterfront Project by the City Council on October 27, 2005. An addendum to the EIR was prepared analyzing the additional impacts of the proposed project under the Third Restatement which will be considered by the City and Redevelopment Agency on February 13, 2007.

DOCUMENTS ATTACHED

Attachment A - Housing and Redevelopment resolution approving the Third Restatement
Attachment B - Third Restatement
Attachment C - Section 33433 Report

Attachment A

RESOLUTION NO.________

RECOMMENDATIONS TO THE CITY COUNCIL AND REDEVELOPMENT AGENCY OF THE CITY OF VALLEJO

BE IT RESOLVED by the Housing and Redevelopment Commission of the City of Vallejo as follows:

WHEREAS on October 17, 2000 the Redevelopment Agency of the City of Vallejo (Agency) entered into a Disposition and Development Agreement (DDA) with Callahan/DeSilva Vallejo, LLC for the acquisition, disposition and development of certain public and private parcels located within the boundaries of the Marina Vista Redevelopment Project Area, the Vallejo Central Project Area and the Vallejo Waterfront Redevelopment Project Area; and

WHEREAS the original DDA was amended and restated in its entirety as of October 1, 2002 (the "First Restatement"), and further amended by a First Amendment to Amended and Restated Disposition and Development Agreement, executed as of October 24, 2003, and a Second Amendment to Amended and Restated Disposition and Development Agreement, executed as of August 24, 2004, and further amended and restated in its entirety as of October 27, 2005 (the "Second Restatement"); and

WHEREAS following approval of the Second Restatement, the Vallejo Waterfront Coalition (the "Coalition") filed an action challenging certain aspects of the Project. The Agency, City, Developer and Coalition entered into settlement negotiations, and thereafter entered into a Settlement and Release Agreement as of November 28, 2006 (the "Settlement Agreement") to resolve the action. The Settlement Agreement provides for the action to be dismissed by the parties within 31 days after the second reading and approval of the ordinances enacting the Settlement-Related Amendments; and

WHEREAS the Agency and Developer have cooperated in the preparation of an Amended and Restated (Third) Disposition and Development Agreement (the "Third Restatement"), which modifies certain provisions of, and fully restates, the Existing DDA to reflect progress made since the approval of the Second Restatement, and the further planning and financial agreements reached by the Agency and the Developer to implement specified terms of the Settlement Agreement; and

WHEREAS on February 7, 2007 the Housing and Redevelopment Commission considered the Third Restatement between the Redevelopment Agency of the City of Vallejo and Callahan DeSilva Vallejo, LLC for the Waterfront Project; and

NOW, THEREFORE, BE IT RESOLVED that the Housing and Redevelopment Commission hereby recommends that the City Council and Redevelopment Agency approve the Third Restatement.

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Attachment B

~~Execution~~Public Hearing Version
January 30, 2007

DISPOSITION AND DEVELOPMENT AGREEMENT

By and Between

**REDEVELOPMENT AGENCY OF
THE CITY OF VALLEJO
and
CALLAHAN / DeSILVA VALLEJO, LLC**

**Waterfront Redevelopment Project /
Marina Vista Redevelopment Project**

Executed as of October 17, 2000

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

Amended as of October 24, 2003

Amended as of August 24, 2004

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

Amended and Restated (Third) as of February 13, 2007

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ATTACHMENTS

Attachment No. 1 Maps of the Site
Attachment No. 2 Legal Description of Developer Parcels
Attachment No. 3 Schedule of Performance
Attachment No. 4 Scope of Development
Attachment No. 5 Form of Grant Deeds
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Attachment No. 7 Form of Memorandum of DDA Third Restatement
Attachment No. 8 Diagram of Parcel A Boundary Line For Purposes of Designing Mare Island Causeway/Mare Island Way Widening Improvements

DISPOSITION AND DEVELOPMENT AGREEMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (this "Agreement"), initially executed as of October 17, 2000, as amended and restated as of October 1, 2002, as further amended as of October 24, 2003, and August 24, 2004, ~~and as hereby fully~~ amended and restated for a second time as of October 27, 2005 (the "Second Restatement"), and as hereby fully amended and restated for a third time as of February 13, 2007 (the "Third Restatement") is entered into by and between the REDEVELOPMENT AGENCY OF THE CITY OF VALLEJO (the "Agency") and CALLAHAN / DeSILVA VALLEJO, LLC, a California limited liability company (the "Developer"). The Agency and the Developer are sometimes collectively referred to in this Agreement as the "Parties" or "parties" and individually as a "Party" or "party."

RECITALS

A. The parties initially executed this Agreement as of October 17, 2000 to implement a program of public and private revitalization of the Vallejo Waterfront area (the "Project," as further defined and described in Section 101 and the Scope of Development (Attachment No. 4)) within a strategic site adjacent to the Waterfront area and Vallejo's commercial Downtown area (the "Site," as further defined and described in Sections 101 and 104). The parties initially executed this Agreement in recognition of the accomplishment of the following milestone actions:

1. On August 13, 1996, the Agency authorized the Executive Director to seek proposals from qualified developers for the development of available parcels within the Marina Vista and Waterfront Redevelopment Project Areas. A request for qualifications was issued on January 2, 1997, and distributed to more than 130 developers. Four proposals were submitted in response to the request for qualifications. A Waterfront Developer Review Panel (the "WDRP") was established that included staff and representatives of the community to review the qualifications statements and visit projects of the proposed developers. Following this process, the WDRP recommended that the Agency approve The DeSilva Group ("DeSilva") as the Master Waterfront Developer. The Agency approved DeSilva as the Master Waterfront Developer on April 15, 1997, and directed DeSilva to formulate a community-based Waterfront Master Plan.

2. In May 1997, the Agency approved an Exclusive Right to Negotiate Agreement ("ERN") with DeSilva, which required DeSilva to develop the Waterfront Master Plan and then proceed to negotiate a Disposition and Development Agreement. DeSilva subsequently teamed with Callahan Property Company ("CPC") to form the limited liability company which is the Developer under this Agreement.

3. Since beginning the Waterfront public planning process, the Developer, in conjunction with the City of Vallejo (the "City"), has held Public Planning Workshops, outreach meetings and presentations to City commissions and boards. In addition, the City's Community Development Department sent letters to neighborhood and community organizations inviting participation in outreach meeting and public workshops, and the public workshops were also advertised in a local newspaper, on a local cable television channel and through handouts and flyers.

4. As a result of this public planning process, DeSilva prepared a Waterfront Master Plan, which was accepted by the Agency on April 20, 1999, subject to certain conditions, including without limitation negotiations of a final Disposition and Development Agreement with the Agency and completion of the environmental review process. The primary goal of the Waterfront Master Plan is to incorporate mixed land uses which are pedestrian-friendly and which will allow the Waterfront and Downtown areas to evolve into the social, cultural and entertainment hub of the City.

5. Following acceptance of the Waterfront Master Plan, the Agency retained an Urban Land Institute (ULI) Advisory Panel, which convened in Vallejo in June 1999, to review the Waterfront Master Plan. The Agency accepted the Panel's report at its meeting on August 24, 1999. On March 28, 2000, modifications to the Waterfront Master Plan were accepted by the Agency.

6. Through a competitive process, the City and the Waterfront Downtown Design Advisory Committee selected the firm of Wallace Roberts & Todd, Inc. ("WRT") as the landscape architect to provide design concepts and plans for the public spaces within the Waterfront Master Plan area. Through an extensive public participation process, WRT prepared and the Agency approved the Vallejo Waterfront Downtown Master Plan for Public Spaces, by action of September 19, 2000 (the "Plan for Public Spaces").

B. This Agreement ~~has been~~was comprehensively updated through the Second Restatement, approved by the Agency on October 27, 2005, to reflect progress made and further planning and financial agreements reached by the Agency and the Developer ~~since~~from the time of the initial execution of this Agreement through the date of the Second Restatement. Among the milestone actions leading to the Second Restatement of this Agreement ~~are~~were the following:

1. The Georgia Street Extension element of the Project ~~has been~~was satisfactorily completed by the parties, with the Developer serving as the project manager for such completion.

2. Former Developer Parcel K ("Former Parcel K") ~~has been~~was removed from the Site that is the subject of this Agreement and ~~has been~~was satisfactorily developed as an office facility for the State Farm Electronic Claims Center pursuant to a separate disposition and development agreement between the Agency and CPC, a member of the Developer. As part of the separate development of Former Parcel K, CPC served as the Agency's project manager for completion of the segment of Capitol Street between Mare Island Way and Civic Center Drive.

3. Former Parcels N and V ~~have been~~were removed from the Site that is the subject of this Agreement and ~~are being considered for~~were made part of the development under a separate disposition and development agreement entered into between the Agency and Triad ~~Development Company~~Downtown Vallejo, LLC. Former Parcel U (the Boat Launch relocation parcel) ~~has~~was also ~~been~~ removed from the Site that is the subject of this Agreement.

4. On December 11, 2002, the City and the Agency circulated an initial draft environmental impact report (the "IDEIR"), in accordance with the California Environmental

Quality Act and applicable state and local guidelines ("CEQA"). The IDEIR evaluated the potential environmental effects of the Project as envisioned under this Agreement as initially executed and ~~previously~~ amended prior to the Second Restatement of this Agreement. Extensive comments were received on the IDEIR. During preparation of responses to those comments, the City and the Agency decided that a revised draft environmental impact report (the "RDEIR") should be prepared and circulated in accordance with CEQA for reasons set forth in the Introduction to the RDEIR. In connection with preparation of the RDEIR, and as detailed therein, the parties and the City ~~have~~ made various revisions to the Project scope and description. These revisions ~~reconfigure~~reconfigured and ~~scale~~scaled-back the Project from that originally envisioned when this Agreement was initially executed in October, 2000, and ~~respond~~responded to public concerns and changed circumstances with respect to surrounding developments in the Downtown area and at Mare Island.

5. The City and the Agency circulated the RDEIR (State Clearing House No. 2000052073) on June 10, 2005. On October 3, 2005, the City and the Agency circulated a document containing responses to comments received on the RDEIR and other information required by CEQA, which together with the RDEIR constitutes the "EIR" for the Project~~, as further described in Section 102.2.~~.

6. In connection with preparation of the EIR and the Second Restatement of this Agreement, the parties and the City ~~have~~ prepared ~~a~~the following series of land use approvals and entitlements for the revised Project, for consideration of approval by the City concurrently with consideration of approval of the Second Restatement of this Agreement (together with the EIR, the following documents and approvals are collectively referred to as the "Required Approvals~~," as further described in Section 102.2). As applicable, the Required Approvals incorporate~~"):

a. An Amendment to the City's General Plan (#00-001, referred to as [the "General Plan Amendment") to include revised and updated land use and urban design goals, policies and map designations for the Site and the Project;]

b. An Amendment to the City's Zoning Ordinance (#03-0003)[to provide for zoning consistent with the General Plan Amendment;]

c. A Planned Development Master Plan for the Site (#00-0022, referred to as [the "Planned Development Master Plan"), which includes as an attached and incorporated element the Waterfront Design Guidelines, prepared jointly by the Agency and Developer;] and

d. A development agreement (#05-0008, referred to as [the "Development Agreement") pursuant to Government Code Section 65864 et seq., between the City and the Developer pertaining to all of the Developer Parcels identified in Section 104 of this Agreement.]

The Required Approvals incorporated refined concepts and designs from previous planning and policy documents for the Waterfront area, including the Waterfront Master Plan and the Plan For Public Spaces (as described in Recital A above).

C. On October 25 and 27, and November 15, 2005, the City Council and the Agency:

1. Conducted public hearings on the revised Project, the Second Restatement of this Agreement, and the Required Approvals;

2. Certified the EIR and made the required CEQA findings; and

3. Approved the Second Restatement of this Agreement and the Required Approvals.

As a result of these actions, the Second Restatement of this Agreement became fully effective by its terms on December 15, 2005.

D. On or about December 2, 2005, the Vallejo Waterfront Coalition, an unincorporated association (the "Coalition") filed a Petition for Writ of Mandate And Complaint for Injunctive Relief in the Solano County Superior Court, captioned *Vallejo Waterfront Coalition v. City of Vallejo, et al.*; Case No. FCS 027048 (the "Action"). On or about January 12, 2006, the Coalition filed a First Amended Petition, etc. in the Action. Beginning on or about January 20, 2006, the Agency, the City, the Developer, and the Coalition have engaged in settlement negotiations to resolve the Action and have reached an agreement to do so on the terms and conditions stated in that certain Settlement and Release Agreement entered into as of November 28, 2006 (the "Settlement Agreement").

E. On November 28, 2006, the City Council and the Agency approved the Settlement Agreement in the form previously executed by the Developer and the Coalition. The City and the Agency thereafter duly executed the Settlement Agreement.

F. On February 13, 2007, following conduct of duly noticed public hearings as required by law, the City Council and the Agency took the following actions

1. The City Council and the Agency approved an addendum to the EIR that evaluated the impacts of the Project as modified by the Settlement-Related Amendments (as defined below), and the Third Restatement of this Agreement (the "EIR Addendum");

2. The City Council and the Agency approved the Third Restatement of this Agreement; and

3. The City Council introduced and conducted the first reading of ordinances (collectively, the "Settlement-Related Ordinances") to approve certain amendments to the Planned Development Master Plan and the accompanying Waterfront Design Guidelines and certain amendments to the Development Agreement, to implement specified terms of the Settlement Agreement (collectively, the "Settlement-Related Amendments").

G. The Settlement Agreement provides for the Action to be dismissed by the parties thereto within thirty-one (31) days after the second reading and approval of the Settlement-Related Ordinances enacting the Settlement-Related Amendments, which second reading is currently scheduled for consideration by the City Council on February 27, 2007. The date that the Action is dismissed is referred to as the "Action Dismissal Date."

H. Through the Third Restatement of this Agreement, the parties intend to modify the Agreement to:

1. Implement the terms of the Settlement Agreement by conforming the terms of this Agreement to the relevant provisions of the Settlement Agreement, the Settlement-Related Ordinances, and the Settlement Related Amendments;

2. Set forth the financial arrangements between the parties with respect to their respective expenditures in connection with the satisfactory disposition of the Action through approval of the Settlement Agreement and related actions;

3. Update both the Schedule of Performance (Attachment No. 3) and performance dates contained throughout the main text of this Agreement to reflect the tolling of obligations under this Agreement during the pending Action, as well as current Project circumstances; and

4. Make other conforming and minor updating changes to reflect changed circumstances for performance of the Project since this Agreement was last amended through the Second Amendment.

I. The revised Project contemplated by the parties and the City for implementation pursuant to this Agreement (as amended by the ~~Second~~Third Restatement) and the Amended Required Approvals (as defined in Section 102.5), consists of a comprehensive and coordinated public and private development effort to revitalize Vallejo's Waterfront area and to link the Waterfront area to the Downtown area. The Project includes, as a central component, development of a major new transit center for ferry and bus users within Parcels L and O of the Site to be known as "Vallejo Station."

~~D~~J. The fundamental objectives of the revised Project to be undertaken pursuant to this Agreement (as amended by the ~~Second~~Third Restatement) and the Amended Required Approvals are to revitalize the Waterfront and Downtown areas by intensifying land uses in certain areas, to expand designated public open space areas from approximately 11 acres to approximately ~~32~~31 acres, to create Vallejo Station as a multimodal transportation facility serving regional and local transit needs, and to enhance public access to the Waterfront and the Waterfront Promenade area. The revised Project includes up to ~~562,000~~587,000 gross square feet of commercial building space (and associated parking), up to 1,251 residential units (and associated parking), the Vallejo Station multimodal transportation facility (including an approximately 1,190 space parking garage for ferry patrons and a new bus transfer center), the development of approximately ~~21~~20 acres of net new public park and open space, and the preservation of approximately 11 acres of existing public park and open space (as further specified in Table 2-3 of the RDEIR, as updated in the EIR Addendum).

AGREEMENT

The Agency and the Developer agree as follows:

1. ~~1.~~ [§100] SUBJECT OF AGREEMENT

A. [§101] Purpose of this Agreement

The purpose of this Agreement is to effectuate the respective Redevelopment Plans (collectively, the "Redevelopment Plans") for the Waterfront Redevelopment Project and the Marina Vista Redevelopment Project (collectively, the "Redevelopment Projects") by providing for the acquisition, disposition and development of certain real property consisting of approximately 92 acres (the "Site") included within the boundaries of the Redevelopment Projects (the "Redevelopment Project Areas"). It is the intent of the Parties that the Site shall be developed as a master planned mixed-use development, including residential, commercial, retail, hotel, conference center, and open space and park uses. All predisposition activities, property acquisitions and dispositions, demolition and public or private improvements of any nature on any portion of the Site, and all other activities in furtherance of the development of the Site pursuant to this Agreement and the Project Approvals (as defined in Section 102.5) are collectively referred to in this Agreement as the "Project."

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

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

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

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

3. The "Southern Waterfront" or "Southern Waterfront Area", generally as shown in the Map of the Site for the Southern Waterfront (Attachment No. 1C).

B. [§102] The Redevelopment Plans; ~~Required Approvals;~~ Effectiveness of Agreement; Project Approvals

1. Redevelopment Plans. A portion of the Site is included within the Waterfront Redevelopment Project Area, and a portion of the Site is included within the Marina Vista Redevelopment Project Area. The Redevelopment Plan for the Waterfront Redevelopment Project was originally approved and adopted by the City Council of the City of Vallejo (the "City Council") on December 26, 1973, by Ordinance No. 206 N.C. (2d). The Redevelopment Plan for the Marina Vista Redevelopment Project was originally adopted by the City Council on January

18, 1960, by Ordinance No. 372 N. C. as the Urban Renewal Plan for the Marina Vista, and was subsequently amended and superseded in its entirety by the adoption of the Redevelopment Plan by Ordinance Nos. 274 N. C. (2d) and 275 N. C. (2d) on May 5, 1975. This Agreement is subject to the provisions of the Redevelopment Plans, as such Redevelopment Plans have been amended to date. The Redevelopment Plans, as they now exist and as they may be subsequently amended pursuant to this Section and Section 701, are incorporated herein by reference and made a part hereof as though fully set forth herein.

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

2. ~~Required Approvals;~~ Effectiveness of Third Restatement of This Agreement. Except ~~with respect to rights and obligations involving preparation and procurement of, or otherwise expressly intended to be exercised prior to and pending, approval of the Required Approvals (which rights and obligations will vest and be effective upon execution of this Agreement by both parties), this Agreement, and the rights and obligations of the parties hereunder, are specifically contingent upon approval or certification, as applicable, and effectiveness following any applicable referendum period, of all of the following actions (collectively the "Required Approvals"):~~

~~a. City Council approval of an Amendment to the City's General Plan (~~{~~**the "General Plan Amendment") to include revised and updated land use and urban design goals, policies and map designations for the Site and the Project;**~~}

~~b. City Council approval of an Amendment to the City's Zoning Ordinance~~{~~**to provide for zoning consistent with the General Plan Amendment;**~~}

~~c. City Council approval of a Planned Development Master Plan for the Site (~~{~~**the "Planned Development Master Plan"), which includes as an attached and incorporated element the Waterfront Design Guidelines, prepared jointly by the Agency and Developer;**~~}

~~d. City Council and Agency Board certification of an Environmental Impact Report (the "EIR") for the Vallejo Station Project and the Vallejo Waterfront Project (SCH No. 2000052073) prepared by the City and Agency to evaluate the environmental impacts of development of the Project in accordance with this Agreement and the other Required Approvals; and~~

~~e. City Council approval of a development agreement (~~{~~**the "Development Agreement") pursuant to Government Code Section 65864 et seq., between the City and the Developer pertaining to all of the Developer Parcels identified in Section 104 of this Agreement.**~~}

~~As used in this Agreement, the "Required Approvals" shall include all conditions of approval in connection with the above actions~~{~~and the EIR Mitigation Monitoring and Reporting Program~~}. ~~This~~as otherwise provided in Sections 102.6 and 110, the Third Restatement of this Agreement shall become effective ~~for all purposes on the date (the "Required Approvals Effective Date") upon which all of the Required Approvals have been approved and are first in full force and effect under applicable law. Promptly following the Required Approvals Effective~~on the Action Dismissal Date, as defined in Recital G. Within thirty (30) days after the Action Dismissal Date, the parties shall memorialize such date through execution of an Operating Memorandum pursuant to Section 709. Unless otherwise provided by applicable law or otherwise determined by a court of competent jurisdiction, so long as the Action has been dismissed, the filing of a legal action challenging the approval ~~or certification of this Agreement (including the Second Restatement) or any Required Approval~~of the EIR Addendum, the Third Restatement of this Agreement, the Settlement Agreement, the Settlement-Related Ordinances and/or the Settlement-Related Amendments shall not be deemed to render the Third Restatement of this Agreement ~~(including the Second Restatement) or any challenged Required Approval non-effective for purposes of establishing the Required Approvals Effective Date and the full effectiveness~~non-effective. Pending the Action Dismissal Date, the Second Restatement of this Agreement shall remain in effect and control the rights and obligations of the parties.

3. Efforts To Obtain Required Approvals and Settlement-Related Ordinances/Amendments. In furtherance of the Agency's obligations under this Agreement, and with the assistance of Developer funding as described in Sections 109.1 and 109.2, the Required Approvals ~~have been prepared and presented for consideration of approval and certification concurrently with the presentation and consideration of approval of the Second Restatement of this Agreement on October 25, 2005 (as continued to October 27, 2005)~~were obtained as further described in Recital C of this Agreement.

The Agency, at its sole cost and in cooperation with the Developer, shall use its best efforts to cause the City to ~~prepare,~~ approve the second reading of and adopt the Settlement-Related Ordinances to enact the Settlement-Related Amendments to the Required Approvals in a manner consistent with the Settlement Agreement, and to obtain effectiveness of the ~~Required Approvals within the time set forth in Item 3(b) of the Schedule of Performance (Attachment No. 3) (the "Required Approvals Deadline"). As previously acknowledged and agreed in Section 10 of the Amendment to this Agreement entered into by the parties as of October 24, 2003, notwithstanding the subsequent passage of the Required Approvals Deadline, the Agency shall remain fully obligated, pursuant to this Section 102 and Section 109.4, to prepare the EIR and to use its best faith efforts to cause the City to prepare, approve, and adopt the Required Approvals in a timely and diligent manner, including funding of all costs required to be funded by the Agency under this Agreement in connection with preparation of the EIR (or a Further Revised EIR, as described in Section 102.4 below) and procurement of the Required Approvals; provided, however, that nothing in this Agreement requires the City to grant the Required Approvals or to grant any particular form of the Required Approvals. The~~Settlement-Related Ordinances and the Settlement-Related Amendments to the Required Approvals by not later than March 29, 2007. Without[the prior written approval of the Developer, which may be granted or denied by the Developer in its sole discretion (notwithstanding the provisions of Section 607)], the Agency shall have no right to terminate this Agreement, or any part hereof, for failure of the ~~EIR to be considered and acted upon for certification and/or the Required~~

~~Approvals to be considered and acted upon for approval and adoption by the City by the Required Approvals Deadline or any later date without~~{~~the prior written approval of the Developer, which may be granted or denied by the Developer in its sole discretion (notwithstanding the provisions of Section 607)~~}City Council to approve second reading of and adopt the Settlement-Related Ordinances in a manner consistent with the Settlement Agreement or for failure of the Settlement-Related Ordinances and the Settlement-Related Amendments to the Required Approvals to become effective following the applicable referendum period by March 29, 2007, or any later date.

4. Failure of ~~Required Approvals~~Settlement-Related Ordinances/Amendments to Become Effective. If the City Council ~~and the Agency, as applicable, do not approve~~does not approve second reading of and adopt the Settlement-Related Ordinances to enact the Settlement-Related Amendments to the Required Approvals in ~~substantially the form presented to them on October 25, 2005 (as continued to October 27, 2005)~~a manner consistent with the Settlement Agreement, or if, following approval~~, all of~~ and adoption, both of the Settlement-Related Ordinances and the Settlement-Related Amendments to the Required Approvals do not become effective in accordance with applicable law by ~~January 31, 2006~~March 29, 2007 (collectively, a "~~Required Approvals~~Settlement Failure Event"), then the provisions of this Section 102.4 shall apply. ~~A Required Approval shall be deemed approved in "substantially the form presented" if it is adopted in the form presented with only such modifications as are approved in writing by the Developer.~~

~~a. If the Required Approvals Failure Event consists of a City Council and/or Agency Board disapproval of proposed certification of the EIR, the Agency, at its cost as provided in Section 109.4 and in cooperation with the Developer, shall prepare such revisions to the EIR (a "Further Revised EIR") as necessary to meet the requirements of CEQA for certification of the Further Revised EIR, and shall submit or resubmit a Further Revised EIR, as necessary, and shall use its best faith efforts to obtain City Council and Agency Board certification of a Further Revised EIR.~~

a. ~~b.~~ Upon a ~~Required Approvals~~Settlement Failure Event, the Developer may terminate this Agreement pursuant to Section 510 hereof.

b. ~~c. If the Required Approvals Failure Event is one other than as described in subsection a. above, and~~ the Developer notifies the Agency that it does not intend to exercise the termination right set forth in subsection ~~b~~a. above, the parties shall meet and confer in good faith for such period as is reasonably necessary to agree upon a modification of the Settlement-Related Ordinances and the Settlement-Related Amendments to the Required Approvals for resubmission to the City Council that accomplishes, as nearly as possible under the applicable circumstances of the previous failure of the Settlement-Related Ordinances and the Settlement-Related Amendments to the Required Approvals to be approved and/or become effective, the physical and economic outcomes contemplated by the parties, the City and the Coalition as envisioned by execution of the ~~Second Restatement of this~~Settlement Agreement. The Agency~~ shall~~, at its sole cost ~~as provided in Section 109.4~~ and in cooperation with the Developer, shall use best efforts to expeditiously prepare and submit, and to cause the City Council to consider, adopt and approve such mutually agreed modified ~~Required Approvals~~Settlement-Related Ordinances and Settlement-Related Amendments to the Required

Approvals, including as necessary, preparing and paying the costs of any amendments to the EIR Addendum or any other required CEQA document.

~~5. Project Approvals~~ 5. Project Approvals. The Required Approvals, as proposed to be amended by the Settlement-Related Amendments, are referred to in this Agreement as the "Amended Required Approvals," and include all conditions of approval in connection with Amended Required Approvals[and the EIR Mitigation Monitoring and Reporting Program]. As used throughout this Agreement, "Project Approvals" has the precise meaning given in the Development Agreement, and consists generally of the Amended Required Approvals, any subsequent amendments to the Amended Required Approvals, and any additional land use approvals, entitlements, Unit Plans, subdivision maps, permits, and amendments thereto that may hereafter be issued or granted by the City in connection with implementation of the Project on the Site.

6. Immediate Effectiveness. The provisions of this Section 102 are expressly made immediately effective upon execution of the ~~Second~~Third Restatement of this Agreement, and shall apply prior to and pending the ~~Required Approvals Effective~~Action Dismissal Date.

C. [§103] The Redevelopment Project Areas

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

D. [§104] The Site

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

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

The Maps of the Site (Attachment No.1) show the currently anticipated configuration of the public and private parcels within the Site as they are described below in this Section 104 and as they are intended to be subdivided (or ~~resubdivided~~re-subdivided) and developed in accordance with this Agreement and the Amended Required Approvals.

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

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

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

a. Northern Waterfront. The Developer Parcels within the Northern Waterfront Area consist of the following parcels and subparcels as shown on Attachment No. 1A: Parcel A (~~including A Street, B Street,~~consisting of subparcels A1 and ~~C Street~~A2), Parcel B1, Parcel B2, and Parcel C1.

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

c. Southern Waterfront. The Developer Parcels within the Southern Waterfront Area consist of the following parcels and subparcels as shown on Attachment No. 1C: Parcel S and Parcel T (consisting of subparcels T1, T2, and T3).

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

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

b. Central Waterfront. The City/Agency parcels within the Central Waterfront Area consist of the following parcels and public streets as shown on Attachment No. 1B: Parcel L3, Parcel L5, Parcel O, the City Hall Parking Lot parcel, Capitol Street and Capitol Street Dedication, Georgia Street and Georgia Street Extension, Civic Center Drive, Unity Plaza, the Capitol Street Open Space parcel, the Festival Green parcel, the Existing Service Club Park parcel, the Existing Georgia Street Mitigation parcel, the Ferry Facility parcel, the Kiss and Ride parcel, the Independence Park parcel, the Future Expansion parcel, the Independence Park Expansion parcel, and the State Farm Mitigation Independence Park parcel.

c. Southern Waterfront. The City/Agency Parcels within the Southern Waterfront Area consist of the following parcels and public streets as shown on Attachment No. 1C: the S-Open Space Parcel, the T-Open Space parcel, the Boat Launch parcel, Marin Street Extension, Solano Avenue Extension, and Kaiser Place.

E. [§105] Parties to this Agreement

1. [§106] The Agency

The Agency is a public body, corporate and politic, exercising governmental functions and powers and organized and existing under the Community Redevelopment Law of the State of California (Health and Safety Code Section 33000 et seq.). The office of the Agency is located at 555 Santa Clara Street, Vallejo, CA 94590. "Agency," as used in this Agreement, includes the Redevelopment Agency of the City of Vallejo and any assignee of or successor to its rights, powers and responsibilities.

2. [§107] The Developer

The Developer is Callahan / DeSilva Vallejo, LLC, a California limited liability company, whose members are De Silva Group, Inc., a California corporation and Callahan Property Company, a California corporation. The principal office of the Developer is 11555 Dublin Boulevard, Dublin, CA 94568.

The qualifications and identity of the Developer are of particular concern to the City and the Agency, and it is because of such qualifications and identity that the Agency has entered into this Agreement with the Developer. Subject to the provisions of Section 315 hereof and any other provision of this Agreement (including the attachments hereto) permitting an assignment or transfer, no voluntary or involuntary successor in interest of the Developer shall acquire any rights or powers under this Agreement except as expressly set forth herein. This Agreement may be terminated by the Agency pursuant to Section 511 hereof (with respect to the portions of the Site and the Project so specified in Section 511) if there is any significant change (voluntary or involuntary) in the membership, management or control of the Developer prior to the completion of the development of the Site as evidenced by the issuance of a Final Certificate of Completion therefor, except as expressly set forth in this Section 107, Section 315 hereof, or any other provision of this Agreement (including the attachments hereto) permitting an assignment or transfer of this Agreement.

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

Except as otherwise provided in this Section 107, Section 315, and any other provision of this Agreement (including the attachments hereto) permitting an assignment or transfer of this Agreement, the Developer shall not assign all or any part of this Agreement without the prior written approval of the Agency.

F. [§108] Deposit

The Developer has made or shall make the following deposits to the Agency.

1. Initial Deposit. ~~Through the Second Restatement of this Agreement, the~~The parties acknowledge and agree that:

a. Prior to or simultaneously with the initial execution of this Agreement by the Agency, the Developer delivered for the benefit of the Agency a deposit of cash or certified check in the amount of FIVE HUNDRED THOUSAND DOLLARS ($500,000) (the "Initial Deposit") as security for the performance of the obligations of the Developer under this Agreement;

b. The Initial Deposit (and interest earned thereon) has been used by the Agency in accordance with the terms of this Agreement to pay for costs incurred by the Agency, from time to time, in the preparation of this Agreement and the Required Approvals; and

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

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

a. A TWO HUNDRED THOUSAND DOLLAR ($200,000) portion of the Additional Deposit shall be delivered to the Agency within five (5) days after the ~~Required Approvals Effective~~Action Dismissal Date; and

b. The remaining THREE HUNDRED THOUSAND DOLLAR ($300,000) portion of the Additional Deposit shall be delivered to the Agency at the time of and as a condition of closing for the conveyance of Parcel A by the Agency to the Developer.

The Agency shall use the Additional Deposit, and any interest earned thereon, to pay costs of the Southern Waterfront Soft Cost Work, as defined and described in Section IV.A.9 of the Scope of Development (Attachment No. 4). The Additional Deposit (including interest earned thereon) shall be credited toward the Purchase Price to be paid to the Agency by the Developer for Parcels S and T, with such credit applied to each closing for portions of Parcels S and T in chronological order until the credit is fully used. If this Agreement is terminated by the Developer pursuant to Section 510 or by the Agency pursuant to subsection d., h., j., k., l., or o. of Section 511, any unexpended portion of the Additional Deposit (including interest earned thereon) shall be returned by the Agency to the Developer as provided therein.

G. [§109] EIR Preparation and Planning Studies

{~~1. Actions To Date. Through the~~ }~~Second~~{ ~~Restatement of this Agreement, the parties acknowledge and agree that~~}~~, as of October 27, 2005:~~

~~a. The Agency and the City have prepared and presented the EIR and the other Required Approvals for consideration of adoption as further provided in Section 102.2.~~
~~b. The~~ [1. Actions To-Date. Through the]Third[Restatement of this Agreement, the parties acknowledge and agree that] the Developer has advanced, on the Agency's behalf and in fulfillment of the Agency's obligations under this Agreement, various costs of preparation of the EIR and other planning studies and reports necessary for preparation of the Required Approvals, a portion of which Developer prior advances, in the aggregate amount of ~~FOUR~~SIX HUNDRED ~~FIFTY-NINE~~TWENTY-EIGHT THOUSAND ~~FIVE HUNDRED THIRTY-FIVE~~SEVENTY-SEVEN DOLLARS ($~~459,535~~628,077), shall be subject to reimbursement as provided in Section ~~109.3~~109.2 below (the "Total Reimbursable ~~Prior~~Developer Advance"). The remaining prior Developer advances to pay costs of preparation of the EIR and other planning studies and reports shall not be subject to reimbursement by the Agency to the Developer.

~~c. The parties anticipate that the Agency will be required to pay additional invoices for consultant services (for EIP Associates and related third-party consultants) in connection with completion of the EIR and the other Required Approvals for presentation and consideration on October 25, 2005 (as continued to October 27, 2005), in the estimated amount of ONE HUNDRED TEN THOUSAND DOLLARS ($110,000) (the actual cost incurred in connection with payment of such additional invoices to prepare the EIR and the other Required Approvals for consideration on October 25, 2005 (as continued to October 27, 2005) is referred to as the "Additional EIR/Required Approvals Cost").~~

2. ~~Payment of Additional EIR/Required Approvals Cost. The Developer shall pay when due, on behalf of the Agency and in fulfillment of the Agency's obligations under this Agreement, the Additional EIR/Required Approvals Cost. 3.~~ Reimbursement To Developer. ~~As used below, "Total Reimbursable Developer Advance" means the sum of the Reimbursable Prior Advance (as defined in Section 109.1.b above) plus the Additional EIR/Required Approvals Cost paid by the Developer pursuant to Section 109.2 above.~~ Upon receipt of available tax increment revenue generated from the Waterfront Redevelopment Project Area and/or the Marina Vista Redevelopment Project Area (but not the Vallejo Central Redevelopment Project Area) or receipt of other available governmental grants or public funds from which the Total Reimbursable Developer Advance may be reimbursed, the Agency shall promptly reimburse to the Developer the Total Reimbursable Developer Advance. Any portion of the Total Reimbursable Developer Advance that has not been reimbursed by the Agency to the Developer at the time of the close of escrow for Parcel A shall be credited toward the Purchase Price otherwise payable by the Developer for Parcel A (or, to the extent that other credits earned by the Developer for Parcel A pursuant to this Agreement are already sufficient to pay the Purchase Price for Parcel A, the unreimbursed portion of the Total Reimbursable Developer

Advance shall be credited at the applicable close of escrow toward the Purchase Price otherwise payable by the Developer for the next Developer Parcel(s) to be purchased by the Developer).

~~4. Agency Obligation. Except for the Developer's past payments as provided in Section 109.1 above, and the Developer's obligation to pay the Additional EIR/Required Approvals cost as provided in Section 109.2 above, the Agency shall pay all costs in connection with fulfillment of its obligations under Sections 102.3 and 102.4 to use best efforts to cause the City to prepare, approve and adopt the Required Approvals (including certification of a Further Revised EIR, if necessary). 5.~~ 3. Immediate Effectiveness. The provisions of this Section 109 are expressly made immediately effective upon execution of the ~~Second~~Third Restatement of this Agreement, and shall apply prior to and pending the ~~Required Approvals Effective~~Action Dismissal Date.

H. [§110] Defense and Settlement of Action

This section sets forth the financial responsibilities of the parties and the City in connection with their defense of the Action, including all activities undertaken by the parties and the City related to defense and settlement of the Action (the "Defense and Settlement Activities").

1. City and Agency Costs. The City and/or the Agency, as applicable, shall pay the costs of the City Attorney's Office, the Agency's special counsel McDonough, Holland & Allen, and City/Agency staff in formulating and implementing the Defense and Settlement Activities. The Agency shall pay the costs to meet its obligations as set forth in Section 102.3 and 102.4.

2. Developer Costs.

a. Basic Costs. The Developer shall pay the costs of the Developer's in-house staff and any outside consultants, advisors, and attorneys employed by the Developer in formulating and implementing the Defense and Settlement Activities, and such costs shall constitute General and Administration Costs within the meaning of Section 201.2(a)(8) or Third Party Costs within the meaning of Section 201.2(a)(26), as applicable.

b. Special Cost Advance. In addition, the Developer shall advance on behalf of the parties and the City payment of the attorneys fees and costs of the Coalition in the amount specified to be paid by the Developer pursuant to the Settlement Agreement (the "Developer's Advance For Coalition Attorneys Fees/Costs"). Fifty percent (50%) of the Developer's Advance for Coalition Attorneys Fees/Costs shall be subtracted from the Preliminary Purchase Price as a credit toward determination of the Purchase Price for Parcel A in accordance with Section 201.2.e.(4). The remaining fifty percent (50%) of the Developer's Advance For Coalition Attorneys Fees/Costs shall be considered and treated as Third Party Costs within the meaning of Section 201.2(a)(26).

3. Immediate Effectiveness. The provisions of this Section 110 are expressly made immediately effective upon execution of the Third Restatement of this Agreement, and shall apply prior to and pending the Action Dismissal Date.

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

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

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

Section 201.2 sets forth the method for determination of the Purchase Price for the Developer Parcels to be conveyed in fee to the Developer. Sections 201.3 through 201.8 set forth the terms for acquisition and conveyance of each of the respective Developer Parcels.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Market Report upon which the amount of the Estimated Gross Residential Unit Sales Proceeds has been determined.

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

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

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

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

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

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

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

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

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

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

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

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

(ii) ~~(ii)~~ an amount that yields a twenty-five percent (25%) internal rate of return on the Developer Capital Costs for the Developer Parcel, taking into account the amounts and timing of all such Developer Capital Costs. The "Developer Capital Costs" for a given Developer Parcel means the sum of the amounts incurred during or otherwise imputed or deemed applicable to the Reporting Period for the given Developer Parcel for the following items listed in the definition of Developer Investment contained in definition (5) above: (A) (Carry-forward Balance, if any), (B) (Third Party Costs), and (C) (General and Administration Costs). The detailed methodology for calculating such internal rate of return amount for a given Developer Parcel shall be set forth in an Operating Memorandum to be executed pursuant to Section 709 within thirty (30) days after the ~~Required Approvals Effective~~Action Dismissal Date;

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

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

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

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

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

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

(8) "General and Administration Costs" for a given Developer Parcel means, except as otherwise provided below, the costs attributable to services provided by the Developer's in-house personnel related to the Project (and not limited to the applicable

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(24) "Residential Parcel" means a Developer Parcel that will be developed to contain for-sale residential dwelling units, but no commercial uses. As of the ~~Second~~Third Restatement, the Residential Parcels include Developer Parcels A and T1.

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

(26) "Third Party Costs" for a given Developer Parcel means, except as otherwise provided below, the out-of-pocket pre-construction payments related to the Project (and not limited to the applicable Developer Parcel) made by the Developer to third-party persons or entities during the Reporting Period for the given Developer Parcel, as reported in the Certified Statement for such Developer Parcel, plus the amount of the Initial Deposit as set forth in Section 108.1, plus the Developer's Wetland Park Contribution as described in Section II.A.3 of the Scope of Development (Attachment No. 4) (but only to the extent the Total Developer Public Parks and Open Space Contribution (as defined in Section I.H of the Method of Financing (Attachment No. 6)) exceeds the amount of City park fee credits granted by the City to the Developer pursuant to Section 3.8 of the Development Agreement). Third Party Costs shall not include any payments made by the Developer for which the Developer is entitled to repayment by the Agency or a credit against Purchase Prices pursuant to Section 108.2, ~~109.3,~~109.2, 110.2., 201.6.a, various provisions of the Scope of Development (Attachment No. 4), or any Operating Memorandum entered into pursuant to Section 709. Third Party Costs also shall not include any payments made prior to the Original Execution Date other than payments by the Developer made in connection with preparation, conduct of the public participation process for, approval and modification of the Waterfront Master Plan, the Plan for Public Spaces, and related planning studies and documents.

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

(28) "Valuation Date" means:

(A) With respect to the Method A Appraisals (Baseline), ~~January~~June 1, ~~2006~~2007 and each succeeding second anniversary, as applicable (i.e., ~~January 1, 2008, 2010, 2012,~~June 1, 2009, 2011, 2013, etc.).

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

b. Appraisal Process—In General. Each appraisal required pursuant to this Section 201.2 shall be performed by a qualified appraiser who is a California Certified General Appraiser and a Member of the Appraisal Institute and who is acceptable to both the Agency and the Developer (the "Appraiser"). The costs for each appraisal shall be shared equally between the Developer and the Agency. By Operating Memorandum prepared and executed in accordance with Section ~~709,~~709 and within thirty (30) days after the Action Dismissal Date, the parties ~~may~~shall provide the Appraiser with further appraisal instructions consistent with the general appraisal instructions provided in this Section 201.2. To the extent consistent with the standards, conditions, and instructions set forth in this Section 201.2 and any applicable executed Operating Memorandum, each appraisal shall be performed in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). To the extent of any inconsistency between the standards, conditions, and instructions of this Section 201.2 or any applicable executed Operating Memorandum and those of USPAP, the standards, conditions, and instructions of this Section 201.2 and any applicable executed Operating Memorandum shall control. The interest appraised in each appraisal shall be a fee simple interest in the applicable Developer Parcel.

As of the ~~Second~~Third Restatement, the parties have retained Garland & Associates as the Appraiser to prepare an appraisal to determine the fair market value, as of the ~~January~~June 1, ~~2006~~2007 Valuation Date, of each Developer Parcel under the conditions and standards set forth in subsections c. below (each, a "Method A Appraisal (Baseline)"). The parties anticipate that such Method A Appraisals (Baseline) will be delivered on or around ~~January~~June 15, ~~2006.~~2007. The parties shall cause an Appraiser to prepare and deliver updated Method A Appraisals (Baseline) on or about each succeeding second (2^{nd}) anniversary of the delivery of the initial Method A Appraisals (Baseline). The Method A Appraisals (Baseline) may set forth the fair market values of each Developer Parcel on a per square foot basis to the extent the precise square footage is not yet known.

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

Notwithstanding the preceding paragraph, in connection with Developer Parcels involving complex, multi-level construction that may require extensive pre-Unit Plan design and engineering efforts (e.g., Parcels J1, J2, L1, and T1), the parties may mutually agree by Operating Memorandum pursuant to Section 709 to commission and obtain the Method A Appraisal (Final) and the Method B Appraisal (Unadjusted) at an earlier date to accommodate financial planning needs, subject to any adjustment of such appraisals at the time of Unit Plan approval as may be set forth in such Operating Memorandum.

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

c. Method A Appraisal—Baseline and Final. For each Developer Parcel then being appraised (whether in connection with a Method A Appraisal (Baseline) or a Method A Appraisal (Final)), the selected Appraiser shall prepare and deliver to the parties an appraisal determining the fair market value of such Developer Parcel as of the Valuation Date, applying the appraisal standards and conditions set forth below in this subsection c. and any other standards and conditions set forth in any Operating Memoranda executed by the parties and delivered to the Appraiser:

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

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

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

(B) In recognizing such marketplace speculation, the appraisal is to take into account and discount for land developer risk the following factors: (i) the terms of this Agreement as of the Original Execution Date, which did not contain any assurances that the City would grant any changes in zoning and/or general plan land use designations with respect to the Site; (ii) the costs and risks as of the Original Execution Date of obtaining changes in zoning and general plan land use designations for the applicable Developer Parcel, including the prospects as of the Original Execution Date of overcoming any public concerns, expectations and opposition to the conversion of the applicable Developer Parcel from its then existing actual land use(s), the need to complete the applicable CEQA and land use approval processes for such zoning and general plan land use amendments, and the prospect that, in order to obtain changes in zoning and general plan land use designations, the potential buyer might need to prepare and obtain master plan approvals from the City for all or portions of the Site in addition to the Developer Parcel being appraised; (iii) the public infrastructure costs related to the Site and the applicable Developer Parcel as of the Original Execution Date and the impact of such costs on the ability to obtain changes in zoning and general plan land use designation; and (iv) the costs and risks as of the Original Execution Date of obtaining necessary BCDC, SLC, Water Board, and other governmental regulatory approvals necessary to support any alternative land uses on the applicable Developer Parcel;

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

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

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

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

d. Method B Appraisal (Unadjusted). For each Developer Parcel then being appraised, the Appraiser shall also prepare and deliver to the parties a Method B Appraisal (Unadjusted) determining the fair market value of such Developer Parcel as of the Valuation Date, applying the appraisal standards and conditions set forth below in this subsection d. and any other standards and conditions set forth in any Operating Memoranda executed by the parties and delivered to the Appraiser:

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

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

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

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

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

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

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

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

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

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

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

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

(4) Finally, the "Purchase Price" for the Developer Parcel shall be determined by the parties. The Purchase Price shall equal the Preliminary Purchase Price (determined in accordance with subsection e.(3) above) less the principal amount of assessments or other governmental charges that are a lien against the Developer Parcel payable after the closing for conveyance of such Developer Parcel, and also less the sum of all previously unapplied amounts that are specified to be credited against the Purchase Price pursuant to Section 108.2, ~~109.3,~~109.2, 110.2.b, 201.6.a, various provisions of the Scope of Development (Attachment No. 4), or any Operating Memorandum entered into pursuant to Section 709; provided, however, that in no event shall the Purchase Price for a Developer Parcel be less than zero dollars ($0).

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

3. Parcel A. Parcel A is currently owned by the City. In accordance with and subject to all the terms, covenants and conditions of this Agreement and within the time set forth in the Schedule of Performance (Attachment No. 3), the Agency agrees to acquire from the City

and convey in fee, and Developer agrees to accept conveyance of, Parcel A for development in accordance with the Scope of Development (Attachment No. 4). The Purchase Price to be paid by the Developer for Parcel A shall be the Purchase Price determined pursuant to Section 201.2.

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

a. Conveyance Method. In accordance with and subject to all the terms, covenants and conditions of this Agreement and the Trust Requirements, and within the time set forth in the Schedule of Performance (Attachment No. 3):

(1) The Agency shall acquire from the City a ground leasehold interest in each of the B/C Ground Lease Parcels pursuant to separate ground leases between the Agency and the City for each of the respective B/C Ground Lease Parcels (each such ground lease is referred to as a "City/Agency Ground Lease"). Each City/Agency Ground Lease shall:

(A) be consistent with the Trust Requirements and the terms of the applicable Agency/Developer Sub-Ground Lease (as described below);

(B) provide the Developer and its lender(s) with third-party beneficiary rights to cure any Agency default and with the reasonable opportunity to enter into a direct ground lease with the City in the event of an Agency default; and

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

(2) The Agency shall convey, and the Developer shall accept conveyance of, a sub-ground leasehold interest in each of the B/C Ground Lease Parcels pursuant to separate sub-ground leases between the Agency and the Developer for each of the respective B/C Ground Lease Parcels (each such sub-ground lease is referred to as an "Agency/Developer Sub-Ground Lease"). Each Agency/Developer Sub-Ground Lease shall:

(A) be consistent with the Trust Requirements;

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

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

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

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

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

(G) contain provisions required by the California Community Redevelopment Law for leases of the nature of the applicable Agency/Developer Sub-Ground Lease, including the provision regarding non-discrimination required by Health and Safety Code Section 33436(b) and the provision regarding property tax payments required by Health and Safety Code Section 33675; and

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

If the parties are unable to agree upon the form of a City/Agency Ground Lease or an Agency/Developer Sub-Ground Lease within the time set forth in the Schedule of Performance (Attachment No. 3), then either party may submit the matter for arbitration in accordance with the provisions of Section 706 to determine the form of the applicable City/Agency Ground Lease or Agency/Developer Sub-Ground Lease consistent with the terms of this Section 201.4.

If requested by the Developer, the Agency shall consider in good faith, and shall cause the City to consider in good faith, an alternative conveyance method whereby, consistent with the Trust Requirements and all applicable law, the City would directly convey a ground leasehold interest in one or more of the B/C Ground Lease Parcels pursuant to a ground lease or ground leases directly between the City and the Developer containing terms comparable to those to be contained in the applicable Agency/Developer Sub-Ground Lease (each, a "City/Developer Ground Lease"). The Agency shall reasonably cooperate with the City ~~and the Agency~~ to prepare and cause approval and execution of any such requested City/Developer Ground Lease.

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

b. Ground Rent Payments. Each Agency/Developer Sub-Ground Lease shall provide for the Developer to make annual ground rent payments (the "Annual Rent Payments" or an "Annual Rent Payment") in advance for each year of the term of the Agency/Developer Sub-Ground Lease, with the initial Annual Rent Payment to be made on the date that the Developer is entitled to possession of the applicable B/C Ground Lease Parcel (the

"Possession Date"), and subsequent Annual Rent Payments to be made on each anniversary of the Possession Date (each, a "Rent Payment Date"). The amount of each Annual Rent Payment shall be determined as follows.

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

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

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

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

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

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

(6) "Adjustment Factor" means a ratio, the numerator of which is the CPI Index amount as of the applicable Rent Adjustment Date, and the denominator of which is the CPI Index amount as of the previous Rent Adjustment Date (or the Possession Date, in connection with determination of the Adjusted Annual Rent Payment Amount for the first Rent Adjustment Date); provided, however, that in no event shall such ratio exceed 1.12.

(7) "CPI Index" means the Consumer Price Index for all Urban-Consumers (CPI-U): U.S. City Average, All Items (base year 1982-84 = 100) for the United States, published by the United States Department of Labor, Bureau of Labor Statistics. If the CPI Index has changed so that the base year differs from that used as of the Possession Date, the CPI shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the CPI Index is discontinued or revised during the term of the applicable Agency/Developer Sub-Ground Lease, such other governmental index or computation with which it is replaced shall be used in order to obtain

substantially the same result as would be obtained if the CPI Index had not been discontinued or revised.

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

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

6. Parcel L.

a. Acquisition and Relocation with Respect To Post Office Site. As further provided in Section 201.6.c, the City and the Agency currently own all of Parcel L except for a parcel owned by the Hilf Trust (the "Post Office Site Owner") and leased to the United States Postal Service (the "USPS") under a long-term lease for operation of a post office facility (the "Post Office Site"), and a parcel owned by Jack Higgins (the "Restaurant Site Owner") and used by a tenant as a place of business for a restaurant (the "Restaurant Site"). This Section 201.6.a sets forth terms for acquisition of the Post Office Site and relocation of the current post office facility from the Post Office Site. Section 201.6.b sets forth terms for acquisition of the Restaurant Site and relocation of the business from the Restaurant Site.

(1) Acquisition of Post Office Site. Within the time sets forth in the Schedule of Performance (Attachment No. 3) and in accordance with all applicable legal requirements, the Agency shall take the following actions at its cost, using federal funds available for implementation of the Vallejo Station development ("Vallejo Station Funds"):

(A) The Agency shall seek to acquire fee title to the Post Office Site from the Post Office Site Owner by voluntary agreement. To that end, the Agency shall deliver a written offer to the Post Office Site Owner following consultation with the

Developer regarding such written offer. The Agency shall use reasonable efforts to acquire the Post Office Site by negotiation at a purchase price consistent with the acquisition budget for the use of Vallejo Station Funds, and shall make good faith efforts to condition such negotiated purchase on either the ability to negotiate the purchase or the passage of a resolution of necessity with respect to the Restaurant Site.

(B) If the Agency is unable to acquire the Post Office Site by negotiation within the time set forth in the Schedule of Performance (Attachment No. 3), the Agency shall <u>or shall cause the City to </u>consider the adoption of a Resolution of Necessity for acquisition of the Post Office Site by eminent domain. If the Agency <u>or the City </u>elects to adopt the Resolution of Necessity, the Agency <u>or the City, as applicable, </u>shall proceed promptly to acquire the Post Office Site by eminent domain and shall file an order for immediate possession with respect to the Post Office Site. The Developer acknowledges that discretion is vested in the Agency <u>and the City </u>to determine whether or not the statutory conditions set forth in Code of Civil Procedure Section 1245.230 are met in order to entitle a governmental agency to adopt a resolution of necessity. Nothing in this Agreement shall obligate the Agency<u> or the City</u> to make the findings required by Code of Civil Procedure Section 1245.230 or adopt the Resolution of Necessity for the Post Office Site. If the Agency ~~fails~~<u>and the City fail</u> to adopt the Resolution of Necessity for the Post Office Site by the time set forth in the Schedule of Performance (Attachment No. 3), or if the Agency <u>or the City </u>adopts the Resolution of Necessity but, after good faith efforts, is unable to proceed with acquisition of the Post Office Site by eminent domain within the time set forth in the Schedule of Performance (Attachment No. 3), the exclusive remedy of Developer shall be to terminate this Agreement pursuant to Section 510 with respect to Parcel J and/or L only, as the Developer may elect. Upon any such termination of this Agreement with respect to Parcel L (so that relocation of the Post Office facility to Parcel T2 as described below is not necessary), the parties shall negotiate in good faith to achieve a mutually acceptable modification of this Agreement and the Project Approvals to enable an appropriate alternative private development of Parcel T2.

(2) <u>Relocation of USPS To Post Office Relocation Facility</u>. The parties' intention is to negotiate with the USPS the termination of its current lease for the Post Office Site and the relocation of the current USPS facility from the Post Office Site to a new Post Office facility to be developed on Parcel T2 (the "Post Office Relocation Facility") by the Developer in accordance with this Agreement and the Project Approvals for Parcel T2, and in accordance with the terms of a new, commercially reasonable and financible lease between the Developer and the USPS (the "Post Office Relocation Facility Lease"). <u>The parties shall make good faith and commercially reasonable efforts to negotiate a relocation agreement with the USPS that includes a long-term continued retail presence for the U.S. Postal Service in the Downtown or the Central Waterfront Area as close as possible to the existing location. The parties acknowledge that the USPS has exclusive authority to determine the location of postal facilities.</u>

The Schedule of Performance (Attachment No. 3) includes a schedule of actions to accomplish the relocation of the USPS operation off of the Parcel L Post Office Site and into the newly completed Post Office Relocation Facility on Parcel T2 by ~~December 2007,~~<u>February 2009,</u> to enable timely commencement of construction of the Vallejo Station public garage on Parcel L3 (the "L3 Public Garage") by that time. The parties acknowledge and agree that accomplishment of such a schedule for relocation of the USPS facility will require fast-tracking of the normal USPS process for the location of new postal facilities; that, based on prior discussions with the USPS, there is reason to believe that such a fast-track process may be feasible; but that, if, despite the parties' good faith efforts, such fast-tracking of the USPS relocation process proves not to be completely feasible, the parties shall make necessary modifications to the Schedule of Performance (Attachment No. 3), through execution of an Operating Memorandum pursuant to Section 709, to reflect future conditions.

To accomplish the intended relocation of the USPS facility from the Post Office Site, the parties shall cooperate to achieve the following preliminary steps within the times set forth in the Schedule of Performance (Attachment No. 3) (some of these actions relate to the physical development of the Post Office Relocation Facility on Parcel T2 within the Southern Waterfront Area); provided, however, that the parties' obligations to perform the following steps (other than negotiation and execution of a Post Office Budget LOI Operating Memorandum, as described and defined below) shall be contingent on prior acquisition of, or adoption of a resolution of necessity with respect to, the Post Office Site by the Agency or the City:

(A) The parties shall jointly seek to negotiate with, and obtain USPS approval of, a letter of intent (a "Post Office LOI") establishing business terms for the termination of the current USPS lease of premises at the Post Office Site and for the new Post Office Relocation Facility Lease. To that end, the parties shall jointly work with the USPS to prepare preliminary plans and specifications, a building program, geotechnical design recommendations, a preliminary development proforma, a general contractor cost estimate and other documents related to the Post Office Relocation Facility that are reasonably required to complete negotiations of the Post Office LOI, and to obtain USPS approval of the location of the Post Office Relocation Facility and of the Developer as the developer and landlord for the Post Office Relocation Facility. The parties shall also complete the steps described in Section 208 to determine that title to Parcel T2 will be in a condition mutually satisfactory to the parties and to the USPS.

Within 90 days after the ~~Required Approvals Effective~~Action Dismissal Date, the parties shall seek to negotiate and execute an Operating Memorandum in accordance with Section 709 (the "Post Office LOI Budget Operating Memorandum") establishing a budget and an allocation of costs for completion of the actions described in this subparagraph (A), based on the following funding principles:

(i) Vallejo Station Funds and Agency MOF Funds (as defined and described in Section I.E.1 of the Method of Financing (Attachment No. 6)) shall be used to the maximum extent they are available and eligible for such use; and

(ii) To the extent the Developer agrees to advance funds for use within the scope and amount of the budget set forth in the Post Office LOI Budget Operating Memorandum or any amendment thereto, the Developer shall be entitled to a credit against the Purchase Price payable by the Developer for Developer Parcels S and T, with such credit applied to each closing for portions of Developer Parcels S and T in chronological order until the credit is fully used.

Upon execution of the Post Office LOI Budget Operating Memorandum (or any amendment thereto), the parties shall adhere to the budget contained therein in connection with the expenditure of funds to accomplish the tasks set forth in this subparagraph (A).

(B) Within 30 days after USPS approval of the Post Office LOI, the parties shall seek to negotiate and execute a further Operating Memorandum in accordance with Section 709 (the "Post Office Development Budget Operating Memorandum") establishing a budget and an allocation of costs for completion of the additional pre-construction actions described in subparagraphs (C) and (E) below together with the actual construction of Post Office Relocation Facility, based on the following funding principles:

(i) Vallejo Station Funds and Agency MOF Funds (as defined and described in Section I.E.1 of the Method of Financing (Attachment No. 6)) shall be used to the maximum extent they are available and eligible for such use;

(ii) Private debt and equity funds to be obtained by the Developer shall next be applied in an amount that can reasonably be obtained based on the Post Office LOI business terms for the Post Office Relocation Facility Lease; and

(iii) Any shortfall in budgeted costs remaining after applying the funds described in clauses (i) and (ii) above shall be filled from contributions of the parties in amounts and subject to funding terms to be negotiated and set forth in the Post Office Development Budget Operating Memorandum.

(C) Following USPS approval of the Post Office LOI and the execution of the Post Office Development Budget Operating Memorandum, the parties shall jointly work to implement the following pre-construction activities using funds as set forth in the Post Office Development Budget Operating Memorandum:

(i) Preparation, in cooperation with the USPS, of design development-level architectural, structural, civil engineering, and landscaping plans and specifications for the Post Office Relocation Facility, and procurement of USPS approval of such design development-level plans and specifications;

(ii) Negotiation, preparation, and procurement of USPS approval of the Post Office Facility Relocation Lease, based on the terms of the Post Office LOI;

(iii) Preparation, in cooperation with the USPS, of final working drawings and final plans and specifications necessary for construction of the Post Office Relocation Facility, and procurement of USPS approval of such working drawings, plans and specifications;

(iv) Procurement of all building and grading permits necessary for construction of the Post Office Relocation Facility; and

(v) Negotiation of the terms for relocation of any existing tenant(s) from Parcel T2 and for revised access to the adjacent Kiewitt property (collectively, the "Parcel T2 Relocation Obligations").

(D) At its cost, the Developer shall use diligent good faith efforts to complete the following additional pre-construction activities:

(i) Preparation, processing, and procurement of City approval of a Unit Plan, tentative tract map, and public improvement plans for the required extension of Solano Avenue in connection with construction of the Post Office Relocation Facility on Parcel T2;

(ii) Recordation of a final parcel map establishing Parcel T2 as a legal parcel and dedicating the required Solano Avenue right-of-way; and

(iii) Procurement of private debt and equity funds for development of the Post Office Relocation Facility as contemplated by the Post Office Development Budget Operating Memorandum.

(E) Using funds as set forth in the Post Office Development Budget Operating Memorandum, the Agency shall perform the Parcel T2 Relocation Obligations.

(F) Upon completion of the foregoing actions, and satisfaction of the requirements set forth in this Agreement for conveyance of a Developer Parcel, the Agency shall sell to the Developer, and the Developer shall purchase from the Agency, Developer Parcel T2 for the Purchase Price and pursuant to the conveyance terms set forth in this Agreement, with particular reference to Section 201.8.

(G) Using funds as set forth in the Post Office Development Budget Operating Memorandum, the Developer shall engage a general contractor to construct and equip the Post Office Relocation Facility and required off-site public improvements (including the required extension of Solano Avenue) in accordance with this Agreement, the Project Approvals, and the Post Office Relocation Facility Lease. Upon completion of construction and in accordance with the terms of the Post Office Relocation Facility Lease, the parties and the USPS shall cause the relocation of fixtures and equipment, as applicable, from the Post Office Site and all other actions necessary to cause the USPS to relocate from and permanently vacate the Post Office Site and move into the completed Post Office Relocation Facility on Parcel T2.

Upon the occurrence of any of the following events (each a "Post Office Relocation Termination Event"), either party may terminate this Agreement with respect to Parcel L (as further provided in Sections 510 and 511), and thereafter the parties shall negotiate in good faith to achieve a mutually acceptable modification of this Agreement and the Project Approvals to enable an appropriate alternative private development of Parcel T2:

(H) Failure within the scheduled time period of the parties to agree upon and execute the Post Office LOI Budget Operating Memorandum;

(I) Failure within the scheduled time period of the USPS to approve a Post Office LOI, the Post Office Relocation Facilities Lease, or any other plans, specifications and documents required to be approved by the USPS in connection with the proposed relocation of its current facilities from the Parcel L Post Office Site; or

(J) Failure within the scheduled time period of the parties to agree upon and execute the Post Office Development Budget Operating Memorandum; or

(K) Failure within the scheduled time period, and despite commercially reasonable good faith efforts, of the Developer to obtain private debt and equity funds for development of the Post Office Relocation Facility as contemplated by the Post Office Development Budget Operating Memorandum.

b. Acquisition and Relocation With Respect to Restaurant Site. Within the time sets forth in the Schedule of Performance (Attachment No. 3) and in accordance with all applicable legal requirements, the Agency shall take the following actions at its cost, using Vallejo Station Funds:

(1) The Agency shall seek to acquire fee title to the Restaurant Site from the Restaurant Site Owner by voluntary agreement. To that end, the Agency shall deliver a written offer to the Restaurant Site Owner following consultation with the Developer regarding such written offer. The Agency shall use reasonable efforts to acquire the Restaurant Site by negotiation at a purchase price consistent with the acquisition budget for the use of Vallejo Station Funds, and shall make good faith efforts to condition such negotiated purchase on either the ability to negotiate the purchase or the passage of a resolution of necessity with respect to the Post Office Site.

(2) If the Agency is unable to acquire the Restaurant Site by negotiation within the time set forth in the Schedule of Performance (Attachment No. 3), the Agency shall or shall cause the City to consider the adoption of a Resolution of Necessity for acquisition of the Restaurant Site by eminent domain. If the Agency or the City elects to adopt the Resolution of Necessity, the Agency or the City, as applicable, shall proceed promptly to acquire the Restaurant Site by eminent domain and shall file an order for immediate possession with respect to the Restaurant Site. The Developer acknowledges that discretion is vested in the Agency and the City to determine whether or not the statutory conditions set forth in Code of Civil Procedure Section 1245.230 are met in order to entitle a governmental agency to adopt a resolution of necessity. Nothing in this Agreement shall obligate the Agency or the City to make the findings required by Code of Civil Procedure Section 1245.230 or adopt the Resolution of Necessity for the Restaurant Site. If the Agency ~~fails~~and the City fail to adopt the Resolution of Necessity for the Restaurant Site by the time set forth in the Schedule of Performance (Attachment No. 3), or if the Agency or the City adopts the Resolution of Necessity but, after good faith efforts, is unable to proceed with acquisition of the Restaurant Site by eminent domain

within the time set forth in the Schedule of Performance (Attachment No. 3), the exclusive remedy of Developer shall be to terminate this Agreement pursuant to Section 510 with respect to Parcel J and/or L only, as the Developer may elect. Upon any such termination of this Agreement with respect to Parcel L (so that relocation of the Post Office facility to Parcel T2 as described ~~below~~above is not necessary), the parties shall negotiate in good faith to achieve a mutually acceptable modification of this Agreement and the Project Approvals to enable an appropriate alternative private development of Parcel T2.

(3) In connection with the acquisition of the Restaurant Site, the Agency shall complete the relocation of the restaurant business from the Restaurant Site in accordance with any voluntarily agreed terms, and all applicable statutory relocation requirements.

c. Acquisition of Portion of Parcel L (City/Agency Site). The City/Agency portion of Parcel L (the "City/Agency Site") consists of the balance of Parcel L (other than the Post Office Site and the Restaurant Site), including a portion of the land currently owned by the Agency and improved with parking improvements, and a portion of the land currently owned by the City and utilized as parking. Within the time set forth in the Schedule of Performance (Attachment No. 3), the Agency shall acquire that portion of Parcel L owned by the City.

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

(1) Parcel L1, consisting of land currently entirely within the City/Agency Site. Following conveyance, Parcel L1 shall be developed in accordance with the Scope of Development (Attachment No. 4).

(2) Parcel L2, consisting of land almost entirely within the City/Agency Site. Following conveyance, Parcel L2 shall be developed in accordance with the Scope of Development (Attachment No. 4).

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

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

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

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

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

7. Parcel S. Parcel S consists of real property, a portion of which is currently owned by the Agency and is improved with marine sales and bait shop uses, and is subject to agreements with the operators of those uses, and a portion of which is currently owned by the City and is improved for storage uses, and is subject to agreements with individual tenants utilizing the storage areas on the property. Within the time set forth in the Schedule of Performance (Attachment No. 3), the Agency shall terminate the existing agreements with the marine sales and bait shop operators, shall cause the City to terminate the existing agreements with the storage tenants, and shall acquire from the City that portion of Parcel S currently owned by the City. Following such acquisition by the Agency, the Agency agrees to convey, and the Developer agrees to accept conveyance of, Parcel S for development in accordance with the Scope of Development (Attachment No. 4). The Purchase Price to be paid by the Developer for Parcel S shall be the Purchase Price determined pursuant to Section 201.2.

8. Parcel T. Parcel T consists of property currently owned by the Agency and occupied by certain tenants. Within the time set forth in the Schedule of Performance (Attachment No. 3), the Agency shall terminate any existing occupancy agreements and cause relocation of existing occupants from Parcel T. In accordance with and subject to all the terms, covenants and conditions of this Agreement, the Agency agrees to convey, and the Developer agrees to accept conveyance of, Parcel T for development in accordance with the Scope of Development (Attachment No. 4). As further provided in Section IV.B of the Scope of Development (Attachment No. 4), Parcel T may be subdivided into between three and five Developer subparcels (each a "T Developer Subparcel"), and conveyed at separate times to the Developer upon satisfaction of the preconditions to the conveyance of each T Developer Subparcel. The Purchase Price to be paid by the Developer for each T Developer Subparcel shall be the Purchase Price determined pursuant to Section 201.2.

B. [§202] Escrow

The Agency agrees to open an escrow for conveyance of each Developer Parcel to the Developer with First American Title Company, or any other escrow company approved by the Agency and the Developer, as escrow agent (the "Escrow Agent"), in Vallejo, California, within the time established in the Schedule of Performance (Attachment No. 3). Except as may mutually be agreed between the Agency and Developer, the close of escrow hereunder and conveyance of each Developer Parcel to the Developer shall occur within the times set forth in the Schedule of Performance (Attachment No. 3). The parties acknowledge and agree that the individual Developer Parcels to be conveyed by the Agency to the Developer may be conveyed to the Developer at separate times, and, as such, the provisions of this Agreement with respect to the conveyance of the Developer Parcels to the Developer shall apply to the extent applicable to the particular Developer Parcel(s) being conveyed at that time.

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

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

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

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

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

3. Costs of drawing the grant deeds;

4. Recording fees;

5. Notary fees;

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

7. Any transfer taxes.

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

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

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

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

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

The Escrow Agent is authorized to:

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

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

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

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

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

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

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

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

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

C. [§203] <u>Conveyance of Title and Delivery of Possession</u>

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

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

Notwithstanding the provisions of this Agreement requiring the Agency to acquire title to the Site prior to the time set for conveyance of the Developer Parcels in the Schedule of

Performance (Attachment No. 3) and to deposit the grant deeds in escrow prior to such time, if, at or prior to the time set forth in the Schedule of Performance for conveyance of the portion of Parcel L that comprises a Developer Parcel, the Agency has not obtained title to the necessary portion of Parcel L but has obtained a judicial order authorizing the Agency to take possession thereof and, upon the further mutual agreement of the parties:

1. The Agency deposits a copy of the order in escrow;

2. Upon request of the Title Company, the Agency delivers an executed agreement indemnifying the Title Company against claims arising out of any property for which the Agency has obtained a judicial order authorizing the Agency to take possession;

3. The Agency delivers exclusive possession of the property involved to the Developer by a written lease or other document reasonably approved as a means of effectuating this Agreement by the Agency and the Developer, on or prior to the time set for conveyance thereof;

4. The right of possession which the Developer acquires from the Agency is such that the Title Company commits to issue a policy or policies of title insurance as set forth in Section 218 and which enables the Developer to obtain financing for the development of such Developer Parcel;

5. The Agency diligently proceeds with the eminent domain action until a final judgment is rendered, and the Agency forthwith deposits the grant deed to such property in the escrow provided herein; and

6. All occupants have been relocated from the property involved or are subject to the order of immediate possession requiring them to surrender possession of the property,

then the Developer shall not terminate this Agreement under the provisions of Section 510 but shall accept such right of possession and shall proceed with the development of the portion of Parcel L that comprises a Developer Parcel. In such event, the escrow provided in Section 202 with respect to such Developer Parcel shall remain open until the grant deeds to the property involved can be deposited therein in accordance with this Section 203.

The Agency shall cooperate with the Developer and the Title Company to seek to procure issuance of a policy or policies of title insurance as described in paragraph 4 above, and in that regard, agrees that it shall provide the indemnification agreement described in paragraph 2 above in a form approved by the Agency and its legal counsel.

D. [§204] Conditions Precedent to Conveyance

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

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

a. Approval, adoption and effectiveness of the Settlement-Related Ordinances enacting the Settlement-Related Amendments to the Required Approvals;

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

c. Completion of acquisition of the applicable Developer Parcel by the Agency (or, if applicable, filing of orders for immediate possession);

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

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

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

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

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

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

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

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

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

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

d. Completion of acquisition of the Developer Parcel (or, if applicable, filing of orders for immediate possession);

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

f. The Developer shall determine the soil conditions of the Site and suitability of the soil conditions for the improvements to be constructed thereon, pursuant to Section 215.3 hereof;

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

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

i. Approval, adoption and effectiveness of the Settlement-Related Ordinances enacting the Settlement-Related Amendments to the Required Approvals; and

j. Procurement from the applicable regulatory agency of the notice pursuant to Health and Safety Code Section 33459.3(c) (the Polanco Act Immunity) with respect to the Developer Parcel, if applicable pursuant to Section 215.

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

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

F. [§208] Condition of Title

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

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

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

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

Notwithstanding any other provision of this Agreement, the Agency shall cause termination of any leasehold interest on a Developer Parcel (other than the City/Agency Ground Leases with respect to the B/C Ground Lease Parcels) prior to conveyance of the Developer Parcel to the Developer.

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

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

H. [§210] <u>Recordation of Deeds and Lease Memoranda</u>

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

I. [§211] <u>Title Insurance</u>

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

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

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

J. [§212] <u>Taxes and Assessments</u>

Ad valorem taxes and assessments, if any are imposed on the Agency, on the Developer Parcels, and taxes upon this Agreement or any rights hereunder, levied, assessed or imposed for any period commencing prior to conveyance of title to the Developer shall be paid for by the Agency. All ad valorem taxes and assessments levied or imposed on the Developer Parcels for any period commencing after closing of the escrow for conveyance of title to the Developer shall be paid by the Developer.

K. [§213] Conveyance Free of Possession

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

L. [§214] Zoning of the Site

As provided and subject to the exceptions set forth in Section 102 hereof, this Agreement is conditioned upon, and the obligations of the Parties hereunder are specifically contingent upon, among other things, the City ~~approving the Required Approvals and the Required Approvals thereafter becoming effective, including any necessary amendments to the City's Zoning Ordinance. Upon approval of such amendments~~approval and subsequent effectiveness following expiration of the applicable referendum period of the Settlement-Related Ordinances enacting the Settlement-Related Amendments to the Required Approvals. Upon approval and effectiveness of such Settlement-Related Ordinances enacting the Settlement-Related Amendments to the Required Approvals, the zoning of the Site will be such as to permit the development of the Site and construction of the improvements in accordance with the provisions of this Agreement. The Agency and Developer shall cooperate and use best efforts to obtain such approvals from the City, and further to obtain or cause the issuance of any other approvals and permits necessary for the use, operation and maintenance of the improvements, including without limitation the joint use of parking facilities, in accordance with the provisions of this Agreement.

M. [§215] Condition of the Site

1. Overview; Parcel A. Prior investigations of the Site by the Agency have revealed contamination on Parcels A, S and T. The Agency has provided the Developer with information regarding Parcel A and shall not be responsible for any corrective action to remediate any contamination on Parcel A.

2. Parcels S and T. The parties shall cause remediation of contamination with respect to Parcels S and T in accordance with Section IV.A of the Scope of Development (Attachment No. 4).

The parties intend that such remediation work shall be undertaken and completed in such a manner as to entitle the Agency to receive the written acknowledgment of immunity pursuant to Health and Safety Code Section 33459.3(c). The parties intend and the Agency shall use good faith efforts to assure that, upon acquisition of Parcels S and T by the Developer, the Developer, the Developer's successors-in-interest and lenders with respect to such Developer Parcels shall be beneficiaries of the immunities contained in Health and Safety Code Section 33459.3(e) relating to such remediation work ("Polanco Act Immunity"). The parties understand and acknowledge that, to the extent any remedial work is undertaken pursuant to Health and Safety Code Section 33459, et seq., the Agency may in its discretion employ the provisions set forth therein in connection with efforts to require responsible parties to perform and/or contribute funds to the remediation. The performance of any remediation actions by the Agency pursuant to this Section 215.2 is designed to place Parcels S and T in the condition upon which the Purchase Prices for such Developer Parcels are determined in accordance with Section 201.2.

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

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

The Developer shall have the right, within the time set forth in the Schedule of Performance (Attachment No. 3) to conduct or cause to be conducted any and all soils or groundwater tests and analyses, engineering studies, environmental audits, and any other tests or analyses of the Developer Parcels required by the Developer at its sole and absolute discretion to determine the presence of uncompacted fill, the condition of the soil or groundwater, the geology, seismology, hydrology or other similar matters on, under or affecting the respective Developer Parcels, the condition of any buildings or improvements located thereon, the presence or absence of any hazardous or toxic substances, wastes or materials, and the suitability of the respective Developer Parcels for the Developer's contemplated use (collectively, the "Parcel Conditions"). It shall be the sole responsibility of the Developer to investigate and determine the Parcel Conditions of the respective Developer Parcels (other than Parcels S and T) and the suitability of such Parcel Conditions for the improvements to be constructed by the Developer.

If the Developer determines that any Parcel Conditions are such as to make the development of any particular Developer Parcel(s) economically infeasible, it shall notify the Agency, specifying such condition(s) (the "Unacceptable Physical Conditions") and, if possible, the corrective action(s) it reasonably believes would need to be completed to remediate such Unacceptable Physical Conditions so that development of the particular Developer Parcel(s) could proceed in an economically feasible manner. The parties shall confer within fifteen (15) days after the Agency's receipt of such notice to seek in good faith to agree upon a method to remediate the Unacceptable Physical Conditions, and any such agreement shall be set forth in an Operating Memorandum executed in accordance with Section 709. At the request of the Developer, an Operating Memorandum shall contain provisions substantially similar to those set forth in the second paragraph of Section 215.2 (in connection with Parcels S and T) related to Agency actions to procure Polanco Act Immunity with respect to remediation of the applicable Developer Parcel. Thereafter, the parties shall perform their respective obligations under such Operating Memorandum to cause remediation of such Unacceptable Physical Conditions.

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

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

N. [§216] <u>Preliminary Work by the Developer</u>

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

Any preliminary work undertaken on the Site by the Developer prior to conveyance of title to the Developer Parcels shall be done only after written consent of the

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

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

O. [§217] Submission of Evidence of Financing

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

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

P. [§218] Cooperation With Subdivision

The Agency, as owner of applicable portions of the Site, shall reasonably cooperate with and assist the Developer, as applicant for various subdivisions and/or lot line adjustments of the Site contemplated by this Agreement and the Project Approvals, and shall execute such documents and consents and take such other actions as are reasonably required to enable the Developer to apply for and obtain approval, filing, and recordation of such subdivisions and/or lot line adjustments.

3. ~~III.~~ [§300] DEVELOPMENT OF THE SITE

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

1. [§302] Scope of Development

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

2. [§303] [Intentionally Omitted]
3. [§304] Unit Plans and Related Documents

The Developer shall prepare and submit to the City a Unit Plan, in accordance with Section 16.116.070 et seq. of the Vallejo Municipal Code and any applicable provisions of this Agreement (with particular reference to the Scope of Development (Attachment No. 4)) and the Settlement Agreement, for each Developer Parcel within the times established in the Schedule of Performance (Attachment No. 3). At the Developer's election, a Unit Plan submission may be accompanied by a Developer application for a vesting tentative map for the applicable Developer Parcel, which application shall be reviewed and processed in accordance with normal City procedures (subject to the terms of the Development Agreement). Any necessary surveys required for the preparation of the Unit Plan or vesting tentative map shall be prepared by the Developer concurrently with the Unit Plan. All Unit Plans shall conform to this Agreement, including the Scope of Development (Attachment No. 4). The Developer may, at its election, apply for, seek approval of, and obtain recordation of a master subdivision or lot line adjustment with respect to one or more Developer Parcels prior to applying for or obtaining a Unit Plan with respect to such Developer Parcel(s).

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

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

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

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

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

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

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

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

By signing the Third Restatement of this Agreement, the City acknowledges and agrees to implement the foregoing procedure in connection with Design Review Board and City Council consideration of Unit Plans for any major project in a Developer Parcel.

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

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

Subject to the terms of this Agreement and the Development Agreement, the Agency and City shall have the right of architectural and site planning review of all plans and drawings, including any changes therein. The Agency agrees that the Developer need submit plans and submissions only to the City, in compliance with the City's requirements for review and approval of Units Plans (Section 16.116.070 et seq. of the Vallejo Municipal Code), and approval by the City of such plans shall be deemed an approval by the Agency and shall satisfy the requirements under this Section 305. In addition, the Developer shall be obligated to submit plans and submissions for special development permits or building permits to City departments or other public agencies.

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

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

5. [§306] Cost of Development

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

6. [§307] Construction Schedule

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

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

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

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

Prior to the commencement of construction on the Site or any portion thereof, the Developer shall furnish or cause to be furnished to the Agency duplicate originals or appropriate certificates of commercial general liability insurance in the amount of at least $1,000,000 combined single limit for bodily injury and property damage and $2,000,000 general aggregate limit, naming the Agency as an additional insured. The Developer shall also furnish or cause to be furnished to the Agency evidence satisfactory to the Agency that any contractor with whom it has contracted for the performance of work on the Site carries workers' compensation insurance as required by law. The obligations set forth in this Section 308 shall remain in effect only until a Final Certificate of Completion has been issued covering the entire Site as hereinafter provided in Section 323 hereof.

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

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

Except as provided below and in Section IV.A of the Scope of Development (Attachment No. 4), before commencement of construction or development of any buildings, structures or other work of improvement upon the Developer Parcels (unless such construction, development or work is to be commenced before the conveyance of title), the Developer shall, at its own expense, secure or cause to be secured any and all permits which may be required by the City, Vallejo Sanitation and Flood Control District ("VSFCD"), San Francisco Bay Conservation and Development Commission ("BCDC"), California State Department of Transportation, or any other governmental agency affected by such construction, development or work. The Agency shall provide reasonable cooperation to the Developer in securing these permits, including acting as the "lead agency" in any instances where a public agency is required to be the lead agency in obtaining such permits, provided that the Agency shall have no obligation to incur out-of-pocket expenses to third parties in connection with such cooperation. Prior to commencement of construction or development of the Developer Parcels, the Developer shall also provide performance and payments bonds in the amount of one hundred percent (100%) of the construction contract. The Developer may propose alternative forms of security, such as letters of credit or completion guarantees for the approval of the Agency, which approval shall not be unreasonably withheld.

Notwithstanding the foregoing, the Agency shall be responsible for obtaining a Section 404 Permit from the U. S. Army Corps of Engineers (the "Section 404 Permit") relating to Parcel A (the Mariner's Cove Site) within the time set forth in the Schedule of Performance (Attachment No. 3). Through the Second Restatement of this Agreement, the parties acknowledge and agree that the Agency has satisfied the requirement of the previous sentence through procurement of the Section 404 Permit dated February 13, 2003. In addition, the Agency shall use best reasonable efforts to complete and enter into a settlement and exchange agreement with the SLC relating to Parcels S and T within the time set forth in the Schedule of Performance (Attachment No. 3), and in the manner more fully set forth in Section IV.A of the Scope of Development (Attachment No. 4).

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

9. [§310] Rights of Access

For the purposes of assuring compliance with this Agreement, representatives of the Agency shall have the reasonable right of access to the Site without charges or fees and at normal construction hours during the period of construction for the purposes of this Agreement, including, but not limited to, the inspection of the work being performed in constructing the improvements. Such representatives of the Agency shall be those who are so identified in writing by the Executive Director of the Agency. The Agency shall indemnify the

Developer, its partners, shareholders, officers and employees, and hold it harmless from any damage caused or liability arising out of this right to access.

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

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

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

11. [§312] Anti-discrimination During Construction

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

B. [§313] Responsibilities of the Agency

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

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

The Developer shall pay when due all real estate taxes and assessments assessed and levied on the Developer Parcels for any period subsequent to conveyance of title to or delivery of possession of the Developer Parcels. Prior to the issuance of a Partial Certificate of Completion for a particular Developer Parcel, the Developer shall not place or allow to be placed on that Developer Parcel any mortgage, trust deed, encumbrance or lien unauthorized by this Agreement, and the Developer shall remove or have removed any levy or attachment made on a particular Developer Parcel that is not specifically authorized by this Agreement, or shall assure the satisfaction thereof, within a reasonable time, but in any event prior to a sale thereunder. Nothing herein contained shall be deemed to prohibit the Developer from contesting the validity or amounts of any tax, assessment, encumbrance or lien, nor to limit the remedies available to the

Developer in respect thereto; provided, however, that prior to commencing any such contest, the Agency, in its reasonable discretion, may require the Developer to post bond in an amount sufficient to cover the tax, assessment, encumbrance or lien, or such portion thereof, to be contested and shall thereafter proceed in good faith to contest the validity or amount of such tax, assessment, encumbrance or lien. The prohibitions of this Section 314 shall not apply with respect to a particular Developer Parcel following issuance of a Partial Certificate of Completion for that Developer Parcel.

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

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

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

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

Upon Agency approval of a Transfer, CALLAHAN/DESILVA VALLEJO, LLC, as the initial Developer, shall have no further obligations under this Agreement with respect to the Developer Parcel(s) to which the Transfer applies, and the term "Developer", as used in this Agreement with respect to the Developer Parcel(s) to which the Transfer applies, shall mean and refer to the Transferee.

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

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

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

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

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

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

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

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

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

4. [§320] Failure of Holder to Complete Improvements

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

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

b. All expenses with respect to foreclosure;

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

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

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

5. [[§321] ~~Notice of Default to Agency; Right of Agency to Cure~~]
~~5.~~ {[~~§321~~] ~~Notice of Default to Agency; Right of Agency to Cure~~}
Mortgage, Deed of Trust or Other Security Interest Default

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

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

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

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

G. [§323] Certificate of Completion

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

Promptly after completion of all construction and development to be completed by the Developer upon the Site, the Agency shall furnish the Developer with a "Final Certificate of Completion" upon written request therefor by the Developer. Such Final Certificate of Completion shall be in such form as to permit it to be recorded in the Office of the County Recorder of Solano County.

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

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

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

4. ~~IV.~~ [§400] USE OF THE SITE

A. [§401] Uses

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

B. [§402] Obligation to Refrain From Discrimination

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

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

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

1. In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, physical handicap, sexual orientation, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises herein conveyed, nor shall the grantee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

2. In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

"That there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, physical handicap, sexual orientation, national origin or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased, nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the premises herein leased."

3. In contracts: "There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, physical handicap, sexual orientation, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land."

D. [§404] Effect and Duration of Covenants

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

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

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

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

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

A. [§501] Defaults – General

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

The injured party shall give written notice of default to the party in default specifying the default complained of by the injured party. Except as required to protect against further damages and except as otherwise expressly provided in Sections 507 and 508 of this Agreement, the injured party may not institute proceedings against the party in default during the applicable cure period set forth in the preceding paragraph.

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

B. [§502] Legal Actions

1. [§503] Institution of Legal Actions.

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

2. [§504] Applicable Law.

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

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

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

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

C. [§506] Rights and Remedies are Cumulative

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

D. [§507] Damages

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

E. [§508] Specific Performance

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

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

1. [§510] Termination by the Developer

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

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

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

c. There occurs a Post Office Relocation Termination Event pursuant to Section 201.6.a.(2), in which event the Developer's termination right shall be limited to termination of this Agreement with respect to Parcel L only; or

d. After efforts to acquire property, including the use of the procedures set forth in Article 1 [commencing with Section 1245.010] of Chapter 4 of Title 7 of the California Code of Civil Procedure have been unsuccessful, the Agency or the City, as applicable, elects not to adopt a resolution of necessity (pursuant to Article 2 [commencing with Section 1245.210] of Chapter 4 of Title 7 of the California Code of Civil Procedure) to acquire the Post Office Site and/or the Restaurant Site by eminent domain, it being expressly understood that the Agency ~~has~~and the City have reserved ~~its~~their discretion to approve or disapprove any such resolution of necessity and that the Developer's exclusive remedy for the failure of the Agency to adopt a resolution of necessity shall be the termination of this Agreement with respect to Parcel L and/or J only pursuant to this Section 510; or

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

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

g. There occurs a ~~Required Approvals~~Settlement Failure Event pursuant to Section 102.4; or

h. There occurs a Developer Southern Waterfront Termination Event pursuant to Section IV.A.5.d of the Scope of Development (Attachment No. 4), in which event the Developer's termination right shall be to terminate this Agreement with respect to the Contaminated Area within the Southern Waterfront Area only and the further rights set forth in Section IV.A.9.d of the Scope of Development shall also apply; or

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

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

k. [Intentionally Omitted]; or

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

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

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

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

then this Agreement may, at the option of the Developer, be terminated by written notice thereof to the Agency; provided, however, that such termination shall be effective only with respect to those Developer Parcels which have not yet been conveyed to the Developer, and shall not affect those Developer Parcels or portions of the Site, if any, which have already been conveyed to the Developer so long as the Developer is not in default under this Agreement with respect to such parcels or portions of the Site; and provided, further, however, if, in the Developer's determination, the event described above leading to the Developer's right to terminate applies only to a certain Developer Parcel or Parcels, the Developer may terminate this Agreement only with respect to such Developer Parcel(s) specified by the Developer and this Agreement shall thereafter remain in effect for all other Developer Parcels and portions of the Site regardless of whether or not the Developer Parcels for which this Agreement will remain in effect have yet been conveyed to the Developer (but subject to the Developer's right to subsequently terminate this Agreement under this Section 510 for one or more additional Developer Parcels if an event described above subsequently occurs); and provided, further, however, that the Agency shall continue to perform all of its obligations under this Agreement that are reasonably related to the Developer Parcels and all other portions of the Site for which this Agreement has not been terminated; and provided, finally, however, that the terms of the following paragraph of this Section 510 shall supersede the foregoing and control the Developer's right to terminate this Agreement to the extent of any inconsistency with the foregoing. Upon a termination pursuant to this Section 510, neither the Agency nor the Developer shall have any further rights against or liability to the other under this Agreement with respect to those Developer Parcels or portions of the Site affected by such termination, and the Agency shall return any unexpended portion of the Additional Deposit (including interest earned thereon) to the Developer as provided in Section 108.2. If and only if the Developer does not elect to terminate this Agreement with respect to a particular Developer Parcel or the Site, as applicable, pursuant to the provisions of this Section 510, the Developer may exercise its rights under Sections 507 and 508 hereof.

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

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

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

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

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

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

e. [Intentionally Omitted]; or

f. The Developer fails to submit to the City a Unit Plan or any other required plans and specifications with respect to a Developer Parcel as required by this

Agreement, and such failure is not cured within 45 days after the date of written demand by the Agency to the Developer; or

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

h. There occurs a Post Office Relocation Termination Event pursuant to Section 201.6.a.(2), in which event the Agency's termination right shall be limited to termination of this Agreement with respect to Parcel L only; or

i. [Intentionally Omitted]; or

j. After efforts to acquire property, including the use of the procedures set forth in Article 1 [commencing with Section 1245.010] of Chapter 4 of Title 7 of the California Code of Civil Procedure have been unsuccessful, the Agency or the City, as applicable, elects not to adopt a resolution of necessity (pursuant to Article 2 [commending with Section 1245.210] of Chapter 4 of Title 7 of the California Code of Civil Procedure) to acquire the Post Office Site and/or the Restaurant Site by eminent domain (it being expressly understood that the Agency ~~has~~and the City have reserved ~~its~~their discretion to approve or disapprove any such resolution of necessity), in which case the Agency may terminate this Agreement with respect to Parcel L only; or

k. The Agency or City is unable, after and despite diligent efforts, to issue bonds or obtain other financing to finance the construction of the L3 Public Garage within the time established therefor in the Schedule of Performance (Attachment No. 3), provided, however, that at the request of either party, the right to terminate this Agreement for such cause under this subsection k. shall be suspended for a period of sixty (60) days following the date it is determined that the Agency or City is unable to obtain such financing for the parties to explore and attempt to negotiate in good faith an alternative development approach and appropriate amendments to this Agreement in lieu of termination, and provided further than the Agency may terminate this Agreement with respect to Parcel L only; or

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

m. The Developer does not make the Additional Deposit (or a portion thereof) in the amount and at the time required under Section 108.2 and such failure is not cured within 15 days of written notice thereof from the Agency; or

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

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

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

In the event of termination pursuant to subsection d., h., j., k., l. or o. of this Section 511, neither the Agency nor the Developer shall have any further rights against or liability to the other under this Agreement with respect to the Developer Parcels and the portions of the Site to which the termination applies, and the Agency shall return any unexpended portion of the Additional Deposit (including interest earned thereon) to the Developer as provided in Section 108.2.

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

IF THE DEVELOPER SHOULD DEFAULT UPON ITS OBLIGATIONS AS DESCRIBED ABOVE UNDER SUBPARAGRAPH a., b., c., f., g., m. or n. OF THIS SECTION 511, MAKING IT NECESSARY FOR THE AGENCY TO TERMINATE THIS AGREEMENT AND TO PROCURE ANOTHER PARTY OR PARTIES TO REDEVELOP THE SITE (OR THE APPLICABLE DEVELOPER

PARCELS, AS THE CASE MAY BE) IN SUBSTANTIALLY THE MANNER AND WITHIN THE PERIOD THAT THE SITE (OR THE APPLICABLE DEVELOPER PARCELS, AS THE CASE MAY BE) WOULD BE REDEVELOPED UNDER THE TERMS OF THIS AGREEMENT, THEN THE DAMAGES SUFFERED BY THE AGENCY BY REASON THEREOF WOULD BE UNCERTAIN. SUCH DAMAGES WOULD INVOLVE SUCH VARIABLE FACTORS AS THE CONSIDERATION WHICH SUCH PARTY WOULD PAY FOR THE SITE (OR THE APPLICABLE DEVELOPER PARCELS, AS THE CASE MAY BE); THE EXPENSES OF CONTINUING THE OWNERSHIP AND CONTROL OF THE SITE (OR THE APPLICABLE DEVELOPER PARCELS, AS THE CASE MAY BE); OF INTERESTING PARTIES AND NEGOTIATING WITH SUCH PARTIES; POSTPONEMENT OF TAX REVENUES THEREFROM TO THE COMMUNITY; AND THE FAILURE OF THE AGENCY TO EFFECT ITS PURPOSES AND OBJECTIVES WITHIN A REASONABLE TIME, RESULTING IN ADDITIONAL IMMEASURABLE DAMAGE AND LOSS TO THE AGENCY AND THE COMMUNITY. IT IS IMPRACTICABLE AND EXTREMELY DIFFICULT TO FIX THE AMOUNT OF SUCH DAMAGES TO THE AGENCY, BUT THE PARTIES ARE OF THE OPINION, UPON THE BASIS OF ALL INFORMATION AVAILABLE TO THEM, THAT SUCH DAMAGES WOULD APPROXIMATELY EQUAL THE VALUE OF THE APPLICABLE WORK PRODUCT THERETOFORE ACQUIRED BY THE AGENCY FROM EXPENDITURES OF THE INITIAL DEPOSIT AND THE ADDITIONAL DEPOSIT, TOGETHER WITH ANY UNEXPENDED PORTION OF THE ADDITIONAL DEPOSIT SET FORTH ABOVE IN THIS SECTION 511 AND HELD BY THE AGENCY AT THE TIME OF THE DEFAULT OF THE DEVELOPER, AND THE APPLICABLE UNEXPENDED AMOUNTS OR PORTIONS OF SUCH ADDITIONAL DEPOSIT AS SET FORTH ABOVE IN THIS SECTION 511 SHALL BE PAID TO THE AGENCY UPON ANY SUCH OCCURRENCE AND, TOGETHER WITH THE ABOVE DESCRIBED WORK PRODUCT, SHALL CONSTITUTE THE TOTAL OF ALL LIQUIDATED DAMAGES FOR THE APPLICABLE DEVELOPER DEFAULT(S) SET FORTH UNDER SUBPARAGRAPH a., b., c., f., g., m. or n. OF THIS SECTION 511, AND NOT AS A PENALTY. SUCH LIQUIDATED DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY OF THE AGENCY WITH RESPECT TO THE APPLICABLE DEVELOPER DEFAULT(S) SET FORTH ABOVE UNDER SUBPARAGRAPH a., b., c., f., g., m. or n. OF THIS SECTION 511. NOTWITHSTANDING THE FOREGOING, IN THE EVENT THAT THIS PARAGRAPH SHOULD BE HELD TO BE VOID FOR ANY REASON, THE AGENCY SHALL BE ENTITLED TO THE FULL EXTENT OF DAMAGES OTHERWISE PROVIDED BY LAW, AS LIMITED BY SECTION 507 HEREOF.

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

DEVELOPER:	**AGENCY:**
By: ______________________	**By:** ______________________
By: ______________________	

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

G. [§512] Special Termination Provisions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I. [§514] <u>Right of Reverter</u>

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Second, to reimburse the Developer up to the amount equal to the sum of: (a) the Purchase Price for the particular Developer Parcel, or part thereof; plus (b) the costs incurred by the Developer for the development of the particular Developer Parcel, or part thereof, and for the improvements existing on the particular Developer Parcel, or part thereof, at the time of the reentry and repossession; plus (c) all architectural, engineering, consultant and legal fees and costs incurred by the Developer in connection with the acquisition and development of the particular Developer Parcel, or part thereof, provided, however, that the Developer first shall deliver to the Agency copies of all of the Developer's plans, studies and tests prepared and performed in connection with the acquisition and development of the particular Development Parcel; less (d) any gains or income withdrawn or made by the Developer from the particular Developer Parcel, or part thereof, or the improvements thereon.

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

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

6. ~~VI.~~ [§600] GENERAL PROVISIONS

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

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

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

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

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

To the Developer:
Callahan / DeSilva Vallejo, LLC
11555 Dublin Boulevard
Dublin, CA 94568
Attn: James Summers

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

B. [§602] Conflicts of Interest

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

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

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

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

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

In addition to the specific provisions of this Agreement, performance by any party hereunder shall not be deemed to be in default (and the times for performance under this Agreement shall be extended as provided below) where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor, architect, engineer, or other service provider or supplier; acts of another party; delays due to existence and remediation of hazardous materials or contaminants, or other soils conditions on the Site which prevents Developer from performing its obligations under and within the manner and time set forth in this Agreement; acts or the failure to act of any public or governmental agency or entity (except that acts or the failure to act of the City or Agency shall not excuse performance by the Agency); bankruptcy of any contractor, subcontractor or other provider other than the Developer; the filing of any court action to set aside or modify this Agreement or any of the Project Approvals; or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any such cause shall not necessarily be calculated on a day-for-day basis, but shall be for that period of delay caused by such enforced delay as reasonably determined by the Agency and Developer. If, however, notice by the party claiming such extension is sent to the other parties more than thirty (30) days after the commencement of the cause, the period shall commence to run only thirty (30) days prior to the giving of such notice.

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

E. [§605] Inspection of Books and Records

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

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

F. [§606] Plans and Data

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

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

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

H. [§608] Attorneys' Fees

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

I. [§609] Representations of the Parties

The Agency and Developer each represents to the other that (i) it has the authority to enter into this Agreement, (ii) it has taken all necessary action for the valid execution and delivery of this Agreement, and (iii) this Agreement is legally binding on the representative party.

J. [§610] Changes in Law

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

7. ~~VII.~~ [§700] SPECIAL PROVISIONS

A. [§701] Amendment of Redevelopment Plans

~~The Agency intends to undertake all actions necessary to process for approval by~~By ordinances approved on November 28, 2006, the City Council adopted amendments to the Redevelopment Plans ~~to merge~~{~~the Waterfront Redevelopment Project~~} ~~and~~and approval of a merged Redevelopment Plan to, among other things, merge the Marina Vista Redevelopment Project ~~with~~,[the Waterfront Redevelopment Project] ~~and~~, and the adjacent Vallejo Central Redevelopment Project (the "2006 Plan Amendments/Merger").

With the exception of the Total Reimbursable Developer ~~EIR/Required Approvals~~ Advance paid ~~or to be paid~~ for by the Developer as provided in Section 109 hereof, the Agency shall be responsible for all costs and expenses necessary to prepare and process for approval all the necessary documents and take all actions necessary for the approval of such 2006 Plan Amendments ~~and merger~~/Merger; provided, however, the parties understand and agree that final approval of any such ~~amendments to the Redevelopment Plans for the Waterfront Redevelopment Project and the Marina Vista Redevelopment Project is dependent upon appropriate actions being made by the City's Planning Commission and adoption of all appropriate findings and determinations by the City Council, which actions are~~2006 Plan Amendments/Merger is dependent upon the passage of the applicable referendum period without a successful referendum to defeat the 2006 Plan Amendments/Merger, which occurrence is beyond the control of the Agency. The Developer agrees that it will cooperate with the Agency and will not object to ~~any Redevelopment~~the 2006 Plan Amendments ~~and mergers~~/Merger, nor will Developer challenge any approvals relating to ~~Redevelopment Plan Amendments and mergers, that are consistent with the purpose, scope and terms of the proposed Redevelopment Plan Amendments and merger contemplated by the Agency as of the execution of this Agreement.~~ the 2006 Plan Amendments/Mergers. By execution of the Third Restatement of this Agreement, the parties acknowledge and agree that they have performed their respective obligations under this Section with respect to the 2006 Plan Amendments/Merger.

Except as provided above, pursuant to the provisions of the Redevelopment Plan for modification or amendment thereof, the Agency agrees that no amendment which changes the uses or development permitted on the Site or changes the restrictions or controls that apply to the Site or otherwise directly ~~affect~~affects the development or use of the Site shall be made or become effective without the prior written consent of the Developer. Amendments to the Redevelopment Plans applying to other property in the Redevelopment Project Areas shall not require the consent of the Developer.

B. [§702] Submission of Documents for Approval

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

C. [§703] Amendments to this Agreement

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

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

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

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

The Developer shall enter into a lease or other operating agreement (the "Hotel Operating Agreement") with a Hotel Operator in form and content satisfactory to the Agency, for the operation and maintenance of the Hotel Improvements; provided, however, that the Developer, at its election, may enter into a separate lease or operating agreement with persons or entities other than the Hotel Operator for those portions of the Hotel Improvements constituting the restaurant and/or the conference center (a "Restaurant Operating Agreement" or a "Conference Center Operating Agreement", as applicable). The Agency shall provide its written approval or reasons for disapproval of any proposed Hotel Operating Agreement~~ within ten (10~~, Restaurant Operating Agreement and/or Conference Center Operating Agreement within thirty (30) days after receipt of the proposed agreement.

F. [§706] Arbitration of Specified Disputes

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

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

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

c. Disputes and matters regarding approval of Design Plans or Modified Design Plans for the Northern Waterfront Public Park and Open Space Improvements or the Southern Waterfront Public Park and Open Space Improvements pursuant to Section II.~~B~~C.3 and IV.C.2, respectively, of the Scope of Development (Attachment No. 4);

d. Disputes and matters regarding the form of the Southern Waterfront Soft Cost Work Operating Memorandum to be prepared pursuant to Section IV.A.9.b of the Scope of Development (Attachment No. 4);

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

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

This arbitration provision is expressly limited to the above specified disputes and matters. The Arbitrator shall dismiss any dispute or matter submitted to him/her for determination if such determination is not expressly authorized in this Section 706.1 or in another written agreement executed by both parties.

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

3. Arbitration Procedure. A party shall initiate arbitration by written notice to the other party. The date such notice is given shall be the "Initiation Date." Except as expressly modified in this Section 706, the arbitration proceeding shall be conducted by a single arbitrator (the "Arbitrator") in accordance with the provisions of Section 1280 et seq. of the California Code of Civil Procedure, as amended or replaced by any successor sections (the "CCP"). Unless the parties mutually agree otherwise, the Arbitrator shall be selected by mutual agreement of the parties from a panel provided by the San Francisco office of the American

Arbitration Association (the "AAA"), and if the parties cannot so agree within fifteen (15) days after the Initiation Date, or if the AAA does not offer a selection of potential arbitrators having the requisite qualifications, either party may apply to the Solano County Superior Court for the appointment of the Arbitrator. If the dispute primarily involves design and construction matters, the Arbitrator shall have at least ten (10) years experience in the resolution of construction disputes (or such other or additional qualifications as the parties may agree upon). If the dispute primarily involves any other matters, the Arbitrator shall have at least ten (10) years experience in the resolution of commercial real estate disputes (or such other or additional qualifications as the parties may agree upon).

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

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

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

The arbitration hearing shall be limited to eight (8) hours in length. Each side shall have no more than four (4) hours to present its case. In calculating the four (4) hours of presentation time, all oral presentations of a party shall be included (including without limitation cross-examination of an opposing witness, addressing questions from the arbitrator, and argument). Upon completion of each party's presentation, the arbitration hearing will be closed.

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

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

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

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

DEVELOPER: ______________ AGENCY: ______________
DEVELOPER: ______________

G. [§707] Affordable Housing Funds

To the extent the Developer constructs and/or renovates residential units outside of the Redevelopment Project Areas, the Developer may submit a request to the Agency to use funds from the Agency's Low and Moderate Income Housing Fund to assist with such construction and/or renovation. The Agency agrees to consider, in good faith, any such request by the Developer to the extent such construction and/or renovation complies with the Agency's affordable housing programs, and appropriate affordability covenants and restrictions are recorded against any such residential units.

H. [§708] Agency Approval

Whenever this Agreement calls for or permits Agency approval, consent, or waiver, the written approval, consent, or waiver of the Agency Executive Director, or his designee, shall constitute the approval, consent, or waiver of the Agency, without further authorization required from the Agency Board unless required by law.

I. [§709] Operating Memoranda

The parties acknowledge that the provisions of this Agreement require a close degree of cooperation, and that new information and future events may demonstrate that changes are appropriate with respect to the details of performance of the parties under this Agreement. The parties desire, therefore, to retain a certain degree of flexibility with respect to the details of performance of those items covered in general terms under this Agreement. If and when, from time to time during the term of this Agreement, the parties find that ~~nonsubstantive~~non-substantive refinements or adjustments regarding details of performance are necessary or appropriate, they may effectuate such refinements or adjustments through a memorandum (individually, and "Operating Memorandum", and collectively, "Operating Memoranda") approved by the parties which, after execution, shall be attached to this Agreement as addenda and become a part hereof. This Agreement describes some, but not all, of the circumstances in which the preparation and execution of Operating Memoranda may be appropriate.

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

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

J. [§710] Legal Action

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

K. [§711] Master Labor Agreement

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

L. [§712] Recordation of Original DDA Memorandum and Memorandum of DDA Third Restatement

In connection with the Second Restatement of this Agreement, the parties caused to be recorded a Memorandum of Disposition and Development Agreement dated as of October 27, 2005 (the "Original DDA Memorandum"). Within ten (10) days after the later to occur of the ~~Required Approvals Effective~~Action Dismissal Date or acquisition by the Agency or City of fee title to each Developer Parcel or portion thereof, the Agency shall cause a memorandum of this

Third Restatement of this Agreement (the "Memorandum of DDA Third Restatement"), in the form attached to this Agreement as Attachment No. 7, to be recorded against ~~each Developer Parcel~~the property described in Section 1.4 of the Development Agreement in the land records of Solano County as a covenant and restriction that runs with the land and is binding on successors in title to each Developer Parcel. The Agency and the Developer each consent to such recordation of the Memorandum of DDA Third Restatement, and to the performance of the same actions with respect to the Memorandum of DDA Third Restatement as are set forth in Section 1.4 of the Development Agreement with respect to the Development Agreement. The parties intend that, upon recordation, the Memorandum of DDA Third Restatement will amend and supersede the Original DDA Memorandum. The Developer acknowledges and agrees that the existence of the lien and encumbrance of the Original DDA Memorandum or the Memorandum of DDA Third Restatement in a Preliminary Title Report (as defined in Section 208) with respect to any Developer Parcel shall not constitute an Unacceptable Title Exception (as defined in Section 208) or constitute a basis for the Developer to disapprove a Preliminary Title Report pursuant to Section 208.

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

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

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

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

This Agreement is executed in four (4) duplicate originals, each of which is deemed to be an original. This Agreement comprises pages 1 through ~~72,~~85, inclusive, and Attachment Nos. 1 through 8, attached hereto and incorporated herein by reference, all of which constitute the entire understanding and agreement of the parties.

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

All waivers of the provisions of this Agreement must be in writing and signed by the Executive Director, or his designee, on behalf of the Agency and/or by the Developer, as applicable. All amendments hereto must be in writing, approved by the Agency Board, and signed by the appropriate authorities of the Agency and the Developer; provided, however, the parties may enter into Operating Memoranda without formal amendment of this Agreement for the purposes, in the manner, and with the effect set forth in Section 709 hereof.

9. ~~IX.~~ [§900] TIME FOR ACCEPTANCE OF AGREEMENT BY AGENCY

This Agreement, when executed by the Developer and delivered to the Agency, must be authorized, executed and delivered by the Agency within ten (10) days after the date of signature by the Developer or this Agreement shall be void, except to the extent that the Developer shall consent in writing to further extensions of time for the authorization, execution and delivery of this Agreement. The effective date of this Agreement is the date when this Agreement has been signed by the Agency. Through the ~~Second~~Third Restatement of this Agreement, the Parties acknowledge and agree that this Agreement in its initial form (the "Original Agreement") was initially fully executed and became effective in accordance with its terms as of October 17, 2000.

By execution below, the parties hereby approve the ~~Second~~Third Restatement of this Agreement as of ~~October 27, 2005.~~February 13, 2007. The parties further acknowledge and agree that the Agreement as amended and restated by the ~~Second~~Third Restatement shall be binding on the parties as of ~~October 27, 2005~~the Action Dismissal Date; provided, however, that if the ~~Second~~Third Restatement is determined to be invalid, void, ineffective, or otherwise unenforceable by a final ~~unappealable~~non-appealable judgment of a court of competent jurisdiction, the Original Agreement, as previously amended, shall thereupon be deemed to be in effect and binding upon the parties as of the effective date of such final ~~unappleable~~non-appealable judgment. Nothing in the ~~Second~~Third Restatement shall modify or affect the initial execution date of this Agreement as of October 17, 2000.

AGENCY:

REDEVELOPMENT AGENCY
THE CITY OF VALLEJO

By: ______________________
~~Robert Nichelini~~
Joseph M. Tanner
~~Acting~~ Executive Director

APPROVED AS TO FORM:

____
Frederick G. Soley
Agency Counsel

ATTEST:

____
Allison Villarante
Agency Secretary

APPROVED AS TO INSURANCE REQUIREMENTS:

____
Will Venski
Risk Manager, City of Vallejo

DEVELOPER:

CALLAHAN/DeSILVA VALLEJO, LLC,
a California limited liability company

By: The DeSilva Group, Inc.,
a California corporation, Member

By: ______________________
~~James B. Summers~~
Ernest D. Lampkin
Vice President

By: Joseph W. Callahan, Jr.,
an individual, Member

By: ______________________
Joseph W. Callahan, Jr.

ACKNOWLEDGEMENT AND ACCEPTANCE BY CITY OF VALLEJO OF UNIT PLAN PROCESSING METHOD SET FORTH IN SECTION 304:

Joseph M. Tanner
City Manager

ATTACHMENT NO. 1

MAPS OF THE SITE

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

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

ATTACHMENT NO. 2

<u>LEGAL DESCRIPTION OF THE DEVELOPER PARCELS</u>

[To be inserted from time to time as provided in Section 104]

ATTACHMENT NO. 3

SCHEDULE OF PERFORMANCE

The following is an updated Schedule of Performance that has been approved as part of the ~~Second~~Third Restatement of this Agreement dated as of ~~October 27, 2005~~February 13, 2007 (the "~~Second~~Third Restatement"). This updated Schedule of Performance indicates, as of the date of the ~~Second~~Third Restatement~~: (1)~~, revisions to the dates for performance of certain actions from the dates shown in the Agreement as initially executed on October 17, 2000, as previously amended and restated as of October 1, 2002, ~~and~~ as further amended by the amendments entered into as of October 24, 2003, and August 24, ~~2004; (2) actions that have been performed or partially performed since the initial execution of the Agreement on October 17, 2000 (such performance is indicated in bold, bracketed type in the Date column for each applicable action).~~2004, and as further amended and restated for a second time as of October 27, 2005. This updated Schedule of Performance may be further revised from time-to-time through execution of an Operating Memorandum as provided in ~~Sections~~Section 604 and 709 of the Agreement.

The action items described below constitute a summary only of the responsibilities and obligations of the parties under this Agreement. Reference is made to the operative provisions of this Agreement (typically indicated in parentheses at the end of each Action item) for a complete statement of the parties' respective responsibilities and obligations. To the extent of any conflict between the terms of this Schedule of Performance and the operative provisions of this Agreement (including the other Attachments hereto), the operative provisions of this Agreement shall control.

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

Action	Date
A. GENERAL	
1. Execution and Delivery of ~~Second~~Third Restatement. The Developer shall execute and deliver the ~~Second~~Third Restatement of this Agreement to the Agency.	Prior to the public hearing to approve the ~~Second~~Third Restatement of this Agreement. ~~**[Completed]**~~
2. Execution of ~~Second~~Third Restatement by Agency. The Agency and City Council shall hold a public hearing to authorize execution of the ~~Second~~Third Restatement of this Agreement by the Agency, and, if so authorized, the Agency shall execute and deliver this Agreement to the Developer. (Section 900)	Within 10 days after delivery of the ~~Second~~Third Restatement of this Agreement by the Developer.
3. ~~Required Approvals (Including EIR Certification)~~Settlement-Related Ordinances;	(a) ~~October 25, 2005 (as may be continued to October 27, 2005).~~Consideration of

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Redline 413250.1

Action	Date
Action Dismissal. (a) The ~~Agency and~~ City shall consider the Settlement-Related Ordinances for adoption~~ and certification, as applicable, all of the Required Approvals (including certification of the EIR). (b) All of the Required Approvals~~. (b) The Settlement-Related Ordinances shall become effective and the ~~Required Approvals Effective~~Action Dismissal Date shall occur. (Section 102)	introduction and first reading of Settlement-Related Ordinances on February 13, 2007; consideration of second reading and adoption of Settlement-Related Ordinances on February 27, 2007. (b) By ~~January 31, 2006.~~March 29, 2007.
4. Memorandum of DDA Third Restatement Recordation. The Agency shall cause recordation of the Memorandum of DDA Third Restatement. (Section 712)	(a) Within 10 days after the ~~Required Approvals Effective~~Action Dismissal Date for Developer Parcels or portions thereof then owned by the City or the Agency. (b) Within 10 days after acquisition for Developer Parcels or portions thereof subsequently acquired by the City ~~or~~of the Agency.
[redacted]	
6. ~~5.~~ Completion of Acquisition of Site. The Agency shall complete acquisition of the applicable parcels comprising the Site (or if applicable, shall obtain orders for immediate possession), and shall complete relocation of all tenants and occupants. [Note: Item ~~87-104~~94-111 below set ~~for~~forth the detailed schedule for acquisition and relocation with respect to the Post Office Site and the Restaurant Site.] (Sections 201.1 and 208)	On a schedule to allow for conveyance of the Developer Parcels to the Developer and construction of the improvements pursuant to this Agreement. ~~[Underway]~~
[redacted]	

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Action	Date
[redacted]	
9. ~~6.~~ Appraisal of Developer Parcels. The Method A Appraisals (Baseline), Method A Appraisals (Final), and Method B Appraisals (Unadjusted) shall be prepared and delivered to the parties. (Section 201.2)	At the times specified in Section 201.2.b.
10. ~~7.~~ Opening of Escrow. The Agency shall open an escrow account(s) for conveyance of the ~~Developer~~Develop-er Parcels to the Developer. (Section 202)	Within 30 days after the ~~Required Approvals Effective~~ Action Dismissal Date.
11. ~~8.~~ Submission-Preliminary Title Reports. The Agency shall submit to the Developer Preliminary Title Reports for the Developer Parcels for Initial Title Review. (Section 208)	Within 30 days after the ~~Required Approvals Effective~~Action Dismissal Date.
12. ~~9.~~ Approval-Preliminary Title Report. (a) The Developer shall approve or disapprove the Preliminary Title Reports. (b) If the Developer disapproves, the parties shall seek to prepare an Operating Memorandum to address Unacceptable Title Exceptions. (Section 208)	(a) Within 90 days after the ~~Required Approvals Effective~~Action Dismissal Date. (b) Within the time specified in Section 208.

[redacted]

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Action	Date
14. ~~10.~~ Physical Conditions Investigation For Developer Parcels Other Than Parcels S and T. (a) The Developer shall conduct any geotechnical and structural investigation and soils tests it determines necessary, and determine whether the Parcel Conditions are suitable and whether it wishes to proceed with acquisition of the Developer Parcels (other than Parcels S and T). (b) If the Developer determines there are Unacceptable Physical Conditions, the parties shall seek to prepare an Operating Memorandum to address such Unacceptable Physical Conditions. (Section 215.3)	(a) Within 90 days after the ~~Required Approvals Effective~~Action Dismissal Date for Developer Parcels (or portions thereof) currently owned by the Agency or the City. Within 90 days after access is obtained for Developer Parcels (or portions thereof) not currently owned by the Agency or the City. ~~**[Underway. The Developer has caused preparation of the specified investigations and tests and obtained a Phase 1 and Phase 2 environmental assessment reports for all of the applicable Developer Parcels. The parties are cooperating to review the reports and any necessary follow-up actions. The Developer has not yet determined whether the Parcel Conditions are suitable and whether it wishes to proceed with acquisition of the Developer Parcels.]**~~ (b) Within the time specified in Section 215.3.
15. ~~11.~~ LLMD Formation. The Agency and the City shall take all steps necessary to cause formation and effectiveness of the LLMD. (Method of Financing Section I.D)	Prior to sale of the initial residential unit within Parcel A.
16. ~~12.~~ Additional Deposit. The Developer shall pay the ~~Additional~~Initial Deposit to the Agency. (Section 108.2)	(a) $200,000 within 5 days after the ~~Required Approvals Effective~~Action Dismissal Date. (b) $300,000 at the close of escrow for Parcel A.
[redacted]	
18. ~~13.~~ Submission-Certificates of Insurance. The Developer shall furnish to the Agency duplicate originals or appropriate certificates of bodily injury and property damage insurance policies. (Section 308)	Prior to the date set forth herein for commencement of construction of the improvements on the Site.
19. ~~14.~~ Issuance-Certificates of Completion. The Agency shall furnish the Developer with Partial	Promptly after completion of all construction required for any Developer Parcel or portion of

Action	Date
or Final Certificates of Completion, as applicable. (Section 323)	the Project to be completed by the Developer on the Site and upon written request therefor by the Developer.

B. NORTHERN WATERFRONT

PARCEL A

Action	Date
20. ~~15.~~ Section 404 Permit. (a) The Agency shall obtain a Section 404 Permit from the U. S. Army Corps of Engineers relating to Parcel A. (Section 309) (b) The Developer shall complete the Section 404 Permit Site Work to perfect the Section 404 Permit. (Scope of Development Section ~~II.~~11.A.~~1~~4)	(a) ~~[~~Completed~~]~~. (b) ~~Within 180 days after the close of escrow for Parcel A exclusive of periods of time in which weather conditions do not reasonably permit performance~~Prior to the expiration date of the Section 404 Permit ~~Site Work~~(currently, December 31, 2009).

[redacted]

Action	Date
23. ~~16.~~ Submission-Unit Plan For Parcel A and Vesting Tentative Map for Northern ~~Waterfront~~Water-front Area. The Developer shall prepare and submit to the City a Complete Application for a Unit Plan ~~application~~ for Parcel A and a vesting tentative map ~~application~~ for the Northern Waterfront Area, including any necessary survey. (Section 304)	Within ~~15 days~~2 years after ~~City Council approval of the Planned Development Master Plan. The provisions of this Item 16 are expressly made immediately effective upon execution of the Second Restatement of this Agreement, and shall apply prior to and pending the Required Approvals Effective~~the Action Dismissal Date.
24. ~~17.~~ Approval-Unit Plan and Vesting Tentative Map. The City shall conduct all architectural and site planning review and shall approve or disapprove the Unit Plan for Parcel A and vesting tentative map for the Northern Waterfront Area, including any necessary survey, in accordance with the following milestone actions: (a) the Design Review Board shall conduct a Study Session on the Complete Application; (b) the	~~As expeditiously as possible under applicable City ordinances following City Council approval of the Required Approvals~~(a) Within 30 days after City receipt of the Complete Application. ~~The provisions of this Item 17 are expressly made immediately effective upon execution of the Second Restatement of this Agreement, and shall apply prior to and pending the Required Approvals Effective Date.~~

Action	Date
Developer shall submit a Revised Application; (c) the Design Review Board shall conduct an Action Session and make its final recommendation/decision on the Revised Application; and (d) the City Council shall conduct a hearing (on appeal) regarding the Design Review Board's recommendation/ decision and shall approve or disapprove the Revised Application. (Section 304)	(b) Within 30 days after the Design Review Board's Study Session, subject to extension by mutual agreement. (c) Within 30 days after City receipt of the Revised Application. (d) Within 30 days after the Design Review Board's Action Session.
25. ~~18.~~ Submission-Updated Preliminary Title Report. The Agency shall submit to the Developer an updated Preliminary Title Report for Parcel A, if necessary. (Section 208)	Within 30 days after ~~the Required Approvals Effective Date~~submittal by the Developer of a Complete Application for the Unit Plan and vesting tentative map.
26. ~~19.~~ Approval-Updated Preliminary Title Report. (a) The Developer shall approve or disapprove the updated Preliminary Title Report for Parcel A. (b) If Developer disapproves, the parties shall seek to prepare an Operating Memorandum to address Unacceptable Title Exceptions. (Section 208)	(a) Within 30 days after submittal by the Agency. (b) Within the time specified in Section 208.
27. ~~20.~~ Submission-Evidence of Financing. The Developer shall submit to the Agency Developer's evidence of financing for acquisition and development of Parcel A. (Section 217)	Within ~~150~~30 days after ~~the Required Approval Effective Date~~City approval of the Unit Plan and Vesting tentative map.

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Action	Date
28. ~~21.~~ Approval-Evidence of Financing. The Agency shall approve or disapprove the Developer's evidence of financing for acquisition and development of Parcel A. (Section 217)	Within 30 days after receipt thereof.
29. ~~22.~~ Submission and Approval-Subdivision of North-ern Waterfront Area. (a) The Developer shall submit an application for any final subdivision or parcel map(s) required for development of the Northern Waterfront Area. (b) The City shall grant or deny all required approvals for final subdivision or parcel map(s) for the Northern Waterfront Area. (Section 304)	(a) Within 120 days after City approval of the vesting tentative map for the Northern Waterfront Area. (b) Within 30 days after submittal by the Developer.
30. ~~23.~~ BCDC Permit Amendment. The parties shall (a) submit an application for and (b) use good faith efforts to obtain any BCDC permit amendments for construction of improvements in the Northern Waterfront Area. (Scope of Development Section II.~~C~~D.2)	(a) Within 30 days after City approval of the vesting tentative map for the Northern Waterfront Area. (b) Prior to the close of escrow for Parcel A.
[redacted]	
31. ~~25.~~ Deposit of Grant Deed for Parcel A. The Agency shall acquire Parcel A from the City and shall deposit the grant deed for Parcel A into escrow. (~~Sections~~Section 202, 208)	Prior to the close of escrow.
32. ~~26.~~ Satisfaction of All Conditions Precedent to Conveyance. All conditions precedent to conveyance of Parcel A have either been satisfied or waived. (Sections 205, 206)	Prior to the close of escrow.
33. ~~27.~~ Residential REA/CC&Rs. The Developer shall prepare, obtain Agency approval of, and record REA/ CC&Rs as applicable for Parcel A. (Section 704)	Prior to issuance of a building permit for the applicable residential improvements.
34. ~~28.~~ Close of Escrow. Fee title to Parcel A shall be conveyed to the Developer. (Section 203)	Within 60 days after ~~approval~~recordation of final subdivision map(s) and evidence of financing, but not later than ~~540 days~~4 years after the ~~Required Approvals Effective~~Action

Action	Date
	Dismissal Date.
35. ~~29.~~ Governmental Permits. The Developer shall obtain any and all ~~permits~~ required ~~by the~~ City ~~or any~~and other governmental agency permits that the Developer is responsible to obtain under this Agreement for the development of the applicable improvements on Parcel A. (Section 309)	Prior to the date set forth herein for the commencement of construction of the applicable improvements on Parcel A.
36. ~~30.~~ Commencement of Construction-Developer Parcel Public Improvements for First Phase of Parcel A. The Developer shall commence demolition and construction of the Developer Parcel Public Improvements for the first phase of Parcel A. (Section 307)	Within 30 days after close of escrow for conveyance of Parcel A to the Developer; provided that, if weather does not reasonably permit commencement at this time, then commencement shall occur as soon as weather does reasonably permit.
37. ~~31.~~ Completion of Construction-Developer Parcel Public Improvements for First Phase of Parcel A. The Developer shall ~~complete~~commence demolition and construction of the Developer Parcel Public Improvements for the first phase of Parcel A.	Within 18 months after commencement thereof by the Developer.
38. ~~32.~~ Completion of Developer Parcel Public Improvements and Private Development for Parcel A. Developer shall complete construction of all Developer Parcel Public Improvements for Parcels A, B and C and all private improvements for Parcel A.	No later than ~~6~~4 years after ~~the Required Approvals Effective Date~~City approval of the final subdivision map(s) for the Northern Waterfront Area.

B/C GROUND LEASE PARCELS

Action	Date
39. ~~33.~~ Forms of Leases. The parties shall agree on the forms of the City/Agency Ground Lease and the Agency/Developer Sub-Ground Lease for each of the B/C Ground Lease Parcels. (Section 201.4)	Within 90 days after the close of escrow for Parcel A.
40. ~~34.~~ Completion of Building Pads. The Developer shall complete rough grading and provision of utilities to create building pads for the B/C Ground Lease Parcels.	Within 120 days after substantial completion of construction of realigned Harbor Way pursuant to Item ~~51.~~57.
41. ~~35.~~ Submission-Unit Plans for B/C Ground Lease Parcels. (a) The Developer shall prepare and submit to the City a ~~Unit Plan~~Complete	(a) Within ~~120 days~~1 year after completion of the Northern Waterfront Public ~~Parks~~Park and Open Space Improvements pursuant to Item

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Action	Date
Application for a Unit Plan for the first-to-be ~~developed~~developer B/C Ground Lease Parcel. (b) The Developer shall prepare and submit to the City a Complete Application for a Unit Plan for each later developed B/C Ground Lease Parcel. (Section 304)	~~50.~~56. (b) Within a time period to enable conveyance and completion of construction of the applicable B/C Ground Lease Parcel by the deadline set forth in Item ~~46.~~52.
42. ~~36.~~ Approval-Unit Plans. The City shall conduct all architectural and site planning review and approve or disapprove the Unit Plan, including any necessary survey, for the applicable B/C Ground Lease Parcel~~. (Section 305~~, in accordance with the following milestone actions: (a) the Design Review Board shall conduct a Study Session on the Complete Application; (b) the Developer shall submit a Revised Application; (c) the Design Review Board shall conduct an Action Session and make its final recommendation/decision on the Revised Application; and (d) the City Council shall conduct a hearing (on appeal) regarding the Design Review Board's recommendation/ decision and shall approve or disapprove the Revised Application. (Section 304)	~~Wthin 90~~(a) Within 30 days after ~~submittal by the Developer~~City receipt of the Complete Application. (b) Within 30 days after the Design Review Board's Study Session, subject to extension by mutual agreement. (c) Within 30 days after City receipt of the Revised Application. (d) Within 30 days after the Design Review Board's Action Session.
43. ~~37.~~ Submission-Updated Preliminary Title Report. The Agency shall submit to the Developer an updated Preliminary Title Report for the applicable B/C Ground Lease Parcel, if necessary. (Section 208)	Within 30 days after approval of the Unit Plan for the applicable B/C Ground Lease Parcel.
44. ~~38.~~ Approval-Updated Preliminary Title Report. (a) The Developer shall approve or disapprove the updated Preliminary Title Report for the applicable B/C Ground Lease Parcel. (b) If the Developer disapproves, the parties shall seek to prepare an Operating Memorandum to address Unacceptable Title Exceptions. (Section 208)	(a) Within 30 days after submittal by the Agency. (b) Within the time specified in Section 208.
45. ~~39.~~ Submission-Evidence of Financing. The Developer shall submit to the Agency Developer's evidence of financing for lease and development of the applicable B/C Ground Lease Parcel. (Section 217)	Within 30 days after approval of the Unit Plan for the applicable B/C Ground Lease Parcel.
46. ~~40.~~ Approval – Evidence of Financing. The	Within 30 days after receipt thereof.

Action	Date
Agency shall approve or disapprove the Developer's evidence of financing for lease and development of the applicable B/C Ground Lease Parcel. (Section 217)	
47. ~~41.~~ Lease With City; Deposit of Sub-Lease for B/C Ground Lease Parcels. The Agency shall enter into the City/Agency Ground Lease and shall deposit the Agency/Developer Sub-Ground Lease for the applicable B/C Ground Lease Parcel into escrow. (Section 202, 208)	Prior to the close of escrow for the applicable B/C Ground Lease Parcel.
48. ~~42.~~ Satisfaction of All Conditions Precedent to Conveyance. All conditions precedent to conveyance of the applicable B/C Ground Lease Parcel have either been satisfied or waived. (Sections 205, 206)	Prior to the close of escrow for the applicable B/C Ground Lease Parcel.
49. ~~43.~~ Close of Escrow. The Agency/Developer Sub-Ground Lease shall be executed and the sub-ground leasehold interest in the applicable B/C Ground Lease Parcel shall be conveyed to the Developer. (Section 203)	Within 30 days after satisfaction of all conditions precedent to the conveyance for the applicable B/C Ground Lease Parcel.
50. ~~44.~~ Governmental Permits. The Developer shall obtain any and all ~~permits~~ required ~~by the~~ City ~~or any~~and other governmental agency permits that the Developer is responsible to obtain under this Agreement for the development of the applicable B/C Ground Lease Parcel. (Section 309)	Prior to the date set forth herein for the commencement of construction of the improvements on the applicable B/C Ground Lease Parcel.
51. ~~45.~~ Commencement of Construction-B/C Ground Lease Parcels. The Developer shall commence demolition and construction of the improvements on the first-to-be developed B/C Ground Lease Parcels. (Section 307)	Within 30 days after close of escrow for conveyance of the first-to-be developed B/C Ground Lease Parcel.
52. ~~46.~~ Completion of Construction-B/C Ground Lease Parcels. The Developer shall complete construction of the improvements on the B/C Ground Lease Parcels.	For the first-to-be developed B/C Ground Lease Parcel, within 12 months after commencement of construction. For final construction of all improvements on the B/C Ground Lease Parcels, no later than ~~6~~4 years after the ~~Required Approvals Effective Date~~City approval of the final subdivision map(s) for the Northern Waterfront Area.

Action	Date
NORTHERN WATERFRONT PUBLIC IMPROVEMENTS	
53. ~~47.~~ Public Participation Design Process; Concept Design and Preliminary Budget. The Agency and the City shall (a) commence and (b) complete the public participation design process and shall prepare the Concept Design and Preliminary Budget for the Northern Waterfront Public Parks and Open Space Improvements. (Scope of Development Section II.~~B~~C.3)	(a) Within 6 months after the ~~Required Approvals Effective~~Action Dismissal Date. (b) Within 12 months after the Action Dismissal Date.
54. ~~48.~~ Submission-Detailed Plans and Construction Cost Estimate. The Developer shall submit to the Agency the Detailed Plans and the Construction Cost Estimate for the Northern Waterfront Public Parks and Open Space Improvements. (Scope of Development Section ~~II.B~~11.C.3)	Within 6 months after receipt of the Concept Design and Preliminary Budget for the Northern Waterfront Public Parks and Open Space Improvements.
55. ~~49.~~ Approval-Detailed Plans or Modified Detail Plans. The Agency shall approve the Detailed Plans submitted by the Developer or specify the form of Modified Detailed Plans for the Northern Waterfront Public Parks and Open Space Improvements. (Scope of Development Section II.~~B~~C.3)	Within 3 months after the Developer submits the Detailed Plans and the Construction Cost Estimate for the Northern Waterfront Public Parks and Open Space Improvements.
56. ~~50.~~ Construction of Northern Waterfront Public Park and Open Space Improvements. The Developer shall complete construction of the Northern Waterfront Public ~~Parks~~Park and Open Space Improvements (subject to subsequent grow-in of landscaping features and improvements). (Scope of Development Section II.~~B~~C.3)	~~Within 1 year after the later to occur of (a) Agency approval of the Design Plans or Modified Design Plans for the Northern Waterfront Public Parks and Open Space Improvements, or (b) completion of construction of the~~Prior to issuance of a certificate of occupancy for the 140th residential unit on Parcel ~~C2 and Parcel E parking lots pursuant to Item 54.~~A.
57. ~~51.~~ Construction of Harbor Way. The Developer shall substantially complete the construction of realigned Harbor Way. (Scope of Development Section II.~~B~~C.1)	Prior to issuance of the first certificate of occupancy for a residential unit within Parcel A.
58. ~~52.~~ Construction of ~~Parcel D2 Improvements~~Wetland Park. The Developer shall complete construction of the ~~open space improvements on Parcel D2~~Wetland Park	~~Within 30 months after commencement of construction of the Developer~~At the earlier of either: (a) one full construction season after the Wetland Park area is no longer needed for

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Action	Date
(subject to subsequent ~~grow~~growing-in of landscaping features and improvements), and cease all staging activities. (Scope of Development Section II.~~B~~A.3)	construction staging as provided in Section II.A.3 of the Scope of Development (Attachment No. 4), or (b) one full construction season after the issuance of the certificate of occupancy for the 140th residential unit on Parcel ~~Public Improvements for the first phase of Parcel A pursuant to Item 30.~~A.
59. ~~53.~~ Form of REAs. The parties shall agree upon the forms of the Parcel C2 REA and the Parcel E/F REA. (Scope of Development ~~Sections~~Section II.~~B~~C.2 and 5)	Concurrently with approval of the forms of Agency/ Developer Sub-Ground Leases as provided in Item ~~33~~39 (i.e., within 90 days after close of escrow for Parcel A).
60. ~~54.~~ Construction of Parcel C2 and Parcel E/F Parking Lots. The Developer shall complete construction of the reconfigured Parcel C2 and Parcel E/F parking lots. (Scope of Development Sections II.~~B~~C.2 and 5)	Within 120 days after substantial completion of construction of realigned Harbor Way pursuant to Item ~~51.~~57.
[redacted]	
61. ~~56.~~ Construction of Mare Island Causeway and Mare Island Way Widening Improvements. The Agency and the City shall cause Lennar to complete the Mare Island Causeway and Mare Island Way Widening Improvements. (Scope of Development Section II.~~C~~D.4~~3~~3)	At the time required for completion pursuant to the Lennar Project Documents.

C. SOUTHERN WATERFRONT

SOUTHERN WATERFRONT PREPARATORY WORK

62. ~~57.~~ Southern Waterfront ~~Area Exchange Agreement~~Soft Cost Work Operating Memorandum. The parties shall ~~prepare and obtain City and SLC approval of~~execute the Southern Waterfront ~~Area Exchange Agreement~~Soft Cost Work Operating Memorandum. (Scope of Development Section IV.A.~~8~~9.b)	~~By June 2006.~~Within 90 days after the Action Dismissal Date.

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Action	Date
63. ~~58.~~ ~~BCDC~~ Southern Waterfront Area ~~Approvals~~Exchange Agreement. The parties shall ~~apply for and~~prepare and use good faith efforts to obtain City and SLC approval of the ~~BCDC~~ Southern Waterfront Area ~~Approvals~~Exchange Agreement. (Scope of Development Section IV.A.8)	By ~~June~~September ~~2006.~~2007.
[redacted]	
65. ~~59.~~ Water Board Clearance For Non-Contaminated Area. The Agency shall obtain Water Board regulatory clearance for development of the Non-Contaminated Area. (Scope of Development Section IV.A.4)	By ~~June~~September ~~2006.~~2007.
66. ~~60.~~ PG&E Settlement. The Agency shall complete negotiation of and shall enter into the settlement agreement with PG&E. (Scope of Development Section IV.A.5)	By ~~June~~September ~~2006.~~2007.
67. ~~61.~~ RAP. The Agency shall prepare and obtain Water Board approval of the RAP. (Scope of Development Section IV.A.5)	By ~~December~~March ~~2006.~~2008.
68. ~~62.~~ Other Pre-Remediation Tasks. The Agency shall execute the Southern Waterfront Remediation Contract, obtain the Southern Waterfront Pollution Risk Insurance, and prepare the Physical Remediation Tasks Budget. (Scope of Development Section IV.A.5)	By ~~March~~June ~~2007.~~2008.
69. ~~63.~~ Commencement of Physical Remediation Tasks. The Agency shall commence the Physical Remediation Tasks to remediate the Contaminated Area. (Scope of Development Section IV.A.6)	Within 30 days after completion of the Other Pre-Remediation Tasks described in Item ~~62.~~68.

Action	Date
70. ~~64.~~ Completion of Physical Remediation Tasks. The Agency shall complete the Physical Remediation Tasks and obtain the necessary closure document for the Contaminated Area from the Water Board. (Scope of Development Section IV.A.6)	Within 1 year after the required commencement date pursuant to Item ~~63.~~69.

S/T DEVELOPER SUBPARCELS

[Note: As used below, the "S/T Developer Subparcels" means collectively, Parcel S, Parcel T1 (and up to ~~three~~four subparcels within Parcel T1), and Parcel T3. Development of Parcel T2 is separately addressed in Items ~~96-104~~102-110 below.]

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Action	Date
71. ~~65.~~ Submission of Unit Plan (and Vesting Tentative Map). (a) The Developer shall prepare and submit to the City a Complete Application for a Unit Plan ~~application~~ for the first-to-be developed of the S/T Developer Subparcels (together with any desired vesting tentative map or lot line adjustment application). (b) The Developer shall prepare and submit to the City a Complete Application for a Unit Plan for each later developed S/T Developer Subparcel (together with any desired vesting tentative map application). (Section 304)	(a) ~~Within 90 days after completion of the Physical Remediation Tasks pursuant to Item 64.~~ As economically feasible, but in any event within a time period to enable conveyance and completion of construction of the first-to-be developed S/T Developer Subparcel by the deadline set forth in Item 87. (b) Within a time period to enable conveyance and completion of construction of the applicable S/T Developer Subparcel by the deadline set forth in Item ~~80.~~ 87.
72. ~~66.~~ Approval-Unit Plan and Vesting Tentative Map. The City shall conduct all architectural and site planning review and approve or disapprove the Unit Plan and vesting tentative map or lot line adjustment (if applicable), including any necessary survey, for the applicable S/T Developer Subparcel~~.~~ , in accordance with the following milestone actions: (a) the Design Review Board shall conduct a Study Session on the Complete Application; (b) the Developer shall submit a Revised Application; (c) the Design Review Board shall conduct an Action Session and make its final recommendation/decision on the Revised Application; and (d) the City Council shall conduct a hearing (on appeal) regarding the Design Review Board's recommendation/decision and shall approve or disapprove the Revised Application. (Section ~~305~~304)	(a) Within ~~90~~30 days after ~~submittal by the Developer for the applicable S/T Developer Subparcel~~City receipt of the Complete Application. (b) Within 30 days after the Design Review Board's Study Session, subject to extension by mutual agreement. (c) Within 30 days after City receipt of the Revised Application. (d) Within 30 days after the Design Review Board's Action Session.
[redacted]	
74. ~~67.~~ Submission-Updated Preliminary Title Report~~.~~, The Agency shall submit to the Developer an updated Preliminary Title Report for the applicable S/T Developer Subparcel, if necessary. (Section 208)	Within 30 days after approval of the Unit Plan for the applicable S/T Developer Subparcel.

Action	Date
75. ~~68.~~ Approval-Updated Preliminary Title Report. (a) The Developer shall approve or disapprove the updated Preliminary Title Report for the applicable S/T Developer Subparcel. (b) If the Developer disapproves, the parties shall seek to prepare an Operating Memorandum to address Unacceptable Title Exceptions. (Section 208)	(a) Within 30 days after submittal by the Agency. (b) Within the time specified in Section 208.
76. ~~69.~~ Submission-Evidence of Financing. The Developer shall submit to the Agency Developer's evidence of financing for acquisition and development of the applicable S/T Developer Subparcel. (Section 217)	Within 30 days after approval of the Unit Plan for the applicable S/T Developer Subparcel.
77. ~~70.~~ Approval-Evidence of Financing. The Agency shall approve or disapprove the Developer's evidence of financing for acquisition and development of the applicable S/T Developer Subparcel. (Section 217)	Within 30 days after receipt thereof.
78. ~~71.~~ Submission and Approval-Subdivision of Parcels S and T. (a) The Developer shall submit an application for final subdivision and parcel maps (or lot line adjustment, as applicable) for the S/T Developer Subparcels. (b) The City shall grant or deny all required approvals for final subdivision and parcel maps (or lot line adjustment, as applicable) for the S/T Developer Subparcels.	(a) Within 90 days after approval of the Unit Plan and vesting tentative maps in connection with the first-to-be developed S/T Developer Subparcel. (b) Within 30 days after submittal by the Developer.
79. ~~72.~~ Acquisition from City. The Agency shall acquire the portion of the applicable S/T Developer Subparcel owned by the City and shall cause termination of all leasehold interests with respect to the applicable S/T Developer Subparcel. (Sections 201.7 and 201.8)	Prior to time that the Developer has satisfied all conditions to close of escrow for the applicable S/T Developer Subparcel.
80. ~~73.~~ Residential REA/CC&Rs. The Developer shall prepare, obtain Agency approval of, and record REA/CC&Rs as applicable for Parcel T1.	Prior to or concurrently with close of escrow for the conveyance of Parcel T1 to the Developer.
81. ~~74.~~ Deposit of Grant Deed. The Agency shall deposit the grant deed for the applicable S/T Developer Subparcel into escrow. (Sections 202, 208)	Prior to the close of escrow for the applicable S/T Developer Subparcel.

Action	Date
82. ~~75.~~ Satisfaction of All Conditions Precedent to Conveyance. All conditions precedent to conveyance for the applicable S/T Developer Subparcel have either been satisfied or waived. (Sections 205, 206)	Prior to the close of escrow for the applicable S/T Developer Subparcel.
83. ~~76.~~ Close of Escrow. Fee title to the applicable S/T Developer Subparcel shall be conveyed to the Developer. (Section 203)	Within 30 days after satisfaction of all conditions precedent to conveyance for the applicable S/T Developer Subparcel (including completion of remediation pursuant to the RAP, as applicable).
84. ~~77.~~ Governmental Permits. The Developer shall obtain any and all ~~permits~~ required ~~by the~~ City ~~or any~~and other governmental agency permits that the Developer is responsible to obtain under this Agreement for the development of the applicable S/T Developer Subparcel. (Section 309)	Prior to the date set forth herein for the commencement of construction of the improvements on the applicable S/T Developer Subparcel.
85. ~~78.~~ Commencement of Construction-Developer Parcel Public Improvements. The Developer shall commence demolition and construction of the Developer Parcel Public Improvements for the applicable S/T Developer Subparcel. (Section 307)	Within 30 days after close of escrow for conveyance of the applicable S/T Developer Subparcel to the Developer.
86. ~~79.~~ Completion of Construction-Developer Parcel Public Improvements. The Developer shall complete construction of the Developer Parcel Public Improvements for the applicable S/T Developer Subparcel.	Within 18 months after commencement thereof by the Developer.
87. ~~80.~~ Completion of Construction-S/T Developer Subparcels. The Developer shall complete construction of all phases of the Developer Parcels Public Improvements and all private development on the S/T Developer Subparcels.	By the last to occur of: (a) the 10th anniversary of the ~~Required Approvals Effective~~Action Dismissal Date; (b) the 8th anniversary of execution and effectiveness of the Southern Waterfront Area Exchange Agreement; (c) the 8th anniversary of procurement of the BCDC Southern Waterfront Area Approvals; or (d) the 8th anniversary of completion of the Physical Remediation Tasks and procurement of the necessary closure document for the Contaminated Area from the Water Board.

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Action	Date
	SOUTHERN WATERFRONT PUBLIC IMPROVEMENTS
88. ~~81.~~ Public Participation Design Process; Concept Design and Preliminary Budget. The Agency and the City shall complete the public participation design process and shall prepare the Concept Design and Preliminary Budget for the Southern Waterfront Public Parks and Open Space Improvements. (Scope of Development Section IV.C.2)	Within 6 months after approval of the Unit Plan (and any desired vesting tentative map) for the first-to-be developed of the S/T Developer Subparcels pursuant to Item ~~66.~~72.
89. ~~82.~~ Submission-Detailed Plans and Construction Cost Estimate. The Developer shall submit to the Agency the Detailed Plans and the Construction Cost Estimate for the Southern Waterfront Public Parks and Open Space Improvements. (Scope of Development Section IV.C.2)	Within 6 months after receipt of the Concept Design and Preliminary Budget for the Southern Waterfront Public Parks and Open Space Improvements.
90. ~~83.~~ Approved-Detailed Plans or Modified Detailed Plans. The Agency shall approve the Detailed Plans submitted by the Developer or specify the form of Modified Detailed Plans for the Southern Waterfront Public Parks and Open Space Improvements~~.~~ (Scope of Development Section IV.C.2)	Within 3 months after the Developer submits the Detailed Plans and the Construction Cost Estimate for the Southern Waterfront Public Parks and Open Space Improvements.
91. ~~84.~~ Construction of Southern Waterfront Public Parks and Open Space Improvements. The Developer shall complete construction of the Southern Waterfront Public Parks and Open Space Improvements (subject to subsequent grow-in of landscaping features and improvements). (Scope of Development Section IV.C.~~2.~~2)	Within 1 year after the later to occur of (a) Agency approval of the Design Plans or Modified Design Plans for the Southern Waterfront Public Parks and Open Space Improvements, or (b) completion of all Southern Waterfront Preparatory Work pursuant to Items ~~57~~62-~~64.~~70.
92. ~~85.~~ Southern Waterfront Public Street Improvements. The Developer shall substantially complete construction of the Southern Waterfront Public Street Improvements. (Scope of Development Section IV.C.1)	(a) For ~~Solano Avenue Extension,~~the portions of the Southern Waterfront Public Street Improvements necessary to serve the Post Office Relocation Facility on Parcel T2, by the time the Developer is required to complete construction of the Post Office Relocation Facility on Parcel T2. (b) For the balance of the Southern Waterfront Public Street Improvements, prior to issuance of

Action	Date
	the first certificate of occupancy for a residential unit within Parcel T1.
93. ~~86.~~ Boat Launch Improvements. The Agency shall complete construction of the Boat Launch Improvements. (Scope of Development (Section IV.C.3)	By the date required in Item ~~84~~91 for completion of construction of the Southern Waterfront Public Parks and Open Space Improvements.

D. CENTRAL WATERFRONT

POST OFFICE SITE/RESTAURANT SITE ACQUISITION AND RELOCATION

Action	Date
94. ~~87.~~ Voluntary Acquisition. The Agency shall seek voluntary acquisition of, and acquire fee title to, the Post Office Site and the Restaurant Site. (Sections 201.6.a and b)	By ~~March~~September ~~2006.~~2007.
95. ~~88.~~ Resolution of Necessity. If voluntary acquisition is not feasible, the Agency or the City shall schedule and conduct a hearing and consider adoption of a resolution of necessity for condemnation of the Post Office Site and/or the Restaurant Site. (Sections 201.6.a and b)	By ~~April~~October ~~2006.~~2007.
96. ~~89.~~ Filing of Action and Order For Possession. If a resolution of necessity is approved, the Agency shall file the condemnation action, including a request for order of immediate possession, for the Post Office Site and/or the Restaurant Site. (Sections 201.6.a and b)	By ~~May~~November ~~2006.~~2007.
97. ~~90.~~ Order of Possession. The Agency shall obtain possession of the Post Office Site and/or Restaurant Site under order of possession. (Sections 201.6.a and b)	By ~~September~~January ~~2006.~~2008.
98. ~~91.~~ Post Office LOI Budget Operating Memorandum. The parties shall execute the Post Office LOI Budget Operating Memorandum. (Section 201.6.a)	Within 90 days after the ~~Required Approvals Effective~~Action Dismissal Date.~~.~~
99. ~~92.~~ Post Office LOI. The parties shall negotiate and execute the Post Office LOI with the USPS. (Section 201.6.a)	By ~~July~~November ~~2006.~~2007.
100. ~~93.~~ Post Office Development Budget Operating	Within 30 days after approval/execution of the

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Action	Date
Memorandum. The parties shall execute the Post Office Development Budget Operating Memorandum. (Section 201.6.a)	Post Office LOI.
[redacted]	
101.~~94.~~ Post Office Facility Relocation Lease and Final Plans. The parties (a) shall negotiate and execute the Post Office Facility Relocation Lease with USPS, and (b) shall prepare and obtain USPS approval of the final plans and specifications for the Post Office Relocation Facility. (Section 201.6.a)	(a) By ~~August 2006.~~December 2007. (b) By ~~October~~February ~~2006.~~2008.
102.~~95.~~ Negotiation of Parcel T2 Relocation Obligations. The parties shall negotiate the terms of the Parcel T2 Relocation Obligations and execute all necessary documentation. (Section 201.6.a)	By ~~April~~October ~~2006.~~2007.
103.~~96.~~ Parcel T2 Vesting Tentative Map. The Developer shall process and obtain City approval of a vesting tentative map, site plan, and related documents for development of the Post Office Relocation Facility on Parcel T2. (Section 201.6.a)	By ~~July~~December ~~2006.~~2007.
104.~~97.~~ Implementation of Parcel T2 Relocation Obligations. The Agency shall perform and complete the Parcel T2 Relocation Obligations to relocate all tenants and occupants from Parcel T2. (Section 201.6.a)	By ~~October~~February ~~2006.~~2008.
105.~~98.~~ Completion of Design/Procurement of Building Permit. The Developer shall complete design and procure the building permit for construction of the Post Office Relocation Facility on Parcel T2. (Section 201.6.a)	By ~~October~~March ~~2006.~~2008.
106.~~99.~~ Parcel T2 Final Map. The Developer shall cause recordation of the final map for Parcel T2. (Section 201.6.a)	By ~~October~~March ~~2006.~~2008.
107.~~100.~~ Satisfaction of All Conditions Precedent to Conveyance-Parcel T2. All conditions precedent to conveyance of Parcel T2 have either been satisfied or waived.	By ~~October~~March ~~2006.~~2008.

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Action	Date
(~~Sections~~Section 205, 206)	
110.~~103.~~ Installation of Equipment/Commencement of Lease. The parties and the USPS shall cause installation of equipment and relocation of the USPS facility from Parcel L to the Post Office Relocation Facility on Parcel T2. The Post Office Relocation Facility Lease shall commence. (Section 201.6.a)	By ~~December~~February ~~2007.~~2009.
111.~~104.~~ Relocation of Restaurant Site Business. The Agency shall cause relocation of the business from the Restaurant Site, if applicable. (Section 208)	By ~~December~~February ~~2007.~~2009.

~~PARCEL L~~

[redacted]

Action	Date
112.~~105.~~ Secure Financing for L3 Public Garage/Public Paseo. The Agency and City shall secure financing for (a) the design and (b) construction of the L3 Public Garage and the public paseo improvements on Parcel L5.	~~By~~(a) Completed. (b) September ~~2007.~~2008.
113.~~106.~~ Design and Construction of L3 Public Garage/Public Paseo. The Agency and the City shall (a) complete design, (b) commence demolition and substantial construction, and (c) complete construction of the L3 Public Garage and the public paseo improvements on Parcel L5. (Scope of Development Sections ~~III~~II.A.3 and 5)	(a) By September ~~2007.~~2008. (b) By ~~January 2008.~~March 2009. (c) By ~~January~~March ~~2010.~~2011.
114.~~107.~~ Parcel L4 Operating Memorandum. The parties shall negotiate and execute the Parcel L4 Operating Memorandum. (Scope of Development Section III.A.4)	Within 60 days after execution of the construction contract for the L3 Public Garage.

Action	Date
[redacted]	
117.~~108.~~ Submission-Unit Plan and Vesting Tentative Map. (a) The Developer shall prepare and submit to the City a Complete Application for a vesting tentative map ~~application~~ for all of the L Developer Parcels and a Unit Plan for the first-to-be developed L Developer Parcel~~-L1.~~, (b) The Developer shall prepare and submit to the City a Complete Application for a Unit Plan for each later developed L Developer Parcel. (Section 304)	(a) By the time the Agency and City commence substantial construction of the L3 Public Garage. (b) Within a time period to enable conveyance and completion of the applicable L Developer Parcel by the deadline set ~~froth~~forth in Item ~~124.~~133.
118.~~109.~~ Approval-Unit Plan and Vesting Tentative Map. The City shall conduct all architectural and site planning review and approve or disapprove the Unit Plan and vesting tentative map (if applicable), including any necessary survey for the applicable L Developer Parcel~~.~~ ~~(Section 305~~, in accordance with the following milestone actions: (a) the Design Review Board shall conduct a Study Session on the Complete Application; (b) the Developer shall submit a Revised Application; (c) the Design Review Board shall conduct an Action Session and make its final recommendation./decision on the Revised Application; and (d) the City Council shall conduct a hearing (on appeal) regarding the Design Review Board's recommendation/decision and shall approve or disapprove the Revised Application. (Section 304)	(a) Within ~~90 days after submittal by the Developer for the applicable L Developer Parcel~~30 days after City receipt of the Complete Application. (b) Within 30 days after the Design Review Board's Study Session, subject to extension by mutual agreement. (c) Within 30 days after City receipt of the Revised Application. (d) Within 30 days after the Design Review Board's Action Session.

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Action	Date
119.~~110.~~ Submission-Updated Preliminary Title Report. The Agency shall submit to the Developer an updated Preliminary Title Report for the applicable L Developer Parcel, if necessary. (Section 208)	Within 30 days after approval of the Unit Plan for the applicable L Developer Parcel.
120.~~111.~~ Approval-Updated Preliminary Title Report. (a) The Developer shall approve or disapprove the updated Preliminary Title Report for the applicable L Developer Parcel. (b) If the Developer disapproves, the parties shall seek to prepare an Operating Memorandum to address Unacceptable Title Exceptions. (Section 208)	(a) Within 30 days after submittal by the Agency. (b) Within the time specified in Section 208.
121. ~~112.~~ Submission-Evidence of Financing. The Developer shall submit to the Agency Developer's evidence of financing for acquisition and development of the applicable L Developer Parcel. (Section 217)	Within 30 days after approval of the Unit Plan for the applicable L Developer Parcel.
122.~~113.~~ Approval-Evidence of Financing. The Agency shall approve or disapprove the Developer's evidence of financing for acquisition and development of the applicable L Developer Parcel. (Section 217)	Within 30 days after receipt thereof.
123.~~114.~~ Submission and Approval-Subdivision of Parcel L. (a) The Developer shall submit an application for final subdivision and parcel maps for Parcel L. (b) The City shall grant or deny all required approvals for final subdivision and parcel maps for Parcel L.	(a) Within 90 days after approval of the Unit Plan (and vesting tentative map) in connection with Parcel L1. (b) Within 30 days after submittal by the Developer.
124.~~115.~~ Acquisition from City. The Agency shall acquire the portion of Parcel L owned by the City. (Section 201.6.c)	Prior to the time the Developer has satisfied all conditions to close of escrow for the applicable L Developer Parcel ~~L1.~~.
125.~~116.~~ Deposit of Grant Deed. The Agency shall deposit the grant deed for the applicable L Developer Parcel. (~~Sections~~Section 202, 208)	Prior to the close of escrow for the applicable L Developer Parcel.
126.~~117.~~ Satisfaction of All Conditions Precedent to Conveyance. All conditions precedent to conveyance for the applicable L Developer Parcel have either been satisfied or waived. (Sections 205, 206)	Prior to the close of escrow for the applicable L Developer Parcel.

Action	Date
127.~~118.~~ Residential REA/CC&Rs. The Developer shall prepare, obtain Agency approval of, and record REA/CC&Rs as applicable for Parcel L1. (Section 704)	Prior to or concurrently with close of escrow for the conveyance of Parcel ~~L~~1 to the Developer.
128.~~119.~~ Vallejo Station REA. The parties shall cause recordation of the Vallejo Station REA against the applicable subparcels within Parcel L. (Scope of Development Section III.A.4)	Concurrently with the close of escrow for conveyance of Parcel L4.
129.~~120.~~ Hotel Operating Agreement. The Developer shall enter into the Hotel Operating Agreement with the Hotel Operator. (Section 705)	Prior to the close of escrow for Parcel L4.
130.~~121.~~ Close of Escrow. Fee title to the applicable L Developer Parcel shall be conveyed to the Developer. (Section 203)	(a) For the first-to-be developed L Developer Parcel~~ L1,~~, within 30 days after satisfaction of all conditions precedent to conveyance, but in any event within ~~6~~12 months after commencement of substantial construction of the L3 Public Garage. (b) ~~For Parcels L2 and L4,~~ For each later developed L Developer Parcel, within 30 days after satisfaction of all conditions precedent to conveyance for the applicable L Developer Parcel.

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Action	Date
131.~~122.~~ Governmental Permits. The Developer shall obtain any and all ~~permits~~ required ~~by the~~ City ~~or any~~and other governmental agency permits that the Developer is responsible to obtain under this Agreement for the development of the applicable L Developer Parcel. (Section 309)	Prior to the date set forth herein for the commencement of construction on the applicable L Developer Parcel.
132.~~123.~~ Commencement of Construction-L Developer Parcels. The Developer shall commence demo-lition and construction on the applicable L Developer Parcel. (Section 307)	Within 30 days after close of escrow for conveyance of the applicable L Developer Parcel to the Developer.
133.~~124.~~ Completion of Construction-L Developer Parcels. The Developer shall complete construction of the improvements on the applicable L Developer Parcel.	Within 24 months after commencement thereof, but in any event by the later to occur of: (a) the 10th anniversary of the ~~Required Approvals Effective~~Action Dismissal Date; or (b) the 8th anniversary of completion of construction of the L3 Public Garage.

[redacted]

135.~~125.~~ Acquisition of Parcel J. The Agency shall acquire Parcel J from the City and cause termination of all leasehold interests.	~~Not later than the commencement of construction of the L3 Public Garage~~Prior to the time that the Developer has satisfied all conditions to the close of escrow for the first-to-be developed J Developer Subparcel.

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Action	Date
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138. ~~126.~~ Submission-Unit Plan and Vesting Tentative Map. (a) The Developer shall prepare and submit to the City a Complete Application for a vesting tentative map ~~application~~ for Parcel J and a Unit Plan for the first-to-be developed J Developer Subparcel. (b) The Developer shall prepare and submit to the City a Complete Application for a Unit Plan for the later developed J Developer Subparcel. (Section 304)	(a) Within 60 days after completion of construction of the City Hall Garage Required Elements. (b) Within a time period to enable conveyance and completion of construction of the later developed J Developer Subparcel by the deadline set forth in Item ~~139.~~ 151.
139. ~~127.~~ Approval-Unit Plan and Vesting Tentative Map. The City shall conduct all architectural and site planning review and approve or disapprove the Unit Plan and vesting tentative map (if applicable), including any necessary survey, for the applicable J Developer Subparcel~~. (Section 305~~, in accordance with the following milestone actions: (a) the Design Review Board shall conduct a Study Session on the Complete Application; (b) the Developer shall submit a Revised Application; (c) the Design Review Board shall conduct an Action Session and make its final recommendation/ decision on the Revised Application; and (d) the City Council shall conduct a hearing (on appeal) regarding the Design Review Board's recommendation/ decision and shall approve or disapprove the Revised Application. (Section 304)	(a) Within ~~90~~30 days after ~~submittal by the Developer for the applicable J Developer Subparcel~~City receipt of the Complete Application. (b) Within 30 days after the Design Review Board's Study Session, subject to extension by mutual agreement. (c) Within 30 days after City receipt of the Revised Application. (d) Within 30 days after the Design Review Board's Action Session.

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Action	Date
140.~~128.~~ Submission-Updated Preliminary Title Report. The Agency shall submit to the Developer an updated Preliminary Title Report for the applicable J Developer Subparcel, if necessary. (Section 208)	Within 30 days after approval of the Unit Plan for the applicable J Developer Subparcel.
141.~~129.~~ Approval-Updated Preliminary Title Report. (a) The Developer shall approve or disapprove the updated Preliminary Title Report for the applicable J Developer Subparcel. (b) If the Developer disapproves, the parties shall seek to prepare an Operating Memorandum to address Unacceptable Title Exceptions. (Section 208)	(a) Within 30 days after submittal by the Agency. (b) Within the time specified in Section 208.
142.~~130.~~ Submission-Evidence of Financing. The Developer shall submit to the Agency Developer's evidence of financing for acquisition and development of the applicable J Developer Subparcel. (Section 217)	Within 30 days after approval of the Unit Plan for the applicable J, Developer Subparcel.
143.~~131.~~ Approval-Evidence of Financing. The Agency shall approve or disapprove the Developer's evidence of financing for acquisition and development of the applicable J Developer Subparcel. (Section 217)	Within 30 days after receipt thereof.
144.~~132.~~ Submission and Approval-Subdivision of Parcel J. (a) The Developer shall submit an application for final subdivision and parcel maps for Parcel J. (b) The City shall grant or deny all required approvals for final subdivision and parcel maps for Parcel J.	(a) Within 90 days after approval of the Unit Plan and vesting tentative map in connection with ~~Parcel J3.~~the first-to-be developed J Developer Subparcel. (b) Within 30 days after submittal by the Developer.
145.~~133.~~ Deposit of Grant Deed. The Agency shall deposit the grant deed for the applicable J Developer Subparcel into escrow. (Sections 202, 208)	Prior to the close of escrow for the applicable J Developer Subparcel.
146.~~134.~~ Satisfaction of All Conditions Precedent to Conveyance. All conditions precedent to conveyance for the applicable J Developer Subparcel have either been satisfied or waived. (Sections 205, 206)	Prior to the close of escrow for the applicable J Developer Subparcel.

Action	Date
147.~~135.~~ Residential REA/CC&Rs. The Developer shall prepare, obtain Agency approval of, and record REA/CC&Rs as applicable for each J Developer Subparcel. (Section 704)	Prior to or concurrently with close of escrow for the conveyance of the applicable J Developer Subparcel to the Developer.
148.~~136.~~ Close of Escrow. Fee title to the applicable J Developer Subparcel shall be conveyed to the Developer. (Section 203)	Within 30 days after satisfaction of all conditions precedent to conveyance for the applicable J Developer Subparcel.
149.~~137.~~ Governmental Permits. The Developer shall obtain any and all ~~permits~~ required ~~by the~~ City ~~or any~~and other governmental agency permits that the Developer is responsible to obtain under this Agreement for the development of the applicable J Developer Subparcel. (Section 309)	Prior to the date set forth herein for the commencement of construction of the improvements on the applicable J Developer Subparcel.
150.~~138.~~ Commencement of Construction – Parcel J. The Developer shall commence demolition and construction of the improvements on Parcel J. (Section 307)	Within 30 days after close of escrow for conveyance of the first-to-be developed J Developer Subparcel.
151.~~139.~~ Completion of Construction-Parcel J. The Developer shall complete construction of the improvements on Parcel J.	For construction on the first-to-be developed J Developer Subparcel, within 24 months after commencement thereof. For the final phase of construction on Parcel J, by the later to occur of: (a) the 10th anniversary of the ~~Required Approvals Effective~~Action Dismissal Date; or (b) the 8th anniversary of completion of construction of the City Hall Garage Required Elements.

CENTRAL WATERFRONT PUBLIC IMPROVEMENTS

Action	Date
152.~~140.~~ Parcel O Bus Transfer Center. The Agency ~~shall~~and the City shall (a) issue a request for services for design, and (b) cause completion of the Bus Transfer Center on Parcel O. (Scope of Development Section III.C.1)	(a) Completed. (b) By January 2008.
153.~~141.~~ Other Transit-Related Improvements. The Agency shall cause completion of the Other Transit-Related Improvements. (Scope of Development Section III.C.2)	By the time required for completion of the L3 Public Garage ~~(January 2010)~~.

Action	Date
154.~~142.~~ Central Waterfront Public Street Improvements. The Agency shall cause completion of the Central Waterfront Public Street Improvements. (Scope of Development Section III.C.3)	(a) By the time required for completion of the L3 Garage ~~(January 2010)~~, for the Mare Island Way modifications and the reconfiguration of Maine Street. (b) By the time required for, and as part of, completion of construction of the City Hall Garage Required Elements pursuant to Item ~~144,~~156, for the Capitol Street Second Segment.
155.~~143.~~ Central Waterfront Public Parks and Open Space Improvements. The Agency shall cause completion of (a) design ~~and~~of the Central Waterfront Public Parks and Open Space Improvements, (b) construction of the Festival Green parcel improvements, and (c) construction of the balance of Central Waterfront Public Parks and Open Space Improvements. (Scope of Development Section III.C.4)	(a) By ~~June 2007.~~September 2008. (b) Within 1 year after the time required for completion of the L3 Public Garage pursuant to Item ~~106~~113(c). (c) Within 2 years after the time required for completion of the L3 Public Garage pursuant to Item 113(c).
156.~~144.~~ City Hall Garage Required Elements. The Agency shall (a) design, (b) commence substantial construction, and (c) complete construction of the City Hall Garage Required Elements. (Scope of Development Section III.C.5 and Method of Financing Section III.D)	(a) Within a time period to enable commencement of construction as set forth in (b) below. (b) Within 60 days after substantial completion of the L3 Public Garage. (c) Within 12 months after the required commencement date as set forth in (b) above.
157.~~145.~~ Phase II Element of City Hall Garage. The Agency shall design and construct the Phase II Element of the City Hall Garage. (Scope of Development Section III.C.5 and Method of Financing Section III.D)	Within a time period determined by the Agency and the City to accommodate parking needs for additional ferry service.

ATTACHMENT NO. 4

SCOPE OF DEVELOPMENT

I. GENERAL

A. Basic Development Standards

1. General. The Developer and the Agency agree that the Site shall be developed and improved in accordance with the provisions of this Agreement, the plans, drawings and related documents approved by the Agency pursuant hereto, and the Project Approvals (as defined and described in Section 102.5). The provisions of this Agreement, including the Scope of Development, are intended to be consistent with the Project Approvals. In the event of any express conflict between the provisions of this Agreement, including the Scope of Development, and the Project Approvals, the provisions of the Project Approvals shall control to the extent of such conflict.

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

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

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

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

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

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

d. Public Rights-of-Way Water Conservation Measures: All landscaping initially installed by the City in the Project's public-rights-of-way, including thoroughfare medians and public sidewalks, shall maximize the use of drought tolerant and

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

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

B. The Project

The entire Site is comprised of real property, a portion of which is owned by or to be acquired by the Agency or City and a portion of which is to be conveyed to the Developer, as more particularly described in Sections 104 and 201. As part of the planning process and development contemplated by this Agreement, some of the parcels comprising the Site will be created or reconfigured in order to create the specific parcels referenced herein.

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

C. Organization of Scope of Development

Parts II, III, and IV of this Scope of Development ~~sets~~set forth, by Area (North Waterfront, Central Waterfront, and South Waterfront, respectively), the proposed development of the Project on the Site, including various actions of the parties to prepare the Site for development, a description of the various private and public parcels, the intended owner of each parcel, the intended use and development of each parcel, the roles and responsibilities of the parties in causing design, construction and funding of the intended use and development, and other pertinent information to guide the development by the parties of each parcel and the related public improvements. Part V addresses alternative construction management methods.

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

II. NORTHERN WATERFRONT

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

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

A. Developer ~~Parcels~~Parcel A and City/Agency Parcel D2 (Wetland Park)

{~~The following Developer Parcels within the Northern Waterfront Area shall be conveyed by the Agency to the Developer~~} ~~(in fee or by ground lease, as noted below)~~{~~in accordance with the terms of this Agreement, and shall be developed by the Developer in accordance with the following general terms and conditions.~~}

~~1. Parcel A.~~

1. Overview of Development.

Parcel A (consisting of subparcels A1 and A2) is an approximately ~~14.9~~11.3-acre parcel. Upon satisfaction of all applicable pre-disposition requirements set forth in this Agreement, the Agency shall convey fee title to Parcel A to the Developer for the Purchase Price set forth in Section 201.3.

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

The Developer, at its cost (subject to a cost cap on specified related off-site improvements as further provided in Section II.C.3 below) and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for the development of Parcel A, ~~and shall design and construct up to 175 single-family attached residential units (each with a two-car garage), the required public streets and private alleys (including visitor parking spaces), and associated private amenities (including swimming pool, private recreational facilities,~~ {~~and private landscaped areas~~}) ~~within Parcel A in accordance with~~Parcel D2 and the related off-site improvements described below, and shall design and develop Parcel A, Parcel D2 and the related off-site improvements generally as follows and as more fully provided in the Project Approvals~~.~~:

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

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

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

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

Prior to submitting a Unit Plan application for the residential development of Parcel A, and in consultation with the City, the Developer shall sponsor, advertise (in the Vallejo *Times Herald*), and provide appropriate and reasonable public notice of, two (2) public community design workshops regarding the townhouse architectural design. The Coalition shall be provided with mailed notice of these meetings in accordance with the Settlement Agreement.

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

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

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

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

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

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

3. Wetland Park on Parcel D2. The Wetland Park on Parcel D2 shall be centrally located and consist of a minimum of 4.0 contiguous acres, with approximately 1.5 to 1.7 acres comprised of vegetated swales, wetland terraces, and a tidal pond connected to the Mare Island Straight. The 4.0 acre size shall not be reduced to accommodate any non-Park use, including but not limited to the residential development described in Section II.A.1 above,

parking, public and private streets, and "paseos" or perimeters of the private development that are not contiguous to the Wetland Park open space. Emergency vehicle-only access will be constructed of grasscrete or similar material and will be located as depicted in Attachment No. 4-1A. Attachment No. 4-1E provides a conceptual plan for the Wetland Park on Parcel D2.

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

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

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

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

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

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

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

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

4. Section 404 Permit Work. The Agency has obtained the necessary Section 404 Permit from the U.S. Army Corps of Engineers to enable the Developer to conduct necessary grading activities on Parcel A and Parcel D2. The Section 404 Permit is in effect through December 31, 2009. The Developer shall perform the grading work in compliance with the Section 404 Permit (the "Section 404 Permit Work") within the time set forth in the Schedule of Performance (Attachment No. 3).

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

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

[The following Developer Parcels within the Northern Waterfront Area shall be conveyed by the Agency to the Developer] ~~(in fee or by ground lease, as noted below)~~ by ground lease[in accordance with the terms of this Agreement, and shall be developed by the Developer in accordance with the following general terms and conditions.]

~~2.~~1 Developer Parcels B1 and B2.

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

The Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for development of Parcels B1 and B2, and shall design and construct a single-story commercial structure for retail and/or restaurant use, together with related private landscaping, on each of Parcels B1 and B2 in accordance with the Project Approvals. The combined square footage of the two commercial structures on Parcels B1 and B2 shall not exceed 12,000 square feet~~.~~; provided, however, that the combined square footage of the two commercial structures on Parcels B1 and B2 may exceed 12,000 square feet if there is a corresponding reduction in the square footage of the commercial structure on Parcel C1, such that the combined square footage of all the commercial structures on Parcels B1, B2 and C1 does not exceed 22,000 square feet. The use of the commercial structures shall be oriented to water-related and recreational uses, including a possible use of the structure on Parcel B1 for the sale and rental of recreational equipment, and a possible full-service restaurant use for the structure on Parcel B2.

Parcel B1 and the development thereon shall be entitled to parking rights and easements with respect to the parking to be provided on ~~Parcel E~~Parcels E and F and related parking areas in accordance with the Parcel E/F REA, as further described in Section II.~~B~~C.5 below. Parcel B2 and the development thereon shall be entitled to parking rights and easements with respect to the parking to be provided on Parcel C2 in accordance with the Parcel C2 REA, as further described in Section II.~~B~~C.2 below.

~~3.~~2. Developer Parcel C1.

Parcel C1 is an approximately 0.5-acre building pad parcel. Upon satisfaction of all applicable pre-disposition requirements set forth in this Agreement, the Agency shall enter into a City/Agency Ground Lease with the City and an Agency/Developer Sub-Ground Lease with the Developer for Parcel C1 in the manner provided in Section 201.4.

The Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for development of Parcel C1, and shall design and construct a single-story commercial structure for water-oriented commercial use, together with related private landscaping, within Parcel C1 in accordance with the Project Approvals. The square footage of such commercial structure on Parcel C1 shall not exceed 10,000 square feet; provided, however, that the square footage of the commercial structure on Parcel C1 may exceed 10,000 square feet if there is a corresponding reduction in the combined square footage of the commercial structures on Parcels B1 and B2, such that the combined square footage of all the commercial structures on Parcels B1, B2, and C1 does not exceed 22,000 square feet. Permitted uses on Parcel C1 shall include marina-serving retail, sale and rental of recreational equipment, a full-service restaurant, and other water-oriented uses.

Parcel C1 and the development thereon shall be entitled to parking rights and easements with respect to the parking to be provided on Parcel C2 in accordance with the Parcel C2 REA, as further described in Section II.~~B~~C.2 below.

C. ~~B.~~Public Facilities and Improvements

The following City/Agency Parcels and associated public improvements shall be developed in accordance with the following general terms and conditions.

1. Harbor Way.

The Harbor Way Parcel is an approximately 2.3-acre parcel to be owned by the City as the right-of-way for the relocated and realigned Harbor Way, a public street. Without cost to the Developer and in a manner consistent with approved vesting tentative map for the Northern Waterfront Area, the Agency shall, or shall cause the City to:

a. abandon those portions of the current Harbor Way right-of-way that will no longer comprise a portion of the realigned Harbor Way;

b. contribute those portions of any property owned by the Agency or the City that are needed as right-of-way for the realigned Harbor Way and obtain clearance of any encumbrances from such property that may prevent or impair development and use of Harbor Way as contemplated by this Agreement and the Project Approvals; and

c. obtain title to any portions of the right-of-way for the realigned Harbor Way not currently owned by the Agency or the City, clear of any encumbrances that may prevent or impair development and use of Harbor Way as contemplated by this Agreement and the Project Approvals.

The Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3 of the Amended DDA), shall design and construct street and utility improvements to cause the relocation and realignment of the public street and utilities to the area within the right-of-way of the Harbor Way Parcel, together with reconstruction of the intersection of such realigned Harbor Way with Mare Island Way, in accordance with the Project Approvals. The Developer shall bear no costs or expenses with respect to acquisition of the Harbor Way Parcel.

2. Parcel C2.

Parcel C2 is an approximately 1.1-acre parcel to be owned by the City to serve as public parking lot between the commercial pad developments on Parcels B2 and C1. The Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall design and reconstruct a surface parking lot and access driveway within Parcel C2 in accordance with the Project Approvals.

By Operating Memorandum, the Agency and the Developer shall agree upon the form of a reciprocal easement agreement to be executed and recorded against Parcels B2, C1, and C2 at the time of closing of the ground lease conveyance for the first to be conveyed of Parcels B2 or C1 (the "Parcel C2 REA"). Among other commercially reasonable terms, the Parcel C2 REA shall grant parking and access rights and easements over Parcel C2 and the improvement thereon to the tenants, subtenants, employees, occupants, patrons and other users of Parcels B2 and C1 and the improvements thereon, in order to make the private development and use of Parcels B2 and C1 commercially feasible. The Parcel C2 REA shall also grant such parking rights and easements over Parcel C2 and the improvements thereon to the users and tenants of the adjacent City Marina. In preparing the Parcel C2 REA, the parties shall reasonably cooperate with the tenants of the adjacent City Marina who will also be benefited by the Parcel C2 REA.

The Parcel C2 REA shall provide for the Developer or the tenants of the improvements on Parcels B2 and C1 to pay to the LLMD (as described and defined in Section I.D of the Method of Financing (Attachment No. 6)) common area maintenance charges to cover a portion of the costs of operation and maintenance of the Parcel C2 parking lot commensurate with the portion of the overall benefit of such parking lot received by Parcel B2 and Parcel C1, respectively, in relation to all users of such parking lot. The City or the LLMD (as described and defined in Section I.D of the Method of Financing (Attachment No. 6)) shall be responsible for the operation and maintenance of the improvements on Parcel C2.

If the parties are unable to agree upon the form of the Parcel C2 REA by the time the Developer is otherwise entitled to conveyance of the sub-ground leasehold interest for the first to be developed of Parcels B2 or C1, then either party may submit the matter for arbitration in accordance with the provisions of Section 706 to determine the form of the Parcel C2 REA consistent with the terms of this Section II.~~B~~C.2.

3. Parcel D1.

Parcel D1 is an approximately ~~3.5~~4.0-acre parcel to be owned by the City to serve as a public park (sometimes referred to as the "Promenade Park") for the Northern Waterfront Area (and the entire Vallejo community) on the west side of Harbor Way adjacent to the waterfront. Attachment No. 4-1F provides a conceptual plan for the Promenade Park on Parcel D1, which is subject to review and refinement pursuant to the public design process described below.

The Developer, at its cost (subject to the limitation set forth below) and in accordance with the Schedule of Performance (Attachment No. 3), shall construct ~~a public park~~the Promenade Park on Parcel D1 and related public park and open space improvements in accordance with the Project Approvals, and in accordance with a design for such park and related open spaces to be developed as follows:

a. The Agency and the City shall conduct a public participation process, and from such public participation process shall prepare a conceptual design (the "Conceptual Design") for public park and open space improvements on Parcel D~~1, Parcel F,~~1 and the public promenade along the waterfront within the Northern Waterfront Area (collectively, the "Northern Waterfront Public Park and Open Space Improvements"). As used herein, the term "Northern Waterfront Public Park and Open Space Improvements" shall consist of: (i) the Promenade Park improvements on Parcel D1; (ii) the Mare Island Causeway Underpass Pathway Improvements, as further described in Section II.A.2 above; (iii) the multipurpose switchback trail ramp providing direct access between the southern sidewalk of Mare Island Causeway and the existing promenade/trail along the water's edge, as further provided in the subsection entitled "Multi-purpose Trail Ramp from Causeway to Promenade Extension" within Section III.D.2.3.4.A of the Waterfront Design Guidelines accompanying the Planned Development Master Plan; and (iv) such other public park and open space improvements and features in the vicinity of the water's edge along the Northern Waterfront Area as may be included in the Conceptual Design. As used herein, the term "Northern Waterfront Public Park and Open Space Improvements" does not include the Wetland Park improvements as further described in Section II.A.3 above. At the time it completes the Conceptual Design, the Agency and the City, in cooperation with the Developer, shall also prepare an estimated budget for performance of the design tasks described in this subsection a. and subsection b. below, and for actual construction of the Northern Waterfront Public Park and Open Space Improvements in accordance with such Conceptual Design (the "Preliminary Budget").

b. Based on the Conceptual Design, the Developer shall prepare, for approval by the Agency and the City, detailed plans and specifications (the "Detailed Plans") and a detailed cost estimate (the "Construction Cost Estimate"), including a reasonable construction contingency, for the construction of the Northern Waterfront Public Park and Open Space Improvements.

c. The Agency and the City shall approve the Detailed Plans if they are materially consistent with the Concept Design and if the construction cost set forth in the Construction Cost Estimate, together with the costs incurred for performance of the tasks described in subsections a. and b. above (collectively, the "Design/Construction Costs"), do not exceed the total amount set forth in the Preliminary Budget. If the Detailed Plans are materially consistent with the Concept Design, but the Design/Construction Costs exceed the total amount set forth in the Preliminary Budget, the Agency and the City, in consultation with the Developer, shall either approve the Detailed Plans notwithstanding such excess cost or specify modifications to the Detailed Plans (the "Modified Detailed Plans") that will enable the Design/Construction Costs to be within the total amount of the Preliminary Budget, or such other total amount as is then acceptable to the Agency and the City, in consultation with the Developer.

If the parties are unable to agree upon the form of mutually acceptable Design Plans or Modified Design Plans within the time provided in the Schedule of Performance (Attachment No. 3), then either party may submit the matter for arbitration in accordance with the provisions of Section 706 to determine the form of the Design Plans or Modified Design Plans consistent with the terms of this Section II.~~B~~C.3.

The Developer shall construct the Northern Waterfront Public Park and Open Space Improvements on Parcel D1 (and other applicable parcels and areas within the Northern Waterfront Area) in accordance with the Design Plans or the Modified Design Plans approved by the Agency and the City, and shall pay, when due, the soft and hard costs of design and construction of the Northern Waterfront Public Park and Open Space Improvements on Parcel D1 (and other applicable parcels and areas within the Northern Waterfront Area), including the design tasks described in subsections a. and b. above; provided, however, that the maximum amount payable by the Developer for the design and construction of the Northern Waterfront Public Park and Open Space Improvements on Parcel D1 and other applicable parcels and areas within the Northern Waterfront Area shall be ONE MILLION SIX HUNDRED TWENTY-NINE THOUSAND ONE HUNDRED FIFTY DOLLARS ($1,629,150). The amount actually expended by the Developer for this purpose, as reviewed and approved by the City, is referred to as the "Developer's Northern Waterfront Public Park and Open Space Contribution." The Agency shall pay, when due, any costs of design and construction of the Northern Waterfront Public Park and Open Space Improvements on Parcel D1 (and other applicable parcels and areas within the Northern Waterfront Area) in excess of the Developer's Northern Waterfront Public Park and Open Space Contribution.

The City or the LLMD (as described and defined in Section I.D of the Method of Financing (Attachment No. 6)) shall be responsible for the ongoing operation and maintenance of the improvements on Parcel D1.

4. Parcel D2.

Parcel D2 is an approximately ~~0.7~~4.0-acre parcel to be owned by the City ~~to serve as public open space for the Northern Waterfront Area on the east side of Harbor Way near the intersection with Mare Island Way. The Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for development of the Parcel D2 public open space improvements, and shall design and construct public open space improvements on Parcel D2 in accordance with the Project Approvals. The Developer shall pay, when due, the soft and hard costs of design and construction of the public open space improvements on Parcel D2~~and developed by the Developer to serve as the Wetland Park, as fully set forth in Section II.A.3 above.

The City or the LLMD (as described and defined in Section I.D of the Method of Financing (Attachment No. 6)) shall be responsible for the ongoing operation and maintenance of the improvements on Parcel D~~2.~~2, as further described in Section II.A.3.

5. Parcel E, Parcel F, and Related Parking Areas.

Parcel E is an approximately ~~1.4~~0.6-acre parcel and Parcel F (formerly known as "Jazz Festival Green") is an approximately 0.8-acre parcel to be owned by the City to serve as a public parking lot ~~between~~in the vicinity of the commercial pad development on Parcel B1 and the ~~public park~~Promenade Park on Parcel D1. The Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for, and shall design and construct or reconstruct, as applicable, a surface parking lot and access driveway within Parcel E and Parcel F in accordance with the Project Approvals.

In order to facilitate the reconfiguration of parking in the Northern Waterfront Area west of Harbor Way generally in the manner shown on Attachment No. 4-1A, the City and the Agency may seek lease amendments (the "Parking-Related Lease Amendments") with Zio Fraedo's, the Sardine Can, and other tenants on the parcels north of Parcel F (the "Related Parking Areas"). The parties cannot predict whether the Parking-Related Lease Amendments will be obtained. Failure to obtain such Parking-Related Lease Amendments shall not be grounds for reducing the size of the Promenade Park on Parcel D1 or the Wetland Park on Parcel D2. If the Parking-Related Lease Amendments are obtained by the City and the Agency, the Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for, and shall resurface and re-stripe the parking lots and any access driveway(s) within the Related Parking Areas in a manner generally consistent with the reconfiguration of parking on such Related Parking Areas shown in Attachment No. 4-1A.

By Operating Memorandum, the Agency and the Developer shall agree upon the form of a reciprocal easement agreement to be executed and recorded against Parcels B1, D1, ~~and E~~E, F and the Related Parking Areas (if the Parking-Related Lease Amendments are obtained) at the time of closing of the ground lease conveyance for Parcel B1 (the "Parcel E/F REA"). Among other commercially reasonable terms, the Parcel E/F REA shall grant parking and access rights and easements over ~~Parcel E and the improvement~~Parcels E and F (and the Related Parking Areas if the Parking-Related Lease Amendments are obtained), and the improvements thereon to the tenants, subtenants, employees, occupants, patrons and other users of Parcel B1 and the improvements thereon, in order to make the private development and use of Parcel B1 commercially feasible. The Parcel E/F REA shall also grant such parking rights and easements~~ over Parcel E and the improvements thereon~~ to the users and tenants of the adjacent City Marina. In preparing the Parcel E/F REA, the parties shall reasonably cooperate with the tenants of the adjacent City Marina who will also be benefited by the Parcel E/F REA.

The Parcel E/F REA shall provide for the Developer or the tenants of the improvements on Parcel B1 to pay to the LLMD (as described and defined in Section I.D of the Method of Financing (Attachment No. 6)) common area maintenance charges to cover a portion of the costs of operation and maintenance of the ~~Parcel E~~ parking lot on Parcels E and F (and the Related Parking Areas if the Parking-Related Lease Amendments are obtained) commensurate with the portion of the overall benefit of such parking lot received by Parcel B1 in relation to all users of such parking lot. The City or the LLMD (as described and defined in Section I.D of the Method of Financing (Attachment No. 6)) shall be responsible for the operation and maintenance of the improvements on ~~Parcel E.~~Parcels E and F (and the Related Parking Areas if the Parking-Related Lease Amendments are obtained)

If the parties are unable to agree upon the form of the Parcel E/F REA by the time the Developer is otherwise entitled to conveyance of the sub-ground leasehold interest for Parcels B1, then either party may submit the matter for arbitration in accordance with the provisions of Section 706 to determine the form of the Parcel E/F REA consistent with the terms of this Section II.B.~~5.~~5..

~~6. Parcel F (Jazz Festival Green).~~

~~Parcel F is an approximately 1.0 acre parcel to be owned by the City and designated and reserved for park use. To the extent the Design Plans for the Northern Waterfront Public Park and Open Space Improvements (prepared and approved in accordance with Section II.B.3 above) provide for development of improvements on Parcel F, the Developer shall construct, and the Developer and the Agency (if applicable), shall pay for the cost of design and construction of such improvements, in the time and manner provided in Section II.B.3 above for the overall Northern Waterfront Public Park and Open Space Improvements.~~

D. ~~C.~~ Area-Wide Actions

The following additional terms shall apply to the development of the Northern Waterfront Area pursuant to this Agreement.

1. State Lands Commission Action.

A small portion of Parcel A, in the vicinity of Mare Island Way and Mare Island Causeway, is within the boundary of the current State tidelands public trust administered by the SLC. While the tidelands public trust area within Parcel A encroaches only on land to be devoted to private streets and landscaped open space (and does not affect land intended for residential units), the parties desire to free the entirety of Parcel A from such tidelands public trust designation. To that end, the Agency, in cooperation with the Developer and at the Developer's cost, shall perform the following actions, within the time set forth in the Schedule of Performance (Attachment No. 3), to obtain SLC approval of a minor amendment to the existing settlement and exchange agreement with the SLC (the "Parcel A Exchange Agreement Amendment"), whereby in exchange for the release of public trust designation from Parcel A, the City will make available for public trust designation a greater amount of land to the west of Parcel A (including portions of Parcel D1 that are to be developed as ~~a public park~~the Promenade Park and open space, as described in Section II.~~B~~C.3 above):

a. Preparation of a proposed Parcel A Exchange Agreement Amendment, and necessary documentation, including an appraisal, legal descriptions of the proposed exchange properties, and other documents, to support City Council and SLC approval;

b. Presentation of the proposed Parcel A Exchange Agreement Amendment and supporting documentation to the City Council for consideration of approval; and

c. If approved by the City Council, presentation of the proposed Parcel A Exchange Agreement Amendment and supporting documentation to the SLC for consideration of approval.

2. Bay Conservation and Development Commission Approvals.

It is anticipated that the private and public development of Northern Waterfront Area within BCDC jurisdiction may require minor administrative amendments to existing BCDC development permits. In accordance with the Schedule of Performance (Attachment No. 3~~ of the DDA~~), and at the Developer's cost, the parties shall cooperate to apply for and obtain any administrative amendments required from BCDC with respect to the applicable current BCDC development permits for the Northern Waterfront Area.

Without limiting the generality of the foregoing paragraph, the parties acknowledge that the parties may be required to seek an amendment of BCDC permit no. 1-86, as amended through Amendment No. 11, in order to accommodate a reconfiguration of the parking in the Northern Waterfront Area generally in the manner shown on Attachment No. 4-1A. The parties shall work cooperatively and in good faith to urge BCDC to agree to the reduction in parking required by the BCDC permit. The parties cannot predict whether any required amendments to BCDC permit no. 1-86 will be obtained. Failure to obtain such amendments shall not be grounds for reducing the size of the Wetland Park on Parcel D2 or the Promenade Park on Parcel D1.

3.~~Pedestrian Walkway Under Causeway.~~

~~The Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain the necessary Project Approvals for, and shall design and construct, pedestrian walkway improvements under the Mare Island Causeway in accordance with the Project Approvals.~~ ~~4.~~ Mare Island Causeway and Mare Island Way Widening Improvements.

The Agency shall cause the City to implement the applicable requirements of the Mare Island Specific Plan (as may be amended), the Development Agreement (as may be amended) between the City and Lennar Mare Island, LLC ("Lennar"), and related environmental mitigation measures (collectively, the "Lennar Project Documents"), in turn to cause Lennar to complete the design and construction of certain improvements related to the widening of Mare Island Causeway and Mare Island Way (the "Widening Improvements") at the time and in the manner set forth in the Lennar Project Documents. The Agency ~~and~~shall or shall cause the City ~~shall~~to assure that the Widening Improvements, and the right-of-way required in connection therewith, shall not encroach across the intended boundary line for Parcel A adjacent to Mare Island Causeway and Mare Island Way as set forth in the boundary line diagram contained in Attachment No. 8 of this Agreement.

4. Parking Lots Landscaping.

The parking lots in the Northern Waterfront Area shall include landscaping as required by the Project Approvals.

E. ~~D.~~ Independent Obligation

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

III. CENTRAL WATERFRONT

Public and private redevelopment of the Central Waterfront Area under this Agreement will be undertaken to create Vallejo Station as a vibrant multi-modal transit center, to provide high intensity residential and commercial uses in the immediate vicinity of Vallejo Station, and to establish a strong, pedestrian-oriented linkage between the Downtown area and the Central Waterfront.

Section III.A below sets forth the scope of development for Parcel L (the core of the Vallejo Station development), while Section III.C addresses the scope of development for Parcel J. Section III.C below outlines the scope of development for the public parcels and improvements in the Central Waterfront Area. Following are standards and procedures of general applicability to the design and development of various parcels and improvements in the Central Waterfront Area.

The architecture in the Central Waterfront Area must be sensitive to the pedestrian scale and the nature of the waterfront experience. People arriving on the ferry, walking, or driving in from the surrounding areas should see highly articulated and well-defined architecture spanning the Mare Island Way street frontage from Capitol Street to Maine Street. Georgia Street is the retail commercial spine of the downtown and special care should be taken in defining the architectural treatment of this gateway to give it the emphasis it needs while maintaining an inviting and attractive appeal to the pedestrian.

Articulation and terracing of building massing shall be the primary ways to achieve the necessary architectural variation in massing. Emphasis shall be placed on designing highly articulated (both horizontally and vertically) and well-detailed buildings fronting all streets in the Central Waterfront Area. The primary goal of terracing and articulation is to avoid blank, minimally articulated building walls fronting Mare Island Way, Georgia Street, Santa Clara Street, and Maine Street and to avoid building facades on Mare Island Way that have only one continuous minimum setback without terracing of the building massing. This articulation shall apply to all levels fronting on all streets in the Central Waterfront Area, regardless of building height. The articulation and terracing in the building massing should be large enough to allow the residential or office uses on the upper floors to use this space as an outdoor terrace when appropriate for the associated use, in order to increase activity along these important building facades. Curvilinear buildings are not appropriate in the Central Waterfront Area, although curvilinear design features such as turrets and window details are acceptable. Attachment No. 4-2A depicts examples of developments that reflect this type of articulation and terracing.

Building heights generally shall step down in a westerly direction from Santa Clara Street to Mare Island Way, as depicted on Attachments No. 4-2B, 2C, 2D, and 2F, and as fully described in the Project Approvals (with particular reference to the Planned Development Master Plan and Waterfront Design Guidelines). Specific standards and requirements regarding building height limits (and the measurement of such height limits), as well as building setbacks, shall be those set forth in the Project Approvals (with particular reference to the Planned Development Master Plan and the Waterfront Design Guidelines).

The Unit Plan applications submitted for Parcel J and Parcel L shall each provide that no less than 20 percent of such parcel's surface area shall be public or private open space. Public and private open space shall include sidewalks, public plazas, public[and private landscaped areas], private courtyards, pedestrian alleys, or such other equivalent spaces.

Prior to the submittal by the Developer of any Unit Plan application(s) for Parcels J and L, and in consultation with the City, the Developer shall sponsor, advertise (in the Vallejo *Times Herald*), and provide reasonable and appropriate public notice of a minimum of two (2) public community design workshops regarding architecture, including the L3 Public Garage (commonly referred to as the Vallejo Station garage) entrances. The Coalition shall be provided with mailed notice of these meetings in accordance with the Settlement Agreement.

[To support long-term Agency financing of the L3 Public Garage (as described in Section III.A.3 below), the Schedule of Performance (Attachment No. 3) requires the Developer to acquire]~~Parcel L1 not later than six (6~~the first-to-be developed L Developer Parcel not later than twelve (12[) months after commencement of substantial construction of the L3 Public Garage]~~.~~.

As used below in connection with retail/commercial uses for Parcels J and L, the following terms have the following meanings:

"Category 1 Uses" means those permitted and conditionally permitted uses set forth in the column entitled "Parcel J1 (Frontage on Festival Green) and Parcel L2" in Table 3 of the Planned Development Master Plan (as amended by the Settlement-Related Amendments).

"Category 2 Uses" means those permitted and conditionally permitted uses set forth in the column entitled "Parcels L1 and L4" in Table 3 of the Planned Development Master Plan (as amended by the Settlement-Related Amendments).

A. Parcel L (Vallejo Station)

The L Developer Parcels (Parcels L1, L2, and L4) shall be conveyed by the Agency to the Developer in fee in accordance with the terms of this Agreement, and shall be developed by the Developer in accordance with the following general terms and conditions. In addition, Parcels L3 and L5 shall be owned by the City or the Agency and developed by the Agency in accordance with the following general terms and conditions.

The City and the Agency are studying the feasibility of alternative strategies and opportunities for implementation of the Vallejo Station project on Parcel L, including a phased approach for parking in the Central Waterfront Area and Vallejo Station. The parties shall consider in good faith any proposed change in the scope, timing, phasing and funding of development of Vallejo Station resulting from such study of alternative strategies, with the objective of achieving the most timely and cost effective development of Vallejo Station that accomplishes as nearly as possible the planning and financial objectives of the parties as reflected in the current scope, timing, phasing and funding of such development. Any mutually acceptable modifications to the scope, timing, phasing and/or funding of the Vallejo Station project on Parcel L shall be set forth in a mutually acceptable Operating Memorandum executed in accordance with Section 709 and, as needed, in a mutually acceptable amendment to the Planned Development Master Plan (including accompanying Waterfront Design Guidelines).

1. Parcel L1.

Parcel L1 is an approximately 1.9 acre parcel. Upon satisfaction of all applicable pre-disposition requirements set forth in this Agreement, the Agency shall convey fee title to Parcel L1 to the Developer for the Purchase Price set forth in Section 201.6.

The Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for the development of Parcel L1, and shall design and construct a ~~four and five-story~~ mixed-use residential/commercial structure on Parcel L1 in accordance with the Project Approvals. The Parcel L1 improvements shall consist of up to 140-condominium units as flats, approximately 241 parking spaces in a two-level garage, and up to 14,000 square feet of retail commercial space fronting Mare Island Way at the Maine Street intersection.

Uses on the ground floor of the building on Parcel L1 fronting on Mare Island Way shall be Category 2 Uses.

{~~To support long-term Agency financing of the L3 Public Garage (as described in Section III.A.3 below), the Schedule of Performance (Attachment No. 3) requires the Developer to acquire~~ }~~Parcel L1 not later than six (6~~{~~) months after commencement of substantial construction of the L3 Public Garage~~}~~.~~

2. Parcel L2.

Parcel L2 is also an approximately 1.9 acre parcel. Upon satisfaction of all applicable pre-disposition requirements set forth in this Agreement, the Agency shall convey fee title to Parcel L2 to the Developer for the Purchase Price set forth in Section 201.6.

The Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for the development of Parcel L2, and shall design and construct a two and three-story office/commercial structure on Parcel L2 in accordance with the Project Approvals. The Parcel L2 improvements shall consist of up to 63,000 square feet of office/commercial space above one level of subterranean parking containing approximately 215 parking spaces.

Uses on the ground floor of Parcel L2 shall be Category 1 Uses.

At the corner of Mare Island Way and Georgia Street, a set back of the building on Parcel L2 shall be provided to create a public open space area of no less than 1,900 square feet (as depicted in Attachment No. 4- 2E), which may include outdoor seating.

3. Parcel L3.

Parcel L3 is a parcel of space with a footprint of approximately 4.6 acres occupying the lower levels of a vertical subdivision that will also include Parcels L4 and L5 (with a combined footprint of approximately 4.25 acres) at upper levels above the parking garage structure to be developed on Parcel L3 (the "L3 Public Garage", commonly referred to as the Vallejo Station Garage). Parcel L3 shall be owned and operated by the City or the Agency.

The Agency, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for the development of the L3 Public Garage, and shall design and construct the L3 Public Garage within Parcel L3 in accordance with the Project Approvals and designs approved by the City. The L3 Public Garage shall consist of a two-level public parking structure containing approximately 1,190 parking spaces, related off-site public improvements, and support columns, utilities, and a podium deck to support the development of the public paseo and related public improvements atop the garage structure within vertical subdivision Parcel L5 (as further described in Section III.A.5 below).

If agreed by the parties pursuant to a Parcel L4 Operating Memorandum (as provided in Section III.A.4 below), or if independently elected by the Agency, the L3 Public Garage shall also contain support columns, utilities, and a podium deck (the "L3 Public Garage Support Facilities For Parcel L4") to support the private development contemplated within vertical subdivision Parcel L4 (as further described in Section III.A.4 below).

The Agency shall pay the costs of design and construction of the L3 Public Garage using Vallejo Station Funds and other Agency MOF Funds (as defined and described in Section I.E.1 of the Method of Financing (Attachment No. 6)), as necessary.

4. Parcel L4.

Parcel L4 is a parcel of space with a footprint of approximately 2.8 acres atop the podium deck of the L3 Public Garage. Parcel L4 will be a part of the vertical subdivision that will also include Parcels L3 and L5.

Within the time set forth in the Schedule of Performance (Attachment No. 3), the parties shall seek to negotiate and execute an Operating Memorandum in accordance with Section 709 (the "Parcel L4 Operating Memorandum") containing the following:

a. The precise dimensions of Parcels L3, L4, and L5, based on engineered plans prepared by the Agency for the L3 Public Garage and in sufficient detail to process a subdivision map establishing the vertical subdivision of Parcels L3, L4, and L5;

b. The procedures to be followed and the roles and responsibilities of the parties to accomplish the vertical subdivision creating Parcels L3, L4, and L5 in accordance with applicable legal requirements;

c. The form of a Reciprocal Easement and Joint Facilities Operation and Maintenance Agreement (the "Vallejo Station REA") granting to Parcel L4 necessary easement rights with respect to the L3 Public Garage Support Facilities For Parcel L4, and setting forth various joint and several construction, operation, maintenance and use rights and responsibilities with respect to the complex of interrelated structures to be developed on Parcels L3, L4, and L5; and

d. Such other matters as the parties mutually determine will facilitate the timely and cost effective construction, operation, maintenance and use of the complex of interrelated structures to be developed on Parcels L3, L4, and L5.

If, despite good faith efforts, the parties are unable to execute a mutually acceptable Parcel L4 Operating Memorandum within the allotted time, then:

e. The Agency may terminate this Agreement with respect to Parcel L4 only and the Developer shall have no further rights to acquire or develop Parcel L4;

f. Following termination of this Agreement with respect to Parcel L4, the Agency, at its discretion, may cause construction of the L3 Public Garage with or without the L3 Public Garage Support Facilities For Parcel L4; and

g. If the Agency does include the L3 Public Garage Support Facilities For Parcel L4, then it will be free to market and convey Parcel L4 at the time, in the manner, at the price, and for such use (consistent with then applicable City land use standards and requirements) as the Agency may determine.

If the parties execute a Parcel L4 Operating Memorandum, then, upon satisfaction of all applicable pre-disposition requirements set forth in this Agreement, the Agency shall convey fee title to Parcel L4 to the Developer for the Purchase Price set forth in Section 201.6. In connection with such conveyance, the parties shall cause recordation of the Vallejo Station REA in substantially the form provided in the Parcel L4 Operating Memorandum.

Upon acquisition, the Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for the development of Parcel L4, and shall design and construct within Parcel L4 a mixed-use structure atop the L3 Public Garage at the level of Santa Clara Street. The Parcel L4 improvements shall be designed and constructed in accordance with the Project Approvals and any applicable terms of the Parcel L4 Operating Memorandum. The Parcel L4 improvements shall consist of a two and four story building containing the following elements:

(1) up to ~~25,000~~approximately 6,000 square feet of retail/commercial space on the first level of the building along the frontage of Santa Clara Street; ~~and~~

(2) up to approximately 14,000 square feet of retail/commercial space in an arcade area fronting on Georgia Street (the "Arcade Area");

(~~2~~3) an additional 200,000 square foot hotel/restaurant/~~meeting~~conference center complex above the first level of the building, including a hotel of up to 200 rooms on the second to fourth levels (the "Hotel Improvements"), and a two-level restaurant and ~~meeting~~conference center facility of up to 32,000 square feet; and

(~~3~~4) a private parking garage on the first two levels of the building containing approximately 172 spaces to serve the uses described in items (1) and (2) above.

Prior to the submission of a Unit Plan application for the Hotel Improvements, the Developer shall submit to the City a description of the features of the Hotel Improvements and a market and feasibility study, prepared by an expert consultant, to identify the feasible hotel/conference market for the site and the amenities necessary to attract a high quality hotel operator. The Developer shall provide notice to the Coalition of the process for the selection of the consultant and provide an opportunity for pre-selection comments from the Coalition on the consultant. The consultant selected shall have experience in hotel/conference center marketing and feasibility studies. The study shall be presented to the City Council at a regularly noticed public hearing. A copy of the study shall be provided to the Coalition as specified in the Settlement Agreement.

Upon completion of the Hotel Improvements, the Developer shall have the option to sell or lease Parcel L4 (or a portion thereof) to a hotel operator (the "Hotel Operator") and, at the Developer's election, to a separate operator or operators for the restaurant and/or conference center who shall thereafter own and/or operate and maintain the Parcel L4 improvements (or the applicable portion thereof) in accordance with this Agreement and the provision of the Hotel Operating Agreement (and the Restaurant Operating Agreement and/or Conference Center Operating Agreement, as applicable) to be entered into pursuant to Section 705 of this Agreement. The Developer may also Transfer Parcel L4 (or subdivided portions thereof and the improvements thereon) as otherwise permitted in this Agreement for Transfers of the Developer Parcels (including procurement of Agency approval where such approval is required under applicable provisions of this Agreement).

As further described below, uses in the Arcade Area shall be Category 1 Uses or Category 2 Uses. The Developer shall, for a time period ending no earlier than twelve (12) months from the date of completion of the retail building shell, use good faith and commercially reasonable efforts to lease the Arcade Area space to tenants occupying their space for Category 1 Uses ("Category 1 Tenants"). If at the expiration of this twelve (12) month period, the Developer has been unable to fully lease the available Arcade Area space to Category 1 Tenants, the Developer shall be free to pursue tenants and to lease any remaining unleased Arcade Area space to tenants occupying their space for Category 2 Uses.

Uses on the first level of the building on Parcel L4 along the frontage of Santa Clara Street shall be Category 2 Uses.

5. Parcel L5.

Parcel L5 is a parcel of space with a footprint of approximately 1.45 acres atop the podium deck of the L3 Public Garage. Parcel L5 will be a part of the vertical subdivision that will also include Parcels L3 and L4. Parcel L5 will be owned and operated by the City or the Agency.

The Agency, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for the development of Parcel L5, and shall design and construct on Parcel L5 a public paseo connecting the Bus Transfer Station to be developed on Parcel O with the Ferry Facility, together with surface parking spaces and related landscaping and amenities. The Parcel L5 improvements shall be designed and constructed in accordance with the Project Approvals and designs approved by the City. The Agency shall pay the costs of design and construction of the Parcel L5 improvements using Vallejo Station Funds and other Agency MOF Funds (as defined and described in Section I.E.1 of the Method of Financing (Attachment No. 6)), as necessary.

The parties acknowledge that, in accordance with the Settlement Agreement, the City and the Agency shall delay installation of the planned northern row of parking along the pedestrian paseo within Parcel L5 until, in the City's determination, the conference center or other uses in "Zone Two" (as such zone is shown in Attachment No. 4-2) require such additional parking spaces. Notwithstanding such delay, the City or the Agency shall be responsible for the cost of installing such parking spaces, as required above. Notwithstanding the above, in the event a phased approach is adopted for the construction of the L3 Public Garage, the City may reconfigure the parking adjacent to the paseo, maintaining a minimum eighteen foot (18') pedestrian paseo, until the second phase of the L3 Public Garage construction is completed.

B. Parcel J

The J Developer Subparcels (Parcels J1 and J2) shall be conveyed by the Agency to the Developer in fee in accordance with the terms of this Agreement, and shall be developed by the Developer in accordance with the following general terms and conditions.

Parcels J1 and J2 are parcels of approximately 2.7 acres and 4.1 acres, respectively. Upon satisfaction of all applicable pre-disposition requirements set forth in this Agreement, the Agency shall convey fee title to Parcels J1 and J2 to the Developer (either concurrently or at separate times as determined by the Developer) for the Purchase Price(s) set forth in Section 201.5.

The Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for the development of Parcels J1 and J~~2,~~2 and Civic Center Drive, and shall design and construct Civic Center Drive and a total of up to 286 residential units in two to four level buildings constructed on top of one story podium garage structures, half below and half above grade. The development of Parcel J will occur in two phases on the two J Developer Subparcels. The units will be stacked flat residential condominiums containing one, two, and three-bedrooms. The garage structures will provide off-street secure, resident parking for approximately 516 vehicles, as well as residential unit storage space, a utility room, stairwells, and elevator areas. The development will include extensive at-grade perimeter landscaping and private recreation and landscaping on the podium decks. Consistent with the Project Approvals, the development of Parcel J~~ may include~~1 includes approximately 25,000 square feet of ground floor ~~retail uses~~Category 1 Uses fronting on the Mare Island Way and Festival Green edges of the parcel.

Prior to the Developer's submittal of any Unit Plan application for Parcel J, the Developer and the City shall study the possibility of removing the intersection of Civic Center Drive and Georgia Street. The Agency shall cause the City to obtain an independent opinion from a qualified traffic engineer regarding whether the intersection's level of service (the "LOS") anticipated in the EIR for the Project can be maintained without the extension of Civic Center

~~Drive through Festival Green to Georgia Street. The Agency shall cause the City to provide notice to the Coalition of the process for the selection of the traffic engineer and provide for pre-selection comments from the Coalition on the traffic engineer proposed for selection. The Agency shall cause the City to conduct a pre-study meeting to solicit comments from interested parties, including the Coalition, regarding the scope of the study. The Developer shall fund the cost of this study. In the event it is determined that such LOS cannot be maintained, and Civic Center Drive is to be extended through Festival Green to Georgia Street, the traffic engineering study also shall include an analysis of possible measures (such as removable bollards) to prevent bisecting the public park on the Festival Green Parcel and the adjacent pedestrian area during non-peak traffic times.~~

The parties acknowledge that, as of the ~~date of this Agreement~~Action Dismissal Date, Parcel J contains certain veteran's memorial plaques. The Developer shall coordinate with the Agency regarding the relocation of such plaques.

Notwithstanding the Schedule of Performance, the Developer, at the Agency's discretion, may acquire and develop Parcel J prior to completion of the L3 Public Garage, provided alternative parking for ferry users shall be provided for during construction of the L3 Public Garage.

C. Public Facilities and Improvements

The following City/Agency Parcels and associated public improvements shall be developed in accordance with the following general terms and conditions.

1. Parcel O (Bus Transfer Center).

Parcel O is an approximately 0.9-acre parcel. Parcel O will be owned and operated by the City or the Agency as part of Vallejo Station.

The Agency, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for, and shall design and construct, a new Bus Transfer Center on Parcel O in accordance with the Project Approvals and designs approved by the City. The new Bus Transfer Center will include up to 12 bus bays, covered passenger waiting areas, seating, lighting, landscaping, and a 10,000 square foot transit office (including a ticket/pass office, a public information booth, and facilities for bus drivers). The Agency shall fund and perform any required site preparation and site remediation in connection with development of the new Bus Transfer Center. Also in connection with development of the new Bus Transfer Center, the Agency shall fund and cause reconfiguration of parking on nearby existing City Parking Lots F and G. The Agency shall pay the costs of design, site preparation/remediation, and construction of the new Bus Transfer Center improvements and related reconfigured public parking improvements using Vallejo Station Funds and other Agency MOF Funds (as defined and described in the Section I.E.1 of the Method of Financing (Attachment No. 6)), as necessary.

2. Other Transit-Related Improvements.

The Agency, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for, and shall design and construct, the following additional transit-related public improvements related to the Vallejo Station development (the "Other Transit-Related Improvements"):

a. Improvements to and expansion of the regional bus stops on Mare Island Way adjacent to the Ferry Facility; and

b. Improvement to and expansion of the existing pick-up/drop-off ("Kiss-and-Ride") area in the Kiss and Ride Parcel.

The Other Transit-Related Improvements shall be designed and constructed in accordance with the Project Approvals and designs approved by the City. The Agency shall fund and perform any required site preparation and site remediation in connection with provision of the Other Transit-Related Improvements. The Agency shall pay the costs of design, site preparation/remediation, and construction of the Other Transit Related Improvements using Vallejo Station Funds and other Agency MOF Funds (as defined and described in Section I.E.1 of the Method of Financing (Attachment No. 6)), as necessary.

3. Public Streets.

Through the Second Restatement of this Agreement, the parties acknowledge and agree that: (a) Capitol Street between Mare Island Way and Civic Center Drive has been fully improved pursuant to a separate disposition and development agreement (the "Parcel K DDA") between the Agency and CPC, one of the principals of the Developer; and (b) the Developer has completed all of its obligations toward the improvements on the Georgia Street Parcel and the Georgia Street Dedication Parcel in accordance with the intended scope of development for such improvements, and all aspects of the Georgia Street extension improvements have been satisfactorily completed.

Except as otherwise provided below, the Agency, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for the development of, and shall design and construct, the following public street improvements (the "Central Waterfront Public Street Improvements"):

a. Modifications to Mare Island Way to complete the landscaped median and other sidewalk and crosswalk improvements (as part of the Vallejo Station development);

b. Reconfiguration of Maine Street between its intersection with Mare Island Way and Santa Clara Street from four travel lanes to three travel lanes, and extension of the northerly curb line approximately six feet to the south (as part of the Vallejo Station development); and

c. Extension of Capitol Street between Santa Clara Street and its current terminus at Civic Center Drive, including provision of on-street parallel parking (the "Capitol Street Second Segment").

The Central Waterfront Public Street Improvements shall be designed and constructed in accordance with the Project Approvals and designs approved by the City. The Agency shall fund and perform any required site preparation and site remediation in connection with provision of the Central Waterfront Public Street Improvements. The Agency shall pay the costs of design, site preparation/remediation, and construction of the Central Waterfront Public Street Improvements using Vallejo Station Funds and other Agency MOF Funds (as defined and described in Section I.E.1 of the Method of Financing (Attachment No. 6)), as necessary.

Notwithstanding the foregoing, the Developer shall be responsible for the design and construction of the Capitol Street Second Segment in accordance with design plans and specifications to be prepared by the Developer and approved by the City. The construction of the Capitol Street Second Segment shall be subject to all bidding requirements and prevailing wage requirements applicable to such improvements. The Agency and/or the City shall be responsible for all costs directly associated with the design and construction of the Capitol Street Second Segment. The Agency shall use best efforts to obtain and make available all funding to pay for the Capitol Street Second Segment within a timeframe that will enable the Capitol Street Second Segment to be constructed by the date set forth in the Schedule of Performance (Attachment No. 3). Section III.D of the Method of Financing (Attachment No. 6) sets forth a process to be implemented by the parties in the event the Agency reasonably determines that it will not have sufficient Agency MOF Funds (as defined and described in Section I.E.1 of the Method of Financing) available within the necessary timeframe to complete construction of the City Hall Garage Required Elements (which include the Capitol Street Second Segment) by the date set forth in the Schedule of Performance. In no event shall the Developer be obligated to commence design and construction of the Capitol Street Second Segment until the Agency reasonably demonstrates the availability of sufficient Agency MOF Funds to pay all costs directly associated with such design and construction.

4. Public Parks and Open Spaces.

The Agency, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for the development of, and shall design and construct public park and open space improvements and amenities on, the following publicly-owned parcels in the Central Waterfront Area (the "Central Waterfront Public Parks and Open Space Improvements"):

a. The approximately 4.2-acre Existing Service Club Park Parcel;

b. The approximately 0.8-acre Existing Georgia Street Mitigation Parcel;

c. The approximately 1.8-acre Future Expansion Parcel;

d. The approximately 1.4-acre Independence Park Expansion Parcel;

e. The approximately 1.3-acre Existing Independence Park Parcel;

f. The approximately 2.3-acre State Farm Mitigation Independence Park Parcel;

g. The Ferry Facility Parcel;

h. The Kiss and Ride Parcel;

i. The approximately 0.6-acre Unity Plaza Parcel;

j. The approximately 0.9-acre Festival Green Parcel; and

k. The approximately 0.7-acre Capitol Street Open Space Parcel.

The Central Waterfront Public Parks and Open Space Improvements shall be designed and constructed in accordance with the Project Approvals and designs approved by the City. The Agency shall fund and perform any required site preparation and site remediation in connection with provision of the Central Waterfront Public Parks and Open Space Improvements. Also as part of the Central Waterfront Public Parks and Open Space Improvements, the Agency shall acquire the Wharf lease (within the Existing Service Club Park Parcel) and the Dentist Office lease (within the Independence Park Expansion Parcel), and shall design and construct public park and open space improvements on the parcels formerly encumbered by the Wharf lease and Dentist Office lease. The Agency shall pay the costs of design, site preparation/remediation, lease acquisition, and construction of the Central Waterfront Public Parks and Open Space Improvements using Vallejo Station Funds and other Agency MOF Funds (as defined and described in Section I.E.1 of the Method of Financing (Attachment No. 6)), as necessary.

The City or the LLMD (as described and defined in Section I.D of the Method of Financing (Attachment No. 6) shall be responsible for the ongoing operation and maintenance of the Central Waterfront Public Park and Open Space Improvements.

5. City Hall Garage.

In accordance with the Schedule of Performance (Attachment No. 3), the Agency shall obtain all necessary Project Approvals for the development of, and shall design and construct, a public parking structure (the "City Hall Garage") on the City Hall Parking Lot Parcel. The City Hall Garage shall be constructed in two phases as follows:

a. The "Phase I Element" will consist of approximately 400 parking spaces within two parking levels, one level below the grade of Santa Clara Street and one level at the grade of Santa Clara Street. The Phase I Element of the City Hall Garage will replace City Hall parking lost as a result of private development of Parcel J in the manner provided in Section III.B above.

b. The "Phase II Element" will consist of approximately 200 parking spaces within a third level to be constructed approximately 12 feet above the grade of Santa Clara

Street. The Phase II Element of the City Hall Garage will serve parking demand for the Bay Link ferry service if and when a fourth ferry is placed in service.

The City Hall Parking Garage shall be designed and constructed in accordance with the Project Approvals and designs approved by the City. The Agency shall perform any required site preparation and site remediation in connection with construction of the City Hall Parking Garage. The Agency shall pay the costs of design, site preparation/ remediation, and construction of the City Hall Garage in the manner set forth in the Section III. of the Method of Financing (Attachment No. 6).

IV. SOUTHERN WATERFRONT

Public and private redevelopment of the Southern Waterfront Area under this Agreement will be undertaken to remediate and redevelop a formerly blighted and obsolete industrial waterfront area for modern reuse, including significant public waterfront access. Redevelopment of the Southern Waterfront Area will also provide a relocation opportunity to move the Post Office facility from Parcel L, thereby freeing the land necessary for the Vallejo Station development in the Central Waterfront Area, as described in Section III above.

Section IV.A below sets forth the responsibilities and actions of the parties to prepare the Southern Waterfront Area for redevelopment under this Agreement. Section IV.B below outlines the scope of development for the Developer Parcels within the Southern Waterfront Area, while Section IV.C addresses the scope of development for the public parcels and improvements in the Southern Waterfront Area. Section IV.D below sets forth the Developer's independent obligation to perform the tasks and responsibilities assigned to the Developer under this Agreement with respect to the Southern Waterfront Area.

A. Preparatory Work

1. Purpose.

This Section IV.A outlines the proposed roles, responsibilities, and actions of the Agency and the Developer to prepare the Southern Waterfront Area to enable the contemplated private and public redevelopment of the Southern Waterfront Area consistent with the terms of this Agreement, including the scope of development set forth in Sections IV.B and IV.C below. As used in this Part IV, the Southern Waterfront Area consists of the parcels and public streets shown in Attachment No. 1C, including Parcel S, Parcel T, the S-Open Space Parcel, the T-Open Space parcel, the Boat Launch Parcel, Marin Street Extension, Solano Avenue Extension, and Kaiser Place.

Preparatory actions to enable development of the Southern Waterfront Area consist generally of the following (collectively, the "Southern Waterfront Preparatory Work"):

a. Remediation of identified currently existing hazardous materials contamination in, on, under or emanating from the Southern Waterfront Area (the "Southern Waterfront Remediation Work," as more fully described below); and

b. Actions to enable development of the Southern Waterfront Area consistent with applicable requirements of the SLC and BCDC (the "Southern Waterfront Regulatory Approvals Work," as more fully described below).

Additional pre-development steps to enable commencement of construction of the U.S. Postal Service Relocation Facility on Parcel T2 are described in Section 201.2, which addresses the relocation of the current U.S. Postal Service facility from its premises in Parcel L, so that development of the Vallejo Station project may commence on Parcel L in a timely manner.

2. Background.

The parties' agreement with respect to the performance and funding of the Southern Waterfront Preparatory Work is based, in part, on the following facts, purposes and intentions:

a. An area consisting of approximately the northern two-thirds of the Southern Waterfront Area (the "Contaminated Area") is characterized by soil gas, soil, and groundwater contamination conditions resulting from former uses of the Contaminated Area involving manufactured gas plant wastes, sand blast wastes, and fuel underground storage tanks. Although these contamination conditions do not pose immediate threat to public health or the environment, they require specified remediation to address regulatory concerns, and to enable private and public redevelopment as envisioned in this Agreement. These contamination conditions have been extensively identified and characterized, and are summarized in the RDEIR (see pages 3.9-10 through 3.9-13).

b. The area within the balance of the Southern Waterfront Area (approximately the southern one-third of the Southern Waterfront Area, or about 14 acres, and including all of Parcel T2) is not considered by the parties to be impacted by contaminants, and, subject to regulatory agency concurrence, can be made immediately available for redevelopment consistent with this Agreement, including construction of the Post Office Relocation Facility (the "Non-Contaminated Area").

c. The Regional Water Quality Control Water Board (the "Water Board") is the lead regulatory agency providing oversight for remediation of the Southern Waterfront Area, and has been actively involved with the City and the Agency for nearly a decade in the characterization of contamination conditions and the development of remediation work plans.

d. The City and the Agency are in advanced stages of settlement discussions with a former owner of the Southern Waterfront Area, the Pacific Gas & Electric Company ("PG&E"), intended to lead to a settlement of claims regarding the contamination conditions within the Southern Waterfront Area that would, among other matters, include settlement payments by PG&E to the City/Agency (the "Southern Waterfront Contamination Settlement Payments"). To further advance such settlement discussions, it is necessary that certain additional testing, remediation work plan scope refinements, and remediation budget estimating work be completed as soon as possible.

e. The City, the Agency and the SLC need to determine and agree upon the extent of public trust lands within the Southern Waterfront Area, and to memorialize such determination and agreement in a settlement and exchange agreement as contemplated by 2003 Senate Bill 296 (the "Southern Waterfront Area Exchange Agreement"), so that Parcels S and T may be developed free of any public trust restrictions.

f. The City and the Agency need to work with BCDC to cause BCDC to process and approve an amendment to the BCDC Bay Plan (a "BCDC Bay Plan Amendment"), and any permit amendments (the "BCDC Permit Amendments") necessary to enable the contemplated private and public development of the shoreline portions of the Southern Waterfront Area.

3. <u>Overview of Roles and Actions</u>.

The Southern Waterfront Preparatory Work shall be performed generally as follows:

a. The Agency, on behalf of itself and the City, shall be contractually responsible for completion of the Southern Waterfront Remediation Work in order to cause remediation of existing contaminants within the Southern Waterfront Area in a manner that is consistent with all regulatory requirements and that will enable the contemplated private and public redevelopment of the Southern Waterfront Area in accordance with this Agreement. The Southern Waterfront Remediation Work includes the following major components:

(1) Regulatory confirmation that the Non-Contaminated Area can be redeveloped without further investigation or remediation, as further described in Section IV.A.4 below;

(2) Completion of all pre-remediation tasks for the Contaminated Area, as further described in Section IV.A.5 below;

(3) Completion of actual physical remediation of the Contaminated Area and procurement of the appropriate closure document from the Water Board, as further described in Section IV.A.6 below (the "Physical Remediation Tasks"); and

(4) Conduct of any post-remediation monitoring required by the Water Board, as further described in Section IV.A.7 below.

To perform the tasks described in paragraphs (1) and (2) above in a timely and cost effective manner (and to assist in overseeing the Physical Remediation Tasks described in paragraph (3) above), the Agency shall engage the services of qualified professionals (collectively, the "Southern Waterfront Remediation Consultants"), including an environmental consultant, an environmental attorney, and a project coordinator/manager (who may be the environmental consultant or attorney serving an additional project coordination/management function). The Agency shall reasonably confer with the Developer regarding the selection and engagement of the Southern Waterfront Remediation Consultants.

b. The Agency shall also be contractually responsible for completion of the Southern Waterfront Regulatory Approvals Work so that Parcels S and T can be developed for private uses in the manner contemplated by this Agreement, as further described in Section IV.A.8 below. To perform these tasks, the Agency shall engage the services of qualified professionals to provide legal, engineering, appraisal, and other technical services (the "Southern Waterfront Regulatory Consultants"). The Agency shall reasonably confer with the Developer regarding the selection and engagement of any Southern Waterfront Regulatory Consultants.

c. The Developer shall cooperate with the Agency in the Agency's performance of the Southern Waterfront Preparatory Work. The Agency shall regularly consult with the Developer regarding the performance of the Southern Waterfront Preparatory Work, and shall consider in good faith the Developer's input regarding all such work.

d. By mutually acceptable Operating Memorandum entered into in accordance with Section 709, the parties may designate the Developer to serve as the Agency's project manager for various components of the Southern Waterfront Preparatory Work, including without limitation, as project manager to oversee performance of the Physical Remediation Tasks described in Section IV.A.6 below; provided, however, that in no event shall the Developer be deemed the "waste generator" in connection with the Southern Waterfront Remediation Work. Among other matters, any such mutually acceptable Operating Memorandum shall set forth the scope and timing of the Developer's project management duties and responsibilities, and the amount, method and timing of compensation to be paid to the Developer for the designated project management services.

e. The Agency, in cooperation with the Developer, shall use diligent good faith efforts to cause completion of the Southern Waterfront Preparatory Work within the timeframe set forth in the Schedule of Performance (Attachment No. 3). In any event, the Agency must complete the Southern Waterfront Remediation Work and the Southern Waterfront Regulatory Approvals Work prior to and as a condition of the conveyance of various portions of Parcels S and T by the Agency to the Developer.

f. The various actions to complete the Southern Waterfront Preparatory Work shall be funded in the manner described in Section IV.A.9 below.

4. <u>Regulatory Clearance For Non-Contaminated Area</u>.

With the assistance and guidance of the Southern Waterfront Remediation Consultants, and in consultation with the Developer, the Agency shall complete the tasks necessary to obtain regulatory clearance for the Non-Contaminated Area, including the following primary tasks:

a. Preparation of all final testing and documentation to be submitted to the Water Board to confirm that the Non-Contaminated Area can be cleared for development without further investigation or remediation.

b. Procurement of the necessary Water Board clearance of the Non-Contaminated Area for intended redevelopment.

5. Pre-Remediation Actions For Contaminated Area.

With the assistance and guidance of the Southern Waterfront Remediation Consultants, and in consultation with the Developer, the Agency shall complete the tasks necessary to prepare for commencement of the Physical Remediation Tasks for the Contaminated Area, including the following primary pre-remediation tasks:

a. Preparation of tests, work plans, cost estimates, and other documentation necessary to achieve the various pre-remediation tasks for the Contaminated Area set forth below in this Section IV.A.5.

b. Completion of a satisfactory settlement agreement with PG&E, including:

(1) Performance of required additional testing related to possible contamination in a designated near-shore area adjacent to the Southern Waterfront Area to further inform the settlement discussions;

(2) preparation of a refined work scope for remediation of the Contaminated Area to be used to obtain remediation cost estimates necessary to enable the parties to complete the settlement and determine the amount of the Southern Waterfront Contamination Settlement Payments (the "Settlement Budget Work Scope"), and procurement of informal Water Board approval of the Settlement Budget Work Scope for this use;

(3) Procurement at the Agency's cost of one bid, and procurement at PG&E's cost of a second bid, from remediation contractors acceptable to the Agency and PG&E, for performance of the Physical Remediation Tasks, based on the Settlement Budget Work Scope; and

(4) Using the cost information obtained from the above tasks, final negotiation, approval and execution of the settlement agreement with PG&E.

c. Completion of testing necessary to characterize and prepare work plans for remediation of peripheral portions of the Contaminated Area that are outside the scope of the PG&E settlement agreement and the Southern Waterfront Contamination Settlement Payments.

d. Preparation, submittal, and procurement of approval from the Water Board of a remedial action plan, remedial design and implementation plan, risk assessment, health and safety plan, and/or other plans necessary to document the work program to complete remediation of the Contaminated Area (collectively, the "RAP"), including satisfaction of remediation standards for portions of the Southern Waterfront Area to be used for public parks and open space. In connection with the processing of the RAP, the Agency shall procure the written acknowledgement from the Water Board authorized by Health and Safety Code Section 333459.3(b), as the first step in obtaining the Polanco Act Immunity (as defined and described in Section 215.2). If the Developer reasonably determines that implementation of the approved RAP will not enable private and public development at commercially reasonable cost of the portions of the Southern Waterfront Area within the Contaminated Area as contemplated by this Agreement, or that the Polanco Act Immunity will not be available following remediation, then the Developer may terminate this Agreement with respect to the portions of the Southern Waterfront Area within the Contaminated Area (a "Developer Southern Waterfront Termination Event") in accordance with Section 510.

e. Solicitation, selection and engagement of a qualified remediation contractor (the "Southern Waterfront Remediation Contractor") to perform the Physical Remediation Tasks necessary to implement the RAP and obtain the appropriate closure document from the Water Board. Notice to proceed under the Southern Waterfront Remediation Contract may be conditioned on procurement of all necessary funding by the Agency. The Agency shall submit the proposed remediation contract with the Southern Waterfront Remediation Contractor (the "Southern Waterfront Remediation Contract") to the Developer for the Developer's input.

f. Procurement from an acceptable insurance provider of a 10-year pollution limited liability insurance policy for the Contaminated Area (the "Southern Waterfront Pollution Risk Insurance"), naming the Agency and the Developer as primary insureds and in a form reasonably acceptable to both the Agency and the Developer. Procurement of the Pollution Risk Insurance may be conditioned upon giving of the notice to proceed under the Southern Waterfront Remediation Contract. In addition, the parties may mutually agree to investigate procurement of a commitment for a cost cap insurance policy (with an economically feasible self-insured retention/deductible) in connection with the Southern Waterfront Remediation Contract. Any agreement between the Agency and the Developer with respect to the procurement and payment of the premium for such a cost cap insurance policy may be set forth in a mutually acceptable Operating Memorandum.

g. Based on the foregoing actions, preparation of a remediation cost budget for completing the Physical Remediation Tasks (as further described in Section IV.A.6 below) with respect to the Contaminated Area (the "Physical Remediation Tasks Budget"). The Physical Remediation Tasks Budget shall be memorialized, and may be amended from time to time, through execution of Operating Memoranda in accordance with Section 709. The Physical Remediation Tasks Budget in effect from time to time shall guide the expenditure of funds by the Agency in connection with procurement of the Southern Waterfront Pollution Risk Insurance, performance of the Southern Waterfront Remediation Contract, continuing services of the Southern Waterfront Remediation Consultants, payment of Water Board and other regulatory agency costs, and payment of other costs related to completion of the Physical Remediation Tasks.

6. Remediation of Contaminated Area; Performance of Physical Remediation Tasks.

With the assistance and guidance of the Southern Waterfront Remediation Consultants, and in consultation with the Developer, the Agency shall cause completion of the Physical Remediation Tasks for the Contaminated Area, including the following primary tasks:

a. Supervision and oversight of performance and satisfactory completion by the Southern Waterfront Remediation Contractor of the Southern Waterfront Remediation Contract, including making all payments required pursuant to such contract.

b. Procurement of the necessary closure document from the Water Board indicating that:

(1) The Physical Remediation Tasks have been completed in accordance with the RAP;

(2) No further remediation work for the Contaminated Area is required in connection with the contamination conditions covered by the RAP;

(3) The Contaminated Area may be used and developed in the manner contemplated by this Agreement (subject only to use restrictions and monitoring requirements acceptable to the Agency and the Developer); and

(4) The Polanco Act Immunity is granted, as authorized by Health and Safety Code Section 333459.3(c).

7. Post-Remediation Monitoring.

In procuring the necessary Water Board closure document as described in Section IV.A.6.b above, the Agency shall seek to arrange that any required post-remediation monitoring functions will be conducted on the portions of the Southern Waterfront Area to remain in public ownership and control and not within Parcels S and T. If any post-remediation monitoring is required to occur on Parcels S and/or T, the Agency shall work with the Water Board and the Developer to arrange for such monitoring to occur on portions of Parcels S and/or T that do not impair the intended private development and use of Parcels S and T. The Agency shall be responsible for the timely and satisfactory conduct of any post-remediation monitoring required by the Water Board; provided, however, that if it is necessary for any such monitoring to occur on Parcels S and/or T, the parties shall agree by Operating Memorandum for the Agency to have necessary access rights to come onto Parcels S and/or T, as applicable, to perform such monitoring, or for the Developer or its successors to perform such monitoring on the Agency's behalf and at the Agency's expense.

8. Performance of Regulatory Approvals Work.

With the assistance and guidance of the Southern Waterfront Regulatory Consultants, and in consultation with the Developer, the Agency shall cause procurement of all agreements, approvals and permits or permit amendments from the SLC and BCDC necessary to enable private and public development of the Southern Waterfront Area in the manner contemplated by this Agreement, and to that end shall perform the following primary tasks:

a. Procurement of an executed and fully effective Southern Waterfront Area Exchange Agreement that, among other matters, establishes the legal boundaries of Parcels S and T that will be confirmed by the Southern Waterfront Area Exchange Agreement to be free of the tidelands public trust and the jurisdiction of the SLC, as well as the legal boundaries of the portions of the Southern Waterfront Area that will be subject to the tidelands public trust. Primary subtasks to obtain the Southern Waterfront Area Exchange Agreement, with a target completion date of June 2006, include the following:

(1) Preliminary actions to provide information and analysis from which to negotiate the terms of the proposed Southern Waterfront Area Exchange Agreement, including procurement of an appraisal of the "as is" value of the Southern Waterfront Area (based on appraisal instructions to be reviewed with SLC staff), consideration of remediation cost estimates established through the tasks described in Section IV.A.5 above to assist in determining the post-remediation value of lands within the Southern Waterfront Area proposed to be made part of the public trust, various title analyses pertaining to the extent of potential State interests in the Southern Waterfront Area (including a preliminary "work up" of potential State claims and an assessment of historical maps, court cases, and legal authority), and a meeting with SLC representatives to walk the site, and discuss development plans, proposed exchange parcels, and appraisal instructions.

(2) Negotiation of the proposed terms of the Southern Waterfront Area Exchange Agreement with SLC staff and general counsel, and preparation of the legal descriptions and plats of the final negotiated trust configuration (including the legal boundaries of Parcels S and T that will be free of the tidelands public trust); and

(3) Procurement of approval by the City Council and the SLC of the Southern Waterfront Area Exchange Agreement, and execution of the agreement.

b. Procurement of a BCDC Bay Plan Amendment to remove the "Water-Related Industry Priority Use Area" designation from the Southern Waterfront Area, and procurement of any necessary BCDC Permit Amendments to existing BCDC permits to reflect the proposed park and open space improvements to the portions of the Southern Waterfront Area that is within BCDC jurisdiction (together, the "BCDC Southern Waterfront Area Approvals"). Primary subtasks to obtain the BCDC Southern Waterfront Area Approvals, with a target completion date of ~~June 2006,~~September 2007, include the following:

(1) Determination of whether the BCDC Bay Plan Amendment should cover land in addition to the Southern Waterfront Area (e.g., the adjacent Kiewit site);

(2) Determination of any additional BCDC information requirements and preparation of the application for the BCDC Bay Plan Amendment;

(3) Procurement of BCDC staff approval of adequacy of the application;

(4) Procurement of City Council authorization to submit the BCDC Bay Plan Amendment application, and submission of the application;

(5) Procurement of BCDC approval of the BCDC Bay Plan Amendment to remove the "Water-Related Industry Priority Use Area" designation from the Southern Waterfront Area.

(6) Determination of any necessary BCDC Permit Amendments based on review of proposed improvements within the portion of the Southern Waterfront Area that is within BCDC jurisdiction;

(7) Preparation and submission of any necessary BCDC Permit Amendments;

(8) Procurement of BCDC approval of any necessary BCDC Permit Amendments.

The parties acknowledge that, as of the Action Dismissal Date, the necessary BCDC Bay Plan Amendment has been obtained.

9. Funding of Southern Waterfront Preparatory Work.

As used below, the term "Southern Waterfront Soft Cost Work" means performance of the Southern Waterfront Preparatory Work described in Section IV.A.4 (Regulatory Clearance for Non-Contaminated Area), Section IV.A.5 (Pre-Remediation Actions For Contaminated Area), and Section IV.A.8 (Regulatory Approvals Work).

a. Overview of Funding. Funding of up to FIVE HUNDRED THOUSAND DOLLARS ($500,000) of the Southern Waterfront Soft Cost Work shall be provided through use of the Additional Deposit to be provided by the Developer pursuant to Section 108.2 of this Agreement. The budget for use of the Additional Deposit to fund specific Southern Waterfront Soft Cost Work shall be set forth in one or more Operating Memoranda to be prepared and executed by the parties in accordance with Section 709. The Operating Memorandum for the initial Two Hundred Thousand Dollar ($200,000) portion of the Additional Deposit shall be prepared and executed within thirty (30) days after the Action Dismissal Date. The Additional Deposit shall be spent solely in accordance with the budget and terms set forth in an executed Operating Memorandum. The balance of the funding for the Southern Waterfront Soft Cost Work shall be provided by the parties in accordance with the terms of the Southern Waterfront Soft Cost Work Operating Memorandum, as further described in subsection b. below. The Physical Remediation Tasks shall be funded in accordance with the terms set forth in subsection c. below.

b. Southern Waterfront Soft Cost Work Operating Memorandum. Within ninety (90) days after the ~~Required Approvals Effective~~Action Dismissal Date, the parties shall negotiate and execute an Operating Memorandum in accordance with Section 709 (the "Southern Waterfront Soft Cost Work Operating Memorandum") establishing a budget and a mutually acceptable allocation of costs for completion of the Southern Waterfront Soft Cost Work (in excess of the costs to be covered by the Additional Deposit Amount as provided in Section 108.2 of the main text of this Agreement and subsection a. above), based on the following funding principles:

(1) Funds from PG&E and any other Agency MOF Funds (as defined and described in Section I.E.1 of the Method of Financing (Attachment No. 6)) available to pay costs of the Southern Waterfront Soft Cost Work shall be used to the maximum extent they are available and eligible for such use; and

(2) To the extent the Developer agrees to advance funds to pay for Southern Waterfront Soft Cost Work within the scope and amount of the budget set forth in the Southern Waterfront Soft Cost Work Operating Memorandum or any amendment thereto (the "Developer's Additional Soft Cost Advance"), the Developer shall be entitled to a credit against the Purchase Price payable by the Developer for Developer Parcels S and T, with such credit applied to each closing for portions of Developer Parcels S and T in chronological order until the credit is fully used.

By mutually agreed Operating Memoranda entered into from time to time, the parties may modify the Southern Waterfront Soft Cost budget and other terms of the Southern Waterfront Soft Cost Work Operating Memorandum. If the parties enter into a Southern Waterfront Soft Cost Work Operating Memorandum, the Agency shall thereafter pay the costs of the Southern Waterfront Soft Cost Work in accordance with the budget and other terms of the Southern Waterfront Soft Cost Work Operating Memorandum and any executed amendments thereto.

If the parties are unable to agree upon a Southern Waterfront Soft Cost Work Operating Memorandum within the negotiating period set forth above, then either party may submit the matter to arbitration in accordance with the provisions of Section 706 to determine the binding terms by which the Southern Waterfront Soft Cost Work will be funded in accordance with the funding principles set forth above. The determination of the arbitrator regarding the terms for funding the Southern Waterfront Soft Cost Work shall be set forth in an Operating Memorandum that the parties will execute and that will thereafter control the payment of costs for the Southern Waterfront Soft Cost Work.

c. Physical Remediation Tasks. Subject to the further provisions of this subsection, the Agency shall be solely responsible for the ultimate payment of all costs of the Physical Remediation Tasks. To meet this funding obligation, the Agency shall apply the Southern Waterfront Contamination Settlement Payments and other Agency MOF Funds (as defined and described in Section I.E.1 of the Method of Financing (Attachment No. 6)) available for such purpose.

Notwithstanding the funding obligation set forth above in this subsection, if the Agency reasonably determines that, at the time the Agency is otherwise required to commence performance and funding of the Physical Remediation Tasks, it will not yet have available sufficient funds to pay the full costs of the Physical Remediation Tasks as set forth in the Physical Remediation Tasks Budget prepared pursuant to Section ~~II~~IV.A.5.g above, the Agency shall so notify the Developer. The parties shall then negotiate in good faith for a period of sixty (60) days (or longer as they may mutually agree) to seek to agree upon the terms of an Operating Memorandum whereby the Developer would agree to advance a specified portion of the costs of the Physical Remediation Tasks and the Agency would agree to repay the Developer for such advance at a specified time and on specified terms (a "Southern Waterfront Physical Remediation Payments Operating Memorandum").

If the parties execute a Southern Waterfront Physical Remediation Payments Operating Memorandum in accordance with Section 709, then the terms of such Southern Waterfront Physical Remediation Payments Operating Memorandum shall control the parties' obligations with respect to the portion of the costs of the Physical Remediation Tasks to be advanced by the Developer (subject to Agency repayment), and the Agency shall remain responsible for initial payment of all remaining portions of the cost of the Physical Remediation Tasks.

If the parties are unable to agree upon a Southern Waterfront Physical Remediation Payments Operating Memorandum within the negotiating period set forth above, then commencement of the Physical Remediation Tasks shall be postponed until the earliest date upon which the Agency reasonably has available sufficient Southern Waterfront Contamination Settlement Payments and other Agency MOF Funds in accordance with the requirements of the Method of Financing (Attachment No. 6) to pay the costs of the Physical Remediation Tasks.

d. Treatment of Developer Soft Cost Contribution. As used below, the term "Developer Soft Cost Contribution" means the sum of the Additional Deposit made pursuant to Section 108.2 and any interest earned thereon (but only to the extent used by the Agency to pay costs of the Southern Waterfront Soft Cost Work), plus the Developer's Additional Soft Cost Advance, if any, as described in subsection b. above.

In the event of a Developer Southern Waterfront Termination (as described in Section IV.A.5.d above), the Agency shall repay to the Developer the Developer Soft Cost Contribution as follows:

(1) First, by crediting the amount of the Developer Soft Cost Contribution against the Purchase Price(s) payable by the Developer for succeeding Developer Parcels under this Agreement;

(2) Second, if the Developer Soft Cost Contribution is not fully repaid through the method described in subsection a. above, by repaying the Developer with the next available Agency MOF Funds (as defined and described in Section I.E.1 of the Method of Financing (Attachment No. 6)); and

(3) Third, if the Developer Soft Cost Contribution is not fully repaid through the methods described in paragraphs (1) and (2) above, by repaying the Developer

from the land sale proceeds received by the Agency from a subsequent sale of any portion of the Southern Waterfront Area to an entity other than the Developer.

B. Developer Parcels

The following Developer Parcels within the Southern Waterfront Area shall be conveyed by the Agency to the Developer in fee in accordance with the terms of this Agreement, and shall be developed by the Developer in accordance with the following general terms and conditions.

1. Parcel S.

Parcel S is an approximately 2.6-acre parcel. Upon satisfaction of all applicable pre-disposition requirements set forth in this Agreement, the Agency shall convey fee title to Parcel S to the Developer for the Purchase Price set forth in Section 201.7.

The Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for the development of Parcel S, and shall design and construct a two-story commercial/office structure containing up to 46,000 square feet on Parcel S in accordance with the Project Approvals. As part of the improvement of Parcel S, the Developer shall reconfigure the existing parking lot to separate the newly reconfigured parking lot on Parcel S from the parking lot to remain on the adjacent Boat Launch Parcel.

Pursuant to a public trust easement or other occupancy arrangement to be agreed upon and set forth in an Operating Memorandum among the parties and the City in accordance with Section 709, easement/occupancy rights over applicable portions of Parcel S shall be granted to the users of the Boat Launch Parcel to provide access to the Boat Launch Parcel (at all times that the Boat Launch Parcel is open to the public) and to provide parking within the Parcel S parking lot (on weekends when the Boat Launch Parcel is open to the public).

2. Parcel T1.

Parcel T1 is an approximately 14.9-acre parcel. Upon satisfaction of all applicable pre-disposition requirements set forth in this Agreement, the Agency shall convey fee title to Parcel T1 to the Developer for the Purchase Price set forth in Section 201.8. At the Developer's election, Parcel T1 may be divided into up to three subparcels (for each of the three separate residential buildings described below) and conveyed separately to the Developer at separate times.

The Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for the development of Parcel T1, and shall design and construct three condominium buildings containing up to a total of 650 units on Parcel T1 in accordance with the Project Approvals. The buildings will contain three and four-story condominium flats over one and two-levels of parking (where the garage will be two-levels, the lower level will be below grade, and the upper level will be partially below grade).

Promptly following the Action Dismissal Date, the parties shall cooperate in good faith to consider alternative programs for a meaningful affordable housing component related to the development of Parcel T1, providing for up to 9% of the residential units related to the Parcel T1 development being made available at affordable housing cost to moderate income households. Such alternatives may include the strategic use of funds deposited in the Agency's Low and Moderate Income Housing Fund, tax-exempt multifamily residential rental municipal bond proceeds, state and federal low income housing tax credit syndication funds, and funds from other state and federal affordable housing programs. Notwithstanding the foregoing, the affordable housing component shall be designed in a manner that will allow the Developer to achieve a financial return on Developer investment for Parcel T1 equal to what would otherwise be yielded if Parcel T1 were not to include an affordable housing component.

Within six (6) months after the Action Dismissal Date, the parties shall prepare and present to the Agency and the City Council a preliminary analysis of affordable housing alternatives related to the development of Parcel T1. The preliminary analysis shall include consideration of issues related to funding opportunities, site locations, potential joint ventures with non-profit affordable housing developers, and site constraints.

Within six (6) months prior to the submittal of a Unit Plan application for Parcel T1, the parties shall prepare and present a specific program that meets the criteria of this Section IV.B.2 for consideration by the Agency and the City Council. Upon Agency and City Council approval of a mutually acceptable specific program, the parties shall prepare any amendments to this Agreement and the Project Approvals (together with any necessary supporting CEQA documentation) to implement the mutually acceptable affordable housing component related to the development of Parcel T1 (or a mutually acceptable off-Site location).

The City and Agency shall bear the costs of their in-house staff and their legal counsel in connection with the above-described evaluation and design of an affordable housing component related to the development of Parcel T1. The Developer shall bear the costs of its in-house staff and its legal counsel, and shall advance the costs of any mutually agreed affordable housing consultants and other consultants, in connection with the above-described evaluation and design of an affordable housing component related to the development of Parcel T1, and the costs described in this sentence shall constitute General and Administration Costs within the meaning of Section 201.2(a)(26) or Third Party Costs within the meaning of Section 201.2(a)(26), as applicable.

3. Parcel T2.

Parcel T2 is an approximately 5.1-acre parcel. Upon satisfaction of all applicable pre-disposition requirements set forth in this Agreement, the Agency shall convey fee title to Parcel T2 to the Developer for the Purchase Price set forth in Section 201.8.

The Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for the development of Parcel T2, and shall design and construct the Post Office Relocation Facility on Parcel T2 in accordance with the Project Approvals. The Post Office Relocation Facility may contain up to 45,000 square feet of building space and associated parking and loading facilities.

4. Parcel T3.

Parcel T3 is an approximately 3.6-acre parcel. Upon satisfaction of all applicable pre-disposition requirements set forth in this Agreement, the Agency shall convey fee title to Parcel T3 to the Developer for the Purchase Price set forth in Section 201.8.

The Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for the development of Parcel T3, and shall design and construct up to 76,000 square feet of flex office/light industrial space in one and two-story buildings, together with associated parking and loading facilities, on Parcel T3 in accordance with the Project Approvals.

C. Public Facilities and Improvements

The following City/Agency Parcels and associated public improvements shall be developed in accordance with the following general terms and conditions.

1. Public Streets.

The Developer, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for, and shall design and construct, the following public street improvements (the "Southern Waterfront Public Street Improvements"):

a. Extension of Marin Street within an approximately 2.3-acre right-of-way parcel;

b. Extension of Solano Avenue within an approximately 1.2-acre right-of-way parcel;

c. Construction of Kaiser Place within an approximately 1.1-acre right-of-way parcel; and

d. Improvements to existing Curtola Parkway and Sonoma Boulevard adjacent to Parcels S and T.

2. S-Open Space and T-Open Space Parcels.

The S-Open Space Parcel and the T-Open Space Parcel (together, the "Southern Waterfront Public Open Space Parcels") together comprise an approximately 8.2-acre area to be owned by the City to serve as a public park and open space area for the Southern Waterfront Area. The Developer, at its cost (subject to the limitation set forth below) and in accordance with the Schedule of Performance (Attachment No. 3), shall construct public park and open space improvements on the Southern Waterfront Public Open Space Parcels (the

"Southern Waterfront Public Park and Open Space Improvements") in accordance with the Project Approvals, and in accordance with a design for such park and related open spaces to be developed as follows:

a. Within the time set forth in the Schedule of Performance (Attachment No. 3), the Agency and the City shall conduct a public participation process, and from such public participation process shall prepare a conceptual design (the "Conceptual Design") for the Southern Waterfront Public Park and Open Space Improvements. At the time it completes the Conceptual Design, the Agency and the City, in cooperation with the Developer, shall also prepare an estimated budget for performance of the design tasks described in this subsection a. and subsection b. below, and for actual construction of the Southern Waterfront Public Park and Open Space Improvements in accordance with such Conceptual Design (the "Preliminary Budget").

b. Based on the Conceptual Design, the Developer shall prepare, for approval by the Agency and the City, detailed plans and specifications (the "Detailed Plans") and a detailed cost estimate (the "Construction Cost Estimate"), including a reasonable construction contingency, for the construction of the Southern Waterfront Public Park and Open Space Improvements.

c. The Agency and the City shall approve the Detailed Plans if they are materially consistent with the Concept Design and if the construction cost set forth in the Construction Cost Estimate, together with the costs incurred for performance of the tasks described in subsections a. and b. above (collectively, the "Design/Construction Costs"), do not exceed the total amount set forth in the Preliminary Budget. If the Detailed Plans are materially consistent with the Concept Design, but the Design/Construction Costs exceed the total amount set forth in the Preliminary Budget, the Agency and the City, in consultation with the Developer, shall either approve the Detailed Plans notwithstanding such excess cost, or specify modifications to the Detailed Plans (the "Modified Detailed Plans") that will enable the Design/Construction Costs to be within the total amount of the Preliminary Budget, or such other total amount as is then acceptable to the Agency and the City, in consultation with the Developer.

If the parties are unable to agree upon the form of mutually acceptable Design Plans or Modified Design Plans within the time provided in the Schedule of Performance (Attachment No. 3), then either party may submit the matter for arbitration in accordance with the provisions of Section 706 to determine the form of the Design Plans or Modified Design Plans consistent with the terms of this Section IV.C.2.

The Developer shall construct the Southern Waterfront Public Park and Open Space Improvements on the Southern Waterfront Public Open Space Parcels in accordance with the Design Plans or the Modified Design Plans approved by the Agency and the City, and shall pay, when due, the soft and hard costs of design and construction of the Southern Waterfront Public Park and Open Space Improvements on the Southern Waterfront Public Open Space Parcels, including the design tasks described in subsections a. and b. above; provided, however, that the maximum amount payable by the Developer for the design and construction of the Southern Waterfront Public Park and Open Space Improvements shall equal the Maximum Contribution Amount (as defined and determined below); and provided, further, however, that the Developer shall not be obligated to pay any soft or hard costs of design and construction of the Southern Waterfront Public Park and Open Space Improvements prior to City approval of the first Unit Plan for any portion of Parcel S or Parcel T (other than Parcel T2) (the "First S/T Unit Plan Approval"). If the Agency elects to pay for any of the design tasks described in subsection a. or b. above prior to the First S/T Unit Plan Approval, then the Agency shall submit to the Developer promptly following the First S/T Unit Plan Approval a certified statement from the Executive Director detailing the amount of funds paid by the Agency for such purpose, and the Developer shall pay the amount so certified by the Executive Director within thirty (30) days of receipt of such certified statement.

As used above, the "Maximum Contribution Amount" means the amount that is the product of THREE MILLION FIVE HUNDRED SEVENTY-ONE THOUSAND NINE HUNDRED TWENTY DOLLARS ($3,571,920) (reflecting the current dollar value of the Developer's maximum contribution toward soft and hard costs of design and construction of the Southern Waterfront Public Park and Open Space Improvements) multiplied by the Inflation Adjustment Factor (reflecting an adjustment to account for inflation to the time of commencement of Developer expenditures for the Southern Waterfront Public Park and Open Space Improvements). The "Inflation Adjustment Factor" means a ratio, the numerator of which is the CPI Index amount as of the date of the First S/T Unit Plan Approval, and the denominator of which is the CPI Index amount as of the ~~Required Approvals Effective~~Action Dismissal Date. "CPI" has the meaning given in Section 201.4.b.(7).

The amount actually expended by the Developer for the soft and hard costs of design and construction of the Southern Waterfront Public Park and Open Space Improvements, as reviewed and approved by the City, is referred to as the "Developer's Southern Waterfront Public Park and Open Space Contribution." The Agency shall pay, when due, any costs of design and construction of the Southern Waterfront Public Park and Open Space Improvements in excess of the Developer's Southern Waterfront Public Park and Open Space Contribution.

The City or the LLMD (as described and defined in Section I.D of the Method of Financing (Attachment No. 6)) shall be responsible for the ongoing operation and maintenance of the Southern Waterfront Public Park and Open Space Improvements on the Southern Waterfront Public Open Space Parcels.

3. Boat Launch Parcel.

The Boat Launch Parcel is an approximately 2.5-acre parcel to be owned and operated by the City as a continuing public boat launch facility. The Agency, at its cost and in accordance with the Schedule of Performance (Attachment No. 3), shall obtain all necessary Project Approvals for, and shall design and construct, the following public improvements on the Boat Launch Parcel (the "Boat Launch Improvements"):

a. Improvements required following hazardous materials remediation of the Boat Launch Parcel necessary to return the public boat launch facilities on the parcel to functional conditions;

b. Reconfiguration of the parking lot and access ways; and

c. Construction of an approximately 3,500 square foot building, including public restrooms, a bait shop, and maritime supporting facilities.

The Boat Launch Improvements shall be designed and constructed in accordance with the Project Approvals and designs approved by the City. The Agency shall fund and perform any required site preparation in connection with provision of the Boat Launch Improvements. The Agency shall pay the costs of design, site preparation, and construction of the Boat Launch Improvements using Agency MOF Funds (as defined and described in Section I.E.1 of the Method of Financing (Attachment No. 6)).

<u>The parties shall cooperate with each other and with the California Department of Boating and Waterways to consider relocation of the Boat Launch and Boat Launch Improvements to the southern portion of the T-Open Space Parcel. The terms for any such mutually agreed relocation shall be set forth in an Operating Memorandum prepared and executed in accordance with Section 709.</u>

D. <u>Independent Obligation</u>

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

V. CONSTRUCTION MANAGEMENT

The Agency agrees that, upon a request by the Developer, the Agency will consider, on a case by case basis, approving Developer to act as construction manager for other portions of the public improvements elements of the Project; provided any such further authorizations shall be conditioned upon the Agency determining, in its reasonable judgment, that such authorization would be mutually beneficial to both parties, and the Agency's ability to make all appropriate findings with respect to such public improvements. To the extent the Developer acts as construction manager for any public improvements elements, such management activities shall be undertaken pursuant to an Operating Memorandum in accordance with Section 709 to be entered into between the Agency and Developer, in form and content satisfactory to the Agency, which shall provide for, among other things, that all work undertaken with respect to the public improvements shall be subject to a competitive bidding process approved by the Agency and shall comply with all applicable state labor provisions, and for monitoring of the work in progress and the costs of such work.

List of Attachments To Attachment No. 4

[redacted]

1088\03\358822.8

ATTACHMENT NO. 5

FORM OF GRANT DEED

Recording Requested by:
Redevelopment Agency
of the City of Vallejo

After Recordation, Mail to:

____
____
____
____

GRANT DEED

For valuable consideration, the receipt of which is hereby acknowledged,

THE REDEVELOPMENT AGENCY OF THE CITY OF VALLEJO, a public body, corporate and politic, of the State of California (herein called "Grantor"), acting to carry out the Redevelopment Plan for the Waterfront Redevelopment Project and the Redevelopment Plan for the Marina Vista Redevelopment Project (collectively, the "Redevelopment Plans"), under the Community Redevelopment Law of the State of California, hereby grants to CALLAHAN/DESILVA VALLEJO, LLC, a California limited liability company (herein called "Grantee"), the real property (the "Developer Parcel") legally described in the document attached hereto, labeled Exhibit A, and incorporated herein by this reference.

1. The Developer Parcel is conveyed subject to the Redevelopment Plans and pursuant to a Disposition and Development Agreement (the "DDA") initially executed as of October 17, 2000, as amended and restated as of October 1, 2002, as further amended as of October 7, 2003, and August 24, 2004, ~~and~~ as ~~further fully~~ amended and restated for a second time as of October 27, 2005, and as amended and restated for a third time as of February 13, 2007, by and between the Grantor and the Grantee. Capitalized terms used but not defined in this Grant Deed shall have the meanings given in the DDA. The Developer Parcel is also conveyed subject to REA/CC&R's and other easements of record. ***[Note: The preceding sentence to appear only in grant deeds for Developer Parcels containing residential uses per Section 704 of the DDA.]***

2. The Grantee hereby covenants and agrees, for itself and its successors and assigns, that during construction and thereafter, the Grantee shall not use the Developer Parcel for other than the uses specified in the Redevelopment Plans.

3. Prior to the issuance of a Partial Certificate of Completion for the Developer Parcel by the Grantor as provided in the DDA, the Grantee shall not, except as permitted by the DDA, sell, transfer, convey, assign or lease the whole or any part of the Developer Parcel without the prior written approval of the Grantor. This prohibition shall not apply subsequent to the issuance of the Partial Certificate of Completion with respect to the improvements upon the Developer Parcel. This prohibition shall not be deemed to prevent the granting of easements or permits to facilitate the development of the Developer Parcel or to prohibit or restrict the leasing or preleasing of any part or parts of a building or structure for occupancy when said improvements are completed.

4. Prior to the issuance of a Partial Certificate of Completion for the Developer Parcel, the Grantor shall have the additional right, at its option, to repurchase, reenter and take possession of the Developer Parcel hereby conveyed, or such portion thereof, with all improvements thereon, subject to and in accordance with the provisions of Section 513 of the DDA.

5. Prior to the issuance of a Partial Certificate of Completion for the Developer Parcel, the Grantor shall have the right, at its option, to reenter and take possession of the Site hereby conveyed, or such portion thereof, with all improvements thereon, and revest in the Grantor the estate conveyed to the Grantee, subject to and in accordance with the provisions of Section 514 of the DDA.

6. The Grantee covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, physical handicap, sexual orientation, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Developer Parcel, nor shall the Grantee itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Developer Parcel.

All deeds, leases or contracts made relative to the Developer Parcel, the improvements thereon or any part thereof, shall contain or be subject to substantially the following nondiscrimination clauses:

a. In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, physical handicap, sexual orientation, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

b. In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

"That there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, physical handicap, sexual orientation, national origin or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased, nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the land herein leased."

c. In contracts: "There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, physical handicap, sexual orientation, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land, nor shall the transferee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the land."

7. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Grant Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust or other financing or security instrument permitted by the DDA; provided, however, that any successor of Grantee to the Developer Parcel shall be bound by such remaining covenants, conditions, restrictions, limitations and provisions, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

8. Except as otherwise provided, the covenants contained in paragraph 2 of this Grant Deed shall remain in effect until the deadline for effectiveness of the Redevelopment Plans; the covenants against discrimination contained in paragraph 6 of this Grant Deed shall remain in perpetuity; and the covenants contained in paragraphs 3, 4 and 5 shall remain in effect until issuance of a Partial Certificate of Completion for the Developer Parcel pursuant to Section 323 of the DDA.

9. The covenants contained in paragraphs 2, 3, 4, 5, and 6 of this Grant Deed shall be binding for the benefit of the Grantor, its successors and assigns, the City of Vallejo and any successor in interest to the Developer Parcel or any part thereof, and such covenants shall run in favor of the Grantor and such aforementioned parties for the entire period during which such covenants shall be in force and effect, without regard to whether the Grantor is or remains an owner of any land or interest therein to which such covenants relate. The Grantor and such aforementioned parties, in the event of any breach of any such covenants, shall have the right to exercise all of the rights and remedies, and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of such breach. The covenants contained in this Grant Deed shall be for the benefit of and shall be enforceable only by the Grantor, its successors and such aforementioned parties.

10. In the event of any express conflict between this Grant Deed or the DDA, the provisions of the DDA shall control.

11. Any amendments to the Redevelopment Plans which change the uses or development permitted on the Site or change the restrictions or controls that apply to the Site or otherwise affect the Site shall require the written consent of the Grantee. Amendments to the Redevelopment Plans applying to other property in the Project Area shall not require the consent of the Grantee.

IN WITNESS WHEREOF, the Grantor and Grantee have caused this instrument to be executed on their behalf by their respective officers thereunto duly authorized, this _ day of ________________________, 20__.

GRANTOR:

REDEVELOPMENT AGENCY OF THE
CITY OF VALLEJO, "GRANTOR"

By: ________________________________
Chairman

By: ____________________________
Secretary

APPROVED:

By: ________________________________
Counsel for Grantor

The provisions of this Grant Deed are hereby approved and accepted.

DEVELOPER:

CALLAHAN DESILVA VALLEJO, LLC,
a California limited liability company

By: The DeSilva Group, Inc.,
a California corporation, Member

By: ______________________
~~James B. Summers~~_
Ernest D. Lampkin
Vice President

By: Joseph W. Callahan, Jr.,
an individual, Member

By: ______________________________
Joseph W. Callahan, Jr.

EXHIBIT A

LEGAL DESCRIPTION OF THE DEVELOPER PARCEL

[TO BE INSERTED]

ACKNOWLEDGMENTS

ATTACHMENT NO. 6

METHOD OF FINANCING

I. GENERAL

A. Overview

The implementation of this Agreement and the Project Approvals will require significant private and public investment. This "Method of Financing", in conjunction with other provisions of this Agreement, sets forth generally the Agency and Developer financing obligations for acquisition and development of the Site, including the Developer Parcels and the City/Agency Parcels. The specific level of investment by the Developer and the Agency will be a function of a variety of factors including, but not limited to, market conditions, tax increment generated by the Project, ability to obtain grant funds, and commitment by the City of Vallejo to finance capital projects. The parties also acknowledge and agree that future Project Approvals will likely result in a refinement and greater specification of the types of improvements that will be required as part of the Project and therefore will modify this Method of Financing. When and as deemed appropriate by the parties, modifications of this Method of Financing will be reflected in an Operating Memorandum, in accordance with the provisions of Section 709 hereof

The balance of this Part I addresses general issues affecting the overall financing of development of the Project. Parts II, III, and IV address the specific financing responsibilities of the Developer and the Agency for Northern Waterfront Area, the Central Waterfront Area, and the Southern Waterfront Area, respectively.

B. Initial Acquisition

The Agency shall be responsible for financing the initial acquisition of the Site, to the extent not already owned by the Agency.

C. Public Financing Districts

Subject to applicable legal requirements, upon the request of the Developer, the Agency shall consider and shall cause the City to consider, in good faith, the formation of one or more assessment districts, community facilities districts, or other similar public financing districts (collectively, "Public Financing Districts") for the purpose of issuing bonded indebtedness or otherwise obtain assessments or special taxes to pay the costs of design and development of on-site public improvements (such as streets and infrastructure within a subdivided Developer Parcel to be constructed by the Developer and dedicated to the City or other public entity) and off-site public improvements normally required by the City to be provided by the property owner in connection with private development (collectively, the "Developer Parcel Public Improvements"), to the maximum extent permitted by law. Such good faith consideration shall include scheduling and conduct of all hearings, elections and other proceedings necessary for the formation of such requested Public Financing District(s) and the issuance of bonded indebtedness or other indebtedness of any such formed Public Financing

District(s). The costs of formation and issuance of indebtedness of such Public Financing District(s) shall be borne by the Developer (or financed through such indebtedness), and the obligations of such Public Financing District(s) shall be payable solely from assessments or special taxes imposed upon one or more of the Developer Parcels following conveyance to the Developer, and not from any funds, revenues or properties of the Agency, the City, or any other public entity without the express prior consent of the Agency, the City or other public entity, as applicable, in their sole discretion.

D. Landscaping and Lighting Maintenance District

Subject to applicable legal requirements, the Developer and the Agency shall cooperate to form, or to cause the City to form, a landscaping and lighting maintenance district (an "LLMD") in accordance with the provisions of the Landscaping and Lighting Act of 1972 (California Streets and Highways Code Section 22500 et seq.) and in accordance with the criteria, standards and procedures set forth below in this Section I.D (as this Section may be modified pursuant to the terms of an Operating Memorandum entered into pursuant to the provisions of Section 709 hereof).

The LLMD shall be formed consistent with the following criteria and standards:

1. The LLMD shall be formed to fund the normal operating and maintenance costs incurred by the City or the LLMD in connection with the landscaping, lighting, park, recreation, and open space facilities located within the publicly-owned right-of-way and parcels within the Site. Subject to applicable legal requirements, the LLMD may be expanded or merged with other landscaping, lighting and maintenance districts (as so expanded or merged, an "Expanded LLMD") to include additional parcels that are specially benefited by public improvements and facilities within the Site and/or to additionally fund the normal operating and maintenance costs incurred by the City or the Expanded LLMD in connection with the landscaping, lighting, park, recreation, and open space facilities within publicly-owned right-of-way and parcels outside the Site but within the boundaries of the Expanded LLMD. The Developer's cooperation and support for the LLMD is predicated upon the City's stated intention to cause eventual formation of an Expanded LLMD that covers the maximum specially benefited area so as to equalize and apportion the LLMD burden over time across the largest legally benefited area, thereby reducing over time the burden initially imposed on the Developer Parcels; provided, however, that if the attempt to form an Expanded LLMD results in a legal challenge to timely formation or in a failure to obtain the required voter approval, then the LLMD shall be scaled-back and formed or maintained just to comprise the Site and the landscaping, lighting, park, recreation and open space facilities within the publicly-owned right-of-way and parcels within the Site.

2. The LLMD shall include, for purposes of assessment of specially benefited parcels, all of the Developer Parcels and the other parcels within the Site, whether publicly or privately-owned (but only to the extent such other parcels are specially benefited and required by applicable law to be included in the LLMD). If the LLMD is made part of an Expanded LLMD, the Expanded LLMD shall additionally include, for purpose of assessment of specially benefited parcels, all other parcels (whether privately or publicly-owned) that are specially benefited by the

landscaping, lighting, park, recreation and open space parcels within publicly-owned right-of-way and parcels within the boundaries of the Expanded LLMD.

3. Assessments of the LLMD or the Expanded LLMD, as applicable, shall be spread among the Developer Parcels and the other parcels subject to assessment in accordance with the special benefit received by each assessed parcel as determined in accordance with applicable legal requirements and procedures; provided, that, in no event shall the annual assessments applicable to the Developer Parcels pursuant to the LLMD or the Expanded LLMD, as applicable, exceed the following amounts:

a. $300 for a single-family residential unit (attached or detached);

b. $200 for a residential condominium unit or a multifamily residential unit; and

c. Twenty cents per square foot of gross building area for improved commercial and industrial land.

Notwithstanding the foregoing, the rate and method of apportionment shall allow for annual adjustments to the above maximum assessments beginning on July 1, 2008, and each July 1 thereafter during the life of the LLMD or the Expanded LLMD, whichever is applicable, by a percentage equal to the Consumer Price Index – All Urban Consumers ("CPI-U") for the San Francisco-Oakland-San Jose area (1982-84=100). In addition, the parties understand and agree that, over the life of the LLMD or Expanded LLMD, as applicable, the methodology for calculating the assessments throughout the district shall be periodically evaluated as additional units within the LLMD or Expanded LLMD are constructed so that per unit assessments may be reduced to ensure that such assessments are fairly allocated within the district.

4. The LLMD and any Expanded LLMD shall be formed in accordance with all applicable legal requirements and procedures for such formation.

The Developer shall cooperate, and shall be deemed to have cooperated, in the formation of the LLMD or an Expanded LLMD for purposes of this Section I.D by casting any ballot and/or executing any petition required by law with respect to the Developer Parcels (or any portion thereof with respect to which the Developer is entitled to cast a ballot and/or execute a petition) necessary to support formation of the LLMD or an Expanded LLMD meeting the criteria and standards set forth above in this Section I.D. Any protest lodged by the Developer with respect to the allocation of assessments among parcels within the LLMD or an Expanded LLMD, as opposed to the formation of the LLMD or an Expanded LLMD itself, shall not constitute a failure of cooperation by the Developer in the formation of the LLMD or an Expanded LLMD for purposes of this Section I.D.

The Agency shall, or shall cause the City, to take all procedurals actions necessary in accordance with all applicable legal requirements to cause formation and effectiveness of the LLMD or an Expanded LLMD by not later than the deadline set forth in the Schedule of Performance (Attachment No. 3). If the LLMD is not formed despite the Agency's diligent good faith efforts to form or cause the City to form the LLMD, then the Agency shall fund or cause the City to fund, to the maximum extent permitted by applicable law and subject to the City's annual budgetary process, the operation and maintenance of those public improvements that are described in the Scope of Development (Attachment No. 4) to be funded by the LLMD.

E. Agency Funding

1. Possible Funding Sources; Agency MOF Funds.

In addition to the application by the Agency of the Required Agency Funds (as defined and described in Section I.E.2. below), the funds to finance the Agency's obligations under this Agreement may include, but shall not be limited to, the following: available Agency funds; future tax increment revenues and bond financing (as further described in Section I.E.4 below); City capital improvement funds, transient occupancy tax and other City tax revenues or fees; state and federal transportation funds, including, without limitation, state and federal funding for the Vallejo Station transit facilities (the "Vallejo Station Funds"); state and federal park and recreation funds; and other public and private grant funds, if available. The Agency may, from time to time, and as it deems appropriate in its sole discretion, seek contributions from the City.

The funds available to the Agency from time to time to pay costs of the Project, including the Required Agency Funds, are collectively referred to in this Agreement as the "Agency Method of Financing Funds" or simply, the "Agency MOF Funds."

2. Required Agency Funds.

Subject to the last sentence of this Section I.E.2, the Agency shall, at a minimum, apply the following funds (the "Required Agency Funds") to finance the Agency's obligations under this Agreement:

a. All amounts actually paid to the Agency from the Developer constituting the Purchase Prices and the Annual Rent Payments for the Developer Parcels within the Site; and

b. The Net Developer Parcels Tax Increment Revenue.

As used herein, "Net Developer Parcels Tax Increment Revenue" means the tax increment revenue received by the Agency attributable to the increase in assessed valuation of each Developer Parcel within the Site following conveyance to the Developer less: (1) the portion of such tax increment revenue required to be set aside by the Agency pursuant to the provisions of Section 33334.2 of the Health and Safety Code; (2) a reasonable and proportionate share of the Agency's administrative expenses related to the Site; and (3) the portion of such tax increment revenue generated from Parcels A, B1, B2, and C1 which may be pledged to repay existing debt arising out of one or more loans between the City and the State of California, Department of Boating and Waterways.

In addition and only if the parties mutually agree, the Required Agency Funds may be re-allocated for different purposes if such re-allocation would result in a greater benefit to the overall development or quality of the Project. The parties agree that the Required Agency Funds may be used to pay debt service on any indebtedness incurred by Agency to finance the cost of improvements under this Agreement.

3. Agency Budgets.

The Agency shall reasonably confer with the Developer, and shall consider in good faith the Developer's input, in connection with preparation of the portions of the Agency's annual budgets, the Agency's periodic five-year implementation plans, and any periodic amendments to such budgets and implementation plans that affect the Project, with the objective of allocating Agency MOF Funds in a manner consistent with the Agency's funding obligations for the Project pursuant to this Agreement and the Agency's other funding commitments.

4. Bond Financing.

In order to implement the Project to redevelop the Site, to satisfy its obligations under this Agreement, and to achieve the goals and objectives of the Redevelopment Plans, the Agency intends, from time to time, to issue bonded indebtedness secured by a pledge of all or a portion of the Net Developer Parcels Tax Increment Revenue and other tax increment revenue (as determined by the Agency) for the purpose of completing the redevelopment of the Project on the Site as expeditiously as possible.

F. Developer Funding

The financing mechanisms of the Developer to meet its obligations pursuant to this Agreement may include, but are not limited to, equity financing, debt financing, assessment district financing (as further set forth in Section I.C above) and other methods of financing as may be necessary to finance the Developer's obligations.

G. Other Financial Incentives

The Agency shall consider in good faith a Developer request that the Agency provide or seek provision from the City of financial or other incentives to enable the highest quality and most timely private development of the Developer Parcels within the Site; provided however, that the Developer shall provide evidence to the City and/or Agency that any such incentive is necessary and further provided that the provision of any such financial or other incentives shall be determined in the sole discretion of the Agency or the City, as applicable.

H. Park Fee Credits

As provided in Section 3.8 of the Development Agreement, the City will grant a credit against City park fees otherwise due with respect to development of the Developer Parcels within the Site pursuant to Chapter 3.18 of the Vallejo Municipal Code in an amount equal to the lesser of (1) the total amount of such City park fees otherwise due with respect to development of the Developer Parcels within the Site, or (2) the Total Developer Public Parks and Open Space Contribution.

As used herein, the "Total Developer Public Parks and Open Space Contribution" means the sum of ~~the~~:

1. The Developer's Northern Waterfront Public Parks and Open Space Contribution (up to $1,629,150, as provided in Section II.~~B~~C.3 of the Scope of Development (Attachment No. 4)); plus ~~the~~

2. The Developer's Southern Waterfront Public Parks and Open Space Contribution (up to $3,571,920 in current dollars and subject to an inflation adjustment, as provided in Section IV.C.2 of the Scope of Development); plus

3. The Developer's Wetland Park Contribution (as described in Section II.A.3 of the Scope of Development).

The parties acknowledge that, through the above cited provisions of the Scope of Development (Attachment No. 4), the Developer has committed to a Total Developer Public Parks and Open Space Contribution well in excess of ~~up to~~ $5,201,070 (in current dollars), which in turn is an amount significantly in excess of the cumulative total of City park fees anticipated to be due in connection with development of all of the Developer Parcels on the Site.

II. NORTHERN WATERFRONT FINANCING

A. Developer Responsibility

Except as provided in Section II.B below, the Developer, or its assignee, shall be responsible for financing all costs associated with the private and public development of the Northern Waterfront Area, including all Developer Parcel Public Improvements in the Northern Waterfront Area, as further described in Part II of the Scope of Development (Attachment No. 4). In addition to the payment of the Purchase Price and Annual Rent Payments for the applicable Developer Parcels and the cost of the related Developer Parcel Public Improvements, as set forth in this Agreement, the Developer's financial responsibility shall include, but not be limited to, payment of costs related to site planning, entitlements, permits, fees, and private on site improvements for all of the Northern Waterfront Area (except as otherwise provided in Section II.B below).

B. Agency Responsibility

The Agency shall have no financial responsibility under this Agreement with respect to the Northern Waterfront Area other than:

1. The costs to deliver the applicable Developer Parcels in the condition specified in this Agreement upon which the Purchase Prices and Annual Rent Payments for the applicable Developer Parcels are determined in connection with Section 201; and

2. Any costs for the Northern Waterfront Public Park and Open Space Improvements required to be made after the maximum amount of the Developer's Northern Waterfront Public Park and Open Space Contribution has been expended, as further provided in Section II.~~B~~C.3 of the Scope of Development (Attachment No. 4).

In addition, the Agency ~~and the City~~shall or shall cause the City to assure that Lennar ~~to pay~~pays for performance of the Mare Island Causeway and Mare Island Way Widening Improvements as provided in Section II.~~C~~D.43 of the Scope of Development (Attachment No. 4).

III. CENTRAL WATERFRONT FINANCING

A. Developer Responsibility—In General

The Developer, or its assignee, shall be responsible for financing all costs associated with the development of the Developer Parcels within the Central Waterfront Area, including all Developer Parcel Public Improvements related to the Central Waterfront Area. In addition to the payment of the Purchase Price for Parcel J (including any J Developer Subparcels), and the L Developer Parcels, and the cost of the related Developer Parcel Public Improvements, as set forth in this Agreement, the Developer's financial responsibility shall include, but not be limited to, payment of costs related to site planning, entitlements, permits, fees, and private on site improvements related to the Developer Parcels and Developer Parcel Public Improvements within the Central Waterfront Area.

B. Agency Responsibility—In General

Except as otherwise provided in Section III.C below, the Agency shall pay all costs to deliver the Central Waterfront Area Developer Parcels in the condition specified in this Agreement upon which the Purchase Prices for the applicable Developer Parcels are determined in connection with Section 201.

Except as otherwise provided in Section III.D below, the Agency shall be responsible for funding the enhancement of the City/Agency Parcels and related public improvements in the Central Waterfront Area including, without limitation:

1. The L3 Public Garage on Parcel L3, as provided in Section III.A.3 of the Scope of Development (Attachment No. 4);

2. The public paseo and associated improvements on Parcel L5, as provided in Section III.A.5 of the Scope of Development (Attachment No. 4);

3. The Bus Transfer Center on Parcel O, as provided in Section III.C.1 of the Scope of Development (Attachment No. 4);

4. The Other Transit-Related Improvements, as provided in Section III.C.2 of the Scope of Development (Attachment No. 4);

5. The Central Waterfront Public Street Improvements, as provided in Section III.C.3 of the Scope of Development (Attachment No. 4); and

6. The Central Waterfront Public Parks and Open Space Improvements, as provided in Section III.C.4 of the Scope of Development (Attachment No. 4).

C. Vallejo Station Post Office Relocation

The parties shall participate in funding the costs of relocating the current Post Office facility from the Post Office Site within Parcel L in the manner provided in Section 201.6.a.(2).

D. City Hall Garage and Related Improvements

Subject to the further provisions of this Section III.D, the Agency shall be solely responsible for the ultimate payment of all costs of design and construction of the City Hall Garage and of the Capitol Street Second Segment necessary to provide access to the City Hall Garage. To meet this funding obligation, the Agency shall apply Agency MOF Funds (as defined and described in Section I.E.1 above) available for such purpose.

Notwithstanding the funding obligation set forth above, if the Agency reasonably determines that, at the time the Agency is otherwise required to commence performance and funding of the design and construction of the Phase 1 Element of the City Hall Garage and the Capitol Street Second Segment (together, the "City Hall Garage Required Elements") in accordance with Item 144 of the Schedule of Performance (Attachment No. 3), it will not yet have available sufficient funds to pay the full costs of design and construction of the City Hall Garage Required Elements, the Agency shall so notify the Developer. The parties shall then negotiate in good faith for a period of sixty (60) days (or longer as they may mutually agree) to seek to agree upon the terms of an Operating Memorandum whereby the Developer would agree to advance a specified portion of the costs of the design and/or construction of the City Hall Garage Required Elements and the Agency would agree to repay the Developer for such advance at a specified time and on specified terms (a "City Hall Garage Required Elements Operating Memorandum").

If the parties execute a City Hall Garage Required Elements Operating Memorandum in accordance with Section 709, then the terms of such City Hall Garage Required Elements Operating Memorandum shall control the parties' obligations with respect to the portion of the costs of design and/or construction of the City Hall Garage Required Elements to be advanced by the Developer (subject to Agency repayment), and the Agency shall remain responsible for initial payment of all remaining portions of the cost of design and construction of the City Hall Garage Required Elements.

If the parties are unable to agree upon a City Hall Garage Required Elements Operating Memorandum within the negotiating period set forth above, then commencement of the design and/or construction of the City Hall Garage Required Elements shall be postponed until the earliest date upon which the Agency reasonably has available sufficient Agency MOF

Funds in accordance with the requirements of this Method of Financing to pay the costs of design and construction of the City Hall Garage Required Elements.

E. Downtown Property Based Improvement District ("PBID")

The Agency and the City shall use best efforts to include Parcels J and L in the proposed PBID. In conjunction with the formation of the LLMD or the Expanded LLMD, the Agency shall and shall cause the City to work cooperatively with the Developer and the developer of the Downtown project and to use best efforts to provide that both the PBID and the LLMD (or Expanded LLMD) function effectively, do not overlap in responsibilities, and are not overly burdensome to present and future property owners.

IV. SOUTHERN WATERFRONT FINANCING

A. Developer Responsibility—In General

Except as provided in Sections IV.B and C below, the Developer, or its assignee, shall be responsible for financing all costs associated with the private and public development of the Southern Waterfront Area, including all Developer Parcel Public Improvements in the Southern Waterfront Area, as further described in Part IV of the Scope of Development (Attachment No. 4). In addition to the payment of the Purchase Price for the applicable Developer Parcels and the cost of the related Developer Parcel Public Improvements, as set forth in this Agreement, the Developer's financial responsibility shall include, but not be limited to, payment of costs related to site planning, entitlements, permits, fees, and private on site improvements for all of the Southern Waterfront Area (except as otherwise provided in Sections IV.B and C below).

B. Agency Responsibility—In General

The Agency shall have no financial responsibility under this Agreement with respect to the Southern Waterfront Area other than:

1. The costs to deliver the applicable Developer Parcels in the condition specified in this Agreement upon which the Purchase Prices for the applicable Developer Parcels are determined in connection with Section 201;

2. Any costs for the Southern Waterfront Public Park and Open Space Improvements required to be made after the maximum amount of the Developer's Southern Waterfront Public Park and Open Space Contribution has been expended, as further provided in Section IV.C.2 of the Scope of Development (Attachment No. 4);

3. The cost of the Boat Launch Improvements, as provided in Section IV.C.3 of the Scope of Development (Attachment No. 4); and

4. The Agency's share of the costs of the Southern Waterfront Preparatory Work, as further described in Section IV.C below.

C. <u>Southern Waterfront Preparatory Work</u>

The parties shall participate in funding the costs of the Southern Waterfront Preparatory Work (as described in Section IV.A of the Scope of Development) in the manner provided in Section IV.A.9 of the Scope of Development (Attachment No. 4).

ATTACHMENT NO. 7

FORM OF MEMORANDUM OF DDA THIRD RESTATEMENT

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

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

No fee for recording pursuant to
Government Code Section 27383

(Space Above This Line For Recorder's Use)

MEMORANDUM OF DISPOSITION AND DEVELOPMENT AGREEMENT
THIRD RESTATEMENT

THIS MEMORANDUM OF DISPOSITION AND DEVELOPMENT AGREEMENT THIRD RESTATEMENT (the "Memorandum") is made as of ~~October 27, 2005,~~ ___________, 2006, by and between the Redevelopment Agency of the City of Vallejo, a public body, corporate and politic (the "Agency"), and Callahan/DeSilva Vallejo, LLC, a California limited liability company (the "Developer").

This Memorandum confirms that the Agency and the Developer have entered into a Disposition and Development Agreement, executed as of October 17, 2000, as amended and restated as of October 1, 2002, as further amended by an Amendment entered into as of October 24, 2003, as further amended by a Second Amendment entered into as of July 20, 2004, ~~and~~ as further amended and restated for a second time as of October 27, ~~2005~~2005, and as further amended and restated for a third time as of February 13, 2007 (collectively, the "DDA"), providing for the acquisition, disposition and development of certain real property (the "Site") included within the boundaries of the Redevelopment Plans for the Waterfront Redevelopment Project and the Marina Vista Redevelopment Project, and construction in phases of a master planned mixed-use development, including residential, commercial, retail and open space and park uses (collectively, the "Project," as further defined in Section 101 of the DDA). Capitalized terms used but not defined in this Memorandum shall have the meanings given in the DDA. Included within the Site is the Developer Parcel(s) described in the attached Exhibit A.

Among other matters, the DDA states as follows:

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

This Memorandum is prepared for the purpose of recordation, and it in no way modifies the provisions of the DDA. This Memorandum amends and supersedes in its entirety that certain Memorandum of Disposition and Development Agreement dated as of October 27, 2005 and recorded in the Official Records of the County of Solano as Document No. 200700002114.

IN WITNESS WHEREOF, the parties hereto have entered into this Memorandum as of the date first above written.

AGENCY:

REDEVELOPMENT AGENCY
THE CITY OF VALLEJO

By: ______________________
~~Robert Nichelini~~
Joseph M. Tanner
~~Acting~~ Executive Director

APPROVED AS TO FORM:

____
Frederick G. Soley
Agency Counsel

ATTEST:

____
Allison Villarante
Agency Secretary

DEVELOPER:

CALLAHAN/DeSILVA VALLEJO, LLC
a California limited liability company

By: The DeSilva Group, Inc.

By: ______________________
~~James B. Summers~~
Ernest D. Lampkin
Vice President

By: Joseph W. Callahan, Jr.,
an individual, Member

By: ______________________
Joseph W. Callahan, Jr.

STATE OF CALIFORNIA)

)

)ss

COUNTY OF)

)On ______________, 20 __, before me, ________________, Notary Public, personally appeared ________________, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature ____________________ (Seal)

____

STATE OF CALIFORNIA)

)

)ss

COUNTY OF)

)On ______________, 20 __, before me, ________________, Notary Public, personally appeared ________________, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

____________________ Signature ____________________

(Seal)

EXHIBIT A TO MEMORANDUM OF DDA

Legal Description of the Applicable Developer Parcel(s)

ATTACHMENT NO. 8

DIAGRAM OF PARCEL A BOUNDARY LINE FOR PURPOSES OF DESIGNING MARE ISLAND CAUSEWAY/MARE ISLAND WAY WIDENING IMPROVEMENTS

THIRD SUPPLEMENTAL REPORT OF THE REDEVELOPMENT AGENCY OF THE CITY OF VALLEJO ON THE PROPOSED AMENDED AND RESTATED (THIRD) DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE AGENCY AND CALLAHAN/DeSILVA VALLEJO, LLC
(Waterfront DDA)

The REDEVELOPMENT AGENCY OF THE CITY OF VALLEJO (the "Agency") and CALLAHAN/DeSILVA VALLEJO, LLC (the "Developer") entered into that certain Disposition and Development, executed as of October 17, 2000 (the "Original DDA"), which Original DDA was amended and restated in its entirety as of October 1, 2002 (the "First Restatement"), and further amended by a First Amendment to Amended and Restated Disposition and Development Agreement, executed as of October 24, 2003, and a Second Amendment to Amended and Restated Disposition and Development Agreement, executed as of August 24, 2004, and further amended and restated in its entirety as of October 27, 2005 (the "Second Restatement") (all of the foregoing are collectively referred to herein as the "Existing DDA"). The Existing DDA provides for the acquisition, disposition and development of certain real property (the "Site"), a portion of which is included within the Vallejo Waterfront Redevelopment Project Area, and a portion of which is included within the Marina Vista Redevelopment Project Area, both of which Redevelopment Project Areas have, since the Second Restatement, been merged with the Vallejo Central Redevelopment Project Area and are a part of the Merged Waterfront/Downtown Redevelopment Project Area.

Following approval of the Second Restatement, the Vallejo Waterfront Coalition (the "Coalition") filed an action challenging certain aspects of the Project. The Agency, City, Developer and Coalition entered into settlement negotiations, and thereafter entered into a Settlement and Release Agreement as of November 28, 2006 (the "Settlement Agreement") to resolve the action. The Settlement Agreement provides for the action to be dismissed by the parties within 31 days after the second reading and approval of the ordinances enacting the Settlement-Related Amendments (as defined below) (the "Action Dismissal Date").

The Agency and Developer have cooperated in the preparation of an Amended and Restated (Third) Disposition and Development Agreement (the "Third Restatement"), which modifies certain provisions of, and fully restates, the Existing DDA to reflect progress made since the approval of the Second Restatement, and the further planning and financial agreements reached by the Agency and the Developer to implement specified terms of the Settlement Agreement. Specifically, the Third Restatement is intended to: (1) implement the terms of the Settlement Agreement by conforming the terms of the DDA to the relevant provisions of the Settlement Agreement; (2) set forth the financial arrangements between the parties with respect to their respective expenditures in connection with the Settlement Agreement and related actions; (3) update both the Schedule of Performance (Attachment No. 3 to the DDA) and performance dates contained throughout the DDA to reflect the tolling of obligations under the DDA during the pending action, as well as current Project circumstances; and (4) make other conforming and minor updating changes to reflect changed circumstances for performance of the Project since the Second Restatement. As used in this Third Supplemental Report, the term "DDA" refers to the Third Restatement.

This Third Supplemental Report has been prepared pursuant to Sections 33433 and 33679 of the California Community Redevelopment Law (Health and Safety Code Section 33000 et seq.) to provide certain information with respect to the proposed Third Restatement. This Third Supplemental Report supplements the Report prepared by the Agency at the time of approval by the Agency of the Original DDA (the "Original Report"), the Supplemental Report prepared by the Agency at the time of approval by the Agency of the First Restatement (the "First Supplemental Report"), and the Second Supplemental Report prepared by the Agency at the time of approval by the Agency of the Second Restatement (the "Second Supplemental Report"), and addresses the changes made through the Third Restatement. All other terms and conditions not addressed in this Report remain unchanged and are as outlined in the DDA and as set out in the Original Report, the First Supplemental Report and the Second Supplemental Report.

I. EIR; AMENDED REQUIRED APPROVALS

A. Amended Required Approvals. Prior to and in conjunction with the preparation and approval of the Second Restatement, the Agency, Developer and City cooperated in preparing and approving a series of land use approvals and entitlements for the Project (the "Required Approvals"), which included:

1. Certification of an Environmental Impact Report (the "EIR") for the Vallejo Station Project and the Vallejo Waterfront Project (SCH No. 2000052073), including the EIR Mitigation Monitoring and Reporting Program;

2. An Amendment to the City's General Plan to include revised and updated land use and urban design goals, policies and map designations for the Site and the Project;

3. An Amendment to the City's Zoning Ordinance to provide for zoning consistent with the General Plan Amendment;

4. A Planned Development Master Plan for the Site and Waterfront Design Guidelines prepared jointly by the Agency and Developer; and

5. A development agreement (pursuant to Government Code Section 65864 et seq.) pertaining to all of the Developer Parcels identified in the DDA.

In conjunction with the Third Restatement, the Agency, Developer and City have cooperated in preparing an addendum to the EIR ("EIR Addendum") that evaluated the impacts of the Project as modified by the Settlement-Related Amendments (as defined below), and certain amendments to the Planned Development Master Plan and the accompanying Waterfront Design Guidelines, and certain amendments to the Development Agreement, to implement specified terms of the Settlement Agreement (collectively, the "Settlement-Related Amendments"). The Required Approvals, as proposed to be amended by the Settlement-Related Amendments, are referred to in the Third Restatement as the "Amended Required Approvals", and also include all conditions of approval in connection with the Amended Required Approvals and the EIR Mitigation Monitoring and Reporting Program.

The Settlement-Related Amendments have been prepared by the Agency and are expected to be presented for consideration of approval and certification concurrently with the presentation and consideration of approval of the Third Restatement. Except for the reimbursement to Developer of the Total Reimbursable Developer Advance, as referenced below, the Agency shall pay all costs in connection with the preparation, approval and adoption of the Settlement-Related Amendments.

B. EIR

As noted above, in conjunction with the Second Restatement, the City and Agency certified the EIR for the Vallejo Station Project and the Vallejo Waterfront Project (SCH No. 2000052073), including the EIR Mitigation Monitoring and Reporting Program. The City and Agency have also prepared an Addendum to the EIR, which will be considered by the City Council and Agency in conjunction with the Third Restatement and the Settlement-Related Amendments. To date, the Developer has advanced, on the Agency's behalf, various costs of preparation of the EIR and other planning studies and reports necessary for preparation of the Required Approvals. A portion of such advances in the amount of $____________ ("Total Reimbursable Developer Advance"), shall be subject to reimbursement to the Developer by the Agency (as discussed below). The remaining amounts of such advances by the Developer are not subject to reimbursement by the Agency.

The Agency shall reimburse the Developer for costs advanced by the Developer to be reimbursed by the Agency, as referenced above, upon receipt of available tax increment revenue generated from the Vallejo Waterfront and/or the Marina Vista Redevelopment Project Areas, or receipt of other available governmental grants or public funds from which such costs may be reimbursed. Any portion of such amounts which have not been reimbursed by the Agency at the time of the close of escrow for Parcel A (or the next Developer Parcel to be purchased by the Developer, if applicable) shall be credited toward the Purchase Price otherwise payable by the Developer for Parcel A (or the next Developer Parcel to be purchased by the Developer, if applicable).

II. COSTS FOR DEFENSE AND SETTLEMENT OF COALITION ACTION

The costs incurred in connection with the defense of the Coalition action referenced above, including all activities undertaken by the parties and the City related to defense and settlement of the action, will be paid as follows:

1. The City and/or Agency shall pay the costs of the City Attorney's Office, the Agency's special counsel, and City/Agency staff in formulating and implementing the defense and settlement activities, which costs are estimated to be approximately $______ for the City, and approximately $________ for the Agency. In addition, the Agency will pay the costs associated with the Settlement-Related Amendments, which costs are estimated to be approximately $________.

2. The Developer will pay the costs of the Developer's in-house staff and any outside consultants, advisors, and attorneys employed by the Developer in formulating and implementing the defense and settlement activities. In addition, the Developer will advance

payment of the attorneys fees and costs of the Coalition as specified in the Settlement Agreement. Fifty percent (50%) of such costs shall be subtracted from the Preliminary Purchase Price as a credit toward determination of the Purchase Price for Parcel A, and the remaining fifty percent (50%) will be considered and treated as Third Party Costs under the DDA, which may affect the determination of the Purchase Price for the Developer Parcels only if Method B is utilized for determining a Purchase Price.

III. PROJECT PHASES; DEVELOPMENT

Certain amendments have been made in the proposed uses and improvements to be developed on the Site, and the different parcels and phasing of the development of the Waterfront Project. Under the Third Restatement, the Waterfront Project will still be developed in three (3) separate and distinct geographic elements or areas (each an "Area"), as set out in the Second Supplemental Report, with the following exceptions:

A. Basic Development Standards. In connection with the initial construction of the Project, all minimum City Building Code and Water Division requirements for indoor water conservation in effect at the time of the effective date of the Settlement Agreement shall be exceeded by no less than twenty percent (20%). In addition, the Developer will actively pursue the integration of green building materials, green construction methods and green site preparation in all Unit Plan applications, where application of such methods and materials integrate with or seamlessly replace more traditional methods.

B. Northern Waterfront Area

1. Developer Parcel A; City/Agency Parcel D2 (Wetland Park). Parcel A has been reconfigured to include approximately 10.9 acres. The Developer, at its sole cost and expense, will develop Parcel A for residential uses, including a townhouse project with no more than 175 dwelling units distributed among two clustered neighborhoods. The dwelling units on Parcel A will be distributed among multiple buildings, comprised of traditional townhouses with stacked flats to be located at one or both ends of each building, and each unit shall be provided with a two car garage. Development of Parcel A will also include the required public streets, public access and pedestrian pathways, and associated private amenities. The Developer shall dedicate the improved public streets within Parcel A in accordance with the requirements of the Project Approvals. Public access will be provided through the new residential neighborhoods to the Wetland Park to be developed on Parcel D2. The parties anticipate that the development of Parcel A will be accomplished in sub-phases. The Developer will be required to complete the applicable public improvements for each sub-phase prior to or concurrently with construction of each such sub-phase.

Parcel D2 is now an approximately 4.0 acre parcel bounded by Parcel A to the north and south. Parcel D2 is to be owned by the City and developed by the Developer, at its cost, subject to the cost cap previously established under the Second Restatement. A 4.0 acre public wetland park (the "Wetland Park") will be created on Parcel D2, a central location between the two townhouse neighborhoods on Parcel A. Key components of the Wetland Park will be (a) a corridor of swales and a tidal pond; (b) open meadows for passive and informal use; (c) interpretive elements; (d) paths, bridges, and seating; (e) screening of surrounding development; (f) an at-grade pedestrian and visual link to the Promenade Park; and (g) tidal function highlighting the connection to the Bay system. Following completion by the Developer, the Wetland Park will be dedicated in fee to the City for park purposes and maintained by the City using assessments generated by the LLMD, or other similar funding mechanism.

2. Parcel E, Parcel F, and Related Parking Areas. Parcel F (an approximately 1.0 acre parcel, previously referred to as Jazz Festival Green) will be utilized, along with Parcel E (an approximately 1.4 acre parcel), for parking purposes as part of the reconfiguration of parking within the North Waterfront Area. To facilitate this reconfiguration of parking, the City and Agency, at their sole cost, will use diligent good efforts to obtain any necessary lease amendments with tenants on the parcels north of Parcel F ("Related Parking Areas"), and the Developer, at its cost, will obtain necessary approval for and resurface and re-stripe the parking lots and access driveways consistent with the parking reconfiguration.

3. BCDC Approvals. The parties may be required to seek an amendment of Bay Conservation and Development Commission (BCDC) permit No. 1-86, in order to accommodate the reconfiguration of the parking in the Northern Waterfront Area. The parties, at the Developer's cost, will cooperate to apply for and obtain any amendments required from BCDC with respect to the applicable current BCDC development permits for the Northern Waterfront Area.

B. Central Waterfront

1. General Standards and Procedures. General standards and procedures have been established for the design and development of various parcels and improvements in the Central Waterfront Area, including standards for the architectural treatment, articulation and terracing of building massing, building heights and setbacks, etc. For Parcels J1, J2, L1, L2, L4 and L5, not less than 20 percent of each such parcel's surface area shall be public or private open space, and include sidewalks, public plazas, public and private landscaped areas, private courtyards, pedestrian alleys, or such other equivalent spaces.

2. Parcel J. Parcels J1 and J2 are approximately 2.7 acres and 4.1 acres, respectively. The Developer will design and construct on Parcels J1 and J2 a total of up to 286 residential units in two to four level buildings constructed on top of one story podium garage structures, half below and half above grade. The development of Parcel J will occur in two phases on the two sub-parcels. The units will be stacked flat residential condominiums containing one, two and three bedrooms. The garage structures will provide off-street secure, resident parking for approximately 516 vehicles, as well as residential unit storage space, a utility room, stairwells, and elevator areas. The development will include extensive at-grade perimeter landscaping and private recreation and landscaping on the podium decks. Development of Parcel J also includes approximately 25,000 square feet ground floor retail uses fronting on Mare Island Way and Festival Green edges of the parcel, and the design and construction of Civic Center Drive through to Georgia Street. Prior to the submittal of any Unit Plan application for Parcel J, the Developer and City will study, at the Developer's cost, the possibility of removing the intersection of Civic Center Drive and Georgia Street, and determine whether the intersection level of service can be maintained without the extension of Civic Center Drive through Georgia Street.

C. Southern Waterfront

1. Parcel T1. Parcel T1 is an approximately 14.9 acre parcel. At the Developer's election, Parcel T1 may be divided into up to three sub-parcels (for each of the three separate residential buildings described below) and conveyed separately to the Developer at separate times). The Developer, at its cost, will design and construct three condominium buildings containing up to a total of 650 units on Parcel T1. The buildings will contain three and four-story condominium flats over one and two levels of parking (where the garage will be two levels, the lower level will be below grade, and the upper level will be partially below grade).

The Agency and Developer will cooperate in good faith to design a program for including a meaningful affordable housing component in the development of Parcel T1 (or a mutually acceptable off-site location). The strategic and cost effective use of the funds deposited in the Agency's Low and Moderate Income Housing fund will be used to leverage other potential public and private sector funding sources to achieve this affordable housing component. The parties will also seek in good faith to present for consideration of adoption by the Agency and the City Council amendments to the DDA and the Project Approvals to implement the affordable housing component on Parcel T1 (or acceptable off-site location). The Developer will bear the costs of its in-house staff and its legal counsel, and shall advance the costs of any mutually agreed affordable housing consultants and other consultants in connection with this effort.

IV. COST OF THE DDA TO THE AGENCY

The costs of the DDA to the Agency were addressed in Section II.H of the Original Report and the Second Supplemental Report. This Third Supplemental Report addresses updated information with respect to those costs expected to be incurred by the Agency, and is intended to supplement the information contained in the Original Report and the Second Supplemental Report.

V. VALUE OF THE DEVELOPER PARCELS; CONSIDERATION TO BE PAID BY DEVELOPER

As noted in the Introduction to this Third Supplemental Report and in Section III of the Original Report and Section VI of the Second Supplemental Report, the consideration to be paid by the Developer to the Agency for each Developer Parcel will be equal to the most recently updated fair market value of the applicable Developer Parcel as determined by a qualified, professional and neutral appraiser mutually selected by the Agency and the Developer. The bases for determining the updated fair market value for each Developer Parcel have not changed in any material respect from the discussion contained in Section VI. of the Second Supplemental Report, and will still be determined using two methods (Method A and Method B, as more fully detailed in the DDA). The Purchase Price will be equal to the higher of the two values.

VI. SECTION 33679 REQUIREMENTS

Health and Safety Code Section 33679 requires that before an agency commits to use tax increment revenues allocated to it for the purpose of paying all or part of the value of the land for, and the cost of the installation and construction of, any publicly owned building, other than parking facilities, a summary must be prepared and made available for public inspection, which includes (a) estimates of the amount of tax increments proposed to be used to pay for such land and construction of the publicly owned building, including interest payments; (b) sets forth the facts supporting the determinations required to be made under Health and Safety Code Section 33445; and (c) sets forth the redevelopment purpose for which such taxes are being used to pay for the land and construction of such publicly owned building.

A. Amount Of Tax Increments To Be Used To Pay For Agency's Costs.

As part of the Waterfront Project, and pursuant to the DDA, the Agency will be providing financing for the design and construction of various publicly-owned improvements, including parking facilities and parks and open space improvements and amenities throughout the Master Plan Area. In addition, the Agency will be providing financing for the design and construction of certain publicly owned buildings. Except for those specific costs addressed in this Third Supplemental Report, the information contained in Section VII.A. of the Second Supplemental Report remains unchanged.

B. Facts Supporting Determinations Required Under Section 33445

1. The development of the public improvements are of benefit to the project area or the immediate neighborhood in which the project is located. As noted in the Original Report, the Second Supplemental Report and this Third Supplemental Report, a portion of the Site is included within the Vallejo Waterfront Redevelopment Project Area, and a portion of the Site is included within the Marina Vista Redevelopment Project Area, both of which Redevelopment Project Areas have, since the Second Restatement, been merged with the Vallejo Central Redevelopment Project Area and are a part of the Merged Waterfront/Downtown Redevelopment Project Areas. A discussion of the Agency's primary goals and objectives, and the blighting conditions that exist within each of these Project Areas is contained in Part IV of the Original Report. The DDA, as amended by the Third Restatement, is a major step toward eliminating or alleviating conditions of blight still remaining within both the Vallejo Waterfront and the Marina Vista Redevelopment Projects. The DDA, as amended by the Third Restatement, will enable the Agency to continue its efforts to revitalize the Vallejo Waterfront and the Marina Vista Redevelopment Project Areas.

In addition to eliminating blighting conditions within the Project Areas (as more fully described in the Original Report), development of the Waterfront Project, including without limitation the public improvements which are a major component of the Project, pursuant to the DDA will provide the following benefits to the Project Areas:

(a) development of the project will create employment opportunities, including short term construction-related jobs, as well as long-term employment opportunities associated with the retail, commercial and office uses to be developed as part of the Waterfront Project;

(b) in furtherance of the project, the Agency and Developer have entered into a Project Labor Agreement with the Napa-Solano Building and Construction Trades Council, and various union affiliates of the Council, to develop a cooperative effort to assure that the development of the private portions of the Waterfront Project will be built in an expeditious, high quality and cost effective manner without interruption or delays, utilizing a skilled workforce;

(c) the DDA will further the Agency's goals and objectives to remediate the hazardous materials conditions existing on portions of the Site, to enable redevelopment and use of those contaminated areas;

(d) relocation of the Post Office to a new facility will not only allow for the redevelopment, replanning and reuse of the outdated facility currently housing the Post Office, but also help to improve the service provided by the U.S. Postal Service by providing for a new expanded and modern facility, which will benefit the residents of the Project Area and the surrounding community;

(e) the Waterfront Project consists of a comprehensive and coordinated public and private development effort to revitalize Vallejo's Waterfront Area and to link the Waterfront area to the Downtown area;

(f) the Waterfront Project includes, as a central component, development of a major new transit center for ferry patrons and bus transfer center, to be known as "Vallejo Station," which will be a multimodal transportation facility serving regional and local transit needs; and

(g) development of the Project will intensify land uses in certain areas, and expand designated public open space areas, and enhance public access to the Waterfront and the Waterfront Promenade areas.

2. No other reasonable means of financing the public improvements are available to the community. As more described in Section VII.A of the Second Supplemental Report, and in the DDA, the Agency intends to utilize funding from various sources to finance its obligations under the DDA. These other funding sources are expected to fund a substantial portion of the costs of the public improvements required under the DDA. In addition, as noted in the DDA, an LLMD is expected to be formed to cover the ongoing operation and maintenance costs of certain public improvements that will initially be funded by the Developer as part of its requirements under the DDA. Neither the City of Vallejo, other public entities, nor private sector developers will be or historically have been able to fully assume the combination of costs associated with development and the costs of infrastructure improvements anticipated and needed in connection with the development of the Waterfront Project. The Agency will continue to examine other methods available to the community to fund public improvements before tax increment is utilized. However, tax increment funds to pay a portion of the costs for the public improvements required under the DDA is necessary to cover the currently estimated shortfall between costs and the other funding sources and to be available in the event that other funding sources are not fully realized. Even though a number of financing methods and sources have been and are available and have been and will be utilized to fund a substantial portion of the costs for the public improvements, such sources are insufficient to finance all program costs.

3. The payment of funds for the public improvements will assist in the elimination of one or more blighting conditions inside the project area, and is consistent with the

Agency's Five-Year Implementation Plan adopted pursuant to Health and Safety Code Section 33490. As required by Health and Safety Code Section 33490, at the time of the merger of the Vallejo Waterfront, the Marina Vista and the Vallejo Central Redevelopment Projects, the Agency adopted a new updated Five Year Implementation Plan, covering Fiscal Year 2004/05 through Fiscal Year 2008/09, for the Merged Downtown/Waterfront Redevelopment Project Areas. In addition to addressing the general goals and objectives for the entire Merged Downtown / Waterfront Redevelopment Project Area, including the Marina Vista and the Waterfront Redevelopment Project Areas, the Implementation Plan specifically identifies as one of the programs anticipated to be undertaken during the Implementation Plan period: "Initiate private development and public improvements as outlined in the DDA with Callahan/DeSilva Vallejo, LLC including private development on Parcel A, public and private development on Parcels B, C, L and J, including the Vallejo Station Project." The Implementation Plan also specifically addresses the Agency's work toward "removing the hazardous materials and regional regulatory encumbrances that currently prevent the Agency from the making the Agency-owned former Kaiser property available for development." The estimated revenues and expenditures during the Implementation Plan period also specifically identify projected revenues and expenditures of Agency funds for the Waterfront Project (including without limitation public improvements, Vallejo Station project and the sale of parcels which are included within the DDA). Additional evidence to support these determinations are contained in Part IV of the Original Report.

C. Redevelopment Purpose For Which Tax Increments Are Being Used.

As defined in Sections 33020 and 33021 of the Health and Safety Code, redevelopment includes the planning and development of all or part of the project area, the provision of open spaces, including public grounds and space around buildings, the provision of public or private buildings, and improvement of recreations areas and other public grounds as are appropriate or necessary in the interest of the general welfare. Section 33445 of the Health and Safety Code provides that an agency may, with the consent of the legislative body, pay all or part of the value of the land for and the cost of the installation and construction of publicly-owned facilities either within or outside the project area, if certain findings are made. The use of tax increment funds which may be necessary to pay for the cost of land for and the cost of the installation and construction of the public improvements and facilities provided for under the DDA, including without limitation those facilities identified in Section VII.A of the Second Supplemental Report, is justified because it will further the Agency's efforts to revitalize the Waterfront and Downtown areas, expand designated public open space areas, create the Vallejo Station multimodal transportation facility, enhance public access to the Waterfront and Waterfront Promenade area, and assist in the elimination of blight, as more fully discussed in Section VII.B of the Second Supplemental Report, and in Part IV of the Original Report.

CITY OF VALLEJO

ADMIN ITEM

Agenda Item No. 13 B

HOUSING AND REDEVELOPMENT COMMISSION

Date: February 7, 2007

TO: Chairperson and Commissioners

FROM: Susan McCue, Economic Development Program Manager SMc
Bonnie Robinson Lipscomb, Senior Community Development Analyst BRL

SUBJECT: RECOMMENDATIONS REGARDING INCLUSIONARY HOUSING

BACKGROUND & DISCUSSION

During its December 2006 regular meeting, the Housing and Redevelopment Commission ("Commission") expressed its interest in sharing its thoughts on inclusionary housing with the City Council. Additionally, City Council Liaison Gary Cloutier addressed the Commission and shared that it would be helpful to have the Commission's thoughts on inclusionary housing when these issues are brought before the Council, particularly on the issue of set asides.

Subsequent to the discussion, in order to facilitate a recommendation to the Council, Chair Abdul-Ghanee appointed an Ad Hoc Committee comprised of Commissioners Pitts and Platzer to meet and bring back recommendations to the Commission for discussion and approval.

The Ad Hoc Committee conferred by phone and in person. Using its various members' expertise, suggestions from other community members, and with notes from the focus group discussions conducted by the Housing Authority staff and assisted by the Rosen & Associates report, the Committee decided on three recommendations it wishes to provide for approval.

RECOMMENDATION

Adopt the resolution supporting the following three recommendations to be presented to the City Council:

1. The creation and adoption of an inclusionary housing ordinance
2. Affordable housing set aside be not less than 15%
3. In-lieu fees be only allowed for fractional unit obligation

ALTERNATIVES CONSIDERED

None considered.

ENVIRONMENTAL REVIEW

An environmental review is not needed as part of this report.

DOCUMENTS ATTACHED

Attachment A - Resolution

CONTACT: Bonnie Robinson Lipscomb, Senior Community Development Analyst
648-5278, blipscomb@ci.vallejo.ca.us

RESOLUTION NO.______

RECOMMENDATIONS TO THE CITY COUNCIL REGARDING INCLUSIONARY HOUSING

BE IT RESOLVED by the Housing and Redevelopment Commission of the City of Vallejo as follows:

WHEREAS on December 13, 2006 the Chairperson of the Housing and Redevelopment Commission appointed an Ad Hoc Committee to formulate recommendations regarding inclusionary housing to be brought before the City Council; and

WHEREAS this Ad Hoc Committee consulted and decided on three recommendations to be brought before the Commission for approval to be recommended to the Council.

NOW, THEREFORE, BE IT RESOLVED by the Housing and Redevelopment Commission of the City of Vallejo that the following three recommendations be provided to the City Council of the City of Vallejo:

1. The creation and adoption of an inclusionary housing ordinance
2. Affordable housing set aside be not less than 15%
3. In-lieu fees be only allowed for fractional unit obligation

ADOPTED by the Housing and Redevelopment Commission of the City of Vallejo at a special meeting held on February 7, 2007 by the following vote: