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City of Chula Vista
276 Fourth Avenue
Chula Vista, California 91910
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(Space above for Recorder's Use)

DEVELOPMENT AGREEMENT

Among

**THE CITY OF CHULA VISTA,
a California charter city and municipal corporation**

and

**NORTH C.V. WATERFRONT L.P.,
a California limited partnership**

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THIS DEVELOPMENT AGREEMENT (“Agreement”) is entered into by and among THE CITY OF CHULA VISTA, a California charter city and municipal corporation (“City”), and NORTH C.V. WATERFRONT L.P., a California limited partnership (“Developer”) as of the Effective Date (as defined in the Agreement). City or Developer are sometimes individually referred to in this Agreement as “Party” and collectively as the “Parties”. The Parties enter into this Agreement with reference to the following recited facts:

RECITALS

A. The State of California has enacted the Development Agreement Statute, found at Sections 65864 et seq., of the California Government Code, to strengthen the public planning process, encourage private participation in comprehensive planning and to reduce the economic risk of development;

B. City is authorized by the Development Agreement Statute and by its City Charter to enter into development agreements with persons and entities having legal or equitable interests in real property for the purpose of establishing predictability for both City and property Developer in the development process and in the provision of public infrastructure and public benefits;

C. Developer has a legal or equitable interest in that certain real property consisting of approximately 33 acres of land located in the City, County of San Diego, State of California, more particularly described and depicted in Exhibit “A” to this Agreement (“Property”);

D. The Property is located in the Harbor District of the Chula Vista Bayfront Master Plan (“Harbor District”) in the City. The Property is currently undeveloped but has been approved by City for the development of up to 1,500 residential units with 15,000 square feet of ground floor retail, a 250- room hotel, and 420,000 square feet of commercial, office, and retail uses, all as more fully described in the City of Chula Vista General Plan (“General Plan”) and Local Coastal Program (which includes the Land Use Plan and Bayfront Specific Plan) (“LCP”), and the Chula Vista Multiple Species Conservation Plan Subarea Plan (“Subarea Plan”) (collectively, “Project Approvals”);

E. Developer desires to develop the Property into a unified development consisting of the uses described in the Project Approvals (“Project”). A general description and depiction of key elements of the Project is contained in Exhibit “B” to this Agreement;

F. Developer has requested that City enter into a development agreement for the development of the Project on the Property, and City desires to enter into this Agreement pursuant to the provisions of the California Government Code, the City Charter, the General Plan, the City Municipal Code, and applicable City policies;

G. This Agreement assures that development of the Project on the Property will occur in accordance with the Project Approvals;

H. This Agreement constitutes a current exercise of City’s police powers to provide

predictability to Developer in the development approval process by vesting the permitted uses, density, intensity of use, and timing and phasing of the Project on the Property in exchange for Developer's commitment to provide significant public benefits to City. Developer would not commit to provide such significant public benefits to City if not for the promise of City that the Property can be developed pursuant to the Existing Land Use Regulations and Subsequent Land Use Regulations;

I. This Agreement is also intended to ensure that Developer has provided funding sufficient to provide the adequate and appropriate infrastructure and public facilities required by the development of the Project on the Property, and that this infrastructure and public facilities will be available no later than when required to serve the Project's demand;

J. The commitments of Developer made in this Agreement allow City to realize significant economic, public facilities, and other public benefits. These public benefits will advance the interests and meet the needs of City's residents and visitors to a significantly greater extent than would development of the Project on the Property absent this Agreement. In addition to the specific public benefits to be provided by the Project and described in Section 5.1 below, Developer also accomplished the following:

(1) Developer agreed with City to voluntarily postpone processing entitlements for the original 97 acres of land that it owned in order to allow City and Port District to engage in a comprehensive planning process for the entire Chula Vista Bayfront, which planning process resulted in Developer's agreement to the land swap referenced below;

(2) Developer agreed to a land swap of 97 acres of land in exchange for the Property in order to preserve sensitive environmental habitat and respond to the concerns and planning objectives of City, the San Diego Unified Port District ("Port District"), the community, and numerous environmental groups (the "Land Exchange Agreement"). The process to accomplish the land swap involved an extensive upfront investment by Developer in the planning process, environmental review process, and outreach to the community and other interested third parties. In addition to an investment in community outreach, Developer has contributed \$3 million to the Port of San Diego as part of the Land Exchange Agreement;

(3) Developer worked extensively with the members of the community, environmental organizations, and representatives of labor unions to obtain support for the land swap and the Project, thus ensuring the ability to achieve the objectives of the Project and resulting benefits to City without additional lengthy and costly delays;

(4) Developer provided funding in the amount of \$1.4 million to acquire approximately two (2) acres of land on which will be located a fire station to provide fire and rescue services for the entire Chula Vista Bayfront. At the time the land became available for purchase, the City did not have funds to acquire the land. When City had adequate funds to purchase the land, Developer sold the land to City for the amount it had paid for the land, thus foregoing any profit on the purchase and sale of the land;

(5) The Project is a “catalyst project” that will anchor and encourage future investment in the Chula Vista Bayfront Master Plan area;

(6) The Project is a significant development for the City with up to 1,500 residential units with 15,000 square feet of ground floor retail, a 250-room hotel, and 420,000 square feet of commercial, office, and retail uses, which will generate a new stream of property and sales tax for the City;

(7) The Project will create a substantial new stream of transient occupancy tax (“TOT”) revenue from short-term rentals from the Project’s 1,500 residential units; and

(8) The Project is expected to provide a significant public benefit by constructing public infrastructure in the Chula Vista Bayfront Master Plan area along with the first phase residential building. This work is expected to earn Bayfront Development Impact Fee credits that the Developer will not be able to fully use for many years because its public infrastructure investments will be made at the beginning of the 20-year term of the Development Agreement. It is highly unusual and extraordinary for a developer to make a significant financial commitment upfront to earn substantial Development Impact Fee credits so far in advance of being able to apply such credits to fees incurred through its project development, and is a demonstration of the significant benefit the Project is expected to provide to the City.

K. In addition to customary development impact fees, the Developer commits to providing the City with \$1 million dollars towards the purchase of a fire engine, which shall be paid at certificate of occupancy of the first phase residential building. The Developer further commits to provide the City with an additional \$500,000 towards the purchase of a fire ladder truck, which shall be paid at the certificate of occupancy of the third phase residential building.

L. In return for Developer’s commitment to provide the public benefits described in Section 5.1 below, City is willing to exercise its authority to enter into this Agreement and to make a commitment of predictability for the development process for the Project on the Property.

AGREEMENT

For good and valuable consideration, City and Developer agree as follows:

1. DEFINITIONS. In this Agreement, unless the context otherwise requires, the following terms and phrases shall have the following meanings:

1.1 Agreement. “Agreement” means this Development Agreement between City and the Developer. The term “Agreement” shall include any amendment to the Agreement properly approved and executed pursuant to the terms of this Agreement.

1.2 Approval Date. “Approval Date” means the date on which the City Council adopted

the Enabling Ordinance amending the General Plan, LCP, and Subarea Plan to allow for the development of the Project on the Property.

- 1.3 CBC Policy. “CBC Policy” means the City’s Guidelines to the Balanced Communities Policy adopted as part of the Housing Element of the General Plan.
- 1.4 CFD. “CFD” means a Community Facilities District formed pursuant to the provisions of the “Mello-Roos Community Facilities Act of 1982”, being Chapter 2.5, Part 1, Division 2, Title 5 of the Government Code of the State of California.
- 1.5 City. “City” means the City of Chula Vista, a California charter city and municipal corporation.
- 1.6 City Charter. “City Charter” means the City of Chula Vista’s City Charter.
- 1.7 City Council. “City Council” means the governing body of City.
- 1.8 City Manager. “City Manager” means the City Manager of City or his or her designee.
- 1.9 City Municipal Code. “City Municipal Code” means the Chula Vista Municipal Code.
- 1.10 Day. “Day” means a calendar day unless specifically stated as a “business day.”
- 1.11 Developer. “Developer” means North C.V. Waterfront L.P., a California limited partnership, and Developer’s successors and assigns as set forth in this Agreement.
- 1.12 Developer’s Vested Right. “Developer’s Vested Right” shall have the meaning set forth in Section 4.1.
- 1.13 DIFs. “DIFs” means City’s Development Impact and In Lieu Fees.
- 1.14 Effective Date. “Effective Date” mean the date on which the Enabling Ordinance for this Agreement becomes effective and the Parties have each signed this Agreement.
- 1.15 RESERVED.
- 1.16 Enabling Ordinance. “Enabling Ordinance” means the ordinance, resolution, or legislative action necessary to approve the Project Approvals or this Agreement.
- 1.17 Existing Land Use Regulations. “Existing Land Use Regulations” mean all Land Use Regulations in effect on the Approval Date, including the General Plan, LCP, and Subarea Plan.

- 1.18 RESERVED.
- 1.19 General Plan. “General Plan” means the General Plan of the City of Chula Vista.
- 1.20 RESERVED.
- 1.21 J Street Sewer Improvements. “J Street Sewer Improvements” means the sewer improvements required for the Project as shown on the attached Exhibit “D.”
- 1.22 J Street Sweep Improvements. “J Street Sweep Improvements” means the improvements potentially required for the Project as shown on the attached Exhibit “E.”
- 1.23 J Street Gateway Monument. “J Street Gateway Monument” means the monument Developer has agreed to design, located at the J Street entrance just west of Interstate Highway 5, which shall consist of street improvements, hardscape, and landscape improvements necessary to create a ceremonial entrance to the Chula Vista Bayfront and the Project area.
- 1.24 Land Use Regulations. “Land Use Regulations” means all ordinances, resolutions, codes, rules, regulations and official policies of City governing the development and use of land, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, timing and phasing of development, the maximum height and size of buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement, construction, and initial occupancy standards and specifications applicable to the Project. “Land Use Regulations” do not include any City ordinance, resolution, code, rule, regulation or official policy governing:
- 1.24.1 The conduct or taxation of businesses, professions, and occupations applicable to all businesses, professions, and occupations in City;
- 1.24.2 Taxes and assessments of general application upon all residents of City.
- 1.24.3 The control and abatement of nuisances.
- 1.25 LCP. “LCP” means City’s Local Coastal Program (which includes the Land Use Plan and Bayfront Specific Plan).
- 1.26 Mortgagee. “Mortgagee” means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other security-device, a lender, and their successors and assigns.
- 1.27 Mello-Roos Act. “Mello-Roos Act” means the Mello-Roos Community Facilities Act of 1982, as amended, being California Government Code Section 53311 *et seq.*
- 1.28 Parties. “Parties” means City on the one hand and Developer on the other hand. A

“Party” means either City or the Developer.

- 1.29 Phase I Project Approvals. “Phase I Project Approvals” means the Development Agreement, tentative and/or final subdivision map, coastal development permit (“CDP”), Phase 1 architectural design schematic, community design guidelines, and Design Review approval as further described in the attached Exhibit “C”:
- 1.30 Port District. “Port District” means the San Diego Unified Port District.
- 1.31 Project. “Project” means the development of the Property as set forth in the Project Approvals and Subsequent Project Approvals, and includes the development of up to 1,500 residential units with 15,000 square feet of ground floor retail, a 250- room hotel, and 420,000 square feet of commercial, office, and retail uses, all as more fully described in the “Project Entitlements” as depicted in Exhibit “B”.
- 1.32 Project Approvals. “Project Approvals” means the entitlements approved by the City to allow for the development of the Project on the Property as further described in the attached Exhibit “L”.
- 1.33 Property. “Property” means the real property described and depicted in Exhibit “A”, consisting of approximately 33 acres of underdeveloped property in the Harbor District of the Chula Vista Bayfront Master Plan (“CV Master Plan”).
- 1.34 Reservation of Authority or Reserved Authority. “Reservation of Authority” or “Reserved Authority” means the rights and authority specifically reserved to City which limits the assurances and rights provided to Developer and Developer’s Vested Right under this Agreement.
- 1.35 Section. “Section” means a numbered section of this Agreement, unless specifically stated to refer to another document or matter.
- 1.36 Subarea Plan. “Subarea Plan” means the Chula Vista Multiple Species Conservation Plan Subarea Plan.
- 1.37 Subsequent Land Use Regulations. “Subsequent Land Use Regulations” means the Land Use Regulations adopted after the Approval Date that do not conflict with the Existing Land Use Regulations or this Agreement. Subsequent Land Use Regulations shall be deemed to conflict with the Existing Land Use Regulations or this Agreement if their application to the Project would (a) restrict or modify the permitted types of land uses, the density or intensity of use, the maximum height, size, or square footage of the proposed buildings, the timing and phasing of development, or building and yard setback requirements specified in the Existing Land Use Regulations; (b) increase the amount or change the location of the infrastructure required for the Project; (c) impose additional exactions or requirements other than as provided for in the Existing Land Use Regulations or

this Agreement; (d) change design or development standards or the policies or requirements of the Existing Land Use Regulations; (e) imposes a new permit requirement or procedure not included within the Existing Land Use Regulations; (f) increase the cost of development of the Project as those costs existed at the time of the Approval Date; or (g) otherwise preclude Developer's ability to develop according to the Existing Land Use Regulations or this Agreement.

- 1.38 Subsequent Project Approvals. "Subsequent Project Approvals" means all approvals, permits, or entitlements approved, granted, or issued after the Approval Date which are required or permitted by the Project Approvals, Existing Land Use Regulations, Subsequent Land Use Regulations, and this Agreement.
- 1.39 Term. "Term" means the term of this Agreement as set forth in Section 6 of this Agreement.
- 1.40 Improvements. "Improvements" mean commencement of construction of any portion of the improvements authorized by the Phase I Project Approvals or the improvements described in Sections 4.11, 4.12, and 4.14.
2. INTEREST OF DEVELOPER. Developer represents that it has a legal or equitable interest in the Property and is authorized to enter into this Agreement.
3. PUBLIC HEARINGS. On July 17, 2018, after providing notice as required by law, the City Council held a public hearing on this Agreement and made any legally required findings as set forth in the Enabling Ordinance for this Agreement.
4. DEVELOPMENT OF THE PROJECT ON THE PROPERTY.
- 4.1 Developer's Vested Right. Developer shall have the vested right to complete the Project on the Property during the Term in accordance with the Existing Land Use Regulations, Subsequent Land Use Regulations, the Subsequent Project Approvals, City's Reservation of Authority, and this Agreement ("Developer's Vested Right").
- 4.2 Governing Land Use Regulations. Except as otherwise provided in this Agreement, the Land Use Regulations applicable to the development of the Project on the Property shall be those contained in the Existing Land Use Regulations, the Subsequent Land Use Regulations, and the Subsequent Project Approvals.
- 4.2.1 City shall review the Subsequent Project Approvals pursuant to the process described in the Existing Land Use Regulations only for consistency with the Existing Land Use Regulations, Subsequent Land Use Regulations, and this Agreement. Such Subsequent Project Approvals shall not be unreasonably withheld or delayed. City will exercise reasonable best efforts to expedite review and processing of Phase I Subsequent Project Approvals without charging any expedited

review fees or additional costs to Developer.

- 4.2.2 Developer may in its sole and absolute discretion agree to subject the Project to Subsequent Land Use Regulations that conflict with the Existing Land Use Regulations.
- 4.2.3 Development on Parcels 2 through 7 shall be subject to the review and approval of the Chula Vista Zoning Administrator through the administrative design review process as set forth in the City of Chula Vista Design Manual and subject to the City's development standards. All development on said parcels shall be consistent with adopted design guidelines and applicable development standards for the Project, subject to public notification requirements, and appealable to the Chula Vista City Council.
- 4.3 Permitted Uses. Except as otherwise provided within this Agreement, the permitted uses on the Property shall be as provided in the Existing Land Use Regulations, Subsequent Land Use Regulations, and the Subsequent Project Approvals.
- 4.4 Density and Intensity; Requirement for Reservation and Dedication of Land. Except as otherwise provided in this Agreement, the density and intensity of use for the development of the Project on the Property, and the requirements for reservation and dedication of land, shall be as provided in the Existing Land Use Regulations, Subsequent Land Use Regulations, and the Subsequent Project Approvals.
- 4.5 Reservation of Authority. The following Land Use Regulations or other requirements shall apply to the Property and the Project unless otherwise specifically provided for in this Agreement:
 - 4.5.1 Processing fees and charges may be imposed by City to cover City's estimated or actual costs of reviewing and processing applications for the Project, providing inspections, conducting annual reviews, providing environmental analysis, or for monitoring compliance with this Agreement or any Project Approvals or Subsequent Project Approvals granted or issued, provided such fees and charges are in force and effect on a general basis on the date of filing such applications with City. This Section shall not be construed to limit the authority of City to charge its then-current, normal and customary application, processing, and permit fees for Project Approvals or Subsequent Project Approvals, building permits and other similar permits, which fees are designed to reimburse City's expenses attributable to such application, processing, and permitting and are in force and effect on a City-wide basis on the date of filing such applications with City, notwithstanding the fact that such fees may have been increased by City subsequent to the Approval Date;

- 4.5.2 Development Impact and In-Lieu Fees. Developer's DIF obligations shall be determined by the City pursuant to the provisions outlined in the Municipal Code or in the ordinances establishing the fees. These amounts shall be fixed for each building permit, as of the date the impact fees are paid, between permit issuance and the issuance of a certificate of occupancy. DIF shall not increase between building permit issuance and final inspection more than the Construction Cost Index;
- 4.5.3 Except as specifically provided for in Section 4.2 of this Agreement, procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals, and any other matter of procedure;
- 4.5.4 The following, provided that they are uniformly applied to all development projects within City:
 - 4.5.4.1 Uniform codes governing engineering and construction standards and specifications adopted by City pursuant to state law. Such codes include, without limitation, City's adopted version of the Uniform Administrative Code, California Building Code, California Plumbing Code, California Mechanical Code, California Electrical Code, and California Fire Code;
 - 4.5.4.2 Local amendments to those uniform codes which are adopted by City pursuant to state law, provided they pertain exclusively to the preservation of life and safety; and
 - 4.5.4.3 City's standards and procedures regarding the granting of encroachment permits and the conveyance of rights and interests which provides for the use of or the entry upon public property.
- 4.5.5 Regulations which may be in conflict with this Agreement, but which are objectively required to protect the public health and safety, provided, however, such regulations shall be of the minimum scope, effect, and duration necessary to address the public health and safety concern;
- 4.5.6 State or federal laws or regulations which preempt local regulations or mandate local regulations or conditions that conflict with the development of the Project on the Property. This expressly includes mandates imposed through the Clean Water Act or the Porter-Cologne Water Quality Control Act. Upon discovery of such a federal or state law, City or Developer shall provide the other Party with written notice, a copy of the state or federal law or regulation, and a written explanation of the legal or regulatory conflict created. Within ten (10) days thereafter, City and Developer shall meet and confer in good faith in a

reasonable attempt to modify this Agreement, as necessary, to comply with such federal or state law or regulation. In such negotiations, City and Developer agree to preserve the terms of this Agreement and the rights of Developer as derived from this Agreement to the maximum extent possible while still following the applicable state or federal law;

- 4.5.7 City's public improvement engineering ordinances, policies, rules, regulations and standards;
 - 4.5.8 Developer shall be issued building permits for the Project after permit applications are reviewed and approved by City consistent with Section 4.2 of this Agreement;
 - 4.5.9 The exercise of the power of eminent domain;
 - 4.5.10 Due to the unique nature of the Project, City acknowledges that exceptions and deviations to some Land Use Regulations may be required and agrees to reasonably consider requests for exceptions and deviations from the Land Use Regulations necessary for development of the Project or implementation of the Project Approvals. Developer acknowledges that it is reasonable for City to deny a request for exceptions and deviations from the Land Use Regulations when necessary to protect the public health, safety, or welfare.
- 4.6 Vested Rights Upon Termination. Developer acknowledges that following termination of this Agreement, except as to any Project Approvals or Subsequent Project Approvals that have vested under state law without reliance on this Agreement, City may amend the Project Approvals and Subsequent Project Approvals as they relate to the Project and the Property.
- 4.7 Compliance with CEQA. The City Council has found that the environmental impacts of the Project have been addressed in the Final Environmental Impact Report for the Chula Vista Bayfront Master Plan (State Clearinghouse No. 2005081077). Where the California Environmental Quality Act requires that an additional environmental analysis be performed in connection with a Subsequent Project Approval or other future discretionary approval granted by City for the Project, the Developer shall pay all of City's reasonable costs to perform that additional analysis. If the application of CEQA to a Subsequent Project Approval would (a) require as mitigation a reduction in the density or intensity of use from that allowed by this Agreement, (b) require as mitigation a change in use from those allowed by this Agreement, (c) result in the identification of new significant, unmitigable impacts, and/or (d) identify an environmentally preferred alternative that would reduce density or intensity of use or change a use from that allowed by this Agreement, then Developer may terminate this Agreement.

- 4.8 Timing of Development. Because the California Supreme Court held in Pardee Construction Co. v. City of Camarillo, 37 Cal. 3d 465 (1984), that the failure of the parties in that case to provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over the parties' agreement, it is the specific intent of the Parties here to provide for the timing of the Project in this Agreement. To do so, the Parties acknowledge and agree that unless otherwise specifically required by this Agreement, Developer shall have the right, but not the obligation, to complete the Project in such order, at such rate, at such times, and in as many development phases and sub-phases as Developer deems appropriate in its sole subjective business judgment.
- 4.9 Conditions, Covenants and Restrictions. Developer shall have the ability to reserve and record covenants, conditions, and restrictions ("CC&Rs") against the Property. Such CC&Rs may not conflict with this Agreement, the Existing Land Use Regulations, Subsequent Land Use Regulations, or Subsequent Project Approvals. Before recording any CC&Rs, Developer shall provide a copy of the CC&Rs to City for review and approval by the City Attorney, which approval shall not be unreasonably denied.
- 4.10 Balanced Communities. City has adopted a Balanced Communities Policy ("CBC Policy"), commonly referred to as Inclusionary Housing, to implement the Housing Element of the General Plan. The Property is located in an area that the CBC Policy defines as a "Primarily Underdeveloped Area". The City agrees that the Property will retain that definition for all Subsequent Project Approvals for the Term of this Agreement. In accordance with the CBC Policy, findings made in Recitals J, K, and L substantiate that special circumstances exist that are unique to the Project that justify granting a variance from the CBC Policy. Based on these findings, City agrees to grant the Project a variance from the CBC Policy. TOT revenue generated by the Project's residential units will satisfy the CBC requirements now and for any Subsequent Project Approvals so long as at least \$3,000,000.00 in TOT revenue has been received from the residential units by the end of Year 10 of this Agreement. If such amount has not been received, however, City shall notify Developer in writing and Developer shall have ninety (90) calendar days to pay the difference between \$3,000,000.00 and the TOT revenue collected by the City to date. Upon receipt, City will commit these funds to further the Goals of the City's Balanced Communities Policy. There shall be no such use restrictions on the TOT revenues generated by 1) the Project's residential units in excess of the initial \$3,000,000.00; 2) the Project's residential units following the end of Year 10 of this Agreement; or 3) the Project's hotel rooms.
- 4.11 J Street Sewer Improvements. The Project requires certain sewer improvements at J Street as more fully described in the attached Exhibit "D" ("J Street Sewer Improvements"). In the event that any portion of the J Street Sewer Improvements is included in City's Capital Improvements Project, City agrees that Developer shall

receive full credit against any Project related sewer connection fee for the cost of designing and constructing that portion of the J Street Sewer Improvements. In the event that the J Street Sewer Improvements provide sewer capacity in excess of that required for the Project and that additional sewer capacity is needed by the City for future development outside of the Project, City agrees to enter into a Reimbursement Agreement with Developer. For any amount that exceeds Developer's proportional share of DIF fees, the Reimbursement Agreement shall provide for cash reimbursement when funds are available as determined by the City Manager, or other mutually acceptable reimbursement mechanism.

- 4.12 J Street Pump Station and Force Mains. The Project may require certain improvements to the pump station and force mains that currently serve the Port District's Marina properties located in what is referred to as the J Street sweep, as more fully described in the attached Exhibit "E" ("J Street Sweep Improvements"). In the event that any portion of the J Street Pump Station and Force Mains is included in City's Capital Improvements Project, City agrees that Developer shall receive full credit against any Project related sewer connection fee for the Developer incurred cost of designing and constructing that portion of the J Street Pump Station and Force Mains. In the event that the J Street Sewer Improvements provide sewer capacity in excess of that required for the Project and that additional sewer capacity is needed by the City for future development outside of the Project, City agrees to enter into a Reimbursement Agreement with Developer. For any amount that exceeds Developer's proportional share of DIF fees, the Reimbursement Agreement shall provide a cash reimbursement to Developer when funds are available as determined by the City Manager, or other mutually acceptable reimbursement mechanism.
- 4.13 Reclaimed Water. City agrees that the Project shall only be required to install water delivery facilities required for the use of reclaimed water in a street segment if such requirement exists at the time Developer files an application for a public improvement permit to construct water delivery facilities in that street segment. The City shall not require Developer to retroactively reconstruct its water delivery facilities to interconnect with a reclaimed water system.
- 4.14 Transportation and Traffic Signal Portion of Development Impact Fees. Developer will be responsible for payment of traffic signal fees ("Traffic Signal Fees") and Bayfront Transportation DIF ("Bayfront DIF") fees, pursuant to applicable City Council Policies and the Chula Vista Municipal Code. The Project shall have the option to design and construct certain elements of the Harbor District's traffic circulation system, provided that the improvements to be constructed by the Developer are fully funded by the Traffic Signal Fees, the Bayfront DIF, or a combination thereof. Credits against the Project's Traffic Signal Fee and/or Bayfront DIF obligations and/or cash reimbursements shall be made pursuant to City Council Policy 478-01 and Section 3.55.150 of the Chula Vista Municipal

Code, as applicable.

- 4.14.1 The Parties acknowledge Developer's intent to make major investments in the public transportation infrastructure in the Bayfront area in advance of constructing the majority of the Project, which will provide a public benefit to the City. As Developer completes such public transportation infrastructure, Developer shall submit a request for reimbursement, or a credit against fees, to the City as set forth in City Council Policy 478-01 (Traffic Signal Fees) and Section 3.55.150 of the Chula Vista Municipal Code (Bayfront DIF). For any credit against fees for the Project as approved by the City, the value of that credit balance (with the credit balance representing the credits approved, less credits applied in-lieu of cash payment at building permit, and other credit adjustments as mutually agreed upon by the Parties in writing) shall be annually adjusted on October 1 using the annual inflation adjustment applied by the City to the subject fee program, as set forth in City Council Policy 478-01 and Section 3.55.090 of the Chula Vista Municipal Code.
- 4.14.2 The Parties acknowledge the possibility that the City Council may choose to add projects to the Bayfront DIF program over the life of this Development Agreement. To ensure that Developer's share of such additional improvements complies with nexus and proportionality requirements, the City agrees to: (1) provide notice to Developer when the City initiates an update to the 2014 BFDIF Nexus Study, or any subsequent nexus study prepared thereafter; and (2) provide at least sixty (60) days' advance notice to Developer before any hearing at which the City Council will consider amending the Bayfront DIF program.
- 4.15 J Street Gateway Monument. Developer has agreed to design the monument for the J Street entrance as more fully described in the attached Exhibit "G" ("J Street Gateway Monument"). The City agrees to add the construction of the J Street Gateway Monument to the Bayfront Impact Fee program in the next update. Should Developer elect to construct the J Street Gateway Monument, the City agrees to enter into a Reimbursement Agreement with Developer. For any amount that exceeds Developer's proportional share of DIF fees, the Reimbursement Agreement shall provide for a cash reimbursement when funds are available as determined by the City Manager, or other mutually acceptable reimbursement mechanism.
- 4.16 Recreational Facilities DIF Credit. To the extent Developer builds facilities that qualify as eligible Recreational Facilities, Developer shall receive credit for this against DIF fees that would have otherwise been paid by Developer.
- 4.17 Parkland Acquisition and Development In-Lieu Fee (PAD) Credit. To the extent Developer builds facilities that qualify as eligible parkland, Developer shall receive

credit for this against PAD fees that would have otherwise been paid by Developer. Should the City replace the PAD in-lieu fee with a similar park DIF in the future, the Developer shall receive credits for eligible facilities in the same manner.

4.18 RESERVED.

4.19 Undergrounding of Overhead Utilities Lines. City acknowledges the benefit of undergrounding overhead utilities lines located within the Otay District and Harbor District of the Chula Vista Bayfront. City has previously obtained a commitment of Rule 20A funds pursuant to the undergrounding program adopted by the California Public Utilities Commission to underground the 230kV lines located within the Chula Vista Bayfront. City agrees that the undergrounding of the remaining overhead utilities lines located within the Otay District and Harbor District shall be presented to the City Council as a priority in any future requests for Rule 20A funds to underground overhead utilities lines within the City.

4.20 Future Use of Project Revenues. City acknowledges that while nothing in this Agreement contemplates revenue sharing with respect to retail sales taxes or other revenues, Developer may ask City to consider revenue sharing and tax deferrals to promote development consistent with the Project Approvals.

4.21 Assistance from Other Governments. Upon Developer's request and at Developer's sole expense, City shall reasonably consider whether to make applications, or reasonably assist and cooperate with Developer in submitting applications for the following assistance, consistent with the Project Approvals and the Subsequent Project Approvals:

4.21.1 Available tax or other benefits from state or federal governments.

4.21.2 Available grants, loans, bonds, or subsidies from non-City local, state, or federal governments or agencies for government programs that seek to encourage the type of development identified in the Project Approvals or Subsequent Project Approvals.

4.21.3 Reimbursement from non-City local, state, or federal sources for any facilities provided as part of the Project.

5. DEVELOPER'S OBLIGATIONS AND PROVISION OF PUBLIC BENEFITS.

5.1 Public Benefits. In connection with the development of the Project, Developer shall provide the following public benefits:

5.1.1 In order to accelerate development of other property located within the Harbor District of the Chula Vista Bayfront Master Plan by constructing necessary infrastructure, demonstrating the economic viability of such

development, and substantially increasing the overall economic activity within the area, Developer agrees to commence construction of Improvements for the Project prior to December 31, 2022, even if the proposed Regional Conference Center has not commenced construction prior to that date. This obligation to commence construction shall be subject to the provisions of Section 11.15 below.

- 5.1.2 In order to elevate and encourage an increase in the quality of development within the Harbor District of the Chula Vista Bayfront Master Plan, Developer agrees that the quality of building materials and landscaping for the Project shall exceed the building materials and landscaping included in the Project's approvals. Developer also shall use its best efforts to obtain a luxury brand name for the residential component of the Project.
- 5.1.3 Developer agrees to pay City a sum of One Million dollars (\$1,000,000.00) towards the purchase of a fire engine ("Fire Engine Payment"). The Developer shall make the Fire Engine Payment prior to the issuance of a certificate of occupancy for the first phase of the residential building for the Project.
- 5.1.4 Developer agrees to pay City a sum of Five Hundred Thousand dollars (\$500,000.00) towards the purchase of a fire ladder truck ("Fire Truck Payment"). The Developer shall make the Fire Truck Payment prior to the issuance of a certificate of occupancy for the third phase of the residential building for the Project.
- 5.1.5 The City anticipates the formation of a CFD in the Bayfront Master Plan area ("Bayfront CFD") that will encompass the Property. The Bayfront CFD is anticipated to include an additional tax on transient occupancy revenues and transactions subject to sales and use tax, as determined by the California State Board of Equalization. Final tax rates shall be as determined during formation proceedings. Developer agrees that it shall not oppose or encourage others to oppose the formation of the Bayfront CFD.

6. TERM AND TERMINATION.

6.1 Term of Agreement. The Term shall commence on the Effective Date. The Term shall continue for a period of twenty (20) years from the Effective Date, subject to the following:

6.1.1 The Term shall be extended for periods equal to the time during which:

6.1.1.1 Litigation is pending which challenges any matter, including

compliance with CEQA or any other local, state, or federal law, related in any way to the approval or implementation of all or any part of the Project Approvals. Any such extension shall be equal to the time between the filing of litigation, on the one hand, and the entry of final judgment or dismissal, on the other.

- 6.1.1.2 Any other delay occurs which is beyond the control of the Parties, as described in Section 11.15.
- 6.1.2 During the Term, certain portions of the Property may be released from this Agreement as provided in Sections 6.4 and 11.2 of this Agreement. The City shall provide written confirmation of such release upon request.
- 6.1.3 As provided in Section 6.2 and elsewhere within this Agreement, the Term may end earlier than the end of the Term as specified in this Agreement.
- 6.2 Termination. This Agreement shall be deemed terminated and of no further effect upon the earlier occurrence of any of the following events:
 - 6.2.1 Expiration of the Term as set forth in Section 6.1;
 - 6.2.2 Entry of a final judgment setting aside, voiding, or annulling the adoption of the Enabling Ordinance for this Agreement;
 - 6.2.3 The adoption of a referendum measure overriding or repealing the Enabling Ordinance for this Agreement;
 - 6.2.4 Completion of the Project in accordance with the terms of this Agreement, including issuance of all required occupancy permits and acceptance, as required by state law, by City, or the applicable public agency, of all required dedications and the satisfaction of all of Developer's obligations under this Agreement; and
 - 6.2.5 Should Developer fail to timely commence construction as provided in section 5.1.1 of this Agreement, City shall have the right, but not the obligation, to terminate this Agreement.
 - 6.2.6 As may be provided by other specific provisions of this Agreement.
- 6.3 Effect of Termination. Subject to Section 6.2, upon any termination of this Agreement, the only rights or obligations under this Agreement which either Party shall have are:
 - 6.3.1 The completion of obligations which were to have been performed prior to termination, other than those which are separately addressed by

Section 5;

6.3.2 Development rights that may have vested as set forth in Section 4.6;

6.3.3 The performance and cure rights set forth in Section 9.3; and

6.3.4 Those obligations that are specifically set forth as surviving this Agreement, such as those described in Section 8.6 and 11.19.2.

6.4 Release of Obligations With Respect to Individual Lots Upon Certification of Occupancy. Notwithstanding any other provision of this Agreement:

6.4.1 When any individual lot has been finally subdivided and sold, leased, or made available for lease to a member of the public or any other ultimate user, and a certificate of occupancy has been obtained for the building(s) on the lot, that lot and its owner shall have no further obligations under and shall be released from this Agreement.

6.4.2 Upon the conveyance of any lot, parcel, or other property, whether residential, commercial, or open space, to a homeowners' association, property owners' association, or public or quasi-public entity, that lot, parcel, or property and its owner shall have no further obligations under and shall be released from this Agreement.

No formal action by City is required to affect this release, but, upon Developer's request, City shall sign an estoppel certificate or other document to evidence the release.

6.5 Term of Map(s) and Other Project Approvals.

6.5.1 Subdivision Maps. Pursuant to Government Code Section 66452.6, the term of all subdivision or parcel maps that are approved for all or any portion of the Project on the Property shall be automatically extended to a date coincident with the Term and, where not prohibited by State law, with any extension of the Term.

6.5.2 Other Project Approvals. Pursuant to Government Code section 65863.9, the Subsequent Project Approvals shall automatically be extended for a term ending concurrently with the applicable subdivision maps for the Project.

6.5.3 Pursuant to Government Code section 65867.5(c), any tentative map prepared for the Project will comply with the provisions of Government Code section 66473.7. (See Final Environmental Impact Report for the Chula Vista Bayfront Master Plan, Appendix 4.14-1.)

7. ANNUAL REVIEW.

- 7.1 Timing of Annual Review. Pursuant to Government Code Section 65865.1, at least once during every twelve (12) month period of the Term, City shall review the good faith compliance of Developer with the terms of this Agreement (“Annual Review”).
- 7.2 Standards for Annual Review. During the Annual Review, Developer shall be required to demonstrate good faith compliance with the terms of this Agreement. “Good faith compliance” shall be established if Developer is in compliance with the terms and conditions of this Agreement. If the City Council or its designee finds and determines that Developer is not in good faith compliance, then City may proceed in accordance with Section 9 pertaining to the potential default of Developer and the opportunities for cure. Developer shall pay City’s reasonable fees and costs incurred in connection with the Annual Review.
- 7.3 Procedures for Annual Review. The Annual Review shall be conducted by City Council or its designee. Developer shall be given a minimum of sixty (60) days’ notice of any date scheduled for an Annual Review.
- 7.4 Certificate of Compliance. At any time during any year that the City Council or its designee finds that Developer is not in default under this Agreement, City shall, upon written request by Developer, provide Developer with a written certificate of good faith compliance within fifteen (15) days of City’s receipt of that request.
- 7.5 Failure of Periodic Review. City’s failure to review at least annually Developer’s compliance with the terms and conditions of this Agreement shall not constitute or be asserted by City or Developer as a breach of this Agreement.

8. THIRD PARTY LITIGATION.

- 8.1 General Plan Litigation. City has determined that this Agreement is consistent with its General Plan, LCP, and Subarea Plan. Developer has reviewed the General Plan, LCP, and Subarea Plan and concurs with City’s determination. City shall not have any liability under this Agreement or otherwise for any failure of City to perform under this Agreement, or for the inability of Developer to develop the Property as contemplated by the Project Approvals, Subsequent Project Approvals, or this Agreement, if such failure or inability is the result of a judicial determination that part or all of the General Plan, LCP, or Subarea Plan is invalid, inadequate, or not in compliance with law.
- 8.2 Third Party Litigation Concerning Project or Agreement. Developer shall, at Developer’s sole expense, defend, indemnify, and hold harmless the City, and its elected and appointed officials, officers, employees, and independent contractors engaged in Project (each a “City Party”, collectively the “City Parties”) from any

third-party claim, action or proceeding against any City Party to attack, set aside, void, or annul the Project Approvals, Subsequent Project Approvals, or this Agreement. City shall promptly notify Developer of any such claim, action or proceeding, and City shall reasonably cooperate in the defense. City may in its discretion participate in the defense of any such claim, action or proceeding. If City uses its discretion to participate in the defense of any such claim, action or proceeding, Developer shall pay City's reasonable attorneys' fees and litigation costs incurred in that defense.

- 8.3 Indemnity. In addition to the provisions of Sections 8.1 and 8.2, Developer shall, at Developer's sole expense, indemnify, defend, and hold free and harmless all City Parties engaged in Project planning or implementation from and against any third-party liability or claims based or alleged upon any act or omission of Developer, its officers, agents, employees, subcontractors, independent contractors (each a "Developer Party"; collectively the "Developer Parties"), for property damage, bodily injury or death (Developer's employees included), or any other element of damage of any kind or nature, relating to or arising from development of the Project, except for claims for damages arising through active negligence or willful misconduct of any City Party. Developer shall defend, at Developer's sole expense, including attorneys' fees, all City Parties in any legal action based upon such alleged acts or omissions of any Developer Party. City may in its discretion participate in the defense of any such legal claim, action, or proceeding. If City uses its discretion to participate in the defense of any such claim, action or proceeding, Developer shall pay City's reasonable attorneys' fees and litigation costs incurred in that defense.
- 8.4 Environmental Contamination. Developer shall, at Developer's sole expense, indemnify, and hold free and harmless all City Parties from and against any liability, based or alleged, upon any act or omission of Developer, or any of its officers, agents, employees, subcontractors, predecessors in interest, successors, assigns, or independent contractors, resulting in any violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene or to environmental conditions on, under, or about the Property, including, but not limited to, soil and groundwater conditions, and Developer shall defend, at its sole expense, including attorneys' fees, all City Parties in any action based or asserted upon any such alleged act or omission. City may in its discretion participate in the defense of any such claim, action, or proceeding. If City uses its discretion to participate in the defense of any such claim, action or proceeding, Developer shall pay City's reasonable attorneys' fees and litigation costs incurred in that defense.
- 8.5 City to Approve Counsel; Conduct of Litigation. With respect to Sections 8.1 through 8.4, City reserves the right either (a) to approve the attorney(s) that Developer selects, hires, or otherwise engages to defend City, which approval shall not be unreasonably withheld or delayed, or (b) in City's sole discretion, conduct

its own defense. If City elects to conduct its own defense, Developer shall reimburse City for all reasonable attorneys' fees and litigation costs incurred for such defense with the understanding that Developer's attorney(s) shall be lead counsel and City's attorney(s) shall, to the maximum extent feasible, cooperate with Developer's attorney(s). Developer shall have the right to audit all billings for such fees and expenses.

8.6 Survival. The provisions of Sections 8.1 through 8.5 inclusive, shall survive the termination, cancellation, or expiration of this Agreement.

9. DEFAULTS AND REMEDIES.

9.1 Default by Developer. Developer shall be in default of this Agreement if it does any or any combination of the following:

9.1.1 Willfully, or through Developer's gross negligence, violates any order, ruling or decision of any administrative or judicial body having jurisdiction over the Property or the Project.

9.1.2 Fails to cure a material breach of this Agreement within the time set forth in a written notice of default from City.

9.2 Default by City. City shall be in default of this Agreement only if it fails to cure a material breach of this Agreement within the time set forth in a written notice of default from the Developer to City.

9.3 Notice and Termination. A Party alleging a default by any other Party shall serve written notice thereof. Each such notice shall state with specificity all of the following:

9.3.1 The nature of the alleged default, with reference to the specific Sections of the Agreement that are alleged to have been breached and the specific facts supporting those allegations.

9.3.2 The manner in which the alleged default may be satisfactorily cured.

9.3.3 A period of time in which the default may be cured. The notice of default shall allow at least sixty (60) days to cure the default. If the default is of such a nature as not to be susceptible of cure within sixty (60) days using diligent efforts, then the defaulting Party shall only be deemed to have failed to cure the default if it fails diligently to commence such cure within sixty (60) days or if it fails diligently to prosecute such cure to its conclusion.

9.4 Default Remedies. A Party who complies with the notice of default and opportunity

to cure requirements of Section 9.3 may, at its option, institute legal action to cure, correct, or remedy the alleged default as provided in this Agreement.

9.5 Developer's Remedy. Developer acknowledges that City would not have entered into this Agreement if it were to be liable in damages under or with respect to all or any part of the development of the Project on the Property. Accordingly, Developer shall not sue City for damages or monetary relief for any matter related to the development of the Project on the Property. Developer's litigation remedies shall be limited to declaratory and injunctive relief, mandate, and specific performance. In the event that Developer desires to enforce any term or provision of this Agreement by specific performance, City expressly agrees that an action in damages is inadequate and unavailable. Given these facts and circumstances, City warrants and represents that damages for a breach are inadequate and/or unavailable and City expressly waives the right to contest any request by Developer to this Agreement for specific performance on the basis that damages are adequate.

9.6 City's Remedy. In the event of an uncured default by Developer, City may pursue any and all available legal or equity remedies for the default.

9.7 Waiver; Remedies Cumulative. All waivers of performance must be in a writing signed by the Party granting the waiver. There are no implied waivers. Failure by City or Developer to insist upon the strict performance of any provision of this Agreement, irrespective of the length of time for which such failure continues, shall not constitute a waiver of the right to demand strict compliance with this Agreement in the future.

A written waiver affects only the specific matter waived and defines the performance waived and the duration of the waiver. Unless expressly stated in a written waiver, future performance of the same or any other condition is not waived.

A Party who complies with the notice of default and opportunity to cure requirements of Section 9.3, where applicable, and elects to pursue a legal or equitable remedy available under this Agreement does not waive its right to pursue any other remedy available under this Agreement, unless prohibited by statute, court rules, or judicial precedent.

Delays, tolling, and other actions arising under Section 11.15 shall not be considered waivers subject to this Section 9.7.

9.8 Alternative Dispute Resolution. Any dispute between the Parties may, upon the mutual agreement of the Parties, be submitted to mediation, binding arbitration, or any other mutually agreeable form of alternative dispute resolution. While an alternative dispute process is pending, the statute of limitation shall be tolled for any claim or cause of action which either of the Parties may have against the other.

10. ENCUMBRANCES, ASSIGNMENTS, AND RELEASES.

- 10.1 Discretion to Encumber. This Agreement shall not prevent or limit Developer, in any manner, at Developer's sole discretion, from encumbering some or all of the Property or any improvement on the Property by any mortgage, deed of trust, or other security device to secure financing related to the Property or the Project.
- 10.2 Mortgagee Protection. City acknowledges that the lender(s) providing financing secured by the Property and/or its improvements may require certain Agreement interpretations and modifications. City shall, at any time requested by Developer or the lender, meet with Developer and representatives of such lender(s) to negotiate in good faith any such interpretation or modification. City will not unreasonably withhold or delay its consent to any requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement. Any Mortgagee of the Property shall be entitled to the following rights and privileges:
- 10.2.1 Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any mortgage or deed of trust on the Property made in good faith and for value.
- 10.2.2 If City timely receives a request from a Mortgagee requesting a copy of any notice of default given to Developer under the terms of this Agreement, City shall provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of default to Developer. The Mortgagee shall have the right, but not the obligation, to cure the default during the remaining cure period allowed Developer under Section 9.3 of this Agreement.
- 10.2.3 Except as otherwise provided within this Agreement, any Mortgagee who comes into possession of some or all of the Property pursuant to foreclosure of a mortgage or deed of trust, or deed in lieu of such foreclosure or otherwise, shall:
- 10.2.3.1 Take that property subject to the terms of this Agreement and as Developer's successor;
- 10.2.3.2 Have the rights and obligations of an Assignee as set forth in Sections 10.5;
- 10.2.3.3 Have the right to rely on the provisions of Section 4 of this Agreement, provided that any development proposed by the Mortgagee is in substantial conformance with the terms of this Agreement; and

10.2.3.4 Not be liable for any defaults, whether material or immaterial, or monetary obligations of Developer arising prior to acquisition of title to the Property by the Mortgagee, except that the Mortgagee may not pursue development pursuant to this Agreement until all delinquent and current fees and other monetary obligations due under this Agreement for the portions of the Property acquired by the Mortgagee have been paid to City.

10.3 Estoppel Certificate. Within ten (10) business days following a written request by either of the Parties, the other Party shall execute and deliver to the requesting Party a statement certifying that (i) either this Agreement is unmodified and in full force and effect or there have been specified (date and nature) modifications to the Agreement, but it remains in full force and effect as modified; and (ii) either there are no known current uncured defaults under this Agreement or that the responding Party alleges that specified (date and nature) defaults exist. The statement shall also provide any other reasonable information requested. The failure to timely deliver this statement shall constitute a conclusive presumption that this Agreement is in full force and effect without modification, except as may be represented by the requesting Party and that there are no uncured defaults in the performance of the requesting Party, except as may be represented by the requesting Party. Developer shall pay to City all reasonable administrative costs incurred by City in connection with the issuance of estoppel certificates under this Section prior to City's issuance of such certificates.

10.4 Transfer or Assignment. Subject to Section 10.6, Developer shall have the right, subject to City's reasonable consent, to sell, transfer, or assign its rights and obligations under this Agreement (collectively, an "Assignment") in connection with a transfer of Developer's interest in all, any portion of, or any interest in the Property ("Transferred Property"). No Assignment shall be made unless made together with the sale, transfer, or assignment of all or any portion of Developer's interest in the Transferred Property.

At least fifteen (15) business days prior to the effective date of any Assignment, Developer shall notify City in writing of the proposed Assignment and provide City with an Assignment and Assumption Agreement, in a form substantially similar to Exhibit "J", executed by the purchaser, transferee, or assignee (collectively, the "Assignee") to expressly and unconditionally assume all duties and obligations of Developer under this Agreement remaining to be performed at the time of the Assignment with respect to the Transferred Property.

10.5 Effect of Assignment. Subject to Section 10.4 and unless otherwise stated within the Assignment, upon an Assignment:

10.5.1 The Assignee shall be liable for the performance of all obligations of Developer with respect to Transferred Property, but shall have no

obligations with respect to the portions of the Property, if any, not transferred (the “Retained Property”). If the Assignee of the Transferred Property defaults under this Agreement, such default shall not constitute a default by the Developer of the Retained Property.

10.5.2 The Developer of the Retained Property shall be liable for the performance of all obligations of Developer with respect to Retained Property, but shall have no further obligations with respect to the Transferred Property. If the Developer of the Retained Property defaults under this Agreement, such default shall not constitute a default by the Assignee of the Transferred Property.

10.5.3 The Assignee’s exercise, use, and enjoyment of the Transferred Property shall be subject to the terms of this Agreement to the same extent as if the Assignee were the Developer provided, however, that Assignee shall not have the right to seek an amendment to this Agreement, the Project Approvals, or the Subsequent Project Approvals with respect to the Transferred Property without the written consent of the Developer of the Retained Property. The Developer of the Retained Property shall retain the right to seek an amendment to this Agreement, the Project Approvals, or the Subsequent Project Approvals with respect to the Retained Property without the written consent of the Assignee.

10.6 City’s Consent. City’s reasonable consent shall be required for any Assignment of all or a portion of this Agreement, provided, however, City’s consent shall not be required if the Assignment is to an entity that is 100% owned by Developer or subject to the control of Developer. It shall be a presumption that control with respect to a corporation or limited liability company is the right to exercise, directly or indirectly, more than fifty percent (50%) of the voting rights attributable to the controlled corporation or limited liability company, and, with respect to any individual, partnership, trust, other entity or association, control is the possession, indirectly or directly, of the power to direct or cause the direction of the management or policies of the controlled entity.

11. MISCELLANEOUS PROVISIONS.

11.1 Rules of Construction. The singular includes the plural; the masculine gender includes the feminine; “shall” is mandatory; “may” is permissive.

11.2 Binding Effect of Agreement. This Agreement shall be recorded against the Property and shall run with the land. The Project shall be carried out on the Property in accordance with the terms of this Agreement. Until released or terminated pursuant to the provisions of this Agreement or until Developer has fully performed its obligations arising out of this Agreement, no portion of the Property shall be released from this Agreement.

- 11.3 Entire Agreement. This Agreement constitutes the entire understanding and agreement of City and Developer with respect to the matters set forth in this Agreement. This Agreement supersedes all negotiations or previous agreements between City and Developer respecting the subject matter of this Agreement.
- 11.4 Recorded Statement Upon Termination. Upon the completion of performance of this Agreement or its cancellation or termination, a statement evidencing completion, cancellation, or termination signed by the appropriate agents of City, shall be recorded in the Official Records of San Diego County, California.
- 11.5 Amendment or Cancellation of Agreement. This Agreement may be amended from time to time or canceled only by the written consent of both City and Developer in the same manner as its adoption, as set forth in California Government Code Section 65868. Any amendment or cancellation shall be in a form suitable for recording in the Official Records of San Diego County, California. An amendment or other modification of this Agreement will continue to relate back to the Effective Date of this Agreement (as opposed to the effective date of the amendment or modification), unless the amendment or modification expressly states otherwise.
- 11.6 Minor Changes/Operating Memorandum. The provisions of this Agreement require a close degree of cooperation between the Parties. It is anticipated that minor changes to the Project may be required from time to time to accommodate design changes, engineering changes, and other refinements related to the details of the Parties' performance. Minor changes are those changes to the Project that are otherwise consistent with the Project Approvals, and which do not result in a change in the type of use, an increase in density or intensity of use, significant new or increased environmental impacts that cannot be mitigated, or violations of any applicable health and safety regulations in effect on the Approval Date. Accordingly, the Parties may mutually consent to adopting "minor changes" through their signing of an operating memorandum reflecting the minor changes without having to amend this Agreement. Neither the minor changes nor any operating memorandum shall require public notice or hearing. The City Attorney and City Manager shall be authorized to determine whether proposed modifications and refinements are minor changes subject to this Section or more significant changes requiring amendment of this Agreement. The City Manager may execute any operating memorandum for minor changes without City Council action.
- 11.7 Project as a Private Undertaking. It is specifically understood by City and Developer that (i) the Project is a private development; (ii) City has no interest in or responsibilities for or duty to third parties concerning any improvements to the Property unless City accepts the improvements pursuant to the provisions of this Agreement or in connection with subdivision map approvals; and (iii) Developer shall have the full power and exclusive control of the Property, subject to the obligations of Developer set forth in this Agreement.

- 11.8 Incorporation of Recitals. Each of the Recitals set forth at the beginning of this Agreement are part of this Agreement.
- 11.9 Captions. The captions of this Agreement are for convenience and reference only and shall not define, explain, modify, construe, limit, amplify, or aid in the interpretation, construction, or meaning of any of the provisions of this Agreement.
- 11.10 Consent. Where the consent or approval of City or Developer is needed to implement Development under this Agreement, the consent or approval shall not be unreasonably withheld, delayed, or conditioned.
- 11.11 Covenant of Cooperation. City and Developer shall cooperate and deal with each other in good faith and assist each other in the performance of the provisions of this Agreement. In addition, City staff shall cooperate with Developer in order to facilitate Developer obtaining any required Project approvals from the California Coastal Commission.
- 11.12 Execution and Recording. The City Clerk shall cause a copy of this Agreement or, at City's discretion, a notice of the Agreement, to be signed by the appropriate representatives of City and recorded with the Office of the County Recorder of San Diego County, California, within ten (10) days following the Effective Date. The failure of City to sign and/or record this Agreement or notice thereof shall not affect the validity of and binding obligations set forth within this Agreement.
- 11.13 Relationship of City and Developer. The contractual relationship between City and Developer arising out of this Agreement is one of independent contractor and not agency. This Agreement does not create any third-party beneficiary rights.
- 11.14 Notices. All notices, demands, and correspondence required or permitted by this Agreement shall be in writing and delivered in person, sent by electronic mail, or mailed by first class or certified mail, postage prepaid, addressed as follows:

If to City, to:
City of Chula Vista
276 Fourth Avenue
Chula Vista, California 91910
Attn: City Manager

With a copy to:
City Attorney
City of Chula Vista
276 Fourth Avenue
Chula Vista, California 91910

If to Developer, to:

North C.V. Waterfront L.P.
1775 Hancock Street, Suite 200
San Diego, California 92106
Attn: Ashok Israni, Chairman
Sergio Sandoval, Senior Project Manager

AND

Thomas P. Sayer, Esq.
9914 Scripps Ranch Blvd., #284
San Diego, California 92131

City or Developer may change its address by giving notice in writing to each of the other names and addresses listed above. Thereafter, notices, demands, and correspondence shall be addressed and transmitted to the new address. Notice shall be deemed given upon personal delivery, the date of actual receipt or, if mailed, not later than two (2) business days following deposit in the United States mail.

- 11.15 Delay for Events Beyond the Parties' Control. Notwithstanding Section 9, performance by either Party of its obligations under this Agreement shall be excused, and the Term shall be extended, for periods equal to the time during which (1) litigation is pending which challenges any matter, including compliance with CEQA or any other local, state, or federal law, related in any way to the approval or implementation of all or any part of the Project Approvals or Subsequent Project Approvals. Any such extension shall be equal to the time between the filing of litigation, on the one hand, and the entry of final judgment or dismissal, on the other. All such extensions shall be cumulative; (2) a delay is caused by reason of any event beyond the control of City or Developer which prevents or delays performance by City or Developer of obligations under this Agreement. Such events shall include, by way of example and not limitation, acts of nature, riots, strikes, or damage to work in process by reason of fire, mud, rain, floods, earthquake, or other such casualties. Such an event may include a severe market or business downturn, recession, collapse or contraction of financial and capital markets, and the unavailability of reasonable market financing. If City or Developer seeks excuse from performance (an "Impacted Party"), it shall provide written notice of such delay to the other party within thirty (30) days of the commencement of such delay. The Impacted Party shall resume the performance of its obligations as soon as practicable after the removal of the cause for delay. If the delay or default, is beyond the control of City or Developer it shall be excused, and an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon. Any disagreement between the Parties with respect to whether this Section applies to a particular delay or default is subject to the filing by either Party of an action for judicial review of the matter, including requests for declaratory and/or injunctive relief.

- 11.16 Interpretation and Governing Law. In any dispute regarding this Agreement, the Agreement shall be governed and interpreted in accordance with the laws of the State of California. Venue for any litigation concerning this Agreement shall be in San Diego County, California.
- 11.17 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.
- 11.18 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.
- 11.19 Future Litigation Expenses.
- 11.19.1 Payment to Prevailing Party. If either Party brings a legal or equitable proceeding against the other Party which arises in any way out of this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and all other reasonable costs and expenses incurred in that proceeding.
- 11.19.2 Scope of Fees. Attorneys' fees under this Section shall include attorneys' fees on any appeal and in any post-judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the termination of this Agreement.
- 11.20 Appeal to City Council. Developer may appeal directly to the City Council any decision by the City Manager concerning the interpretation and/or administration of this Agreement. Developer shall file any such appeal with the City Clerk within ten (10) days after receiving notice of the City Manager's decision. The City Council shall render a decision at the next available noticed public hearing.
12. EXHIBITS. All exhibits attached to this Agreement are incorporated as a part of this Agreement. Those exhibits are:

Exhibit	Description
"A"	Legal Description and Depiction of the Property
"B"	General Description and Depiction of the Project
"C"	Phase I Project Approvals
"D"	J Street Sewer Improvements
"E"	J Street Sweep Improvements
"F"	RESERVED
"G"	RESERVED
"H"	RESERVED
"I"	RESERVED
"J"	Assignment and Assumption Agreement
"K"	RESERVED
"L"	Project Entitlements

(Signatures on following page)

Developer and City have executed this Agreement on the dates set forth below.

CITY

DEVELOPER

CITY OF CHULA VISTA, a California
charter city and municipal corporation

NORTH C.V. WATERFRONT L.P., a
California limited partnership

By: _____
Mayor

By: PACIFICA HOSPITALITY GROUP,
INC., a Nevada corporation, its sole general
partner

Date: _____

By: _____

ATTEST:

Its: _____

By: _____
City Clerk

Date: _____

APPROVED AS TO FORM:

By: _____
City Attorney

EXHIBIT "A"

LEGAL DESCRIPTION AND DEPICTION OF THE PROPERTY

LAND DESCRIPTION
TRUST TERMINATION PARCEL

AD 558 / G10-08.16

Two parcels of land situate in the City of Chula Vista, County of San Diego, State of California and more particularly described as follows:

Parcel 1

Those portions of Fractional Quarter Section 170 and 171 of the Rancho de La Nacion, situate in the City of Chula Vista, County of San Diego, State of California according to Map thereof by Morill, filed as Map No. 166 in the Office of the County Recorder of San Diego granted to the State of California as BFG Parcel 2 by deed recorded December 30, 1999 as Document No. 1999-0845737, and more particularly described as all of said BFG Parcel 2 lying southerly of the following described line:

COMMENCING at Station 116 of the ordinary high water mark as fixed and established by agreement recorded June 22, 1953, in Book 4897, Page 408 of Official Records of said County, and depicted on that "Survey of the Ordinary High Water Mark on the Shore of San Diego Bay" by the California State Lands Commission, filed as Miscellaneous Map 217 Records of said County; thence North 14°12'27" West 334.64 feet along said ordinary high water mark to the POINT OF BEGINNING of said line; thence leaving said ordinary high water mark North 84°22'28" East 323.30 feet to the beginning of a curve concave north; thence easterly along said curve with a radius of 534.00 feet through a central angle of 3°07'25" an arc distance of 29.11 feet to the intersection with the easterly line of said BFG Parcel 2 and the TERMINOUS of said line.

Parcel 2

That portion of tide lands and submerged land whether filled or unfilled within the Bay of San Diego, situate in the City of Chula Vista, County of San Diego, State of California lying westerly of the ordinary high water mark of said Bay, as said ordinary high water mark was fixed and established by agreement recorded June 22, 1953, in Book 4897, Page 408 of Official Records of said County, also shown on that "Survey of the Ordinary High Water Mark on the Shore of San Diego Bay" by the California State Lands Commission, filed as Miscellaneous Map 217, Records of said County, and more particularly described as follows:

BEGINNING at Station 116 of said ordinary high water mark; thence North 14°12'27" West 334.64 feet along said ordinary high water mark; thence leaving said ordinary high water mark along the following nine (9) courses:

1. South 84°22'28" West 86.65 feet to the beginning of a curve concave southerly;
2. Thence westerly along said curve with a radius of 416.00 feet through a central angle of 13°34'46" an arc distance of 98.59';
3. South 70°47'42" West 284.67 feet to the beginning of a curve concave northerly;
4. Thence westerly along said curve with a radius of 2034.00 feet through a central angle of 1°17'22" an arc distance of 45.77 feet;
5. South 72°05'04" West 249.60 feet;
6. South 26°46'42" West 20.04 feet;
7. South 17°54'50" East 1365.90 feet;
8. South 62°51'20" East 28.26 feet;
9. North 72°12'10" East 503.92 feet to the intersection with said ordinary high water mark;

thence along said ordinary high water mark North 7°04'12" West 11.59 feet; thence North 7°04'12" West 491.51 feet; thence North 4°01'57" West 568.80 feet to the POINT OF BEGINNING.

RESERVING THEREFROM, for the benefit of the Grantor and the People of the State of California to use (I) the public rights-of-way lying within the parcel as described below and commonly known as "J" Street and Marina Parkway in the City of Chula Vista, County of San Diego, State of California and (II) that portion of the said described parcel lying generally south and west of said "J" Street and Marina Parkway. The foregoing reservation shall terminate and shall be no further force or effect upon completion of the realignment and improvement of said segments of "J" Street and Marina Parkway as evidenced by written acceptance of said realignment and improvement by the San Diego Unified Port District and the City of Chula Vista, as applicable:

That portion of tide lands and submerged land whether filled or unfilled within the Bay of San Diego, situate in the City of Chula Vista, County of San Diego, State of California lying westerly of the ordinary high water mark of said Bay, as said ordinary high water mark was fixed and established by agreement recorded June 22, 1953, in Book 4897, Page 408 of Official Records of said County, also shown on that "Survey of the Ordinary High Water Mark on the Shore of San Diego Bay" by the California State Lands Commission, filed as Miscellaneous Map 217, Records of said County, and more particularly described as follows:

COMMENCING at Station 116 of said ordinary high water mark; thence North 14°12'27" West 334.64 feet along said ordinary high water mark; thence leaving said ordinary high water mark along the following seven (7) courses:

1. South 84°22'28" West 86.65 feet to the beginning of a curve concave southerly;
2. Thence westerly along said curve with a radius of 416.00 feet through a central angle of 13°34'46" an arc distance of 98.59';
3. South 70°47'42" West 284.67 feet to the beginning of a curve concave northerly;
4. Thence westerly along said curve with a radius of 2034.00 feet through a central angle of 1°17'22" an arc distance of 45.77 feet;
5. South 72°05'04" West 249.60 feet;
6. South 26°46'42" West 20.04 feet;
7. South 17°54'50" East 833.96 feet to the POINT OF BEGINNING said point of beginning being the beginning of a curve concave northeasterly; thence southeasterly along said curve with a radius of 540.00 feet through a central angle of 88°33'22" an arc distance of 834.62 feet to the intersection with said ordinary high water mark; thence along said ordinary high water mark South 7°04'12" East 13.38 feet; thence leaving said ordinary high water mark South 72°12'10" West 503.92 feet; thence North 62°51'20" West 28.26 feet; thence North 17°54'50" West 531.94 feet to the POINT OF BEGINNING.

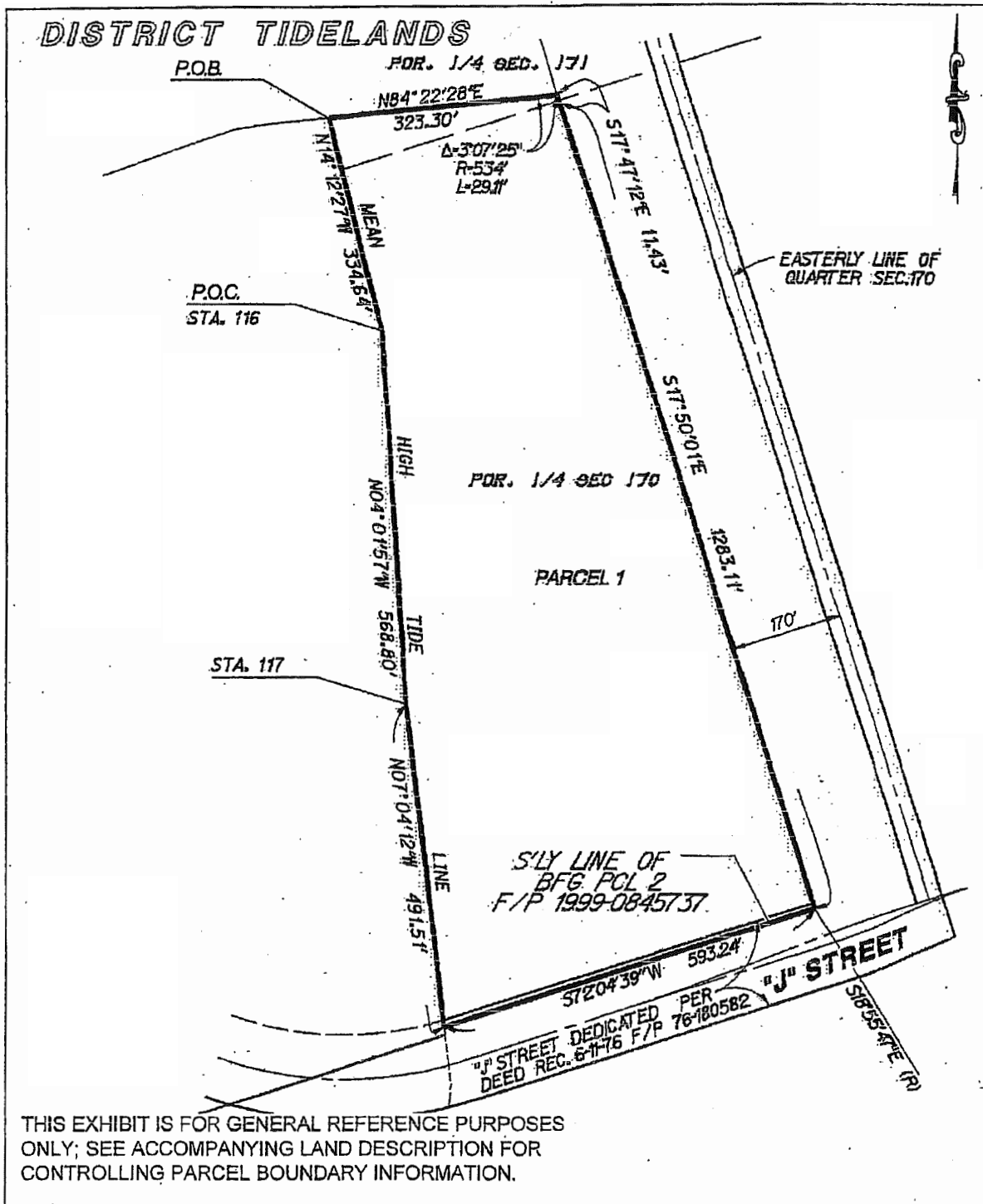
BASIS OF BEARINGS for this description is California Coordinate System 1983 Zone VI. All distances are grid distances.

END OF DESCRIPTION

Prepared 11/21/2011 by the Boundary Unit of the California State Lands Commission.



EXHIBIT A-2



PLAT OF FINAL TRUST TERMINATION PARCEL 1

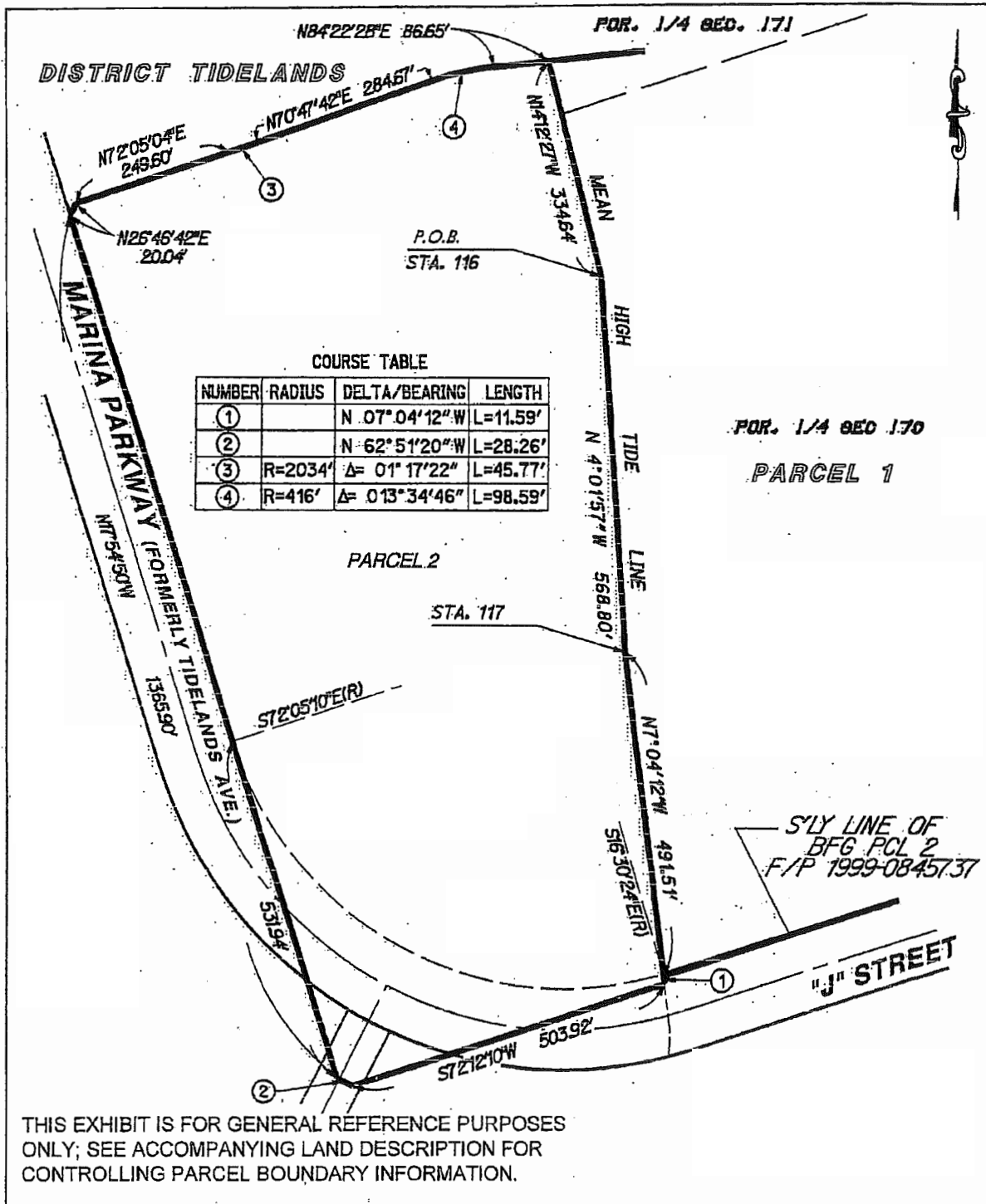
DATE 11/21/2011

AD 558 / G10-08.16
CSLC, SDUPD,
NORTH C.V. WATERFRONT L.P.
LAND EXCHANGE AGREEMENT

CALIFORNIA STATE
LANDS COMMISSION



EXHIBIT A-3



THIS EXHIBIT IS FOR GENERAL REFERENCE PURPOSES ONLY; SEE ACCOMPANYING LAND DESCRIPTION FOR CONTROLLING PARCEL BOUNDARY INFORMATION.

PLAT OF TRUST TERMINATION PARCEL 2

DATE 11/21/2011

AD 558 / G10-08.16
 CSLC, SDUPD,
 NORTH C.V. WATERFRONT L.P.
 LAND EXCHANGE AGREEMENT

CALIFORNIA STATE
 LANDS COMMISSION



EXHIBIT “B”

GENERAL DESCRIPTION AND DEPICTION OF THE PROJECT

**Chula Vista Bayfront Master Planned Project
General Project Description & Depiction of Property**

I. Pacifica Companies Development Portion

Within the Plan area, Pacifica Companies' development portion (the "Property") will consist of 33 acres of 1,500 residential condos, 420,000 SF of commercial office & retail space, and a 250-room hotel (the "Project"). North C.V. Waterfront L.P. is an affiliate of Pacifica Companies, and is defined as the Developer in the accompanying Development Agreement. The Project is intended to be constructed in phases over the length of the Development Agreement.



Land Exchange Illustrative

Chula Vista Bayfront Local Coastal Plan
Chula Vista, California

Exhibit 14

Land Use Plan

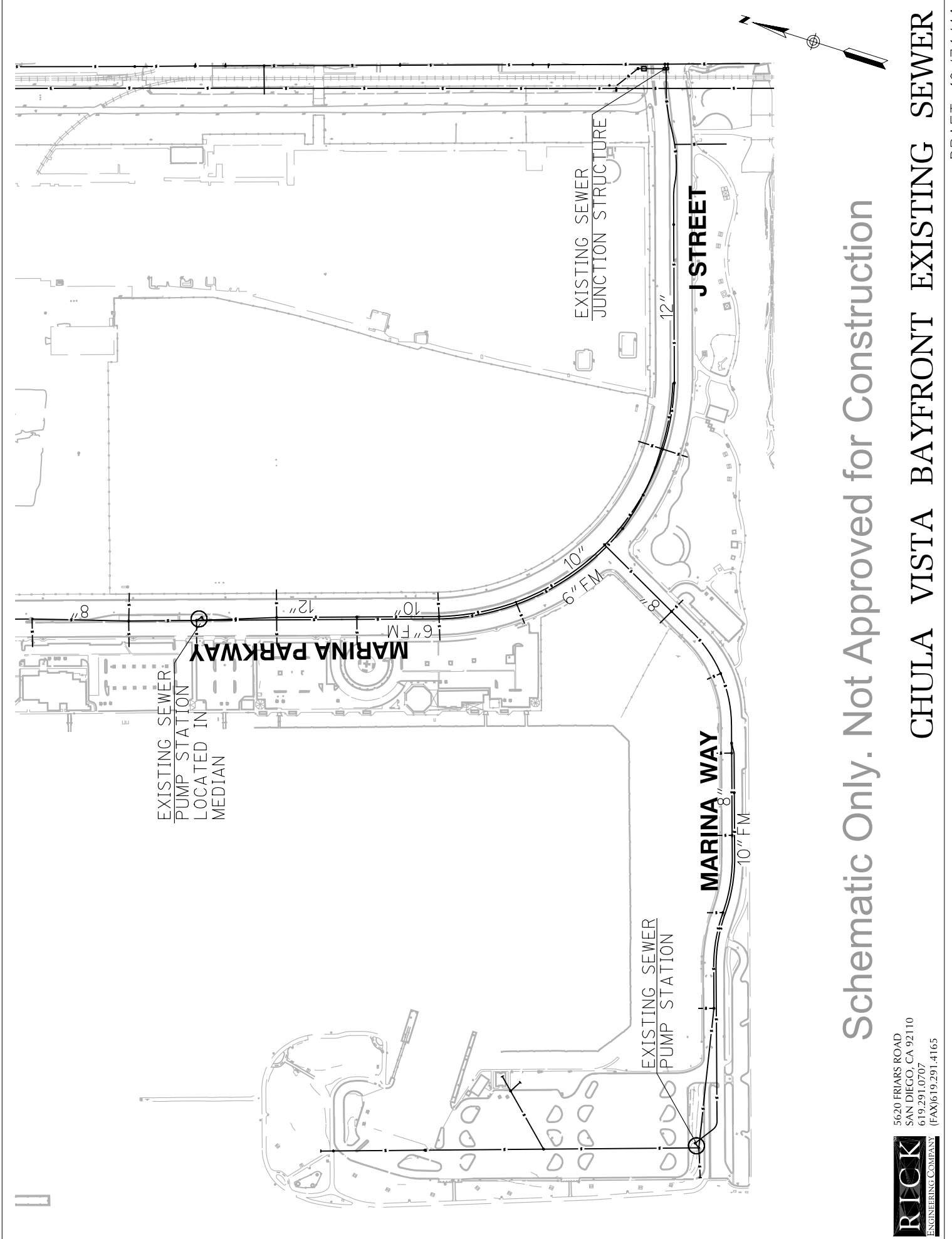
EXHIBIT “C”

PHASE I PROJECT APPROVALS

-) Development Agreement
-) Tentative subdivision map
-) Coastal Development Permit
-) Local Coastal Program Amendment
-) Design Review approval

EXHIBIT "D"

J STREET SEWER IMPROVEMENTS



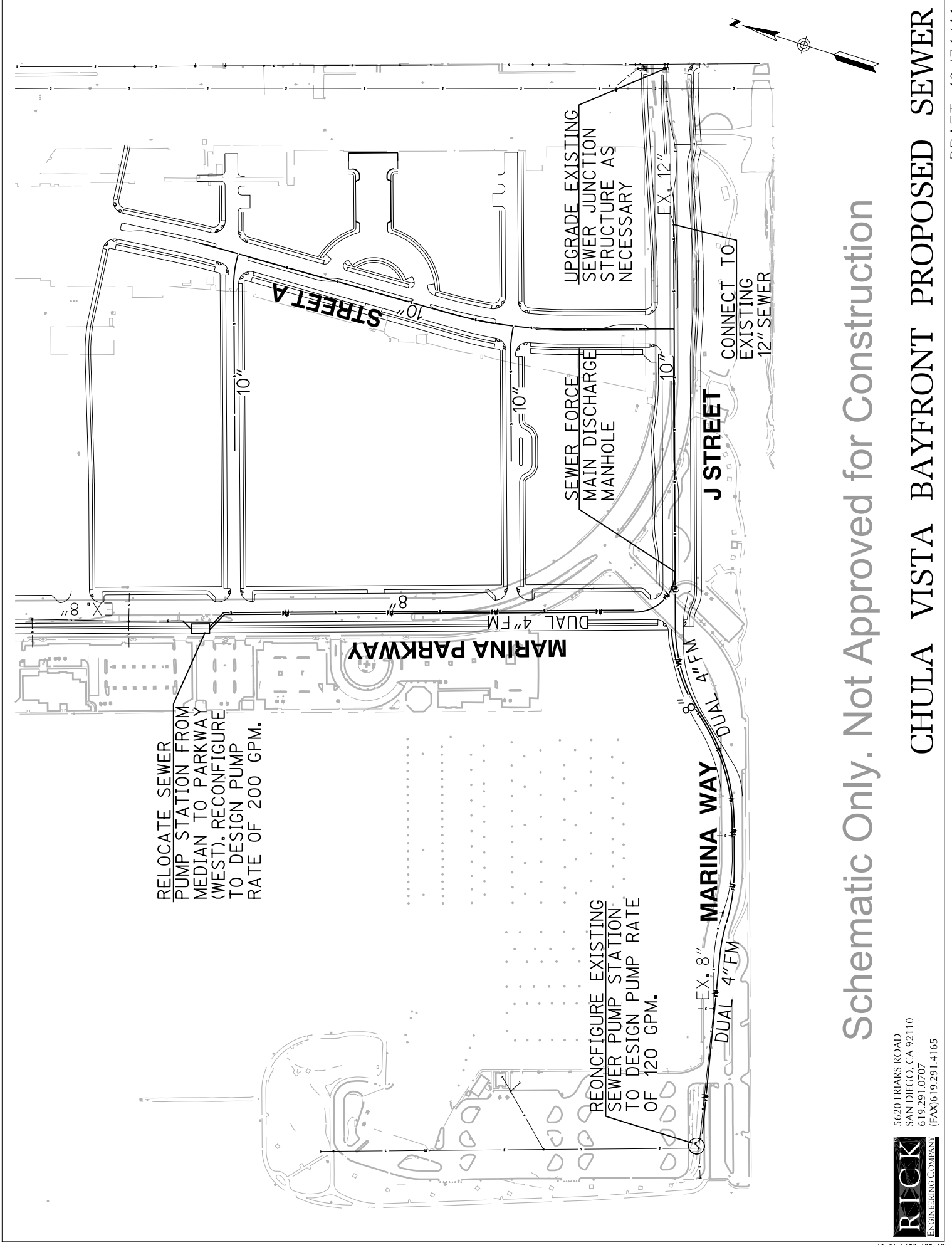
Schematic Only. Not Approved for Construction



5620 FRIARS ROAD
 SAN DIEGO, CA 92110
 619.291.0707
 (FAX) 619.291.4165

CHULA VISTA BAYFRONT EXISTING SEWER

DRAFT 10/31/14



RELOCATE SEWER PUMP STATION FROM MEDIAN TO PARKWAY (WEST). RECONFIGURE TO DESIGN PUMP RATE OF 200 GPM.

RECONFIGURE EXISTING SEWER PUMP STATION TO DESIGN PUMP RATE OF 120 GPM.

UPGRADE EXISTING SEWER JUNCTION STRUCTURE AS NECESSARY

CONNECT TO EXISTING 12" SEWER

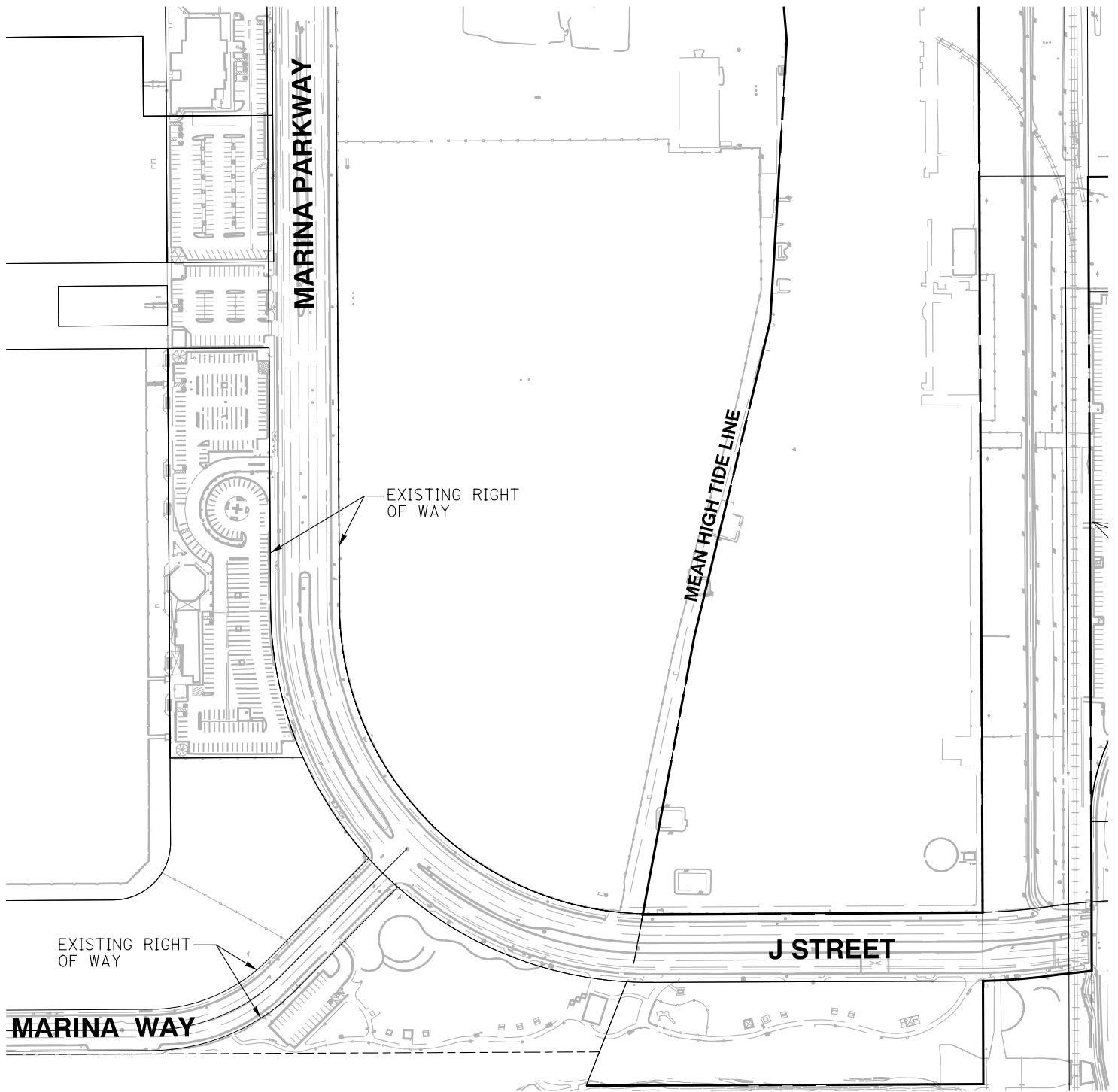
Schematic Only. Not Approved for Construction

5620 FRIARS ROAD
 SAN DIEGO, CA 92110
 619.291.0707
 (FAX) 619.291.4165



EXHIBIT "E"

J STREET SWEEP IMPROVEMENTS



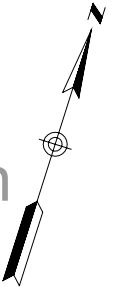
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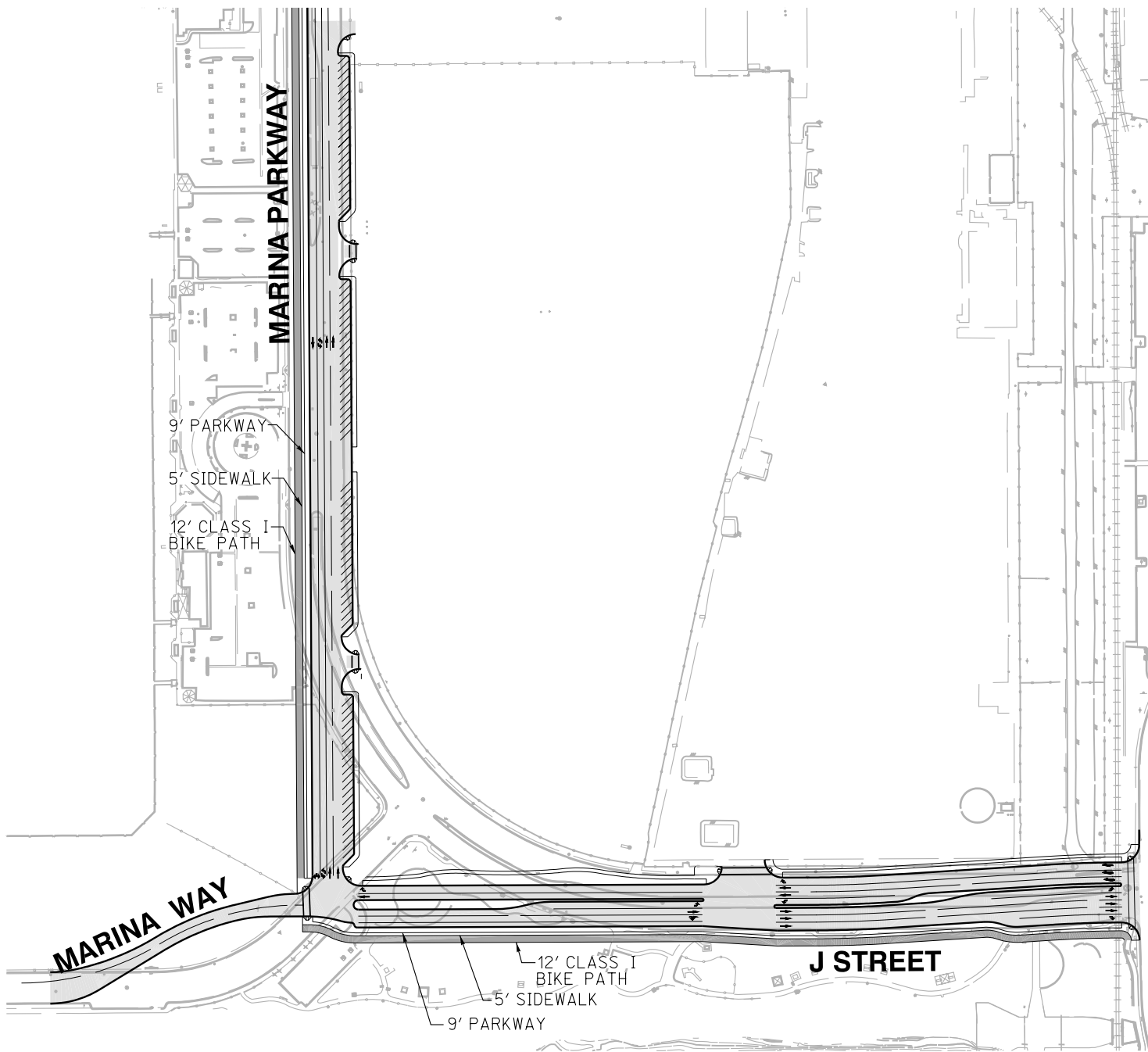


5620 FRIARS ROAD
 SAN DIEGO, CA 92110
 619.291.0707
 (FAX)619.291.4165

CHULA VISTA BAYFRONT EXISTING CONDITIONS

DRAFT 10/31/14





Schematic Only. Not Approved for Construction



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 619.291.0707
 (FAX)619.291.4165

PACIFICA COMPANIES PROPOSED IMPROVEMENTS

DRAFT 10/31/14

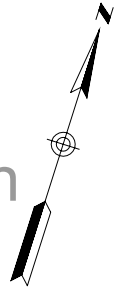


EXHIBIT “F”

RESERVED

EXHIBIT “G”

RESERVED

EXHIBIT “H”

RESERVED

EXHIBIT "I"

RESERVED

EXHIBIT “J”

ASSIGNMENT AND ASSUMPTION AGREEMENT

ASSIGNMENT AND ASSUMPTION AGREEMENT

**ASSIGNMENT AND ASSUMPTION OF
DEVELOPMENT AGREEMENT AMONG CITY OF CHULA VISTA AND**

THIS ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT AGREEMENT (“Assignment”) is made as of the ___ day of _____, 20__ (“**Effective Date**”), by and among the _____ (“Developer”) and _____ (“**Assignee**”) with reference to the following facts:

RECITALS

A. Developer has entered into that certain Development Agreement, dated _____, ____ by and between the City of Chula Vista (“**City**”), on the one hand, and the X

B. _____ and Y Capital Partners on the other hand (“**Agreement**”) for certain real property consisting of approximately _____ acres of land located in the City, more particularly described in Exhibit “A” (“**Property**”).

C. Developer desires to assign and delegate, and Assignee desires to accept and assume, all of Developer’s rights and obligations under the Agreement in accordance with the terms and conditions set forth herein.

D. By signing this Assignment, City approves the Assignment in accordance with the terms and conditions set forth herein and in the Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Developer and Assignee do hereby agree as follows:

1. Assignment and Assumption. Effective as of the Effective Date, Developer hereby assigns, transfers, and conveys to Assignee all of Developer’s rights, interest, duties, liabilities, and obligations in, to, and under the Agreement, and Assignee hereby accepts and assumes all such rights, interests, duties, liabilities, and obligations under the Agreement from Developer for [the Property or a portion of the Property] (“Assigned Property”) [, except to the extent Developer has retained a portion of the Property (the “Retained Property”)].

2. City Consent to Assignment. Effective as of the Effective Date, City hereby consents to the Assignment and hereby fully releases and forever discharges Developer from any and all obligations to City under the Agreement for the Assigned Property, [except Developer’s obligations with respect to the Retained Property].

3. Entire Agreement. This Agreement represents the final and entire agreement between the parties in connection with the subject matter hereof, and may not be modified except by a written agreement signed by both Developer and Assignee.

4. Governing Law. This Agreement has been prepared, negotiated, and executed in, and shall be construed in accordance with, the laws of the State of California, without regard to conflict of law rules.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

Developer:

By: _____

Assignee:

By: _____

Name: _____

Its: _____

City:

City of Chula Vista,
a California Municipal Corporation

By: _____

Name: _____

Its: _____

EXHIBIT “K”

RESERVED

EXHIBIT “L”

PROJECT ENTITLEMENTS

- J Chula Vista Bayfront Master Plan, as jointly approved by the San Diego Port Authority Board of Commissioners and City Council of Chula Vista, 2005
- J Chula Vista Bayfront Master Plan certified Environmental Impact Report, as jointly approved by the San Diego Port Authority Board of Commissioners and City Council of Chula Vista, 2010
- J Chula Vista Bayfront Master Plan, as approved by the California Coastal Commission, 2012
- J City of Chula Vista Bayfront Specific Plan, Local Coastal Program, “LCP”, 2012
- J City of Chula Vista Bayfront Land Use Plan, 2012
- J Chula Vista Multiple Species Conservation Plan Subarea Plan (“Subarea Plan”), 2013