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STATE OF CALIFORNIA
SAN FRANCISCO BAY
CONSERVATION & DEVELOPMENT
COMMISSION
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SAN FRANCISCO, CA
ATTN: STEVE MCADAM

96-061913

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GALILEE HARBOR SETTLEMENT AGREEMENT

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STATE OF CALIFORNIA
SAN FRANCISCO BAY
CONSERVATION & DEVELOPMENT COMMISSION
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GALILEE HARBOR SETTLEMENT AGREEMENT

PARTIES

The PARTIES to this AGREEMENT are the State of California, acting by and through the San Francisco Bay Conservation and Development Commission ("COMMISSION"); the Galilee Harbor Community Association ("GHCA"), a California nonprofit mutual benefit corporation, individually and as the authorized representative of its members as of the effective date of this AGREEMENT, who are identified in Exhibit A ("GHCA members"); and Joseph J. Giraudo, individually and as trustee of the Kristopher Trust, Beverly J. Giraudo, Stephen L. Pasquan, and Pamela Pasquan, each of whom owns a fee title interest in certain of the lands involved in this Agreement (hereafter collectively referred to as the "Record Owners").

RECITALS

A.o This Agreement is being made to settle and forever compromise various claims made by theo PARTIES concerning the use of some 6.8 acres of land located in the City of Sausalito, California ("CITY"), easterly of Bridgeway Boulevard, in and along the shore of Richardson Bay, between Dunphy Park and Schoonmaker Point. This area is known locally as Galilee Harbor. A site map is attached hereto as Exhibit B.

B.o As shown on Exhibit C, Galilee Harbor consists of four parcels which are separated from oneo another by portions of the following four CITY streets: Napa, Mono, Humboldt and Donahue. Two of the parcels are upland parcels; one is partially submerged; and one is almost entirely submerged, as are the CITY streets. Thus:

1.o Parcel 1 (Assessor's Parcel No. 64-082-01) is a one-acre parcel which, except for ao narrow strip along its easterly border, lies landward of the mean high tide line.

2.o Parcel 2 (Assessor's Parcel No. 64-081-001) is a 2.1-acre parcel to the east ofo Parcel 1. Except for a small area near Schoonmaker Point, Parcel 2 lies entirely beneath the waters of Richardson Bay.

3.o Parcel 3 (Assessor's Parcel No. 64-084-05) is a 7,000-square-foot parcel which lieso southerly of Parcel 1 and entirely landward of the mean high tide line.

4. Parcel 4 (Assessor's Parcel No. 64-032-01) is a 16,000-square-foot parcel lying southerly of Parcel 2. Although it lies waterward of the mean high tide line, only the easterly two-thirds or so of Parcel 4 is entirely submerged; the westerly third forms a spit which is rarely, if ever, completely inundated.

5. The CITY streets which intersect the area are located on tide and submerged lands granted to the CITY by the California Legislature in the 1950's (see Chapter 791, Stats. 1957) and are currently leased to GHCA.

C. GHCA owns Parcel 2 in fee, having purchased it from the Record Owners in or about May of 1989. GHCA presently occupies the other parcels pursuant to a lease-purchase agreement first entered into with the then record owners in or about April of 1986.

D. As shown in more detail on Exhibit C, Parcel 2 currently houses the floating docks at which GHCA's members and guests moor the houseboats and live-aboard boats on which they reside. Parcel 1 contains various other facilities used by GHCA's members, including: a marine railway; a fixed pier, known as the Marine Service Pier, which extends out onto Parcel 2; and bathroom, laundry, storage, and recycling facilities. Parcel 3 contains a graveled parking area and a small building (the "Tin Shed") used by GHCA for its offices. Parcel 4 is now vacant (except to the extent, if any, that the storage shed on the adjoining parcel to the south encroaches). This parcel used to house a portion of the Napa Street Pier and the collection of structures (totaling some 4,800 square feet) leased by GHCA from the RECORD OWNERS and known as the "Crab Shacks," but these were demolished by the CITY in or about 1991 due to their deteriorated condition. In 1995, the CITY also demolished two other structures in the area: the public dinghy dock and the deck known as the "Wave Traders' Platform." These structures were previously located at the foot of Napa Street, where it enters the Bay.

E. The COMMISSION, an agency of the State of California created pursuant to the McAteer-Petris Act (Govt. Code §§66600 et seq.), is vested with the power to issue or deny permits for development projects within the area of its jurisdiction, which includes San Francisco Bay and its immediate shoreline (see Govt. Code §66610(a) -(b)). Any person "wishing to place fill, extract materials, or make any substantial change in use of any water, land, or structure" within this area must first obtain a permit from the COMMISSION. (Govt. Code § 66632(a).) As used in the Act, the term "fill" means "earth or any other substance or material, including pilings or structures placed on pilings, and structures floating at some or all times and moored for extended periods, such as houseboats and floating docks." (Ibid.)

F. Much of the Galilee Harbor site is within the Commission's geographic area of jurisdiction as defined in the McAteer-Petris Act. Parcels 2 and 4 and the underwater streets adjoining them lie entirely within the Commission's "Bay" jurisdiction (see Govt. Code §66610(a)). Portions of Parcels 1 and 3 lie within its "shoreline band" jurisdiction (see Govt. Code §66610(b)), as does a small part of the upland portion of Napa Street. Neither the uses which GHCA and its members make of the portion of the Galilee

Harbor site within the COMMISSION's geographic area of jurisdiction nor the structures located there are authorized pursuant to a COMMISSION permit.

G. In 1983 and each year thereafter, despite objection by the COMMISSION's staff, the County of Marin ("COUNTY") has awarded GHCA Community Development Block Grant funds to assist it in establishing a modern residential marina the occupancy of which would be permanently restricted to low and moderate-income households by and large.

H. In 1988, the CITY amended its General Plan to incorporate a specific plan -- known as the Marinship Specific Plan -- for the CITY's northern waterfront, including the area in and around Galilee Harbor. Averring that a "tradition of mixed maritime, art and live-aboard uses" has occurred at Galilee Harbor, the plan provides that "[t]he land and water portions of the parcel should be developed together to create a working waterfront project, possibly with marine craftsmen and artists serving as focal point for the area (pages 8, 29, 30). COMMISSION staff advised the CITY (and GHCA), on numerous occasions that such a project would be inconsistent with the Act, and the policies set forth in the Bay Plan and RBSAP to the extent that it incorporated any berths for houseboats or in excess of 10 percent of all berths for live-aboard boats.

I. In or about October of 1988, GHCA applied to the CITY for a conditional use permit authorizing the renovation of its facilities and site. The CITY gave final approval of GHCA's application on July 31, 1991. A true and correct copy of Resolution No. 3979, the CITY's approval for the project, which GHCA calls the "Galilee Maritime Service Harbor" project, is attached hereto as Exhibit D.

J. As a result of an on-going dispute with GHCA over whether the present and continued future use of the Galilee Harbor area as a residential marina is permissible under the McAteer-Petris Act as it applies in this area, on May 17, 1991, the COMMISSION filed an action against GHCA, GHCA's members, and the RECORD OWNERS entitled State of California ex rel. San Francisco Bay Conservation and Development Commission vs. Galilee Harbor Community Association, Marin County Superior Court No. 149568.

K. The COMMISSION's contentions are specifically made, in part, in the complaint and other papers it has filed in the above action, which complaint and other papers are incorporated by reference in these recitals. GHCA's contentions are specifically made, in part, in the permit application and supporting materials it has filed with the COMMISSION since the COMMISSION initiated its ACTION, including the "Prospectus for a Maritime Service Harbor," which papers are incorporated by reference in these recitals. GHCA contends that no permit from the COMMISSION is required for the existing uses and structures within its area of jurisdiction because all were established before the McAteer-Petris Act was enacted. As to the proposed Galilee Marine Service Harbor Project, GHCA contends that a permit could be approved by the COMMISSION consistent with the Act, the Bay Plan, and the RBSAP.

L. In or about August of 1991, the COMMISSION and GHCA stipulated to a stay of the ACTION pending application by GHCA for a permit for the "Galilee Maritime Service Harbor" project and COMMISSION

action on the application. Before GHCA's application for a COMMISSION permit could be filed, GHCA had first to obtain approval of its project from the Regional Water Quality Control Board and a lease from the CITY authorizing the uses proposed for those portions of the city streets involved. (See 14 California Administrative Code, §10310 et seq.) This took nearly two years. GHCA's application was accepted as complete and filed by the COMMISSION on October 4, 1993 (Application No. 19-91).

M. On April 21, 1994, the COMMISSION held a public hearing on the GHCA's permit application, at which strong views, both for and against the project, were expressed.

N. At GHCA's request, on May 19, 1994 the COMMISSION held a closed session to discuss a proposed settlement of the ACTION which would allow construction of a modified (scaled-down) version of the project, following which it directed the Attorney General to "continue negotiations" so as to reach "a realistic settlement, if possible."

O. GHCA subsequently withdrew its permit application and representatives of GHCA, the COMMISSION, the CITY, the COUNTY, and the environmental community commenced the protracted series of negotiations culminating in this AGREEMENT and the related Memoranda of Understanding entered into by the COMMISSION and the CITY and the COMMISSION and the COUNTY.

P. The PARTIES recognize that, unless the disputes involved in the ACTION are settled by negotiation and compromise, each of them will expend substantial sums of money in litigation, the results of which are uncertain, and that it is in their best interest and in the best interest of the general public that a compromise agreement be made.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the following terms and conditions, the PARTIES agree as follows:

I. PROJECT ELEMENTS.

The Galilee Maritime Service Harbor Project as approved by the City of Sausalito shall be modified so as to conform to the project plans set forth in Exhibit E. Pursuant to these modified plans, and subject to the conditions set forth in the following sections of this AGREEMENT, GHCA is authorized to do the following:

A. In The Bay.

1. Remove 10,446 square feet of existing, unauthorized floating docks;

2. Dredge approximately 7,000 cubic yards of material from the water area to ensure that all boats will float at all stages of the tide;

3. Install and use 9,218 square feet of new floating docks available for public pedestrian access, with benches on the end of each dock also available for public use, and use approximately 14,000 square feet of water area for mooring a total of 38 vessels, no more than 4 of which shall be houseboats and the remainder of which may be live-aboards. (See 14 California Code of Regulations, §§ 10127

[for the definition of "houseboat"], 10128 [for the definition of "live-aboard"].) The parties recognize that the exact water area covered by the resident vessels will vary from time to time and agree that minor and temporary changes in coverage shall not require the COMMISSION's approval.

4. Reduce solid Bay fill at the project site by approximately 7,300 square feet by removal of solid fill now in the Bay;

5. Provide direct City sewer hookups for all 38 berths;

6. Install 725 square feet of floating fill for a wave damper;

7. Stabilize the shoreline by installing an upland drainage system, reducing the angle of eroding slopes to the natural repose of the mud, covering the slopes with a soil erosion blanket through which marsh plants will be installed and planting 27,537 square feet of marsh habitat;

8. Install a 540 square foot portion of a total 775 square foot public small boat launching float, gangway and access deck;

9. Install an 80 foot long, 10 foot wide dock access pier with a 30 foot diameter public viewing platform and a five foot wide wheelchair access ramp;

10. Install 330 square feet of steps leading down into the water at the foot of the new Napa Street Plaza; and

11. Restore and create approximately 14,000 square feet of intertidal habitat along the shoreline by removing non-native plants, preparing slopes (including such things as grading, soil amendments and erosion control measures) and planting native vegetation.

B. Public Access Improvements Within The 100-Foot Shoreline Band.

1. Install a paved wheelchair-accessible pedestrian pathway along the shoreline, 13 feet wide along Humboldt Street and 10 feet wide along Mono Street, with a 36-inch high grapestake fence between the pathway and the Mono Street marsh, and between the pathway and the Open Work Area;

2. Install a 13 foot wide, paved, wheelchair-accessible bicycle and pedestrian footpath along the westerly boundary of the site, linking the central waterfront and Marinship areas of Sausalito;

3. Install two public open spaces, one approximately 20 feet in diameter and one approximately 30 feet in diameter, along the shoreline path adjacent to the Mono Street marsh;

4. Install a total of 3 picnic tables, 13 benches, and 6 trash receptacles in public access areas;

5. Provide rest rooms at the Marine Service Center building which shall be available for public use during daylight hours;

6. Install 8 public access signs, 6 directional, and 7 interpretive signs, as shown on Exhibit E, sheets 2, 3, and 8.

7. Install two, 96 square foot pilot houses from the historic ferryboat Issaquah for historic displays and public access;

8. Install a 4,670 square foot crushed granite public access plaza;

9. Install a bike rack at the southwest corner of the fish and bait shop on Parcel 3 for public use;

10. Permanently dedicate the entirety of Parcel 4, a 16,000 square foot area, to the City of Sausalito for public access and/or open space use;

11. Install a 5 foot wide wheelchair-accessible crushed granite public access pathway along the spit on Parcel 4;

12. Install an 800 square foot deck which shall be available for public use around the fish and bait shop; and

13. Install an approximately 235-square-foot portion of a 775-square-foot public small boat launching float, gangway, and access ramp.

14. Other Improvements Within The 100-Foot Shoreline Band.

15. Install 8,315 square feet of upland landscaping, of which approximately 5,000 square feet is in public access areas;

16. Install site lighting;

17. Install, south of the driveway serving the open work area: (a) an enclosure for dumpsters and oily waste disposal; and (b) a waste water recycling system;

18. Install an enclosure for bicycles to serve berth holders, workers and customers;

19. Install 64 parking spaces, one of which will be used for motorcycles, and 8 of which shall be signed for public access use during daylight hours, including one van-width space for disabled accessibility;

20. Rehabilitate the existing shipways and install a 7,400 square foot Open Work Area;

21. Rehabilitate the existing 600 square foot structure located adjacent to the spit for use as a retail fish and bait shop, with an adjacent enclosure for a dumpster;

22. Relocate the foot of the paved portion of Napa Street 80 feet inland and install new sidewalks, curbs and gutters;

23. Construct and use a two-story Marine Service Center building 83 feet by 47 feet and containing an interior floor area of 5,675 square feet, for marine construction, repair, service, industrial, sales, and arts and crafts activities; harbormaster's office; GHCA office; meeting room; and restrooms; and

24. Restore and create approximately 14,000 square feet of intertidal habitat along the shoreline by removing non-native plants, preparing slopes (including such things as grading, soil amendments and erosion control measures) and planting native vegetation.

II. FINDINGS OF THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION.

The San Francisco Bay Conservation and Development Commission by its approval and execution of this AGREEMENT finds and declares that:

A. Necessity of Modifications to Project as Approved by the CITY. The modifications required pursuant to this AGREEMENT in the Galilee Maritime Service Harbor Project as approved by the CITY pursuant to Resolution No. 3979 are necessary to remedy the effects of GHCA's past maintenance and/or placement of unauthorized fill in the Bay and will allow for the construction and use of facilities that will form part of a comprehensive program to address the problem of illegal long-term mooring of residential vessels in Richardson Bay.

B. Fill. As modified pursuant to this AGREEMENT, construction of this project will result in a net reduction of 7,300 square feet of solid fill at and in the immediate environs of Galilee Harbor. Placement of fill below the mean high tide line will be restricted to floating fill for the docks, gangways, floats, wave damper, and boats and pile-supported fill for the access pier.

C. Public Access and Recreation. As modified by this AGREEMENT, this project will increase public access to, and the opportunities for public enjoyment of, San Francisco Bay and its shoreline in the Galilee Harbor area.

D. Drydocks. Pursuant to a separate agreement with the COMMISSION, the COUNTY has removed from Richardson Bay the badly deteriorated drydocks previously located directly offshore (easterly) of Galilee Harbor. As an expression of support for the Galilee Maritime Service Harbor project, the COUNTY requested that credit for the approximately 55,000-odd square feet of fill so removed would be considered as mitigation for any fill in the Bay attributable to the Galilee Harbor project as modified by this AGREEMENT. So considered, the ratio of fill removed to fill in the proposed project is approximately: 3 to 1.

E. Coastal Zone Management Act. The conditions and modifications of this project proposed by the COMMISSION and incorporated into this settlement agreement arise from the requirements of the McAteer-Petris Act, the San Francisco Bay Plan, and the RBSAP. These authorities have been approved under the federal Coastal Zone Management Act as the state coastal management program for the San Francisco Bay segment of the California coastal zone. The COMMISSION intends its approval of this settlement agreement to be the equivalent of federal consistency concurrence pursuant to 16 U.S.C. § 1455(c)(3) and (d).

III. PROJECT CONDITIONS.

GHCA's authority to undertake the Galilee Maritime Service Harbor Project as modified pursuant to section I of this AGREEMENT shall be subject to the following conditions, in addition to the standard provisions set forth in section IV:

A. Specific Plans and Plan Review.

1. Plan Review. No work whatsoever shall be commenced pursuant to this AGREEMENT until final precise site, engineering, grading, architectural, and landscaping plans and any other relevant

criteria, specifications, and plan information for that portion of the work have been submitted to, reviewed, and approved in writing by or on behalf of the COMMISSION. The specific drawings and information required will be determined by the staff. To save time, preliminary drawings should be submitted and approved prior to final drawings.

Plans submitted shall be accompanied by a letter requesting plan approval, identifying the type of plans submitted, the portion of the project involved, and indicating whether the plans are final or preliminary. Approval or disapproval shall be based upon:

a. Completeness and accuracy of the plans in showing the features required, particularly the mean high water line (here, the 5.08-foot contour line above Mean Lower Low Water), property lines, and the line 100 feet inland of the mean high water line , and any other criteria required by this AGREEMENT;

b. Consistency of the plans with the terms and conditions of this AGREEMENT;

c. The provision of the amount and quality of public access to and along the shoreline and in and through the project to the shoreline required by this AGREEMENT;

d. Consistency with legal instruments reserving public access and open space areas; and

e. Assuring that any fill in the Bay does not exceed this AGREEMENT and will consist of appropriate shoreline protection materials as determined by or on behalf of the COMMISSION.

Plan review shall be completed by or on behalf of the COMMISSION within 45 days after receipt of the plans to be reviewed.

2. Specific Plans.

a. Site, Architectural, and Landscaping Plans. Site, architectural, and landscaping plans shall include and clearly label the mean high water line (here, the 5.08-foot contour line above Mean Lower Low Water), the line 100 feet inland of the mean high water line, the property lines, the boundaries of all areas to be reserved for public access purposes and open space, grading, details showing the locati, types, dimensions, and materials to be used for all structures, irrigation, landscaping, drainage, seating, parking, signs, lighting, fences, paths, trash containers, utilities and other proposed improvements.

b. Engineering Plans. Engineering plans shall include a complete set of contract drawings and specifications and design criteria. The design criteria shall be appropriate to the nature of the project, the use of any structures, soil and foundation conditions at the site, and potential earthquake-induced forces. Final plans shall be signed by the professionals of record and be accompanied by:

(1) Evidence that the design complies with all applicable codes; and

(2) Evidence that a thorough and independent review of the design details, calculations, and construction drawings has been made, such as a final plan check review by the CITY.

3. Conformity with Final Approved Plans. All work, improvements, and uses shall conform to the final approved plans. Prior to any use of the facilities authorized pursuant to this AGREEMENT, the appropriate design professional(s) of record shall certify in writing that, through personal knowledge, the work authorized by this AGREEMENT has been performed in accordance with the approved design criteria and in substantial conformance with the approved plans. No noticeable changes shall be made thereafter to any final plans or to the exterior of any constructed structure, outside fixture, lighting, landscaping, sign, parking area, or shoreline protection work without first obtaining written approval of the change(s) by or on behalf of the COMMISSION.

4. Discrepancies between Approved Plans and Project Conditions. In case of any discrepancy between final approved plans and the Project Conditions set forth in this section III of this AGREEMENT or legal instruments approved pursuant to this AGREEMENT, the Project Conditions or the legal instrument shall prevail. GHCA is responsible for assuring that all plans accurately and fully reflect the Project Conditions of this AGREEMENT and any legal instruments submitted pursuant to this AGREEMENT.

B. Public Access.

1. Area. The public access areas provided for pursuant to section I A, paragraphs 3 (excluding vessels), 8, 9, 10, and 11 of this AGREEMENT, and the public access areas provided for pursuant to section I B, paragraphs 1 through 3, 7, 8, 10, 11, and 13, which encompass in toto approximately 1.2 acres (an approximately 51,114 square foot area), along approximately 890 feet of shoreline, shall be made available to the public for unrestricted public access for walking, bicycling, sitting, viewing, fishing, picnicking, and related purposes. If GHCA wishes to use the public access areas for other than these purposes, it must obtain prior written approval by or on behalf of the COMMISSION.

The public access areas provided for pursuant to the aforementioned provisions include:

(1) New public access in the shoreline band: 17,116 square feet; and

(2) New public access outside the shoreline band: 9,580 square feet; and

(3) Already dedicated public access to be improved: 7,140 square feet; and

(4) New public access in the Bay: 10,883 square feet.

2. Permanent Guarantee. GHCA and such of the RECORD OWNERS as may be necessary shall irrevocably grant or dedicate to the CITY or other public agency, or otherwise permanently guarantee the public's rights in, the access areas referenced at section I B, paragraphs 1 through 3, 10, and 11, of this AGREEMENT. The public's right to enter upon and use these areas for the purposes set forth at section III B, paragraph 1, above, shall commence no later than upon completion of construction of the public access improvements required under Phase One of the construction schedule set by this AGREEMENT.

3. Form of Instrument. Such instrument shall be in a form that meets the requirements for recordation in Marin County and shall include: a legal description of the property being restricted and of the area(s) being restricted for public access; and a map that clearly shows and labels the 5.08-foot

contour line above Mean Lower Low Water, the portion of the property being set aside for public access, and other appropriate landmarks and topographic features of the site, such as the location and elevation of the top of bank of any levees, any significant elevation changes, and the location of the nearest public street and adjacent public access areas. Approval or disapproval of the instrument by the COMMISSION shall occur within thirty (30) days after submittal for approval and shall be based on the following:

a. Sufficiency of the instrument to create legally enforceable rights and duties to provide the public access area required by this AGREEMENT;

b. Inclusion of an exhibit to the instrument that clearly shows the area to be reserved with a legally sufficient description of the boundaries of such area; and

c. Sufficiency of the instrument to create legal rights in favor of the public for public access that will run with the land and be binding on any subsequent purchasers, licensees, and users.

4. **Recordation of the Instrument.** Within thirty (30) days after approval of the instrument, GHCA shall record the instrument and shall provide evidence of recording to the COMMISSION. No changes shall be made to the instrument after approval without the express written consent by or on behalf of the COMMISSION.

5. **Maintenance.** The public access areas provided for in section I B, subsections (1)-(3), (8), (10), and (11), of this AGREEMENT shall be permanently maintained by, and at the expense of, GHCA. Such maintenance shall include, but is not limited to, repairs to all path surfaces, replacement of any plant materials deposited within the access areas, removal of any encroachments into the access areas, and assuring that the public access signs remain in place and visible. Within thirty (30) days after notification, GHCA shall correct any maintenance deficiency noted in any inspection of the site by COMMISSION staff.

6. **Assignment.** GHCA may transfer maintenance responsibility to a public agency or another party acceptable to the COMMISSION at such time as the property transfers to a new party in interest but only provided that the transferee of the property agrees in writing, in a form acceptable to counsel for the COMMISSION, to be bound by all applicable terms and conditions of this AGREEMENT.

7. **Reasonable Rules and Restrictions.** GHCA may impose reasonable rules and restrictions for the use of the public access areas to correct particular problems that may arise. Such limitations, rules, and restrictions shall have first been approved by, or on behalf of, the COMMISSION upon a finding that the proposed rules would not significantly affect the public nature of the area, would not unduly interfere with reasonable public use of the public access areas, and would tend to correct a specific problem that GHCA has both identified and substantiated. Rules may include restricting hours of use and delineating appropriate behavior.

C. **Open Space.** GHCA shall permanently restrict as open space, to remain in its current condition with no further filling or development except as provided in this AGREEMENT, any and all portions

of Parcels 1, 2, 3, and 4 that are located bayward of the 5.08-foot contour line above Mean Lower Low Water.

GHCA shall submit to the Executive Director an instrument that creates such open space restriction and that includes a map that shows all appropriate boundaries, including the 5.08-foot contour line above Mean Lower Low Water, and a metes and bounds description of the area being restricted as open space. The instrument shall be in a form that meets the requirements for recordation in the County of Marin.

The Executive Director shall review and either approve or disapprove the proposed instrument within 30 days of its receipt. Approval or disapproval shall be based on the sufficiency of the instrument to create the required open space condition. If the Executive Director approves the instrument, GHCA shall record the instrument within 30 days of its approval and shall thereafter provide the COMMISSION with a copy of the recorded instrument. If the Executive Director disapproves the instrument, GHCA shall correct all deficiencies and resubmit the corrected instrument for further staff review within 30 days of receipt of the written notification of disapproval. The Executive Director shall then review the corrected instrument in accordance with this review procedure, and GHCA shall record the approved instrument within thirty (30) days of its approval.

D. **Marina Conditions.**

1. **Construction Standards.** Construction standards for marina berths and associated facilities shall be at least equal to those established by the California Department of Boating and Waterways.

2. **Construction Activity.** All construction activity shall be performed to minimize turbidity and to prevent debris from drifting and presenting a pollution or navigation hazard.

3. **Operation.**

a. **Berth Occupancy Criteria.**

(1) **Initial Occupancy Criteria.** All households residing on vessels berthed at Galilee Harbor must comply with the affordability controls set forth below, in this section III D, at paragraph 3. c.; the maritime use and occupation requirements contained in CITY's Resolution No. 3979; and the requirements of the By-laws of GHCA as they may be amended from time to time.

(2) **Initial Order of Priority.** In addition, berths shall initially be allocated in the following priority order, in which all references to vessels "located at" Galilee Harbor include vessels for which GHCA has officially granted temporary leave status, as that term is defined below:

(a) First, to vessels now located at Galilee Harbor that are owned by members of GHCA who demonstrate to the COMMISSION's satisfaction that his/her vessel existed and was moored in the immediate vicinity of the harbor prior to September 30, 1983.

(b) Next, to vessels now located at Galilee Harbor that are owned by members of GHCA who demonstrate to the COMMISSION's satisfaction that his/her vessel was moored in Richardson Bay or was under construction in Richardson Bay prior to September 30, 1983.

(c) Next, to vessels now located at Galilee Harbor that are owned by members of GHCA who demonstrate to the COMMISSION's satisfaction that the member resided on another vessel that both: (1) existed and was located in Richardson Bay prior to September 30, 1983, and (2) was subsequently removed from Richardson Bay or to a berth authorized pursuant to a COMMISSION permit for vessels of its type and use.

(d) Next, to vessels that were anchor-outs in Richardson Bay on and before June 1, 1995 whose owners can demonstrate to the COMMISSION's satisfaction that his/her vessel existed and was moored in Richardson Bay prior to September 30, 1983.

(3) Subsequent Occupancy Criteria. Any berth subsequently vacated shall be allocated in accordance with the criteria set forth in this section III D, at paragraphs 3 a. (1) and 3 a. (2), if possible. If, within 14 days after notice of the berth's availability is posted (see paragraph 3 b. (3) (a) of this section III D), no vessel applies which qualifies under the criteria set forth in paragraphs 3 a. (1) and 3 a. (2) of this section III D, GHCA may rent the berth to a household occupying a navigable vessel not existing in Richardson Bay prior to September 30, 1983 if, and only if: (1) continued residential use of the vacant berth is required in order to satisfy the requirements of GHCA's public funding; (2) the household meets the criteria set forth above in paragraph 3 a. (1) of this section III D; (3) the vessel was not an anchor-out on or after the effective date of this AGREEMENT; and (4) for at least the preceding year, the vessel has either been berthed at marina(s) authorized pursuant to a COMMISSION permit to handle vessels of its type and use or maintained at a location outside the COMMISSION's geographic area of jurisdiction.

(4) Water-Oriented Use. Insofar as the COMMISSION is concerned, berths may be let at any time to any navigable, seaworthy vessels used for recreational or other water-oriented purpose.

b. Procedure for Filling Berths.

(1) Initial Occupancy Plan. Before the commencement of construction of any of the new facilities planned for Galilee Harbor, GHCA shall provide the COMMISSION with an Initial Occupancy Plan and supporting documentation which together demonstrate that each vessel initially occupying a berth satisfies the initial occupancy criteria set forth above in this section III D, at paragraphs 3.a.(1) and 3.a.(2). Within 60 days of the receipt of these materials, the COMMISSION shall notify GHCA whether the proposed initial occupancy complies with these criteria or not in which case all points of deficiency shall be specifically identified. GHCA shall have 30 days to correct any and all such points of deficiency. The COMMISSION shall respond to any supplementary information concerning initial occupancy submitted by GHCA within 20 days of submittal. RECORD OWNERS shall purchase, at fair market value, any vessel found by the COMMISSION not to qualify and either destroy it or move it to a legal berth, within 30 days from the date written notice of such failure to qualify is mailed to GHCA.

(2) Temporary Relocation Plan. Before and during construction of the Galilee Maritime Service Harbor project, the residential-use vessels now moored at Galilee Harbor which qualify for a berth in the improved marina (see section III D, paragraph 3.b.(1), supra) and the existing floats, piers, gangways, and other structures may have to be relocated temporarily in order to make way for dredging and construction of the marina improvements. Accordingly, prior to the commencement of construction of the improvements included in Phase One of the construction schedule set forth below, in paragraph 3. of section III F, GHCA shall provide the COMMISSION with a temporary relocation plan identifying the residential-use vessels and structures which are to be relocated; the area to which they are to be removed; and the disposition to be made of any other vessels or structures occupying Parcel 2.

The Executive Director shall review and either approve or disapprove the proposed temporary relocation plan within 10 working days of its receipt. Approval or disapproval shall be based on the potential impacts to sensitive Bay resources, existing navigation areas, and improvements in the vicinity. If the Executive Director disapproves the plan, GHCA shall promptly correct all deficiencies and resubmit the corrected plan, which the Executive Director shall then review in accordance with this review procedure. Only after the Executive Director approves the temporary relocation plan, may GHCA proceed with the relocation.

(3) Subsequent Vacancies. GHCA will undertake concerted efforts to make any berths that subsequently become vacant available to vessels within the Richardson Bay anchor-out community that qualify for berth space pursuant to paragraphs 3.a.(1) and 3 a.(2) of this section III D, by doing the following:

(a) Posting a Notice of Availability in the form set forth in Exhibit F at the following locations within ten (10) days of learning of an impending vacancy: (1) the public dinghy landings at the foot of Turney and Napa Streets; (2) the public bulletin boards at the Industrial Center Building outside the West Marine store and at City Hall; (3) GHCA's office door; and (4) such other locations as the CITY may require. In addition, GHCA will notify the Richardson Bay Regional Agency ("RBRA") of the vacancy and provide RBRA with copies of the Notice of Availability for direct delivery to the anchor-outs by its harbormaster in the course of his/her regular patrols of the anchorage or by such other local official as may be appropriate.

(b) The Notice of Availability shall enumerate the berth occupancy criteria prescribed in this section III D, at paragraphs 3 a. (1) and 3. a. (2).

(c) GHCA shall provide the Executive Director of the COMMISSION with supporting documentation which demonstrates that the vessel to which it proposes to rent such vacant berth satisfies the subsequent occupancy criteria set forth above in this section III D, at paragraph 3. a. (3). Within 10 working days of the receipt of these materials, the Executive Director shall notify GHCA whether the proposed occupant complies with these criteria or not in which case all points of

deficiency shall be specifically identified. GHCA shall have 30 days to correct any and all such points of deficiency. The COMMISSION shall respond to any supplementary information concerning the proposed occupant within 10 working days of submittal by GHCA. In no event, may GHCA let a vacant berth to a vessel rejected by the Executive Director for failure to satisfy the subsequent occupancy criteria.

c. Affordability Controls.

(1) Income Limitations. Occupancy of the berths at the HARBOR for residential purposes shall be restricted to households which satisfy the following income limitations:

(a) Unrestricted Berths. Up to 10 percent of the total berths may be occupied by households whose total income exceeds the "moderate income" standard set forth below, in paragraph 3. c. (1) (b) of this section III D, so long as the members of said household have been residents of Galilee Harbor for eight or more continuous years.

(b) Moderate Income Berths. Up to 20 percent of the remaining berths may be occupied by households whose members' total income does not exceed the qualifying limits set by the California Department of Housing and Community Development for "moderate income" Marin County households of similar size pursuant to section 50093 of the California Health and Safety Code or any successor statute or regulation (hereafter, the "moderate income standard"). Currently this is $57,200 per annum per two person household. (See Exhibit G.)

(c) Lower Income Berths. No less than 70 percent of the total berths shall be occupied by households whose members' total income is equal to or less than the qualifying limits set by the California Department of Housing and Community Development for "lower income" Marin County households of similar size pursuant to section 50079.5 of the California Health and Safety Code or any successor statute or state regulation (hereafter, "the lower income standard"). Currently, this is $32,150 per annum per two-person household. (See Exhibit G.)

(2) Recordation of Affordability Controls. The foregoing affordability controls shall be incorporated in a deed restriction on the project. GHCA shall submit to the Executive Director an instrument that creates such restriction and that includes a map that shows all appropriate boundaries, including the 5.08-foot contour line above Mean Lower Low Water, and a metes and bounds description of the area being restricted. The instrument shall be in a form that meets the requirements for recordation in the County of Marin.

The Executive Director shall review and either approve or disapprove the proposed instrument within 30 days of its receipt. Approval or disapproval shall be based on the sufficiency of the instrument to create the required restriction. If the Executive Director approves the instrument, GHCA shall record the instrument within 30 days of its approval and shall thereafter provide the COMMISSION with a copy of the recorded instrument. If the Executive Director disapproves the instrument, GHCA shall correct all deficiencies and resubmit the corrected instrument for further staff review within 30 days of receipt of the

written notification of disapproval. The Executive Director shall then review the corrected instrument in accordance with this review procedure, and GHCA shall record the approved instrument within thirty (30) days of its approval.

(3) Administration of Affordability Controls. The foregoing affordability controls will be administered by the Ecumenical Association for Housing or other independent low-income housing provider acceptable to the COMMISSION, the City of Sausalito, and GHCA.

d. Waste Discharge. The discharge of any solid or liquid wastes, including bilge water, gray water, or sewage, into the Bay within the marina basin is prohibited.

e. Waste Facilities. GHCA shall install a suitable facility for receiving and disposing of oily wastes, and a facility for pumping out vessel holding tanks and receiving wastes from portable toilets. Such facilities shall be constructed to all applicable codes and standards. The pump out facility shall be connected to onshore waste treatment facilities, and shall be maintained by GHCA in a safe and sanitary manner. All such facilities shall be available to boaters every day of the week and any fees for the use of such facilities shall be limited in amount to cover the cost of the operation of the facilities.

f. Marine Toilets/ Vessels Berthed at the Harbor. GHCA shall make it a requirement of the use or occupancy of any berth that: (a) any vessel berthed, if equipped with a marine toilet, shall contain an adequate holding tank, incinerator recirculation device, or other equivalent device approved by applicable agencies to preclude discharge of wastes into the waters of the marina, or have the marine toilet rendered inoperable while any such vessel is moored in the marina; and (b) any violation of the waste discharge requirements of this AGREEMENT shall be cause for immediate cancellation by GHCA of the right of such use or occupancy. GHCA shall submit to the COMMISSION a copy of the berthing agreement it proposes to use, which agreement shall set forth the requirements included in this condition.

g. Vessels Occupying the Harbor.

(1) In order to maintain adequate tidal circulation in the marina area, all vessels occupying berths at the harbor must float at all stages of the tide.

(2) Direct shoreside sewer connections for each berth shall be provided by GHCA.

(3) Each and every vessel authorized to occupy a berth at the harbor pursuant to section III D, paragraph 3 of this AGREEMENT shall either be permanently connected to such shoreside sewer or demonstrate to the COMMISSION's satisfaction that it qualifies as a live-aboard vessel. Even vessels which qualify as live-aboards must be connected to the shoreside sewer when berthed at the marina.

(4) To qualify as a live-aboard vessel for purposes of occupying a berth at the harbor, a vessel shall demonstrate to the COMMISSION that it is capable of active navigation by

making a one hour cruise of Richardson Bay. Vessels which otherwise qualify for initial occupancy of a berth (see section III D, paragraph 3. (b) (1) above) shall have five years from the effective date of this AGREEMENT in which to meet this requirement.

(5) All houseboats and live-aboard boats berthed at the harbor shall meet local occupancy standards and all other applicable local plans and requirements.

h. Responsibility for Implementation. GHCA shall be responsible for carrying out the requirements set forth in this section III D, and shall promptly notify the COMMISSION in writing of the name, address, and telephone number of the officer, member, or other person primarily responsible for the performance of this duty, as such may change from time to time.

4. Termination of Residential Use Due to Public Trust Concerns. The COMMISSION shall conduct a study of public trust needs regarding Parcel 2, within five years of the effective date of this AGREEMENT and every five years thereafter. If the COMMISSION determines within the first five years that Parcel 2 is needed for water-oriented uses and public trust needs, occupancy of the marina by houseboats and live-aboards (see 14 Cal. Code of Regulations §§10127, 10128) shall be terminated at the end of the first 20-year term. If after the first five-years, the COMMISSION determines that the Parcel 2 is needed for water-oriented uses and public trust needs, occupancy of the marina by such residential-use vessels shall be terminated no less than 15 years from the date of said determination. In any event, neither the original 20-year term of this AGREEMENT nor the second 20-year term provided for at paragraph III. D. 5. below may be extended or renewed by COMMISSION absent public hearing.

5. Maximum Period of Residential Use of Parcel 2. If at the conclusion of the original 20-year term of this AGREEMENT, a date certain for termination of residential use of the marina has not been set by the Commission pursuant to section III. D. 4., then such use may be reauthorized for one additional 20-year period if, after public hearing, the Commission determines: (1) that there is no foreseeable need for Parcel 2 to be used for water-oriented and public trust purposes within the next twenty years; and (2) that in implementing the access and waterside improvements described in section I of this Agreement, GHCA has fully complied with the conditions set forth in section III, specifically: (a) the marina conditions set forth in section III D (including the affordability controls set forth in paragraph 3. c. of that section); (b) the public access conditions set forth in Sections III B and III C; and the marsh restoration conditions set forth in section III E. If the COMMISSION finds that GHCA has not fully complied with the aforesaid provisions of the AGREEMENT, then residential use of the marina may not be reauthorized unless and until all existing applicable policies of the Bay Plan, specifically the policies regarding water quality, public access, and other uses of the Bay and shoreline (excluding Policies 4A and 4H), are satisfied and the marsh restoration is functioning successfully. Upon the expiration of such period or its earlier termination by the Commission pursuant to section III D. 4., above, berths may be used only for water-oriented purposes, except that any GHCA member listed in Exhibit A who satisfies the initial occupancy requirements set forth

above, in section III. D. 3. a., paragraphs (1) and (2), may continue his or her residential use for so long as he or she remains at Galilee Harbor and Parcel 2 is not needed for water-oriented and public trust purposes.

E. Marsh Restoration.

GHCA shall submit a marsh restoration plan and program, to be approved by or on behalf of the COMMISSION for the restoration and enhancement of portions of Parcels 1, 2, and 4, as shown on Exhibit E, and consisting, in total, of not less than 0.6 acres. The plan and program shall contain the following:

1. Site Conditions and Modifications. A topographic map of the site in one-foot contours and a topographic map showing the proposed modifications. All elevations shall be relative to National Geodetic Vertical Datum (NGVD). The map shall include typical cross-sections showing proposed elevation of marsh plain, any channels, and any high spots. The map shall show proposed plant species along the cross-sections according to their expected zone of growth. The map shall include or a separate map shall show the vicinity including storm drains, the elevation of adjacent surrounding properties, and the limit of the 100-year flood. The vicinity map shall include figures for the estimated tidal range related to Mean Higher High Water, Mean High Water, Mean Lower Low Water, Mean Sea Level, the maximum predicted tide, and the 100-year tide.

2. Soil and Water Information. The program shall include a report identifying the type of soils found at the site and the soil type of any fill to be imported to the site. Information shall be provided on the quantitative soil measurements of salinity, pH, organic content, and bulk density. Information shall also be provided on the water, including water analysis of salinity, pH, biochemical oxygen demand (BOD), dissolved oxygen (DO), and, if appropriate, heavy metals.

3. Schedule. The program shall include a schedule indicating when fill, dredging or grading will occur, the time to be allowed for settlement, the time when levee breaches or inlet structures will begin to function and the time when planting will occur. The program shall include an estimate of the extent of expected sedimentation over a ten-year period.

4. Responsibility for Flooding. GHCA shall assure that the restoration plan meets the requirements of the Public Works Director who has jurisdiction over the site and the surrounding area. GHCA shall provide a letter to the COMMISSION indicating that the review has been done and that inland areas will not flood as a result of the work shown on the plan.

5. Timing. Within 45 days of receipt of the plan and program, the COMMISSION shall notify GHCA whether the proposed plan and program comply with the foregoing requirements and, if not, of the supplementary information needed.

F. **Project Phasing.**

The Galilee Maritime Service Harbor Project, as modified herein, shall be implemented in the following order.

1. **Recordation of AGREEMENT and Other Instruments.** Prior to the approval by the COMMISSION of any project plans pursuant to section III F. 2. below (see also section III A.), GHCA shall record the following instruments in the County of Marin:

a. This AGREEMENT (see section IV B, infra).

b. The instrument(s) permanently guaranteeing the public's rights in the access areas referenced at section I B, paragraphs 1 through 3, 10, and 11 of this AGREEMENT (see section III B, paragraph 2, supra).

c. The instrument(s) permanently restricting as open space those portions of Parcels 1,2,3, and 4 identified in section III C of this AGREEMENT.

d. The deed restriction securing the affordability controls on berth occupancy provided for at section III D, paragraph 3. c. of this AGREEMENT (see section III D, paragraph 3. c. (2).)

2. **COMMISSION Approvals.** Prior to the commencement of the work included in Phase One of the construction schedule set forth below, in paragraph 3 of this section III F (i.e., prior to the commencement of any work at any location pursuant to this AGREEMENT), GHCA shall obtain COMMISSION approval of the following:

a. The marsh restoration plan and program described at section III E.

b. The initial occupancy plan described at section III D, paragraph 3. b. (1).

c. The temporary relocation plan provided for at section III D, paragraph 3. b. (2).

d. Final precise plans for Phase I of the work (see section III F. 3. a. infra).

3. **Priority of Improvements.** GHCA shall use its best efforts to obtain funding adequate to construct all improvements in one phase, from commencement of work through completion of the entire Galilee Maritime Service Harbor project. If restricted funding requires phasing of the project, the improvements shall be constructed in the order and within the time set forth below.

a. **PHASE I (six month project).**

(1) **Main Features.**

Dedication of public access and open space areas.

Dredging and excavation.

Berths, access pier, and pilot houses with displays.

Utility hook-ups.

Public parking, shoreline paths, Napa Street Plaza, benches, bike path, and signs.

Small boat launching float, gangway and deck.

Steps into water at foot of Napa Street.

Shoreline protection and marsh planting.

Base rock, drainage, and reorganization of parking areas.

Napa Street improvements.

(2) Sequence of Work.

1. Crab shacks on spit are demolished (completed).
2. Deck at foot of Napa Street is demolished (completed).
3. Public access areas are dedicated.
4. Existing Marine Service Pier is demolished and temporary floating access is installed.
5. Upland bulkheads/retaining walls are constructed.
6. Boats are moved to south side of water parcel.
7. North side of water parcel is dredged, Schoonmaker Point is excavated.
8. Rough grading of upland is completed, utility mains are placed.
9. Wave damper is constructed.
10. North docks are built and launched from the Upland parcel.
11. Access Pier and handicapped gangway are constructed.
12. The existing restroom and laundry facilities are relocated to east to make way for the bike path.
13. Utility lines are installed.
14. Boats are hooked up to North docks.
15. South side of water parcel is dredged and south docks are built and utility lines installed.
16. Small boat launching dock, gangway and float are constructed.
17. Boats are hooked up to South docks.
18. Pilot houses are installed and renovated.
19. Steps to the water at foot of Napa Street are constructed.
20. Finished grading is completed.
21. The shoreline paths, including those along Mono and Humboldt Streets and out to the end of the spit, are constructed with a walking surface of compacted crushed

roadbase below a finished topping of asphalt.

22. Shore access signs, benches, picnic tables, bike rack, and trash receptacles are installed along paths and at end of docks.

23. Shoreline stabilization is installed.

24. Marsh is planted and marsh protection fences are constructed.

25. Upland open space (site of the future Marine Service Building) is hydro-seeded.

26. The existing containers housing tools and equipment are relocated to the Boat works area.

27. Parking spaces are re-arranged to the locations shown on the project plans.

28. The parking areas receive a crushed rock road base and catch basins.

29. The eight public shoreline access parking areas are provided, landscaped, and reserved and signed for public use.

30. Napa Street improvements, including turn-around and sidewalks, are constructed and finished.

31. Historic exhibits are set up in the pilot houses and opened to the public.

32. The plaza and bikepath are constructed, finished, and landscaped.

(3) Timing. GHCA shall not commence any of the work called for in Phase I unless and until it has satisfied the COMMISSION that it has obtained financing adequate to allow completion of all such work. Construction of the work called for pursuant to Phase I must be commenced within two (2) years of the effective date of the COMMISSION's approval of this AGREEMENT and be completed within five (5) years of such date. (See section IV, paragraph E.)

b. PHASE II (six month project).

(1) Main Features.

Boat ways and boat Works.

All parking areas paved and lighted, and non-public parking area landscaped.

(2) Sequence of Work.

1. Specific plans and plan review for this phase. (See section III A., supra.)
2. Boat ways is rehabilitated.
3. Irrigation and drainage installed in parking lot. Boat works waste disposal system installed.
4. Parking lot and boat works paved.
5. Boat Works is enclosed with a cyclone fence and gates.
6. Dumpster and waste disposal enclosure is constructed.
7. All other landscaping is completed, except at the site of the future Fish and Bait shop and the future marine service building, which remain hydro-seeded.
8. Site lighting and remaining signs are installed.

(3) Timing. GHCA shall not commence any of the work called for in Phase II unless and until it has completed Phase I and obtained financing adequate to allow completion of all the Phase II work.

c. PHASE III (six month project).

(1) Main Features.

Future Fish and Bait shop building (the "Tin Shed") is renovated, except interior where GHCA offices are located.

Future Fish and Bait shop deck built and linked with shoreline walkways.

(2) Sequence of Work.

1. Specific plans and plan review for this phase. (See section III A., supra.)
2. The exterior of the future Fish and Bait Shop building (the "Tin Shed") is renovated.
3. The deck around the future Fish and Bait Shop is constructed.
4. Benches and picnic tables and bike racks are added are installed.

(3) Timing. GHCA shall not commence any of the work called for in Phase III until Phases I and II have been completed and it has obtained financing adequate to allow completion of all the Phase III work.

d. **PHASE IV (six month project).**

(1) **Main Features.**

Marine Service Building

Public Deck

Fish & Bait shop interior renovated and fish and bait sales uses established

All remaining project features

(2) **Sequence of Work.**

1. Specific plans and plan review for this phase. (See section III A., supra.)
2. The Marine Service Building is constructed.
3. The Public Deck is constructed and benches installed.
4. The existing rest room and laundry facilities are demolished.
5. GHCA's office is moved to the Marine Service Building, the interior of the Fish and Bait Shop is renovated, and the fish and bait sales use is established.
6. Landscaping adjacent to the Marine Service Building and Fish and Bait Shop is installed.
7. Site lighting and signage adjacent to the Marine Service building and Fish and Bait Shop are installed.
8. All final aspects of project are completed.

(3) **Timing.** GHCA shall not commence any of the work called for in Phase IV until Phases I, II, and III have been completed and it has obtained financing adequate to allow completion of all the Phase IV work.

G. **Performance of the Work.**

Work must be performed in the precise manner and at the precise locations indicated in GHCA's filed application, as modified by the terms of this AGREEMENT and any plans approved in writing by or on behalf of the COMMISSION. In addition:

1. **Required Permissions.** All required permissions from other governmental bodies must be obtained before the commencement of work; these bodies include, but are not limited to, the U. S. Army Corps of Engineers, the State Lands Commission, the Regional Water Quality Control Board, and the city and/or county in which the work is to be performed, whenever any of these may be required. This AGREEMENT does not relieve GHCA of any obligations imposed by State or Federal law, either statutory or otherwise.

2. **Notice to Contractor.** GHCA shall provide a copy of this AGREEMENT to any contractor or person working in concert with GHCA to carry out the activities authorized pursuant to this AGREEMENT and shall point out the project conditions contained herein.

3. **Dredging.**

a. **Thirty-Month Agreement for Dredging.** The approximately 7,000 cubic yards or less of new dredging authorized by this AGREEMENT shall be completed within thirty (30) months of the effective date of the COMMISSION's approval of this AGREEMENT. No further dredging is authorized by this AGREEMENT.

b. **Water Quality Certification.** If the original waiver of water quality certification has lapsed, prior to the commencement of the dredging authorized pursuant to this AGREEMENT, GHCA shall obtain a new water quality certification or waiver of water quality certification from the California Regional Water Quality Control Board, San Francisco Bay Region. Failure to obtain such certification or waiver of certification prior to the commencement of the dredging episode shall terminate the COMMISSION's authorization for dredging.

c. **Dredging Report.**

(1) **Prior Notice of Dredging.** GHCA shall notify the staff by telephone or in writing at least seven (7) days prior to undertaking the dredging authorized by this AGREEMENT. On request, GHCA shall allow the COMMISSION staff or representatives of other state or federal agencies to come aboard the dredge or barge associated with the dredging or disposal episode and observe the operation to ensure that the dredging or disposal activity is consistent with the dredging report required herein and the other terms and conditions of this AGREEMENT.

(2) **Dredging Report.** Within thirty (30) days of completion of the dredging authorized by this AGREEMENT, GHCA shall submit to the COMMISSION a report which contains: (a) a bathymetric map showing the location of all areas authorized to be dredged and to what depth based on Mean Lower Low Water (MLLW); (b) a bathymetric map showing the actual areas dredged and to what depth based on MLLW, and any dredging that occurred outside the area authorized to be dredged or below the depths authorized to be dredged shall be depicted graphically on the map; (c) a vicinity map showing the disposal site; and (d) the calculated volume of the actual material dredged or disposed. The COMMISSION reserves the right to have such report inspected by a reliable third party familiar with bathymetric mapping in order to verify the contents of the report. If a third party selected by or on behalf of the COMMISSION indicates that the report is inaccurate, the COMMISSION reserves the right to require GHCA to submit a revised report that meets the requirements of this condition. If the COMMISSION determines that the contents of the dredging report indicates that work has occurred beyond that authorized by the AGREEMENT, such violation may result in the initiation of enforcement action by or on behalf of the COMMISSION.

d. Timing. To protect important fisheries or migrating anadromous fish species, no dredging shall occur pursuant to this AGREEMENT between December 1 and March 1 of any year during the duration of this AGREEMENT unless written approval of dredging during this period is provided by or on behalf of the COMMISSION prior to the commencement of the dredging. Approval of any dredging activities between December 1 and March 1 of any year shall be made by or on behalf of the COMMISSION only upon the finding that: (1) unforeseen delays have occurred in a dredging operation which was begun prior to December 1 of any year to the extent that the dredging episode could not be completed by the December 1 deadline; (2) a professional biologist, or other individual sufficiently competent to identify herring spawning activity, is at the project site during all dredging operations; and (3) if herring spawning is detected at or within 200 meters of the dredging operations by GHCA's on-site biologist or qualified staff person, Department of Fish and Game personnel, or the COMMISSION staff, all dredging will cease for a minimum of 14 days or until it can be determined that the herring hatch has been completed and larval herring concentrations have left the site. GHCA shall provide the COMMISSION staff and Department of Fish and Game personnel with all necessary telephone, FAX, and pager numbers to facilitate rapid and efficient communication. Under these circumstances, dredging may be resumed thereafter at the sole discretion of GHCA and the COMMISSION staff, but shall be terminated by no later than December 31 of that year, or if further spawning takes place at the site.

e. In-Bay Disposal. At least 45 days prior to the commencement of the disposal episode authorized pursuant to this AGREEMENT, GHCA shall submit a written statement to the Executive Director that contains all of the following: (1) the dates within which the dredging and disposal episode is proposed; (2) the total volume of material proposed to be dredged and location of the proposed disposal in the Bay; (3) an explanation as to why ocean or upland disposal of the material is infeasible; (4) an explanation as to how the proposed disposal is consistent with the U.S. Army Corps of Engineers' management of the disposal site so as to maintain adequate disposal site capacity; and (5) results of chemical and biological testing of the material proposed for dredging and disposal. The authorization for the dredging and disposal episode shall become effective only when either: (1) the Executive Director informs GHCA in writing that he or she has determined that the episode is consistent with this AGREEMENT, that there is no feasible upland alternative available for the dredged material, and that sufficient capacity exists at the disposal site consistent with the long-term management of the disposal site, and that the material is suitable for in-Bay disposal; or (2) the Executive Director does not respond to GHCA's written statement within 30 days of its receipt. If the Executive Director determines that ocean or upland disposal of the material is feasible and/or the material is unsuitable for in-Bay disposal, and/or the U.S. Army Corps of Engineers indicates that the proposed disposal is inconsistent with the Corps' management of the disposal site so as to maintain adequate disposal site capacity, such determination shall terminate the COMMISSION's authorization for in-Bay disposal as part of that dredging episode.

4. **Marsh Protection.** The work authorized by this AGREEMENT shall be performed in a manner that will prevent any significant adverse impact on any existing tidal marsh or other sensitive wetland resources, except as specifically authorized by this AGREEMENT. If any unforeseen adverse impacts occur to any such areas as a result of the activities authorized pursuant to this AGREEMENT, GHCA shall restore the area to the condition it was in before the adverse impact or to an improved marsh condition.

5. **Construction Operations.** All construction operations shall be performed to prevent construction materials from falling into the Bay. In the event that such material escapes or is placed in an area subject to tidal action of the Bay, GHCA shall immediately retrieve and remove such material at its expense. In addition, work must be performed in a manner so as to minimize muddying of waters, and if diking is involved, dikes shall be waterproof. If any seepage returns to the Bay, GHCA will be subject to the regulations of the Regional Water Quality Control Board in that region.

6. **Creosote Treated Wood.** No pilings or other wood structures that have been pressure treated with creosote shall be used in any area subject to tidal action in the Bay or any certain waterway, in any salt pond, or in any managed wetland within the COMMISSION's jurisdiction as part of the project authorized pursuant to this AGREEMENT

7. **Debris Removal.** All construction debris shall be removed to a location outside the jurisdiction of the COMMISSION. In the event that any such material is placed in any area within the COMMISSION's jurisdiction, GHCA, or the owner of the improvements authorized pursuant to this AGREEMENT, shall remove such material, at its expense, within ten days after it has been notified by the Executive Director of such placement.

H. **Notice of Completion.** The Notice of Completion and Declaration of Compliance in the form attached as Exhibit H to this AGREEMENT shall be completed and returned to the COMMISSION within 30 days following completion of each phase of construction.

I. **Hold Harmless Agreement.** GHCA agrees to indemnify, defend and save harmless the State of California, its agencies, departments, officers, agents and employees from any and all claims, demands, losses or judgments accruing or resulting to any person, firm, corporation or entity who may be injured or damaged by work performed in accordance with the terms and conditions of this AGREEMENT.

J. **COMMISSION Jurisdiction Over Fill Areas.** Notice is hereby given that, under the McAteer-Petris Act, the area of the Galilee Harbor Maritime Service Harbor project that is within the COMMISSION's jurisdiction under section 66610(a) remains within that jurisdiction even after fill or substantial change in use, authorized by this AGREEMENT, may have changed the character of the area. Thus, further action by or on behalf of the COMMISSION shall be required before any future change of use or work within areas filled may be commenced. Further, any area not subject to the jurisdiction of the San Francisco Bay Conservation and Development COMMISSION that becomes, as a result of any work or project authorized in this AGREEMENT, subject to tidal action shall become subject to the COMMISSION's "Bay" jurisdiction under Public Resources

Code section 66610 (a).

IV. GENERAL PROVISIONS.

A. Effective Date and Binding Effect. This AGREEMENT shall become effective on the date that the COMMISSION directs that its approval shall be effective, provided that it has been duly and properly executed by each of the PARTIES.

B. Recordation. GHCA shall record this AGREEMENT in Marin County on or before the effective date of the COMMISSION's approval of the AGREEMENT and shall, within five (5) days after recordation, provide evidence of such recordation to the COMMISSION.

C. Entry of Judgment. The Parties shall submit this AGREEMENT to the Superior court of the County of Marin for its approval and jointly request entry of a consent judgment, which shall include a waiver by the Parties of the right to appeal therefrom, in the case of State of California ex rel. San Francisco Bay Conservation and Development Commission vs. Galilee Harbor Community Association, Marin County Superior Court No. 149568, consistent with this Agreement, in the form attached hereto as Exhibit I.

D. Timing of Implementation of AGREEMENT. The COMMISSION and GHCA agree upon the desirability and need of fully implementing the provisions of this AGREEMENT at the earliest possible date. The COMMISSION recognizes that GHCA's ability to commence construction is dependent partly upon factors beyond the control of GHCA, including the possible need to renew any governmental agency approvals which may have lapsed during the prolonged negotiations leading to this AGREEMENT, and the need to secure financing for the project. In consideration of these factors, GHCA and the COMMISSION agree as follows:

E. Best Efforts/Reports. GHCA and the COMMISSION will exert their best efforts to expedite all steps described in this AGREEMENT which must be concluded before construction of the project, including making submittals and providing responses in the least possible time.

1. Immediately upon the effective date of the COMMISSION's approval of this AGREEMENT, GHCA shall commence its search for financing for the Galilee Maritime Service Harbor Project and shall initiate the proceedings necessary to update all project approvals and to obtain all ministerial permits.

2. GHCA shall provide the COMMISSION with a written report on the status of the project on January 31, 1996 and every six months thereafter at least until the completion of the Phase I construction.

F. Remedies.

Remedies under this section are in addition to, and do not supersede or limit, any and all other remedies provided by law.

1. Failure Timely to Commence or Complete Phase I Construction. If GHCA fails to commence and/or complete the work called for pursuant to Phase I of the construction schedule within the time limits set forth above, at section III F., paragraph 3.a.(3), or if GHCA fails to complete the access amenities called for at section III. F., paragraphs 3 b. and 3 c., within five years of the completion of Phase I, this AGREEMENT shall become null and void, unless prior to expiration, such time limits are extended

pursuant to a duly adopted amendment to this AGREEMENT (see section IV F). If the AGREEMENT becomes null and void, any fill or structure placed in the Bay pursuant to this AGREEMENT, including the vessels berthed at the harbor, shall be removed by GHCA or the owner upon receiving written notification by or on behalf of the COMMISSION to remove the fill or structure.

2. Failure of an AGREEMENT Term. Unless the COMMISSION directs otherwise, this AGREEMENT shall become null and void if any term, condition, or provision of this AGREEMENT shall be found illegal or unenforceable through the application of statute, administrative ruling, or court determination. If this AGREEMENT becomes null and void, any fill or structures placed in reliance on this AGREEMENT shall be subject to removal by GHCA to the extent that the COMMISSION determines that such removal is appropriate. Any uses authorized shall be terminated to the extent that the COMMISSION determines that such uses should be terminated.

3. Deadlines for COMMISSION PERFORMANCE. Plans and other information GHCA is required to submit to the COMMISSION pursuant to this AGREEMENT shall be deemed approved upon the expiration of the time for COMMISSION response stated herein, unless the parties agree in writing to an extension of the time.

4. Violation of AGREEMENT.

a. Revocation. Except as otherwise noted, violation of any term, condition, or provision of this AGREEMENT by GHCA shall be grounds for revocation of the AGREEMENT. The COMMISSION may revoke the AGREEMENT for such violation after a public hearing held on reasonable notice to GHCA. If the AGREEMENT is revoked, the COMMISSION may determine, if it deems such appropriate, that all or part of any fill or structure placed pursuant to this AGREEMENT, <u>including vessels,</u> shall be removed by GHCA.

b. Other Administrative and Civil Remedies. The administrative and civil remedies provided in the McAteer-Petris Act (Gov. Code section 666000 et seq. [all further statutory references in this paragraph are to provisions of this code]) to redress a violation of the Act, or of a permit issued pursuant to the Act, are incorporated herein by reference and shall be available to redress a violation of this AGREEMENT. Thus, violation of any term, condition, or provision of this AGREEMENT shall be grounds for the issuance by the COMMISSION of a cease and desist order pursuant to section 66638 and/or the imposition of administrative civil penalties pursuant to section 66641.5(d). In determining whether to issue a cease and desist order or assess an administrative penalty, the COMMISSION shall follow the procedures set forth at 14 California Code of Regulations, sections 11310 et seq. Alternatively, the COMMISSION may sue in Superior Court for injunctive relief and civil penalties, including punitive damages, as provided in sections 66633, subdivision (d), and 66641.5, subdivisions (a) through (c). In no event, however, shall any person be subject to both administrative civil liability and civil liability imposed by the Superior Court for the same violation.

5. Abandonment of Improvements. If, at any time, the COMMISSION determines that all or any of the improvements placed in the Bay pursuant to this AGREEMENT have been abandoned for a period of two

years or more, or have deteriorated to the point that public health, safety or welfare is adversely affected, the COMMISSION may require that the improvements be removed by GHCA, or by the owner of the improvements, within 60 days or such other reasonable time as the COMMISSION may direct.

6. Surety Bond.

a. RECORD OWNERS shall provide a surety bond or other security device acceptable to the COMMISSION in an amount acceptable to its Executive Director, and naming the State of California as the assured, to guarantee to the COMMISSION the faithful performance by GHCA of any fill removal order issued by the COMMISSION pursuant to this section IV F, paragraphs 1, 2, 4, or 5.

b. The COMMISSION's Executive Director may increase the amount of the surety bond or other security device as necessary to cover any additional expense that may be associated with the removal of the improvements to be installed during Phase I and Phase II of the construction process.

c. The surety bond or other security device shall be maintained in full force and effect from the effective date of this AGREEMENT until the COMMISSION authorizes its termination or until 60 days following the submission to the COMMISSION of the Notice of Completion for the Phase II construction (see section III.H., supra), whichever first occurs.

G. **Entire Agreement; Amendment.** This AGREEMENT contains the entire agreement between the PARTIES with regard to the matters set forth, and it may be amended or modified only in the following described manner. GHCA shall immediately inform the Executive Director of the COMMISSION in writing of any proposed amendment, including any proposed modification in the Galilee Maritime Service Harbor project, and the Executive Director and GHCA shall jointly determine whether such proposed modification or amendment is minor or major (i.e., material or nonmaterial) in nature (see 14 Cal. Code of Regulations, §10800). If the modification or amendment is determined to be minor or nonmaterial, the Executive Director may act on it on the COMMISSION'S behalf after listing it to the COMMISSION (see 14 Cal. Code of Regulations §10620), unless a majority of the COMMISSION objects. If a majority objects, or the amendment is determined to be major, or the Executive Director and GHCA cannot agree on whether it is major or minor, the amendment shall be brought before the COMMISSION for action in the same manner as an application for a major permit (see 14 Cal. Code of Regulations §10500 et seq.) In no event shall any proposed amendment of this AGREEMENT take effect until approved in writing by each of the PARTIES affected.

H. **Successors and Assigns.** The terms, provisions, and conditions contained in this AGREEMENT are covenants that run with the land and shall be binding upon and inure to the benefit of the PARTIES and each of them and their heirs, successors, and assigns.

I. **Assignment.** The rights derived from this AGREEMENT are assignable as provided below. An assignment shall not be effective until the assignee shall have executed and the COMMISSION shall have received an acknowledgment that the assignee has read and understood this AGREEMENT and the AGREEMENT itself and agrees to be bound by the terms and conditions of the AGREEMENT, and the Executive Director of the

COMMISSION shall have approved the assignee as being reasonably capable of complying with such terms and conditions.

J. **Further Assurances.** So long as authorized by applicable laws to do so, the COMMISSION and GHCA will do such further acts and execute, acknowledge, and deliver such further documents and instruments as may be necessary to fully effectuate the provisions of this amended agreement.

K. **No Admission Made.** This is an AGREEMENT of compromise. Accordingly, the PARTIES agree that none of its provisions constitute, or shall be construed as, an admission concerning any of the matters addressed and all parties reserve the right to assert positions different from, or contrary to those set forth in this AGREEMENT should it not become effective or be determined to be invalid.

L. **Counterpart Originals.** This AGREEMENT may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument and as if all of the parties to the aggregate counterparts had signed the same instrument.

M. **Litigation Costs/Attorneys Fees.** Each party shall bear its own attorneys fees and costs in the ACTION. In the event of institution of litigation by any Party to enforce the provisions of this AGREEMENT, the prevailing party in said litigation shall be entitled to recover reasonable attorneys' fees.

N. **Headings.** The title headings of the paragraphs of this AGREEMENT are inserted for convenience only and shall not be considered in construing this agreement.

O. **Acknowledgements.** In the execution of this AGREEMENT, each party shall furnish such acknowledgements and certifications as may be necessary to duly and properly record this AGREEMENT in the Office of the Recorder of the County of Marin, California.

P. **Construction By California Law.** This AGREEMENT is entered into in the State of California and shall be construed and interpreted in accordance with its laws.

Q. **Representation of Comprehension of Document.** In entering into this AGREEMENT, the PARTIES represent that they have relied on legal advice of their attorneys who are the attorneys of their choice. The PARTIES further represent that the terms of this AGREEMENT have been completely read by and explained to them by their attorneys, and that they fully understand and voluntarily accept those terms.

R. **Authorship.** Each Party and counsel for each Party has reviewed and revised this AGREEMENT, and accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this AGREEMENT or any amendment of it.

S. **Authority to Execute.** GHCA represents and warrants that it has full power to enter into this AGREEMENT, to execute any and all documents required to implement this AGREEMENT, and to do whatever else is necessary to fulfill the terms, covenants, and conditions of this AGREEMENT.

T. **Exhibits.** All exhibits in the "List of Exhibits" appearing at the beginning of this AGREEMENT are incorporated herein by this reference.

U. **Notices.** All notices or correspondence between the PARTIES concerning this AGREEMENT shall be addressed as set forth below unless a party gives written notice to the others of a change of name or address, in which case all subsequent notices and correspondence shall be addressed as set forth in that notice:

STATE: Will Travis, Executive Director
San Francisco Bay Conservation
and Development Commission
30 Van Ness Avenue, Suite 2011
San Francisco, CA 94102

GHCA: Mary L. Hudson, Esq.
1736 Franklin Street, 8th Floor
Oakland, CA 94612

RECORD OWNERS: Charter Properties
2801 Greenwich Street
San Francisco, CA 94123
ATTENTION: Michael Pasquan

Notice of any change of the foregoing shall be made in writing to all persons listed above.

IN WITNESS WHEREOF, the PARTIES have executed this AGREEMENT as of the day and year set forth below.

DATED: June 14, 1996

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

By: _____
WILL TRAVIS
Executive Officer

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
)
COUNTY OF San Francisco)

On this 14 day of June, 1996, before me, Myrna Carter-Lee, Notary Public,

personally appeared Will Travis,
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.

Myrna Carter-Lee
MYRNA CARTER-LEE
Notary Public

MGC1 Myrna Carter-Lee MGC1
Comm. #992013
NOTARY PUBLIC - CALIFORNIA
City & County of San Francisco
Comm. Expires April 18, 1997

DATED: June 14, 1996

GALILEE HARBOR COMMUNITY ASSOCIATION,
a California mutual benefit corporation

By: _____
Joni Oaktree, President
Board of Directors

_____
Chris Hardman, Secretary
Board of Directors

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
)
COUNTY OF MARIN)

On this 14th day of JUNE, 1996, before me, SUSAN DUPUIS NOTARY PUBLIC, personally appeared JONI OAKTREE & CHRIS HARDMAN, 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.

SUSAN DUPUIS
COMM. # 985423
Notary Public — California
MARIN COUNTY
My Comm. Expires FEB 25, 1997

DATED: May __, 1996

JOSEPH J. GIRAUDO,
individually and as trustee of the Kristopher Trust

By: _____

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
COUNTY OF MARIN)

On this 18th day of July, 1996, before me, Patrick W. Wilson, personally appeared JOSEPH J. GIRAUDO, personally known to me (or proved to me on the basis of satis-factory 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.

PATRICK W. WILSON
COMM. #1028535
NOTARY PUBLIC-CALIFORNIA
MARIN COUNTY
My Comm. Expires June 5, 1998

DATED: May __, 1996

BEVERLY J. GIRAUDO

By: Beverly J. Giraudo

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
COUNTY OF Marin)

On this 13th day of July, 1996, before me, Patrick W. Wilson, personally appeared Beverly J. Giraudo, personally known to me (or proved to me on the basis of satis-factory 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.

PATRICK W. WILSON
COMM. #1028535
NOTARY PUBLIC-CALIFORNIA
MARIN COUNTY
My Comm. Expires June 5, 1998

DATED: May __, 1996

STEPHEN L. PASQUAN

By: _____

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
)
COUNTY OF MARIN)

On this 12th day of July, 1996, before me, Patrick W. Wilson,

personally appeared STEPHEN L. PASQUAN,

personally known to me (or proved to me on the basis of satis-factory 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.

PATRICK W. WILSON
COMM. # 1028535
NOTARY PUBLIC-CALIFORNIA
MARIN COUNTY
My Comm. Expires June 5, 1998

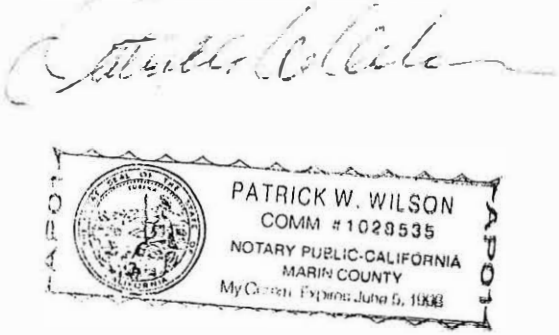
DATED: May __, 1996

PAMELA PASQUAN

By: Pamela Pasquan, by Michael Pasquan, Her Atty in Fact.

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
)
COUNTY OF Marin)

On this 12th day of July, 1996, before me, Patrick W. Wilson,
personally appeared Michael Pasquan,
personally known to me (or proved to me on the basis of satis-factory 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.