

(O-99-110)

ORDINANCE NUMBER O- 18643 (NEW SERIES)

ADOPTED ON APR 26 1999

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO REPEALING ORDINANCE NUMBER O-18626 (NEW SERIES), ADOPTED FEBRUARY 16, 1999, AND APPROVING THE SEVENTH AMENDMENT TO THE FIRST SAN DIEGO RIVER IMPROVEMENT PROJECT DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SAN DIEGO AND CALMAT CO., THEREBY AMENDING THE DEVELOPMENT AGREEMENT ADOPTED DECEMBER 6, 1982, INCLUDING THE FIRST AMENDMENT ADOPTED AUGUST 1, 1983; THE SECOND AMENDMENT ADOPTED MARCH 16, 1987; THE THIRD AMENDMENT ADOPTED OCTOBER 19, 1992; AND THE FOURTH, FIFTH, AND SIXTH AMENDMENTS ADOPTED FEBRUARY 22, 1994.

WHEREAS, CalMat Co. [Owner] is the owner or equitable owner of that certain real property known as Rio Vista West consisting of approximately 94.5 acres located within the First San Diego River Improvement Project (FSDRIP) Specific Plan area within the Mission Valley Community planning area; and

WHEREAS, the parties desire to amend the First San Diego River Improvement Project Development Agreement to memorialize changes to the Specific Plan for Rio Vista West, as amended on APR 13 1999 by Resolution No. R- 291480 [R-99-1105]; and

WHEREAS, The City of San Diego, a charter city, is authorized pursuant to Government Code sections 65864 through 65869.5 to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property in order to establish certainty in the development process. The City further enters into this

Agreement pursuant to its Charter and self-rule powers and San Diego Municipal Code section 105.0101 et seq.; and

WHEREAS, the parties desire to amend the Development Agreement relating to the above-described real property in conformance with the provisions of the Government Code in order to achieve revised development of private land uses together with the provision of public services, public uses, and urban infrastructure all in the promotion of the health, safety, and general welfare of the City of San Diego; and

WHEREAS, pursuant to the terms of this Seventh Amendment to the Development Agreement, Owner will continue to provide substantial public improvements and benefits to the City. In consideration of the public improvements and benefits to be provided by Owner pursuant to the amended Development Agreement, and in order to strengthen the public planning process and reduce the economic costs of development by the Seventh Amendment to the Development Agreement, the City intends to give Owner assurance that Owner can continue with the development of the subject property for the term of the Development Agreement pursuant to the amended Development Agreement; and

WHEREAS, on December 17, 1998, the Planning Commission of The City of San Diego, after giving notice pursuant to Government Code sections 65854, 65854.5, and 65856 and San Diego Municipal Code section 105.0103, held a public hearing on the application for the Seventh Amendment to the Development Agreement; and

WHEREAS, on February 16, 1999, the City Council adopted Ordinance No. O-18626 (New Series) approving the Seventh Amendment to the Development Agreement; and

WHEREAS, CalMat Co., the developer of the project, recently became aware that the public noticing information they provided to the City for the previous Planning Commission and City Council hearings may have been deficient; and

WHEREAS, in order to be assured that the project is properly noticed, the developer has made application to repeal the previous approvals that may be affected by noticing deficiencies and requested that new approvals and adoptions be granted for the project; and

WHEREAS, the Council of The City of San Diego, after providing public notice as required by law, held a public hearing on Owner's application, wherein all persons desiring to be heard were heard, and pursuant to said public hearing the Council recommended approval of the Seventh Amendment to the Development Agreement; and

WHEREAS, the Council finds that the Seventh Amendment to the Development Agreement is consistent with the Progress Guide and General Plan and the Mission Valley Community Plan, as well as all other applicable policies and regulations of The City of San Diego; and

WHEREAS, the Council has reviewed and considered the Seventh Amendment to the Development Agreement and determined the content of the Seventh Amendment to the Development Agreement to be complete and correct; NOW, THEREFORE,

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. The Council finds and determines the facts stated above to be true.

Section 2. The Council repeals Ordinance No. O-18626 (New Series).

Section 3. The Council further finds with respect to the Seventh Amendment to the Development Agreement that:

A. It is consistent with the objectives, policies, programs and uses specified in the Progress Guide and General Plan and the Mission Valley Community Plan.

B. It will not be detrimental to the public health, safety and general welfare.

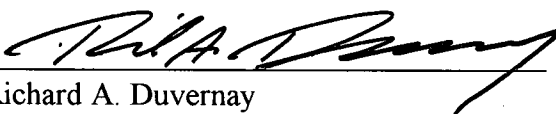
C. It will promote the orderly development of property or the preservation of property values in accordance with good land use practice.

Section 4. The Council hereby approves the Seventh Amendment to the First San Diego River Improvement Project Development Agreement, in the form attached hereto, and authorizes and directs the City Manager to execute the Amendment, a copy of which is on file in the office of the City Clerk as Document No. OO-___ **18643** ___. The City Clerk is directed to record the Amendment and this Ordinance with the County Recorder of San Diego County within ten days after its execution.

Section 5. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 6. That this ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: CASEY GWINN, City Attorney

By 
Richard A. Duvernay
Deputy City Attorney

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04/6/99
Or.Dept:P&DR
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**SEVENTH AMENDMENT TO
FIRST SAN DIEGO RIVER IMPROVEMENT PROJECT
DEVELOPMENT AGREEMENT**

This SEVENTH AMENDMENT TO FIRST SAN DIEGO RIVER IMPROVEMENT PROJECT DEVELOPMENT AGREEMENT ("Amendment") is made and entered into on this _____ day of _____, 1998; by and between THE CITY OF SAN DIEGO, a municipal corporation ("City") and CALMAT CO., a Delaware corporation ("CalMat"), with reference to the following:

RECITALS

A. WHEREAS, the First San Diego River Improvement Project Development Agreement ("Agreement") was made and entered into on January 6, 1983 by and between the City of San Diego and MBM Associates, Mission Valley Partners, Mission Valley One, Ltd., Douglas O. Allred, Donald F. Sammis and Conrock Co. A copy of said Agreement is on file in the office of the City Clerk as Document No. 00-15868 and is incorporated herein by reference.

B. WHEREAS, the First Amendment to the Agreement ("First Amendment") was entered into on August 1, 1983. A copy of said First Amendment is on file in the office of the City Clerk as Document No. 00-16015 and is incorporated herein by reference.

C. WHEREAS, the Second Amendment to the Agreement ("Second Amendment") was entered into on March 16, 1987. A copy of said Second Amendment is on file in the office of the City Clerk as Document No. 00-16828 and is incorporated herein by reference.

D. WHEREAS, the Third Amendment to the Agreement ("Third Amendment") was entered into on October 19, 1992. A copy of said Third Amendment is on file in the office of the City Clerk as Document No. 00-17853 and is incorporated herein by reference.

E. WHEREAS, the Fourth Amendment to the Agreement ("Fourth Amendment") was entered into on February 22, 1994. A copy of said Fourth Amendment is on file in the office of the City Clerk as Document No. 00-18038 and is incorporated herein by reference.

F. WHEREAS, the Fifth Amendment to the Agreement ("Fifth Amendment") was entered into on February 22, 1994. A copy of said Fifth Amendment is on file in the office of the City Clerk as Document No. 00-18039 and is incorporated herein by reference.

FORM OF

DOCUMENT NO. 00-18643

FILED APR 26 1999

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

G. WHEREAS, the Sixth Amendment to the Agreement ("Sixth Amendment") was entered into on February 22, 1994. A copy of said Sixth Amendment is on file in the office of the City Clerk as Document No. 00-18040 and is incorporated herein by reference.

H. WHEREAS, by agreement dated May, 1988, San Diego Bond-MBM Associates, Ltd. became the successor in interest to a portion of the rights and obligations of MBM Associates in the Agreement, First Amendment, Second Amendment and Third Amendment.

I. WHEREAS, by agreement dated October 28, 1988, MBM West II and Mission Colony Partners became the successor in interest to a portion of the rights and obligations of San Diego Bond - MBM Associates, Ltd. in the Agreement, First Amendment, Second Amendment and Third Amendment.

J. WHEREAS, concurrent with execution of the Agreement, the City adopted, by Resolution No. R-257496 dated November 16, 1982, the First San Diego River Improvement Project Specific Plan ("Specific Plan") providing for the land uses and development permitted under the Agreement. A copy of the Specific Plan is on file in the office of the City Clerk and is incorporated herein by reference.

K. WHEREAS, the Specific Plan was first amended pursuant to Resolution No. R-258911 adopted by the City on July 19, 1983. A copy of the amendment is on file in the office of the City Clerk and is incorporated herein by reference.

L. WHEREAS, the Specific Plan was once again amended by the City on April 8, 1986, pursuant to Resolution No. R-265413. A copy of said second amendment ("Hazard Center Amendment (II)") is on file in the office of the City Clerk, as Document No. RR-265413, and is incorporated herein by reference.

M. WHEREAS, the Specific Plan was once again amended by the City on October 6, 1992, pursuant to Resolution No. R-280832. A copy of said third amendment ("San Diego Bond - MBM Associates, Ltd. Amendment (III)") is on file in the office of the City Clerk, as Document No. RR-280832, and is incorporated herein by reference.

N. WHEREAS, the Specific Plan was once again amended by the City on May 4, 1993, pursuant to Resolution No. R-281917. A copy of said fourth amendment ("Park In The Valley Amendment (IV)") is on file in the office of the City Clerk, as Document No. RR-281917, and is incorporated herein by reference.

O. WHEREAS, the Specific Plan was once again amended by the City on December 7, 1993, pursuant to Resolution No. R-283175. A copy of said fifth amendment ("Rio Vista West Amendment (V)") is on file in the office of the City Clerk, as Document No. RR-283175 and is incorporated herein by reference.

P. WHEREAS, the Specific Plan was once again amended by the City on February 8, 1994, pursuant to Resolution No. R-283390. A copy of said sixth amendment ("Hazard Center East Amendment (VI)") is on file in the office of the City Clerk, as Document No. RR-283390 and is incorporated herein by reference.

Q. WHEREAS, the Specific Plan was once again amended by the City on _____, pursuant to Resolution No. _____. A copy of said seventh amendment ("HP Mission Valley Amendment (VII)") is on file in the office of the City Clerk, as Document No. RR-_____ and is incorporated herein by reference

R. WHEREAS, CalMat now desires to amend the Agreement, as amended, to incorporate the HP Mission Valley Amendment VII to the Specific Plan

S. WHEREAS, this Amendment has been adopted in the same manner as the Agreement was adopted by an ordinance as set forth in Government Code Sections 65867, 65867.5 and 65868 and San Diego Municipal Code Sections 105.0101, et seq.

T. AND WHEREAS, the City finds that this Amendment is consistent with the City's General Plan and Progress Guide and with the Specific Plan, as amended, and has completed all necessary proceedings in accordance with the City's rules and regulations for its approval.

NOW, THEREFORE, in consideration of mutual promises, obligations and covenants herein contained, the parties hereto further amend the Agreement, as amended by the First, Second, Third, Fourth, Fifth and Sixth Amendments, as follows:

1. Whenever the term Specific Plan is used in the Agreement, it shall refer to First San Diego River Improvement Project Specific Plan as amended by the City Council of City on _____, and on file in the office of the City Clerk as Document No. _____.

2. Except as amended hereby, the Agreement, as previously amended, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed as of the date and year first above written.

"City"

CITY OF SAN DIEGO, a municipal
corporation

By: _____