

ATTACHMENT 25

FINANCING AND REVENUE SHARING PLAN

This Financing and Revenue Sharing Plan (“Plan”) is attached to and made a part of the Disposition and Development Agreement (the “Agreement”) for Hunters Point, Phase 1 (“Phase 1”). Terms not defined in this Plan have the meanings given to them in the Agreement. The Agency and Developer are bound by this Plan as part of the obligations they assume, and benefits they receive, under the Agreement.

Section 1. Definitions.

Advance Interest Rate means Developer’s cost of borrowing as calculated from time to time, but in no event to exceed eight and one half percent (8.5%) simple interest per annum. At any time interest is accruing at the Advance Interest Rate, Developer will provide its cost of borrowing on a quarterly basis, or more frequently if the Agency so requests, together with the methodology supporting such cost of borrowing.

Agency Land Return means the amount that results in an eleven percent (11%) per annum internal rate of return on the undistributed balance of the Land Value beginning from the Effective Date. The per annum internal rate of return is calculated as the compounded monthly internal rate of return. The Agency Land Return for each month is calculated using the formula set forth in Exhibit D attached hereto, and an example of such calculation is included in Exhibit D.

Approved Budget means the Preliminary Budget and any subsequent Budgets approved by the Agency (or deemed approved) pursuant to the processes described in Sections 6 and 7 below.

Approved Expenses means Developer’s Hard Costs and Soft Costs, and the Agency’s Costs (as defined in the Agreement), expended in developing Phase 1 that are incurred after the Effective Date of the Agreement and included in an Approved Budget. Approved Expenses exclude (i) costs that are not included in an Approved Budget, (ii) costs incurred before the Effective Date of the Agreement, (iii) Qualified Predevelopment Costs, (iv) Qualified Pre-Agreement Costs, (v) any amounts that cannot be reasonably verified through statements and invoices and (vi) any reimbursement for Developer’s, or any Developer Affiliate’s, overhead or personnel expenses, or payments to Developer or any Developer Affiliate; provided that, the Agency will not unreasonably withhold its approval of payments to Developer or any Developer Affiliate specifically identified in any proposed Budget for which Developer has provided written evidence (reasonably satisfactory to the Agency) that the proposed payments are not related to overhead or personnel expenses and do not exceed amounts that would be payable to non-related third parties in arms-length transactions for similar services within the City.

Arbiter has the meaning set forth in Section 7.2(d).

Bond Proceeds means the proceeds of any Mello-Roos Bonds issued for the development of Phase 1.

Bond Proceeds Account means an interest-bearing account for all Net Bond Proceeds.

Budget Disputes has the meaning set forth in Section 6.4.

City means the City and County of San Francisco.

Commence Construction means the commencement of substantial physical construction of the Infrastructure as part of a sustained and continuous construction plan.

Default Shortfall means a shortfall in revenue, whether through an overrun or acceleration of costs, or a delay or shortfall in Bond Proceeds or Gross Revenues, to the extent caused by a breach of any provision of the Agreement or the negligent act or omission or willful misconduct of Developer, its officers, employees, agents, contractors, subcontractors or others for whom it is responsible. A Default Shortfall may be triggered not only by a Developer Event of Default, as defined in the Agreement, but also by any event or circumstance that could become an Event of Default if not cured within any cure period granted to Developer, *i.e.*, a Default Shortfall may occur even if Developer avoids an Event of Default by curing the default within the specified cure period. A Default Shortfall is so defined because the Parties acknowledge that Developer must cure any default using its own funds, and not through a Reimbursable Mandatory Developer Advance (as defined below). If Developer, its officers, employees, agents, contractors, subcontractors or others for whom it is responsible commit a breach of any provision of the Agreement, are negligent or commit an act of willful misconduct, whether in supervising performance, designing and implementing a marketing program or otherwise, then any shortfall in revenue will be assumed to be a Default Shortfall, and Developer will bear the burden of proving that the breach, negligence or willful misconduct was (i) not the cause of the shortfall or (ii) was only a contributory cause, and if so, the extent of the contribution.

Developer's Outstanding Qualified Pre-Agreement Costs means the portion of Qualified Pre-Agreement Costs not paid out of Bond Proceeds pursuant to Section 2.2.

Developer's Outstanding Qualified Predevelopment Costs means the portion of Developer's Qualified Predevelopment Costs not paid out of Bond Proceeds pursuant to Section 2.2.

Developer Equity Return means the amount that results in a twenty-five percent (25%) per annum internal rate of return on the undistributed balance of the Developer's Outstanding Qualified Predevelopment Costs beginning from the Effective Date. The per annum internal rate of return is calculated as the compounded monthly internal rate of return. The Developer Equity Return for each month is calculated using the formula set forth in Exhibit D attached hereto, and an example of such calculation is included in Exhibit D.

Effective Date means the Effective Date of the Agreement.

Gross Revenues means all cash, notes or other payments or credits of any kind arising from disposition of Lots. Mandatory Developer Advances, Voluntary Agency Advances and Bond Proceeds are not included in Gross Revenues.

Hard Costs means Developer's out-of-pocket costs actually incurred and paid to licensed contractors and material suppliers for labor and materials required in connection with the demolition, grading and physical construction of the Infrastructure, as set forth in construction contracts and purchase orders approved by Owner. Hard Costs exclude (i) any amounts incurred prior to the date Developer Commences Construction, (ii) architectural, engineering or other design, consultant, attorney or other professional fees, (iii) any construction management fee, (iv) Qualified Predevelopment Costs, (v) Qualified Pre-Agreement Costs, (vi) Soft Costs, (vii) any amounts that cannot be reasonably verified through statements and invoices and (viii) any reimbursement for Developer's, or any Developer Affiliate's, overhead or personnel expenses, or payments to Developer or any Developer Affiliate; provided that, the Agency will not unreasonably withhold its approval of payments to Developer or any Developer Affiliate specifically identified in any proposed Budget for which Developer has provided written evidence (reasonably satisfactory to the Agency) that the proposed payments are not related to overhead or personnel expenses and do not exceed amounts that would be payable to non-related third parties in arms-length transactions for similar services within the City. Hard Costs include necessary building permit fees, bond premiums and similar costs that are calculated as a percentage of Hard Costs.

Horizontal Improvements or Infrastructure means the works of improvement described in the Infrastructure Plan attached as Attachment 9 to the Agreement, as it may be amended from time to time.

Land Proceeds Account means an interest-bearing account for all Gross Revenues.

Land Value means the amount of Thirty Million Dollars (\$30,000,000.00) treated as if expended on the Effective Date.

Lots has the meaning set forth in the Agreement; the Lots are shown in the map attached as Attachment 2 to the Agreement, as it may be amended from time to time.

Mandatory Developer Advance has the meaning set forth in Section 5.1.

Mediator has the meaning set forth in Section 7.2(a)

Mello-Roos Bonds means tax-exempt bonds issued under the Mello-Roos Community Facilities Act of 1982, California Government Code Sections 53311 *et seq.*

Mello-Roos Reserve has the meaning set forth in Section 3.4.

Net Bond Proceeds means the amount of any Bond Proceeds less the amounts of the Public Facility Predevelopment Costs, Public Facility Pre-Agreement Costs, and the initial funding of the Operating Reserve and the Mello-Roos Reserve, payable from Bond Proceeds immediately upon sale of the Mello-Roos Bonds as set forth in Section 2.2 below.

Net Revenues means Gross Revenues less the costs described in Section 3.3(a)-(e) below.

Non-Reimbursable Mandatory Developer Advance has the meaning set forth in Section 5.3.

Operating Reserve has the meaning set forth in Section 4.

Party means either the Agency or Developer; **Parties** means the Agency and Developer, collectively.

Preliminary Budget means the budget and project pro-forma attached as Exhibit A to this Attachment 25.

Project Accounts mean the Bond Proceeds Account and the Land Proceeds Account.

Project Decision Team or **PDT** means a team of four (4) persons, two (2) selected by the Agency and two (2) selected by Developer, who will consult with Developer on Budget matters.

Project Site means Parcels A-1 and B-1 as more particularly described in Attachment 1 to the Agreement, and as shown on the map attached as Attachment 2 to the Agreement.

Public Facility Approved Expenses means the portion and types of Approved Expenses that are eligible for reimbursement out of Bond Proceeds pursuant to applicable IRS rules and regulations, consistent with their tax-exempt status and customary underwriting standards related to the issuance of the Mello-Roos Bonds.

Public Facility Predevelopment Costs means the portion and types of Qualified Predevelopment Costs described on Exhibit B to this Attachment 25 that are eligible for reimbursement out of Bond Proceeds under applicable IRS rules and regulations, consistent with their tax-exempt status and customary underwriting standards related to the issuance of the Mello-Roos Bonds, up to a maximum amount not to exceed Ten Million Dollars (\$10,000,000.00).

Public Facility Pre-Agreement Costs means the portion and types of Qualified Pre-Agreement Costs described on Exhibit C to this Attachment 25 that are eligible for reimbursement out of Bond Proceeds under applicable IRS rules and regulations, consistent with their tax-exempt status and customary underwriting standards related to the issuance of the Mello-Roos Bonds.

Qualified Predevelopment Costs means the costs described on Exhibit B to this Attachment 25, plus interest at the rate of twelve percent (12%) per annum simple interest from the date the costs are paid by Developer until the Effective Date of the Agreement (the “Roll-Up Interest”). The Qualified Predevelopment Costs shall not exceed Twenty Million Dollars (\$20,000,000.00) and the Roll-Up Interest shall not exceed Five Million Dollars (\$5,000,000.00),

in a total aggregate amount not to exceed Twenty-Five Million Dollars (\$25,000,000.00).

Qualified Pre-Agreement Costs means the costs described on Exhibit C attached to this Attachment 25 in the amount of One Million Four Hundred Seventy-Four Thousand Five Hundred Dollars (\$1,474,500.00). Qualified Pre-Agreement Project Costs will not accrue interest.

Records has the meaning set forth in Section 8.

Reimbursable Mandatory Developer Advance has the meaning set forth in Section 5.2.

Shortfall and Reimbursement Agreement has the meaning set forth in Section 5.1.

Soft Costs means Developer's out-of-pocket costs actually incurred and paid to third-party providers for designing the Infrastructure and for marketing and selling the Lots, and comprising architectural, engineering, consultant, attorney and other professional fees, real property taxes and assessments for the Lots, insurance expenses, sales and marketing expenses, and customary closing costs incurred in connection with sales of the Lots. Soft Costs exclude (i) any amounts incurred prior to the Effective Date, (ii) Qualified Predevelopment Costs, (iii) Qualified Pre-Agreement Costs, (iv) Hard Costs, (v) any amounts that cannot be reasonably verified through statements and invoices and (vi) any reimbursement for Developer's, or any Developer Affiliate's, overhead or personnel expenses, or payments to Developer or any Developer Affiliate; provided that, the Agency will not unreasonably withhold its approval of payments to Developer or any Developer Affiliate specifically identified in any proposed Budget for which Developer has provided written evidence (reasonably satisfactory to the Agency) that the proposed payments are not related to overhead or personnel expenses and do not exceed amounts that would be payable to non-related third parties in arms-length transactions for similar services within the City. Soft Costs may include a construction management allowance calculated as a percentage of Hard Costs, not to exceed six percent (6%) of Hard Costs and a project management/task force allowance not to exceed four percent (4%) of Hard Costs.

Voluntary Agency Advance has the meaning set forth in Section 5.4.

Section 2. Financing.

2.1 General. In order to provide credit enhancements for issuance of Mello-Roos Bonds in the amounts (and in accordance with the other assumptions) set forth in the Preliminary Budget, at the Close of Escrow on Parcel A-1, Developer will cause the issuance of letter(s) of credit, or another form of credit enhancements acceptable to the underwriters for the issuance of the Mello-Roos Bonds. The letter(s) of credit or other form of credit enhancements will provide security for the Mello-Roos Bonds in the aggregate amount of not less than Twenty-Five Million Dollars (\$25,000,000.00), unless the Agency in its sole discretion agrees to a lesser amount. If required, at the Close of Escrow on Parcel B-1, Developer will provide letter(s) of credit or other form of credit enhancements for issuance of Mello-Roos Bonds in the amounts (and in accordance with the other assumptions) set forth in the then Approved Budget for Parcel B-1, consistent with the Agency's guidelines for such issuance. The Mello-Roos

Bonds will be secured by the letter(s) of credit or other form of credit enhancements and by the Project Site, without recourse to either the Agency's or the City's General Fund or the Agency's Tax Increment proceeds. The letter(s) of credit or other form of credit enhancements will be secured by corporate guarantees or other collateral from Developer or its Affiliates, without recourse to the Project Site, the Agency's or the City's General Fund or the Agency's Tax Increment proceeds. Financial institutions issuing the letter(s) of credit or other form of credit enhancements must have a rating of at least "A" from Moody's Investor's Service Inc. or Standard & Poor's Rating Service, or the equivalent rating from any successor rating agency mutually acceptable to the Parties on the date of issuance and at any later credit renewal date. Developer must provide substitute letter(s) or credit or other form of credit enhancements for any letter of credit or other form of credit enhancement that does not meet this rating standard on a credit renewal date. Subject to Developer complying with its obligations in this Section 2.1, the Agency will use commercially reasonable efforts to issue the Mello-Roos Bonds in the amounts set forth in the Preliminary Budget, and in accordance with the assumptions set forth in the Preliminary Budget and with customary underwriting standards.

2.2 Distribution. Immediately upon sale of the Mello-Roos Bonds, the Bond Proceeds will be used first to pay for the Public Facility Predevelopment Costs up to a maximum of Ten Million Dollars (\$10,000,000.00), then to pay the Public Facility Pre-Agreement Costs and then to initially fund the Mello-Roos Reserve and finally to fund the Operating Reserve. The remainder, the Net Bond Proceeds, will be deposited into the Bond Proceeds Account and may be used only to pay debt service on the Mello-Roos Bonds (and any mutually acceptable prepayments of principal, to the extent feasible), and the Public Facility Approved Expenses, as set forth in Section 3.2 below.

2.3 Accounting. Developer and the Agency will separately track all Bond Proceeds in order to comply with the requirements that (a) Bond Proceeds may be used only for purposes consistent with their tax exempt status and in accordance with this Agreement and (b) the amount of Public Facility Predevelopment Costs payable from Bond Proceeds do not exceed Ten Million Dollars (\$10,000,000.00).

Section 3. Project Accounts, Distributions of Gross Revenues, and Reserves.

3.1 Project Accounts. Developer will establish and maintain the Project Accounts with financial institutions approved by the Agency in writing. Developer will not commingle funds held in the Project Accounts with other funds held by Developer. The Agency will have a security interest in the Project Accounts superior to any other security interests. This security interest will be evidenced by a UCC-1 Financing Statement and a control agreement with each financial institution holding a Project Account. Developer will cooperate with the Agency in obtaining control agreement(s) and preparing and filing such Financing Statement and any continuation statements required to keep the Financing Statement effective. Any statements and all other records related to the Project Account will be available for the Agency's review and audit in accordance with Section 8 below.

3.2 Distributions from the Bond Proceeds Account. Distributions of Net Bond Proceeds from the Bond Proceeds Project Account shall be made only to pay debt service

on the Mello-Roos Bonds (and any mutually acceptable prepayments of principal, to the extent feasible), and the Public Facility Approved Expenses, as set forth in an Approved Budget.

3.3 Distributions from the Land Proceeds Account. Distributions of Gross Revenues from the Land Proceeds Account shall be made only for the following costs, in the following order of priority:

- (a) First, to pay debt service on the Mello-Roos Bonds, and any mutually acceptable prepayments of principal, to the extent feasible;
- (b) Next, to fully replenish the Mello-Roos Reserve, to the extent necessary;
- (c) Next, to pay for Approved Expenses as set forth in an Approved Budget;
- (d) Next to repay any Reimbursable Mandatory Developer Advances and Voluntary Agency Advances, plus accrued interest at the Advance Interest Rate, in pro-rata shares, as provided in Section 5.5;
- (e) Next, to repay any Developer's Outstanding Qualified Pre-Agreement Costs, without interest thereon; and
- (f) Next, to distribute Net Revenues to Developer and Agency as set forth in Section 4.

3.4 Mello-Roos Reserves. Developer will maintain such reserves as may be required under customary underwriting requirements for issuance of the Mello-Roos Bonds (the "Mello-Roos Reserve") in the Bond Proceeds Account. To the extent that Gross Revenues or Bond Proceeds are insufficient to fund the Mello-Roos Reserve, such deficiency shall be funded by Developer as a Reimbursable Mandatory Developer Advance.

Section 4. Distributions of Net Revenues.

Generally distributions of Net Revenues from the Land Proceeds Account will be made monthly. However, no distributions of Net Revenues will be made unless and until there are sufficient reserves in the Land Proceeds Account to fund one hundred percent (100%) of the budgeted operating and capital needs of Phase 1, excluding debt service on the Mello-Roos Bonds, and net of any projected Gross Revenues (both as projected in the then Approved Budget) for the following three (3) month period (the "Operating Reserve"). If the Operating Reserve requirement is met, then distributions of Net Revenues will be made as follows:

First, forty percent (40%) to Developer and sixty percent (60%) to the Agency until both: (a) Developer has received an amount under this provision and Section 3 equal to Developer's Outstanding Qualified Predevelopment Costs plus the Developer Equity Return and (b) the Agency has received an amount equal to the Land Value plus the Agency Land Return;

Next, once either Party has received its respective specified return under (a) or

(b) above, one hundred percent (100%) to the other Party until such other party has received its specified return; and

Next, fifty percent (50%) to Developer and fifty percent (50%) to the Agency.

Section 5. Mandatory Developer Advances and Voluntary Agency Advances.

5.1 Mandatory Developer Advances. If at any time there are insufficient funds in the Project Accounts to pay Approved Expenses payable from Gross Revenues or Bond Proceeds, whether through an overrun or acceleration of costs, a delay or shortfall in Bond Proceeds or Gross Revenues, or from any other cause, Developer will advance the funds required to assure completion of all of Phase 1 (Parcel A-1 and Parcel B-1) (a “Mandatory Developer Advance”). To the extent required under customary underwriting standards or recommended by counsel in order to improve marketability of the Mello-Roos Bonds, Developer’s obligation to complete all of Phase 1 will be memorialized in a Shortfall and Reimbursement Agreement consistent with such standards or recommendations. Developer’s obligation to complete all of Phase 1, and Developer’s obligations under the Shortfall and Reimbursement Agreement (if one is required), will be guaranteed by Lennar Corporation and LNR Property Corporation, as part of the Guaranty of Developer’s obligations under the Agreement in the form attached as Attachment 8 to the Agreement.

5.2 If the shortfall is not a Default Shortfall, then Developer will be entitled to a distribution in the amount of its Mandatory Developer Advance together with accrued interest at the Advance Interest Rate computed monthly on the principal balance thereof from time to time outstanding from and including the date such Advance was made to and including the date such Advance is repaid. In that event, the Mandatory Developer Advance will become a “Reimbursable Mandatory Developer Advance.”

5.3 If the shortfall is a Default Shortfall, then Developer will be required to make a Mandatory Developer Advance at its sole cost without any reimbursement, interest or other compensation (a “Non-Reimbursable Mandatory Developer Advance”).

5.4 Voluntary Agency Advances. Subject to Developer’s prior written approval, not to be unreasonably withheld or delayed, the Agency in its sole and absolute discretion may elect (but will never be required) to make a voluntary advance to the Project Account, to be used only for the purposes specified by the Agency at the time the Agency seeks Developer’s approval (a “Voluntary Agency Advance”). The Agency will be entitled to return of its Voluntary Agency Advance and accrued interest at the Advance Interest Rate, from and including the date such Advance was made to and including the date such Advance is repaid.

5.5 Timing of Repayment of Reimbursable Mandatory Developer Advances and Voluntary Agency Advances. Reimbursable Mandatory Developer Advances and Voluntary Agency Advances, plus accrued interest at the Advance Interest Rate, will be paid in the order set forth in Section 3.3 above. If at any time both Reimbursable Mandatory Developer Advances and Voluntary Agency Advances are outstanding, they will be paid in the same proportions that each bears to the total of such Advances then outstanding, plus interest at the Advance Interest Rate, until both such Advances and all accrued interest are paid in full. For

example, if the Reimbursable Mandatory Developer Advances plus interest equal Sixty Thousand Dollars (\$60,000.00) and the Voluntary Agency Advances plus interest equal Forty Thousand Dollars (\$40,000.00), then each payment shall be allocated sixty percent (60%) to Developer and forty percent (40%) to the Agency until both such Advances and all accrued interest are paid in full.

5.6 Procedures for Advances. Prior to making any Mandatory Developer Advance or Voluntary Agency Advance, the Party making the Advance will consult with the other Party as to the need for, and timing, uses and amounts of, the Advance. Any Voluntary Agency Advance requires Developer's consent, and any Mandatory Developer Advance requires the Agency's consent. In both cases consent will not be unreasonably withheld or delayed. The then Approved Budget will be revised to show the type, amount and time of any Advance, as well as the amount and time of any repayment, allocating the repayment between interest and principal.

Section 6. Approved Budget.

6.1 Caps on Predevelopment and Pre-Agreement Costs. Developer and the Agency have agreed upon certain caps for Qualified Predevelopment Costs and Qualified Pre-Agreement Costs. The amount and nature of those costs are described in Exhibits B and C attached hereto. Any amounts incurred by Developer in producing the deliverables and performing the tasks described therein in excess of those caps will be absorbed by Developer without reimbursement. Notwithstanding the foregoing, as set forth in the Phase 2 Exclusive Negotiating Agreement (as defined in the Agreement) entered into by Developer and the Agency on the Effective Date of the Agreement, up to Three Million One Hundred Six Thousand Five Hundred Dollars (\$3,106,500.00) of the earliest incurred Qualified Predevelopment Costs, subject to verification, will be deferred to Phase 2, but these deferred amounts will not accrue interest.

6.2 Preliminary Budget. Developer and the Agency have also agreed on a Preliminary Budget commencing with the Effective Date, to be updated on a specified basis by Developer, subject to the Agency's approval, as set forth below. The Preliminary Budget assumes that Close of Escrow on Parcel A-1 is earlier than on Parcel B-1, but that commercial Lots are available for sale on Parcel B-1 from and after the fourth (4th) anniversary of Close of Escrow on Parcel A-1. The Preliminary Budget includes, among other things, (a) the estimated Bond Proceeds and Lot sale proceeds, the uses of those Bond Proceeds and Lot sale proceeds and the sources for payment of the debt service on the Mello-Roos Bonds, (b) the amount of Developer's Qualified Predevelopment Costs, Public Facility Predevelopment Costs, Qualified Pre-Agreement Project Costs, Public Facility Pre-Agreement Project Costs, Hard Costs, Soft Costs and Approved Expenses and the sources for repayment of those items, (c) a detailed Project cost breakdown of major cost categories, (d) any expected Voluntary Agency Advances and expected Reimbursable Mandatory Developer Advances, (e) cash flow projections and (f) major development, construction and marketing milestones, the estimated dates of achievement and the revenues and costs associated with the milestones, including a specified order in which Lots will be developed with Horizontal Improvements and then sold. In part, this order is based on the need for Lot sales proceeds to fund further Horizontal Improvements, and therefore the order recognizes that sales of certain Affiliate Lots may be more likely to generate

the required revenue in the early stages of Phase 1. As referenced in Section 15 of the Agreement, the Preliminary Budget also incorporates a Schedule setting forth a Minimum Purchase Price for each Lot, which will be subject to confidentiality restrictions mutually acceptable to the Agency and to Developer. The relevant Minimum Purchase Prices are incorporated in the Preliminary Budget and cannot be changed without the prior written consent of both Developer and the Agency. Among other things, the Preliminary Budget sets forth a projected distribution of Net Revenues based on the assumptions set forth in that Preliminary Budget, but the Parties acknowledge that the actual facts may differ from those assumptions.

6.3 Initial Update of Preliminary Budget at Close of Escrow. In consultation with the PDT, Developer will update the Preliminary Budget, and provide a copy of the proposed update to the Agency together with supporting information substantiating all proposed changes thereto (in a form reasonably acceptable to the Agency), no more than sixty (60) and no less than thirty (30) days prior to Close of Escrow. If the PDT unanimously approves the update, then the approved update will be the Approved Budget. If the PDT fails to unanimously approve the update, then the Agency and Developer will consult in an attempt to reach agreement by the Close of Escrow, or such later date as they mutually agree, using the following standards:

(a) Qualified Predevelopment Costs and Qualified Pre-Agreement Costs cannot exceed the specified caps and, subject to those caps, the Agency will approve these categories of Costs so long as Developer produces paid invoices or other verification reasonably acceptable to the Agency supporting the amounts claimed; provided that, the allocation of such Costs, and of Approved Expenses, to the Public Facility category must be supported by opinions of bond counsel reasonably acceptable to the Agency to the extent the same are paid with Bond Proceeds. Disputes as to this category of Costs are not Budget Disputes and will be resolved under the verification provisions of Section 8.

(b) Hard Costs do not have specified caps and the Agency will approve Hard Costs so long as (i) the Hard Costs claimed result from competitive bids from at least three (3) responsible bidders not Affiliated with Developer, with the lowest responsive bidder prevailing, unless Developer obtains Agency's prior written consent to a negotiated bid on the basis that the negotiated bid will result in a superior work product at a competitive price and (ii) Developer produces paid invoices or other verification reasonably acceptable to the Agency supporting the amounts claimed; provided that, the allocation of Hard Costs to the Public Facility category must be supported by opinions of bond counsel reasonably acceptable to the Agency to the extent Hard Costs are paid with Bond Proceeds. Disputes as to Hard Costs are not Budget Disputes and will be resolved under the verification provisions of Section 8, except as to the adequacy of competitive bid procedures or whether the Agency consented to a negotiated bid, both of which are Budget Disputes.

(c) Soft Costs must also be supported by paid invoices or other verification reasonably acceptable to the Agency, but in addition Developer must demonstrate to the Agency's reasonable satisfaction that that the Soft Costs meet the criteria for Approved Expenses, were necessarily incurred to construct the Infrastructure as required by the Agreement and represent the lowest commercially reasonable cost considering the type of labor or materials involved, the then competitive market for such labor and materials, any relevant time pressures

and the other criteria imposed by the Agreement, *e.g.*, the Equal Opportunity Program and Community Benefits Provided by Developer attached as Attachment 24. The allocation of Soft Costs to the Public Facility category must be supported by opinions of bond counsel reasonably acceptable to the Agency to the extent Soft Costs are paid with Bond Proceeds. Disputes as to Soft Costs are Budget Disputes and will be resolved under Section 7, although the verification provisions of Section 8 will also apply.

(d) The Agency will approve increases in the Preliminary or then Approved Budget to the extent the increases reflect actual, verifiable increases directly relating to changes to approved Construction Documents requested by the Agency, to the extent the Agency's requested changes are inconsistent with the Infrastructure Plan attached as Attachment 9 to the Agreement. Disputes as to the Agency's approval are Budget Disputes and will be resolved under Section 7.

(e) The Agency will rely on Developer's estimates of Gross Revenues, and of the timing of Lot sales, unless Developer has been materially inaccurate in its estimates for the prior two (2) annual budget cycles, in which event Developer will have to support its estimates with expert opinions reasonably satisfactory to the Agency. Disputes as to Gross Revenues are Budget Disputes and will be resolved under Section 7.

(f) The amount and timing of Bond Proceeds and Voluntary Agency Advances will be based on the most recent information available. Disputes as to the amount of timing of Bond Proceeds are Budget Disputes and will be resolved under Section 7; provided that, the Agency will never be obligated to make a Voluntary Agency Advance and the disputes specified in Section 6.4 (a) and (b) are not Budget Disputes and shall be resolved only by agreement between the Parties or by litigation.

(g) The amount and timing of Mandatory Developer Advances will be a function of the other components of the Preliminary or then Approved Budget. Disputes as to the amount and timing of Mandatory Developer Advances are Budget Disputes and will be resolved under Section 7; provided that, Developer will make Mandatory Developer Advances when required under this Attachment 25.

6.4 Disputes and Operation Pending Disputes. Any dispute as to verification will be subject to the audit procedures set forth in Section 8. Any other disputes regarding Budget matters ("Budget Disputes") will be subject to the dispute resolution procedure in Section 7; provided that, any disputes as to (a) the Minimum Purchase Price for each Lot as set forth in the Preliminary Budget and (b) whether Qualified Predevelopment Costs, Qualified Pre-Agreement Costs or Approved Expenses should be allocated to the Public Facility category (to the extent the same are paid from Bond Proceeds), are not Budget Disputes and shall be resolved only by agreement between the Parties or by litigation. Pending agreement or other resolution of any dispute, Developer will proceed in accordance with (i) elements of the proposed Budget that are not subject to dispute and (ii) all other elements of the proposed Budget in accordance with Developer's positions, pending resolution of the dispute, unless the Agency in its sole and absolute discretion directs otherwise; provided, however, that Developer may elect not to proceed in the event of a Construction Dispute (as specified in the Agreement) until such Construction Dispute is resolved. If Developer proceeds pending resolution of a dispute, then as

part of the ultimate agreement or resolution between Developer and the Agency, they shall prepare a written reconciliation of the amounts paid by Developer and the amounts that should have been paid in accordance with the final agreement or resolution, and Developer and the Agency shall then make any necessary adjustments between them based on the reconciliation. Following the Parties' agreement on all updated items (or the final resolution of any differences between them), the Preliminary Budget will be known as the "Approved Budget".

6.5 Annual Update of Approved Budgets. In consultation with the PDT, Developer will update the then Approved Budget on an annual basis no more than sixty (60) and no less than thirty (30) days prior to the end of Developer's fiscal year. The annual update will be subject to the same procedures for review, approval, dispute resolution and operation pending dispute resolution as provided in Sections 6.3 and 6.4.

6.6 Other Changes to Approved Budgets. The Agency's approval is required of any (a) changes to a line item in the then Approved Budget that exceeds ten percent (10%) of the line item, (b) transfer between line items in excess of ten percent (10%) of the lesser of the line items and (c) changes that reduce the Net Revenue shown in the then Approved Budget by more than ten percent (10%). Developer will operate within each line item of the Approved Budget, subject to the above contingency and Sections 6.4 and 6.5. If Developer desires to change an Approved Budget other than in accordance with the annual review process, then it will consult with the PDT and provide a copy of the proposed change to the Agency no more than sixty (60) and no less than thirty (30) days prior to the date on which Developer proposes to implement the change. The proposed change will be subject to the same procedures for review, approval, dispute resolution and operation pending dispute resolution as provided in Sections 6.3 and 6.4.

6.7 Expenses Subject to Verification. All Approved Expenses, Hard Costs, Soft Costs, Qualified Predevelopment Costs and Qualified Pre-Agreement costs are subject to confirmation by an inspection and independent audit performed by an auditor selected by the Agency, in accordance with Section 8 below.

Section 7. Dispute Resolution.

7.1 Good-Faith Negotiation by Parties. The Parties shall attempt to resolve, through good-faith negotiation among themselves, any Budget Dispute subject to this Section 7 for a period of ten (10) days after the Budget Dispute is raised by any Party in a written notice to the other Party. Each Party shall be represented in such negotiations by one (1) or more representatives with decision making and settlement authority sufficient to resolve the Budget Dispute, subject to approval of the Party's governing body, where required.

7.2 Mediation and Arbitration. Any Budget Dispute that cannot be resolved by the Parties during such ten (10) day good-faith negotiation period shall be submitted first to mediation within five (5) days after conclusion of the good-faith negotiation period described in Section 7.1.

(a) The mediator ("Mediator") will be the first available Mediator from a list of at least three (3) pre-approved Mediators to be agreed upon by the Agency and

Developer as a condition to Closing, starting with the first named Mediator and continuing to cycle through the list as Mediators are required, provided that no Mediator will mediate consecutive disputes. If none of the Mediators listed is able or willing to serve, a single neutral Mediator shall be appointed by JAMS/Endispute in San Francisco, California. The Mediator appointed must have at least ten (10) years of experience in resolving disputes similar to the dispute at issue.

(b) The mediation shall be conducted according to the rules established by JAMS/Endispute; provided that, the mediation must be completed within thirty (30) days after the Mediator is appointed.

(c) If the dispute has not been resolved through an agreement in principle among the Parties within such thirty (30) day mediation period, the matter will be submitted to arbitration.

(d) The arbitrator (“Arbiter”) will be the first available arbitrator from a list of at least three (3) pre-approved Arbiters to be agreed upon by the Agency and Developer as a condition to Closing, starting with the first named Arbiter and continuing to cycle through the list as Arbiters are required, provided that no Arbiter will arbitrate consecutive disputes. If none of the Arbiters listed is able or willing to serve, a single neutral Arbiter shall be appointed by JAMS/Endispute in San Francisco, California. The Arbiter appointed must have at least ten (10) years of experience in resolving disputes similar to the dispute at issue.

(e) The arbitration shall be conducted according to the rules established by JAMS/Endispute. Judgment upon the Arbiter’s decision may be entered in any court of competent jurisdiction.

(f) Initially, each Party will advance fifty percent (50%) of the fees and costs of the Mediator and the Arbiter, if any. The non-prevailing Party in the arbitration shall pay the Mediator’s and Arbiter’s fees and costs. The Arbiter shall have the right to assess all or any part of any expenses to one of the Parties as sanctions. If the Arbiter does not assess the expenses, and the Parties do not otherwise agree, the expenses of each Party in preparing for and participating in the mediation and arbitration, if any, shall be borne by each such Party.

(g) The provisions of this Section 7 shall constitute the sole and exclusive provisions for the resolution of any and all Budget Disputes subject to this Section 7, whether arising before or after the Effective Date.

7.3 Acknowledgment.

NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN SECTION 7 DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN SECTION 7. IF YOU REFUSE TO SUBMIT TO

ARBITRATION AFTER AGREEING TO THIS PROVISION YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS PROVISION IS VOLUNTARY. WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN SECTION 7 TO NEUTRAL ARBITRATION IN ACCORDANCE WITH THAT SECTION.

Agreed to and accepted by: Agency: _____ Developer: _____

Section 8. Records and Audit Rights.

Developer will maintain books and records of all receipts and disbursements related to Phase 1 in accordance with generally accepted accounting principles consistently applied, or in another auditable form approved by the Agency in advance and in writing (collectively, the "Records"). Developer will maintain the Records in the City or at a mutually agreeable storage facility for at least ten (10) years after the Agency issues a Certificate of Completion for the Horizontal Improvements in Phase 1. The Agency shall have the right at any time, after reasonable notice, to inspect and copy Developer's Records. If, after an inspection, the Agency disputes any matters set forth in the Records, or any payments or disbursements made by Developer, then the Agency shall be entitled to retain an independent certified public accountant to copy, review and/or audit the Records, after reasonable notice and at reasonable times. If the audit or review shows any discrepancy, then Developer will correct the discrepancy, and the Party owing funds will deposit such funds in the Project Account, or pay such funds to the other Party, as the case may be, within thirty (30) days after the audit results are made available to Developer and the Agency. The deposit or payment will include interest at the Advance Interest Rate from and after the date the discrepancy arose to and including the date the discrepancy is rectified. The Agency will pay the costs of any inspection, audit or review, unless the audit reveals a discrepancy of more than two percent (2%) of the amount properly due, exclusive of interest, in which case Developer will pay the cost of the inspection, review or audit within thirty (30) days after receipt of an invoice from the Agency.

LIST OF EXHIBITS

- Exhibit A Preliminary Budget and Project Pro Forma**
- Exhibit B Description of Qualified Predevelopment Costs**
- Exhibit C Description of Pre-Agreement Costs**
- Exhibit D Agency Land Return and Developer Equity
Return Formulas and Examples**