

AMENDED AND RESTATED AGREEMENT TO NEGOTIATE

THIS AMENDED AND RESTATED AGREEMENT TO NEGOTIATE (“**Restated Agreement**”) dated for reference purposes as of July 12, 2016, (the “**Restated Effective Date**”) is entered into by and between the CITY OF CONCORD, a California municipal corporation in its capacity as local reuse authority for the Concord Naval Weapons Station (“**City**”), and LENNAR CONCORD, LLC, a Delaware limited liability company (“**Developer**”). City and Developer are sometimes referred to individually herein as a “**Party**” and collectively as the “**Parties**.”

RECITALS

A. City has solicited and evaluated development proposals from development entities for the first phase of development of the approximately 5,028-acre property known as the Inland Area of the Concord Naval Weapons Station (“**CRP Area**”).

B. The Concord Naval Weapons Station was once the United States Navy’s primary ammunition depot on the Pacific Coast. The Navy vacated the CRP Area in 1997, and in 2005 officially placed it on the base closure list. At that point, the City, acting through its City Council, was designated as the Local Reuse Authority by the Department of Defense pursuant to the provisions of the federal Base Realignment and Closure Act (P.L. 101-510), as amended (“**BRAC**”). The City engaged in a seven-year planning process, which, among other things, culminated in the adoption of the Concord Reuse Project (“**CRP**”) Area Plan.

C. Approximately 2,700 acres of the CRP Area (“**Regional Park**”) will be set aside for habitat conservation/restoration, open space and passive recreation pursuant to a public benefit conveyance from the United States government to a regional parks agency. An additional approximately 80 acres may be set aside for various public benefit uses, including, potentially, a first responder training facility, the City-owned portion of the golf course and various Caltrans, BART and City rights-of-way property. The balance of the CRP Area comprising approximately 2,248 acres (“**Development Footprint**”) will be transferred by Navy to City under the economic development conveyance provisions of BRAC. The Navy will transfer the Development Footprint to City in phases, with the first transfer to consist of approximately 1,400 acres (the “**First Transfer Parcel**”). The CRP Area, the Regional Park, the Development Footprint, the First Transfer Parcel and the approximately 500 acre portion of the First Transfer Parcel that is the subject of this Restated Agreement (the “**Development Phase One Property**”) are each depicted on the Site Map attached hereto as Attachment 1.

D. City issued a Request for Qualifications for development of an approximately 350-500 acre portion of the First Transfer Parcel on January 15, 2014. In June 2014, the City announced the names of four prequalified respondents who would be invited to submit proposals in response to a City Requests for Proposals (“**RFP**”). Based on the proposals submitted in response to the RFP, City selected two master developer candidates to pursue concurrent negotiations with City: Developer and Catellus

Development Corporation (“**Second Developer Candidate**”). Developer has proposed developing the Development Phase One Property with a mix of residential, commercial and public uses substantially consistent with the approved CRP Area Plan (“**Development**”).

E. City and Developer are parties to an Agreement to Negotiate dated May 26, 2015, as amended and extended by a First Amendment to Agreement to Negotiate dated July 6, 2015 (“**First Amendment**”), a Second Amendment to Agreement to Negotiate dated November 25, 2015 (“**Second Amendment**”), and a letter agreement dated February 29, 2016 (collectively, the “**Original Agreement**”). City and Second Developer Candidate were parties to a separate agreement to negotiate (“**Second Developer Agreement**”) that was substantially consistent with the Original Agreement between City and Developer.

F. The Original Agreement and the Second Developer Agreement each contemplated a Negotiating Period to be conducted in two stages. In the first stage of the Negotiating Period known as the “**Preliminary Stage**,” City would work together with Developer and the Second Developer Candidate to negotiate and draft separate term sheets for presentation to the City Council. If City Council selected one of the two master developer candidates as the preferred master developer, and its proposed term sheet, the selected developer and City would proceed to the second stage of the Negotiating Period known as the “**DDA Stage**.”

G. Pursuant to the Original Agreement and the Second Developer Agreement, City and Developer on the one hand, and City and Second Developer Candidate on the other, worked together in good faith to negotiate and draft separate term sheets for presentation to the City Council. However, Second Developer Candidate withdrew its development proposal and term sheet prior to the City Council’s consideration of the two term sheets. The Second Developer Agreement was subsequently terminated on March 30, 2016.

H. Following the withdrawal of Second Developer Candidate from the master developer selection process, City and Developer produced a final proposed term sheet and presented it to the City Council for consideration on May 11, 2016. At that same meeting, the City Council approved the Developer’s final proposed term sheet with one minor modification regarding the timing of delivery of affordable units as set forth in Attachment 2 attached hereto and incorporated herein (“**Approved Term Sheet**”) and selected Developer as the preferred master developer with whom City desires to proceed to the DDA Stage of the Negotiating Period, pursuant to the Approved Term Sheet.

I. The Parties desire to enter into this Restated Agreement to (1) amend and restate the Original Agreement in its entirety, (2) establish a deadline for the expiration of the DDA Stage of the Negotiating Period and, subject to satisfaction of certain requirements, allow for potential administrative extension of such period; and (3) memorialize certain other agreements of the Parties all as set forth herein.

A G R E E M E N T S

CITY AND DEVELOPER HEREBY AGREE AS FOLLOWS:

1. Incorporation of Recitals.

The recitals set forth above, and all defined terms set forth in such recitals and in the introductory paragraph preceding the recitals, are hereby incorporated into this Restated Agreement as though set forth in full.

2. Good Faith Negotiations.

City and Developer agree for the DDA Stage of the Negotiating Period described in Section 3 below, to negotiate diligently and in good faith the terms of a mutually satisfactory Disposition and Development Agreement (“**DDA**”), including a form of statutory development agreement as an exhibit thereto, for the conveyance of the Development Phase One Property via multiple phased closings and the development of the Development thereon, on terms consistent with the Approved Term Sheet.

3. Negotiating Period.

As provided for in the Original Agreement and this Restated Agreement, the Negotiating Period has been and will be conducted in two stages as follows:

3.1 Preliminary Stage. The Preliminary Stage of the Negotiating Period commenced on May 26, 2015, and ended on May 11, 2016, when the City Council selected Developer as the preferred master developer with whom City desires to proceed to the DDA Stage of the Negotiating Period, pursuant to the Approved Term Sheet.

3.2 DDA Stage.

The DDA Stage of the Negotiating Period commenced on May 12, 2016. Unless extended as provided in Section 3.3 below, the DDA Stage shall expire on July 12, 2018. During the DDA Stage, it is expected that City will continue to negotiate with the Navy regarding the transfer of the First Transfer Parcel and that Developer will participate in such negotiations. If a DDA has not been executed by City and Developer by the expiration of the DDA Stage of the Negotiating Period, then this Restated Agreement shall terminate and neither Party shall have any further rights or obligations under this Restated Agreement, except as set forth herein. If a DDA is executed by City and Developer then, upon said DDA becoming a Final Approval (as described herein), this Restated Agreement shall terminate, and all rights and obligations of the Parties shall be as set forth in the executed DDA. For purposes of this Section 3.2, “Final Approval” shall mean that (i) the time for filing of a petition, lawsuit, or legal challenge relating to the City’s approval of the DDA has expired with no such petition, lawsuit, or legal challenge having been filed; or (ii) any petition, lawsuit or legal challenge relating to the City’s approval of the DDA has been conclusively resolved with prejudice in a manner satisfactory to City and to Developer with no further right to appeal.

3.3 Extensions. The City Manager, on the City's behalf, shall extend the DDA Stage of the Negotiating Period for a period of 120 days each time one of the extension milestones set forth in this Section 3.3 below is satisfied (for a total possible extension of up to 360 days), without regard to the order in which one or more milestones are satisfied, provided the City Manager determines in his or her reasonable discretion that, as of the date the applicable milestone is achieved, the Parties have also made substantial progress in their negotiations regarding the DDA. The extension milestones are: (i) completion of the first administrative draft of a specific plan for the Development Phase One Property ("**Specific Plan**"); (ii) completion of the first administrative draft of a master infrastructure plan for the entirety of the Development Footprint ("**Infrastructure Plan**"); and (iii) publication of the draft environmental impact report or other applicable CEQA document for the Development. The Parties acknowledge and agree that (a) the Infrastructure Plan shall provide conceptual utility, transportation network, storm water management and supporting infrastructure layouts for the entirety of the Development Footprint with explanatory information to demonstrate how the locations and sizing of utilities and other infrastructure components are derived; (b) the utility, transportation network, storm water management and supporting infrastructure layouts for the Development Phase One Property shall be at a greater level of detail, consistent with the level of detail provided in the Specific Plan, than for the balance of the Development Footprint; and (c) the Infrastructure Plan shall update the existing site-wide Development Footprint infrastructure plans as necessary or appropriate to reflect plans for the Development of the Development Phase One Property as set forth in the Specific Plan. In addition, the DDA Stage shall be automatically extended for the duration of any of the following instances of "**Enforced Delay**": x) delay, not to exceed two (2) years, beyond July 12, 2018, as such date may be extended pursuant to the first sentence of this Section 3.3, in the execution of an Economic Development Conveyance Memorandum of Agreement ("**EDC MOA**") or such other agreement between the City and the United States required for the conveyance of the First Transfer Parcel to the City; y) the duration, not to exceed four (4) years, of any legal challenge relating to this Restated Agreement, the master developer selection process, the Approved Term Sheet, or the EDC MOA or such other agreement between the City and the United States required for the conveyance of the First Transfer Parcel to the City; and z) delay, not to exceed two (2) years, caused by force majeure, meaning natural and man-made acts outside the control of Developer, including wars, violence, strikes, and natural disasters (but excluding adverse economic events), and adversely affecting Developer's or City's ability to timely perform obligations under this Restated Agreement.

4. Exclusivity of Negotiations.

During the DDA Stage of the Negotiating Period, the City shall negotiate exclusively with Developer regarding development of the Development Phase One Property. Notwithstanding the above, during the entirety of the Negotiating Period, this Restated Agreement shall not prevent City from providing information regarding the Development Phase One Property and development thereof to persons or entities other than Developer or engaging in negotiations with other public entities, including the Navy, San Francisco Bay Area Rapid Transit District and East Bay Regional Park District, with respect to coordination of development, transfer and use of the CRP Area.

5. Planning and CEQA Review.

Pursuant to the California Environmental Quality Act (“CEQA”), City certified a Final Programmatic Environmental Impact Report (“**Program EIR**”), adopted Overriding Findings of Significance and adopted a Mitigation Monitoring and Reporting Program (“**MMRP**”) in conjunction with adoption of the Reuse Plan and adopted an Addendum to the Program EIR in connection with the CRP Area Plan. Developer acknowledges that, in conjunction with City consideration of a DDA and any permits or approvals for the Development, it will be necessary to comply with CEQA, although the Program EIR may be relied upon to the extent permitted under CEQA. Developer is expected to commence and complete preparation of the Specific Plan during the DDA Stage of the Negotiation Period. To ensure sound planning of the Development Phase One Property, in particular the planning of utility and transportation infrastructure improvements, the Parties anticipate that the Specific Plan may begin to address backbone infrastructure related issues for some or all of the balance of the Development Footprint. The Parties further anticipate that the Specific Plan will be considered for approval by the City Council concurrently with the City Council’s consideration for approval of the DDA and other related documents, including a statutory development agreement for the Development (“**DA**”) as contemplated by the Approved Term Sheet, and that compliance with CEQA will require preparation of additional project level CEQA documents for the Development. Notwithstanding any other provision of this Restated Agreement to the contrary, Developer, at its sole expense, shall pay all costs incurred by City in connection with City review and consideration of the Specific Plan, the Infrastructure Plan and all other permits and approvals for the Development, including all other applications for City and federal, state and other regulatory agency permits and approvals, including all costs associated with environmental review and, if necessary, preparation of additional CEQA documents, including project, program, supplemental or subsequent environmental impact report(s), if any, with respect to the Development, as contemplated by the DDA and the Specific Plan (collectively, “**CEQA and Planning and Regulatory Costs**”) pursuant to one or more separate reimbursement agreements. CEQA and Planning and Regulatory Costs are in addition to the City Costs described in Section 6 below and shall be paid by Developer pursuant to one or more separate reimbursement agreements.

6. Reimbursement of City Costs; Good Faith Deposit. Developer shall be required to reimburse the City for certain City Costs (defined below) incurred during the Preliminary Stage of the Negotiating Period and during the DDA Stage of the Negotiating Period, as set forth in detail below. As used in this Restated Agreement, “**City Costs**” means and includes all internal and third party expenses incurred by City during the Negotiating Period in connection with the negotiation and drafting of the DDA, including but not limited to expenses of financial consultants, attorneys, planners and engineers retained to negotiate draft term sheets and ancillary agreements, including the DA and the interim lease as described in Section 5 of the Approved Term Sheet (“**Interim Lease**”), and prepare analyses regarding the timing and financial ability to complete the Development, all related solely to the Development. The initial budget for City Costs anticipated to be incurred from and after June 1, 2016 is Five Hundred Twenty Nine Thousand Dollars (\$529,000) (“**Anticipated City Costs Budget**”). City Costs do

not include CEQA and Planning and Regulatory Costs, which are addressed in Section 5 above.

6.1 Preliminary Stage Negotiations. In consideration for the Original Agreement, Developer, delivered to City a cash deposit of Two Hundred Fifty Thousand Dollars (\$250,000) ("**Initial Good Faith Deposit**"). In accordance with the terms of the Original Agreement City drew against the Initial Good Faith Deposit and applied such draws to pay City Costs. As of November 25, 2015, the approximate balance of the Initial Good Faith Deposit was \$65,000. In the Second Amendment, City agreed not to incur any further City Costs payable from the Initial Good Faith Deposit prior to the initial public meeting at which the City Council considered Developer's proposed term sheet without prior notice to Developer. On May 11, 2016, the City Council at a public meeting considered and approved the Approved Term Sheet and selected Developer as the preferred master developer. By email dated May 18, 2016, City informed Developer that City would recommence incurring City Costs to be reimbursed by Developer per the terms of the Original Agreement and that City would apply the remaining balance of the Initial Good Faith Deposit towards payment of City Costs incurred on and after such date. As of June 1, 2016, approximately \$54,000 of the Initial Good Faith Deposit remains unexpended by City.

6.2 DDA Stage Negotiations.

6.2.1 Within five (5) business days following the Restated Effective Date, Developer shall supplement the Initial Good Faith Deposit by providing to City a second cash deposit of Four Hundred Seventy-Five Thousand Dollars (\$475,000) ("**Second Good Faith Deposit**"). The remaining balance of the Initial Good Faith Deposit, as supplemented by the Second Good Faith Deposit, and any further augmentations of same, shall be referred to as the "**Good Faith Deposit.**" Except as otherwise provided herein, if this Restated Agreement is terminated by either Party prior to expiration of the Negotiating Period, City shall promptly return any unexpended and uncommitted portion of the Good Faith Deposit to Developer.

6.2.2 The Parties acknowledge and agree that while the City believes the Anticipated City Costs Budget is adequate to cover all City Costs for the DDA Stage of the Negotiating Period, the Anticipated City Costs Budget is preliminary, shall be updated by the City before the start of fiscal year 2017-2018 with forward looking projections based on actual City Costs incurred as of such update, and may require further modification by the City from time to time. Accordingly, the Anticipated City Costs Budget may be increased from time to time with the written consent of Developer, which shall not be unreasonably withheld, conditioned, or delayed, provided that before the Anticipated City Costs Budget is increased: (1) the City shall have conferred with Developer and furnished such written justification for the increase as Developer may reasonably request; (2) City shall have provided monthly Invoices to Developer as provided in Section 6.3; and (3) City shall have endeavored to use staff resources and outside consultants in a cost-effective and business-like manner. Within twenty (20) days of Developer's approval of an increase in the Anticipated City Costs Budget, Developer shall deliver to City cash or other immediately available funds to supplement the Good

Faith Deposit in an amount commensurate with the increase in the Anticipated City Costs Budget. If Developer disapproves or otherwise fails to approve any requested augmentation of the Anticipated City Costs Budget within thirty (30) days following City's request therefor, or if Developer fails to supplement the Good Faith Deposit within twenty (20) days after approving such augmentation, City shall have no obligation to continue processing any pending or new Development applications, incurring any further City Costs or negotiating in connection with the proposed DDA until such time as the requested budget augmentation has been approved and the additional funds required to supplement the Good Faith Deposit have been so delivered.

6.2.3 The approval of any proposed increase in Anticipated City Costs Budget shall be deemed an amendment of this Restated Agreement, and Developer shall not be liable for any City Costs in excess of the Anticipated City Costs Budget (as increased by approval of Developer pursuant to Section 6.2.2) without Developer's express written consent. Developer's obligation to pay for all such City Costs shall survive the expiration or termination of this Restated Agreement with respect to any and all City Costs incurred on or before the date which is thirty (30) days following the date of expiration or termination as set forth herein, provided, however, except as may otherwise be agreed upon by the Parties, in no event will Developer's liability for City Costs exceed the amount of the Good Faith Deposit then held by City.

6.3 City Draws and Invoices. City shall be entitled to draw against the Good Faith Deposit and apply such draws to pay all City Costs, not to exceed the amount of the Anticipated City Costs Budget plus any approved augmentation(s) of same as such City Costs are incurred. City shall provide Developer with monthly invoices for City Costs (hereafter "**Invoices**"). Such Invoices must provide sufficient detail from which Developer may confirm who performed the services, the nature of the work performed, the hours worked, the rate charged to the City, and that the services were performed for City Costs. Invoices shall be binding on Developer in the absence of error demonstrated by the Developer within ninety (90) days of Developer's receipt of a given Invoice. If the Parties enter into a DDA, the remaining amount of the Good Faith Deposit shall be disposed of as specified in the DDA, and the Good Faith Deposit shall be considered an eligible project cost for purposes of calculation of Developer returns in any profit participation arrangement agreed to in the DDA. If this Restated Agreement is terminated without execution of a DDA for any reason (except for default by Developer under Section 10), then the Good Faith Deposit and any interest earned thereon, less any amounts needed to pay City Costs incurred prior to the date of termination, shall be refunded promptly to Developer.

6.4 Deposit Accounts. City shall be under no obligation to pay or earn interest on the Good Faith Deposit, but, if interest shall accrue or be payable thereon, such interest (when received by City) shall be accumulated by City and added and held as part of the Good Faith Deposit.

7. Progress Reports and Information.

Within ten (10) days following either Party's request, which may be made from time to time during the Negotiating Period, the other Party shall submit to the requesting Party a written progress report advising the requesting Party on the status of all work being undertaken by or on its behalf. Further, City shall provide Developer with information regarding the Development Phase One Property reasonably available to City and shall make good faith efforts to notify Developer of: i) any third party offers or requests for negotiation received by City concerning the disposition of all or a portion of the Development Footprint; ii) any proposed City response to such offers or requests from a private party prior to City's issuance of such response; and iii) the status of any negotiations between the City and any public entity concerning the disposition of all or a portion of the Development Footprint that occurs pursuant to the City's reserved negotiation rights in Section 4.

8. Limitations on Effect of Restated Agreement.

This Restated Agreement (and any extension of the DDA Stage of the Negotiating Period) shall not obligate either City or Developer to enter into a DDA on or containing any particular terms. By execution of this Restated Agreement (and any extension of the DDA Stage of the Negotiating Period), City is not committing itself to, or agreeing to, undertake disposition of the Development Phase One Property or any portion thereof and Developer is not committing itself to acquire the Development Phase One Property or any portion thereof. Execution of this Restated Agreement by City and Developer is merely an agreement to conduct a period of negotiations in accordance with the terms hereof, reserving for subsequent City action the final discretion and approval regarding the execution of a DDA and all proceedings and decisions in connection therewith. Any DDA resulting from negotiations pursuant to this Restated Agreement shall become effective only if and after such DDA has been considered and approved by the City Council, following conduct of all legally required procedures, and executed by duly authorized representatives of City and Developer. Until and unless a DDA is signed by Developer, approved by the City Council, and executed by City, no agreement drafts, actions, deliverables or communications arising from the performance of this Restated Agreement shall impose any legally binding obligation on either Party to enter into or support entering into a DDA or be used as evidence of any oral or implied agreement by either Party to enter into any other legally binding agreement. This Restated Agreement, which pertains only to negotiating procedures and standards between City and Developer, does not limit in any way the discretion of City in acting on any applications for permits or approvals for the Development. Consistent with Section 5 of this Restated Agreement, the Parties acknowledge that CEQA compliance in connection with consideration of the Development will be required, and that City shall retain the discretion in accordance with applicable law before action on the Development by the City Council to (i) identify and impose mitigation measures to mitigate significant environmental impacts, (ii) select other feasible alternatives to avoid significant environmental impacts, (iii) balance the benefits of the Development against any significant environmental impacts prior to taking final action if such significant impacts cannot otherwise be avoided; or (iv) determine not to proceed with the Development.

9. Defaults and Remedies.

9.1 Default. Failure by either Party to negotiate in good faith as provided in this Restated Agreement shall constitute an event of default hereunder. Except as otherwise set forth herein with respect to City's immediate right to terminate the Restated Agreement under Section 10 or Section 11, the non-defaulting Party shall give written notice of a default to the defaulting Party, specifying the nature of the default and the required action to cure the default. If such default remains uncured fifteen (15) days after receipt by the defaulting Party of such notice in the case of a default on an obligation to pay or reimburse money, or thirty (30) days after receipt of such notice in the case of all other defaults, the non-defaulting Party may exercise the remedies set forth in Section 9.2 or 9.3 below.

9.2 Exclusive Remedies for City Default. In the event of an uncured default by City, Developer's sole and exclusive remedies shall be (a) an action for injunctive relief in the event of a willful and bad faith breach by City to commence negotiations with another developer with respect to the Development Phase One Property or (b) to terminate this Restated Agreement, upon which termination Developer shall be entitled to return of the remaining unexpended and uncommitted balance of the Good Faith Deposit and any interest earned thereon, and neither Party shall have any further right, remedy or obligation under this Restated Agreement; provided, however, any obligation under a specific provision of this Restated Agreement for Developer to indemnify or defend the City shall survive such termination.

9.3 Exclusive Remedies for Developer Default. Except as otherwise provided in Section 10 below, in the event of an uncured default by Developer, City's sole and exclusive remedy shall be to terminate this Restated Agreement and retain that portion of the Good Faith Deposit and any interest earned thereon, needed to pay City Costs incurred prior to the date of such termination. Following such termination, neither Party shall have any right, remedy or obligation under this Restated Agreement; provided, however, any obligation under a specific provision of this Restated Agreement for Developer to indemnify or defend City shall survive such termination.

9.4 No Damages. Except as otherwise provided in Section 10 below, neither Party shall have any liability to the other for damages or otherwise for any default, nor shall either Party have any other claims with respect to performance or non-performance by the other Party under this Restated Agreement. Subject to Section 9.2 above and Section 10 below, each Party specifically waives and releases any such rights or claims they may otherwise have at law or in equity in the event of a default by the other Party, including the right to recover actual, consequential, special or punitive damages from the defaulting Party.

10. Non-Disparagement.

10.1 Disparaging Statement. Developer agrees to refrain from making any public statements (e.g., statements made in press releases, public hearings, community meetings, or similar public forums), or authorizing any statements to be reported as being

attributed to the Developer, that are critical or derogatory of the City Council or City staff, and which are intended to and which would reasonably be expected to injure the reputation or business of the City (hereafter a “**Disparaging Statement**”).

10.2 Notice and Demand to Meet and Confer. In the event where City claims that Developer has made or authorized a Disparaging Statement in violation of this Section 10, City shall provide notice of such claimed violation in accordance with Section 14, along with a demand to Developer to meet and confer in good faith within five (5) business days of Developer’s receipt of said notice.

10.3 Mediation. If the Parties are unable to resolve the dispute at the meeting (or such longer time as each Party may agree in its sole discretion), the Parties agree to try and settle the dispute in good faith by mediation. Mediation shall be conducted by JAMS, Inc. (“**JAMS**”), in accordance with JAMS mediation rules and procedures (including those relating to confidentiality), and shall occur at JAMS’ facility in Walnut Creek, California. Mediation shall not extend beyond one half-day absent mutual agreement of the Parties. Developer agrees to pay all costs charged by JAMS as a result of any mediation occurring pursuant to this Subsection 10.3

10.4 Liquidated Damages. DEVELOPER ACKNOWLEDGES AND AGREES THAT COMMISSION OR AUTHORIZATION OF A DISPARAGING STATEMENT BY DEVELOPER MAY RESULT IN IRREPARABLE HARM TO THE CITY AND THAT THERE IS NO ADEQUATE REMEDY AT LAW FOR A VIOLATION OF THIS SECTION 10. DEVELOPER FURTHER ACKNOWLEDGES AND AGREES THAT IN THE EVENT OF SUCH VIOLATION, CITY WILL SUFFER DAMAGES, INCLUDING LOST OPPORTUNITIES TO PURSUE OTHER DEVELOPMENT AND DELAYED RECEIPT OF PROPERTY TAX REVENUES FROM THE DEVELOPMENT PHASE ONE PROPERTY, AND THAT IT WOULD BE IMPRACTICABLE AND INFEASIBLE TO FIX THE ACTUAL AMOUNT OF SUCH DAMAGES. THEREFORE, IF DEVELOPER IS IN BREACH OF ITS OBLIGATIONS UNDER THIS SECTION 10, AND ASSUMING CITY HAS EXHAUSTED THE PROCEDURES DESCRIBED IN SUBSECTIONS 10.2 AND 10.3, CITY MAY (I) IF THIS RESTATED AGREEMENT HAS NOT ALREADY EXPIRED OR BEEN TERMINATED, IMMEDIATELY TERMINATE THIS RESTATED AGREEMENT BY WRITTEN NOTICE TO DEVELOPER, AND (II) RETAIN THE UNEXPENDED PORTION OF THE GOOD FAITH DEPOSIT PLUS ANY INTEREST THEREON, AS FIXED AND LIQUIDATED DAMAGES AND NOT AS A PENALTY. DEVELOPER’S OBLIGATIONS UNDER THIS SECTION 10 SHALL SURVIVE TERMINATION OR EXPIRATION OF THIS RESTATED AGREEMENT. BY PLACING THE INITIALS OF THE AGENT EXECUTING THIS RESTATED AGREEMENT ON ITS BEHALF BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS RESTATED AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION.

INITIALS: DEVELOPER MB

CITY MB

11. Negotiation Protocols and Campaign Contributions

11.1 Negotiation Restrictions. Developer agrees and acknowledges that the DDA Stage negotiations shall take place with the LRA Executive Director, the City's legal, financial and planning advisers and such other City parties as may be designated by the LRA Executive Director from time to time (collectively, the "**City Designated Team**"). During the DDA Stage, Developer shall not engage in, and shall ensure that Lennar Corporation, Lennar Homes of California, Inc., and Five Point Holdings, LLC, and its and their Affiliates (defined below) do not engage in, discussions or negotiations regarding the DDA with any City Council or Planning Commission members, or other City employees or officials as may be designated by the LRA Executive Director from time to time (collectively, "**Excluded City Parties**"), unless requested to do so by the City Designated Team for specific purposes related to the negotiations. As used herein, "**Affiliate(s)**" means an entity which controls, is controlled by or under common control with Lennar Corporation, Lennar Homes of California, Inc., or Five Point Holdings, LLC, as applicable. Within ten (10) business days of the execution of this Restated Agreement (or, where an Excluded City Party is added, within ten (10) business days of such addition), the City Manager shall advise the Excluded City Parties in writing of the prohibition on discussions or negotiations regarding the DDA with Developer, Lennar Corporation, Lennar Homes of California, Inc., and Five Point Holdings, LLC and its and their Affiliates described in this Section 11. To facilitate City Manager's ability to provide accurate advice and direction to Excluded City Parties, Developer, within five (5) business days following the execution of this Restated Agreement, shall provide the LRA Executive Director with a list of all Affiliates of Lennar Corporation, Lennar Homes of California, Inc., and Five Point Holdings, LLC, and thereafter promptly update such list, as necessary, to reflect any changes in the identified Affiliates. Nothing in this Section 11 shall prevent discussions or negotiations regarding the DDA in the following circumstances: (i) responses to requests for information from one or more Excluded City Parties, provided such responses are directed to the City Designated Team; (ii) Developer's participation in any question and answer sessions, workshops, or tours approved in writing by the City Designated Team; (iii) Developer's participation in City Council or Planning Commission meetings; or (iv) meetings with one or more Excluded City Parties from time to time, provided such meetings are arranged by the LRA Executive Director and are conducted at such times, under such conditions and in such fora as may be required by applicable law and as determined and directed by the LRA Executive Director. Developer may request from time to time, but not more frequently than once per month or more than six (6) times per year, that LRA Executive Director arrange opportunities to meet with one or more Excluded City Parties under the terms set forth in clause (iv) above. LRA Executive Director shall not unreasonably withhold or delay approval of such requests.

11.2 Campaign Contribution Restrictions. During the DDA Stage Developer agrees not to make and agrees to ensure that Lennar Corporation, Lennar Homes of California, Inc., and Five Point Holdings, LLC and its and their Affiliates do not make, any political contribution(s) to the campaign of any appointed or elected sitting City of Concord official running for any elected office or any candidate running for elected City office. Further, during the DDA Stage, Developer agrees not to solicit its employees,

contractors or subcontractors working on the Development to make any political contribution(s) to the campaign of any appointed or elected sitting City of Concord official running for any elected office or any candidate running for elected City office. Within ten (10) business days of the execution of this Restated Agreement (or, in the case of newly appointed or newly elected officials, within ten (10) business days of such appointment or election), the City Manager shall advise all appointed or elected sitting City of Concord officials in writing of the restrictions on campaign contributions set forth in this Section 11.2.

11.3 City Remedies. In the event of Developer's violation of its obligations under this Section 11, City may immediately terminate this Agreement by written notice to Developer without affording Developer any opportunity to cure such violation.

12. Rights Following Expiration or Termination.

Following expiration or termination of this Restated Agreement, neither Party shall have any further rights against or liability to the other under this Restated Agreement except as otherwise provided herein. Following expiration or termination of this Restated Agreement, unless a DDA is signed by Developer, approved by the City Council, and executed by City, City shall have the absolute right to pursue disposition and development of the Development Phase One Property in any manner and with any party or parties it deems appropriate.

13. Right to Enter the First Transfer Parcel.

City shall work in good faith with the Navy to provide Developer, its employees, agents and contractors with a right of entry or other similar access to the First Transfer Parcel for the purpose of conducting inspections, tests, examinations, surveys, studies, appraisals and marketing tours. Any right of entry shall be in a form acceptable to City, Navy and Developer.

14. Notices.

Any approval, disapproval, demand or other notice which any Party may desire to give to the other Party under this Restated Agreement must be in writing and may be given by any commercially acceptable means, including first class mail, personal delivery, or overnight courier, to the Party to whom the notice is directed at the address of the Party as set forth below, or at any other address as that Party may later designate by notice:

To Developer:	Lennar Concord, LLC
	c/o Five Point
	One Sansome Street, Suite 3200
	San Francisco, CA 94104
	Attention: Kofi Bonner, Regional President
	Telephone: (415) 995-1770

with a copy to: Perkins Coie LLP
505 Howard Street, Suite 1000
San Francisco, CA 94105
Attention: Matthew S. Gray, Esq.
Telephone: (415) 344-7082

To City: City of Concord
Local Reuse Authority
1950 Parkside Drive
Concord, California
Attention: LRA Executive Director
Telephone: (925) 671-3001

with copies to: City of Concord
1950 Parkside Drive
Concord, California
Attention: City Attorney
Telephone: (925) 671-3160

and

Burke, Williams & Sorensen, LLP
1901 Harrison Street, 9th Floor
Oakland, CA 94612-3501
Attention: Gerald J. Ramiza
Telephone: (510) 273-8780

Any notice shall be deemed received on the date of delivery if delivered by personal service, three (3) business days after mailing if sent by first class mail, and on the date of delivery or refused delivery as shown by the records of the overnight courier if sent via overnight courier.

15. Confidentiality of Information.

Any information provided by Developer to City, including *pro formas* and other financial projections (whether in written, graphic, electronic or any other form) that is clearly marked as "CONFIDENTIAL/PROPRIETARY INFORMATION" ("**Confidential Information**") shall be subject to the provisions of this Section 15. Subject to the terms of this Section, City shall use good faith diligent efforts to prevent disclosure of the Confidential Information to any third parties, except as may be required by the California Public Records Act (Government Code Section 6253 *et seq.*) or other applicable local, state or federal law (collectively, "**Public Disclosure Laws**"). Notwithstanding the preceding sentence, City may disclose Confidential Information to its officials, employees, agents, attorneys and advisors, but only to the extent necessary to carry out the purpose for which the Confidential Information was disclosed. Developer acknowledges that City has not made any representations or warranties that any Confidential Information City receives from Developer will be exempt from disclosure

under any Public Disclosure Laws. In the event the City's legal counsel determines that the release of the Confidential Information is required by Public Disclosure Laws, or order of a court of competent jurisdiction, City shall notify Developer of City's intention to release the Confidential Information. If the City Attorney, in his or her discretion, determines that only a portion of the requested Confidential Information is exempt from disclosure under the Public Disclosure Laws, City may redact, delete or otherwise segregate the Confidential Information that will not be released from the non-exempt portion to be released.

Developer acknowledges that in connection with City Council's consideration of any DDA as contemplated by this Restated Agreement, City will need to present a summary of Developer's financial projections, including anticipated costs of development, anticipated project revenues, and returns on cost and investment. If this Restated Agreement is terminated without the execution of a DDA, City shall return to Developer any Confidential Information.

If any litigation is filed seeking to make public any Confidential Information, City and Developer shall cooperate in defending the litigation, and Developer shall pay City's reasonable costs of defending such litigation and shall indemnify City against all costs and attorneys' fees awarded to the plaintiff in any such litigation. Alternatively, Developer may elect to disclose the Confidential Information rather than defend the litigation.

The restrictions set forth herein shall not apply to Confidential Information to the extent such Confidential Information: (a) is now, or hereafter becomes, through no act or failure to act on the part of City, generally known or available; (b) is known by the City at the time of receiving such information as evidenced by City's public records; (c) is hereafter furnished to City by a third party, as a matter of right and without restriction on disclosure; (d) is independently developed by City without any breach of this Restated Agreement and without any use of or access to Developer's Confidential Information as evidenced by City's records; (e) is not clearly marked "CONFIDENTIAL/PROPRIETARY INFORMATION" as provided above (except where Developer notifies City in writing, prior to any disclosure of the Confidential Information, that omission of the "CONFIDENTIAL/PROPRIETARY INFORMATION" mark was inadvertent), or (f) is the subject of a written permission to disclose provided by Developer to City.

16. No Commissions.

Each Party represents and warrants that it has not entered into any agreement, and has no obligation, to pay any real estate commission in connection with the transaction contemplated by this Restated Agreement. If a real estate commission is claimed through either Party in connection with the potential transaction contemplated by this Restated Agreement or any resulting DDA, then the Party through whom the commission is claimed shall indemnify, defend and hold the other Party harmless from any liability related to such commission. The provisions of this Section 16 shall survive termination of this Restated Agreement.

17. Assignment.

The qualifications and identity of Developer and its parent companies, Lennar Homes of California, Inc. and Lennar Corporation, and its management company, Five Point Holdings, LLC, are of particular concern to City. It is because of those unique qualifications and identity that City has entered into this Restated Agreement with Developer. Accordingly, except as provided below, Developer may not assign this Restated Agreement to any other person or entity, without the prior written approval of the City Council. Any purported voluntary or involuntary assignment by Developer of this Restated Agreement without such City written approval shall be null and void, except as provided below. Notwithstanding the foregoing, Developer may assign this Restated Agreement without approval by the City to another business entity provided that Lennar Homes of California, Inc. or Lennar Corporation (a) has responsibility for the day to day entitlement and development activities of such entity; and (b) has a voting and profits interest in such entity. Developer shall provide not less than ten (10) days' prior written notice to City of any such permitted assignment. As provided in Section 25.b.ii. of the Approved Term Sheet, any proposed assignment to Five Point Holdings, LLC or an Affiliate of Five Point Holdings, LLC shall require review and confirmation of the adequacy of Five Point Holdings, LLC's and, if applicable, its Affiliate's, financial capacity, and be subject to approval by the City Council in its discretion.

18. Estoppels.

As of June 1, 2016, Developer has approved payment from the Initial Good Faith Deposit of City Costs in the approximate amount of \$196,000. Developer hereby certifies and reaffirms, for the benefit of City, that all such City Costs paid through such date by City from the Initial Good Faith Deposit have been properly incurred, documented and billed by City, as applicable. Developer further certifies and reaffirms, for the benefit of City, that Developer has no claims and will have no claims against City or any other person or entity in the future for reimbursement of all or any portion of the City Costs incurred prior to the Restated Effective Date regardless of whether or not City and Developer reach agreement on the terms of a DDA for the proposed Development. Developer reaffirms its obligation to pay all City Costs incurred on or after the date of City's notice to Developer (i.e. May 18, 2016) and continuing until the earlier of expiration of the DDA Stage of the Negotiating Period (as it may be extended) or termination of this Restated Agreement.

Each Party further acknowledges and certifies that, as of the date hereof, the other Party has fully and faithfully performed all of its obligations under the Original Agreement and this Restated Agreement, the other Party is not in default under the Original Agreement or this Restated Agreement and each Party knows of no event that has occurred or is continuing which, with the passage of time or the giving of notice, or both, would constitute a default by the other Party under the Original Agreement or this Restated Agreement.

City is relying upon Developer's acknowledgments and certifications in this Section 18 in advancing to the DDA Stage of the Negotiating Period, and in

consideration of such material reliance, Developer shall now and forever be estopped from denying the validity of the certifications and acknowledgments in this Section. City shall now and forever be estopped from denying the validity of the certifications and acknowledgements in the preceding paragraph.

19. Applicable Law; Venue.

This Restated Agreement shall be construed in accordance with the law of the State of California without reference to choice of laws principles, and venue for any action under this Restated Agreement shall be in Contra Costa County, California.

20. Severability.

If any provision of this Restated Agreement or the application of any such provision shall be held by a court of competent jurisdiction to be invalid, void or unenforceable to any extent, the remaining provisions of this Restated Agreement and the application thereof shall remain in full force and effect and shall not be affected, impaired or invalidated.

21. Integration.

This Restated Agreement contains the entire understanding between the Parties relating to the matters set forth herein. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged in this Restated Agreement and shall be of no further force or effect.

22. Modifications.

Any alteration, change or modification of or to this Restated Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each Party.

23. Waiver of *Lis Pendens*.

It is expressly understood and agreed by the Parties that no *lis pendens* shall be filed against any portion of the Development Phase One Property or any other portion of the CRP Area with respect to this Restated Agreement or any dispute or act arising from this Restated Agreement.

24. Rights to Design Concepts and Development Plans.

Once submitted, all development project design concepts and plans that Developer owns or has the right to transfer shall become the property of the City. The City, without compensation to Developer or any third party, may use such development project design concepts and plans, together with any and all ideas and materials submitted in connection with the negotiations hereunder, whether or not City and Developer enter into a DDA; provided, however, to the extent such concepts and plans are used without Developer's permission or agreement, Developer disclaims any representations or

warranties regarding such concepts and plans, including whether or not they are sufficient for any particular purpose.

25. Interpretation.

As used in this Restated Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." Unless otherwise expressly stated, "days" means calendar days. This Restated Agreement shall be interpreted as though prepared jointly by the Parties. Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Restated Agreement or any of its terms.

26. Authority.

Each person executing this Restated Agreement on behalf of Developer does hereby covenant and warrant that (a) Developer is created and validly existing under the laws of Delaware, (b) Developer has and is duly qualified to do business in California, (c) Developer has full corporate power and authority to enter into this Restated Agreement and to perform all of Developer's obligations hereunder, and (d) each person (and all of the persons if more than one signs) signing this Restated Agreement on behalf of Developer is duly and validly authorized to do so.

27. Joint and Several.

If Developer consists of more than one entity or person, the obligations of Developer hereunder shall be joint and several.

28. Counterparts.

This Restated Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

29. List of Attachments.

The following Attachments are attached hereto and incorporated herein by reference:

- (a) Attachment 1 – Site Map
- (b) Attachment 2 - Approved Term Sheet

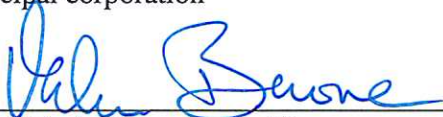
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IN WITNESS WHEREOF, the parties hereto have executed this Restated Agreement as of the date first above written.

CITY:

CITY OF CONCORD, a California
municipal corporation

By:


Valerie Barone, City Manager


DEVELOPER:

LENNAR CONCORD, LLC, a Delaware
limited liability company

By:


Name:

Title:


Kofi S. Bonner
President


APPROVED AS TO FORM:

By:


Susanne Brown, City Attorney

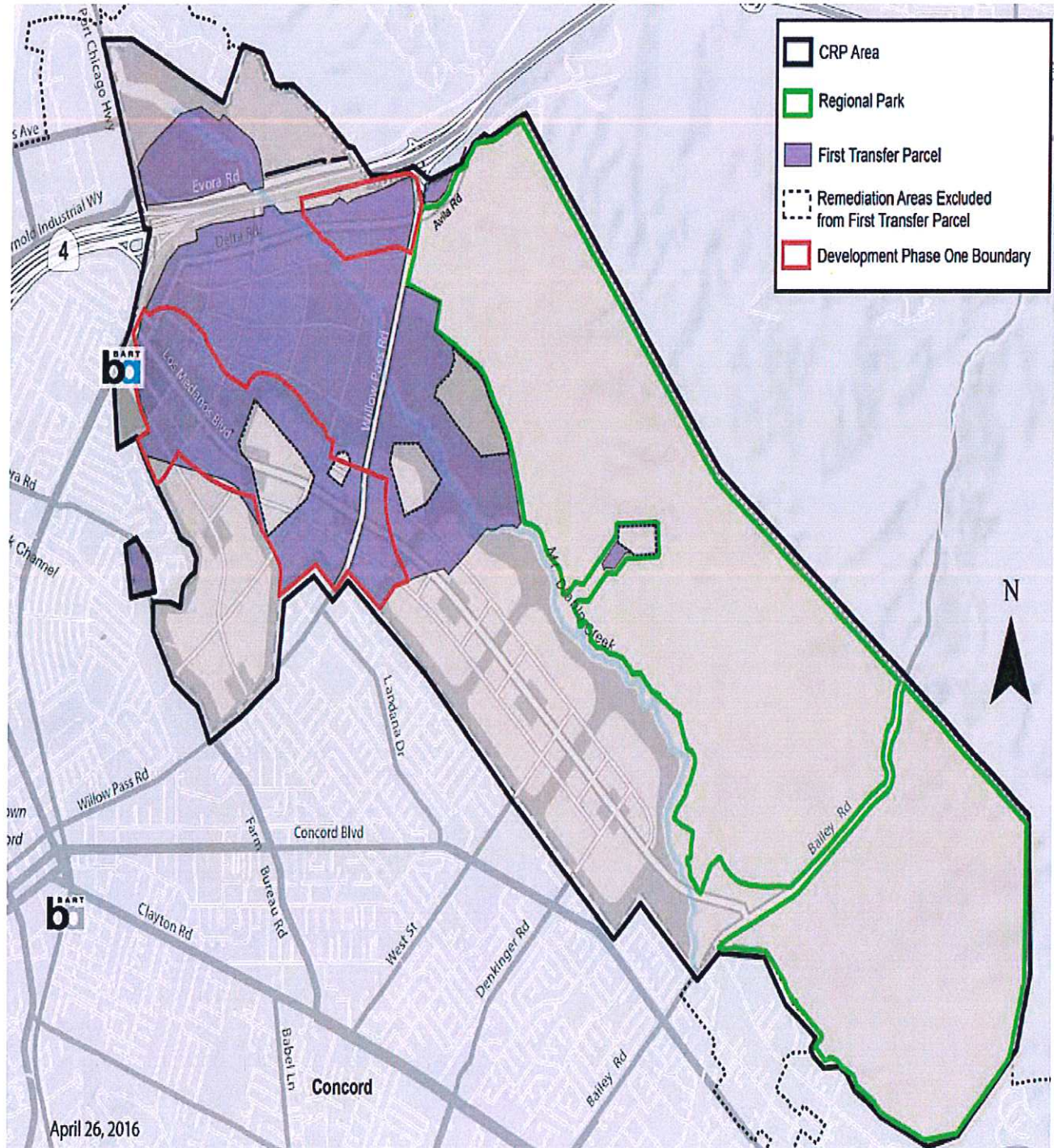
ATTEST:

By:


Joelle Fockler, City Clerk

ATTACHMENT 1

SITE MAP



ATTACHMENT 2

APPROVED TERM SHEET

CONCORD NAVAL WEAPONS STATION

**TERM SHEET FOR
DISPOSITION AND DEVELOPMENT AGREEMENT
BETWEEN CITY OF CONCORD, IN ITS CAPACITY AS THE LOCAL REUSE
AUTHORITY ("CITY" OR "LRA") AND
LENNAR CONCORD, LLC ("DEVELOPER")**

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* * * * *

CONCORD NAVAL WEAPONS STATION

TERM SHEET FOR DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN CITY OF CONCORD, IN ITS CAPACITY AS THE LOCAL REUSE AUTHORITY ("CITY" OR "LRA") AND LENNAR CONCORD, LLC ("DEVELOPER")

1. Purpose of Term Sheet and DDA.

The purpose of this term sheet is to set forth the key business terms to be included in a Disposition and Development Agreement ("**DDA**") between City and Developer if City selects Developer as the preferred master developer and the parties enter the DDA Stage (as defined in the Negotiating Agreement). The purpose of the DDA is to (a) provide for the disposition of the Development Phase One Property (defined in Section 2) to Developer through multiple phased closings; (b) effectuate the timely development of the Development Phase One Property with a range of land uses substantially consistent with the Concord Reuse Project Area Plan (the "**CRP Area Plan**"), including parks and other public amenities and facilities and residential and commercial uses; and (c) provide terms and conditions upon which Developer would have the option to acquire and develop future development phases of the Development Footprint (defined in Section 2).

2. Development Phase One Property.

The "**Development Phase One Property**" consists of approximately 500 acres, as depicted on Exhibit A. The Development Phase One Property is a portion of the initial site, expected to be 1,100 to 1,400 acres in size (the "**First Transfer Parcel**") that is anticipated to be transferred by the United States Navy ("**Navy**") to City as the first phase of an economic development conveyance ("**EDC**") of the inland portion of the former Concord Naval Weapons Station property. The developable property that will ultimately be transferred by Navy to City through the EDC is expected to total approximately 2,248 acres (the "**Development Footprint**").

3. Project.

Developer and the City (together, the "**Parties**") propose that the project to be developed within the Development Phase One Property include the key components and amenities, general densities, and land use patterns described in this Section 3 (the "**Project**"). The Project is based on Developer's current anticipated financial feasibility proforma dated April 22, 2016, a summary of which is attached hereto as Exhibit B (the "**Proforma**"). Specific densities, land use patterns, and uses remain subject to refinement through the planning and negotiation of the Specific Plan and Development Agreement and associated California Environmental Quality Act ("**CEQA**") process, all as set forth in

Section 7. While Developer's key obligation under the DDA is to deliver Backbone Infrastructure (as described in section 6(a)) to serve the Project's land use program, Developer also agrees to make commercially reasonable efforts to market resulting development parcels throughout the Project to vertical developers (including Developer, Affiliates of Developer as defined in Section 21(a) and third-party developers) so that vertical development -- and its associated benefits to the community -- may proceed in an orderly and timely manner and to ensure that commercial and retail uses are developed in a balanced manner with residential uses.

- a. Development Stages & Project Summary. The Project is proposed to be developed in three stages (each a "**Development Stage**"). The Project elements to be included in each Development Stage are described in the tables below and are depicted on Exhibit C through Exhibit E:

Overview of Development Stages One Through Three		
Development Stage One	Development Stage Two	Development Stage Three
<ul style="list-style-type: none"> • 224 Acres • 1,245 residential units and neighborhood serving retail • 20 acres of commercial, flex, and research & development uses adjacent to Highway 4 • 57 acres of core project elements/community benefits 	<ul style="list-style-type: none"> • 172 acres • 1,386 residential units and neighborhood serving retail • 42 acres of commercial, flex, and research & development uses adjacent to Highway 4 • 30 acres of core project elements/community benefits 	<ul style="list-style-type: none"> • 104 acres • 1,761 residential units¹ • 25 acres of neighborhood commercial uses in TOD Core • 18 acres of core project elements/community benefits

Residential Development by Development Stage						
Type	Description	Net Density/ Average FAR	Stage One	Stage Two	Stage Three	Total
BART Commercial Center Residential - TOD Core	4-5 story building with residential over ground-floor commercial	90 du/ac, net of grocery store use and associated parking			8 acres 300 units	8 acres 300 units

Residential Development by Development Stage						
Type	Description	Net Density/ Average FAR	Stage One	Stage Two	Stage Three	Total
High Density - <i>TOD Neighborhood</i>	4-5 story buildings with parking structures	90 du/ac		6 acres 405 units	12 acres 810 units	18 acres 1,215 units
Mixed Apartments & Condominiums - <i>TOD Neighborhood;</i> - <i>Central Neighborhood</i>	2-3 story buildings with garages & surface parking	30 du/ac		14 acres 315 units	13 acres 293 units	27 acres 608 units
Residential Transitional Housing	2-3 story buildings with open space facilities	30 du/ac	10 acres 80 units			10 acres 80 units
Mixed Townhomes & Cottages - <i>TOD Neighborhood</i> - <i>Central Neighborhood;</i> - <i>Village Neighborhood</i>	2-3 story buildings with private garages	20 du/ac	21 acres 273 units	23 acres 299 units	8 acres 104 units	52 acres 676 units
Mixed Townhome & Single Family - <i>Central Neighborhood</i> - <i>Village Neighborhood</i>	2 story buildings/ mix of townhomes & bungalows	14 du/ac	74 acres 673 units	18 acres 164 units	28 acres 255 units	120 acres 1,092 units

Residential Development by Development Stage						
Type	Description	Net Density/ Average FAR	Stage One	Stage Two	Stage Three	Total
Single Family Homes - <i>Village Neighborhood</i>	1-2 story buildings with private gardens & typically alley access for parking	8 du/ac	4 acres 218 units	39 acres 203 units		81 acres 421 units
Total Residential Units			1,245	1,386	1,761 ¹	4,392
Note 1			100 affordable units will be shifted to Stage One per discussion and agreement between Developer and City at May 11, 2016 hearing. Location and density of these 100 units to be determined through Specific Plan process. See also note 4 to Exhibit G.			

Commercial Development by Development Stage						
Type	Description	Net Density/ Average FAR	Stage One	Stage Two	Stage Three	Total
BART Commercial Center - <i>TOD Core</i>	Adjacent to BART station; 4-5 story mixed-use buildings with ground-floor retail	0.3		Ground floor neighborhood retail in two blocks closest to BART.	52,272 square feet	52,272 square feet
BART Flex Campus - <i>TOD Core</i>	Near BART station; small businesses, large corporate employer, or institution seeking proximity to BART	1.4			829,382 square feet	829,382 square feet

Commercial Development by Development Stage						
Type	Description	Net Density/ Average FAR	Stage One	Stage Two	Stage Three	Total
Commercial Flex	Near Highway 4 at Willow Pass; Uses include R&D/flex, light industrial, office, and retail and services	0.4	261,360 square feet	548,856 square feet		810,216
Total Commercial Development			261,360 square feet	548,856 square feet	861,654 square feet	1,691,870 square feet

Key Project Elements & Community Benefits by Development Stage				
Type	Stage One	Stage Two	Stage Three	Total
Community / Village Centers	4 acres, including neighborhood serving retail	2 acres		6 acres
Parks, Greenways, and Open Space Areas	43 acres	28 acres	8 acre <i>Ellipse Park</i>	79 acres
Services/Utilities, and Other Project Improvements	10 acres		East-west boulevard to Willow Pass Road	10 acres
Total Core Project Element Development	57 acres	30 acres	18 acres *including possible new 10-acre K-8 public school	105 acres

Public School Enhancements and Expansion			
Stage One	Stage Two	Stage Three	Terms
Refurbishment of existing Holbrook Elementary School near Development Phase One	*See Terms	10 acres / K-8 Elementary School	Developer will either refurbish Holbrook Elementary School as a Stage One public improvement, or construct a new 10-acre K-8 school facility in Stage Three, unless student demand necessitates that the new school is constructed in Stage Two.

b. Neighborhood Serving Retail.

- i. Neighborhood serving retail shops are proposed to be included in Development Stage One as shown on Exhibit C. These retail shops will carry food items, sundries, and other daily necessities and will provide a walking-distance retail resource for the earliest residents of the Project.
- ii. Neighborhood serving-retail is proposed at the ground floor of at least two blocks of the highest-density residential development closest to Bay Area Rapid Transit ("**BART**") in the Transit Oriented Development Neighborhood ("**TOD Neighborhood**") as part of Development Stage Two as shown in Exhibit D.
- iii. Approximately 52,272 square feet of neighborhood serving retail is proposed to be located within the Transit Oriented Development Core (the "**TOD Core**") as part of Development Stage Three as shown in Exhibit E.
- iv. Developer will make commercially reasonable efforts to market TOD Neighborhood and TOD Core retail property and entitlements to vertical developers in order that retail uses may be constructed and opened as soon as is commercially reasonable.

c. Recreational/Civic Amenities. Developer will develop and construct the following key recreational and civic amenities and public spaces, as follows:

- i. Parks and Greenways. Developer will deliver 79 acres of parks and greenways within Development Phase One in a sequence that will complement the overall pace and character of corresponding vertical development and as further described in Section 3(a) above and depicted in Exhibit C through Exhibit E. Parks and greenways will provide for access and trail connectivity for local and regional trails/bikeways and will provide initial connectivity to the Delta DeAnza Regional Trail.
 - ii. Community Centers. Developer will deliver one community center within Development Stage One and another within Development Stage Two. Each community center will be approximately 2-4 acres and will offer improvements and programming designed to complement other future community centers planned for areas outside of Development Phase One. Improvements and programming at the community centers are described in the EDC Property Improvements Program (Exhibit H).
- d. Affordable Housing.
 - i. Delivery of Development-Ready Affordable Housing Pads. Developer will satisfy the 25% affordable housing requirement identified by the City in the CRP Area Plan. Developer will deliver development-ready pads ("**Affordable Housing Pads**") sufficient to accommodate 1,098 units of affordable units at a range of affordability levels, all at eighty percent or less of Area Median Income, and throughout each Development Stage within Development Phase One. (See Section 4.3 of the EPIP [Exhibit H] for additional details.)
 - ii. Additional Developer Funding and Commitments to Ensure Delivery of Affordable Housing Units. In addition to its satisfaction of existing requirements through delivery of development-ready pads, Developer proposes a comprehensive affordable housing program to ensure actual delivery of **810 affordable homes**. Developer's program includes:
 - 1. Developer-Provided Gap Subsidies for Affordable Housing Development. Developer will provide a specific affordable housing gap subsidy of \$40,000,000, including for low and very-low income housing. This Funding is separate from the EPIP Fund described in Section 3(e). Developer anticipates that this subsidy will yield **400 affordable homes**.
 - 2. Mixed-Income 80/20 Projects. Developer or one of its vertical developers shall provide **100 affordable homes** for low-income families at 50% AMI or less within mixed-

income, higher density portions of the Project in buildings where 80% of the units are market rate and 20% are affordable ("**80/20 Projects**"). Developer will pursue 4% affordable housing tax credits for 80/20 Projects.

3. **Permanent Multifamily Supportive Housing.** In Development Phase One, Developer will dedicate approximately 10 acres for satisfaction of the City's existing commitments to facilitate development of approximately **125 units** of permanent multifamily supportive housing. Units developed on this property dedicated by Developer count towards the 25% obligation described in Section 3(d) above. The Parties agree that permanent multifamily supportive housing should be located adjacent to one or more other affordable housing developments in order to facilitate provision of supportive services and programs to the residents of such permanent multifamily supportive housing.
4. **Self-Help Housing.** Developer will donate approximately 2 acres of development-ready property to one or more self-help housing developers for development of low or very low-income homes at approximately 10 units per acre, resulting in **20 affordable homes**.
5. **Inclusionary Housing.** In addition to the dedication of development-ready sites and Developer funding as described above, Developer will require vertical developers (including Developer, Affiliates of Developer and third-party developers) to provide inclusionary units in an amount equal to 5% of the market-rate units proposed within Development Phase One which will result in approximately **165 affordable homes** (5% of the 3,294). These inclusionary units shall be affordable to moderate income households, shall be located within high-density residential product types, and shall be distributed among Development Stage Two and Development Stage Three.

- iii. **Other Federal, State, and Regional Funding Sources.** Additional funding will be required for affordable housing developers to deliver the remainder of the City's goal of 1,098 affordable units in Development Phase One. Developer's internal team has secured funding for thousands of affordable units of all product types or related infrastructure, in both urban and suburban settings, through sources including Low Income Housing Tax Credits (both 4% and 9%), HUD's Supportive Housing Program (SHP), HUD HOME Program, HUD 202 and 811 Programs, the Federal Home Loan Bank Affordable Housing Program, California Proposition 46

Multifamily Housing Program, California Proposition 1C, Transit Oriented Development Grant Program, Infill Infrastructure Grant Program, Strategic Growth Council's Affordable Housing and Sustainable Communities Program, Cal ReUSE Brownfield Funding, and California Proposition 63 - Mental Health Services Act Funding. Developer will put this experience to work, alongside the City and affordable housing partners, to leverage the maximum possible amount of available government funding from these programs and any new state or federal programs developed in the coming years. Moreover, Developer will pursue government funding specific for veterans housing, including through HUD's Veterans Affairs Supportive Housing Program, and the California Department of Housing and Community Development's Veterans Housing and Homelessness Prevention Program.

- iv. Affordability Levels & Senior, Veteran, Workforce, and Special Needs Affordable Housing. Affordable housing constructed on development-ready sites delivered by Developer shall be focused in medium-to-high density areas. When identifying affordable housing developers to build the affordable housing sites described in Section 4(d)(i), Developer will -- in addition to opportunities for individuals and families -- create opportunities for a range of affordable housing types, including:
 - 1. Senior or Active Adult Affordable Housing
 - 2. Veterans Affordable Housing
 - 3. Workforce Affordable Housing (for local teachers, firefighters, police, etc.)
 - 4. Affordable Housing for Individuals with Special Needs.
- v. Affordable Housing Development Partners. Developer will make reasonable good faith efforts to select, on a competitive basis, local or regional non-profit, mission-driven affordable housing developers which are based in the Bay Area to develop the affordable rental housing counted toward the 25% obligation described in section 3(d) above.
- e. Concord EDC Property Improvement Program. Developer will commit to provide community benefits to the City as described in an EDC Property Improvements Program (the "*EPIP*") that will be attached to, and incorporated within, the DDA. The EPIP will specifically address the various categories of significant public improvements and amenities to be delivered by Developer to the City and the EDC Property residents, businesses and visitors. A preliminary term sheet for the EPIP is attached

as Exhibit H. The EPIP, among other things, identifies an EDC Property Improvements Fund (the "***EPIP Fund***") of \$20,000,000 to be made available by Developer to implement a range of improvements and programs benefitting the EDC Property to be selected by the City. The EPIP Fund is to be paid in approximately \$2M annual increments over 10 years (adjusted annually for inflation) commencing with the first land sale by Developer.

- f. Golf Course/Evora Road. If identified as feasible and necessary mitigation by the applicable CEQA document to mitigate a potentially-significant project-specific or cumulative traffic impact, Developer will fund and construct (subject to potential pro rata reimbursement by parties other than City in the event of a cumulative impact): (i) access improvements, including an extension of Evora Road from its current location to an area identified in a relevant traffic impact study as necessary to mitigate or reduce the identified traffic impact; and (ii) golf course reconfiguration improvements to address affected portions of Diablo Creek Golf Course.
- g. Acceleration of Parks and Open Space.
 - i. Lennar's land use program includes significant committed up-front public improvements for the benefit of the entire Concord community, including:
 - 1. A 4-acre community center (open to the entire community) in the very first stage of development, Development Stage One, which commences immediately after Project approval.
 - 2. 43 acres of parks, greenways, and open spaces in the very first stage of development, Development Stage One, which commences immediately after Project approval.
 - 3. A second, 2-acre community center in Stage Two of Development Phase One, which commences approximately three (3) years after Project approval.
 - 4. 28 acres of parks, greenways, and open spaces in Stage Two of Development Phase One.
 - 5. The 8-acre Ellipse Park, which includes a paved plaza with fountain and other hardscaped areas, seating, and possibly a community center building and amphitheater. The center of the park includes landscaped greens which could include play areas similar to a local park in Stage Three of Development Phase One.
 - ii. Developer proposes to include a Specific Plan land use alternative that would evaluate inclusion of the Tournament Park infrastructure

in Development Phase One along with an expanded Development Phase One footprint to accommodate acceleration of the Tournament Park. Developer will extend Backbone Infrastructure and provide grading and site preparation work to serve the Tournament Park.

4. Summary of Project Milestones and Phasing Requirements.

- a. Size and Configuration of Land Transfers from City to Developer. Transfers from the City to Developer within a Development Stage may occur in one or more sub-stages (each corresponding to a "*Parcel*"), the size and sequencing of which may be determined by Developer subject to compliance with the Specific Plan.
- b. Defined Terms. "*Master Entitlement Date*" means the date by which the Navy has transferred the Development Phase One Property (or a substantial portion thereof in the event of carve outs to the initial Finding of Suitability to Transfer ["*FOST*"]) to the City and final approval of the Specific Plan and Development Agreement has occurred. "*Large Lot Tentative Map*" means a tentative subdivision map that subdivides a Development Stage or a portion thereof into large parcels served by Backbone Infrastructure, with each large parcel proposed to be further subdivided through further mapping, typically by the vertical developer.
- c. Schedule of Performance. The Schedule of Performance to be included in the DDA shall address four key milestones for each Development Stage within Development Phase One: i) applications for Large Lot Tentative Subdivision Maps, ii) conveyance of Parcels from City to Developer, iii) Commencement of Backbone Infrastructure within or serving a Parcel; and iv) Completion of Backbone Infrastructure within or serving a Parcel; Each milestone is described for Development Stage One through Development Stage Three in the table below ("*Schedule of Performance Table*"). The Schedule of Performance Table also describes park and open space improvements, schools, and community centers within each Development Stage. Schedule of Performance milestones remain subject to refinement through the planning and negotiation of the Specific Plan and Development Agreement and associated CEQA process, all as set forth in Section 7.

Milestone	Development Stage One	Development Stage Two	Development Stage Three
First Large Lot Tentative Map Application	Within 3 months of Master Entitlement Date	Within 36 months of Master Entitlement Date	Within 72 months of Master Entitlement Date
Land Transfers	<u>Initial Sub-Phase</u> Within 12 months of Master Entitlement Date	<u>Initial Sub-Phase</u> Within 36 months of Master Entitlement Date	<u>Initial Sub-Phase</u> Within 84 months of Master Entitlement Date
	<u>Remaining Sub-Phases</u> Within 24 months of Master Entitlement Date	<u>Remaining Sub-Phases</u> Within 60 months of Master Entitlement Date	<u>Remaining Sub-Phases</u> Within 96 months of Master Entitlement Date
Backbone Infrastructure	<u>Commencement</u> Within 3 months of first Close of Escrow for any Sub-Phase within Stage One	<u>Commencement</u> Within 3 months of first Close of Escrow for any Sub-Phase within Stage Two	<u>Commencement</u> Within 3 months of first Close of Escrow for any Sub-Phase within Stage Three
	<u>Completion</u> Within 36 Months of Commencement	<u>Completion</u> Within 24 Months of Commencement	<u>Completion</u> Within 24 Months of Commencement

5. Interim Lease.

Developer agrees to enter into an interim lease with City upon the later of approval of a DDA or conveyance of the First Transfer Parcel, subject to the following:

- a. Developer, at its expense, will operate, manage and maintain the entirety of the First Transfer Parcel, including providing security, maintenance and management of grazing or other leases.
- b. Developer is entitled to 50% of net revenues (gross revenues less all Developer costs incurred under the interim lease, including security, management, insurance, maintenance, etc.), if any, generated from grazing, leases, or other operations on property covered by the interim lease.
- c. As additional EDC property is conveyed by Navy to City, such property shall be automatically added to the premises covered by the interim lease.

- d. Developer will cooperate with Navy and the East Bay Regional Park District ("**EPRPD**") or other recipients of Public Benefit Conveyance ("**PBC**") property to explore joint security/property management arrangements under which the entirety of the Concord Naval Weapons Station, including the First Transfer Parcel, the PBC property and that portion of the EDC property not yet transferred by Navy could be managed by one party with the costs shared among Developer, the PBC property recipient, and Navy.
- e. The interim lease will be terminated in part as portions of the Development Phase One Property are transferred to Developer pursuant to the terms of the DDA.
- f. Except to the extent Developer causes or exacerbates a release of existing hazardous materials, Developer shall have no liability related to hazardous materials on or within any areas subject to the Interim Lease where the presence of such hazardous materials predates Developer's execution of the interim lease.
- g. Developer will coordinate with the City to procure one or more pollution legal liability ("**PLL**") insurance policies. Developer will be solely responsible for the costs of PLL insurance policies.

6. Infrastructure.

- a. Backbone Infrastructure and Off-Site Roadway Improvements. Backbone Infrastructure may be constructed and delivered on a Parcel by Parcel basis. "**Backbone Infrastructure**" for a Parcel shall mean those components of infrastructure, including off-site roadway improvements, described in Exhibit I, that are within, or are necessary to serve planned development within, the Parcel.
- b. Developer Obligation; Timing. Developer, at its expense (subject to City's obligations to participate in implementation of financing mechanisms identified in Section 12), shall construct the Backbone Infrastructure to support the development of the Development Phase One Property in accordance with the Schedule of Performance described in Section 4(c).
- c. Upsizing of Infrastructure. Obligations to construct Backbone Infrastructure shall include construction of oversized public facilities to accommodate future development of remaining portions of the Development Phase One Property and the Development Footprint as planned and depicted in the Specific Plan. Developer will coordinate with BART regarding potential future uses for the North Concord BART Station and infrastructure sizing.
- d. Reimbursement. If Developer for any reason is not the master developer of any future portion of the Development Phase One Property or any

portion of the remainder of the Development Footprint to be served by upsized Backbone Infrastructure, City shall require future development to reimburse Developer for the pro rata share of Backbone Infrastructure capacity created by Developer in excess of the capacity required for land transferred by City to Developer.

- e. Willow Pass Road and Bridge. Developer agrees to improve Willow Pass Road to four lanes (including the bridge) between Landana and State Route 4 as part of Development Phase One. Developer has included funding for this work in the Proforma. The Specific Plan will evaluate measures to avoid conflicts with other City objectives, including:
 - i. A key component of the land plan is the use of a couplet on Willow Pass Road between Development Phases One and Two that would allow for a total of four lanes of traffic that would be separated into two one-way segments, with a village between these segments. The effect of this design is to enhance placemaking while facilitating vehicle circulation.
 - ii. The configuration of Willow Pass Road improvements may include the following, which will be further evaluated in the traffic section of the project-specific CEQA document:
 - 1. Construction of a parallel two lane road and bridge while retaining (and seismically upgrading, if necessary) the existing bridge and two-lane road in place as a one-way section of the couplet.
 - 2. Staged construction of the bridge to the two sides of the existing roadway and bridge.

7. Project Entitlements.

- a. Specific Plan. As noted in Section 3 above, the particulars of the project to be developed on the Development Phase One Property will be set forth in a Specific Plan to be prepared by Developer, at its sole cost and expense. Developer agrees to commence preparation of the Specific Plan and the related CEQA document (see Section 7(c)) at the earliest possible date upon receiving concurrence of the LRA Director that it is appropriate to commence such work. The Specific Plan will be prepared in accordance with California law and will comply with the following:
 - i. Must be substantially consistent with the goals and objectives of the CRP Area Plan; include development of the full range of uses, housing types, and densities contemplated by the Concord Reuse Project ("CRP") Area Plan; and establish a development area that is consistent with, or smaller than and contained within, the development area contemplated by the CRP Area Plan.

- ii. Must provide for creation of a sense of place at the point of interface with the BART station, including an initial entry plaza, retail core, or other comparable signature public space.
- iii. Must be based on substantial community input and will be reviewed by the City's Design Review Board, Parks Recreation and Open Space Commission and Planning Commission and subject to final approval by the City Council.
- iv. Must reflect consultation with key stakeholders, specifically residents in the immediate vicinity, for example, the Sun Terrace, East Sun Terrace and Holbrook neighborhoods, BART, and the East Bay Regional Park District, as well as the Community Coalition for a Sustainable Concord and the general Concord community.
- v. Must identify and describe relationships to CRP Area Plan land use patterns anticipated for portions of the Development Footprint outside of the Development Phase One Property so as to allow Developer to satisfy its obligation pursuant to Section 6(c) to upsize Backbone Infrastructure to accommodate future phases of development outside the Development Phase One Property. The Specific Plan may also include a land use program, development standards, and design guidelines for the Future Development Property (as defined in Section 24).
- vi. Must identify all Backbone Infrastructure needed to support: A) development of the Development Phase One Property, including any required off-site infrastructure; and B) future development of the remainder of the Development Footprint outside of the Development Phase One Property consistent with a land use program to be established in the Specific Plan.
- vii. Must include a framework for evaluating and maintaining financial feasibility of development of the Development Phase One Property (including implementation of extraordinary unanticipated conditions of approval or extraordinary unanticipated CEQA mitigation measures imposed upon the project) consistent with parameters set forth in the Proforma.
- viii. Must include development standards and design guidelines to implement or exceed the goals and objectives of the CRP Area Plan and Climate Action Plan -- including those regarding sustainability, transit, community character, and economic vitality -- as well as a process for implementation.

- ix. Must include appropriate management planning documents to in minimize construction impacts on existing residents and protect public health and safety
 - x. Must include a minimum 300 foot wide corridor along Mt. Diablo Creek (150 ft. on either side of center) for conservation/restoration.
- b. Development Agreement. Concurrently with approval of a Specific Plan Developer will enter into a Development Agreement with City that provides the following:
- i. Term. A term of 15 years, subject to the following extensions:
 - 1. Automatic extension for any of the reasons for Excusable Delay under the DDA as provided in Section 23.
 - 2. Automatic extension for the period of time following the Master Entitlement Date required to obtain final approval of all resource agency permits required to implement the Project, including: (i) authorization to dredge or fill waters of the United States under Clean Water Act Section 404 from the U.S. Army Corps of Engineers; (ii) certification of the San Francisco Bay Regional Water Quality Control Board under Section 401 of the Clean Water Act; (iii) a Streambed Alteration Agreement with the California Department of Fish and Wildlife; (iv) authorization under Sections 7 and/or 10 of the federal Endangered Species Act from the Fish and Wildlife Service; and/or (v) a Consistency Determination or Incidental Take Permit from the California Department of Fish and Wildlife under the California Fish and Game Code. Application of this automatic extension is subject to Developer's reasonably diligent pursuit of such resource agency permits. Provided Developer can reasonably proceed with development consistent with the Schedule of Performance in the absence of one or more of the above-referenced permits, the extension in this Section 7(b)(i)(2) would apply only to those geographic areas of Development Phase One where development consistent with the Specific Plan cannot occur absent such permit.
 - 3. Upon Developer's written notice to City following issuance of building permits for 60% of the residential dwelling units within Development Phase One and timely completion of Backbone Infrastructure as necessary to serve said units, the term of the Development Agreement will be extended for a period of up to five (5) years ("**DA Extension**").

ii. Vested Rights.

1. Development Phase One. Developer shall have the vested right to develop the Development Phase One Property in accordance with and subject to the Development Agreement, the Specific Plan (and any related contemporaneous approvals) and any subsequently-required project approvals, which shall control the overall design, development, and construction of the Project and all improvements and appurtenances in connection therewith, including without limitation: (1) permitted uses; (2) density and intensity of uses; (3) maximum height and size of buildings; (4) building location; (5) the number of allowable parking spaces, (6) provision for construction of public improvements, and (7) all mitigation measures that may be required.
2. Future Approvals. To the extent Developer is required to obtain any subsequent Project approvals from the City, the City shall not use its discretionary authority in considering any such application to change the policy decisions reflected in the Development Agreement and the Specific Plan, or otherwise to prevent or to delay development of the Project.
3. Future Development Property. If Developer acquires the right to any Future Development Property pursuant to Section 24, Developer will have a vested right to develop the Future Development Property in accordance with the terms of any subsequently-required project approvals, including any development agreement and disposition and development agreement entered into by the Parties for such Future Development Property.

iii. EDC Public Improvements and Amenities. As set forth in the EPD Property Improvements Program. (See Exhibit H.)

iv. Fees. Except for impact fees (including habitat mitigation fees) imposed upon Project-specific permits by federal and state resource agencies or to address Project-specific mitigation measures imposed through the CEQA process, the Project shall be subject only to development impact fees that are imposed uniformly on a City-wide basis. However, the Project shall not be subject to any of the following fees or exactions, due to the substantial infrastructure, mitigation measures and improvements to be provided by the Project:

1. Any affordable housing fee, off-set or similar affordable housing requirement.
 2. Any traffic or transportation impact fee other than a fee program pursuant to the Specific Plan or pursuant to the mitigation monitoring and reporting program adopted in connection with a CEQA document for the Specific Plan and the Development Agreement.
 3. Any City development impact fee that addresses development impacts previously addressed and/or mitigated by Developer relative to the Project through mitigation measures imposed through the CEQA process described in Section 7(c); Project elements included in the development program; improvements negotiated pursuant to the EPIP; or Project features, programs, or benefits required pursuant to the DDA, the DA, or the Specific Plan.
- v. Credit Against Fees. Where Developer would be required to pay a development impact fee notwithstanding the provisions above, Developer shall receive credit against the fee in the amount of actual reasonable hard and soft costs, not including financing costs, associated with facilities built or provided as part of the Project.
- vi. Assignment. Assignment provisions and remedies consistent with those in the DDA.
- c. CEQA. Developer will work with the City to prepare a comprehensive and legally defensible CEQA document for the Specific Plan and Development Agreement, which will incorporate, as appropriate SB 375, SB 743 and/or other priority planning and transit-based statutory or regulatory provisions. City and Developer anticipate that project-level CEQA review would tier from the Reuse Plan Programmatic EIR and the CRP Area Plan Addendum. This new CEQA document is expected to include, and build upon, the mitigation measures incorporated into the mitigation monitoring and reporting program for the Reuse Plan Programmatic EIR. City will determine, with input from Developer, whether a second addendum to the Reuse Plan EIR, a negative declaration tiered from the Reuse Plan EIR, a supplemental EIR tiered from the Reuse Plan EIR, or some other CEQA document should be prepared. Developer will bear the costs of CEQA compliance for the Specific Plan and Development Agreement, including the costs of the CEQA consultant who shall be retained by the City. To comply with CEQA and give the public the opportunity to be aware of the environmental consequences of the Project, and to fully participate in the CEQA process, the Parties acknowledge that the City has no obligation to approve and Developer has no obligation to develop the Project unless and until the Parties have negotiated, executed and delivered mutually

acceptable agreements based upon information produced from the CEQA environmental review process and any other public review and hearing processes, subject to all applicable governmental approvals. City shall retain discretion in accordance with applicable law before action on the Project by the City Council to (i) identify and impose mitigation measures to mitigate significant environmental impacts, (ii) select other feasible alternatives to avoid significant environmental impacts, (iii) balance the benefits of the Project against any significant environmental impacts prior to taking final action if such significant impacts cannot otherwise be avoided, or (iv) determine not to proceed with the Project.

The Parties acknowledge that the project-specific CEQA document will include a full transportation impact analysis to determine the nature and timing of any local or regional traffic improvement and mitigation measures described in the Community Reuse Plan Environmental Impact Report as well as other mitigation measures that may be deemed feasible and may reduce or avoid potentially significant traffic impacts.

8. Reimbursement of City Costs.

Developer would enter into a reimbursement agreement with City to provide for the payment of City's internal, third party and consultant costs in connection with the review and processing of Developer's Specific Plan, Development Agreement, CEQA compliance, interim lease agreements, land use entitlement and permit applications, including applications for federal, state and other regulatory agencies, and the LRA project management costs to complete the transfer process from the Navy and associated activities, as well as any costs associated with the negotiation of future DDAs pursuant to Section 24 below. Costs would be payable within thirty (30) days of City's written demand which shall be accompanied by copies of invoices or other reasonable evidence of such costs. The reimbursement agreement would provide for an "evergreen deposit" of \$550,000 to secure Developer's obligations to pay such costs. If the City draws on the deposit to pay any such costs, Developer would be obligated to deposit with City additional funds to fully replenish the Deposit within twenty (20) days of City's demand therefor. The following City and LRA costs would be paid pursuant to the reimbursement agreement:

- a. City's fully loaded costs to maintain a suitable level of staffing for the project, which the Parties currently estimate will be 2.5 full-time equivalent staffing within the Community and Economic Development Department, including a dedicated principal planner supported by up to an additional 1.5 full-time equivalent staffing at a variety of levels, to (i) participate in the preparation and review of the Specific Plan, such as review scope of work and approach to outreach process, meet regularly with Developer and consultants, review interim and final deliverables, and prepare staff reports for Council and Board/Commission review; (ii) lead and expedite review of

project development applications; and (iii) interface with other City departments on the Developer's behalf.

- b. City's fully loaded costs to maintain 2.0 full-time staffing equivalents for LRA project management.
- c. Actual costs associated with City-led CEQA review, including (i) outside consultant costs to prepare environmental documents and studies; and (ii) costs of City staff, consultants and outside counsel to manage, review and oversee the CEQA process.
- d. Actual costs of outside consultants and counsel to provide support to the City and LRA in implementation of the DDA, including but not limited to negotiation, drafting, processing and implementing the Development Agreement, Specific Plan and all subsequent project agreements and entitlements, and the LRA's project management costs to complete the negotiations and transfer process with the Navy.
- e. To address ancillary City costs incurred in connection with the above described work, including time spent by other City departments, including the City Manager, City Clerk, City Attorney, Engineering Division and Police Department (i.e. departments other than Community and Economic Development Department and the LRA addressed in (a) and (b) above), Developer will pay an administrative mark-up of 6.5% on the costs described in subsections (a) and (b) above.
- f. The reimbursement agreement will provide for the following procedures relating to reimbursement of City expenses described in section 8(a)-(e):
 - i. Annual Budget. A budget will be established annually consistent with the City's fiscal year (July 1-June 30) and submitted to Developer for review and approval prior to its approval by the City Council. A process for augmenting the budget where necessary will also be included.
 - ii. Reporting. City shall deliver cost reports to Developer within 45 days following the end of each calendar quarter detailing City, third-party professional, and/or other costs incurred by the City related to the Project in relation to the approved budget.
 - iii. Disputes. Developer shall bring any inconsistencies or requests for clarification to the City's attention within 30 days of receipt of a given cost report. The Parties shall attempt in good faith to informally resolve any dispute. If the Parties have not been able to resolve the dispute, the dispute may be resolved by non-binding mediation or such other non-binding method determined by the Parties.

- iv. Third-Party Professionals. City may retain third-party professionals to assist City Staff in negotiating, drafting, processing and implementing the DDA, Development Agreement, Specific Plan and all subsequent project agreements, plans, permits, and/or other entitlements, including related CEQA document, described in Section 7(c) of the Term Sheet. Developer shall have the right to retain a third-party consultant or consultants of its choosing for the purpose of preparing its Specific Plan, subject to the approval of the City, which approval shall not be unreasonably withheld.

9. Conditions Precedent to Transfer to Developer.

City would convey Parcels within the Development Phase One Property to Developer by grant deed in multiple phases corresponding with Developer's phased build-out of the Backbone Infrastructure for the Development Phase One Property upon the satisfaction of the following conditions precedent:

- a. Fee Title. The federal government shall have conveyed the Parcel to the City without any use or activity restrictions that would materially impede the development of the Parcel, pursuant to a Finding of Suitability to Transfer issued by the Navy and concurred-in by the U.S. Environmental Protection Agency, the Department of Toxic Substances Control and the regional water board.
- b. Development Phase One Property Project Entitlements. The City shall have finally approved the Specific Plan and the Development Agreement as to the Development Phase One Property.
- c. Approvals for Backbone Infrastructure. The City shall have: (i) approved a Large Lot Tentative Map that includes the Parcel; (ii) approved and executed an Improvement Agreement providing for installation of Backbone Infrastructure for the Parcel and the posting of security consistent with the requirements of the Subdivision Map Act and the Subdivision Code ensuring performance of such Backbone Infrastructure and payment of labor and materials in connection therewith; and (iii) approved any development permit required for the construction of the Backbone Infrastructure for the particular Parcel.
- d. Insurance Policies. Developer shall have submitted to the City evidence of the insurance required to be maintained by Developer.
- e. Evidence of Financing. City shall have approved evidence of financing for the Backbone Infrastructure for the Parcel submitted by Developer, which shall include: a final approved budget relating to the Backbone Infrastructure, and demonstrating to the satisfaction of the LRA Executive Director or designee the availability of funds sufficient to pay all applicable costs relating to the Backbone Infrastructure.

- f. Commitment to Commence and Complete Improvements. Developer shall demonstrate to the reasonable satisfaction of the LRA Executive Director or designee that Developer will commence the Backbone Infrastructure for the Parcel within the applicable time pursuant to the Schedule of Performance and is committed to continuously and diligently working towards completion of such Backbone Infrastructure within the applicable time pursuant to the Schedule of Performance in Section 4. The Parties shall agree upon and attach to the DDA a form of letter to the LRA Executive Director that, when executed by Developer and accompanied by materials identified in the letter, would satisfy the requirements of this Section 9(f).
- g. Miscellaneous Standard Closing Conditions. The Parties shall have submitted executed closing documents into escrow, title insurance policies shall be ready to be issued and other standard conditions to closing (which shall be described in more detail in the DDA) shall be met.
- h. Waiver of Conditions / Reversionary Right. Developer may request, and City shall reasonably consider, transfers of property within Development Phase One prior to satisfaction of one or more of the conditions in Section 9 provided: (i) City retains a reversionary right as to such property for which one more conditions has not been satisfied until satisfaction of such condition(s); and (ii) Developer shall be required to satisfy all Developer obligations as to such property under the DDA, including Schedule of Performance obligations relating to the commencement and completion of Backbone Infrastructure as to such property.

10. Conditions Precedent to Transfer to Vertical Developer.

Developer would be permitted to convey subdivided portions of the Development Phase One Property to one or more vertical developers upon the satisfaction of the following conditions precedent:

- a. Satisfaction of Conditions Precedent to Transfer from City to Developer. All applicable conditions precedent set forth in Section 9 shall have been satisfied.
- b. Assignment and Assumption Agreement. The vertical developer shall have executed an assignment and assumption agreement with the City in substantially the form attached to the DDA.
- c. Fair Market Value Appraisal for Assignment to Affiliated Vertical Developer. Where Developer proposes to transfer to a Vertical Developer that is an Affiliate of Developer (as defined in Section 21), Developer shall submit an appraisal of fair market value of the land proposed for transfer for City review and approval, which shall not be unreasonably withheld or denied.

- d. Assignee Formation Documents. The vertical developer shall have delivered to the City entity formation and other relevant documentation relating to the corporate, partnership, limited liability or other similar status, as the case may be, of the entity to which Developer intends to assign its rights under the assignment and assumption agreement as to such Parcel.
 - e. Related Backbone Infrastructure. All Backbone Infrastructure required for the reuse of the applicable Parcel shall have been completed or bonded for or insured around.
 - f. Insurance Policies. Assignee shall have submitted to the City evidence of required insurance policies pursuant to the DDA as required in the assignment and assumption agreement.
 - g. Commitment to Commence Vertical Improvements. The vertical developer shall demonstrate to the reasonable satisfaction of the LRA Executive Director or designee that the vertical developer will commence the vertical improvements within the time set forth in any vertical schedule of performance included in the assignment and assumption agreement and is committed to continuously and diligently prosecute such vertical improvements to completion within the time provided therefor in such vertical schedule of performance. The Parties shall agree upon and attach to the DDA a form of letter to the LRA Executive Director that, when executed by vertical developer and accompanied by materials identified in the letter, would satisfy the requirements of this Section 10(g).
 - h. Miscellaneous Standard Closing Conditions. The Parties shall have submitted executed closing documents into escrow, title insurance policies shall be ready to be issued and other standard conditions must be met.
11. City Participation.

In addition to contribution of the EPIP Fund described in Section 3(e) and Exhibit H, Developer will make a contribution to the City through application of a profit participation formula more fully described in Exhibit F, and which provides the City backend participation after Developer reaches a 20% unlevered investment rate of return. It is anticipated based on the Proforma's current projections that this profit participation model will yield a return to the City of approximately \$23.5 Million. Developer and City acknowledge the need to negotiate the terms for conveyance of property from the Navy. Any land acquisition payment required to be made to the Navy (which could include an up-front payment, a participation framework, or some other structure) would be considered a project cost for purposes of the Proforma.

12. Financing of Public Improvements and Publicly Accessible Private Improvements.
- a. Developer proposes to finance the construction, installation, and long-term maintenance of Backbone Infrastructure, other public improvements, and community benefits through the use of private capital; federal, state, and local governmental (other than City) grants; community facilities districts ("CFDs"), enhanced infrastructure financing districts or other similar vehicles ("IFDs"), and other financing mechanisms.
 - b. Developer also proposes to finance ongoing maintenance and replacement of publicly accessible private improvements, including private streets, private storm drains, common areas, and landscaping etc. through the use of various revenue sources, including homeowners associations ("HOAs"), landscaping and lighting districts ("LLDs") geologic hazard abatement districts ("GHADs"), and other financing mechanisms.
 - c. Prior to implementing an IFD or other mechanism that would direct to Developer tax increment otherwise available to the City, or implementation of revenue sources for annual maintenance and replacement costs, Developer shall demonstrate that the combination of its proposed financing strategies would preserve fiscal neutrality to the City's General Fund.
13. Open Book Accounting.
- a. Proposed Financial Deal Structure. Developer proposes a deal structure that aligns public and private interests through an open sharing of information and profits. Developer will provide a completely open book partnership allowing City to confirm Developer's budgets and security (including subdivision bonds) to fully secure Backbone Infrastructure on a Parcel-by-Parcel basis before any land is conveyed to Developer.
 - b. Open Book Accounting. Developer shall maintain a completely open book accounting, with specific processes for record keeping, accounting, and auditing as further described below.
 - i. Book and Recordkeeping Obligation. Developer shall maintain books and records of all Project costs and expenses for a period of three years following the end of each calendar year, or such longer period as may be necessary to comply with BRAC requirements. Books and record shall be maintained with generally-acceptable accounting principles consistently applied or in another auditable form approved by the City.
 - ii. Annual Reports. Developer shall provide annual reports to the City commencing as of the date that Developer receives the first Parcel from the City. Annual reports, which shall be submitted to the City

no later than four months after the end of each fiscal year, shall include at minimum: updated estimates of project costs and gross revenues; variances from the prior year's annual report (if applicable); new development that is expected to occur or that is occurring; and a summary of all public benefits delivered to the City, including EPIP funding; and a statement of cumulative IRR achieved to date. Annual reports shall use generally accepted accounting procedures acceptable to the City.

- iii. Inspection Rights. Upon ten business days' prior written notice, City shall have the right to review or audit Developer's books and records at Developer's local office.

14. Remediation.

City will transfer the Development Phase One Property to Developer subject to applicable provisions of the deed from the Navy to the City, including the Comprehensive Environmental Response, Compensation, and Liability Act ("**CERCLA**") Section 120 covenants received from the Navy. Land anticipated for residential use is expected to be cleaned to appropriate residential standards, and to remain subject to CERCLA covenants. If hazardous materials requiring investigation or remediation are discovered on the Development Phase One Property during development and following completion of Navy's remediation program, the City shall not be responsible for performing or paying for such investigation or remediation; in such instance, Developer will, in its sole discretion, either: (1) request that the Navy perform or pay for the investigation or remediation under the CERCLA Section 120 covenants or the indemnity provided under BRAC Section 330 of the National Defense Authorization Act of 1993, PL 102-484, October 23, 1992, 106 Stat. 2315, as amended ("**DOD Indemnity**"); and/or (2) tender a claim to the insurer under the PLL policy to pay for the investigation or remediation or (3) in situations where the costs of performing the investigation or remediation would be less than the costs of pursuing a claim against the Navy or paying the deductible or self-insured retention under the PLL policy, perform or cause to be performed the investigation or remediation at its own cost. Notwithstanding the foregoing, Developer will not take any action that adversely affects the rights of the City under CERCLA Section 120 covenants granted by the Navy or under the DOD Indemnity or under the PLL policy. The Parties share the following objectives relating to remediation and transfers from the Navy:

- a. It is in the Parties mutual interest for the First Transfer Parcel to transfer from the Navy to the City as expeditiously as possible without any use or activity restrictions that would materially impede development of the First Transfer Parcel and for subsequent portions of the Development Footprint to transfer without any use or activity restrictions that would materially impede development of such property as expeditiously as possible thereafter.

- b. The Parties will cooperate and will both participate actively in negotiations with the Navy, US EPA, DTSC, and regional water board over remediation of hazardous materials and the transfer of lands from the Navy to the City on a schedule that will permit timely development consistent with the Specific Plan.
- c. For lands within the Development Phase One Property (or reasonably necessary for the efficient development of the Development Phase One Property) that are not included in the First Transfer Parcel or transferred within a reasonable time thereafter via a FOST under Section 120(h)(3)(A) and (B) of CERCLA, it is in the Parties mutual interest to gain access to such lands under a license or lease in furtherance of conveyance ("**LIFOC**") or have such lands transferred pursuant to a Finding of Suitability for Early Transfer ("**FOSET**") under Section 120(h)(3)(C) of CERCLA, and subject to approval by the Navy. Accordingly, Developer agrees to coordinate with City to actively and in good faith negotiate such licenses, LIFOCs, FOSETs and related Environmental Services Cooperative Agreements ("**ESCA**s") that provide for sufficient funds from the Navy to complete the necessary remediation and procure appropriate environmental insurance.
- d. For properties not included in the Development Phase One Property that may be eligible for a FOSET, as may be determined by the Navy, Developer similarly agrees to coordinate with the City to actively and in good faith negotiate FOSETs and related ESCAs that provide for sufficient funds from the Navy to complete the necessary remediation and procure appropriate environmental insurance. As appropriate, the Parties shall consider advocating for the use of a phased transfer of FOST-eligible properties to the extent such phasing would allow accelerated transfer of less complicated sites critical to development phasing (e.g. Site 13) ahead of the transfer or early transfer under a FOSET of other potentially more complicated sites (e.g. Bunker City).

15. Habitat & Species Mitigation and Resource Agency Permitting.

- a. The Parties will cooperate, at Developer's expense, to obtain from the various resource agencies, including the U.S. Fish and Wildlife Service, the U.S. Army Corps of Engineers, the California Department of Fish and Wildlife and the San Francisco Bay Regional Water Quality Control Board, all permits and approvals which are necessary to implement reuse of the Development Phase One Property in accordance with the CRP Area Plan and the Specific Plan. Developer will work with the lead land manager for the EBRPD PBC areas and the City as to Mt. Diablo Creek conservation areas, in an effort to meet aquatic resource/wetlands and endangered species mitigation for the EDC property development on the EBRPD PBC property to the maximum feasible extent. Final determinations regarding the amount of mitigation credit will be reflected in permits or other

authorizations issued by the resource agencies, and Developer will bear all costs of such mitigation requirements whether on or off of the EBRPD PBC property.

- b. The Parties agree to cooperate in pursuing all resource agency permits necessary to implement the Project and establishing mutually agreeable, reasonable and appropriate mitigation obligations. The Parties share the following objectives regarding resource agency permitting and the associated mitigation:
 - i. Impacts to species, aquatic resources, and other resources subject to the resource agency permits and authorizations (collectively, **"Ecological Resources"**) from development should be mitigated, to the maximum extent reasonably feasible and cost-effective, on site or on the EBRPD PBC property. If off site mitigation is required, best efforts will be made to mitigate within the Mt. Diablo or Kirker Creek watersheds to the extent reasonably feasible and cost-effective.
 - ii. Obligations to fund and implement mitigation should be roughly proportionate -- in amount, nature, and timing -- to either the phasing of development generally or, where appropriate, to the timing of actual impacts caused by development. However, the Parties acknowledge that resource agencies may require some, or a substantial amount, of mitigation in advance of development impacts in order to accommodate all of the mitigation on the PBC property. City will work with the resource agencies to identify in the permitting documents and approvals the mitigation necessary to offset impacts from the Development Phase One Property, the balance of the First Transfer Parcel development, and subsequent development. However, the permitting documents may not clearly distinguish the impacts and offsetting mitigation, and this determination may have to be made by mutual agreement of City and Developer.
- c. Prior to issuance of the first grading permit, Developer will establish an endowment fund or provide a financial mechanism acceptable to the resource agencies to pay certain ongoing costs associated with Ecological Resources and other on-going mitigation obligations. The endowment fund or other acceptable financial mechanism will be in an amount deemed sufficient by the resource agencies to fund long-term management and monitoring of the conservation areas. While a non-wasting endowment will be required to fund certain creation, restoration, enhancement, start-up, and interim management and monitoring obligations associated with the mitigation program, the Parties acknowledge that it may be appropriate for other mitigation obligations to be secured through other financial tools (for example, letters of credit,

bonding, etc.). The Parties agree to pursue the most cost-effective combination of funding mechanisms available through the resource agency permitting process.

- d. Following execution of the DDA, Developer may apply to become co-applicant / co-permittee on the City's pending resource agency permit applications.

16. Labor Policies & Local Opportunity.

- a. The DDA will address Developer's obligations with respect to local hire policies and goals for Project-related construction jobs consistent with a program to be reviewed and approved by Developer and the City Council, which may include:
 - i. The City's good-faith Hire Concord First goal that 40% of the construction workforce should be local (Concord first, then Contra Costa County).
 - ii. Job training, apprenticeship programs, and vocational training opportunities, as more fully described in the EPIP (Exhibit H), and which would extend to both construction and permanent operational jobs.
 - iii. Coordination with the Greater Concord Chamber of Commerce, the Mt. Diablo Unified School District, East Bay Works, the Contra Costa Workforce Development Board, California State University East Bay, and the California Employment Development Department to enhance opportunities for local employment and training.
 - iv. Military veteran-focused career training and workforce reintegration programs.
 - v. Use of public sector employees (i.e. County Connection drivers) to staff the proposed Concord Connector described in the EPIP.
- b. Developer will use good faith efforts to engage community-based organizations (CBOs) involved in local labor issues to promote awareness of the Project and opportunities for local labor workforce development and business participation.
- c. Developer anticipates entering into, and will negotiate in good faith to secure, one or more project labor agreements for Project construction.
- d. Developer will sell land corresponding to at least 40% of the total residential units (including affordable units) within Development Phase One to third-party vertical developers. Developer is also committed to implementing Hire Concord First policies by maximizing development

opportunities, at competitive prices, for local development firms. Opportunities would be for residential, commercial, and recreational facilities and would focus on Concord first, then Contra Costa County or the nine Bay Area counties.

- e. Developer acknowledges that additional dialogue regarding labor peace is appropriate during the DDA negotiation process, including the impact of any labor peace agreements on third parties. The Parties acknowledge that potential "labor peace agreements," if any, should be confined to those certain Development Phase One Property commercial parcels to be developed for uses employing a predominance of service sector workers. In no event shall Developer be obligated to enter into any labor peace agreement which would put operators of the applicable commercial businesses at a competitive disadvantage in the marketplace or have a material adverse effect on the sale price that vertical developers are willing to pay for, or the rental income to be derived from, such parcels.

17. Prevailing Wages.

Developer agrees that any worker (as defined by State prevailing wage law) performing publicly-funded construction, alteration, demolition, installation or repair work or street, sewer or other improvement work done under the direction and supervision or by the authority of any officer or public body ("**Public Work**") shall be paid not less than the general prevailing rate of wages, as provided by State prevailing wage law, and shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in Concord, California. Developer shall include in any contract for Public Work a requirement that all workers performing labor under such contract shall be paid not less than the general prevailing rate of wages for the labor so performed as provided by California prevailing wage law.

18. Insurance.

Developer shall maintain, at its cost and expense, the following policies of insurance: (a) commercial general liability; (b) automobile; (c) workers' compensation; (d) builder's risk and (e) one or more PLL policies to the extent required under Section 5, naming Developer as insured and, except for workers' compensation insurance, naming the City as additional insured, on forms acceptable to City, and in amounts commensurate with similar military base redevelopment projects as will be determined in the DDA.

19. Indemnity.

- a. Developer shall indemnify, defend and hold the City harmless from and against any and all claims resulting or arising from or in any way connected with the following, provided Developer shall have no obligation to indemnify the City (but will be obligated to defend, subject to

reimbursement below) to the extent any such claims directly or indirectly result from the active negligence or willful misconduct of the City:

- i. The existence, release, presence or disposal of any hazardous materials to the extent that the City's liability results from any of the following: (i) Developer's breach of any obligation under the DDA with respect to hazardous materials; (ii) Developer's breach of any environmental law on or relative to the Development Phase One Property; (iii) Developers breach of any covenants or land use controls contained in the applicable Navy deed to the City or other actions by Developer that compromise or invalidate City's rights under the CERCLA covenants granted by Navy or the DOD Indemnity; or (iv) any release or threatened release of Hazardous Materials to the extent the release or threatened release commenced during Developer's ownership of the subject real property or was caused, contributed to, or exacerbated by Developer, provided that (iv) shall not apply to the extent that such release or threatened release was caused, contributed to, or exacerbated by the City;
 - ii. The non-compliance of improvements constructed by Developer with any federal, State or local laws or regulations, including those relating to access, or any latent defects, in all cases regardless of whether the City has reviewed and/or approved plans for such infrastructure.
 - iii. During the period of time that Developer holds title to any portion of the Development Phase One Property, the death of any person or any accident, injury, loss or damage whatsoever caused to any person or to the property of any person that shall occur in such portion of the Development Phase One Property; and
 - iv. The death of any person or any accident, injury, loss or damage whatsoever caused to any person or to the property of any person that shall occur in or around the Development Phase One Property, including any portions of the EDC property, the PBC property, or off-site improvement areas, to the extent caused by the act or omission of Developer, or its agents, servants, employees or contractors.
- b. In addition to the foregoing, Developer shall indemnify, defend, and hold the City harmless from and against all losses and costs arising out of or connected with contracts or agreements (i) to which the City is not a party and (ii) entered into by Developer in connection with its performance under the DDA, including any assignment & assumption agreement (see Section 21, *infra*), provided Developer shall have no obligation to indemnify the City (but will be obligated to defend, subject to

reimbursement as provided below) to the extent that any such losses and costs result, directly or indirectly, from the active negligence or willful misconduct of the City.

- c. Notwithstanding the foregoing, where claims are asserted against the City in connection with any of the claims above, Developer agrees to defend the City, subject to reimbursement by City to Developer of the City's pro rata share of costs (including attorneys' fees associated with Developer's defense) corresponding to City liability following final resolution of such claims.
- d. Each Vertical Developer will be required to undertake comparable indemnity and defense obligations for benefit of City with respect to the portion of the Development Phase One Property acquired by such Vertical Developer.

20. Third Party Legal Challenges.

City and Developer will cooperate in the defense of any third party challenge of the DDA, Specific Plan, Development Agreement, any Project entitlements or any related CEQA determinations or documents. If Developer elects, in its sole discretion, to contest or defend a challenge, the Developer shall take the lead role, represented by counsel of Developer's choice, and shall reimburse City for any of City's reasonable costs related to the challenge, and indemnify, defend and hold the City harmless from any damages, including attorneys' fees, awarded. Any proposed settlement will be subject to City's and Developer's approval, each in its reasonable discretion. In addition, City shall have the right, but not the obligation, to contest or defend any challenge, at its sole expense, in the event that Developer elects not to do so.

21. Transfers.

This Term Sheet and the DDA shall be executed and entered into by Lennar Concord, LLC, or another Lennar entity controlled by Lennar Concord, LLC, and approved by City in its sole and absolute discretion. After execution of the DDA, transfers by Developer of certain rights and obligations under the DDA may be appropriate or necessary to achieve organizational and tax efficiencies, to attract development partners for diverse Project elements, to attract capital and investment in the Project, or other commercially recognized reasons. Developer shall be permitted to transfer its interests in the DDA only as set forth in this Section 21. For purposes of this Section 21, "**control**" means power, indirectly or directly, to direct or cause the direction of the management or policies of the subject person or entity by contract or otherwise, subject only to major decisions requiring the consent and approval of other owners of such entity.

- a. Transfer to Affiliate of Developer. Developer shall be permitted to transfer all or any portion of its rights and corresponding obligations under the

DDA from time to time to a transferee who, directly or indirectly, controls, is controlled by, or is under common control with Developer (any such person or entity, an "**Affiliate**") without, in any such case, the approval of the City, provided that at the time of such transfer: (1) there has been no event of default by Developer under the DDA; and (2) no event has occurred that, with notice and opportunity to cure or both, would constitute an event of default by Developer under the DDA.

- b. Transfer to Non-Affiliates of Developer. Developer may desire to transfer its rights and corresponding obligations under the DDA to an entity or individual that is not an Affiliate of Developer to bring particular expertise to a Project component or to otherwise improve the chances for successful development of a unique Project component (for example, development of a campus, light industrial, or retail component). Transfers by Developer of all or a portion of its rights and corresponding obligations under the DDA to a transferee that is not an Affiliate (hereafter "**Transfers to Non-Affiliates**") are permitted only as follows:
 - i. Transfers to Non-Affiliates may not involve Developer's rights and corresponding obligations in more than one hundred (100) acres of the Development Phase One Property in the aggregate.
 - ii. Transfers to Non-Affiliates require prior written approval of the City, which such approval shall not be unreasonably withheld, conditioned or delayed provided the transferee or persons controlling the transferee:
 - 1. Has demonstrable and successful experience acting as the developer of a project of similar size commensurate with the property in which an interest is being transferred (the "**Experience Requirement**");
 - 2. Satisfies the "**Net Worth Requirement**", i.e. a demonstration by transferee (or persons controlling transferee) that assets exceed liabilities in an amount commensurate with that reasonably required to complete Developer's transferred obligations; and
 - 3. Have not been suspended, debarred, or prohibited from contracting with the City.
- c. Change in Control; Stock/Share Transactions. Developer shall not, without the City's consent, allow a transfer in the direct or indirect interests in Developer to any person or entity or allow a change in control of Developer unless immediately following any such transfer or change, Lennar Corporation or another entity approved by the City (or the potential new public company described in Section 25(b)(ii) below) directly or

indirectly owns 25% or more of the economic interests in Developer. Nothing in this Section 21 shall restrict transfer or issuance of shares on a public market or a merger or similar transaction.

- d. Mortgages & Transfers to Vertical Developers. Subject to any conditions set forth in other sections of this Term Sheet, the following mortgages and transfers shall be allowed without review or approval by the City:
 - i. Upon or at any time after the satisfaction of the conditions precedent to transfer of a Parcel to Developer set forth in Section 9, any mortgage against fee title (or leasehold title) as to such Parcel.
 - ii. Upon or at any time after the satisfaction of conditions precedent to transfer of a Parcel to a vertical developer set forth in Section 10, any conveyance by Developer to a transferee of fee or leasehold title as to such Parcel or portion thereof, and a corresponding assignment of any rights or obligations of Developer under the DDA to such vertical developer assignee as to such Parcel or portion thereof.
 - iii. Upon or at any time after the satisfaction of conditions precedent to transfer of a Parcel to a vertical developer and completion of the vertical development, the sale or leasing for occupancy of the completed vertical development.
- e. Form of Assignment & Assumption Agreement. The Parties agree to negotiate and include as exhibits to the DDA approved forms of one or more assignment and assumption agreements. The form of assignment and assumption agreement for vertical developers shall include a framework for the commitment by vertical developers to a schedule of performance for commencement and completion of vertical development.
- f. Other Transfers. Any transfer not otherwise permitted by this Section 21 may be approved by City in its sole, absolute discretion.

22. Remedies.

- a. Limitations on Award of Damages. Appropriate and customary remedies in the case of default by a Party (and in no event to include actual, consequential, special, or punitive damages) will be addressed by the Parties in the DDA. The principal remedy of both Parties in the event of default under the DDA shall be specific performance.
- b. No Attorneys' Fees. Each party will bear its own attorney fees in any action by a Party to enforce its rights under the DDA.
- c. City Remedies Against Vertical Developers. The form of assignment and assumption agreement to be negotiated between City and Developer and

attached to the DDA shall address City's remedies against vertical developers for defaults by such vertical developers.

23. Excusable Delays.

The time for Developer to perform any act under the DDA, including Developer's obligations in Section 4 (Schedule of Performance), shall be automatically extended for the period of any of the delays described below (each, an "***Excusable Delay***"). Developer's obligation to make EPIP Fund payments to the City as set forth in Section 3(e) above, including the schedule for such payments, shall not be subject to extension for Excusable Delay.

- a. Administrative Delay. Meaning failure by governmental entities to act within reasonable times under applicable laws or actions by governmental entities that are successfully challenged by the Developer or an assignee/transferee/vertical developer.
- b. CEQA Delay. Meaning the time reasonably required to complete any additional environmental review or documentation for future Project applications or approvals (not including the initial approvals of Specific Plan and the Development Agreement), subject to a requirement that Developer shall have made all commercially reasonable efforts to timely complete such environmental review, and the time during which legal proceedings regarding sufficiency of environmental review are pending (regardless of whether development is subject to a stay during such proceedings).
- c. Economic Delay. Meaning a sustained decline in the residential real estate market as measured by the House Price Index. Economic Delay shall commence upon Developer's notification to the City (together with appropriate documentation) that there has been a four percent (4%) or greater decline in the House Price Index over the preceding twelve (12) month period. Economic Delay shall continue prospectively on a quarterly basis and remain in effect until date on which the House Price Index has increased for three (3) successive quarters; provided that the cumulative total of Economic Delay shall not exceed forty-eight (48) months. "House Price Index" shall mean the quarterly all-transactions index published by the Federal Housing Finance Agency representing home price trends for the Oakland-Hayward-Berkeley, CA Metropolitan Statistical Area Division. If the House Price Index is discontinued, Developer and the City shall approve a substitute index that tracks the residential market with as close a geography to the Oakland-Hayward-Berkeley, CA Metropolitan Statistical Area Division as possible.
- d. Force Majeure. Meaning the range of natural and man-made acts outside of the control of the Party claiming delay, including wars, strikes, natural disasters, litigation, and reasonably unforeseen site conditions, and

adversely affecting the claiming Party's (which may, notwithstanding anything above, be Developer or City) ability to timely perform its obligations under the DDA.

- e. Notice. To claim Excusable Delay, Developer shall provide notice within sixty (60) days of actual knowledge of the event causing the delay. The period of Excusable Delay shall commence, and shall run from, the date of such notice.

24. Transfer of Remainder of Development Footprint.

- a. Developer submitted its proposal for the Development Phase One Property to the City with the understanding that there would be no guaranteed development rights to future phases. Developer acknowledges that City may, but will not be required to negotiate with Developer regarding the transfer of all or any portion of the balance of the EDC Property, including the balance of the First Transfer Parcel, other than the Development Phase One Property (the "**Future Development Property**"). Notwithstanding the foregoing, should City in its discretion choose to negotiate with Developer regarding the transfer of all or any portion of the Future Development Property, whether prior to or after completion of development of the Project, then City may do so without initiating a new competitive process (such as a request for qualifications, request for proposals, or other process) with respect to such Future Development Property, provided that Developer is not in material default under the DDA with respect to the Project.
- b. In the event that City elects to convey all or any portion of the Future Development Property (the "**Transferred Portion**") to any party other than Developer, then City will require the developer of such Transferred Portion to reimburse Developer, out of project revenues from such Transferred Portion, for such Transferred Portion's pro rata share of reasonable Project Costs incurred by Developer for oversized utilities, school facilities, habitat or species mitigation work, hazardous materials remediation or containment work or facilities, environmental insurance premiums, planning and environmental review, or other similar work or improvements serving and benefitting the Project and such Transferred Portion and that the new developer would have had to complete but for Developer's completion thereof. The DDAs for both the Development Phase One Property and such Transferred Portion will contain a mechanism for granting priority and security for such reimbursement. Developer acknowledges that the City will not be obligated to fund such reimbursement from its general fund or other City revenues (other than fees or revenues from the development of such Transferred Portion).

25. Additional Sections to Be Reflected in DDA.

a. Protection of City Interests in CNWS Property & Security for Developer Obligations.

- i. The City will own the entire Development Phase One Property upon the completion of the land transfer from the Navy.
- ii. The Development Phase One Property will consist of multiple discrete Parcels. Property will be conveyed to Developer in increments -- one Parcel at a time -- and only when Developer is prepared to immediately commence Backbone Infrastructure, parks, and public facilities on the Parcel. Based on its experience with other comparable projects, a transfer Parcel would likely range generally from 40 acres to 60 acres, though parcel sizes may vary depending on market conditions. City will at all times retain fee ownership of all land other than the Parcel on which Developer is building Backbone Infrastructure, parks, and public facilities and land that has already been developed.
- iii. No land will transfer to Developer, unless and until City determines that Developer has satisfied the following conditions, among others, prior to the close of escrow for each Parcel as further described in Section 9 :
 1. Evidence of Financing. Developer is obligated to provide evidence to the City every time it seeks to take down a parcel to establish Developer's budget and financing plan to pay all costs necessary to complete the Backbone Infrastructure associated with a Parcel. The City is under no obligation to transfer a Parcel unless and until the LRA Director finds that the proposed budget is satisfactory.
 2. Improvement Bonds. Developer is obligated to post bonds with the City to ensure the completion of all Backbone Infrastructure, parks and public facilities, and the payment of labor and material costs associated with these improvements. If Developer defaults on its obligation, the bonds provide the City with all that is needed to ensure completion of the Backbone Infrastructure and other improvements.
 3. Insurance Policies. Developer must provide the City with evidence of adequate insurance coverage (in addition to environmental policies) to address risks associated with development of infrastructure, parks, and community facilities and as further described in Section 18.

4. Commitment to Commence Backbone Infrastructure and Complete Improvements. The LRA Director must be satisfied that Developer will commence and complete Backbone Infrastructure for the Parcel within the timeframe described in the Schedule of Performance.

b. Corporate Structure & Capitalization of LLC.

i. Lennar Concord LLC.

1. Use of limited liability companies is the industry standard for real estate development in the United States. Developer forms such entities in connection with all of its community development projects. Developer's peer firms – including the other finalist in this process— likewise rely on LLCs in connection with their projects.
2. The Project is proposed to be an asset of Lennar Corporation. The Developer, Lennar Concord, LLC, is wholly owned by Lennar Homes of California, Inc., which is wholly owned by Lennar Corporation.
3. Lennar Corporation is a multi-division, diversified company with many subsidiary entities that operate across different economic platforms in diverse markets. Use of a limited liability company insulates the Project and any Parcels transferred to Developer from potential liabilities incurred by one or more of Lennar Corporation's other developments or business enterprises, including the scenario where another unrelated Lennar business enterprise were to enter into bankruptcy.
4. In the early stages of the Project -- during planning and entitlement stages -- Lennar Concord, LLC will be funded through capital contributions by its parent company, Lennar Corporation. As the commencement of Backbone Infrastructure approaches, it is likely Lennar Concord, LLC will also seek additional, diversified sources of funding, including construction financing and possibly investment capital.
5. The DDA will provide the City with procedures and transparency and ensure that the LLC will be adequately funded to perform all of Developer's obligations.
 - a. Evidence of Financing. Developer will be required to provide budgets, financing plan, and security (such as subdivision bonds) sufficient to complete Backbone

Infrastructure. If adequate evidence is not presented, the City will be under no obligation to transfer land. (See Section 9(e).)

- b. Open Book Accounting. Developer is required to implement open book accounting procedures to provide transparency. Developer will also be required to provide detailed annual statements to the City specifying costs and revenues, and Developer will be required to keep books and records and allow for City inspection of said books and records at any time upon notice by City. (Open book procedures are described in greater detail in Section 13.)
- c. Improvement Bonds. Developer will be required to provide bonds to the City each time a parcel is conveyed. These bonds will secure delivery of Backbone Infrastructure and other public facilities and amenities. (See Section 9(c).)

ii. Five Point.

- 1. Lennar Corporation will soon have Five Point assume day-to-day management of Northern California projects, including Candlestick Point/ Hunters Point Shipyard, Treasure Island and the Project.
- 2. The current employees of Lennar Urban -- including President Kofi Bonner and Executive Vice President Suheil Totah -- will become Five Point employees and will remain responsible for day-to-day management of these projects.
- 3. Although day-to-day management will be handled by Five Point, the Project would remain an asset of Lennar Corporation. It is possible Developer in the future could seek City's permission to transfer the Project to a Five Point entity. As part of any transfer request, Developer would be required to provide City with financial, management and other relevant information requested by City. Any such transfer shall be subject to City approval.
- 4. Developer's ultimate parent company, Lennar Corporation, recently made a filing with the U.S. Securities and Exchange Commission announcing that it had agreed to contribute its interests in the Hunters Point Shipyard/Candlestick Point projects in San Francisco, Newhall Ranch in Los Angeles County, and Great Park Neighborhoods in Orange County,

to subsidiaries of Five Point Holdings, Inc. The contribution is conditioned upon Five Point's completion of an initial public offering of its common stock. If consummated, the contribution would result in a new publicly traded company that, through subsidiaries, would assume responsibility for these large-scale, multi-year, California military base reuse and redevelopment projects. The Project is not part of the contribution. However, given the Project's similar size, character, and need for similar expertise, it is possible that Lennar would seek to transfer its direct or indirect interests in the Project to a subsidiary of the new public company (which could include Five Point Communities, which jointly submitted the original response to the RFQ alongside Lennar, or an affiliate). Day-to-day management and staffing of Developer are not expected to change and will remain under the leadership of Kofi Bonner. In connection with any such proposed transfer, Developer would provide the City with appropriate financial, management, and other customary information regarding Five Point requested by the City, so that the City may determine in its reasonable discretion whether Five Point has sufficient financial capacity to undertake the Project.

- c. Commitment to Successful Transit Oriented Development at Earliest Possible Stage.
- i. Developer is committed to implementing the City's vision for a vibrant, pedestrian-oriented, mixed-use and transit-oriented core around the BART station.
 - ii. Successful high-density TOD Core development can occur only after:
 1. BART completes its own planning process, negotiates a DDA, and provides for the reconfiguration of its existing parking, access, and related facilities.
 2. New development and placemaking create demand for high-density housing sufficient to elevate rents and land values to levels that will support development of the infrastructure and community benefits associated with such high-density development.
 - iii. Developer's land use program includes substantial high-density, mixed-use development adjacent to BART as soon as is economically and logistically feasible..

- iv. In Development Stage Two, commencing four (4) years after Project approval:
 - 1. Developer will develop Backbone Infrastructure within Transit Oriented Neighborhood blocks adjacent to BART to serve high-density housing ranging from 30 to 90 units per acre.
 - 2. 720 residential units of medium and high density TOD-oriented housing will be developed.
 - 3. Mixed-use, transit-oriented, neighborhood-serving retail uses will be developed in ground level spaces in two TOD blocks closest to BART.
- v. In Development Stage Three:
 - 1. Developer will complete Backbone Infrastructure within the Transit Oriented Core abutting BART property and throughout the remaining Transit Oriented Neighborhood blocks.
 - 2. 1,100 residential units of high density housing (90 units per acre), and 293 units of medium density housing (30 units per acre) will be developed, along with additional ground-floor retail in the TOD Core, a grocery-based neighborhood serving retail center and 800,000 square feet of BART Flex Campus uses.
- vi. Developer is experienced in, and anticipates engaging with BART to develop the TOD Core Area. Developer is committed to accelerating development of the TOD Core if negotiations with BART provide an opportunity for such accelerated development.
- vii. In addition, the land use program includes the improvement at every stage of Development Phase One of the linear greenway that will connect BART to every neighborhood within Development Phase One and, eventually, the remainder of the project.

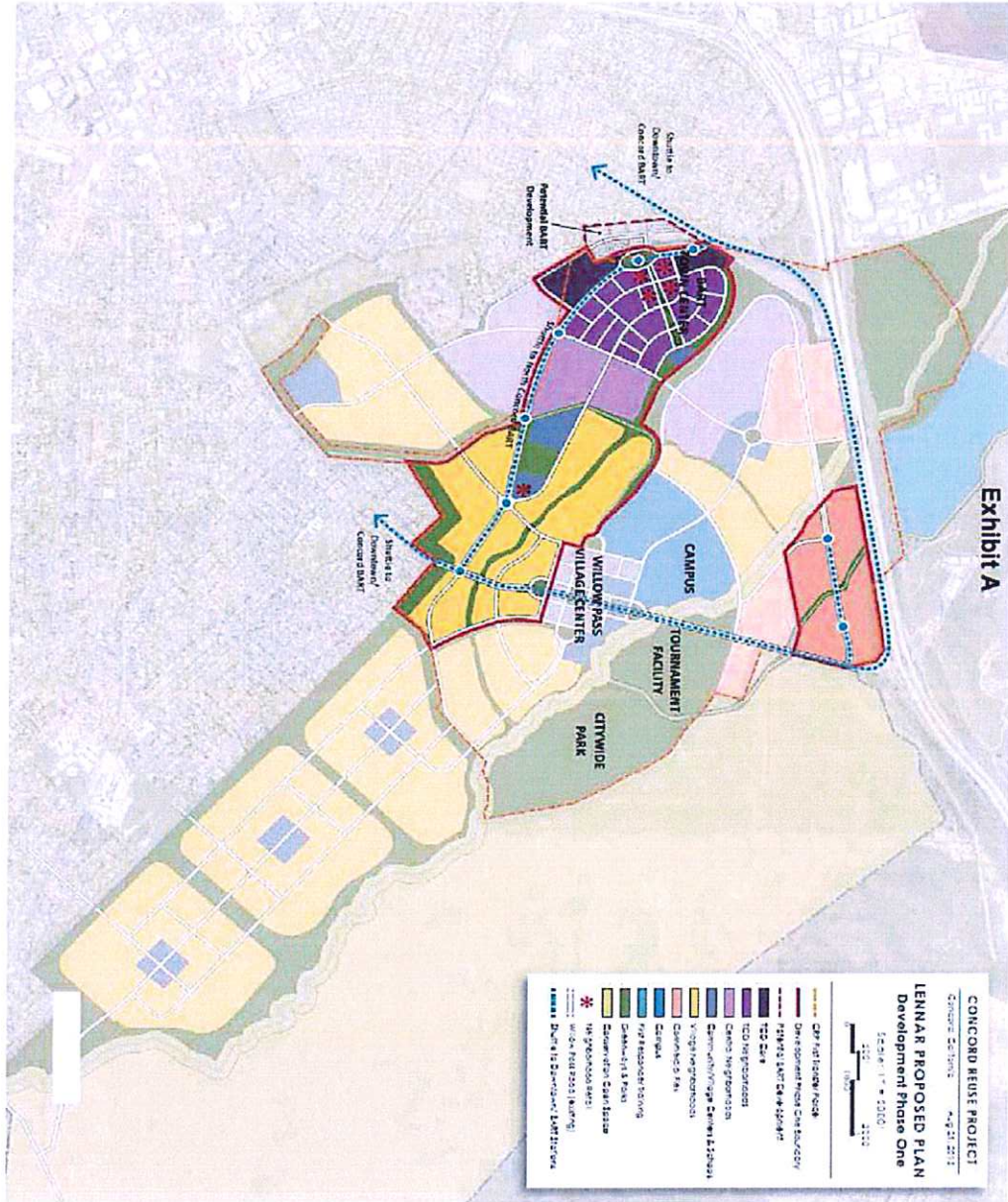
26. Exhibits.

<u>Exhibit A:</u>	Development Phase One Property
<u>Exhibit B:</u>	Proforma (Summary Sheet & Cashflow Analysis)
<u>Exhibit C:</u>	First Development Stage
<u>Exhibit D:</u>	Second Development Stage
<u>Exhibit E:</u>	Third Development Stage
<u>Exhibit F:</u>	City Profit Participation "Waterfall" Description
<u>Exhibit G:</u>	Distribution of Affordable Housing

Exhibit H: Preliminary EDC Property Improvements Program
Exhibit I: Backbone Infrastructure by Development Stage

Exhibit A

Development Phase One Property



OAK #4839-4358-5573 v23

Exhibit A

OAK #4822-6927-3138 v12

Attachment 2

Exhibit B

Proforma (Summary Sheet & Cashflow Analysis)

Exhibit B
CNWS Financial Model Summary

Item	Amount (in Millions)	
	Constant \$\$	Nominal \$\$
Development Program†		
Market Rate Units	3,294	3,294
Affordable Units	<u>1,096</u>	<u>1,096</u>
Total Units (1)	4,392	4,392
Sources and Uses		
Sources		
Net Land Revenues	\$765.8	\$915.7
CFD	\$120.7	\$138.8
IFD	\$29.3	\$36.1
Grant Funding (2)	<u>\$5.2</u>	<u>\$5.0</u>
Total	\$921.0	\$1,096.6
Uses		
Pre-Dev	\$11.5	\$12.5
In-Tract	\$172.2	\$200.1
Backbone and Off-Site Infrastructure (3)	\$258.6	\$288.8
CFD Taxes	\$14.2	\$22.0
On-Site Overhead	\$4.5	\$5.3
Habitat Mitigation	\$4.9	\$5.7
Property Mgmt./Security	\$3.4	\$4.0
Marketing & Sales Center (4)	\$11.8	\$13.6
Circulator (5)	\$2.9	\$3.3
Schools/ Parks/ Greenways	\$83.7	\$100.8
Community Centers	\$20.3	\$22.8
Community Benefits Fund (6)	\$20.0	\$24.7
Affordable Housing Fund (7)	\$40.0	\$49.3
Proj. Management Fee	<u>\$16.1</u>	<u>\$24.0</u>
Total	\$884.1	\$777.3
Net Cash Flow (constant \$\$, millions)	\$256.9	\$319.3
Profit Participation Results		
(Profit Participation @ 20%)		
Net Contribution	\$23.5	\$30.5
Net Developer Return	\$233.4	\$288.7
IRR Before Profit Participation		22.4%

Community Benefits Summary		
Description	Amount (in Millions)	
	Constant \$\$	Nominal \$\$
Community Centers	\$20.3	\$22.8
Schools, Parks and Greenways	\$83.7	\$100.8
Circulator	\$2.9	\$3.3
Com. Benefits Fund	\$20.0	\$24.7
Affordable Housing Fund	\$40.0	\$49.3
Contribution (Profit Participation @ 20%)	\$23.5	\$30.5

Profit Participation**	
1. IRR Range	Participation Share of Return
IRR Between 20% - 25%	35%
IRR Between 25% - 30%	40%
IRR Greater than 30%	50%

** Note: Actual results will vary from projections, sharing in net cash flows through the waterfall structure illustrated below will be calculated on actual net cash flows.

† Plan covers approximately 500 gross acres.

(1) Affordable housing represents 25 percent of the total units. Plan assumes providing five percent of the market rate units as inclusionary. It was determined that the loss of revenues on the market rate developments from the addition of the inclusionary requirement at moderate income levels was effectively offset by the additional land freed up for market rate development. As a result, no specific adjustments were made to the development program and corresponding financial analysis to reflect the shift to providing inclusionary housing.

(2) Assumes grant funding for infrastructure or to offset other costs.

(3) Assumes \$20 million reimbursement by future phase developers for infrastructure oversizing.

(4) Covers the cost of both the sales center and master marketing and branding costs of outside third party consultants. Lennar is not collecting any sales and marketing fees/commissions for the sale of land.

(5) Circulator is assumed to come online once residents move into the CNWS community.

(6) Funds are intended to support a variety of services and programs consistent with the EDC Property Improvement Program (Exhibit H). Funds are dedicated at \$2 million per year for ten years from general sources.

(7) Affordable housing funds are dedicated at \$4 million per year for ten years from general sources.

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Exhibit B

First Development Stage

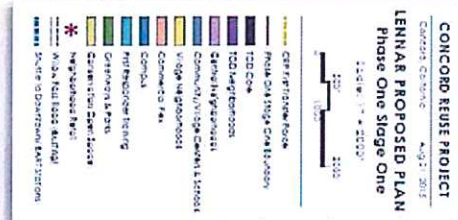


Exhibit C

Attachment 2

Second Development Stage

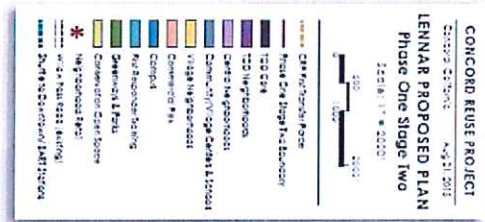
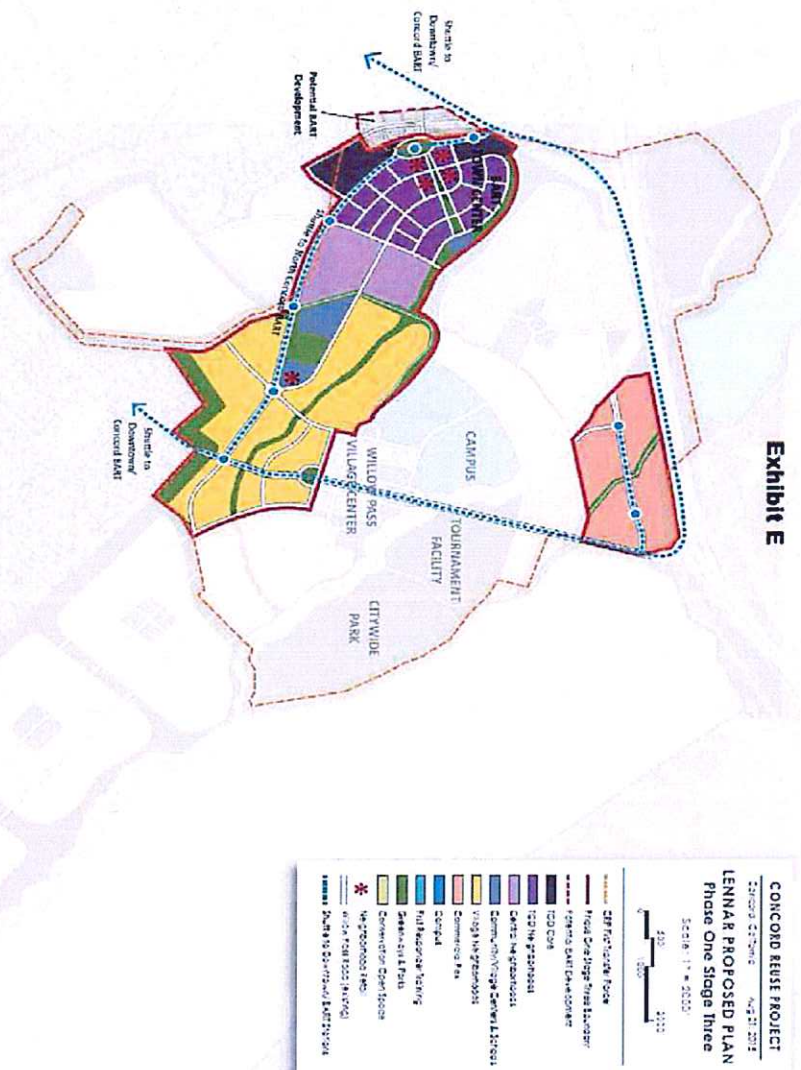


Exhibit D

Third Development Stage



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Exhibit E

Exhibit F

City Profit Participation "Waterfall" Description

Description of Profit Participation Formula

Calculation of IRR

Within sixty days (60) of the end of the full calendar year occurring two years after the Initial Closing and sixty days from each succeeding calendar year until the Cash Flow Distribution Termination Date with respect to the City, Developer shall present a reasonably detailed statement to the City ("IRR Statement") accompanied by an accounting report that is defined in the DDA showing the cumulative IRR achieved from the DDA execution date to the most recent calendar year end.

Share of Net Cash Flow

Once the IRR Statement shows that the Developer has achieved an average IRR of more than 20.00% Project to date, then Developer within ninety (90) days after applicable calendar year end shall contribute 35% of the Net Cash Flow in excess of 20.00% but not to exceed 25.00% to the City as a First Tier Contribution, with the balance to be retained by the Developer.

If the IRR Statement shows that the Developer has achieved an average IRR of more than 25.00% Project to date, then Developer within ninety (90) days after applicable calendar year end shall contribute 40% of the Net Cash Flow in excess of 25.00% but not to exceed 30.00% to the City as a Second Tier Contribution, with the balance to be retained by the Developer.

If the IRR Statement shows that the Developer has achieved an average IRR of more than 30.00% Project to date, then Developer within ninety (90) days after applicable calendar year end shall contribute 50% of the Net Cash Flow in excess of 30.00% to the City as a Third Tier Contribution, with the balance to be retained by the Developer.

If the IRR Statement shows that the Developer has achieved an average IRR of more than 35.00% Project to date, then Developer within ninety (90) days after the applicable Reporting Period shall contribute 50% of the Net Cash Flow in excess of 35.00% to the City as a Third Tier Contribution, with the balance to be retained by the Developer.

Exhibit G

Distribution of Affordable Housing

Exhibit G
CNS: Development Program by Stage

Draft - Confidential/Proprietary Information - Not for Public Disclosure

Prototype	Bldg/Acre	Stage 1		Stage 2		Stage 3		Phase 1 Total	
		Net Acres	Units	Net Acres	Units	Net Acres	Units	Net Acres	Units
Affordable Residential									
Multi-Family High	60	0	0	2	200	2	162	4	362
Multi-Family Mid	35	0	0	1	18	8	283	9	311
3-Story Attached Flat	25	0	0	0	0	0	0	0	0
3-Story Townhome	20	5	105	0	0	0	0	5	105
Premier Multi-Family Signature Housing (1)	30	9	125	0	0	0	0	8	125
Incubatory (2)		0	0	3	32	1	63	4	165
Total Affordable Units		14	230	5	330	11	508	31	1,098
% Affordable									25%
Market Rate Residential									
Multi-Family High	90	0	0	2	205	9	835	12	1,040
4-Story Attached Flat	30	0	0	7	215	0	0	7	215
3-Story Attached Flat	25	0	0	4	50	1	34	5	133
3-Story Townhome	20	6	123	5	100	2	35	13	268
2-Story Townhome	15	0	0	7	100	2	34	8	134
Small Lot Duplex	14	48	673	12	154	16	255	78	1,092
Traditional / Midcourt SFD	8	82	818	15	202	0	0	53	921
Total Market Rate Units		19	1,615	32	1,086	33	1,183	177	3,394
Total Residential Units		21	1,845	37	1,316	44	1,781	208	4,392
Non-Residential Development									
Commercial Floor	14	0	0	32	0	0	0	47	0
Flex Office Campus	0	0	0	0	0	14	0	14	0
Total Non-Residential Development		14	0	32	0	14	0	64	0
TOTAL (2)		110	1,345	109	1,386	62	1,781	272	4,392
Footnotes:									
(1) Includes BART property, including high density residential units, most of BART commercial center, and portion of Fox Chase Campus									
(2) Assumes a total of 10 gross acres will be subdivided towards premier and mid-tier signature housing. Average allocation for the family and additional land dedicated is assumed to be subdivided over two Commercial									
(3) Includes housing represents six percent of the planned site housing									
(4) The plan vision anticipates 100 gross acres dedicated to parks and recreation, sports, community centers, and services and utilities for a									
(5) The plan vision anticipates 200 gross acres for a									

(1) Assumes a total of 10 gross acres will be subdivided to provide primary residential housing. Assumed allocation of the land and additional land dedication is assumed to be subdivided into the Commercial Floor Office Campus.

(2) Incubatory housing represents five percent of the total affordable housing.

(3) 272 net acres corresponds to approximately 282 gross acres. In addition, the Phase 1 units representing 105 gross acres allocated to parks and recreation, schools, community centers, and service and utilities, for a total Phase 1 of approximately 280 gross acres.

(4) 1,098 net acres corresponds to approximately 1,108 gross acres. In addition, the Phase 1 units representing 105 gross acres allocated to parks and recreation, schools, community centers, and service and utilities, for a total Phase 1 of approximately 1,100 gross acres.

EXHIBIT H
CONCORD EDC PROPERTY IMPROVEMENTS PROGRAM
(Term Sheet)

This form of EDC Property Improvements Program is part of the Term Sheet and is intended to form the basis for negotiation of a full EDC Property Improvements Program (the "**EPIP**") to be attached to the Disposition and Development Agreement ("**DDA**") by and between the City of Concord and Lennar Concord, LLC.

1. PURPOSE.

The purpose of the EPIP is to provide for the delivery and/or funding of community benefits associated with the Project by Developer. Eight categories of community benefits are identified:

"Project Elements Conferring EDC Benefit": Core elements of the Project that are required in some form and confer benefits to the EDC Property.

"Local Hiring, Vocational Programs, Local Builders": Proposed hiring, vocational, and apprenticeship programs as well as programs to create opportunity for vertical builders within the local community.

"Affordable Housing": Developer's commitment to deliver affordable housing sites within the Project.

"Community Centers and Spaces": Specialized recreational facilities offering unique programming and benefits to the Concord community.

"Tournament Park": Developer's proposal to include a Specific Plan land use alternative that would evaluate inclusion of the infrastructure to serve a state-of-the-art tournament park with specialized sports facilities capable of hosting regional sporting events and tournaments.

The **"Concord Circulator":** A transit resource designed to knit together the Project with the existing Concord community.

"EPIP Fund": A proposed range of programs and improvements benefitting the EDC Property among which the City may select to implement with Project-generating revenues. Developer will contribute \$20,000,000 from Project revenues to fund these programs and improvements. The list of programs and improvements identified are meant to reflect current priorities described in the City's planning documents. Additional or alternative programs and improvements may be identified through the Specific Plan process.

"City Participation": City's participation in Project profits as described in Exhibit F.

2. PROJECT ELEMENTS CONFERRING EDC BENEFIT.

- 2.1 General.** Developer shall deliver or fund (or cause to be funded) the following Project Elements Conferring EDC Benefit, as listed below in Section 2.2. Developer's obligations to provide the benefitting facilities described in this Section 2 are currently estimated to cost over \$83,000,000 as reflected on the Proforma.
- 2.2 Project Elements Conferring EDC Benefit.** The Project Elements Conferring EDC Benefit consist of:
- 2.2.1 Public Schools.** One of the following options to be selected in consultation with the Mt. Diablo Unified School District ("District"): Developer offers to comprehensively refurbish the existing Holbrook Elementary School in Development Stage One. Or, if District prefers investment in a new facility instead of refurbishment, Developer would construct an approximately 10-acre K-8 public school in Development Stage Three to serve students within the Project and the greater Concord area along with funding for specialized programming and potential refurbishment of certain other existing school facilities. If student demand shows K-8 facilities are required earlier, development of the K-8 school may be accelerated to Development Stage Two.
- 2.2.2 Parks, Open Space and Greenways.** Development of approximately 79 acres of improved parks, greenways, and open spaces, including the Ridgetop Park and the extension of Ridgetop Trail to connect Ridgetop Park to Willow Pass Road, all as shown in Exhibits A and C-E to the Term Sheet.
- (a) Parks, open space and greenways shall be designed with wildlife crossings and wildlife movement as a priority, where applicable.
 - (b) Parks shall have limited roadways designed to be minimally intrusive, shall accommodate bicycle traffic, be designed with traffic calming features and for vehicular exclusion for special events, high pedestrian/bike uses, etc. Roads crossing the parks shall be limited to the extent feasible and designed in a manner that protects pedestrian connectivity and recreational use. Designation of uses and amenities for parks shall be identified through a community process to determine priorities and uses.
 - (c) Phasing of these parks (as described in Section 2.2.2), greenways, and open spaces will be as follows:
 - (i) 43 acres in Development Stage One

- (ii) 28 acres in Development Stage Two; and
- (iii) 8 acres (the Ellipse Park) in Development Stage Three.

2.2.3 Habitat Mitigation & Enhancement. Consistent with the CRP Area Plan and requirements imposed by natural resource agencies, Developer will provide for the long-term protection and enhancement of wetlands, riparian areas, and special status species habitat. The majority of protected and enhanced habitat is expected to be on the approximately 2,700 acre Public Benefit Conveyance portion of the Concord Naval Weapons Station that is adjacent to the Development Footprint. The Project's system of parks and greenways will connect the Project to the protected open spaces surrounding the habitat areas for the recreational enjoyment of the community.

3. LOCAL HIRING, VOCATIONAL PROGRAMS, LOCAL BUILDERS.

- 3.1 Local Hire Program.** Implementation of the City's good-faith Hire Concord First goal that 40% of the construction workforce is comprised of local residents (Concord first, then Contra Costa County). Developer and Vertical Developers would require contractors and vendors to make good faith efforts to hire from within the City of Concord, and would then look to other residents of Contra Costa County, and then the region. Developer will also coordinate with the Greater Concord Chamber of Commerce, the Mt. Diablo Unified School District, East Bay Works, the Contra Costa Workforce Development Board, California State University East Bay, and the California Employment Development Department to enhance opportunities for local employment and training.
- 3.2 Vocational Training & Apprenticeship Programs.** Developer will work with Project contractors to facilitate vocational programs for Project residents and/or Concord residents generally. Such programs would create gateways to career development, including for permanent operational jobs. Vocational training programs may be coordinated with Mt. Diablo Unified School District, East Bay Works, the Contra Costa Workforce Development Board, California State University East Bay, and the California Employment Development Department.
- 3.3 Veteran-Focused Training & Employment Opportunities.** Developer will work with Project contractors to facilitate programs designed to provide transitional job-training, counseling, and incentive programs to promote hiring and advancement of military veterans. (For example, Helmets-to-Hardhats or similar programs.)

- 3.4 **Vertical Developers & Local Opportunity.** Developer will sell land corresponding to at least 40% of the total residential units (including affordable units) within Development Phase One to third-party vertical developers. Developer is also committed to implementing Hire Concord First policies by maximizing development opportunities, at competitive prices, for local development firms. Opportunities would be for residential, commercial, and recreational facilities and would focus on Concord first, then Contra Costa County or the nine Bay Area counties.

4. **AFFORDABLE HOUSING.**

- 4.1 **Generally.** Developer will satisfy the 25% affordable housing requirement identified by the City in the CRP Area Plan. Developer will deliver development-ready pads ("***Affordable Housing Pads***") sufficient to accommodate 1,098 units of affordable units at a range of affordability levels (to be determined by the City for consistency with Housing Element goals and objectives) and throughout each Development Stage within Development Phase One.

- 4.1.1 Affordable Housing Pads will have undergone appropriate environmental and/or resource agency permitting (as required) and will be free and clear of liens.
- 4.1.2 Affordable Housing Pads will include utilities to the curb line, and will not require major grading. Affordable Housing Pads shall be provided with adjoining streets in place and all wet and dry utilities available at the adjacent right of way, adequately sized to accommodate the anticipated number of new dwelling units.
- 4.1.3 Affordable Housing Pads shall be comparable to adjacent market rate sites in terms of cross slope, subsurface soils conditions and regularity of the parcel.
- 4.1.4 Affordable Housing Pads shall be distributed throughout the Project with the same advantages and desirability as market rate sites, including access to transit and amenities.
- 4.1.5 Affordable Housing Pads will be of appropriate size to incorporate the corresponding development density, and for purposes of assigning sites, the capacity of any given affordable housing site shall be based on the underlying density allowed for market rate units, without relying on potential density bonuses.

- 4.2 **Additional Developer Funding and Commitments to Ensure Delivery of Affordable Housing Units.** In addition to its satisfaction of existing requirements through delivery of development-ready pads, Developer proposes a comprehensive affordable housing program to ensure actual delivery of 810 affordable homes. Developer's program includes:

- 4.2.1 Developer Provided Gap Subsidies.** Developer will provide a specific affordable housing gap subsidy of \$40,000,000, including for low and very-low income housing. This funding is separate from the EPIP Fund, and Developer anticipates that this subsidy will yield 400 affordable homes.
- 4.2.2 Mixed-Income 80/20 Projects.** Developer or one of its vertical developers shall provide 100 affordable units for low-income families at 50% AMI or less within mixed-income, higher density portions of the Project in buildings where 80% of units are market rate and 20% are affordable ("*80/20 Projects*"). Developer will pursue 4% affordable housing tax credits for 80/20 Projects
- 4.2.3 Permanent Multi-Family Supportive Housing.** In Development Phase One, Developer will dedicate approximately 10 acres for satisfaction of the City's existing commitments to facilitate development of approximately 125 units of permanent multifamily supportive housing. Permanent multifamily supportive housing will be located adjacent to one or more other affordable housing developments in order to facilitate provision of supportive services and programs to the residents of such permanent multifamily supportive housing.
- 4.2.4 Self-Help Housing.** Developer will donate approximately two (2) acres of development-ready property to one or more self-help housing developers for development of low or very low-income homes at approximately 10 units per acre, resulting in 20 affordable homes.
- 4.2.5 Inclusionary Housing.** In addition to the dedication of development-ready sites and Developer funding as described above, Developer will require vertical developers (including Developer, Affiliates of Developer and third-party developers) to provide inclusionary units in an amount equal to 5% of the market-rate units proposed within Development Phase One which will result in approximately 165 affordable homes (5% of the 3,294). These inclusionary units shall be affordable to moderate income households, shall be located within high-density residential product types, and shall be distributed among Development Stage Two and Development Stage Three.
- 4.3 Other Federal, State, and Regional Funding Sources.** Additional funding will be required for affordable housing developers to deliver the remainder of the City's goal of 1,098 affordable units in Development Phase One. Developer's internal team has secured funding for thousands of affordable units of all product types or related infrastructure, in both urban and suburban settings, through sources including Low Income

Housing Tax Credits (both 4% and 9%), HUD's Supportive Housing Program (SHP), HUD HOME Program, HUD 202 and 811 Programs, the Federal Home Loan Bank Affordable Housing Program, California Proposition 46 Multifamily Housing Program, California Proposition 1C, Transit Oriented Development Grant Program, Infill Infrastructure Grant Program, Strategic Growth Council's Affordable Housing and Sustainable Communities Program, Cal ReUSE Brownfield Funding, California Proposition 63 - Mental Health Services Act Funding. Developer will put this experience to work, alongside the City and affordable housing partners, to leverage the maximum possible amount of available government funding from these programs and any new state or federal programs developed in the coming years. Moreover, Developer will pursue government funding specific for veterans housing, including through the U.S. Department of Housing and Urban Development's Veterans Affairs Supportive Housing Program, and the California Department of Housing and Community Development's Veterans Housing and Homelessness Prevention Program.

4.4 Affordability Levels & Senior, Veteran, Workforce, and Special Needs Affordable Housing.

Affordable housing constructed on development-ready sites delivered by Developer shall be focused in medium-to-high density areas. When identifying affordable housing developers to build the affordable housing sites described in Section 4.1, Developer will -- in addition to opportunities for individuals and families -- create opportunities for a range of affordable housing types, including:

4.4.1 Senior or Active Adult Affordable Housing

4.4.2 Veterans Affordable Housing

4.4.3 Workforce Affordable Housing (for local teachers, firefighters, police, etc.)

4.4.4 Affordable Housing for Individuals with Special Needs.

4.5 Affordable Housing Development Partners. Developer will make reasonable good faith efforts to select, through a competitive process, local or regional non-profit, mission-driven affordable housing developers which are based in the Bay Area to develop the affordable rental housing counted toward the 25% obligation described in section 4.1 above.

5. COMMUNITY CENTERS AND SPACES.

5.1 General. Developer will provide two community centers -- one in Development Stage One and another in Development Stage Two -- offering a range of specialized facilities and programming that will complement other, future community centers outside of Development

Phase One and will offer recreational opportunities to both Project residents and the rest of the Concord community.

- 5.2 **Improvements & Programming.** The mix of facilities and programming to be included in any particular community center shall be subject to coordination and agreement between the City and Developer, but may include, for example, the following:

- 5.2.1 **Oasis-Themed** including features like indoor/outdoor yoga studio, fitness center with pilates studio, lap pool, and zen garden.
- 5.2.2 **Sky-Themed** featuring a small outdoor performance venue, bike repair station, artist pavilion, rotating public art showcases, and dedicated "hackable" space (with rotating public sculptures, flexible meeting space, and wall art).
- 5.2.3 **Earth-Themed** featuring a farmer's market, a seasonal flower mart (including pumpkin patch, Christmas tree lot, etc.), a children's aquarium or museum focused on wildlife.
- 5.2.4 **Grass-Themed** featuring a small scale sporting venue (for track and field, seasonal ice skating, etc.); flexible outdoor space for bocce ball, horseshoes, or oversized chess; or an urban playground with a concrete slide or skate park.
- 5.2.5 **Water-Themed** featuring a reflecting pool, hammock park, timed fountains or waterfalls, and outdoor kitchen and grills.

6. **TOURNAMENT PARK.**

- 6.1 Developer proposes to include a Specific Plan land use alternative that would evaluate inclusion of the Tournament Park infrastructure in Development Phase One along with an expanded Development Phase One footprint to accommodate acceleration of the Tournament Park. Developer will extend Backbone Infrastructure and provide grading and site preparation work to serve the Tournament Park.

7. **CONCORD CIRCULATOR.**

- 7.1 **General.** During preparation of the Area Plan, the Concord community strongly expressed its desire for "One Concord." Advancing this goal requires strong, reliable, and user-friendly transit connections between the Project and the rest of the community.
- 7.2 **Concord Circulator.** To ensure both that existing Concord residents can take advantage of new amenities offered by the Project and that Project residents will contribute to the economic vitality of the existing community, Developer will establish and fund the Concord Circulator. The Circulator

will provide reliable, scheduled transit connections to BART (either North Concord/Martinez or Downtown Concord), park and open space facilities within the Project, and key downtown business centers (including Todos Santos Plaza). Developer will subsidize initial capital cost of vehicles and operation of the Circulator for approximately three years commencing in Development Stage One, after which operations could become integrated into the County Connection transportation system or become the responsibility of the Project's master homeowners association. City would not fund capital costs or operation of the Concord Circulator. Developer shall consider use of public sector employees (i.e. County Connection drivers) to staff the Concord Connector.

8. EDC PROPERTY IMPROVEMENTS PROGRAM FUND.

- 8.1 General.** As to the range of potential Project improvements described in this Section 8, the Parties acknowledge that the City is best situated to determine, based on its priorities, which improvements provide the greatest value to the Project and its future residents, businesses and visitors. Developer will contribute **\$20,000,000** to an EPIP Fund. The EPIP Fund is to be paid in approximately \$2M annual increments over 10 years (adjusted annually for inflation) commencing with the first land sale by Developer.
- 8.2 Project Improvements.** The City may elect to dedicate the EPIP Fund to any of the following benefits. During negotiation of the DDA, the City and Developer may further refine this list and shall provide details on how ongoing funding will be provided for any long-term programs.
- 8.2.1 Affordable Housing Gap Subsidy.** Gap subsidies for affordable units on the Development Phase One Property in order to leverage and layer additional funding that may be required from federal, state, regional and conventional financing and philanthropic sources. The Parties agree that the City may inform income eligibility limits and/or the amount of overall housing, subject to compliance with governing law and conformance with any related project approval. This additional gap subsidy would be in addition to, and separate from the \$40,000,000 Developer-provided affordable housing gap subsidy described in Section 4.2.1.
- 8.2.2 Project Housing Fund.** Contribution to a Project Housing Fund, which will be used to assist qualifying residents to purchase residential units in Development Phase One through opportunities such as down payment assistance, rent-to-own opportunities, purchase of buildable pads, and/or the purchase of units, including those specifically designed for senior citizens.

8.2.3 Educational Benefits.

- (a) *Scholarship Funding.* Funding to assist youth (and/or adults up to a certain age) with the cost of tuition and/or educational materials for courses offered by colleges, universities, and/or technical and trade schools recognized by appropriate educational accreditors.
- (b) *Education Improvement Funding.* Funding for education enhancements (distinct from the development or refurbishment of core school facilities), which may include new facilities or upgrades to educational resources to promote health and wellness (including e.g., new specialized sports facilities).

8.2.4 Health and Wellness.

- (a) *Wellness Contribution.* Funding to subsidize facilities and/or programming associated with improving public health and wellness, which may, for example, include the creation/expansion of clinics, physical fitness centers and programming, access to healthy food, and pediatric programs.
- (b) *Support of Access to Healthy Foods.* Funding and/or other support (e.g., subsidized or free access to commercial space) for access to fresh, healthy, locally-grown and organic food by accommodating community gardens, farmers markets, and local markets.
- (c) *Urban Agriculture.* Funding and/or other support for urban agriculture, including small crop production and community gardening in appropriate locations.

8.2.5 Business Development and Community Asset Building.

- (a) *Insurance and Credit Support for Small, Local Contractors.* Financial support for a surety bond and credit support program for use by small, local contractors in connection with the Project. The program would provide security to assist in obtaining insurance and credit support that may be required in order to participate in the development of the Project.

8.2.6 Emerging Technologies.

- (a) *Emerging Technologies.* Provide funding and/or commercial space to support facilities for emerging technologies, such as alternative fueling stations.
- (b) *Electric/Autonomous Vehicles.* Implement street design, circulation system, and design benefits in order to enhance the use of electric and/or autonomous vehicles.

8.2.7 Resource Conservation and Restoration.

- (a) *Public Education Programming.* Funding or development of programming to educate and inform residents about the unique natural resources within the Project area as well as ongoing conservation and restoration efforts.
- (b) *Stewardship Programming.* Funding or development of programs to encourage community volunteerism and stewardship in the protection and restoration of natural resources.

8.2.8 Arts and Cultural Facilities and Programming. Funding or development of facilities and programming (in conjunction with appropriate Concord-based entities as identified by the City) to promote local artistic and cultural activities.

8.2.9 Library or Other Civic Uses. Funding for development by the City or non-profit organizations of a community reading room, library, or other similar civic uses.

9. CITY PARTICIPATION.

- 9.1 General.** In addition to contribution of the EPIP Fund described in Section 8.1, Developer will make a contribution to the City through application of a profit participation formula more fully described in Exhibit F, and which provides the City backend participation after Developer reaches a 20% unlevered investment rate of return. It is anticipated based on the Proforma's current projections that this profit participation model will yield a return to the City of approximately \$23.5 Million. Developer and City acknowledge the need to negotiate the terms for conveyance of property from the Navy. Any land acquisition payment required to be made to the Navy (which could include an up-front payment, a participation framework, or some other structure) would be considered a project cost for purposes of the Proforma.

Exhibit I

Backbone Infrastructure by Development Stage



**Carlson, Barbee
& Gibson, Inc.**

CIVIL ENGINEERS • SURVEYORS • PLANNERS

EXHIBIT I

June 23, 2015
Job No.: 2431-000
Revised: April 22, 2016

Summary of Major Infrastructure Stages 1-3 Concord Reuse Plan Concord, California

STAGE 1

- Site Preparation, Demolition and Grading
- Backbone Roads and improvement of Willow Pass Road to four lanes from Highway 4 to Landana Drive
- Additional two lane Willow Pass Road Bridge
- Backbone Trunk Sewer and Off-Site Trunk Sewer (depending on availability of interim capacity within the existing system)
- Backbone Storm Drain Including Stormwater Quality and Detention Basins
- Backbone Potable Water, Zone 2 Reservoir and Off-Site Water Extension from Bates Avenue / Port Chicago Highway
- Backbone Recycled Water Mains
- Backbone Dry Utility System
- Neighborhood Park
- Community Center
- Rehabilitation / Improvements to Holbrook Middle School
- Fire Station
- Corporation Yard
- PG&E Substation Site

STAGE 2

- Site Preparation, Demolition and Grading
- Backbone Roads, Interim Connection to Panoramic Drive, and improvement of the Arnold / Port Chicago Highway Intersection.
- Contra Costa Canal Crossings
- Backbone Trunk Sewer
- Backbone Storm Drain Including Stormwater Quality and Detention Basins
- Backbone Potable Water
- Backbone Recycled Water
- Backbone Dry Utility System
- Neighborhood Park
- Community Center

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OAK #4839-4358-5573 v23

Exhibit I-1

STAGE 3

- Site Preparation, Demolition and Grading
- Backbone Roads, Permanent Connection to Panoramic Drive and Improvement of the Panoramic / Port Chicago Highway Intersection
- Contra Costa Canal Crossings
- Backbone Trunk Sewer
- Backbone Storm Drain Including Stormwater Quality and Detention Basins
- Backbone Potable Water
- Backbone Recycled Water
- Backbone Dry Utility System
- Neighborhood Park
- Middle School

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