Staff Report

Date: May 11, 2016

To: City Council/City Council Sitting as the Local Reuse Authority

From: Valerie J. Barone, City Manager

Prepared by: Guy S. Bjerke, Director, Community Reuse Planning
Guy.Bjerke@cityofconcord.org
925 671-3076

Subject: **Presentation of a Revised Lennar Term Sheet and Consideration of Staff's Recommendation that City Council Select Lennar Concord LLC as the Master Developer for the Development Phase One Property at the Concord Naval Weapons Station and Proceed to the Disposition and Development Agreement (DDA) Stage of the Negotiation Period, as defined in the Agreement to Negotiate between the LRA and Lennar**

Report in Brief
On May 3, 2016, due to a lack of quorum, the City Council adjourned the meeting pursuant to Government Code Section 58955. The meeting was adjourned to May 11, 2016, 6:30 p.m. This item from the May 3, 2016 agenda was continued to the agenda of May 11, 2016. Attached is the May 3, 2016 Staff Report in its entirety, along with correspondence received after the posting of the May 3, 2016 agenda and prior to the posting of the May 11, 2016 agenda.

LRA staff has further negotiated with Lennar Concord LLC (Lennar) to include a new provision in the Revised Lennar Term Sheet that will provide a LRA right of access to any parcel in default for the purpose of using subdivision bonds to complete infrastructure. Section 22 – Remedies is being clarified to more clearly spell out the remedies that would be available to the LRA in the event of a Developer default. Section 24 – Transfer of Remainder of Development Footprint is also being clarified. The current section title does not accurately describe both sub-paragraphs under it. See Attachment 2 to this staff report. (This document will be available on Monday, May 9, 2016)

On Tuesday, May 3, 2016 Lennar Urban informed the LRA that Lennar Corporation is contributing several of its assets to FivePoint Holdings LLC and that other projects in which the Lennar Corporation retains an ownership interest will be managed by FivePoint Holdings LLC. FivePoint Holdings LLC will also manage Lennar Concord LLC, as a Lennar Corporation asset, as proposed in Section 25. b. ii. of the Revised Lennar Term Sheet.

Public Contact
The City Council Agenda was posted.

Attachments
1. May 3, 2016 Staff Report
2. Additional Provision/Clarification to the Revised Lennar Term Sheet (Will be available Monday, May 9, 2016)
3. LRA Staff Response to Hope Johnson Letter
4. Correspondence received

ATTACHMENT 1

Staff Report

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Report in Brief

On April 5 and April 13, 2016 the City Council sitting as the Local Reuse Authority (LRA) heard presentations from staff and Lennar Concord LLC ('Lennar'), and received public testimony on Lennar's Term Sheet. The LRA deferred selection of Lennar as the Master Developer for the Development Phase One Property and, directed staff to negotiate further on several key issues, and provide information/additional analysis of options for moving forward.

LRA staff and consultants have met with Lennar to discuss improvements and clarifications to their Term Sheet. We have also reviewed the alternatives to selecting a Master Developer to determine whether any one of them is a viable or superior approach for Concord. This staff report provides analysis of both efforts.

Attachment 1 to this report is an improved Term Sheet that Lennar is committed to sign ('Revised Lennar Term Sheet'). (Attachment 2 is a redlined version of the Revised Lennar Term Sheet comparing it to the version attached to the September 29, 2015 staff report ('Original Lennar Term Sheet'). The Revised Lennar Term Sheet responds to all of the issues raised by the LRA. The Revised Lennar Term Sheet meets or

exceeds many of the provisions of the September 29, 2015 version of the Catellus Term Sheet, which led LRA staff to recommend selection of Catellus over Lennar.

Lennar has updated the financial pro-forma supporting the Revised Lennar Term Sheet, to show more revenue from land sales, and $49.6 million in additional project infrastructure costs, amenities and benefits. These additional costs include $40.0 million for affordable housing gap subsidies and $15.7 million for Willow Pass Road and bridge improvements. As a result of the additional affordable housing commitment, Lennar has reduced the guaranteed EPIP (community benefits) Fund by $10.0 million, to a new sum of $20.0 million, but Lennar also reduced the Internal Rate or Return threshold for LRA profit participation to 20 percent, from 25 percent in the Original Lennar Term Sheet. This change, together with higher overall net revenues from completion of the Development Phase One Property indicates that the LRA share of profits that could be used at the LRA's discretion for the benefit of the property to be transferred to the LRA by the U.S. Navy would total $23.5M, although this sum is not guaranteed.[1]

In addition, Lennar has now agreed to:

- Remove requirements for binding arbitration over any disputed City costs
- Remove its option to purchase additional Economic Development Conveyance (EDC) property for future development phases; maintain completely open book accounting of the project
- More clearly specify its intention to take down the Development Phase One Property for infrastructure installation in small parcels, leaving the ownership of the remaining land with the LRA until needed for development
- Clarify that the LRA will retain ownership of all land outside of the Development Phase One Property for future development and/or land leasing opportunities
- Prepare the Specific Plan concurrent with negotiations for a Disposition and Development Agreement (DDA)
- Via the Specific Plan, explore ways to expedite transit-oriented development (TOD) around the BART station, rollout of Transportation Demand Management (TDM) programs and offsite infrastructure for traffic mitigation and infrastructure for the proposed tournament sports facility.

Project structure and management have been clarified showing that Lennar Concord LLC will be an asset of Lennar Corporation. Per the Revised Lennar Term Sheet, the DDA will include procedures and LRA oversight that ensure the Lennar Concord LLC will be adequately funded to perform all development obligations.

[1] In the September 29, 2015 staff report, nominal dollar values were reported for both Lennar and Catellus financials because Catellus did not provide constant dollar values in its financials. Because this staff report only refers to numbers in the Original and Revised Lennar Term Sheets, LRA staff elected to use constant dollar values in the text of the term sheet. However, if they are needed for reference, all of the relevant nominal dollar values associated with the Original Lennar and Catellus term sheets are available in the September 29, 2015, staff report.

In staff's analysis of alternatives to selecting Lennar we found significant hurdles and adverse ramifications to either restarting the Master Developer Selection process or employing an alternative implementation approach. This is discussed in Section 3 under Analysis in this report.

Recommended Action
Staff recommends that the City Council sitting as the LRA: (i) accept the Revised Lennar Term Sheet; (ii) select Lennar as the Master Developer for the Development Phase One Property; and (iii) direct staff to proceed to the DDA Stage of the Negotiation Period (as defined in the Agreement to Negotiate between the LRA and Lennar).

Adopting staff's recommendation directs the LRA and Lennar teams to negotiate and draft a comprehensive DDA for approval by Lennar and the City Council during which Lennar will further refine its development program so that the LRA, with Lennar's cooperation and assistance, can complete its business plan for the LRA's EDC application and negotiate land value sharing with the Navy.

Background
On April 13, 2016, the LRA, after extensive public comment, identified a number of issue areas that required further explanation, analysis and/or improvement in the Original Lennar Term Sheet. To assist in the discussion, staff has organized the analysis below into three sections:

Section 1 – Lennar Term Sheet Revisions
Section 2 – Explanation/Clarification of Issues That Did Not Require Changes in the Revised Lennar Term Sheet
Section 3 – Alternatives to Selection of a Master Developer

As the reader reviews the information in the Analysis section below, it is important keep in mind the areas of the 2,200 acre EDC portion of the Concord Naval Weapons Station (CNWS) that are under consideration for transfer and subsequent development. As illustrated in Figure 1, there will be approximately 1,100 acres in the initial EDC land transfer from the Navy. The initial transfer acreage will be in the LRA ownership at completion of the transfer. Also shown in Figure 1 is the initial Development Phase One Property footprint of 500 acres as proposed by Lennar for which a DDA will be negotiated. The LRA will retain ownership of all transferred EDC land outside of the Development Phase One Property footprint. In addition, the LRA will continue to own the land within the Development Phase One Property footprint until such time as individual parcels are released for development. There will be between 8 and 10 parcel releases before the entire 500 acres would be transferred to Lennar. Further, there will be additional Navy conveyances to the LRA to transfer the remaining 1,100 acres of the EDC portion of the CNWS, which will involve two to three subsequent development phases that will have separate DDA's guiding development.

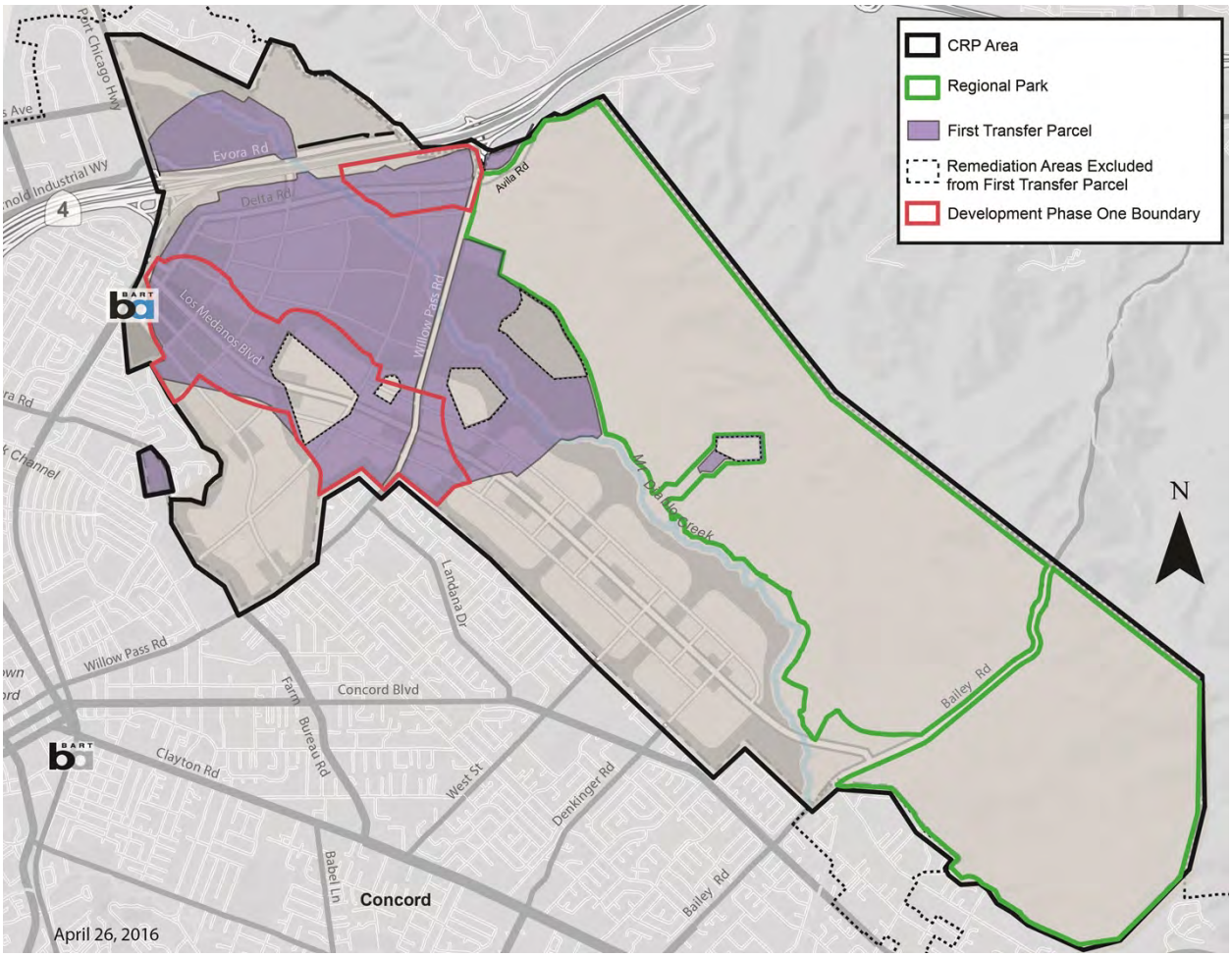


Figure 1

Analysis

Section 1 - Term Sheet Revisions

1. Affordable Housing Requirements

Section 3 d. of the Revised Lennar Term Sheet (pages 7-9) addresses clarifications and changes to the provisions governing development of affordable housing. Lennar continues to be committed to providing improved building pads with utilities stubbed out at the property line to accommodate approximately 1,100 units of affordable housing that will be affordable to households earning less than 80 percent of Area Median Income (AMI). These free, improved sites represent one form of subsidy to encourage development of affordable housing, and have an estimated value of $60 million. In addition, Lennar has added $40.0 million in gap funding to help non-profit developers raise the additional funding that will be required to build affordable housing for low- and very low-income residents. Lennar will also provide improved development pads and

utilities at no cost for approximately 125 units of homeless housing (per Legally Binding Agreements with HUD and homeless housing providers) and 20 units of self-help housing as part of the overall commitment that 25 percent of the Phase One Development Property housing will be affordable. Lennar, or a vertical developer, will also provide up to 100 units for low-income families with incomes of less than 50 percent of AMI within mixed income projects where 80 percent of the units are at market rate and 20 percent are affordable. These various subsidies will collectively assist production of approximately 810 units of housing affordable to very low- and low-income households. Lennar will work with housing advocates to find other sources of state, federal and regional funding and, in particular, funding that could support low-income housing specifically for veterans. Lennar's affordable housing program will now subsidize more very low- and low-income housing units than the proposal by Catellus.

2. Tournament Sports Park

Section 3 g. (4) ii of the Revised Lennar Term Sheet (page 12), commits Lennar, as part of the project's infrastructure costs, to extend utilities and access to the site of the proposed tournament sport complex. Expansion of the infrastructure and evaluation of the sports complex facility in the Specific Plan could help kick start this important community benefit as part of the initial phase of development.

3. LRA Retention of Land for Direct Leasing

The total acreage in the first land transfer to the LRA will be approximately 1,100 acres. The LRA will retain ownership of 600 acres during and at the conclusion of Development Phase One. As noted in the Revised Lennar Term Sheet, Section 24 (page 35), Lennar has no rights with respect to the balance of the first transfer parcel (i.e. approximately 600 acres) or any other land outside of the Development Phase One Property footprint and, therefore, the LRA can, at its sole discretion, sell or lease all or a portion of such land to another party or self-develop property to create future LRA revenues for the benefit of the EDC property. The concept of self-development by the LRA will be considered in the Specific Plan for land outside of the Development Phase One Property footprint.

4. Backbone Infrastructure and Offsite Roadway Improvements

Backbone Infrastructure and offsite roadway improvements are addressed in Section 6. a., c. and e. (pages13/14). The Revised Lennar Term Sheet now includes the full expansion of Willow Pass Road in the Specific Planning process and implementation of the expansion once approved in the Specific Plan and certified in compliance documents under the California Environmental Quality Act (CEQA). The Backbone Infrastructure will be delivered on a parcel-by-parcel basis in accordance with a master utility plan so that the infrastructure is oversized to accommodate future development located outside the boundaries of the Development Phase One Property.

5. Future Development Rights
In the Original Lennar Term Sheet, Lennar retained an option to acquire and develop additional phases of the EDC Property if it met certain basic performance milestones. As described in the September 29, 2015 staff report, LRA staff identified Lennar's option to purchase remaining phases as a business term that was not in the LRA's best interest. As Lennar committed to at the April 5 meeting and as reflected in the Revised Lennar Term Sheet, Section 24 (page 35), Lennar has now agreed that it would have no automatic rights to acquire or develop any portion of the balance of the EDC Property. While the LRA would have the option to select Lennar as the Master Developer for future phases of the EDC Property without having to go through a new competitive selection process, the decision to do so would be entirely within the City Council's discretion and would be further conditioned on Lennar not being in default under the Development Phase One Property DDA. Consistent with the terms that Catellus previously offered under its Term Sheet, the Revised Lennar Term Sheet would require a different Master Developer of future phases of the EDC Property to reimburse Lennar for a fair share of the costs incurred by Lennar to construct oversized utilities, school facilities, habitat and species mitigation work and similar improvements to the extent such Lennar work benefits the applicable future phase of the EDC Property.

6. Binding Arbitration of LRA Cost Disputes
As noted in Section 8.f.iii (page 20), the Revised Lennar Term Sheet no longer requires binding arbitration to resolve disputes over LRA costs to negotiate agreements for, process permits for and monitor implementation of the Development Phase One Property.

7. Traffic Mitigation Studies
Exhibit I to the Revised Lennar Term Sheet provides a full listing of all onsite/offsite roadway improvements that are presently proposed to mitigate traffic. Lennar is obligated to fund those improvements. In Section 7.c. (page 18) of the Revised Lennar Term Sheet, Lennar acknowledges that a full and updated transportation impact analysis and nexus funding study will be completed as part of the Specific Plan. The nexus study will determine the need and timing for further local and regional traffic improvements and mitigation measures and set the projects fair share of the implementation costs.

8. Open Book Accounting
The Revised Lennar Term Sheet proposes a deal structure that aligns public and private interests through an open sharing of annual information with the LRA about project revenues, costs, net cash flow, profits, and provides the LRA with inspection and audit rights.

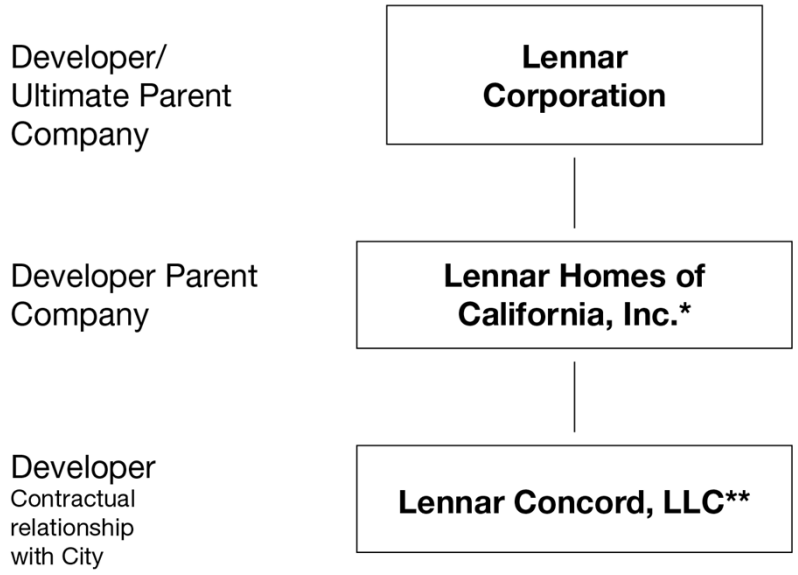
9. Protection of City Interests in the Property and Security of Developer Obligations

As noted in Section 25 a. i-iv (pages 36/37), of the Revised Lennar Term Sheet, upon the completion of the first EDC land transfer from the Navy, the LRA will initially own all the property within the proposed Development Phase One Property footprint. The Development Phase One Property footprint will consist of multiple discrete parcels. Ownership will be conveyed to Lennar in small increments (40-60 acres) -- one parcel at a time -- and only when Lennar is prepared to immediately commence development of Backbone Infrastructure, parks, and public facilities on the parcel. The LRA will retain fee ownership of all land other than the parcels conveyed to Lennar for such development. No land will transfer to Lennar unless and until the LRA staff determines that Lennar has satisfied the following conditions, among others, prior to the close of escrow:

A. Evidence of Funding
B. Posting of Improvement Bonds
C. Insurance Policies
D. Commitment to Performance schedules set by the LRA

10. Corporate structure and Capitalization of the LLC

Section 25 b. I 1-5. (pages 37-39) of the Revised Lennar Term Sheet addresses issues of corporate structure and capitalization of Lennar Concord, LLC. Use of a special purpose entity, such as a limited liability company is the industry standard for real estate development in the United States. Developers form such special purpose entities in connection with virtually all development projects. Lennar is not unique in this regard as Catellus also intended to create a special purpose LLC entity in connection with its proposed project. Creation of special purpose entities serves to insulate a developer and its investors from financial problems that may occur on a separate development project in another location. Such special purpose entities are also typically required by lenders as a condition of providing construction financing for a development project. In the early stages of the project (i.e., during planning, design and entitlement stages) Lennar Concord, LLC will be funded through capital contributions by its parent company, Lennar Corporation. The relationship between Lennar Corporation, Lennar Concord LLC, and other entities is illustrated below. As the commencement of Backbone Infrastructure approaches, it is likely Lennar Concord, LLC will seek additional, diversified sources of funding, including construction financing and possibly investment capital. Prior to making any changes to its corporate structure or capitalization plans, Lennar would have to seek LRA approvals. Staff believes that under this arrangement the LRA/City's interests will be protected.



* Wholly owned by Lennar Corporation
** Wholly owned by Lennar Homes of California, Inc.

11. Expedited Transit-Oriented Development (TOD)
Section 25.c. i-vii. (pages 39-40) of the Revised Lennar Term Sheet address Lennar's commitment to expedite TOD at the earliest possible stage, subject to concurrence of BART in connection with planning for development of its property.

12. Summary of Revised Lennar Term Sheet Financial Projections
The table on the page 10 of this staff report compares the development program, sources of funds, uses of funds, net cash flow and profit participation with the LRA that are attached to the Revised Lennar Term Sheet with the equivalent attachment to the Original Lennar Term Sheet. These summaries are drawn from detailed confidential financial models prepared by Lennar and independently reviewed by the LRA financial consulting team. Although dollar values in the comparison table are presented in both constant dollars (without inflation) and nominal dollars (including inflation), the constant dollar values are used in the text of the Revised and Original Lennar Term Sheets, and therefore that dollar value concept is also used in the following summary.[2]

The comparison shows that for exactly the same development program, Lennar now projects higher net land sales revenue, due to updated annual home price appreciation

[2] In the September 29, 2015 staff report, nominal dollar values were reported for both Lennar and Catellus financials because Catellus did not provide constant dollar values in its financials. Because this staff report only refers to numbers in the Original and Revised Lennar Term Sheets, LRA staff elected to use constant dollar values in the text of the term sheet. However, if they are needed for reference, all of the relevant nominal dollar values associated with the Original Lennar and Catellus term sheets are available in the September 29, 2015, staff report.

assumptions, which reflect continuing recovery in the San Francisco East Bay real estate market. These assumptions also increase the net benefit of the two assumed public financing sources (a Community Facilities District (CFD), and an Enhanced Infrastructure Financing District (EIFD), and conversely, reduce the amount Lennar would need to set aside for developer-paid CFD taxes prior to home sales. In all, Lennar now projects $921.0 million in total revenue from the Phase One Development Property, or $118.3 million more revenue than previously projected for the Original Lennar Term Sheet financials.

Costs of development are now projected to total $664.1 million, or $49.6 million more than for the previous Term Sheet. The principal changes include $15.7 million in additional expenditures related to Willow Pass Road and bridge widening, a new $40.0 million fund for affordable housing gap subsidies, and a $10.8 million reduction in the EPIP (community benefits) Fund (which is offset by the new affordable housing commitment and larger profit participation share to the LRA). Net cash flow is now projected to total $256.9 million, which represents a net increase of $68.7 million compared with the Original Lennar Term Sheet financials.

Lennar has also lowered the Internal Rate of Return (IRR) threshold at which profits would be shared with the LRA, to 20 percent versus 25 percent previously. This change, in combination with higher net revenues, leads Lennar to project that in addition to the guaranteed $20.0 million in the EPIP Fund, the LRA could realize a profit share of $23.5 million from buildout of the Development Phase One Property, which is an increase of $3.5 million compared with the Original Lennar Term Sheet financials. Consistent with federal law, all of these funds will have to be reinvested into community benefits or mitigation related to the CNWS redevelopment.

While this updated financial portrait is based on reasonable assumptions at this point in time, actual results may differ from these projections for a number of reasons, including changes required as a result of the pending Specific Plan process, further negotiations with the Navy regarding the Economic Development Conveyance, further negotiations with federal and state permitting agencies, and changes in real estate market conditions.

Comparison of Lennar Concord LLC Financial Projections for Development Phase One Property
9/29/15 Term Sheet vs. Revised Term Sheet

	9/29/15 Term Sheet			Revised Term Sheet			Differences	
Development Program								
Total Acres		500			500			-
Market Rate Units		3,294			3,294			-
Affordable Units		1,098			1,098			-
Total Units		4,392			4,392			-
Commercial Square Footage		1,690,000			1,690,000			-
Sources and Uses of Funds	**Amount (in Millions)**		Notes	**Amount (in Millions)**		Notes	**Amount (in Millions)**	
	Constant $$	Nominal $$		Constant $$	Nominal $$		Constant $$	Nominal $$
Sources								
Net Land Revenues	$654.8	$767.7		$765.8	$915.7	A	$111.0	$148.1
CFD	$115.0	$128.2		$120.7	$138.8	A	$5.7	$10.5
IFD	$27.7	$33.3		$29.3	$36.1	A	$1.7	$2.7
Grant Funding	$5.2	$6.0		$5.2	$6.0		$0.0	$0.0
Total Sources	**$802.6**	**$935.2**		**$921.0**	**$1,096.6**		**$118.3**	**$161.3**
Uses								
Pre-Development	$11.5	$12.5		$11.5	$12.5		$0.0	$0.0
In-Tract Improvements	$127.6	$148.0		$127.6	$150.3		$0.0	$2.3
Backbone and Off-Site Infrastructure	$160.8	$180.6		$176.5	$201.7	B	$15.7	$21.1
CFD Taxes	$17.8	$24.7		$14.2	$22.6	A	-$3.6	-$2.1
On-Site Overhead	$4.5	$5.3		$4.5	$5.3		$0.0	$0.0
Habitat Mitigation	$4.9	$5.7		$4.9	$5.7		$0.0	$0.0
Property Mgmt./Security	$3.8	$4.3		$3.4	$4.0		-$0.4	-$0.3
Marketing & Sales Center	$10.7	$12.0		$11.8	$13.6		$1.1	$1.6
Circulator	$2.9	$3.3		$2.9	$3.3		$0.0	$0.0
Schools/ Parks/ Greenways	$58.2	$64.0		$58.2	$64.0		$0.0	$0.0
Community Centers	$18.2	$20.0		$18.2	$20.0		$0.0	$0.0
Contingency	$71.1	$80.3		$74.3	$84.9	C	$3.2	$4.6
Soft Costs	$76.2	$85.5		$80.1	$91.5	C	$3.9	$6.0
Project Management Fee	$15.6	$21.7		$16.1	$24.0		$0.5	$2.3
EPIP ("Community Benefits") Fund	$30.8	$36.0		$20.0	$24.7	D	-$10.8	-$11.3
Affordable Housing Fund	$0.0	$0.0		$40.0	$49.3	E	$40.0	$49.3
Total Development Costs	**$614.5**	**$703.9**		**$664.1**	**$777.3**		**$49.6**	**$73.5**
Net Cash Flow	**$188.2**	**$231.3**		**$256.9**	**$319.3**		**$68.7**	**$88.0**
Profit Participation Results								
IRR Profit Participation Threshold	25%	25%		20%	20%		-5%	-5%
Net Profit Sharing to LRA	$20.0	$23.5	F	$23.5	$30.5		$3.5	$7.0
Net Developer Return	$168.2	$207.8		$233.4	$288.7		$65.2	$80.9
Calculated IRR Before Profit Participation	22.0%	22.0%		22.4%	22.4%		0.4%	0.4%

Notes:

A - Differences result from updated annual price appreciation assumptions.

B - Includes $15.7M in additional hard costs for Willow Pass Road and bridge widening.

C - Differences dues to percentage calculations applied to larger applicable cost subtotals.

D - Reduction offset by new afforable housing subsidy commitment and increased profit sharing with LRA.

E - New affordable housing gap subsidy commitment of $49M will be provided under revised Term Sheet.

F - Values are based on Profit Participation Option #2 (dedicated payments) in the 9/29/15 Term Sheet.

Sources: Lennar Concord LLC Term Sheet Pro Formas

Prepared by: HR&A Advisors, Inc.

Section 2 – Explanation/Clarification of Issues That Do Not Require Changes to the Term Sheet

1. Interim Leasing
Section 5 (page 12) of the Revised Lennar Term Sheet notes that Lennar will enter into an interim lease with the LRA for the entire First Transfer Parcel (approximately 1,100 acres). Lennar will operate, manage and maintain the entirety of the First Transfer parcel, at its expense.

2. Lease vs. Fee Transfers
Both Catellus and Lennar proposed to take down property for development in increments. Based on their experience, both firms proposed parcel transfers of roughly 40-60 acres in size. Lennar proposes to acquire a fee interest, only in the particular parcel it would be working on, with the balance of the Development Phase One Property footprint remaining in LRA ownership until ready for take down and development. As noted in the discussion above (Section 1- Issue 9), the Revised Lennar Term Sheet protects the LRA's interest in each parcel while it is being developed.

3. Use of EB-5 Program for Financing of Development
Attachment 3 to this staff report provides a memo on the background of EB-5 financing. The EB-5 program, a federal program, has become popular in California since the end of the Great Recession and the demise of redevelopment. It has been used as a financing tool for several single purpose projects such as hotels in the Bay Area. It has also been incorporated more broadly in the financing associated with the reuse of the Hunter's Point Naval Shipyard. As noted in the memo, there are some controversies surrounding the program and Congress will consider whether to renew the relevant program later this year. Lennar reports that it has no specific plan to use EB-5 financing for the Phase One Development Property. Even if it did, the LRA and City would not play any role in obtaining or administering the use of those funds.

4. Attorney's Fees
City Council suggested during the April 13, 2016 meeting that an attorneys' fee provision under which the losing party would be obligated to pay the prevailing party's attorneys' fees in the event of a dispute would be preferable to a binding arbitration provision and might be acceptable to the LRA. The Catellus Term Sheet from September 29, 2015 included such an attorneys' fee provision. LRA staff identified the Catellus attorneys' fee provision as a business point that was not favorable to the LRA. In the case of the attorneys' fee clause, LRA staff noted that because private parties' fees would typically be higher than public sector fees in any litigation dispute, an attorneys' fee clause would, more often than not, work to the LRA disadvantage and potentially provide undue leverage to the private party developer in negotiating the resolution of a future dispute. The Revised Lennar Term Sheet continues to waive an attorneys' fee clause.

5. Traffic mitigation
In addition to the items discussed in Lennar's Development Phase One Property proposal, the Reuse Plan EIR (2010) and Concord Area Plan EIR Addendum (2012) transportation analyses assumed completion of a variety of off-site street improvement projects to address traffic impacts resulting from development on the former CNWS. These include improvements to local roads, highway interchanges, and highway improvements, all of which were anticipated to happen by 2030. Further, the redevelopment of the site will require traffic impact mitigation measures. These will be defined through preparation of a Nexus Study to establish a traffic impact fee that will apply to future development on the site and ensure the costs of mitigating traffic impacts are shared appropriately between responsible parties. This Nexus Study will be prepared in collaboration with affected neighboring jurisdictions.

6. Specific Plan Schedule
Section 7 (page 14) of the Revised Lennar Term Sheet discusses Project Entitlements. Lennar proposes to commence preparation of the Specific Plan and environmental compliance documents at its expense as soon as possible and in parallel to the DDA negotiations. Lennar's willingness to start and fund the Specific Plan without a signed DDA is an expression of trust and good faith on Lennar's part and provides the LRA with crucial information for our discussion of value with the Navy.

Section 3 - Alternatives to selection of Lennar as the Master Developer

At the April 13, 2016 Council meeting, Council members sitting as the LRA asked staff to investigate possible alternative implementation options, if the LRA and Lennar could not reach an acceptable revised Term Sheet. Over the last three weeks staff has investigated options in parallel to the negotiation of the Revised Lennar Term Sheet. Staff has used the LRA's relationship with the Association of Defense Communities (ADC) and other LRA executive directors across the nation, and the resources of the LRA consulting team, to provide perspectives on various options.

1. Restart the Process
Restarting the Master Developer selection process is not in the LRA's best interest. Lennar is one of the most experienced and qualified firms in the US with the capacity to execute this project. Restarting the process would add a minimum of one year to the project timeline, and considering that it has taken the LRA over two years to get to this point it is highly likely that another two years would be required to complete a new selection process. There is no guarantee that a term sheet resulting from that process would be any better than the Revised Lennar Term Sheet. The experience at the Alameda Naval Air Station is a local example where restarting the process (more than once) has delayed commencement of development by almost 15 years. Staff would also be concerned that the Navy might lose patience with the LRA as a result of such a

delay and consider alternative methods of conveyance that would diminish the LRA's control of the process and ability to implement the approved Area Plan.

2. Employ an Alternative Implementation Approach

Over the past 25 years of military base re-use experience around the U.S., Local Reuse Authorities have utilized a range of mechanisms, including a Master Developer-led process, to implement re-use development plans. These alternatives include: (1) city or county internal management of the development process (e.g., City of Alameda, City of Tustin); (2) a Joint Powers Authority (JPA) organized under applicable State law (e.g., Fort Ord Reuse Authority, March Air Force Base, Norton Air Force Base, Lowry Air Force Base, Kansas Army Ammunition Depot); and (3) an independent non-profit development corporation formed by a city, county or, more likely, a state agency (Brunswick NAS, Red River Army Depot). The choice of which mechanism to use has been a function of numerous considerations, including local circumstances, bases that overlap jurisdictional boundaries, the specifics of the base re-use plan, and the internal capacity and preferences of the LRA and its host jurisdiction. In some cases, an LRA has started with one approach and changed to another during the course of plan implementation.

The issue of local circumstances is especially relevant to determining how to manage potential development. The Concord Naval Weapons Station is unique compared to the majority of closed military bases around the United States in that it is only 35 miles from a major metropolitan center with a mass transit station contiguous to the property. The majority of closed military facilities are in remote or rural areas where the pace of development is slower and features lower market demand; development in such locations tends to be very opportunistic. In those communities, market demand and risk are significantly lower and can be managed by less sophisticated organizations. The Concord Naval Weapons Station is also different from many former military bases, even those in the Bay Area, in that there are no existing facilities or buildings that would allow some interim uses (development) to slowly evolve. For development to occur at CNWS, a significant capital investment must occur on day one, and successful development requires a very sophisticated management and staffing structure.

While there is no "right" approach, experience suggests that the choice of which approach Concord might use should consider, at minimum, the following:

A. Access to sufficient capital;
B. Functional capacity to perform;
C. Efficiency of implementation;
D. Appropriate risk allocation;
E. Control over the implementation process; and
F. Potential financial return to the public sector

The LRA staff and consulting team conclude that, on balance, none of the available

alternatives to a Master Developer would be appropriate for Concord, for the following reasons:

A. *Insufficient Access to Capital.* None of the alternatives structures offers ready access to the scale of capital that will be required to implement the CNWS Area Plan, which Lennar as Master Developer can clearly provide. Based on the updated financials for Lennar's proposed Development Phase One Property, approximately $300 million in investment capital will be required to fund the Specific Plan and related environmental review process, and construct enough of the required Backbone Infrastructure to begin generating projected land sale revenues. Neither the LRA, nor the LRA in combination other with likely JPA partners (e.g., BART or the East Bay Regional Park District), have such resources at their disposal. Any separately-formed non-profit or for-profit corporation is unlikely to raise the required scale of investment capital as quickly as Lennar can deploy its financial resources. Furthermore, the EDC Property transferred to the LRA by the Navy is unlikely to have value sufficient to serve as collateral for a loan to raise the required capital, and unlike some other surplus military bases as noted above, CNWS does not include large numbers of existing buildings whose lease revenue can be collateralized.

B. *Long Lead Time to Develop Functional Capacity*. Any of the alternative implementation approaches will require at least 18 to 24 months to conduct a competitive selection process to retain sufficiently skilled project management and technical personnel or consultants. Such personnel must have military base re-use implementation experience and professional relationships with the U.S. Navy and state and federal permitting agencies. It is highly unlikely that a newly established team of individuals and consultants retained by the LRA could be quickly harnessed into an efficient professional team to the same degree as Lennar's team, which has many years of collaborative working relationships.

C. *Process Inefficiencies*. In addition to the long lead time required to staff an alternative management and technical team, any of the alternative implementation mechanisms would also require starting over with a development and financing plan for a new Development Phase One. Use of an independent non-profit development corporation would require time to identify an appropriately sophisticated board of directors and negotiate an operating agreement, as well as formulate a new Development Phase One concept which would be needed to negotiate a value sharing arrangement with the Navy. Lennar, on the other hand, is ready to immediately commence DDA negotiations and preparation of the Specific Plan and related environmental documents-based on its already formulated Development Phase One Property plan.

D. *Risk Allocation*. A City or Joint Powers implementation approach would shift significant financial and implementation risk back to the public sector. Use of a

City created development corporation could insulate the City general fund against some of this risk-shifting, but the specifics would depend on negotiations over the term of the operating agreement and land value negotiations with the Navy.

E. *Control*. A City-administered development team or JPA implementation approach would provide for more significant day-to-day control over the development process than using a Master Developer like Lennar, whose performance would be monitored against performance and financial benchmarks set forth in a DDA. Using a more independent City created development corporation would likely result in the same outcomes and risk represented by using a Master Developer.

F. *Potential Financial Return to the Public Sector*. One distinct advantage of the alternative implementation approaches is that they could potentially increase the scale of net revenue that would be returned to the public sector, by eliminating the profit Lennar or any other Master Developer would expect to earn. On the other hand, the potential to earn that profit incentivizes the Master Developer to control costs and operate efficiently in order to maximize its financial return on investment, which in turn enhances the ability of the City to participate in profit sharing, as specified in the revised Lennar Term Sheet.

For all of the above reasons, and considering the exhaustive Master Developer selection process that Concord has undertaken to date, and the strength of the Revised Lennar Term Sheet, selection of an alternative implementation mechanism does not appear warranted at this time.

Public Contact
The City Council Agenda was posted.

Attachments
1. Revised Lennar Term Sheet
2. Redline Comparison to the Original Lennar Term Sheet
3. EB 5 Summary
4. Correspondence received

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 • 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	**Development Stage Two** • 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	**Development Stage Three** • 104 acres • 1,761 residential units • 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 *- TOD Neighborhood*	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 *- TOD Neighborhood;* *- Central Neighborhood*	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 *- TOD Neighborhood* *- Central Neighborhood;* *- Village Neighborhood*	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 *- Central Neighborhood* *- Village Neighborhood*	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 *- Village Neighborhood*	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	4,392

Commercial Development by Development Stage						
Type	**Description**	**Net Density/ Average FAR**	**Stage One**	**Stage Two**	**Stage Three**	**Total**
BART Commercial Center *- TOD Core*	Adjacent to BART station; 4-5 story mixed-use buildings with ground-floor retail	0.3		Ground floor neigh-borhood retail in two blocks closest to BART.	52,272 square feet	52,272 square feet
BART Flex Campus *- TOD Core*	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 *Ellipse Park*	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	Initial Sub-Phase Within 12 months of Master Entitlement Date	Initial Sub-Phase Within 36 months of Master Entitlement Date	Initial Sub-Phase Within 84 months of Master Entitlement Date
	Remaining Sub-Phases Within 24 months of Master Entitlement Date	Remaining Sub-Phases Within 60 months of Master Entitlement Date	Remaining Sub-Phases Within 96 months of Master Entitlement Date
Backbone Infrastructure	Commencement Within 3 months of first Close of Escrow for any Sub-Phase within Stage One	Commencement Within 3 months of first Close of Escrow for any Sub-Phase within Stage Two	Commencement Within 3 months of first Close of Escrow for any Sub-Phase within Stage Three
	Completion Within 36 Months of Commencement	Completion Within 24 Months of Commencement	Completion 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 ("***ESCAs***") 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.

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

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

Exhibit A

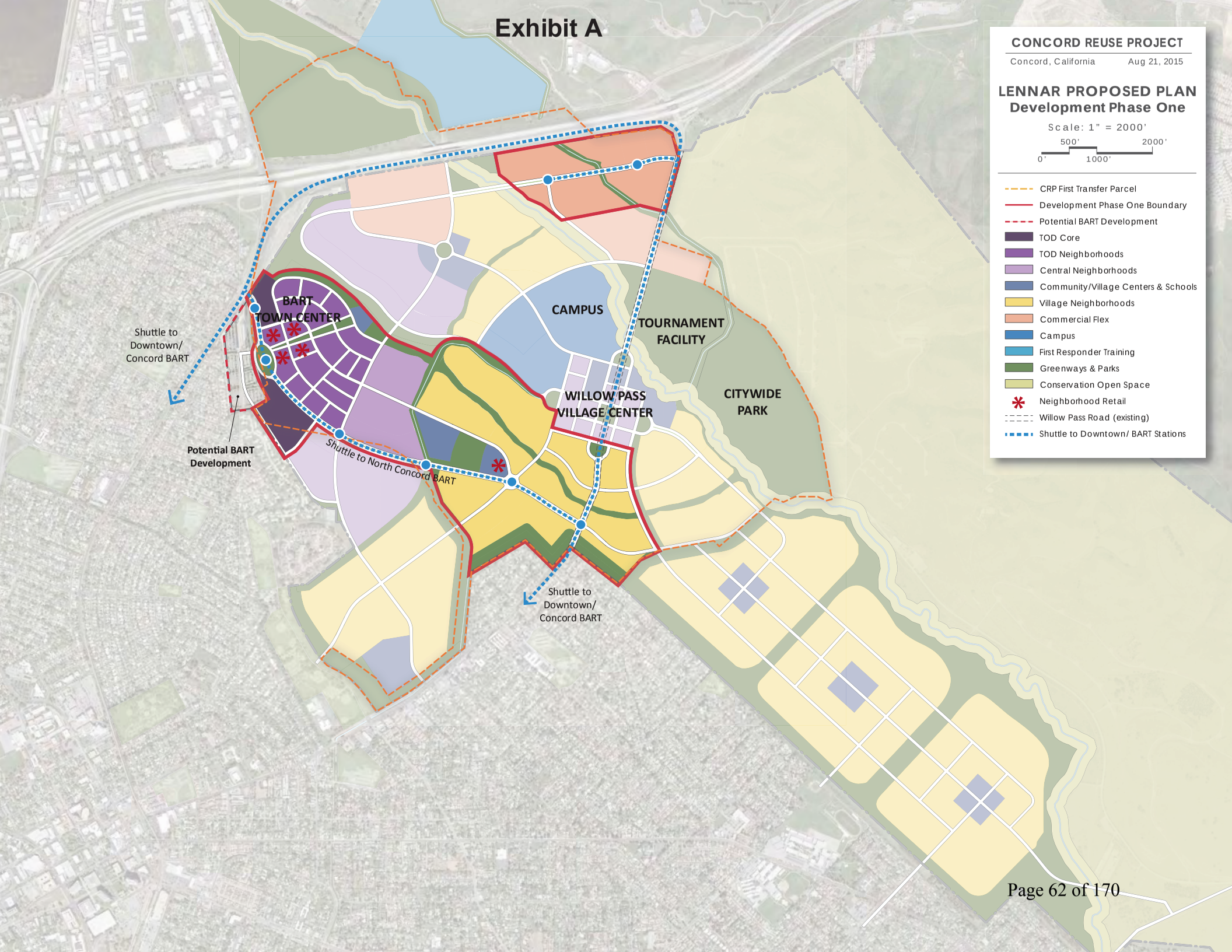

CONCORD REUSE PROJECT
Concord, California
Aug 21, 2015
LENNAR PROPOSED PLAN
Development Phase One
Scale: 1" = 2000'
0'
500'
1000'
2000'
CRP First Transfer Parcel
Development Phase One Boundary
Potential BART Development
TOD Core
TOD Neighborhoods
Central Neighborhoods
Community/Village Centers & Schools
Village Neighborhoods
Commercial Flex
Campus
First Responder Training
Greenways & Parks
Conservation Open Space
Neighborhood Retail
Willow Pass Road (existing)
Shuttle to Downtown/ BART Stations
BART TOWN CENTER
CAMPUS
TOURNAMENT FACILITY
CITYWIDE PARK
WILLOW PASS VILLAGE CENTER
Shuttle to Downtown/ Concord BART
Potential BART Development
Shuttle to North Concord BART
Shuttle to Downtown/ Concord BART

Exhibit B
CNWS Financial Model Summary

Item	Amount (in Millions) Constant $$	Nominal $$
Development Program†		
Market Rate Units	3,294	3,294
Affordable Units	1,098	1,098
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)	$5.2	$6.0
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	$22.6
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	$16.1	$24.0
Total	$664.1	$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.

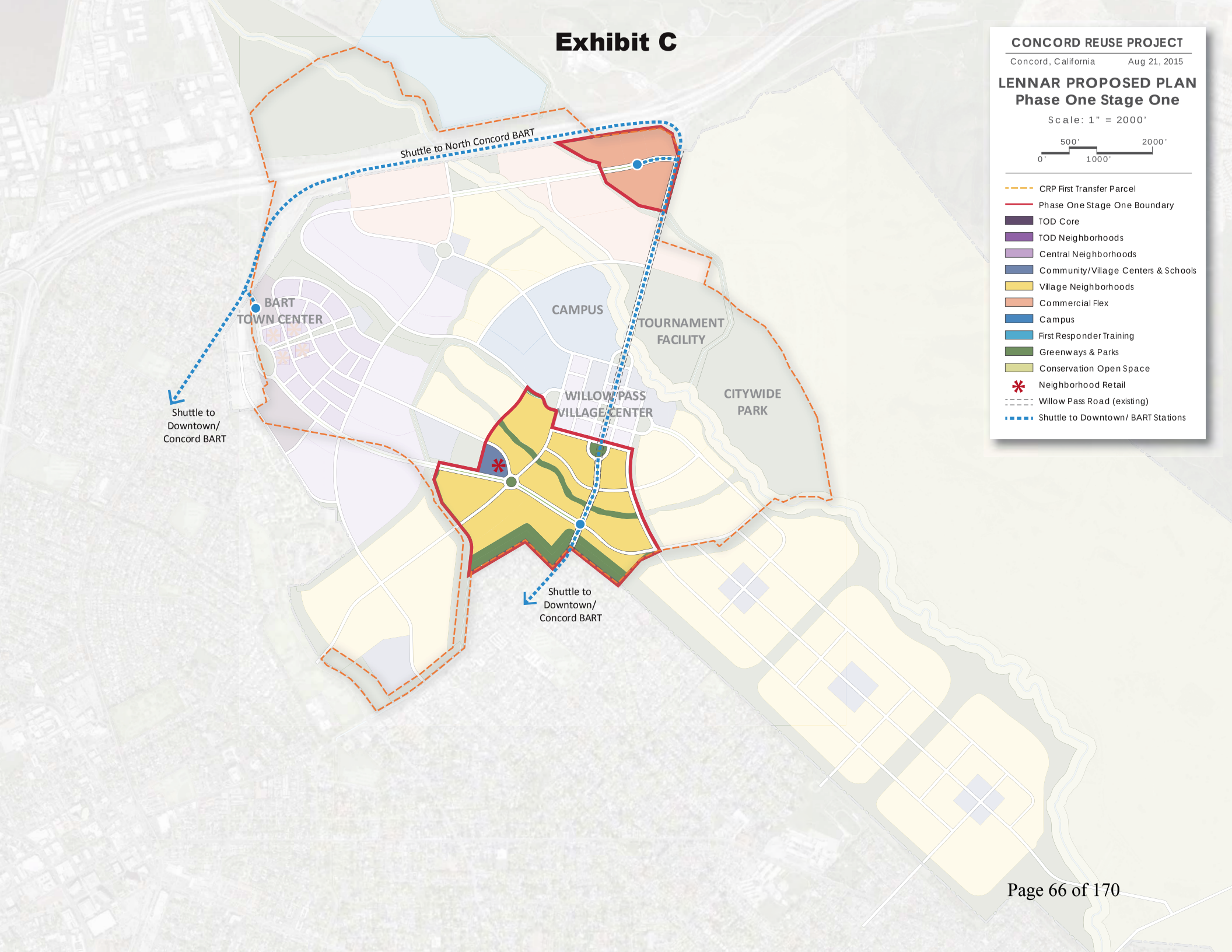
(4) Covers the cost of both the sales center and master marketing and branding costs of outside third party consultants. Lennar is not collecting any sales and marketing fees/commissions for the sale of land.

(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.

Exhibit C


CONCORD REUSE PROJECT
Concord, California
Aug 21, 2015
LENNAR PROPOSED PLAN
Phase One Stage One
Scale: 1" = 2000'
0'
500'
1000'
2000'
CRP First Transfer Parcel
Phase One Stage One Boundary
TOD Core
TOD Neighborhoods
Central Neighborhoods
Community/Village Centers & Schools
Village Neighborhoods
Commercial Flex
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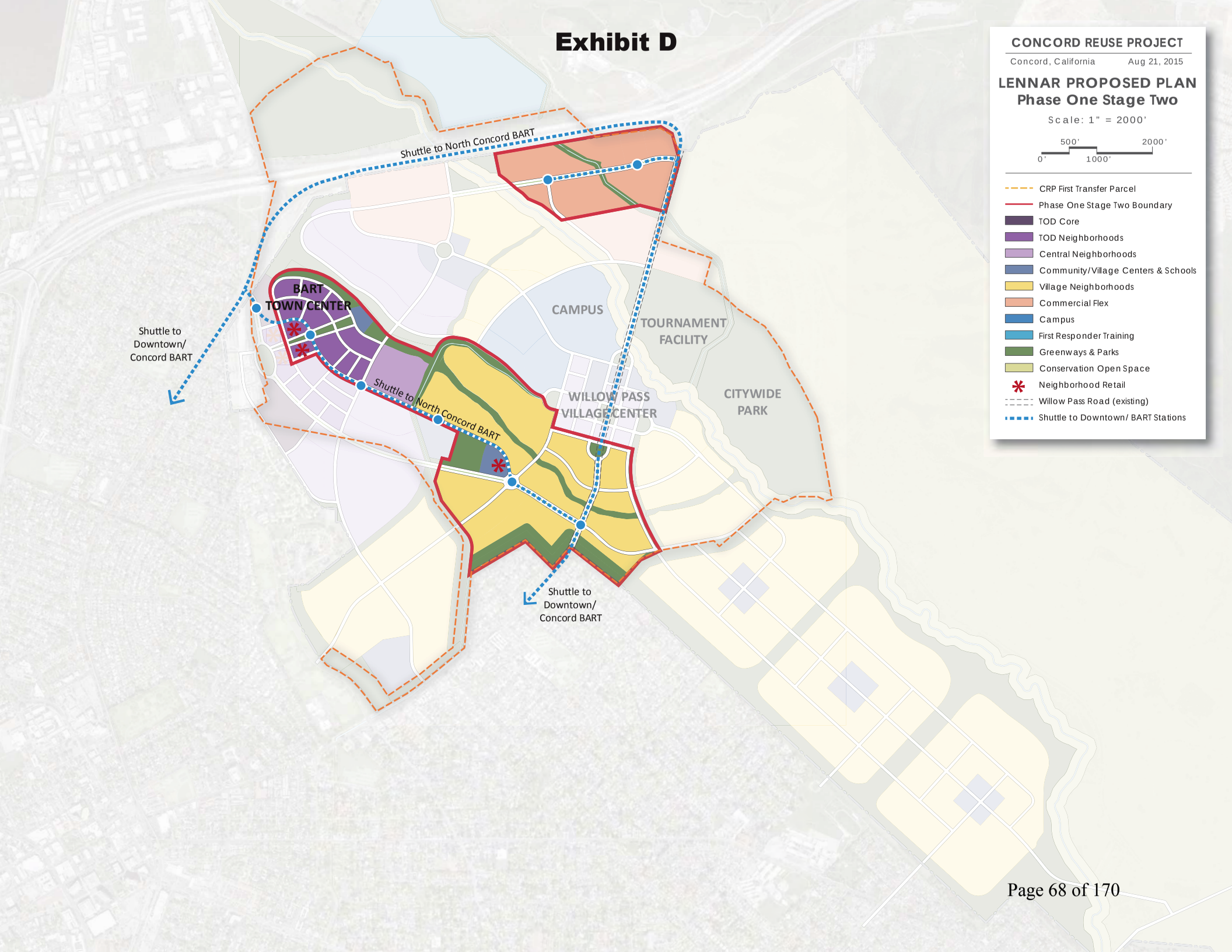
Shuttle to Downtown/ BART Stations
Shuttle to North Concord BART
BART TOWN CENTER
CAMPUS
TOURNAMENT FACILITY
CITYWIDE PARK
WILLOW PASS VILLAGE CENTER
Shuttle to Downtown/ Concord BART
Shuttle to Downtown/ Concord BART

Exhibit D


CONCORD REUSE PROJECT
Concord, California
Aug 21, 2015
LENNAR PROPOSED PLAN
Phase One Stage Two
Scale: 1" = 2000'
0'
500'
1000'
2000'
CRP First Transfer Parcel
Phase One Stage Two Boundary
TOD Core
TOD Neighborhoods
Central Neighborhoods
Community/Village Centers & Schools
Village Neighborhoods
Commercial Flex
Campus
First Responder Training
Greenways & Parks
Conservation Open Space
Neighborhood Retail
Willow Pass Road (existing)
Shuttle to Downtown/ BART Stations
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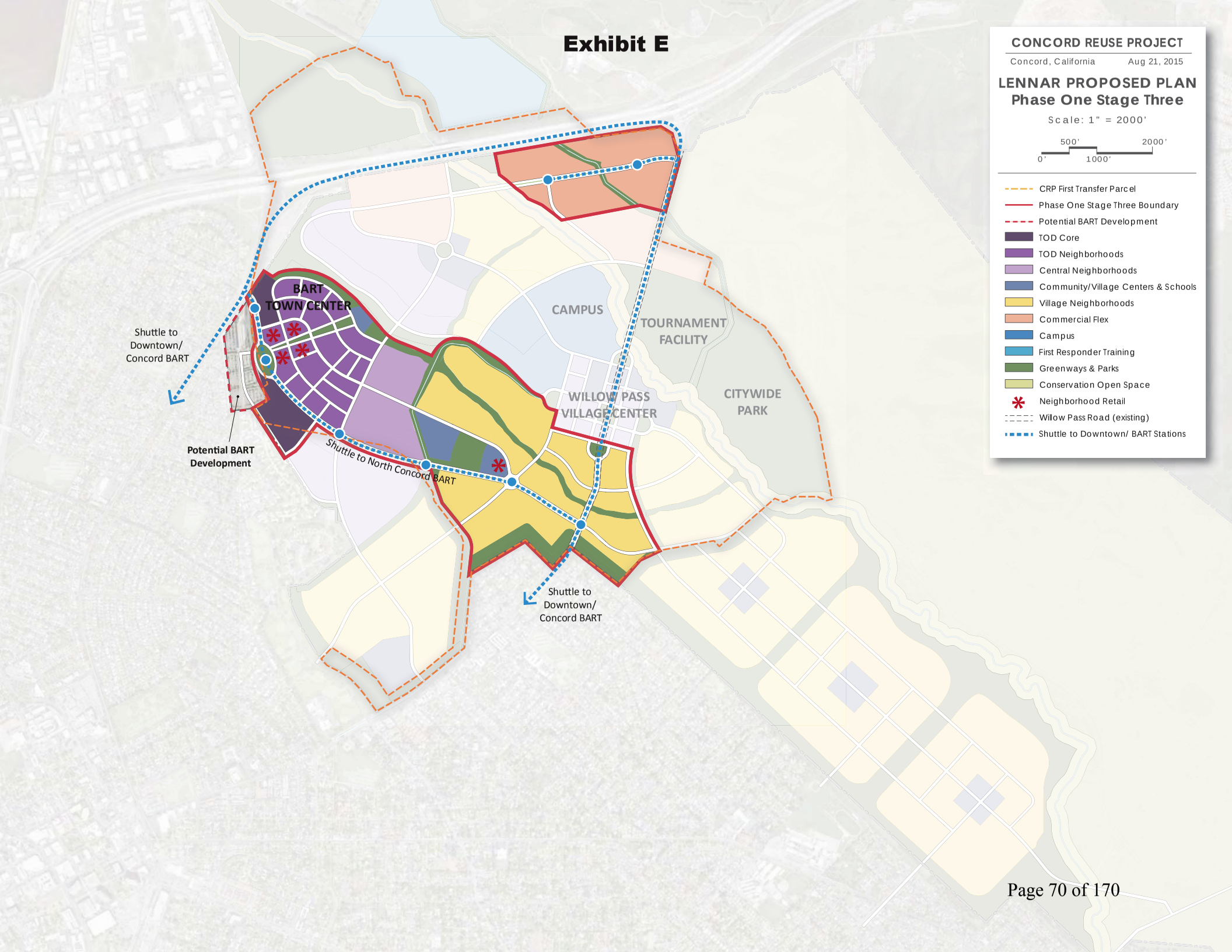
CAMPUS
TOURNAMENT FACILITY
WILLOW PASS VILLAGE CENTER
CITYWIDE PARK
Shuttle to North Concord BART
Shuttle to Downtown/ Concord BART

Exhibit E


CONCORD REUSE PROJECT
Concord, California
Aug 21, 2015
LENNAR PROPOSED PLAN
Phase One Stage Three
Scale: 1" = 2000'
0'
500'
1000'
2000'
CRP First Transfer Parcel
Phase One Stage Three Boundary
Potential BART Development
TOD Core
TOD Neighborhoods
Central Neighborhoods
Community/Village Centers & Schools
Village Neighborhoods
Commercial Flex
Campus
First Responder Training
Greenways & Parks
Conservation Open Space
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CITYWIDE PARK
Shuttle to Downtown/ Concord BART
Potential BART Development
Shuttle to North Concord BART
Shuttle to Downtown/ Concord BART

Exhibit F

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

CNWS: Development Program by Stage

Draft – Confidential/Proprietary Information – Not for Public Disclosure

		Stage 1		Stage 2		Stage 3		Phase 1 Total		
Prototypes	**DU/Acre**	**Net Acres**	**Units**	**Net Acres**	**Units**	**Net Acres**	**Units**	**Net Acres**	**Units**	**% Units**
Affordable Residential										
Multi-Family High	90	0	0	2	200	2	192	4	392	9%
Multi-Family Mid	35	0	0	1	18	8	293	9	311	7%
3-Story Stacked Flat	25	0	0	0	0	0	0	0	0	0%
3-Story Townhome	20	5	105	0	0	0	0	5	105	2%
Permanent Multifamily Supportive Housing (1)	30	9	125	0	0	0	0	9	125	3%
Inclusionary (2)	*Mixed Densities*	0	0	3	82	1	83	4	165	4%
Total Affordable Units	*35*	**14**	**230**	**5**	**300**	**11**	**568**	**31**	**1,098**	**25%**
% Affordable										
Market Rate Residential										
Multi-Family High	90	0	0	2	205	9	835	12	1,040	24%
4-Story Stacked Flat	30	0	0	7	215	0	0	7	215	5%
3-Story Stacked Flat	25	0	0	4	99	1	34	5	133	3%
3-Story Townhome	20	6	123	5	100	2	35	13	258	6%
2-Story Townhome	15	0	0	7	100	2	34	8.9	134	3%
Small Lot Paseo	14	48	673	12	164	18	255	78	1,092	25%
Traditional / Autocourt SFD	8	27	218	25	203	0	0	53	421	10%
Total Market Rate Units	19	**82**	**1,015**	**62**	**1,086**	**33**	**1,193**	**177**	**3,294**	**75%**
Total Residential Units	21	**96**	**1,245**	**68**	**1,386**	**44**	**1,761**	**208**	**4,392**	**100%**
Non-Residential Development										
Commercial Flex		14	0	32	0	0	0	47	0	
Flex Office/Campus		0	0	0	0	14	0	14	0	
Town Center/TOD		0	0	0	0	4	0	4	0	
Total Non-Residential Development		**14**	**0**	**32**	**0**	**18**	**0**	**64**	**0**	**na**
TOTAL (2)		**110**	**1,245**	**100**	**1,386**	**62**	**1,761**	**272**	**4,392**	**na**

* Excludes BART property, including high-density residential units, most of BART commercial center, and portion of Flex Office/ Campus.

(1) Assumes a total of 10 gross acres will be dedicated towards permanent multifamily supportive housing. Acreage allocation for the facility and additional land dedication is assumed to be subtracted from the Commercial Flex land use on Willow Pass Rd in Stage 1.

(2) Inclusionary housing represents five percent of the market rate housing.

(3) 272 net acres corresponds to approximately 395 gross acres. In addition, the Plan assumes approximately 105 gross acres dedicated to parks and greenways, schools, community centers, and service and utilities, for a total Plan area of approximately 500 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.

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

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

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 ~~August 21~~April 22, ~~2015~~ 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 ~~20(a~~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 • 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	**Development Stage Two** • 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	**Development Stage Three** • 104 acres • 1,761 residential units • 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 *- TOD Neighborhood*	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 *- TOD Neighborhood;* *- Central Neighborhood*	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 *- TOD Neighborhood* *- Central Neighborhood;* *- Village Neighborhood*	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 *- Central Neighborhood* *- Village Neighborhood*	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 *- Village Neighborhood*	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	4,392

Commercial Development by Development Stage						
Type	**Description**	**Net Density/ Average FAR**	**Stage One**	**Stage Two**	**Stage Three**	**Total**
BART Commercial Center *- TOD Core*	Adjacent to BART station; 4-5 story mixed-use buildings with ground-floor retail	0.3		Ground floor neigh-borhood retail in two blocks closest to BART.	52,272 square feet	52,272 square feet
BART Flex Campus *- TOD Core*	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 *Ellipse Park*	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. Developer will implement the City's 25% affordable housing policy through a combination of inclusionary housing; delivery of development-ready affordable housing sites at no cost; leveraging of available federal, state, and regional government funding; and Developer-provided funding sources the City may choose to direct towards gap subsidies for affordable housing development among other community benefits.~~

~~i. Inclusionary Housing. 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 medium and high-density residential product types, and shall be distributed among each of Development Stage One through Development Stage Three.~~

d. Affordable Housing.

i. ~~ii.~~Delivery of Development-Ready Affordable Housing Pads. ~~To~~ Developer will satisfy ~~the remainder of~~ the 25% affordable housing ~~commitment~~ requirement identified by the City in the CRP Area Plan~~,~~. Developer will deliver development-ready pads ("***Affordable Housing Pads***") ~~at no cost~~ sufficient to accommodate 1,098 units of affordable ~~housing.~~units at a range of affordability levels ~~(to be determined by the City consistent with its Housing Element)~~ , 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. ~~iii.~~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.

1. Need. Gap subsidies are likely required to ensure the timely construction of affordable housing units throughout the Development Phase One program.

iii. 2. 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.

3. Developer-Provided Funding. Developer has committed elsewhere in this Term Sheet to make **$50,000,000** available to the City through two sources of funding that the City may direct towards a range of improvements, amenities and programs benefitting the EDC Property and its residents, including potential gap subsidies for affordable housing development within the Project:

~~a. An EDC Property Improvements Program Fund of at least **$30,000,000**, which consists of: 1) $20,000,000 in annual payments by Developer to the City, and 2) proceeds from a fee to be paid by Developer on commercial and certain residential development, with Developer guaranteeing a minimum of $10,000,000 in such fees. Timing for Developer payments to the EPIP Fund is described in Section 3(e) below and Exhibit H.~~

~~b. The **$20,000,000** in annual contributions offered in the guaranteed, up-front payment City Participation formula (which is one of two formulas Developer has offered to the City) as described in Section 11 and Exhibit F. The City Participation formulas in Section 11 and Exhibit F are in addition to the EDC Property Improvements Program Fund.~~

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~~ and include units affordable at 60% of the Area Median Income ("***AMI***") and below~~. When identifying affordable housing developers to build the affordable housing sites described in Section 4~~.2~~(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.

~~Homeless Housing. In Development Phase One, Developer will dedicate approximately 10 acres for satisfaction of the City's existing commitments to facilitate development of approximately 80 units of homeless transitional housing. Units developed on this property dedicated by Developer count towards the 25% obligation described in Section 3(d) above. The Parties agree that v.homeless transitional 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 transitional housing.~~

v. ~~vi.~~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 ~~at least~~ $~~30,000,000~~ 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 ~~consists of:~~ is to be paid in approximately $2M annual increments over 10 years (adjusted annually for inflation) commencing with the first land sale by Developer.

~~i. $20,000,000 in funding by Developer to City to be paid in approximately $2M annual increments (adjusted annually for inflation) commencing with the first land sale by Developer; and~~

~~ii. Proceeds from a 1% fee to be paid by Developer on all for-sale residential units sold at greater than $700,000 and a $1.25/sq. ft. fee levied on commercial properties (with the $1.25/sq. ft. fee levied on commercial properties to be adjusted annually for inflation). The Proforma estimates these proceeds at approximately $10,800,000. Developer will guarantee a contribution of $10,000,000 from such proceeds and will pay such guaranteed minimum contribution in increments of at least $1,000,000 per year 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. ~~g.Acceleration of Tournament Park (Subject to City Approval). The Concord community has indicated its desire for a state-of-the art tournament park with specialized sports facilities capable of hosting regional sporting events and tournaments to be developed within the Development Footprint ("***Tournament Park***"). Developer supports including the Tournament Park in Development Phase One land use program. If the City Council determines it would like to accelerate development of the Tournament Park to Development Phase One,~~ 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~~ site. Developer would work with the City to develop a modified land use program for Development Phase One with sufficient acreage to accommodate 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 ~~8~~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	Initial Sub-Phase Within 12 months of Master Entitlement Date	Initial Sub-Phase Within 36 months of Master Entitlement Date	Initial Sub-Phase Within 84 months of Master Entitlement Date
	Remaining Sub-Phases Within 24 months of Master Entitlement Date	Remaining Sub-Phases Within 60 months of Master Entitlement Date	Remaining Sub-Phases Within 96 months of Master Entitlement Date
Backbone Infrastructure	Commencement Within 3 months of first Close of Escrow for any Sub-Phase within Stage One	Commencement Within 3 months of first Close of Escrow for any Sub-Phase within Stage Two	Commencement Within 3 months of first Close of Escrow for any Sub-Phase within Stage Three
	Completion Within 36 Months of Commencement	Completion Within 24 Months of Commencement	Completion 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, ~~BART~~ 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 ~~Remaining Phases~~ the Future Development Property (as defined in Section ~~23~~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. ~~Remaining Phases~~Future Development Property. If Developer acquires ~~one or more of the Remaining Phases~~ the right to any Future Development Property pursuant to Section 24, Developer will have a vested right to develop the ~~applicable Remaining Phases~~ 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 ~~Remaining Phase~~Future Development Property.

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

iv. Fees. ~~The~~ 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 ~~9(a)-(e~~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~~ for a period of 10 business days, or such additional time as may be agreed upon by the Parties~~. ~~After the expiration of the informal resolution period, if~~ If the Parties have not been able to resolve the dispute, the dispute ~~shall be resolved by expedited binding arbitration before a single arbitrator selected by City from a list of 5 JAMS arbitrators presented by Developer~~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. ~~c.~~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. ~~d.~~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. ~~e.~~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. ~~f.~~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(f~~10(g).

h. ~~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 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 ~~to be selected by the City among two alternatives~~ more fully described in Exhibit F~~. One formula (Scenario 1 in Exhibit F) offers~~

~~back-end~~ , and which provides the City backend participation ~~at lower thresholds for the Developer's~~ after Developer reaches a 20% unlevered investment rate of return. ~~The other formula (Scenario 2 in Exhibit F) offers guaranteed up-front annual contributions totaling $20,000,000 (approximately $2,000,000 per year commencing with first land sales by Developer) plus back-end participation at higher thresholds for the Developer's 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. ~~13.~~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 ("***ESCAs***") 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 ~~are~~ 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. ~~14.~~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. ~~15.~~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. ~~16.~~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. ~~17.~~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 ~~6~~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. ~~18.~~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 ~~20~~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. ~~19.~~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. ~~20.~~Transfers.

~~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 ~~20~~21. For purposes of this Section ~~20~~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 ~~21~~ 25(b)(ii) below) directly or indirectly owns 25% or more of the economic interests in Developer. Nothing in this Section ~~20~~ 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 ~~20~~ 21 may be approved by City in its sole, absolute discretion.

~~21. Potential Five Point Transaction.~~

~~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 prior to City considering any DDA for approval, so that the City may determine in its reasonable discretion whether Five Point has sufficient financial capacity to undertake the Project.~~

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 will make extraordinary up-front investments in processing, environmental, and entitlement to complete development within the Development Phase One Property. Developer will also incur significant front-loaded infrastructure, improvement, and mitigation costs within Development Phase One to ensure that the remainder of the Development Footprint, which the City and Developer currently anticipate will develop in two additional phases (the "***Development Phase Two Property***" and the "***Development Phase Three Property***," together, the "***Remaining Phases***"), can be orderly and efficiently developed. For these reasons, Developer shall have an option on the Remaining Phases provided:~~

~~i. Progress Milestone. With respect to the Development Phase Two Property option, building permits for at least 60% of the residential dwelling units planned for Development Phase One have been issued. With respect to the option for any Remaining Phases beyond Development Phase Two, the threshold of development required to have been commenced shall be identified in the DDA. Certain exceptions to this progress milestone are allowed on terms to be further defined in the DDA, but to include:~~

~~1. Time-Sensitive Non-Residential Opportunities. It is in both the City's and Developer's interests to be able to respond quickly to unique or desirable development opportunities, including those that may arise within portions of the Development Footprint outside of Development Phase One. Exceptions to progress milestones would be permitted where one or more non-residential development opportunities arise in a Remaining Phase that would advance the goals and objectives of the CRP Area Plan and requires prompt action by the City to capitalize on such opportunity.~~

~~2. Delays in Development Phase One. Exceptions to progress milestones would be permitted where unanticipated constraints or challenges (including unforeseen remediation or Navy land transfer issues or resource agency permit issues) have slowed the pace of development within Development Phase One despite Developer's reasonable good faith diligent efforts.~~

ii. Schedule of Performance. Developer is in compliance with the Schedule of Performance.

iii. No Default. Developer is not in default under the DDA.

b. If the conditions in Section 24(a) are satisfied as to the current Development Phase:

i. The Parties shall agree upon a schedule of performance for horizontal infrastructure, phasing program, and public improvements and amenities program for the next Remaining Phase. The nature and extent of obligations of Developer and the City, respectively, in a new disposition and development agreement addressing the Remaining Phase, shall be generally commensurate with those of the DDA addressing the current Development Phase.

ii. The structure and terms for conveyance of the Remaining Phases to developer, including consideration (including valuation of the land) and any City profit participation, shall be substantially the same as are set forth in the DDA for the Development Phase One Property.

iii. The Parties shall prepare a separate Development Agreement for each such Remaining Phase addressing the scope of Developer's vested rights and the community benefits to be provided to City. The term of the Development Agreement for each of the Remaining Phases shall be commensurate with the Development Phase One Property Development Agreement, with appropriate adjustments to the extent the Remaining Phase acreage is less than or greater than the Development Phase One Property.

c.In the event Remaining Phases are developed by a party other than Developer, City shall condition the development of such Remaining Phases upon reimbursement by such third party developer a pro rata share of the actual cost incurred by Developer in connection with installation of oversized infrastructure and/or front loading of species and habitat mitigation or conservation work that benefits the entire Development Footprint as opposed to just the Development Phase One Property.

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. ~~25.~~Exhibits.

Exhibit A:	Development Phase One Property
Exhibit B:	Proforma (Summary Sheet & Cashflow Analysis)
Exhibit C:	First Development Stage
Exhibit D:	Second Development Stage
Exhibit E:	Third Development Stage
Exhibit F:	City Profit Participation “Waterfall” Description
Exhibit G:	Distribution of Affordable Housing
Exhibit H:	Preliminary EDC Property Improvements Program
Exhibit I:	Backbone Infrastructure by Development Stage

Hold for Exhibit B

~~Table 1~~Exhibit B

CNWS Financial Model Summary

~~Item~~	~~8.21.15 Revised Plan*~~	~~Constant 2015 $$~~	~~Nominal $$~~
Item		Constant $$	Nominal $$
Development ~~Program~~Program†			
Market Rate Units		3,294	3,294
Affordable Units		1,098	1,098
Total Units (1)		4,392	4,392
Sources and Uses			
Sources~~(constant $$, millions)~~			
Net Land Revenues		$~~654.8~~765.8	$~~767.7~~915.7
CFD		$~~115.0~~120.7	$~~128.2~~138.8
IFD		$~~27.7~~29.3	$~~33.3~~36.1
Grant Funding (2)		$5.2	$6.0
Total		$~~802.6~~921.0	$~~935.2~~$1,096.6
Uses~~(constant $$, millions)~~			

Community Benefits Summary		
Description	~~Amount (constant $$, millions)~~Amount (in Millions)	
	Constant $$	Nominal $$
Community Centers	$20.3	$22.8
~~Enhanced Community Centers *~~Schools, Parks and Greenways	$~~14.5~~83.7	$100.8
Circulator	$2.9	$3.3
~~Com. Benefits Fund **~~	~~$30.8~~	
Com. Benefits Fund	$20.0	$24.7
~~Contribution (City Participation Contribution + Profit Participation)~~Affordable Housing Fund	$40.0	$49.3
~~Scenario 1~~	~~$30.7~~	
~~Scenario 2~~Contribution	~~$20.0~~	
(Profit Participation @ 20%)	$23.5	$30.5
~~Schools, Parks and Greenways~~	~~$83.7~~	

~~* This refers to the budget intended to provide community amenities such as an organic garden, communal BBQ area and other facilities over and above core community center attributes.~~

Pre-Dev.	$11.5	$12.5
In-Tract	$172.2	$200.0200.1
Backbone and Off-Site Infrastructure (3)	$235.8258.6	$258.5288.8
CFD Taxes	$17.814.2	$24.722.6
On-Site Overhead	$4.5	$5.3
On-Site OverheadHabitat Mitigation	$4.54.9	$5.25.7
Habitat Mitigation	$4.9	$5.6
Property Mgmt./Security	$3.83.4	$4.34.0
Marketing & Sales Center (4)	$10.711.8	$12.013.6
Circulator (5)	$2.9	$3.3
Schools/ Parks/ Greenways	$83.7	$97.7100.8
Community Centers	$20.3	$22.422.8
Community Benefits Fund (6)	$30.820.0	$36.024.7
Proj. Management Fee	$15.6	$21.7
Total	$614.5	$703.9
Aet Cash Flow (constant $$, millions)ffordable Housing Fund (7)	$188.240.0	$231.349.3
Proj. Management Fee	$16.1	$24.0
Total	$664.1	$777.3
Net Cash Flow (constant $$, millions)	$256.9	$319.3
Profit Participation Results		
Scenario 1 (Profit Participation @ 20%)		
Net Contribution	$30.723.5	$38.430.5
Net Developer Return	$157.5233.4	$193.0288.7
Scenario 2 ($20m City Participation Contribution + Profit Participation @ 25%)		

** Number will vary depending on sales price of homes (see Footnote 6).

Profit Participation *

Scenario 1Profit Participation**

1. IRR Range	*Participation Participation Share of Return*
IRR Between 20% - 25%	35%
IRR Between 2520% - 3025%	4035%
IRR Greater than Between 25% - 30%	5040%
IRIR Greater than 30%	50%

Scenario 2

1. City Participation Contribution	$20m ($2m per year)

2. IRR Range	*Participation Share of Return*
IRR Between 25% - 30%	35%
IRR Between 30% - 35%	40%
IRR Greater than 35%	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.

~~Net Contribution~~	~~$20.0~~	~~$23.6~~
~~Net Developer Return~~	~~$168.2~~	~~$207.8~~
-	-	-
IRR Before Profit Participation		**~~22.0~~22.4%**

~~*~~ † Plan ~~cover~~ covers approximately 500 gross acres.

(1) ~~Note that unit counts have been adjusted to maintain~~ Affordable housing represents 25 percent ~~affordable~~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 ~~One Concord. Funds are derived from a 1 percent fee charged to vertical developers on all for-sale residential units sold at greater than $700,000, a $1.25 per square foot assumed linkage fee on all commercial development, as well as $20 million~~ the EDC Property Improvement Program (Exhibit H). Funds are dedicated at $2 million per year for ten years from general sources~~. Funding from residential fee will vary depending on actual sales prices of homes.~~

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

Exhibit F

Description of Profit Participation ~~Formulas~~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 consistent with~~ 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

~~Scenario 1~~

~~Until~~ 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 ~~Reporting Period~~ 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 ~~Reporting Period~~ 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 ~~Reporting Period~~ 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.

~~Scenario 2~~

~~A $20.0 million contribution to the City of Concord as a Participation Contribution is to be paid in annual installments of $2.0 million commencing in the first year in which land sales occur. The full $20 million will be paid no later than ninety (90) days after the end of the calendar year in which 100% of the Phase 1 land sales are completed. After payment of the Participation Contribution, the Net Cash Flow would be distributed in the following manner.~~

~~Until 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 Reporting Period shall contribute 35% of the Net Cash Flow in excess of 25.00% but not to exceed 30.00% to the City as a First Tier Payment, 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 the applicable~~

~~Reporting Period 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 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.

Hold for Exhibit G

Draft – Confidential/Proprietary Information – Not for Public Disclosure

~~Table 2~~Exhibit G

CNWS: Development Program by Stage

Prototypes	DU/Acre	Stage 1 Net Acres	Stage 1 Units	Stage 2 Net Acres	Stage 2 Units	Stage 3 Net Acres	Stage 3 Units	Phase 1 Total Net Acres	Phase 1 Total Units	% Units
Affordable Residential										
Multi-Family High	90	0	0	2	200	~~3~~2	~~275~~192	~~5~~4	~~475~~392	~~11~~9%
Multi-Family Mid	35	0	0	~~3~~1	~~100~~18	8	293	~~11~~9	~~393~~311	~~9~~7%
3-Story Stacked Flat	25	0	0	0	0	0	0	0	0	0%
3-Story Townhome	20	~~8~~5	~~150~~105	0	0	0	0	~~8~~5	~~150~~105	~~3~~2%
~~Homeless Transitional~~ Permanent Multifamily Supportive Housing (1)	30	~~7~~9	~~80~~125	0	0	0	0	~~7~~9	~~80~~125	~~2~~3%
Inclusionary (2)	*Mixed Densities*	0	0	3	82	1	83	4	165	4%
Total Affordable Units	*35*	**~~15~~14**	**230**	**5**	**300**	**11**	**568**	**31~~.5~~**	**1,098**	**25%**
% Affordable			~~18%~~		~~22%~~		~~32%~~		~~25%~~	
Market Rate Residential										
Multi-Family High	90	0	0	2	205	9	835	12	1,040	24%
4-Story Stacked Flat	30	0	0	7	215	0	0	7	215	5%
3-Story Stacked Flat	25	0	0	4	99	1	34	5	133	3%
3-Story Townhome	20	6	123	5	100	2	35	13	258	6%
2-Story Townhome	15	0	0	7	100	2	34	8.9	134	3%
Small Lot Paseo	14	48	673	12	164	18	255	78	1,092	25%
Traditional / Autocourt SFD	8	27	218	25	203	0	0	53	421	10%
Total Market Rate Units	19	**82**	**1,015**	**62**	**1,086**	**33**	**1,193**	**177**	**3,294**	**75%**
Total Residential Units	21	**96**	**1,245**	**~~67~~68**	**1,386**	**44**	**1,761**	**208**	**4,392**	**100%**

Non-Residential Development									
Commercial Flex	14	0	32	0	0	0	47	0	
Flex Office/Campus	0	0	0	0	14	0	14	0	
Town Center/TOD	0	0	0	0	4	0	4	0	
Total Non-Residential Development	**14**	**0**	**32**	**0**	**18**	**0**	**64**	**0**	**na**
TOTAL (2)	**~~111~~110**	**1,245**	**~~99~~100**	**1,386**	**62**	**1,761**	**272**	**4,392**	**na**

* Excludes BART property, including high-density residential units, most of BART commercial center, and portion of Flex Office/ Campus.

(1) Assumes a total of 10 gross acres will be dedicated towards ~~homeless transitional~~ permanent multifamily supportive housing. Acreage allocation for the facility and additional land dedication is assumed to be subtracted from the Commercial Flex land use on Willow Pass Rd in Stage 1.

(2) Inclusionary housing represents five percent of the market rate housing.

~~(2~~(3) 272 net acres corresponds to approximately 395 gross acres. In addition, the Plan assumes approximately 105 gross acres dedicated to parks and greenways, schools, community centers, and service and utilities, for a total Plan area of approximately 500 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.

~~"**Acceleration of Tournament Park**": Delivery of accelerated infrastructure by Developer should the City Council wish to pursue a third-party development proposal for the Tournament Park in Development Phase One.~~

"**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 ~~at least~~ $~~30,000,000~~ 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**": ~~Two alternative options available to the City to participate~~ 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 implement the City's 25% affordable housing policy through a combination of inclusionary housing; delivery of development-ready affordable housing sites; leveraging of available federal, state, and regional government funding; and Developer-provided funding sources the City may choose to direct towards gap subsidies for affordable housing development among other community benefits.~~

~~**4.2** **Inclusionary Housing**. Developer will require vertical developers, whether Developer, Developer affiliates or third-party developers, to provide inclusionary units in an amount equal to 5% of the market-rate units proposed within Development Phase One. These inclusionary units shall be affordable to moderate income households, shall be located within medium and high-density residential product types, and shall be distributed among each of Development Stage One through Development Stage Three.~~

4.1 ~~**4.3Delivery of Development-Ready Affordable Housing Sites**. To satisfy the remainder of the 25% affordable housing commitment~~ **Generally.** Developer will satisfy the 25% affordable housing requirement identified by the City in the CRP Area Plan, Developer will deliver~~, at no cost,~~ development-ready pads ~~to accommodate affordable housing, as further described below~~ ("***Affordable Housing Pads***") sufficient to accommodate 1,098 units of affordable units.at a range of affordability levels (to be determined by the City ~~consistent~~ for consistency with ~~its~~ Housing Element goals and objectives) and throughout each Development Stage within Development Phase One.

4.1.1 ~~4.3.1~~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 ~~4.3.2~~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 ~~4.3.3~~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 ~~4.3.4~~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 ~~**4.3.5**~~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.

~~**4.4 Gap Subsidies for Affordable Housing Development**.~~

~~**4.4.1** Need. Gap subsidies are likely required to ensure the timely construction of affordable housing units throughout the Development Phase One program.~~

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 ~~**4.4.2**~~**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 ~~deep experience securing~~ 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.

~~**4.4.3** Developer-Provided Funding. Developer has committed elsewhere in the Term Sheet to make **$50,000,000** available to the City through two sources of funding that the City may direct towards a range of improvements, amenities and programs benefitting the EDC Property and its residents, including potential gap subsidies for affordable housing development within the Project:~~

~~**(a)** The EPIP Fund of at least **$30,000,000**, which consists of: 1) $20,000,000 in annual payments by Developer to the City, and 2) proceeds from a fee to be paid by Developer on commercial and certain residential development, with Developer guaranteeing a minimum of $10,000,000 in such fees. Timing for Developer payments to the EPIP Fund is described in Section 8 below.~~

~~**(b)** The **$20,000,000** in annual contributions offered in the guaranteed, up-front payment City Participation formula (which is one of two formulas Developer has offered to the City) as summarized in Section 9 (below) and detailed in the Term Sheet (Section 11 and Exhibit F). The City Participation formulas in the Term Sheet (Section 11 and Exhibit F) are in addition to the EPIP Fund described in 4.4.3(a) above.~~

4.4 ~~**4.5**~~**Affordability Levels & Senior, Veteran, Workforce, and Special Needs Affordable Housing.** Affordable housing constructed on ~~Affordable Housing Pads~~ development-ready sites delivered by Developer shall be focused in medium-to-high density areas ~~and include units affordable at 60% AMI and below~~. When identifying affordable housing developers to build the affordable housing sites described in Section ~~4.2~~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 ~~**4.5.1**~~Senior or Active Adult Affordable Housing

4.4.2 ~~4.5.2~~Veterans Affordable Housing

4.4.3 ~~4.5.3~~Workforce Affordable Housing (for local teachers, firefighters, police, etc.)

4.4.4 ~~**4.5.4**~~Affordable Housing for Individuals with Special Needs.

~~4.6**Homeless Housing**. In Development Phase One, Developer will dedicate approximately 10 acres for satisfaction of the City's existing commitments to facilitate development of approximately 80 units of homeless transitional housing. Units developed on this property dedicated by Developer count towards the 25% obligation described in Section 4.1 above.~~

4.5 ~~4.7~~**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. ~~ACCELERATION OF~~ TOURNAMENT PARK~~, SUBJECT TO CITY APPROVAL~~.

6.1 ~~The Concord community has indicated its desire for a state-of-the art Tournament Park with specialized sports facilities capable of hosting regional sporting events and tournaments to be developed within the Development Footprint. Developer supports including the Tournament Park~~ Developer proposes to include a Specific Plan land use alternative that would evaluate inclusion of the Tournament Park infrastructure in Development Phase One ~~land use program. If the City Council is interested in accelerating development~~ along with an expanded Development Phase One footprint to accommodate acceleration of the Tournament Park ~~to Development Phase One,~~ . Developer ~~would support such a change and~~ will extend Backbone Infrastructure and provide grading and site preparation work to serve the Tournament Park ~~site. Developer would work with the City to develop a modified land use program for Development Phase One with sufficient acreage to accommodate 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 ~~a minimum of~~ **$~~30,000,000~~ 20,000,000** to an EPIP Fund. The EPIP Fund ~~consists of:~~ is to be paid in

approximately $2M annual increments over 10 years (adjusted annually for inflation) commencing with the first land sale by Developer.

~~i. **$20,000,000** in funding by Developer to City to be paid in approximately $2M annual increments (adjusted annually for inflation) commencing with the first land sale by Developer; and~~

~~ii. Proceeds from a 1% fee to be paid by Developer on all for-sale residential units sold at greater than $700,000 and a $1.25/sq. ft. fee levied on commercial properties (with the 1.25/sq. ft. fee levied on commercial properties adjusted annually for inflation). The Proforma estimates these proceeds at approximately $10,800,000. Developer will guarantee a contribution of **$10,000,000** from such proceeds. Additional details on the timing for payment of these proceeds shall be addressed in the DDA Stage.~~

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 ~~above~~.1, Developer will make a contribution to the City through application of a profit participation formula ~~to be selected by the City among two alternatives~~ more fully described in Exhibit F ~~to the Term Sheet. One formula (Scenario 1 in Exhibit F) offers back-end~~ , and which provides the City backend participation ~~at lower thresholds for the Developer's~~ after Developer reaches a 20% unlevered investment rate of return. ~~The other formula (Scenario 2 in Exhibit F) offers guaranteed up-front annual contributions totaling $20,000,000 (approximately $2,000,000 per year commencing with first land sales by Developer) plus back-end participation at higher thresholds for the Developer's 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.

Carlson, Barbee & Gibson, Inc.
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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 ~~0.5 miles± of Willow Pass Road.~~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, ~~Improvement~~ and improvement of the Arnold / Port Chicago Highway Intersection~~ and an additional Portion of Willow Pass Road~~.
- 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

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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MEMORANDUM

To: Guy Bjerke, Director of Community Reuse Planning, City of Concord

From: Paul J. Silvern

Date: April 25, 2016

Re: Summary of the EB-5 Immigrant Investor Program

As requested, this memorandum provides a summary of the so-called "EB-5" investment program that has become an increasingly popular as a source of financing for real estate development projects across the U.S.

U.S. Citizenship and Immigration Service (USCIS) administers a program through which alien entrepreneurs (and their spouses and unmarried children under 21) are eligible to apply for a green card (permanent residence) if they make the necessary investment in a commercial enterprise in the United States that would create or preserve at least 10 permanent full-time jobs for qualified U.S. workers.[1] Applicants to the EB-5 visa program must demonstrate that they meet all requirements of the program prior to filing with USCIS. If it is determined that the investment criteria is met and properly documented, an investor may be granted conditional permanent residence status for a period of two years. At the end of the conditional period a permanent green card may be issued. An investor may apply for U.S. citizenship five years after the initial grant of conditional permanent residence.

This program is known as "EB-5" for the name of the employment-based fifth preference visa that participants receive. Congress created the EB-5 Program in 1990 to stimulate the U.S. economy, particularly in high poverty and high unemployment urban and rural areas, through job creation and capital investment by foreign investors. In 1992, Congress created the Immigrant Investor Pilot Program, also known as the Regional Center Program.[2] This program sets aside EB-5 visas for participants who invest in commercial enterprises associated with "Regional Centers" approved by USCIS based on proposals for promoting economic growth. Regional Centers are third-party managed investment vehicles (private or public), which assume the responsibility of creating the required number of jobs. Development projects in the San Francisco Bay Area which

[1] See generally, https://www.uscis.gov/eb-5.

[2] Immigration and Nationality Act, 8 United States Code (U.S.C.) 1153(b)(5) §203(b)(5), as amended by Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1993 (Pub. L. 102-365); see also 8 Code of Federal Regulations (C.F.R.) § 204(6).

have used EB-5 program investments include several military base re-use projects (e.g., Hunters Point), as well as a number of individual new commercial developments, particularly hotels.

Use of the EB-5 program was relatively limited until the Great Recession and subsequent contraction of more traditional sources of capital, and it became much more popular in California following the loss of tax increment financing that was associated with the demise of California's system of redevelopment in 2012. Today, according to one summary, there are approximately 440 EB-5 Regional Centers operating across the U.S., and USCIS received over 6,300 applications to the EB-5 program in a recent year, nearing its authorized annual cap.[3] A report by Brookings estimates that since 1990 the EB-5 program has captured approximately $5.0 billion in direct investments and created over 85,000 full-time jobs.[4]

Under the federal law, all EB-5 investors must invest in a new commercial enterprise that was established after Nov. 29, 1990. "Commercial enterprise" means any for-profit activity formed for the ongoing conduct of lawful business including, but not limited to a Sole Proprietorship, Partnership (whether limited or general), Holding Company, Joint Venture, Corporation, Business Trust or other entity, which may be publicly or privately owned. This definition includes a commercial enterprise consisting of a holding company and its wholly owned subsidiaries, provided that each such subsidiary is engaged in a for-profit activity formed for the ongoing conduct of a lawful business. Specific Project Entities (e.g., Lennar Concord LLC) typically formed by real estate developers for individual development projects qualify as an eligible "commercial enterprise."

Investments by alien entrepreneur that are eligible to qualify for preferential visa treatment must create or preserve at least 10 full-time jobs for qualifying U.S. workers within two years (or under certain circumstances, within a reasonable time after the two-year period) of the immigrant investor's admission to the United States as a Conditional Permanent Resident. These include creating or preserving either direct or indirect jobs. "Direct" jobs are actual identifiable jobs for qualified employees located within the commercial enterprise into which the EB-5 investor has directly invested his or her capital. "Indirect" jobs are those jobs shown to have been created collaterally or as a result of capital invested in a commercial enterprise (e.g., resulting from construction of a real estate development) that is affiliated with a Regional Center by an EB-5 investor. A foreign investor may only use the indirect job calculation if affiliated with a Regional Center. A "qualified employee" is a U.S. citizen, permanent resident or other immigrant authorized to work in the United States. The individual may be a conditional resident, an asylee, a refugee, or a person residing in the United States under suspension of deportation. This definition does not include the immigrant investor; his or her spouse, sons, or daughters; or any foreign national in any nonimmigrant status (such as an H-1B visa holder) or who is not authorized to work in the United States. Full-time employment means employment of a qualifying employee by the new commercial enterprise in a position that requires a minimum of 35 working hours per week. "Full-time employment" also means employment of a qualifying employee in a position that has been created indirectly from investments associated with the program. Certain job-sharing arrangements also qualify.

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[3] Initiative for a Competitive Inner City (ICIC), *Increasing Economic Opportunity In Distressed Urban Communities With EB-5*, June 2014.

[4] Audrey Singer and Camille Galdes. *Improving the EB-5 Investor Program*, International Financing for E.U. Regional Economic Development, Brookings-Rockefeller Project on State and Metropolitan Innovation, February 2014.

The capital investment requirement, which includes cash, equipment, inventory, other tangible property, cash equivalents and indebtedness secured by assets owned by the alien entrepreneur, provided that the alien entrepreneur is personally and primarily liable and that the assets of the new commercial enterprise upon which the petition is based are not used to secure any of the indebtedness. All capital must be valued at fair-market value in United States dollars. Assets acquired, directly or indirectly, by unlawful means (such as criminal activities) may not be considered capital for the purposes of section 203(b)(5) of the Act. The required minimum investments are $1.0 million per job created, or $500,000 per job in a Targeted Employment Area, which is an area that, at the time of investment, is a rural area or an area experiencing unemployment of at least 150 percent of the national average rate.

The program is quite complicated and has experienced its share of scams and fraud, which has prompted recent Congressional inquiry during the most recent legislative re-authorization of the Pilot Program.[5] It should be noted, however, that, absent direct state or local government participation in a Regional Center (which does not apply to Concord), implementation of this program relies purely on a set of private sector relationships and transactions operating under federal requirements, and does not require any direct involvement by local government.

[5] Eliot Brown, "Lawmakers to Revisit Debate Over Visa Program," The Wall Street Journal, April 12, 2016.

From: Matt Leber [mailto:matt@ebho.org]
Sent: Wednesday, April 27, 2016 1:30 PM
To: Bjerke, Guy; Kofi Bonner; Suheil Totah; Randi T. Gerson
Cc: Margaret Hanlon-Gradie; Seth Adams; Julian Gross
Subject: Mr. Bjerke, Associates at Lennar - CCSC Proposed Revisions to the Term Sheet

Mr. Bjerke, Mr. Bonner, Mr. Totah and Ms. Gerson,

Please find attached, on behalf of the Community Coalition for a Sustainable Concord, our proposed revisions to the CNWS Term Sheet.

We have discussed most of these items with you in detail and over time but wanted to provide sample language to integrate as we have requested.

I will follow up with you in the very near future and please don't hesitate to call to discuss.

Matthew Leber
Campaign & Coalition Director
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(615) 414-3788 | matt@ebho.org
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Community Coalition for a Sustainable Concord

Proposed Revisions to Term Sheet between City of Concord and Lennar Concord, LLC

April 27, 2016

The Community Coalition for a Sustainable Concord ("CCSC" or "the Coalition") requests that Lennar Concord, LLC ("Lennar") and the City of Concord ("City") include the following new and revised provisions in the term sheet to be finalized if Lennar is selected as master developer for the "Phase One" portion of redevelopment of the Concord Naval Weapons Station (the "Project").

The Coalition has repeatedly been informed by the City and by Lennar that key aspects of development and financing of the Project will be determined during the years after selection of the master developer – and therefore that inclusion of a full slate of community benefits commitments in the term sheet is premature. We trust that the term sheet will reflect both parties' acknowledgement that it does not include all subject areas and developer commitments that will need to be set forth in the Project's disposition and development agreement ("DDA") and related documents.

Nonetheless, the most recent draft term sheet states that it contains "key business terms" that will be included in the DDA. It contains numerous commitments of Lennar – including substantial financial commitments – to which Lennar can apparently agree at this juncture. Given that important aspects of the negotiation are occurring, we feel that inclusion of a broad slate of community benefits commitments in the term sheet is necessary and appropriate.

We therefore propose that, prior to or contemporaneous with any selection of Lennar as master developer, the term sheet be revised to include the following new or amended provisions related to the Project's community benefits. Exhibit H (Term Sheet for EDC Property Improvements Program) should also be revised with corresponding edits.

Labor & Employment

1. **Labor Peace.**
   a. In term sheet draft section 15.e:
      i. Delete final sentence of current draft.
      ii. Add the following language: "In order to preserve and maximize the City's revenue and to protect the City's ongoing proprietary interest in the project from the potential costs of labor disputes, Developer shall require the operator of any hotel or hotel/conference center to demonstrate an assurance of labor peace by being party to a valid Labor Peace Agreement with any union in Contra Costa County that is actively engaged in representing and seeking to represent hotel employees; "Labor Peace Agreement" means an agreement that prohibits the union and its members from engaging in picketing, work stoppages, boycotts or other economic interference with the business of the hotel substantial period of time, especially during the time the hotel or restaurant is becoming established and is attempting to secure its reputation and a stable customer base."
      iii. Add the following language: "Developer shall require operator of any retail site or restaurant that will employ more than 25 employees to demonstrate labor peace through negotiation of a card check / neutrality agreement."
      iv. Add the following language: "For any space to be operated as a grocery store, Developer shall make best efforts to lease space to a tenant that can demonstrate labor peace through either negotiation of a card check / neutrality agreement or entry into a collective bargaining agreement."
2. **Local Hire for Permanent Jobs.** Add the following language to term sheet draft section 3.1: "Developer shall require all project employers hiring workers for non-construction jobs to notify and consider applicants from a local referral source, in an attempt to achieve a percentage goal of employment of Concord residents for 40% of non-construction jobs. If qualified Concord residents are unavailable for jobs in question, the local referral source will refer, and employers shall consider, Bay Point and Pacheco residents, and then Contra Costa County residents."
3. **Worker Qualifications.** Add the following language: "Developer shall require that all Project employers: (a) limit inquiry into applicants' criminal convictions to convictions relevant to job duties; (b) conduct such inquiry only after a conditional offer of employment has been made; and (c) consider mitigating circumstances regarding criminal convictions in making final hiring decisions."
4. **Workforce Development Funds.** Add the following language: "Developer shall provide $X on an annual basis to Monument Impact (a Concord-based 501(c)(3) workforce development provider) to be used for career skills development for Concord residents."
5. **Responsible Employers.** Add the following language: "Developer shall apply responsible contracting standards to service contractors for building and facility services, and tenants with more than 25 employees on-site." Alternative: In award of building and facility services contracts, Developer shall require bidders to

demonstrate labor peace through negotiation of a card check / neutrality agreement."

6. Living Wage. Add new paragraph 15.f: "Living Wages. Developer and City shall ensure that all project employers provide at least $15 per hour in compensation to all on-site workers, including wages and benefits, with annual cost-of-living adjustments."

Affordable Housing

1. **Affordable Housing Income Levels.** Replace paragraph 3.d with the following: "Affordable Housing. Developer will implement the City's 25% affordable housing policy, serving households at 80% Area Median Income and below, through a combination of inclusionary housing; delivery of development-ready affordable housing sites at no cost; leveraging of available federal, state, and regional government funding; and Developer provided funding for gap subsidies for affordable housing development."

2. **Gap Subsidy.** Replace paragraph 3.d.iii.3 with the following: "Developer-Provided Funding. Developer shall make **$83,500,000** available to the City, which sum the City shall direct towards gap subsidies for affordable housing development (80% AMI and below) within the Project. Such funds shall be held by the City in a segregated account for this purpose."

3. **Inclusionary Housing.** Replace last sentence of paragraph 3.d.i with the following: "These inclusionary units shall be affordable to households at 80% AMI and below, shall be located within medium and high density residential product types, and shall be distributed among each of Development Stage One through Development Stage Three in proportion to market-rate units constructed in each stage."

4. **Low-income Tax Credit Units.** Term sheet should require construction of at least 100 additional affordable units through the 80/20 Low-Income Tax Credit project, affordable to households at 80% AMI and below.

5. **Affordable Housing Pads.** Replace paragraph 3.d.ii with the following: **"**Delivery of Development-Ready Affordable Housing Pads. To satisfy the remainder of the 25% affordable housing commitment identified by the City in the CRP Area Plan, Developer will deliver development-ready pads ("Affordable Housing Pads") at no cost to accommodate affordable housing at a range of affordability levels below 80% AMI and throughout each Development Stage within Development Phase One. (See Section 4.3 of the EPIP [Exhibit H]for additional details.)

6. **Construction of Homeless Units.** Add to section 3.d.iv: "Project planning and implementation by City and Developer shall facilitate and advance fulfillment of the City's and the Local Reuse Authority's obligations under the Legally Binding Agreement (Land Transfer for Homeless Units), dated as of August 2012 and entered into with the Contra Costa Countywide Homeless Base Conversion Collaborative and other parties."

Sustainability and Transit

1. **Compact Development Standards.** Add the following language to paragraph 7.a.viii: "The project and the Specific Plan shall meet or exceed the density, convenience, and block size standards set forth in Table 3.4, CRP Area Plan Book One, p. 44 of the CRP Area Plan."

2. **Phasing Requirements.** Revise the Overview of Development Stages One Through Three and the Schedule of Performance Table to require developer to (a) construct all infrastructure for the TOD Core and TOD Neighborhood in Development Stage One; and (b) construct or cause construction of at least 50% of the TOD Core and TOD Neighborhood residential units in Development Stage One.

3. **Energy and Water.** Add the following language to paragraph 7.a.viii: "The project and the Specific Plan shall exceed the CRP Area Plan's Sitewide Green Building Standard CA-3 (Book 3, p. 20) to achieve net positive energy production within Phase One." Add the following paragraph to section 7.a.: "xi. Must include a requirement that development of the Development Phase One property is water neutral, with developer provision of infrastructure supporting grey water and water recycling systems."

4. **Transportation.** Add the following to section 7.a.:

"xii. Must include a requirement that development of the Development Phase One property achieve the mode-split targets established by the CRP Area Climate Action Plan, Policy CA-T-5.8, by 2030, by taking the following steps:

- **a. Transportation Demand Management.** Developer shall create a transportation demand management plan and administration infrastructure (e.g. TMA) during the master planning process to meet/exceed the mode-split targets.
- **b. Intervals.** Developer shall ensure that the project meets interim mode-split targets established for two- or three-year intervals throughout development of Phase One.
- **c. Transit Performance.** Developer shall meet/exceed local transit performance and frequency requirements to achieve the mode-split targets.
- **d. County Connection** Developer shall negotiate in good faith to retain County Connection to provide local transit within the

project including offering the right of first refusal and right to match offers from competing providers. Developer shall require the local transit provider to take specified steps toward achievement of applicable interim performance targets. Developer shall only utilize a private provider if a public provider cannot be retained after best efforts, and shall require any private provider to demonstrate labor peace.

e. **Contra Costa Transportation Authority.** Developer shall coordinate with CCTA and other relevant agencies and stakeholders, to ensure that county and regional transportation infrastructure investments are aligned to facilitate achievement of the mode-split targets."

5. Neighborhood Connectivity. Add the following paragraph to section 7.a.: "xiii. Must include a Bicycle and Pedestrian Connectivity Plan to provide for safe connections from surrounding neighborhoods into the Reuse Plan area including separated crossings over busy arterial roadways such as Concord Boulevard, Willow Pass Road, Port Chicago Highway, and Bailey Road."

Parks and Open Space

Add a new section 3.h, as follows:

h. Parks and Open Space Development and Operation. City and Developer shall ensure the following with regard to development of the Development Phase One Property, including aspects of such development that affect planning and development of remaining portions of the Development Footprint:

1. Acreage. Acreage of parks and open space in the Development Footprint shall equal no less than 69% of such area, or the minimum number of acres consistent with the CRP Area Plan. Offsite mitigation areas shall not count towards this commitment and are in addition to the 69%. All parks, with the exception of the Regional Park and additional conservation areas, shall be City-owned, publicly-accessible, and managed consistent with the provisions of the DDA related to labor and employment. All parks shall be designed with wildlife crossings and wildlife movement as a priority. Duration and source of management funding for parks and open spaces shall be specified, with a baseline for annual operating costs of the parks, commitment to funding that baseline for at least 25 years and, at the least, identification of an ongoing revenue stream.

2. City Parks. Parks in each development phase shall be provided in developed form at no less than the acreage shown on the adopted Reuse Plan. City parks may be used as the location for public facilities such as museums, ball fields, community gardens, dog parks, active sports fields, and similar uses that would be inconsistent with the conservation goals of the Regional Park. City parks and

boundary linear parks shall have limited roadways designed to be minimally intrusive and shall include Class 1 bike lanes, 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.

3. Green Frame & Access. Developer shall provide a green frame for all parks to a level necessary to provide neighborhood, regional and BART trail access through Phase One to the parks included in the phase, and to the Regional Park, with, at a minimum, provision of access and trail connectivity for the entire greenway system as well as to the regional park as far as a Bailey Road regional park staging area, Avila Rd./Willow Pass Road Staging Area.

4. Mount Diablo Creek Riparian Zone. The conservation and habitat restoration area along Mt. Diablo creek shall be no less than 300' in width for its entire length, and no less than 150' from centerline on either side of the creek. Although the golf course can overlap with the creek zone north of Highway 4, the area 150' from centerline shall be a resource zone with habitat and restoration uses as the primary focus. Recreational trail connectivity shall be provided in consultation with East Bay Regional Park District and consistent with the requirements of natural resource agencies. Pedestrian bridges shall be provided for connectivity into the regional park consistent with the requirements of natural resource agencies.

5. Boundary & Other Linear Parks. The boundary linear park (neighborhood frame) along the Reuse Area boundary with existing neighborhoods, BART, etc., shall average no less than 275-425' in width for its entire length, and for each phase (Willow Pass Park shall not be part of this average), and shall include the entire experimental forest areas along the reuse plan boundary and along Bailey Road. The new neighborhood separators shall average no less than 150-500' in width, and the Central Greenway and Contra Costa Canal greenway shall average no less than 100' in width.

6. Biological Mitigation. Biological mitigation shall be geographically located onsite at the Weapons Station Inland or Tidal areas first, Mt. Diablo and Kirker Creek watersheds second, and in all cases within Contra Costa County. If it cannot be completely fulfilled within the Station area, by priority it must be located first in the "Mt. Diablo Creek" or "Willow and Kirker Creek" watersheds, as defined in the Contra Costa Watershed Atlas.

7. Conveyance of Restored and Protected Lands. The entire length of Mt. Diablo creek within the Inland area and north to and including the golf course shall be enhanced and restored consistent with the approach to restoration ultimately agreed to with the resource agencies. After restoration, East Bay Regional Park District shall be offered dedication of any and all of the creek area. If a conservation easement or other restrictive covenant is required for any part of the base or mitigation areas, it shall be offered first to EBRPD, appropriate local non-governmental organizations ("NGOs") along with necessary management funds, and monitoring and enforcement endowments as necessary.

8. Restoration Work. Creek and habitat restoration and native planting or other restoration projects shall be offered to appropriate local NGOs first, and to private contractors only if there is not a suitable NGO provider.

9. Mitigation Fund. Developer shall establish a mitigation fund for the purposes of habitat enhancement and park improvements within the Regional Park area as required by the Biological Opinion and Regulatory agencies, in agreement with EBRPD.

10. Regional Park Benefit Assessment. Developer shall establish a Community Facilities District on all market rate residential units to provide for the long-term management and operation of the Regional Park of no less than (a) for Single Family Residences: $200/unit; and (b) for Multi-Family Units: $150/unit.

11. Trail Gap Development. Developer shall complete development of the Contra Costa Canal to Delta DeAnza Regional Trail, a Class 1 separated trail connecting the Contra Costa Canal Regional Trail to the Delta DeAnza Regional Trail, prior to the issuance of Certificates of Occupancy of any Phase 1 residential development. Specific trail alignment and design shall be coordinated with the East Bay Regional Park District.

Community Oversight

Add a new term sheet section, as follows:

Community Oversight. The City shall establish an advisory body as the "CNWS Community Oversight Commission," with eleven members appointed by the Mayor and confirmed by City Council. The mandate of the commission shall be to:

(i) provide the public and stakeholders with additional information regarding ongoing planning and implementation of the project;
(ii) review implementation of the project's community benefits commitments, including status of affordable housing construction, compliance with local employment requirements, provision of parks and open space, and other public benefits to be delivered by the project; and
(iii) provide the City Council, Developer, and other project participants with recommendations on implementation issues regarding the project's community benefits commitments.

Membership on the Commission shall reflect a range of public stakeholders in the Project, including community-based organizations, affordable housing advocates, labor organizations, environmental advocates, and the local business community.

From: Stan Stansbury [mailto:abstansbury@gmail.com]
Sent: Wednesday, April 27, 2016 9:48 PM
To: Concord City Council
Subject: Starting the CNWS Process Over

By now, since you've been served with recall petitions, it should be clear to you that your relationship with your constituents has reached a new low.

I do not know what political consequences you would face by starting over. But I do know that as of now, no one I know thinks you're credible, and no one I know thinks you're either decent or honest. And I'm not one of the tin foil hat set who religiously attend council meetings to pressure you about which developer to pick. I'm an ordinary guy whose attention was attracted by what seemed like egregious ethical violations.

it does not matter if you're all paragons of governmental virtue. It does not matter if one proposal is a gazillion percent better than the other. It does not even matter if Catellus and Seeno are just as unethical and slimy as Lennar clearly is.

If you do not restart the contract process now, you will always be the chumps who sold Concord down the river for 30 pieces of silver. The mud will get you too, Mr. Grayson, even if you got out early and won't cast a vote. It was contributions to your campaign after all.

Post May 3rd Edits and Additions to Revised Lennar Term Sheet

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 providing for rights of entry by the City if needed to ensure performance of bonded obligations; 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.

22. Remedies.

a. Limitations on Award of Damages. ~~Appropriate and customary~~ Developer's remedies in the case of default by ~~a Party (and~~ City shall 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.~~ . City's remedies in the case of default by Developer shall in no event include consequential, special or punitive damages. City shall be entitled to recover actual damages where Developer has defaulted on an obligation to reimburse or pay money to the City pursuant to the DDA.

b. Remedies: Each Party's remedies for default under the DDA shall include: (i) a right of termination; (ii) specific performance, where permitted under California law; and (iii) other remedies at law or in equity subject to Section 22(a). The Parties' respective rights of termination shall be subject to materiality, notice, cure and related provisions to be addressed in the DDA.

~~b~~c. 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~~d. 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.

24. ~~Transfer of~~ City Discretion on 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~~ has no guaranteed development rights to future phases.

b. ~~a.~~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***").

c. ~~Notwithstanding the foregoing, should~~ 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.

d. ~~b.In the event that City elects to convey all or any portion of~~ If City selects a different master developer to develop the Future Development Property ~~(the "***Transferred Portion***") to any party other than Developer~~, ~~then~~ City will require ~~the~~ such future master developer ~~of such Transferred Portion~~ to reimburse Developer~~, out of project revenues from such Transferred Portion, for such Transferred Portion's~~ for such future master developer's pro rata share of ~~reasonable Project Costs incurred by Developer~~ costs 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~~future master developer's property. ~~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).~~

Local Reuse Authority Staff Response to Hope Johnson Letter

Attention: Full City Council – Please deliver for meeting this evening

No justification supports staff's recommendation to select Lennar as master developer at the Concord Naval Weapons Station. Lennar's revised term sheet is not the "better deal" council and staff promised to negotiate. Instead, staff and Lennar have merely shuffled money around, countering additions in some places by taking away from others. This proposed term sheet continues to fall short of the superior bid submitted by Catellus, the baseline term sheet Guy Bjerke and council represented would be used to negotiate more for Concord from Lennar.

Response: The Revised Lennar Term Sheet is equal to or better than Catellus' Term Sheet in the eyes of LRA staff and consultants – who originally recommended the Catellus Term Sheet last September. The Revised Lennar Term Sheet is the result of negotiations between the LRA and Lennar and some dollars were shifted to address staff's understanding of public preferences and Council's direction to us.

Lennar's bid remains inferior to the bid we learned was originally recommended by staff, despite the City Manager and Council's attempt to hide this recommendation from the public. In addition, staff has now admitted that negotiating with one developer only is not the competitive process council claimed it would be. We were told that competition would be through the option to start the process over should the revised Lennar bid fall short. Now, staff's memo is stating that starting over is not a viable option. If true, staff and council previously lied to us to appease the public's concern that one bidding developer fails to be a "competitive" process."

Response: LRA staff stated that competition in the process continues despite Catellus' withdrawal through both the use of Catellus' Term Sheet and the option of rejecting Lennar and starting the Master Developer selection process over. Rejecting Lennar and starting the Master Developer selection process over was and continues to be an option for the LRA. After review of the "start over" option and the LRA serving as the Master Developer, LRA staff and consultants have recommended against pursuing either of those courses of action. Especially, as stated above, because the LRA staff believes the Revised Lennar Term Sheet is also superior to those options.

Selecting Lennar without adding competition for this $6 billion project is beyond unacceptable. Staff is proposing selecting a master developer by default for the most important project in Northern California.

Response: The Master Developer selection process was designed to narrow the field of qualified firms – and select one. As stated above, the process has and continues to be competitive and LRA staff believes that the result of the process is a term sheet that is superior to both earlier term sheets.

This revised term sheet is inferior to the previous superior bid. It results in a minimum cost of $35 million to current Concord residents when this project should not be costing them any money at all.

Response: Again, the LRA staff and consultants believe the Revised Lennar Term Sheet is equal to or better than any previous Term Sheet. It's unclear how the cost in this paragraph is being calculated – but it would never be a cost to current Concord residents. The LRA has adopted a "fiscal neutrality" policy to make sure the Reuse Project does not negatively impact existing residents financially or in the provision of city services.

As discussed at previous council meetings, Lennar's term sheet was $50 million short on funds to upgrade infrastructure outside of the redevelopment property when compared to the superior bid chased away by council. This outside infrastructure work is not optional; roadways especially must be upgraded to accommodate the large trucks and traffic generated at the onset of the project. Thus, any amount short will immediately become the burden of current Concord residents. Lennar added only $15 million for this, and then only for Willow Pass Road and the related bridge. This new provision completely ignores the already over-burdened roadways near North Concord BART and entrances to major freeways. In a counter move, Lennar has reduced promised community benefits by $10 million. Factoring in the

reduction to Concord benefits, Lennar leaves $45 million up to current Concord residents to cover this necessary beginning work. Current Concord residents should not be subsidizing work needed to start the project or give up community benefits to repair Willow Pass Road.

Response: The author is apparently referencing Off-site Roadway Improvements when saying the Initial Lennar Term Sheet "was $50 million short". The footnote on page 16 of the September 29, 2015 staff report did show Catellus spending $67 million against $16 million by Lennar. In subsequent discussions with Lennar, ahead of the April 5 selection meeting, LRA staff learned that the footnote was in error and should have reflected $29 million for Lennar – see April 5 staff report Revised Table C. Further, the amounts used in those comparisons were in nominal (inflated) dollars. The May 3 staff report uses constant (non-inflated) dollars. Lennar is proposing additional funding for Willow Pass Road/Bridge of $15.7 million (constant) which equals $21.1 (nominal). So the Revised Lennar Term Sheet now provides $50.1 million (nominal) in this category.

Other necessary roadway improvements, like those referenced by the author, will be the subject of study in the Specific Plan and related CEQA documents. A nexus study will be conducted to make sure development in the Reuse Project contributes its fair share to the costs of any improvements identified in those studies. This obligation is not new, and is found in the adopted Reuse Plan (2010) and Reuse Area Plan (2012), as well as the adopted mitigation and monitoring plan.

The EPIP – community benefits fund – is now $10.8 million (constant) less in the Revised Lennar Term Sheet. In exchange, we now have $40 million (constant) in gap subsidy for affordable housing and a lower threshold, 20% IRR rather than 25% IRR, for LRA participation in future project profits – now estimated at $23.5 million (constant).

Concord residents are not subsidizing the project or giving up community benefits under the Revised Lennar Term Sheet.

Lennar originally offered no funds to assist with the affordable housing gap. The revised term sheet has allocated $40 million. This amount remains inferior to the term sheet snubbed by the council, falling $16 million short of the bid by Catellus. Again, in a counter move, Lennar has added more than this amount to the total cost of the project as well as reducing profits available to Concord. Clearly, there is evidence Concord can do better than what Lennar has been forced to even consider offering.

Response: The author is again comparing nominal dollars to constant dollars. The Catellus gap subsidy was $56 million (nominal). The Revised Lennar Term Sheet provides a gap subsidy of $49.3 million (nominal). In addition, Lennar is committing more of the gap subsidy to low and very-low income units, providing mixed affordable housing and moderate income inclusionary units. The LRA staff and consultants feel the Revised Lennar Term Sheet is now superior in respect to affordable housing. Further, it is appropriate to add the gap subsidy as project cost to ensure the affordable units get built as the project develops and are not waiting for, or dependent on, the project's profitability.

It should be noted here that any profits generated by the project must be used for only the redevelopment property for 20 years. Only property taxes from the development will be available for Concord's general fund during that time. This will be an issue should the council select Lennar because Lennar has such a poor history of actually building housing at its projects. It has built only 260 units at Mare Island since 1997 and, as of mid-2015, only 288 of 3,500 affordable units promised at Hunters Point since 1999.

Response: Any revenue from land sales, leases, the EPIP or the LRA's potential profit participation must be spent on community benefits or mitigation related to the Reuse Project for a period of seven years after the last land transfer from the Navy, so that could be as long as 2035 by current estimates. However, the expenditure of these funds in the Reuse Project does not mean they will only benefit the Project. Numerous community facilities, parks and the Tournament Sports Facility will be available to all residents – of Concord and the region.

Both property taxes and sales taxes generated from the Reuse Project will be available to the City's General Fund.

Lennar is only able to build on a project once they have entitlements (permits). LRA staff is unaware of how long Lennar had to work on each projects listed in order to get it approved or entitled so they could actually build anything. Our Reuse Project started in 2006. We are still between two to three years away from having a Specific Plan that provides any entitlement to build. So it could be 2020 before any units are actually constructed. During that time period there will likely be economic upticks and downturns, both of which will impact the pace of development. It is worth pointing out that the way the deal is structured it is clearly in Lennar's interest to construct the project.

Lennar continues to demand title to some land rather than leasing from Concord. This is not acceptable. At nearby Mare Island, Lennar received title to land in exchange for contributing money to the bankruptcy reorganization of its subsidiary. This allowed Lennar to purchase the land from Vallejo at ten cents on the dollar, another broken agreement. Staff's assertion that the development agreement could protect Concord's ability to control land titled to Lennar is contrary to bankruptcy law. Staff is asking council to agree to give Lennar the option of transferring title to one of its subsidiaries, Five Point. Should this happen and Five Point file for bankruptcy, any provision protecting Concord's rights to the land would be overridden by bankruptcy reorganization laws. This isn't complicated and very similar to personal bankruptcy; when someone files for bankruptcy, the courts override all credit card and bank agreements. Lennar has demonstrated it is more than willing to do this, and there is no reason to take the risk it will not do it again. The revised term sheet does not protect Concord; it merely allows the council to sneak title to Five Point away from public scrutiny after the development agreement is signed.

Response: Lennar and Catellus proposed different development models. Lennar's is the model more typically used by master developers. The LRA staff and consultants have negotiated safeguards into the Revised Lennar Term Sheet, for instance – Lennar is not purchasing the entire 500 acres in Development Phase One on day one. Lennar Concord LLC will only be allowed to purchase and work on a single 40-60 acre parcel after meeting a series of stringent requirements that protect the City's interest. The LRA will hold the balance of the property.

Any transfer of Lennar Concord LLC to any entity will require LRA approval at a public meeting, so references to"sneak[ing] title to Five Point away from public scrutiny" is both misleading and incorrect.

In addition, Concord should not allow any possibility of the fate of Concord Naval Weapons Station property from becoming entwined with Lennar's projects in San Francisco and San Diego. Lennar states it plans to transfer title to those projects to Five Point if that company's recent IPO application is granted. Concord should eliminate any possibility of being caught up in any bankruptcy of Five Point, especially since courts have halted development of the San Diego property to be transferred by voiding an EIR and withholding permits until Lennar addresses environmental and transparency issues. An investment fund associated with the San Diego project, Third Avenue Real Estate, is already experiencing financial trouble. Allowing Lennar any possibility of associating title at Concord's project with this already shaky San Diego deal is undeniably irresponsible.

Response: Five Point will manage Lennar Concord LLC on behalf of the Lennar Corporation. Lennar Concord LLC is designed as a limited liability company to protect the project and insulate it from responsibility for other projects by the parent company. The Open Book accounting provision in the Revised Lennar Term Sheet will also serve as a tool to ensure that our Reuse Project rises or falls on its own performance.

The above is not a comprehensive review of the continued short falls in Lennar's term sheet and the troubled selection process created by council's poor decisions. It also doesn't even address Lennar's troubles with environmental issues, such as its alliance with Tetra Tech, the company found by NBC Investigations to have falsified toxic soil samples at Hunters Point. The lack of competition is resulting in staff asking for Lennar to receive the contract by default. This project is far too complex and important for the council to accept this unreasonable premise. Further, Lennar should have been disqualified when it

violated the negotiating agreement by lobbying, demonstrating pay to play politics is dominating the selection process. Even the majority of speakers at public comment supporting Lennar are individuals and entities who received monetary and in-kind gifts from the company. None are owners of Lennar homes or people directly employed in nearby Lennar projects. One former San Francisco sheriff even stated that Lennar had benevolently met with the community and added water trucks when dust during demolition became an issue for the community, completely failing to acknowledge that the Bay Area Air Quality Management District had fined Lennar $515,000 for violations in handling the dust.

Everyone can see that something is not right about the decisions and illogical arguments put forth by council and staff to keep Lennar in the process. It is time for the council to apologize to Concord, and start the process over. The staff memo and revised term sheet are an insult to the residents of Concord.

Council should not be settling for the inferior for Concord on this project.

Response: The LRA staff and consultants have an obligation to provide our best advice to the LRA who is conducting a Master Developer selection process under the terms of an Agreement to Negotiate. We are recommending the selection of Lennar and the acceptance of the Revised Lennar Term Sheet after a lengthy and exhaustive process. Should the Council enter into the revised term sheet with Lennar, the next step is to use it as the basis for further negotiations with Lennar of a Disposition and Development Agreement – which will provide another opportunity to improve the terms of the proposed partnership between the LRA and Lennar.

Sincerely,
Hope Johnson
Concord Resident

From: Tim Carr [mailto:tcarr925@gmail.com]
Sent: Sunday, May 01, 2016 5:00 PM
To: Concord City Council; Edi Birsan; Laura Hoffmeister Mayor
Subject: Disagree with 'Transfer of Title' to the developer

Hello City Council,

1) I recommend asking Lennar to remove the stipulation the land be signed over to them. Let them work off a lease. Then if the holding company were to go bankrupt, the city would still own the land and could find someone else to do the job. **Do not let them own the property at any time.** Heed what has happened in other locations.
You had specifically asked your staff to remove this "transfer of title" step to a Limited Liability Corp. However, staff left it in and are now recommending this term sheet.

I am concerned with the staff and their recommendation in spite of this major discrepancy. Lennar heard you all say in a council meeting you did not want to transfer title and did not want to work with the LLC they set up.

There is more to this decision than just 'looking at the term sheet'.
2) Again, I would prefer you decide to not accept this sheet, do not accept Lennar, and restart your look for a developer. Let's find a developer we can trust. You have the chance to get away from Lennar now, later you may not.

Tim Carr
3721 Hillsborough Dr. (Sun Terrace homeowner)
Concord, CA
tcarr925@gmail.com

5/3/2016

Concord City Mayor and Council members

I am greatly disappointed that there are only 3 of the 5 City Council members who can decide and vote on the Master Developer for the Concord Naval Weapons Station development. This decision is too important to only have 3 of the 5 make this decision. The residents of this city deserve better than this situation.

It is an embarrassment that my City is in this position. One council person recused himself because of where he lives. Ron Leone should not have bothered to run for the City Council position. When he was campaigning, he should have been honest enough to tell the people he was asking to vote for him that he would not be able to be involved or vote on the most important issue to ever come before the Council.

Tim Grayson is an even more embarrassment to the residents due to the questionable campaign donations for the Assembly seat. Why the donations were not vetted prior to accepting stretches credulity.

Just be aware that the residents of Concord are watching and making notes on whom to support or not support in any upcoming election to any political seat in the state of California.

Sincerely,

Katherine Dano-Luttjohann
4591 Lincoln Drive Concord, Ca 94521

From: KatherineLuttjohann [mailto:KatherineLuttjohann@astound.net]
Sent: Tuesday, May 03, 2016 11:08 PM
To: Concord City Council
Subject: Concord City Council actions

City Clerk
Please acknowledge the receipt of this letter.

For Laura Hoffmeister, Dan Helix, Tim Grayson, Edi Birsan, and Ron Leone.

Please print and give a copy to the Mayor and the City Council members.

Thank you,
Katherine Dano-Luttjohann

From: Evelyn Freitas [mailto:eaf@railsoft.com]
Sent: Tuesday, May 03, 2016 10:28 PM
To: Concord City Council
Subject: Institutional Controls at BRAC Sites: The Next Battleground - sac_005696.pdf

http://www.economic.saccounty.net/LocateHere/McClellan/Documents/sac_005696.pdf

Attention City council, City Manager, Staff

From: Evelyn Freitas [mailto:eaf@railsoft.com]
Sent: Tuesday, May 03, 2016 8:27 PM
To: Concord City Council; Press Log Contact Mayor@claycord.com
Cc: reclaimcnws@yahoo.com; edcneighborsagainstcorruption@gmail.com
Subject: Lennar's history in San Francisco a dire warning for Concord

https://contracostabee.com/?p=50749

ATTENTION ALL CITY COUNCIL MEMBERS, CITY MANAGER STAFF, Please review my article in the Contra Costa Bee. Next meeting we will have an organized group in large numbers to address our needs. Evelyn Freitas

Moore, Marsha

From: Laperchia, Pamela
Sent: Monday, May 02, 2016 3:26 PM
To: Moore, Marsha; Dunbar, Vicki; Solomon, Debra
Subject: FW: EBRPD Comments on May 3, 2016 Staff Report
Attachments: EBRPD Comments on May 3 2016 CC Staff Report.pdf

Another letter for the meeting tomorrow night.

From: Brian Holt [mailto:BHolt@ebparks.org]
Sent: Monday, May 02, 2016 2:44 PM
To: Bjerke, Guy
Cc: Larry Tong; Kristina Kelchner; cmarsh@DowneyBrand.com; Isby Fleischmann; Laperchia, Pamela
Subject: EBRPD Comments on May 3, 2016 Staff Report

Hi Guy –

Attached is a letter from the District on the May 3, 2016 staff report regarding the revised Lennar Term Sheet. A hard copy will follow, please ensure copies are provided to the Council.

Feel free to contact me should you have any questions.

East Bay Regional Park District

Brian Holt
Principal Planner | Acquisition, Stewardship & Development
East Bay Regional Park District
2950 Peralta Oaks Court, Oakland, CA 94605
T: 510-544-2623| F: 510-569-1417
BHolt@ebparks.org | www.ebparks.org

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Please consider the environment before you print

East Bay Regional Park District

2950 PERALTA OAKS COURT P.O. BOX 5381 OAKLAND CALIFORNIA 94605-0381 T: 1-888-EBPARKS F: 510-569-4319 TRS RELAY: 711 WWW.EBPARKS.ORG

May 2, 2016

Guy Bjerke
Director of Community Reuse Planning
City of Concord
1950 Parkside Drive
Concord, CA 94519

RE: May 3, 2016 City Council Meeting, Lennar Revised Term Sheet Staff Report

Dear Guy:

The East Bay Regional Park District (the 'District') appreciates the ongoing coordination and partnership between our two agencies in the planning for the reuse of the former Concord Naval Weapons Station. As you know, the District is currently developing a Land Use Plan for the portions of the base that are proposed to be managed as a regional park.

The District has reviewed the staff report for the May 3, 2016 City Council meeting concerning the revised Lennar Term Sheet. We have received a number of questions from the public regarding information contained in that report regarding the future regional park boundaries that should be clarified. Figure 1, page 4, of the staff report shows the boundary of lands proposed to be conveyed through an Economic Development Conveyance (EDC) versus lands proposed to be conveyed to the District through a Public Benefit Conveyance (PBC). Those boundaries include a number of variations and carve-outs from the area proposed to be conveyed to the District as shown in the adopted Area Plan. The carve-outs and adjustments were made in consultation with the District and are necessary to accommodate infrastructure development and remediation that will facilitate implementation of the Area Plan.

The figure is misleading in that it identifies the boundaries shown in the map as being the boundaries of the regional park. It has always been the understanding between the District and the City that there may be portions of the regional park that would actually be transferred through the EDC to the City. These lands could accommodate the City's necessary infrastructure and remediation while being operated for recreation and open space purposes as part of the regional park. A more accurate label on Figure 1 would be to indicate that the lines delineate the EDC and PBC boundaries and to make clear to the public that the regional park may ultimately include lands owned by both the City and the District transferred through both conveyance mechanisms.

We look forward to continuing to work with the City in the details of the planning, design, and operational responsibilities of the future regional park – including memorializing this relationship through the Memorandum of Understanding that we have been collaborating on.

Thank you for the opportunity to provide comments. Please feel free to contact me at (510) 544-2623 or bholt@ebparks.org should you have any questions.

Respectfully,

Brian W. Holt
Principal Planner

Cc: Concord City Council
Beverly Lane, EBRPD Board of Directors
Kristina Kelchner, EBRPD Assistant District Counsel

Board of Directors

Doug Siden, President, Ward 4 | Beverly Lane, Vice-President, Ward 6 | Dennis Waespi, Treasurer, Ward 3 | Diane Burgis, Secretary, Ward 7 | Whitney Dotson, Ward 1 | John Sutter, Ward 2 | Ayn Wieskamp, Ward 5 | Robert E. Doyle, General Manager

From: Hope Johnson [mailto:hope.johnson@earthlink.net]
Sent: Tuesday, May 03, 2016 10:15 AM
To: Concord City Council
Cc: Bjerke, Guy; lwhite@bayareanewsgroup.com; dborenstein@bayareanewsgroup.com; jlyons@sfchronicle.com; rswan@sfchronicle.com; tamara@claytonpioneer.com; news@claycord.com; richeber@amerasa.net
Subject: CNWS Master Developer Selection - May 3

Attention: Full City Council – Please deliver for meeting this evening

No justification supports staff's recommendation to select Lennar as master developer at the Concord Naval Weapons Station. Lennar's revised term sheet is not the "better deal" council and staff promised to negotiate. Instead, staff and Lennar have merely shuffled money around, countering additions in some places by taking away from others. This proposed term sheet continues to fall short of the superior bid submitted by Catellus, the baseline term sheet Guy Bjerke and council represented would be used to negotiate more for Concord from Lennar.

Lennar's bid remains inferior to the bid we learned was originally recommended by staff, despite the City Manager and Council's attempt to hide this recommendation from the public. In addition, staff has now admitted that negotiating with one developer only is not the competitive process council claimed it would be. We were told that competition would be through the option to start the process over should the revised Lennar bid fall short. Now, staff's memo is stating that starting over is not a viable option. If true, staff and council previously lied to us to appease the public's concern that one bidding developer fails to be a "competitive" process."

Selecting Lennar without adding competition for this $6 billion project is beyond unacceptable. Staff is proposing selecting a master developer by default for the most important project in Northern California.

This revised term sheet is inferior to the previous superior bid. It results in a minimum cost of $35 million to current Concord residents when this project should not be costing them any money at all.

As discussed at previous council meetings, Lennar's term sheet was $50 million short on funds to upgrade infrastructure outside of the redevelopment property when compared to the superior bid chased away by council. This outside infrastructure work is not optional; roadways especially must be upgraded to accommodate the large trucks and traffic generated at the onset of the project. Thus, any amount short will immediately become the burden of current Concord residents. Lennar added only $15 million for this, and then only for Willow Pass Road and the related bridge. This new provision completely ignores the already over-burdened roadways near North Concord BART and entrances to major freeways. In a counter move, Lennar has reduced promised community benefits by $10 million. Factoring in the reduction to Concord benefits, Lennar leaves $45 million up to current Concord residents to cover this necessary beginning work. Current Concord residents should not be subsidizing work needed to start the project or give up community benefits to repair Willow Pass Road.

Lennar originally offered no funds to assist with the affordable housing gap. The revised term sheet has allocated $40 million. This amount remains inferior to the term sheet snubbed by the council, falling $16 million short of the bid by Catellus. Again, in a counter move, Lennar has added more than this amount to the total cost of the project as well as reducing profits available to Concord. Clearly, there is evidence Concord can do better than what Lennar has been forced to even consider offering.

It should be noted here that any profits generated by the project must be used for only the redevelopment property for 20 years. Only property taxes from the development will be available for Concord's general fund during that time. This will be an issue should the council select Lennar because Lennar has such a poor history of actually building housing at its projects. It has built only 260 units at Mare Island since 1997 and, as of mid-2015, only 288 of 3,500 affordable units promised at Hunters Point since 1999.

Lennar continues to demand title to some land rather than leasing from Concord. This is not acceptable. At nearby Mare Island, Lennar received title to land in exchange for contributing money to the bankruptcy reorganization of its subsidiary. This allowed Lennar to purchase the land from Vallejo at ten cents on the dollar, another broken agreement. Staff's assertion that the development agreement could protect Concord's ability to control land titled to Lennar is contrary to bankruptcy law. Staff is asking council to agree to give Lennar the option of transferring title to one of its subsidiaries, Five Point. Should this happen and Five Point file for bankruptcy, any provision protecting Concord's rights to the land would be overridden by bankruptcy reorganization laws. This isn't complicated and very similar to personal bankruptcy; when someone files for bankruptcy, the courts override all credit card and bank agreements. Lennar has demonstrated it is more than willing to do this, and there is no reason to take the risk it will not do it again. The revised term sheet does not protect Concord; it merely allows the council to sneak title to Five Point away from public scrutiny after the development agreement is signed.

In addition, Concord should not allow any possibility of the fate of Concord Naval Weapons Station property from becoming entwined with Lennar's projects in San Francisco and San Diego. Lennar states it plans to transfer title to those projects to Five Point if that company's recent IPO application is granted. Concord should eliminate any possibility of being caught up in any bankruptcy of Five Point, especially since courts have halted development of the San Diego property to be transferred by voiding an EIR and withholding permits until Lennar addresses environmental and transparency issues. An investment fund associated with the San Diego project, Third Avenue Real Estate, is already experiencing financial trouble. Allowing Lennar any possibility of associating title at Concord's project with this already shaky San Diego deal is undeniably irresponsible.

The above is not a comprehensive review of the continued short falls in Lennar's term sheet and the troubled selection process created by council's poor decisions. It also doesn't even address Lennar's troubles with environmental issues, such as its alliance with Tetra Tech, the company found by NBC Investigations to have falsified toxic soil samples at Hunters Point. The lack of competition is resulting in staff asking for Lennar to receive the contract by default. This project is far too complex and important for the council to accept this unreasonable premise. Further, Lennar should have been disqualified when it violated the negotiating agreement by lobbying, demonstrating pay to play politics is dominating the selection process. Even the majority of speakers at public comment supporting Lennar are individuals and entities who received monetary and in-kind gifts from the company. None are owners of Lennar homes or people directly employed in nearby Lennar projects. One former San Francisco sheriff even stated that Lennar had benevolently met with the community and added water trucks when dust during demolition became an issue for the community, completely failing to acknowledge that the Bay Area Air Quality Management District had fined Lennar $515,000 for violations in handling the dust.

Everyone can see that something is not right about the decisions and illogical arguments put forth by council and staff to keep Lennar in the process. It is time for the council to apologize to Concord, and start the process over. The staff memo and revised term sheet are an insult to the residents of Concord.

Council should not be settling for the inferior for Concord on this project.

Sincerely,
Hope Johnson
Concord Resident

From: Michael McDermott [mailto:mtmcder@pacbell.net]
Sent: Sunday, May 01, 2016 10:26 PM
To: Concord City Council
Subject: May 3 2016 City Council Meeting: Attention all Council Members

Concord City Council:

On Friday, April 30, the City Council agenda for the May 3 Council Meeting was posted. That agenda included a link to the Lennar negotiations "Term Sheet" presented by city staff for discussion.

I do have two specific items I would like to see revised on this Term Sheet:

1) On page 34 I was pleased to see provision is being made for review of the specific plan by Concord residents. The document states:
(the specific plan) "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. "

I would ask that these meeting dates, times, and locations be posted well in advance on the city website and all those attending or commenting be required to identify themselves, including their home address and the neighborhood of Concord they represent. This process so far has been dominated by input and feedback from out of town special interest groups. We should see the needs and concerns of Concord residents recognized and addressed.

2) On page 169, a CNWS Community Oversight Commission is proposed. This sounds like a good idea, but unfortunately the proposal stacks the membership with the same (mostly) out of town special interest groups that have dominated input so far: "Membership on the Commission shall reflect a range of public stakeholders in the Project, including community-based organizations, affordable housing advocates, labor organizations, environmental advocates, and the local business community".

Can't we have an Oversight Commission composed of civic-minded residents of Concord who are **not** representing single issues but instead are concerned about the welfare of the City as a whole? The special interest groups can address the Oversight Commission, but they should NOT be members.

One final thought: The Term Sheet document is 170 pages long, with numerous changes/updates highlighted. It seems to me the public should be allowed more time to review this document and comment on it before the city council takes action to approve a Master Developer and proceed to the DDA. Offering the public adequate time to review and discuss the specifics of this complex document is the best way to build support and avoid the appearance this is a back room deal and a "fait accompli". Please consider waiting a few more weeks to allow for more complete public input before finalizing a recommendation.

Thank you for your consideration of my suggestions.
Sincerely,
Mike McDermott
1301 Saddlehill Lane
Concord, Ca.
Cell: 925-451-1072

Nakamura, Mary

From: Kim McGee (via Google Docs) <kimmcgee2014@gmail.com>
Sent: Monday, May 02, 2016 9:38 AM
To: Concord City Council
Subject: Lennar Letter
Attachments: Lennar Letter.docx

Kim McGee has attached the following document:

Lennar Letter

Please read and consider the attachment. I'm addressing the negotiations with Lennar for the CNWS.
I look forward to seeing you at the city council meeting May 3, 2016.
Sincerely,
Kim McGee

Google Docs: Create and edit documents online.

May 2, 2016

Concord City Council
Concord City Hall
1950 Parkside Dr.
Concord, CA. 94520
CityCouncil@cityofconcord.org

Re: CNWS and Lennar

Dear Concord City Council,

Please allow me to introduce myself. My name is Kim McGee. I moved to Concord over 10 years ago. Calling Concord my home is important to me and so is the future of Concords development. This brings me to write a letter of consideration for the selection of a MD for the CNWS. Please review my concerns regarding the choosing of Lennar as the MD. As a participating community member, I've been engaged with the development process. Many friends and neighbors have voiced their concerns over picking ***any*** Master Developer at this time.
First, I hear all to often that the City of Concord should, or must restart a bidding process for this large development. (I believe we started with eight LOQ, narrowed it to four, then two, resulting in one withdrawal; leaving only Lennar currently negotiating the contract.)
Next, It feels like a huge controversy over not only who is left in order to pick a MD, but how **few City Council Members** are able to **vote on a multi-billion dollar project**. I believe we have five Council Members. Certainly it takes all five members to vote on the future of Concord, especially one as large as the CNWS (or use additional experienced leaders). If I'm correct, three members are left to make this decision for our community. In fact this leaves two people to decide on one and only one MD to decide the ***future*** of CNWS and the residents of Concord.
Additionally the controversy over officials and appointees on this assignment. (see below)

There have been numerous newspapers articles telling stories of inadequate outcomes for several Lennar projects. To name a few:Treasure Island, Mare Island, Hunters Point and other out of state mishaps. Promises not lived up to, leaving cities with major costs after Lennar stepped aside. Do we really want to risk putting Concord and its citizens in danger of the past performances of Lennar? I recall hearing time and again, "past performance predicts future outcomes."
**For time sake I will refer to only a few suspicious occurrences. (Plenty of bad publicity and legal issues arose prior to 2015 that lead to the following.)

August 2015-- Mayor Grayson returns $16,800 of contributions to his Assembly campaign from firms/ individuals linked to Lennar. This happened only after an exposure by newspaper investigative reporters.

August 7, 2015- Michael Wright was the director of the Community Reuse Plan. (Wright participated in many successful Navy base closures.) Then around many scandals (one surrounding Attorney Coon's death) the City Manager Valerie Barone hires Guy Bjerke, a former Concord councilman, replacing Michael Wright. Months later, public records reveal that a panel of experts indicated that ***Guy Bjerke lacked the experience for the job. I ask, "Why would the City of Concord hire an inadequate employee to see over a billion dollar project which may well be our largest undertaking?"***

I realize the need for growth in Concord. I agree Concord needs additional housing, including affordable and low income homes. New storefronts and industries will increase revenues to Concord. I love the idea of a beautiful Regional Park. Of course, if I had my druthers I would choose to keep Concord as is. Clearly that idea is fairytale thinking.
Please hear my voice. Hear me and fellow Concord residents question the mistakes made. With Catellus dropping out of a billion dollar project because of the lack of the City Council to negotiate their term sheet are we able to proceed? I wonder then, why you choose to negotiate a term sheet with Lennar? Especially when **Lennar appears to have questionably findings** in regard to the donations to Tim Grayson's campaign. Everybody knows that putting money into the pockets of people making huge decisions is unacceptable. Why are you even considering to **reward** Lennar with a negotiation after their behavior is already questionable?
I have great concern over the business practices of Lennar. I **fear** that unless the City Council has a **reset button**, Concord citizens will continue to lack in trust for our council members as well as ***not support the CNWS project.***
The decision for the future of the CNWS and the city is an important one. Please ***do not choose Lennar*** without at least a further full investigation into their business practices.
Competition is essential for negotiating the best deals for Concord. ***Might you consider inviting Catellus back? Open back up the LOQ process to other Master Developers?*** We need time to explore not only other options, but to fix the problems which ended us up here
Given the history, if the members of the council have even a modicum of **respect for the community**, it will start over.
Respectfully,,
Kim McGee
Concord Resident

From: H M [mailto:holly3939@hotmail.com]
Sent: Sunday, May 01, 2016 10:37 AM
To: Concord City Council
Subject: Att: Mayor Hoffmeister

May 1, 2016
Mayor Hoffmeister
Council member Helix
Council member Birsan

Re: Tuesday's vote on the Master Developer for the Concord Naval Weapons Station

This Tuesday, once again, there is a vote for the selection of the Master Developer for the Concord Naval Weapons station. And once again, Lennar Urban is in the running. Only this time, they are the only contender.

I do not want to get into the hows and whys you, the Council, got to this point. We are all aware of Lennar's history with this project.

I do implore you to remember you were voted in by the residents of Concord, by those of us living in Sun Terrace, Holbrook Heights and East Sun Terrace. These are the residents and voters who are going to be massively impacted by the project.

At the past few Council meetings, Lennar has managed to bring in people from Danville, Walnut Creek, San Francisco and other cites who went on and on about how great Lennar is. The problem is, these people are NOT your constituents, nor will they be directly affected by the year of construction, traffic diversion, rodents, dust, bond issues, taxes, lack of funds, and everything else that comes with such a major project.

And yet you continue to listen to their views and endorse a company that knowingly lobbied the council and council member Grayson, bankrupted the City of Vallejo, cost CALPERS almost $1B and have a history of mismanagement, under funding and deceit. I found it especially interesting that Bonner never ONCE apologized for the campaign contributions that Cattelus rightfully questioned and was ridiculed for it.

In reviewing their 'revised' Term Sheet, most of it is a re-distribution of funds. The City now gets less community money because Lennar took that money to cover the low-income housing gap. Lennar still get to own the land!!!! And there is NOTHING that talks about Post Chicago Highway, Panoramic or the BART entrance. They do talk about Willow Pass Road and a 'study' to look into other road issues. Had they bothered to meet with the residents and see when even the current traffic conditions are, they would have included it.

I implore you to NOT accept Lennar's 'new' Term Sheet and either start the process over and/or consider Council member's Helix's idea of the City being its own Master Developer. Concord cannot afford to be another victim of Lennar.

Sincerely -

Kathryn Holly McGlothlin

From: alan smith [mailto:alanbsmith@sbcglobal.net]
Sent: Tuesday, May 03, 2016 6:49 AM
To: Concord City Council
Subject: New Concord Library

Dear friends,

As you discuss the master developer tonight,please remember the priorities the council set in I thin August 2007.

A new library was the number two priority after public safety.

Thanks as always for your support of the Concord library.

Alan Smith

Nakamura, Mary

From: Stan Stansbury <abstansbury@gmail.com>
Sent: Wednesday, April 27, 2016 9:48 PM
To: Concord City Council
Subject: Starting the CNWS Process Over

By now, since you've been served with recall petitions, it should be clear to you that your relationship with your constituents has reached a new low.

I do not know what political consequences you would face by starting over. But I do know that as of now, no one I know thinks you're credible, and no one I know thinks you're either decent or honest. And I'm not one of the tin foil hat set who religiously attend council meetings to pressure you about which developer to pick. I'm an ordinary guy whose attention was attracted by what seemed like egregious ethical violations.

it does not matter if you're all paragons of governmental virtue. It does not matter if one proposal is a gazillion percent better than the other. It does not even matter if Catellus and Seeno are just as unethical and slimy as Lennar clearly is.

If you do not restart the contract process now, you will always be the chumps who sold Concord down the river for 30 pieces of silver. The mud will get you too, Mr. Grayson, even if you got out early and won't cast a vote. It was contributions to your campaign after all.

From: Stan Stansbury [mailto:abstansbury@gmail.com]
Sent: Tuesday, May 03, 2016 12:18 PM
To: Concord City Council
Subject: Developer selection for CNWS

One last shot to try to make you see sense.
If you pick Lennar, you will:
1) Effectively reward Lennar for trying to bribe a council member. They will conclude that they can try to pay off anybody and everybody, if they haven't already.
2) Make permanent enemies of concerned citizens. They will waiting for you around every bend with protests, injunctions, and lawsuits. There is room to doubt the durability of decisions made by officials who are the targets of recall, for example.
3) Deepen existing divisions within your own City staff with the potential for scandal and substandard performance.
4) Shorten your own careers. Nobody I know believes anything you say, or trusts you. The kindest comments are that you're just not smart enough to oversee a project of this size.

I understand that you're used to doing whatever you want, secure in the knowledge that only major contributors are watching. But that's just not the case anymore.

Alfred B. Stansbury
Concord resident

Sir,

please read the reports and do <u>not</u> hire Lennar.
The contractor will bankrupt Concord!

J. Spelian

Lennar's history of failed projects should concern Concord leaders and voters

nick marsch April 22, 2016

As the City of Concord evaluates the fitness of Lennar-Urban to be its partner in developing the Concord Naval Weapons Station (CNWS) Reuse Project, it is important that the past history of this firm is carefully analyzed before considering tying the knot. With urban planning much like geology, the keys to the future can be seen in what has transpired in the past.

In 2003, Lennar Corporation obtained the rights to redevelop the El Toro Marine Corp Air Station in the City of Irvine, California. Promises were made by Lennar, including the investment of $200,000,000 for construction of a "Great Park". Lennar reneged on the deal, and the Great Park project languished for years as the developer failed to honor its agreements with the City of Irvine. Instead of a Great Park, Lennar planted a small patch of grass and offered "balloon rides". Seriously. The original plans included a guess-your-weight booth, and the two-headed lady exhibit, but those were axed due to budgetary constraints.

Now the City of Concord is facing an important decision – selection of a master developer for the valuable CNWS redevelopment project. And the city will have to live with the consequences of that decision for decades.

Lennar COO Jonathon Jaffe

The City of Vallejo had just such a decision to make almost twenty years ago – and the city chose Lennar as master developer of Mare Island. They too have had to live with the consequences of that decision ever since.

Here is what happened in Vallejo:

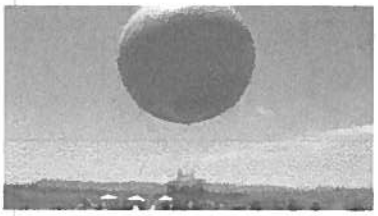
Lennar assigned their interests in the Vallejo Mare Island contract to a Lennar-controlled holding company called LandSource LLC. Then Lennar, according to a lawsuit filed by creditors of LandSource, used inflated appraisals and fabricated cash flow projections to leverage up the balance sheet of LandSource, borrowed 1.4 billion dollars against that cooked up valuation, transferred all of the that cash to its own and its sister company's accounts, and rendered LandSource insolvent the same day.

Not surprisingly, Lennar filed bankruptcy on behalf of LandSource just 13 months later, on June 9, 2008. This bankruptcy filing included Mare Island, and the resulting losses to the City of Vallejo, creditors, and investors in LandSource were well over a billion dollars.

I published a book on Amazon in November of 2015 that recounts this story. The title of the book is: *Crime and Deception – How Lennar Corporation Swindled America's Largest Pension Fund*. The book is a product of two years of national research on Lennar's business practices, with a focus on an analysis of the LandSource swindle. Put simply, independent research clearly shows that Lennar routinely engages in fraudulent business practices, does not honor its agreements, and uses and abuses the courts to evade contractual obligations.The book is written exclusively from information gathered from third party fully substantiated sources, including court records, news articles, Lennars own documents, testimony of Lennar executives, press releases, and other verifiable sources.

Facts from the book were quoted in an article published about Lennar in the Contra Costa Bee on November 18, 2015. Copies of the book were made available recently to members of the Concord City Council

The City Manager of Concord recently received a letter from Lennar COO Jonathan Jaffe denouncing the book, the author, and labeling the contents of the book as "false allegations" and "unsubstantiated" claims. Nothing could be further from the truth. Notably, Lennar has never publicly challenged the contents of the book.



Taking a Ride With Lennar

Lennar and Mr. Jaffe's pointless and diversionary ad hominem attacks are the refuge of those with nothing to say, and they do not address the primary question: *is Lennar a suitable bidder for the CNWS master developer contract*?

The bottom line is that Concord needs a trustworthy and capable partner to move forward on the CNWS project. A review of Lennars track record and the track record of its top officers reveals that this company is anything but trustworthy and capable.

A BIG RISK FOR THE CITY OF CONCORD

Lennar COO Jonathan Jaffe – pictured above – was the principal architect of the failure and bankruptcy of LandSource LLC, one of the largest fraud-based real estate failures in the country. At his direction, Lennar duped CalPERS and a Barclays Bank loan syndicate out of over one billion dollars. In other words, Lennar and Jaffe took and spent the savings of over 1.6 million members in the CalPERS pension fund. Another victim was the City of Vallejo's Mare Island redevelopment project, and by extension the citizens of Vallejo. This is the true measure of Mr. Jaffe and Lennar.

Our own experiences with Lennar should be informative. Mr. Jaffe was the manager on a $500,000,000 jointly-owned development in Southern California. Since the City of Concord is being offered a "profit participation" from Lennar, it would be instructive to review testimony from Jaffe in an under-oath deposition taken on August 13, 2012 on this subject:

Q. Now as I understand it, the Bridges development company lost money every year since Lennar became involved with HCC (the Bridges development company) and Mr. Marsch, correct?

A. I believe that is correct.

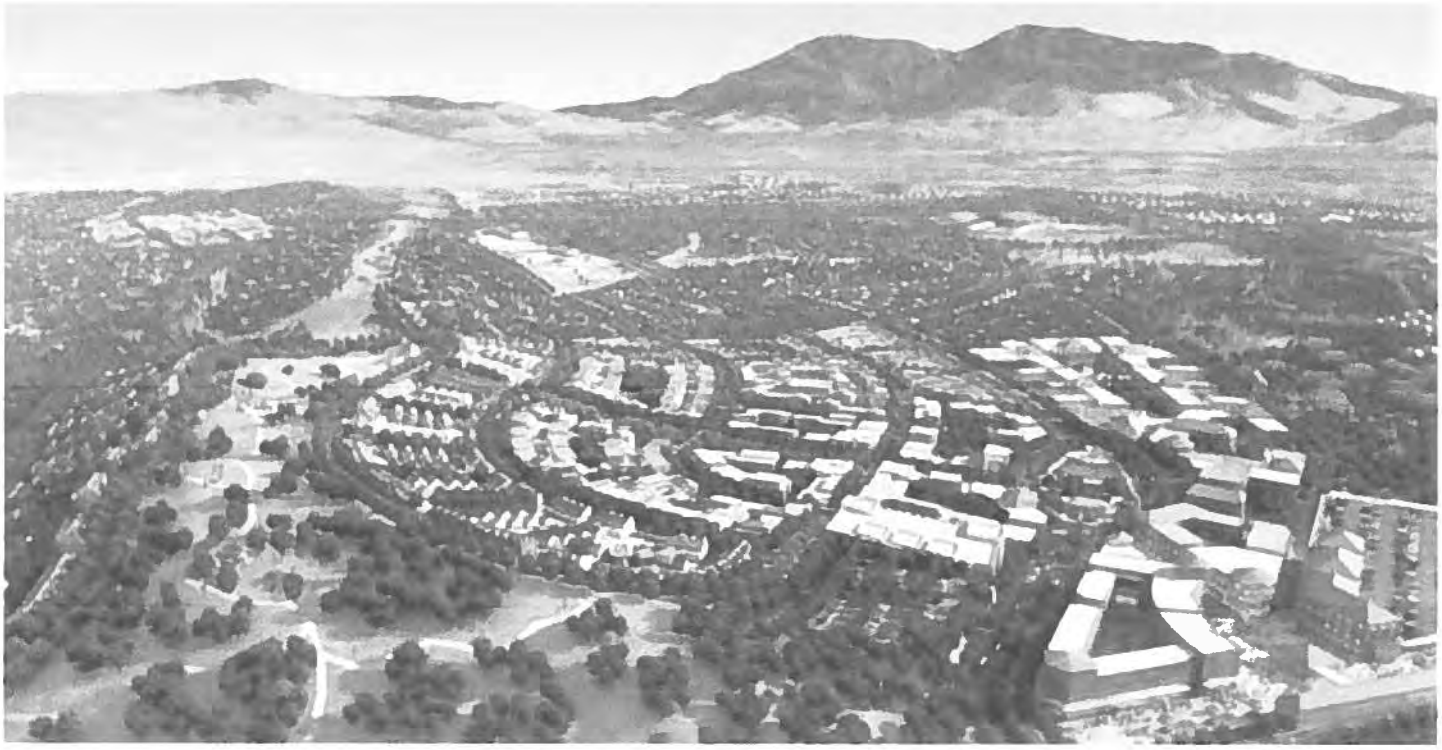
Q. And that is true for every year beginning with 1998, right?

A. Right.

Mr. Jaffe was testifying under oath that, as managers, he and Lennar "managed" to lose money for ten years straight while in charge of an extraordinary development opportunity during the longest real estate expansion in California history. That leaves only two explanations to consider: were they grossly incompetent or dishonest? The answer is it was both, but neither of these choices is an attractive proposition for the City of Concord.

If the City of Concord allows Lennar to have the CNWS contract, we don't suggest waiting by the mailbox for the first *profit participation* check. Vallejo is still waiting.

AN EVEN BIGGER RISK FOR THE CITY OF CONCORD



The lennar-urban-topographical for proposed master developer plan for Concord naval Weapons Station

Lennar created another holding company in July of 2015. It is called Five Point Holdings Inc. Let's call it Five Point. According to SEC filings by Lennar, Five Point is another multi-project holding company, much like LandSource. Same actors, new play. The primary asset of Five Point is Newhall Ranch in Santa Clarita, CA. What a coincidence! This is the same primary asset that was in LandSource.

Other assets in Five Point include Heritage Fields in Orange County, CA, The Shipyard Communities in San Francisco, and a few other similar holdings.

Five Point's principal asset, Newhall Ranch, is a huge problem for Lennar and Five Point. The California Supreme Court voided the the permits and entitlements for the massive project in November of 2015, citing non-credible findings in a 5,800 page environmental impact report prepared and submitted by Lennar to obtain permits for the development. The project in its current state is nearly valueless, and is certainly not the basis for a legitimate IPO Five Points has filed with the SEC.

Lennar and Jon Jaffe, who oversee management of Newhall Ranch, bear full responsibility for mismanagement of this project, and the catastrophic loss of value. But, as usual, others are paying the price. The primary equity holder of the Newhall ranch project is a New York-based hedge fund called Third Avenue Management. Third Avenue had purchased the distressed debt created by the failure and bankruptcy of LandSource, and eventually converted the debt to equity. The equity in Newhall Ranch is held in one of Third Avenue's main funds, called Third Avenue Focused Credit Fund.

On December 15, 2015, this fund imploded, had a run on the bank, and had to petition the SEC for an emergency exemptive relief order. This order sought, among other things, the right to prevent further withdrawals from the fund, and to execute an aggressive liquidation plan. A contributing factor for the implosion: an inability to obtain liquidity from their Newhall investment. What does this portend for Five Point Holdings Inc. since it was dependent on Newhall Ranch for its own viability?

This series of events has had a profound impact on Five Point Holdings Inc. In the unlikely event that the SEC would approve an IPO, any cash raised would go toward liquidating the Third Avenue Fund, and also into the

Lennar executives pockets. According to the IPO documents, ***the Lennar executives rake off the first $12,000,000 of any funds raised in the IPO process.***

Why is this important for the City of Concord? *Because, according to the Lennar term sheet with the City of Concord, Lennar proposes to transfer the Concord CNWS opportunity into Five Point if it win the contract.*

How would this affect the city of Concord? Here is how: The CNWS contract is a very valuable asset, and Lennar is desperate to obtain it. Note the willingness to match the Catellus offer, and the attempt to improperly influence former Mayor Grayson's vote. The intention, as spelled out in Lennars term sheet, is to move the CNWS project into Five Point. Lennar built some misleading language into the term sheet about financial tests in regard to a transfer to Five Point, but note that it took them less than an hour to transform LandSource into a financial basket case.

After preparing some creative projections and appraisals, the transfer of the CNWS property into Five Point would allow Lennar to leverage the city's valuable land, pocket large amounts of cash from unsuspecting lenders or investors, and little or no money will be available to develop the large and capital-intensive developments that make up the assets of Five Point Holdings Inc. the City of Concord would be set up for a repeat of Vallejo's experience, including bankruptcy filings, delays, and huge losses.

The SEC requires the filing of all of the relevant information regarding a proposed IPO in a form called an S-1. Five Point was required to file a draft S-1 form with the SEC along with the confidential IPO application...***Has the City of Concord requested a copy of this document and any amendments?***

The city is talking about a long-term relationship with a masterplan developer. Wouldn't it be prudent to find out as much a possible about any prospective candidate, including Lennar? Right now, past performance indicates that the Lennar and Jaffe track records might qualify them for a slot on America's Biggest Loser, but hardly as candidates to manage an important project like Concord's redevelopment plan.

All of our research is available to the City of Concord at any time. Please email any request for more information to info@swanmountainpress.com. There are also two websites available now that provide additional information about Lennar: www.crimeanddeception.com and www.crimeanddeception-newhall ranch.com.

Coming next week: Ten Essential Questions the citizens and the City of Concord should ask Lennar before signing on the dotted line.

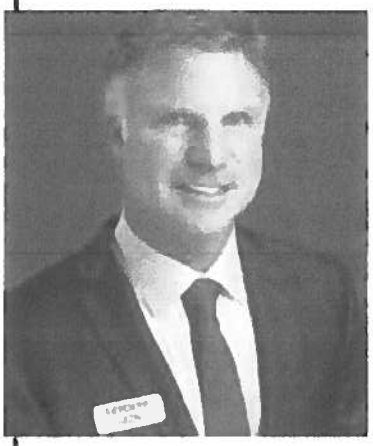
~ Editors Note- Nick Marsch has been involved in extensive litigation with Lennar over project accounting, conversion, and management issues and has written a book about them detailing his experiences.

10 Essential Questions the City of Concord Should Ask Lennar

nick marsch April 25, 2016

The City of Concord has an important decision to make. Selection of a master plan developer for the Concord Naval Weapons Station (CNWS) project. The more the City of Concord can learn about a potential candidate before strolling down the aisle with them, the better. It would pay to know more about Lennar and its executives – like COO Jon Jaffe. Two years of in-depth research on Lennar reveals much about the company and its top executives.

One of the most accurate and prescient whistle-blowers in modern times is Harry Markopolos, author of the book *No One Would Listen*. He blew the whistle on Bernie Madoff years before he was caught. Mr. Markopolos was, of course, called a liar. And he was dismissed as a crank by the SEC. They ignored his warnings. *Perhaps the biggest regulatory blunder of all time.* Eventually he boiled down his premises on Mr. Madoff to ten simple questions that the SEC could ask of Mr. Madoff. The SEC never asked those questions.



10 Questions Concord City Council must ask Lennar COO Jon Jaffe

Following the lead of Mr. Markopolos, here is a simplified inquiry into Lennars background and business practices distilled into ten questions the City of Concord should ask before further consideration of Lennar as a bidder on the CNWS redevelopment project. The answers – or non-answers – could be very informative.

TEN ESSENTIAL QUESTIONS

Question 1: The California Public Employees Retirement System – CalPERS – lost over $922,000,000 in 2007 when the fund was induced to contribute assets to a Lennar and Jaffe-managed entity – LandSource LLC. According to a well-researched lawsuit filed by creditors of LandSource, *Lennar used misleading cash flow projections* to obtain access to CalPERS assets.

Then, according to the suit, Lennar used *inflated appraisals and falsified cash flow projections* to borrow 1.4 billion dollars from a Barclays Bank loan syndicate. The loan was secured, in part, by CalPERS-contributed assets. Lennar immediately transferred the loan proceeds to its (and their sister company's) own accounts. That left LandSource responsible for the interest and principle payments due on the massive debt, but completely illiquid going into a historic economic downturn. Mr. Jaffe knew *before the loan was finalized* there was no way for LandSource to make the contractual interest and principal payments. How could it? There was no cash left on the balance sheet.

Lennar actions set the table for a massive collapse and subsequent bankruptcy just 13 months later. There is no dispute that CalPERS lost everything it contributed in this Lennar scheme. And it turned out that Lennar, much like Enron, had failed to disclose huge off-balance sheet liabilities and was concealing its true financial condition from CalPERS and Barclays Bank.

Correspondence and documents available indicate clearly that Mr. Jaffe knew well in advance of the

transaction that the real estate markets were imploding and that *all of the information supplied to CalPERS and the lender to pull off this transaction was knowingly false. He also knew that Lennar was on the verge of collapse.*

Is Lennar willing to publicly disclose to the public, CalPERS, Barclays Bank, shareholders, the SEC, and the City of Concord all of their internal correspondence, emails, reports, projections, cash planning documents, and land acquisition or disposition plans for 2007, and a comprehensive list of all former or current employees involved in LandSource and in any aspect of the land acquisition and disposition process at Lennar? And would Lennar be willing to provide to the City of Concord an estimate of losses to all the victims of this scheme?

Question 2: As recounted in the book *Crime and Deception*, Lennar was sued by the Federal Deposit Insurance Corporation (FDIC) in Ft. Myers, Florida for defrauding two federally-insured financial institutions. The counts in the complaint include: Fraud in the Inducement, Constructive Fraud, Conspiracy, Negligent Misrepresentation, Breach of Contract, and Breach of Fiduciary Duty. And worse, numerous Lennar employees were directly involved in this elaborate fraud. Lennar was contributory to the failure of not one but two financial institutions, leaving taxpayers on the hook for millions of dollars. The federal case number is 2:12-cv-00595-SPC, and was filed in the Middle District of Florida.

According to the FDIC, *Lennar executives used inflated appraisals, straw buyers, large undisclosed kickbacks (28%), and falsified HUD-1 forms to accomplish this fraud.* Lennar tried to litigate its way out of this crime, but was forced by the FDIC to settle on the courthouse steps. They entered into a sealed settlement agreement with the FDIC. No executives went to jail (as usual).

Is Lennar willing to provide the entire court file, including all exhibits – sealed or unsealed, witness statements, depositions, and settlement correspondence, and the settlement documents to the public, shareholders, the SEC, and specifically to the City of Concord for due diligence purposes? If not, why not? And is Lennar willing to disclose the identity and contact information of all former and current Lennar employees involved in this fraud?

Question 3: Lennar was sued in the state of Maryland for Breach of Contract and Fraud involving a valid and binding land purchase contract. The lawsuit was then amended by the plaintiffs to include three additional counts: Fraudulent Inducement, Negligent Misrepresentation, and Fraudulent Concealment. The Maryland court had learned that Lennar had concealed over 100,000 pages of incriminating documents in encrypted files and agreed to add these new counts. A trial was held on the matter in 2014. *The Lennar executives testified, but were viewed as non-credible by the judge*. The federal judge agreed entirely with the plaintiff, ruled against Lennar, ordered payment in excess of $225,000,000 to the plaintiff, and tacked on interest and legal fees potentially in excess of $100,000,000. The federal case number is 8:08-cv-01863-DKC and was filed in the Southern Division in Maryland.

Is Lennar willing to provide the entire court file, including depositions and exhibits – sealed or not, to the public, shareholders, the SEC, and specifically to the City of Concord for due diligence purposes? If not, why not?

Question 4: In the above-cited Maryland case, the federal judge, Deborah K. Chasenow, became aware that Lennar and its executives had a pattern and practice of routinely breaching valid and binding contracts, and using and abusing the legal system to evade contractual obligations. Lennar was ordered to produce a list of all breach of contract and fraud litigation pending against Lennar. *The company produced a 157 page list, and then had to amend the list to include even more previously-undisclosed litigation*. Lennar then moved to seal and conceal this list from the SEC, shareholders, and others.

Is Lennar willing to disclose this list filed in the Maryland case to the public, shareholders, the SEC, and specifically to the City of Concord for due diligence purposes? If not, why not?

Kofi Bonner pitches Lennar to become Master developer for CNWS development

Question 5: Lennar currently has lawsuits in the hundreds filed or pending against the company. The company employs dozens of law firms.

Is Lennar willing to provide to the public, shareholders, the SEC, and specifically to the City of Concord a third-party certified list of all litigation currently facing the company? What is the annual cost of defending litigation facing the company, and what is the total claim exposure in dollars to the company right now?

Question 6: In the City of Santa Clarita, located northeast of Los Angeles, Lennar and Jon Jaffe oversee the Newhall Ranch development project. This is the largest master plan development in the Five Point Holdings Inc. portfolio and is discussed in the previous article on Lennar. On November 30, 2015, the California Supreme Court stripped the entitlements from the project, citing material deficiencies in the Environmental Impact Report (EIR) that Lennar had filed in connection with the development. Lennar has been trying unsuccessfully to obtain entitlements and permits for this project for over ten years. The Concord CNWS project will also require an EIR.

California Attorney General Kamala Brown, a Willie Brown girl, is the Democratic Party frontrunner for the U.S. Senate

The record shows that Lennar has historically failed to perform on a timely basis on their master-planned developments. In the Mare Island project, Lennar has under-performed on this project for almost 20 years. And Lennar financially impacted the city of Vallejo badly when they put the Mare Island project into bankruptcy.

Why should the City of Concord consider awarding the CNWS contract to Lennar, given the demonstrable inability of Lennar to obtain entitlements on a timely basis, chronic under-performance on project timelines, and a proven track record of causing huge losses for partners, investors, and municipalities by conversion, mismanagement, and bankrupting large master planned communities under their control?

Question 7: Keith Jackson, a long-time fixture on the Lennar payroll and a principal political advisor to Lennar in the Bay Area was recently indicted for felony bribery, money laundering, grand theft, and campaign finance fraud. These indictments followed previous indictments for gun-running, drug-trafficking, and murder-for-hire.

Which Lennar employees are most closely associated with Mr. Jackson, and how is Lennar involved in these felony counts?

Question 8: Lennar was found in the Jenkins report commissioned by the City of Concord to have orchestrated secret maximum-dollar campaign contributions to former Mayor Tim Grayson to improperly

influence his decision on the CNWS contract.

Why did Lennar employees and consultants decline to participate in the investigation process? Which Lennar employees were involved in this scheme, and how was the scheme implemented? Did Keith Jackson play a role in this scheme? What do the Lennar executives know about the unusual circumstances involving the investigation of the Lennar role in the Grayson campaign contributions?

Keith Jackson, a PR consultant for Lennar, on his way to arraignment for racketeering, conspiracy to commit arms trafficking with Leeland Yee, narcotics trafficking and murder for hire. Lee and Jackson (in addition to other prominent California politicians from Northern California (e.g. Kamala Harris, and Lennar Urban President Kofi Bonner) are closely associated with former San Francisco Mayor Willie Brown,

Question 9: The CEO of CalPERS at the time Lennar fraudulently obtained assets from the pension fund in 2007 was Federico Buenrostro. Mr. Buenrostro has subsequently pled guilty to taking bribes in a pervasive pay-to-play scheme as CEO and manager of the pension fund. In one instance, according to his plea, Mr. Buenrostro accepted paper bags and and shoe boxes full of cash in a Hyatt hotel room in Sacramento. Mr. Buenrostro stated in his plea that he was responsible for the administration of CalPERS financial affairs. These duties included overseeing ongoing investments and prospective investment decisions in connection with CalPERS administration of billions of dollars in assets. *Given the toxic pay-to-play environment at CalPERS, it would have been difficult or impossible for Lennar to deal with the fund without also dealing with Mr. Buenrostro.*

Did the Lennar executives make arrangements with Mr. Buenrostro to overlook the blatant theft of nearly a billion dollars in assets from the fund? What were the arrangements? Was Keith Jackson involved in this process? Real estate fraud, at least after the fact, is easy to ferret out. It almost always involves inflated appraisals and fabricated cash flow projections. Why didn't CalPERS pursue Lennar and Mr. Jaffe as managers of LandSource for fraud, and try to recover assets on behalf of the fund?

Question 10: Top law enforcement professionals were consulted in the process of researching the book, *Crime and Deception*. The main areas of this research were: what is the criteria to establish a pattern and practice of fraudulent behavior, and what elements are required to qualify under RICO statutes (Racketeering Influenced Corrupt Organizations). Their research showed that when the national pattern and practice of Lennar and its executives is analyzed under RICO statutes, that the executives, including Jon Jaffe and CEO Stuart Miller, qualify for prosecution under numerous counts. These counts included Bribery, Mail Fraud, Wire Fraud, Obstruction of Justice, Witness Tampering, Extortion, Money Laundering, and Bankruptcy Fraud. All that is required to prosecute are two counts over a ten year period. The Lennar executives clearly over-qualify under that metric.

Our law enforcement professionals also confirmed that Mr. Jaffe himself has been accused of maintaining illicit offshore accounts and that he has been associated with a known money launderer.

Is Lennar or are any of its executives under criminal investigation at this time (not including Keith Jackson)? If so, where, by what agency, and in regard to which of their activities?

SUMMARY

I hope that the City of Concord can benefit from the extensive and in-depth research available on Lennar, its executives, and its business practices. This information could help city leaders make a more informed decision on selection of a trustworthy and capable developer for the CNWS redevelopment plan. And what has been shown here is the tip of the iceberg.

Lennar COO Jonathan Jaffe – pictured above – asserted in a recent communication to the City of Concord that all of the information in the book *Crime and Deception* was comprised of "false allegations" and "unsubstantiated" claims. But despite Mr. Jaffe's protestations, the record clearly shows a consistent pattern – Lennar has been sued by the Federal Government for fraud. Lennar has been sued by counter-parties to valid and binding contracts for fraud. Lennar has been sued by creditors for fraud. And Lennar is attempting to conceal the evidence that the company has been sued by hundreds of others for fraud, and a lot more.

Perhaps Mr. Jaffe isn't telling the truth. Again. Just ask the 1.6 million men and women who depend on CalPERS to safeguard their savings from a lifetime of work, and lost nearly one billion dollars in another Lennar scheme.

If Lennar is the only remaining bidder on the valuable CNWS project, then the citizens of the City of Concord deserve considerably better than this choice. Why would the City of Concord even take a chance on having an experience like mine, and so many others? Perhaps the choice of master developer should be decided by those most affected by this important decision – the citizens themselves.

All research for this article is available to the City of Concord at any time. Please email any request for more information to info@swanmountainpress.com. There are also two websites available now that provide additional information about Lennar: www.crimeanddeception.com and www.crimeanddeception-newhallranch.com.

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nick marsch April 25, 2016

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influence his decision on the CNWS contract.

Why did Lennar employees and consultants decline to participate in the investigation process? Which Lennar employees were involved in this scheme, and how was the scheme implemented? Did Keith Jackson play a role in this scheme? What do the Lennar executives know about the unusual circumstances involving the investigation of the Lennar role in the Grayson campaign contributions?

Keith Jackson, a PR consultant for Lennar, on his way to arraignment for racketeering, conspiracy to commit arms trafficking with Leeland Yee, narcotics trafficking and murder for hire. Lee and Jackson (in addition to other prominent California politicians from Northern California (e.g. Kamala Harris, and Lennar Urban President Kofi Bonner) are closely associated with former San Francisco Mayor Willie Brown

Question 9: The CEO of CalPERS at the time Lennar fraudulently obtained assets from the pension fund in 2007 was Federico Buenrostro. Mr. Buenrostro has subsequently pled guilty to taking bribes in a pervasive pay-to-play scheme as CEO and manager of the pension fund. In one instance, according to his plea, Mr. Buenrostro accepted paper bags and and shoe boxes full of cash in a Hyatt hotel room in Sacramento. Mr. Buenrostro stated in his plea that he was responsible for the administration of CalPERS financial affairs. These duties included overseeing ongoing investments and prospective investment decisions in connection with CalPERS administration of billions of dollars in assets. *Given the toxic pay-to-play environment at CalPERS, it would have been difficult or impossible for Lennar to deal with the fund without also dealing with Mr. Buenrostro.*

Did the Lennar executives make arrangements with Mr. Buenrostro to overlook the blatant theft of nearly a billion dollars in assets from the fund? What were the arrangements? Was Keith Jackson involved in this process? Real estate fraud, at least after the fact, is easy to ferret out. It almost always involves inflated appraisals and fabricated cash flow projections. Why didn't CalPERS pursue Lennar and Mr. Jaffe as managers of LandSource for fraud, and try to recover assets on behalf of the fund?

Question 10: Top law enforcement professionals were consulted in the process of researching the book, *Crime and Deception*. The main areas of this research were: what is the criteria to establish a pattern and practice of fraudulent behavior, and what elements are required to qualify under RICO statutes (Racketeering Influenced Corrupt Organizations). Their research showed that when the national pattern and practice of Lennar and its executives is analyzed under RICO statutes, that the executives, including Jon Jaffe and CEO Stuart Miller, qualify for prosecution under numerous counts. These counts included Bribery, Mail Fraud, Wire Fraud, Obstruction of Justice, Witness Tampering, Extortion, Money Laundering, and Bankruptcy Fraud. All that is required to prosecute are two counts over a ten year period. The Lennar executives clearly over-qualify under that metric.

Our law enforcement professionals also confirmed that Mr. Jaffe himself has been accused of maintaining illicit offshore accounts and that he has been associated with a known money launderer.