

**FIRST AMENDMENT TO AGENCY ASSISTANCE
AGREEMENT**

between the

CONTRA COSTA COUNTY REDEVELOPMENT AGENCY

and

PLEASANT HILL TRANSIT VILLAGE ASSOCIATES, LLC,

This First Amendment is dated as of February 25, 2008 and is an amendment to the Agency Assistance Agreement (the "Agreement") dated as of December 19, 2005 and by and between the Contra Costa Redevelopment Agency ("Agency") and Pleasant Hill Transit Village Associates, LLC ("Developer"), with reference to the following:

RECITALS

A. All capitalized terms in this First Amendment shall have the meaning set forth in the Agreement and the Design and Construction Agreement (the "DCA") (also defined as the "Construction Agreement" in the Agreement) dated December 19, 2005 by and among the Agency, Developer and BART.

B. The actual costs of constructing the BART Parking Structure have exceeded previous estimates and the expected costs of constructing the Backbone Infrastructure have increased due to additions to the scope of those improvements and construction cost increases occurring since the parties entered in to the Agreement. In addition, the Placemaking Infrastructure is estimated to cost less than had been anticipated when the parties entered into this Agreement. The parties wish to amend the Agreement to specify how the added costs of the BART Parking Structure and Backbone Infrastructure will be accommodated and to adjust downward the estimated cost of the Placemaking Infrastructure.

Therefore, the parties agree as follows:

Section 1. Additional Agency Assistance for BART Parking Structure.

The Agreement shall be amended to add the following Section 5.12:

"Section 5.12 Additional Assistance for BART Parking Structure.

 (a) Notwithstanding subsection (b)(viii) of Section 2.15 of the DCA, if the costs of construction of the BART Parking Structure exceed the amounts paid pursuant to subsections (b)(i) through (b)(vii) of Section 2.15 of the DCA, then the next Four Million

Seven Hundred Thirty-nine Thousand Dollars (\$4,739,000) of the costs of constructing the BART Parking Structure shall be paid one half (1/2) by the Agency and one half (1/2) by the Developer on a pari passu basis, that is, on a 50/50 basis as the funds are needed.

(b) If the costs of constructing the BART Parking Structure exceed the amount paid pursuant to subsections (b)(i) through (b)(vii) of Section 2.15 of the DCA and the amount paid pursuant to Section 5.12(a), any such additional costs of constructing the BART Parking Structure shall be paid by the Developer, except for the costs of an approved Structure Change Order for which the Agency or BART will provide additional funds beyond the amount in the Parking Structure Contingency Fund."

Section 2. Funding for Backbone Infrastructure.

The Agreement shall be amended to add Section 5.13 as follows:

"Section 5.13 Payment for Backbone Infrastructure.

(a) Notwithstanding anything to the contrary in the DCA, including subsection 1.01(s), Section 3.05 and Section 3.17 of the DCA, the BI Budget is now estimated to be Fourteen Million Six Hundred Thousand Dollars (\$14,600,000), and the costs of construction of the Backbone Infrastructure shall be borne and paid as follows:

(i) The first Two Million Three Hundred Thousand Dollars (\$2,300,000.00) of the cost of constructing the Backbone Infrastructure shall be paid by the Agency.

(ii) The next Five Million Eight Hundred Thousand Dollars (\$5,800,000.00) of the cost of constructing the Backbone Infrastructure shall be paid by the Developer; this amount may come from the proceeds of the Mello-Roos Bonds secured by a special tax on the portion of the BART Station Property to be leased to Developer for development of rental apartments and/or from any other source Developer provides including the proceeds of loans obtained by Developer. If the proceeds of Mello-Roos Bonds are used, the payments of bond proceeds to Developer shall be made pursuant to a funding agreement between the County and Developer and containing payment procedures similar to the payment procedures set forth in the DCA applicable to funding the costs of the BART Parking Structure.

(iii) The next Two Million Dollars (\$2,000,000.00) of the cost of constructing the Backbone Infrastructure shall be paid by the Developer. Developer may choose to provide its share of the payments under this subsection (a)(iii) through the proceeds of Mello-Roos Bonds secured by a special tax on the office and/or for-sale housing parts of the development on the BART Station Property.

(iv) The next Four Hundred Thousand Dollars (\$400,000.00) shall be paid by the Agency.

(v) (A) Any costs of constructing the Backbone Infrastructure in excess of the amounts paid pursuant to subsections (a)(i) through (a)(iv) of this Section 5.13 shall be paid by Developer but only if the sum of the amounts paid by the Developer and the Agency pursuant for construction of the BART Parking Structure pursuant to Section 5.12 of this Agreement is equal to or greater than Four Million Seven Hundred Thirty-nine Thousand Dollars (\$4,739,000.00).

(B) If the sum of the amounts paid by the Developer and the Agency for construction of the BART Parking Structure pursuant to Section 5.12 of this Agreement is less than Four Million Seven Hundred Thirty-nine Thousand Dollars (\$4,739,000.00), then the Agency and the Developer shall each be responsible for paying pari passu one half (1/2) of the costs to be paid pursuant to this subsection (a)(v) of this Section 5.13, provided, however, that the sum of the amount paid by the Developer and the Agency pursuant to this subsection (a)(v) for the costs shall not exceed an amount equal to (i) Four Million Seven Hundred Thirty-nine Thousand Dollars (\$4,739,000.00) less the sum of the amounts paid by the Agency and the Developer pursuant to Section 5.12 of this Agreement.

(vi) Any costs of constructing the Backbone Infrastructure in excess of the amounts paid pursuant to subsections (a)(i) through (a)(v) of this Section 5.13 shall be paid by the Developer except to the extent that there is an approved Infrastructure Change Order for which the Agency or another party provides funding. If there is an approved Infrastructure Change Order that results in savings, the savings shall be applied to reduce the total cost of the Backbone Infrastructure.

(b) The payments of and accounting for the costs of construction of the Backbone Infrastructure shall be carried out using procedures determined by the Agency that are similar to those set out in Section 3.15 of the DCA, provided, however, that payment of and accounting for costs that will be paid from or reimbursed by the proceeds of Mello Roos Bonds shall be carried out pursuant to a funding agreement between the County and the Developer."

Section 3. Placemaking Infrastructure.

The Agreement shall be amended to add Section 5.14 as follows:

"5.14 Placemaking Infrastructure.

(a) Notwithstanding anything to the contrary in the DCA including subsection (vv) of Section 1.01 and Section 3.04, the PI Maximum Price is estimated to be Seven Million Six Hundred Thousand Dollars (\$7,600,000.00), which shall be Agency's responsibility to pay. To the extent that the actual cost of the Placemaking Infrastructure will exceed \$7,600,000, the parties will meet and confer in order to reduce the scope of the Placemaking Infrastructure so that the actual costs of the Placemaking Infrastructure will not exceed \$7,600,000.

(b) The costs of all Placemaking Infrastructure shall be the Agency's responsibility. In no event is the Agency obligated under this Agreement to pay more than \$7,600,000 for the Placemaking Infrastructure. In addition to the estimated \$7,600,000 the Agency is required to pay under subsection (a) of this Section, the Agency expects to have

available up to an additional Two Million Five Hundred Thousand Dollars (\$2,500,000) that can be used for Placemaking Infrastructure in addition to those Placemaking Infrastructure Improvements that the parties contemplate will be constructed with the funds specified in subsection (a) of this section. It is anticipated that these funds will be used for a civic use, a bicycle station and additional BART Station Enhancements."

Section 4. Tax Increment Payments.

Section 4.01 of the Agreement, entitled "Annual Payment of Net Phase I Tax Increment" shall be amended to delete all references to the Mello Roos Bonds. Accordingly, Section 4.01 shall read as follows:

"4.01 Annual Payment of Net Phase I Tax Increment.

Beginning with the First Fiscal Year and continuing so long as the Agency is no longer entitled to receive Tax Increment from the Project Area, the Agency shall pay to Developer in each Fiscal Year an amount equal to the Phase I Net Tax Increment, but in no event more than \$500,000. If an annual payment the Agency makes pursuant to this Section 4.01 is less than \$500,000, then the amount of the deficiency shall accrue with interest at the rate of six and one half percent (6.5%) per year. The deficiency and accrued interest shall be payable in future Fiscal Years from the first available Phase I Net Tax Increment to the extent the Phase I Net Tax Increment exceeds the amount owing for that Fiscal Year pursuant to this Section 4.01

Section 5. Mello Roos Financing.

Section 4.02 of the Agreement, entitled "Mello Roos Financing" shall be amended to reflect the fact that Mello Roos financing for the construction of the Backbone Infrastructure is no longer a mandatory requirement. Accordingly, Section 4.02 shall read as follows:

"Section 4.02. Mello Roos Financing.

The Developer may elect to finance some or all of the Backbone Infrastructure costs using Mello Roos or assessment financing. If Developer so elects, then the Developer and Agency shall cooperate and use good faith efforts to cause the County to form a special tax or assessment district pursuant to the Mello Roos Special Tax Law or other applicable law consisting of the property subject to the Apartment Sublease, establish a special tax or assessment for that district and issue bonds secured by the receipts from that tax or assessment (the "Mello Roos Bonds"), the proceeds of which shall be used to fund the construction of the Backbone Infrastructure in conjunction with development of the Phase I Improvements. The parties anticipate that the Backbone Infrastructure will include those "backbone" public improvements such as streets, sidewalks and utilities that are not part of the Placemaking Infrastructure to be funded by the Agency pursuant to the Construction Agreement and this Agreement. The Developer agrees to consent to or vote in favor of any actions necessary to form the district, levy the special tax and sell the bonds. If the Developer desires to purchase the Mello Roos Bonds, the Agency shall cooperate with Developer to arrange for that purchase. In addition, the Agency and Developer shall cooperate to form a Mello Roos special tax district covering the property subject to the Apartment Sublease that will provide for a special tax of approximately \$50,000 per year to pay County maintenance costs related to the Project."

Section 6. Credits for Specific Plan Development Fees.

(a) Pursuant to Section 2.15(b) (iv) of the DCA, Developer shall pay up to Three Million Three Hundred Thousand Dollars (\$3,300,000.00) for the costs of construction of the BART Parking Structure and shall receive credits in an equal amount against payment Specific Plan development impact fees payable to the County in connection with development of the Phase I and the Phase II Improvements. Those credits shall be applied against the first Specific Plan development impact fees that Developer incurs for development of the Project.

(b) In addition, Developer is entitled to an additional Two Million Nine Hundred Eighty Five Thousand Dollars (\$2,985,000) of development fee credits in consideration of the Developer's payment of One Million Four Hundred Ninety Two Thousand Five Hundred Dollars (\$1,492,500) to the Authority, which the Authority will use solely for BART Station Enhancements, all as more particularly described in Section 6.19 of the DDA. Developer may use the credits obtained pursuant to Section 5.01 of the DCA only if it has first used the credits obtained pursuant to Section 2.15(b) (iv) of the DCA. Developer shall pay the amount it is required to pay pursuant to Section 5.01 of the DCA at the earlier of when the Authority needs those funds for construction of BART Station Enhancements or when credits are needed to pay Specific Plan development impact fees for the Project, but in no event earlier than the Apartment and Liner Closing. Such development fee credits can be used for either or both Phase I and Phase II Improvements.

Section 7. Approval of Agency Loan.

Pursuant to Section 5.04 of the Agreement, the Developer hereby approves the Agency's pledge of a portion of the Tax Increment from the Project Area pursuant to Third Supplement to the Pleasant Hill BART/Contra Costa Centre Loan Agreement between the Agency and the County of Contra Costa Public Financing Authority ("Financing Authority") pursuant to which the Agency borrowed from the Authority a portion of the proceeds of the Financing Authority's \$62,205,000 2007 Tax Allocation Revenue Bonds, Series A, \$25,500,000 2007 Tax Allocation Revenue Bonds, Series A-T, and \$16,665,000 2007 Tax Allocation Revenue Bonds, Subordinate Series B.

Section 8. First Offer to Public Employees.

The following Section 5.15 relating to first opportunities to purchase in the sale of units developed on the For-Sale Property shall be added to the Agreement:

"Section 5.15. First Offer to Public Employees Program.

The Developer shall provide a first offer program to public employees to purchase the units that are developed on the For-Sale Property. Such first offer shall be provided pursuant to a program developed by Agency and Developer. The Agency and the Developer shall negotiate in good faith towards an agreement providing for such program and shall complete the agreement providing for the program prior to the closing of the For-Sale Property for sale of that property to

the Developer. However, the parties have agreed on the following principles on which the program will be based. During the first offer period, the public employees will be entitled to buy units on the same terms and conditions on which the units will initially be offered to the general public and will be subject to the same requirements as buyers from the general public. It is the intent of the parties that the first offer period will occur prior to the commencement of sales to the general public and that following expiration of the first offer period, public employees will be considered part of the general public with respect to purchasing the units. The parties agree that the first offer program will be developed so as to not have a material adverse effect on the marketing, prices and timing of sales of units beyond the effect of the basic program principles as described in this section."

Section 9. Walden Green Improvements.

The following Section 5.16 relating to the Walden Green improvements shall be added to the Agreement as follows:

"Section 5.16 Improvements to Walden Green.

(a) Condition 17 of the conditions of approval for the Final Development Plan and other approvals for the Developer's development of the BART Station Property requires Developer to mitigate for the loss due to relocation of Jones Road of a portion of Walden Green, the linear right of way to the east of the BART Station Property and running from Treat Boulevard to Mayhew Road. This mitigation is required to include improvements to the Walden Green area with a value equal to or greater than the value of the Walden Green property lost as a result of the road relocation. That mitigation is required to be reviewed and approved by the Redevelopment Director. This Section 5.16 is intended to implement the review and approval process required by Condition 17.

(b) Prior to the completion of the improvements on Lot 2 (as defined in the DDA), the Developer shall, after consultation with the Agency, submit to the Redevelopment Director a program to make landscaping improvements to the currently improved portion of the Walden Green area and/or irrigation or other infrastructure improvements to the currently unimproved northerly portion of Walden Green or to provide funding for maintenance of Walden Green improvements. The program shall have a cost of Two Hundred Fifty Thousand Dollars (\$250,000). The Redevelopment Director shall not unreasonably withhold approval of the program. Once the program has been approved, the Developer shall promptly undertake to implement the program by building or installing the improvements contemplated by the approved program or by providing funding for maintenance. The Agency shall facilitate any building or installation of the improvements by arranging for Developer and its contractors to have a right of entry to the Walden Green property for the purposes of building or installing the improvements. Section 4.01 of the DCA (relating to prevailing wages) shall apply to the building or installation of these improvements.

(c) The Agency and Developer shall each contribute \$125,000 to the program approved pursuant to this section.

Section 10. Definitions.

The following definitions in Section 1.01 of the Agency Assistance Agreement are hereby completed to read as follows:

(l) "Construction Agreement" means the Construction Agreement dated as of December 19, 2005 by and among the Agency, BART, and Developer and providing for construction of the BART Parking Structure and the Public Improvements.

(n) "DDA" means the Disposition and Development Agreement dated December 19, 2005 by and between the Developer and the Authority.

(t) "For-Sale Base Year Value" means the value of the For-Sale Property on the 2004-2005 Contra Costa County assessment roll, which value the parties agree is \$0.

(ff) "Phase I Base Year Value" means the value of the Phase I Property on the 2004-2005 Contra Costa County assessment roll, which value the parties agree is \$0.

Section 11. No Other Amendment.

Except as amended by this First Amendment to the Agreement, the Agreement shall remain in full force and effect and unamended.

Section 12. Counterparts.

This Agreement may be signed in multiple counterparts, which, when signed by all parties, shall constitute a binding agreement.

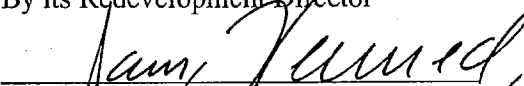
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IN WITNESS WHEREOF, the parties executed this First Amendment on or as of the date first written above.

AGENCY:

CONTRA COSTA COUNTY
REDEVELOPMENT AGENCY

By its Redevelopment Director



DEVELOPER:

PLEASANT HILL TRANSIT VILLAGE
ASSOCIATES LLC,
A Delaware limited liability company

By: _____

Name: _____

Title: _____

IN WITNESS WHEREOF, the parties executed this First Amendment on or as of the date first written above.

AGENCY:

CONTRA COSTA COUNTY
REDEVELOPMENT AGENCY

By its Redevelopment Director

DEVELOPER:

PLEASANT HILL TRANSIT VILLAGE
ASSOCIATES LLC,
A Delaware limited liability company

By: 

Name: Stephen W. Wilson

Title: Authorized Representative