

October 4, 1999
CONFIDENTIAL

TERM SHEET

HAMILTON 2000

I. Purpose.

1. This Term Sheet (including the exhibits hereto) represents the “best and final” offer of HAMILTON 2000 (herein “DEVELOPER”) resulting from meetings with City Staff and Consultants during the “best and final offer” phase with the three finalist development teams pursuant to the Request for Master Developer Proposals, Hamilton Army Airfield Property, City of Novato, March 1999 (“RFP”). HAMILTON 2000 is a to-be-formed Limited Liability Company comprised of two members, Taylor Woodrow Homes, Inc. and O’Brien Group, Inc. By executing this Term Sheet, Taylor Woodrow Homes, Inc. and O’Brien Group, Inc. promise to form the Hamilton 2000 LLC and to cause it to perform as herein provided and as provided in the Development Agreement, the PSA and the OPA if and when Hamilton 2000 is selected to be the Master Developer.

2. If DEVELOPER is selected as the master developer, DEVELOPER agrees:

- a. to be bound by the provisions and requirements of this Term Sheet which (together with other technical, clarifying and conforming changes) shall be incorporated, as applicable, into the proposed Agreement for Purchase and Sale (“PSA”) with the Novato Public Finance Authority (“Authority”),

the Development Agreement (“Development Agreement”) with the City of Novato (“City”) and the Owner Participation Agreement (“OPA”) with the Novato Redevelopment Agency (“Agency”); and

(b) to execute each of said documents on its behalf, in form approved for submission by the City Manager, and submit to City officials for processing for approval in accordance with the following schedule (as City officials may modify from time to time in their reasonable discretion):

- (i) Upon Completion of Revisions to Agreements by City and Agency, Consistent With Term Sheet: DEVELOPER shall submit to the City Manager the PSA with the Authority, the Development Agreement with the City, and the OPA with the Agency, executed on behalf of DEVELOPER, in form approved for submission by the City Manager, as constituting the proposal of DEVELOPER consistent with the provisions of this Term Sheet.
- (ii) October 12, 1999: Selection by City, Authority, and Agency of master developer.
- (iii) October 18, 1999: Public hearing on agreements and related matters by Novato Planning Commission.
- (iv) October 26, 1999: Joint public hearing on agreements and related matters by City, Authority and Agency.
- (v) November 9, 1999: Final actions and approvals on agreements and related matters by City, Authority and Agency.
- (vi) NOVEMBER 16, 1999: Submission of DEVELOPER’S escrow deposit which shall be applicable to the Purchase Price.
- (vii) November 10, 1999 to December 12, 1999: Escrow instructions and pre-closing escrow documents completed.
- (viii) December 14, 1999: Pre-closing of Escrow.

- (ix) December 15, 1999: Payment in full of \$8,130,000 purchase price by DEVELOPER. Close of Escrow (minus deposit).

3. If DEVELOPER is selected as the master developer, City staff will submit and process the approval of the PSA, Development Agreement and OPA as modified in accordance with the provisions of this Term Sheet. However, DEVELOPER understands and agrees that during the process of obtaining final approvals of the PSA, Development Agreement, OPA and related matters, City staff may request additional clarifying changes or conditions to said documents in response to questions or requests by members of the City Council, Authority, Redevelopment Agency, Planning Commission or City officials. DEVELOPER shall cooperate in good faith with City staff to consider such changes in the documents and shall not unreasonably withhold its approval or consent to such changes unless, in the good faith determination of DEVELOPER, such changes would have a material adverse impact on DEVELOPER'S proposal. DEVELOPER's deposit will become non-refundable on the earlier of DEVELOPER's breach of the Development Agreement, the PSA, and/or the OPA or the close of escrow with the Navy for the Property.

4. If DEVELOPER is selected as the master developer and the PSA, Development Agreement and OPA receive final approvals, this Term Sheet shall remain in effect until the Close of Escrow. In the event that for any reason other than DEVELOPER failure to accept title and pay the purchase price for the Property, Close of Escrow is delayed beyond December 15, 1999, this Term Sheet shall remain in effect until the earliest to occur of: (a) Close of Escrow, or (b) June 15, 2000, provided that the timing of the rights and obligations of DEVELOPER does not materially, adversely impact DEVELOPER's rights and benefits and provided that DEVELOPER's performance is not made materially more difficult as a result of the passage of time. In the event that the PSA, Development Agreement and/or the OPA do not receive final approvals, DEVELOPER shall be relieved of all obligations hereunder.

5. If DEVELOPER is not selected as the master developer, this Term Sheet shall remain in effect until the Close of Escrow or, at the sole option of City staff in the event that final documents are not approved and entered into with the selected master developer, for a period of not more than 120 days following the date of November 9,

1999, or such longer period as shall be agreed to by DEVELOPER, provided, however, that the schedule shall provide reasonable time for DEVELOPER to obtain approvals from their Boards.

6. DEVELOPER understands and agrees that the prohibitions in paragraph 5 on page 12, and in the fifth “bullet” paragraph on page 29 of the RFP against unauthorized contact with City officials and others involved in the selection process to influence the selection or approval process outside of City sponsored or City approved meetings or presentations remain in effect and that violation of such prohibitions may lead to disqualification of DEVELOPER. DEVELOPER also understands and agrees that, except as clarified under this Term Sheet, all other provisions in the RFP, including but not limited to the “Conditions of Offer” on pages 11 through 14, inclusive, and “Selection Procedure” on pages 28 and 29, remain applicable to the selection of a master developer and the processing of approvals of agreements and other documents pursuant to the provisions of this Team Sheet.

7. DEVELOPER agrees that except as publicly disclosed in this Term Sheet, the PSA, Development Agreement, OPA and City staff presentations, all matters and documents considered or discussed with City staff and consultants during the “best and final” offer phase of the master developer selection process under the RFP shall remain confidential (being necessary to protect the interests of all developers during the developer selection process).

8. City and Agency agree that prior to and as a condition to close of escrow, the Property shall be free of contaminants and developable as provided in the Development Agreement, the Re-Use Plan, the PSA, and the OPA and the City shall deposit with Escrow Holder one or more letters in form(s) reasonably acceptable to DEVELOPER from DTSC, RWQCB and/or the EPA confirming that each such agency has found that the Property is suitable, without delay or expense to DEVELOPER, for the development contemplated in the Development Agreement, the OPA, the PSA, and the Re-Use Plan.

I. PROPOSAL: CLARIFICATIONS; MODIFICATIONS

1. Mandatory Requirements. In the acquisition, ownership, use and development of the Property to be acquired by the DEVELOPER (the "Property"), DEVELOPER shall comply with all applicable requirements of the Reuse Plan, the Approved Offer to Purchase with the Navy, and the Hamilton Field Redevelopment Plan. DEVELOPER understands that the amendment to the Hamilton Field Redevelopment Plan adding additional area to the Redevelopment Project Area in addition to the Property may or may not be implemented for any period in the sole discretion of the City and Agency provided that such addition does not adversely affect DEVELOPER.

2. DEVELOPER'S Proposal. Ownership and development of the Property, and all applications for entitlements, shall be consistent with the proposal of DEVELOPER submitted on June 9, 1999, in response to the RFP, as modified by the written responses of DEVELOPER to clarifications requested by City staff and consultants prior to the selection of DEVELOPER as one of three finalists on August 3, 1999 (copies of said proposal and written responses are on file with the City Clerk as well as certain information submitted as confidential and maintained by Keyser Marston Associates, Inc., collectively herein the "Proposal"), subject to the following modifications and clarifications resulting from the best and final offer phase.

3. Developer Identity: Team Members; Legal Relationships.

- (a) The identity of DEVELOPER, its legal composition, responsible parties, team members and their relations are set forth in the Proposal.
- (b) Notwithstanding anything to the contrary in the Proposal:
 - (i) DEVELOPER and its members shall remain jointly and severally liable for the performance of all obligations of the developer under the PSA, Development Agreement and OPA. Personal guarantees from individual owners of DEVELOPER's members shall not be required;
 - (ii) O'Brien Group, a California Corporation, and Taylor Woodrow Homes, Inc., a California Corporation shall guarantee, at the time of final execution of the PSA,

Development Agreement, and OPA respectively, the performance of the DEVELOPER under the PSA, Development Agreement, and OPA in form and content approved by the Authority, City and Agency, as the case may be; and

- (iii) any transfer or sale of portions of the Property to any authorized party for development, operation and maintenance shall be pursuant to an assignment agreement approved by the City and consistent with the provisions of Sections 3(b)(iv) and (v), below. The City's approval of such assignment agreement shall not be unreasonably withheld.
- (iv) Any approved sale or transfer of a portion of the Property for development of market rate housing or for Senior housing or for commercial development as provided in the Development Agreement and the Re-Use Plan shall relieve the DEVELOPER of all liability under the terms of the Development Agreement, the Re-Use Plan, the OPA, and the PSA with respect to such Property except that such transfer shall not limit the obligations of the DEVELOPER with respect to the development of affordable housing as provided herein. The parties contemplate that any transfer of a portion of the Property for development of market rate housing shall be a transfer of "finished lots" so that the infrastructure necessary to support such development shall be in place at the time of the transfer or that bonds will have been posted for such infra structure and that any transfer of a portion of the Property for senior housing or commercial development will be in accordance with an agreement under which the City will have adequate assurances that the transferee will comply with all of the terms of the relevant agreements.

(v) DEVELOPER and the City acknowledge that DEVELOPER intends to transfer the portion of the Property to be developed as affordable housing as addressed in the Development Agreement and the Re-Use Plan to Bridge Housing. Upon its review and approval of the Public Finance Plan and the Affordable Housing Plan, the City shall consent to the transfer from DEVELOPER to Bridge Housing of the affordable housing component of the Property. The City agrees to provide for a direct transfer of the Hillside Property from the City to Bridge Housing, at the request and pursuant to the instructions of DEVELOPER, at Close of Escrow. Notwithstanding the transfer or assignment of responsibilities to Bridge Housing (or, in the event that DEVELOPER elects not to transfer the Property to Bridge Housing, then to any other party approved by the City) DEVELOPER shall remain responsible for the performance of the affordable housing obligations under the relevant agreements as provided herein. The responsibility of DEVELOPER for the performance of the affordable housing obligations under the relevant agreements shall be as described hereinbelow:

- A. DEVELOPER shall develop affordable housing in accordance with Exhibit D, the Affordable Housing Plan.
- B. The City and DEVELOPER recognize that DEVELOPER's ability to develop the affordable housing in accordance with the Affordable Housing Plan rests upon financial contributions to be made to affordable housing including a subsidy of \$10,500,000 from DEVELOPER, the issuance of tax increment

- bonds by the Agency, the continued existence and availability of tax credit financing, and other factors.
- C. DEVELOPER recognizes that the City must comply with its agreements with the Navy and Marin County regarding the amount of affordable housing to be developed on the Property.
- D. The DEVELOPER shall develop affordable housing in accordance with Exhibit D provided that the economic assumptions set forth in Exhibit D materialize. In the event that the economic assumptions upon which Exhibit D is predicated do not materialize, then DEVELOPER and City shall work together to revise the affordable housing plan as necessary to adjust to the economic conditions. The failure of DEVELOPER's economic assumptions to materialize may include, but is not limited to, the discontinuation of tax credit financing, the Agency's election not to issue tax increment bond financing, material increases in costs not compensated for by increases in projected gross revenues from affordable housing, and other economic factors as described at Section 5.7(a) of the Development Agreement. The failure of such economic conditions to materialize is referred to as "Excluded Risks." In the event of an Excluded Risk, the DEVELOPER shall nevertheless develop affordable housing in compliance with the minimum standards of the Navy Agreement and the agreement with Marin County, provided that the City and the Agency will be obligated to contribute (or waive collection of) so much of the Senior Housing Trust Fund and City General Impact Fund (the "Available Funds") as may be required in order to fund the

construction of affordable housing in light of the materialization of the Excluded Risks.

- E. In the event that an Excluded Risk materializes, DEVELOPER and the City shall meet and confer to determine if a modification of the schedule for development of affordable housing will make the Affordable Housing Plan feasible for DEVELOPER or if other changes to the Affordable Housing Plan which are acceptable to the City will make the Affordable Housing Plan feasible.
- F. The timing for construction of affordable housing is dependent upon the availability of tax increment and other economic factors and may result in the construction of market rate housing in advance of some or all of the affordable housing. In no event shall DEVELOPER be relieved of its obligation to construct affordable housing as a result of DEVELOPER's having completed the development of market housing hereunder. DEVELOPER shall, as a condition to the right to proceed with development of market housing, demonstrate to the satisfaction of the City that the DEVELOPER's proposed contribution of \$10,500,000 to the funding of affordable housing shall be made and secured as market housing is developed and sold by means of a standard withholding of a percentage of the purchase price projected to yield the \$10,500,000. DEVELOPER shall be entitled to reduce the \$10,500,000 withholding as affordable housing is developed in accordance with the Affordable Housing Plan or as necessary to meet the guarantee set forth at Paragraph G, below.

G. In the event that the City and the DEVELOPER are unable to agree upon any modifications to the Affordable Housing Plan, and an Excluded Risk has materialized which materially impairs DEVELOPER's ability to perform as specified in Exhibit D, the DEVELOPER shall nevertheless be obligated to develop affordable housing to the minimum standards of the agreement between the City and the Navy (Required Affordable Housing); to wit; the DEVELOPER shall develop not fewer than the following number of units* in the following classifications:

Very Low Income Ownership	0
Low Income Ownership	177
Moderate Income Ownership	175
Very Low Income Rental	153
Low Income Rental	143
Moderate Income	0

*subject to limited adjustment consistent with the agreements between the City and the Navy and Marin County based upon the ultimate number of approved market rate units. The minimum performance of the DEVELOPER in the event of the materialization of an Excluded Risk shall exclude all improvements not required by the Navy Agreement and the Marin County Agreement.

The City shall contribute up to all of Available Funds to make up for shortfalls in the sources of funds for development of Affordable Housing. DEVELOPER shall be responsible for all of the additional costs and expenses, if any, over and above the sources of funds identified in Exhibit D, and the Available Funds. The DEVELOPER and the City shall agree

to a schedule for the development of Required Affordable Housing in accordance with the provisions of the Development Agreement.

H. The DEVELOPER shall diligently pursue development of affordable housing in accordance with Exhibit D. The DEVELOPER guarantees development of Required Affordable Housing as provided herein.

4. Requirements Applicable to the Property. Notwithstanding anything to the contrary in the Proposal, the ownership, demolition, development, operation and maintenance of the Property shall conform to the following requirements:

(a) Maintenance and Security Pending Development:

- (i) Following Close of Escrow and before demolition and site preparation, DEVELOPER will maintain adequate security and protection of the Property to the reasonable satisfaction of the City Manager to prevent vandalism, deterioration, nuisance, hazards, and other conditions adversely affecting the appearance, maintenance and condition of the Property and the improvement therein.
- (ii) Following Close of Escrow and before demolition and site preparation, DEVELOPER will provide watering, pruning and weed abatement to the reasonable satisfaction of the City Manager to maintain existing trees and landscaping along Ignacio Boulevard. DEVELOPER shall also prepare and submit a plan to the City Manager for approval to enhance the appearance of Ignacio Boulevard after completion of site improvements along Ignacio Boulevard.
- (iii) During the entitlement process, DEVELOPER will design the development of the Property to maintain as many healthy existing trees on the Property as reasonably feasible in accordance with approved plans.

(b) Demolition:

- (i) Prior to completion of City approval of a precise development plan and tentative map for Rafael Village, DEVELOPER will prepare and process an application for a demolition permit for existing improvements and infrastructure in Rafael Village, and shall commence demolition of existing improvements and infrastructure in Rafael Village in accordance with the following schedule:
- (ii) (a) Submit application within thirty (30) days of receipt of final, non-appealable precise development plan and tentative map.
- (iii) (b) Commence work within sixty (60) days of receipt of permit
- (iv) (c) Complete work within 180 days of commencement.
- (v) During the entitlement process, DEVELOPER will prepare and submit to the City for approval a phased demolition plan for existing improvements and infrastructure in Capehart/Hillside and other areas of the Property. All Capehart units will be demolished. Hillside units may also be demolished in the discretion of the DEVELOPER.
- (vi) During the entitlement process, DEVELOPER will prepare and submit to the City for approval a recycling plan to achieve, to the maximum extent reasonably possible, the goal of Seventy Per Cent (70%) recycling of products from demolition and site clearance as measured by weight.

(c) Lot Sizes:

- (i) To provide compatibility with surrounding neighborhoods, DEVELOPER will develop Rafael Village in accordance with

the average lot sizes shown on the map attached as Exhibit A hereto.

- (ii) Lot sizes for Capehart/Hillside and other areas of the Property will conform to applicable requirements of the Reuse Plan and precise development plans as approved by the City.
- (iii) The Senior Housing site will be from three to five acres and will include from 90 to 100 units.

(d) Minimum Number of Allowed Units:

The number of single family lots in Rafael Village, exclusive of up to 90 – 100 units of senior housing, shall be established in a precise development plan as approved by the City, not to exceed a maximum of 387 single family lots (the 404 maximum number of lots allowed by the Reuse Plan, adjusted for subdivision plotting inefficiencies); provided the DEVELOPER shall be entitled to a minimum number of Three Hundred Fifteen (315) lots subject to capacity and topography of the Rafael Village portion of the Property to accommodate and comply with the City's standard subdivision requirements.

(e) Community Facilities:

In general, new community facilities will not be provided in light of the City's desire to maximize the improvement and use of community facilities already existing at Hamilton Field. DEVELOPER will pay full development fees in lieu of providing community facilities as provided in Exhibit B and subject to the terms hereof.

(f) Neighborhood Parks; Open Space:

In general, neighborhood parks will be privately developed and maintained. Open spaces under the control and jurisdiction of

other agencies are expected to remain under their control and jurisdiction. The City will consider acceptance of offers of dedication of open space to be left in its natural condition provided the City is satisfied as to the level of cost or potential liability, if any, associated with such dedication.

(g) Formation and Responsibilities of Community Facility Maintenance Districts (CFMD), Landscaping and Lighting Districts (LLD) and Neighborhood Associations:

(i) A CFMD will be formed to maintain neighborhood facilities and private open space, at the election of the DEVELOPER, subject to the approval of the City which shall not be unreasonably withheld, provided that the proposed CFMD is lawfully created and reasonably established to provide all of the services necessary for those community facilities to be adequately maintained. In addition, an LLD, will be formed for Rafael Village, if necessary, to develop and maintain landscaping and lighting. The formation of the LLD and its responsibilities shall be subject to approval of the City, which approval shall not be unreasonably withheld provided that the proposed LLD is lawfully created and reasonably established to provide all of the services necessary for lighting and landscaping to be adequately installed and maintained.

(ii) A neighborhood association will be formed for the Capehart/Hillside areas to maintain neighborhood facilities and private open space and to retain uniform exterior maintenance and appearance of the residential units. The formation and bylaws of the association and its responsibilities shall be subject to the approval of the City which approval shall not be unreasonably withheld, provided that the association shall be established to provide the

services reasonably necessary to achieve the objectives set forth in the first sentence of this subparagraph.

(h) Seniors Housing:

The senior units in Rafael Village will not contain any assisted living units. Not less than 90 nor more than 100 senior units will be allowed. These units, at DEVELOPER'S discretion, may be either rental or ownership units (DEVELOPER acknowledges that the neighborhood has indicated a preference for ownership units). At least a number of senior units equal to 15% of all units approved in a precise development plan for Rafael Village shall be deed restricted for moderate-income households.

(i) Coordination with Transitional Housing:

(i) It is contemplated the Property, as conveyed from the Navy to the Authority and simultaneously from the Authority to DEVELOPER will exclude 60 described units in the Capehart/Hillside areas for transitional housing and that concurrently or following the conveyance of the Property, the 60 transitional units will be separately conveyed to the Authority. It is also contemplated that following the recording of a final subdivision map for the Capehart/Hillside areas, DEVELOPER and the Authority will transfer and convey between them the land or lots required to relocate the 60 transitional units within the Property boundaries as shown on the final subdivision map. DEVELOPER will cooperate with the Authority to implement this process of reconfiguring the final location of the 60 transitional units.

(ii) Consistent with the terms of the RFP (paragraph 7 on pages 6 and 7 of the RFP), DEVELOPER will be responsible for constructing the infrastructure to serve the transitional units and renovating [or constructing new] transitional units.

Renovation [or new construction] and infrastructure costs for the transitional units, including overhead, pro rata reimbursement of entitlement costs, and all City and other fees imposed with respect to such housing will be funded entirely by public and private subsidy sources and will not be the responsibility of the DEVELOPER. Assuming the subsidy funding is available, the DEVELOPER will develop the transitional units simultaneously with the adjoining Capehart and Hillside units.

- (iii) During the entitlement process, DEVELOPER will consult with the City and, through the City, with a transitional housing developer to locate the transitional housing units in logical building clusters so that they can be constructed when subsidy funding is available to pay all allocable costs (including infrastructure costs, overhead, pro rata reimbursement of entitlement costs, government fees, landscaping, and all other costs) for such transitional housing. The City shall retain final approval rights over the locations of the transitional units provided the locations shall not prevent DEVELOPER from proceeding with its logical and phased development of the affordable housing units in the Capehart and Hillside areas.
- (iv) The transitional housing units will be designed to design standards comparable to the affordable housing units, and will be constructed by the DEVELOPER when subsidy funding is available. During the entitlement process, DEVELOPER, in consultation with the City and, through the City, with the affordable housing developer, will develop and submit to the City for its approval a construction management plan for the transitional units which shall include the allocation of costs (including infrastructure costs,

overhead, pro rata reimbursement of entitlement costs, government fees, landscaping, and all other costs) for the transitional housing, the commitment of DEVELOPER to construct said transitional units, in phases, as subsidy funding is available, and other matters necessary to achieve the transitional housing units consistent with DEVELOPER's program of development of the affordable housing in the Capehart and Hillside areas.

- (v) DEVELOPER acknowledges and agrees that the Authority will own transitional housing lots but that ownership of the transitional housing units may be with transitional housing developer as lessee of the lots and that the terms of such arrangements between the Authority and such transitional housing developer shall be determined by the Authority in its discretion provided that the transitional housing developer shall be experienced in the development of transitional housing, shall have sufficient funding to complete the transitional housing and pay DEVELOPER all sums due hereunder, shall have experience and demonstrated ability to manage such housing in a manner that will not adversely impact the neighboring residential neighborhood, and provided that such transitional housing developer is expressly obligated to reimburse DEVELOPER all of DEVELOPER's costs as described hereinabove at Section 4 I (ii) and ((iii).

- (vi) During the entitlement process DEVELOPER, in consultation with the City and, through the City, with the transitional housing developer (a developer to be selected by the City to develop transitional housing), will prepare and submit to the City for its approval a management plan to include the transitional housing units under covenants, conditions, and

restrictions (“CC&Rs”) to be recorded for all of the Capehart and Hillside areas providing, among other matters, for the maintenance of all open space, landscaped areas, private neighborhood facilities, building exteriors, use restrictions, and the apportionment and payment of costs therefore, and to integrate the transitional housing units into the neighborhood association management process to enforce such CC&Rs.

- (j) Housing Preferences: During the entitlement process DEVELOPER will prepare and submit to the City for approval, subject to applicable legal requirements, a plan to implement the housing preference set forth in the fourth “bullet” paragraph on page 9 of the RFP.
- (k) San Pablo Site: The San Pablo Site may be developed for not less than 17 nor more than 22 market rate dwelling units subject to approvals obtained during the entitlement process. The City shall cooperate with the DEVELOPER to obtain the one foot strip along the boundary of the site at no cost to the City. DEVELOPER shall not be obligated to construct or pay for affordable housing over and above the affordable housing component of the Re-Use Plan and the Development Agreement in connection with the development of the San Pablo site. DEVELOPER will pay the Municipal Service Fee for development in the San Pablo Site.
- (l) Exchange Triangles: The Exchange Triangle Site shall be developed for commercial use as a retail center serving both the local residential population and the adjacent community facility and civic uses, subject to the approvals obtained during the entitlement process. The Exchange Triangle Site shall be suitable for such uses, subject to land use approvals as provided in the relevant documents.

5. City Reimbursements; Payments. Notwithstanding anything to the contrary in the Proposal, the requirements of the Reuse Plan that the development,

operation and maintenance of the Property be undertaken with assurances to the City that the City will not incur municipal deficits or unrecovered costs as a result of such development, shall be implemented and deemed satisfied by the payments to be made in the amounts calculated and at the times set forth in Exhibit B hereto.

6. Agency Financial Assistance:

- (a) To make it economically feasible for DEVELOPER to develop the Property in accordance with its Proposal and the provisions of this Term Sheet, including meeting the affordable housing goals of the Reuse Plan, and thereby induce DEVELOPER to proceed with the planning and development of the Property, the Agency will commit the net tax increment available to the Agency from the Hamilton Field Redevelopment Project to DEVELOPER as set forth in the financing portion of Exhibit D hereto, the Affordable Housing Plan; provided that the portion of the net tax increment required to be deposited into the Agency's Low and Moderate Income Housing Fund for the Hamilton Field Redevelopment Project will be utilized to assist in achieving the affordable housing goals for the Reuse Plan. Net tax increment available to the Agency shall be determined by the Agency in accordance with the terms of the Settlement Agreement between the City, Agency, and County of Marin ("County"). Net tax increment shall be exclusive of an annual amount equal to \$100,000 per year (escalation at the rate of 3.5 percent per year) to be retained by the Agency for its costs of managing the Redevelopment Project.
- (b) DEVELOPER and Agency agree that the implementation of the Development Agreement and the OPA will require significant public financing based upon tax increment. Subject to economic feasibility and satisfaction of legal and marketing conditions, as determined by the Agency, DEVELOPER may request the issuance of Agency bonds secured by future tax increment revenues to provide proceeds for the Agency's payments or reimbursement to

DEVELOPER in which case the Agency shall diligently pursue the issuance of such bonds. DEVELOPER's obligation to develop affordable housing under the relevant documents in the event of the materialization of one or both of the Excluded Risks (i.e. the Agency does not succeed in securing tax increment bond financing or other financing substantially as set forth in the Finance component of the Affordable Housing Plan, Exhibit D, and/or tax credit financing is unavailable to DEVELOPER for reasons beyond DEVELOPER's control) DEVELOPER shall nevertheless be obligated to perform as set forth at Section 3(b)(v)G.

- (c) It is contemplated that prior to close of escrow, a more detailed plan of public financing will be agreed upon by DEVELOPER and the Agency to implement the forgoing requirements in subsection (a) and (b).

7. Construction Requirements:

(a) ADA Compliance:

DEVELOPER will design, construct, rehabilitate and provide for the operation of improvements to the Property in a manner not in violation of the requirements of the Americans with Disabilities Act (ADA) and all other requirements of applicable federal and state laws. During the entitlement process DEVELOPER will prepare and submit to the City for approval a plan to provide for and meet disabled access and adaptability requirements.

(b) Prevailing Wages:

In the construction of improvements to the Property, DEVELOPER will pay prevailing wages to the extent required by applicable federal and state laws. The City shall not impose any such requirements except as required by State and/or Federal law.

(c) Labor, Subcontractor Outreach Programs:

During the entitlement process, DEVELOPER shall prepare and submit to the City for its approval an outreach and monitoring

program to assure that persons and subcontractors in the region of Marin and Sonoma Counties are informed of the availability of construction work and the opportunity to bid on construction work during the development of the Property, provided that DEVELOPER shall retain rights to exercise its good faith business judgment in the selection of employees and subcontractors based on their qualifications.

(d) Undergrounding of Utilities:

In satisfaction of the requirements of the Redevelopment Plan, DEVELOPER shall trench and reasonably repair the street immediately covering the trench to underground all existing above ground utilities serving Rafael Village (see Exhibit A). All new utilities will be placed underground, in conformance with City Development Standards and the requirements of the serving utility companies.

(e) Phasing of Capehart and Hillside Units:

Following approval of the agreements by the City, Authority and Agency and before Close of Escrow, DEVELOPER will prepare and submit to City for its approval a construction phasing plan to set forth and coordinate the development of housing units in Rafael Village and the development of a specified number of affordable housing units in the Capehart and Hillside areas. The phasing plan shall take into account potential future changes in circumstances beyond the control of the parties, including, economic and physical conditions, and shall include a mechanism for the adjustment of phasing as may be reasonably required and agreed to under such circumstances. The DEVELOPER's obligation to construct affordable housing in accordance with Exhibit D shall survive the construction of market rate housing.

8. Schedule for Entitlements:

DEVELOPER will process entitlements for development of the Property in accordance with the schedule of target and default dates set forth in Exhibit C hereto. City will reasonably cooperate with DEVELOPER in meeting such schedule so that demolition, site preparation and commencement of development of the Property will not be unduly delayed. The DEVELOPER shall be entitled to secure phased Final Maps for the Project to facilitate development in accordance with the approved schedules.

9. Tolling of Obligations:

In the event that DEVELOPER is substantially unable to perform as required under the terms of the relevant agreements as a result of the acts or omissions of the City, the Agency, the Navy, or any third person having the authority or ability to delay performance, then all of the deadlines for DEVELOPER's performance shall be extended for a reasonable time so that DEVELOPER will have the time necessary to perform after such delay.

10. Affordable Housing Plan:

Prior to close of escrow, DEVELOPER will prepare and submit to the City for its approval, and the City will approve, a detailed plan for the development, financing and operation of the affordable housing units in the Capehart and Hillside areas to achieve the affordable goals of the Reuse Plan. The affordable housing plan shall be consistent with the requirements and objectives set forth in Exhibit D hereto.

11. Miscellaneous Revisions to Development agreement, PSA, and

OPA

PSA

Revise Section 2.04 to provide for relief to DEVELOPER in event of City's default.

Consider revision to order of closing of escrow at Section 3.06 D so that documents are recorded prior to distribution of funds

Conform 6.05 to the assignment provisions addressed hereinabove and in the Development Agreement

II. Conforming, Clarifying Changes to Agreements and Board Approvals:

Conforming changes shall be made to the PSA, Development Agreement and OPA, to conform to the matters in this Term Sheet and to make other technical and clarifying changes mutually acceptable to DEVELOPER and City staff. A list of such confirming changes is set forth in Exhibit E hereto. In addition, the following revisions to the PSA, the OPA, and the Development Agreement shall be made:

PSA

- a. 2.04: DEVELOPER shall not be liable if the failure to close if the City defaults.
- b. 2.05: Delete unless required by the Navy.
- c. 3.03 Change December 10, 1999 to December 17, 1999.
- d. 3.06 Convey property by Grant Deed to DEVELOPER.
- e. 4.02B Buyer to have rights allowed under law in event of Seller's default.
- f. 5.01 Any delays resulting from hazardous conditions which require remediation will excuse DEVELOPER's performance. The DEVELOPER shall not be obligated to pay for remediation of the Property.

DEVELOPMENT AGREEMENT

- a. Add a provision that DEVELOPER shall complete the Project in accordance with all ordinances, policies and standards in effect as of execution of the Development Agreement.

- b. Clarify the definition of Existing Approvals.
- c. DEVELOPER must consent to the final terms of the Navy covenants which the DEVELOPER understands will establish affordable housing requirements as described in this Term Sheet.
- d. DEVELOPER cannot warrant that Navy Covenants will not interfere with performance of the Development Agreement and other agreements until the covenants are provided to DEVELOPER for its review.
- e. Revise Section 4.2 to provide that the City shall not impose any conditions to the Development Agreement which materially adversely impact the rights of DEVELOPER as a condition to an extension of the Development Agreement and that the City will not unreasonably refuse to renew the Development Agreement provided that DEVELOPER is performing in accordance with its terms.
- f. Revise Section 5.3 to provide that DEVELOPER shall faithfully comply with and shall not knowingly violate Existing Approvals.
- g. DEVELOPER's obligations under the Development Agreement shall terminate upon completion of the development as required under the terms of the Development Agreement.
- h. The City shall cooperate with DEVELOPER and DEVELOPER's lenders to make revisions to the Development Agreement as may reasonably be required by DEVELOPER's lenders without materially impairing the rights of the City.

OPA

- a. Section 203: Include reference to Affordable Housing Plan.
- b. Section 213: DEVELOPER to have the right to review and comment upon the Agreement prior to its recordation.

- c. Section 300: DEVELOPER's obligations shall terminate upon DEVELOPER's build out or approved transfer of the Property except as may be provided as a condition to a transfer.
- d. Section 400: Cure period to be 90 days.

As a result of significant changes in the business terms of the agreement between the City and the DEVELOPER, many of which have arisen since the members of DEVELOPER have sought and obtained Board authorizations to proceed with the project and after each member was advised that there would not be further material changes in the business deal, the obligations, and each of them, of the members of DEVELOPER and Bridge Housing are subject to the following:

TAYLOR WOODROW HOMES, Inc.'s obligations hereunder shall be contingent upon the approval of its Chief Executive Committee. Taylor Woodrow Homes, Inc. shall seek such approval promptly and this contingency shall be waived by TAYLOR WOODROW HOMES, Inc. if it does not deliver a written notice of non-approval on or before 5:00 p.m. on October 26, 1999.

O'Brien Group, Inc.'s obligations hereunder shall be contingent upon the approval of its Board of Directors. O'Brien Group, Inc. shall seek such approval promptly and this contingency shall be waived by O'Brien Group, Inc. if it does not deliver a written notice of non-approval on or before 10:00 am on October 12, 1999.

Bridge Housing's obligations hereunder shall be contingent upon the approval of its Board of Directors. Bridge Housing shall seek such approval promptly and this contingency shall be waived by Bridge Housing if it does not deliver a written notice of non-approval on or before 10:00 am on October 12, 1999.

Subject to the approval of the City, in the event TAYLOR WOODROW HOMES, Inc. does not receive approval as provided hereinabove, then O'Brien shall proceed on its own as the DEVELOPER in accordance with the terms hereof.

SUBMITTED:

HAMILTON 2000:

DEVELOPER:

Date: _____

By: _____

Taylor Woodrow Homes, Inc

By: _____

O'Brien Group

ACCEPTED FOR PROCESSING BY CITY MANAGER:

Date: _____

RODRICK J. WOOD
City Manager
City of Novato

EXHIBIT E

CONFORMING CHANGES TO AGREEMENTS

I. Conforming Changes to the Development Agreement

A. Paragraph 2 is modified by paragraph I.8. of the Term Sheet to the extent that the Developer's warranties and representations are conditioned upon the City and Agency agreeing that the Property is free of contaminants and depositing with the escrow holder letters from the DTSC, RWQCB and the EPA confirming the property is suitable for development without delay and expense to the Developer.

B. Paragraphs 2(a), (b), (c) and (d) are modified by paragraph I.1. of the Term Sheet to the extent that the Developer is not a general partnership but a Limited Liability Company (LLC) consisting of Taylor Woodrow Homes, Inc. and O'Brien Group, Inc. Paragraph 2(c) is further modified by paragraph 3(b)(i) of the Term Sheet to the extent that the Developer and its members shall be jointly and severally liable for the performance of obligations under the Development Agreement, PSA and OPA, but that personal guarantees from individual owners of the Developer and its members shall not be required for the performance of Developer's obligations hereunder.

C. Paragraph 4 is modified by paragraph II.9 of the Term Sheet to the extent that in the event Developer is substantially unable to perform as a result of the acts or omissions of the City, Agency or Navy, or any third person having the authority or ability to delay performance, then all of the deadlines for Developer's performance shall be extended for the duration of each such delay plus the additional time reasonably necessary to perform after such delay.

D. Paragraphs 5.1 is modified to the extent that Exhibit C "Permitted Uses and Other Conditions of Development," contain those provisions set forth in paragraph II.4 of the Term Sheet. Paragraph 5.1(b) is modified by paragraph 5 of the Term Sheet to the extent that the City will not incur municipal deficits or unrecovered costs will be

deemed satisfied by the payments to be made in the amounts calculated and at the times set forth in the Public Finance Plan.

E. Paragraph 5.5(c) is modified by paragraphs II.6(a)(b) and (c) of the Term Sheet to the extent that the Agency agrees to commit all of the net tax revenue available from the Project to the Developer subject to the terms of the Settlement Agreement; that Developer shall be relieved of the obligation to provide affordable housing in the event that the Agency does not succeed in obtaining tax increment bond financing or other financing set forth in the Public Finance Plan; that the absence of such financing reduces the availability of funds for the development of affordable housing; and that prior to the Developer's deposit becoming non-refundable, a more detailed plan of public financing will be agreed upon by the Developer and the Agency.

F. Paragraph 5.5(e) is modified by Exhibit B of the Term Sheet to the extent that the Developer shall not be required to pay affordable housing in lieu fees and that all development fees shall be at the lower of the then current rate of such fees or the rate in effect as of September 1, 1999.

G. Paragraph 5.7(a) and (b) are modified by the Term Sheet to the extent that prior to the Developer's deposit becoming non-refundable under the terms of the PSA, the Developer will submit a construction phasing plan to condition the development of Rafael Village on the number of affordable housing units in the Capehart and Hillside Areas; that right of the Developer to proceed with market housing is independent of the development of affordable housing under the terms of the relevant agreements; that the processing of entitlements for development of the Property shall be in accordance with the schedule set forth in Exhibit C of the Term Sheet; and that the Developer shall be entitled to secure phased final maps for the Project to facilitate development in accordance with approved schedules. The provisions of 5.7 extending deadlines as a result of changed conditions remain effective.

H. Paragraphs 9.1(c) and (d) are modified by paragraph 4(g) of the Term Sheet to the extent that the Developer shall form a Community Facility Maintenance District, Landscaping and Lighting Districts and/or Neighborhood Associations for

Rafael Village and the Capehart/Hillside areas, the approval of which by the City shall not be unreasonably withheld.

I. Paragraph 10.3 is modified by paragraph II.9. of the Term Sheet to the extent that in the event Developer is substantially unable to perform as a result of the acts of omissions of the City, Agency or Navy, or any third person having the authority or ability to delay performance, then all of the deadlines for Developer's performance shall be extended for the duration of each such delay plus the additional time reasonably necessary to perform after such delay.

J. Paragraph 17.1(a) is modified by paragraph I.1. of the Term Sheet to the extent that the Developer is not a general partnership but a Limited Liability Company (LLC) consisting of Taylor Woodrow Homes, Inc. and O'Brien Group, Inc.

K. Paragraphs 17.1(b) and 17.2 are modified and augmented by paragraphs II.3(b)(ii)(iii) and (iv) of the Term Sheet to the extent that the City shall not unreasonably withhold its consent to an assignment agreement; that the parties contemplate the transfer of a portion of the Property to Bridge Housing, and that the responsibility of the Developer for the performance of affordable housing obligations shall be in the form of a \$25,200,000.00 financial guarantee to the City.

L. The Development Agreement is modified by the inclusion of the Construction Requirements contained in paragraphs 7(a)(b)(c) and (d) of the Term Sheet pertaining to ADA Compliance, Prevailing Wages, Labor/Subcontractor Outreach Programs, and the Undergrounding of Utilities.

II. Conforming Changes to the Agreement of Purchase and Sale

A. Section 2.01 is modified by paragraph I.8. of the Term Sheet to the extent that the Seller agrees that the Property is free of contaminants and deposits with the escrow holder letters from the DTSC, RWQCB and the EPA confirming the property is suitable for development without delay and expense to the Developer.

B. Section 2.03(A) is modified by paragraph 2(b)(vi) of the Term Sheet to the extent that the Developer shall submit its escrow deposit one week after the final, non-appealable approvals by the City, Authority and Agency on the various agreements.

C. Section 3.06(A) is modified by paragraph I.8 of the Term Sheet to the extent that the Seller shall deposit with the escrow holder letters from the DTSC, RWQCB and the EPA confirming the property is suitable for development without delay and expense to the Developer.

D. Section 6.03 is modified by paragraph I.8 of the Term Sheets to the extent that the Seller agrees the Property is free of contaminants and deposits with the escrow holder letters from the DTSC, RWQCB and the EPA confirming the property is suitable for development without delay and expense to the Developer.

E. Section 6.05 is modified by and should be consistent with paragraphs 17.1 and 17.2 of the Development Agreement, pertaining to Transfers and Assignments.

III. Conforming Changes to the Owner Participation Agreement

A. Section 208 is modified by and should be consistent with paragraphs 17.1 and 17.2 of the Development Agreement, pertaining to Transfers and Assignments.

IV. Additional Changes

DEVELOPER recognizes that conforming the Development Agreement, the PSA and the OPA to the Term Sheet may require changes in addition to the changes specified hereinabove and the City and DEVELOPER shall amend the documents as necessary to conform to the Term Sheet.