

## REIMBURSEMENT AGREEMENT

San Benito County and Richland Real Estate Fund, LLC  
Lima Property Specific Plan and EIR Preparation

This AGREEMENT ("AGREEMENT") is made, and entered into as of the 23<sup>rd</sup> day of October, 2018, ("EFFECTIVE DATE") by and between the COUNTY of San Benito ("COUNTY") and Richland Real Estate Fund, LLC ("RICHLAND").

WHEREAS, RICHLAND intends to initiate the consideration of a Specific Plan in accordance with Chapter 19.29 of the County Code of Ordinances and related amendments to County Code Title 25 (Zoning Ordinance) with appropriate project-level environmental clearance under CEQA ("SPECIFIC PLAN" covering the future development on a 347-acre property located at the west side of Highway 25 and east and south of Ridgemark ("PROJECT"), and consisting of Assessor's Parcel Number 025-200-064 ("PROPERTY");

WHEREAS, RICHLAND intends in the future to request County land use entitlements that are not a part of this AGREEMENT to develop a new master-planned community that is consistent with the SPECIFIC PLAN and Zoning regulations if approved ("SUBSEQUENT DEVELOPMENT PROPOSAL");

WHEREAS, RICHLAND and COUNTY know that the PROJECT will require COUNTY to expend resources to process RICHLAND's request after RICHLAND's submission of an application to initiate the PROJECT, including, but not limited to, processing of RICHLAND's application, preparation of the SPECIFIC PLAN, zoning code amendments and environmental documentation related to the PROJECT;

WHEREAS, RICHLAND and COUNTY acknowledge that RICHLAND's SPECIFIC PLAN application is incomplete until an executed agreement to pay all COUNTY costs for processing the application is filed in accordance with County Code Section 19.29.004 (A);

WHEREAS, COUNTY and RICHLAND have agreed in accordance with County Code Section 19.29.006 that RICHLAND is required to enter into an agreement with the County and shall be responsible for reimbursing COUNTY for all costs and expenses incurred by COUNTY with respect to the PROJECT, including, but not limited to:

- costs of staff time,
- the costs of an outside firm for preparation of the SPECIFIC PLAN (and subconsultants),
- the costs of a qualified consultant (and subconsultants) to prepare an environmental impact report,
- the preparation of a development agreement, if requested by RICHLAND, and
- the costs of outside counsel if legal advice from outside counsel is determined prudent and warranted by the County after consultation with RICHLAND, in accordance with the terms of this AGREEMENT;

NOW, THEREFORE, in consideration of the foregoing promises and in order to carry on the intent and purpose of applicable codes, ordinances, resolutions and regulations, RICHLAND and COUNTY agree as follows:

#### **SECTION 1. THE SECURITY DEPOSIT**

**A. Posting of the Security Deposit:** Upon execution of this AGREEMENT, RICHLAND shall deposit with COUNTY in a manner reasonably satisfactory to COUNTY the amount of Fifty Thousand Dollars (\$50,000) hereafter referred to as the "SECURITY DEPOSIT." The SECURITY DEPOSIT shall be held by the COUNTY as security for the full and faithful performance by the RICHLAND of all the terms and conditions of this AGREEMENT.

A. If this AGREEMENT is terminated in accordance with SECTION 6 below, the COUNTY and RICHLAND shall meet in good faith to negotiate the form and amount of security, if any, that will be required to meet any post-termination indemnification obligations of RICHLAND. If no agreement can be reached as to the amount of the post-termination security required, the COUNTY and RICHLAND shall use the alternative dispute resolution procedures set forth in SECTION 10 of this AGREEMENT to resolve this issue.

B. In the event any legal challenge is filed as a result of the PROJECT processed under this AGREEMENT, the total amount of the SECURITY DEPOSIT shall be increased within thirty (30) days by an additional sum of \$20,000.00.

**B. Withdrawal of and Maintenance of Security Deposit:** If RICHLAND defaults on its obligations to provide and maintain any deposit required by this AGREEMENT or to timely pay for any PROJECT Costs as defined in SECTION 2 below, then COUNTY shall be entitled to draw upon the SECURITY DEPOSIT to recover any and all sums in default. The SECURITY DEPOSIT shall be required for as long as RICHLAND is bound by any financial obligation(s) under this AGREEMENT. If COUNTY is required to draw upon the SECURITY DEPOSIT, RICHLAND shall within five (5) days of notification from the County that the balance in the SECURITY DEPOSIT has fallen below Fifty Thousand Dollars (\$50,000) replenish the SECURITY DEPOSIT and maintain with the COUNTY the SECURITY DEPOSIT in the amount of the Fifty Thousand Dollars (\$50,000) to secure payment to the COUNTY for PROJECT COSTS. Failure by the RICHLAND to maintain a SECURITY DEPOSIT balance of Fifty Thousand Dollars (\$50,000) within five (5) days of notification from the County that the balance in the SECURITY DEPOSIT has fallen below Fifty Thousand Dollars (\$50,000) shall be considered a default by the RICHLAND of the terms and conditions of this AGREEMENT

**C. Estimated Budget and Schedule.** Within sixty (60) days, or as soon as possible thereafter based on response to the consultant request for proposals (RFPs), following execution of this AGREEMENT, COUNTY will prepare and provide RICHLAND with a draft scope of work and an estimate of staff and outside consultant expenses for processing of the PROJECT ("BUDGET"). The BUDGET shall also include any and all other anticipated costs, including overhead charges. RICHLAND will have fifteen (15) business days from receipt of the initial Budget to review and

comment upon the BUDGET. The COUNTY will also provide a schedule ("SCHEDULE") and estimate of when such expenses are expected to be incurred. COUNTY will provide to RICHLAND copies of any executed contracts with consultants. The estimated BUDGET and SCHEDULE will be updated monthly and submitted along with the monthly summary reflecting reimbursable PROJECT Costs forwarded to RICHLAND pursuant to SECTION 3 of this AGREEMENT. The COUNTY will use reasonable efforts to maintain a BUDGET for its staff and consultants to satisfy milestones on the SCHEDULE. In preparing the BUDGET and in processing the PROJECT, the COUNTY will at all times endeavor to keep costs down.

- D. Investment:** COUNTY shall maintain the SECURITY DEPOSIT in an interest-bearing account for the benefit of RICHLAND. RICHLAND acknowledges and agrees that in lieu of paying staff costs for account maintenance and tracking of interest, RICHLAND elects to waive any interest on the SECURITY DEPOSIT. COUNTY shall at all times maintain records as to the expenditure of the SECURITY DEPOSIT; provided, however, COUNTY may use the SECURITY DEPOSIT only as set forth herein. The SECURITY DEPOSIT may be invested by COUNTY in lawful investments, in accordance with COUNTY'S established investment policies.
- E. Return of Deposit after COUNTY Final Action:** COUNTY shall return to RICHLAND any funds remaining on deposit after one hundred and eighty (180) days have passed subsequent to COUNTY'S final action on the PROJECT and the COUNTY has received from RICHLAND payment of all PROJECT COSTS incurred, as required under SECTION 2 of this AGREEMENT except to the extent that RICHLAND has not satisfied its indemnification obligations per SECTION 7 of this AGREEMENT.
- F. Subsequent Reimbursement Agreement:** In the event RICHLAND seeks discretionary permit(s) or entitlement(s) related to the PROJECT after COUNTY returns any remaining funds on deposit pursuant SECTION 1 (E) of this AGREEMENT, RICHLAND and COUNTY shall enter into a new reimbursement agreement for the requested permits or entitlements.

## **SECTION 2. PROJECT COSTS TO BE REIMBURSED**

RICHLAND shall be responsible for payment of all reasonable direct and indirect costs incurred by COUNTY as a result of the PROJECT ("PROJECT COSTS"), which are incurred by the COUNTY after the date of this AGREEMENT. During the term of this AGREEMENT, so long as RICHLAND is fulfilling its obligations hereunder, COUNTY shall process RICHLAND's application(s) for the PROJECT until such time as COUNTY certifies or does not certify the Environmental Impact Report and approves or denies the SPECIFIC PLAN. PROJECT COSTS shall include, but are not limited to:

- A.** All COUNTY staff time, including, but not limited to, the Resource Management Agency (Planning, Public Works and Integrated Waste Divisions), Office of County Counsel, Environmental Health, Administration, Clerk of the Board, GIS Department and the Clerk/Auditor/Recorder, expended on PROJECT-related activities and/or litigation. Such staff time includes direct labor costs as well as departmental and indirect overhead costs. County

shall bill at the County's normal hourly rates, which may include overhead charges if incorporated into the hourly rate.

- B. All COUNTY costs, not specified in SECTION 2(A) above, expended on PROJECT-related activities (e.g., costs of telephone, mileage, supplies, postage, etc.). Such costs shall not include general overhead, but shall be limited to cost incurred solely because of the PROJECT.
- C. All costs of any outside consultants including travel hired to assist COUNTY with PROJECT-related activities and/or litigation, including, but not limited to, attorneys, planning and design consultants, engineers, hydrologists, traffic consultants, biologists, archeologists, CEQA consultants, community outreach facilitator and other technical and professional consultants as deemed necessary by COUNTY in processing the PROJECT. COUNTY shall use its best efforts to use COUNTY staff in lieu of outside consultants when COUNTY staff is available and can perform the same task for less cost than an outside consultant. County staff is presently supplemented by a contract Principal Planner from the M-Group Planning Consultants who will be considered the lead County project manager for the PROJECT.
- D. All costs incurred in connection with the preparation of an environmental impact report. It is anticipated that the PROJECT will require environmental review (the preparation of an environmental impact report) in conformance with CEQA and the COUNTY is therefore in the process of retaining outside consultants to assist with said review. In conjunction with selecting and retaining any consultants, the COUNTY shall meet and confer with RICHLAND to obtain input regarding the consultants under consideration. While COUNTY agrees to meet and confer with RICHLAND prior to selecting any outside consultant and to consider the above factors, the COUNTY retains the sole discretion to select or hire any outside consultant. In selecting a consultant, COUNTY shall consider at a minimum the following factors:
  - i. proposed price to complete work;
  - ii. extent of relevant experience;
  - iii. strength of references;
  - iv. strength of individual team members who would be tasked with key analyses;
  - v. general reputation; and
  - vi. for any environmental consultant, its record of accomplishment for preparing documents that have successfully withstood judicial challenge under the California Environmental Quality Act (CEQA).
- E. All costs incurred in connection with a Development Agreement if RICHLAND requests the negotiation and preparation of a Development Agreement in accordance with the provisions of County Code Chapter 19.11 in conjunction with the PROJECT. Chapter 19.11 requires that the applicant shall pay all actual costs incurred by the County in processing a Development

Agreement application. In that event, it is the intent of RICHLAND and the COUNTY that the terms of this AGREEMENT shall include and apply to the Development Agreement application.

- F. Legal fees and costs incurred by the COUNTY in connection with the Project.

### **SECTION 3. PROCESS FOR REIMBURSEMENT OF PROJECT COSTS**

- A. COUNTY shall prepare and provide RICHLAND (by electronic mail or whatever is the preferred method of delivery) monthly summaries reflecting all PROJECT COSTS set forth in SECTIONS 2(A)-(F) above incurred during each month.
- B. Following execution of this AGREEMENT, RICHLAND shall deposit with the COUNTY in a separate account (hereinafter the "CHARGES FOR SERVICES - DEVELOPER DEPOSIT") the amount of Thirty Thousand Dollars (\$30,000) to pay for all costs set forth in SECTIONS 2 (A)-(F) and any other PROJECT COSTS. RICHLAND shall within ten (10) days of notification from the County that the balance in the SECURITY DEPOSIT has fallen below Ten Thousand Dollars (\$10,000) replenish the SECURITY DEPOSIT and maintain with the COUNTY the CHARGES FOR SERVICES - DEVELOPER DEPOSIT in the amount of the Thirty Thousand Dollars (\$30,000) to secure payment to the COUNTY for PROJECT COSTS. Failure by the RICHLAND to maintain a CHARGES FOR SERVICES - DEVELOPER DEPOSIT balance of Thirty Thousand Dollars (\$30,000) within ten (10) days of notification from the County that the balance in the CHARGES FOR SERVICES - DEVELOPER DEPOSIT has fallen below Ten Thousand Dollars (\$10,000) shall be considered a default by the RICHLAND of the terms and conditions of this AGREEMENT. COUNTY and RICHLAND agree to meet in good faith and discuss adjustments to the amount of the CHARGES FOR SERVICES - DEVELOPER DEPOSIT if the actual monthly expenditures for PROJECT COSTS routinely (defined as two or more consecutive months) exceed the amount of the CHARGES FOR SERVICES - DEVELOPER DEPOSIT.
- C. COUNTY shall maintain the CHARGES FOR SERVICES - DEVELOPER DEPOSIT in an interest-bearing account for the benefit of RICHLAND. RICHLAND acknowledges and agrees that in lieu of paying staff costs for account maintenance and tracking of interest, RICHLAND elects to waive any interest on the CHARGES FOR SERVICES - DEVELOPER DEPOSIT. COUNTY shall at all times maintain records as to the expenditure of the CHARGES FOR SERVICES - DEVELOPER DEPOSIT; provided, however, COUNTY may use the CHARGES FOR SERVICES - DEVELOPER DEPOSIT only as set forth herein. The CHARGES FOR SERVICES - DEVELOPER DEPOSIT may be invested by COUNTY in lawful investments, in accordance with COUNTY'S established investment policies.
- D. For those PROJECT COSTS set forth in SECTIONS 2(A)-(F), COUNTY shall provide a written, monthly summary to RICHLAND of all PROJECT COSTS charged by COUNTY against the CHARGES FOR SERVICES - DEVELOPER DEPOSIT. The written summary shall be supported by appropriate documentation such as timesheets, invoices, and receipts; provided, however, that COUNTY shall have the right to redact from such documentation any information that the COUNTY reasonably determines is privileged, confidential, or not otherwise subject to release pursuant to the California Public Records Act (Gov't Code § 54950 et seq.). RICHLAND shall approve or

disapprove COUNTY'S reimbursement of all costs set forth in each such summary within twenty (20) business days of receipt. If COUNTY does not receive a response from RICHLAND within this twenty (20) business day timeframe, the requested reimbursement shall be deemed approved and COUNTY shall draw on the CHARGES FOR SERVICES - DEVELOPER DEPOSIT to cover said PROJECT COSTS. In the event RICHLAND notifies COUNTY in writing within this twenty (20) business day timeframe that it does not approve said reimbursement, COUNTY may still draw on the CHARGES FOR SERVICES - DEVELOPER DEPOSIT to cover said PROJECT COSTS subject to resolution of this dispute in accordance with SECTION 10 below. For those PROJECT COSTS set forth in SECTIONS 2(C) and (D) above, COUNTY shall pay said costs directly to the outside consultants, list those payments on the monthly summary and provide appropriate documentation indicating the name of each outside consultant and the services provided. In addition, COUNTY shall provide RICHLAND on a monthly basis (by regular mail, electronic mail, or facsimile) a copy of any and all consultant invoices paid directly by COUNTY during the preceding month. COUNTY shall have the right to redact from such documentation any information that COUNTY reasonably determines is privileged, confidential, or not otherwise subject to release pursuant to the California Public Records Act (Gov't Code § 54950 et seq.).

#### **SECTION 4. FEES, PERMITS AND COUNTY REGULATIONS**

This AGREEMENT replaces any Specific Plan, Environmental, General Plan Amendment, Zone Change Petition and related application fees normally collected by the COUNTY on behalf of the County Counsel's Office, Environmental Health Department, Fire Department, Public Works Department, and/or the Planning Department at the time an application for a proposed PROJECT is made. Specifically, this AGREEMENT replaces any Specific Plan or Environmental fee contained in San Benito COUNTY Code of Ordinances Sections 5.01.049, 5.01.060 and 5.01.061. Any amount previously paid by RICHLAND with the filing of its current SPECIFIC PLAN and Zone Change application will be credited to the RICHLAND against any future amount due and owing. Notwithstanding the foregoing, RICHLAND shall be responsible to pay any fee not expressly abrogated by this AGREEMENT, including, but not limited to, any discretionary or ministerial fee(s) on required PROJECT permits such as subdivision maps, design review, building permits, grading permits, and the like, and any fees or expenses approved by the Planning Commission and/or Board of Supervisors that are made part of the PROJECT's conditions of approval. Nothing in this AGREEMENT shall be deemed to abrogate the responsibility of RICHLAND to obtain any required permit(s) or comply with any laws associated with any applications, permits, studies, or construction activities related to the PROJECT. This AGREEMENT does not apply to any fees the RICHLAND is required to pay to any entity other than the COUNTY of San Benito, including any state or federal agency, or on any new application or PROJECT.

#### **SECTION 5. TERM**

Subject to SECTION 6, the term of this AGREEMENT shall commence on the Effective Date and terminate upon the later of: (a) one (1) year from the second reading of the SPECIFIC PLAN adoption ordinance; or (b) one (1) year from the final action by the Board of Supervisors on the PROJECT; or (c) six (6) months from completion of any litigation of the PROJECT. "Completion of litigation" shall mean final judgment



in the case has been issued and the time to appeal has passed, or settlement between the parties has been reached and, in such case, approval from the County Board of Supervisors has been obtained. Nothing herein shall be deemed to abrogate RICHLAND's responsibility to pay for ongoing expenses, including litigation expenses, incurred by COUNTY as a result of PROJECT-related activities, which activities occurred during the term of this AGREEMENT. Nothing in this AGREEMENT shall be construed to guarantee approval of the PROJECT or vest any rights to develop any SUBSEQUENT DEVELOPMENT PROPOSAL or require COUNTY approval of any SUBSEQUENT DEVELOPMENT PROPOSAL.

#### **SECTION 6. TERMINATION**

RICHLAND may, at its option, terminate this AGREEMENT at any time on thirty (30) days' prior written notice to COUNTY ("TERMINATION NOTICE") if RICHLAND determines not to proceed with the PROJECT. In the event of termination, RICHLAND shall be responsible for the payment of all PROJECT COSTS incurred up to and including the date of termination, including any PROJECT COSTS challenged by Richland in accordance with Section 3.D and resolved in favor of the County in accordance with Section 10 below. COUNTY shall apply the sums maintained in the Security and CHARGES FOR SERVICES - DEVELOPER DEPOSIT to any unreimbursed PROJECT COSTS through the termination date, and COUNTY shall then refund any remaining Security and CHARGES FOR SERVICES - DEVELOPER DEPOSIT funds (including any interest earned thereon) to RICHLAND within thirty (30) days of the date of termination.

#### **SECTION 7. INDEMNIFICATION**

In addition to PROJECT COSTS, RICHLAND shall defend, indemnify, and hold COUNTY free and harmless from any and all suits, fees, claims, demands, causes of action, proceedings (hereinafter collectively referred to as "LEGAL ACTIONS"), costs, losses, damages, liabilities and expenses (including, but not limited to, an award of attorneys' fees, expert witness fees, and court costs) incurred by COUNTY arising (directly or indirectly) or resulting from the review, processing, consideration, or approval of RICHLAND's PROJECT or action taken by COUNTY thereon including any review, processing, consideration, approval or action taken by County on a Development Agreement pursuant to SECTION 2(E) herein. In the event RICHLAND does not wish to defend a LEGAL ACTION either as party to said action or as Real Party-in-Interest, RICHLAND will reimburse COUNTY for any damages, costs, or fees awarded pursuant to any default judgment or other judgment taken against the COUNTY as a result of its decision not to defend a LEGAL ACTION. The failure of the RICHLAND to promptly reimburse the COUNTY for any damages, costs or fees, due and owing under this SECTION 7 shall entitle the COUNTY in addition to its other legal and equitable remedies to draw upon the SECURITY DEPOSIT and the CHARGES FOR SERVICES - DEVELOPER DEPOSIT. RICHLAND's obligations pursuant to this SECTION 7 shall survive suspension or termination of this AGREEMENT.

- A. In the event the COUNTY'S processing of the PROJECT results in any LEGAL ACTION being initiated, the COUNTY shall notify the RICHLAND promptly of any such action. RICHLAND will provide and take primary responsibility for the legal defense of itself and the COUNTY (hereinafter referred to as the "JOINT LEGAL DEFENSE") to the fullest extent possible. RICHLAND shall defend COUNTY'S actions with competent legal counsel of RICHLAND's choice

without charge to COUNTY, subject to COUNTY approval. Prior to selecting such legal counsel, RICHLAND shall meet and confer with COUNTY to obtain COUNTY'S input on the question of whether such counsel is, indeed, competent with respect to the body of law at issue in the litigation. COUNTY shall not unreasonably withhold its consent to RICHLAND's choice of counsel where such counsel enjoys a good reputation with respect to work under such body of law and can point to notable successes in prior litigation involving that body of law. For purposes of this AGREEMENT, a complaint including the recovery of attorney fees and costs will be considered a request for "monetary damages." The COUNTY and RICHLAND shall cooperate in good faith in the defense of any LEGAL ACTION that names the COUNTY as a party and for which the RICHLAND undertakes the primary responsibility for the Joint Legal Defense of in accordance with the terms of this SECTION 7. The COUNTY, through the County Counsel's Office, shall be kept apprised by the RICHLAND and retained counsel of significant dates and hearings, shall receive copies of all pleadings filed in the matter by any party, and shall be allowed to participate in strategic decisions regarding the development of any applicable defense strategies and in preparing pleadings, prior to filing. RICHLAND and COUNTY may enter into a "JOINT LEGAL DEFENSE AGREEMENT" amending any terms hereto.

- B. In the event of any Legal Action against COUNTY and/or RICHLAND, COUNTY will protect from public disclosure to the fullest extent possible, any communications between its attorneys and those representing RICHLAND in said action. The parties intend that communications between County Counsel, retained counsel and/or COUNTY staff, for purposes of the joint defense of a legal action, are entitled to the attorney-client privilege and/or work product privilege and are to be protected from disclosure through the exemption contained in Cal. Gov't. Code § 6254(b) and/or (k), Evidence Code section 954 and/or Code of Civil Procedure section 2018.030. Similarly, communications between County Counsel and Board of Supervisors will be held in Closed Session pursuant to Cal. Gov't. Code §54956.9. Any Legal Action seeking to compel disclosure of privileged communications shall be defended by the RICHLAND in accordance with the terms and conditions set forth in this SECTION 7.
- C. Nothing contained in this SECTION 7, however, shall be construed to limit the discretion of COUNTY, in the interest of the public welfare, to settle, defend, or appeal, or to decline settlement or to terminate or forego defense or appeal of a LEGAL ACTION at its own expense. In no event shall COUNTY be required to continue with a legal challenge, although COUNTY shall have the right to do so, in the event RICHLAND fails to pay any amounts owing to COUNTY pursuant to this AGREEMENT. In no event shall COUNTY have any obligation or liability to RICHLAND in connection with COUNTY'S defense or prosecution of litigation related to the PROJECT (including, but not limited to, the outcome thereof) or in the event COUNTY elects not to prosecute a case or defend litigation brought against it. The failure of the RICHLAND to undertake the defense of any Legal Action within the scope of this SECTION 7 or the decision of the RICHLAND to terminate, forego, or abandon the defense or appeal of a Legal Action may be treated by the COUNTY as an abandonment of the PROJECT by the RICHLAND and will relieve



the COUNTY from any further duty, legal or otherwise, to continue to process the RICHLAND's PROJECT.

- D. If either COUNTY or RICHLAND determines in good faith that common counsel presents a bona fide conflict of interest, then COUNTY may employ separate counsel to represent or defend the COUNTY, and RICHLAND shall pay the reasonable attorneys' fees and costs of such counsel within thirty (30) days of receiving an itemized billing statement. Failure by the RICHLAND to reimburse COUNTY for its separate counsel may be treated as an abandonment of the PROJECT by RICHLAND and will relieve the COUNTY from any further duty, legal or otherwise, to continue to process the RICHLAND's PROJECT.

## **SECTION 8. NOTICES**

All notices called for in this AGREEMENT shall be given in writing by personal delivery, electronic mail or facsimile (with copy of such notice sent not later than the next day by mail or overnight private courier in accordance with the provision herein) or by overnight mail or overnight private courier. Facsimile notices shall be deemed received on the day sent if sent prior to 6:00 p.m. Pacific Time or if sent after 6:00 p.m. Pacific Time, then deemed received on the next day. Overnight mail or couriered notices shall be deemed received the next business day following deposit into the U.S. mail or delivery to the private courier. First class mail, postage prepaid, shall be deemed received three days after postmark. Mailed or couriered notices shall be addressed as set forth below, but either party may change its contact information by giving written notice thereof to the other in accordance with the provisions of this SECTION 8.

### **To the COUNTY:**

John P. Guertin, RMA Director  
County of San Benito  
2301 Technology Parkway  
Hollister, CA 95023-2513  
Fax: 831.637.5334

### **With a copy to:**

Barbara Thompson, County Counsel  
County of San Benito  
481 Fourth Street, 2<sup>nd</sup> Floor  
Hollister, CA 95023  
Fax: 831.636.4044

### **To RICHLAND:**

Brian Hardy, Vice President  
Richland Real Estate Fund, LLC  
3161 Michaelson Drive, Suite 425  
Irvine, California 92612  
Fax: 949.261.7016

### **With a copy to:**

General Counsel  
Richland Real Estate Fund, LLC  
3161 Michaelson Drive, Suite 425  
Irvine, California 92612  
Fax: 949.261.7016

## **SECTION 9. DEFAULT BY RICHLAND**

- A. If RICHLAND defaults in its obligations to provide and maintain the deposits required by this AGREEMENT in [Section 1.B](#) and [3.B](#) or to timely pay for any PROJECT COSTS as required under this AGREEMENT, then COUNTY, at COUNTY'S option, may suspend any activities related to the PROJECT upon thirty (30) days' written notice to RICHLAND. During the pendency of any notice

period, whether for monetary or non-monetary default(s), COUNTY, at COUNTY'S option, may suspend processing and/or consultant activities related to the PROJECT until such default is cured by the RICHLAND. COUNTY shall give RICHLAND written notice of such default and any decision by the COUNTY to suspend processing and/or consulting activities related to the PROJECT activities. Subject to SECTION 10 below, COUNTY may terminate this AGREEMENT and institute legal proceedings, with no further notice to RICHLAND, if such default is not remedied by RICHLAND within thirty (30) days after such notice is given by COUNTY to RICHLAND. Upon such termination, COUNTY shall not be obligated to expend any additional funds on PROJECT-related matters; however, COUNTY may, in its discretion (such discretion to be exercised in good faith), expend Deposit funds after termination of this AGREEMENT as necessary to complete PROJECT-related activities already commenced or for which monetary obligations have already been incurred. Subject to SECTION 10, RICHLAND consents and agrees not to object to, appeal or protest any of the conditions and/or payments referenced in this SECTION 9.

- B. In the event of RICHLAND's default, RICHLAND waives any permit review timelines otherwise applicable.

#### **SECTION 10. DISPUTE RESOLUTION**

- A. If a dispute arises related to the interpretation or enforcement of, or compliance with, the terms and provisions of this AGREEMENT ("Dispute"), COUNTY and RICHLAND shall first attempt to resolve it through informal discussions. In the event a Dispute cannot be resolved in this manner within sixty days (60) days after the Dispute arises, then COUNTY and RICHLAND shall engage in the following Alternative Dispute Resolution procedures:
- B. **Mediation:** The COUNTY and RICHLAND agree that any and all disputes, claims, or controversies between COUNTY and RICHLAND and arising of or related to this AGREEMENT shall be submitted to the San Jose, California office of Judicial Arbitration and Mediation Services, Inc. ("JAMS") for mediation, and if the matter is not resolved through mediation, then it shall be submitted to JAMS for final binding arbitration pursuant to the arbitration clause set forth below. Either COUNTY or RICHLAND may commence mediation by providing to JAMS and the other party a written request for mediation setting forth the subject of the dispute and the relief requested. The COUNTY and RICHLAND will cooperate with JAMS and with one another in selecting a mediator from JAMS' panel of neutrals and in scheduling the mediation proceedings. If the parties cannot agree on the appointment of a mediator or the date of the mediation within thirty (30) days after the written request for mediation, then JAMS shall appoint the mediator at its discretion and/or set a mediation date. The COUNTY and RICHLAND covenant that they will participate in the mediation in good faith, and that they will share equally in its costs. All offers, promises, conduct, and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts, and attorneys, and by the mediator and any JAMS employees, are confidential, privileged, and inadmissible for any purpose, including impeachment, in any litigation or other proceedings involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered

inadmissible or non-discoverable as a result of its use in mediation. Either party may seek equitable relief prior to the mediation to preserve the status quo pending the completion of that process. Except for an action to obtain equitable relief, neither party may commence civil litigation. Either COUNTY or RICHLAND may initiate arbitration with respect to the matters submitted to mediation by filing a written demand for arbitration at any time following completion of the initial mediation session or sixty (60) days after the date of the written request for mediation, whichever occurs last. Mediation may continue after the commencement of arbitration, if COUNTY and RICHLAND so desire. Unless otherwise agreed to by COUNTY and RICHLAND, the mediator shall be disqualified from serving as the arbitrator in the case. The provisions of this clause may be enforced by any court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, fees, and expenses, including attorney's fees, to be paid by the party against whom enforcement is ordered.

- C. **Arbitration:** Any dispute, claim or controversy between COUNTY and RICHLAND arising out of this AGREEMENT or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this AGREEMENT to arbitrate, not resolved by the mediation process set forth above, shall be determined by arbitration to be held in San Benito County before one arbitrator, unless the parties otherwise agree to an alternate venue. Neither party may request an arbitration hearing in conformity with this arbitration clause until after the matter has been submitted to mediation in conformity with the mediation clause set forth above and the initial mediation session has been completed or sixty (60) days has passed since the date of the initial written request for mediation, whichever occurs last. The arbitration shall be administered by the San Jose, California office of JAMS pursuant to its Streamlined Arbitration Rules and Procedures, which rules shall govern the commencement of the arbitration and the selection of the arbitrator, among other things. Judgment on the Arbitrator's Award may be entered in San Benito County Superior Court, or any court having competent jurisdiction. This clause shall not preclude COUNTY or RICHLAND from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.

The costs and fees of arbitration (including those fees and expenses set forth in JAMS' fee schedule in effect at the time of commencement of the arbitration) shall be borne equally by COUNTY and RICHLAND, and each side shall be responsible for its own attorney's fees and expert witness' fees.

- D. The dispute resolution process shall be undertaken in good faith. A mediator or arbitrator other than JAMS may be agreed to by COUNTY and RICHLAND in writing. By agreeing to this dispute resolution process, neither COUNTY nor RICHLAND hereby loses or waives its right to assert the operation of any applicable statute of limitations as an affirmative defense. The arbitration award shall be final and binding upon COUNTY and RICHLAND and each agrees that it will accept such decision and award as binding and conclusive and will abide thereby.

#### **SECTION 11. NO WAIVER OF IMMUNITIES**

Nothing in this AGREEMENT shall be construed as a waiver by COUNTY of any of the immunities granted to it under federal, state or local law, including the provisions of Sections 818.6, 830.6 and 831.3 of the California Government Code.

#### **SECTION 12. COMPLETE AGREEMENT**

Except as may otherwise be explicitly set forth herein, this AGREEMENT constitutes the final, complete, and exclusive statement of the terms hereof between COUNTY and RICHLAND related to the subject matter set forth herein. Neither party is relying on any representation or warranty outside those expressly set forth in this AGREEMENT. Any and all amendments to this AGREEMENT shall be in writing, shall be stated as an amendment to this AGREEMENT and shall be executed by both parties.

#### **SECTION 13. UNENFORCEABILITY; SEVERABILITY**

If a court of competent jurisdiction holds any clause or portion of this AGREEMENT to be invalid or unenforceable in whole or in part for any reason, the validity and enforceability of the remaining clauses, or portions of them, shall not be affected unless an essential purpose of this AGREEMENT would be defeated by loss of the invalid or unenforceable provision. To that end, this AGREEMENT shall be construed as not containing such clause and the provisions of this AGREEMENT are declared to be severable.

#### **SECTION 14. SUCCESSORS AND ASSIGNS**

This AGREEMENT shall bind and benefit RICHLAND and COUNTY and their successors-in-interest, whether voluntary or involuntary. RICHLAND agrees to require any successor to assume all duties and obligations set forth herein. RICHLAND shall provide COUNTY with notice of any transfer of ownership interest in the PROJECT or subject property.

#### **SECTION 15. NO THIRD-PARTY RIGHTS**

This AGREEMENT is not intended to be, and shall not be, construed to create any third-party beneficiary rights in any person or entity who is not a party, unless expressly provided herein.

#### **SECTION 16. NO JOINT VENTURE OR PARTNERSHIP**

The parties specifically acknowledge that each party is an independent entity with respect to the terms contained in this AGREEMENT. None of the terms of this AGREEMENT shall be deemed to create a partnership between the parties in the businesses of RICHLAND or the affairs of COUNTY, or otherwise, or cause them to be considered joint ventures or members of any joint enterprise.

#### **SECTION 17. CONSTRUCTION**

Each party hereto declares and represents that in entering into this AGREEMENT, it has relied and is relying solely upon its own judgment, belief, and knowledge of the nature, extent, effect, and

consequence relating thereto. Each party further declares and represents that this AGREEMENT is made without reliance upon any statement or representation not contained herein of any other party or any representative, agent, or attorney of the other party. The parties agree that they are aware they have the right to be advised by counsel with respect to the negotiations, terms, and conditions of this AGREEMENT and that the decision of whether to seek the advice of counsel with respect to this AGREEMENT is a decision which is the sole responsibility of each of the parties. Accordingly, no party shall be deemed to have been the drafter hereof, and the principle of law set forth in Civil Code § 1654 that contracts are construed against the drafter shall not apply.

#### **SECTION 18. TIME IS OF THE ESSENCE**

For the purpose of this AGREEMENT and of each provision of this AGREEMENT, time is of the essence.

#### **SECTION 19. COOPERATION**

RICHLAND and COUNTY shall cooperate fully in the execution of any and all other documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this AGREEMENT. The parties shall act in good faith toward each other and shall act in a fair, diligent and reasonable manner, and neither party shall take any action that will prohibit, impair or impede the other party's exercise of enjoyment of its rights and obligations secured through this AGREEMENT. RICHLAND acknowledges this is a County managed and led project with the all outside consultants serving at the sole direction of the County. It is the County's responsibility to ensure a fair, objective and transparent process and to maintain a complete public administrative record. The County and RMA staff in particular is the central point of contact and communication between all parties. There is to be no direct communication between RICHLAND and any outside consultants retained by the County and other applicable parties without County's knowledge and pre-approval. Any such communication in violation of the preceding sentence may result in delays and/or the removal of such consultant.

#### **SECTION 20. APPLICABLE LAW**

This AGREEMENT shall be construed and enforced in accordance with the federal, State of California and local laws. All references to statutes and regulations shall include all amendments, replacements and enactments on the subject as of the Effective Date and any later changes, which do not materially and substantially alter the positions of COUNTY and RICHLAND.

#### **SECTION 21. JURISDICTION AND VENUE**

This AGREEMENT is executed and is to be performed in the County of San Benito, California, and any action or proceeding brought relative to this AGREEMENT shall be heard in San Benito County Superior Court. COUNTY and RICHLAND each consent to the personal jurisdiction of the court in any such action or proceeding.



**SECTION 22. REPRESENTATIONS OF AUTHORITY**

Each party signing this AGREEMENT represents and warrants to the other party that all necessary legal prerequisites to that party's execution of this AGREEMENT have been satisfied and that the signatory has been authorized to sign this AGREEMENT and bind the party on whose behalf the signatory signs.

**SECTION 23. NO PROMISE OR REPRESENTATION**

RICHLAND and COUNTY agree that nothing in this AGREEMENT (i) is to be construed as a representation, promise or commitment on the part of COUNTY to give special treatment to, or exercise its discretion favorably for, the PROJECT or RICHLAND, or (ii) shall be construed to limit the discretion of COUNTY, in the interest of the public welfare, in making recommendations about or exercising its decision-making authority on the merits of the PROJECT.

*[ signatures on following page ]*

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be duly executed as of the date first above written.

COUNTY:

San Benito County Board of Supervisors

By: \_\_\_\_\_  
Anthony Botelho, Chair

Date: \_\_\_\_\_

RICHLAND:

Richland Real Estate Fund, LLC

By: \_\_\_\_\_  
John E. Troutman, Vice President

Date: 10/31/2018

ATTEST:

San Benito County  
Janet Slibsager, Clerk of the Board

By: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:

San Benito County Counsel's Office

By: \_\_\_\_\_  
G. Michael Ziman, Deputy County Counsel

Date: November 1, 2018