

RESOLUTION NO. 2007-26

**A RESOLUTION BY THE BOARD OF
THREE RIVERS LEVEE IMPROVEMENT AUTHORITY
APPROVING PROPOSAL TO AMEND SECOND AGREEMENT FOR
ADVANCED FUNDING AND REIMBURSEMENT OF COSTS FOR LEVEE
IMPROVEMENTS, AND DIRECTING RELATED ACTIONS**

WHEREAS, the Three Rivers Levee Improvement Authority (the "Authority"), a joint exercise of powers authority of which the County of Yuba (the "County") and Reclamation District 784 ("RD784") are the members, has constructed over \$130,000,000 of levee improvements resulting in the certification of levees on the Western Pacific Interceptor Canal, the Bear River and substantial portions of the levees on the Yuba River, thereby significantly improving public safety in Southern Yuba County; and

WHEREAS, the County has enacted an ordinance which imposes an impact fee on land in the area benefiting from the levee improvements, in order to fund the levee improvements; and

WHEREAS, the County, the Authority and RD784 have entered into agreements with various landowners in the Southern area of the County, including a Second Funding Agreement for Advanced Funding and Reimbursement of Costs for Levee Improvements (the "Second Funding Agreement"), in order to provide advance funding for the levee improvements pending receipt of impact fees; and

WHEREAS, prior to starting the levee improvements along the Feather River necessary to complete the levee improvement program and achieve 200 year flood protection for the Southern portion of the County, the Authority applied to the State of California for funding for a setback levee on the Feather River, which involves costs in excess of the funds to be advanced under the Second Funding Agreement; and

WHEREAS, the Department of Water Resources of the State of California has informed the Authority that it has provisionally qualified the Authority to receive a maximum of \$138,510,000 of State funds towards the costs of the levee improvements to be done and specified that, in order to obtain a commitment of the State funds, among other requirements, the Authority identify a financing plan for a local share of the costs of the levee improvements of \$53,300,000 (the "Local Share"); and

WHEREAS, while it is expected that impact fees will ultimately be collected in amounts sufficient to fund the Local Share, funds will need to be advanced in respect thereof in order to timely fund the Local Share when needed to fund the levee improvements, and it is now proposed that the Second Funding Agreement be amended (the "Amendment") to provide a means to fund the Local Share; and

WHEREAS, it is proposed that the Amendment provide that the participating landowners provide approximately \$30,000,000 of the Local Share, and that the County provide, by means of a general fund lease financing with certificates of participation (the "Certificates of Participation") approximately \$23,300,000, with approximately \$6,500,000 of the participating landowners contribution and all of the County contribution to cover the impact fees expected to be paid by the landowners, other than the participating landowners, in the area benefited by the levee improvements; and

WHEREAS, the Board of the Authority now desires to express its approval of a term sheet for the proposed Amendment, and to direct Staff to work with the County and participating landowners in connection with its financing plan and preparation of the Amendment, and to submit to the plan to the State.

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees of the Three Rivers Levee Improvement Authority as follows:

Section 1. The Board hereby approves the Term Sheet For First Amendment To Second Funding Agreement attached hereto as Exhibit A.

Section 2. The Board hereby directs staff to continue working with the County and participating landowners in connection with its financing plan and preparation of the Amendment, and to submit to the State the financing plan.

Section 3. This Resolution shall take effect upon its adoption.

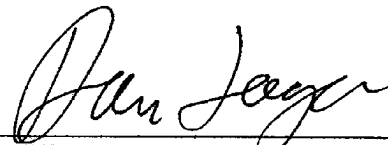
PASSED AND ADOPTED this 2nd day of October, 2007, by the Board of Three Rivers Levee Improvement Authority by the following vote:

AYES: Directors Brown, Crippen, Griego, Logue

NOES: None

ABSENT: Directors Webb

ABSTAIN: None

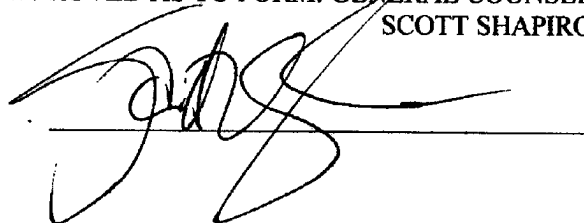


THREE RIVERS LEVEE IMPROVEMENT
AUTHORITY

ATTEST: DONNA STOTTLEMEYER,
CLERK OF THE BOARD



APPROVED AS TO FORM: GENERAL COUNSEL
SCOTT SHAPIRO



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FINAL TERM SHEET FOR FIRST AMENDMENT
TO SECOND FUNDING AGREEMENT

I. Introduction of Concepts and Summary of Funding Requirements

- A. Three Rivers Levee Improvement Authority ("TRLIA") has constructed over \$130 million of levee improvements with funding from the participating landowners, set forth in Exhibit A ("Participants"), other landowners and the State of California. These improvements have led to the certification of levees on the Western Pacific Interceptor Canal, the Bear River, and substantial portions of the levees on the Yuba River, significantly improving public safety in southern Yuba County.
- B. Yuba County has put into place a Levee Impact Fee, which completely funds the remaining levee improvements, primarily located along the Feather River and Yuba River, necessary to achieve 200-year flood protection for southern Yuba County. The costs of this program were to be advanced by certain landowners, and those landowners were to be reimbursed, over time, from the collection of impact fees paid by other landowners. This arrangement had been memorialized in the Second Funding Agreement.
- C. Prior to starting improvements on the Feather River, TRLIA applied to the State to fund (from Propositions 1E and 84) a setback levee on the Feather River, which has costs in excess of the program originally to be funded by the landowners. The State has tentatively agreed to fund a maximum State cost share of \$138.51 million for levee improvements, including the Feather River Setback Levee. In order to qualify for the funding, TRLIA is required to demonstrate the timely availability of a local share of \$53.3 million.
- D. While the entire local share of \$53.3 million can ultimately be paid for by development through the Levee Impact Fee, the purpose of this First Amendment to the Second Funding Agreement ("First Amendment") is to establish how monies will be advanced by certain landowners, TRLIA and the County, and then how those landowners and the County can be repaid by the eventual collection of impact fees and by other means.
- E. The local share necessary to be advanced is made up of two different types of funds:
 - i. The first type of funds are impacts fees which would eventually be paid during build out by the Participants and which impact fees those Participants are willing to advance in the form of Capital

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Calls in order to provide a portion of the necessary cash flow for the project. These Participant impact fees are currently estimated at \$22.4 million.

- ii. The second type of funds are impact fees which will eventually be paid by non-participating landowners but, due to the need for timely availability of funds, will be jointly advanced by the Participants and the County and which will ultimately be repaid to the Participants and the County from impact fees paid by non-participating landowners, along with other sources of revenue. These impact fees are referred to in the Second Funding Agreement as the Deferred Participants Levee Obligation and are currently estimated at \$30.9 million.
- F. Through this First Amendment the Participants are committing to advance fund the Participants Levee Obligation as required for construction of these levee improvements (\$22.4 million). The Participants will no longer advance fund the entire Deferred Participant Obligation as originally set forth in the Second Funding Agreement, and the County will advance fund a majority of the remaining Deferred Participants' Obligation.
- G. Through this First Amendment, the County and the Participants are agreeing to jointly advance fund the Deferred Participants Levee Obligation of \$30.9 million, except as otherwise revised by Section V(B) below, as follows:
- 1. The Participants will contribute \$7.6 million.
 - 2. The County will contribute \$23.3 million.
- H. Until such time as State funds are available to TRLIA, TRLIA will fund State share of the required cash flow through a credit line, grant anticipation note or other mechanism.
- I. The timing of funding hereunder will be based on a TRLIA approved cash flow and project schedule (the "Approved Cash flow and Project Schedule") for completion of the levee improvement program which will reflect local share contributions that are required to match funding from the State funding and be an exhibit to the First Amendment.

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II. Participants Financial Obligation

- A. The Participants advanced funding obligation (which includes their Participant Levee Obligation (\$22.4 million) and portion of the Deferred Participants Levee Obligation (\$7.6 million)), which shall be funded under the First Amendment, shall not exceed \$30 million dollars, in fulfillment of its complete obligation (and advance of Deferred Participant Obligation), for the capital improvements to the Levee Program, as set forth in Exhibit B ("Participant Landowner Funding Proforma"). The Participants' ultimate contribution to the Levee Improvement Program will be determined, once the Levee Improvement Program is complete, pursuant to Section 16 of the Second Funding Agreement.
- B. Upon execution of the First Amendment, the Participants shall transfer \$5.1 million to the Participant Levee Improvement Fund for funding the Levee Improvement Project, which includes the Feather River Setback Levee. Those funds must be transferred within 5 business days after execution of the First Amendment.
- C. Upon satisfaction of the following criteria, the Participants shall transfer the \$5.1 million held in the Participant Levee Improvement Fund to a third-party Trustee Account as discussed below in Section VII (H): (1) Execution of Development Agreement as defined below in Section VI; (2) State Reclamation Board approval of the Feather River Setback Levee; (3) Executed Grant Agreement between TRLIA and State; (4) receipt of audited financial statements from TRLIA; and (5) no restrictions, moratorium or de facto moratoriums on issuance of building permits at the time of the transfer.
- D. The Participants shall be required to fund the remaining Participant Levee Obligation and Deferred participant Levee Obligation through Capital Calls based on Approved Cash flow and Project Schedule and Landowner Proforma, unless and until another funding mechanism is identified and approved pursuant to Section IV below.
- E. Once the Approved Cash flow and Project Schedule has been established in the First Amendment, then Capital Call amounts for Participants shall not increase, nor be accelerated, without Participant Escrow Committee written approval.
- F. No joint and several liability by and between Participants.
- G. To provide assurance of payment of Capital Calls, the Participants agree to resolve the disputes arising under or relating to this First Amendment related to required Capital Calls pursuant to the Approved

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Cash flow and Project Schedule and Landowner Proforma, by binding arbitration rather than litigation. The award rendered by the arbitrator or arbitrators shall be final, and judgment shall be entered upon it in accordance with applicable law in any court having jurisdiction thereof. The County and TRLIA shall be entitled to recover from the defaulting Participant all costs and attorney fees if legal action is undertaken.

- H. Section II(G) shall be valid until and unless Participant replaces this assurance with the lien on its property in the amount of the remaining Capital Calls for that Participant, established through the formation of a new Community Facilities District and/or Benefit Assessment District, if successful in their formation.
- I. Further, if an individual Participant does not fund as required by the First Amendment to the Second Funding Agreement, the County may suspend all entitlements, not approve final maps, and shall suspend issuing building permits, even as to those building permits which may have already been funded by that Participant through previous advanced funding obligations. These penalties shall only apply to the defaulting Participant, and only until the default has been cured.
- J. The Deferred Participant Obligation (\$7.6 million) shall be funded through capital calls paid by Participants only after the Participant's Levee Obligation (\$22.4 million) amounts have been paid in full, or by CFD bonds, if a new CFD is established.

III. Yuba County Financial Obligation

- A. The County advance funding obligation shall not exceed \$23.3 million.
- B. The County's advance funding obligation will be funded through the issuance of Certificates of Participation ("COPs"), a long term debt borrowing commonly used by California Counties to fund essential capital projects, or other financing mechanism. COPs are repaid from the County's legally available revenue, including the General Fund, impact fees, and other revenue sources that may be authorized in the future such as Community Facility Districts ("CFD") and Assessment Districts ("AD").
- C. The County will issue COPs in the amounts necessary to fund the project based on the Approved Cashflow and Project Schedule, unless and until another funding mechanism is identified and approved pursuant to Section IV below.

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IV. Consideration of the Creation of a Community Facility District and Benefit Assessment District

- A. The Parties agree that a CFD and an AD can be mutually beneficial to all Parties by creating additional revenue streams to repay funds advanced and reduce future payments and provide additional security. Therefore, the Parties commit to work in good faith to pursue the formation of a CFD and/or an AD which provides such benefits.
- B. If the creation of the new CFD and AD do not raise sufficient revenue to completely offset the funds to be advanced by the Participants and the County, the Participants and the County still remain responsible to advance the necessary funding as discussed above in Sections II and III.
- C. The CFD and AD bonds issued will be subject to the County Land Secured Debt Policies, as may be amended from time to time, and the then-current underwriting standards.

V. New Funding Allocation

- A. Additional funds, not otherwise discussed herein and received for the Levee Improvement Program from the State or Federal government or from other sources shall be used, to the extent possible, to repay the advancing of funds by the County.
- B. After Open Enrollment, as discussed below in Section VII(A), any payments made by Deferred or Future Participant will be used to repay solely the advance of the Deferred Participants Levee Obligation by the County for 2-3 years from the date of the First Amendment. On the ~~second~~-third anniversary of the First Amendment TRLIA shall complete the computation of the Final Par Amount pursuant to Section 16(B), and then repayment to County and Participants shall be consistent with the percentages for which Participants and County actually advanced, and were not repaid, for Deferred Participant Obligations. Any defaulting Participant will only be repaid advanced funds after all other Participants and County have been repaid.
- C. Revenue received from Levee Impact Fees (other than Deferred and Future Participants) shall be used to repay the advancing of funds by the County.
- D. Notwithstanding Section V(B) above, any Participant that funded a Deferred Participant Obligation pursuant to the Second Funding Agreement, prior to execution of the First Amendment, shall maintain their repayment position and receive a priority in repayment from the date of the third anniversary of the First Amendment until fully repaid.

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- B. If the creation of the new CFD and AD do not raise sufficient revenue to completely offset the funds to be advanced by the Participants and the County, the Participants and the County still remain responsible to advance the necessary funding as discussed above in Sections II and III.
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- B. After Open Enrollment, as discussed below in Section VII(A), any payments made by Deferred or Future Participant will be used to repay solely the advance of the Deferred Participants Levee Obligation by the County for 2 years from the date of the First Amendment. On the second anniversary of the First Amendment TRLIA shall complete the computation of the Final Par Amount pursuant to Section 16(B), and then repayment to County and Participants shall be consistent with the percentages for which Participants and County actually advanced, and were not repaid, for Deferred Participant Obligations. Any defaulting Participant will only be repaid advanced funds after all other Participants and County have been repaid.
- C. Revenue received from Levee Impact Fees (other than Deferred and Future Participants) shall be used to repay the advancing of funds by the County.
- D. Notwithstanding Section V(B) above, any Participant that funded a Deferred Participant Obligation pursuant to the Second Funding Agreement, prior to execution of the First Amendment, shall maintain their repayment position.

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VI. Provisions of Development Agreement

- A. The Parties agree that the Development Agreement will be formally approved for each Participant by County prior to the transfer of fund pursuant to II(C) above, subject to approval by County Board of Supervisors.
- B. The Development Agreement will protect all Participants from (1) any new development impact fees or exactions that may be enacted by County; (2) any changes to the existing Capital Facilities Fees, except that Participants will agree to provide for any increase in the amount of 50% of any and all approved increases to the Traffic Impact (Road Improvements) Fee, which is part of the County Public Facilities Fee, in the event of an approval of an increase in such fee for an identified project and based on an approved nexus study, and (3) will provide for a 20 year map life for the current approved tentative maps owned by the Participants from the date of the First Amendment
- C. The term of the Agreement shall be 8 years from the date of the First Amendment.
- D. If a Participant fails to make a required capital call, or fails to perform any provision under this First Amendment, subject to a 30-day cure period, the Development Agreement for that Participant shall become null and void.

VII Miscellaneous Provisions

- A. An Open Enrollment Period of 60 days from the execution of the First Amendment shall be set up to encourage additional Participants. Any Deferred Participant that joins the funding program during the open enrollment period, shall reduce Participant and County funding obligations equally (50/50) up to \$15.2 million. Any amount in excess of \$15.2 million raised during open enrollment shall go solely to the County to repay their Deferred Participant Obligation.
- B. Upon satisfaction of its own Capital Call obligation, there shall not be any limit, metering or allocation on issuance of building permits for such Participants .
- C. It is anticipated that cost overruns will be covered by the currently existing contingency fund outlined in the budget, additional revenue received from impact fees, revenues received from RD

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784, and additional revenue received by TRLIA based on additional grant requests which may be made.

- D. Assuming no default in funding by any individual Participant, Participant funding of its individual amount pursuant to the First Amendment shall be required so long as there is no restriction, moratorium or de facto moratorium on the issuance of building permits. However, in the event of any restriction, moratorium or de facto moratorium on the issuance of building permits, Participant's shall be released from all funding obligations under the First Amendment until such time as the building permit restriction, moratorium or de facto moratorium has been removed.
- E. Sections 6, 13, 14, and 15 of the Second Funding Agreement shall be modified to simplify the Capital Call process and ensure timely payment consistent with TRLIA's Capital Call requirements and provision of sufficient back-up information to the Participant Escrow Committee. Approval from the Participant Escrow Committee shall be revised to require only a majority vote of the quorum.
- F. County shall be prepared to issue Levee Impact Fee Bonds, and Senior Levee Impact Fee Bonds pursuant to Exhibit M the Second Funding Agreement, upon Participant's payment of Deferred Participants Levee Obligation.
- G. Builder Bond program shall continue in place as set forth in the Second Funding Agreement secured by the existing CFD No. 2006-1 and CFD 2006-2.
- H. Third Party Trustee shall be selected by TRLIA and County.
- I. Participants and County shall each pay their own issuance costs for Builder Bonds and COPs' respectively. Costs of bond issuance for CFD and AD shall be split according to benefit received, i.e. offset to funding obligation.
- J. The First Amendment shall not be effective unless executed by all Parties.
- K. No other changes to the Second Funding Agreement.

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EXHIBIT A

LIST OF PARTICIPANTS

1. Cresleigh Homes Corporation, a California Corporation
2. KB HOME Sacramento Inc., a California Corporation
3. K. Hovnanian Forecast Homes Northern, Inc.
4. Lennar Renaissance, Inc., a California Corporation
5. Matthews Land, Inc., a California Corporation
6. Meritage Homes of California, a California Corporation
7. Plumas Lake Holdings, LLC
8. Towne Development of Plumas Lake, LLC
by Towne Development of Sacramento, Inc.
9. Western Pacific Housing Inc., a Delaware Corporation

Exhibit B

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Participant Landowner Funding Proforma
\$30 Million In Forward Funding

Buildings	Assessed Project	(1) Prior Advance Payments [2]	(2) Actual Advance Payments	(3) Open Enrollment Payments	(4) Advance Pending Paid	(5) Proposed May-08 Payment [3]	(6) Proposed May-08 Payment	(7) Proposed Job-08 Payment
Cherokee / Knoxville	Rio Del Oro 6 & 8	\$2,449,224	\$284,213	\$24,844	\$0	\$173,681	\$43,364	\$665,148
Cherokee / Knoxville	Cockfield Phoenix Ranch	\$1,526,343	\$176,883	\$4,101	\$0	\$129,051	\$32,616	\$441,297
Cherokee / Knoxville	Whisper Ranch (Units 2, 3, 8 & 7)	\$1,300,211	\$1,287,495	\$113,864	\$0	\$790,524	\$206,375	\$1,217,854
Cherokee / Knoxville (Forward)	Whisper Ranch (Units 2, 3, 8 & 7)	\$1,300,211	\$0	\$0	\$2,314,148	\$462,408	\$1,068,640	\$1,410,958
Cherokee / Knoxville	Phoenix Ranch	\$529,600	\$497,268	\$48,979	\$462,411	\$0	\$0	\$2,821,569
Cherokee / Knoxville (Advance)	Phoenix Ranch	\$529,600	\$0	\$0	\$0	\$0	\$0	\$0
Cherokee / Knoxville	Phoenix Ranch Phase 1	\$1,141,255	\$1,051,864	\$89,390	\$0	\$0	\$0	\$0
Cherokee / Knoxville	River Oaks Ranch	\$1,176,794	\$899,448	\$184,738	\$0	\$0	\$0	\$0
Cherokee / Knoxville	River Oaks Ranch	\$43,268	\$43,268	\$0	\$0	\$0	\$0	\$0
Cherokee / Knoxville	River Oaks Ranch	\$2,073,228	\$2,073,228	\$0	\$0	\$0	\$0	\$0
Cherokee / Knoxville	River Oaks Ranch	\$2,099,144	\$2,099,144	\$0	\$0	\$0	\$0	\$0
Cherokee / Knoxville	River Oaks Ranch	\$1,620,132	\$1,620,132	\$0	\$0	\$0	\$0	\$0
Cherokee / Knoxville	River Oaks Ranch	\$1,317,253	\$1,317,253	\$0	\$0	\$0	\$0	\$0
Cherokee / Knoxville	River Oaks Ranch	\$1,044,480	\$1,044,480	\$0	\$0	\$0	\$0	\$0
Cherokee / Knoxville	River Oaks Ranch	\$2,050,248	\$2,050,248	\$0	\$0	\$0	\$0	\$0
Cherokee / Knoxville	River Oaks Ranch	\$2,282,448	\$2,282,448	\$0	\$0	\$0	\$0	\$0
Cherokee / Knoxville	River Oaks Ranch	\$41,089,258	\$12,898,744	\$0	\$2,877,161	\$6,998,408	\$1,000,000	\$19,882,408

Buildings	Assessed Project	(8) Proposed Advance Payments	(9) Proposed May-08 Payment	(10) Proposed Oct-08 Payment	(11) Remaining Landowner Contributions	(12) Total Advanced and Pending Agent Contributions	(13) Total Leases Contributions
Cherokee / Knoxville	Rio Del Oro 6 & 8	\$124,971	\$120,429	\$46,617	\$633,627	\$1,879,814	\$3,328,334
Cherokee / Knoxville	Cockfield Phoenix Ranch	\$223,751	\$223,751	\$64,311	\$1,287,495	\$1,835,007	\$3,186,248
Cherokee / Knoxville	Whisper Ranch (Units 2, 3, 8 & 7)	\$884,268	\$884,268	\$64,311	\$3,051,735	\$4,880,582	\$9,144,361
Cherokee / Knoxville (Forward)	Whisper Ranch (Units 2, 3, 8 & 7)	\$884,268	\$0	\$0	\$2,314,148	\$3,198,416	\$7,852,528
Cherokee / Knoxville	Phoenix Ranch	\$0	\$269,797	\$128,748	\$1,498,268	\$2,896,813	\$1,111,947
Cherokee / Knoxville	Phoenix Ranch	\$12,791	\$779,454	\$342,658	\$6,432,379	\$7,624,711	\$1,748,811
Cherokee / Knoxville	Phoenix Ranch Phase 1	\$0	\$0	\$0	\$0	\$0	\$0
Cherokee / Knoxville	River Oaks Ranch	\$445,299	\$445,299	\$212,789	\$2,131,881	\$3,235,168	\$7,701,848
Cherokee / Knoxville	River Oaks Ranch	\$179,428	\$179,428	\$129,488	\$2,314,269	\$2,803,193	\$3,477,775
Cherokee / Knoxville	River Oaks Ranch	\$1,743,931	\$1,743,931	\$7,494	\$1,044,048	\$3,509,394	\$4,791,265
Cherokee / Knoxville	River Oaks Ranch	\$1,513,434	\$1,513,434	\$232,973	\$1,044,048	\$3,299,815	\$4,791,265
Cherokee / Knoxville	River Oaks Ranch	\$884,268	\$884,268	\$144,411	\$2,444,411	\$3,473,100	\$4,791,265
Cherokee / Knoxville	River Oaks Ranch	\$0	\$0	\$0	\$0	\$0	\$0
Cherokee / Knoxville	River Oaks Ranch	\$0	\$0	\$0	\$0	\$0	\$0
Cherokee / Knoxville	River Oaks Ranch	\$41,089,258	\$22,347,622	\$10,911	\$184,268	\$30,367,808	\$61,727,171

NOTE 1: The figures represented do not distinguish between Leases, Obligations and Pro-Rata Deferred Obligations.
 NOTE 2: Building permit applications will be reimbursed after zoning hearing is secured for the project.
 NOTE 3: This proforma includes prior fund payments.
 (1) As of the date this proforma was drafted, Leimert and Rio Del Oro have become advanced participants.
 (2) Payments are for the current funding agreement.
 (3) In arrears, per May 2007 advance.