

REIMBURSEMENT - PLANNING - AGREEMENT BETWEEN THE  
CITY OF HUNTINGTON BEACH AND  
BELLA TERRA ASSOCIATES, LLC  
FOR COSTS INCURRED FOR  
PREPARATION OF ENVIRONMENTAL IMPACT REPORT FOR  
BELLA TERRA RESIDENTIAL UNITS

THIS AGREEMENT ("Agreement") is made and entered into by and between the City of Huntington Beach, a municipal corporation of the State of California, hereinafter referred to as "CITY," and BELLA TERRA ASSOCIATES, LLC , a Delaware Limited Liability Company hereinafter referred to as "DEVELOPER."

WHEREAS, DEVELOPER is proposing to develop an area within the City of Huntington Beach known as Bella Terra Residential Units; and

DEVELOPER is required to submit applications to CITY for approval of various discretionary matters, such as entitlements, zone changes, land use approvals and environmental assessments; and

DEVELOPER desires that all entitlements, zone changes, land use approvals and environmental assessments be processed as soon as possible; and

DEVELOPER desires to have CITY commit sufficient resources to enable the expeditious processing of applications and other necessary documentation; and

Pursuant to California Government Code Section 87103.6, DEVELOPER is allowed to defray the cost of processing development applications and entitlements by reimbursing CITY for such costs,

NOW, THEREFORE, in consideration of the promises and agreements hereinafter made and exchanged, the parties agree as follows:

1. PAYMENT

DEVELOPER agrees to reimburse CITY for its professional services as follows:

A. Within ten (10) days following execution of this Agreement by CITY, DEVELOPER will make an initial payment to CITY in the amount of One Hundred Thirty Two Thousand Seven Hundred Ninety-Eight Dollars (\$132,798.00) (hereinafter the "Amount of Deposit"). Thereafter, on the first day of each third month, DEVELOPER shall replenish the Amount of Deposit by paying to CITY an amount equal to the amount paid by CITY for professional services funded by this Agreement (the "Quarterly Payment"). The parties acknowledge that the Amount of Deposit will be used to pay the professional planning services funded by this Agreement, and if, prior to the payment of any Quarterly Payment, the Amount of Deposit is less than One Thousand Dollars (\$1,000), DEVELOPER shall make the next Quarterly Payment within ten (10) days' notice from CITY. DEVELOPER acknowledges that the amount referenced in this Agreement is the CITY's best estimate of the costs for the services described herein, and that the actual cost of said services may be higher. In the event that the actual cost of said services exceeds the estimated costs, DEVELOPER agrees to pay the actual cost within ten (10) days after receiving CITY's invoice for same. In the event the actual costs of Reimbursement Services are less than the estimated costs, CITY will refund the difference between the actual and estimated costs.

B. The estimated cost to cover twelve (12) months of professional services is Two Hundred Forty One Thousand Four Hundred Fifty Dollars (\$241,450.00).

C. A late payment fee of ten percent (10%) will be assessed if CITY receives any payment later than the thirtieth (30<sup>th</sup>) day after that payment is due but unpaid. In addition, one and one-half percent (1½) interest per month shall be added for each month the payment hereunder is due but unpaid.

2. STATEMENT OF INTENT

The amounts reimbursed to CITY pursuant to this Agreement will help defray CITY's cost of the professional planning services required to process DEVELOPER's various development applications and entitlements as set forth herein.

3. EXCLUSIVE CONTROL BY CITY

CITY will maintain exclusive control over the work described herein. Nothing in this Agreement:

A. Shall be deemed to require CITY to approve any plan, proposal, suggestion, application or request submitted by DEVELOPER.

B. Shall be deemed to limit, in any respect whatsoever, CITY's sole authority to direct and control the planner(s) assigned to DEVELOPER's various development projects.

C. Shall be deemed to impose any liability on CITY different from any liability as may otherwise be established by law.

4. CITY EMPLOYEES AND OFFICIALS

DEVELOPER shall employ no CITY official nor any regular CITY employee in the work performed pursuant to this Agreement. No officer or employee of CITY shall have any direct financial interest in this Agreement.

5. TIME IS OF THE ESSENCE

CITY agrees that time is of the essence for the performance of the work to be funded pursuant to this Agreement and therefore, thirty (30) days prior to each quarterly invoice, DEVELOPER shall submit a list of proposed activities to be performed by the CITY for approval by the Planning Director.

6. TERMINATION OF AGREEMENT

Either party may terminate this Agreement at any time with or without cause, upon ten (10) days' prior written notice to the other party. DEVELOPER shall be responsible for all costs incurred prior to termination, including any and all costs incurred after notice of termination has been given.

7. TERM

This Agreement shall be effective on the date of its approval by the City Council of CITY. This Agreement shall expire when terminated as provided herein.

8. NOTICES

Any notices, certificates, or other communications hereunder shall be given either by personal delivery to DEVELOPER's agent or to CITY as the situation shall warrant, or by enclosing the same in a sealed envelope, postage prepaid, and depositing the same in the United States Postal Service, to the addresses specified below; provided that CITY and DEVELOPER, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent:

TO CITY:

City of Huntington Beach  
ATTN: Hayden Beckman  
2000 Main Street  
Huntington Beach, CA 92648

TO DEVELOPER:

Bella Terra Associates, LLC  
c/o DJM Capital Partners  
Attn: Kristofer Golder  
777 Edinger Avenue, Suite 133  
Huntington Beach, CA 92647

9. MODIFICATION

No waiver or modification of any language in this Agreement shall be valid unless in writing and duly executed by both parties.



10. SECTION HEADINGS

The titles, captions, section, paragraph and subject headings, and descriptive phrases at the beginning of the various sections in this Agreement are merely descriptive and are included solely for convenience of reference only and are not representative of matters included or excluded from such provisions, and do not interpret, define, limit or describe, or construe the intent of the parties or affect the construction or interpretation of any provision of this Agreement.

11. INTERPRETATION OF THIS AGREEMENT

The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the parties. If any provision of this Agreement is held by an arbitrator or court of competent jurisdiction to be unenforceable, void, illegal or invalid, such holding shall not invalidate or affect the remaining covenants and provisions of this Agreement. No covenant or provision shall be deemed dependent upon any other unless so expressly provided here. As used in this Agreement, the masculine or neuter gender and singular or plural number shall be deemed to include the other whenever the context so indicates or requires. Nothing contained herein shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provision contained herein and any present or future statute, law, ordinance or regulation contrary to which the parties have no right to contract, then the latter shall prevail, and the provision of this Agreement which is hereby affected shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law.

12. DUPLICATE ORIGINAL

The original of this Agreement and one or more copies hereto have been prepared and signed in counterparts as duplicate originals, each of which so executed shall, irrespective of the

date of its execution and delivery, be deemed an original. Each duplicate original shall be deemed an original instrument as against any party who has signed it.

13. IMMIGRATION

DEVELOPER shall be responsible for full compliance with the immigration and naturalization laws of the United States and shall, in particular, comply with the provisions of the United States Code regarding employment verification.

14. LEGAL SERVICES SUBCONTRACTING PROHIBITED

DEVELOPER and CITY agree that CITY is not liable for payment of any subcontractor work involving legal services, and that such legal services are expressly outside the scope of services contemplated hereunder. DEVELOPER understands that pursuant to Huntington Beach City Charter Section 309, the City Attorney is the exclusive legal counsel for CITY; and CITY shall not be liable for payment of any legal services expenses incurred by DEVELOPER.

15. ATTORNEY'S FEES

In the event suit is brought by either party to construe, interpret and/or enforce the terms and/or provisions of this Agreement or to secure the performance hereof, each party shall bear its own attorney's fees.

16. GOVERNING LAW

This Agreement shall be governed and construed in accordance with the laws of the State of California.

17. SIGNATORIES

Each undersigned represents and warrants that its signature hereinbelow has the power, authority and right to bind their respective parties to each of the terms of this Agreement, and shall indemnify CITY fully for any injuries or damages to CITY in the event that such authority or power is not, in fact, held by the signatory or is withdrawn.

18. ENTIRETY

This Agreement, and the attached exhibits, contains the entire agreement between the parties respecting the subject matter of this Agreement and supersedes all prior understanding and agreements whether oral or in writing between the parties respecting the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their authorized officers on \_\_\_\_\_, 20\_\_\_\_.

DEVELOPER,  
BELLA TERRA ASSOCIATES, LLC,

CITY OF HUNTINGTON BEACH, a  
municipal corporation of the State of  
California

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

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
print name  
ITS: (circle one) Chairman/President/Vice President

\_\_\_\_\_  
City Clerk

**AND**

INITIATED AND APPROVED:

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

\_\_\_\_\_  
Director of Community Development

\_\_\_\_\_  
print name  
ITS: (circle one) Secretary/Chief Financial  
Officer/Asst. Secretary – Treasurer

REVIEWED AND APPROVED AS TO  
CONTENT:

\_\_\_\_\_  
City Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney 