

RESOLUTION NO. 159-2006

Adopted December 5, 2006

AUTHORIZING A FIRST AMENDMENT TO THE AMENDED AND RESTATED EXCLUSIVE NEGOTIATIONS AGREEMENT (PHASE 2, HUNTERS POINT SHIPYARD) WITH LENNAR/BVHP, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, AS THE PRIMARY DEVELOPER OF THE REMAINDER OF HUNTERS POINT SHIPYARD; HUNTERS POINT SHIPYARD REDEVELOPMENT PROJECT AREA

BASIS FOR RESOLUTION

1. At its meeting of March 30, 1999, after an extensive Request for Qualifications ("RFQ") process, the Agency Commission (the "Commission") selected Lennar/BVHP, LLC as the primary developer (the "Developer" or "Lennar") for the Hunters Point Shipyard (the "Shipyard"). On June 1, 1999, by Resolution No. 68-99, the Commission approved an Exclusive Negotiations Agreement ("Original ENA") with the Developer for the development of the entire Shipyard. The Original ENA is a contract obligating the Redevelopment Agency of the City and County of San Francisco (the "Agency") to negotiate exclusively with Lennar and obligating both parties to negotiate diligently and in good faith to reach agreement on a Disposition and Development Agreement and other transaction documents (together the "DDA") in a timely manner. The ENA establishes a schedule of performance for the completion of the negotiations, including major milestones with target dates and required completion dates leading up to an agreement with Lennar concerning one or more DDAs.
2. On December 2, 2003, the Commission approved and authorized the execution of the first set of transaction documents, including the Disposition and Development Agreement Hunters Point Shipyard Phase 1 ("Phase 1 DDA") for a portion of the Shipyard identified as Parcel A-1 and Parcel B-1 (hereinafter collectively "Phase 1"). On that same day, the Commission also approved the Amended and Restated Exclusive Negotiations Agreement ("Phase 2, Hunters Point Shipyard") (herein referred to as the "Agreement" or the "ENA"), which sets forth the terms and conditions under which the Agency and the Developer will negotiate one or more DDAs and related agreements for the remainder of the Shipyard or portions thereof.
3. On March 31, 2004, the United States Department of the Navy (the "Navy") and the Agency executed a conveyance agreement (the "Conveyance Agreement"), which is the framework that sets forth the terms and conditions for the phased clean up and transfer of the Shipyard to the Agency. In accordance with the Conveyance Agreement, the Navy conveyed the first 75 acres of the Shipyard (Parcel A) to the Agency on December 3, 2004. The portion of Parcel B that is

included in the Phase 1 DDA is still owned by the Navy and is not anticipated for transfer to the Agency until 2011.

4. On April 5, 2005, the Agency transferred the non-public parcels within Parcel A to the Developer to construct the infrastructure improvements required under the Phase 1 DDA. The Commission also authorized the issuance of approximately \$34.5 million in Mello-Roos bonds to finance the construction of the public infrastructure in the Phase 1 development. On that same date, the Commission approved the First Amendment to the Phase 1 DDA, which included technical corrections and changes that were necessary to clarify the intent of the Phase 1 DDA.
5. Because of the delayed transfer of Parcel B from the Navy to the Agency and declining real estate market conditions, the Developer requested additional changes to the Phase 1 DDA. Therefore, on October 17, 2006, by Resolution No. 141-2006, the Commission approved the Second Amendment to the Phase 1 DDA, which, among other things, removed Parcel B-1 from the Phase 1 development.
6. The Agreement expires on December 2, 2006. Therefore, the Agency and the Developer now wish to enter into a First Amendment to the Agreement ("First Amendment") to: i) extend the term of the Agreement and ii) modify existing and establish new terms and conditions under which the Agency and the Developer will continue to negotiate one or more DDAs for the balance of the Shipyard or portions thereof. The term of the First Amendment will start retroactively on December 3, 2006 for a term that ends on December 31, 2007.
7. Among other things, the First Amendment includes the following provisions:
 - a. The Developer has paid the Agency several deposits totaling \$350,000 in connection with the development opportunity at the Shipyard. In 1998, the Developer paid the Agency a \$50,000 deposit with its submittal of its qualifications in response to the Agency issued RFQ for a master developer for the Shipyard. In early 1999, the Developer paid an additional \$150,000 as a performance deposit upon being selected by the Commission as the master developer for the Shipyard. The Developer has also paid two additional deposits in the amount of \$75,000 each on May 1, 2000 and October 26, 2005, respectively, to extend the term of the ENA. Under the First Amendment, the Developer has agreed to forfeit its right to be reimbursed any amount of these deposits. These funds will be used to offset unrecovered Agency costs incurred while negotiating with the Developer during the first phase of development.
 - b. In the event that the Developer and the Agency fail to agree upon a transaction cost budget and a revised schedule of performance for the period between July 1, 2007 and December 31, 2007 that is satisfactory to the Agency's Executive

Director by June 30, 2007, the Agreement as amended will terminate automatically on June 30, 2007. Provided that the parties agree upon a revised budget that the Agency's Executive Director finds satisfactory and the Developer fulfills its obligations outlined in the schedule of performance, which is included in the First Amendment, Agency staff will seek Commission authorization of an extension of the exclusive negotiations period at the end of 2007.

- c. The Agency will compile all approved provisions of the Agreement, including the First Amendment, into a revised Amended and Restated Exclusive Negotiations Agreement (Phase 2, Hunters Point Shipyard). The revised document will include a new schedule of performance, which establishes the major milestones and deliverables necessary to negotiate one or more DDAs for the transfer and redevelopment of the balance of the Shipyard or portions thereof.

RESOLUTION

ACCORDINGLY, IT IS RESOLVED by the Redevelopment Agency of the City and County of San Francisco that the Executive Director is authorized to: 1) execute a First Amendment to the Amended and Restated Exclusive Negotiations Agreement (Phase 2, Hunters Point Shipyard) with Lennar/BVHP, LLC, a California limited liability company, as the primary developer of the remainder of Hunters Point Shipyard, substantially in the form lodged with the Agency General Counsel; and 2) implement all of the provisions set forth in the First Amendment, including executing the revised Amended and Restated Exclusive Negotiations Agreement (Phase 2, Hunters Point Shipyard).

APPROVED AS TO FORM:

for

James B. Morales
Agency General Counsel