

## RESOLUTION NO. 149-2009

*Adopted December 15, 2009*

### **APPROVING AN AMENDED AND RESTATED INDENTURE OF TRUST, A REMARKETING STATEMENT, AND RELATED DOCUMENTS FOR REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO COMMUNITY FACILITIES DISTRICT NO. 7 (HUNTERS POINT SHIPYARD PHASE ONE IMPROVEMENTS); HUNTERS POINT SHIPYARD REDEVELOPMENT PROJECT AREA**

#### **BASIS FOR RESOLUTION**

1. The Commission of the Redevelopment Agency of the City and County of San Francisco (the "Agency") has conducted proceedings under and pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, Chapter 2.5 of Part 1 of Division 2 of Title 5 (commencing with Section 53311) of the California Government Code (the "Act"), to form Redevelopment Agency of the City and County of San Francisco Community Facilities District No. 7 (Hunters Point Shipyard Phase One Improvements) (the "CFD"), to authorize the levy of a special tax (the "Special Tax") upon the land within the CFD, and to issue bonds secured by the Special Tax, the proceeds of which are to be used to finance certain public improvements (the "Facilities"), all as described in those proceedings.
2. At an election of the qualified electors in the CFD held on April 5, 2005, the qualified electors approved the incurring of bonded indebtedness in the maximum principal amount of \$40,000,000 and an annual appropriations limit of \$40,000,000.
3. On April 20, 2005, pursuant to an Indenture of Trust dated as of April 5, 2005 (the "2005 Indenture"), the Agency issued its \$34,500,000 initial principal amount Redevelopment Agency of the City and County of San Francisco Community Facilities District No. 7 (Hunters Point Shipyard Phase One Improvements) Variable Rate Demand Special Tax Bonds, 2005 Series A (the "2005 Bonds"). Because the interest rate on the 2005 Bonds is a variable rate, the repayment of the 2005 Bonds is secured by an irrevocable, direct-pay letter of credit (the "Existing Letter of Credit"), which is currently provided by KBC Bank N.V., New York Branch ("KBC").
4. On September 2, 2008, following a public hearing and an election of the qualified electors in the CFD, the Commission adopted its Resolution No. 93-2008, entitled, "Declaring Completion of Change Proceedings for Redevelopment Agency of the City and County of San Francisco Community Facilities District No. 7 (Hunters Point Shipyard Phase One Improvements) and Approving Certain Related Documents" (the "Resolution of Change"), pursuant to which the Commission, among other things, (i) approved an amended and restated Rate and Method of

Apportionment of Special Tax for the CFD, (ii) approved the issuance of bonds of the Agency for the CFD pursuant to the Act to finance in whole or in part the construction and/or acquisition of the Facilities in the aggregate principal amount of not to exceed \$65,000,000 (which amount includes the initial principal amount of the 2005 Bonds but does not include the principal amount of fixed interest rate bonds issued for the purpose of refunding the variable rate 2005 Bonds), (iii) approved an increased annual appropriations limit of \$65,000,000, and (iv) approved a First Supplement to Indenture, which amended and supplemented the 2005 Indenture (as amended and supplemented, the "Original Indenture").

5. Concurrently with the change proceedings relating to the CFD, the owner of taxable property in the CFD, Lennar-BVHP, LLC, a California limited liability company, transferred title in the property to HPS Development Co., LP, a Delaware limited partnership.
6. The Existing Letter of Credit expires on April 15, 2010. HPS Development Co., LP has proposed substituting an irrevocable, direct-pay letter of credit (the "Substitute Letter of Credit") issued by JPMorgan Chase Bank, N.A. ("JPMorgan Chase") for the Existing Letter of Credit.
7. In connection with delivery of the Substitute Letter of Credit, HPS Development Co., LP has proposed amendments to the Original Indenture. The Substitute Letter of Credit will be delivered pursuant to a Letter of Credit Facility Agreement dated as of October 29, 2009, as supplemented (the "Reimbursement Agreement"), between Lennar Corporation, a Delaware corporation, which is an affiliated entity to HPS Development Co., LP, and JPMorgan Chase.
8. Pursuant to the Original Indenture, the Substitute Letter of Credit will be effective ten (10) business days after the Trustee has given notice of the proposed substitution to the owners of the 2005 Bonds.
9. Pursuant to the Original Indenture, the proposed changes to the Original Indenture will be effective thirty (30) days after the Agency has given written notice to owners of the 2005 Bonds of the proposed changes and notifying them that they have the right to demand purchase of their 2005 Bonds.
10. Agency staff and consultants have prepared an Amended and Restated Indenture of Trust (the "Amended and Restated Indenture") to reflect the delivery of the Substitute Letter of Credit and the changes to the Original Indenture requested by HPS Development Co., LP. Agency staff and consultants have also prepared a Remarketing Statement describing the Substitute Letter of Credit, the Reimbursement Agreement, the Amended and Restated Indenture, and the current nature of land use in the CFD (the "Remarketing Statement") to be used in connection with the notice to owners of the 2005 Bonds described above and, thereafter, in connection with remarketing of the 2005 Bonds during the time they bear interest at a variable rate of interest.

11. Approval of the Amended and Restated Indenture of Trust, the Remarketing Statement, and the Substitute Letter of Credit is not a Project as defined by the California Environmental Quality Act Guidelines Sections 15378(b)(4) and 15378(b)(5). The approval will not independently result in a significant physical effect on the environment.

## RESOLUTION

**ACCORDINGLY, IT IS RESOLVED**, by the Redevelopment Agency of the City and County of San Francisco, as follows:

- Section 1. The Executive Director, the Deputy Executive Director, Finance and Administration and a written designee of the Executive Director are each authorized to execute, and the Secretary is authorized to attest, the Amended and Restated Indenture, substantially in the form lodged with the Agency General Counsel, together with such additions or changes as are approved by the Executive Director, the Deputy Executive Director, Finance and Administration or a written designee of the Executive Director upon consultation with the Agency General Counsel and the Agency's co-bond counsel. The approval of such additions or changes shall be conclusively evidenced by the execution and delivery of the Amended and Restated Indenture by the Executive Director, the Deputy Executive Director, Finance and Administration or a written designee of the Executive Director.
- Section 2. The Commission approves and authorizes distribution of the Remarketing Statement prepared in connection with the delivery of the Substitute Letter of Credit and the Amended and Restated Indenture in substantially the form lodged with the Agency General Counsel. The Executive Director, the Deputy Executive Director, Finance and Administration and a written designee of the Executive Director are each authorized to execute the Remarketing Statement, substantially in the form of the Remarketing Statement lodged with the Agency General Counsel, making such additions or changes as necessary in consultation with the Agency General Counsel and the Agency's co-bond counsel. Execution of the final Remarketing Statement shall be conclusive evidence of the approval of the Remarketing Statement by the Commission.
- Section 3. Each of the Executive Director, the Deputy Executive Director, Finance and Administration and a written designee of the Executive Director is hereby authorized to execute any documents necessary in order to accomplish the delivery to the Trustee of the Substitute Letter of Credit, including a written instruction to the Trustee to accept such Substitute Letter of Credit; provided, however, that the Substitute Letter of Credit shall meet the requirements for a "Letter of Credit" as defined in the Original Indenture.

- Section 4. The firms of Jones Hall, A Professional Law Corporation, and Lofton & Jennings are hereby designated as Co-Bond Counsel to the Agency in connection with the proceedings described in this Resolution. The Executive Director, the Deputy Executive Director, Finance and Administration and a written designee of the Executive Director are each authorized and directed to execute agreements with said firms for their services in connection with these proceedings, in the form on file with the Agency General Counsel.
- Section 5. The Executive Director, the Deputy Executive Director, Finance and Administration and a written designee of the Executive Director are each authorized and directed to execute a Remarketing Agreement with the firm of Stone & Youngberg LLC, the underwriter and remarketing agent of the 2005 Bonds, for its services in connection with these proceedings, in the form on file with the Agency General Counsel.
- Section 6. This Resolution is effective upon its adoption; provided, however, pursuant to the Original Indenture, the proposed Amended and Restated Indenture shall be effective on the date that is 30 days after the Agency has given written notice to owners of the 2005 Bonds of the proposed Amended and Restated Indenture, which notice shall be accompanied by the Remarketing Statement, and notifying them that they have the right to demand purchase of their 2005 Bonds.
- Section 7. All actions taken by the officers and agents of the Agency with respect to the proceedings described in this Resolution, including but not limited to execution and delivery of the Amended and Restated Indenture and distribution of the Remarketing Statement, are approved, confirmed and ratified, and the Executive Director, the Deputy Executive Director, Finance and Administration and a written designee of the Executive Director are each authorized to do any and all things and take any and all actions and execute any and all certificates, agreements and other documents, which they, or any of them, may deem necessary or advisable in order to consummate the various proceedings in accordance with this Resolution, and any certificate, agreement, and other document described in the documents herein approved.

**APPROVED AS TO FORM:**



*for*  
James B. Morales  
Agency General Counsel