MEMORANDUM

TO: Agency Commissioners

FROM: Fred Blackwell
Executive Director

SUBJECT: Authorizing a Fifth Amendment to the Hunters Point Shipyard Phase 1 Disposition and Development Agreement and a First Amendment to the Community Benefits Agreement between the Redevelopment Agency of the City and County of San Francisco and HPS Development Co., L.P.; Hunters Point Shipyard Redevelopment Project Area.

EXECUTIVE SUMMARY

Since 1997, with the adoption of the Hunters Point Shipyard Redevelopment Plan, the Agency has engaged in an intensive community-based planning process. On December 2, 2003 the Commission authorized, by Resolution No. 179-2003, the Hunters Point Shipyard Phase 1 Disposition and Development Agreement ("DDA") between the Agency and Lennar-BVHP, LLC, now known as HPS Development Co, LP ("Lennar" or the "Developer").

The Phase 1 DDA for the Hunters Point Shipyard ("Shipyard") has been amended since its approval in December 2003. The Commission: 1) on April 5, 2005, authorized by Resolution No. 3-2005, a First Amendment to the DDA; 2) on October 17, 2006, by Resolution No. 141-2006, a Second Amendment to the DDA; 3) on August 5, 2008, by Resolution No. 84-2008, a Third Amendment to the DDA; and 4) on August 19, 2008, by Resolution No. 86-2008, a Fourth Amendment to the DDA.

The DDA obligates Lennar to construct the infrastructure necessary to support the vertical development of 1,498 residential units in the Phase 1 development, and 26 acres of open space and parks. At least 15% of Lennar's 1,280 units will be affordable, and the Agency will cause to be constructed 218 units at deeper levels of affordability. The DDA also obligates Lennar to an 11 program Community Benefits Agreement, dated April 4, 2005, to provide training, assistance, and contracting opportunities to community residents and organizations, as well as offer 30 percent of the units to be constructed in Phase 1 of the Shipyard to Bayview Hunters Point-based developers and contractors ("Community Builders").

Lennar is in the final stages of horizontal construction, however, since 2007 the housing, financial, and credit markets have experienced historically significant disruptions and declines in values and activity. In order to maintain project momentum and facilitate vertical construction, the Agency and Lennar are now proposing several changes to the Phase 1 agreement through a Fifth Amendment to the DDA. The Fifth Amendment will enable the Agency and Lennar to respond to the current market conditions, streamline the land delivery and sales process, and activate housing development, including opportunities for Community Builders. In addition,
through this Fifth Amendment, Lennar will provide for a $1 million advance (in two $500,000 payments) to the Shipyard Legacy Fund or Community Benefits Fund, which will be managed by the Quasi-Public-Entity (“QPE”) in accordance with the DDA’s Attachment 23 and the Shipyard Legacy Fund Report endorsed by the Commission on October 2, 2007, by Resolution No. 110-2007.

Staff recommends that the Commission authorize the Executive Director to execute a Fifth Amendment to the Hunters Point Shipyard Phase 1 Disposition and Development Agreement to facilitate the further development of horizontal and vertical improvements within Phase 1, and to further effectuate the development contemplated by the Hunters Point Shipyard’s Redevelopment Plan.

BACKGROUND

The Shipyard is located within the Bayview Hunters Point (“BVHP”) neighborhood in southeast San Francisco. The Shipyard was a major center of employment for the community, providing logistics support, and construction and maintenance services for the United States Department of the Navy (“Navy”) from World War II until 1974, when it was effectively shut down. At its peak, the Shipyard employed 17,000 civilian and military personnel, many of whom lived in the adjacent neighborhood. The closure of the Shipyard had profound negative impacts on the economic base of the local community, contributing to a high unemployment rate that has remained more than double the rate citywide.

The Conveyance Agreement dated, March 31, 2004 between the United States Department of the Navy (the “Navy”) and the Agency, sets forth the framework for the Shipyard’s phased clean up, consistent with the intended use of the property, and the transfer of the Shipyard parcels to the Agency. Subsequently, on December 3, 2004, the Navy conveyed the first 75 acres of the Shipyard (Parcel A) to the Agency, and on April 5, 2005, the Agency transferred the non-public parcels within Parcel A to Lennar. Parcel A was the first portion of the Shipyard that was cleared for residential development and enabled the implementation of the development program in the DDA.

In furtherance of the financing plan for the project, in April 2005 the Commission authorized the formation of Community Facilities District (“CFD”) No. 7 to help fund the cost of public infrastructure development, and issued $34.5 million in variable rate Mello-Roos special tax bonds (secured by Lennar). In September 2008, the Commission also authorized the formation of CFD No. 8, to create an ongoing funding stream through a special tax assessed on the housing parcels (no bonds will be issued by CFD No. 8) for the operation and maintenance of the new open space and streetscape elements developed within Phase 1.

Although the Shipyard’s DDA has been amended since its approval in December 2003, the development program remains substantially the same. The First Amendment to the DDA, approved in April 2005, recognized the satisfied closing conditions required in the DDA, and authorized the Agency to transfer the non-public portions of Parcel A to Lennar and execute an Interagency Cooperation Agreement between the Agency and the City and County of San Francisco to ensure coordination and cooperation amongst all City departments and commissions with jurisdiction over the project. The Second Amendment to the DDA, approved in October
2006, adjusted the project’s for-sale and for-rent housing development ratio and schedule of performance to respond to the housing market conditions and the Navy’s delayed Parcel B remediation schedule (thus removing Parcel B from the Phase 1 development). The Third Amendment to the DDA, approved in August 2008, adjusted the project’s schedule of performance to reflect the cumulative effects of project construction delays and better coordinate the completion of the horizontal construction with that of the vertical construction. The Fourth Amendment to the DDA, also approved in August 2008, authorized the Agency to approve new financial partners, assign and amend certain DDA rights and obligations to the new venture, and clarified the Agency and Lennar’s rights and obligations in completing the Shipyard’s infrastructure construction.

The key features of the Phase 1 development include:

- Construction of new horizontal infrastructure improvements (utilities, street grid systems and streetscape improvements) and the delivery of finished lots for vertical development;
- The creation of entitlements for approximately 1,498 residential units (218 of which will be Agency-sponsored affordable housing units), including a robust affordable housing program which ensures overall that 15 percent of the total number of Developer units will be affordable;
- Approximately 10,000 square feet of commercial development, including job-generating retail;
- Construction of 26 acres of open space and parks;
- Provision of six acres of land set aside for development of community facilities (1.2 acres in Phase 1 and 4.8 acres in the Phase 2 portion of the Shipyard’s development), the mix of uses of which are presently being determined through a community-based planning process;
- Implementation of an 11-program Community Benefits Agreement benefiting community residents, community-based organizations and businesses through job training, hiring, contracting and development opportunities;
- Provision of facilities for current artist tenants and participation of local artists in public art;
- Participation in the Agency’s Equal Opportunity Program affording opportunities to minority and women-owned business enterprises;
- Provision of substantial financial guarantees by the Developer, including a letter of credit securing the entire amount of the Mello-Roos bonds used to partially fund public infrastructure; and
- Reinvestment of the Agency’s portion of land sales net revenue from the Shipyard, into the Shipyard Legacy Fund to be managed by the QPE for the benefit of the BVHP community in accordance with the DDA’s Attachment 23 and the Shipyard Legacy Fund Report.

With participation by local community-based organizations, Lennar commenced deconstruction and demolition activities on Parcel A in Spring 2005 as the first step in the construction of the horizontal improvements. Mass grading, the next phase of construction, was completed on Parcel A in 2007 and the final stage of horizontal improvements, infrastructure, is currently underway and nearly 75 percent of the Hilltop’s infrastructure is complete. Lennar has also finished the final map (a technical document which establishes legal, serviceable and developable lots) and subdivision process for the Phase 1 project in August 2009, and has been actively marketing portions of the Shipyard to developers for vertical construction.
San Francisco Residential Market Update

The downturn in the nation’s economy, combined with the immediate pressures on the banking industry and availability of credit, are continuing to have an effect on development. San Francisco has not been nearly as affected as outlying areas in the Bay Area by the drop in housing sales and prices, but there has been a clear decrease in sales for new residential developments, and steady levels in pricing are often supported by substantial developer "concessions" which lower the price of new units. In response, developer spending on new construction has dropped dramatically. According to the United States Census Bureau – Department of Commerce, the nation’s total construction spending on new residential development has decreased 32 percent from June 2006 to June 2009.

Construction cost increases have slowed as a result of the construction slowdown, however, development costs in San Francisco remain extremely high, and many new projects may not be financially feasible under current market conditions. With this imbalance, equity and construction financing entities have been taking an extremely cautious approach to committing financing to projects.

While the Bay Area housing market has begun to show some signs of recovery (overall sales volume was up 16 percent in July 2009 from a year earlier), San Francisco is still struggling with reduced sales volume, down 11 percent. This is due to San Francisco generally having higher prices than elsewhere, and much less foreclosure activity. The median home price in the overall Bay Area fell 16 percent in July 2009, to $395,000 from a year earlier, but in San Francisco the median fell only 14 percent, to $642,500. There were 136 foreclosures in San Francisco in the second quarter of 2009, compared to 1,466 in Alameda County, 2,044 in Contra Costa County, 1,210 in Santa Clara County, and 1,056 in Solano County. This indicates that the bigger price reductions elsewhere, due to foreclosures, are still driving the increase in sales volume.

The housing market is also correlated with employment levels, and the recent increases in the San Francisco unemployment rate is exacerbated by layoffs in the financial and banking industries. San Francisco’s unemployment rate is currently 10 percent, up from 6 percent in July 2008. While San Francisco’s unemployment rate is better than the 12 percent rate for California overall, it is worse than the 9 percent rate for the larger Bay Area. The impact of the economic crisis on Bay Area firms, and the resulting mergers, downsizings, and closures, will continue to impact the local economy through the rest of 2009 and into 2010. Uncertainty about the future, difficulty obtaining mortgage financing (especially jumbo loans), and the sense that prices may drop further are contributing to buyer reluctance for many projects.

DISCUSSION

In order to complete the Phase 1 development program, significant infrastructure improvements need to be completed, including: 1) site grading and demolishing existing structures (completed in September 2007); 2) construction of new roadways and sidewalks; 3) over 26 acres of open space and parks; and 4) construction of new utilities such as potable water, storm water, sanitary sewer, gas, electrical and telecommunication systems.
In an effort to improve the Shipyard Project’s feasibility and improve the proforma, Lennar has continued to optimize the Shipyard Phase 1 land plan and housing program to incorporate more marketable and efficient homes and increase estimated land values. However, even with the new programming and the resulting additional land values, unfavorable market conditions have continued to put downward pressure on land prices and land sales.

Despite the market’s negative effect on the Phase 1 project, Lennar is optimistic about the development at the Shipyard. This confidence is evidenced by Lennar’s continued willingness to expend considerable financial resources to continue to entitle, construct, design, and finance the Shipyard project. Eventually, market fundamentals and credit availability will improve and the Shipyard will be positioned to accelerate its development forward.

Beginning in late 2008 and throughout 2009, Lennar and the Agency have been in active discussions regarding ways to enable the Shipyard development to respond to the historically significant disruptions and declines in values and activity in the housing, financial, and credit markets. The goals of the discussions were to update the DDA so that the project could maintain momentum, facilitate vertical construction, and make common sense changes that would clarify the DDA, and continue to have benefits accrue to the BVHP community.

Agency staff and the Agency’s independent financial consultant negotiated with Lennar for several months, conducted financial analysis and a review of the above market conditions, resulting in the following recommended changes to the DDA principally presented below:

**FIFTH AMENDMENT SUMMARY**

**Clarifying Changes**

**ATTACHMENT 2: UPDATE OF THE LAND USE PLAN (ILLUSTRATIVE ONLY):**

- **PROPOSAL:** Community Builder lots will still be shown, but minor changes to the development blocks will be reflected and non-pertinent data removed.

**PREVIOUSLY:** The number of units, product types, Community Builder lots, and land uses were depicted. Information such as maximum density and land use were duplicative and sometimes inconsistent with the Design for Development.

**ATTACHMENT F: AFFORDABLE HOUSING:**

**Home Owner Association (HOA) Dues**

- **PROPOSAL:** The Agency will establish a fund with Lennar for the Shipyard’s 50% and 80% Area Median Income (“AMI”) units to augment HOA payments if necessary, for a period of up to ten years.

**PREVIOUSLY:** In an effort to increase affordability, the Second Amendment to the DDA capped the initial amount ($350 to start) of the HOA’s for the affordable 50% AMI units and tied future increases to HOA’s for both the 50% and 80% AMI units to increases in the rate of AMI. Previously, Developer had no obligation to make a financial contribution to this fund, but pursuant to the 5th Amendment is agreeing to contribute $217,500 to be used to fund any future shortfalls.
ATTACHMENT 10: SCHEDULE OF PERFORMANCE

Infrastructure
• PROPOSAL: Complete the Hilltop by February 2010 (delayed five months) and complete the Hillside by November 2011 (delayed 23 months).

Open Space and Parks
• PROPOSAL: Complete within eight months of occupancy of first unit, estimated to be mid-2012 for the Hilltop (delayed 21 months) and mid-2014 for the Hillside (delayed 38 months), respectively.

PREVIOUSLY: Infrastructure: Scheduled to be completed by October 2009 for the Hilltop and December 2009 for Hillside. Open Space and Parks: Complete Hilltop eight months after Innes Court is completed, estimated to be March 2010, and Hillside eight months after Oakdale Avenue and Navy Road are complete, estimated to be November 2010.

The Developer has had to make a variety of plan changes to reflect program and product updates, delayed absorption, and other technical adjustments that, in turn, impacted infrastructure placement and schedule. There have also been over 100 days of unavoidable delays due to wet conditions on-site, and to air monitoring shutdowns. It is also important to have the parks built in conjunction with the adjacent homes to prevent damage to parks during construction and ensure that the parks are built when the building are occupied. The schedule of performance is being updated to accommodate these changes.

Efficiency/Streamlining Changes to Facilitate Vertical Construction

SECTION 15: TRANSFER OF LOTS:
Purchase and Sale Agreement
• PROPOSAL: Lennar and the Agency will agree mutually to a revised form of Purchase and Sale Agreement. The subsequent execution of this Agreement will not require Agency approval if there are no material changes.

PREVIOUSLY: Finalizing each Purchase and Sale Agreement required Agency approval. This was redundant and less efficient since the “form” would have been agreed to prior.

Real Estate Brokerage Agreement
• PROPOSAL: Lennar and the Agency will agree mutually to a list of Real Estate Land Brokers. Lennar will then select a Broker from this list and execute a final Brokerage Agreement.

Lot Appraisal
• PROPOSAL: Lennar and the Agency will agree mutually to a list of Appraisers and Appraisal Instructions. Lennar will choose an Appraiser from the list, but cannot use the same appraiser for more than three consecutive appraisals. All lots will be appraised and sold for Fair Market Value based on an appraisal.

PREVIOUSLY: Agency approval was required before choosing a Broker or Appraiser, and/or executing the final agreement. However, mutually agreeing to the Broker and Appraiser’s lists, as well as the Appraisal Instructions, is considered sufficient and effective.
Community Builder Lots

- PROPOSAL: Authorize the Executive Director to enter into a First Amendment to the Community Benefits Agreement dated April 4, 2005 to: 1) add the additional option of a “Fee Developer” (in exchange for a fee, a Community Builder would perform a scope of services) to the Community Builder participation models, which already include the Joint Venture and the Independent Developer options; 2) clarify to more clearly specify that if necessary, the BVHP area based Community Builder can update and replace its Development Assistant; and 3) that the Community Builders must select a participation model (Joint Venture, Independent, or Fee Developer) within 30 days of Appraisal of the Community Builder’s lot.

PREVIOUSLY: Only the Joint Venture and the Independent Developer options were available in the Community Benefits Agreement. However, Community Builders were having great difficulty meeting the capital requirements for either program and the Fee Developer option has no capital requirements. The Community Benefits Agreement language intends for the BVHP area based Community Builder to be able to replace its Development Assistant, but it was not explicit on this issue. No time frame was addressed in the previous process because there were only the two existing options.

USE OF AGENCY LOTS

- PROPOSAL: Authorize the Executive Director to execute a Lease with the Developer to access the Agency parcels provided that the lease; 1) is in accordance with the purposes of the DDA; 2) includes insurance coverage; 3) will confer a community benefit; and 4) will not materially inhibit the intended use of the Agency Parcels.

PREVIOUSLY: Access would have to be provided through an executed Permit to Enter for a one-year maximum. Entering into a lease (under the Agency’s existing policy) would provide for a longer and more certain term.

ATTACHMENT F: AFFORDABLE HOUSING, SECTION 15: TRANSFER OF LOTS AND ATTACHMENT 27: FORM VERTICAL DDA

Distribution of Inclusionary Units

- PROPOSAL: At least 15% of the total number of Developer units will be affordable. These units will be equally distributed throughout the Phase 1 development. However, on a project by project basis, a minimum of 10% and a maximum of 20% of the development’s units shall be affordable. There shall also be a “true-up” of the 15% at certain milestones, by the date the (1) 300th, (2) 600th, (3) 900th, and (4) 1,200th unit is transferred.

PREVIOUSLY: One of the DDA’s affordable housing goals was to have at least 15% of the total number of Developer units be affordable and equally distributed throughout Phase 1. Through consultation with Agency Housing staff, it was determined that the range specified above would give the Developer the flexibility necessary to activate vertical development and meet the 15% standard overall at frequent intervals.

Major Phase Approval

- PROPOSAL: Includes: 1) Basic Designs, 2) Executed Vertical DDA with buyer identified OR “Form” of Vertical DDA to be finalized by Executive Director if sold to “Qualified Buyer”, 3) Estimate of number of Affordable units, 4) report on compliance with Schedule of Performance.
• At least one Major Phase Application must be submitted every 24 months, and Lots must be sold within 12 months of a Major Phase approval or the approval expires (with possible six-month extension from the Executive Director).

**Form of Vertical DDA**

• **PROPOSAL:** Form of Vertical DDA will be updated to conform to the Fifth Amendment’s Major Phase Approval process. Updates include, but are not limited to: 1) number of affordable units ranging from 10% to 20% of units in each development; 2) sold to “Qualified Buyer”; and 3) Executive Director may authorize final Vertical DDA’s without further Commission review following a Major Phase Approval, provided that there are no material changes to the form approved by the Commission. “Qualified Buyer” retains DDA’s original definition; “third-party buyer who is creditworthy, has at least (5) years of experience in similar development, and qualifies for a mortgage loan consistent the Vertical DDA.”

**PREVIOUSLY:** The Major Phase Approval was silent on grouping project documents. By bundling the design and form of Vertical DDA approvals, greater efficiency and coordination of individual projects is achieved by obtaining the Commission’s review of all project documents together, rather than in sequence and over time.

**ATTACHMENT 25: SECTIONS 1, 3, 4, 5 AND 6**

$1 million Community Benefits Fund Advance to the Shipyard Legacy Fund:

• **PROPOSAL:** 1) First $500,000 payment when first lot is sold, and 2) Second $500,000 payment when the Hilltop infrastructure is certified as completed, but no later than 30 months from the date of the Fifth Amendment.

**Distribution of Net Revenues**

• **PROPOSAL:** 1st) unchanged (Mello-Roos debt service); 2nd) unchanged (Mello Roos Reserve); 3rd) to pay a) Approved Expenses, b) Outstanding Qualified Pre-Agreement Costs, c) Developer Advances, d) and a required 22.5% cumulative unleveraged Internal Rate of Return (“IRR”); 4th) 100% to the Community Benefits Fund until Voluntary Agency Advances (less Developer’s $1M Community Benefits Fund Advance) are repaid; 5th) thereafter split 50:50.

**Approved Budget**

• **PROPOSAL:** Lennar will continue to present projected gross revenues, budgets, and expenses to date on a quarterly basis to the Agency and the Mayor’s Hunters Point Shipyard Citizen’s Advisory Committee, but will not be subject to Agency approval, only an Agency audit.

**PREVIOUSLY:**

• There was no obligation to advance money to the Shipyard Legacy Fund.

• Net Revenues were distributed: 1st) to fund any remaining Mello-Roos debt service; 2nd) to replenish any remaining Mello Roos Reserve; 3rd) to pay all Approved expenses (including Qualified Pre-Agreement and Pre-Development Costs); 4th) to repay any Developer or Agency advances (and any interest) pro-rata; 5th) repay any outstanding Qualified Pre-Agreement Costs; 6th) any balance is split 40% to Lennar until 25% IRR is achieved on $25 million in predevelopment costs, and 60% to Agency until 11% IRR is achieved on $30 million in land value; and 7th) thereafter 50:50. Currently, Lennar advances funds to the project at 8.5% interest. Lennar is now also advancing the Community Benefits Fund $1 million. However, Lennar is taking the risk that there may not be sufficient revenue to pay
back the $1 million advance; therefore, the requisite overall return on all of their advances (IRR) has been increased to 22.5%.

- Projected gross revenues, budgets, and expenses were subject to Agency approval and audit. Approval of the budget was considered unnecessary because Agency funds are not involved and expenditures were also subject to audit, which remains. The Mello-Roos expenditure approval process is unchanged. Financial updates to the Agency and the CAC will also continue.

COMMUNITY OUTREACH

The Agency and Lennar informed and briefed the Mayor’s Hunters Point Shipyard Citizen’s Advisory Committee (‘’CAC’’ ) on the details and impacts of the Fifth Amendment during its meetings in July, September and October 2009. At these meetings, Agency staff conducted an in-depth review and discussion of the document. The CAC approved the Fifth Amendment at its October 19, 2009 meeting.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

Commission authorization of the Fifth Amendment is not a project as defined by California Environmental Quality Act Guidelines Section 15378(b)(5). The proposed changes under the Fifth Amendment are related to how the Agency administers the DDA. Such administrative activities of the Agency will not independently result in a physical change in the environment.

STAFF RECOMMENDATION

Agency redevelopment efforts are long-term undertakings, with work in blighted areas often extending over decades. The Agency’s work goes forward through changes in economic and real estate cycles, and is often crucial to providing the catalyst for new development and economic growth in otherwise difficult markets. The Agency’s ability to be creative and flexible in structuring development agreements is particularly critical in difficult periods. Therefore, Agency staff recommends the Commission’s authorization for the Executive Director to enter into a Fifth Amendment to the DDA and execute all documents, amendments, agreements and instruments reasonably necessary or required to implement the Fifth Amendment to the DDA to further the goals of the Redevelopment Plan and the Phase 1 DDA, including the execution of a First Amendment to the Community Benefits Agreement.

Prepared by Thor Kaslofsky, Project Manager

Fred Blackwell
Executive Director

Attachment A: Fifth Amendment to the Hunters Point Shipyard Phase 1 Disposition and Development Agreement

Attachment B: First Amendment to the Community Benefits Agreement
RECORDING REQUESTED BY AND WHENRecorded RETURN TO:

San Francisco Redevelopment Agency
One South Van Ness Avenue, 5th Floor
San Francisco, CA 94103
Attention: Development Services

This document is exempt from payment of a recording fee pursuant to California Government Code Section 27383.

FIFTH AMENDMENT TO DISPOSITION AND DEVELOPMENT AGREEMENT
(Hunters Point Shipyard Phase 1)

This FIFTH AMENDMENT TO DISPOSITION AND DEVELOPMENT AGREEMENT (HUNTERS POINT SHIPYARD PHASE 1) (this “Fifth Amendment”), dated as of October 20, 2009 (the “Fifth Amendment Effective Date”), is entered into by and between the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic, exercising its functions and powers and organized and existing under the Community Redevelopment Law of the State of California (together with any successor public agency designated by or pursuant to law, the “Agency”) and HPS Development Co., LP, a Delaware limited partnership (“Developer”), with reference to the following facts and circumstances:

RECITALS

A. The Agency and Developer entered into that certain Disposition and Development Agreement Hunters Point Shipyard Phase 1 dated as of December 2, 2003 and recorded in the Official Records of the City and County of San Francisco (the “Official Records”) on April 5, 2005 as Document No. 2005H932190 at Reel 1861, Image 564 (the “Original DDA”), as amended by that certain First Amendment to Disposition and Development Agreement Hunters Point Shipyard Phase 1 dated as of April 4, 2005 and recorded in the Official Records on April 5, 2005 as Document No. 2005H932191 at Reel 1861, Image 565 (the “First Amendment”), and as further amended by that certain Second Amendment to Disposition and Development Agreement Hunters Point Shipyard Phase 1 dated as of October 17, 2006 and recorded in the Official Records on October 26, 2006 as Document No. 20061275571 at Reel J254, Image 429 (the “Second Amendment”), and as further amended by that certain Amendment to Attachment 10 (Schedule Of Performance For Infrastructure Development And Open Space “Build Out” Schedule Of Performance) to the Disposition And Development Agreement Hunters Point Shipyard Phase 1 dated as of August 5, 2008 and recorded in the Official Records on March 24, 2009 as Document No. 2009-1738449 (the “Third Amendment”), and as further amended by that certain Fourth Amendment to Disposition and Development Agreement (Hunters Point Shipyard Phase 1) dated as of August 29, 2008 and recorded in the Official Records on March 24, 2009 as Document No. 2009-1738450 (the “Fourth Amendment”, and together with the
Original DDA, the First Amendment, the Second Amendment and the Third Amendment, the “DDA”).

B. Pursuant to the DDA, Developer is constructing Infrastructure on the Project Site, including on the Hillside and the Hilltop, in accordance with the Schedule of Performance for Infrastructure Development and the Schedule of Performance for Infrastructure and the Open Space Build-Out Schedule of Performance, each of which is attached to the DDA as Attachment 10 (collectively, the “Schedule of Performance”) and is subject to extension pursuant to the provisions of the DDA, including those for Unavoidable Delay. Developer has made substantial progress in the construction of the Infrastructure, particularly on the Hilltop, and recently completed the subdivision of the Project Site (the “Subdivision”), thereby permitting Developer to sell portions of the Project Site to Vertical Developers for the purpose of constructing Vertical Improvements thereon.

C. In accordance with Article 15 of the DDA, Developer recently engaged a Land Broker and has been actively engaged in efforts to sell portions of the Project Site to Vertical Developers. While such marketing has not yet yielded viable offers, Developer anticipates that its Affiliates will develop Vertical Improvements on certain Lots on the Hilltop in the near term following Completion of the Infrastructure thereon. In furtherance thereof, Developer and its Affiliates are currently engaged in planning for such Vertical Improvements and on seeking approval for such Vertical Improvements in accordance with the procedures set forth in the Design Review and Document Approval Procedure for Vertical Improvements.

D. The Schedule of Performance was formulated by Developer and the Agency to reflect the scope of the Infrastructure and the anticipated market demand for Residential Projects constructed on the Project Site. Due to historic disruptions in the capital markets in 2008 and 2009, land values have dramatically declined, potential Vertical Developers have been unable to secure credit to acquire Lots and thereafter construct Vertical Improvements thereon, and the demand for newly constructed Units in the City has also dramatically declined.

E. Pursuant to the terms of the DDA, Gross Revenues from the sale of Lots are, after certain amounts are paid to Developer, to be shared by Developer and the Agency, with the Agency’s proceeds being deposited in an account maintained by the Agency (the “Community Benefits Fund”) and reinvested for the benefit of the BVHP Area in a manner consistent with Attachment 23 to the DDA. As a result of such economic disruptions, projected Gross Revenues, and thus projected distributions to the Community Benefits Fund, have dramatically declined.

F. In order to (i) ensure that the Community Benefits Fund may be funded for the benefit of the BVHP Area in the near term despite recent economic disruptions, (ii) encourage Developer to focus its efforts on the development of a vibrant community on the Hilltop, including the potential development of Vertical Improvements on portions thereof by Affiliates of Developer, (iii) match the Schedule of Performance to the anticipated market demand for Lots, (iv) incorporate into the Schedule of Performance the cumulative effects of Unavoidable Delays that have occurred prior to the Fifth Amendment Effective Date, (v) facilitate the efficient marketing and conveyance of Lots and (vi) make other conforming amendments, all for the purposes of achieving redevelopment within Phase 1 of the Shipyard and to further effectuate
the program of development contemplated by the Redevelopment Plan, the Agency and Developer wish to enter into this Fifth Amendment.

AGREEMENT

ACCORDINGLY, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Agency and Developer agree as follows:


   (a) Developer shall pay or cause to be paid to the Community Benefits Fund five hundred thousand dollars ($500,000) within thirty (30) days after each of the following dates (such payments, which total one million dollars ($1,000,000), shall be referred to herein, collectively, as “Developer’s Community Benefits Fund Advance”):

      (i) the date on which close of escrow occurs with respect to the first Lot (or Block, as the case may be) sold by Developer to a Vertical Developer in accordance with Article 15 of the DDA; and

      (ii) the earlier to occur of: (A) the date on which both of the following events have occurred: (x) Certificates of Completion for all Infrastructure on the Hilltop, including with respect to the Open Space, have been recorded in accordance with the terms of the DDA and (y) the Director of the Department of Public Works of the City (“DPW”) deems in accordance with the terms of the PIA (as defined below) that all of the Phase I Required Infrastructure (as defined in the PIA) on the Hilltop is complete (as evidenced by written notice thereof delivered in accordance with the terms of the PIA); and (B) the date which is thirty (30) months after the Fifth Amendment Effective Date.

   (b) Developer’s Community Benefits Fund Advance shall only be repaid (without interest thereon), if at all, in accordance with the provisions of Section 8Cb’(c’b) of this Fifth Amendment.

2. Major Phase Approval.

   (a) Vertical Improvements shall be constructed in Major Phases as proposed by Developer (together with Vertical Developers, as applicable) pursuant to “Major Phase Applications”, which applications shall be subject to approval by the Commission (each, a “Major Phase Approval”). A Major Phase Application shall include the items listed in clauses (i) through (iv) below:

      (i) A report regarding compliance with the Schedule of Performance with respect to the subject Lots.

      (ii) A Major Phase Housing Data Table and Project Housing Data Table, as required by Sections 3.6 and 3.7 of the Affordable Housing Program, including an estimate of the Inclusionary Units to be located within each Residential Project contained on the subject Lots; provided, however, that such estimate shall be in conformance with the provisions set forth in Section 6(b) of this Fifth Amendment.
(iii) For each Lot included in the Major Phase Application, either (a) a form of Vertical DDA that includes a date for commencement of construction which is relative to the date on which the Lot(s) applicable to the Vertical DDA are transferred pursuant to Article 15 of the DDA or (b) a final Vertical DDA executed by the Vertical Developer.

(iv) Either (a) Basic Concept Design documents consistent with the Design Review and Document Approval Procedure for Vertical Improvements or (b) preliminary basic concept design documents, including: (1) a written Statement of Program, including a general description of the proposed development, size and use of the facilities; (2) data charts that include the maximum number of dwelling units, building coverage and building height and bulk; (3) an illustrative site plan depicting site boundaries, building footprints (including neighboring buildings), existing roads, sidewalks, mid-block connections, public and private parks, existing streetscape improvements, view corridors and streetwalls; and (4) illustrative sketches of a Residential Project which may ultimately be constructed on such Lot(s). Nothing contained in clause (b) of this subsection (iv) shall be deemed to waive the requirement that a Residential Project comply with the terms of the Design Review and Document Approval Procedure for Vertical Improvements.

(b) Timing of Major Phase Applications. Developer shall use commercially reasonable efforts to submit a minimum of one (1) Major Phase Application every twenty-four (24) months beginning as of the Fifth Amendment Effective Date.

(c) Timing of Sale of Lots. Developer shall use commercially reasonable efforts to transfer each Lot to a Vertical Developer in accordance with the provisions of Article 15 of the DDA within twelve (12) months after the Major Phase Approval applicable to such Lot.

(d) Execution and Delivery of Vertical DDA Following a Major Phase Approval. To the extent not previously executed, at closing of the purchase and sale of a Lot pursuant to Article 15 of the DDA, the Executive Director (on behalf of the Agency) and the Vertical Developer shall execute, deliver and, immediately following the grant deed, record a Vertical DDA for such Lot. Such Vertical DDA shall include (i) a detailed schedule of performance, (ii) a definitive number of Inclusionary Units to be located within each Residential Project contained on the subject Lot (which number shall be in conformance with the provisions set forth in Section 6(b) of this Fifth Amendment) and (iii) to the extent not previously obtained, an obligation to comply with the applicable provisions of the Design Review and Document Approval Procedure for Vertical Improvements. Prior to executing such Vertical DDA, the Executive Director shall reasonably determine that (1) the Vertical Developer thereunder is a Community Builder, a Qualified Buyer or an Affiliate of Developer and (2) such Vertical DDA contains no material changes to the form of Vertical DDA approved for such Lot pursuant to the Major Phase Approval related thereto.

(e) Expiration of Major Phase Approval. If a Vertical DDA with respect to a Lot subject to a Major Phase Approval has not been executed and delivered by the parties thereto prior to the date which is twelve (12) months after the date of such Major Phase Approval, then, unless extended for a period not to exceed six (6) months by the reasonable written approval of the Executive Director, a new Major Phase Application for such Lot shall be submitted, and a
Major Phase Approval received, prior to executing and delivering a Vertical DDA with respect to such Lot.

3. Transfer of Lots.

(a) Sections 15.1 through 15.6 and the introductory paragraph of Article 15 of the DDA are hereby deleted in their entirety and the following is substituted in lieu thereof:

"The Parties contemplate that the Lots will be sold to Affiliates of Developer, Community Builders and Qualified Buyers who will thereafter construct Vertical Improvements on such Lots. Developer and the Agency each has an interest relating to the purchase price for the Lots and to the identity, characteristics and qualifications of the buyers of the Lots. The following conditions apply to all Lot sales.

15.1 Fair Market Value; Purchase and Sale Agreement

(a) Unless both Parties mutually agree otherwise, in their respective sole discretion, each Lot will be sold for no less than its Fair Market Value.

(b) The initial form of purchase and sale agreement delivered by Developer to a prospective buyer shall be the form mutually agreed upon by Developer and the Agency; provided, however, that any subsequent revisions to such form prior to the date of execution thereof, if any, shall be in the sole and absolute discretion of Developer so long as such revisions (i) are not materially adverse to the Agency and (ii) are not materially inconsistent with the DDA or the Vertical DDA applicable to the Lot(s) subject to such purchase and sale agreement. A purchase and sale agreement meeting these conditions is referred to herein as a "Purchase and Sale Agreement".

15.2 Lot Appraisal

(a) After issuance of a Certificate of Completion for a particular Lot or series of Lots (or prior thereto if the Vertical Developer has sufficient access to undertake vertical improvements), if Developer wishes to sell the Lot or series of Lots it shall first initiate a "Lot Appraisal" with respect thereto to be performed by a Land Appraiser selected pursuant to Section 15.2(c) below. Developer will deliver to the Land Appraiser appraisal instructions mutually agreed upon by the Parties to prepare a written Lot Appraisal which determines the Fair Market Value of the subject Lots (on an individual basis and not as a bulk sale) and deliver such Lot Appraisal, together with comparables supporting the Land Appraiser's conclusion, to the Agency and Developer within thirty (30) days after request therefor. Such instructions shall provide that the Lot Appraisal may be used by and relied upon by Developer, its Affiliates and the Agency. In determining the "Fair Market Value", the Land Appraiser shall determine the cash purchase price that a willing buyer would pay to a willing seller at the time of sale, neither
being under a compulsion to buy or sell and both being fully aware of the relevant facts, including:

(i) the Infrastructure serving the subject Lot(s) upon Completion thereof;

(ii) the attributes (including views, if any) and the location within Phase 1 of the subject Lot(s);

(iii) the status of Phase 1 as a master planned community in an urban setting;

(iv) the benefits and obligations related to the Lots or a Vertical Developer thereof under (x) the form of Vertical DDA, including without limitation the requirements related to Inclusionary Housing and the schedule of performance for Vertical Improvements set forth therein and (y) the Community Benefits Agreement; and

(v) the carrying costs required if Vertical Improvements on the Lots are not able to be developed promptly after the purchase closes because of market conditions, including the inability to obtain commercially reasonable financing for the construction of Vertical Improvements on the subject Lot(s) (subject to the buyer’s compliance with the schedule of performance for Vertical Improvements set forth in the Vertical DDA).

The cost of the Lot Appraisal will be borne by Developer. Unless otherwise agreed in writing by the Parties, the Land Appraiser’s determination of Fair Market Value of a Lot will be conclusive on both Parties; provided however, that (1) Developer and the Agency may at any time agree in writing to initiate a replacement Lot Appraisal for such Lot and (2) if a Purchase and Sale Agreement for a Lot contained in a Lot Appraisal has not been executed and delivered by a date that is: (x) more than three (3) months and less than nine (9) months from the date of the applicable Lot Appraisal, then at any time during such period Developer may initiate a replacement Lot Appraisal for such Lot; or (y) nine (9) months or more from the date of the applicable Lot Appraisal, then as a condition to a sale of the Lot pursuant to Section 15.3, 15.4 or 15.5, Developer shall first initiate a replacement Lot Appraisal for such Lot. Any such replacement Lot Appraisal shall be made using the same procedure described above for the initial Lot Appraisal.

(b) If at any time there are no Land Appraisers on the List of Land Appraisers, there are no Land Appraisers on the List of Land Appraisers willing or able to prepare a Lot Appraisal, or Developer or the Agency wishes to augment such list, then the Agency and Developer shall, upon ten (10) days’ written notice by either of them, attempt in good faith to agree to augment such List of Land Appraisers. If they are unable to do so within such ten (10) day period, Developer may send the Agency a list of three (3) Land Appraisers, in which case the Agency shall deliver to Developer, within five (5) days after its receipt of Developer’s list, a list
of three (3) Land Appraisers or its written agreement to add one (1) or more of the Land Appraisers on Developer’s list to the List of Land Appraisers. If there is no prompt agreement at this point on a Land Appraiser to add to the List of Land Appraisers, each of the Agency and Developer shall strike two (2) names from the other party’s list and they shall promptly deliver a written request to the Presiding Judge of the Superior Court of the City and County of San Francisco to select the Land Appraiser from the two names remaining, and his or her decision (or that of his or her designee) will conclusively determine the Land Appraiser to be added to the List of Land Appraisers. If the Presiding Judge (or his or her designee) does not determine the Land Appraiser to be added to the List of Land Appraisers within fifteen (15) days after Developer’s receipt of the Agency’s list, then the Parties shall meet within five (5) days and at such meeting, if the parties still do not agree, then the Land Appraiser shall be selected by the flip of a coin, with the Agency calling “heads” or “tails”. If the Agency wins the coin flip, the remaining Land Appraiser on the Agency’s list shall be added to the List of Land Appraisers; if not, the remaining Land Appraiser on Developer’s list shall be added to the List of Land Appraisers.

(c) At least ten (10) days prior to initiating a Lot Appraisal pursuant to Section 15.2(a), Developer shall deliver written notice of the identity of the Land Appraiser selected by Developer from the List of Land Appraisers; provided that no Land Appraiser will be the Land Appraiser for more than three (3) consecutive Lot sales (for purposes of this restriction, a sale of more than one (1) Lot in a single transaction or series of transactions to a single purchaser or group of affiliated purchasers shall count as one (1) Lot sale).

15.3 Affiliate Sale

If an Affiliate of Developer desires to purchase a Lot for which a Lot Appraisal has been obtained, then Developer and such Affiliate may deliver written notice thereof to the Agency, including an executed Purchase and Sale Agreement between Developer and such Affiliate which provides for a sale of the Lot “as is”, “where is” and for a purchase price at least equal to the Fair Market Value of the Lot as determined by the Lot Appraisal applicable thereto, payable in full to seller at closing.

15.4 Third-Party Sale

(a) If (i) an Affiliate of Developer has not elected to purchase a Lot (not including Community Builder Lots) for which a Lot Appraisal has been obtained within ninety (90) days of the date of such Lot Appraisal or (ii) Developer wishes to market a Lot (not including Community Builder Lots), then Developer shall promptly initiate a marketing program for such Lot through a Land Broker selected by Developer from the List of Land Brokers. Developer will retain such Land Broker through a commercial form of listing agreement negotiated by Land Broker and Developer (the “Land Brokerage Agreement”). The “Marketing Period” during which the Lot will be actively marketed will be six (6) months. If
during the Marketing Period a Qualified Buyer offers to buy the Lot “as is”, “where is” and for a purchase price at least equal to the Fair Market Value of the Lot, payable in full to seller at closing, then Developer will use commercially reasonable efforts to enter into a Purchase and Sale Agreement with the Qualified Buyer with respect to such Lot(s) in a form mutually acceptable to Developer and the Qualified Buyer. If (i) no Qualified Buyer offers to buy the Lot during the Marketing Period for at least Fair Market Value, (ii) Developer and the Qualified Buyer, if any, cannot agree on the Purchase and Sale Agreement or (iii) any such Qualified Buyer defaults under the Purchase and Sale Agreement and does not cure such default in accordance with the terms of the Purchase and Sale Agreement, then such Lot will not be sold to the Qualified Buyer, if any, and will instead be available for purchase by an Affiliate of Developer pursuant to Section 15.3 or another Qualified Buyer pursuant to Section 15.4; provided, however, that if Developer elects to pursue specific performance against the defaulting Qualified Buyer, then Developer will initiate and diligently prosecute an action for specific performance, but may settle the same in its sole and absolute discretion.

(b) If at any time there are no Land Brokers on the List of Land Brokers, there are no Land Brokers on the List of Land Brokers willing or able to market the Lot, or Developer or the Agency wishes to augment such list, then the Agency and Developer shall, upon ten (10) days’ written notice by either of them, attempt in good faith to agree to augment such List of Land Brokers. If they are unable to do so within such ten (10) day period, Developer may send to the Agency a list of three (3) Land Brokers, in which case the Agency shall deliver to Developer, within five (5) days after its receipt of Developer’s list, a list of three (3) Land Brokers or its written agreement to add one (1) or more of the Land Brokers on Developer’s list to the List of Land Brokers. If there is no prompt agreement at this point on a Land Broker to add to the List of Land Brokers, each of the Agency and Developer shall strike two (2) names from the other party’s list and they shall promptly deliver a written request to the Presiding Judge of the Superior Court of the City and County of San Francisco to select the Land Broker from the two names remaining, and his or her decision (or that of his or her designee) will conclusively determine the Land Broker to be added to the List of Land Brokers. If the Presiding Judge (or his or her designee) does not determine the Land Broker to be added to the List of Land Brokers within fifteen (15) days after Developer’s receipt of the Agency’s list, then the Parties shall meet within five (5) days at such meeting, if the parties still do not agree, then the Land Broker shall be selected by the flip of a coin, with the Agency calling “heads” or “tails”. If the Agency wins the coin flip, the remaining Land Broker on the Agency’s list shall be added to the List of Land Brokers; if not, the remaining Land Broker on Developer’s list shall be added to the List of Land Brokers.

(c) At least ten (10) days prior to engaging a Land Broker pursuant to Section 15.4(a), Developer shall deliver written notice of the identity of the Land Broker selected by Developer from the List of Land Brokers. Furthermore, Developer
shall deliver an executed copy of the Land Brokerage Agreement to the Agency within ten (10) days of the execution and delivery thereof.

15.5 **Community Builder Lots**

(a) Within thirty (30) days of the date of a Lot Appraisal for a Community Builder Lot (the "Community Builder Election Period"), the Community Builder assigned thereto shall elect to participate in the Community Builder Program pursuant to one of the models of participation provided for in the Community Benefits Agreement by providing written notice of its selected model of participation to Developer and the Agency. For a period of sixty (60) days following receipt of such notice by Developer (the "Community Builder Negotiation Period"), Developer shall negotiate in good faith with the applicable Community Builder to enter into the agreements applicable to such model of participation and a Purchase and Sale Agreement in a form mutually acceptable to Developer and the Community Builder which provides for a sale of the Community Builder Lot "as is", "where is" and for a purchase price at least equal to the Fair Market Value of the Lot, payable in full to seller at closing (collectively, the "Community Builder Agreements").

(b) If (i) the assigned Community Builder does not elect to participate in the Community Builder Program during the Community Builder Election Period in accordance with Section 15.5(a), (ii) Developer, the Community Builder and, as applicable, an Affiliate of Developer or a Qualified Buyer are unable to execute and deliver the Community Builder Agreements within the Community Builder Negotiation Period despite Developer's good faith efforts or (iii) the purchaser under the Purchase and Sale Agreement defaults thereunder and does not cure such default in accordance with the terms of the Purchase and Sale Agreement, then such Lot will not be sold as a Community Builder Lot and the Agency may thereafter elect to purchase the Community Builder Lot by delivering written notice to Developer within one hundred eighty (180) days after the expiration of the later to occur of (x) the Community Builder Election Period and (y) the Community Builder Negotiation Period (if any) (the "Agency Election Period"). If Developer elects to pursue specific performance against the buyer under the Purchase and Sale Agreement, then Developer will initiate and diligently prosecute an action for specific performance, but may settle the same in its sole and absolute discretion. Any such purchase by the Agency shall be pursuant to a Purchase and Sale Agreement between Developer and the Agency which provides for a sale of the Community Builder Lot "as is", "where is" and for a purchase price at least equal to the Fair Market Value of the Lot, payable in full to seller at closing, or on other terms mutually satisfactory to Developer and the Agency. If the Agency does not elect to purchase the Community Builder Lot within the Agency Election Period, or the Agency and Developer are unable, despite their respective good faith efforts, to enter into a Purchase and Sale Agreement within thirty (30) days after the Agency notifies Developer of its election to purchase the Community Builder Lot, then the Community Builder Lot will no longer be
considered a Community Builder Lot and may be offered for sale in accordance with Section 15.4.

(c) Certain obligations of Developer with respect to the Community Builder Lots are set forth in the Community Benefits Agreement.

15.6 New DDA

Except as expressly provided otherwise in this Agreement, no Transferee shall be liable for an Event of Default by Developer or another Transferee in the performance of its respective obligations under this Agreement, and Developer shall not be liable for the default by any Transferee in the performance of its obligations under such Vertical DDA.”

4. Schedule of Performance. Attachment 10 of the DDA is hereby deleted in its entirety and the document attached hereto as Exhibit A is substituted in lieu thereof.

5. Contributions Related to HOA Dues for Inclusionary Units. Capitalized terms used in this Section 5 but not otherwise defined in the DDA shall have the meanings ascribed to them in the Master CC&Rs.

(a) 50% AMI Inclusionary For-Sale Units. Pursuant to the terms of section 6.8.6 of the Master CC&Rs, the Agency may, for a period not to exceed ten (10) years from the date of the sale to an Owner of the first Unit sold in Phase 1 and subject to availability of funds, pay to the Master Association or any Subassociation any discrepancy in Assessments between Market Rate Units and Required BMR Units resulting from the limitations on Assessments imposed by section 6.8 with respect to Inclusionary For-Sale Units targeting 50% of AMI. Neither Developer nor any Vertical Developer shall at any time be required to fund any such discrepancy (if any).

(b) 80% AMI Inclusionary For-Sale Units. Pursuant to the terms of section 6.8.6 of the Master CC&Rs, the Agency may, for a period not to exceed ten (10) years from the date of the sale to an Owner of the first Unit sold in Phase 1 and subject to availability of funds, pay to the Master Association or any Subassociation any discrepancy in Assessments between Market Rate Units and Required BMR Units resulting from the limitations on Assessments imposed by section 6.8 with respect to Inclusionary For-Sale Units targeting 80% of AMI (an “80% HOA Shortfall”). Except as set forth in the immediately following sentence, neither Developer nor any Vertical Developer shall at any time be required to fund any such discrepancy (if any). Developer shall make a contribution of two hundred seventeen thousand five hundred dollars ($217,500), payable to the Agency, on the date which is thirty (30) days after the sale to an Owner of the first Unit sold in Phase 1, which contribution, and any interest earned thereon, shall be used by the Agency solely in connection with an 80% HOA Shortfall.

6. Updated Land Use Plan; Distribution of Inclusionary Units; Residential Density Transfer.

(a) Updated Land Use Plan. Schedule B to Attachment 2 of the DDA is hereby deleted in its entirety and the document attached as Exhibit B hereto is substituted in lieu thereof.
(b) **Distribution of Inclusionary Units.** Developer shall have the right to determine the number of Inclusionary Units to be located in each Residential Project at any time prior to the date on which the Vertical DDA related to such Residential Project is executed and delivered by the parties thereto, so long as the following minimum requirements are met: (i) at least fifteen percent (15\%) of the aggregate number of all Residential Units in Phase 1 constructed or scheduled to be constructed on all Lots are Inclusionary Units as of the following dates: (x) the date on which the Lot on which the (1) 300th, (2) 600th, (3) 900th and (4) 1200th Residential Unit will be constructed is transferred by Developer pursuant to Article 15 of the DDA and (y) the date on which the last Lot is transferred by Developer pursuant to Article 15 of the DDA; and (ii) the number of Inclusionary Units within each Residential Project shall be no less than ten percent (10\%) and no greater than twenty percent (20\%); provided, however, that the Commission may, upon the written request of Developer, reduce or increase the percentage contained in clause (ii). For purposes of calculating the number of Inclusionary Units, any fraction equal to or greater than one half (1/2) shall be rounded up to the nearest whole number and any fraction less than one half (1/2) shall be rounded down to the nearest whole number.

(c) **Residential Density.** Vertical Improvements constructed on each Lot shall be subject to the densities permitted by the Amended Design for Development for Vertical Improvements.

7. **Use of Agency Lots.** The Agency may, upon Developer’s reasonable written request, execute a lease pursuant to which Developer or its Affiliates shall be entitled to enter and access the Agency Parcels, or portions thereof; provided, however, that such lease shall be in a form reasonably acceptable to the Executive Director which provides for reasonable insurance coverages for the Agency, and prior to execution and delivery thereof the Executive Director reasonably finds that the uses or portions thereof permitted thereunder (i) are in accordance with the purposes of the DDA, (ii) will confer a community benefit and (iii) will not materially inhibit the intended use of the Agency Parcels.

8. **Distribution of Net Proceeds.**

(a) The provisions of this Section 8 shall supersede in their entirety Sections 3.3 and 4 (regarding distributions) and Sections 5.2 and 5A (regarding the payment of interest) of Attachment 25 to the DDA.

(b) Distributions from the Land Proceeds Account shall be made in the following order of priority:

(i) First, to pay required debt service on the Mello-Roos Bonds;

(ii) Second, to the extent necessary, to fully replenish the Mello-Roos Reserve;

(iii) Third, to Developer until Developer receives from the Land Proceeds Account an amount equal to the sum of (1) all of the Approved Expenses incurred by Developer, (2) all of Developer’s Outstanding Qualified Pre-Agreement Costs, (3) Reimbursable Mandatory Developer Advances and (4) a twenty-two and one half percent
(22.5%) cumulative unleveraged internal rate of return on all of the amounts described in clauses (1) – (3) of this subsection (iii), compounded quarterly;

(iv) Fourth, one hundred percent (100%) to the Community Benefits Fund until the amount distributed pursuant to this clause (iv) equals the Voluntary Agency Advances less an amount equal to Developer’s Community Benefits Fund Advance; and

(v) Fifth, fifty percent (50%) to Developer and fifty percent (50%) to the Community Benefits Fund.

(c) For purposes of determining the amounts contained in Section 8(b)(iii) above, “Developer” shall include Developer and Developer’s predecessor-in-interest, Lennar – BVHP, LLC, a California limited liability company.


(a) As of the Fifth Amendment Effective Date. As of the Fifth Amendment Effective Date, the Agency acknowledges and agrees that it has not contributed any Voluntary Agency Advances except for in connection with EDA Grant #1, which the Agency used to reimburse Developer for costs incurred by Developer (including Developer’s predecessor-in-interest, Lennar – BVHP, LLC, a California limited liability company) for Phase 1 which qualified for reimbursement under such grant. Such reimbursement shall be considered a Voluntary Agency Advance.

(b) Following the Fifth Amendment Effective Date. Promptly following the Fifth Amendment Effective Date and upon receipt of proceeds from EPA Grant #2, the Agency shall reimburse Developer for costs incurred by Developer (including Developer’s predecessor-in-interest, Lennar – BVHP, LLC, a California limited liability company) for Phase 1 which qualify for reimbursement under such grant. Such reimbursement shall be considered a Voluntary Agency Advance.

(c) Notwithstanding the provisions of Section 5.4 of Attachment 25 to the DDA, Voluntary Agency Advances, including but not limited to those contained in subsections (a) and (b) of this Section 9, shall not accrue interest.

10. Project Budgets.

(a) Update of Project Budgets. Notwithstanding the provisions of Section 6 of Attachment 25 to the DDA, Developer shall update the Project Budget as of the beginning of each fiscal year of Developer (the “Fiscal Year”) in order to reflect its determination of the anticipated Approved Expenses and Gross Revenues for the upcoming Fiscal Year and projections through the end of the horizontal development as well as the Approved Expenses, Gross Revenues and Reimbursable Mandatory Developer Advances from the prior Fiscal Years. Each annual update shall be delivered to the Agency no later than the beginning of the third month of such year. Developer shall also have the right in its discretion to update any Project Budget during the Fiscal Year to which it relates from time to time and, if it does so, it shall promptly deliver a copy of such update to the Agency together with reasonable information supporting the update.
(b) Cost and Budget Disputes. The Agency and Developer each acknowledge and agree that as of the Fifth Amendment Effective Date neither Party is aware of any facts or circumstances which constitute a dispute as to Hard Costs or Soft Costs in any Project Budget submitted to date. Furthermore, the Agency and Developer each acknowledge and agree that as of the Fifth Amendment Effective Date neither Party is aware of any Budget Disputes.

11. Subdivision. In connection with the Subdivision, Developer, the Agency and the City entered into that certain Hunters Point Shipyard Phase 1 Public Improvement Agreement dated as of July 21, 2009 (as amended from time to time, the “PIA”), a copy of which is on file with the Agency and may be examined during regular business hours by the public at the Agency’s office. Following Completion Infrastructure Construction, or portions thereof, the Agency shall cooperate with Developer to secure (i) the release of all Security issued to DPW under the PIA and (ii) Acceptance (as defined in the PIA) by the City of the Infrastructure.


(a) Definitions.

(i) The following defined terms in Section 1.1 of the DDA are hereby amended to read in full as follows:

“Community Benefits Agreement” means that certain Community Benefits Agreement (Hunters Point Shipyard Phase 1) entered into by Developer (as successor-in-interest to Lennar – BVHP, LLC, a California limited liability company), dated as of April 4, 2005, as amended from time to time.

“Community Builder” has the meaning set forth in the Community Benefits Agreement.

“Community Builder Program” has the meaning set forth in the Community Benefits Agreement.

“Community Builder Lots” means those Lots identified on the Land Use Plan as Community Builder Lots. Subject to Section 15.5(b), Lots containing at least thirty percent (30%) of the Total Vertical Developer Residential Units (rounded up to the nearest whole number) shall at all times be designated as Community Builder Lots.

“Complete Open Space Construction” has the meaning set forth in Attachment 10.

“Fair Market Value” has the meaning set forth in Section 15.2(a).

“Marketing Period” has the meaning set forth in Section 15.4(a).

(ii) The following defined terms are hereby added to Section 1.1 of the DDA:
“Block” means the segmentation of the Project Site into separate Lots, or groups of Lots, as depicted on the Land Use Plan. As of the Fifth Amendment Effective Date, Parcel A-1 (the “Hilltop”) has been divided into twelve (12) separate Blocks and Parcel A-2 (the “Hillside”) has been divided into fifteen (15) separate Blocks.

“Land Appraiser” means the land appraiser selected pursuant to Section 15.2(a).

“Land Broker” means the land broker selected pursuant to Section 15.4(a).

“Land Brokerage Agreement” has the meaning set forth in Section 15.4(a).

“List of Land Appraisers” means the list attached hereto as Attachment 35, as such attachment may be revised from time to time by the written agreement of Developer and the Agency and pursuant to the provisions of Section 15.2(b) hereof.

“List of Land Brokers” means the list attached hereto as Attachment 36, as such attachment may be revised from time to time by the written agreement of Developer and the Agency and pursuant to the provisions of Section 15.4(b) hereof.

“Lot Appraisal” has the meaning set forth in Section 15.2(a).

“Major Phase” means a development segment comprising one (1) or more Blocks or portions thereof containing one (1) or more Residential Projects.

“Master CC&Rs” means that certain Master Declaration of Covenants, Conditions and Restrictions and Grant and Reservation of Easements of Hunters Point Shipyard Phase One, made by Developer, as declarant, and the Agency, as consenting owner, dated as of August 12, 2009 and recorded in the Official Records on August 12, 2009 as Document No. 2009-1815408-00 at Reel J954, Image 0597, as amended from time to time.

(iii) The following defined terms are hereby deleted from Section 1.1 of the DDA:

1. Affiliate Purchase and Sale Agreement;
2. Appraiser;
3. Broker;
Community Builder Purchase and Sale Agreement;
Complete Appraisal;
Minimum Purchase Price;
Real Estate Brokerage Agreement;
Restricted Use Appraisal; and
Third-Party Purchase and Sale Agreement.

(iv) The following defined terms in Section 1 of Attachment 25 to the DDA are hereby amended to read in full as follows:

"Project Budget" means the Preliminary Budget and any subsequent Budgets delivered in accordance with the terms hereof.

(b) Each reference contained in the DDA (including in Attachment 25 thereto) to (i) "Approved Budget" is hereby deleted in its entirety and "Project Budget" is substituted in lieu thereof, (ii) "Appraiser" is hereby deleted in its entirety and "Land Appraiser" is substituted in lieu thereof, (iii) "Broker" is hereby deleted in its entirety and "Land Broker" is substituted in lieu thereof and (iv) "Real Estate Brokerage Agreement" is hereby deleted in its entirety and "Land Brokerage Agreement" is substituted in lieu thereof.

(c) Sections 2.2 and 2.3 of the DDA are hereby amended to replace the references to "Section 15.5" with "Section 15.6".

(d) In Section 3.2(ii) of Exhibit B of Attachment 24 to the DDA, references to "Minimum Purchase Price" are hereby replaced with "Fair Market Value."

(e) The definition of "Major Phase" in Section 2 of Attachment 22 to the DDA and in Attachment F to Attachment 27 to the DDA is hereby deleted in its entirety and the following is substituted in lieu thereof:

"Major Phase" means a development segment comprising one (1) or more Blocks or portions thereof containing one (1) or more Residential Projects.

(f) The document attached hereto as Exhibit C is hereby inserted into the DDA as Attachment 35 thereto.

(g) The document attached hereto as Exhibit D is hereby inserted into the DDA as Attachment 36 thereto.

13. Form of Vertical DDA and Purchase Agreement. The First Amendment included an initial form of Vertical DDA and purchase sale agreement, each of which was attached to the DDA as Attachment 27 thereto. In order to update such agreements to reflect the terms and provisions of the DDA which have been amended since the date of the First Amendment,
confirm the applicability of the relevant provisions of such agreements and conform such agreements to reflect the development of Phase 1 anticipated by the Parties, the Parties agree that promptly following the Fifth Amendment Effective Date they will work together in good faith to prepare and mutually agree upon (i) "the initial form of purchase and sale agreement" referred to in Section 15.1(b) of the DDA and (ii) the form of Vertical DDA to be used in connection with the first Major Phase Application to be submitted after the Fifth Amendment Effective Date. In formulating such updated agreements, the Parties shall use such agreements as contained in Attachment 27 to the DDA as the initial basis of their efforts. In order to be effective, the Vertical DDA updated pursuant to this Section 13 shall require the approval of the Commission, which approval may be given simultaneously with the first Major Phase Approval of a Major Phase Application which includes such updated Vertical DDA.


(a) Incorporation. This Fifth Amendment constitutes a part of the DDA and any reference to the DDA shall be deemed to include a reference to the DDA as amended by this Fifth Amendment.

(b) Ratification. To the extent of any inconsistency between this Fifth Amendment and the DDA (including, without limitation, any attachments or exhibits thereto), the provisions contained in this Fifth Amendment shall control. As amended by this Fifth Amendment, all terms, covenants, conditions and provisions of the DDA shall remain in full force and effect.

(c) Definitions. All capitalized terms used but not defined herein shall have the meanings assigned thereto in the DDA.

(d) Successors and Assigns. This Fifth Amendment shall be binding upon and inure to the benefit of the successors and assigns of the Agency and Developer, subject to the limitations set forth in the DDA.

(e) Counterparts. This Fifth Amendment may be executed in any number of counterparts (including by fax, PDF or other electronic means), each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

(f) Governing Law; Venue. This Fifth Amendment shall be governed by and construed in accordance with the laws of the State of California. The parties agree that all actions or proceedings arising directly or indirectly under this Fifth Amendment shall be litigated in courts located within the County of San Francisco, State of California.

(g) Integration. This Fifth Amendment (together with the referenced or incorporated agreements) contains the entire agreement between the parties with respect to the subject matter of this Fifth Amendment. Any prior correspondence, memoranda, agreements, warranties or representations relating to such subject matter are superseded in total by this Fifth Amendment. No prior drafts of this Fifth Amendment or changes from those drafts to the executed version of this Fifth Amendment shall be introduced as evidence in any litigation or other dispute resolution proceeding by either party or any other person, and no court or other body shall consider those drafts in interpreting this Fifth Amendment.
(h) Further Assurances. The Agency Executive Director and Developer shall execute and deliver all documents, amendments, agreements and instruments reasonably necessary or reasonably required in furtherance of this Fifth Amendment, including as required in connection with the Community Benefits Agreement, the Open Space Master Plan, the Interim Lease, other documents and agreements attached to the DDA or incorporated therein by reference, and other documents reasonably related to the foregoing.

[ REMAINDER OF PAGE INTENTIONALLY BLANK ]
IN WITNESS WHEREOF, the Agency and Developer have each caused this Fifth Amendment to be duly executed on its behalf as of the Fifth Amendment Effective Date.

AGENCY:

Authorized by Agency Resolution No. _____
adopted ______________________

Approved as to Form:

By: ______________________
Name: James B. Morales
Title: Agency General Counsel

DEVELOPER:

REDEVELOPMENT AGENCY OF THE
CITY AND COUNTY OF SAN FRANCISCO,
a public body, corporate and politic

By: ______________________
Name: Fred Blackwell
Title: Executive Director

HPS DEVELOPMENT CO., LP,
a Delaware limited partnership,

By: CP/HPS Development Co. GP, LLC,
a Delaware limited liability company,
its General Partner

By: ______________________
Name: Kofi Bonner
Its: Authorized Representative
STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO  

On ____________, before me, ________________________________, Notary Public, personally appeared ________________________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

______________________________  
Notary Public  

(Seal)
EXHIBIT A

Schedule of Performance

[ Attached ]
ATTACH #10

Stop Engre
ATTACHMENT 10

Open Space Build-Out Schedule of Performance

For purposes of this Open Space Build-Out Schedule of Performance, the following initially capitalized terms shall have the meanings set forth below:

"Complete Open Space Construction" means Complete Construction of all open space component items contemplated in the Open Space Master Plan.

As of the date of this Open Space Build-Out Schedule of Performance for Infrastructure Development, the Open Space Master Plan is being developed in accordance with the Design Review and Document Approval Procedure for Infrastructure Development. Items of work will be established when the final Construction Documents for the work are permitted.

<table>
<thead>
<tr>
<th>Activity</th>
<th>Schedule</th>
</tr>
</thead>
<tbody>
<tr>
<td>Innes Court Park</td>
<td>4 months after first occupancy of first Unit on the Hilltop.</td>
</tr>
<tr>
<td>a) Hillpoint Park</td>
<td>4 months after first occupancy of first Unit on the Hilltop.</td>
</tr>
<tr>
<td>b) Hilltop ADA Path (from Galvez to Hudson)</td>
<td></td>
</tr>
<tr>
<td>c) Hilltop Open Space, and</td>
<td></td>
</tr>
<tr>
<td>d) Galvez Steps</td>
<td></td>
</tr>
<tr>
<td>Two Pocket Parks for Block 55E</td>
<td>8 months after first occupancy of first Unit on Block 55E.</td>
</tr>
<tr>
<td>Parcel G</td>
<td>8 months after first occupancy of first Unit on Block 55E.</td>
</tr>
<tr>
<td>Pocket Park for Blocks 50 and 49</td>
<td>8 months after first occupancy of first Unit on Block 50 and Block 49.</td>
</tr>
<tr>
<td>Three Pocket Parks for Block 55W</td>
<td>8 months after first occupancy of first Unit on Block 55W.</td>
</tr>
<tr>
<td>Pocket Parks Along Navy Road</td>
<td></td>
</tr>
<tr>
<td>Park 1</td>
<td>8 months after first occupancy of first Unit on Lots 39 through 53.</td>
</tr>
<tr>
<td>Park 2</td>
<td>8 months after first occupancy of first Unit on Lots 54 through 69.</td>
</tr>
<tr>
<td>Park 3</td>
<td>8 months after first occupancy of first Unit on Lots 1 through 18.</td>
</tr>
<tr>
<td>Pocket Parks Along Oakdale</td>
<td></td>
</tr>
<tr>
<td>Park 1</td>
<td>8 months after first occupancy of first Unit on Lots 70 through 83.</td>
</tr>
<tr>
<td>Park 2</td>
<td>8 months after first occupancy of first Unit on Lots 84 through 92.</td>
</tr>
<tr>
<td>Park 3</td>
<td>8 months after first occupancy of first Unit on Lots 93 through 109.</td>
</tr>
<tr>
<td>Park 4</td>
<td>8 months after first occupancy of first Unit on Lots 110 through 115.</td>
</tr>
<tr>
<td>Park 5</td>
<td>8 months after first occupancy of first Unit on Lots 116 through 131.</td>
</tr>
<tr>
<td>a) Central Park,</td>
<td>4 months after first occupancy of first Unit on the Hillside.</td>
</tr>
<tr>
<td>b) Hillside ADA Paths, and</td>
<td></td>
</tr>
<tr>
<td>c) Hillside Open Space</td>
<td></td>
</tr>
</tbody>
</table>
EXHIBIT B

Land Use Plan

[ Attached ]
4j
map
EXHIBIT C

List of Land Appraisers

[ Attached ]
**ATTACHMENT 35**

**List of Land Appraisers**

<table>
<thead>
<tr>
<th>Name of Appraiser</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>John R. Kaeuper &amp; Company</td>
<td>212 Sutter St. Suite 200</td>
</tr>
<tr>
<td></td>
<td>San Francisco, California 94108</td>
</tr>
<tr>
<td>Carneghi-Blum &amp; Partners, Inc.</td>
<td>595 Market Street, Suite 2230</td>
</tr>
<tr>
<td></td>
<td>San Francisco, California 94105</td>
</tr>
<tr>
<td>Mansbach Associates, Inc.</td>
<td>582 Market Street, Suite 217</td>
</tr>
<tr>
<td></td>
<td>San Francisco, California 94104</td>
</tr>
<tr>
<td>Hamilton, Ricci &amp; Associates, Inc.</td>
<td>930 Montgomery Street, Suite 400</td>
</tr>
<tr>
<td></td>
<td>San Francisco, California 94133</td>
</tr>
<tr>
<td>Joseph J. Blake &amp; Associates, Inc.</td>
<td>2300 Clayton Road, Suite 1300</td>
</tr>
<tr>
<td></td>
<td>Concord, California 94520</td>
</tr>
<tr>
<td>O’Reilly Appraisal</td>
<td>2140 Great Highway</td>
</tr>
<tr>
<td></td>
<td>San Francisco, California 94116</td>
</tr>
<tr>
<td>J.W. Tom &amp; Associates</td>
<td>Real Estate Appraisal and Consultation</td>
</tr>
<tr>
<td></td>
<td>39 Colby Street</td>
</tr>
<tr>
<td></td>
<td>San Francisco, California 94134</td>
</tr>
<tr>
<td>Baum and Associates</td>
<td>307 Deertrail Lane</td>
</tr>
<tr>
<td></td>
<td>Mill Valley, California 94941</td>
</tr>
<tr>
<td>Clifford Associates</td>
<td>268 Bush Street, Suite 2300</td>
</tr>
<tr>
<td></td>
<td>San Francisco, California 94104</td>
</tr>
<tr>
<td>Charles L. Theus</td>
<td>2625 Alcatraz Avenue (PMB 515)</td>
</tr>
<tr>
<td></td>
<td>Berkeley, California 94705</td>
</tr>
<tr>
<td>CB Richard Ellis</td>
<td>Valuation &amp; Advisory Services</td>
</tr>
<tr>
<td></td>
<td>350 Sansome Street, Suite 840</td>
</tr>
<tr>
<td></td>
<td>San Francisco, California 94104</td>
</tr>
<tr>
<td>Integra Realty Resources</td>
<td></td>
</tr>
<tr>
<td></td>
<td>101 Montgomery Street, Suite 1800</td>
</tr>
<tr>
<td></td>
<td>San Francisco, California 94104</td>
</tr>
</tbody>
</table>
EXHIBIT D

List of Land Brokers

[ Attached ]
## ATTACHMENT 36

### List of Land Brokers

<table>
<thead>
<tr>
<th>Company</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>CB Richard Ellis</td>
<td>101 California Street, 44th Floor</td>
</tr>
<tr>
<td></td>
<td>San Francisco, California 94111</td>
</tr>
<tr>
<td>The CAC Group</td>
<td>255 California Street, Suite 200</td>
</tr>
<tr>
<td></td>
<td>San Francisco, California 94111</td>
</tr>
<tr>
<td>Eastdil Secured</td>
<td>101 California Street, Suite 2950</td>
</tr>
<tr>
<td></td>
<td>San Francisco, California 94111</td>
</tr>
<tr>
<td>Zephyr Real Estate</td>
<td>1542 20th Street</td>
</tr>
<tr>
<td></td>
<td>San Francisco, California 94107</td>
</tr>
<tr>
<td>Jones Lang LaSalle</td>
<td>One Front Street, Suite 1200</td>
</tr>
<tr>
<td></td>
<td>San Francisco, California 94111</td>
</tr>
<tr>
<td>Coldwell Banker: San Francisco</td>
<td>Coldwell Banker: San Francisco, California</td>
</tr>
<tr>
<td>Grubb &amp; Ellis</td>
<td>1 Bush Street</td>
</tr>
<tr>
<td></td>
<td>San Francisco, California 94104</td>
</tr>
<tr>
<td>Cushman &amp; Wakefield</td>
<td>1 Maritime Plaza, Suite 900</td>
</tr>
<tr>
<td></td>
<td>San Francisco, California 94111</td>
</tr>
<tr>
<td>Colliers International</td>
<td>50 California Street</td>
</tr>
<tr>
<td></td>
<td>San Francisco, California 94111</td>
</tr>
<tr>
<td>McGuire Real Estate</td>
<td>2001 Lombard</td>
</tr>
<tr>
<td></td>
<td>San Francisco, California 94123</td>
</tr>
<tr>
<td>Arroyo &amp; Coates</td>
<td>500 Washington Street, Suite 700</td>
</tr>
<tr>
<td></td>
<td>San Francisco, California 94111</td>
</tr>
<tr>
<td>Century 21: San Francisco, California</td>
<td>Century 21: San Francisco, California</td>
</tr>
</tbody>
</table>
FIRST AMENDMENT TO COMMUNITY BENEFITS AGREEMENT
(Hunters Point Shipyard Phase 1)

This FIRST AMENDMENT TO COMMUNITY BENEFITS AGREEMENT (HUNTERS POINT SHIPYARD PHASE 1) (this “First Amendment”) dated as of October 20, 2009 (the “Effective Date”) is entered into by and between the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic, exercising its functions and powers and organized and existing under the Community Redevelopment Law of the State of California (together with any successor public agency designated by or pursuant to law, the “Agency”) and HPS Development Co., LP, a Delaware limited partnership (successor-in-interest to Lennar - BVHP, LLC, a California limited liability company, “Developer”), with reference to the following facts and circumstances:

RECITALS

A. The Agency and Developer are parties to that certain Disposition and Development Agreement Hunters Point Shipyard Phase 1 dated as of December 2, 2003 and recorded in the Official Records of the City and County of San Francisco (the “Official Records”) on April 5, 2005 as Document No. 2005H932190 at Reel I861, Image 564 (the “Original DDA”), as amended by that certain First Amendment to Disposition and Development Agreement Hunters Point Shipyard Phase 1 dated as of April 4, 2005 and recorded in the Official Records on April 5, 2005 as Document No. 2005H932191 at Reel I861, Image 565 (the “First Amendment”), and as further amended by that certain Second Amendment to Disposition and Development Agreement Hunters Point Shipyard Phase 1 dated as of October 17, 2006 and recorded in the Official Records on October 26, 2006 as Document No. 20061275571 at Reel J254, Image 429 (the “Second Amendment”), and as further amended by that certain Amendment to Attachment 10 (Schedule Of Performance For Infrastructure Development And Open Space “Build Out” Schedule Of Performance) to the Disposition And Development Agreement Hunters Point Shipyard Phase 1 dated as of August 5, 2008 and recorded in the Official Records on March 24, 2009 as Document No. 2009-1738449 at Reel J854, Image 0185 (the “Third Amendment”), and as further amended by that certain Fourth Amendment to Disposition and Development Agreement (Hunters Point Shipyard Phase 1) dated as of August 29, 2008 and recorded in the Official Records on March 24, 2009 as Document No. 2009-1738450 at Reel J854, Image 0186 (the “Fourth Amendment”), and as further amended by that certain Fifth Amendment to Disposition and Development Agreement (Hunters Point Shipyard Phase 1) dated as of October 20, 2009 and recorded in the Official Records on , 2009 as Document No. at Reel Image (the “Fifth Amendment”), and together with the Original DDA, the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment and as amended from time to time, the “DDA”). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the DDA.

B. Pursuant to the DDA, Developer is constructing Infrastructure on the Project Site and intends to sell the Lots to Vertical Developers for the purpose of constructing Vertical Improvements thereon. The DDA requires Developer to make available thirty percent (30%) of the Lots to Community Builders and to enter into an agreement to implement certain Community Benefits contained in Exhibit B to Attachment 24 of the DDA, including those Community
Rights granted under the "Open Data" classification. This file, "HPS1_Comm_Benefits_020808.pdf", may be freely used, copied, or otherwise distributed, provided that the FORBES 100 company name is credited in all uses.

Benefits related to the Community Builder Lots. In furtherance thereof, the Agency and Developer entered into that certain Community Benefits Agreement (Hunters Point Shipyard Phase 1) dated as of April 4, 2005 (the “CBA”).

C. The CBA provides a framework pursuant to which the Agency and Developer select entities from the Community Builders Pool (as defined in the CBA) to serve as Community Builders for the Community Builder Lots. Consistent with the terms of the CBA, following the Close of Escrow and the execution and delivery of the CBA, the Agency and Developer formed the Selection Panel and selected the Community Builders Pool, from which Developer selected the Community Builders identified on Exhibit B.

D. The Community Builder Program (as defined in the CBA) affords Community Builders with the opportunity to actively and substantially participate in the day-to-day responsibilities associated with the Vertical Development of the Community Builder Lots. The Community Builder Program is intended to serve as a capacity building experience for the Community Builders such that they will be able to independently secure future development projects by virtue of their participation in the Community Builder Program.

E. The Original DDA and the CBA anticipated that the Community Builder Lots would be sold by Developer to either an Independent Community Builder (as defined in the CBA) or a Joint Venture Community Builder (as defined in the CBA). In either case, the Community Builder would be required to provide substantial capital to (i) purchase the Community Builder Lot for the Fair Market Value and (ii) construct Vertical Improvements thereon in accordance with the Vertical DDA for such Community Builder Lot. Pursuant to the DDA, if a Community Builder is unable to secure sufficient capital to undertake such acquisition and development, the Community Builder Lots shall be offered to the Agency and thereafter to third-parties. In either case, the benefits of the Community Builder Program would be lost.

F. In order to increase the likelihood that Community Builders are able to participate in the development of the Community Builder Lots irrespective of their capital capacity and risk tolerance, the Agency and Developer desire to expand the Community Builder Program consistent with the intent of the DDA and the CBA. Therefore, the Agency and Developer wish to enter into this First Amendment to ensure that the full value of the Community Builder Program can be realized and to memorialize their understanding and commitments concerning the matters set forth below.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Agency and Developer agree as follows:

1. Community Builder Program. Section 4 of the CBA is hereby deleted in its entirety and the provisions contained in Exhibit A hereto are substituted in lieu thereof.

2. Community Builders. The parties acknowledge and agree that as of the Effective Date (i) the Community Builders and their respective assigned Community Builder Lots are those contained in Exhibit B hereto and (ii) the Community Builders Pool currently contains no potential Community Builders.
3. **Clarifications.**

   a. All references to “Lennar/BVHP” shall be deleted in their entirety and “Developer” shall be substituted in lieu thereof.

   b. The last sentence of the introductory paragraph of the CBA shall be deleted in its entirety and the following shall be substituted in lieu thereof:

   “This Agreement is entered into pursuant to that certain Disposition and Development Agreement (Hunters Point Shipyard Phase 1) dated as of December 2, 2003 by and between the Agency and Developer (as amended from time to time, the “DDA”).”

   c. **Section 16.2** of the CBA is hereby amended by deleting the addresses set forth therein for a notice or communication to the Agency and the following is hereby substituted therefor:

   “San Francisco Redevelopment Agency
   One South Van Ness Avenue, 5th Floor
   San Francisco, California 94103
   Attn: Executive Director
   Facsimile: 415.749.2525

   And to:

   San Francisco Redevelopment Agency
   One South Van Ness Avenue, 5th Floor
   San Francisco, California 94103
   Attn: General Counsel
   Facsimile: 415.749.2575”

   d. **Section 16.2** of the CBA is hereby amended by deleting the addresses set forth therein for a notice or communication to Developer and the following is hereby substituted therefor:

   “HPS Development Co., LP
   c/o Lennar Urban
   49 Stevenson Street, Suite 600
   San Francisco, California 94105
   Attn: Kofi Bonner
   Facsimile: 415.995.1778

   And to:

   Paul, Hastings, Janofsky & Walker LLP
   55 Second Street, 24th Floor
   San Francisco, California 94105
   Attn: Charles V. Thornton, Esq.
   Facsimile: 415.856.7101”
e. **Section 16.5** of the CBA is hereby deleted in its entirety and the following shall be substituted in lieu thereof:

   **Successors and Assigns/No Third-Party Beneficiary.** This Agreement shall be binding upon and inure to the benefit of the Agency and the permitted successors and assigns of Developer, including, as applicable, Vertical Developers. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies on any person other than the parties hereto and their respective permitted successors and assigns. Nothing in this Agreement is intended to discharge any obligation of any third person to any party hereto or give any third person any right of action against any party hereto.

f. **Section 16.11** of the CBA is hereby deleted in its entirety and the following shall be substituted in lieu thereof:

   **Entire Agreement.** This Agreement, together with the DDA, contains the entire agreement between the parties with respect to the subject matter hereof. Any prior correspondence, memoranda, agreements, warranties or representations relating to such subject matter are superseded by this Agreement. No prior drafts of this Agreement or changes from those drafts to the executed version of this Agreement shall be introduced as evidence in any litigation or other dispute resolution proceeding by either party or any other person and no court or other body shall consider those drafts in interpreting this Agreement.

g. **Exhibit E** of the CBA is hereby deleted in its entirety and the phrase “Location of Community Builder Lots” adjacent to “Exhibit E” in the List of Exhibits shall be deleted in its entirety and “Intentionally Deleted” shall be substituted in lieu thereof.

4. **Miscellaneous.**

a. **Incorporation.** This First Amendment constitutes a part of the CBA and any reference to the CBA shall be deemed to include a reference to such CBA as amended by this First Amendment.

b. **Ratification.** To the extent of any inconsistency between this First Amendment and the CBA (including, without limitation, any attachments or exhibits thereto), the provisions contained in this First Amendment shall control. As amended by this First Amendment, all terms, covenants, conditions and provisions of the CBA shall remain in full force and effect.

c. **Successors and Assigns.** This First Amendment shall be binding upon and inure to the benefit of the permitted successors and assigns of the Agency and Developer, subject to the limitations set forth in the CBA, as applicable.

d. **Counterparts.** This First Amendment may be executed in any number of counterparts (including by facsimile or similar means of electronic transmission), all of which, together, shall constitute the original agreement.
e. **Governing Law; Venue.** This First Amendment shall be governed by and construed in accordance with the laws of the State of California. The parties agree that all actions or proceedings arising directly or indirectly under this First Amendment shall be litigated in courts located within the County of San Francisco, State of California.

f. **No Third Party Beneficiaries.** Nothing in this First Amendment, express or implied, is intended to confer any rights or remedies on any person other than the parties hereto and their respective permitted successors and assigns. Nothing in this First Amendment is intended to discharge any obligation of any third person to any party hereto or give any third person any right of action against any party hereto.

g. **Integration.** This First Amendment contains the entire agreement between the parties with respect to the subject matter of this First Amendment. Any prior correspondence, memoranda, agreements, warranties or representations relating to such subject matter are superseded by this First Amendment. No prior drafts of this First Amendment or changes from those drafts to the executed version of this First Amendment shall be introduced as evidence in any litigation or other dispute resolution proceeding by either party or any other person and no court or other body shall consider those drafts in interpreting this First Amendment.

h. **Further Assurances.** The Agency Executive Director and Developer shall execute and deliver all documents, amendments, agreements and instruments reasonably necessary or reasonably required in furtherance of this First Amendment, including as required in connection with the DDA, other documents and agreements attached to the DDA or incorporated therein by reference, and other documents reasonably related to the foregoing.

[ REMAINDER OF PAGE INTENTIONALLY LEFT BLANK ]
IN WITNESS WHEREOF, the Agency and Developer have each caused this First Amendment to be duly executed as of the Effective Date.

Authorized by Agency Resolution No. __________ adopted October 20, 2009

Approved as to Form:

By: __________________________
Name: James B. Morales
Title: Agency General Counsel

AGENCY:

REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, corporate and politic

By: __________________________
Name: Fred Blackwell
Title: Executive Director

DEVELOPER:

HPS DEVELOPMENT CO., LP, a Delaware limited partnership

By: CP/HPS Development Co. GP, LLC, a Delaware limited liability company, its General Partner

By: __________________________
Name: Kofi Bonner
Title: Authorized Representative
EXHIBIT A

SECTION 4. COMMUNITY BUILDER PROGRAM.

4.1 Definitions.

“BVHP Area Builders” means:

(a) developers or builders who do business in and have a primary business address in the BVHP Area and have an established, fixed office in a non-portable building in the BVHP Area where regular construction-related work is conducted;

(b) developers or builders who are listed in the Permits and License Tax Paid File with the City and County of San Francisco with a business address in the BVHP Area;

(c) developers or builders who possess a current Business Tax Registration Certificate issued by the City and County of San Francisco that shows a primary business address in the BVHP Area;

(d) developers or builders who have a demonstrated history of working in the BVHP Area;

(e) established, construction-related companies that include an owner, or owners, who live in the BVHP Area and who possess at least fifty one percent (51%) of the ownership interest in such company; and/or

(f) non-profits, including faith-based organization(s), based in the BVHP Area (“BVHP Non-Profit Group”) which provide satisfactory evidence to the Selection Panel that such BVHP Non-Profit Group either (i) itself possesses the requisite technical proficiency and experience or (ii) has a contractual relationship with a developer, builder or established, construction-related company (the “Development Assistant”) which provides the BVHP Non-Profit Group with the requisite Technical Qualifications (as defined below).

“Community Builders” means BVHP Area Builders selected from the Community Builders Pool pursuant to this Agreement.

“Community Builder Program” means the program outlined in this Section 4.

4.2 Location of Community Builder Lots. The Community Builder Lots shall be located in areas shown on the Land Use Plan attached to the DDA as Schedule B to Attachment 2; provided, however, that such locations may be revised from time to time in accordance with the terms of the DDA or upon written agreement of the Agency and Developer.

4.3 Selection of Community Builders.

(a) Applicant Outreach Process. As warranted in accordance with Section 4.3(f) hereof, Developer shall identify and inform potential BVHP Area Builders of the opportunity to participate in the Community Builder Program by employing such efforts as Developer believes are reasonably necessary in order to elicit sufficient applicants to ensure that
the goals of the Community Builder Program can be fulfilled (the “Applicant Outreach Process”). Such efforts may include, but are not limited to:

(1) Conducting community outreach, which may include, but is not limited to, advertising, direct mail, e-mail and flyers targeted at BVHP Area Builders, including outreach to those organizations identified in Exhibit L hereto (as such exhibit may be updated from time to time by Developer or the Agency by written notice to the other party);

(2) Providing the Community Builder Application (as defined below) to each BVHP Area Builder who requests an application and posting the Community Builder Application on Developer’s and Agency’s website;

(3) Conducting workshops designed to explain the Community Builder Program and the application process therefor; and

(4) Staffing the Project Office to answer questions about the Community Builder Program and to assist in completing the Community Builder Application.

(b) Community Builder Application.

(1) Form. The “Community Builder Application” shall be the application form attached hereto as Exhibit G, as such application form may be revised by Developer from time to time. In order to assist the Selection Panel with the Qualification Finding, the Community Builder Application must provide, to the extent available, the information described below:

(i) Technical Proficiency. Documentation of technical qualifications related to the proposed development, including resumes of all members of the applicant and the identification of licenses, certificates and relevant educational training. Documentation of a proven track record as a developer or builder, including demonstrable record as either a developer or builder of a housing or commercial development, including a list of client references.

(ii) Relevant Experience. Documentation of direct or related experience, including but not limited to investment, construction, engineering and development experience and a detailed explanation of previous development projects, including location, size, cost, capital and financing sources used, economic performance, project timeline and a description of the role of the applicant or its constituent members in the project. Proven track record of meeting a project timeline as well as the ability to hire and manage sub-contractors, schedule trades and materials and secure permits.

(iii) Financial History and Financial Capacity. Documentation of successful bid and job completion. Documentation of the following financial information: four (4) years of annual credit reports, annual reports, audited financial statements or tax returns of the applicant and its constituent members and real estate portfolios, recent history of obtaining financing commitments, a description of all projects currently underway but not completed, including the financial commitment required of the applicant, identification of equity and debt capital and the relationship between the developer and the financing source.
(iv) **Litigation History.** Detailed information regarding any litigation that involved the applicant or any of its direct or indirect constituent members.

(v) **Formation.** Documentation evidencing that the applicant and its constituent members, if any, have been duly formed, made all filings and are in good standing in the State of California and in the state of their respective incorporation. If the applicant is a (x) joint venture or (y) a BVHP Non-Profit Group with a Development Assistant, then the applicant shall provide evidence demonstrating the existence of a duly executed contractual relationship between the applicable parties.

(2) **Process.** Developer shall provide applicants with a reasonable period of time in which to submit a Community Builder Application. Developer shall notify applicants of receipt of the submitted Community Builder Application, keep a list of all persons who submit a Community Builder Application and consult with the Agency to supplement such list with additional names of potential Community Builders (each, a “Community Builder Applicant”, and collectively, the “Community Builder Applicants”).

(c) **Selection Panel.** A selection panel comprised of two (2) representatives appointed by each of the Agency and Developer (the “Selection Panel”) shall by mutual agreement create a pool of potential Community Builders selected from the Community Builder Applicants (the “Community Builders Pool”). Representatives appointed to the Selection Panel shall be employees of the party that appointed such representative and shall be experienced in real estate development matters. Representatives may be replaced from time to time by the party that originally appointed such representative by providing written notice thereof to the other appointing party.

(d) **Selection Criteria for Inclusion in the Community Builders Pool.** To be included in the Community Builders Pool, the Selection Panel must find (the “Qualification Finding”) that the applicant (1) qualifies as a BVHP Area Builder, (2) has technical proficiency and relevant experience (including at least two (2) years of development or construction experience) to perform duties that are economically significant to the development of a Community Builder Lot (the “Technical Qualifications”) and (3) has the capacity to actively and substantially participate in the day-to-day, financial and policy decision-making responsibilities associated with the acquisition and development of a Community Builder Lot.

(e) **Selection of Community Builders.** Developer shall have the sole and absolute discretion to select Community Builders from the Community Builders Pool and to assign such Community Builders to Community Builder Lots. Upon such selection and assignment, Developer shall provide written notice thereof to the Community Builders, those in the Community Builders Pool and the Agency and the selected Community Builder shall no longer be considered part of the Community Builders Pool.

(f) **Community Builders Application Updates.** Due to the phased nature of the Project, the Community Builders Pool may be formed and Community Builders may be selected therefrom significantly in advance of the Completion of Horizontal Improvements for a particular Community Builder Lot. In order to ensure that the qualifications stated by Community Builders in their respective Community Builder Applications remain current, the
Agency or Developer may from time to time issue a written request to a Community Builder (the "Update Request") for an update to the information provided in the Community Builder Application previously submitted. Responses to Update Requests shall be handled as follows:

1. Failure to respond in writing within forty-five (45) days following receipt of an Update Request will result in the disqualification of such Community Builder from participating in the Community Builder Program. In the event of a disqualification, Developer shall have the sole and absolute discretion to (i) select a new Community Builder from the Community Builders Pool and/or (ii) conduct the Applicant Outreach Process to increase the available number of potential Community Builders in the Community Builders Pool and thereafter select a new Community Builder from the Community Builders Pool (the "Disqualification Procedures").

2. In the event that a Community Builder timely responds to the Update Request, but advises of a change in any of the material information or qualifications included on its application that the Selection Panel believes is materially adverse, then the Selection Panel shall provide to the Community Builder written notice of specific deficiencies in the information provided in response to the Update Request (the "Cure Notice"). The Community Builder will have forty-five (45) days (the "Resolution Period") to provide information to the Selection Panel sufficient to address the concerns specified in the Cure Notice. If a Cure Notice is sent to a Community Builder that is comprised of a BVHP Non-Profit Group and its Development Assistant, then the BVHP Non-Profit Group shall provide the Selection Panel during the Resolution Period with an updated Community Builder Application, which may propose a replacement Development Assistant (the "Replacement Development Assistant") if necessary to address the deficiencies noted in the Cure Notice. Within fifteen (15) days following the last day of the Resolution Period, the Selection Panel shall by mutual agreement determine whether the information submitted by the Community Builder (or the BVHP Non-Profit Group) adequately cures the deficiencies outlined in the Cure Notice and shall inform such Community Builder (or the BVHP Non-Profit Group) in writing of such determination. If the Selection Panel determines that the information submitted by the Community Builder (or the BVHP Non-Profit Group) does not adequately cure the deficiencies outlined in the Cure Notice, then the Selection Panel may by mutual agreement elect to issue a subsequent Cure Notice or direct Developer to follow the Disqualification Procedures.

4.4 Form of Participation by Community Builder. Community Builders shall be given the opportunity to participate in the Community Builder Program under any of the following three (3) models:

(a) Independent Community Builder. An "Independent Community Builder" is a Community Builder which possesses the capacity to (1) acquire its assigned Community Builder Lot in accordance with the terms set forth in the DDA, (2) negotiate a Vertical DDA mutually acceptable to such Community Builder and the Agency and (3) complete the Vertical Improvements for such Community Builder Lot in accordance with the terms of such Vertical DDA. Under such model, the Independent Community Builder would be solely responsible for acquiring and developing the applicable Community Builder Lot in accordance with the terms of this Agreement, the DDA and the Vertical DDA.
(b) **Joint Venture Community Builder.** A “Joint Venture Community Builder” is a Community Builder which forms a joint venture with Developer (or an Affiliate of Developer) (such joint venture, the “Developer/Community Builder Venture”) pursuant to a joint venture agreement mutually agreed upon by Developer (or an Affiliate of Developer) and the Community Builder (the “Developer/Community Builder Joint Venture Agreement”). The Developer/Community Builder Joint Venture Agreement shall require the Community Builder to contribute a material portion of the anticipated costs of acquiring its assigned Community Builder Lot in accordance with the terms set forth in the DDA and the anticipated costs of completing the anticipated Vertical Improvements for such Community Builder Lot and the return thereon shall be commensurate with the portion so contributed by the Community Builder.

(c) **Fee Developer Community Builder.** A “Fee Developer Community Builder” is a Community Builder which enters into a customary development services agreement (the “Fee Developer Agreement”) with the owner of the applicable Community Builder Lot pursuant to which the Fee Developer Community Builder participates in the day-to-day development of the applicable Community Builder Lot. The Fee Developer Agreement will not require the Community Builder to contribute capital to either (i) acquire the applicable Community Builder Lot or (ii) complete the Vertical Improvements for such Community Builder Lot. In consideration of such participation, the Fee Developer Community Builder will receive compensation (the “Development Fee”) of up to three percent (3%) of either: (a) the direct costs associated with the vertical construction of the applicable Community Builder Lot (the “Cost Model”) or (b) the gross revenues of the applicable Community Builder Lot (the “Revenue Model”). Under (x) the Cost Model, the Development Fee will be paid based on the payment date and amount of qualifying costs and (y) the Revenue Model, the Development Fee will be paid monthly based on the anticipated gross revenues, with a portion of such Development Fee to be disbursed after and to the extent the development of the Community Builder Lot has resulted in a commercially reasonable rate of return. The Development Fee, the final amount and method of calculation of which will be included in the Fee Developer Agreement, may be adjusted downward, if at all, based on the level of services to be provided by the Community Builder.
### EXHIBIT B

#### Community Builders

<table>
<thead>
<tr>
<th>Community Builder Lot</th>
<th>Community Builder</th>
</tr>
</thead>
<tbody>
<tr>
<td>Block 1JV</td>
<td>Tabernacle/Amanco Development, LLC</td>
</tr>
<tr>
<td>Block 52JV</td>
<td>Marinship Development Interests, LLC</td>
</tr>
<tr>
<td>Block 53JV</td>
<td>MDC/C. Churchwell, LLC</td>
</tr>
<tr>
<td>Block 54JV</td>
<td>BAMEC Inc</td>
</tr>
<tr>
<td>Block 48A</td>
<td>San Francisco Housing Development Corporation</td>
</tr>
<tr>
<td>Block 48F</td>
<td>Shiloh Development Team, LLC</td>
</tr>
<tr>
<td>Block 48J</td>
<td>Unassigned</td>
</tr>
<tr>
<td>Block 48K</td>
<td>BVHP Multi Purpose Center/Baines Group</td>
</tr>
<tr>
<td>Block 48O</td>
<td>Eagle Environmental Construction</td>
</tr>
</tbody>
</table>