MEMORANDUM

TO: Agency Commissioners

FROM: Fred Blackwell
Executive Director

SUBJECT: Approving an Amended and Restated Indenture of Trust, a Remarketing Statement, and Related Documents for Redevelopment Agency of the City and County of San Francisco Community Facilities District No. 7 (Hunters Point Shipyard Phase One Improvements); Hunters Point Shipyard Redevelopment Project Area

EXECUTIVE SUMMARY

On December 2, 2003 the Commission authorized, by Resolution No. 179-2003, the Hunters Point Shipyard Phase One Disposition and Development Agreement ("DDA") between the Agency and Lennar-BVHP, LLC, now known as HPS Development Co, LP ("Lennar" or the "Developer"). On April 5, 2005 the Commission authorized the Agency’s Executive Director to transfer Parcel A of the Hunters Point Shipyard ("Shipyard") to Lennar.

In furtherance of the financing plan for the Shipyard project, in April 2005 the Commission authorized the formation of Community Facilities District No. 7 ("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). These bonds are secured by an irrevocable, direct-pay letter of credit (the "Existing Letter of Credit"), which is currently provided by KBC Bank N.V., New York Branch ("KBC"). Lennar is proposing to substitute an irrevocable, direct-pay letter of credit (the "Substitute Letter of Credit") issued by JPMorgan Chase Bank, N.A. ("JPMorgan Chase") for the Existing Letter of Credit.

DISCUSSION

In 2005, in furtherance of the financing plan for the Shipyard Phase One development, the Commission authorized the formation of the Redevelopment Agency of the City and County of San Francisco CFD No. 7, pursuant to the California Mello-Roos Community Facilities Act of 1982, as amended (the "Mello-Roos Act"), to help fund the cost of public infrastructure development (including open space improvements) required for Phase One of the Hunters Point Shipyard. On April 20, 2005, pursuant to an Indenture of Trust dated as of April 5, 2005 (the "2005 Indenture"), the Agency issued $34,500,000 in variable rate special tax bonds (the "2005 Bonds"), supported by the special taxes collected under CFD No. 7. Because the interest rate on the 2005 Bonds is a variable rate, the repayment of the 2005 Bonds is secured by the Existing Letter of Credit which is an irrevocable, direct-pay letter of credit with KBC.
On October 17, 2006, the Commission authorized a Second Amendment to the DDA ("Second Amendment"), which includes a land plan that depicts the density and product type (i.e., town homes, condominiums, flats, etc.) distribution for the Phase 1 development. The Second Amendment also includes a provision that allows Agency staff and Lennar to further refine the unit distribution and product types for the Phase 1 development. As a result of the Second Amendment, on September 2, 2008, following a public hearing and an election of the qualified electors in CFD No. 7, the Commission adopted its Resolution No. 93-2008, entitled, "Declaring Completion of Change Proceedings for Redevelopment Agency of the City and County of San Francisco Community Facilities District No. 7 (Hunters Point Shipyard Phase One Improvements) and Approving Certain Related Documents", pursuant to which the Commission, among other things, (i) approved an amended and restated Rate and Method of Apportionment of Special Tax for CFD No. 7, (ii) approved the issuance of bonds of the Agency for CFD No. 7 pursuant to the Act to finance in whole or in part the construction and/or acquisition of authorized facilities in the aggregate principal amount of not to exceed $65,000,000 (which amount includes the initial principal amount of the 2005 Bonds, but does not include the principal amount of fixed interest rate bonds issued for the purpose of refunding the variable rate 2005 Bonds), (iii) approved an increased annual appropriations limit of $65,000,000, and (iv) approved a First Supplement to Indenture, which amended and supplemented the 2005 Indenture (as amended and supplemented, the "Original Indenture").

Concurrently with the change proceedings described in the previous paragraph, Lennar-BVHP, LLC transferred title in the property to HPS Development Co., LP, a Delaware limited partnership.

The Existing Letter of Credit expires on April 15, 2010. HPS Development Co., LP has proposed substituting an irrevocable, direct-pay letter of credit (the "Substitute Letter of Credit") issued by JPMorgan Chase Bank, N.A. ("JPMorgan Chase") for the Existing Letter of Credit. In connection with delivery of the Substitute Letter of Credit, HPS Development Co., LP has proposed amendments to the Original Indenture. The Substitute Letter of Credit will be delivered pursuant to a Letter of Credit Facility Agreement dated as of October 29, 2009, as supplemented (the "Reimbursement Agreement"), between Lennar Corporation, a Delaware corporation, which is an affiliated entity to HPS Development Co., LP, and JPMorgan Chase.

Agency staff and consultants have prepared an Amended and Restated Indenture of Trust (the "Amended and Restated Indenture") to reflect the delivery of the Substitute Letter of Credit and the changes to the Original Indenture requested by HPS Development Co., LP. Agency staff and consultants have also prepared a Remarketing Statement describing the Substitute Letter of Credit, the Reimbursement Agreement, the Amended and Restated Indenture and the current nature of land use in CFD No. 7 (the "Remarketing Statement") to be used in connection with the notice to owners of the 2005 Bonds of the Amended and Restated Indenture and the Substitute Letter of Credit, and, thereafter, in connection with remarketing of the 2005 Bonds during the time they bear interest at a variable rate of interest.
Agency staff believes the requested amendments to the Original Indenture, as reflected in the Amended and Restated Indenture, will not adversely impact the Agency. Principal of and interest on the 2005 Bonds are payable only from draws on the letter of credit (currently the Existing Letter of Credit and, upon substitution, the Substitute Letter of Credit).

In connection with delivery of the Substitute Letter of Credit, the Agency will receive a letter from Standard & Poor’s to the effect that the rating on the 2005 Bonds will not be adversely impacted by delivery of the Substitute Letter of Credit. Pursuant to the Original Indenture, the provider of a letter of credit for the 2005 Bonds must have long term unsecured debt obligations that are rated “A” or better by Standard & Poor’s or Moody’s Investors Service and, as a result of the delivery of its letter of credit, the 2005 Bonds must be rated “A-1” or its equivalent or better by Standard & Poor’s or Moody’s. The long-term/short-term rating of KBC is “A/A-1” by S&P; while secured by the Existing Letter of Credit, the 2005 Bonds are rated “A/A-1” by S&P. The long-term/short-term rating of JPMorgan Chase is “AA-/A-1+” by S&P; upon issuance of the Substitute Letter of Credit, the 2005 Bonds will be rated “AA-/A-1+” by S&P.

STAFF RECOMMENDATION

Staff recommends that the Commission adopt a resolution authorizing the execution of the Amended and Restated Indenture of Trust, authorizing distribution of a Remarketing Statement for the 2005 Bonds, authorizing the Trustee to accept the Substitute Letter of Credit and authorizing execution of agreements for supplemental services for co-bond counsel and related parties.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

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

Prepared by Thor Kaslofsky, Project Manager

Fred Blackwell
Executive Director