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RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

Successor Agency to the San Francisco Redevelopment Agency
One South Van Ness Avenue, 5th Floor
San Francisco, California 94103
Attention: Executive Director

VERTICAL DISPOSITION AND DEVELOPMENT AGREEMENT
(HUNTERS POINT SHIPYARD PHASE 1 – BLOCK 52)

by and between

THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO,
a public body, corporate and politic, of the State of California,

and

[HPS1 BLOCK 52, LLC
a Delaware limited liability company]
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>ARTICLE</th>
<th>DESCRIPTION</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>DEFINITIONS</td>
<td>4</td>
</tr>
<tr>
<td>2</td>
<td>TERM OF THIS AGREEMENT</td>
<td>14</td>
</tr>
<tr>
<td>2.1</td>
<td>Term of this Agreement</td>
<td>14</td>
</tr>
<tr>
<td>3</td>
<td>TERMS FOR CONVEYANCE OF PARCELS; RELEASE OF HORIZONTAL DDA; COMMUNITY BENEFITS</td>
<td>14</td>
</tr>
<tr>
<td>3.1</td>
<td>Purchase Agreement; Escrow Closing</td>
<td>14</td>
</tr>
<tr>
<td>3.2</td>
<td>Conveyance</td>
<td>14</td>
</tr>
<tr>
<td>3.3</td>
<td>Release of Horizontal DDA</td>
<td>14</td>
</tr>
<tr>
<td>3.4</td>
<td>Community Facilities District</td>
<td>15</td>
</tr>
<tr>
<td>3.5</td>
<td>Transportation Management</td>
<td>15</td>
</tr>
<tr>
<td>3.6</td>
<td>Affordable Housing Plan and Community Benefits Plan</td>
<td>15</td>
</tr>
<tr>
<td>3.7</td>
<td>Agency Policies</td>
<td>15</td>
</tr>
<tr>
<td>3.8</td>
<td>Community Builder Lot</td>
<td>16</td>
</tr>
<tr>
<td>4</td>
<td>PROPERTY “AS-IS” AND RELEASE</td>
<td>16</td>
</tr>
<tr>
<td>4.1</td>
<td>Acquired in Connection with Defense Base Closure</td>
<td>16</td>
</tr>
<tr>
<td>4.2</td>
<td>No Side Agreements or Representations; “As-Is” Purchase</td>
<td>17</td>
</tr>
<tr>
<td>4.3</td>
<td>Release</td>
<td>19</td>
</tr>
<tr>
<td>4.4</td>
<td>Survival</td>
<td>20</td>
</tr>
<tr>
<td>5</td>
<td>HAZARDOUS MATERIALS</td>
<td>20</td>
</tr>
<tr>
<td>5.1</td>
<td>Definitions</td>
<td>20</td>
</tr>
<tr>
<td>5.2</td>
<td>Hazardous Materials Indemnification</td>
<td>21</td>
</tr>
<tr>
<td>5.3</td>
<td>Survival</td>
<td>22</td>
</tr>
<tr>
<td>6</td>
<td>VERTICAL DEVELOPMENT</td>
<td>22</td>
</tr>
<tr>
<td>6.1</td>
<td>Land Uses Within Project Area</td>
<td>22</td>
</tr>
<tr>
<td>6.2</td>
<td>Commencement and Completion of Improvements</td>
<td>23</td>
</tr>
<tr>
<td>6.3</td>
<td>Approval of Construction Plans</td>
<td>23</td>
</tr>
<tr>
<td>6.4</td>
<td>Conditions to Commencement of Development</td>
<td>23</td>
</tr>
<tr>
<td>6.5</td>
<td>Issuance of Certificates of Completion</td>
<td>23</td>
</tr>
<tr>
<td>6.6</td>
<td>Non-Merger in Certificate of Completion</td>
<td>25</td>
</tr>
<tr>
<td>7</td>
<td>COOPERATION AND ASSISTANCE; AUTHORIZATIONS</td>
<td>25</td>
</tr>
</tbody>
</table>
# TABLE OF CONTENTS

(continued)

<table>
<thead>
<tr>
<th>Article</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>7.1</td>
<td>Interagency Cooperation Agreement</td>
<td>25</td>
</tr>
<tr>
<td>7.2</td>
<td>Authorization and Issuance of Permits</td>
<td>26</td>
</tr>
<tr>
<td>8.1</td>
<td>General Development Restrictions</td>
<td>27</td>
</tr>
<tr>
<td>8.2</td>
<td>Nondiscrimination Covenants</td>
<td>28</td>
</tr>
<tr>
<td>8.3</td>
<td>Environmental Covenants and Notices</td>
<td>29</td>
</tr>
<tr>
<td>9.1</td>
<td>PERMIT TO ENTER</td>
<td>29</td>
</tr>
<tr>
<td>10.1</td>
<td>AGENCY COSTS</td>
<td>29</td>
</tr>
<tr>
<td>10.2</td>
<td>Reporting of Agency Costs</td>
<td>29</td>
</tr>
<tr>
<td>10.3</td>
<td>Payment of Agency Costs</td>
<td>30</td>
</tr>
<tr>
<td>11.1</td>
<td>DISPUTE RESOLUTION</td>
<td>30</td>
</tr>
<tr>
<td>11.2</td>
<td>Arbitration Matters</td>
<td>30</td>
</tr>
<tr>
<td>11.3</td>
<td>Submission to Arbitration</td>
<td>30</td>
</tr>
<tr>
<td>11.4</td>
<td>Use of Evidence</td>
<td>31</td>
</tr>
<tr>
<td>11.5</td>
<td>Proceeding Pending Resolution of a Dispute</td>
<td>31</td>
</tr>
<tr>
<td>12.1</td>
<td>DEFAULTS AND REMEDIES</td>
<td>32</td>
</tr>
<tr>
<td>12.2</td>
<td>General; Notice of Default</td>
<td>32</td>
</tr>
<tr>
<td>12.3</td>
<td>Default by Vertical Developer</td>
<td>32</td>
</tr>
<tr>
<td>12.4</td>
<td>Agency’s Remedies for Vertical Developer Default</td>
<td>34</td>
</tr>
<tr>
<td>12.5</td>
<td>Default by the Agency</td>
<td>35</td>
</tr>
<tr>
<td>12.6</td>
<td>Vertical Developer’s Remedies for Agency Default</td>
<td>35</td>
</tr>
<tr>
<td>12.7</td>
<td>Agency Liability</td>
<td>35</td>
</tr>
<tr>
<td>12.8</td>
<td>Rights and Remedies Cumulative</td>
<td>35</td>
</tr>
<tr>
<td>12.9</td>
<td>No Implied Waivers</td>
<td>35</td>
</tr>
<tr>
<td>12.10</td>
<td>Agreement for Specific Performance</td>
<td>35</td>
</tr>
<tr>
<td>13.1</td>
<td>FINANCING; RIGHTS OF MORTGAGEES</td>
<td>36</td>
</tr>
<tr>
<td>13.2</td>
<td>Right to Mortgage</td>
<td>36</td>
</tr>
<tr>
<td>13.3</td>
<td>Certain Assurances</td>
<td>36</td>
</tr>
</tbody>
</table>
# TABLE OF CONTENTS

(continued)

<table>
<thead>
<tr>
<th>Article</th>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>13.3</td>
<td>Mortgagee Not Obligated to Construct</td>
<td>36</td>
</tr>
<tr>
<td>13.4</td>
<td>Copy of Notice of Default and Notice of Failure to Cure to Mortgagee</td>
<td>37</td>
</tr>
<tr>
<td>13.5</td>
<td>Mortgagee’s Option to Cure Defaults</td>
<td>37</td>
</tr>
<tr>
<td>13.6</td>
<td>Mortgagee’s Obligations with Respect to the Property</td>
<td>38</td>
</tr>
<tr>
<td>13.7</td>
<td>Required Provisions of Any Mortgage</td>
<td>38</td>
</tr>
<tr>
<td>13.8</td>
<td>No Impairment of Mortgage</td>
<td>38</td>
</tr>
<tr>
<td>13.9</td>
<td>Multiple Mortgages</td>
<td>39</td>
</tr>
<tr>
<td>13.10</td>
<td>Cured Defaults</td>
<td>39</td>
</tr>
<tr>
<td>14</td>
<td>ARTICLE 14. TRANSFERS AND ASSIGNMENT</td>
<td>39</td>
</tr>
<tr>
<td>14.1</td>
<td>Vertical Developer’s Right to Transfer</td>
<td>39</td>
</tr>
<tr>
<td>14.2</td>
<td>Liability for Default</td>
<td>41</td>
</tr>
<tr>
<td>14.3</td>
<td>Restrictions on Speculation</td>
<td>41</td>
</tr>
<tr>
<td>14.4</td>
<td>Restrictions on Agency Transfer</td>
<td>41</td>
</tr>
<tr>
<td>14.5</td>
<td>Sale of Individual Residential Units</td>
<td>42</td>
</tr>
<tr>
<td>15</td>
<td>ARTICLE 15. GENERAL INDEMNITY</td>
<td>43</td>
</tr>
<tr>
<td>15.1</td>
<td>General Indemnification by Vertical Developer</td>
<td>43</td>
</tr>
<tr>
<td>15.2</td>
<td>Common Law Remedies</td>
<td>44</td>
</tr>
<tr>
<td>15.3</td>
<td>Defense of Claims</td>
<td>44</td>
</tr>
<tr>
<td>15.4</td>
<td>Limitations of Liability</td>
<td>44</td>
</tr>
<tr>
<td>15.5</td>
<td>Survival</td>
<td>44</td>
</tr>
<tr>
<td>16</td>
<td>ARTICLE 16. ALL-PARTY INDEMNITY</td>
<td>44</td>
</tr>
<tr>
<td>16.1</td>
<td>Indemnity</td>
<td>44</td>
</tr>
<tr>
<td>16.2</td>
<td>Common Law Remedies</td>
<td>45</td>
</tr>
<tr>
<td>17</td>
<td>ARTICLE 17. CEQA MITIGATION MEASURES</td>
<td>45</td>
</tr>
<tr>
<td>18</td>
<td>ARTICLE 18. INSURANCE</td>
<td>46</td>
</tr>
<tr>
<td>19</td>
<td>ARTICLE 19. MISCELLANEOUS PROVISIONS</td>
<td>46</td>
</tr>
<tr>
<td>19.1</td>
<td>Incorporation of Attachments</td>
<td>46</td>
</tr>
<tr>
<td>19.2</td>
<td>Notices</td>
<td>46</td>
</tr>
<tr>
<td>19.3</td>
<td>Time for Performance</td>
<td>47</td>
</tr>
<tr>
<td>19.4</td>
<td>Excusable Delay</td>
<td>48</td>
</tr>
</tbody>
</table>
# TABLE OF CONTENTS

(continued)

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>19.5</td>
<td>Attorneys’ Fees</td>
<td>50</td>
</tr>
<tr>
<td>19.6</td>
<td>Eminent Domain</td>
<td>51</td>
</tr>
<tr>
<td>19.7</td>
<td>Non-Merger in Deed</td>
<td>51</td>
</tr>
<tr>
<td>19.8</td>
<td>Successors and Assigns/No Third Party Beneficiary</td>
<td>51</td>
</tr>
<tr>
<td>19.9</td>
<td>Estoppel Certificates</td>
<td>51</td>
</tr>
<tr>
<td>19.10</td>
<td>Counterparts</td>
<td>52</td>
</tr>
<tr>
<td>19.11</td>
<td>Amendments; Waiver</td>
<td>52</td>
</tr>
<tr>
<td>19.12</td>
<td>Authority and Enforceability</td>
<td>52</td>
</tr>
<tr>
<td>19.13</td>
<td>References</td>
<td>52</td>
</tr>
<tr>
<td>19.14</td>
<td>Correction of Technical Errors; Amendments</td>
<td>52</td>
</tr>
<tr>
<td>19.15</td>
<td>Brokers</td>
<td>53</td>
</tr>
<tr>
<td>19.16</td>
<td>Governing Law</td>
<td>53</td>
</tr>
<tr>
<td>19.17</td>
<td>Compliance with the Law</td>
<td>53</td>
</tr>
<tr>
<td>19.18</td>
<td>Effect on Other Party’s Obligation</td>
<td>53</td>
</tr>
<tr>
<td>19.19</td>
<td>Table of Contents; Captions</td>
<td>53</td>
</tr>
<tr>
<td>19.20</td>
<td>No Gift or Dedication</td>
<td>53</td>
</tr>
<tr>
<td>19.21</td>
<td>Severability</td>
<td>53</td>
</tr>
<tr>
<td>19.22</td>
<td>Entire Agreement; Supersedure</td>
<td>54</td>
</tr>
<tr>
<td>19.23</td>
<td>No Party Drafter</td>
<td>54</td>
</tr>
<tr>
<td>19.24</td>
<td>Further Assurances</td>
<td>54</td>
</tr>
<tr>
<td>19.25</td>
<td>Approvals and Consents</td>
<td>54</td>
</tr>
<tr>
<td>19.26</td>
<td>Interpretation</td>
<td>55</td>
</tr>
<tr>
<td>19.27</td>
<td>Represented by Counsel</td>
<td>55</td>
</tr>
<tr>
<td>19.28</td>
<td>Recordation</td>
<td>55</td>
</tr>
<tr>
<td>19.29</td>
<td>Community Benefits Plan</td>
<td>55</td>
</tr>
<tr>
<td>19.30</td>
<td>Conflicts</td>
<td>55</td>
</tr>
<tr>
<td>19.31</td>
<td>Numbers</td>
<td>55</td>
</tr>
<tr>
<td>19.32</td>
<td>Cooperation and Non-Interference</td>
<td>55</td>
</tr>
<tr>
<td>19.33</td>
<td>Notice of Termination</td>
<td>56</td>
</tr>
<tr>
<td>19.34</td>
<td>Plans on Record with Agency</td>
<td>56</td>
</tr>
</tbody>
</table>
### TABLE OF CONTENTS (continued)

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>19.35 Survival</td>
<td>56</td>
</tr>
<tr>
<td>19.36 Developer Acknowledgement</td>
<td>56</td>
</tr>
</tbody>
</table>
LIST OF ATTACHMENTS

A. Legal Description of the Property
B. Map of Property
C. Schedule of Performance
D. Description of the Project
   1. Inclusionary Units in the Project
E. Community Benefits Plan
F. Affordable Housing Plan
   1. Declaration of Restrictions for For-Rent Affordable Residential Units
   2. Declaration of Restrictions for For-Sale Affordable Residential Units and Option to Purchase Agreement
   3. Memorandum of Option
   4. Release of Option Rights
   5. Project Housing Data Table
   6. Marketing and Operating Obligations
G. Insurance
H. Forms of Notice of Compliance of Access Laws
   1. Form of Notice of Compliance of Construction with Access Laws
   2. Form of Notice of Compliance of Design with Access Laws
I. Form of Architect’s Certificate
J. Form of Certificate of Completion
K. Project MMRP
L. Form of Permit to Enter
M. Vertical Design Review and Document Approval Procedure
N.

N-A BVHP ECP

N-B Revisions and Interpretations to BVHP ECP

O. SBE Policy

P. Equal Benefits Policy

Q. Minimum Compensation Policy

R. Health Care Accountability Policy

S. Prevailing Wage Policy
VERTICAL DISPOSITION AND DEVELOPMENT AGREEMENT
(HUNTERS POINT SHIPYARD PHASE 1 – BLOCK 52)

This VERTICAL DISPOSITION AND DEVELOPMENT AGREEMENT (HUNTERS POINT SHIPYARD PHASE 1 – BLOCK 52) (including all attachments and as amended or supplemented from time to time in accordance with the terms hereof, this “Agreement”), dated as of __________, 2014 (the “Reference Date”), is made by and between the Agency and Vertical Developer. Certain initially capitalized terms used herein that are neither a proper name nor the first word in a sentence have the meanings ascribed to them in Article I.

RECITALS

A. In furtherance of the objectives of the California Community Redevelopment Law, California Health and Safety Code §§ 33000 et seq. (as amended from time to time, the “CCRL”), the Agency has undertaken a program for the clearance and reconstruction or rehabilitation of slum and blighted areas in the City, including the area commonly known as the “Hunters Point Shipyard”.

B. The Agency prepared the Redevelopment Plan providing for the clearance and redevelopment or rehabilitation of certain lands in the Project Area and the further uses of such land. In cooperation with the City, the Agency is in the process of implementing the Redevelopment Plan.

C. The United States of America, acting through the United States Department of the Navy (the “Navy”), and the Agency entered into that certain Conveyance Agreement dated as of March 31, 2004 (as amended from time to time, the “Conveyance Agreement”) governing the terms and conditions for the transfer of the Hunters Point Naval Shipyard (the “Shipyard”) from the Navy to the Agency. Pursuant to the Conveyance Agreement, the Shipyard has been divided into seven (7) primary parcels designated A through G. As of the date hereof, Parcel A has been conveyed to the Agency and portions thereof have been subsequently conveyed to Developer. As contemplated in the Conveyance Agreement, the remaining parcels are to be conveyed to the Agency over time in phases.

D. The Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic, of the State of California (the “Redevelopment Agency”), and Lennar – BVHP, LLC, a California limited liability company (“Lennar BVHP”), 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 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. 2006I275571 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-I738449 at Reel J254, Image 429 (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-I738450 at Reel J854, Image 186 (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 November 3, 2009 and recorded in the Official Records on November 30, 2009 as Document No. 2009I879123 at Reel K28, Image 60 (the “Fifth Amendment”), and as further amended by that certain Sixth Amendment to Disposition and Development Agreement (Hunters Point Shipyard Phase 1) dated as of December 19, 2012 and recorded in the Official Records on February 11, 2013 as Document No. 2013J601488 (the “Sixth Amendment”, and together with the Original DDA, the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, the Fifth Amendment and as may be further amended or supplemented from time to time, the “Horizontal DDA”). Effective as of August 29, 2008, Lennar BVHP assigned its interests in the Horizontal DDA to Developer with the consent of the Agency.

E. Under Assembly Bill No. 1X 26 (Chapter 5, Statutes of 2011-12, First Extraordinary Session) (“AB 26”) and the California Supreme Court’s decision in California Redevelopment Association v. Matosantos, No. S194861, all redevelopment agencies in the State of California, including the Redevelopment Agency, were dissolved by operation of law as of February 1, 2012, and their non-affordable housing assets and obligations were transferred to certain designated successor agencies, which AB 26 charged with satisfying enforceable obligations of the former redevelopment agencies.

F. In June 2012, the California Legislature adopted legislation amending AB 26 as a trailer bill to the State’s budget bill for the 2012-2013 fiscal year, known as Assembly Bill No. 1484 (Chapter 26, Statutes of 2011-12, Regular Session) (“AB 1484”), and the Governor signed that bill on June 27, 2012. While AB 26 defined the successor agency to be the sponsoring community, AB 1484 provided that (i) the successor agency is a separate public entity from the public agency that provides for its governance and the two entities shall not merge, (ii) the successor agency has its own name and the capacity to sue and be sued, (iii) the successor agency succeeds to the organizational status of the former redevelopment agency but without any legal authority to participate in redevelopment activities except to complete the work related to an approved enforceable obligation, and (iv) the successor agency is a local entity for purposes of the Ralph M. Brown Act.

G. Pursuant to AB 26 and AB 1484, the Agency was designated as the successor agency to receive the non-affordable housing assets and certain retained affordable housing assets of the Redevelopment Agency, and the Agency succeeds, by operation of law, to the Redevelopment Agency’s rights, title and interest in the Horizontal DDA, without the necessity for any assignment or other action on the part of any party. On October 2, 2012, the City’s Board of Supervisors adopted Ordinance 215-12 (File No. 120898) acknowledging that the Agency is a separate legal entity, creating the Agency Commission as the commission and policy body of the Agency and delegating to the Commission the authority to act in place of the former San Francisco Redevelopment Agency Commission to implement certain projects, including Phase 1
and the Project. As required by AB 26, the City also established the oversight board of the Agency (the “Oversight Board”).

H. The Horizontal DDA is an enforceable obligation within the meaning of AB 26 and AB 1484 (“Enforceable Obligations”), and was in existence before June 28, 2011. The Oversight Board has recognized and approved the Horizontal DDA as an Enforceable Obligation, and has approved recognized obligation payment schedules that include various obligations and commitments relating to this Enforceable Obligation. On December 13, 2012, the California Department of Finance provided written confirmation that this determination of enforceability is final and conclusive in accordance with California Health and Safety Code section 34177.5(i).

I. California Health and Safety Code section 34177 provides that the Agency, as a successor agency, is required to (i) perform obligations required pursuant to any Enforceable Obligation, and (ii) continue to oversee development of properties until the contracted work has been completed. Under section 2 of the Fifth Amendment, the Agency is obligated to enter into “Vertical DDAs” such as this Agreement.

J. This Agreement is in furtherance of and is necessary to complete an Enforceable Obligation that existed before June 28, 2011, and is in the best interests of the Agency, Developer, Vertical Developer and the taxing entities.

K. The Horizontal DDA sets forth, among other things, (i) Developer’s obligations with respect to the construction of certain public infrastructure improvements, (ii) the development plan for Phase 1, including affordable housing requirements, and (iii) certain community benefits. “Phase 1” is described in attachment 1 to the Horizontal DDA and is depicted in the Land Use Plan. The development of Phase 1 is based on the Redevelopment Plan and that certain Conceptual Framework for Phase 1 Development of the Hunters Point Shipyard, issued on January 13, 2003, reviewed by the Mayor’s Hunters Point Shipyard Citizens Advisory Committee (the “CAC”) and other stakeholders, and approved by the Agency on July 22, 2003 (the “Conceptual Framework”). The Redevelopment Plan establishes the basic land use standards for Phase 1 and includes general objectives, including planning objectives, that apply to Phase 1. In furtherance of the Redevelopment Plan, the Agency Commission approved the Design for Development, which is a companion document to the Redevelopment Plan, incorporating the general ideas set forth in the Conceptual Framework and containing design standards and design guidelines that apply to all development in Phase 1. Additionally, the Agency has created the Vertical Design Review and Document Approval Procedure, which sets forth the process and requirements for review and approval by the Agency of the design and construction documents related to vertical development in Phase 1.

L. In addition to the public infrastructure improvements to be made by Developer pursuant to the terms set forth in the Horizontal DDA, development in Phase 1 is anticipated to include: (i) approximately twelve hundred ninety-eight (1,298) Residential Units that will be developed by Affiliates of Developer, Community Builders and Qualified Buyers, fifteen percent (15%) of which will be Affordable, and approximately two hundred eighteen (218) Residential Units that will be developed by the Agency, one hundred percent (100%) of which will be Affordable; (ii) nine thousand (9,000) square feet of commercial, retail, research and development, cultural and educational space; and (iii) approximately one and two tenths (1.2)
acres for community facilities, the use for which will be determined pursuant to a community-based process.

M. Concurrently with this Agreement, Vertical Developer is acquiring from Developer the property described more fully in Attachment A (the “Property”) and any improvements thereon. The Property is depicted in Attachment B (and is also generally depicted as Block 52JV on the Land Use Plan). Vertical Developer proposes to construct the Project under the terms of this Agreement.

N. Vertical Developer is obligated to provide certain community benefits, as more particularly set forth herein, including certain requirements set forth in the Affordable Housing Plan, the Community Benefits Plan and the Agency Policies.

O. In furtherance of the Redevelopment Plan, the Agency caused that certain Declaration of Restrictions affecting all of the property subject to the Redevelopment Plan to be recorded in the Official Records on November 21, 2003 as Document No. 03-H595997 at Reel I519, Image 1666 (as amended from time to time, the “Project Area Declaration of Restrictions”).

P. The development proposed under this Agreement and the fulfillment generally of this Agreement are: (i) in the best interest of the City and the health, safety, morals and welfare of its residents; (ii) in accordance with the public purposes and provisions of applicable federal, state and local laws and requirements; and (iii) consistent with, in furtherance of, and necessary to the effectuation of the Redevelopment Plan.

Q. The Parties desire to enter into this Agreement to memorialize their understandings and commitments concerning the matters generally described above.

AGREEMENT

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

ARTICLE 1. DEFINITIONS

The following terms shall have the meanings ascribed to them below.

“AB 26” is defined in Recital E.

“AB 1484” is defined in Recital F.

“Affiliate” means, with respect to a Person, any Person that directly or indirectly Controls, is Controlled by or is under Common Control with such Person.

“Affordable” is defined in the Affordable Housing Plan.

“Affordable Housing Plan” means the document attached hereto as Attachment F.
“Agency” means the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic, of the State of California, or any successor public agency designated by or pursuant to law.

“Agency Commission” means the City’s Commission on Community Investment and Infrastructure, acting as the commission of the Agency, or any successor governing body of the Agency designated by or pursuant to law.

“Agency Costs” means the reasonable costs and expenses actually incurred and paid by the Agency in connection with its obligations under this Agreement including (and limited to) (i) the hourly costs of Agency employees who perform such actions, determined by the salary of such employees determined on an hourly basis plus an amount not to exceed sixty-five percent (65%) of such salary for general overhead, benefits and administration multiplied by the number of actual hours (billed in not more than quarter hour increments) worked by such employees in performing such actions, (ii) fees of third-party professionals engaged by the Agency to perform such actions, (iii) costs incurred and paid by the Agency to City Agencies under the Interagency Cooperation Agreement in connection with such actions (excluding costs incurred for any City permit application or processing fees paid directly by Developer or Vertical Developers to the City) and (iv) costs of the City Attorneys’ Office, at the lowest rates regularly charged by the City Attorneys’ Office to similarly situated third party developers (which shall in no event exceed comparable rates charged by private law firms in the City with approximately the same number of attorneys as employed by the City Attorneys’ Office). Agency Costs do not include (1) general and administrative costs or overhead of the Agency except as permitted in clause (i) above, (2) costs of the Agency incurred before the Effective Date, except for any costs incurred by the Agency in the negotiation, preparation and approval of this Agreement, and (3) dispute resolution costs (including litigation costs recovered under Section 19.5) or other costs recovered by the Agency from permits, fees or other third party payments.

“Agency Default” is defined in Section 12.4.

“Agency Director” means the Executive Director of the Agency or any successor executive officer of the Agency designated by or pursuant to law.

“Agency Policies” is defined in Section 3.7.

“Air Space Parcels” is defined in Section 6.5(c).

“Administrative Delay” is defined in Section 19.4(a)(ii).

“Amendment Action” is defined in Section 8.1.

“Arbitration Matter” is defined in Section 11.1(a).

“Arbitration Notice” is defined in Section 11.2.

“Agreement” is defined in the introductory paragraph of this document.
“Architect” means a duly licensed architect designated by Vertical Developer from time to time to issue the Architect’s Certificates and to perform the other services requiring the expertise of an architect contemplated under this Agreement.

“Architect’s Certificate” means a certificate issued by the Architect that is substantially in the form of Attachment I.

“Article 31” is defined in Section 14.5(b).

“Article 31 Brochure” is defined in Section 14.5(b).

“Article 31 Plans” is defined in Article 17.

“Assumption Agreement” means an agreement in recordable form, approved by the Agency and duly executed by the Transferor and the Transferee that describes (i) the portions of the Property being Transferred, (ii) the obligations of the Transferor that the Transferee assumes, (iii) the obligations of the Transferor from which the Transferor will be released, and (iv) the acknowledgment of the Transferee that it has reviewed and agrees to be bound by all conditions and restrictions applicable to the Transfer Property, including those contained in this Agreement.

“Authorization” is defined in Section 7.2(a).

“Building Permit” means a building or site permit issued by the Central Permit Bureau that allows Vertical Developer to Commence Construction of the Improvements pursuant to this Agreement.

“BVHP ECP” is defined in Section 3.7.

“Board of Supervisors” means the Board of Supervisors of the City, or any successor governing body of the City designated by or pursuant to law.

“Business Day” means a day of the week other than a Saturday, Sunday or holiday recognized by the City, the Agency or national banks in the State of California.

“BVHP Area” means that portion of the City contained within zip codes 94124, 94134 and 94107, as such zip codes exist as of the Effective Date. Unless otherwise expressly indicated, references to Bayview Hunters Point, the community, neighborhoods and variants of those terms mean the BVHP Area.

“CAC” is defined in Recital K.

“CCRL” is defined in Recital A.

“Central Permit Bureau” means the Central Permit Bureau of the Department of Building Inspection or any successor public permitting body of the City designated by or pursuant to law.

“CEQA Delay” is defined in Section 19.4(a)(iii).
“Certificate of Completion” means a certificate issued in accordance with Section 6.5(a) that is substantially in the form of Attachment J.

“Certificate of Completion Review Period” is defined in Section 6.5(a).

“Certificate of Occupancy” means an instrument issued by the Department of Building Inspection certifying that a Residential Unit, Residential Project, non-residential Project or portion of any of the foregoing, as applicable, is fit for occupancy or use pursuant to the Building Code of the City.

“CFD” is defined in Section 3.4.

“City” means, as the context requires, (i) the City and County of San Francisco, a charter city of the State of California, or (ii) the territorial jurisdiction of the foregoing.

“Commence Construction” means ground breaking in connection with the commencement of physical construction of the Improvements.

“Common Control” means that two or more Persons are Controlled by the same other Person.

“Community Benefits Agreement” means that certain Community Benefits Agreement (Hunters Point Shipyard Phase 1) dated as of April 4, 2005 by and between the Agency and Developer, as amended by that certain First Amendment to Community Benefits Agreement (Hunters Point Shipyard Phase 1) dated as of November 3, 2009, and as may be further amended or supplemented from time to time.

“Community Benefits Plan” means the document attached as Attachment E.

“Community Builder” is defined in the Horizontal DDA.

“Community Builder Lot” is defined in the Horizontal DDA.

“Complete Construction” (and any variation thereof) means, as applicable, that: (i) a specified scope of work has been completed in accordance with the plans and specifications thereof, including those elements of the Construction Documents for which approval is required pursuant to the Vertical Design Review and Document Approval Procedure; (ii) public agencies with jurisdiction have issued all permits, licenses, approvals, Certificates of Occupancy and other sign-offs required for the contemplated use and occupancy of the scope of work; (iii) the site has been cleaned and all equipment, tools and other construction materials and debris have been removed; (iv) all bills for the scope of work have been paid, any surety has consented to final payment, all recorded mechanics’ liens have been removed (by bonding or otherwise) and the period for recording mechanics’ liens has expired; and (v) all as-built plans and warranties, guaranties, operating manuals, operations and maintenance data, certificates of completed operations or other insurance, and all other close-out items required under the pertinent construction contract, have been provided to the Agency.

“Conceptual Framework” is defined in Recital K.
“Conflicting Law” means applicable local, state or federal laws and any rules, regulations, orders, executive mandate or any applicable local, state or federal court decisions thereunder (or any approvals permits, authorizations or conditions thereto) that preclude or substantially increase the cost of performance of or compliance with any provision of this Agreement.

“Construction Dispute” is defined in Section 11.4.

“Construction Documents” means the Final Construction Documents and the applicable Design Documents, working drawings and specifications setting forth the requirements for construction of a particular scope of work in sufficient detail so that a reasonably experienced general contractor can prepare a responsive bid.

“Control” means the ownership (direct or indirect) by one Person and/or such Person and its Affiliates of day-to-day control of the activities of a Person coupled with a significant equity and voting interest in such Person. “Controlled” and “Controlling” have correlative meanings.

“Conveyance Agreement” is defined in Recital C.

“CP/HPS2 DDA” means that certain Disposition and Development Agreement (Candlestick Point and Phase 2 of the Hunters Point Shipyard) dated as of June 3, 2010 and recorded in the Official Records of the City and County of San Francisco on November 18, 2010 as Document No. 2010-J083660-00 at Reel K273, Image 427 by and between the Agency (as successor in interest to the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic, of the State of California) and CP Development Co., L.P., a Delaware limited partnership; as amended by that certain First Amendment to the Disposition and Development Agreement (Candlestick Point and Phase 2 of the Hunters Point Shipyard) dated as of December 19, 2012, and as may be further amended from time to time.

“CP/HPS2 Project” means the development of Candlestick Point and Phase 2 of the Hunters Point Shipyard under and as contemplated by the CP/HPS2 DDA (for the avoidance of doubt, including pursuant to any Assignment and Assumption Agreements entered into, and Authorizations obtained, in connection therewith (as “Assignment and Assumption Agreements” and “Authorizations” are defined in the CP/HPS2 DDA)).

“Department of Building Inspection” means the Department of Building Inspection of the City, or any successor body of the City designated by or pursuant to law.

“Deed” means the conveyance document described in the Purchase Agreement, duly executed and acknowledged by Developer and in recordable form, which document conveys the Property to Vertical Developer.

“Deed Restrictions” means those encumbrances on title, including affordability restrictions, non-discrimination provisions, and environmental covenants and notices recorded against the Property, including restrictions in the deed transferring the Property from the Navy to the Agency.

“Default Delay” is defined in Section 19.4(a)(iv).
“Deferred Items” is defined in Section 6.5(e).

“Design for Development” means that certain Hunters Point Shipyard Phase 1 Design for Development originally adopted by the Agency Commission on September 30, 1997 by Resolution No. 193-1997, amended by the Agency Commission on January 18, 2005 by Resolution No. 7-2005, further amended by the Agency Commission on June 3, 2010 by Resolution No. 68-2010, further amended by the Agency Commission on June 13, 2013 by Resolution No. 18904, and as may be further amended or supplemented from time to time.

“Design Documents” means the Basic Concept Design Documents, the Schematic Design Documents and the Design Development Documents, each of which have the meaning set forth in the Vertical Design Review and Document Approval Procedure, and the Open Space Master Plan.

“Developer” means HPS Development Co., LP, a Delaware limited partnership, or any successor or assign to this Agreement.

“Effective Date” means the Reference Date.

“Enforceable Obligations” is defined in Recital H.

“Environmental Laws” is defined in Section 5.1(b).

“Equal Benefits Policy” is defined in Section 3.7(c).

“Escrow Holder” means that certain title company with which Developer has opened an escrow to effectuate the closing under the Purchase Agreement.

“Excusable Delay” is defined in Section 19.4(a).

“Final Construction Documents” is defined in the Vertical Design Review and Document Approval Procedure.

“Fifth Amendment” is defined in Recital D.

“First Amendment” is defined in Recital D.

“Foreclosed Property” is defined in Section 13.6.

“Force Majeure” is defined in Section 19.4(a)(i).

“Fourth Amendment” is defined in Recital D.

“Hazardous Material” is defined in Section 5.1(a).

“Health Care Accountability Policy” is defined in Section 3.7(e).

“Horizontal Certificate of Completion” means a “Certificate of Completion”, as defined in the Horizontal DDA.
“Horizontal DDA” is defined in Recital D.

“Horizontal Improvements” means those improvements identified in the Horizontal DDA constructed or to be constructed by Developer pursuant to the Horizontal DDA.

“Improvements” means the Vertical Improvements that comprise the Project, as more particularly described in Attachment D and the Design Documents and the Construction Documents approved in accordance with this Agreement.

“Inclusionary Unit” is defined in the Affordable Housing Plan.

“Indemnified Party(ies)” is defined in Section 5.2.

“Interagency Cooperation Agreement” means that certain Letter Agreement dated as of February 11, 2005 by and among the Mayor’s Office of the City, the Agency, the San Francisco Department of Public Works, the San Francisco Public Utilities Commission, the San Francisco Municipal Transportation Agency, the San Francisco Department of Parking and Traffic, the San Francisco Department of Planning, the San Francisco Department of Real Estate, the Department of Building Inspection and the San Francisco Department of Public Health, as the same may be amended from time to time.

“Land Use Plan” is defined in the Horizontal DDA.

“Lennar BVHP” is defined in Recital D.

“Losses” is defined in Section 5.2.

“Minimum Compensation Policy” is defined in Section 3.7(d).

“Mortgage” is defined in Section 13.1.

“Mortgagee” is defined in Section 13.1.

“Mortgagee Acquisition” is defined in Section 13.6.

“Mortgagor” is defined in Section 13.1.

“Navy” is defined in Recital C.

“Notice of Compliance of Construction with Access Laws” means a certificate issued by the Architect that is substantially in the form of Attachment H-1.

“Notice of Compliance of Design with Access Laws” means a certificate issued by the Architect that is substantially in the form of Attachment H-2.

“Notice of Termination” is defined in Section 19.33.

“Occupant” is defined in Section 14.5(b).
“Official Records” means the Official Records of the City and County of San Francisco.

“Open Space” means the parcels retained by the Agency and designated for parks, public recreation and other open space uses, portions of which are designated as Open Space on the Land Use Plan.

“Open Space Master Plan” means an open space, parks and recreation master plan for design, and development and maintenance of the Open Space adopted by the Agency Commission on January 16, 2007 by Resolution No. 6-2007.

“Original DDA” is defined in Recital D.

“Outside Date” means the date set forth in the Schedule of Performance for the performance of an obligation under this Agreement.

“Oversight Board” is defined in Recital G.

“Owner” is defined in Section 14.5(b).

“Party” or “Parties” means, individually or collectively as the context requires, the Agency and Vertical Developer.

“PCBs” is defined in Section 5.1(a).

“Permit to Enter” means, an agreement executed by the Agency and Vertical Developer in accordance with Article 9, which agreement shall be substantially in the form of Attachment L with only such changes as may be approved by the Agency and Vertical Developer, or as reasonably required by the Agency in connection with site specific requirements. The Agency, may from time to time amend the attached form of Permit to Enter to impose such insurance, bond, guaranty and indemnification requirements as the Agency determines are necessary or appropriate to protect its interests, consistent with the Agency’s custom and practice and in a manner that will not unnecessarily interfere with or materially increase the cost or risk of Vertical Developer’s ability to perform under this Agreement or, if it would unnecessarily interfere with or materially increase such cost or risk, such amendment must be consistent with commercial industry practice.

“Person” means any natural person, corporation, firm, partnership, limited liability company, limited partnership, association, joint venture, governmental or political subdivision or agency or any similar entity.

“Phase 1” is defined in Recital K.

“Portion” shall refer to any of the Property that constitutes one or more legal lots of land, but which does not constitute the whole of the Property.

“Prevailing Wage Policy” is defined in Section 3.7(f).
“Project” means the development of the Improvements in accordance with this Agreement.

“Project Area” means the real property comprising the Hunters Point Shipyard Project Area under the Shipyard Redevelopment Plan.

“Project Area Declaration of Restrictions” is defined in Recital O.

“Project MMRP” means the Mitigation, Monitoring and Reporting Program attached hereto as Attachment K.

“Property” is defined in Recital M.

“Purchase Agreement” means that certain Purchase and Sale Agreement and Joint Escrow Instructions entered into between Developer, as “Seller”, and Vertical Developer, as “Buyer”, dated as of December 13, 2013, as amended from time to time.

“Purchase Price” means the purchase price of the Property paid by Vertical Developer to Developer pursuant to the Purchase Agreement.

“Qualified Arbitrator” means a natural person who (i) is not an Affiliate of any Party, (ii) is chosen in accordance with the procedures of JAMS and (iii) has at least ten (10) years of experience in acting as an arbitrator with respect to complex real estate transactions but, if the issue in dispute is primarily related to construction, then instead he or she shall have at least ten (10) years of experience in acting as an arbitrator with respect to construction disputes.

“Qualified Buyer” is defined in the Horizontal DDA.

“Redevelopment Agency” is defined in Recital D.

“Redevelopment Documents” means: (i) the Redevelopment Plan; (ii) the Design for Development; (iii) the Open Space Master Plan; (iv) the Vertical Design Review and Document Approval Procedure; and (v) the Agency Policies.

“Redevelopment Plan” means that certain Hunters Point Shipyard Redevelopment Plan, approved and adopted by the Board of Supervisors by ordinance number 285-97 on July 14, 1997, as amended by the Board of Supervisors by ordinance number 2010-11 on August 3, 2010, and as the same may be further amended from time to time consistent with the Horizontal DDA and, with respect to the Property, this Agreement.

“Redevelopment Requirements” means those certain requirements for development of Phase 1 contained in: (i) the Redevelopment Documents; (ii) the Project Area Declaration of Restrictions; (iii) those elements of the Construction Documents for which approval is required (and has been obtained) pursuant to the Vertical Design Review and Document Approval Procedure; and (iv) this Agreement.

“Reference Date” is defined in the introductory paragraph of this document.
“Release” is defined in Section 5.1(c).

“Release of Horizontal DDA” means a release of the Horizontal DDA issued in accordance with Section 3.3.

“Release Threshold” is defined in Section 14.1(c).

“Residential Project” is defined in the Affordable Housing Plan.

“Residential Unit” is defined in the Affordable Housing Plan.

“SBE Policy” is defined in Section 3.7(b).

“Schedule of Performance” means that certain Schedule of Performance attached hereto as Attachment C, as such Schedule of Performance may be updated under the terms of this Agreement.

“Schedule of Performance Default” is defined in Section 12.2(d).

“Second Amendment” is defined in Recital D.

“Shipyards” is defined in Recital C.

“Significant Change” means: (i) Vertical Developer files, or is the subject of, a petition for bankruptcy, or makes a general assignment for the benefit of its creditors; (ii) a receiver is appointed on account of Vertical Developer’s insolvency; (iii) a writ of execution or attachment or any similar process is issued or levied against any bank accounts of Vertical Developer, or against any property or assets of Vertical Developer being used or required for use in the development of the Improvements or against any substantial portion of any other property or assets of Vertical Developer that is not removed or otherwise resolved within ninety (90) days; or (iv) a final non-appealable judgment is entered against Vertical Developer in an amount in excess of Five Million Dollars ($5,000,000.00), and it is unable to either satisfy or bond the judgment within ninety (90) days.

“Sixth Amendment” is defined in Recital D.

“Special Taxes” means special taxes levied in the CFDs pursuant to the applicable “Rate and Method of Apportionment” and the proceedings to establish the CFDs, including all delinquent Special Taxes collected at any time whether by payment or through foreclosure proceedings.

“Supplement” is defined in Article 17.

“Temporary Certificate of Occupancy” is defined in Section 6.5(b).

“Third Amendment” is defined in Recital D.

“Transfer” means to sell, assign, convey, lease, sublease, hypothecate or otherwise alienate all or any portion of the Property and/or any Vertical Improvements.
“Transfer Property” means the Property (or any Portion) that is Transferred by Vertical Developer in accordance with Article 14.

“Transferee” means the Person to whom a Transfer is made pursuant to this Agreement.

“Transferor” means the Person from whom a Transfer is made pursuant to this Agreement.

“Transportation Management Association” is defined in Section 3.5.

“Transportation Management Program” is defined in Section 3.5.

“Vertical Design Review and Document Approval Procedure” means that certain Vertical Design Review and Document Approval Procedure attached hereto as Attachment M.

“Vertical Developer” means [HPS1 Block 52, LLC, a Delaware limited liability company], or any successor or assign permitted in accordance with the terms hereof.

“Vertical Developer Default” is defined in Section 12.2.

“Vertical Improvements” means buildings, structures, and other works of improvement (including, as applicable, landscaping) to be constructed on the Property, as described in the Final Construction Documents.

ARTICLE 2. TERM OF THIS AGREEMENT

2.1 Term of this Agreement. The term of this Agreement shall commence upon the Effective Date and end on the date of issuance of the final Certificate of Completion for all of the Improvements, unless earlier terminated in accordance with the terms of this Agreement.

ARTICLE 3. TERMS FOR CONVEYANCE OF PARCELS; RELEASE OF HORIZONTAL DDA; COMMUNITY BENEFITS

3.1 Purchase Agreement; Escrow Closing. Developer and Vertical Developer have agreed to the purchase and sale of the Property, which purchase and sale, and the delivery and recordation of documents and funds in connection therewith, shall be consummated on the Effective Date pursuant to the Purchase Agreement. The Purchase Agreement is a Purchase and Sale Agreement (as defined in the Horizontal DDA) executed and delivered pursuant to article 15 (and other applicable provisions) of the Horizontal DDA.

3.2 Conveyance. Conveyance of the Property to Vertical Developer shall be pursuant to the Deed. Prior to the Effective Date, Developer and the Agency approved the Deed Restrictions set forth in the Deed, which Deed Restrictions shall not be amended without the approval of the Agency Director, Vertical Developer and Developer.

3.3 Release of Horizontal DDA. On the Effective Date, the Agency and Developer will execute and cause Escrow Holder to record in the Official Records (pursuant to joint escrow instructions approved by Developer and the Agency Director) a Release of Horizontal DDA,
pursuant to which the Horizontal DDA is terminated as to the Property (excepting from such
termination any obligations expressly stated in the Horizontal DDA and/or this Agreement to
survive such termination). The Agency shall not, under any circumstance, be responsible or
liable to Vertical Developer for the failure to complete any Horizontal Improvements on or near
the Property, or at any location within the Project Area, and Vertical Developer and all
successors assume the risk that any such Horizontal Improvements will not be completed.

3.4 Community Facilities District. Vertical Developer hereby acknowledges that the
Property is and will continue to be subject to the lien of Special Taxes for community facilities
districts (collectively, the “CFDs”), including: (i) Redevelopment Agency of the City and
County of San Francisco Community Facilities District No. 7 (Hunters Point Shipyard Phase
One Improvements) (“CFD No. 7”), as set forth in the Third Amended and Restated Notice of
Special Tax Lien recorded in the Official Records of the City and County of San Francisco on
May 14, 2014, as instrument number 2014J879951; and (ii) Redevelopment Agency of the City
and County of San Francisco Community Facilities District No. 8 (Hunters Point Shipyard Phase
One Maintenance) (“CFD No. 8”), as set forth in the Amended and Restated Notice of Special
Tax Lien recorded in the Official Records of the City and County of San Francisco on May 14,
2014, as instrument number 2014J879952. Such CFDs have been formed. In CFD No. 7, Special
Taxes have been and will be collected, and bonds have been and will be issued, to finance
construction of certain infrastructure and other improvements, including Open Space. In CFD
No. 8, Special Taxes have been and will be collected to provide certain services, including
maintenance of the Open Space. The Agency and Vertical Developer, as required, shall
cooperate to provide the City, the Agency and the CFD administrator(s) with the information
required by the CFDs to calculate and levy Special Taxes on the Property in any year. Vertical
Developer shall not, at any time, contest, protest, or otherwise challenge the formation of the
CFDs, the issuance of additional bonds or other financing secured by Special Taxes, or the
application of bond proceeds or Special Taxes. Vertical Developer shall not institute, or
cooperate in any manner with, proceedings to repeal or reduce the Special Taxes.

3.5 Community Facilities District. Vertical Developer hereby acknowledges that the
Property is and will continue to be subject to the lien of Special Taxes for community facilities
districts (collectively, the “CFDs”), including: (i) the Redevelopment Agency of the City and
County of San Francisco Community Facilities District No. 7 (Hunters Point Shipyard Phase
One Improvements), as set forth in the Second Amended and Restated Notice of Special Tax
Lien recorded in the Official Records of the City and County of San Francisco on September
15, 2008, as instrument number 2008I645982; and (ii) Redevelopment Agency of the City and
County of San Francisco Community Facilities District No. 8 (Hunters Point Shipyard Phase
One Maintenance), as set forth in the Notice of Special Tax Lien recorded in the Official
Records of the City and County of San Francisco on September 15, 2008, as instrument number
2008I645983. Such CFDs were formed, and bonds have been and will be issued, to finance
construction of certain infrastructure and other improvements, including Open Space, and to
provide certain services, including maintenance of the Open Space. The Agency and Vertical
Developer, as required, shall cooperate to provide the City, the Agency and the CFD
administrator(s) with the information required by the CFDs to calculate and levy Special Taxes
on the Property in any year. Vertical Developer shall not, at any time, contest, protest, or
otherwise challenge the formation of the CFDs or the issuance of additional bonds or other
financing secured by Special Taxes.
3.6 **Transportation Management.** Vertical Developer acknowledges and agrees that the Property is, and will continue to be, included within and subject to the Candlestick Point-Hunters Point Shipyard Transportation Demand Management Program (the “**Transportation Management Program**”), which includes a Candlestick Point-Hunters Point Transportation Management Association (the “**Transportation Management Association**”). The Transportation Management Association will develop, implement, operate, and administer strategies and programs to manage transportation resources in Phase 1 and in the CP/HPS2 Project. Vertical Developer shall cooperate in good faith with the Transportation Management Association and impose such obligations on each Owner and Occupant, as shall be required by the Transportation Management Association in order to implement the Transportation Management Program and the fees associated therewith, including, as applicable, by imposing such requirements under the purchase and sale agreement or lease for a Residential Unit, under the covenants, conditions and restrictions applicable to the Project and/or under “Participation Agreements” described in the Transportation Management Program.

3.7 **Affordable Housing Plan and Community Benefits Plan.** Vertical Developer and the Agency shall comply with their respective obligations under the Affordable Housing Plan and the Community Benefits Plan.

3.8 **Agency Policies.** Vertical Developer and the Agency shall at all times comply with the applicable provisions of the following rules, regulations and official policies of the Agency that are applicable to and govern the overall design, construction, fees, use or other aspect of development of the Project, each of which may, subject to the restrictions set forth in the Redevelopment Plans as in effect on the Effective Date, be revised from time to time by the Agency upon notice thereof to Vertical Developer (such policies, as so revised from time to time, the “**Agency Policies**”):

   (a) the Bayview Hunters Point Employment and Contracting Policy (adopted by Resolution No. 127-2007, Dec. 4, 2007) attached as Attachment N-A, as revised by the revisions and interpretations attached as Attachment N-B (collectively, as so revised from time to time, the “**BVHP ECP**”);

   (b) the Small Business Enterprise Policy (adopted by Resolution No. 82-2009, July 27, 2009) attached as Attachment Q (as so revised from time to time, the “**SBE Policy**”);

   (c) the Nondiscrimination in Contracts and Equal Benefits Policy (adopted by Resolution No. 175-1997, Sep. 9, 1997) attached as Attachment P (as so revised from time to time, the “**Equal Benefits Policy**”);

   (d) the Minimum Compensation Policy (adopted by Resolution No. 34-2009, April 7, 2009) attached as Attachment Q (as so revised from time to time, the “**Minimum Compensation Policy**”);

   (e) the Health Care Accountability Policy (adopted by Resolution No. 34-2009, April 7, 2009) attached as Attachment R (as so revised from time to time, the “**Health Care Accountability Policy**”); and
3.9 [Community Builder Lot]. The Agency and Vertical Developer acknowledge and agree that the Property is a Community Builder Lot and that in accordance with article 15 of the Horizontal DDA (and the Community Benefits Agreement), Vertical Developer and the Community Builder for such Community Builder Lot [(Marinship Development Interests, LLC)] have entered into a _____ Agreement (as defined in the Community Benefits Agreement) with respect to development on the Community Builder Lot.

ARTICLE 4. PROPERTY “AS-IS” AND RELEASE

4.1 Acquired in Connection with Defense Base Closure. Vertical Developer acknowledges that: (i) in 1974 the Navy closed the Shipyard and leased it to a commercial ship repair company; (ii) in 1991 the Shipyard was selected for transfer under the Defense Base Closure and Realignment Act of 1990, Part A of Title XXIX of Public Law 101-510, 10 U.S.C. §2687, as amended; (iii) pursuant to the authority provided by section 2824(a) of the National Defense Authorization Act for Fiscal Year 1991 (Pub. L. No. 101-510), as amended by section 2834 of the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. No. 103-160), the Navy will convey the Shipyard to the Agency in phases; and (iv) Developer acquired the Property from the Agency. Additionally, Vertical Developer acknowledges and understands that the real property comprising Phase 1 was transferred from the Navy to the Agency with certain environmental notices and covenants and notices that run with the land that are set forth in the quitclaim deeds from the Navy to the Agency that are recorded in the Official Records.

4.2 No Side Agreements or Representations; “As-Is” Purchase. VERTICAL DEVELOPER REPRESENTS AND WARRANTS TO THE AGENCY THAT PRIOR TO THE EFFECTIVE DATE VERTICAL DEVELOPER HAD THE OPPORTUNITY TO INDEPENDENTLY AND PERSONALLY INSPECT THE PROPERTY AND THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE PROPERTY. VERTICAL DEVELOPER AGREES THAT TO THE MAXIMUM EXTENT PERMITTED BY LAW, VERTICAL DEVELOPER ACCEPTED THE PROPERTY IN ITS THEN CURRENT CONDITION “AS-IS” AND “WITH ALL FAULTS”, INCLUDING ANY FAULTS AND CONDITIONS SPECIFICALLY REFERENCED IN THE PURCHASE AGREEMENT OR THIS AGREEMENT. NO PERSON ACTING ON BEHALF OF THE AGENCY IS AUTHORIZED TO MAKE, AND BY EXECUTION HEREOF, VERTICAL DEVELOPER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, THE AGENCY HAS NOT MADE, NOR DOES IT MAKE, AND THE AGENCY SPECIFICALLY NEGATES AND DISCLAIMS, ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO:

(a) THE VALUE OF THE PROPERTY;
(b) THE INCOME TO BE DERIVED FROM THE PROPERTY;

(c) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES THAT VERTICAL DEVELOPER MAY CONDUCT THEREON, INCLUDING ANY DEVELOPMENT OF THE PROPERTY;

(d) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY;

(e) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PROPERTY;

(f) THE NATURE, QUALITY OR CONDITION OF THE PROPERTY, INCLUDING THE WATER, SOIL AND GEOLOGY;

(g) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY;

(h) THE MANNER, CONDITION OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE PROPERTY;

(i) COMPLIANCE WITH ANY ENVIRONMENTAL LAWS (AS DEFINED IN SECTION 5.1(b));

(j) THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS (AS DEFINED IN SECTION 5.1(a)) AT, ON, UNDER, ADJACENT TO, OR IN THE VICINITY OF THE PROPERTY;

(k) THE CONTENT, COMPLETENESS OR ACCURACY OF THE DUE DILIGENCE MATERIALS, INCLUDING ANY INFORMATIONAL PACKAGE, COST TO COMPLETE ESTIMATE OR OTHER MATERIALS PREPARED BY DEVELOPER OR THE AGENCY;

(l) THE CONFORMITY OF THE IMPROVEMENTS TO ANY PLANS OR SPECIFICATIONS FOR THE PROPERTY, INCLUDING ANY PLANS AND SPECIFICATIONS THAT MAY HAVE BEEN OR MAY BE PROVIDED TO VERTICAL DEVELOPER;

(m) THE CONFORMITY OF THE PROPERTY TO PAST, CURRENT OR FUTURE APPLICABLE ZONING OR BUILDING CONDITIONS;

(n) DEFICIENCY OF ANY UNDERSHORING;

(o) DEFICIENCY OF ANY DRAINAGE;
(p) The fact that all or a portion of the property may be located on or near an earthquake fault line or located in a special study zone;

(q) The existence of vested land use, zoning or building entitlements affecting the property;

(r) The effectiveness of any noise abatement measures that may or may not be implemented at adjacent properties;

(s) The commencement, continuation or timing of any development, construction or improvement of any part of the project area, including phase 1, or any other area, including Candlestick Point or the site of the CP/HPS2 project, or any other area by developer or its affiliates, the agency or any other person; or

(t) Any other matter concerning the property except as may be otherwise expressly stated herein or by separate agreement, including any and all such matters referenced, discussed or disclosed in any documents delivered by developer or the agency to vertical developer, in any public records of any governmental agency or entity or utility company, or in any other documents available to vertical developer. Vertical developer further acknowledges and agrees that, having been given the opportunity to inspect the property and review information and documentation affecting it, vertical developer is relying solely on its own investigation of the property and review of such information and documentation, and not on any information provided or to be provided by the agency. Vertical developer further acknowledges and agrees that any information made available to it or provided or to be provided by or on behalf of the agency with respect to the property was obtained from a variety of sources and that the agency has not made any independent investigation or verification of such information and makes no representations as to the accuracy or completeness of such information except as may otherwise be provided herein. Vertical developer agrees, in accordance with section 4.3, to fully and irrevocably release all such sources of information and preparers of information and documentation to the extent such sources or preparers are indemnified parties (as defined in section 5.2) from any and all claims that vertical developer may now have or hereafter acquire against such sources and preparers of information for any losses (as defined in section 5.2) arising from such information or documentation. The agency is not liable or bound in any manner by any oral or written statements, representations or information pertaining to the property, or the operation thereof, furnished by
ANY OF THE FOREGOING PERSONS OR ANY OTHER PERSON. VERTICAL DEVELOPER FURTHER ACKNOWLEDGES AND AGREES THAT NEITHER DEVELOPER NOR THE AGENCY HAS ANY OBLIGATION TO MAKE REPAIRS, REPLACEMENTS OR IMPROVEMENTS EXCEPT AS MAY OTHERWISE BE EXPRESSLY STATED HEREIN.

4.3 Release. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, VERTICAL DEVELOPER AND ANY PERSON CLAIMING BY, THROUGH OR UNDER IT, HEREBY FULLY AND IRREVOCABLY RELEASES THE INDEMNIFIED PARTIES FROM ANY AND ALL CLAIMS THAT IT MAY NOW HAVE OR HEREAFTER ACQUIRE AGAINST SUCH INDEMNIFIED PARTIES, OR ANY OF THEM, FOR ANY LOSSES ARISING FROM OR RELATED TO ANY CONSTRUCTION DEFECTS, ERRORS, OMISSIONS OR OTHER CONDITIONS, LATENT OR OTHERWISE, INCLUDING ENVIRONMENTAL, GEOTECHNICAL AND SEISMIC MATTERS, AFFECTING THE PROPERTY, OR ANY PORTION THEREOF INCLUDING ENVIRONMENTAL MATTERS THAT WERE:

(a) DESCRIBED OR REFERRED TO IN THE ENVIRONMENTAL REPORT(S) OR IN ANY ENVIRONMENTAL AUDIT OBTAINED BY VERTICAL DEVELOPER;

(b) REASONABLY DISCOVERABLE BY PRUDENT INVESTIGATION PRIOR TO THE EFFECTIVE DATE; OR

(c) OTHERWISE DISCLOSED TO VERTICAL DEVELOPER BY DEVELOPER OR THE AGENCY OR DISCOVERED BY VERTICAL DEVELOPER AT ANY TIME PRIOR TO THE EFFECTIVE DATE.

THIS RELEASE INCLUDES CLAIMS OF WHICH VERTICAL DEVELOPER IS PRESENTLY UNAWARE OR WHICH IT DOES NOT PRESENTLY SUSPECT TO EXIST THAT, IF KNOWN BY IT, WOULD MATERIALLY AFFECT VERTICAL DEVELOPER’S RELEASE OF THE AGENCY. VERTICAL DEVELOPER SPECIFICALLY WAIVES THE PROVISION OF CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES AS ФOLLOWS:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

IT IS UNDERSTOOD AND AGREED THAT THE PURCHASE PRICE HAS BEEN FORMULATED WITH REFERENCE TO THE FACT THAT THE PROPERTY IS SOLD BY DEVELOPER AND PURCHASED BY VERTICAL DEVELOPER SUBJECT TO THE FOREGOING. THE PURCHASE PRICE WILL NOT BE ADJUSTED, NOR SHALL VERTICAL DEVELOPER BE ENTITLED TO ANY OFFSET OR CREDIT FOR ANY REASON, INCLUDING COSTS TO VERTICAL DEVELOPER.
DEVELOPER ASSOCIATED WITH THE PROPERTY PROVING TO BE GREATER THAN EXPECTED.

INITIALS:  
(Vertical Developer)  (Agency)

4.4 **Survival.** The terms and provisions of this Article 4 shall survive the expiration or termination of this Agreement.

**ARTICLE 5. HAZARDOUS MATERIALS**

**5.1 Definitions**

(a) The term “Hazardous Material” means any material, waste, chemical, compound, substance, mixture, or byproduct that is identified, defined, designated, listed, restricted or otherwise regulated under Environmental Laws as a “hazardous constituent”, “hazardous substance”, “hazardous material”, “hazardous waste constituent”, “infectious waste”, “medical waste”, “biohazardous waste”, “extremely hazardous waste”, “pollutant”, “toxic pollutant”, “toxic substance”, “regulated substance”, or “contaminant”, or any other formulation intended to classify substances by reason of properties that are deleterious to the environment, natural resources, wildlife or human health or safety, including ignitability, infectiousness, corrosiveness, radioactivity, carcinogenicity, toxicity and reproductive toxicity. Hazardous Material includes any form of natural gas, petroleum products or any fraction thereof, asbestos, asbestos containing materials, polychlorinated biphenyls (“PCBs”), materials containing PCBs, and any substance that, due to its characteristics or interaction with one or more other materials, wastes, chemicals, compounds, substances, mixtures or byproducts, damages or threatens to damage the environment, natural resources, wildlife or human health or safety.

(b) The term “Environmental Laws” means all present and future federal, state and local laws, statutes, rules, regulations, ordinances, standards, directives, interpretations and conditions of approval, all administrative or judicial orders or decrees and all guidelines, permits, license approvals or other entitlements, or rules of common law pertaining to the protection of the environment, natural resources, wildlife, human health or safety, or employee or community right-to-know requirements related to the work being performed under this Agreement, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. sections 9601 et seq.), the Resources Conservation and Recovery Act of 1976 (42 U.S.C. sections 6901 et seq.), the Clean Water Act (33 U.S.C. sections 1300 et seq.), the Safe Drinking Water Act (49 U.S.C. sections 1410-1450), the Hazardous Materials Transportation Act (49 U.S.C. sections 1801 et seq.), the Toxic Substance Control Act (15 U.S.C. sections 2601-2629), the California Hazardous Waste Control Act, Hazardous Substances Account Act, Safe Drinking Water and Toxic Enforcement Act and other California statutes associated with hazardous waste, hazardous materials, hazardous substances, and toxic substances (Health & Safety Code sections 25100-25600), the California Porter-Cologne Water Quality Control Act (Water Code sections 13000 et seq.) and all regulations, rulings and orders promulgated or adopted pursuant thereto.
(c) The term “Release” means any accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the air, land, surface water, groundwater or environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Hazardous Material).

5.2 Hazardous Materials Indemnification.

(a) Vertical Developer shall indemnify, defend and hold harmless the Agency, the City, and their respective direct and indirect commissions, commissioners, departments, members, supervisors, officers, directors, servants, Affiliates, subsidiaries, agents, representatives, employees, attorneys, contractors, lenders, successors, assigns and all other Persons acting on their behalf (individually, an “Indemnified Party” and collectively, the “Indemnified Parties”) from and against any and all claims, demands, liabilities, losses, damages, injuries, accidents, fires or other casualty of any kind or character to any Person or property, liens, obligations, interest, injuries, penalties, fines, lawsuits or other proceedings, judgments and awards and costs and expenses (including reasonable attorneys’ and consultants’ fees and costs and court costs) of whatever kind or nature, known or unknown, contingent or otherwise, present and future, including the reasonable costs to the Indemnified Party of carrying out the terms of any judgment, settlement, consent decree, stipulated judgment or other partial or complete termination of an action or procedure that requires the Indemnified Party to take any action (collectively, “Losses”) incurred by or asserted against any Indemnified Party after the Effective Date in connection with, arising out of, in response to, or in any manner relating to (i) violation of any Environmental Law on or relative to the Property or the Project by Vertical Developer or any of its officers, employees, agents or others for whom it is responsible (collectively, the “Vertical Developer Parties”), or (ii) any Release or threatened Release of a Hazardous Material or any condition of pollution, contamination or Hazardous Material-related nuisance on, under, from or around the Property to the extent that such Release, threatened Release, condition, contamination or nuisance occurs after the Effective Date and during the period of Vertical Developer’s ownership of the Property, or is caused, contributed to, or exacerbated at any time by Vertical Developer or any of the Vertical Developer Parties, except, as to any particular Indemnified Party, to the extent such violation, Release, threatened Release, condition, contamination or nuisance is caused, contributed to or exacerbated by such Indemnified Party.

(b) Vertical Developer’s obligations under this Section 5.2 shall apply regardless of responsibility for passive negligence and the availability of insurance proceeds. However, if it is reasonable to assert that a claim under this Section 5.2 is covered by a pollution liability or other insurance policy or the indemnification provisions of Section 330 of the Fiscal Year 1993 National Defense Authorization Act (P. Law 102-484) or other indemnifications under which the Agency and/or such other Indemnified Party is an insured party or a potential claimant, then the Agency shall reasonably cooperate with Vertical Developer in asserting a claim or claims under such insurance policy but without waiving any of its rights under this Section 5.2. Vertical Developer specifically acknowledges and agrees that it has an immediate and independent obligation to defend the Indemnified Parties from any claim that actually or reasonably potentially falls within the indemnification provision of this Section 5.2, even if the allegations are or may be groundless, false or fraudulent. Vertical Developer’s obligation to
defend shall arise at the time such claim is tendered to Vertical Developer and shall continue at all times thereafter. Notwithstanding the foregoing, if an Indemnified Party is a named insured on a pollution liability or other insurance policy that reasonably may be expected to cover all or any portion of the Losses, then such Indemnified Party will not seek indemnification from Vertical Developer under this Section 5.2 unless it has first asserted (and thereafter diligently continues to pursue) a claim under such policy or policies and until any limits from the policy or policies are exhausted, on condition that (i) Vertical Developer pays any self-insured retention amount required under the policy or policies, and (ii) nothing in this sentence requires any Indemnified Party to pursue a claim for insurance through litigation before seeking indemnification from Vertical Developer. Notwithstanding the foregoing, the Parties agree that (A) there are no limits on an Indemnified Party’s right to pursue a claim against Vertical Developer for any Losses not expected to be covered by insurance, and (B) for any period during which an Indemnified Party pursues an action against an insurer and thereby refrains from seeking indemnification from Vertical Developer, any applicable statute of limitations for the claim against Vertical Developer shall be tolled.

5.3 **Survival.** The terms and provisions of this Article 5 shall survive the expiration or termination of this Agreement.

**ARTICLE 6. VERTICAL DEVELOPMENT**

6.1 **Land Uses Within Project Area.** Vertical Developer’s development of the Improvements shall be designed, reviewed, constructed and completed in accordance with the terms set forth in this Agreement, the other Redevelopment Requirements and the Deed Restrictions.

6.2 **Commencement and Completion of Improvements.** Vertical Developer shall use commercially reasonable efforts to promptly Commence Construction and Complete Construction of the Improvements as set forth in the Schedule of Performance, but in no event shall Vertical Developer Commence Construction or Complete Construction later than the respective Outside Date therefor (subject to Excusable Delay). If Vertical Developer determines that it will not be able to meet an Outside Date due to market conditions, Vertical Developer may request up to two (2) six-month extensions to an Outside Date. Any such request shall be made, if at all, not later than the date that is thirty (30) days before the applicable Outside Date, and shall be subject to the approval of the Agency Director, in his or her reasonable discretion.

6.3 **Approval of Construction Plans.** The Agency and Vertical Developer shall comply with the terms of the Vertical Design Review and Document Approval Procedure.

6.4 **Conditions to Commencement of Development.** Before Commencing Construction of the Improvements, or any portion thereof, Vertical Developer shall satisfy the following conditions precedent, to the extent not expressly waived by the Agency:

   (a) Vertical Developer shall have complied with the applicable requirements of the Vertical Design Review and Document Approval Procedure and obtained the Agency’s approval of the Basic Concept Design Documents, the Schematic Design Documents, the Design...
Development Documents and the Final Construction Documents, as and when required under the Vertical Design Review and Document Approval Procedure;

(b) The Agency shall have received a Notice of Compliance of Design with Access Laws;

(c) Vertical Developer shall have obtained a Building Permit (or if the site permit process is utilized, the first addendum to the site permit) for the Improvements, or applicable portion thereof;

(d) Vertical Developer shall have certified in writing to the Agency (i) the date Vertical Developer anticipates it will Commence Construction and (ii) that it is ready, willing and able to Commence Construction of the Improvements and Complete Construction of the same in accordance with the terms and conditions of this Agreement; and

(e) Vertical Developer shall have paid in full, when due, any Agency Costs for which Vertical Developer has received an invoice in accordance with Section 10.2.

In satisfaction of the condition precedent set forth in Section 6.4(d), above, Vertical Developer hereby certifies that Vertical Developer anticipates that it will Commence Construction within ten (10) Business Days of the Effective Date and that it is ready, willing, and able in all material respects to Commence Construction of the Improvements and Complete Construction of the same in accordance with the terms and conditions of this Agreement at such time.

6.5 Issuance of Certificates of Completion.

(a) **Process**: After Vertical Developer reasonably believes that it has Completed Construction of the Improvements, or all of the Improvements on a Portion, in accordance with this Agreement, Vertical Developer shall request a Certificate of Completion from the Agency. As part of this request, Vertical Developer shall submit to the Agency the following, in each case to the extent applicable thereto: (i) a copy of the Certificate of Occupancy for the Improvements; (ii) a signed Architect’s Certificate, reflecting Complete Construction of the Improvements; (iii) a signed Notice of Compliance of Construction with Access Laws, and (iv) payment for any Agency Costs that have been billed in accordance with Section 10.2 and are then due. Provided there is no Vertical Developer Default then existing hereunder (and no notice of default has been delivered to Vertical Developer under Section 12.1 that remains uncured or that will not be cured by the mere issuance of a Certificate of Completion that Vertical Developer is entitled to receive), the Agency determines that Vertical Developer has Completed Construction of the Improvements and Vertical Developer has paid in full all Agency Costs that have been billed in accordance with Section 10.2 and are then due, the Agency will issue and record a Certificate of Completion within thirty (30) days after the Agency’s receipt of Vertical Developer’s request and submittal of all documents noted above in
the form required and any such Agency Costs (such period, the “Certificate of Completion Review Period”).

(b) **Temporary Certificate of Occupancy.** The Agency may, in its reasonable discretion, accept a “Temporary Certificate of Occupancy” for the Improvements from the Department of Building Inspection in lieu of a Certificate of Occupancy under Section 6.5(a); provided, however, that Vertical Developer shall be required to promptly obtain a Certificate of Occupancy and thereafter deliver a copy of the Certificate of Occupancy to the Agency within ten (10) Business Days following receipt thereof.

(c) **Air Space Parcels.** Vertical Developer may elect to subdivide the Improvements or portions thereof and/or the Property or Portions into separate recorded air space parcels (“Air Space Parcels”) pursuant to the City’s subdivision ordinance and any other applicable rules and regulations, but shall not be entitled to obtain a Certificate of Completion with respect to an independent Air Space Parcel.

(d) **Effect of Certificate of Completion:**

(i) For purposes of this Agreement only, the Agency’s issuance of a Certificate of Completion shall be a conclusive determination of the Complete Construction of the applicable Improvements as required under this Agreement, including with respect to the obligations to Commence Construction and Complete Construction of such Improvements in accordance with the Construction Documents.

(ii) A Certificate of Completion will not constitute evidence of compliance with or satisfaction of any obligation of Vertical Developer to any holder of a mortgage, or any insurer of a mortgage securing money loaned to finance the Improvements, or any part thereof.

(iii) A Certificate of Completion is not in lieu of a Certificate of Occupancy, which still must be obtained from the City.

(iv) Following recordation of the Certificate of Completion, any Person then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Property or any Portion (including all Improvements thereon) shall not, solely by virtue of such ownership, purchase, lease, or acquisition, or by virtue of such Person’s actual or constructive knowledge of the contents of this Agreement, incur any obligation or liability under this Agreement for the Construction of Improvements on the Property or such Portion for which the Certificate of Completion was recorded.

(v) Without limiting Section 19.35, the Agency’s issuance of any Certificate of Completion shall not relieve Vertical Developer or any other Person from the ongoing Redevelopment Requirements (other than the Complete Construction of the Improvements described in the Certificate of Completion), obligations or restrictions recorded against the Property, applicable building, fire or other construction code requirements, the applicable subdivision code of the City, or other applicable laws.
(e) **Conditional Approval.** If there remain uncompleted (i) customary punch list items, (ii) minor landscaping, or (iii) exterior finishes (to the extent Vertical Developer can demonstrate to the Agency’s reasonable satisfaction that such finishes would be damaged during the course of later construction of interior improvements) (the “Deferred Items”), each as approved by the Agency Director, the Agency may issue a conditional certificate of completion upon receipt of a reasonable schedule showing that all of the Deferred Items will be completed in a timely fashion, but in no event later than six (6) months from the date of issuance. In the event that Vertical Developer requests a conditional certificate of completion from the Agency, such Deferred Items shall be itemized and attached as an exhibit to the conditional certificate of completion together with a schedule for completion of the Deferred Items. Upon Complete Construction of the Deferred Items, the Agency will promptly issue a final Certificate of Completion with respect thereto.

(f) **Failure to Issue a Certificate of Completion.** If the Agency fails to issue a Certificate of Completion in accordance with this Section 6.5 within the Certificate of Completion Review Period, then within fifteen (15) Business Days thereafter the Agency shall deliver to Vertical Developer a written statement setting forth in reasonable detail the basis for such failure and the reasonable measures or acts that Vertical Developer must undertake or perform in order to obtain the requested Certificate of Completion. Nothing in this Section 6.5 shall be deemed to make the Agency’s failure to act an approval or issuance of any Certificate of Completion.

6.6 **Non-Merger in Certificate of Completion.** Without limiting Section 19.35, none of the provisions of this Agreement relating to non-construction obligations are intended to, or shall be, merged by reason of the issuance of a Certificate of Completion verifying Completion of Construction of a particular Improvement.

ARTICLE 7. **COOPERATION AND ASSISTANCE; AUTHORIZATIONS**

7.1 **Interagency Cooperation Agreement.** The Agency, the Mayor’s Office and various City agencies have previously entered into the Interagency Cooperation Agreement, pursuant to the terms of which the Agency and the City have agreed to diligently and expeditiously process all submissions and applications for permits, approvals, agreements and other entitlements for developments in Phase 1, including design reviews and approvals, all subdivision and map approvals, all approvals of construction documents and construction and occupancy permits and other permits required for development. The Agency shall use its best efforts to cause the timely performance by applicable City agencies under the Interagency Cooperation Agreement.

7.2 **Authorization and Issuance of Permits.**

(a) Except as provided under the Interagency Cooperation Agreement or the Vertical Design Review and Document Approval Procedure, Vertical Developer is responsible for obtaining any permit, approval, entitlement, agreement, permit to enter, subdivision map or other authorization (“Authorization”) as may be necessary or desirable to effectuate and implement the development contemplated under this Agreement from any City agency or other governmental agency having or claiming jurisdiction over all or a portion of the Property.
Vertical Developer is advised that the Central Permit Bureau will forward all Building Permits for the Project to the Agency and the Department of Streets and Mapping will forward all maps for the Project for the Agency’s approval of compliance with the Redevelopment Requirements and this Agreement. The Agency’s review of such permits and maps is limited to compliance with the requirements and standards in the Vertical Design Review and Document Approval Procedure and other Redevelopment Requirements. Absent manifest error, a signature by an authorized representative of the Agency on any Authorization shall be conclusive evidence that there is no conflict with the Redevelopment Requirements and this Agreement arising out of such Authorization.

(b) Upon Vertical Developer’s request, the Agency shall reasonably cooperate with Vertical Developer in its efforts to obtain any Authorization, including by executing any such Authorization to the extent the Agency is required or permitted to execute the same as co-applicant or co-permittee, so long as such Authorizations are consistent with this Agreement. Vertical Developer shall not agree to the imposition of any conditions or restrictions in connection with obtaining any such Authorizations if the same would create any obligations on the part of the Agency not otherwise contemplated under this Agreement, without the Agency’s prior written approval, which may be given or withheld in its sole discretion. In any event, the Agency shall not bear any cost or expense in connection with such Authorizations.

(c) Vertical Developer, at no cost or expense to the Agency, shall be solely responsible for ensuring that the design and construction of the Improvements comply with any and all conditions or restrictions imposed by any City agency or other governmental agency in connection with any Authorization, whether such conditions are to be performed on or off the Property. Vertical Developer shall have the right to appeal or contest any such conditions or restrictions in any manner permitted by law; provided, however, that the Agency shall have the right to approve such appeal or contest if it is either a co-applicant or co-permittee. Such approval shall not be unreasonably withheld, conditioned or delayed if Vertical Developer can demonstrate to the Agency’s reasonable satisfaction that such appeal will not impose any responsibility or liability on the Agency which will not be paid or reimbursed by Vertical Developer (subject to any reasonable bonding or security, if needed). In all other cases, the Agency shall have the right to withhold its consent in its sole and absolute discretion. Any fines, penalties or corrective actions imposed as a result of Vertical Developer’s failure to comply with the terms and conditions of any such Authorization shall be paid or otherwise discharged by Vertical Developer and the Agency shall have no liability, monetary or otherwise, for such fines and penalties.

ARTICLE 8.    RESTRICTIONS ON THE SITE AND DEVELOPMENT

8.1 General Development Restrictions. After the Effective Date, except as may be required by a Conflicting Law, the Agency shall not approve, recommend or forward to the Oversight Board or the Board of Supervisors for their approval any termination of or amendment or supplement to any component of the Redevelopment Documents related to the Property or any Portion (an “Amendment Action”) unless consistent with this Section 8.1.

(a) Before the issuance of the final Certificate of Completion for the Project, for so long as this Agreement remains in effect, the Agency may not take an Amendment Action
without Vertical Developer’s consent, which consent shall not be unreasonably withheld, if such amendment would: (i) alter the permitted uses of the Property or any Portion, (ii) decrease the maximum height of any improvements permitted on the Property or any Portion, (iii) reduce the density or intensity of development permitted on the Property or any Portion, (iv) modify the provisions regarding fees or exactions in such a manner that Vertical Developer is adversely impacted, (v) other than negligibly increase the cost of the development of the Project, (vi) other than negligibly delay the development of the Project, (vii) limit or restrict the availability of infrastructure to the Project, (viii) impose limits or controls on the timing, phasing or sequencing of development that materially adversely affect the development of the Project, (ix) modify the occupancy requirements of the Project, or (x) materially increase the costs of complying with the terms of this Agreement or otherwise materially affect Vertical Developer’s ability to perform its obligations under this Agreement.

(b) Following the issuance of the final Certificate of Completion for the Project, the Agency may take an Amendment Action without Vertical Developer’s consent if such amendment will not (i) alter the permitted uses of the Property or any Portion, (ii) decrease the maximum height of any improvements permitted on the Property or any Portion, (iii) reduce the density or intensity of development permitted on the Property or any Portion, (iv) modify the provisions regarding fees or exactions in such a manner that Vertical Developer is adversely impacted, (v) modify the occupancy requirements for the Project, or (vi) materially increase the costs of operating the Project and/or complying with the terms of this Agreement or otherwise materially affect Vertical Developer’s ability to perform its obligations under this Agreement remaining after the issuance of such Certificate of Completion.

(c) If the Property, or any Portion, is Transferred pursuant to the terms set forth in Article 14, then, for purposes of this Section 8.1, a Transferee shall only include the owner of the Transfer Property and, in the case of a condominium or similar development, the owner of the Transfer Property shall be deemed to be the homeowner’s association, but in no event shall the consent of any owner of an individual Residential Unit or Air Space Parcel be required.

(d) Following the Effective Date, the Agency will not enact any new exaction applicable to the Vertical Improvements (in addition to those in existence as of the Effective Date). This restriction does not, however, prevent the City from enacting any new fees or exactions (and any limits on the City’s ability to impose new fees or exactions are set forth in the Redevelopment Plan).

(e) If the Agency becomes the fee owner of the Property or any Portion, whether voluntarily or involuntarily, then the restrictions in this Section 8.1 shall terminate and be of no further force or effect as to the Property or the Portion owned by the Agency.

(f) The terms and provisions of this Section 8.1 shall survive the expiration or termination of this Agreement; provided, however, that if this Agreement is terminated due to a Vertical Developer Default, then the terms and provisions of this Section 8.1 shall not survive such termination and shall thereafter be of no further force or effect.

8.2 Nondiscrimination Covenants.
(a) Vertical Developer acknowledges the nondiscrimination covenants included in the Deed Restrictions and agrees that neither Vertical Developer itself (nor any Person or entity claiming under or through it), nor any occupant or user of the Project (or any part thereof) or any Transferee, successor, assign or holder of any interest in the Project (or any part thereof) or any Person or entity claiming under or through such Transferee, successor, assign or holder, shall establish or permit in violation of such nondiscrimination covenants any practices or practices of discrimination or segregation in connection with the Project, including with reference to the selection, location, number, use or occupancy of buyers, tenants, vendees or others. However, Vertical Developer shall not be in default of its obligations under this Section 8.2 during the pendency of a judicial action or arbitration involving a bona fide, good faith, dispute over whether Vertical Developer is engaged in discriminatory practices and Vertical Developer promptly acts to satisfy any judgment or award against Vertical Developer.

(b) The nondiscrimination covenants provided in the Deed Restrictions shall be covenants running with the land and they shall be, in any event and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement (i) binding for the benefit and in favor of the Agency and the City, as beneficiary, and the respective successors and assigns of each; and (ii) binding against Vertical Developer, its successors and assigns to or of the Project and any improvements thereon or any part thereof or any interest therein, and any party in possession or occupancy of any portion of the Project or the improvements thereon.

(c) In amplification, and not in restriction, of the provisions of Sections 8.2(a) and (b), the Agency, the City and their respective successors and assigns, as to the covenants provided for in this Article 8, of which they are stated to be beneficiaries, shall be beneficiaries both for and in their own right and also for the purposes of protecting the interests of the BVHP Area and other parties, public or private, and without regard to whether the Agency or the City has at any time been, remains, or is an owner of any land or interest therein to which, or in favor of which, such covenants relate. The Agency and the City and their respective successors and assigns shall have the right, as to any and all of such covenants of which they are stated to be beneficiaries, to exercise all the rights and remedies, and to maintain any actions at law or suits in equity or other proper proceedings, to enforce such covenants to which it or any other beneficiaries of such covenants may be entitled, including restraining orders, injunctions and/or specific enforcement, judicial or administrative.

(d) Vertical Developer shall be entitled to notice and shall have the right to cure any breach or violation of the nondiscrimination covenants in accordance with Article 12.

8.3 **Environmental Covenants and Notices.** The Property is subject to certain Deed Restrictions, including environmental notices and covenants that run with the land under the quitclaim deeds from the Navy to the Agency (which quitclaim deeds are recorded in the Official Records), as more particularly described in Section 4.1. Vertical Developer agrees to comply with the applicable requirements of such notices and covenants.
ARTICLE 9. PERMIT TO ENTER

When reasonably required in connection with the construction of the Improvements, the Agency shall, upon Vertical Developer’s request, execute a Permit to Enter to permit Vertical Developer, its representatives, agents, contractors, consultants, subcontractors, suppliers, joint venture partners, and their respective employees and agents to enter and access any portion of the Project Area owned or leased by the Agency, subject to the rights of third parties and any reasonable limitations imposed by the Agency. In addition, when reasonably required in connection with the construction of the Improvements, the Agency shall assist Vertical Developer in obtaining a permit to enter from the City or any other governmental entity that owns or leases property in the Project Area.

ARTICLE 10. AGENCY COSTS

10.1 Agency Costs. The Agency is entitled to reimbursement for Agency Costs incurred in connection with performing its obligations under this Agreement and any changes to this Agreement requested by Vertical Developer. Upon the request of Vertical Developer, the Agency and Vertical Developer shall meet and confer regarding the Agency Costs likely to be incurred in connection with this Agreement. Except to the extent specifically set forth herein, the Agency shall not be entitled to collect any other fee or reimbursement from Developer or Vertical Developer in connection with the performance of the Agency’s obligations under this Agreement.

10.2 Reporting of Agency Costs. Within ninety (90) days following the end of each calendar quarter during the term of this Agreement, the Agency Director shall deliver to Vertical Developer a summary of Agency Costs incurred during such quarter (an “Agency Costs Report”). Each Agency Costs Report shall contain a certification by the Agency Director that such Agency Costs Report, to his or her knowledge, is complete and accurate. The summary shall be in a reasonably detailed form and shall include (i) a general description of the services performed and Agency Costs incurred, (ii) the total hours spent by all Agency employees and each Agency employee, (iii) the hourly rates for employees as set forth in the definition of Agency Costs, (iv) the fees and costs incurred and paid by the Agency under the Interagency Cooperation Agreement, and (v) the fees and costs of third-party professionals and copies of invoices from such third-party professionals. The Agency shall provide such supporting documentation as Vertical Developer may reasonably request to verify that the Agency Costs were incurred in accordance with this Agreement. The Agency and Vertical Developer shall cooperate with one another to develop a reporting format that satisfies the reasonable informational needs of Vertical Developer to justify expenditures of Agency Costs in accordance with this Agreement without divulging any privileged or confidential information of the Agency, the City, or their respective contractors. The Agency Costs Report shall be binding on Vertical Developer in the absence of error demonstrated by Vertical Developer within six (6) months of Vertical Developer’s receipt of the same.

10.3 Payment of Agency Costs. Vertical Developer shall reimburse the Agency for Agency Costs described in each Agency Costs Report no later than sixty (60) days after the receipt of the Agency Costs Report from the Agency. While the Parties currently anticipate the Agency Cost Reports will be delivered quarterly, the Agency shall have the right to submit
monthly Agency Cost Reports. The Parties shall meet and confer in good faith to resolve any disputes regarding an Agency Costs Report. The Agency shall have the right to terminate or suspend any work for Vertical Developer under this Agreement upon Vertical Developer’s failure to pay amounts due and owing hereunder, and continuing until Vertical Developer makes payment in full to the Agency.

ARTICLE 11. DISPUTE RESOLUTION

11.1 Arbitration Matters.

(a) Notwithstanding the provisions of Article 12, any dispute arising under each of the following is an “Arbitration Matter” following notice from one Party to another Party that a dispute exists as to such matter: (i) Articles 6 and 10; and (ii) disputes under provisions set forth in Attachments to this Agreement that require or permit arbitration.

(b) Following the receipt of notice of an Arbitration Matter, the Parties will have thirty (30) days (or such longer time as they may agree) to attempt to resolve the Arbitration Matter through informal good faith negotiations. The Parties shall be represented in such negotiations by one or more representatives with decision-making and settlement authority sufficient to resolve the dispute, subject to approval by the Party’s governing authority, where required. The Parties agree that the circumstances of this matter make it imperative that the dispute be resolved at the earliest possible date.

11.2 Submission to Arbitration.

(a) If an Arbitration Matter is not resolved by discussion as set forth in Section 11.1(b), then any applicable Party may, in accordance with the applicable rules of JAMS, submit the Arbitration Matter to a single Qualified Arbitrator at JAMS in the City. The Party requesting arbitration shall do so by giving notice to that effect to the other Party or Parties affected (the “Arbitration Notice”). The Arbitration Notice must include a summary of the issue in dispute and the reasons why the Party giving the Arbitration Notice believes that the other Party is in breach.

(b) The Parties will cooperate with JAMS and with one another in selecting a mutually acceptable arbitrator with appropriate expertise in the Arbitration Matter from a JAMS panel of neutrals, and in scheduling the arbitration proceedings as quickly as feasible. If the Parties are not able to agree upon the arbitrator, then each will select one arbitrator, and the two selected arbitrators shall select a third arbitrator. The third arbitrator selected shall resolve such dispute in accordance with the laws of the State pursuant to the JAMS Streamlined Arbitration Rules and Procedures.

(c) The Parties shall bear their own attorneys’ fees, costs and expenses during the arbitration proceedings and each Party shall bear one-half of the costs assessed by JAMS. The Parties shall use good faith efforts to conclude the arbitration within thirty (30) days after selection of the arbitrator, and the arbitrator shall be requested to render a written decision and/or award consistent with, based upon and subject to the requirements of this Agreement (including the available remedies set forth in Article 12) within ten (10) days after the final submission by the Parties to the arbitrator. The arbitrator shall have no right to modify any provision of this Agreement.
Agreement. If a Party chooses to submit any documents or other written communication to the arbitrator or JAMS, it shall deliver a complete and accurate copy to the other Party at the same time it submits the same to the arbitrator or JAMS which shall in no event be later than five (5) days before the date of arbitration. Neither Party shall communicate orally with the arbitrator regarding the subject matter of the arbitration without the other Party present.

(d) Subject to the provisions of this Section 11.2, the Parties will cooperate to provide all appropriate information to the arbitrator. The arbitrator will report his or her determination in writing, supported by the reasons for the determination. As part of that determination, the arbitrator shall have the power to determine which Party or Parties prevailed, wherein the prevailing Party or Parties shall recover all of their reasonable fees, costs and expenses (including the fees and costs of attorneys as provided in Section 19.5) from the non-prevailing Party, to be paid within ten (10) days after the final decision of the arbitrator with regard to such fees, costs and expenses. If no Party is deemed the “prevailing party” the Parties shall split costs of the arbitration equally and shall bear their own costs and attorneys’ fees. Except as provided in sections 1286.2, 1286.4, 1286.6 and 1286.8 of the California Code of Civil Procedure, the determination by the arbitrator shall be conclusive, final and binding on the Parties. The arbitrator’s decision and/or award may be entered as a judgment in any court having competent jurisdiction and shall constitute a final judgment as between the Parties and in that court.

11.3 Use of Evidence. The provisions of sections 1152 and 1154 of the California Evidence Code will apply to all settlement communications and offers to compromise made during any arbitration.

11.4 Proceeding Pending Resolution of a Dispute. Pending agreement or other resolution of any dispute subject to this Article 11, or other dispute hereunder, Vertical Developer will proceed in accordance with (i) elements of this Agreement that are not subject to dispute and (ii) all elements of this Agreement that are subject to dispute in accordance with Vertical Developer’s positions, pending resolution of the dispute, unless the Agency in its reasonable discretion directs otherwise; provided, however, if the dispute involves the Agency’s disapproval or conditional approval of Design Documents or Construction Documents, or an alleged design defect, code violation or other matter that could result in the Vertical Improvements having to be demolished and replaced (each, a “Construction Dispute”), then Vertical Developer may not proceed until such Construction Dispute is resolved. If Vertical Developer delays work pending resolution of a dispute, then the arbitrator may as part of an award, or the Parties may agree as part of a settlement to, adjust the Schedule of Performance to reflect the delay. If a dispute involves a monetary or payment issue, the arbitrator or the Parties shall prepare a written reconciliation of the amounts paid by Vertical Developer and the amounts that should have been paid in accordance with the final agreement or resolution, and Vertical Developer and the Agency shall then make any necessary adjustments between them based on the reconciliation.

ARTICLE 12. DEFAULTS AND REMEDIES
12.1 **General; Notice of Default.**

(a) In the event of any default by Vertical Developer under this Agreement, the Agency may deliver a notice of default to Vertical Developer (with a copy to Developer) regarding such default. The notice of default shall state with reasonable specificity the nature of the alleged default, the provisions under which the default is claimed to arise and the manner in which the default may be satisfactorily cured. Upon receipt of such notice of default, unless a shorter cure period is provided for in this Agreement, Vertical Developer shall commence within a reasonable time not to exceed sixty (60) days to cure such default (if susceptible to cure), and shall thereafter pursue such cure diligently to completion within one hundred and twenty (120) days following such notice.

(b) In the event of any default by the Agency under this Agreement, Vertical Developer may deliver a notice of default to the Agency regarding such default. The notice of default shall state with reasonable specificity the nature of the alleged default, the provisions under which the default is claimed to arise and the manner in which the default may be satisfactorily cured. Upon receipt of such notice of default, unless a shorter cure period is provided for in this Agreement, the Agency shall commence within a reasonable time not to exceed sixty (60) days to cure such default (if susceptible to cure), and shall thereafter pursue such cure diligently to completion within one hundred and twenty (120) days following such notice.

(c) Upon delivery of a notice of default, representatives of the Agency and Vertical Developer shall promptly meet to discuss the alleged default and the manner in which the defaulting Party can cure the default. Upon request of either Party, the Agency and Vertical Developer shall continue to meet during the applicable cure period to investigate and consider alternatives to remedy the default. At all times, the Agency and Vertical Developer will keep Developer apprised of any such meetings, and Developer will have the right to participate in any such meetings. If, at any time, the Party alleging a default determines that there has been no default or that it has been cured, that Party shall issue to the other Party (with a copy to Developer) a written dismissal of the notice of default.

12.2 **Default by Vertical Developer.** The occurrence of any one of the following events or circumstances shall constitute a “**Vertical Developer Default**”:

(a) Vertical Developer causes or permits the occurrence of (i) a Transfer not permitted under this Agreement or (ii) a Significant Change;

(b) Vertical Developer allows any Person, other than Vertical Developer, its Affiliates or authorized representatives to occupy or use all or any part of the Property in violation of this Agreement, and such event or condition shall not have been cured within thirty (30) days following Vertical Developer’s receipt of notice thereof from the Agency;

(c) Vertical Developer fails to pay real estate taxes or assessments on the Property when due or places any Mortgages, encumbrances or liens upon the Property or the Improvements or any part thereof in violation of this Agreement, and such event or condition shall not have been cured within thirty (30) days following Vertical Developer’s receipt of notice.
thereof from the Agency, subject, as to encumbrances and liens, to Vertical Developer’s right to contest the validity or amount of any tax, assessment, encumbrance or lien and to pursue any remedies associated with such contest; provided, however, that such contest and pursuit of remedies does not subject the Property (or any Portion) or the Improvements to sale or forfeiture, nor impair any of Vertical Developer’s obligations under this Agreement;

(d) Vertical Developer fails to Commence Construction or to Complete Construction of the Improvements on before the applicable Outside Date and such failure continues for a period of thirty (30) days following Vertical Developer’s receipt of notice thereof from the Agency (a “Schedule of Performance Default”);

(e) Vertical Developer fails to pay when due any amount required to be paid hereunder, and such failure continues for a period of thirty (30) days following Vertical Developer’s receipt of notice thereof from the Agency;

(f) Vertical Developer is in default under any of the Agency Policies and fails to cure the same in accordance with the terms of such documents;

(g) Except to the extent permitted in accordance with Section 19.4(c), Vertical Developer abandons the Property without the approval of the Agency Director for more than sixty (60) consecutive days, or a total of one hundred twenty (120) days between the Effective Date and the issuance of a Certificate of Completion, and such abandonment continues for a period of thirty (30) days following Vertical Developer’s receipt of notice from the Agency;

(h) Vertical Developer defaults in the performance of or violates any covenant, or any part thereof, set forth in the Deed Restrictions, and such default or violation continues for a period of thirty (30) days following Vertical Developer’s receipt of notice thereof from the Agency; or

(i) Vertical Developer fails to perform any other material agreements or obligations required to be performed under this Agreement by Vertical Developer, including obligations under the Community Benefits Plan, and such failure continues for the period of time for any cure or the expiration of any grace period specified in this Agreement therefor, or if no such time or grace period is specified, within sixty (60) days after Vertical Developer’s receipt of notice thereof from the Agency as appropriate, or in the case of a default that is curable but is not susceptible of cure within sixty (60) days, Vertical Developer fails promptly to commence to cure such default and thereafter diligently to prosecute such cure to completion within a reasonable time, but in no event to exceed one hundred and twenty (120) days.

12.3 Agency’s Remedies for Vertical Developer Default. In the event of a Vertical Developer Default, the Agency may, but shall not be required to, exercise any remedies available to it pursuant to the terms of this Article 12, subject to the terms and provisions of Article 13. The remedies available to the Agency in the instance of a Vertical Developer Default are as follows:

(a) Termination of this Agreement. In the event of a Vertical Developer Default, the Agency Director, at his/her option, may issue a Notice of Termination with respect to the Property or Portion with respect to which such Vertical Developer Default pertains. Such
Notice shall state the cause for such termination, the Property or Portion to which such termination pertains, and the effective date of termination, which date shall be no less than thirty (30) days following the date of the notice. No such termination shall be effective unless the Agency Commission approves such termination following a noticed public meeting held within ninety (90) days of such Notice. Notwithstanding the foregoing, if the Vertical Developer Default giving rise to the Notice of Termination has been cured to the Agency Director’s satisfaction before the date the Agency Commission holds the noticed public meeting on the proposed termination, the Agency Director shall cancel the Notice of Termination and inform the Agency Commission of such cancellation.

(b) **Other Remedies.** The remedies provided for herein are in addition to and not in limitation of other remedies available at law or in equity, including (i) those provided in the Deed and elsewhere for violation of the covenants set forth in Article 8, (ii) the right to institute such proceedings as may be necessary, including action to cure the default or to compel specific performance by Vertical Developer, (iii) the right to revoke any and all rights that Vertical Developer may have to construct the Improvements pursuant to this Agreement, and (iv) the remedies set forth in the Agency Policies. The meet and confer periods and cure periods in this Agreement shall not prevent the Agency from commencing any injunctive proceeding if the Agency believes it good faith that any postponement will cause irreparable harm.

(c) **Schedule of Performance Default.** Notwithstanding any other provision of this Agreement to the contrary, the Agency’s first remedy for a Schedule of Performance Default shall be to meet and confer with Vertical Developer, for a period of not less than ten (10) days, to determine the cause of the Schedule of Performance Default and the date by which Vertical Developer can cure the Schedule of Performance Default. During such meet and confer period, the Agency Director may direct that Vertical Developer suspend construction of the Improvements in accordance with this Agreement until such time as Vertical Developer shall have received the approval of the Agency Commission to resume such construction. Upon receipt of any such notice of suspension, Vertical Developer shall promptly take such actions as shall be reasonably required in order to cause the Property to be in good and safe condition and shall promptly thereafter, but not later than thirty (30) days following receipt of such notice, suspend any further construction activities. Vertical Developer shall present to the Agency Commission the reason for such Schedule of Performance Default at the next regularly-scheduled meeting of the Agency Commission for which an agenda has not yet been finalized and for which the Agency can prepare and submit a staff report in keeping with the Agency’s standard practices. The Agency shall notify Vertical Developer of the date and time of such meeting with at least five (5) Business Days advance notice. If Vertical Developer and the Agency Director agree to a revised Schedule of Performance during the meet and confer period, then they will present the revised Schedule of Performance to the Agency Commission for consideration at that meeting. If the Schedule of Performance Default is the failure to Commence Construction by the applicable Outside Date (or the failure to continue construction once grading and foundation work has begun but no vertical development work has commenced), then the Agency Commission may elect to either grant an extension or terminate this Agreement.
12.4 **Default by the Agency.** It shall constitute an “Agency Default” under this Agreement if the Agency fails to perform any of its agreements or obligations under this Agreement and such failure continues for the period of time for any cure or the expiration of any grace period specified in this Agreement therefor, or if no such time or grace period is specified, within sixty (60) days after the Agency’s receipt of notice thereof from Vertical Developer, or, in the case of a default that is curable but is not susceptible of cure within sixty (60) days, if the Agency fails promptly to commence to cure such default and thereafter diligently to prosecute such cure to completion within a reasonable time, but in no event to exceed one hundred and twenty (120) days.

12.5 **Vertical Developer’s Remedies for Agency Default.** In the event of an Agency Default, Vertical Developer shall have the right to institute an action for injunctive relief, including specific performance of this Agreement. The meet and confer periods and cure periods set forth in this Agreement shall not prevent Vertical Developer from commencing any injunctive proceeding if Vertical Developer believes in good faith that any postponement will cause irreparable harm.

12.6 **Agency Liability.** Except as expressly set forth in Section 19.5, the Agency shall not have any liability whatsoever for monetary damages, and in no event will the Agency or Developer be liable for lost opportunities, lost profits or other damages of a consequential nature, in either case under this Agreement.

12.7 **Rights and Remedies Cumulative.** Except with respect to any provision in this Agreement to the contrary, the rights and remedies of the Parties, whether provided by law or this Agreement, shall be cumulative, and the exercise by any Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same event of default by another Party.

12.8 **No Implied Waivers.** No waiver made by a waiving Party with respect to the performance or manner or time thereof (including an extension of time for performance) of any obligations of another Party, or of any condition to the waiving Party’s own obligations, shall be considered a waiver of the waiving Party’s rights with respect to any obligation of another Party or any condition to the waiving Party’s own obligations beyond those expressly waived in writing.

12.9 **Limitation on Liability.** No natural person, including any commissioner, member, supervisor, officer, director, employee, partner, representative, or attorney of a Party, shall be personally liable to another Party in the event of any default or for any amount that may become due to a Party under this Agreement, provided the foregoing shall not limit any liabilities that exist under a security instrument or that exist under applicable law.

12.10 **Agreement for Specific Performance.** The Parties have determined that the obligations under this Agreement are special, unique and of extraordinary character, and except as set forth in this Agreement to the contrary, equitable remedies and specific performance are particularly appropriate for enforcement of this Agreement. If proceedings are brought in equity by either Party to specifically enforce obligations under this Agreement, then the other Party shall not raise as a defense that there is an adequate remedy at law for such obligation. Nothing
in the foregoing shall limit a Party’s right to payments that are due and owing under this Agreement, including under any indemnity or under Section 19.5.

ARTICLE 13. FINANCING; RIGHTS OF MORTGAGEES

13.1 Right to Mortgage. Vertical Developer and any Person to whom it transfers its interest in this Agreement, as permitted under this Agreement (collectively and individually, as the case may be, a “Mortgagor”), shall have the right, at any time and from time to time during the term of this Agreement, to grant a mortgage, deed of trust or other security instrument (each a “Mortgage”) encumbering all or a portion of such Mortgagor’s respective interests in all or a portion of the Project, the Property and/or a Portion (including the right to receive payments or other revenue emanating from the Project and/or the Property), for the benefit of any Person (together with its successors in interest, a “Mortgagee”) as security for one or more loans related to the Project, the Property, Phase 1 and/or the CP/HPS2 Project, the proceeds from which are used to pay or reimburse costs incurred in connection with the Project, the Property, Phase 1 and/or the CP/HPS2 Project, subject to the terms and conditions contained in this Section 13. Except as provided in this Section 13.1, no Mortgage shall be granted to secure obligations unrelated to the Project, the Property, Phase 1 and/or the CP/HPS2 Project or to provide compensation or rights to a Mortgagee in return for matters unrelated to the Project, the Property, Phase 1 and/or the CP/HPS2 Project. Notwithstanding the foregoing, any Mortgage that relates to Vertical Developer’s interest in this Agreement must encumber the Property and any Mortgage that encumbers the Property must also encumber Vertical Developer’s interest in this Agreement. A Mortgagee may transfer or assign all or any part of or interest in any Mortgage without the consent of or notice to any Party; provided, however, that the Agency shall have no obligations under this Agreement to a Mortgagee unless the Agency is notified of such Mortgagee. Furthermore, the Agency’s receipt of notice of a Mortgagee following the Agency’s delivery of a notice or demand to Vertical Developer or to one or more Mortgagees under Section 13.4 shall not result in an extension of any of the time periods in this Section 13, including the cure periods specified in Section 13.5.

13.2 Certain Assurances. The Agency agrees to cooperate reasonably with each Mortgagor or prospective Mortgagor in confirming or verifying (i) the rights and obligations of a Mortgagee hereunder and (ii) the status of any work being undertaken by Developer under the Horizontal DDA.

13.3 Mortgagee Not Obligated to Construct. Notwithstanding any other provision of this Agreement, including those that are or are intended to be covenants running with the land, a Mortgagee, including any Person who obtains title to all or any portion of or any interest in the Project, the Property or any Portion as a result of foreclosure proceedings, or conveyance or other action in lieu thereof, or other remedial action, including (a) any other Person who obtains title to the Property or any Portion from or through such Mortgagee or (b) any other purchaser at foreclosure sale, shall in no way be obligated by the provisions of this Agreement to Commence Construction or Complete Construction. Nothing in this Section 13.3 or any other provision of this Agreement shall be deemed or construed to permit or authorize any Mortgagee or any other Person to devote all or any portion of the Property to any uses, or to construct any improvements, other than uses and improvements consistent with this Agreement and the other Redevelopment Requirements.
13.4 **Copy of Notice of Default and Notice of Failure to Cure to Mortgagee.** Whenever the Agency shall deliver any notice or demand to a Mortgagor for any breach or default by such Mortgagor in its obligations or covenants under this Agreement, the Agency shall at the same time forward a copy of such notice or demand to each Mortgagee having a Mortgage on the portion of the Project or the Property or any interest in the revenues therefrom or related thereto that is the subject of the breach or default who has previously made a written request to the Agency for a copy of any such notices. The Agency’s notice shall be sent to the address specified by such Mortgagee in its most recent notice to the Agency. In addition, if such breach or default remains after any cure period permitted under this Agreement, as applicable, has expired, the Agency shall deliver a notice of such failure to cure such breach or default to each such Mortgagee at such applicable address. A delay or failure by the Agency to provide such notice required by this Section 13.4 shall extend, for the number of days until notice is given, the time allowed to a Mortgagee for cure.

13.5 **Mortgagee’s Option to Cure Defaults.** Before or after receiving any notice of failure to cure referred to in Section 13.4, each Mortgagee shall have the right (but not the obligation), at its option, to commence within the same period as Vertical Developer to cure or cause to be cured any Vertical Developer Default, plus an additional period of (a) thirty (30) days to cure a monetary Vertical Developer Default and (b) sixty (60) days to cure a non-monetary Vertical Developer Default that is susceptible of cure by such Mortgagee without obtaining title to the applicable property subject to the applicable Mortgage, subject in each case to extension as provided in Section 13.4. If a Vertical Developer Default is not cured within the applicable cure period (or cannot be cured by the Mortgagee without obtaining title to the applicable real property), the Agency nonetheless shall refrain from exercising any of its remedies for the Vertical Developer Default and shall permit the cure by a Mortgagee of such Vertical Developer Default if, within a Mortgagee’s applicable cure period: (i) such Mortgagee has a recorded security interest in the applicable real property (and, if applicable, a perfected security interest in other applicable property) and notifies the Agency in writing that such Mortgagee intends to proceed with due diligence to foreclose the Mortgage or otherwise obtain title to the subject property; (ii) such Mortgagee commences foreclosure proceedings whether by non-judicial foreclosure, judicial foreclosure, or by appointment of a receiver, within sixty (60) days after giving such notice, and diligently pursues such proceedings to completion; and (iii) after obtaining title, such Mortgagee, subject to Section 13.11, diligently proceeds to cure those Vertical Developer Defaults: (A) that are susceptible of cure by such Mortgagee; and (B) of which such Mortgagee has been given written notice by the Agency under Section 13.4 or thereafter. Notwithstanding the foregoing, no Mortgagee shall be required to cure any Vertical Developer Default that is specific or personal to a Mortgagor (by way of example and not limitation, a Mortgagor bankruptcy, or the failure to submit required information in the possession of such Mortgagor), and the completion of a foreclosure and acquisition of title to the applicable property by a Mortgagee shall be deemed to be a cure of such Vertical Developer Defaults; provided the foregoing shall not excuse a Mortgagee’s failure to cure any continuing default that is curable by Mortgagee. Although no Mortgagee is obligated to do so, any Mortgagee that directly or indirectly obtains title to and that properly Completes Construction of the Improvements relating to the applicable portion of the Property in accordance with this Agreement shall be entitled, upon written request made to the Agency, to a Certificate of Completion.
13.6 Mortgagee’s Obligations with Respect to the Property. Except as set forth in this Section 13, no Mortgagee shall have any obligations or other liabilities under this Agreement unless and until it acquires title by any method to all or some portion of or interest in the Project or the Property (referred to as “Foreclosed Property”), and expressly assumes Vertical Developer’s rights and obligations under this Agreement in writing. A Mortgagee (or its designee, successor or assign) that acquires title to any Foreclosed Property (a “Mortgagee Acquisition”), and expressly assumes Vertical Developer’s rights and obligations under this Agreement, shall take title subject to all of the terms and conditions of this Agreement to the extent applicable to the Foreclosed Property, including any claims for payment or performance of obligations that are due as a condition to enjoying the benefits under this Agreement from and after the Mortgagee Acquisition. Upon completion of a Mortgagee Acquisition and written assumption of Vertical Developer’s rights and obligations under this Agreement, the Agency shall recognize the Mortgagee as Vertical Developer under this Agreement. The Agency shall have no right to enforce any obligation under this Agreement against any Mortgagee unless such Mortgagee expressly assumes and agrees to be bound by this Agreement in a form reasonably approved in writing by the Mortgagee and the Agency, which form shall be consistent with the terms of this Agreement (for the avoidance of doubt, the foregoing shall not limit the Agency’s rights and remedies against Vertical Developer notwithstanding any interest the Mortgagee may have in Vertical Developer or any right against any successor owner of the Property for a continuing default, as set forth in and subject to the limitations of this Article 13). However, the Agency shall have the right to terminate this Agreement with respect to the Foreclosed Property if the Mortgagee does not agree to assume the rights and obligations of Vertical Developer relating to the Foreclosed Property in writing within ninety (90) days following a Mortgagee’s acquisition of title to the Foreclosed Property. If a Mortgagee or any Person who acquires title to real property in the Property from a Mortgagee assumes obligations to construct Improvements under this Agreement, the Schedule of Performance with respect to the Foreclosed Property shall be extended as needed to permit such construction.

13.7 Required Provisions of Any Mortgage. Vertical Developer agrees to have each Mortgage provide that (i) the Mortgagee shall promptly provide the Agency by registered or certified mail a copy of any notice of default by Vertical Developer under the Mortgage that is delivered by such Mortgagee to Vertical Developer before the expiration or termination of this Agreement and (ii) the Agency shall be given notice on or before the date that any Mortgagee initiates any Mortgage foreclosure action with respect to the Property or the Project.

13.8 No Impairment of Mortgage. No default by a Mortgagor under this Agreement shall invalidate or defeat the lien of any Mortgagee. Neither a breach of any obligation in a Mortgage nor a foreclosure under any Mortgage shall defeat, diminish, render invalid or unenforceable or otherwise impair Vertical Developer’s rights or obligations under this Agreement or constitute, by itself, a default under this Agreement.

13.9 Multiple Mortgages. If at any time there is more than one Mortgage constituting a lien on a single portion of the Project or the Property or any interest therein, the lien of the Mortgagee prior in time to all others on that portion of the mortgaged property shall be vested with the rights under this Section 13 to the exclusion of the holder of any other Mortgage; provided, however, that if the holder of a senior Mortgage fails to exercise the rights set forth in this Section 13, each holder of a junior Mortgage shall succeed to the rights set forth in this
Section 13 only if the holders of all Mortgages senior to it have failed to exercise the rights set forth in this Section 13 and holders of junior Mortgages have provided written notice to the Agency under Section 13.4. No failure by the senior Mortgagee to exercise its rights under this Section 13 and no delay in the response of any Mortgagee to any notice by the Agency shall extend any cure period or Vertical Developer’s or any Mortgagee’s rights under this Section 13. For purposes of this Section 13.9, in the absence of an order of a court of competent jurisdiction that is served on the Agency, a title report prepared by a reputable title company licensed to do business in the State of California and having an office in the City, setting forth the order of priorities of the liens of Mortgages on real property, may be relied upon by the Agency as conclusive evidence of priority.

13.10 Cured Defaults. Upon the curing of any Vertical Developer Default by a Mortgagee within the time provided in Section 13.5, the Agency’s right to pursue any remedies for the cured Vertical Developer Default shall terminate.

13.11. Limitation on Liability of Mortgagee. Notwithstanding anything to the contrary contained in this Article 13 and upon completion of a Mortgagee Acquisition, a Mortgagee (or its designee, successor or assign) that acquires title to any Foreclosed Property shall not be:

(a) liable for the acts or omissions of Vertical Developer, provided the foregoing shall not stop the Agency from taking actions under this Agreement for any ongoing defaults that continue past the date of a Mortgagee Acquisition. The Agency shall have no right to assert a claim for any damages against Mortgagee (or its designee, successor or assign) for the acts or omissions of Vertical Developer, provided that the Agency shall not be deemed to waive any right or claim against Vertical Developer;

(b) liable for any unpaid amounts, including Agency Costs, payable to the Agency by Vertical Developer and accruing prior to the date of the Mortgagee Acquisition, provided such unpaid amounts will become due and owing if and when a Mortgagee agrees to assume Vertical Developer’s obligations under this Agreement;

(c) bound to any representation or warranty relating to the Improvements or responsible for any construction delays accruing prior to the Mortgagee Acquisition.

ARTICLE 14. TRANSFERS AND ASSIGNMENT

14.1 Vertical Developer’s Right to Transfer. Vertical Developer (and any Transferee) shall have the right to Transfer the Transfer Property and the corresponding rights and obligations under this Agreement, to any Person at any time and from time to time during the term of this Agreement, subject to the following terms and conditions:

(a) Vertical Developer shall have the right to Transfer all of the Property and the corresponding rights and obligations under this Agreement without the consent of the Agency if:
(i) the Transferee is an Affiliate of Vertical Developer, a Qualified Buyer or a Community Builder;

(ii) the Transferee is Developer or an Affiliate of Developer;

(iii) the Transfer is effected by the consolidation or merger of Vertical Developer into or with any other business organization whether or not Vertical Developer is the surviving entity pursuant to applicable law of the jurisdiction of Vertical Developer’s incorporation; or

(iv) a Certificate of Completion has been issued for all of the Transfer Property.

(b) In addition to the Transfer rights under Section 14.1(a), Vertical Developer shall have the right to Transfer all of the Property (or any Portion) and the corresponding rights and obligations under this Agreement with the prior written consent of the Agency Director, which consent shall not be unreasonably withheld, conditioned or delayed. Notice of any such approval shall be delivered to Vertical Developer in writing within thirty (30) days following the Agency’s receipt of Vertical Developer’s request therefor. If the Agency Director does not approve such Transfer in writing within thirty (30) days following delivery of such request, the proposed Transfer shall be deemed disapproved.

(c) Whether or not consent of the Agency is required for a Transfer, no less than fifteen (15) days’ prior to the effective date of a Transfer (i) Vertical Developer shall provide the Agency with notice of the proposed Transfer, including the identity, address and telephone number of the proposed Transferee, (ii) the proposed Transferee shall deliver to the Agency an Assumption Agreement stating that as of the effective date of such Transfer it shall have assumed the rights and obligations of Vertical Developer under this Agreement applicable to the Transfer Property, (iii) Vertical Developer shall pay the Agency any Agency Costs that have been billed in accordance with Section 10.2 and are then due, and (iv) for any Transfer to an Affiliate of Vertical Developer, an Affiliate of Developer, or a Qualified Buyer, Vertical Developer and the proposed Transferee shall demonstrate to the Agency Director that the proposed Transferee is, in fact, an Affiliate of Vertical Developer, an Affiliate of Developer or a Qualified Buyer, as applicable, and, if the Transferor requests a release, evidence that such Transferee meets or exceeds the creditworthiness and development experience requirements of a Qualified Buyer (the “Release Threshold”). Within ten (10) Business Days of receiving any such information under clause (iv) above, the Agency shall reasonably determine if the Transferee is an Affiliate of Vertical Developer, an Affiliate of Developer or Qualified Buyer, as applicable, and whether such proposed Transferee meets or exceeds the Affiliate Release Threshold.

(d) So long as the Agency has received the Assumption Agreement as provided in Section 14.1(c) and no notice of default has been delivered to Vertical Developer under Section 12.1 that remains uncured as of the date of the Transfer, the Agency shall, within thirty (30) days following written notice of a Transfer, provide the Transferor with a written release from any obligations under this Agreement applicable to the Transfer Property, which release shall be in form and substance reasonably satisfactory to the Transferor and the Agency
(but excluding from such release any obligation to pay money where such obligation accrued before the date of the Transfer). Upon any Transfer to an Affiliate of Vertical Developer or to an Affiliate of Developer, in either case that does not meet the Release Threshold as determined by the Agency under Section 14.1(e), the Transferor shall not be released from its obligations under this Agreement.

(e) Vertical Developer’s rights and obligations under this Agreement may be Transferred only (1) in conjunction with the Transfer of the Transfer Property to which the rights and obligations apply and (2) subject to Section 14.2. The Transferee, upon taking title (or in the case of a ground lease, possession) of the Transfer Property shall succeed to all of Vertical Developer’s rights (including the right to Transfer) and obligations under this Agreement that relate to the Transfer Property.

(f) The provisions of this Article 14 shall not be deemed to prohibit or otherwise restrict (1) the granting of Authorizations to facilitate the development, operation and use of the Project Area, in whole or in part, (2) the grant or creation of a Mortgage, (3) the sale or transfer of the Property or a Portion or any interest therein pursuant to foreclosure or the exercise of a power of sale contained in a Mortgage or any other remedial action in connection therewith, or a conveyance or transfer thereof in lieu of foreclosure or exercise of such power of sale, or (4) any Transfer to the Agency, the City, City agencies or any other governmental agency. This Article 14 shall not create any obligation on or duty of a Mortgagee other than as set forth in Article 13.

14.2 Liability for Default. No Transferee shall be liable for the default by a Transferor in the performance of its obligations under this Agreement before the date of any applicable Transfer, except to the extent that such Transferee has specifically agreed to release Transferor from such obligations, provided the foregoing shall not release any Transferee from liability for any ongoing default following the date of Transfer. No Transferor shall be liable for the default by a Transferee in the performance of its obligations following the date of any applicable Transfer except to the extent that such Transferor has specifically agreed to satisfy or cause to be satisfied such obligations (or is an Affiliate of Developer or an Affiliate of Vertical Developer that has not meet the Affiliate Release Threshold and has thus not been released under Section 14.1(d)).

14.3 Restrictions on Speculation. Vertical Developer represents and warrants to the Agency that it is acquiring the Property and entering into this Agreement for the purpose of developing and operating the Property in accordance with the terms of this Agreement, and not for speculation or excess profit-taking in land.

14.4 Restrictions on Agency Transfer. This Agreement shall not restrict the Agency’s right to Transfer all or any portion of the Project Area to which it holds title; provided that the Agency shall not Transfer its rights and obligations under this Agreement to any party other than as required by operation of law. The Agency agrees, however, not to Transfer any portion of the Project Area or any interest therein acquired by it to any Person where such Transfer would preclude the Agency’s or Vertical Developer’s performance under this Agreement or the uses, densities, rights or intensity of development contemplated under this Agreement or the Redevelopment Documents.
14.5 **Sale of Individual Residential Units.**

(a) **Applicability of Transfer Restrictions.**

(i) Notwithstanding any other provision of this Agreement, the provisions relating to Transfers shall not apply to buyers of individual Residential Units for which, on or before the date of sale, a Certificate of Occupancy has been issued.

(ii) Except with respect to Inclusionary Units, which shall be handled according to the provisions set forth in the Affordable Housing Plan, the Agency will not: (i) require notice or assumption of obligations for sales or subsequent re-sales of any such Residential Units; (ii) require notice or assumption of obligations, if any, for the transfer of Residential Unit project condominium common areas for which a Certificate of Occupancy has been issued to an owner’s association; nor (iii) impose any obligations with respect to completion of the Improvements on individual Residential Units for which a Certificate of Occupancy has been issued.

(b) **Article 31 Brochure.** Before the first sale of an individual Residential Unit, the Agency and the Department of Public Health shall have provided written approval of the form and contents of a brochure prepared by Developer or Vertical Developer (the “**Article 31 Brochure**”) describing in terms understandable to a layperson the steps that must be taken to comply with Article 31 of the Health Code of the City (“**Article 31**”) if (i) the Person who executes a purchase and sale agreement or other agreement for transfer of an individual Residential Unit together with any land associated with it (“**Owner**”), or (ii) any other Person entitled by ownership, permit, leasehold, or other legal relationship to have the exclusive right to occupy an individual Residential Unit together with any land associated with it under such agreement, and to engage in activities therein that are subject to the requirements of Article 31 (“**Occupant**”), desires to engage in soil disturbance or groundwater disturbance activities subject to the requirements of Article 31.

Vertical Developer must provide a copy of the Article 31 Brochure to any potential Owner or Occupant of an individual Residential Unit no later than the execution of a purchase and sale agreement (or other agreement for transfer of an individual Residential Unit) and obtain the potential Owner’s or Occupant’s written acknowledgement of such Owner’s or Occupant’s receipt, review and understanding of the contents of the Article 31 Brochure. In addition, Vertical Developer must incorporate into any purchase and sale agreement (or other agreement for transfer of an individual Residential Unit) a requirement that before the Owner or Occupant of an individual Residential Unit sells, leases or otherwise transfers the unit to a subsequent Owner or Occupant, the prospective Owner or Occupant (as applicable) of the individual Residential Unit must receive a copy of the Article 31 Brochure and acknowledge the receipt thereof in writing.

(c) **Release by Individual Residential Purchaser.** Vertical Developer shall include in each purchase and sale agreement for a Residential Unit a full waiver and release of any and all claims against the Agency and the City resulting from Vertical Developer’s completion of, or failure to complete, all or any part of the Improvements and Developer’s completion of, or failure to complete, all or any part of the Horizontal Improvements.
(d) **No Benefits to Individual Residential Purchaser.** This Section 14.5 is for the express benefit of Vertical Developer, and nothing herein shall be construed to:
(a) confer on an individual Residential Unit purchaser the status of Transferee or Vertical Developer or (b) provide such purchaser, as opposed to Vertical Developer, with the right to request a Certificate of Completion for an individual Residential Unit.

**ARTICLE 15. GENERAL INDEMNITY**

**15.1 General Indemnification by Vertical Developer.** Except as provided in Section 15.4 and subject to Section 14.2, Vertical Developer agrees to and shall indemnify, reimburse, defend and hold harmless the Indemnified Parties from and against any and all Losses arising out of, in response to, or in any manner relating to (i) the noncompliance of the Improvements with any federal, state or local laws or regulations (except as to those obligations expressly accepted by the Agency under Section 7.2(b)), including those relating to handicap access or any patent or latent defects therein, or (ii) the death of any person or any accident, injury, loss or damage whatsoever caused to any person or to the property of any person that shall occur anywhere on the Property or be caused by any act or occurrence that takes place on the Property, except as to any particular Indemnified Party to the extent such Losses are directly or indirectly caused by the willful misconduct, the active negligence or illegal acts of an Indemnified Party.

Vertical Developer agrees to indemnify, reimburse, defend and hold harmless the Indemnified Parties from and against any and all Losses from or caused by: (a) Vertical Developer’s ownership and/or operation of the Property; (b) Vertical Developer’s development of the Property or failure to develop the Property, including any claims by the purchaser of a Residential Unit relating to the Improvements or a failure to Complete Construction of some or all of the Improvements; (c) any acts or omissions of Vertical Developer relating to the Property; (d) any misrepresentation or breach of representation, warranty or covenant by Vertical Developer in this Agreement; (e) any bodily injury, property damage, accident, fire or other casualty to or involving Vertical Developer or any of its representatives or contractors; and (f) any violation or alleged violation by Vertical Developer, or any representative or contractor of Vertical Developer, of any law, ordinance, or regulation now or hereafter enacted or of any provision of this Agreement except as to any particular Indemnified Party to the extent such Losses are directly or indirectly caused by the willful misconduct, the active negligence or illegal actions of an Indemnified Party.

In addition to the foregoing, Vertical Developer shall indemnify, defend and hold harmless the Indemnified Parties from and against all Losses arising directly or indirectly out of or connected with contracts or agreements entered into by Vertical Developer in connection with its performance under this Agreement, except as to any particular Indemnified Party to the extent caused by the willful misconduct, the active negligence or illegal actions of an Indemnified Party.

**15.2 Common Law Remedies.** The agreement to indemnify, reimburse, defend and hold harmless set forth in Section 15.1 is in addition to, and in no way shall be construed to limit or replace, any other obligations or liabilities which Vertical Developer may have to the Agency in this Agreement, at common law or otherwise except as same may be expressly limited by the provisions of Article 12.
**15.3 Defense of Claims.** The Agency agrees to give prompt notice to Vertical Developer with respect to any suit or claim initiated or threatened against it or any other Indemnified Party that it believes is likely to give rise to a claim for indemnity hereunder. In no event will such notice be given later than the earlier of (a) ten (10) days after valid service of process as to any filed suit or (b) fifteen (15) days after receiving notification of the filing of such suit or the assertion of such claim. Notwithstanding the foregoing, Vertical Developer’s liability hereunder shall not be diminished if notice is not given to Vertical Developer within the time periods specified above, except to the extent the interests of Vertical Developer were materially prejudiced as a result of such delay. At its option, but subject to the reasonable consent and approval of the Agency, Vertical Developer shall be entitled to control the defense, compromise or settlement of any such matter through counsel of Vertical Developer’s own choice; provided, however, that in all cases the Agency shall be entitled to participate in such defense, compromise or settlement at their own expense. If Vertical Developer shall fail, however, in the Agency’s reasonable judgment, within a reasonable time following notice from the Agency alleging such failure (which in no event will exceed thirty (30) days after Vertical Developer’s receipt of such notice), to take reasonable and appropriate action to defend, compromise or settle such suit or claim, the Agency shall have the right promptly to hire counsel at Vertical Developer’s sole expense to carry out such defense, compromise or settlement, which expense shall be immediately due and payable to the Agency upon the appropriate delivery to Vertical Developer of a properly detailed, invoice therefor.

**15.4 Limitations of Liability.** It is understood and agreed that no Indemnified Parties shall be personally liable to Vertical Developer nor shall any officers, directors, partners, shareholders, agents or employees of Vertical Developer (or of its successors or assigns) be personally liable to the Agency in the event of any default or breach of this Agreement by the Agency or Vertical Developer. Further, notwithstanding anything to the contrary set forth in this Article 15, the foregoing indemnities of Vertical Developer shall exclude any Losses governed by the terms of Article 5.

**15.5 Survival.** The terms and provisions of this Article 15 shall survive the expiration or termination of this Agreement.

ARTICLE 16.  **ALL-PARTY INDEMNITY**

**16.1 Indemnity.** Each Party agrees to indemnify, defend and hold harmless each other Party from and against any and all Losses arising from any breach of express representation, warranty or covenant by made by such Party in Section 19.12. This indemnity does not apply, however, to (a) any item, matter, occurrence or condition that was known as of the Effective Date by the Party to whom the express representation, warranty or covenant was made, or (b) any claim relating to the impact, effect or interpretation of AB 26, AB1484, or the dissolution of the Redevelopment Agency.

**16.2 Common Law Remedies.** The agreement to indemnify, defend and hold harmless set forth in Section 16.1 is in addition to, and in no way shall be construed to limit or replace, any other obligations or liabilities which any Party may have to any other Party pursuant to this Agreement at common law or otherwise except as same may be limited by the provisions of Article 12.
ARTICLE 17.  CEQA MITIGATION MEASURES

In order to mitigate the significant environmental impacts of the development contemplated hereby, the construction and subsequent operation of all or any part of the Improvements shall be in accordance with all applicable Environmental Laws and the mitigation measures imposed by the Redevelopment Requirements or otherwise imposed as a condition to any development entitlement (including those measures relating to archeological investigation, study and removal) and including, the Project MMRP. To the extent required by the Project MMRP, such mitigation measures shall be incorporated by Vertical Developer into any contract or subcontract for any environmental investigations.

As part of its obligations under this Article 17, Vertical Developer and its contractors and subcontractors for any environmental investigations, construction or operation of the Improvements which are not subject to Article 31, shall comply with the applicable provisions of the following plans prepared by Developer pursuant to the terms of the Horizontal DDA and Article 31: Dust Control Plan, Health and Safety Plan (including Contingency Plan), Stormwater and Erosion Control Plan, Soil Importation Plan, Transportation and Disposal Plan (if applicable), and Closure Report (collectively, the “Article 31 Plans”). To the extent that the Article 31 Plans originally prepared by Developer do not adequately address how Vertical Developer’s environmental investigations, construction or operation of the Improvements, Vertical Developer, or its contractor or subcontractor, as appropriate, shall prepare and submit to the Agency, for its prior written approval, a supplement to the Article 31 Plans specifying the measures it will take to ensure compliance with the Article 31 Plans’ requirements (“Supplement”). Copies of the approved Supplement shall be provided to the Agency and the Department of Public Health for their files.

Vertical Developer and its contractors and subcontractors for any environmental investigations, construction or operation of the Improvements, shall comply with all applicable laws and requirements (as set forth in Section 19.16), including, all applicable Environmental Laws and the applicable provisions of Article 31, the Article 31 Plans or Supplement. In the event the Agency or Vertical Developer (or any of Vertical Developer’s contractors or subcontractors) receives a complaint concerning compliance with the Article 31 Plans or Supplement during construction of the Improvements, Vertical Developer, together with the contractor or subcontractor that is the subject of the complaint (if applicable), shall meet and confer with the complainant in the presence of the Agency and shall attempt to resolve in good faith, the issues presented in the complaint as expeditiously as possible. The Agency, in its discretion, shall determine whether or not the requirements of the Article 31 Plans or Supplement are being satisfied. In the event the Agency so determines that the requirements of the Article 31 Plans or Supplement are not being satisfied, the Agency may, in its discretion, set a cure period within which Vertical Developer together with any applicable contractor or subcontractor shall comply with the requirements of the Article 31 Plans or Supplement. If the Agency determines (in its sole judgment) that compliance has not been reached within the cure period, the Agency shall be entitled to suspend all Agency and City approval processes until such time as the Agency determines, in its discretion, that appropriate measures have been taken to effect compliance with the requirements of the Article 31 Plans or Supplement.

ARTICLE 18.  INSURANCE
Vertical Developer shall obtain insurance in the forms and amounts set forth in Attachment G.

**ARTICLE 19. MISCELLANEOUS PROVISIONS**

19.1 **Incorporation of Attachments.** Each Attachment to this Agreement is incorporated herein and made a part hereof as if set forth herein in full.

19.2 **Notices.** A notice or communication under this Agreement by any Party to another must be given or delivered by hand, a nationally recognized courier, or registered or certified mail, postage prepaid, addressed as follows:

(a) In the case of a notice or communication to the Agency:

Successor Agency to the San Francisco Redevelopment Agency  
One South Van Ness Avenue, 5th Floor  
San Francisco, California 94103  
Attn: Executive Director  
Reference: Hunters Point Shipyard Phase 1 Project  
Telefacsimile: 415.749.2525

with a copy to:

Successor Agency to the San Francisco Redevelopment Agency  
One South Van Ness, 5th Floor  
San Francisco, California 94103  
Attn: General Counsel  
Reference: Hunters Point Shipyard Phase 1 Project  
Telefacsimile: 415.749.2575

(b) In the case of a notice or communication to Vertical Developer:

[HPS1 Block 52, LLC  
c/o Lennar Urban  
One Sansome Street, Suite 3200  
San Francisco, California 94104  
Attn: Kofi Bonner  
Telefacsimile: 415.995.1778]

With a copy to

Paul Hastings LLP  
55 Second Street, 24th Floor  
San Francisco, California 94105  
Attn: Charles V. Thornton, Esq.  
Telefacsimile: 415.856.7101
Attn: David A. Hamsher, Esq.
Telefacsimile: 415.856.7123

Any notice required under this Agreement that is sent by a Party shall be sent to, or contemporaneously copied to, all of the other Parties.

Every notice or communication given to a Party pursuant to the terms of this Agreement must be in writing and state (or must be accompanied by a cover letter that states) substantially the following:

(1) the section of this Agreement pursuant to which the notice is given and the action or response required, if any;

(2) if applicable, the period of time within which the recipient of the notice must respond thereto;

(3) if applicable, that the failure to object to the notice within a stated time period will be deemed to be the equivalent of the recipient’s approval or disapproval of, or consent to, the subject matter of the notice;

(4) if approval is being requested, shall be clearly marked “Request for Approval”; and

(5) if a notice of disapproval or an objection that requires reasonableness, shall specify with particularity the reasons therefor.

Any mailing address or telefacsimile number may be changed at any time by giving notice of such change in the manner provided above at least ten (10) days before the effective date of the change. All notices under this Agreement shall be deemed given, received, made or communicated on the date personal receipt actually occurs or, if mailed, on the delivery date or attempted delivery date shown on the return receipt, or, if sent by telefacsimile, on the date of transmission with confirmed answer back.

19.3 Time for Performance.

(a) Except as provided herein, all performance (including cure) dates expire at 5:00 p.m. on a Business Day (San Francisco, California time) on the performance or cure date. Provisions in this Agreement relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action is not a Business Day, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding Business Day.

(b) Time is of the essence in the performance of all the terms and conditions of this Agreement.

19.4 Excusable Delay.

(a) Excusable Delay. Each of the following shall be “Excusable Delay”:

-48-
(i) "Force Majeure", which means: war; acts of terrorism; insurrection; strikes or lock-outs not caused by, or outside the reasonable control of, the Party claiming an extension; riots; floods; earthquakes; fires; casualties; acts of nature; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation not caused by, or outside the reasonable control of, the Party claiming an extension; existing environmental conditions affecting the Property that are not the responsibility of Vertical Developer under this Agreement or Developer under the Horizontal DDA, and previously unknown environmental conditions discovered on or affecting the Property or any portion thereof, in each case including any delay caused or resulting from the investigation or remediation of such conditions; litigation that enjoins construction or other work on the Property or any portion thereof, causes a lender to refuse to fund, disburse or accelerate payment on a loan, or prevents or suspends construction work on the Property except to the extent caused by the Party claiming an extension; unusually severe weather; inability to secure necessary labor, materials or tools (provided that the Party claiming Force Majeure has taken reasonable action to obtain such labor, materials or substitute materials on a timely basis); a development moratorium, as defined in section 66452.6(f) of the California Government Code, extending the expiration date of a tentative subdivision map; the occurrence of a Conflicting Law; and any other causes beyond the reasonable control and without the fault of the Party claiming an extension of time to perform;

(ii) "Administrative Delay", which means: (i) any governmental entity’s failure to act within a reasonable time, in keeping with standard practices for such governmental entity, or within the time contemplated in the Interagency Cooperation Agreement or this Agreement (after a timely request to act and when a duty to act arises); and (ii) the taking of any action, or the failure to act, by any governmental entity where such action or failure to act is challenged by Developer or Vertical Developer and the governmental entity’s act or failure to act is determined to be wrong or improper; provided, that delays caused by an applicant’s failure to provide completed applications or required information shall not, by itself, be an Administrative Delay; or

(iii) "CEQA Delay", which means: (i) any time during which there are litigation or other legal proceedings pending involving the certification or sufficiency of the environmental impact report for the Project or any other additional environmental review, regardless of whether development activities are subject to a stay, injunction or other prohibition on development action; and (ii) any time required by the Agency or City to prepare additional environmental documents in response to a pending request for an approval by the City or the Agency that requires additional environmental review; provided that the Party claiming delay has timely taken reasonable actions to obtain any such approval or action.

(iv) "Default Delay", which means the period of any default by the Agency of any of its obligations under this Agreement.

Notwithstanding anything to the contrary in this Section 19.4, the following shall not be Excusable Delay: (1) the lack of credit or financing; or (2) the appointment of a receiver to take possession of the assets of Vertical Developer, an assignment by Vertical Developer for the benefit of creditors, or any other action taken or suffered by Vertical Developer under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute.
(b) **Period of Excusable Delay.** The period of an Excusable Delay shall commence to run from the time of the commencement of the cause. The Party claiming Excusable Delay shall provide notice to the other applicable Parties of such Excusable Delay within a reasonable time following the commencement of the cause. If, however, notice by the Party claiming such extension is sent to the other Parties more than sixty (60) days after the commencement of the cause, the period shall commence to run only sixty (60) days before the giving of such notice, provided that the Party claiming the extension gives notice within a reasonable time following the commencement of the cause.

(c) **Effect of Excusable Delay.** Each extension for Excusable Delay shall cause all future dates in the Schedule of Performance to be extended by the period of the Excusable Delay (in each case as they may have otherwise been extended). An extension for Excusable Delay shall not entitle Vertical Developer (A) to abandon any portion of the Property that it owns or where it has Commenced Construction without first taking appropriate measures to leave the Property in good and safe condition, (B) to extend the Outside Dates for the Complete Construction of the Improvements on which Vertical Developer has Commenced Construction to the extent that Excusable Delay is not related to such activities, (C) to cease paying taxes or assessments on any real property it owns within the Property, (D) to avoid or delay its payment obligations under Article 10 or elsewhere in this Agreement (except to the extent that such payments are tied to the Outside Dates for the Complete Construction of the Improvements or are otherwise expressly affected by Excusable Delay).

(d) **Agreed Upon Delay.** Times of performance under this Agreement may also be extended in writing by the Agency and Vertical Developer, each acting in its respective sole discretion.

(e) **Agency Extensions.** Upon the request of Vertical Developer, the Agency Director may by written instrument and in the Agency Director’s sole and absolute discretion (i) extend for a period not to exceed six (6) months the time for Vertical Developer’s performance of any term, covenant or condition of this Agreement or (ii) permit the curing of any default upon such terms and conditions as it determines appropriate; provided that any such extension or permissive curing shall not operate to release any of Vertical Developer’s obligations for, nor constitute a waiver of the Agency’s rights with respect to, any other term, covenant or condition of this Agreement or any other event of default under this Agreement.

In addition to matters set forth in the immediately preceding paragraph, the Agency may extend the time for performance by any other Party of any term, covenant or condition of this Agreement by a written instrument signed by the Agency Director for a period of up to six (6) months without the execution of a formal recorded amendment to this Agreement, and any such written instrument shall have the same force and effect and impart the same notice to third parties as a recorded amendment to this Agreement.

Vertical Developer acknowledges that any changes in the Schedule of Performance beyond those extensions of time permitted under this Agreement require approval by the Agency Commission as provided in Section 19.11.
The Agency may, in its sole discretion, condition any extension under this Section 19.4(e) of at least six (6) months upon its receipt of a fee in an amount that is equal to not more than the equivalent fee that would be required for a similar extension by the City’s Planning or Building Department.

(f) **Limitations.** In the event that an Excusable Delay exceeds twelve (12) months (except as set forth in the last sentence of this Section 19.4(f)), the Parties shall meet and confer in good faith on mutually acceptable changes to the Project that will allow development of the Project to proceed to the extent possible notwithstanding the event or events causing such Excusable Delay. In the event the Parties are unable to agree, either Vertical Developer or the Agency may commence a thirty (30) day mediation between Vertical Developer and the Agency before a single mediator at JAMS in the City in accordance with the applicable mediation rules of JAMS in an attempt to resolve the question of whether there is, or continues to be, an Excusable Delay. Any such mediation will be limited to the matter described in the preceding sentence, shall be conducted in accordance with the rules and regulations of JAMS and shall not be binding on the Parties. Notwithstanding anything to the contrary in this Agreement, in no event shall an Excusable Delay extend for a period greater than (i) for litigation, three (3) months after a final, non-appealable judgment is issued or affirmed, (ii) for any other Excusable Delay (other than CEQA Delay), forty-eight (48) months after the start of the Excusable Delay. There shall be no cutoff date for a CEQA Delay.

19.5 **Attorneys’ Fees.**

(a) Should any Party institute any action or proceeding in court to enforce any provision hereof or should the Agency institute any action or proceeding in court for damages by reason of an alleged breach of any provision of this Agreement, the prevailing party shall be entitled to receive from the losing party court costs or reasonable, out-of-pocket expenses incurred by the prevailing party, including expert witness fees, document copying expenses, exhibit preparation costs, carrier expenses and postage and communication expenses, and such amount as the court may adjudge to be reasonable attorneys’ fees for the services rendered the prevailing party in such action or proceeding. Attorneys’ fees under this Section 19.5 include attorneys’ fees on any appeal, and, in addition, a Party entitled to attorneys’ fees shall be entitled to all other reasonable costs and expenses incurred in connection with such action.

(b) For purposes of this Agreement, reasonable fees of in-house counsel for the Agency or Vertical Developer shall be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience in the subject matter area of the law for which the Agency’s or Vertical Developer’s in-house counsel’s services were rendered who practice in the City in law firms.

(c) Notwithstanding anything in this Section 19.5, those disputes required to be resolved pursuant to arbitration and mediation, as set forth in Article 11, shall be governed according to the provisions set forth in Article 11.

19.6 **Eminent Domain.** The exercise by the Agency of its eminent domain power with regard to any portion of the Property owned by Vertical Developer in a manner that precludes performance by Vertical Developer of any of its material obligations (or would otherwise give
rise to an Vertical Developer Default) hereunder shall constitute a breach by the Agency of its obligations under this Agreement.

19.7 **Non-Merger in Deed.** None of the provisions of this Agreement are intended to, or shall be, merged by reason of the Deed transferring title to the Property from Developer to Vertical Developer or any successor in interest, and any such Deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

19.8 **Successors and Assigns/No Third Party Beneficiary.** Subject to the provisions of Article 14, this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Agency and Vertical Developer. Except as expressly provided otherwise in this Agreement, as for instance in regard to the City, Mortgagees and Developer, this Agreement is made and entered into only for the protection and benefit of the Parties and their respective successors and assigns, and no other Person shall have or acquire any right or action of any kind based upon the provisions of this Agreement.

19.9 **Estoppel Certificates.** Each Party may request an estoppel certificate from one or more of the Parties from time to time in accordance with this Section 19.9. The Mortgagee may request an estoppel certificate from the Agency from time to time in accordance with this Section 19.9. The Agency or Vertical Developer, as applicable, shall within fifteen (15) days after receipt of a written request from any such Person execute and deliver to the requesting Person an estoppel certificate certifying to the requesting Person the following information:

(a) Whether or not this Agreement is unmodified and in full force and effect. If there has been a modification of this Agreement, the certificate shall state that this Agreement is in full force and effect as modified, and shall set forth the modification, and if this Agreement is not in full force and effect, the certificate shall so state;

(b) Whether or not the delivering Party contends that the other Party has committed an event of default under this Agreement or whether any event, act or omission has occurred that, with notice and the expiration of any cure period without cure, would become an event of default by the other Party;

(c) Whether or not there are then existing set-offs or defenses against the enforcement of any right, remedy, duty or obligation of the other Party;

(d) Where a Mortgagee or Vertical Developer is the requesting Party, whether or not the Horizontal DDA is unmodified and in full force and effect. If there has been a modification of the Horizontal DDA, the certificate shall state that the Horizontal DDA is in full force and effect as modified, and shall set forth the modification, and if the Horizontal DDA is not in full force and effect, the certificate shall so state; and

(e) Where a Mortgagee or Vertical Developer is the requesting Party, whether or not the Agency contends that Developer has committed an event of default under the Horizontal DDA or whether any known event, act or omission
has occurred that, with notice and the expiration of any cure period without cure, would become such an event of default by Developer.

19.10 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be deemed an original, and all of which together shall constitute one and the same instrument. Delivery of this Agreement may be effectuated by hand delivery, mail, overnight courier or electronic communication (including by PDF sent by electronic mail, facsimile or similar means of electronic communication). Each Party agrees to promptly deliver an executed original of this Agreement with its original signature to the other Party, but a failure to do so shall not affect the enforceability of this Agreement, it being expressly agreed that each Party shall be bound by its own electronically delivered signature and shall accept the electronically delivered signature of the other Party.

19.11 **Amendments; Waiver.** Any amendment to this Agreement must be in writing, express the intent to amend this Agreement and be signed by the Agency and Vertical Developer, in each case by a Person having authority to do so on behalf of such party. Any waiver of any provision of this Agreement by a Party must be in writing and signed by a Person having authority to execute such a waiver behalf of such Party. Vertical Developer acknowledges that, except to the extent explicitly set forth in this Agreement, the consent of the Agency Commission is required for a Person to have authority to execute an amendment to this Agreement on behalf of the Agency.

19.12 **Authority and Enforceability.** Vertical Developer and the Agency each represent and warrant to the other that the execution and delivery of this Agreement, and the performance of its respective obligations hereunder, have been duly authorized by all necessary action on its part, and will not conflict with, result in any violation of, or constitute a default under, any provision of any agreement or other instrument binding upon or applicable to it, nor of any present law or governmental regulation or court decree binding upon or applicable to it. Notwithstanding anything in this Section 19.12 to the contrary, the Parties acknowledge that there may be, from time to time, additional requisite action by the Agency Commission in connection with this Agreement.

19.13 **References.** Wherever in this Agreement the context requires, references to the masculine shall be deemed to include the feminine and the neuter, and references to the singular shall be deemed to include the plural.

19.14 **Correction of Technical Errors; Amendments.** If by reason of inadvertence, and contrary to the intention of Vertical Developer and the Agency, errors are made in this Agreement in the identification or characterization of any title exception, in a legal description or the reference to or within any Attachment with respect to a legal description, in the boundaries of any parcel in any map or drawing which is an Attachment, or in the typing of this Agreement or any of its Attachments, the Parties by mutual agreement may correct such error by memorandum executed by them without the necessity of amending this Agreement.

19.15 **Brokers.** The Parties each represent and warrant to the other that they have not employed a broker or a finder in connection with the transactions contemplated by this Agreement, and agree to defend, indemnify and hold the other Parties harmless from any Losses
arising from or in connection with the claims of any broker or finder asserted through the indemnifying Party.

19.16 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California. All references in this Agreement to local laws, statutes and regulations shall be to the Applicable City Regulations (as defined in the Redevelopment Plan).

19.17 **Compliance with the Law.** It is the responsibility of Vertical Developer to be informed of local, state and federal laws and requirements applicable to this Agreement and to assure that all of its activities on the Property are in compliance with those laws and requirements.

19.18 **Effect on Other Party’s Obligation.** In the event Vertical Developer’s or the Agency’s performance is excused or the time for performance is extended pursuant to Section 19.4, in either case in accordance with the terms of this Agreement, the performance of the applicable Party that is conditioned on such excused or extended performance shall also be excused or extended unless, in the case of an extension, the Agency specifically refuses to excuse such performance when granting the extension.

19.19 **Table of Contents; Captions; Defined Terms.** The Table of Contents is for the purpose of convenience of reference and is not to be deemed or construed in any way as a part of this Agreement or as supplemental thereto or amendatory thereof. Any caption preceding the text of any Section, paragraph or subsection or in the Table of Contents is included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement. The title of any defined term is for reference purposes only and the common meaning thereof shall be disregarded in the construction and interpretation of each such defined term.

19.20 **No Gift or Dedication.** Except as otherwise specified herein, this Agreement shall not be deemed to be a gift or dedication of any portion of the Property to the general public, for the general public, or for any public use or purpose whatsoever. Vertical Developer shall have the right to prevent or prohibit the use of the Property or portion thereof, owned by Vertical Developer, including common areas and buildings and improvements, by any Person for any purpose inimical to the operation of a private, integrated mixed use project as contemplated by this Agreement. Where in fact dedication occurs, it must be evidenced by an express written offer of dedication for specified purposes; duly executed by Vertical Developer and written acceptance of the dedication for such purposes by the Agency, City, City agency or Community Facilities District, as applicable. The offer of dedication and acceptance shall be recorded in the Official Records.

19.21 **Severability.** Invalidation of any provision of this Agreement, or of its application to any Person, by judgment or court order shall not affect any other provision of this Agreement or its application to any other Person or circumstance, and the remaining portions of this Agreement shall continue in full force and effect, unless enforcement of this Agreement as invalidated would be unreasonable or grossly inequitable under all relevant circumstances or would frustrate the fundamental purposes of this Agreement.
19.22 Entire Agreement; Supersede. This Agreement contains all of the representations and the entire agreement by and between Vertical Developer and the Agency with respect to the subject matter of this Agreement. Any prior correspondence, memoranda, agreements, warranties or representations relating to such subject matter are superseded in total 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 Vertical Developer or the Agency or any other Person, and no court or other body shall consider those drafts in interpreting this Agreement. Nothing in this Section 19.22 shall be construed to limit or interpret the Purchase Agreement, which remains in full force and effect in accordance with its terms.

19.23 No Party Drafter. Although certain provisions of this Agreement were drafted by the Agency and certain provisions may have been drafted by Vertical Developer, the provisions of this Agreement shall be construed as a whole and not strictly for or against any one Party in order to achieve the objectives and purposes of the Parties.

19.24 Further Assurances. Vertical Developer and the Agency each covenant, on behalf of itself and its successors, heirs and assigns, to take all actions and to do all things, and to execute, with acknowledgment or affidavit if required, any and all documents and writings that may be reasonably necessary or proper to achieve the purposes and objectives, or to correct inadvertent errors in the drafting of this Agreement. The Agency Director is authorized to execute on behalf of the Agency any closing or similar documents and any contracts, agreements, memoranda or similar documents with state, regional and local entities or enter into any tolling agreement with any Person that are necessary or proper to achieve the purposes and objectives of this Agreement, if the Agency Director determines that the document or agreement is necessary or proper and is in the Agency’s best interests.

19.25 Approvals and Consents. Unless otherwise expressly provided in this Agreement or in the Vertical Design Review and Document Approval Procedure, whenever approval, consent or satisfaction is required of Vertical Developer or the Agency pursuant to this Agreement, it shall not be unreasonably withheld, conditioned or delayed. The reasons for disapproval of consent shall be stated in reasonable detail in writing. Approval by Vertical Developer or the Agency of any act or request by another Party shall not be deemed to waive or render unnecessary approval to or of any similar or subsequent acts or requests. Unless otherwise expressly provided in this Agreement or in the Vertical Design Review and Document Approval Procedure, approvals or consents of the Agency will be given by the Agency Director. Whenever approval, consent or any other action is required by the Agency Commission, the Agency Director shall upon the request of Vertical Developer submit such matter to the Agency Commission at the next regularly-scheduled meeting of the Agency Commission for which an agenda has not yet been finalized and for which the Agency can prepare and submit a staff report in keeping with the Agency’s standard practices.

19.26 Interpretation. Unless otherwise specified, whenever in this Agreement, including its Attachments, reference is made to the Table of Contents, any Article, Section or Attachment, or any defined term, the reference shall be deemed to refer to the Table of Contents, Article, Section or Attachment, or defined term of this Agreement. Any reference to an Article or Section includes all subsections and subparagraphs of that Article or Section. The use in this
Agreement of the words “including”, “such as” or words of similar import when following any general term, statement or matter shall not be construed to limit such statement, term or matter to the specific items or matters, whether or not language of non-limitation, such as “without limitation” or “but not limited to” or words of similar import, is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter. In the event of a conflict between the Recitals and the remaining provisions of the Agreement, the remaining provisions shall prevail.

19.27 Represented by Counsel. Vertical Developer and the Agency each acknowledges, warrants and represents that it has been fully informed with respect to, and represented by counsel of its choice in connection with the rights and remedies of and waivers by it contained in this Agreement and after such advice and consultation has presently and actually intended, with full knowledge of its rights and remedies otherwise available at law or in equity, to waive and relinquish those rights and remedies to the extent specified in this Agreement, and to rely solely on the remedies provided for in this Agreement with respect to any event of default by another Party, or any other right that Vertical Developer or the Agency seeks to exercise. The language of this Agreement must be construed as a whole according to its fair meaning.

19.28 Recordation. The Agency shall cause this Agreement to be recorded in the Official Records promptly following the execution and delivery of this Agreement by the Agency and Vertical Developer.

19.29 Community Benefits Plan. The Agency hereby acknowledges and agrees that the inclusion of the Community Benefits Plan in this Agreement satisfies Developer’s obligation to enter into the “Assumption Agreement” referenced in section 2.1 of the Community Benefits Agreement. Except for the foregoing, the Community Benefits Plan does not amend or limit the Community Benefits Agreement or Developer’s obligations thereunder.

19.30 Conflicts. In the event of a conflict between the terms of this Agreement and the Purchase Agreement, the terms of this Agreement shall prevail.

19.31 Numbers. For purposes of calculating a number (that is required to be a whole number) under this Agreement, 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.

19.32 Cooperation and Non-Interference. Subject to the CCRL and any other applicable laws or regulations, Vertical Developer and the Agency shall each refrain from doing anything that would render its performance under this Agreement impossible, and subject to Article 12 each shall do everything that this Agreement contemplates that the Party shall do to accomplish the objectives and purposes of this Agreement.

19.33 Notice of Termination. Unless otherwise specified herein, in the event of any termination of this Agreement in whole or in part in accordance with the terms of this Agreement, the terminating Party shall first provide the other Parties with no less than fifteen (15) days prior notice by delivery of a copy of the proposed Notice of Termination and may, after the expiration of such fifteen (15) day notice, cause the recordation of such Notice of
Termination in the Official Records. Any “Notice of Termination” shall be in recordable form and describe the legal parcel containing the Property, or Portion, to which such termination pertains. Following the recordation of any Notice of Termination, the terminating Party shall promptly provide a conformed copy of such recorded Notice of Termination to the Agency, any applicable Mortgagee, Developer and Vertical Developer. The recordation of a Notice of Termination shall not affect in any manner the rights of the Agency, any applicable Mortgagee or Vertical Developer to (i) contest the terminating Party’s right to cause such recordation or (ii) assert any right, title or interest in or to this Agreement with respect to such Property or Portion. Nothing in this Section 19.33 shall be deemed to grant any Party any rights to terminate this Agreement that are not otherwise specified in this Agreement.

19.34 Plans on Record with Agency. The most recent versions of the Attachments, as such Attachments may be amended or supplemented from time to time in accordance with this Agreement or the terms of such Attachments, shall not be required to be recorded but shall be kept on file with the Agency. The Agency and Vertical Developer shall update or supplement the Schedule of Performance from time to time to reflect changes to the same as permitted in this Agreement. Full color copies of all recorded documents are also on file with the Agency. All documents on file with the Agency shall be made available to members of the public at reasonable times in keeping with the Agency’s standard practices.

19.35 Survival. Any release, partial release, expiration or termination of this Agreement shall not affect any provision of this Agreement that, by its express term, is intended to survive the expiration or termination of this Agreement. Provisions of applicable Agency Policies shall survive any such release, partial release, expiration or termination of this Agreement until the sooner of (i) with respect to any Residential Unit or Residential Project constructed in accordance with this Agreement, the date on which such Residential Unit or Residential Project, as applicable, has received a Certificate of Completion and has been sold to a third party for residential use or (ii) expiration of the Redevelopment Plan. Provisions of the Affordable Housing Plan shall run with the land and bind the Property and, upon Complete Construction of the Improvements, the applicable Residential Units, as set forth in the applicable deeds and recorded restrictions. Upon any termination of this Agreement prior to issuance of the final Certificate of Completion, Vertical Developer shall not have the right to proceed with the Improvements and any additional construction must proceed, if at all, under the terms of a new vertical disposition and development agreement with the Agency or, with the written agreement of the Agency, a reinstatement of this Agreement with appropriate agreed upon revisions.

19.36 Developer Acknowledgement. This Agreement is a Vertical DDA (as defined in the Horizontal DDA) executed and delivered pursuant to the Horizontal DDA. By its signature below, Developer consents to this Agreement and acknowledges and agrees that it is not a party to this Agreement (or, for the avoidance of doubt, a Party or one of the Parties). Developer (and its successors and assigns) is an intended third party beneficiary of this Section 19.8, Sections 3.8, 12.1(c), 19.29 and 19.33 and the Community Benefits Plan (with respect to Vertical Developer’s obligations to Developer thereunder). Except for the foregoing third party beneficiary rights, Developer has no rights or obligations under this Agreement, and nothing in this Agreement amends or limits Developer’s rights and obligations under the Horizontal DDA.

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

**AGENCY:**

Authorized by Agency Resolution No. ________________ adopted _____ __, 20__

Approved as to Form:

DENNIS J. HERRERA, City Attorney, as counsel to the Agency

By: ________________
    Charles Sullivan
    Deputy City Attorney

**SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO,**
a public body, corporate and politic, of the State of California

By: ________________
    Name: ________________
    Title: ________________

**VERTICAL DEVELOPER:**

[HPS1 BLOCK 52, LLC,
a Delaware limited liability company]

By: ________________
    Name: ________________
    Title: ________________

**ACKNOWLEDGED AND AGREED:**

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

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

By: ________________
    Name: ________________
    Title: ________________
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.

(Seal)
Notary Public
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.

(Seal)
Notary Public
ATTACHMENT A

Legal Description of the Property
ATTACHMENT B

Map of the Property

[ ATTACHED ]
### ATTACHMENT C

Schedule of Performance

<table>
<thead>
<tr>
<th>Obligation</th>
<th>Estimated Date</th>
<th>Outside Date</th>
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</thead>
<tbody>
<tr>
<td>Commence Construction of Improvements</td>
<td>[March 15, 2015]</td>
<td>[May 1, 2015]</td>
</tr>
<tr>
<td>Complete Construction of Improvements</td>
<td>[July 15, 2016]</td>
<td>1,440 days following the date on which Vertical Developer</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Commences Construction</td>
</tr>
</tbody>
</table>
ATTACHMENT D

Description of Project

The Project is bordered by Friedell Street to the West, Coleman Street to the East, Jerrold Street to the North, and Kirkwood Street to the South. The Project will be comprised of 2 small podium style buildings, 1 large podium style building and 2 town home buildings that sit along the mews. All units will be for-sale. The townhomes are timber-framed buildings, built on grade. Townhomes are three stories tall, each built over its own one- or two-car garage. Townhomes each have their own private backyard and private decks and/or balconies. Private backyards average approximately 650 square feet. Townhomes include a garage and in some cases a bedroom and bathroom on the ground floor, kitchen dining and living areas on the second floor, and bedrooms and bathrooms on the third floor. The flats are three and five story timber-framed buildings, built over a concrete garage podium. Condominiums include 1-bedroom, 2-bedroom and 3-bedroom homes. Each flat has at least one reserved parking space in the shared parking garage. Condominium flats buildings include common area courtyards and several flats come with private decks, patios and/or balconies.
**ATTACHMENT D-1**

**Inclusionary Units in the Project**

Total Residential Units in the Project: 74

For-Sale or For-Rent: For-Sale

<table>
<thead>
<tr>
<th>AMI Percentage</th>
<th>Number of Inclusionary Units</th>
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<tbody>
<tr>
<td>80%</td>
<td>8</td>
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</table>
ATTACHMENT E

Community Benefits Plan

This Community Benefits Plan defines the community benefit obligations of Vertical Developer.

1. CONSTRUCTION ASSISTANCE PROGRAM.

a. Introduction. Under the Community Benefits Agreement, Developer has implemented (and is required thereunder to continue to implement or cause to be implemented) a Construction Assistance Program (as defined in the Community Benefits Agreement). This Section 1 sets forth Vertical Developer’s obligations with respect to the Project relative to the Construction Assistance Program. “BVHP Area Contractors” means contractors and subcontractors (but not including Vertical Developer’s general contractor) that (i) 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; (ii) 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; and (iii) 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.

b. Surety Bond Program. Vertical Developer shall not require any BVHP Area Contractor to provide surety bonds for work on the Project. Vertical Developer shall include in all contracts with Vertical Developer’s contractors on the Project, and require that all contractors provide in their contracts with subcontractors on the Project, that BVHP Area Contractors shall not be required to provide surety bonds for work on the Project. Additionally, such contracts shall state that any request by such contractor or subcontractor to a BVHP Area Contractor to obtain surety bonds for work on the Project shall be an event of default under such contract and shall entitle such BVHP Area Contractor to exercise all remedies at law and in equity.

c. Technical Assistance Program. Under the Community Benefits Agreement, Developer has implemented (and is required thereunder to continue to implement or cause to be implemented) a Technical Assistance Program (as defined in the Community Benefits Agreement). Vertical Developer shall reasonably cooperate with Developer in the implementation of the Technical Assistance Program with respect to the Project as follows:

i. Contractor Liaison. Under the Community Benefits Agreement, Developer has engaged (and is required thereunder to continue to engage or cause to be engaged) a “Contractor Liaison” to, among other things, respond to questions about and provide assistance with completion and submission of bid packages and applications, explain submission and other deadlines, review plans and other materials as necessary and provide
information about programs available to contractors in Phase 1. In all elements of the Project, Vertical Developer shall reasonably cooperate with the Contractor Liaison to provide opportunities to all contractors or subcontractors who seek to work on the Project to be provided with the assistance offered by the Contractor Liaison. Vertical Developer shall notify all prospective contractors and subcontractors, in the applicable bid packages, of the Contractor Liaison and the services provided by the Contractor Liaison.

ii. **Contractor Liaison Office.** As part of the Technical Assistance Program, Developer has established an office for the Contractor Liaison (the “**Contractor Liaison Office**”) in the office established by Developer in Phase 1 as Developer’s project office (the “**Project Office**”). On or before the date of issuance, Vertical Developer shall provide the Contractor Liaison with the plans and specifications for deconstruction, demolition and construction of the Project and a sufficient supply of bid packages, applications and other information pertinent to providing information to contractors about the opportunities for contractors who are performing or wish to perform work on the Project. Vertical Developer shall use good faith efforts to keep the Contractor Liaison and CityBuild informed of upcoming construction opportunities and schedules.

iii. **Contractor Workshops.**

1. **Vertical Development Community Benefits Workshop Series.** Under the Community Benefits Agreement, Developer hosts workshops from time to time as part of a Vertical Development Community Benefits Workshop Series (as defined in the Community Benefits Agreement). These workshops have covered, or will cover, contracting opportunities relating to deconstruction and demolition, infrastructure, and vertical development, as well as general construction industry matters. Vertical Developer shall reasonably cooperate with Developer in conducting the Vertical Development Community Benefits Workshop Series that relate to the Project, including by providing information regarding the following items as they relate to the Project:

   a. Contractor opportunities and applications for bidding process;

   b. Contractor pre-qualification process;

   c. Overview of technical assistance program, including plan room overview, Project Office orientation, and introduction of Constructor Liaison;

   d. Required accounting procedures;
e. SBE and local hiring requirements;

f. Bid package review and dissemination;

g. Key dates review;

h. Questions and answers;

i. Safety requirements;

j. Contractor expectations; and

k. Mentorship Program.

Vertical Developer shall work with Developer to provide notice to BVHP Area Businesses no less than fifteen (15) days before any workshop that includes the Project’s contracting opportunities.

2. **General Construction Industry Matters Community Benefits Workshop.** Under the Community Benefits Agreement, Developer hosts workshops from time to time to address general construction industry matters that may include, without limitation, accounting, legal, insurance, labor or other issues related to the construction industry. At the request of Developer, Vertical Developer shall reasonably cooperate with Developer with respect to such workshops that relate to the Project and occur during the term of this Agreement, including by participating in such workshops and providing relevant information related to the Project, and taking such additional actions as may be reasonably requested to promote and enhance such workshops.

d. **Financial Assistance Program.** Under the Community Benefits Agreement, Developer implemented (and is required thereunder to continue to implement or cause to be implemented) a Financial Assistance Program (as defined in the Community Benefits Agreement) to assist BVHP Area Contractors. At the request of Developer, Vertical Developer shall reasonably cooperate with Developer with respect to the Financial Assistance Program in relation to the Project, including by informing BVHP Area Contractors on the Project of the opportunities and assistance that may be available to them under the Financial Assistance Program. In addition, within sixty (60) days before the later of (i) the advertisement of the first contract for the Improvements or (ii) the Reference Date, Vertical Developer shall contact financial institutions with which it does business and other financial institutions that have a reputation for assisting with community development projects (“Financial Partners”) to introduce them to the Project, to explain the general financial needs of the BVHP Area Contractors, and to use good faith commercially reasonable efforts to encourage the Financial Partners to assist BVHP Area Contractors in accessing necessary financing such as lines of credit, loans, or other financial assistance based on conventional underwriting practices.
as follows:

i. **Property Tour and Immersion Event.** Vertical Developer shall conduct a property tour and immersion event at the Project for the Financial Partners. The event shall also include a discussion regarding the financial needs of the BVHP Area Contractors.

ii. **Contractor Introduction Event.** Vertical Developer shall host an event to introduce BVHP Area Contractors to Financial Partners, to review financial needs, to distribute loan applications and to discuss other information required for financial assistance. Such event may be combined with the property tour and immersion event above.

iii. **Technical Assistance Resources.** Under the Community Benefits Agreement, Developer has created a list of technical and financial assistance programs in the BVHP Area and elsewhere available to help BVHP Area Contractors that need to qualify for loans. Vertical Developer shall cooperate with Developer in maintaining and augmenting such list.

iv. **Ongoing.** Vertical Developer shall continue to provide reasonably requested information to Financial Partners regarding the development of the Project.

v. **Coordination with Developer for Events.** Vertical Developer may combine the events described in clauses (i) and (ii) above with similar events hosted by Developer and other vertical developers in Phase 1 so long as there is at least one (1) such event in each calendar year in which a new vertical project commences construction.

e. **Mentorship Program.** Under the Community Benefits Agreement, Developer has implemented (and is required thereunder to continue to implement or cause to be implemented) a Mentorship Program (as defined in the Community Benefits Agreement). The main goals of the Mentorship Program are to increase the volume of work that BVHP Area Contractors win in open competition, broaden the base of activity, increase the long-term stability, and expand the services in the construction industry of such BVHP Area Contractors. As of the Effective Date, the Mentorship Program Sponsor is Renaissance Entrepreneurship Center. At the request of Developer, Vertical Developer shall reasonably cooperate with Developer and the Mentorship Program Sponsor with respect to the Mentorship Program to the extent related to the Project, including by, as applicable, providing information for Developer’s reporting and workshop obligations under the Community Benefits Agreement. Vertical Developer shall display information about the Mentorship Program on its website for the Project, participate in Mentorship Program meetings at the request of Developer or the Mentorship Program Sponsor, and encourage participation in the Mentorship Program, working with both Mentors and Proteges to further the goals of the Mentorship Program and available opportunities for mentoring in the Project. In addition,
Vertical Developer shall use good faith efforts to encourage its contractors to partner with BVHP Area SBEs (as defined in the SBE Policy) construction-related enterprises immediately and participate in the Mentorship Program that will provide measurable results for BVHP Area SBE construction-related enterprises. Vertical Developer shall require companies that bid on work for the Project to submit documentation that outlines their SBE experience, including the names of the SBE entities such companies have partnered with, the level of guidance and support offered to the SBE entity by such companies, and the level of success that these SBE enterprises have accomplished as part of their business or mentorship relationship with such companies. Contract bidders shall also be required to describe how they will utilize a SBE partner during the applicable phase of the Project.

f. **Business Incubation Space Program.** Developer retains the obligation to provide the Business Incubator Space in accordance with section 7 of the Community Benefits Agreement. Vertical Developer shall have no obligation to provide space in connection with the Business Incubator Space Program (as defined in the Community Benefits Agreement). Vertical Developer shall use good faith efforts (at no cost to Vertical Developer) to refer BVHP Area Business to, and reasonably assist the Agency and Developer with efforts to locate new businesses in, the Community Facilities Space in the CP/HPS2 Project and/or the business incubation program planned by the Agency for Building 813.

2. **HOME BUYERS’ ASSISTANCE PROGRAM.**

a. **Introduction.** Under the Community Benefits Agreement, Developer has implemented (and is required thereunder to continue to implement or cause to be implemented) a Home Buyers’ Assistance Program (as defined in the Community Benefits Agreement). This Section 2 sets forth Vertical Developer’s obligations with respect to the Project relative to the Home Buyers’ Assistance Program.
b. **Program Description.**

i. **First Time Homebuyer Down Payment and Financing Assistance.**

1. Vertical Developer shall provide information to qualified buyers of Market-Rate Residential Units regarding any 0% downpayment options offered by Developer’s preferred lenders under the Community Benefits Agreement and/or Vertical Developer’s preferred lenders for the Project. In addition, Vertical Developer shall use good faith efforts to work with the Agency and local community economic development organizations to identify (i) programs that could be the source of “gift” funds that may be used by qualified buyers for two percent (2%) of the required down payment on an Affordable Residential Unit in the Project pursuant to the Affordable Housing Plan, and (ii) programs that could provide other forms of financial assistance for such qualified buyers, and to provide qualified buyers with a list of such programs.

2. Vertical Developer shall use good faith efforts to work with its preferred lenders to provide information to qualified home buyers regarding any available fixed-rate financing for low and moderate-income first-time home buyers (individuals who have not owned a home within the past three (3) years).

ii. **Homeownership Counseling Services.** Vertical Developer shall notify Homeownership SF of the opportunity for homeownership in the Project in advance of marketing homes for sale to the general public. Vertical Developer shall also provide an orientation to the counseling services’ staff and application information for prospective homeowners.

iii. **Outreach.** Within sixty (60) days after the Effective Date, Vertical Developer shall conduct an outreach program in cooperation with the CAC and local credit counseling services to ensure BVHP Area residents are aware of the homeownership opportunities in the Project well in advance of homes being marketed for sale. On a quarterly basis, after the initial outreach program, Vertical Developer in cooperation with the CAC and local credit counseling services shall conduct seminars on homeownership opportunities in the Project and the qualification process, including applicable requirements, including qualification requirements, of the Affordable Housing Plan. Such seminars may be held in cooperation with Developer and other “Vertical Developers” developing projects in Phase 1. Vertical Developer shall also provide information on the Agency’s Limited Equity Homeownership Program, prepared by the Agency, to all prospective buyers of Affordable Residential Units or as otherwise requested by the Agency, all in accordance with the Affordable Housing Plan. On request of the Agency, Vertical Developer shall provide
the Agency with any materials provided by Vertical Developer in such seminars.

iv. **Failure to Comply.** If Vertical Developer fails to comply, and until it does comply, with the terms of the Home Buyers’ Assistance Program (as they may be extended or otherwise waived by the Agency Director in his or her reasonable discretion), at the sole option of the Agency, and upon prior written notice, (i) neither Universal American Mortgage Company of California nor any other affiliate mortgage company of Vertical Developer shall be permitted to pre-qualify prospective homeowners in the Project or provide mortgages for prospective homeowners in the Project and (ii) Vertical Developer shall be prohibited from conducting any marketing, entering into any home sales contracts or closing any home sales, in each case with respect to the Project.

3. **OUTREACH PROGRAM.**

   Under the Community Benefits Agreement, Developer has implemented (and is required thereunder to continue to implement or cause to be implemented) an Outreach Program. The Outreach Program is to facilitate the dissemination of important information, deadlines and other important information regarding the programs described in this Community Benefits Plan and in the Community Benefits Agreement to BVHP Area Businesses and residents. Vertical Developer shall from time to time, including upon request therefor from Developer or the Agency, provide information to Developer, the Agency and BVHP Area Businesses regarding deadlines and updates for the Project for inclusion in the Outreach Program. A list of applicable BVHP Area Businesses is maintained by and available from the Agency or Developer.
ATTACHMENT F

Affordable Housing Plan

This Attachment F describes the affordable housing plan for the Project, as applied to Vertical Developer. It does not limit or amend the Affordable Housing Program applicable to Developer under Phase 1 as set forth in the Horizontal DDA.

Section 1  Definitions.

Terms not defined in this Affordable Housing Plan have the meanings given to them in the Agreement.

“Affordable” means: (a) with respect to a For-Rent Residential Unit, a monthly Rental Rate, including a Utility Allowance, that does not exceed thirty percent (30%) of the AMI Percentage applicable to such For-Rent Residential Unit multiplied by the Area Median Income, based upon the Imputed Household Size for such For-Rent Residential Unit; and (b) with respect to a For-Sale Residential Unit, a purchase price based on a five percent (5%) down payment and a rate for a thirty (30) year fixed mortgage based on the higher of: (1) the ten-year rolling average interest rate, as calculated by the Agency based on data provided by Fannie Mae, Freddie Mac, or an equivalent, nationally recognized mortgage financing institution, or (2) the current, commercially reasonable rate available through an Agency-approved lender, with a total of annual payments for principal, interest, taxes, assessments, insurance and HOA dues that do not exceed thirty-three percent (33%) of the Program Income Level multiplied by the AMI.

“Agreement” means, and has the definition set forth in, that certain Vertical Disposition and Development Agreement (Hunters Point Shipyard Phase 1 – Block 52) to which this Affordable Housing Plan is attached.

“AMI Percentage” means the percentage of AMI applicable to a specified Inclusionary Unit as set forth in attachment D-1 to the Agreement, which percentage shall be eighty percent (80%), as applicable.

“Area Median Income” or “AMI” means the area median income for a household, adjusted solely for Imputed Household Size, and not adjusted for other factors, including HUD high cost adjustments, as determined by HUD for the San Francisco Primary Metropolitan Statistical Area, from time to time.

“Close of Escrow” means the recordation of the deed evidencing the conveyance of Option Units to the Agency.

“Declaration of Restrictions for For-Rent Affordable Residential Units” means a document substantially in the form attached as Exhibit 1, as such form is amended from time to time in accordance with the terms of the Agreement and this Affordable Housing Plan.

“Declaration of Restrictions for For-Sale Affordable Residential Units and Option to Purchase Agreement” means a document substantially in the form attached as Exhibit 2, as such
form is amended from time to time in accordance with the terms of the Agreement and this Affordable Housing Plan.

“Escrow” has the meaning set forth in Section 2.6(h).

“For-Rent” or “Rental” means a Residential Unit that is intended at the time of Complete Construction to be occupied subject to a lease, and not offered For-Sale.

“For-Sale” or “Sale” means a Residential Unit that is intended at the time of Complete Construction to be offered for sale, e.g., as a condominium for individual Residential Unit ownership.

“HOA” has the meaning set forth in Section 2.3(c).

“HUD” means the United States Department of Housing and Urban Development.

“Imputed Household Size” means, for For-Rent Residential Units, the total number of bedrooms in the Residential Unit plus one (1), and for For-Sale Residential Units, one (1) person for one-bedroom Residential Units, and one (1) person per bedroom plus one (1) for all other Residential Units.

“Inclusionary Unit” means an Affordable Residential Unit to be constructed by Vertical Developer pursuant to this Affordable Housing Plan and the Agreement.

“Inclusionary Unit Owner” means the Person holding fee title to an Inclusionary Unit.

“Market Rate” or “Market Rate Residential Unit” means a Residential Unit that has no restrictions under this Affordable Housing Plan or the Agreement with respect to affordability levels or income restrictions for occupants.

“Memorandum of Option” means a document substantially in the form attached as Exhibit 3.

“Option Purchase Price” has the meaning set forth in Section 2.6(e).

“Option Units” has the meaning set forth in Section 2.6(a).

“Option Unit Exceptions” has the meaning set forth in Section 2.6(c).

“Project Housing Data Table” means information provided by Vertical Developer to the Agency in accordance with Section 2.7.

“Program Income Level” means the percentage that is five percent (5%) below the AMI Percentage for such For-Sale Inclusionary Unit. Accordingly, the Program Income Level for For-Sale Inclusionary Units targeting households at eighty percent (80%) of AMI is seventy five percent (75%).

“Release of Option Rights” means the document, substantially in the form attached as Exhibit 4, in which the Agency releases its right to purchase Vertical Developer Residential Units
in a specific Residential Project, other than those specific Option Units that the Agency has elected to purchase under this Affordable Housing Plan.

“Rent” or “Rental Rate” means, for each For-Rent Affordable Residential Unit, the total of annual payments for (a) use and occupancy of the Residential Unit and land and facilities associated therewith, (b) any separately charged fees or services assessed by Vertical Developer that are required of all tenants, other than security deposits, (c) a reasonable allowance for utilities that are payable by the tenant, not including telephone service (which number shall not exceed the Utility Allowance) and (d) any taxes or fees charged for use of the land and facilities other than by Vertical Developer.

“Residential Project” means a development in the Project containing Residential Units and possibly containing other uses permitted under the Redevelopment Requirements, that is undertaken by Vertical Developer through the Agreement.

“Residential Unit” means a dwelling unit consisting of a room or suite of two (2) or more rooms that is designed for residential occupancy.

“Title Company” means Chicago Title Insurance Company or such other title company as may be approved from time to time by Vertical Developer and the Agency.

“Title Report” has the meaning set forth in Section 2.6(b).

“Utility Allowance” means, if the cost of utilities (except telephone) and other services for a For-Rent Affordable Residential Unit is the responsibility of the occupying household, an amount equal to the estimate made by the San Francisco Housing Authority or, if not available, HUD, of the monthly costs of a reasonable consumption of such utilities and other services for the For-Rent Affordable Residential Unit by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary and healthful living environment.

Section 2 Housing Program Under Horizontal DDA.

2.1 Obligations under Horizontal DDA. Vertical Developer shall have no obligations under the Horizontal DDA, including performance of the overall affordable housing program pursuant to attachment 22 thereto, and including any requirement regarding percentage allocation of For-Rent Affordable Residential Units and For-Sale Affordable Residential Units required for the entirety of Phase 1 under the Horizontal DDA.

2.2 For-Sale and For-Rent Residential Units. Vertical Developer may cause Residential Units in a Residential Project to be offered either For-Sale or For-Rent. The determination of whether the Residential Units will be For-Sale or For-Rent is set forth in attachment D-1 to the Agreement, and applies to all of the Residential Units in the Project. Before Complete Construction of the Project, Vertical Developer may change the Residential Units from For-Sale to For-Rent, or vice-a-versa, by notification to the Agency. Following Complete Construction of the Project, Vertical Developer may request the ability to rent a For-Sale Residential Unit or sell a For-Rent Residential Unit based on market conditions, with recordation of the appropriate declarations and compliance with the marketing plan as required by this Affordable Housing Plan, and any such request shall be subject to the prior written approval of the
Agency Director, which approval shall not be unreasonably withheld, conditioned or delayed. Subject to any such approval, nothing in this Section 2.2 shall limit the requirements of this Affordable Housing Plan that a Declaration of Restrictions for For-Rent Affordable Residential Units be recorded against each For-Rent Affordable Residential Unit, that each For-Sale Affordable Residential Unit be sold to qualified members of the public using a Declaration of Restrictions for For-Sale Affordable Residential Unit and Option to Purchase Agreement (and the other documents required thereby).

2.3 Inclusionary Unit Requirement.

(a) Allocation. The Project shall include the total number of Residential Units and the total number of Inclusionary Units with the specified AMI Percentages set forth in attachment D-1 to the Agreement.

(b) Affordability. The pricing of Inclusionary Units is pursuant to this Affordable Housing Plan and the Agency’s Limited Equity Homeownership Program, as may be amended by the Agency from time to time consistent with the Agreement and this Affordable Housing Plan. The maximum prices shall be set for affordability shall be based upon the Imputed Household Size and Program Income Level, as set forth in the definition of “Affordable”.

(c) For-Sale Inclusionary Unit Expenses. Homeowner’s association (“HOA”) dues for Inclusionary Units shall not exceed the amounts permitted therefor under the covenants, conditions and restrictions applicable to the Project as approved by the Agency Director. No HOA dues will be payable by tenants in For-Rent Inclusionary Units, and For-Sale Inclusionary Units shall not be subject to any additional assessment (other than the permitted HOA dues) within Vertical Developer’s control.

(d) Design. The design of the Inclusionary Units shall be substantially equivalent in size, location, amenities and quality and reflect the mix of Residential Unit sizes and room configurations of, and be dispersed among, the Market Rate Residential Units in each Residential Project.

(e) Marketing and Operations Guidelines. Vertical Developer’s obligations with respect to the marketing and operation of the Residential Units, including the rental rates of For-Rent Inclusionary Units, sales prices of For-Sale Inclusionary Units, tenant qualifications and reporting requirements and Vertical Developer’s obligations with respect to marketing and occupancy preferences for the Market Rate Residential Units are described in Exhibit 6.

2.4 Continued Affordability of Inclusionary Units. In no event later than the first rental of a For-Rent Inclusionary Unit or sale of a For-Sale Inclusionary Unit, if such has not already occurred, Vertical Developer will record against such Residential Unit, as applicable, either the Declaration of Restrictions for For-Rent Affordable Residential Units or the Declaration of Restrictions for For-Sale Affordable Residential Units and Option to Purchase Agreement to ensure continued affordability for a ninety (90) year period after the initial lease or sale of such Residential Unit. Vertical Developer will promptly provide to the Agency a copy of the recorded documents, showing the date of recording and document numbers. Any condominium map for each Residential Project containing Inclusionary Units shall also reflect the above restrictions. Further,
Vertical Developer will upon sale of each For-Sale Inclusionary Unit, promptly provide to the Agency a copy of each recorded grant deed, showing the date of recording and document number. The Inclusionary Unit Owner of the For-Sale Inclusionary Unit shall execute the Short Form Deed of Trust and Assignment of Rents, the Addendum to Deed of Trust, and the Promissory Note Secured By Deed of Trust, in the forms attached as appendices to Exhibit 3. Vertical Developer or the Inclusionary Unit Owner will promptly provide to the Agency a copy of the recorded documents, showing the date of recording and document numbers.

2.5 Disability Access. Vertical Developer shall comply with all applicable federal, state and local disability access laws, including the Americans With Disabilities Act, section 504 of the Rehabilitation Act, the Fair Housing Amendments Act and any other applicable disability access laws. Vertical Developer is responsible for determining those disability access laws applicable to the Project. In addition, prior to occupancy of the Project, Vertical Developer shall provide to the Agency a reasonable written accommodations policy that indicates how Vertical Developer will respond to requests by disabled individuals for accommodations in Residential Units and common areas of the Project.

2.6 Memorandum of Option; Closing.

(a) Option Units. The Agency may purchase up to fifteen percent (15%) of the For-Sale Residential Units in the Project (the “Option Units”) from Vertical Developer (the “Option”). Vertical Developer will record against the Property the Memorandum of Option evidencing the Option, and promptly provide to the Agency a copy of the recorded documents, showing the date of recording and document numbers.

(b) Procedure for Exercise of Option. After the Agency’s final approval of the Construction Documents for a Project containing For-Sale Residential Units and Developer’s determination of the purchase prices that Developer will offer the Residential Units to the public, but in no event earlier than one hundred twenty (120) days or later than sixty (60) days before Vertical Developer begins to offer the Residential Units for sale, Vertical Developer will deliver to the Agency a written notice informing the Agency of such completion and of the purchase prices for the Residential Units (provided, the Agency’s right to acquire Residential Units originally designated For-Rent but subsequently offered For-Sale shall arise when the Agency Director approves any such conversion and is notified of the purchase prices). The notice will include a description of the Residential Units approved (including number of bedrooms and amenities), and a preliminary title report covering the Residential Units issued by the Title Company (the “Title Report”), together with copies of all documents relating to title exceptions showing in the Title Report. The Agency will have ninety (90) days after receipt of the notice (or approval of the conversion from a For-Rent to a For-Sale Residential Unit) and other required information to exercise the Option by written notice to Vertical Developer, specifying in its notice the Residential Units it intends to purchase, which shall be the Option Units with respect to the Project.

(c) Due Diligence. During the ninety (90) day period after the Agency’s receipt of Vertical Developer’s notice and other required information under Section 2.6(b), (i) Vertical Developer will permit the Agency and its designated representatives, at reasonable times and after reasonable notice, to review all non-privileged reports, plans, specifications and other information relating to the approved Residential Units and to inspect the site where the approved Residential
Units are being constructed and (ii) the Agency may object to any exception shown on the Title Report, other than Permitted Exceptions as set forth in the Agreement, or any other liens or encumbrances agreed to by the Agency in the course of Developer’s development of Phase 1 or otherwise contemplated by the Agreement (subject to the Agency’s right to require removal of liens and encumbrances affecting the Residential Unit on or before the Close of Escrow notwithstanding the fact that they are permitted as part of Developer’s development of Phase 1). Subject to the foregoing, if the Agency fails to so object, then the new exception will be deemed to be a Permitted Exception. If the Agency does so object, then Vertical Developer at its cost will remove any exceptions created by or on behalf of Vertical Developer (and Developer will be required to remove any exceptions created by or on behalf of Developer) prior to the Close of Escrow on the Option Unit, and in its sole discretion may elect to remove any other exception to which the Agency objected. If Vertical Developer does so elect, it will notify the Agency within ten (10) days after receipt of the Agency’s objection. The title exceptions to which the Agency did not object, as well as those to which the Agency objected but Vertical Developer elected not to remove, or that are otherwise permitted hereunder are the “Option Unit Exceptions”.

(d) Release of the Option. Within ten (10) days after the Agency exercises its Option or doesn’t, but in no event later than the initial marketing of Residential Units in the Project, the Agency will record against the Residential Units in the Project that are not Option Units a Release of Option Rights, evidencing the Agency’s release of its Option as to such Residential Units, and promptly provide to Vertical Developer a copy of the recorded document, showing the date of recording and document number.

(e) Purchase Price. The Agency shall pay Vertical Developer an “Option Purchase Price” for any Option Units equal to the price of that Residential Unit offered by Vertical Developer to the public minus six percent (6%) of such price. If the Agency does not exercise the Option, but Vertical Developer subsequently reduces the purchase price offered to the public for a Market Rate Unit at any time, then Vertical Developer shall notify the Agency of the reduced purchase price and the Agency shall have the Option to purchase the Residential Units at the reduced price minus six percent (6%) in accordance with the procedures set forth in this Section 2.6.

(f) Time For Payment. Promptly after Complete Construction of an Option Unit, or a number of Option Units for which Complete Construction occurred reasonably contemporaneously, Vertical Developer will deliver to the Agency a written notice of Complete Construction of the Option Units, together with a copy of a recorded final subdivision map for the Project, showing the date of recording and document number, which creates separate legal parcels for each of the Option Units. The Agency shall pay the Option Purchase Price to Vertical Developer through Escrow within thirty (30) days after the later of (i) the Agency’s receipt of Vertical Developer’s notice of Complete Construction, or (ii) the date that is thirty (30) days after the Agency accepts the Option Purchase Price (as it may be reduced from time to time) (the “Close of Escrow”), subject to extensions of such period for any delay caused by Vertical Developer.

(g) Right of Access. After exercise of the Agency’s Option, Vertical Developer will continue to permit the Agency and its designated representatives, at reasonable times and after reasonable notice, to review all non-privileged reports, plans, specifications and other information relating to the Option Units and to inspect the Option Units under construction.
(h) **Escrow.** Within five (5) Business Days after Complete Construction of each Option Unit or a number of Option Units for which Complete Construction occurred reasonably contemporaneously, Vertical Developer shall establish an escrow ("Escrow") with the Title Company and shall notify the Agency in writing of the Escrow number and contact person at the same time it delivers the notice specified in Section 2.6(f).

(i) **Title Policy.** As a condition precedent to the Agency’s obligation to accept conveyance of the Option Units, the Title Company shall be irrevocably committed to issue to the Agency a California Land Title Association owner’s title insurance policy with such endorsements, reinsurance and direct access agreements as the Agency shall reasonably designate and the Title Company shall accept. Such title insurance policy will be in the amount of the Option Purchase Price, and will insure that fee title to the Option Units and all easements appurtenant thereto are vested in the Agency, subject only to the Option Unit Exceptions.

(j) **Closing Costs and Prorations.** Vertical Developer will pay to the Title Company or the appropriate payee thereof transfer taxes, if any, and the Agency shall pay all title insurance premiums. All other closing costs shall be allocated in accordance with the then current custom in the City and County of San Francisco. Ad valorem taxes and assessments, if any, on the Option Units, shall be prorated as of the Close of Escrow. Any such taxes and assessments, including supplemental taxes and escaped assessments, levied, assessed, or imposed for any period up to recordation of the deed, shall be borne by Vertical Developer.

(k) **Escrow Instructions.** At least fifteen (15) days prior to the date specified for Close of Escrow, each party will furnish the Title Company with appropriate escrow instructions consistent with, and sufficient to implement the terms of, the Option, and will contemporaneously furnish a copy of these instructions to the other party. At least two (2) Business Days prior to the date specified for Close of Escrow, each party will deposit into Escrow all documents it is obligated to deposit under this Section 2.6, and at least one (1) Business Day prior to the date specified for Close of Escrow each party will wire transfer into Escrow all funds it is obligated to pay under this Option.

(l) **Deliveries into Escrow.**

1. The Agency will deliver into Escrow:

   (A) the Option Purchase Price; and

   (B) escrow instructions and funds consistent with this Affordable Housing Plan.

2. Vertical Developer will deposit into Escrow:

   (A) a standard title company grant deed for each Option Unit in a form reasonably approved by the Agency, executed by Vertical Developer in recordable form; and

   (B) escrow instructions and funds consistent with this Affordable Housing Plan.
(m) **Conditions Precedent to Closing.**

(1) **Agency Conditions to Closing.** The following are conditions precedent to the Agency’s obligations with respect to the conveyance of the Option Units, to the extent not expressly waived by the Agency by written notice to Vertical Developer:

   (A) The Title Company shall be irrevocably committed to issue to the Agency title insurance required by Section 2.6(i);

   (B) Vertical Developer shall have performed all obligations under this Section 2.6 required to be performed by Vertical Developer prior to the date for Close of Escrow; and

   (C) Vertical Developer shall have delivered to the Agency or the Title Company, as applicable, all instructions and documents to be delivered to the Agency at Close of Escrow under this Section 2.6.

(2) **Vertical Developer Conditions to Closing.** The following are conditions precedent to Vertical Developer’s obligations with respect to the conveyance of the Option Units, to the extent not expressly waived by Vertical Developer by written notice to the Agency:

   (A) The Agency shall have performed all obligations under this Affordable Housing Plan required to be performed by the Agency prior to the date for Close of Escrow; and

   (B) The Agency shall have delivered to Vertical Developer or the Title Company, as applicable, all instructions and documents to be delivered to Vertical Developer or the Title Company at Close of Escrow under this Section 2.6.

(n) **Closing.** Provided that the conditions to the Agency’s obligations and the conditions to Vertical Developer’s obligations with respect to the Option Units have been satisfied or waived, then on the Close of Escrow on the Option Units, the Title Company will record the deed referenced in Section 2.6(l)(2)(A) in the Official Records, issue the title policy referenced in Section 2.6(i), prorate and pay amounts in accordance with Section 2.6(j) and the escrow instructions, release to Vertical Developer the portion of the Option Purchase Price due to Vertical Developer and deliver to the Agency and Vertical Developer signed settlement statements.

(o) **Expiration of Option.** The Option shall automatically expire and all rights and obligations thereunder shall be released and be of no further force and effect after the earlier to occur of: (i) the date the Agency purchases fifteen percent (15%) of the Residential Units developed by “Vertical Developers” (including Vertical Developer) located in Phase 1 or in the Project, or (ii) for a specific Residential Unit, the date the Agency elects not to or fails to purchase the Residential Unit in accordance with this Section 2.6 and Vertical Developer sells that Residential Unit to another Person (i.e., recognizing the Agency’s ongoing right to reconsider the purchase of a Residential Unit whenever Vertical Developer reduces the offered purchase price to the public until it is sold).
(p) **Cooperation With Agency Requests.** Vertical Developer shall reasonably cooperate with requests by the Agency to be a co-applicant on any Agency tax credit financing application for the financing of the Option Units, provided that such reasonable cooperation shall be at no cost to Vertical Developer and Vertical Developer shall assume no liability whatsoever relating to or arising out of Vertical Developer being a co-applicant.

(q) **Binding Arbitration.** In the event of a dispute, the Agency and the affected Vertical Developer agree to submit to binding arbitration by an impartial third party pursuant to article 11 of the Agreement.

### 2.7 Submissions for Project Approvals

In order to verify and to track compliance with the Affordable Housing Program under the Horizontal DDA and this Affordable Housing Plan, Vertical Developer shall submit a Project Housing Data Table as part of the application package for Basic Concept Design approval. The Agency shall review and approve the Project Housing Data Table in accordance with the procedures for Basic Concept Design approval set forth in the Vertical Design Review and Document Approval Procedure and development of the Project shall proceed in accordance with such approvals. The Agency acknowledges and agrees that the Project Housing Data Table for the Project was previously submitted by Vertical Developer and approved by the Agency, a copy of which is attached hereto as Exhibit 5.

(a) **Project Data.** For each Residential Project, the Project Housing Data Table shall identify:

1. The current owner of the applicable real property;
2. The current development status, including:
   
   (A) Whether any Residential Project within the Project has not received Basic Concept Design and Schematic Design approval, and
   
   (B) Whether a Building Permit, Certificate of Occupancy, and/or Certificate of Completion has or have been issued for a Residential Project and the dates thereof;
3. The use and, if such Residential Project has received Schematic Design approval, whether it is a For-Sale or For-Rent Residential Project;
4. The parcel acreage;
5. The maximum building height;
6. The total number of Residential Units;
7. The total number of Inclusionary Units and the AMI Percentages applicable to each of the Inclusionary Units.

### Section 3 Agency Affordable Housing Plan
Subject to the Redevelopment Requirements, from time to time the Agency may modify the forms of the documents used to implement this Affordable Housing Plan (i.e., the form of the Declaration of Restrictions for For-Rent Affordable Residential Units and the Declaration of Restrictions for For-Sale Affordable Residential Units and Option to Purchase Agreement) to reflect changes in Agency policy or applicable law, but these changes will not affect the obligations of Vertical Developer as set forth in this Affordable Housing Plan (except as agreed to by Vertical Developer or as permitted under the terms of the Agreement).
LIST OF EXHIBITS

Exhibit 1  Declaration of Restrictions for For-Rent Affordable Residential Units
Exhibit 2  Declaration of Restrictions for For-Sale Affordable Residential Units and Option to Purchase Agreement
Exhibit 3  Memorandum of Option
Exhibit 4  Release of Option Rights
Exhibit 5  Project Housing Data Table
Exhibit 6  Marketing and Operating Obligations
Exhibit 6-1 Form of Marketing Plan
EXHIBIT 1

DECLARATION OF RESTRICTIONS FOR FOR-RENT AFFORDABLE RESIDENTIAL UNITS

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

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

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

DECLARATION OF RESTRICTIONS FOR FOR-RENT AFFORDABLE RESIDENTIAL UNITS

This DECLARATION OF RESTRICTIONS FOR FOR-RENT AFFORDABLE RESIDENTIAL UNITS (this “Declaration”) is made as of, ________________, 20___ (the “Effective Date”) by HPS1 Block 52, LLC, a Delaware limited liability company (“Owner”), in favor of the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic, of the State of California (the “Agency”). Owner is fee owner of record of that certain real property located in the City and County of San Francisco (the “City”), State of California more particularly described in the attached Attachment A (the “Property”).

RECITALS

The following recitals of fact are a material part of this Declaration:

A. The Property is in the City within the Hunters Point Shipyard and is subject to the provisions of that certain Hunters Point Shipyard Redevelopment Plan, approved and adopted by the Board of Supervisors by ordinance number 285-97 on July 14, 1997, as amended by the Board of Supervisors by ordinance number 2010-11 on August 3, 2010, and as the same may be further amended from time to time consistent with the Horizontal DDA and, with respect to the Property, this Agreement. Owner intends to construct on the Property _________________ (_____ ) For-Rent Affordable Residential Units and _________________ (_____ ) Market Rate Housing Units (as herein defined).

B. The Agency and Owner have entered into that certain Vertical Disposition and Development Agreement (Hunters Point Shipyard Phase 1 – Block 52), dated ____________, 2014, and recorded in the City’s Official Records on ____________, 20___, as Document No. _______ (as amended and supplemented from time to time, the “Agreement”), including the Affordable Housing Plan attached thereto as attachment F (the “Program”), concerning the development of
affordable and market rate housing units on the Property. The Agreement and the Program are on file with the Agency as public records. This Declaration is executed and recorded in accordance with the Agreement and the Program, and partially satisfies the requirements therein.

C. The Agency has developed a program to provide home rental opportunities to individuals and families with low incomes by offering homes for rent at rates that are below those otherwise prevailing in the market.

D. The Agency’s intent is to preserve the affordability of such homes by restricting their rental.

E. Such homes constitute a valuable community resource. To protect and preserve this resource, it is necessary, proper and in the public interest for the Agency to administer occupancy and rental controls by means of this Declaration.

NOW, THEREFORE, in consideration of the substantial economic benefits inuring to Owner and the public purposes to be achieved under the affordable housing program, Owner and the Agency agree as follows:

Section 1 Definitions.

Terms not defined in this Declaration have the meanings given to them in the Agreement, including the Program.

“Affordable Rent” means a monthly Rental Rate, including a Utility Allowance, that does not exceed thirty percent (30%) of the AMI Percentage applicable to such Residential Unit multiplied by the Area Median Income, based upon the Imputed Household Size for such Residential Unit.

“Agency” has the meaning set forth in the Preamble.

“Agreement” has the meaning set forth in the Recitals.

“Area Median Income” or “AMI” means the area median income for a household, adjusted solely for Imputed Household Size, and not adjusted for other factors, including HUD high cost adjustments, as determined by HUD for the San Francisco Primary Metropolitan Statistical Area, from time to time.

“AMI Percentage” means the percentage of AMI applicable to a specified For-Rent Affordable Residential Unit as set forth in Attachment A-1, which percentage shall be eighty percent (80%), as applicable.

“City” has the meaning set forth in the Preamble.

“Complete Construction” means the point at which Residential Units have been completed in accordance with approved plans and specifications, as reasonably determined by Agency, and a Certificate of Occupancy has been issued for such Residential Units.
“Declaration” has the meaning set forth in the Preamble.

“Developer” has the meaning set forth in the Recitals.

“Effective Date” has the meaning set forth in the Preamble.

“For-Rent Affordable Residential Unit” means a Residential Unit that is intended at the time of Complete Construction to be occupied subject to a lease at the Affordable Rent described herein, and not offered for sale.

“HUD” means the United States Department of Housing and Urban Development.

“Imputed Household Size” means the total number of bedrooms in a Residential Unit plus one (1).

“Income Certification” has the meaning set forth in Section 4 and Attachment B.

“Market Rate Housing Unit” means a Residential Unit that has no restrictions under this Declaration with respect to affordability levels or income restrictions for occupants.

“Owner” has the meaning set forth in the Preamble.

“Program” has the meaning set forth in the Recitals.

“Property” has the meaning set forth in the Preamble.

“Rent” or “Rental Rate” means, for each For-Rent Affordable Residential Unit, the total of annual payments for (a) use and occupancy of the Residential Unit and land and facilities associated therewith, (b) any separately charged fees or services assessed by Owner that are required of all tenants, other than security deposits, (c) a reasonable allowance for utilities that are paid by the tenant, not including telephone service (which shall not exceed the Utility Allowance) and (d) any taxes or fees charged for use of the land and facilities other than by Owner.

“Residential Unit” means a dwelling unit consisting of a room or suite of two (2) or more rooms that is designed for residential occupancy.

“Utility Allowance” means, if the cost of utilities (except telephone) and other services for a For-Rent Affordable Residential Unit is the responsibility of the occupying household, an amount equal to the estimate made by the San Francisco Housing Authority or, if not available, HUD, of the monthly costs of a reasonable consumption of such utilities and other services for the For-Rent Affordable Residential Unit by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary and healthful living environment.

Section 2 Restricted Affordable Residential Units.
2.1 **For-Rent Affordable Residential Units.** The Residential Project contains ____________ (______) For-Rent Affordable Residential Units, distributed throughout the Residential Project as set forth on the diagram attached hereto as Attachment A-1, with the AMI Percentages set forth therein. The occupancy of all of the For-Rent Affordable Residential Units shall be restricted to housing for low-income households at Affordable Rents.

2.2 **Term of Declaration.** The For-Rent Affordable Residential Units shall remain available at Affordable Rents for a continuous period of ninety (90) years after the initial lease of each For-Rent Affordable Residential Unit. Vertical Developer shall notify the Agency of the initial lease date, and the Agency shall maintain a record of the expiration of the ninety (90) year term for each For-Rent Affordable Residential Unit. The For-Rent Affordable Residential Units shall remain available at Affordable Rents for the entire ninety (90) year period, regardless of any termination of the Agreement.

**Section 3 **Lease Terms and Rental Rates.**

3.1 **Lease Term.** The lease term for each For-Rent Affordable Residential Unit and for each Market Rate Housing Unit offered for rent shall not exceed one (1) year. The lease term for each For-Rent Affordable Residential Unit shall be renewable annually only upon the completion of the Income Certification process described in Section 4.

3.2 **Rental Rate.** The Rental Rate for each For-Rent Affordable Residential Unit shall initially be determined based upon the Imputed Household Size and AMI Percentage for that For-Rent Affordable Residential Unit (and, as set forth in the definition of Affordable Rent, shall not exceed thirty percent (30%) of the applicable AMI Percentage multiplied by the Area Median Income, based upon the Imputed Household Size).

3.3 **Adjustments to Rental Rate.** The Rental Rate for For-Rent Affordable Residential Units shall be adjusted upward or downward, once each year to reflect changes, if any, in the AMI and the Utility Allowance. However, no annual increase shall be greater than the percentage increase during the immediately preceding year, if any, in the AMI, even if Owner was entitled to increase the Rental Rate in prior years but elected not to do so.

**Section 4 **Income Certification For Tenants of Affordable Residential Units.**

4.1 **Initial Income Certification.** Owner shall require all households applying for occupancy of For-Rent Affordable Residential Units to submit an Income Certification at the time of application on the form attached as Attachment B. Owner shall make reasonable efforts to verify such Income Certifications, including without limitation calling such applicants’ employers or other sources of income to confirm the income shown.

4.2 **Household Income After Occupancy.**

   (a) Owner shall require all households applying for a lease renewal to submit a new Income Certification annually, within sixty (60) days before the expiration date of the current lease on the For-Rent Affordable Residential Unit. Owner shall make reasonable efforts to verify such Income Certifications, including without limitation calling such applicants’ employers or other income sources to confirm the income shown.
(b) Changes in incomes of households occupying For-Rent Affordable Residential Units shall not affect the classification of Residential Units as For-Rent Affordable Residential Units until the household income exceeds one hundred and twenty percent (120%) of AMI. At that point, the lease may be renewed for one additional year, and the household shall be informed that it no longer qualifies and may be subject to non-renewal of such lease at expiration. On or before the ninetieth (90th) day prior to the expiration date of such lease, Owner shall designate the next available Residential Unit of comparable size within the Residential Project as a replacement For-Rent Affordable Residential Unit, using commercially reasonable efforts to match the distribution of For-Rent Affordable Residential Units and Market Rate Housing Units shown on Attachment A-I. Owner shall then restrict the Rent on the replacement For-Rent Affordable Residential Unit to the level specified in Sections 3.2 and 3.3, the Residential Unit occupied by the household that no longer qualifies for low-income housing under this Declaration shall no longer be considered a For-Rent Affordable Residential Unit, and the household may execute a new lease on the Residential Unit at an unrestricted Rental Rate (i.e., such Residential Unit will be a Market Rate Housing Unit). However, if Owner is unable to designate a replacement For-Rent Affordable Residential Unit on or before the date specified, and the most recent Income Certification shows that the household no longer qualifies for low-income housing under this Declaration, then Owner shall not renew the household’s lease on the For-Rent Affordable Residential Unit. Thereafter, the For-Rent Affordable Residential Unit shall be rented to a low-income household, subject to this Declaration, the Agreement and the Program. Owner shall keep the household that no longer qualifies for low-income housing reasonably informed of the Owner’s attempts to obtain a replacement For-Rent Affordable Residential Unit.

(c) At all times the number of For-Rent Affordable Residential Units in the Residential Project must be at least the number specified in Section 2.1.

Section 5 Records and Reporting Requirements for For-Rent Affordable Residential Units.

5.1 Reports. Owner shall provide reports regarding the For-Rent Affordable Residential Units to the Agency on a quarterly basis, commencing on the 15th of the month after issuance of a Certificate of Occupancy for the Residential Project, in the form attached hereto as Attachment C, as well as any additional reports or information reasonably requested by the Agency as to the availability, maintenance and operation of the For-Rent Affordable Residential Units and the Residential Project. The report shall separately identify any replacement For-Rent Affordable Residential Units, the For-Rent Affordable Residential Units replaced and any households in the category described in Section 4.2(b) (households whose income has increased to the level that the household no longer qualifies for low-income housing under this Declaration).

5.2 Maintenance of Records. Owner shall maintain and retain records of all applications, Income Certifications, income verifications, leases, management actions, and rent rolls relating to the For-Rent Affordable Residential Units for five (5) years. The Agency or its designee shall have the right to inspect and copy such records upon reasonable notice during regular business hours.
Section 6 Covenants.

The restrictions set forth in this Declaration shall run with the Property and shall be binding on and inure to the benefit of all parties having or acquiring any right, title or interest in the Property and to their successors and assigns.

Section 7 Remedies Cumulative.

The Agency’s rights and remedies, whether provided by law, in equity or by this Declaration, shall be cumulative, and the exercise of any one or more of such rights or remedies shall not preclude the exercise of any other or further rights or remedies for the same or any other default or breach. No waiver with respect to the performance of any of Owner’s obligations shall be effective except to the extent the particular obligation is expressly waived, nor shall it be a waiver with respect to any other rights or remedies of any other of Owner’s obligations.

Section 8 Governing Law.

This Declaration shall be governed by and construed in accordance with the internal laws of the State of California.

Section 9 Severability.

Invalidation of any provision of this Declaration, or of its application to any person, by judgment or court order, shall not affect any other provision of this Declaration or its application to any other person or circumstance, and the remaining portions of this Declaration shall continue in full force and effect, unless enforcement of this Declaration as invalidated would be unreasonable or grossly inequitable under all relevant circumstances or would frustrate the fundamental purposes of this Declaration.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
IN WITNESS WHEREOF, Owner has executed this Declaration as of the Effective Date.

OWNER:

HPS1 Block 52, LLC
a Delaware limited liability company

By: ______________
Name: ______________
Title: ______________
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.

(Seal)
Notary Public
Attachment A

PROPERTY DESCRIPTION

[To be provided prior to recordation of Declaration.]
Attachment A-1

DISTRIBUTION OF
AFFORDABLE RESIDENTIAL UNITS AND MARKET RATE RESIDENTIAL UNITS

[To be provided prior to recordation of Declaration]
Attachment B

FORM OF INCOME CERTIFICATION

[To be provided prior to recordation of Declaration.]
Attachment C

AFFORDABLE RESIDENTIAL UNIT REPORT

[To be provided quarterly for each Residential Project after recordation of Declaration.]
DECLARATION OF RESTRICTIONS FOR FOR-SALE AFFORDABLE RESIDENTIAL UNITS AND OPTION TO PURCHASE AGREEMENT

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

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

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

DECLARATION OF RESTRICTIONS FOR FOR-SALE AFFORDABLE RESIDENTIAL UNITS AND OPTION TO PURCHASE AGREEMENT

This DECLARATION OF RESTRICTION S FOR FOR-SALE AFFORDABLE RESIDENTIAL UNITS AND OPTION TO PURCHASE AGREEMENT (this “Declaration”) is made as of ________, 20___, (the “Effective Date”) by and between

________________________________ as ________________________

[indicate manner in which owner takes title] (“Owner”) and the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic, of the State of California (the “Agency”). Owner is purchasing that certain real property in the City with a street address of _________________________________________________________________,
San Francisco, California, and more particularly described on Exhibit A to the Grant Deed (“Property”). Capitalized terms used in this Declaration have the meanings given to them in Section 1.

RECATIALS

The following recitals of fact are a material part of this Declaration:

(a) The Agency has developed a program to provide home ownership opportunities to individuals and families with low and moderate incomes by offering homes for sale at prices that are below those otherwise prevailing in the market;

(b) The Agency’s intent is to preserve the affordability of such homes by restricting the resale price;

(c) Such homes constitute a valuable community resource; and
It is necessary, proper and in the public interest for the Agency to protect and preserve this resource by administering occupancy and resale controls by means of this Declaration.

NOW, THEREFORE, in consideration of the substantial economic benefits inuring to Owner and the public purposes to be achieved under the affordable housing program, Owner and the Agency agree as follows:

Section 1 Owner’s Affordable Purchase Price.

Owner’s “Affordable Purchase Price” for the Property is $_______. This is the purchase price that is affordable as determined under the Housing Plan.

Section 2 Definitions.

As used in this Declaration, the capitalized terms set forth below shall have the following meanings:

“Addendum to Deed of Trust” means the supplemental document to the Deed of Trust, executed by a Qualified Purchaser in favor of the Agency, in the form attached as Appendix 3.

“Affordable Purchase Price” is defined in Section 1.

“Agency” is defined in the Preamble.

“Agency Note” is the promissory note executed by Owner in favor of the Agency, which is secured by a Deed of Trust executed by Owner in favor of the Agency, in the form attached as Appendix 1.

“AMI Percentage” is defined in Section 3.1.

“Area Median Income” or “AMI” means the area median income for a household, adjusted solely for the Imputed Household Size, and not adjusted for other factors, including HUD high cost adjustments, as determined by HUD for the San Francisco Primary Metropolitan Statistical Area, from time to time.

“Broker” means a real estate broker licensed by the State of California Department of Real Estate and approved by the Agency to assist Owner in identifying Qualifying Purchasers for the Transfer of the Property.

“Buyer Acknowledgement” means the acceptance of terms and conditions of this Declaration, in the Loan Disclosure Information form attached as Appendix 6.

“Capital Improvements” is defined in Section 8.1.

“Catastrophic Illness” means an illness or injury that incapacitates Owner for an extended period of time, or that incapacitates a member of Owner’s family, which incapacity requires Owner to take time off from work for an extended period to care for that family member,
and taking extended time off from work creates a financial hardship for Owner because he or she has exhausted all of his or her sick leave and other paid time off.

“Certificate Holder” means those households with a valid Certificate of Preference issued by the Agency that entitles the holder to receive preference in consideration for housing due to displacement by prior redevelopment activities.

“City” means the City and County of San Francisco.

“Closing Costs” means the reasonable and customary costs incurred by Owner in transferring the Property.

“Damage” means deficiencies in the Property occurring during Owner’s ownership of the Property, including without limitation: (1) violations of applicable building, plumbing, electric, fire or housing codes; (2) needed repair to appliances furnished to Owner upon purchase of the Property; (3) holes and other defects (except for holes from picture hangers) in walls, ceilings, floors, doors, windows, screens, carpets, drapes, countertops and similar appurtenances; and (4) repairs needed, as determined by Agency, to put the Property into saleable condition, including without limitation cleaning and painting.

“Declaration” is defined in the Preamble.

“Deed of Trust” means one or more Deeds of Trust on the Property, executed by Owner in favor of the Agency, substantially in the form attached as Appendix 2.

“Domestic Partner” means any person who has or enters into a domestic partnership currently registered with a governmental body pursuant to State or local law authorizing such registration.

“Down Payment Assistance Loan” is a loan of down payment funds made by the Agency to Owner for purchase of the Property.

“Effective Date” is defined in the Preamble.

“Event of Default” is defined in Section 9.1.

“Fair Market Value” means the cash purchase price for the Property that a willing buyer would pay to a willing seller at the time of sale, neither being under a compulsion to buy or sell, as determined by an independent, MAI-certified appraiser who has experience in residential appraisals in San Francisco.

“Grant Deed” is defined in Section 6.1(b).

“Gross Annual Income” means pre-tax money earned annually by a household including overtime pay, commissions, dividends, and any other source of income.

“Housing Plan” is defined in Section 3.1.
“HUD” means the United States Department of Housing and Urban Development.

“Imputed Household Size” one person for one-bedroom Residential Units, and one person per bedroom plus one for all other Residential Units.

“Income Certification” means a document substantially in the form attached as Appendix 5.

“Notice” is defined in Section 11.4.

“Notice of Proposed Transfer” is defined in Section 5.1.

“Occupancy Certificate” is defined in Section 11.3.

“Owner” is defined in the Preamble, and upon Owner’s death includes the personal representative administering Owner’s estate.

“Owner’s Proceeds” means the amount due to Owner upon Transfer of the Property to a Qualifying Purchaser or upon exercise of the Agency’s Purchase Option, according to the terms of this Declaration.

“Permitted Exceptions” means those title exceptions that are accepted by the Qualifying Purchaser in writing and set forth in Appendix 4.

“Principal Residence” means the location at which an individual resides for at least ten (10) months out of each calendar year or such shorter period of time as the Agency, in its sole discretion, shall determine.

“Property” is defined in the Preamble.

“Purchase Option” is defined in Section 7.1.

“Purchase Option Assignee” is defined in Section 7.3.

“Qualifying Purchaser” means persons and families who are first time homebuyers as defined in Internal Revenue Service Code and approved by the Agency whose Gross Annual Income does not exceed the AMI Percentage of Area Median Income, adjusted for Household Size.

“Repair Costs” means the costs to repair Damage to the Property.

“Resale Affordable Price” means a purchase price based on a five percent (5%) down payment and a rate for a thirty (30) year fixed mortgage based on the higher of: (1) the ten-year rolling average interest rate, as calculated by the Agency based on data provided by Fannie Mae, Freddie Mac, or an equivalent, nationally recognized mortgage financing institution, or (2) the current, commercially reasonable rate available through an Agency-approved lender, with a total of annual payments for principal, interest, taxes, assessments, insurance and homeowners’ association dues that do not exceed thirty-three percent (33%) of the Area Median Income, based
upon the Household Size for the Property, multiplied by five percent (5%) below the AMI Percentage.

“Senior Lender” means a bank, savings and loan association, insurance company, pension fund, publicly traded real estate investment trust, governmental agency, or charitable organization engaged in making loans which customarily makes residential purchase money loans and has loaned money to Owner or a Qualifying Purchaser to purchase or refinance the purchase of the Property.

“Senior Lien” means a single deed of trust for the purpose of securing a loan from the Senior Lender to finance or refinance the purchase of the Property.

“Transfer” means any voluntary or involuntary sale, assignment or transfer of any interest in the Property.

“Unauthorized Transfer” is defined in Section 9.1(a).

“VDDA” is defined in Section 3.1.

“Vertical Developer” is defined in Section 3.1.

Section 3 Related Documents.

3.1 VDDA. The Agency and HPS1 Block 52, LLC, a Delaware limited liability company (“Vertical Developer”), entered into that certain Vertical Disposition and Development Agreement (Hunters Point Shipyard Phase I – Block 52), recorded in the official records of the City and County of San Francisco on ________, 20____, as Document Number _______ (as amended and supplemented from time to time, the “VDDA”), including the Affordable Housing Plan attached thereto as attachment F (the “Housing Plan”), concerning the development of affordable and market rate housing units. The VDDA and the Housing Plan are on file with the Agency as public records. Under the VDDA and the Housing Plan, the Property is income and price restricted to be affordable to persons or households earning not more than eighty percent (80%) of Area Median Income (the “AMI Percentage”). This Declaration is being executed and recorded in accordance with the VDDA and partially satisfies the requirements therein.

3.2 Agency Note and Deed of Trust. Owner executed an Agency Note in favor of Agency, dated ________________, 20___, secured by a Deed of Trust and Addendum to Deed of Trust and recorded same against the Property. The Deed of Trust and Addendum to Deed of Trust also secure Owner’s obligations to the Agency under this Declaration.

Section 4 Affordable Restrictions.

4.1 Restrictions. Owner shall own and occupy the Property as Owner’s Principal Residence, and Owner shall not lease the Property, or any portion thereof, without the Agency’s prior written consent.
4.2 **Term.** This Declaration shall remain in effect for forty-five (45) years from the Effective Date until such time as the Property is Transferred pursuant to the terms of this Declaration, at which time a declaration with the same form and substance as this Declaration shall become effective for forty-five (45) years from the effective date of such declaration. Upon the expiration of this Declaration due to completion of the 45-year term, Owner must repay to the Agency the difference between the Resale Affordable Price and the Fair Market Value, as determined at the completion of the term. In lieu of this payment to the Agency, Owner may renew the term of this Declaration for an additional forty-five (45) years.

4.3 **Owner Representations and Warranties.** In applying to purchase the Property, Owner submitted an Income Certification. Owner acknowledges that reasonable efforts may be made to verify such Income Certification, including without limitation calling Owner’s employers or other sources of income to confirm the income shown. Owner represents and warrants to the Agency that the Income Certification and any financial and other information Owner previously provided to the Agency for the purpose of qualifying to purchase the Property was true and correct at the time it was given and remains true and correct as of the date of this Declaration.

**Section 5 Transfer Procedures.**

5.1 **Notice of Proposed Transfer.** Except as provided in Sections 5.5 and 5.6(a), if Owner desires to Transfer the Property, Owner shall deliver written notice to the Agency (“Notice of Proposed Transfer”), and the Agency shall calculate the Resale Affordable Price and notify Owner of the same.

5.2 **Priority to Certificate Holders.** Owner may Transfer the Property only to a Qualifying Purchaser or the Agency. The Agency shall give notice to Certificate Holders who shall have priority in purchasing the Property over all other Qualified Purchasers, except for transferees under Section 5.5 and 5.6(a) and the Agency. If no Certificate Holders express interest in purchasing the Property or are not otherwise qualified, then Owner shall market the Property as set forth in Section 5.3.

5.3 **Marketing the Property.** Owner shall work with a Broker to locate a Qualifying Purchaser for Transfer of the Property at the Resale Affordable Price. Owner and the Broker shall use diligence and good faith in marketing the Property as evidenced by all of the following:

- Listing the Property on the MLS Listing;
- Advertising the Property in the real estate section of at least two (2) newspapers of general circulation in the City;
- Conducting at least two (2) open houses of the Property; and
- Requesting that the Agency list the Property on the Agency’s website.

If Owner and Broker, acting diligently and in good faith, are unable to locate a Qualifying Purchaser after one hundred and fifty (150) days from the date of Agency’s receipt of the Notice of Proposed Transfer, then the AMI Percentage for Qualifying Purchasers shall be
increased to one hundred fifty percent (150%) of AMI. The Resale Affordable Purchase Price shall remain the same.

5.4 Inspection. Within thirty (30) days after the Agency’s receipt of the Notice of Proposed Transfer, the Agency shall have the right to enter and inspect the Property. The Agency shall give Owner twenty-four (24) hours prior written notice before conducting an inspection. The Agency may inspect the Property to determine if any Damage exists. In the event any Damage is noted; the Agency shall determine the Repair Costs and shall deliver written notice to Owner specifying the Damage and the Repair Costs. Owner shall either: (a) repair the Damage at Owner’s cost, or (b) cause the escrow agent at closing to pay the Repair Costs to Agency from Owner’s Proceeds, as provided in Section 6.3. If Owner elects to repair the Damage, the Agency shall have the right to re-inspect the Property under the terms of this Section 5.4 after the repairs are complete. If the Agency determines in the Agency’s sole discretion that Damage still remains, Owner shall cause the escrow agent at closing to pay the remaining Repair Costs to the Agency, but only to the extent such funds are available after payment of the Senior Lien. If Owner elects to repair the Damage, all repairs and the re-inspection shall be completed without extending the closing date, unless extended by mutual written agreement of both the Agency and Owner.

5.5 Transfer to Spouse or Domestic Partner. If an Owner marries or becomes a Domestic Partner after purchasing the Property, the spouse or Domestic Partner may become a co-Owner. An Owner intending to add a spouse or Domestic Partner as a co-Owner must present his or her marriage certificate or Domestic Partnership registration to the Agency for review, and the proposed co-Owner shall execute an addendum to this Declaration and any other Agency documents related to the Property by which the co-Owner shall assume the same rights and responsibilities with respect to those documents as Owner.

5.6 Transfer Upon Owner’s Death.

(a) Upon Owner’s death, the Property may be Transferred to any co-Owner previously approved by the Agency without further Agency approval, but such co-Owner shall notify Agency within thirty (30) days of the Transfer.

(b) Upon the death of Owner and all Agency approved co-Owners, the Property may be Transferred by inheritance, will, or any other function of law to a Qualifying Purchaser. The proposed transferee shall submit an Income Certification and any other information reasonably requested by the Agency to verify that the proposed transferee meets the requirements for a Qualifying Purchaser. The Agency shall have forty-five (45) days after receipt of all required information to determine whether the proposed transferee is a Qualifying Purchaser. If the Agency determines that the proposed transferee is a Qualifying Purchaser, the Property may be Transferred to the proposed transferee for no consideration. The proposed transferee shall execute a new Declaration and any other Agency documents related to the Property by which the proposed transferee shall assume the same rights and responsibilities with respect to those documents as Owner. If the Agency determines that the proposed transferee is not a Qualifying Purchaser, the Property shall be Transferred pursuant to Sections 5.1 - 5.4, inclusive.

Section 6 Closing
6.1 **Conditions to Closing.** Except as provided in Sections 5.5 and 5.6(a) and Transfers by foreclosure or the Senior Lender’s acceptance of a deed in lieu of foreclosure, all Transfers shall take place through an escrow with a mutually acceptable escrow company. It shall be a condition to closing, other than a Transfer to a co-Owner pursuant to Section 5.5 or 5.6(a), that the escrow agent involved in the closing has received the following:

(a) Written confirmation from the Agency of the Resale Affordable Price and either (i) the identity of the Qualifying Purchaser or (ii) notification that the Agency is exercising the Purchase Option;

(b) A standard title company form grant deed, executed and acknowledged by Owner (or the Agency as attorney in fact for Owner) granting the Property to the Qualifying Purchaser (“Grant Deed”), which shall be recorded in the City’s Official Records;

(c) A declaration with the same form and substance as this Declaration executed and acknowledged by the Qualifying Purchaser and the Agency, which shall be recorded in the City’s Official Records;

(d) An Agency Note secured by a Deed of Trust and Addendum to Deed of Trust, executed by the Qualifying Purchaser on the Agency’s standard forms, attached as Appendix 1, Appendix 2 and Appendix 3, which Deed of Trust and Addendum to Deed of Trust shall be recorded in the City’s Official Records; and

(e) A signed copy of the Buyer Acknowledgement.

6.2 **Closing Procedures For Sale to Qualifying Purchaser.** At closing, Owner shall convey the Property to the Qualifying Purchaser by Grant Deed. Owner shall cause a mutually acceptable title company to issue to the Qualifying Purchaser a CLTA standard coverage owner’s form of title insurance policy in the amount of the Resale Affordable Price insuring title to the Property vested in the Qualifying Purchaser, subject only to standard printed form exceptions, the Agency’s Deed of Trust and exclusions, liens for current taxes and assessments not yet due or payable, the new declaration and such other matters as were exceptions to title as of __________ [date of sale to first Owner] or are Permitted Exceptions. All closing costs and title insurance premiums shall be paid pursuant to the custom in the City.

6.3 **Owner’s Proceeds.** The value of the Owner’s Proceeds from a Transfer of the Property shall be calculated as follows. Owner’s Proceeds equal:

(a) The Resale Affordable Price;

(b) Less the amount necessary to release the Senior Lien;

(c) Less Closing Costs;

(d) Less any Repair Costs due to the Agency pursuant to Section 5.4;

(e) Plus the amortized value of Capital Improvements pursuant to Section 8.2.
6.4 Resale Affordable Price. The Agency and Owner acknowledge that the Senior Lien holder will not release the Senior Lien unless it is repaid in full. If the Senior Lien holder does not release the Senior Lien because Owner has not or cannot fully repay it, then the sale will be cancelled or Owner will be in default under the Senior Lien.

Section 7 Agency’s Purchase Option.

7.1 Grant of Option. Owner grants to the Agency an option to purchase the Property upon the occurrence of an Event of Default (“Purchase Option”).

7.2 Exercise of Option. The Agency may exercise the Purchase Option as follows:

(a) If the Purchase Option is triggered as a result of an Event of Default under Sections 9.1(a) - (d), then the Agency may exercise the Purchase Option within ninety (90) days after the Agency gives written notice of default to Owner.

(b) If the Purchase Option is triggered as a result of Owner’s default under the Senior Lien as provided in Section 9.1(e), then the Agency may exercise the Purchase Option by giving written notice to Owner and Senior Lender at any time prior to five (5) business days before the date of a foreclosure sale, as the same may be postponed from time to time, under the Senior Lien pursuant to California Civil Code § 2924f. Though the Senior Lender shall not be required to do so, the Senior Lender shall endeavor to provide the Agency with a copy of any notice of default that it issues to Owner.

7.3 Assignment of Purchase Option. Prior to or after exercise of the Purchase Option, the Agency may assign the Purchase Option to a governmental agency, non-profit organization, or a Qualifying Purchaser (“Purchase Option Assignee”), who shall be subject to this Declaration.

7.4 Grant of Power of Attorney. Owner hereby grants to the Agency an irrevocable power of attorney coupled with an interest to act on Owner’s behalf to execute, acknowledge and deliver any and all documents relating to the Purchase Option.

7.5 Non-Liability of Agency. The Agency shall not be held liable by reason of its exercise or non-exercise of the Purchase Option.

Section 8 Capital Improvements; Maintenance.

8.1 Capital Improvements. A “Capital Improvement” is a permanent improvement to the Property made during Owner’s ownership of the Property that: (a) has a value in excess of one-half of one percent (0.5%) of the Affordable Purchase Price originally paid by Owner but less than ten percent (10%) of the Affordable Purchase Price originally paid by Owner; (b) has a useful life of greater than five (5) years subsequent to the proposed Transfer by Owner; and (c) has been made with all required permits and approvals, including without limitation homeowner’s association and governmental approvals obtained prior to the construction or installation of the Capital Improvement(s).
8.2 Credits for Capital Improvements. Owner shall receive credit at the time of Transfer for Capital Improvements made to the Property as follows:

(a) At least thirty (30) days prior to the date of Transfer, Owner shall deliver to the Agency a list of the Capital Improvement(s), if any, made to the Property. The Agency shall determine whether the proposed improvements qualify as Capital Improvement(s), as defined in Section 8.1.

(b) The value of Capital Improvements shall equal the sum of all Capital Improvements with each improvement amortized by a factor of seven percent (7%) per year from the date of the Capital Improvement’s completion.

8.3 Maintenance. Owner shall not destroy or damage the Property, allow the Property to deteriorate, or commit waste on the Property. Owner shall maintain the Property in compliance with all applicable laws, ordinances and regulations and in a good and clean condition and all appliances and fixtures shall be in good working order.

Section 9 Default and Remedies.

9.1 Events of Default. The occurrence of any one of the following events or circumstances shall constitute an “Event of Default” by Owner under this Declaration.

(a) Owner has actually Transferred or attempted to Transfer the Property in violation of the covenants and restrictions contained in this Declaration (“Unauthorized Transfer”).

(b) The Agency has determined in the Agency’s sole discretion that the Property is not Owner’s Principal Residence.

(c) Owner fails to pay real estate taxes, assessments or homeowner’s association dues, when due or Owner fails to maintain insurance in such amounts as required under this Declaration; or Owner places any mortgages, encumbrances or liens upon the Property in violation of this Declaration; and such event or condition shall not have been cured within thirty (30) days following the date of written notice to cure by the Agency to Owner.

(d) Owner fails to perform any other agreements or obligations on Owner’s part to be performed under this Declaration; and such failure continues for thirty (30) days following the date of written notice to cure by the Agency to Owner, or in the case of a default not susceptible of cure within thirty (30) days, Owner fails to promptly commence such cure within thirty (30) days and thereafter fails to diligently prosecute such cure to completion.

(e) Owner causes or permits a default under the Senior Lien and fails to cure the same in accordance with the cure provisions in the Senior Lien.

(f) Owner is in default of a term of the Agency Note and/or the Deed of Trust.

9.2 Remedies. Upon the occurrence of an Event of Default by Owner, Agency may exercise any or all of the remedies set forth below:
(a) Agency shall have the right to exercise the Purchase Option;

(b) Agency shall have the right to institute an action for specific performance of the terms of this Declaration, for an injunction prohibiting a proposed Transfer in violation of this Declaration, or for a declaration that a Transfer is void;

(c) Agency shall have the right to institute an action for foreclosure on its Deed of Trust and/or to accept a deed in lieu of foreclosure; and

(d) Agency shall have the right to exercise all other remedies permitted by law or at equity.

Section 10    Lender Provisions.

10.1 Purposes of Financing. Subject to the Agency’s prior written approval, Owner may encumber title to the Property for the sole purpose of securing (a) purchase money financing, (b) refinancing (but only up to the amount of the original financing), or (c) refinancing up to the amount of the original financing, plus fifty percent (50%) of the value of the Resale Affordable Price less the Owner’s Affordable Purchase Price. Refinancing under option (c), above, shall be permitted only for making Capital Improvements to the Property, meeting post-secondary educational expenses incurred by a household member after the date of purchase, meeting the costs of an Owner’s or Owner’s immediate family member’s Catastrophic Illness, or securing funds required to implement a dissolution of marriage or domestic partnership agreement. Owner shall not cause or permit any other mortgages, encumbrances or liens upon the Property. Owner shall submit to the Agency on an annual basis a certification that Owner has not refinanced the Property in violation of this Section 10.1.

10.2 Subordination. This Declaration shall be subordinate to the Agency-approved Senior Lien.

10.3 Default and Foreclosure. Owner shall provide a copy of any notice of default under the Senior Lien to the Agency within three (3) days of Owner’s receipt. In the event of any default under the Senior Lien, Agency, in addition to any other rights and remedies it may have under this Declaration, at law or in equity, shall have the right to:

(a) cure such default pursuant to Section 10.4;

(b) exercise its Purchase Option pursuant to Section 7.2(b); or

(c) foreclose its Deed of Trust on the Property.

Agency’s rights under this Section 10.3 shall not prevent the Senior Lender from commencing a judicial or nonjudicial foreclosure of the Senior Lien. If the Agency, in its sole discretion, does not act pursuant to Sections 10.3(a) – (b), and the Senior Lender acquires the Property through foreclosure or acceptance of a deed-in-lieu of foreclosure, future sales of the Property shall not be subject to the resale restrictions provided herein.
10.4 **Right to Cure.** Although the Agency has no obligation to do so, the Agency may perform any act required of Owner in order to prevent a default under, or an acceleration of the indebtedness secured by, the Senior Lien or the commencement of any foreclosure or other action to enforce the collection of such indebtedness. If the Agency elects to cure any such default, Owner shall pay the expenses incurred by the Agency in effecting any cure upon demand within thirty (30) days, together with the interest thereon at the maximum interest rate permitted by law. Failure of Owner to timely reimburse the Agency shall constitute an Event of Default under Section 9.1(d).

**Section 11** Miscellaneous.

11.1 **Damage and Destruction; Condemnation; Insurance.** If the Property is condemned or the improvements located on the Property are damaged or destroyed, all proceeds from insurance or condemnation shall be distributed in accordance with this Section 11.1, subject to the requirements of the Senior Lien. Insurance shall be maintained in the types and amounts required under the Senior Lien. Unless Owner, the Agency, and Senior Lender otherwise agree in writing, insurance proceeds shall be applied to restore or repair the Property damaged. If Owner, the Agency and Senior Lender determine that restoration or repair cannot be made, or if the Property is condemned, the insurance or condemnation proceeds shall first be allocated to pay the outstanding value of the Senior Lien and all associated fees of the Senior Lender, with the balance distributed between Owner and the Agency as follows. The proceeds attributable to the Property shall be multiplied by a fraction, the numerator of which is the Resale Affordable Price as calculated under this Declaration and the denominator of which is the Fair Market Value of the Property as of the date immediately prior to the damage, destruction or condemnation. The resulting amount shall be allocated to Owner and the balance shall be allocated to the Agency.

11.2 **No Discrimination; Lead-Based Paint Prohibition.** Owner shall comply with all applicable laws and regulations regarding non-discrimination and lead-based paint prohibitions.

11.3 **Owner Occupancy Verification.** To ensure compliance with this Declaration’s requirement that Owner use the Property as his/her Principal Residence, Owner shall provide Agency with a completed Occupancy Certificate (“Occupancy Certificate”), to be provided by the Agency by February 1 of each year for the previous calendar year.

11.4 **Notices.** Any notice, demand or other communication required or permitted to be given under this Declaration (a “Notice”) by either party to the other party shall be in writing and sufficiently given or delivered if transmitted by (a) registered or certified United States mail, postage prepaid, return receipt requested, (b) personal delivery, or (c) nationally recognized private courier services, in every case addressed as follows:
If to the Agency: Successor Agency to the San Francisco Redevelopment Agency
One South Van Ness Avenue, 5th Floor
San Francisco, California 94103

If to Owner: at the Property address

Any such Notice transmitted in accordance with this Section 11.4 shall be deemed delivered upon receipt, or upon the date delivery was refused. Any party may change its address for notices by written Notice given to the other party in accordance with the provisions of this Section 11.4.

11.5 Remedies Cumulative. Subject to applicable law, the Agency’s rights and remedies, whether provided by law, in equity or by this Declaration, shall be cumulative, and the exercise of any one or more of such rights or remedies shall not preclude the exercise of any other or further rights or remedies for the same or any other default or breach. No waiver with respect to the performance of any of Owner’s obligations shall be effective except to the extent the particular obligation is expressly waived in writing by the Agency, nor shall any such waiver be a waiver with respect to any other rights or remedies of any other of Owner’s obligations.

11.6 Attorneys’ Fees for Enforcement. If any action or legal proceeding is instituted by Owner or the Agency arising out of this Declaration, the prevailing party therein shall recover reasonable attorneys’ fees and costs in connection with such action or proceeding. For purposes of this Declaration, reasonable fees of any in-house counsel for the Agency shall be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience in the subject matter area of the law for which the Agency’s in-house counsel’s services were rendered who practice in law firms located within the City.

11.7 Integration. This Declaration constitutes an integration of the entire understanding and agreement of Owner and the Agency with respect to the subject matter hereof. Any representations, warranties, promises, or conditions, whether written or oral, not specifically and expressly incorporated in this Declaration, shall not be binding on any of the parties, and Owner and the Agency each acknowledge that they have not relied, in entering into this Declaration, on any representation, warranty, promise or condition, not specifically and expressly set forth in this Declaration. All prior discussions and writings have been, and are, merged and integrated into, and are superseded by, this Declaration.

11.8 Severability. In the event that any provision of this Declaration is determined to be illegal or unenforceable, such determination shall not affect the validity or enforceability of the remaining provisions hereof, all of which shall remain in full force and effect.

11.9 Successors and Assigns. This Declaration shall be binding upon and inure to the benefit of the successors and assigns of the Agency. The Agency may assign or transfer its rights under this Declaration upon thirty (30) days written notice to Owner. It is expressly agreed by Owner that Owner may assign his or her rights to this Declaration only by Transfer pursuant to Section 5 or by the Agency’s exercise of the Purchase Option pursuant to Section 7.
11.10 **Headings.** The headings within this Declaration are for the purpose of reference only and shall not limit or otherwise affect any of the terms of this Declaration.

11.11 **Time for Performance.** Time is of the essence in the performance of the terms of this Declaration. All dates for performance (or cure) shall expire at 5:00 p.m. on the performance or cure date. Any performance date which falls on a Saturday, Sunday or Agency holiday is automatically extended to the next Agency working day.

11.12 **Amendments.** Any modification or waiver of any provision of this Declaration or any amendment thereto must be in writing and signed by a person or persons having authority to do so, on behalf of both the Agency and Owner.

11.13 **Controlling Agreement.** Owner covenants that Owner has not executed and will not execute any other agreement with provisions contradictory to or in opposition to the provisions of this Declaration. Owner understands and agrees that this Declaration shall control the rights and obligations between Owner and the Agency.

11.14 **Governing Law.** This Declaration, shall be governed by, and construed and enforced in accordance with, the internal laws of the state of California.

11.15 **Recordation.** Owner shall cause this Declaration to be recorded in the City’s Official Records.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
IN WITNESS WHEREOF, Owner has executed this Declaration as of the Effective Date.

AGENCY:

Authorized by Agency Resolution
No. _______________ adopted ________, 20__

Approved as to Form:

DENNIS J. HERRERA, City Attorney, as counsel to the Agency

By: ________________
    [Name]
    Deputy City Attorney

SUCCESSOR AGENCY TO THE
REDEVELOPMENT AGENCY OF THE
CITY AND COUNTY OF SAN
FRANCISCO,
a public body, corporate and politic, of the
State of California

By: ________________
    Name: ________________
    Title: ________________

OWNER:

By: ________________
    Name: ________________
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.

(Seal)
Notary Public
Appendix 1

PROMISSORY NOTE SECURED BY DEED OF TRUST

Date: _______________  San Francisco, California

THIS NOTE MAY NOT BE PREPAID

FOR VALUE RECEIVED, the undersigned ________________ (“Debtor”), promises to pay to the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic, of the State of California, (“Holder” or “Agency”), at One South Van Ness Avenue, 5th Floor, San Francisco, California 94103, or any other place designated in writing by Holder to Debtor, the amount calculated under the formula stated in this Promissory Note Secured by Deed of Trust (this “Note”).

Debtor and Holder executed a Declaration of Restrictions for For-Sale Affordable Residential Units and Option to Purchase Agreement (the “Declaration”), dated the same date as this Note, which, in part, establishes the rights and obligations of the Debtor and Holder in the event Debtor desires to Transfer the real property described in the Declaration (the “Property”). “Transfer” means any voluntary or involuntary sale, assignment or transfer of any interest in the Property.

Debtor obtained a loan (“Senior Lien”) from __________ (“Senior Lender”), which loan is secured by a first deed of trust lien on the Property (“First Deed of Trust”). The Declaration and this Note are subordinate to the Senior Lien.

This Note is secured by a Second Deed of Trust, dated the same date as this Note, executed by Debtor in favor of Holder, with __________________________ as Trustee, which secures the payment of the debt evidenced by this Note, and all renewals, extensions and modifications of this Note (“Agency’s Deed of Trust”).

Capitalized terms used herein and not defined shall have the meanings set forth in the Declaration or in Agency’s Deed of Trust, as applicable.

Upon Debtor’s actual, attempted or pending Transfer of the Property other than as permitted under the Declaration, or upon default under the Senior Lien (the “Trigger Date”), Debtor shall pay to Holder:

a. The difference between (1) the Fair Market Value of the Property as of the Trigger Date and (2) the Resale Affordable Purchase Price as of the Trigger Date, had such Transfer been executed in accordance with the Declaration. Fair Market Value shall be determined by an appraisal of the Property. The appraiser shall be an independent, MAI-certified appraiser who has experience in residential appraisals in San Francisco, and shall be selected by Holder, plus

b. Any amounts disbursed by Holder under Section 5 of the Deed of Trust to protect Holder’s rights in the real property described in the Declaration and Deed of Trust; plus
c. Commencing from the Trigger Date, interest on the amounts due at an annual rate of 10%, compounded.

With or without the filing of any legal action, proceeding or appeal, or appearance in any bankruptcy proceeding, Debtor agrees to pay on demand, together with interest at the above rate from the date of such demand until paid, all reasonable attorneys’ fees, costs of collection, costs, and expenses incurred by Holder in connection with the defense or enforcement of this Note and the Deed of Trust.

No previous waiver and no failure or forbearance by Holder in acting with respect to the terms of this Note or the Deed of Trust shall constitute a waiver of any breach, default, or failure of condition under this Note, the Deed of Trust, or the Declaration. A waiver of any term of this Note, the Deed of Trust, or the Declaration must be made in writing, signed by both parties, and shall be limited to the express written terms of such waiver. In the event of any inconsistencies between the terms of this Note and the terms of any other document related to the debt evidenced by this Note, the terms of this Note shall prevail.

If this Note is executed by more than one person as Debtor, the obligations of each such person shall be joint and several, and each shall be primarily and directly liable hereunder. Debtor waives presentment, demand, notice of dishonor, notice of default or delinquency, notice of acceleration, notice of protest and nonpayment, notice of costs, expenses or losses and interest thereon, notice of interest on interest and late charges, and diligence in taking any action to collect any sums owing under this Note or in proceeding against any of the rights or interest in or to properties securing payment of this Note.

Time is of the essence with respect to every provision in this Note. This Note shall be construed and enforced in accordance with the substantive and procedural laws of the State of California, except to the extent that Federal laws preempt the laws of the State of California, and all persons and entities in any manner obligated under this Note consent to the jurisdiction of any Federal or State Court within the State of California having proper venue and also consent to service of process by any means authorized by California or Federal law.

This Note shall be cancelled upon Debtor’s Transfer of the Property in accordance with the Declaration.

________________________________________
Debtor – [Name]
Appendix 2

DEED OF TRUST

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

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

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

Recorder’s Stamp

SHORT FORM DEED OF TRUST AND ASSIGNMENT OF RENTS

This SHORT FORM DEED OF TRUST AND ASSIGNMENT OF RENTS (this “Deed of Trust”) is made on _________________, 20___ (the “Effective Date”), among ________________________________ (“TRUSTOR” or “OWNER”), whose address is _______________________________; ______ ____________________________; ____________________________ ("TRUSTEE"); and the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic, of the State of California whose address is One South Van Ness Avenue, 5th Floor, San Francisco, California 94103 (“AGENCY” or “BENEFICIARY”);

WITNESSETH: That Trustor IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS to TRUSTEE IN TRUST, WITH POWER OF SALE, that property in San Francisco County, California, described as:

TOGETHER WITH the rents, issues and profits thereof, SUBJECT, HOWEVER, to the right, power and authority given to and conferred upon Beneficiary by paragraph (10) of the provisions incorporated herein by reference to collect and apply such rents, issues and profits.

For the Purpose of Securing: 1. Performance of Trustor’s obligations under the Declaration of Restrictions for For-Sale Affordable Residential Units and Option to Purchase Agreement, dated of even date herewith, together with each agreement of Trustor incorporated by reference or contained therein. 2. Payment of the indebtedness evidenced by one promissory note of even date herewith, and any extension or renewal thereof, executed by Trustor in favor of Beneficiary or order. 3. Payment of such further sums as the then record owner of said property hereafter may borrow from Beneficiary, when evidenced by another note (or notes) reciting it is so secured.

INITIALS________
To Protect the Security of this Deed of Trust, Trustor Agrees:

By the execution and delivery of this Deed of Trust and the note secured hereby, that provisions (1) to (14), inclusive, of the fictitious deed of trust recorded in Santa Barbara County and Sonoma County October 18, 1961, and in all other counties October 23, 1961, in the book and at the page of Official Records in the office of the county recorder of the county where said property is located, noted below opposite the name of such county, viz:

<table>
<thead>
<tr>
<th>COUNTY</th>
<th>BOOK</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>San Francisco</td>
<td>A332</td>
<td>905</td>
</tr>
</tbody>
</table>

which provisions, identical in all counties, (printed on the attached unrecorded pages) are hereby adopted and incorporated herein and made a part hereof as fully as though set forth herein at length; that Trustor will observe and perform said provisions; and that the references to property, obligations and parties in said provisions shall be construed to refer to the property, obligations, and parties set forth in this Deed of Trust.

The undersigned Trustor requests that a copy of any Notice of Default and of any Notice of Sale hereunder be mailed to him at his address hereinbefore set forth.

________________________

Owner - [Name]
STATE OF CALIFORNIA                  )            ss
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.

(Seal)
Notary Public
DO NOT RECORD

The following is a copy of provisions (1) to (14), inclusive, of the fictitious deed of trust, recorded in each county in California, as stated in the foregoing Deed of Trust and incorporated by reference in said Deed of Trust as being a part thereof as if set forth at length therein.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES:

(1) To keep said property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting said property on requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune: and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

(2) To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney’s fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear; and in any suit brought by Beneficiary to foreclose this Deed.

(4) To pay: at least ten days before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust. Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

INITIALS ________
(5) To pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the amount allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

(6) That any award of damages in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

(7) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

(8) That at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to the making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.

(9) That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed and said note to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The Grantee in such reconveyance may be described as “the person or persons legally entitled thereto.” Five years after issuance of such full reconveyance, Trustee may destroy said note and this Deed (unless directed in such request to retain them).

(10) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such, rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection,
including reasonable attorney’s fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(11) That upon default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed, said note and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash of lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the proceeding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cast of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

(12) Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and pages where this Deed is recorded and the name and address of the new Trustee.

INITIALS _________
(13) That this Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledgees, of the note secured hereby, whether or not named as Beneficiary herein. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

(14) That Trustee accepts this Trust when this Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

INITIALS _______
REQUEST FOR FULL RECONVEYANCE

TO: ________________________, TRUSTEE:

The undersigned is the legal owner and holder of all indebtedness secured by the within Deed of Trust. All sums secured by said Deed of Trust have been fully paid and satisfied; and you are hereby requested and directed, on payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel all evidences of indebtedness, secured by said Deed of Trust, delivered to you herewith, together with the said Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, all the estate now held by you under the same.

Dated: ________________________________

By: ________________________________    By: ________________________________

Please mail Reconveyance to:

______________________________________________

Do not lose or destroy this Deed of Trust OR THE NOTE which it secures. Both original documents must be delivered to the Trustee for cancellation before reconveyance will be made.
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.

(Seal)
Notary Public
ADDENDUM TO DEED OF TRUST

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

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

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

ADDENDUM TO DEED OF TRUST

This ADDENDUM TO DEED OF TRUST (this “Addendum”) is part of the Short Form Deed of Trust and Assignment of Rents dated ________________, 20___ (the “Deed of Trust”), to which this Addendum is attached, made on ________________, 20___, among ______________________ (the “Trustor” or “Owner”), whose address is ______________________________; __________, a corporation (“Trustee”); and the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic, of the State of California whose address is One South Van Ness Avenue, 5th Floor, San Francisco, California 94103 (“Agency” or “Beneficiary”). The following provisions are made a part of the Deed of Trust:

Owner obtained a loan (“Senior Lien”) from ______________________________ (“Senior Lender”), which Loan is secured by a first deed of trust lien on the Property (“First Deed of Trust”).

Owner and Agency executed a Declaration of Restrictions for For-Sale Affordable Residential Units and Option to Purchase Agreement, dated the same date as the Deed of Trust (the “Declaration”). The Declaration establishes, in part, the rights and obligations of Owner and the Agency in the event of a Transfer of the Property. “Transfer” means any voluntary or involuntary sale, assignment or transfer of any interest in the Property.

Owner and the Agency also executed a Promissory Note Secured by Deed of Trust, dated the same date as the Deed of Trust and this Addendum, which is secured by the Deed of Trust (“Agency Note”).

Capitalized terms used herein and not defined shall have the meanings set forth in the Declaration.

COVENANTS. Owner and the Agency covenant and agree as follows:
1. **Prior Deeds of Trust; Charges; Liens.** Owner shall perform all of Owner’s obligations under the First Deed of Trust, including Owner’s covenants to make payments when due. Owner shall pay on time and directly to the person owed payment all taxes, assessments, charges, fines and impositions attributable to the Property which may attain priority over this Deed of Trust.

Except for the Senior Lien, Owner shall promptly discharge any other lien which shall have attained priority over this Deed of Trust unless Owner: (a) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which, in the Agency’s sole discretion, operate to prevent the enforcement of the lien; or (b) obtains from the holder of the lien an agreement satisfactory to the Agency in its sole discretion subordinating the lien to this Deed of Trust. Except for the Senior Lien, if the Agency determines that any part of the Property is subject to a lien which may attain priority over this Deed of Trust, the Agency may give Owner a notice identifying the lien. Owner shall satisfy such lien or take one or more of the actions set forth above within ten (10) days of the giving of notice.

2. **Obligations Cancelled.** Upon a Transfer of the Property in accordance with the Declaration, Owner’s obligations hereunder shall be cancelled, and the lien of this Deed of Trust shall be reconveyed.

3. **Sale of Note.** The Agency Note or a partial interest in the Agency Note (together with this Deed of Trust) may be sold one or more times without prior notice to Owner. If the Agency Note is sold, Owner will be given written notice of the sale in accordance with and containing any other information required by applicable law.

BY SIGNING BELOW, the Owner accepts and agrees to the terms and covenants contained in this Deed of Trust.

________________________
Owner - [Name]

------------ Space Below This Line for Acknowledgment -------------
Appendix 4

PERMITTED EXCEPTIONS TO TITLE

To be provided at the close of escrow for each Affordable Unit
Appendix 5

FORM OF INCOME CERTIFICATION

[To be provided prior to recordation of Declaration.]
Appendix 6

LOAN DISCLOSURE INFORMATION

SAN FRANCISCO
REDEVELOPMENT AGENCY
LIMITED EQUITY
HOMEOWNERSHIP PROGRAM

Loan Disclosure Information

MARCH 2004
# TABLE OF CONTENTS

Important Note to the Reader ................................................................. Page 3  
Buyer Acknowledgement ........................................................................ Page 5  
Program Summary .................................................................................. Page 6  
Program Elements .................................................................................. Page 7  
  Eligibility ............................................................................................... Page 7  
  Affordable Purchase Prices ................................................................. Page 7  
  Resale Affordable Purchase Prices ...................................................... Page 9  
  Capital Improvements .......................................................................... Page 10  
  Minimum Resale Value ........................................................................ Page 11  
  Owner Refinancing ................................................................................ Page 12  
  Permissible Transfers & Agency Broker Panel .................................... Page 13  
  Agency Purchase Option ...................................................................... Page 14  
  Owner Default & Agency Remedies .................................................... Page 14  
  Agency Promissory Note and Deed of Trust ...................................... Page 15  
  Transfer by Marriage, Domestic Partnership, and Inheritance .......... Page 16  
  Term ....................................................................................................... Page 16
IMPORTANT
NOTE TO THE READER

The purpose of this document is to explain the San Francisco Redevelopment Agency’s Limited Equity Homeownership Program (“Program”). Homes sold through this Program are subject to price controls at resale, as well as other terms and restrictions that affect your rights as a homeowner. Some of the terms and provisions are complex, and require that you thoroughly understand them prior to your purchase of a home. **IF YOU DESIRE TO PARTICIPATE IN THE PROGRAM AND PURCHASE A HOME, YOU MUST ATTEST TO YOUR FULL UNDERSTANDING OF AND AGREEMENT TO ALL THE PROGRAM’S TERMS AND CONDITIONS BY SIGNING BELOW PRIOR TO CLOSING ESCROW.**

I, the undersigned, hereby acknowledge and accept all the terms and conditions contained in the Declaration of Resale Restrictions and Option to Purchase, the Promissory Note Secured by a Deed of Trust, and the Short Form Deed of Trust and Assignment of Rents (“Agency Documents”), all of which I have agreed to comply with in return for purchasing my home at a below-market-rate price. I acknowledge that a staff member of the Successor Agency to the Redevelopment Agency of the City and County of San Francisco (“Agency”) explained the terms and provisions of the Agency Documents to me, and that I have had a chance to review this Limited Equity Homeownership Program Loan Disclosure Information document, which further explains the Agency Documents. I have also been provided enough time to seek an independent legal opinion about the Agency Documents and my purchase of the home, if I so chose.

I understand that by my execution of the Agency Documents, I agree that the resale price of my home will be restricted to a price that is affordable to a household of a predetermined size, earning a pre-determined percentage of Area Median Income (“AMI”), based on figures published by the Mayor’s Office of Housing, based on data published by the U.S. Department of Housing and Urban Development (or any government agency subsequently assuming this responsibility). I understand that the Agency will determine the resale affordable price applicable to my home when I notify the Agency of my intent to sell. I understand that fair market value will not determine the resale price of my home.

I further understand that the Agency’s calculation of the resale affordable purchase price for my home will consider, in addition to the current income for a pre-determined AMI level, an interest rate which is the higher of i) the 10-year rolling average of rates as calculated by the Agency (or its successor) and based on data provided by data provided by Fannie Mae, Freddie Mac, or an equivalent, nationally recognized mortgage lending institution, or ii) the current, commercially reasonable rate available through an Agency-approved lender, and other current housing costs, such as insurance, HOA dues, and taxes. I know that any proceeds I receive from the sale of my home will be affected by the value of these factors, since they will be used to calculate the resale affordable purchase price of my home.

I understand that the Agency imposes resale restrictions on homes that it subsidizes so that it can provide homeownership opportunities to many generations of low- and moderate-income families over time and that the equity I will be able to build in my home will be limited...
so that the Program is available to the next purchaser of my home. I understand that my ability to purchase my home at an affordable price is contingent upon my agreement to comply with the resale controls and Program restrictions.

PROPERTY ADDRESS: _________________________________

SIGNED: ____________________ DATE: ________________

DATE: ______________________
PROGRAM SUMMARY

- The purpose of the San Francisco Redevelopment Agency’s Limited Equity Homeownership Program (“Program”) is to provide homeownership opportunities to low- and moderate-income households (“Eligible Buyers”) who otherwise would not be able to purchase a home in San Francisco.

- To make homes affordable to Eligible Buyers, the Agency may sell land to developers at below-market-rate prices and/or provide construction funding. In return for this assistance, developers agree to sell the homes to Eligible Buyers. Eligible Buyers, in turn, purchase their homes at affordable prices and agree to comply with Program requirements.

- The Agency is able to offer the benefits of homeownership to many generations of Eligible Buyers through restrictions on resale prices, which limit the amount of equity that an Eligible Buyer is able to build. By limiting Eligible Buyers’ equity, homes can be sold at affordable prices again and again. Market fluctuations, which often result in prices too high for low- and moderate-income households to afford, do not affect limited equity resale affordable prices.
PROGRAM ELEMENTS

#1: Eligibility

To qualify as an Eligible Buyer, households must meet the following criteria:

- Household income (including income imputed from assets) within the AMI “target range” of low- to moderate-income buyers.
- Demonstrable ability to qualify for a first mortgage, i.e., good credit, stable employment, and manageable debt.
- Savings available for a 5% down payment. 2% may have been provided to the buyer as a gift.
- First-time homeowner status.
- Commitment to use the property as the principal residence.

The San Francisco Mayor’s Office of Housing publishes AMI levels for San Francisco annually, based on data published by the U.S. Department of Housing and Urban Development. The AMI target ranges that determine a household’s eligibility to purchase will vary from development to development, based on the amount of subsidy provided by the Agency to the developer. The Agency will qualify all buyers for both initial sales and for resales. Documentation of household income and assets, such as W-2s, tax returns, bank statements, and deferred income balance statements, is required.

#2: Affordable Purchase Prices

When developers set affordable purchase prices for units they sell, they use very specific information, as described below:

- AMI level: Developers in contract with the Agency are obligated to sell their units at prices affordable to households within a certain AMI “target range.” For example, a developer in 2003 may be obligated to sell his/her units to households making between 75% and 100% of AMI. For a household of 3, this translates to incomes between $61,765 and $82,350.
- Household size: For the pricing calculation, the Agency assumes a household size of one person for a one-bedroom unit, and, for all other units, one person more than the number of bedrooms. For example, a household of three people is assumed for a two-bedroom unit, four people for a three-bedroom, and so on. (For occupancy, the Agency requires a minimum of one person per bedroom. For example, a single person can apply for a studio or one-bedroom unit only. A two-person household could apply for a studio, one- or two-bedroom unit.)
- 33% “PITI”: Principal, interest, taxes, and homeowners’ insurance – total housing costs – are assumed to be 33% of a household’s gross monthly income.
• **First mortgage interest rate:** the Agency’s calculation assumes a fixed mortgage interest rate based on the higher of the following: i) a 10-year rolling average of interest rates as calculated by the Agency, or ii) market conditions at the time the homes are offered for sale. The Agency will not permit a variable rate mortgage or an interest only mortgage, as such instruments are contrary to the objectives of long-term affordability and stability of the first time homebuyers program.

• **Owner down payment:** The Agency assumes (and requires at a minimum) that the household will make a cash down payment of 5% of the affordable purchase price.

Once a developer knows, for each unit, what the applicable AMI level is, the household size, the cost of taxes and insurance, and the interest rate, he/she can set the affordable purchase price. For example, a two-bedroom unit assumes a household of three. If the developer’s obligation calls for an AMI level of 80%, the three-person household’s income would be $65,900 in 2003. 33% of that income level is $21,747, or $1,812 per month. This figure, $1,812 is the most the household will pay for PITI at the time of purchase. (This might fluctuate over time.) If the household’s insurance costs were $100 per month, and taxes were $210 per month, the total monthly income available to pay the first mortgage would be $1,502 per month. Using an 8% interest rate, the first mortgage value would be $204,698. Assuming a 5% down payment, the first mortgage would cover 95% of the purchase price, so the affordable purchase price would be $215,471.

### #3 Resale Affordable Purchase Prices

When a household decides to sell its home, it notifies the Agency, and the Agency calculates the resale affordable purchase price, using the same AMI percentage and household size that were used to calculate the seller’s affordable purchase price. To follow the example given above, the family of 3 earning 80% of AMI that bought its home for $215,471 in 2003 might decide to sell the home five years later. The Agency will determine the resale price by taking the income for a 3-person household at 80% of AMI in 2008, limiting payments for PITI to 33% of gross monthly income. The calculation will use the higher of the current mortgage interest rate or the current 10-year rolling average of rates, and current tax and insurance costs, and it will assume a 5% down payment by the new eligible buyer. So, for example, if AMI increased 10% between 2003 and 2008, taxes and insurance increased by 5%, and interest rates held steady, the resale affordable purchase price would be $239,429. After subtracting the cost of necessary repairs (if any) and closing costs, the seller would be entitled to the difference between the old affordable price and the new affordable price. The example is shown numerically below:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>80% AMI, 3-person HF income, 2008 (2003 +10%):</td>
<td>$72,490</td>
</tr>
<tr>
<td>33% of gross income:</td>
<td>$23,922</td>
</tr>
<tr>
<td>Per month:</td>
<td>$1,994</td>
</tr>
<tr>
<td>Monthly taxes &amp; insurance, 2008 (2003 + 5%)</td>
<td>($325)</td>
</tr>
<tr>
<td>Monthly income available for 1st mortgage:</td>
<td>$1,669</td>
</tr>
<tr>
<td>Mortgage (assuming 8% interest, 30-yd fixed)</td>
<td>$227,457</td>
</tr>
<tr>
<td>5% Down payment:</td>
<td>$11,972</td>
</tr>
<tr>
<td>Resale Affordable Purchase Price:</td>
<td>$239,429</td>
</tr>
</tbody>
</table>
Transactional costs (6%)  
$14,366

Repayment of full value of 1st mort + down payment:  
$215,471

Owner’s proceeds:  
$9,592*

*In this case, no repairs were required, but closing costs, which came in at 6% of the selling price, were deducted from the resale affordable purchase price. After deducting the full value of the owner’s original affordable price, the seller’s proceeds equal $9,592. Note that this limited equity return is in addition to all principal paid down on the first mortgage and the return of the owner’s original 5% down payment.

By transferring this property from one 80% AMI household to another under the Program, the home remains affordable, the benefits of homeownership are passed along, and all owners have a chance to earn limited equity!

#4 Capital Improvements

As shown above, AMI levels and current housing costs such as interest rates and insurance costs determine affordable prices. Affordable purchase prices alone cannot, therefore, reflect improvements and upgrades that an owner has made to his/her unit, such as new floors and countertops. To avoid discouraging owners from improving their properties, the Agency will allow owners to recover for the amortized value of approved capital improvements.

To qualify, each capital improvement must meet certain criteria:

- It must be a permanent improvement.
- It must have a value greater than 0.5% but less than 10% of the affordable purchase price originally paid by the owner.
- It must have a useful life longer than 5 years after the owner sells the home.
- It must have been installed with all required permits and approvals.

Owners wishing to sell and recover a portion of the cost of capital improvements must give the Agency a list of capital improvements and the date installed or completed, with invoices or other verifying documentation, at least thirty (30) days before the property is sold or transferred. The Agency must approve the capital improvements (i.e., make sure they meet the criteria described above), and will allow owners to recover the approved, amortized amount at escrow closing. The credit for each capital improvement is amortized by a factor of 7% per year from the date of the capital improvement’s completion.

#5: Minimum Resale Value

As described above, the resale affordable purchase price is subject to variable factors that fluctuate over time, such as mortgage interest rates, taxes, and insurance costs. Because of the variability of these factors, owners assume some risk when they purchase their homes! For example, if the interest rate used in the pricing calculation increases from the time of initial purchase to time of resale, and increases in AMI over that same time do not compensate for the
interest rate increase, a resale affordable purchase price could actually be lower than the original price an owner paid. The Agency’s use of the 10-year rolling average of interest rates is intended to minimize the interest rate risk at resale, but there is no guarantee that the available interest rates or the 10-year average will not increase over time. To further minimize the risk owners take when they participate in the Program, the Agency will increase the applicable AMI level on a resale, up to 120% of AMI, when the original AMI level applicable to that home does not result in a resale affordable price high enough to pay off the original value of the first mortgage.

If, after making this adjustment to ensure first mortgage payoff, the resultant resale affordable price is still not high enough to return an owner’s original down payment funds and to cover standard closing expenses, the Agency will deposit funds into escrow to cover these expenses, as a credit to the owner.

The Agency’s goal is to ensure that owners in the Program will recover at least the original purchase price of their home, so that their sale proceeds equal, at a minimum, the value of their down payment and any principal paid down on the first mortgage. The Agency also seeks to prevent closing costs from wiping out this minimum return, and will therefore cover closing costs as necessary.

But owners still assume a risk! Owners are solely responsible for:

- Repair costs. When an owner notifies the Agency of its intent to sell, the Agency has the right to inspect the unit, determine if damage exists, and calculate the value of repair. If the owner does not satisfactorily make the itemized repairs, owners will be held responsible for repair costs at the close of escrow.

- Payments due on junior liens and first mortgage equity refinancing. The Agency will only increase a resale affordable purchase price to the original value of the first mortgage. If the owner has refinanced the home and withdrawn equity, the owner is solely responsible for paying off the incremental value of the refinanced mortgage or new, junior liens.

- If the resale affordable purchase price produced using 120% of AMI is still insufficient to pay off the first mortgage, the owner is solely responsible for his/her mortgage debt beyond that adjusted resale affordable purchase price. Please note that first mortgage lender will not release its lien unless the mortgage is repaid in full. If the first lender does not release its lien because the Owner has not or cannot fully repay it, then the sale will be cancelled or the Owner will be in default.

#6: Owner Refinancing

To protect its investment and to preserve the intent of the Program, the Agency must approve all refinancing agreements.

Owners can refinance up to the original value of their first mortgage in order to obtain a lower interest rate or withdraw principal paid down on the mortgage.
Owners may also refinance their homes to withdraw up to 50% of the difference between the resale affordable purchase price and their original affordable purchase price, for the following reasons only:

- To make capital improvements to the home
- To pay for post-secondary educational expenses of a household member
- To meet the cost of an owner’s or owner’s immediate family member’s catastrophic illness
- To secure funds required to implement a marriage dissolution agreement or domestic partnership dissolution agreement.

#7: Permissible Transfers & Agency Broker Panel

Owners may only transfer their homes to other Eligible Buyers or the Agency. In order to help owners find new Eligible Buyers when they are ready to sell, the Agency has established a broker panel. These licensed real estate brokers are familiar with the Agency’s Program and requirements, and direct a portion of their marketing to low- and moderate-income clients. Owners are not required to use the Agency’s broker panel, but they are required to sell to new Eligible Buyers that only the Agency can qualify as “eligible”.

If, after 150 days from the date an owner lists its property for sale and a demonstrated good faith effort on the part of the owner and his/her broker to sell the home, an owner cannot locate a new Eligible Buyer, the Agency will authorize a 50% increase to the AMI level defining “Eligible Buyer” for that particular home. (“Good faith effort” means use of all standard marketing tools, such as a Multiple Listing Service listing, advertised open houses, and other, additional advertising.) For example, if an owner’s good faith effort to find an Eligible Buyer at 80% of AMI failed after 150 days, he/she could renew the search and include as potential buyers households earning up to 120% of AMI. The resale affordable purchase price would remain the same (i.e., based on the 80% AMI income), thus enhancing the home’s marketability to the higher-income households.

#8: Agency Purchase Option

While the Agency may purchase the home as an Eligible Buyer (in a standard sale transaction), it retains an option to purchase the home in the event of owner default, under either the Agency Documents or the first mortgage.

#9: Owner Default and Agency Remedies

An owner is in default of the Agency Documents if any of the following occur:

- A transfer of the property in violation of the Declaration of Resale Restrictions and Option to Purchase;
• Use of the property other than as owner’s principal residence (owners must certify that they occupy the home at least 10 months out of every 12 annually);

• Failure to pay required housing costs, such as taxes, homeowner dues, assessments, or insurance;

• Placement of any mortgages, liens or encumbrances on the property that the Agency has not approved;

• Any other violation of the Agency Documents; or

• default on the first mortgage.

If an owner is in default and doesn’t or can’t cure the default within the times specified in the Agency Documents or first mortgage documents, the Agency can exercise its purchase option, commence an action for specific performance or an injunction to prevent an impermissible sale, foreclose on its deed of trust, and/or exercise any other remedy permitted by law.

#10: Agency Promissory Note and Deed of Trust

To protect its investment, the Agency requires that all owners execute a promissory note and deed of trust when they purchase their homes. Unlike standard promissory notes for conventional mortgages, the Agency promissory note has no face value and cannot be prepaid. Its purpose is to protect the Agency’s investment if an owner defaults on the first mortgage or Agency obligations. An owner default “triggers” the promissory note and Agency deed of trust, which secures the promissory note against the property and is recorded to provide public notice of the owner’s obligations under the Program. In the case of default, the promissory note states that the owner must pay the Agency the difference between the resale affordable purchase price and fair market value, in addition to any costs incurred by the Agency to enforce its rights and a default interest payment on the sum due. An independent appraiser will determine fair market value.

Financing for the 3-person, 80% AMI household can again illustrate the issue. This household had a resale affordable purchase price of $239,429. If they defaulted on their loan, and fair market value was, for example, $550,000, they would owe the Agency $310,571 (plus default-related costs) under the Agency’s promissory note.

If an owner transfers his/her property according to the Program requirements and complies with all other Agency and first mortgage obligations, the Agency will simply terminate the promissory note and deed of trust at resale.

#11: Transfer by Marriage, Domestic Partnership, and Inheritance

If an owner marries or enters a domestic partnership, the spouse or partner can become a co-owner by executing an addendum to the Agency Documents. The addendum confers the same rights and obligations of the owner upon the spouse or partner.
Upon the death of a property owner or owners, the home can be transferred to an heir, as long as the heir is an Eligible Buyer approved by the Agency. If the heir does not qualify to occupy the home, the home must be sold according to the terms of the Agency Documents, and the owner’s proceeds will transfer to the owner’s estate.

**#12: Term**

The term of the Agency Documents – or the period of time that resale restrictions and all other Agency obligations apply – is 45 years. At the end of the term, owners are obligated to pay to the Agency the difference between the resale affordable purchase price and fair market value. In lieu of this payment, an owner may opt to renew his/her agreements with the Agency for an additional 45-year term.
MEMORANDUM OF OPTION

This MEMORANDUM OF OPTION is entered into as of ____________ __, 2014 (the “Effective Date”) by and between HPS1 Block 52, LLC, a Delaware limited liability company (“Vertical Developer”) and the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic, of the State of California (the “Agency”). Vertical Developer grants to Agency the right to purchase up to fifteen percent (15%) of the Residential Units to be constructed on Block 52 of the former Hunters Point Naval Shipyard, Phase 1, in the City and County of San Francisco, more particularly described on Exhibit A, attached hereto and incorporated herein by this reference, on the terms and conditions set forth in that certain Vertical Disposition and Development Agreement (Hunters Point Shipyard Phase 1 – Block 52), recorded in the official records of the City and County of San Francisco on ____________ __, 2014 as Document Number _____________.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
IN WITNESS WHEREOF, the Agency and Vertical Developer have executed this Memorandum of Option as of the Effective Date.

**AGENCY:**

Authorized by Agency Resolution
No. ________________ adopted _____ __, 20__

Approved as to Form:

DENNIS J. HERRERA, City Attorney, as counsel to the Agency

By: __________________
[Name]
Deputy City Attorney

**SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO,**
a public body, corporate and politic, of the State of California

By: __________________
Name: __________________
Title: __________________

**VERTICAL DEVELOPER**

HPS1 BLOCK 52, LLC,
a Delaware limited liability company

By: __________________
Name: __________________
Title: __________________
STATE OF CALIFORNIA )
COUNTY OF SAN FRANCISCO ) ss

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.

(Seal)
Notary Public
STATE OF CALIFORNIA )

COUNTY OF SAN FRANCISCO ) ss

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.

(Seal)
Notary Public
Exhibit A

Legal Description
EXHIBIT 4

RELEASE OF OPTION RIGHTS

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

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

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

RELEASE OF OPTION RIGHTS

This RELEASE OF OPTION RIGHTS (this “Release”) is executed as of __________, 20___ (the “Effective Date”) by the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic, of the State of California (the “Agency”). The Agency was granted the right to purchase up to fifteen percent (15%) of the Residential Units to be constructed in the development of Block 52 of the former Hunters Point Naval Shipyard, Phase 1, in the City and County of San Francisco, on the terms and conditions set forth in that certain Vertical Disposition and Development Agreement (Hunters Point Shipyard Phase 1 – Block 52), recorded in the Official Records of the City and County of San Francisco on __________, 20__ as Document Number ________. (the “Option Rights”). A Memorandum of Option referencing the Agency’s Option Rights was recorded in the Official Records of the City and County of San Francisco on __________, 20__ as Document Number __________. The Option Rights apply to that certain real property in the City and County of San Francisco more particularly described in Attachment A (the “Released Property” – which describe only the units as to which the Agency has elected not to exercise its Option Rights). By this Release, as of the Effective Date, the Agency hereby releases the Option Rights as they apply to the Released Property. The Agency takes no action with respect to its other Option Rights as to all property that is not the Released Property.

The Agency will take further actions, including without limitation executing additional documents in recordable form, if reasonably necessary or proper in order to effect the release of the Option Rights consistent with this Release.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
The Agency has executed this Release as of the Effective Date.

**AGENCY:**

Authorized by Agency Resolution
No. _________________ adopted _____ __, 20__

Approved as to Form:

DENNIS J. HERRERA, City Attorney, as counsel to the Agency

By: ________________
    [Name]
    Deputy City Attorney

SUCCESSOR AGENCY TO THE
REDEVELOPMENT AGENCY OF THE
CITY AND COUNTY OF SAN FRANCISCO,
a public body, corporate and politic, of the State of California

By: ________________
    Name: ________________
    Title: ________________
STATE OF CALIFORNIA
) ss
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.

(Seal)
Notary Public
ATTACHMENT A

RELEASED PROPERTY

[Describe only those units as to which the Agency has elected not to exercise its Option Rights.]
**EXHIBIT 5**

<table>
<thead>
<tr>
<th>Block:</th>
<th>52</th>
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<tr>
<td>Vertical Developer:</td>
<td>HPS1 Block 52, LLC</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Residential Lot Number</th>
<th>Owner</th>
<th>Development Status</th>
<th>Use</th>
<th>Parcel Acreage</th>
<th>[If Schematic Design Approval Received:] For-Sale or For-Rent</th>
<th>Max Building Height</th>
<th>Number Incl Units @ 80%</th>
<th>Total Inclusionary Unit Count</th>
<th>Total Number of Residential Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>HPS1 Block 52, LLC</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>8</td>
<td>8</td>
<td>74</td>
</tr>
</tbody>
</table>
EXHIBIT 6
MARKETING AND OPERATING OBLIGATIONS

Section 1  Purpose.

1.1  The purpose of this Exhibit 6 is to set forth Vertical Developer’s marketing and operating obligations with respect to all Residential Units in the Project, including For-Rent Inclusionary Units, For-Sale Inclusionary Units, For-Rent Market Rate Residential Units and For-Sale Market Rate Residential Units.

1.2  In the event of any inconsistency between the terms of this Exhibit 6 and the Agreement, including the other provisions of the Affordable Housing Plan, the Agreement and the other provisions of the Affordable Housing Plan shall control.

Section 2  Definitions.

Unless separately defined in this Exhibit 6, capitalized terms have the meanings set forth in the Agreement (including in the Affordable Housing Plan).

“Advance Notice” is defined in Section 4.1.

“Advance Notice Period” is defined in Section 4.1.

“Affirmative Marketing Obligations” is defined in Section 4.

“Agency’s Certificate Program” means the Agency’s Property Owner and Occupant Preference Program established in accordance with Section 33410, et seq., of the California Health & Safety Code.

“Certificate Holder” means an owner or occupant of residential property who meets the following criteria:

(a)  The owner or occupant was displaced by either (i) the Agency’s acquisition of such residential property, or (ii) the rehabilitation of such residential property where the owner of the property has entered into an owner participation agreement or other similar agreement with the Agency to perform such rehabilitation;

(b)  The Agency has determined that such individual is eligible to receive a Certificate of Preference pursuant to the relocation and replacement housing responsibilities of the Agency pursuant to Article 9, beginning with Section 33410, et seq., of the California Health and Safety Code; and

(c)  The Agency has certified such individual as a holder of a Certificate of Preference pursuant to the Agency’s Certificate Program, as such program currently exists or as may be amended within ninety (90) days of the Effective Date, and such future amendments.
“Certificate of Preference” means a certificate issued by the Agency pursuant to the Agency’s Certificate Program, to evidence the status of an owner or occupant of residential property as a Certificate Holder. For purposes of this Exhibit 6, a Certificate of Preference may be either a “Residential A Certificate” issued to a displaced resident, or a “Residential C Certificate” issued to other members of a Residential A Certificate household.

“Community Outreach” is defined in Section 4.

“Income Verification Information” means the information required by HUD to determine eligibility for the rental of a For-Rent Inclusionary Unit, or the purchaser of a For-Sale Inclusionary Unit.

“Lottery” means the process Vertical Developer uses to randomly select from all applications submitted, and develop a Potential Tenant List or Potential Purchaser List, as described in Section 5.1(c) or 6.1(c)(6), as applicable.

“Marketing Information” means Vertical Developer’s good faith estimate of each of the following information, in each case to the extent available as of the date of determination:

(a) For each Residential Project, a master list that indicates the following for each Residential Unit in such Residential Project:
   (i) The unit number;
   (ii) Whether the Residential Unit will be offered for For-Rent or For-Sale;
   (iii) The number of bedrooms and baths;
   (iv) The approximate net square footage;
   (v) A list of amenities (e.g., disposal, washer/dryer, etc.); and
   (vi) The initial Rental Rate or purchase price, as applicable.

(b) For each For-Rent Affordable Residential Unit,
   (i) The master list shall also indicate:
      (1) The cost of utilities to be paid by the tenant;
      (2) The amount of any deposit required to reserve the Residential Unit, any security deposit and any other fees related to the rental of such Residential Unit;
      (3) The duration of the rental agreement or lease and
   (ii) The following additional items:
(1) a policy for the deposit, use and return of any reservation deposit, security deposit or other fees described in (b)(i)(2), above; and

(2) Copies of any rental applications and forms to be used for Income Verification Information.

(c) For each For-Rent or For-Sale Affordable Residential Unit, the following additional items:

(i) A detailed description of Vertical Developer’s rules for tenants (or Covenants Conditions and Restrictions, as appropriate);

(ii) The amount of application processing fee, if any; and

(iii) A description of application process, and the length of time needed by Vertical Developer to process applications.

(d) For each For-Sale Affordable Residential Unit, the master list shall also indicate:

(i) Cost of HOA dues to be paid for the Residential Unit; and

(ii) Amount of CFD assessments for the Residential Unit at the time of initial sale.

“Marketing Plan” means the document attached hereto as Exhibit 6-1. Vertical Developer shall complete the Marketing Plan as required in herein with Vertical Developer’s good faith estimate as of the date of determination of the information required therein. Vertical Developer and the Agency acknowledge and agree that the Marketing Plan is intended to provide information consistent with this Exhibit 6 and is not intended to expand or otherwise contradict Vertical Developer’s obligations herein.

“Occupancy Priorities” is defined in Section 5.1(b).

“Potential Purchaser List” is defined in Section 6.1(c)(6)(D).

“Potential Tenant List” is defined in Section 5.1(c)(7).

“Purchaser Lottery List” is defined in Section 6.1(c)(6)(C).

“Rent Burdened” or “Assisted Housing Resident” means persons who are paying more than 50% of their income for housing or persons residing in public housing or Project-Based Section 8 Housing.

“Rent-Up” means the period of time from the date when the Rental Residential Units in a Residential Project are first offered for lease until rental agreements have been signed for all such Rental Residential Units in the Residential Project.
“San Francisco Residents” means a person in a household in which there are one or more persons eighteen (18) years or older residing in San Francisco at the time of the submittal of the housing application or purchase offer.

“Second Lien Documents” means the Agency Note and the Deed of Trust (as those documents are defined in the Declaration of Restrictions for For-Sale Affordable Residential Units and Option to Purchase Agreement to be executed by the purchaser of each For-Sale Affordable Residential Unit).

“Tenant Lottery List” is defined in Section 5.1(c)(6).

Section 3  Nondiscrimination Requirements.

Vertical Developer acknowledges the goal of achieving a residential population in all Residential Projects developed in Phase 1 that reflects the racial and ethnic diversity of San Francisco. To that end, Vertical Developer will comply with the Affirmative Marketing Obligations. In addition, in the marketing, operation and rental or sale of the Residential Units in Phase 1 (including the initial and subsequent rentals and sales of all Affordable Residential Units and all Market Rate Residential Units), Vertical Developer and any subsequent owner of any such Residential Units shall not discriminate based on race, religion, color, ancestry, national origin, age, sex, sexual orientation, marital status, gender identity, disability, lawful source of income (as defined in Section 3304 of the San Francisco Police Code, including to Section 8 or any equivalent rent subsidy), or any other basis prohibited by law. Nothing in this Section 3 shall prohibit Vertical Developer from applying other lawful standards for resident selection or from exercising its rights in managing property, so long as such standards and rights are equitably applied to prospective and actual residents of both Affordable Residential Units and Market Rate Residential Units.

Section 4  Community Outreach for All Residential Units.

This Section 4 requires Vertical Developer to comply with the community based outreach requirements (“Community Outreach”) described below in this Section 4. The Community Outreach requirements must be implemented before the obligations outlined in Sections 5, 6, 7, and 8 (the “Affirmative Marketing Obligations”) for all For-Rent and For-Sale Affordable Residential Units and For-Sale Market Rate Residential Units.

4.1  Notice.

At least thirty (30) days for For-Rent, and ninety (90) days for For-Sale, before initiation of the Affirmative Marketing Obligations or other public advertising and marketing of the Residential Units in the Project, Vertical Developer shall provide community-based groups, faith-based organizations, and others in the Bayview Hunters Point area (based on a list developed by Developer with and approved by the Agency) with advance notice (the “Advance Notice”) that affordable and/or market rate housing opportunities in the Project will become available (the “Advance Notice Period”). This Advance Notice will include a description of the housing, the qualifications for tenancy or ownership, a copy of the application (to the extent available), and the name of a Vertical Developer representative who can answer questions and provide additional information about the application process.
4.2 Community Meetings

During the Advance Notice Period, Vertical Developer shall conduct at least two (2) informational meetings in the Bayview Hunters Point area to answer questions and provide information to community residents about the housing opportunities that are becoming available in the Project and other related matters described in the Advance Notice required in Section 4.1. Such meetings may be held in conjunction with seminars, meetings and other outreach undertaken by Vertical Developer under the Community Benefits Plan, by other “Vertical Developers” under other vertical disposition and development agreements or by Developer under the Community Benefits Agreement.

4.3 Community Assistance and Information Services.

Vertical Developer shall provide Bayview Hunters Point area residents with information and other assistance to enable them to qualify for the For-Rent and For-Sale Residential Units. This information and other assistance, developed in collaboration with, and approved by, the Agency, shall include referrals to government agencies, lending institutions, and other organizations that may be able to provide financial and other assistance to qualified applicants. Such information may be provided in conjunction with other information provided or other outreach undertaken by Vertical Developer under the Community Benefits Plan, by other “Vertical Developers” under other vertical disposition and development agreements or by Developer under the Community Benefits Agreement.

4.4 Agency Use of Information. The Agency may use, information provided by Vertical Developer in connection with the outreach program under the Community Benefits Plan, Attachment E and the Marketing Information provided by Vertical Developer under this Exhibit 6 to communicate with Certificate Holders.

Section 5 For-Rent Affordable Residential Units.

5.1 Procedures for Initial Rentals of For-Rent Affordable Residential Units.

(a) Affirmative Marketing Obligations.

(1) Before the initial rental of For-Rent Affordable Residential Units, Vertical Developer shall advertise in media directed to different ethnic groups in San Francisco including Asian Week, Chinese Times, El Bohemio, El Mensajero, Hokubei Mainichi, Horizontes, Korea Times, Metro Reporter Group, New Bayview, New Fillmore, Nichi Bei Times, and Philippine News. The Agency reserves the right to modify this list from time to time to adequately reflect diverse ethnicities and to allow for media that no longer exist; provided, however, that the list of required advertising media shall not exceed fifteen (15) publications. Advertisements shall be published in the predominant language of the ethnic group served by each applicable publication.

(2) Print ads shall be published at least twice in each publication that has a weekly circulation, and at least once in all other publications. Ads must be published before Vertical Developer’s conducting the Lottery for the initial rental of For-Rent Affordable Residential Units in the applicable Residential Project.
(3) Vertical Developer shall prepare and provide to the Agency for its review and approval a copy of the proposed advertisement described in Section 5.1(a)(2) at least sixty (60) days before conducting the Lottery for the initial rental of For-Rent Affordable Residential Units. The Agency’s approval rights are limited to determining compliance with Section 5.1(a)(4). The Agency will approve or disapprove the proposed advertisement within five (5) Business Days of receipt. Failure by the Agency to either approve or disapprove the proposed advertisement within such five (5) day period shall be deemed approval.

(4) Print advertisements shall be no less than four inches (4”) by six inches (6”) in size. Each print advertisement shall include the U.S. Department of Housing and Urban Development Fair Housing logo and the words “Equal Housing Opportunity”. Vertical Developer shall include models of different races and ethnic background in all its pictorial advertising that includes models.

(b) Occupancy Priorities. In the initial rental of For-Rent Affordable Residential Units, Vertical Developer shall give the following occupancy priorities (the “Occupancy Priorities”):

(1) Hunters Point Certificate Holders. Vertical Developer shall give first-priority preference to Certificate Holders of Hunters Point Residential A and C Certificates each in the manner described in Section 5.1(c)(7).

(2) Western Addition Certificate Holders. Vertical Developer shall give second priority preference to Certificate Holders of Western Addition Residential A and C Certificates, each in the manner described in Section 5.1(c)(7).

(3) Rent Burdened or Assisted Housing Residents Who Are San Francisco Residents. Vertical Developer shall give a third-priority preference to persons paying more than 50% of their income for housing, or persons residing in public housing or Project-Based Section 8 housing, who are San Francisco Residents, in the manner described in Section 5.1(c)(7).

(4) San Francisco Residents. Vertical Developer shall give fourth priority preference to San Francisco Residents in the manner described in Section 5.1(c)(7).

(5) Members of the general public.

(c) Rental Procedures/Lottery.

(1) Vertical Developer shall determine priority for occupancy of For-Rent Affordable Residential Units according to the Lottery described in this Section 5.1(c).

(2) Vertical Developer shall conduct a separate Lottery for each Residential Project containing For-Rent Affordable Residential Units.

(3) At least ninety (90) days before the date that Vertical Developer estimates in good faith that it will conduct the Lottery for For-Rent Affordable Residential Units in a Residential Project, Vertical Developer shall provide to the Agency the then-current
Marketing Information applicable to such Residential Units, together with a notice stating the
date on which Vertical Developer intends to start leasing such For-Rent Affordable Residential
Units.

(4) Promptly thereafter, Vertical Developer and the Agency shall
provide notice to Certificate Holders of the housing opportunity and the application and Lottery
process for For-Rent Affordable Residential Units. Vertical Developer shall provide the Agency
with a list of all Certificate Holders that have submitted an application, as well as information on
each Certificate Holder’s status in the application process, promptly following the Agency’s
request therefor.

(5) After completing the Affirmative Marketing Obligations outlined
above, but no earlier than three (3) weeks after the first day on which Vertical Developer will
accept applications, Vertical Developer shall combine applications from all applicants, including
Certificate Holders, if any, Rent Burdened or Assisted Housing Residents, San Francisco
Residents, and members of the general public into one Lottery for each Residential Project.

(6) Vertical Developer shall select potential tenants at random from
the combined pool of applicants by selecting all applicants submitting to the Lottery. Each
applicant will be assigned a number in the order selected (the “Tenant Lottery List”).

(7) Vertical Developer shall then identify any applicants entitled to an
Occupancy Priority and rank all applicants on the Tenant Lottery List according to the preference
categories in Section 5.1(b), and within each category in the order in which their name was
selected for the Tenant Lottery List. This prioritized list shall be referred to as the “Potential
Tenant List”. Vertical Developer shall provide the Agency with the Potential Tenant List within
three (3) days of its creation.

(8) Within thirty (30) days of the creation of the Potential Tenant List,
unless otherwise mutually agreed by Vertical Developer and the Agency, Vertical Developer
shall determine the eligibility of as many households on the Potential Tenant List as there are
available For-Rent Affordable Residential Units in a particular Residential Project (i.e., one
household per available For-Rent Affordable Residential Unit) in the order of priority on the
Potential Tenant List, taking into account income and household size restrictions for the For-
Rent Affordable Residential Units in each Residential Project, and applying all such other
Vertical Developer tenant selection criteria consistent with this Exhibit 6 so as to fill all of the
For-Rent Affordable Residential Units. Vertical Developer shall then inform all eligible tenants
so selected of the availability of For-Rent Affordable Residential Units in the particular
Residential Project.

(9) All applicants from the Potential Tenant List shall have a
reasonable opportunity to view either the actual Residential Unit for which the
individual/household is qualified, or a model or other Residential Unit in that Residential Project
that is substantially similar to the Residential Unit that the individual/household is qualified to
occupy. All applicants from the Potential Tenant List shall then have at least three (3) days from
the date of such viewing opportunity to notify Vertical Developer of his/her intention to rent a
For-Rent Affordable Residential Unit and to take all other steps necessary in accordance with the Marketing Information to secure such For-Rent Affordable Residential Unit.

(d) **Tenant Income Eligibility.** The required tenant income levels for each For-Rent Affordable Residential Unit in each applicable Residential Project shall be determined solely according to the requirements of the Affordable Housing Plan and the Declaration of Restrictions for For-Rent Affordable Residential Units, which shall be recorded against each such Residential Project in accordance with the Affordable Housing Plan.

(e) **Rental Charge Restrictions.** The rental rates for For-Rent Affordable Residential Units in each applicable Residential Project shall be determined solely according to the requirements of the Affordable Housing Plan and the Declaration of Restrictions for For-Rent Affordable Residential Units, which shall be recorded against each such Residential Project in accordance with the Affordable Housing Plan.

### 5.2 Procedures for Subsequent Rentals of Vacant For-Rent Affordable Residential Units.

(a) **Affirmative Marketing Obligations.** Vertical Developer shall make good faith efforts to advertise the periodic vacancy of For-Rent Affordable Residential Units in a manner designed to reach diverse ethnic populations.

(b) **Occupancy Priorities.**

In the subsequent rental of vacant For-Rent Affordable Residential Units, Vertical Developer shall give Occupancy Priorities in the order outlined in Section 5.1(b), first to persons in each category on the Potential Tenant List and then to persons in each category who request to be included on the waiting list following completion of Rent-Up of such Residential Units.

(c) **Disqualification of Person on the Potential Tenant List.**

(1) **A Certificate Holder, Rent-Burdened or Assisted Housing Resident, or San Francisco Resident on the Potential Tenant List or the waiting list of a Residential Project shall no longer be entitled to maintain the individual’s/household’s priority position on such list upon occurrence of any of the following:**

   (A) The individual/household is offered, but does not rent a For-Rent Affordable Residential Unit that the individual/household is eligible to occupy (based on income and household size);

   (B) The income of the individual/household is too high for that individual/household to qualify for any For-Rent Affordable Residential Unit available in the particular Residential Project; or

   (C) The individual/household fails to satisfy Vertical Developer’s tenant selection criteria applicable to the particular Residential Project, applied in accordance with all applicable local, state and federal fair housing laws.
Section 6  For-Sale Affordable Residential Units.

6.1 Procedures for Initial Sales of For-Sale Affordable Residential Units.

(a) Affirmative Marketing Obligations.

(1) Before the initial sale of For-Sale Affordable Residential Units, Vertical Developer shall advertise in media directed to different ethnic groups in San Francisco including Asian Week, Chinese Times, El Bohemio, El Mensajero, Hokubei Mainichi, Horizontes, Korea Times, Metro Reporter Group, New Bayview, New Fillmore, Nichi Bei Times, and Philippine News. The Agency reserves the right to modify this list from time to time to adequately reflect diverse ethnicities and to allow for media that no longer exist; provided, however, that the list of required advertising media shall not exceed fifteen (15) publications. Advertisements shall be published in the predominant language of the ethnic group served by each applicable publication.

(2) Print ads shall be published at least twice in each publication that has a weekly circulation, and at least once in all other publications. Ads must be published before Vertical Developer conducts the Lottery for the initial sale of For-Sale Affordable Residential Units in the applicable Residential Project.

(3) Vertical Developer shall prepare and provide to the Agency for its review and approval a copy of the proposed advertisement described in Section 6.1(a)(2) at least sixty (60) days before accepting applications for the initial sale of For-Sale Affordable Residential Units. The Agency’s approval rights are limited to determining compliance with Section 6.1(a)(4). The Agency will approve or disapprove the proposed advertisement within five (5) Business Days of receipt. Failure by the Agency to either approve or disapprove the proposed advertisement within such five (5) day period shall be deemed approval.

(4) Print advertisements shall be no less than four inches (4”) by six inches (6”) in size. Each print advertisement shall include the U.S. Department of Housing and Urban Development Fair Housing logo and the words “Equal Housing Opportunity”. Vertical Developer shall include models of different races and ethnic background in all its pictorial advertising that includes models.

(b) Occupancy Priorities.

Vertical Developer shall use the Occupancy Priorities in Section 5.1(b) in the initial sale of For-Sale Affordable Residential Units.

(c) Sales Procedures.

(1) No later than sixty (60) days after the later to occur of (i) the date of the Agency Commission’s approval of the Schematic Design Documents and (ii) the Effective Date, Vertical Developer shall provide the Agency with the then-current Marketing Information and the Agency and Vertical Developer shall thereafter provide such Marketing Information to Certificate Holders.
(2) No later than one hundred fifty (150) days before the date that Vertical Developer estimates in good faith that it will sell the first For-Sale Affordable Residential Unit in the Residential Project, Vertical Developer shall request current pricing information for For-Sale Affordable Residential Units from the Agency (which pricing shall be determined in accordance with the Affordable Housing Plan).

(3) No later than one hundred twenty (120) days before the date that Vertical Developer estimates in good faith that it will sell the first For-Sale Affordable Residential Unit in the Residential Project, Vertical Developer shall provide the then-current Marketing Information to the Agency and Marketing Plan.

(4) No later than ninety (90) days before the date that Vertical Developer estimates in good faith that it will sell the first For-Sale Residential Unit in a Residential Project, Vertical Developer shall provide the Agency with the then-current Marketing Information and the Agency and Vertical Developer shall thereafter provide such Marketing Information to Certificate Holders. Vertical Developer shall provide the Agency with a list of all Certificate Holders that have submitted an application, as well as information on each Certificate Holder’s status in the application process, promptly following the Agency’s request therefor.

(5) Vertical Developer, in cooperation with the Agency, shall conduct at least two (2) public informational meetings regarding the sale of For-Sale Affordable Residential Units in each Residential Project. Each meeting shall be advertised in conjunction with the advertising required under Section 6.1(a). Each meeting shall be open to persons potentially interested in the purchase of a For-Sale Affordable Residential Unit. At each meeting, Vertical Developer and the Agency shall describe the following:

(A) The number and type of For-Sale Affordable Residential Units to be offered;

(B) The income and purchase price restrictions applicable to each available For-Sale Affordable Residential Unit;

(C) The resale restrictions applicable to each available For-Sale Affordable Residential Unit, including the Second Lien Documents to be executed by each purchaser;

(D) The anticipated schedule for marketing and selling such For-Sale Affordable Residential Units; and

(E) Information on covenants, conditions and restrictions; HOA dues; CFD assessments; and proposed rules of the HOA applicable to such For-Sale Affordable Residential Units.

Such meetings may be held in conjunction with seminars, meetings and other outreach undertaken by Vertical Developer under the Community Benefits Plan, by other “Vertical Developers” under other vertical disposition and development agreements or by Developer under the Community Benefits Agreement.
(6) Vertical Developer may, at its discretion, accept pre-applications from interested purchasers and may pre-qualify purchasers of For-Sale Affordable Residential Units according to the occupancy restrictions applicable to a particular Residential Unit and the application of such other tenant selection criteria permitted under this Exhibit 6.

(7) Vertical Developer shall conduct (or cooperate with the Mayor’s Office of Housing to conduct) a Lottery of all interested purchasers, including any potential purchasers that have been pre-qualified by Vertical Developer, as follows:

(A) Vertical Developer shall conduct a separate Lottery for each Residential Project containing For-Sale Affordable Residential Units.

(B) Vertical Developer shall combine all Certificate Holders, Rent Burdened or Assisted Housing Residents, San Francisco Residents and applications from members of the general public into one Lottery for each Residential Project.

(C) Vertical Developer shall select potential purchasers at random from the combined pool of applicants, by selecting all applicants, and shall prioritize potential purchasers in the order selected into an initial list of potential purchasers (the “Purchaser Lottery List”).

(D) Vertical Developer shall then prioritize names on the Purchaser Lottery List according to the Occupancy Priorities in Section 5.1(b). This newly prioritized list shall be referred to as the “Potential Purchaser List”. Vertical Developer shall provide the Agency with the Potential Purchaser List within three (3) days of its creation.

(E) Within thirty (30) days of the creation of the Potential Purchaser List, unless otherwise mutually agreed by Vertical Developer and the Agency, Vertical Developer (together with the Mayor’s Office of Housing) shall determine the eligibility of enough households on the Potential Purchaser List as there are available For-Sale Affordable Residential Units in a particular Residential Project (i.e., one household per available For-Sale Affordable Residential Unit) in the order of priority on that list, taking into account income and household size restrictions for the For-Sale Affordable Residential Units in each Residential Project, and applying such other purchaser selection criteria consistent with this Exhibit 6. Vertical Developer shall then inform that number of eligible purchasers so selected of the availability of Residential Units in the particular Residential Project. Vertical Developer’s determination of purchaser eligibility is subject to a mortgage lender’s approval of each potential purchaser.

(d) Purchaser Income Eligibility and Sales Price Restriction. The income levels for purchasers of, and sales prices for, each For-Sale Affordable Residential Unit in each Residential Project shall be determined solely according to the requirements of the Affordable Housing Plan and the Declaration of Restrictions for For-Sale Affordable Residential Units and Option to Purchase Agreement. A Declaration of Restrictions for For-Sale Affordable Residential Units and Option to Purchase Agreement, indicating the types of For-Sale Affordable Residential Units in each applicable Residential Project, shall be recorded against each
Residential Project containing For-Sale Affordable Residential Units in accordance with and as more particularly set forth in the Affordable Housing Plan.

6.2 Procedures for Resales of For-Sale Affordable Residential Units. All obligations of the owners of For-Sale Affordable Residential Units with respect to the resale of For-Sale Affordable Residential Units, including Occupancy Priorities and resale procedures, are contained in the Second Lien Documents. Purchaser income eligibility and sales price restrictions applicable to the resale of For-Sale Affordable Residential Units shall be determined solely according to the requirements of the Declaration of Restrictions for For-Sale Affordable Residential Units and Option to Purchase Agreement.

Section 7 For-Sale Market Rate Residential Units:

7.1 Procedures for Initial Sales of For-Sale Market Rate Residential Units.

(a) Affirmative Marketing.

(1) Before the initial sale of For-Sale Market Rate Residential Units, Vertical Developer shall advertise in media directed to different ethnic groups in San Francisco including Asian Week, Chinese Times, El Bohemio, El Mensajero, Hokubei Mainichi, Horizontes, Korea Times, Metro Reporter Group, New Bayview, New Fillmore, Nichi Bei Times, and Philippine News. The Agency reserves the right to modify this list from time to time to adequately reflect diverse ethnicities and to allow for media that no longer exist; provided, however, that the list of required advertising media shall not exceed fifteen (15) publications. Advertisements shall be published in the predominant language of the ethnic group served by each applicable publication.

(2) Print ads shall be published at least twice in each publication that has a weekly circulation, and at least once in all other publications. Ads must be published before Vertical Developer’s acceptance of any applications for the initial sale of For-Sale Market Rate Residential Units in the applicable Residential Project.

(3) Vertical Developer shall prepare and provide to the Agency for its review and comment only a copy of the proposed advertisement described in Section 7.1(a)(2) at least, thirty (30) days before accepting applications for the initial rental of For-Sale Market Rate Residential Units. The Agency’s review and comment rights are limited to those items in Section 7.1(a)(4).

(4) Print advertisements shall be no less than four inches (4”) by six inches (6”) in size. Each print advertisement shall include the U.S. Department of Housing and Urban Development Fair Housing logo and the words “Equal Housing Opportunity.” Vertical Developer shall include models of different races and ethnic background in all its pictorial advertising that includes models.

(b) Occupancy Priorities. In the initial sale of For-Sale Market Rate Residential Units, Vertical Developer shall give a first-priority preference to Hunters Point Certificate Holders, Western Addition Certificate Holders, and then to San Francisco Residents.
7.2 Procedures for Subsequent Sales of For-Sale Market Rate Residential Units.
This Exhibit 6 does not impose any restrictions on the subsequent sales of For-Sale Market Rate Residential Units.

Section 8 Reporting Requirements.

Vertical Developer shall comply with the following reporting requirements, in addition to any other requirements imposed by the funding source for the development of Market Rate Residential Units or Affordable Residential Units.

8.1 For-Rent Affordable Residential Units

(a) Within ten (10) days after the execution of a rental agreement for the last For-Rent Affordable Residential Unit in a particular Residential Project, Vertical Developer shall provide to the Agency a report on the status of each Certificate Holder on the Potential Tenant List, and a rent roll specifying each Residential Unit number, Residential Unit size, number of occupants, affordability designation, and rent.

(b) Vertical Developer shall provide to the Agency quarterly reports, no later than the 15th day of the month, which indicate the following information for the preceding quarter:

1. The number of individuals/households on the waiting list for a particular Residential Project containing For-Rent Affordable Residential Units;

2. With respect to Certificate Holders, Rent Burdened or Assisted Housing Residents and San Francisco Residents:

   (A) The names of current Certificate Holders, Rent Burdened or Assisted Housing Residents, and San Francisco Residents on the waiting list for each such Residential Project and the date on which each such name was added to the waiting list;

   (B) The names of Certificate Holders, Rent Burdened or Assisted Housing Residents, and San Francisco Residents who leased Residential Units during the preceding quarter; and

   (C) If applicable, the reason why any Certificate Holder, Rent Burdened or Assisted Housing Resident, or San Francisco Resident on the waiting list did not rent an available For-Rent Affordable Housing Residential Unit (e.g., not income-eligible, household size not appropriate for the Residential Unit).

3. The Residential Unit number and date of leasing of each Residential Unit rented during the preceding quarter.

4. The number of names added to and removed from each waiting list during the preceding quarter.
(c) Vertical Developer shall provide to the Agency, in the quarterly report, a current waiting list for each such Residential Project, together with a narrative summary of each case in which a Certificate Holder was denied occupancy of a For-Rent Affordable Residential Unit, and the grounds for such denial (e.g., not income eligible, household size not appropriate for the available Residential Unit size).

8.2 For-Sale Affordable Residential Units. Within ten (10) days following the close of escrow of all For-Sale Affordable Residential Units in a particular Residential Project, Vertical Developer shall provide to the Agency a report on the status of each Certificate Holder on the Potential Purchaser List, and a sales roll specifying each Residential Unit number, Residential Unit size, number of occupants, affordability designation, and sales price.

8.3 For-Sale Market Rate Residential Units. Within ten (10) days after execution of a purchase agreement for ninety percent (90%) of For-Sale Market Rate Residential Units in a particular Residential Project, Vertical Developer shall provide to the Agency a report regarding the status of each Certificate Holder who applied for the purchase of any such Residential Unit.
EXHIBIT 6-1

FORM OF MARKETING PLAN
ATTACHMENT G

Insurance Requirements

1. **Definitions.**

   (a) **“City Parties”** means collectively as the City and Agency and their respective supervisors, commissioners, officers, agents and employees.

   (b) **“Contractor”** means as any Person in a direct contract with Vertical Developer for Work for the Project.

   (c) **“Design-Build Contractor”** means as any Person that has a direct contract with Vertical Developer or Contractor for architectural services, engineering, landscape architectural services or any other professional design services and Work for the Project.

   (d) **“Developer Parties”** means collectively as the Developer, CP/HPS Development Co. GP, LLC, Lennar Corporation, and all of their respective partners, parents, affiliates, successors and assigns.

   (e) **“Pollution Work”** means as any Work that involves disturbance of (i) soil where Hazardous Materials, as defined in the Agreement, are known to be located; (ii) groundwater; (iii) lead-based paint; (iv) asbestos containing materials; or (v) the removal, transportation and disposal of Hazardous Material.

   (f) **“Remediation Subcontractor”** means as Contractors and Subcontractors that perform environmental remediation work or handle Hazardous Material for the Project.

   (g) **“Subcontractor”** means as any Person that is acting as a subcontractor in a direct contract with a Contractor for Work for the Project.

   (h) **“Work”** means as the furnishing of any construction or labor for the Project required for or in connection with the construction and completion of the Project.

2. **Insurance Requirements for Vertical Developer.**

   Vertical Developer shall procure and maintain during the Project, the insurance set forth under this Section 2 for the longer of: (i) the entire term of the Agreement; and (ii) the durations set forth in this Attachment G.

   2.1 **Builder’s Risk Property Insurance.** Upon Commencement of Construction on or about the Project, Vertical Developer shall procure the following Builder’s Risk insurance:

   (a) **Minimum Scope and Limits.** Builder’s Risk Insurance shall be written on a “Special Causes of Loss” or an equivalent form with replacement cost, in an amount at least equal to the estimated cost of all material and equipment that is to be or may be a permanent part of the completed Project from the time such equipment is delivered to the Property. The Builder’s Risk Insurance will not cover Contractor’s or Subcontractor’s temporary structures,
materials, supplies, tools or equipment, or any other property not destined to become a permanent part of the competed Project, whether owned or rented, or Contractor’s and Subcontractor’s materials and equipment while stored at any off-Property storage location or while in transit to the Property, and Contractor and Subcontractor shall be solely responsible for such items. Notwithstanding anything to the contrary in this Section 2.1, the Builder’s Risk Insurance shall cover materials, supplies, tools, equipment, and any other property to the extent of Vertical Developer’s interest therein, in any case to be installed by any Contractor or Subcontractor at the Property, whether such materials, supplies, tools or equipment, or other property are physically located on- or off-Property.

(b) **Named Insured.** Named insureds shall include Vertical Developer and shall cover all Contractors and Subcontractors whose products or Work will be a part of or incorporated into the Project.

(c) **Deductibles and Self-Insured Retentions.** With respect to the City, any deductibles or self-insured retentions (“SIR”) will be the responsibility of Vertical Developer. Vertical Developer may require Contractors or Subcontractors to be responsible for each of their losses to the extent of the deductible or SIR.

(d) **Policy Term.** The policy shall be maintained from Commencement of Construction through to the earlier to occur of the date of the Certificate of Completion or the Project is put to use as intended.

(e) **Waiver of Subrogation.** Vertical Developer shall obtain an endorsement that requires the insurer to waive all rights of subrogation against the City Parties for losses arising from the Work. Contractors and Subcontractors will waive all rights against each other and against Developer Parties, Vertical Developer, and the City Parties for loss or damage to the extent covered by Builder’s Risk or any other property or equipment insurance applicable to the Work, except such rights as they may have to the proceeds of such insurance. If the policies of insurance referred to in this Section require an endorsement or consent of the insurance company to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed or obtain such consent.

**2.2 Workers’ Compensation Insurance and Employer’s Liability Insurance.**

(a) **Minimum Scope and Limits.** Workers’ Compensation Insurance with Employer’s Liability insurance with limits of the following (or any higher limits as required by applicable law), unless Vertical Developer has no employees:

- **Coverage A.** Statutory Benefits – State of Hire
- **Coverage B.** Employers’ Liability of:
  - Bodily Injury by accident $1,000,000
  - Bodily Injury by disease $1,000,000 policy limit
  - Bodily Injury by disease $1,000,000 each employee

(b) **Policy Term.** The policy shall be maintained for the duration of the Project.
(c) **Waiver of Subrogation.** Vertical Developer shall obtain an endorsement that requires the insurer to waive all rights of subrogation against the Developer Parties and City Parties. If the policies of insurance referred to in this Section 2.2 require an endorsement or consent of the insurance company to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed or obtain such consent.

### 2.3 Commercial General Liability Insurance.

(a) **Commercial General Liability Insurance.** Vertical Developer shall maintain commercial general liability insurance ("CGL") for the Project in amounts and scopes that Vertical Developer reasonably determines are appropriate for projects of similar size, quality and cost in the City. The Developer Parties and City Parties shall be additional insureds under such policy(ies). Owner Controlled Insurance Programs ("OCIP") and Contractor Controlled Insurance Programs ("CCIP") may be provided for this purpose. If Vertical Developer is an Affiliate of Developer and the Project is a For-Sale Residential Project, then either (i) Developer shall include all of Vertical Developer’s eligible Contractors and Subcontractors in the OCIP or CCIP that Developer obtained for Phase 1 or (ii) Vertical Developer shall separately obtain an OCIP or CCIP that shall cover all of Vertical Developer’s eligible Contractors and Subcontractors.

(b) **Waiver of Subrogation.** The CGL policy holder shall obtain an endorsement that requires the insurer to waive all rights of subrogation against the Developer Parties and the City Parties. If the policies of insurance obtained pursuant to this Section 2.3 require an endorsement or consent of the insurance company to provide for continued coverage where there is a waiver of subrogation, the CGL policy holder will cause them to be so endorsed or obtain such consent.

### 3. Insurance Requirements for Pollution Work.

In connection with any Pollution Work, Vertical Developer will (or, if Vertical Developer is an Affiliate of Developer, may cause Developer), or shall require Remediation Subcontractors that will be performing such Pollution Work, to procure and maintain the Contractors Pollution Liability insurance coverages set forth under this Section 3, at a minimum, all at their sole cost and expense and for the longer of their contracts and the durations set forth in this Attachment G.

(a) **Minimum Limits.** Contractors Pollution Liability insurance with limits of not less than Two Million Dollars ($2,000,000) aggregate, or such higher amount equal to the cost of the applicable Pollution Work, per policy period of one year, or for the duration of the Pollution Work if longer than one year. If such activity involves or may involve lead-based paint or asbestos identification / remediation, such insurance shall not contain lead-based paint or asbestos exclusion.

(b) **Policy Term.** The policy shall be maintained for the duration of the Remediation Subcontractor’s contract and for a period of at least five (5) years after completion of the Pollution Work.
(c) **Policy Type.** This insurance may be on a claims-made form or occurrence form.

(d) The retroactive date must be shown, and must be before the effective date of the contract of the Remediation Subcontractor or the date such Pollution Work commences, whichever is later.

(e) If coverage is reduced, canceled or non-renewed, and not replaced with another claims-made or occurrence policy form with a retroactive date before the effective date of the contract or subcontract of the Remediation Subcontractor or the date such Pollution Work commences, whichever is later, the Remediation Subcontractor must purchase an extended period coverage for a minimum of five (5) years after completion of such Pollution Work.

(f) If the Remediation Subcontractor is transporting Hazardous Materials, such entity must have:

(i) Coverage must be on Insurance Services Office (ISO) form CA00 01 (0692) or coverage at least as broad, and include all owned, hired and non-owned automobiles. Coverage must include pollution and clean-up while being transported or towed or handled for movement into, onto or from the covered automobiles.

(ii) Coverage shall include an MCS-90 endorsement.

(g) **Insurance Policies.** Each insurance policy required under this Section 3 shall comply with the following requirements:

(i) An Additional Insured Endorsement covering Vertical Developer, the Developer Parties and the City Parties.

(ii) Any Contractors Pollution Liability policies shall be primary insurance to any other insurance available to the additional insureds with respect to any claims arising out of the Project and the Remediation Subcontractor’s contract. Any insurance or self-insurance maintained by Developer Parties or City Parties shall be excess of Remediation Subcontractor’s insurance and shall not contribute with it.

(iii) Separation of Insured Clause.

(iv) Non-Owned Disposal Site coverage.

(v) There shall be no exclusions for XCU (Explosion, Collapse or Underground damage coverage.)

(vi) A Waiver of Subrogation, to apply in favor of Developer Parties and City Parties.
(vii) This policy may not be subject to a SIR or deductible that exceeds $100,000. Any and all SIRs must be susceptible of being satisfied under this policy through payments made by additional insureds, co-insurers, and/or insureds other than the First Named Insured. SIR and deductibles must be stated and shall not reduce the limits of liability.

(viii) “Covered Operations” designated by the policy must include all work performed under the Remediation Subcontractor’s contract.

(ix) Carriers. The policies shall be issued by insurance carriers licensed and approved to do business in California, having a general rating of not less than an “A(-)” and financial rating of not less than “VII” in the most current A.M. Best’s Insurance or, if not rated by A.M. Best, then a comparable rating from a nationally recognized rating agency approved by Vertical Developer.

(x) Notice of Cancellation. The policies will have standard cancellation/non-renewal clauses conforming to the California Insurance Code, and shall contain a provision that the policy shall not reduced or cancelled without thirty (30) days’ prior written notice if the reduction or cancellation is for any reason other than non-payment. Cancellation for non-payment of premium will provide ten (10) days’ notice of such cancellation to the insureds. Remediation Subcontractor shall provide Vertical Developer with a copy of any notice of reduction or cancellation that it receives within five (5) Business Days of receipt of such notice. Vertical Developer shall have the right, but not the obligation to pay any premium due before the specified reduction or cancellation date, without waiving other rights and remedies.

(xi) Evidence of Insurance. As evidence of specified insurance coverage, Vertical Developer will accept certificates and endorsements issued by Remediation Subcontractor’s insurance carrier showing such policies in force for the specified period. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf.

(xii) Primary and Excess Coverage. All required limits of insurance may be purchased or placed through a combination of primary and excess insurance policies.

4. **Insurance Prerequisite.**

Vertical Developer shall not permit any Design-Build Contractors, Contractors, or Subcontractors to Commence Construction or perform services on or relating to the Project until such entities have complied with the applicable insurance requirements set forth in this Attachment G.

5. **No Limitations.**
The insurance requirements in this Attachment G are minimum requirements. Nothing contained in this Attachment G shall be construed as limiting the type, quality or quantity of insurance Vertical Developer may obtain and maintain at its discretion.
ATTACHMENT H-1

Form of Notice of Compliance of Construction with Access Laws

TO: Successor Agency to the Redevelopment Agency of the City and County of San Francisco
One South Van Ness Avenue, 5th Floor
San Francisco, California 94103

Development: Hunters Point Shipyard
Property: ______________________

DATE: ______________________

FROM: [Architect of Record]
________________________
________________________

This Notice is being provided pursuant to section 6.5 of that certain Vertical Disposition and Development Agreement (Hunters Point Shipyard Phase 1 – Block 52), by and between the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic, of the State of California (the “Agency”), HPS1 Block 52, LLC, a Delaware limited liability company (“Vertical Developer”), dated as of ____________2014, and recorded in the Official Records of the City and County of San Francisco on ______________, as Document No. _____ at Reel ____. Image ____ (as amended, the “Vertical DDA”). Capitalized terms used but not otherwise defined in this Notice have the meanings given to them in the Vertical DDA.

As Architect of Record for the construction of the Vertical Improvements, I observed the Vertical Improvements regarding Accessibility for Persons with Disabilities during construction and, most recently, on ______________(date), and all the statements made below are made as of this most recent visitation. My opinions and statements provided in this certificate are limited to my on-site inspections. I am not required to make nor have I made exhaustive or continuous on-site inspections of the Vertical Improvements.

I neither retained nor exercised control over or charge of, nor am I responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the construction of the Vertical Improvements.

I shall not be responsible for the contractor’s schedules or failure to carry out the work in accordance with the Construction Documents. I neither have nor have had control over or charge of acts or omissions of any contractor, subcontractor or their agents or employees, or of any other person performing portions of the construction.

I hereby declare to the best of my knowledge, information and belief, that it is my professional opinion that, except as may be noted on Exhibit 1 attached hereto:
1. Based on my observation, the construction of the Vertical Improvements with respect to Accessibility for Persons with Disabilities has been and is being performed in accordance and complies with all applicable local, state, and federal building laws and regulations with respect to Accessibility for Persons with Disabilities.

2. Based on my observation, the construction of the Vertical Improvements with respect to Accessibility for Persons with Disabilities has been done in a good and workperson-like manner; and all of the work, materials and fixtures are acceptable.

3. In my opinion, construction of the Vertical Improvements has been completed satisfactorily in accordance with all applicable local, state, and federal building laws and regulations with respect to Accessibility for Persons with Disabilities.

[Architect of Record]

By: ______________________

Its: ______________________
EXHIBIT 1

EXCEPTIONS TO NOTICE OF COMPLIANCE OF CONSTRUCTION

WITH ACCESS LAWS

The statements made on the Notice of Compliance of Construction with Access Laws to which this Exhibit is attached are subject to the following exceptions:
ATTACHMENT H-2

Form of Notice of Compliance of Design with Access Laws

TO: Successor Agency to the Redevelopment Agency of the City and County of San Francisco
One South Van Ness Avenue, 5th Floor
San Francisco, California 94103

Development: Hunters Point Shipyard
Block: 5

DATE: ____________, 2014

FROM: [Architect of Record]

This Notice is being provided pursuant to section 6.4 of that certain Vertical Disposition and Development Agreement (Hunters Point Shipyard Phase 1 - Block 52), by and between the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic, of the State of California (the “Agency”), and HPS1 Block 52, LLC, a Delaware limited liability company (“Vertical Developer”), dated as of ____________, 2014 (as amended, the “Vertical DDA”). Capitalized terms used but not otherwise defined in this Notice have the meanings given to them in the Vertical DDA.

As Architect of Record for the construction of the Vertical Improvements, I examined schematic drawings dated ____________, 20____ [identify by document set or other information] for conformity to local, state, and federal building laws and regulations with respect to Accessibility for Persons with Disabilities.

I hereby declare, to the best of my knowledge information and belief, that it is my professional opinion that design of the Vertical Improvements has been performed in accordance with all applicable local, state, and federal building laws and regulations with respect to Accessibility for Persons with Disabilities, except as may be noted on Exhibit 1 attached hereto.

[Architect of Record]

By: ________________________________

Its: ________________________________
EXHIBIT 1

EXCEPTIONS TO NOTICE OF COMPLIANCE OF DESIGN WITH ACCESS LAWS

The statements made on the Notice of Compliance of Design with Access Laws to which this Exhibit is attached are subject to the following exceptions:
ATTACHMENT I

Form of Architect’s Certificate

TO: Successor Agency to the Redevelopment Agency of the City and County of San Francisco
One South Van Ness Avenue, 5th Floor
San Francisco, California 94103

Development: Hunters Point Shipyard
Block:

DATE: ______________________

FROM: [Architect of Record]

This Certificate is being provided pursuant to section 6 of that certain Vertical Disposition and Development Agreement (Hunters Point Shipyard Phase 1 - Block 52), by and between the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic, of the State of California (the “Agency”), and HPS1 Block 52, LLC, a Delaware limited liability company (“Vertical Developer”), dated as of October ______, 20__, and recorded in the Official Records of the City and County of San Francisco on ____________, as Document No. _____ at Reel _____, Image ____ (as amended, the “Vertical DDA”). Capitalized terms used but not otherwise defined in this Notice have the meanings given to them in the Vertical DDA.

As Architect of Record for the design and construction of the Vertical Improvements, I observed the Vertical Improvements during construction and, most recently, on ____________, 20__, and all the statements made below are made as of the dates of my observations. My opinions and statements provided in this certificate are limited to my on-site inspections. I am not required to make nor I have I made exhaustive or continuous on-site inspections of the Vertical Improvements.

I neither retained nor exercised control over or charge of, nor am I responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the construction of the Vertical Improvements.

I shall not be responsible for the contractor’s schedules or failure to carry out the work in accordance with the Construction Documents. I neither have nor have had control over or charge of acts or omissions of any contractor, subcontractor or their agents or employees, or of any other person performing portions of the construction.

I hereby declare to the best of my knowledge, information and belief, that it is my professional opinion that, except as may be noted on Exhibit 1 attached hereto:
1. Based on such observation, the construction of the improvements described in Exhibit 1 (the “Improvements”) has been and is being performed in accordance with those elements of the Construction Documents for the Improvements.

2. Based on such observation, the construction of the Improvements has been done in a good and workperson-like manner, and all of the work, materials and fixtures are acceptable.

3. The construction on the Improvements has been completed and complies with all applicable local, state and federal building laws, regulations and ordinances.

4. The required certificates, approvals and permits of all governmental authorities having jurisdiction covering the work to date on the Improvements have been issued and are in force, and there is not an undischarged violation of applicable laws, regulations or orders of any governmental authority having jurisdiction of which I have notice as of the date hereof.

5. If final: [This is the final Architect’s Certificate for the Project, and all of the Improvements described in the Vertical DDA have been completed and comply with all applicable local, state and federal building laws, regulations and ordinances.]

[Architect of Record]

By: ______________________

Its: ______________________
EXHIBIT 1

IMPROVEMENTS

The Improvements consist of the following:

[insert detailed description of the Improvements covered by this Certificate; can reference and incorporate a contract or design document]

EXCEPTIONS TO ARCHITECT’S CERTIFICATE

The statements made on the Architect’s Certificate to which this Exhibit is attached are subject to the following exceptions:
ATTACHMENT J

Form of Certificate of Completion

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

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

HPS1 Block 52, LLC
c/o Paul Hastings LLP
55 Second Street, 24th Floor
San Francisco, California 94105
Attention: David A. Hamsher, Esq.

CERTIFICATE OF COMPLETION

WHEREAS, the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic, of the State of California (the “Agency”), and HPS1 Block 52, LLC, a Delaware limited liability company (“Vertical Developer”), have entered into that certain Vertical Disposition and Development Agreement (Hunters Point Shipyard Phase 1 - Block 52), dated as of _________, 2014, and recorded in the Official Records of the City and County of San Francisco on ______________, as Document No. ______ at Reel _______, Image ____ (as amended, the “Vertical DDA”). Capitalized terms used but not otherwise defined in this Notice have the meanings given to them in the Vertical DDA. The Vertical DDA is on file with the Agency as a public record and is incorporated herein by reference. This Certificate of Completion is executed and recorded in accordance with the Vertical DDA and partially satisfies the requirements therein. Terms not defined in this Certificate of Completion have the meanings given to them in the Vertical DDA;

WHEREAS, with respect to that certain real property situated in the City and County of San Francisco, State of California (“City”) described in Exhibit I attached hereto and made a part hereof (the “Property”), the Agency has determined that Vertical Developer’s construction obligations for the Improvements [set forth on Exhibit II], as specified in the Vertical DDA, have been fully performed and [all of the][such] Improvements have been completed in accordance therewith; and

WHEREAS, as stated in the Vertical DDA, the Agency’s determination regarding said construction obligations is not directed to, and thus the Agency assumes no responsibility for, latent or other defects.

NOW, THEREFORE, as provided in the Vertical DDA, with respect to the Property, and subject to the foregoing provisions, the Agency has determined and hereby certifies that Vertical Developer’s obligation to complete [all of the Improvements][the Improvements set forth on
Exhibit II] has been fully performed and completed, and Vertical Developer has no additional construction obligations under the Vertical DDA [with respect to such Improvements].

Nothing contained in this instrument shall modify in any other way any provision of the Vertical DDA.

IN WITNESS WHEREOF, the Agency has executed this instrument this _____ day of ______, 20___.

Authorized by Agency Resolution No. _____ adopted ______.

Approved as to Form:

DENNIS J. HERRERA, City Attorney, as counsel to the Agency

By: ______________________________
    [Name]
    Deputy City Attorney

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

By: ______________________________
    Executive Director

APPROVED:

By: ______________________________
    Development Services Manager

By: ______________________________
    Agency Architect or Engineer
EXHIBIT 1

LEGAL DESCRIPTION OF THE PROPERTY
ATTACHMENT K

Project MMRP

[Attached]
# HUNTERS POINT SHIPYARD
**PHASE I DEVELOPMENT**
**MITIGATION MONITORING AND REPORTING PROGRAM APPLICABLE TO VERTICAL DDA**

## MEASURES APPLICABLE TO PHASE I DEVELOPMENT – VERTICAL DDA

<table>
<thead>
<tr>
<th>Mitigation Measure</th>
<th>Mitigation Responsibility</th>
<th>Monitoring Responsibility</th>
<th>Monitoring Actions/Schedule</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Air Quality</strong></td>
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<tr>
<td>2.B <em>Construction PM10</em></td>
<td><strong>Agency, City, or other owner/developer</strong></td>
<td><strong>Agency, DPW, Department of Building Inspection (DBI)</strong></td>
<td><strong>Agency, and depending on the project, DPW or DBI to require evidence of compliance through site permit process</strong></td>
</tr>
<tr>
<td>BAAQMD officials consider PM10 emissions from construction sites to be potentially significant. As conditions of construction contracts, contractors will be required to implement BAAQMD guidelines for controlling particulate emissions at construction sites. BAAQMD guidelines are summarized below:</td>
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<tr>
<td>• Seed and water all unpaved, inactive portions of the lot or lots under construction to maintain a grass cover if they are to remain inactive for long periods during building construction.</td>
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<td>• Halt all clearing, grading, earthmoving, and excavating activities during periods of sustained strong winds (hourly average wind speeds of 25 mph [40 km per hour] or greater).</td>
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<tr>
<td>• Water or treat all unpaved active portions of the construction site with dust control solutions, twice daily, to minimize windblown dust and dust generated by vehicle traffic. (City Ordinance 175-95 requires that nonpotable water be used for this purpose.)</td>
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<tr>
<td>• Sweep paved portions of the construction site daily or as necessary to control windblown dust and dust generated by vehicle traffic. Sweep streets adjacent to the construction site as necessary to remove accumulated dust and soil.</td>
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<td>• Cover trucks carrying loose soil or sand before they leave the construction site, and limit on-site vehicle speeds to 15 mph (24 km per hour) or lower in unpaved construction areas.</td>
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<tr>
<td>• Limit the area subject to excavation, grading or other construction activity at any one time. Cover on-site storage piles of loose soil or sand.</td>
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</table>
### MEASURES APPLICABLE TO PHASE I DEVELOPMENT – VERTICAL DDA

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<th>Monitoring Actions/Schedule</th>
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</thead>
<tbody>
<tr>
<td>Noise</td>
<td>Agency, City, or other owner/developer</td>
<td>Implement through Project-level plan review and during site permit process</td>
<td>Agency, DBI</td>
<td>Require evidence of compliance through project-level plan review for first construction phase in Parcel A and Parcel Band site permits for residential construction in Parcel A and Parcel B</td>
</tr>
</tbody>
</table>

#### 3.A Residential Construction
To reduce noise impacts to proposed residential properties east of Donahue Street, orient and design new or renovated buildings such that future noise intrusion will be minimized to within acceptable levels. In addition, comply with the San Francisco Building Code’s noise insulation standards for new residential construction. Physical barriers also could be constructed to reduce noise transmission to these residential areas.
<table>
<thead>
<tr>
<th>Hazardous Materials and Waste</th>
<th>Mitigation Measure</th>
<th>Mitigation Responsibility</th>
<th>Monitoring Responsibility</th>
<th>Monitoring Actions/Schedule</th>
</tr>
</thead>
<tbody>
<tr>
<td>7.D  Construction After Remediation</td>
<td>Perform construction activities in a manner consistent with institutional controls designed to be protective of public health, as determined in consultation with the regulatory agencies, and in accordance with CAL OSHA regulations. Take the following additional steps, where warranted by site-specific information:</td>
<td>Agency, City, or other owner/developer</td>
<td>DPH, DBI, Agency, DPW</td>
<td>Agency, DPH and depending on project DPW or DBI through compliance with Article 31 site permit process, project-level plan review, and subdivision improvement plan review</td>
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<tr>
<td></td>
<td>• Obtain information on soil and groundwater contamination by sampling, reviewing existing Navy data, and/or consulting with regulatory agencies. When no sampling results are available, develop and implement a sampling program similar to that required under Article 22A of the San Francisco Public Works Code.</td>
<td>Implement through project-level plan review, subdivision improvement plans and site permit process</td>
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<td>• If contamination is identified in the areas proposed for disturbance, prepare a site mitigation plan, similar to that required under Article 22A of the Health Code. If applicable, implement the requirements of Cal. Code Reg. Tit 8 § 5192 (Hazardous Waste Operations and Emergency Response).</td>
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<td>• Dispose of groundwater in accordance with applicable permits.</td>
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<td>7.E  Construction Contingency Plan for Unanticipated Hazardous Materials</td>
<td>Inform contractors that unknown hazardous materials could be encountered during demolition or excavation, and instruct them regarding steps to be taken if this occurs. These steps include the following:</td>
<td>Agency, City or other owners/developers</td>
<td>DPH, DBI, DPW, Agency</td>
<td>Agency, DPH and depending on the project, DBI or DPW to review and approve contingency plan and monitor compliance through the Article 31 site permit process</td>
</tr>
<tr>
<td></td>
<td>• The contractor shall immediately stop work in the area and notify the San Francisco Department of Public Health (DPH) verbally and in writing.</td>
<td>Implement through site permit process and during construction</td>
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<td>• The contractor shall immediately secure the area to prevent accidental access by construction workers or the public.</td>
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<td>• The identified material shall be sampled as directed by DPH.</td>
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<td>• Handling and disposal of identified materials shall be in accordance with DPH direction and in compliance with applicable laws and regulations.</td>
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<td>• Work on site may resume only where and when permitted by DPH.</td>
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### MEASURES APPLICABLE TO PHASE I DEVELOPMENT – VERTICAL DDA

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<tr>
<td><strong>7.F Controls on Ecological Exposure to Hazardous Materials During Construction</strong></td>
<td>Agency, City or other owners/developers</td>
<td>Implement through site permit process and during construction</td>
<td>DPH, DBI, DPW, RWQCB, Bay Conservation and Development Commission (BCDC), United States Army Corps of Engineers (U.S. Army Corp), Agency, San Francisco Public Utilities Commission (SFPUC)</td>
<td>Agency, DPH and depending on the project, DBI or DPW to require evidence of compliance through Article 31 site permit process; SFPUC to monitor storm and sanitary sewer system discharges; US Army Corp, BCDC. RWQCB to review pile driving along Bay</td>
</tr>
</tbody>
</table>

For surface water impacts, follow all conditions of the state of California storm water construction permit, including implementing BMPs to reduce storm water runoff from the site.

For groundwater discharge impacts, follow all permit requirements for discharge into the storm water system or sanitary sewer system. Treat water as appropriate to comply with discharge levels as required by the permit.

Assess potential effects on groundwater gradients within construction areas if dewatering is proposed or if new utility lines are proposed that could act as conduits for contaminants in groundwater. Conduct dewatering activities and design utility installations such that contamination does not spread to the Bay or other ecologically sensitive areas. New storm drains shall have watertight joints, such as rubber gaskets. Methods to be considered could include installing sheet piling, groundwater pumping/recharge, and installing utility lines in impermeable bedding material.

For boring and pile driving activities along the Bay, drive the piles directly into the sediments without boring where possible, to minimize and localize sediment disruption. Where pile driving without drilling is not possible due to shallow bedrock, drive a casing to the solid material, preventing collapse of the material and allowing drilling to occur within the casing without excessive sediment disruption. Then place the pile in the casing and backfill with concrete.

Perform dredging activities in a manner consistent with institutional controls established via the CERCLA process. Require consultation with agencies represented in the Army Corps of Engineers Interagency Dredged Material Management Office regarding appropriate methods for limiting disturbance of sediment, containing suspended sediment to the immediate area being dredged, and additional measures to be protective of human health and the environment as described in Section 3.7.5 (under Dredging).
## MEASURES APPLICABLE TO PHASE I DEVELOPMENT – VERTICAL DDA

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<td><strong>Geology and Soils</strong></td>
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<tr>
<td><strong>8.A Handling Naturally Occurring Asbestos During Construction</strong></td>
<td>Agency, City or other owners/developers</td>
<td>Implement through site permit process and during construction</td>
<td>DPH, DBI, DPW, Agency</td>
<td>Agency, DPH and depending on project DPW or DBI to review construction plan procedures through Article 31 site permit process</td>
</tr>
<tr>
<td>Follow BAAQMD, U.S. EPA, and federal and CAL OSHA regulations for construction and demolition activities. Continuously wet serpentine involved in excavation or drilling operations. Wet and cover stockpiled serpentine. Do not use serpentine as road, surfacing, or paving material. Cap serpentine used as fill material with at least one foot (0.3 m) of clean non-serpentine till material, and implement institutional controls to prevent future exposure from excavation activities. Treat excavated waste materials containing greater than one percent asbestos by weight as hazardous waste, and transport and dispose of this material in accordance with applicable Federal and state regulations.</td>
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<td><strong>8.B Existing Building Survey for Seismic Hazards</strong></td>
<td>Agency</td>
<td>Complete survey prior to lease, other use authorization or through she permit process</td>
<td>DBI, Agency</td>
<td>Agency to require evidence of survey prior to lease or other use authorization; DBI to review survey report and preventative measures through site permit process</td>
</tr>
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<td>Before increasing the occupancy of existing buildings, survey buildings that may be unsafe in the event of an earthquake, and take appropriate steps to prevent injury. Those steps could include interior modifications, bracing, retrofits, and/or access restrictions.</td>
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### MEASURES APPLICABLE TO PHASE I DEVELOPMENT – VERTICAL DDA

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<tr>
<th>Mitigation Measure</th>
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<tr>
<td><strong>Water Resources</strong></td>
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<tr>
<td>9.A Storm Water Improvement Design to Control CSO Volumes</td>
<td>Subject to regulatory approvals, Agency, City or other owner/developer</td>
<td>Submit as part of project-level reviews, subdivision improvement plans and site permit plans</td>
<td>Agency, DPW, SFPUC</td>
<td>Agency, DPW, SFPUC to review as part of project-level reviews, subdivision improvement plans and site permit process</td>
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<tr>
<td>9.B Storm Water Discharge Quality</td>
<td>Subject to regulatory approvals, Agency, City or other owner/developer</td>
<td>Submit as part of project-level reviews, subdivision improvement plans and site permit plans</td>
<td>DPW, SFPUC</td>
<td>Agency, DPW, SFPUC to review as part of project-level reviews, subdivision improvement plans and site permit process</td>
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**9.A Storm Water Improvement Design to Control CSO Volumes**

Eliminate projected increases in combined sewer overflow (CSO) volumes caused by storm water discharges to the City’s combined system by upgrading or replacing the separated system at EPS (Option 1 or 2). Also consider ways to offset non-significant increases attributable to sanitary flows. Arrange for the SFPUC to condition permits issued for groundwater discharge to the City’s combined sewer system, so that discharges do not occur in wet weather when overflows are anticipated to occur.

**9.B Storm Water Discharge Quality**

To ensure that the quality of storm water discharges improves as anticipated, implement the following measures:

- Develop and implement a SWPPP for HPS that is applicable to new development under the Redevelopment Plan to control the quality of direct discharges of stormwater to near-shore waters. The SWPPP will include provisions for controlling soil migration off site (e.g., silt fences, settling units) during periods of runoff and for monitoring possible sources of industrial contaminants. Develop the program in coordination with the San Francisco Public Utility Commission staff and according to guidelines contained in the California Municipal Storm Water Best Management Practice Handbook, the California Industrial/Commercial Storm Water Best Management Practice Handbook and U.S. EPA’s proposed Phase II stormwater regulations.

- As part of the SWPPP, implement BMPs such as public education and outreach, pollution prevention, and good housekeeping.

- Construct stormwater retention and treatment areas on site to improve the quality of discharges to the Bay. Specify in the SWPPP the locations of appropriate areas for stormwater infiltration that avoid toxic hot spot areas and capped areas and identify drainage patterns to direct stormwater to appropriate infiltration locations.
# HUNTERS POINT SHIPYARD
## PHASE I DEVELOPMENT
### MITIGATION MONITORING AND REPORTING PROGRAM APPLICABLE TO VERTICAL DDA

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<td><strong>Utilities</strong></td>
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<tr>
<td><strong>10.A. Drinking Water Distribution System</strong></td>
<td>Subject to regulatory approvals, Agency, Coy or other owner/developer</td>
<td>Submit as part of project-level reviews, subdivision improvement plans and site permit plans</td>
<td>Agency, DPW, SFPUC</td>
<td>Agency, DPW, SFPUC to review as part of project-level reviews, subdivision improvement plans and site permit process</td>
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<tr>
<td>Prior to authorization of reuse activities within a given area of HPS, assess deficiencies in the water distribution system and address them through planned infrastructure improvements or other actions. As proposed under the draft utility infrastructure plan, replace the potable water distribution system with a new system built to meet demands of proposed development. This will ensure the supply of safe potable water and adequate water pressure. As an alternative to wholesale system replacement, the City also could implement incremental improvements.</td>
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<td>- In the upper housing area, cap the water distribution system and drain and abandon the 410,000-gallon (1.5-million liter) tank.</td>
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<td>- Locate, excavate, and repair valves and lines. Replace PVC lines.</td>
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<td>- Sample water at the point of consumption for chlorine, lead, and copper levels to ensure that it complies with the Safe Drinking Water Act.</td>
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<td>- Install backflow preventers at the two San Francisco service points.</td>
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<td>- Inspect service points for cross connections and for exposure to contamination so problems can be remediated, if needed.</td>
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<td>- Install water meters to measure quantities delivered.</td>
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<tr>
<td><strong>10.B Fire Fighting Water Distribution System</strong></td>
<td>Subject to regulatory approvals, Agency, City or other owner/developer</td>
<td>Submit as part of project-level reviews, subdivision improvement plans and site permit plans</td>
<td>Agency, DPW, San Francisco Fire Department (SFFD)</td>
<td>Agency, DPW, SFFD to review as part of project-level reviews, subdivision improvement plans and site permit process</td>
</tr>
<tr>
<td>Prior to authorization of reuse activities within a given area of HPS, assess fire fighting deficiencies in the water systems and address them through planned infrastructure improvements or other actions. Construct a new auxiliary water supply system to augment the water supply for fire fighting purposes. As an alternative to constructing a new system, the City may, in the interim, upgrade the existing potable water distribution system and fire hydrants to meet fire-fighting needs.</td>
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<td><strong>10.C Storm Water Collection System</strong></td>
<td>Subject to regulatory approvals, Agency, City or other owner/developer</td>
<td>Submit as part of project-level reviews, subdivision improvement plans and site permit plans</td>
<td>Agency, DPW, SFPUC</td>
<td>Agency, DPW, SFPUC to review as part of project-level reviews, subdivision improvement plans and site permit process</td>
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<tr>
<td>Prior to authorization of reuse activities within a given area of HPS, assess deficiencies in the storm water collection system and address them through planned infrastructure improvements or other actions. To mitigate impacts, implement the following measures:</td>
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<td>• Upgrade or replace the storm water collection system as planned in each section of HPS prior to reuse.</td>
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<td>• Restrict the amount of paved surfaces at HPS for no net increase.</td>
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<td>• Design the storm water collection system to incorporate appropriate infiltration locations and drainage patterns contained in the SWPPP as provided in Measure 9.B.</td>
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<td>• Install valves, gates, or duckbills at storm line discharge points to prevent tidal surges and movement of contaminated Bay Mud into the storm lines.</td>
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<td><strong>10.D Sanitary Collection System</strong></td>
<td>Subject to regulatory approvals, Agency, City or other owner/developer</td>
<td>Submit as part of subdivision improvement plans and site permit plans</td>
<td>Agency, DPW, SFPUC</td>
<td>Agency, DPW, SFPUC to review as part of project-level reviews, subdivision improvement plans and site permit process</td>
</tr>
<tr>
<td>Prior to authorizing reuse activities within a given area of HPS, assess deficiencies in the sanitary collection system and address them through planned infrastructure improvements or other actions. Construct a sanitary collection system at HPS to meet the Proposed Reuse Plan’s sanitary collection needs.</td>
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<td><strong>10.E Natural Gas System</strong></td>
<td>Subject to regulatory approvals, Agency, City or other owner/developer</td>
<td>Submit as part of project-level reviews, subdivision improvement plans and site permit plans</td>
<td>Agency, DPW, SFPUC</td>
<td>Agency, DPW, SFPUC to review as part of project-level reviews, subdivision improvement plans and site permit process</td>
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<tr>
<td>Prior to authorization of reuse activities within a given area of HPS, assess deficiencies in the natural gas system and address them through planned infrastructure improvements or other actions. Construct a natural gas system according to Federal, state, and local codes to meet the Proposed Reuse Plan’s needs.</td>
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<td><strong>Cultural Resources</strong></td>
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<td><strong>12.D Archeological Resources</strong></td>
<td>Agency, City or other owner/developer</td>
<td>Prior to excavation; ongoing implementation during construction as required by measure</td>
<td>Agency, State Historic Preservation Office (SHPO)</td>
<td>Agency to require evaluation prior to excavation; SHPO to review treatment plans if required</td>
</tr>
<tr>
<td>Require contractors to be made aware of the potentials for discovery of archaeological resources. If development in the four subsurface zones identified as having the potential for containing significant archeological deposits involves construction or installation below the level of fill, retain a professional archeologist to develop a project-specific treatment or monitoring program.</td>
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<td>If archaeological resources are discovered during construction, suspend all work in the immediate vicinity. Avoid altering the materials and their context pending site investigation by a qualified professional archeologist. If the qualified professional archaeologist determines that the discovery is significant, notify the SHPO and ensure that an appropriate treatment plan is developed and implemented.</td>
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<tr>
<td>13.B Litter Control</td>
<td>Agency, City, DPW or other owner/developer</td>
<td>Submit as part of project-level reviews, subdivision improvement plans and site permit plans</td>
<td>Agency, DPW</td>
<td>Agency, DPW to review through subdivision and site permit approval process</td>
</tr>
</tbody>
</table>

Provide adequate trash receptacles along public access areas. Ensure pick-up and trash receptacle maintenance on a regular basis.
ATTACHMENT L

Form of Permit to Enter

PERMIT TO ENTER

This PERMIT TO ENTER (this “Agreement”) is entered into as of __________ __, 20__ (the “Effective Date”) by and between the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, corporate and politic (the “Agency”), and _____________, a ______________ [Vertical Developer] (“Permittee”).

RECITALS

A. The Agency and Permittee are parties to that certain Vertical Disposition and Development Agreement (Hunters Point Shipyard Phase 1 – Block __), dated for reference purposes as of _____ __, 20__ (as amended and supplemented from time to time, the “Vertical DDA”), under which Permittee is to carry out the development of the Property (as defined in the Vertical DDA), all as more particularly described therein (the “Project”).

B. The Agency owns certain real property adjoining or in the vicinity of the Property, which real property is more particularly described in Exhibit A (the “Permit Area”) [and is generally depicted as Block ___ on the Land Use Plan (as defined under the Vertical DDA)].

C. In connection with the Project, Permittee wishes to access the Permit Area from time to time in order to undertake the activities described on Exhibit B (collectively, and as amended and supplemented from time to time in accordance with Section 1.a, the “Interim Use”). [NOTE: no activities that displace, disturb or otherwise physically affect the Permit Area are permitted under this Permit. If any such use is requested, the Agency may require revisions to this Permit form, including additional insurance.]

D. Pursuant to article 9 of the Vertical DDA, the Agency and Permittee desire to enter into this Agreement to grant Permittee a permit to enter the Permit Area in accordance with the terms and conditions of this Agreement.

AGREEMENT

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

1. Permit to Enter; Interim Use.

   a. Grant of Permit to Enter. The Agency hereby grants Permittee a non-exclusive permit to enter upon the Permit Area for the Interim Use. No uses other than the Interim Use are authorized by this Agreement. The Interim Use is subject to the terms and conditions of this Agreement and the rights of ingress and egress and other uses by the Agency and others who are authorized to access or use portions of the Permit Area. In no event shall Permittee interfere with, and the Permit Area shall not include the right to access, any area for
which exclusive use has been granted to another person or entity unless such person or entity grants consent.

b. **Consent Requirement for Additional Interim Use.** Permittee may from time to time request the written consent of the Agency’s Executive Director for additional Interim Uses as may be necessary or appropriate for the Project. Any such request shall include documentation describing any such additional Interim Use, including, as applicable, the work plan for such work, the identity of the persons who will perform the work and the time periods for completion of the work. A form by which such request may be made is attached as Exhibit B-1 (notwithstanding Section 25, any such request, and any consent in response thereto, may be delivered by electronic mail to the addresses last given by the Agency or Permittee, as applicable). Any such consent shall be considered in accordance with the Agency’s standard practices and in light of Permittee’s apparent needs and the availability of alternatives. Upon granting any such consent, the requested additional Interim Use shall automatically become an Interim Use under this Agreement. The Agency shall from time to time attach any such request and consent (including any conditions or requirements relating to such consent) as part of Exhibit B by providing notice thereof to Permittee, provided that the Agency’s failure to attach any such request and consent as part of Exhibit B shall not impair the validity of any such consent.

Without limiting the foregoing, Permittee shall not be permitted to perform any work or services that displace, disturb or otherwise physically affect the Permit Area (collectively, “Physical Activities”), without the prior written consent of the Agency’s Executive Director, which may be given or denied in the Agency’s Executive Director’s sole discretion following a detailed description of the proposed Physical Activities, and the Agency’s Executive Director may require additional insurance or other revisions to this Agreement before granting such consent.

c. **Access.** Portions of the Project Area (as defined under the Vertical DDA) are subject to certain access controls implemented by the Agency pursuant to its Hunters Point Security Guard Standard Operating Procedures. The Agency shall cooperate with Permittee and its Representatives to issue any required identification to permit Permittee and its applicable Representatives to access such portions of the Project Area for any applicable Interim Use. Not less than two (2) Business Days in advance of any desired access by a Representative that does not possess any such identification or for any desired access, Permittee or its Representatives shall notify the Agency’s project manager for the Project Area (notwithstanding Section 25, any such notice may be delivered by electronic mail to the address(es) last given by the Agency) of the identity of any such Representatives, the time periods during which such Representatives desire access the Permit Area, and any additional information reasonably requested by such project manager.

d. **Approvals.** Permittee shall obtain all permits, licenses and approvals of any regulatory agencies required before performing any work in or on the Permit Area.

e. **Agency Policies.** Permittee shall comply with all applicable Agency Policies, as defined in the Vertical DDA, in connection with its use of the Permit Area. Permittee shall also require compliance by all Representatives.

f. **Maintenance.** In connection with its use hereunder, Permittee shall at all times, at its sole cost, maintain the Permit Area in a good, clean, safe, secure, sanitary and sightly
condition. Permittee shall use, and shall cause its Representatives to use, due care at all times to avoid any damage or harm to Permit Area. In no event shall the Agency or Developer be responsible for any loss or damage to any property of Permittee or its Representatives, or any personal injury, from any cause whatsoever.

g. **Surrender.** Upon termination of this Agreement, Permittee and its Representatives shall vacate the Permit Area and remove any and all of Permittee’s and Representatives’ personal property located thereon and restore those portions of the Permit Area that they have altered to substantially the same condition as such portions existed prior to such alteration. The Agency shall have the right without notice to dispose of any property left by Permittee and any Representative after they have vacated (or were required to vacate) the Permit Area, at Permittee’s cost.

h. **No Liens.** Permittee shall bear all costs or expenses of any kind or nature in connection with its use of the Permit Area, and shall keep the Permit Area free and clear of any liens or claims of lien arising out of or in any way connected with its use of the Permit Area.

i. **Developer and Agency Access.** Permittee acknowledges and agrees that the Permit Area is part of two large redevelopment project areas, and the Permit Area may be needed by the Agency or Developer (as defined in the Vertical DDA) as part of those redevelopment projects. Without limiting the foregoing, Permittee agrees to cooperate with the Agency or Developer in connection with any access or use by the Agency or Developer or their respective agents.

2. **Entry by Subpermitees and Representatives under Permittee Authority.**

   a. **Permittee’s Agents.** Permittee’s entry right extends to all employees, agents and representatives of Permittee.

   b. **Subpermits.** Permittee may grant a subpermit to enter the Permit Area or a portion thereof (each, a “Subpermit”) to third party agents, contractors, consultants, subcontractors, suppliers or joint venture partners, and their respective employees or agents who use the Permit Area for the Interim Use (collectively, the “Subpermitees”). Any Subpermit shall be subject to all of the terms and conditions of this Agreement. Any Subpermit shall terminate automatically, without cost or liability to the Agency, upon the termination of this Agreement. The Agency shall have the right to refuse access to the Permit Area to any Subpermittee that fails to maintain the required insurance or otherwise breaches the terms of this Agreement.

   c. **Representatives.** Permittee may grant entry to the Permit Area to third party agents, contractors, consultants, subcontractors, suppliers or joint venture partners, and their respective employees or agents who use the Permit Area temporarily for visual inspections, non-invasive surveying work, deliveries, and other occasional and non-invasive entry that is incidental to the Project (collectively, together with the Subpermitees, the “Representatives”). The Agency shall have the right to refuse access to the Permit Area to any such Person that breaches the terms of this Agreement.
3. **Term.** The term of this Agreement shall commence upon the Effective Date and shall terminate upon the earliest to occur of (i) termination of the Vertical DDA, (ii) Permittee’s failure to maintain the insurance required under Section 8 (or deliver to the Agency valid certificates of insurance as required) and to cure such failure within thirty (30) days following Agency’s, (iii) ninety (90) days following the delivery of a notice of termination by Permittee or the Agency; provided, however, that the Agency shall not deliver such notice unless it determines in its sole discretion that (1) the Permit Area is no longer reasonably required in connection with the construction of the Improvements or (2) the Permit Area is required for other uses, or (iv) immediately upon notice thereof if the Agency determines that there is an emergency requiring such termination. The Agency shall also have the right to terminate this Agreement for default, in accordance with Section 10.

4. **Compensation to the Agency.** Other than any Agency Costs, Permittee shall pay no monetary compensation to the Agency in consideration for this Agreement or for Permittee’s right to use the Permit Area under this Agreement.

5. **Indemnification.** Pursuant to sections 5.2 and 15.1 of the Vertical DDA, Permittee has agreed to indemnify the Agency and its supervisors, commissioners, officers, employees, attorneys, contractors and agents against certain Losses (as defined in the Vertical DDA). Under this Agreement, such indemnifications shall extend and apply to all Losses arising out of or resulting from the acts or omissions of Permittee and Representatives in entering upon or performing activities upon the Permit Area under this Agreement, subject to the terms and conditions of such indemnifications set forth in the Vertical DDA. For purposes of the foregoing indemnity, all Representatives shall be deemed to be parties for whom Permittee is responsible under this Section 5 (as contemplated by section 15.1 of the Vertical DDA). Permittee may seek separate indemnification from any Representative, as it deems necessary; however, the existence or absence of any such indemnification shall not affect or limit Permittee’s indemnification of the Agency as set forth above. All indemnifications herein shall survive the completion or other termination of this Agreement, subject to the terms and conditions therefor set forth in the Vertical DDA. The indemnities herein shall in no way be limited by the insurance requirements contained in this Agreement, or in any other document or agreement between the parties.

6. **Hazardous Substance Acknowledgement and Disposal.**
   a. **Hazardous Substance Acknowledgement.** Permittee and all Representatives acknowledge that portions of the Permit Area have been identified as a National Priorities List Site under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, and that, in entering upon the Permit Area and performing the Interim Use under this Agreement, Permittee and Representatives may be working with, or be exposed to substances or conditions that are toxic or otherwise hazardous. Permittee and Representatives acknowledge that the Agency gives no representations or warranties with respect to the presence of such substances or conditions, and that the Permit Area is accepted as described and subject to the qualifications provided in Section 11.
   
   b. **Proper Disposal of Hazardous Substances.** Permittee and Representatives respectively assume sole responsibility for managing, removing and properly disposing of any waste that they produce during or in connection with their respective entry upon the Permit Area.
and/or the Interim Use, including preparing and executing any manifest or other documentation required for, or associated with, the removal, transportation and disposal of Hazardous Substances (as defined in the Vertical DDA) to the extent necessary in connection with managing, removing and properly disposing of such waste.

7. **Soils Investigation.** No soil investigations are permitted under this Agreement.

8. **Permittee’s Insurance.** Permittee agrees to obtain at least the insurance coverages required under this Section 8. The limits of liability of the insurance requirements in this Section 8 can be provided by any combination of primary and excess liability insurance policies. Permittee is permitted to obtain or substitute any of the insurance required in this Section 8 with project-specific insurance if such project-specific insurance meets each of the requirements set forth in this Section 8.

   a. **Required Coverage.** Permittee shall maintain the following insurance against claims for injuries to persons or damages to property that may arise from or in connection with any entry or activity upon the Permit Area under this Agreement by Permittee and its Representatives:

      (1) **Commercial General Liability Insurance.** Commercial general liability insurance on an occurrence-based form with limits of not less than One Million Dollars ($1,000,000) for each occurrence and in the aggregate, including coverage for bodily injury, property damage, broad-form property damage, contractual liability, fire damage, products and completed operations and explosion, collapse and underground XCU. The insurance can be provided through an Owner Controlled Insurance Program or Contractor Controlled Insurance Program.

      (2) **Worker’s Compensation Insurance.** Worker’s Compensation Insurance with Employer’s Liability limits of not less than One Million Dollars ($1,000,000) for each accident, including a waiver of all rights of subrogation against the City and County of San Francisco, a municipal corporation, the Agency, and their respective supervisors, commissioners, officers, agents and employees (the “Agency Parties”), for losses arising from or in connection with the Interim Use, as applicable, unless Permittee has no employees.

      (3) **Automobile Insurance.** In connection with any such entry or activity upon the Permit Area that involves the use of automobiles, comprehensive automobile liability insurance with limits of not less than One Million Dollars ($1,000,000) for each occurrence combined single limit for bodily injury and property damage, including owned and non-owned and hired vehicles.

   b. **Requirements for the Insurance.**

      (1) **Insurance Term.** Permittee shall maintain commercial general liability insurance coverages required under this Section 8 continuously throughout the term of this Agreement.

      (2) **Aggregate Limits.** Should any of the insurance required under this Section 8 be provided under a form of coverage that includes a general annual aggregate limit or
provides that claims investigation or legal defense costs be included in such general annual aggregate limit, either the general aggregate limit must apply separately to the activities upon the Permit Area pursuant to this Agreement or the general aggregate limit shall be twice the required insurance or claims limits specified above. The obligations under this Section 8.b.(2) shall survive any termination or earlier expiration of this Agreement. In the event Permittee obtains a project-specific policy, so long as the coverages outlined in Section 8.a.(1) are obtained, the requirements of this Section 8.b.(2) do not apply.

(3) Insurers. Each insurance policy required under this Section 8 shall be issued by an insurance company duly authorized to do business in the State of California and with a current rating of no less than A(-):VII, unless otherwise approved by the Agency’s Executive Director (or his or her designee) in writing.

(4) Evidence of Coverage. Permittee shall deliver to the Agency certificates of insurance with the required policy endorsements in a form reasonably satisfactory to the Agency, evidencing the coverage required hereunder. Permittee shall provide the Agency with replacement certificates, binders or policies as soon as possible, but in no event later than ten (10) Business Days after the expiration dates of expiring policies. If Permittee fails to procure such certificates, binders or policies by the expiration date of the expiring policies, Permittee shall immediately notify Agency of such failure. In the event that (i) replacement certificates, binders or policies are not timely provided to the Agency or (ii) Permittee informs the Agency (or the Agency otherwise determines) that Permittee will not, or cannot, procure such insurance by the expiration thereof, the Agency may, after notifying Permittee’s Director of Risk Management at the address set forth in Section 25 and Permittee’s other notice parties identified in Section 25, in writing, procure, at its sole option, without waiving any rights or remedies that the Agency may have for Permittee’s default hereunder, the same for the account of the Agency and the cost thereof shall be paid to the Agency within thirty (30) days after delivery to Permittee of invoices therefor. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurance carrier to bind coverage on its behalf. The certificates and endorsements may be on forms provided by the Agency. All certificates and endorsements are to be received and approved by the Agency before the Interim Use commences.

(5) Self-Insured Retentions. Any project-specific policy purchased for this Agreement containing a self-insured retention (“SIR”) greater than Two Hundred and Fifty Thousand Dollars ($250,000) shall be disclosed to the Agency and shall be subject to the Agency’s reasonable approval. If any policy is subject to a SIR, then such SIR shall contain or be endorsed to provide that the SIR may be satisfied by the named insured or the Agency and its successors and assigns.

(6) No Limitations on Coverage. The insurance limits set forth in this Section 8 are minimum levels of insurance only and nothing herein should be construed to limit the actual limits of insurance obtained by Permittee. Should Permittee obtain limits and coverages in excess of the minimum insurance requirements contained in this Section 8, then the limits in the policy shall apply.

(7) No Limitation on Other Coverage. Permittee’s compliance with the provisions of this Section 8 shall in no way relieve or decrease Permittee’s other obligations
under the Vertical DDA or this Agreement (including any indemnification obligations). In addition, nothing in this Section 8 shall limit the obligation of Permittee to procure and maintain such insurance or provide such indemnification as the Agency may require for a permit to enter any property outside of the Permit Area now or later owned, leased or otherwise controlled by the Agency, nor shall anything in this Section 8 be deemed to limit the insurance coverage or indemnification under any other agreement between Permittee and the Agency.

c. Additional Specific Requirements for the Commercial General Liability Insurance. All general liability insurance policies shall be endorsed or contain provisions that provide the following:

(1) The Agency Parties are to be covered as additional insureds. If Permittee elects to waive the levels of insurance, the self-insured retention requirements and who is a named insured, with respect to a Subpermittee as set forth in Section 9, then the insurance shall also be endorsed to include the Subpermittee as an additional insured.

(2) Such general liability policies are primary insurance to any other insurance available to the Agency Parties, with respect to any claims arising out of this Agreement. Such policies shall also provide for severability of interests. For any claims that may arise from or in connection with this Agreement and Permittee’s insurance coverage shall be primary insurance with respect to the Agency Parties. Any insurance or self-insurance maintained by the Agency Parties shall be excess of Permittee’s insurance and shall not contribute with it.

(3) Permittee shall endeavor to obtain a provision providing that any failure of or by Permittee to comply with the reporting provisions of the policies shall not affect coverage provided to the Agency Parties, provided that the Agency Parties have complied with the reporting provisions as they apply to the Agency Parties.

(4) Thirty (30) days’ advance written notice to the Agency of cancellation of coverage (or ten (10) days’ advance written notice in case of nonpayment of premium), mailed to the address for the Agency set forth in this Agreement.

d. Review. The Agency may condition any approval of an additional Interim Use under Section 1.b, extension of time under Section 3 or amendment under Section 22 upon a requirement that Permittee obtain such additional insurance, or provide such additional security, bond, guaranty or indemnification, as the Agency reasonably determines is necessary or appropriate to protect its interests in light of the new Interim Use, time extension or amendment, provided that such requirement is consistent with the Agency’s custom and practice and will not unnecessarily interfere with or materially increase the cost or risk of Permittee’s ability to perform under this Agreement or, if it would unnecessarily interfere with or materially increase the cost or risk, such requirement must be consistent with commercial industry practice.

9. Subpermittee’s Insurance. Permittee agrees to require the Subpermittees to obtain the insurance coverages required under this Section 9. The limits of liability of the insurance requirements in this Section 9 can be provided by any combination of primary and excess liability insurance policies. Notwithstanding the foregoing, Permittee may, with the
written consent of the Agency’s Executive Director, elect to waive or reduce the insurance levels, self-insured retention and who is an additional insured requirements in this Section 9 for Commercial General Liability Insurance, provided that: (1) together with Permittee’s general liability insurance, there are adequate risk management protections given the proposed scope of work; and (2) Permittee shall remain liable for any Losses relative to the acts or omissions of the Subpermittee as set forth in Section 5 and shall have the Subpermittee added as an additional insured on Permittee’s general liability insurance.

a. Required Coverage. Subpermittee shall maintain the following insurance against claims for injuries to persons or damages to property that may arise from or in connection with any entry or activity upon the Permit Area under this Agreement by Subpermittees:

(1) Commercial General Liability Insurance. Commercial general liability insurance on an occurrence-based form with limits of not less than One Million Dollars ($1,000,000) for each occurrence and in the aggregate, including coverage for bodily injury, property damage, broad-form property damage, contractual liability, fire damage, products and completed operations and explosion, collapse and underground XCU.

(2) Worker’s Compensation Insurance. Worker’s Compensation Insurance with Employer’s Liability limits of not less than One Million Dollars ($1,000,000) for each accident, including a waiver of all rights of subrogation against Permittee and the Agency Parties for losses arising from or in connection with the Interim Use, as applicable.

(3) Automobile Insurance. In connection with any such entry or activity upon the Permit Area that involves the use of automobiles, comprehensive automobile liability insurance with limits of not less than One Million Dollars ($1,000,000) for each occurrence combined single limit for bodily injury and property damage, including owned and non-owned and hired vehicles.

b. Requirements for the Insurance.

(1) Insurance Term. The Subpermittee shall maintain the commercial general liability insurance coverages required under this Section 9 continuously throughout the term of the later of its contract or Subpermit, without lapse. Such insurance shall either (i) have completed operations coverage for at least five (5) years following the later of the term of its contract or Subpermit, or (ii) be maintained for a period of five (5) years beyond the expiration or termination of such term.

(2) Insurers. Each insurance policy required under this Section 9 shall be issued by an insurance company duly authorized to do business in the State of California and with a current rating of no less than A(-):VII, unless otherwise approved by Permittee in writing.

(3) Evidence of Coverage. Upon request, Subpermittee’s (for whom the insurance requirements have not been waived as set forth above) shall deliver to Permittee certificates of insurance with the required policy endorsements in a form satisfactory to Permittee, evidencing the coverage required hereunder. Subpermittee shall provide Permittee with replacement certificates, binders or policies as soon as possible, but in no event later than ten (10) Business Days after the expiration dates of expiring policies. If Subpermittee fails to
procure such certificates, binders or policies by the expiration date of the expiring policies, Subpermittee shall immediately notify Permittee of such failure. In the event that (i) replacement certificates, binders or policies are not timely provided to Permittee or (ii) Subpermittee informs Permittee (or Permittee otherwise determines) that Subpermittee will not, or cannot, procure such insurance by the expiration thereof, Permittee may procure, at its sole option, without waiving any rights or remedies that Permittee may have for Subpermittee’s default hereunder, the same for the account of Permittee and the cost thereof shall be paid to Permittee within thirty (30) days after delivery to Permittee of invoices therefor. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurance carrier to bind coverage on its behalf. The certificates and endorsements may be on forms provided by Permittee. All certificates and endorsements are to be received and approved by Permittee before the Interim Use commences.

(4) **Self-Insured Retentions.** Any policy containing a SIR greater than Two Hundred and Fifty Thousand Dollars ($250,000) shall be disclosed to Permittee and shall be subject to Permittee’s reasonable approval. If any policy is subject to a SIR, then such SIR shall contain or be endorsed to provide that the SIR may be satisfied by: (i) the named insured; or (ii) Permittee; or (iii) the Agency and its successors and assigns.

(5) **No Limitations on Coverage.** The insurance limits set forth in this Section 9 are minimum levels of insurance only and nothing herein should be construed to limit the actual limits of insurance obtained by Subpermittee. Should the Subpermittee obtain limits and coverages in excess of the minimum insurance requirements contained in this Section 9, then the limits in the policy shall apply.

c. **Additional Specific Requirements for the Commercial General Liability Insurance.** All general liability insurance policies shall be endorsed or contain provisions that to provide the following:

(1) The Agency Parties and Permittee are to be covered as additional insureds.

(2) The Subpermittees’ general liability policies are primary insurance to any other insurance available to the additional insureds with respect to any claims arising out of the Subpermittee’s contracts and the Subpermit. Such policies shall also provide for severability of interests. For any claims that may arise from or in connection with the Subpermittees’ contracts and the Subpermit, Subpermittees’ insurance coverages shall be primary insurance with respect to Permittee and the Agency Parties. Any insurance or self-insurance maintained by Permittee or the Agency Parties shall be excess of Subpermittee’s insurance and shall not contribute with it.

(3) Thirty (30) days’ advance written notice to Permittee and the Agency of cancellation of coverage (or ten (10) days’ advance written notice in case of nonpayment of premium), mailed to Permittee.
d. **Additional Insurance.** Permittee may impose higher coverages or additional insurance requirements on any Subpermittee as determined by Permittee in its discretion.

10. **Remedies.** In the event of any default under this Agreement, the Agency shall have all rights and remedies available at law or in equity. Without limiting the foregoing, if Permittee fails to perform any of its obligations, to restore the Permit Area or repair damage, then the Agency may, at its sole option, remedy such failure for Permittee’s account and at Permittee’s expense by providing Permittee with five (5) days’ prior notice of the Agency’s intention to cure such default (except that no such prior notice shall be required in the event of an emergency as determined by the Agency). Such action by the Agency shall not be construed as a waiver of any rights or remedies of the Agency under this Agreement. Permittee shall pay to the Agency upon demand, all costs, damages, expenses or liabilities incurred by the Agency, including reasonable attorneys’ fees, in remedying or attempting to remedy such default. Permittee’s obligations under this Section 10 shall survive the termination of this Agreement.

11. **“As Is”; No Representations; No Relocation Assistance; General Release.**

   a. **As Is; Waiver and Release.** The Agency makes no representation or warranty, express or implied, regarding the Permit Area, including but not limited to the physical, environmental, title or legal condition of some or all of the Permit Area. The Permit Area is accepted strictly “AS IS” and entry upon the Permit Area by Permittee (and all Representatives) is an acknowledgment by Permittee and Representatives that they accept the risk of all dangerous places and defects in or around the Permit Area. Permittee shall not, and shall not permit its Representatives to cause the Permit Area to be unsafe, unsightly or unsanitary. Permittee fully releases and waives any and all claims against the Agency and Developer relating to the Permit Area.

   b. **No Representations.** The Agency makes no representations or warranties, express or implied, with respect to the environmental or other condition of the Permit Area or the surrounding property (including all facilities, improvements, structures and equipment thereon and soil and groundwater thereunder), or compliance with any Environmental Laws (as defined in the Vertical DDA), and gives no indemnification, express or implied, for any costs of liabilities arising out of or related to the presence, discharge, migration or Release (as defined in the Vertical DDA) or threatened Release of Hazardous Substances in or from the Permit Area.

   c. **No Relocation Assistance.** Permittee acknowledges that it will not be a displaced person at the time this Agreement is terminated or revoked, and Permittee fully releases and waives any and all claims against the Agency and Developer relating to such termination including any and all claims for relocation benefits or assistance under federal or state relocation assistance laws.

   d. **General Release.** In connection with the foregoing releases, Permittee acknowledges that it is familiar with section 1542 of the California Civil Code, which reads:
A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Permittee acknowledges that the waivers and releases contained in this Agreement include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Permittee realizes and acknowledges that it has waived the benefit section 1542 of the California Civil Code, and any statute or other similar law now or later in effect. The waivers and releases contained in this Agreement shall survive the termination of this Agreement.

12. **Possessory Interest.** Permittee recognizes and understands that this Agreement may create a possessory interest subject to property taxation and that Permittee may be subject to the payment of property taxes levied on such interest under applicable law. Permittee shall pay all of such charges when they become due and payable and before delinquency.

13. **Compliance with Laws.**

   a. **Compliance with all Laws.** All entry or activity upon the Permit Area under this Agreement shall be in full compliance with all applicable laws and regulations of the federal, state and local governments.

   b. **Nondiscrimination.** Permittee herein covenants for itself and for all persons claiming in or through it (including all Representatives) that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, gender identity, marital or domestic partner status, disability (including AIDS or HIV status), national origin or ancestry in connection with the Interim Use.

14. **Governing Law.** This Agreement shall be governed by and interpreted under the laws of the State of California. Local laws, statutes and regulations applicable to this Agreement shall be the Applicable City Regulations (as defined in the Vertical DDA).

15. **Attorneys’ Fees.** Should any party institute any action or proceeding in court or other dispute resolution mechanism permitted or required under this Agreement, the prevailing party shall be entitled to receive from the losing party the prevailing party’s reasonable costs and expenses incurred, including expert witness fees, document copying expenses, exhibit preparation costs, carrier expenses and postage and communication expenses, and such amount as may be awarded to be reasonable attorneys’ fees and costs for the services rendered the prevailing party in such action or proceeding. Costs and expenses under this Section 15 shall include costs and expenses on appeal of any such action or proceeding.

16. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be considered an original, and all of which shall constitute one and the same instrument. Delivery of this Agreement may be effectuated by hand delivery, mail, overnight courier or electronic communication (including by PDF sent by electronic mail, facsimile or similar means of electronic communication). Any electronic signatures shall have the same legal effect as manual signatures.
17. **Assignment.** This Agreement may not be assigned by either party without the express written consent of the other party, which consent may be withheld in such parties’ sole and absolute discretion; provided, however, that Permittee may assign this Agreement in connection with a permitted assignment of the Vertical DDA. Upon any permitted assignment of this Agreement, the assigning party shall be released of its obligations hereunder consistent with any release under the Vertical DDA.

18. **No Third Party Beneficiaries.** This Agreement is made and entered into only for the protection and benefit of the Agency and Permittee and their respective successors and permitted assigns, and where applicable, the City and County of San Francisco. No other person shall have or acquire any right or action of any kind based upon the provisions of this Agreement except as explicitly provided to the contrary in this Agreement.

19. **Interpretation.** Where the context requires herein, the singular shall be construed as the plural, and neuter pronouns shall be construed as masculine and feminine pronouns, and vice versa. Unless otherwise specified, whenever in this Agreement, including its Exhibits, reference is made to any Recital, Article, Section, Exhibit, or any defined term, the reference shall be deemed to refer to the Recital, Article, Section, Exhibit or defined term of this Agreement. Any reference to a Recital, an Article or a Section includes all subsections and subparagraphs of that Recital, Article or Section. Section and other headings are for the purpose of convenience of reference only and are not intended to, nor shall they, modify or be used to interpret the provisions of this Agreement. References in this Agreement to days shall be to calendar days, unless otherwise specified; provided, that if the last day of any period to give notice, reply to a notice, meet a deadline or to undertake any other action occurs on a day that is not a Business Day, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding Business Day. For purposes of this Agreement, the term “Business Day” means a day other than a Saturday, Sunday or holiday recognized by the Agency. The use in this Agreement of the words “including”, “such as” or words of similar import when used with reference to any general term, statement or matter shall not be construed to limit such statement, term or matter to the specific statements, terms or matters, unless language of limitation, such as “and limited to” or words of similar import are used with reference thereto. In the event of a conflict between the Recitals and the remaining provisions of this Agreement, the remaining provisions shall prevail.

20. **Severability.** If any clause or provision of this Agreement is illegal, invalid or unenforceable under present or future laws, then and in that event, it is the intention of the parties that the remainder of this Agreement shall not be affected thereby. It is also the intention of the parties that in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, there be added, as a part of this Agreement, a clause or provision as similar in effect to such illegal, invalid or unenforceable clause or provision as shall be legal, valid and enforceable; if after using their respective good faith efforts for not less than thirty (30) days after such clause or provision is finally determined to be illegal, invalid or unenforceable the parties cannot agree on such added clause or provision, then this Agreement may be terminated by either party upon written notice thereof to the other party.

21. ** Entire Agreement.** This Agreement contains or expressly incorporates by reference the entire agreement of the parties with respect to the matters contemplated herein and
supersedes all prior negotiations or agreements, written or oral between the parties with respect to the matters contemplated herein.

22. **Amendments.** Notwithstanding any other provision of this Agreement to the contrary, this Agreement may be amended or otherwise modified only by a written instrument that expresses the intent to amend or otherwise modify this Agreement and that is signed by both parties.

23. **Waivers.** No party shall be deemed to have waived any provision of this Agreement unless it does so in writing, and no “course of conduct” shall be considered to be such a waiver, absent such a writing.

24. **Authority of Agency’s Executive Director.** Subject to the requirements of the Vertical DDA and applicable law, any consent, approval or other actions of the Agency under this Agreement will be given, determined or undertaken, as applicable, by the Agency’s Executive Director. However, nothing herein shall be deemed to prevent the Executive Director from bringing any matter to the Agency Commission for its consideration, in his/her sole discretion. The Agency’s Executive Director shall have the right to delegate, in writing, certain tasks to be performed by the Agency under this Agreement to Agency staff; provided that the Agency’s Executive Director shall not have the right to delegate the approval of an additional Interim Use under Section 1.b or the waiver of any insurance requirement, and any such approval or waiver shall be given, if at all, by the Agency’s Executive Director.

25. **Notices.** Any notices required or permitted to be given hereunder shall be given in writing and shall be delivered (i) in person, (ii) by certified mail, postage prepaid, return receipt requested, (iii) by facsimile with confirmation of receipt, or (iv) by a commercial overnight courier that guarantees next day delivery and provides a receipt. Such notices shall be addressed as follows:

If to Permittee:


Facsimile: ____________

For notices to Permittee’s Director of Risk Management under Section 8.b(4)


If to the Agency: Successor Agency to the San Francisco Redevelopment Agency One South Van Ness Avenue, 5th Floor San Francisco, California 94103
Attention: Executive Director  
Facsimile: 415.749.2525

With a copy to:  
San Francisco City Attorney’s Office  
City Hall, Rm. 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102  
Attention: RE/Finance  
Facsimile: 415.554.4755

or to such other address as either party may from time to time specify in writing to the other party. Any notice or other communication delivered as herein above provided shall be deemed effectively given (a) on the date of delivery, if delivered in person; (b) on the date mailed if sent by certified mail, postage prepaid, return receipt requested or by a commercial overnight courier; or (c) on the date of transmission, if sent by facsimile with confirmation of receipt. Such notices shall be deemed received (1) on the date of delivery, if delivered by hand or overnight express delivery service; (2) on the date indicated on the return receipt if mailed; or (3) on the date of transmission, if sent by facsimile. If any notice mailed is properly addressed but returned for any reason, such notice shall be deemed to be effective notice and to be given on the date of mailing. Any notice sent by the attorney representing a party shall qualify as notice under this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
IN WITNESS WHEREOF, the Agency and Permittee have duly executed this Agreement effective as of the Effective Date.

**Permittee:**

[_____________________

**Agency:**

Approved as to form:

DENNIS J. HERRERA, City Attorney, as counsel to the Agency

By: ______________________
Name: Charles Sullivan, Deputy City Attorney
Title: Executive Director

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

By: ______________________
Name: Tiffany Bohee
Title: Executive Director
EXHIBIT A

Permit Area

[ ATTACHED ]
EXHIBIT B

Interim Use

[DESCRIBE USE (e.g., (i) place and store construction trailers and construction materials; (ii) short- and long-term parking of construction vehicles and trucks]
EXHIBIT B-1

Example Form of Request for Additional Interim Use

Date:       , 20__
VIA ELECTRONIC MAIL
Successor Agency to
the San Francisco Redevelopment Agency
One South Van Ness Avenue, 5th Floor
San Francisco, California 94103
Attention: Executive Director

RE: Request for Additional Interim Use Related to __________

Dear Sir/Madam:

As you are aware, the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic (the “Agency”), and _________ [Vertical Developer] (“Permittee”), are parties to that certain Permit to Enter, dated as of ______ __, 20__ (the “Permit Agreement”) under which the Agency grants Permittee access to the Permit Area (as defined in the Permit Agreement).

Under section 1.b of the Permit Agreement, Permittee may from time to time request the written consent of the Agency’s Executive Director for additional Interim Uses. Any such request shall include documentation describing any such additional Interim Use, including, as applicable, the work plan, the identity of the persons who will perform the work and the time periods for completion of the work.

Permittee hereby requests your written consent for an additional Interim Use, as described in the attached documentation. Please confirm your consent to the additional Interim Use, including the persons who will perform the work, as described in the attached materials by countersigning the appropriate space below (or by providing a separate consent letter). Upon our receipt of your consent, (1) the additional Interim Use as described in this request shall automatically become an Interim Use under the Permit Agreement without conditions or limitations except (if applicable) as set forth in your consent, and (2) this request and your consent will be attached to the Permit Agreement as part of Exhibit B.

Please do not hesitate to contact ________ with any questions or concerns.

Sincerely,

[Permittee]

ACKNOWLEDGED AND AGREED:

Agency:
Successor Agency to the
Redevelopment Agency of the
City and County of San Francisco,
a public body, corporate and politic

By: ___________________________
   Name: ___________________________
   Title: Executive Director

cc: San Francisco City Attorney’s Office
    City Hall, Room 234
    1 Dr. Carlton B. Goodlett Place
    San Francisco, California 94102
    Attention: RE/Finance
ATTACHMENT M

VERTICAL DESIGN REVIEW AND DOCUMENT APPROVAL PROCEDURE

I. INTRODUCTION

This Vertical Design Review and Document Approval Procedure (this “VDRDAP”) sets forth the procedure for design submittals and review of the plans and specifications for the Project. The Project includes residential, streetscape, private open spaces, and other permanent and interim uses, as applicable and as more completely described in the Agreement. The Agency shall review plans and specifications to assure that they conform to the Agreement and the other applicable Redevelopment Requirements. Agencies of the City will review plans and specifications for compliance with the Applicable City Regulations.

A. DEFINITIONS

Capitalized terms unless separately defined in this VDRDAP shall have the meanings set forth in the Agreement.

B. REVIEW

1. Subdivision Map Review.

The review and approval of Design Documents and Construction Documents by the Agency pursuant to this VDRDAP are in addition to and do not waive the requirements for subdivision review and approval as specified in the Subdivision Map Act and in the Hunters Point Shipyard Subdivision Code and Hunters Point Shipyard Subdivision Regulations. The processing of a subdivision map may occur concurrently with or independently of a project approval.

2. Temporary and Interim Uses.

The Agency architectural staff shall review applications for temporary and interim uses.

II. PROJECT APPROVALS

Project Approval submissions shall consist of four components or stages:

- Basic Concept Design,
- Schematic Design,
- Design Development Documents, and
- Final Construction Documents.
A. SCOPE OF REVIEW

The Agency shall review and approve Basic Concept Design Documents, Schematic Design Documents, Design Development Documents and Final Construction Documents, each as defined below, for conformity with any prior approvals and the Redevelopment Requirements, including the Design for Development. The Agency’s review shall include consideration of such items as the architectural design, site planning and landscape design as applicable and appropriate to each submittal. Vertical Developer shall submit a report regarding compliance with the Project MMRP previously adopted by the Agency pursuant to the California Environmental Quality Act (CEQA). The mitigation measures are a part of the final Environmental Impact Report. The mitigation measures are intended to reduce the major impacts of this development on the environment. The Agency shall review such report to ensure compliance with the CEQA and the Project MMRP. The Agency shall not disapprove, require changes from or impose conditions inconsistent with the Redevelopment Requirements or matters it has previously approved, provided that the Project submittals are consistent with any matter the Agency has previously approved.

B. AGENCY PROCESS

1. Review by Agency.

The redevelopment of the Hunters Point Shipyard contemplated by the Redevelopment Requirements is a priority project for the City and the Agency. The Agency shall review all applications for Project Approvals as expeditiously as possible. The Agency architectural staff shall keep Vertical Developer informed of the Agency’s review and comments, as well as comments by City Agencies, other government agencies, or community organizations consulted by the Agency, and shall provide Vertical Developer opportunities to meet and confer with Agency staff prior to the Agency Commission hearing, if any, to review the specific application for Project Approval.

2. Pre-Submission Conference.

Prior to filing an application for any Project Approval, Vertical Developer may submit to the Agency architectural staff preliminary maps, plans, design sketches and other data concerning the proposed project and request a pre-submission conference. Within fifteen (15) days after the receipt of such request and material, the Agency architectural staff shall hold a conference with Vertical Developer to discuss the proposed application. As part of such conference, the Agency architectural staff may approve, in consultation with Vertical Developer, the scope of submissions if different from that set forth on Exhibit 1, recognizing that each project is unique and that all documents outlined herein may not be required for each proposed project.

3. Cooperation by Vertical Developer.

In addition to the required information set forth in Exhibit 1 attached hereto, Vertical Developer shall submit such materials and information as the Agency architectural staff may reasonably request, that are consistent with the type of documents listed in Exhibit 1, and that are reasonably required to clarify a submittal provided pursuant to this VDRDAP. Additionally,
Vertical Developer shall reasonably cooperate with, and participate in, design review presentations to the Agency Commission and to the public through the CAC.

C. REVIEW OF BASIC CONCEPT DESIGN

Basic Concept Design Documents shall be submitted to the Agency for review and approval. Basic Concept Design Documents shall demonstrate a concept level of detail consistent with the Redevelopment Requirements.

1. Timing of Agency’s Review.

   The Agency architectural staff shall review the Basic Concept Design for completeness and advise Vertical Developer in writing of any deficiencies within fifteen (15) Business Days following receipt of Vertical Developer’s Basic Concept Design submittal. In the event the Agency architectural staff does not so advise Vertical Developer, the application for Basic Concept Design shall be deemed complete. The time limit for the Agency staff’s review shall be within sixty (60) days from the date the Basic Concept Design has been determined to be complete. The Agency shall take such reasonable measures necessary to comply with the time periods set forth herein.

   The Agency Commission shall review and approve, conditionally approve or disapprove the application for Basic Concept Design within the sixty (60) day period set forth above. If the Agency Commission disapproves the Basic Concept Design in whole or in part, the Agency Commission shall set forth the reasons for such disapproval in the resolution adopted by the Agency Commission. If the Agency Commission conditionally approves the Basic Concept Design, such approval shall set forth the concerns and/or conditions on which the Agency Commission is granting approval. If the Agency Commission disapproves an application in part or approves the application subject to specified conditions, then, in the sole discretion of the Agency Commission, the Agency Commission may delegate approval of such resubmitted or corrected documents to the Agency architectural staff.

   Vertical Developer and the Agency may agree to any extension of time necessary to allow revisions of submittals. The Agency shall review all revisions as expeditiously as possible, within the time frame of the extension agreed to by the Agency and Vertical Developer. If required to be submitted to the Agency Commission, the Agency Commission shall either approve or disapprove such resubmitted or corrected documents as soon as possible.


   Vertical Developer shall submit “Basic Concept Design Documents”, which shall consist of the documents and information listed in Exhibit 1 attached hereto. The Agency architectural staff may waive certain document submittal requirements if the Agency architectural staff determines such documents are not necessary for the specific application.
D. REVIEW OF SCHEMATIC DESIGN

Except as provided below, Schematic Design Documents shall be submitted to the Agency Commission for review and consideration. Schematic Design Documents shall relate to schematic design level of detail for a specific project. The purpose of this submittal is to expand and develop the Basic Concept Design, incorporating changes resulting from resolution of the Agency’s design concerns and comments.

1. Timing of Agency’s Review.

The Agency architectural staff shall review the application for Schematic Design for completeness and advise Vertical Developer in writing of any deficiencies within fifteen (15) Business Days after the receipt of the Schematic Design Documents. In the event the Agency architectural staff does not so advise Vertical Developer, the application for Schematic Design shall be deemed complete. The time limit for the Agency staff’s review shall be forty nine (49) days from the date the application for Schematic Design was determined to be complete. The Agency shall take such reasonable measures necessary to comply with the time periods set forth herein.

The Agency Commission may elect, in its sole discretion, to delegate approval of the Schematic Design to the Agency architectural staff at the time the Agency Commission reviews the Basic Concept Design. If the Agency disapproves the Schematic Design in whole or in part, the Agency shall set forth in writing the reasons for such disapproval. If the Agency approves the Schematic Design subject to conditions, such approval shall set forth in writing the concerns and/or conditions on which the Agency is granting approval. If the Agency Commission disapproves an application in part or approves the application subject to specified conditions, then, in the sole discretion of the Agency Commission, the Agency Commission may delegate approval of the resubmitted or corrected documents to the Agency architectural staff.

Vertical Developer and the Agency architectural staff may agree to any extension of time necessary to allow revisions of submittals prior to a decision by the Agency. The Agency shall review all such revisions as expeditiously as possible, within the time frame of the extension agreed to by the Agency architectural staff and Vertical Developer. If required to be submitted to the Agency Commission, the Agency Commission shall either approve or disapprove such resubmitted or corrected documents as soon as possible.

Vertical Developer may request to submit Basic Concept Design and Schematic Design Documents simultaneously. The Agency architectural staff shall approve or disapprove such request within a reasonable time. In the event that Agency architectural staff permits Vertical Developer to submit complete sets of Basic Concept Design Documents and Schematic Design Documents simultaneously, the Agency Commission shall approve, conditionally approve or disapprove the Schematic Design Documents at the same time it approves the Basic Concept Design, and no later than twenty-one (21) days following the time period for approval of the Basic Concept Design. The Schematic Design submittal shall govern if there is any discrepancy between the two design submittals.
2. **Document Submittals.**

Vertical Developer shall submit “**Schematic Design Documents**”, which shall consist of the documents and information listed in Exhibit 1 attached hereto. The Agency architectural staff may waive certain document submittal requirements if the Agency architectural staff determines such documents are not necessary for the specific application.

**E. REVIEW OF DESIGN DEVELOPMENT DOCUMENTS**

Design Development Documents shall be submitted for review and approval, conditional approval, or disapproval by the Agency architectural staff, following approval of the Schematic Design.

1. **Scope of Review.**

The Agency architectural staff shall review the Design Development Documents for conformity with any prior approvals and the Redevelopment Requirements, including the Design for Development. Design Development Documents will relate to design development level of detail for the Project specifically. The purpose of this submittal is to expand and develop the Schematic Design incorporating changes resulting from resolution of comments and concerns during the Schematic Design phase and to prepare drawings and other documents as to architectural, structural, mechanical and electrical systems.

2. **Timing of Agency’s Review.**

The Agency architectural staff shall review the Design Development Documents for completeness and advise Vertical Developer in writing of any deficiencies within ten (10) Business Days after the receipt of the Design Development Documents. In the event the Agency architectural staff does not so advise Vertical Developer, the Design Development Documents shall be deemed complete. The time limit for the Agency architectural staff’s review shall be forty-nine (49) days from the date the Design Development Documents were determined to be complete. The Agency architectural staff shall take such reasonable measures necessary to comply with the time periods set forth herein.

Vertical Developer and the Agency architectural staff may agree to any extension of time necessary to allow revisions of submittals prior to a decision by the Agency architectural staff. The Agency architectural staff shall review all such revisions as expeditiously as possible, within the time frame of the extension agreed to by the Agency architectural staff and Vertical Developer.

3. **Document Submittals.**

Vertical Developer shall submit “**Design Development Documents**”, which submittal shall consist of the documents and information listed in Exhibit 1 attached hereto. The Agency architectural staff may waive certain document submittal requirements if the Agency architectural staff determines such documents are not necessary for the specific application.
F. REVIEW OF FINAL CONSTRUCTION DOCUMENTS

1. Agency Review.

Final Construction Documents will relate to the construction documents level of detail for a specific project. The purpose of this submittal is to expand and develop the Design Development Documents to their final form, prepare drawings and specifications in sufficient detail to set forth the requirements of construction of the project and to provide for permitting. Final Construction Documents may be divided and submitted in accordance with an addenda schedule for the project approved in writing in advance by the City’s Department of Building Inspection and the Agency architectural staff. Provided Vertical Developer’s Final Construction Documents are delivered to the Agency architectural staff concurrently with submittal to the Department of Building Inspection, Final Construction Documents shall be reviewed by the Agency architectural staff within twenty-one (21) days following the Agency architectural staff's receipt of such documents from and approved by the Department of Building Inspection and any other appropriate City Agencies with jurisdiction. In the event that Vertical Developer’s Final Construction Documents are not delivered concurrently to the Agency architectural staff, the Agency architectural staff shall review the Final Construction Documents as expeditiously as possible.


The “Final Construction Documents” submittal shall consist of the information specified for the Design Development Documents in Exhibit 1 attached hereto.

III. OTHER CITY-PERMITS

A. COMPLIANCE WITH OTHER LAWS

No Agency review will be made or approval given as to the compliance of the Design Development Documents or Final Construction Documents with any building codes and standards, including building engineering and structural design, or compliance with building codes or regulations, or any other applicable state or federal law or regulation relating to construction standards or requirements, including, without limitation, compliance with any local, state or federal law or regulation related to the suitability of the improvements for use by persons with physical disabilities.

B. AGENCY REVIEW OF CITY PERMITS

No building permit, or any other City permit, including any permits required by the Department of Public Works shall be issued unless the Agency has reviewed and approved the permit application.

C. SITE PERMITS

Vertical Developer shall not submit a site permit or addenda application to the Department of Building Inspection until the Agency has approved Vertical Developer’s Schematic Design Documents. The Agency may withhold its approval of any such application
until the Agency has determined that Vertical Developer’s application for approval of the Design Development Documents is complete. Notwithstanding the foregoing, Vertical Developer may apply for City permits related to grading and excavation activities prior to the Agency architectural staffs approval at any time. Grading and excavation are often the first two addenda to site permits.

Pursuant to such site permit process, the Final Construction Documents may be divided and submitted to the Department of Building Inspection in accordance with an addenda schedule for the project approved in writing in advance by the Agency architectural staff and Department of Building Inspection. Construction may proceed after the appropriate Site Permit addenda have been issued, including, for example, and without limitation, addenda for foundations, superstructure, and final building build-out. In no case shall construction deviate from, or exceed the scope of, the issued addenda.

IV. MODIFICATIONS AND AMENDMENTS TO PROJECT APPROVAL

The Agency may, by written decision, approve project applications that amend or modify the then-current Project Approval, provided that the Agency makes the following determinations: (1) the requested amendment or modification involves a deviation that does not constitute a material change; (2) the requested amendment or modification will not be detrimental to the public welfare or injurious to the property or improvements in the vicinity of the project; and (3) the grant of the requested amendment or modification will be consistent with the general purposes and intent of the Redevelopment Plan and Plan Documents. In the event that the Agency determines that a requested amendment or modification deviates materially from the project already approved by the Agency, the Agency may require submittal of an amended project application, as appropriate, for review by the Agency in accordance with the provisions herein.

Amendments and modifications will be processed in accordance with this VDRDAP.

V. GOVERNMENT REQUIRED PROVISIONS, CHANCES

The Agency and Vertical Developer acknowledge and agree that neither one will delay or withhold its review or approval of those elements of or changes in the Basic Concept Design, Schematic Design, Design Development Documents or Final Construction Documents that are required by any City Agency, including the City’s Department of Building Inspection, the Fire Marshall, or any other government agency having jurisdiction; provided, however, that (i) the party whose review or approval is sought shall have been afforded a reasonable opportunity to discuss such element of, or change in, documents with the governmental authority requiring such element or change and with either Vertical Developer’s or the Agency’s architect, as the case may be, and (ii) Vertical Developer or the Agency shall have reasonably cooperated with the other and such governmental authority in seeking such reasonable modifications of such required element or change as the other shall deem necessary or desirable. Vertical Developer and the Agency each agrees to use its diligent, good faith efforts to obtain the other’s approval of such elements or changes, and its request for reasonable modifications to such required elements or changes, as soon as reasonably possible.
EXHIBIT 1

DOCUMENTS TO BE SUBMITTED FOR PROJECT APPROVALS

During each stage of the project design review process, the Agency architectural staff and Vertical Developer shall agree upon the scale of the drawings for project submissions. The Agency architectural staff and Vertical Developer shall also discuss and agree upon the scope of the subsequent project submissions recognizing that each project is unique and that all documents outlined herein may not be required for each project.

Design Development Documents and other Construction Documents to be submitted shall be prepared by an architect licensed to practice in and by the State of California. Vertical Developer shall submit a report outlining compliance with the Project MMRP.

A. BASIC CONCEPT DESIGN DOCUMENTS

Three (3) sets of Basic Concept Design Documents shall be submitted to the Agency. The program of uses, the height of buildings or other factors in the proposed project may trigger some variation in the submittal requirements in order to illustrate consistency with standards and guidelines in the Redevelopment Plan and Plan Documents. Basic Concept Design Documents will illustrate building height, building bulk, block development, street frontage, conceptual building elevations, and streetwall length, height and character. Project Basic Concept Design submittals will include the following documents.

1. Data Charts

Data charts submitted should provide information appropriate to a Basic Concept Design submittal consistent with the project being proposed, including:

   a. Program of uses
   b. Maximum development density
   c. Approximate number of parking and loading spaces
   d. Building coverage and streetwall calculations

2. Vicinity Plan

In addition to the site plan for the immediate area of the project under review, a diagrammatic vicinity plan should be submitted showing this project in the context of planned and existing:

   a. Utilities, including interim facilities
   b. Vehicular, bicycle and pedestrian circulation
   c. View corridors
d. Public and private open space

3. Site Plan (at a scale of 1” = 40; unless otherwise agreed upon)

The Site Plan will pertain to the total area of development and improvement included in this project which may include required streets, open space and other existing infrastructure improvements. A Site Plan should indicate the location of uses; the general location, scale, relationship, and orientation of buildings; the general site circulation and relationship of ground floor uses, and:

a. Site boundaries
b. Building footprints
c. Existing public open space areas
d. Private open space areas
e. Setbacks
f. Existing roads, sidewalks, mid-block connections
g. Parking and loading facilities (including interim facilities)
h. Circulation diagram including entry locations for pedestrians, autos and service vehicles
i. Existing and proposed streetscape improvements

4. Building Plans, Elevations and Sections sufficient to describe the development proposal

Written Statement of Program, including: size and use of the facilities proposed, structural system and principal building materials.

5. Model

A Basic Concept Design level block model shall illustrate the location, scale and massing of proposed building(s) and its relationship to existing public open space, streets and surrounding development areas.

6. Illustrative Materials

Sketches or perspective renderings (and other appropriate illustrative materials acceptable to the Agency) shall be submitted to illustrate the character of the proposed development.
7. Phasing Plan

Within the project, any anticipated phasing of construction or temporary Improvements, including temporary or interim parking facilities and infrastructure, to ease the transition among projects and between phases, if any, shall be indicated.

B. SCHEMATIC DESIGN

Documents submitted at this stage in the design review will relate to schematic design level of detail for a specific project. The purpose of this submittal is to expand and develop the Basic Concept Design, incorporating changes resulting from resolution of the Agency’s design concerns and comments. The Schematic Design submission for a specific project should generally be consistent with the Basic Concept Design approval. A Schematic Design submittal will include the following documents.

1. Written Statement

A written statement of proposal shall cover items similar to those on the Basic Concept Design data charts including number of parking and loading spaces, size and use of the facilities provided, with the addition of the structural system, principal building materials and area calculations.

2. Schematic design drawings

The Schematic Drawings shall generally include, but not be limited to:

a. Isometric or perspective drawings sufficient to illustrate overall project.

b. Site plan at appropriate scale showing relationships of buildings with their respective uses designating open spaces, terraces, landscaped areas, walkways, loading areas, streets, water elements, and adjacent uses. Adjacent existing and proposed street and structures should also be shown. Scale: minimum 1/16”=1 ‘0

c. Site sections showing height relationships of those areas noted above. Scale: minimum 1/16”=1 ‘0

d. Building plans, elevations and sections sufficient to describe the development proposal, the general architectural character, and materials proposed at appropriate scale to fully explain the concept. Scale: minimum 1/8”=1 ‘0

e. Written Statement of program, including: size and use of the facilities proposed, structural system and principal building materials.

3. Model

A model shall be submitted to the Agency which shall be prepared at an appropriate scale indicating the exterior building design.
4. **Perspectives, Sketches and Renderings**

Perspectives, sketches, and renderings, as necessary to indicate the architectural character of the project and its relationship to the pedestrian level shall be submitted to the Agency.

5. **Samples**

Samples of proposed materials and exterior colors shall be submitted to the Agency.

6. **Perspective drawings sufficient to depict the design characteristics of the project.**

C. **DESIGN DEVELOPMENT DOCUMENTS**

Documents submitted at the design development stage in design review will relate to design development level of detail for a specific project. The purpose of this submittal is to expand and develop the Schematic Design incorporating changes resulting from resolution of comments and concerns during the Schematic Design phase and to prepare drawings and other documents as to architectural, structural, mechanical and electrical systems.

The Design Development Document submission for a specific project should generally be consistent with the Schematic Design approval.

1. **Site plans showing where applicable:**

   a. Building relationships to landscaped areas, parking facilities, loading facilities, roads, sidewalks, mid-block connections, any transit facilities, and both public and private open space areas. All land uses within the subject parcel shall be designated. Streets and points of vehicular and pedestrian access shall be shown, indicating proposed new paving, planting and lighting if applicable.

   b. All utilities or service facilities which are a part of or link this project to the public infrastructure shall be shown.

   c. Grading plans depicting proposed finish site elevations

   d. Site drainage and roof drainage.

   e. Required connections to existing and proposed utilities.

   f. All existing structures adjacent the site.

2. **Building floor plans and elevations including structural system, at an appropriate scale (1/8” to 1’ minimum).**

3. **Building sections showing typical cross sections at an appropriate scale, and in particular indicating street walls and adjacent open spaces, relationship of**
ground floor uses to pedestrian outdoor areas, and including mechanical equipment

4. Landscape design plans showing details of landscape elements including walls, fences, planting, outdoor lighting, ground surface materials. Appropriate reference to improvements in the City’s right of way shall be shown.

5. Drawings showing structural, mechanical and electrical systems.

6. Materials and colors samples as they may vary from those submitted for Schematic Design approval.

7. Sign locations and design.


9. Roof plan showing location of and screen design for all rooftop equipment; and roof drainage.

D. FINAL CONSTRUCTION DOCUMENTS

Documents submitted at this stage in the design review will relate to the construction documents level of detail for a specific project. The purpose of this submittal is to expand and develop the Design Development Documents, prepare drawings and specifications in sufficient detail to set forth the requirements of construction of the project and to provide for permitting.

The Final Construction Documents shall generally be consistent with the approved Design Development Documents. The Final Construction Documents shall comply with the requirements of the City’s Department of Building Inspection, including Site Plans and Construction Drawings and Specifications ready for bidding. In addition, Vertical Developer shall submit a presentation of all exterior color schedules including samples, if appropriate, and design drawings for all exterior signs and graphics prior to completed construction. The Agency architectural staff and Vertical Developer shall continue to work to resolve any outstanding design issues, as necessary.
ATTACHMENT N-A

BVHP ECP

[ ATTACHED ]
ATTACHMENT N-B

Revisions to and Interpretations of BVHP ECP for the Project

1. Revisions and Interpretations. Unless otherwise approved by Vertical Developer and the Agency Director, each in their respective sole and absolute discretion, the following revisions and interpretations to the BVHP ECP shall apply to the Agreement:

1.1 References to the PAC shall be changed to the CAC.

1.2 The definition of “Employer” in Section III.11 is deleted and replaced with the following: Employer means any person(s), firm, partnership, corporation, government agency, (whether for profit or nonprofit), or combination thereof, who owns or operates a retail or commercial business with twenty (20) or more employees that conduct the majority of their duties at the Project Site, and shall include retailers, service providers, office workers, property managers, parks and open space managers, and others.

1.3 The definition of “First Consideration” in Section III.13 is deleted and replaced with the following: “First Consideration means that a Project Sponsor, Contractor and/or Employer shall give first consideration to qualified BVHP Residents in accordance with Section VII.A. (6) - (8) of this Employment and Contracting Policy, then to residents of the 94134 and 94107 zip code areas, then residents of other existing San Francisco redevelopment project areas, and then to San Francisco residents for hiring opportunities in the areas of construction workforce, permanent / temporary workforce and trainee hires before offering the hiring opportunity to other applicants.”

1.4 The definition of “CBO” (community-based organization) in Section III. 6 is deleted and replaced with the following: “CBO means a workforce referral entity approved by the Agency and Developer from time to time.”

1.5 The definition of “Contractor” in Section III. 9 is deleted and replaced with the following: “Contractor means any person(s), firm, partnership, corporation (whether for profit or nonprofit), or combination thereof, who is a general contractor, subcontractor (regardless of tier) or consultant working on any part of the Project. Contractors shall include, without limitation, architects, engineers and other design professionals.”

1.6 The definition of “Project Sponsor” in Section III.19 is deleted and replaced with the following: “Project Sponsor means Vertical Developer.”

1.7 All aspects of the Project shall be deemed to be either an Agency Action Project subject to Section IV.A (Agency Action Projects) or a CityBuild and Public Improvement subject to Section IV.C (CityBuild and Public Improvements), as applicable. Upon the Agency’s request, each Project Sponsor shall enter into an Employment and Contracting Agreement on or before Commencement of the Vertical Improvements.

1.8 All references to the “LCP Tracker system” in Section VII.B.1 are replaced with “the PRS”.

-ii-
1.9 A new definition is inserted, as follows: “PRS means a web-based software used to collect, verify and manage prevailing wage certified payrolls and related labor compliance documentation.”

1.10 Worker request forms under Section VII.A.6 shall be submitted via the PRS.
ATTACHMENT O

SBE Policy

[ ATTACHED ]
ATTACHMENT P

 Equal Benefits Policy

  [ ATTACHED ]
ATTACHMENT Q

Minimum Compensation Policy

[ ATTACHED ]
ATTACHMENT R

Health Care Accountability Policy

[ ATTACHED ]
ATTACHMENT S

Prevailing Wage Policy

[ ATTACHED ]