MEMORANDUM

TO: Community Investment and Infrastructure Commissioners

FROM: Tiffany Bohee
Executive Director

SUBJECT: Approving a Ground Lease that incorporates the acceptance of an Assignment of Deed of Trust and Promissory Note with AMCAL Pacific Pointe Fund, L.P., with HPS Development Co., L.P., for a 59-unit (plus one manager’s unit) affordable housing development serving very low-income families at Block 49 pursuant to the 6th Amendment to the Phase 1 Hunters Point Shipyard Disposition and Development Agreement; Hunters Point Shipyard Redevelopment Area

EXECUTIVE SUMMARY

The Phase 1 Disposition and Development Agreement ("Phase 1 DDA"), between the Office of Community Investment and Infrastructure ("OCII") as successor to the San Francisco Redevelopment Agency ("SFRA") and HPS Development Co, LP ("Lennar" or the "Master Developer") requires the Master Developer to provide 192 inclusionary affordable units ("Developer Affordable Units") within the Phase 1 of the Hunters Point Shipyard Project ("Shipyard") development. The 6th Amendment ("6th Amendment") to the Phase 1 DDA, which was approved in December 2012, modified the Affordable Housing Program to shift the Master Developer’s affordable housing obligation serving very-low income households earning up to 50% of Area Median Income ("AMI") from Developer Affordable Units within the market rate blocks onto Block 49 (the "Project"). The Developer continues to have an obligation to provide affordable units serving households earning up to 80% of AMI within the market rate blocks. The 6th Amendment also required a $1 million contribution to OCII that will be used for affordable housing within the Shipyard Project.

The Project is located at the intersection of Donahue Street and Kirkwood Avenue in Phase 1 of Shipyard Project and will provide 60 rental units of affordable housing, serving very low-income households earning up to 50% of Area Median Income. The project is a joint venture of AMCAL Multi-Housing ("AMCAL") and Young Community Developers ("YCD") (together, the "Block 49 Developer").

Since delivery of affordable housing at Block 49 is an obligation of Lennar pursuant to the Phase I DDA, OCII is not providing development funding. However, Block 49 is being developed consistent with OCII’s other affordable housing sites; OCII owns the land and proposes to enter into a long term Ground Lease with Block 49 Developer. The Project has received all it financing commitments, including Low Income Housing Tax Credits ("LIHTC"), a 4% tax-exempt bond allocation, and private construction loan. In order to proceed with construction commencement in late September, staff is now requesting the Commission authorize the Executive Director to enter into a 55-year Ground Lease (see Attachment A), with one option for 44 additional years, with the Block 49 Developer.
In accordance with the 6th Amendment, Lennar transferred ownership, at no cost to OCII, of the Block 49 site to OCII in July 2014. In order to deliver the site to OCII in a developable condition, Lennar was responsible for off-site improvements for an amount of approximately $4.1 million. Off-site improvements included: demolition, grading, water lines, streets base and paving work, sidewalks, soft and indirect costs. The off-site costs are directly related to Block 49 and are included in eligible basis for the calculation of LIHTCs, and will provide approximately $2.5 million in additional equity for the Project. Since Lennar is obligated to provide gap funding to build the housing, the additional $2.5 million in LIHTC equity generated from the off-sites expenses therefore reduces the amount of subsidy Lennar would have otherwise put into the vertical development costs of the Project.

To effectuate this approach and include the off-sites cost in eligible basis for the LIHTCs, the $4.1 million must be in the form of a loan (not a grant). Lennar has made a loan to the Block 49 Developer for these costs in the form of a Promissory Note and Deed of Trust ("Off-Sites Expense Loan" or the "Loan"). While the inclusion of the off-sites expense in the overall LIHTC financing is a creative way for Lennar to reduce its costs on the vertical development, it was never anticipated that Lennar would be repaid for the off-sites expense since it is an obligation of Lennar as the Shipyard master developer. Staff is therefore proposing that the Loan be assigned from Lennar to OCII through the Ground Lease at the construction financing closing so that any repayment of the Loan through future cash flow of the Project would go towards the City and not Lennar. OCII is not providing any development funding for the Project.

After the project is complete and at permanent loan conversion, the Ground Lease, and the assigned Loan will transfer from OCII to the Mayor’s Office of Housing and Community Development ("MOHCD"), as the Housing Successor under California Health and Safety Code Section 34181(c). MOHCD will then hold the Off-Sites Expense Loan and will receive repayment of that loan through the surplus cash that flows through the Ground Lease. Only after the Off-Sites Expense Loan is fully repaid will the Block 49 Developer receive the typical developer's share of one-third of any remaining surplus cash after all other required payments have been made.

Staff recommends authorizing a Ground Lease with AMCAL Pacific Pointe Fund, L.P., with HPS Development Co., L.P. both related to the development of Block 49 in the HPSY Redevelopment Area.

DISCUSSION

Hunters Point Shipyard and Candlestick Point Overview and Summary
The Hunters Point Shipyard and Candlestick Point areas are comprised of approximately 780 acres along the long-neglected waterfront lands of southeastern San Francisco. The areas will be developed in two phases and transform the land into productive areas for jobs, parks, and housing, including affordable housing.

Phase I and Phase II will deliver over 12,000 new homes, approximately 32 percent of which will be below market rate and will include the rebuilding of the Alice Griffith public housing development consistent with the City’s HOPE SF program, up to 3 million square feet of research and development space, and more than 350 acres of new parks in the southeast portion of San Francisco. Additionally, over $6 billion of new economic activity will be generated to the
City, more than 12,000 permanent jobs, hundreds of new construction jobs each year, new community facilities, new transit infrastructure, and provide approximately $90 million in community benefits. The full build out will occur over 20 to 30 years, but nearly 1,500 units of housing and 26 acres of parks will be completed over the next five years in the first phase of the Shipyard.

**Phase 1 Development Program**
In December 2003, the former San Francisco Redevelopment Agency Commission approved the Phase 1 DDA with Lennar. The Phase 1 DDA has been amended since its approval in 2003. The SFRA Commission authorized: 1) on April 5, 2005, a First Amendment to the DDA; 2) on October 17, 2006, a Second Amendment to the DDA; 3) on August 5, 2008, a Third Amendment to the DDA; 4) on August 19, 2008, a Fourth Amendment to the DDA; 5) on November 30, 2009 a Fifth Amendment to the DDA; and 6) on December 19, 2012 the Commission on Community Investment and Infrastructure approved a Sixth Amendment to the DDA.

The Phase 1 DDA obligates Lennar to construct the infrastructure necessary to support the total vertical development of 1,498 housing units in the Phase 1 development and 26 acres of open space and parks. Overall the Phase 1 infrastructure is 60-70% complete. Blocks 50, 51, 53, and 54 (247 units) are under construction. Blocks 50/51 are 85% done and Blocks 53/54 are 35% complete.

**Phase 1 Affordable Housing Program (Attachment B)**
The Second Amendment of the Phase 1 DDA, outlines the Phase 1 Affordable Housing Program which stipulates that a minimum of 27 and a maximum of 40 percent of all the 1,498 Phase 1 units be affordable. The maximum 40 percent will be achieved if OCII exercises an option to purchase additional units for affordable housing in Phase 1. The baseline affordable housing units will consist of (a) approximately 218 units to be built on OCII’s Affordable Housing blocks and (b) 15 percent or approximately 192 units to be built as Developer Affordable Units.

The Affordable Housing Program requires that the 192 Developer Affordable Units be available at various levels of Area Median Income (“AMI”).
- 30 percent are required to be available up to 50 percent AMI households (58 units)
- 70 percent are required to be available up to 80 percent AMI households (134 units)
- Additionally Lennar is required to build one additional affordable unit as a result of a density bonus that was granted for Block 51.

While keeping the total of affordable housing units at the same level as before, the Sixth Amendment to the Phase 1 DDA shifted the 50 percent AMI Developer Affordable Units to Block 49. This change allows all of the 50 percent AMI affordable units being available much sooner than if they were included throughout the development timeline of Phase 1’s market rate projects.

**Block 49 Affordable Housing Project Summary**
The Commission approved the schematic design for the Project in October 2013, and the Block 49 Development and Disposition Agreement (“Block 49 DDA”) as well as an Option to Ground Lease was approved in February 2014. The design has 60 affordable family residential units (22 one-bedroom, 26 two-bedroom, and 11 three-bedroom units) and one two-bedroom manager’s
unit above parking in five 5 stories of housing over a podium. The building construction will consist of one base level of concrete construction with four levels of wood construction above. The subterranean garage will accommodate 45 parking spaces. The development includes a 1,000 square foot community room. The outdoor courtyard will include drought tolerant landscaping, interesting hardscape design, tot-lots for children and seating areas for parents and residents.

The total development cost of the Project is $31,572,930, for which funding sources include: equity raised from the sale of 4% Low-Income Housing Tax Credits; tax-exempt bond financing in the form of mortgage revenue bonds; private bank construction loan; developer equity; subsidy from Lennar, as required by the 6th Amendment, in the form of a residual receipts loan and the Off-Sites Expense Loan between Lennar and the Block 49 Developer which will be assigned from Lennar to OCII through the Ground Lease.

**Marketing and Occupancy Preferences**

The Project will serve households up to 50% of Area Median Income as published by MOHCD. A marketing plan will be submitted 30 days after construction loan closing. Since the Block 49 DDA was approved prior to the Commission’s August 2014 adoption of a resolution authorizing a preference for Ellis Act Housing Preference certificate holders, the Project will therefore not be subject to that preference.

The units will be marketed, and made available through a lottery, to the public in the following priority order pursuant to the Phase I DDA:

1) Hunters Point Certificate of Preference Holders
2) Western Addition Certificate of Preference Holders
3) Rent burdened or assisted housing residents who are San Francisco residents (public housing or Project Based Section 8)
4) San Francisco Residents
5) Members of the general public.

**Ground Lease Terms**

Consistent with OCII’s Affordable Housing sites, OCII will retain ownership of the land and enter into a long term ground lease with the Block 49 Developer. Once the Project is complete, land ownership, the related Ground Lease, and loan will be transferred to MOHCD as the Housing Successor Agency, who will perform long-term asset management duties. The Block 49 Developer’s limited partnership AMCAL Pacific Pointe, L.P., (the “Tenant”) will maintain ownership of the building or “improvements” on the land. A summary of some of the key terms of the Ground Lease are below.

**Ground Lease Rent**

The Ground Lease terms provide for an Annual Rent set at 10% of the fair market value of the property. The Annual Rent consists of: Base Rent of $15,000, which comes out of the project’s annual operating expenses and accrues, if not paid; and Residual Rent that is equal to the Annual Rent less the $15,000 Base Rent. Residual Rent is paid for only to the extent that there is surplus cash after a project pays all of its operating expenses, and does not accrue if it is not paid. The Annual Rent for the Project is $220,000. This Ground Lease structure creates a public land trust
that maintains affordability in the event of an ownership change of the improvements and offers the best assurance against market rate conversion.

The Off-Sites Expense Loan is structured as a residual receipts loan and the project financing must demonstrate it can be repaid in order to meet the IRS true debt test. Repayment is subject to Section 6.02(g) Permitted Uses of Surplus Cash of the ground lease. Typically, after all other approved expenses and fees have been paid, the remaining surplus cash is split with 2/3 to OCII (or MOHCD once the Ground Lease is transferred) and 1/3 to the developer. In order to show the repayment of the Off-Sites Expense Loan, the Ground Lease is structured so that the surplus cash payments are made such that 50% are going towards the Loan repayment and 50% are standard payments to OCII/MOHCD. Since MOHCD will be holding the loan by the time any surplus cash is generated, all of the surplus cash is thus going to MOHCD until it can be demonstrated that the Off-Sites Expense Loan has been fully repaid. Only after the Loan has been fully repaid will the Block 49 Developer receive any surplus cash, which at that time will follow the typical Ground Lease structure of 1/3 to the Developer and 2/3 to OCII/MOHCD.

**Affordability Restrictions**
The Ground Lease imposes long term affordability restrictions, in this case requiring the Project to serve very low-income households earning up to 50% of Area Median Income as published by MOHCD.

**Construction of the Improvements**
The Ground Lease requires the Tenant to construct the Project in compliance with the approved construction documents and according with an agreed-upon Schedule of Performance. OCII staff has reviewed the construction documents and the MOHCD Construction Manager (on behalf of OCII) will monitor construction progress on the Project until completion. The Ground Lease requires any changes to the construction plans after construction has commenced must be approved by OCII, and such change requests must be submitted to OCII with a copy to the MOHCD Construction Manager.

**Equal Opportunity Program and Compliance with OCII Policies**
The Phase 1 DDA requires the Developer to follow an equal opportunity program, which substantially consists of, 1) the Bayview Hunters Point Employment and Contracting Policy ("BVHP ECP"), 2) the Small Business Enterprise Policy ("SBE"), 3) the Nondiscrimination in Contracts and Equal Benefits Policy, 4) the Minimum Compensation Policy, 5) the Health Care Accountability Policy, 6) the Prevailing Wage Policy, and 7) the Card Check Neutrality Policy.

Under the BVHP ECP, developers must make good faith efforts to award 50 percent of the contracting opportunities to SBE consultants and contractors with first consideration for businesses with addresses in the BVHP Area (defined as zip codes 94124, 94134, and 94107). The BVHP ECP also requires developers to make good faith efforts to achieve 50 percent local workforce participation, with First Consideration to BVHP Area residents, in construction workforce hiring, permanent/temporary workforce hiring, and trainee program.

To date, the developer has achieved 57.5% SBE participation for professional consultant services. Of the total fees, 51% are San Francisco-based SBEs, 28.9% are minority-owned firms
and 27.8% are women-owned firms. Attached are AMCAL and YCD’s SBE professional services summary (Attachment C).

Community Support
The community has been consistently supportive of the Project, starting with the design process in the Summer of 2013, and the development documents which were presented to the Mayor’s Hunters Point Shipyard Citizens Advisory Committee (“CAC”) in early Fall 2013. The CAC supported the Ground Lease Option when it was presented earlier this year. Additionally, the fully negotiated Ground Lease will be presented to the CAC at its full Committee meeting on September 8, 2014.

Next Steps
Approval of the Ground Lease is an approval of a disposition of an OCII-owned property. On December 14, 2012, the Department of Finance issued a final and conclusive enforceable obligation determination related to the San Francisco Hunters Point Shipyard Redevelopment Project. In April 2014, OCII staff consulted with the State Department of Finance (“DOF”) regarding the disposition of the Project through the Ground Lease, and DOF confirmed that since the Shipyard obligations had received a “final and conclusive determination, all sales, transfers, and conveyances of property (as outlined in the project documents) are authorized.” The Developer will close the project financing so that construction will commence in late September 2014.

(Originated by Pamela Sims, Development Specialist, Hunters Point Shipyard)

Tiffany Bohée
Executive Director

Attachment A: Draft Ground Lease
Attachment B: Location of Block 49 and OCII affordable housing sites
Attachment C: Professional Services Consultant Summary