Memo

To: Ethan Warsh
From: Colin Elliott
Re: Second Amendment to the DDA – Candlestick Point and Hunters Point Shipyard Phase 2

Date: August 28, 2014

Dear Ethan

As requested I have reviewed your memorandum and the draft Second Amendment to the Candlestick Point/Hunters Point Shipyard Phase 2 Development and Disposition Agreement. As you know, I have been working as a real estate advisor to the City and Successor Agency concerning the Shipyard and Candlestick Point projects for the last 12 years and so I am very familiar with the background and circumstances surrounding both. In general, the proposed 2nd Amendment does not substantially change the intent of the DDA, but makes practical modifications to reflect the changed phasing and circumstances surrounding the project. However, I would wish to make the following observations:

**Early transfer of the Existing Stadium Site:** The regional retail and mixed use components of the Stadium Site were originally in Major Phase 3, but were moved to Major Phase 1 following the departure of the 49ers. It therefore makes sense to transfer the site to Lennar now to enable them to proceed with the stadium demolition. Ownership of the site, versus either leasing or licensing it, will also help Lennar attract additional capital and investors to finance the regional retail and mixed use components. I am informed that it simpler to transfer the entire stadium site, as opposed to the land for just two or three sub-phases, and that this will also allow Lennar to use the surrounding areas for demolition and construction staging and interim parking.

**Binding Obligation to Complete new Parks:** Since the Existing Stadium Site is owned by the City and County of San Francisco through its Department of Parks and Recreation, it is deemed to be parkland that needs to be replaced under Proposition G. When the Stadium Site was in Major Phase 3, it was assumed that some new parkland would either have already been completed or would be built concurrently with the development of the regional retail and mixed use components. Obviously no new parkland has yet been built, and it is likely to be some time before it is, as most is contained in Major Phases 3 and 4. Under the DDA currently, for conveyance of the Existing Stadium Site or any portion, the developer must provide Adequate Security to ensure a proportionate amount of parklands is built in...
accordance with Proposition G. This will still apply for any transfer of a sub-phase (see Additional Park Security below), but the 2nd Amendment states that the developer must have provided a binding obligation to complete the new public parks in order for the entire Existing Stadium Site to be transferred early and to comply with Proposition G. The parties have agreed that the requirements to demolish the stadium, submit sub-phase applications in accordance with the Schedule of Performance, and provide a Deed Restriction and subsequent Additional Park Security, as outlined below, meet the requirements of Proposition G.

**Deed Restriction:** The early transfer of the Existing Stadium Site will be subject to a Deed Restriction preventing the developer from using the site for anything except parks, open space, demolition of the stadium, construction staging, parking, and other interim or temporary uses. The site cannot be redeveloped until submission and approval of a sub-phase as per the existing DDA requirements. So while the developers will own the Existing Stadium site after the early transfer, they won’t be able to do much with it until they get the appropriate sub-phase approvals, and provide the Additional Park Security, whereupon the Deed Restriction for that sub-phase will be lifted.

**Additional Park Security:** Upon applying for a sub-phase approval, the developer will either have to provide a proportionate amount of parkland or put up Additional Park Security. Per the DDA, the security can be bonds, corporate guarantees or other security equal to the estimated cost to complete the required amount of parkland. The estimated cost is to include a contingency and an allowance for future inflation for the time period over which the parkland is expected to be completed. One thing to consider here is whether there should also be a procedure to allow for the occasional review of the amount of security to check it remains adequate.

**Reversionary Quitclaim Deed:** For the Agency to transfer the Existing Stadium Site, the developer will have to execute a Reversionary Quitclaim Deed which will allow the Agency to re-claim the property, or any sub-phase, in the event of a default, such as not providing the necessary parklands. As allowed for under the 1st Amendment to the DDA, the developer can get the Reversionary Quitclaim Deed released for any approved sub-phase by providing bonds or other security in the amount of 125% of the estimated cost to complete the infrastructure for that sub-phase.

**Benefits to the Taxing Entities:** Transfer of the entire Existing Stadium Site to the developer earlier than originally contemplated in the DDA, will accelerate the amount of land at this stage subject to property tax that will pass through to the taxing entities. Also, transferring the entire Existing Stadium Site relieves the City, a Taxing Entity, from the costs and obligations of maintenance, security and ongoing ownership of the site, as well as the increased liability resulting from demolition of the stadium.

I trust this memo is suitable for your purposes, but please do not hesitate to contact me if you require any further advice or information.

Colin Elliott
Principal – C.H. Elliott & Associates

*This memo is subject to the following Limiting Conditions:*

The information in this memo is provided in good faith based on the experience of the writer, but no assurance is given that the proposed amendment to the DDA will actually result in the benefits envisioned. It is the nature of development that some assumptions may not materialize and unanticipated events and circumstances may occur. Therefore, actual results and outcomes will likely vary from the projections, and some of the variations may materially affect the phasing, finished product and financing of the development. Further, no assurances can be given as to the possible effect on development of present or future federal, state or local legislation, including any regarding environmental or ecological matters. This memorandum may not be used for any purpose other than that for which it was prepared and no liability is accepted to any third party for the whole or any part of the contents. In accordance with our usual practice, we must state that neither the whole nor any part of this memorandum, nor any reference thereto, may be included in any document, circular or statement without our prior written approval as to the form and context in which it will appear.