Executive Summary of
The Hunters Point Shipyard/Candlestick Point Enforceable Obligations
April 10, 2012

This summary is made with reference to the enforceable obligations for the Hunters Point Shipyard/Candlestick Point Project (sometimes referred to below as the "Project") as shown on the Recognized Obligation Payment Schedule ("ROPS") dated as of April 10, 2012, for the successor Agency to the Redevelopment Agency of the City and County of San Francisco (the "Agency"). More particularly, this description relates to items HPSY-1 to HPSY-54 on the ROPS.

The Project is one of San Francisco's three critical redevelopment legacy projects that the Agency, as successor to the former redevelopment agency, must continue to implement under enforceable obligations consistent with ABX1 26. The Project is divided into two related parts, called Phase 1 and Phase 2, each with a separate disposition and development agreement ("DDA") with a private master developer (the two master developers are separate but affiliated entities). The DDAs are binding enforceable obligations, pre-dating January 2011, that the Agency assumed as successor to the Agency. The DDAs, together with a number of related binding agreements attached to or referenced in the text of the DDA, establish a comprehensive set of enforceable obligations that collectively govern the completion of this Legacy Project. While the agreements contemplate that the master developer will develop the Project in discrete subphases over time as the market dictates, the subphases are not discretionary and the Agency committed to, and has enforceable obligations with respect to, all of the subphases. The DDAs remain in effect through the earlier of Project completion or the end of the applicable redevelopment plans (estimated 2043).

Both Phase 1 and Phase 2 follow a horizontal land development model. Under this model, the master developer builds infrastructure and readies lots to be sold for vertical development, in subphases. The master developer also completes parks and open spaces and provides other public benefits throughout the development, at a pace and with specific obligations linked to its private development of subphases. Once the master developer improves the land and subdivides it into marketable lots, the developer either sells the lots at fair market value to vertical developers or the the Agency acquires or retains the lots for the development of affordable housing or other public purposes.

The DDAs require the Agency to, among other things:

(1) acquire land for conveyance to the master developer upon the completion of specified conditions;

(2) form community facility districts ("CFDs") and issue debt secured by the CFD special taxes to finance infrastructure and the maintenance of parks and open spaces;

(3) build a specific amount of affordable housing on specified parcels using property tax revenues (former tax increment);

(4) process land use approvals under the approved redevelopment plans and associated land use controls; and

(5) not amend the existing redevelopments plans and associated land use controls without the prior consent of the master developer.
Under the Phase 2 DDA, the Agency and the City made an enforceable pledge for the master developer's benefit of all of the available property tax revenues (former tax increment) generated within the development areas, over the term of the redevelopment plans. The agreement dedicates that these ongoing tax revenues will be used to pay for or reimburse the master developer for eligible project costs (basically, public infrastructure) and also to pay for the development of affordable housing in the project area. Further, the agreements require that the Agency issue debt secured by these property tax revenues for these public purposes. As the agreements make clear, the Agency and the City made this pledge of property tax revenues, and the commitment to issue debt, for the master developer's benefit and the master developer relied on it to make significant upfront private investments in this Legacy Project.

In addition to the DDAs, the enforceable obligations for the Project include agreements relating to land assembly or use (i.e., the Navy Conveyance Agreement, the Interim Lease, the Trust Exchange Agreement, the State Park Reconfiguration Agreement, the Recreation and Park Agreement, and the Alice Griffith MOU), agreements relating to financing (i.e., the Tax Allocation Pledge Agreement, and the Financing Plans and Housing Plans that are part of the DDAs), and agreements relating to land use approvals (i.e., the Interagency Cooperation Agreements, the Planning Cooperation Agreement, and the Document Review and Approval Procedures that are a part of the DDAs). Parties other than the City or the Agency, including the private master developers, the Navy, the California Department of Parks and Recreation, the California State Lands Commission, and the San Francisco Housing Authority, have the right to enforce all of these obligations, as more particularly described below.

The master developer has invested substantial sums and performed significant work in reliance on the enforceable obligations. Development of the Project will produce numerous public benefits for the City, the region and the State. Those benefits include: the development of approximately 10,500 residential units (including over 3,330 affordable and workforce housing units), the creation of over 330 acres of new waterfront parks and other public open space, the reconfiguration and renovation of Candlestick State Point Recreation Area (including at least $50,000,000 to the California Department of Parks and Recreation to improve and maintain this valuable asset as reconfigured), the exchange of public trust properties so as to place the trust on properties with high trust value and remove it from property with low trust value, and the creation of extensive job-generating retail and research and development space, all consistent with state legislation and local voter-approved measures relating to the development of this property.
ENFORCEABLE OBLIGATIONS GOVERNING
SAN FRANCISCO LEGACY PROJECT FOR HUNTERS POINT
SHIPYARD/CANDLESTICK POINT

I. Introduction: The Dissolution Law Protects Enforceable Obligations And Ongoing Pledges Of Tax Revenues (Former Increment) From Redevelopment Project Areas Under Such Obligations.

Chapter 5, Statutes of 2011, ABx1 26 and Assembly Bill No. 1484 (Chapter 26, Statutes of 2011-12, Regular Session) (collectively, the “Dissolution Law”) requires the successor agency to the Redevelopment Agency of the City and County of San Francisco (the "Agency"), to make payments under and perform the former Agency's "enforceable obligations", as defined in such act. (See California Health and Safety Code sections 34174(a), 34177(a), (b) and (c)); all section references are to the California Health and Safety Code section 33000 et. seq. (the "CRL") unless otherwise noted.) Under the act's express terms, nothing in the Dissolution Law should be construed to give rise to an event of default under any of the documents governing the enforceable obligations. (See section 34174(a).) An underlying premise of these provisions is to avoid an unconstitutional impairment of contract rights.

The Dissolution Law defines "enforceable obligations” to include bonds, loans, judgments or settlements, and any "legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy", as well as certain other obligations. (See sections 34167(d)(5) and 34171(d)(1).) The Dissolution Law excludes from that definition certain contracts solely between a redevelopment agency and the city or county that formed that redevelopment agency. (See section 34171(d)(2).)

The Dissolution Law requires that successor agencies complete approved development projects that are subject to enforceable obligations by mandating that successor agencies perform those obligations and continue to oversee development until the contracted work has been completed or the contractual obligations can be transferred to other parties. (See Sections 34177(a),(b),(c) and (i).) Importantly, the Dissolution Law expressly requires that pledges of increment associated with enforceable obligations of former redevelopment agencies be honored. (See sections 34175(a), 34172(c) and (d), and 34174(a).) And the Dissolution Law provides for successor agencies to make new pledges of property tax revenues (former tax increment) under pre-existing agreements comprising enforceable obligations, subject to approval of their oversight boards and review by the State Controller and State Department of Finance. (See sections 34180(i) and 34178.)

On January 24, 2012 the City's Board of Supervisors unanimously adopted Resolution No. 11-12 (the "City Resolution"), and on January 26, 2012 the Mayor signed the City Resolution, regarding the dissolution of the redevelopment agency and the transfer of its assets and obligations. Consistent with the Dissolution Law, the City Resolution provided for the City to accept the redevelopment agency's housing assets (including the Low and Moderate Income Housing Fund) upon dissolution. The City Resolution also provided for the City to accept all of the other assets of the former Agency and to perform the City's duties under the Dissolution Law as successor agency, including making payments and performing enforceable obligations of the former Agency. On October 2, 2012, the Board of Supervisors adopted Ordinance No. 215-12, acknowledging that the Agency is a separate legal entity as a result of AB 1484, with the non-housing assets remaining with the Agency, and creating the Agency’s Commission as the policy body of the Agency to implement the Major Approved Development Projects and other enforceable obligations under the Dissolution Law.
On February 1, 2012, the Agency ceased to exist by operation of law as a result of the Dissolution Law and the California Supreme Court's decision in California Redevelopment Association v. Matosantos, No. S194861, which upheld the Dissolution Law and extended AB26's implementation deadlines. The Agency assumed the assets and enforceable obligations of the Agency subject to the terms, conditions and limitations set forth in the Dissolution Law. The debt of the Agency is payable only from the property tax revenues (former tax increment) or other revenue sources that originally secured such debt. The Dissolution Law expressly limits the liabilities of a successor agency in performing duties under the Dissolution Law to the amount of property tax revenues received by such successor agency under the Dissolution Law (generally equal to the amount of former tax increment received by the former redevelopment agency) and the assets of the former redevelopment agency. The Dissolution Law does not pledge any of the City's general fund revenues to pay any of the former Agency's debt, nor does the Dissolution Law obligate the City's general fund to repay any such debt.

In the City Resolution, the Board of Supervisors identified three major integrated, multi-phase revitalization projects that are vital to the City's future and will achieve numerous public benefits for the City, region and the State. These "legacy" projects include (1) the Mission Bay North and the Mission Bay South Redevelopment Projects (collectively "Mission Bay"), (2) Phases One and Two of the Hunters Point Shipyard Redevelopment Project and Zone 1 of the Bayview Hunters Point Redevelopment Project (collectively, "Hunters Point Shipyard/Candlestick Point"), and (3) the Transbay Transit Center Redevelopment Project, including Zone 1 ("Transbay") (including Zone 1) (collectively, the "Major Approved Development Projects"). The Board of Supervisors found that the enforceable obligations for the Major Approved Development Projects include the continuing pledge for the duration of those projects of property tax revenues generated in the project areas (former tax increment) for building public infrastructure, public facilities and affordable housing.

In the City Resolution, the Board of Supervisors also found that the terms of the enforceable obligations for the Major Approved Development Projects specifically oblige the issuance of bonds or other evidences of indebtedness, with such bonds to be repaid through such pledges of tax revenues. To fulfill the enforceable obligations with third parties under the Major Approved Development Projects, the Agency must issue or otherwise ensure the issuance of new bonds secured by the pledges of property tax revenues from such areas or otherwise payable from such property tax revenues, subject to approval by the new oversight board and review by the State Department of Finance under the process contemplated by the Dissolution Law. Private developers and other third parties have acted in good faith reliance on these enforceable obligations and invested substantial private funds and state and federal grant monies in the Major Approved Development Projects, which are underway and in various stages of development.

II. The Hunters Point Shipyard/Candlestick Point Legacy Project.

A. Overview: Two Related Projects That Are Governed By Enforceable Obligations.

The Major Approved Development Project at Hunters Point Shipyard/Candlestick Point is itself divided into two distinct development areas or phases, each with a separate disposition and development agreement and a separate (but related) private master developer. These disposition and development agreements are binding contractual agreements that provide for the transfer of land from the Agency to the master developers, the master developers' and the Agency's rights and obligations relating to the construction of specified improvements, and the financing mechanisms for completing these development projects.

The first project ("Phase 1") covers approximately 75 acres and is governed by a stand-alone disposition and development agreement dated as of December 2, 2003 (as amended, the
“Phase 1 DDA”)\(^1\) with HPS Development Co., LP\(^2\) (“Phase 1 Developer”). The second project (“Phase 2”) is significantly larger, covering over 700 acres at the Shipyard and at the adjacent Candlestick Point. Phase 2 is governed by a stand-alone disposition and development agreement dated as of June 3, 2010 (the "Phase 2 DDA") between the Agency and CP Development Co., LP ("Phase 2 Developer"); all references to the "Developer" shall mean the Phase 1 Developer or the Phase 2 Developer, as applicable). While planning for the Phase 1 and Phase 2 projects are closely intertwined, and the public’s ability to realize the full benefits of each project is dependent upon the successful development of both projects, development of Phase 1 is not legally dependent on development of Phase 2, nor does development of Phase 2 legally depend on development of Phase 1.

The Shipyard is a former military base that closed in 1974. Candlestick Point is the site of the existing San Francisco 49ers stadium, which is near the end of its useful life, parking lots used only on game days, and the Alice Griffith public housing project, which is in desperate need of replacement. Phase 1 and Phase 2 include all of the real property that is covered by the Hunters Point Shipyard Redevelopment Plan that the City's Board of Supervisors adopted in July 1997, as amended (the “Shipyard Redevelopment Plan”). Candlestick Point is located within a separate redevelopment plan area, the Bayview Hunters Point Redevelopment Plan, which the City's Board of Supervisors adopted in May 2006, as amended (the "BVHP Plan", together with the Shipyard Redevelopment Plan, the "Project Redevelopment Plans").

Both Phase 1 and Phase 2 follow a horizontal land development model. Under this model, the Developer builds infrastructure and completes lots to be sold for vertical development. The Developer also completes parks and open spaces and provides other public benefits throughout the development. Once the land is improved and subdivided into marketable lots, the lots are either sold at fair market value to vertical developers or retained by the Agency for the development of affordable housing and other public purposes.

Due to the difference in size, cost and complexity of the Phase 1 and Phase 2 projects, the financing plans for Phase 1 and Phase 2 are different. The Phase 1 DDA horizontal improvements are financed by Developer sources, community facilities district (“CFD”) special taxes and the issuance of Mello-Roos or CFD bonds secured by those taxes, and the sale of completed market rate lots to vertical developers. Phase 1 does not include a pledge of property tax increment to the Developer; but the Agency agreed to build a specified amount of affordable housing in Phase 1 using property tax increment.

As is further discussed in Section II.C, below, the Phase 2 DDA relies on the same financing tools. But due to the complexity and significant cost of the Phase 2 build-out, the Agency and the City made an enforceable pledge and allocation of all of the available property tax increment generated within the development area for eligible project costs in accordance with CRL. The Agency also agreed to issue tax allocation bonds and to use the 20% tax increment set aside under CRL (the “Housing Increment”) for the Agency affordable housing. These public funding sources, including the CFD and tax increment financing, were required to obtain the significant upfront private investment required for development and achieve a commercially reasonable return on that investment.

### B. The Phase 1 Project.

\(^1\) The Phase 1 DDA was amended five times between its execution and November 3, 2009. All references herein to the Phase 1 DDA refer to the original document as amended.

\(^2\) HPS Development Co., LP was designated in the Fourth Amendment to the Phase 1 DDA as the successor to the original master developer, Lennar-BVHP, LLC.
1. **The Enforceable Obligations Under The Phase 1 DDA.**

The Phase 1 DDA sets forth the obligations of both the Agency and the Developer regarding Phase 1. The Phase 1 DDA will expire as to obligations related to horizontal improvements upon the sale of the final improved lot under the Phase 1 DDA and, as to obligations related to vertical development, upon the sale of the last constructed commercial or residential unit to an unrelated buyer. While the Phase 1 project is smaller and less complex than the Phase 2 project, the Developer has already incurred over $165,000,000 in costs preparing the Phase 1 project for vertical development (including construction, planning and management costs), and Agency staff estimates that at least 40% of the infrastructure work remains to be completed.

The Agency has numerous obligations under the Phase 1 DDA, including obligations to: (i) issue development project approvals and certificates upon completion of work, and cause City agencies to issue permits, approvals, licenses, maps or other authorizations in a timely manner; (ii) comply with obligations under the "Interim Lease", under which the Agency leases property at the site to the Developer primarily for use by a long-standing artists community; and (iii) acquire and maintain certain public improvements, including as trustee for the California State Lands Commission. The Phase 1 DDA also requires the Agency to transfer real property to the Developer upon the satisfaction of certain standard conditions, to build a specified number of affordable housing units on specified lots completed by the Developer, and to create CFDs and issue CFD bonds for the financing of infrastructure improvements, all as further described below.

The required real property transfers to Developer under Phase 1 have already occurred. Planning for the development of the Agency affordable housing is well underway, though physical construction of this housing has not yet commenced. The Agency has formed CFDs and issued CFD bonds, although additional CFDs bonds will be required to complete Phase 1. These CFD bonds are secured by a special tax on real property in the Phase 1 project area and do not require a pledge of tax increment or rely on tax increment financing in any way. The CFD special taxes and bond proceeds are not revenues of the Agency. As such, the Agency can perform the CFD obligations, without the need for oversight board approval under the Dissolution Law.

2. **The Enforceable Obligations for Agency Real Property Conveyances.**

On March 31, 2004, the Agency and the United States Department of the Navy (the “Navy”) entered into a comprehensive agreement governing the terms and conditions of the phased conveyance of the Shipyard property by the Navy to the Agency (the "Conveyance Agreement"). The Conveyance Agreement obligates the Navy to convey parcels to the Agency as the Navy successfully completes hazardous substance remediation. The Agency agreed to work cooperatively with the Navy to expedite the remediation and ultimate conveyance of the parcels. The Conveyance Agreement relates to the entirety of the Shipyard, covering both Phase 1 and Phase 2.

In April 2004, the Navy completed hazardous substance remediation of the parcels known as A-1 and A-2 (which includes the entirety of Phase 1) and conveyed these parcels to the Agency. One year later, in April 2005, the Agency conveyed all of this property to the Developer except for those portions of the property to be used for the Agency affordable housing.

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3 In addition, the Agency has entered into numerous contracts in furtherance of its enforceable obligations under the Phase 1 DDA, including contracts relating to the issuance of debt, as listed in the existing Enforceable Obligations Payment Schedule (EOPS) adopted by the Agency.
housing, the community facilities and infrastructure, and several existing buildings that house a long-established artists’ community.\(^4\) As a result, long before the Dissolution Law’s effective date, the Agency already satisfied its obligation to transfer real property to the Developer.

3. **The Enforceable Obligations For Agency Affordable Housing.**

The Phase 1 DDA, including the attached “Affordable Housing Program”, obligates the Agency to develop affordable housing on parcels designated as “Agency Housing Parcels”. The Fifth Amendment to the Phase 1 DDA, executed in October 2009, identifies the location of those parcels. The Phase 1 DDA requires the Developer to complete and prepare the Agency Housing Parcels for vertical development, and much of this work has been completed or substantially completed. The Phase 1 DDA provides for the development of approximately 1,498 residential units, with not less than twenty-seven percent (27%) affordable to very low-, low- and moderate-income residents.

The Affordable Housing Units will consist of approximately two hundred eighteen (218) Agency-constructed Affordable Housing Units to be built on the Agency Housing Parcels and the remainder will be inclusionary units constructed by vertical developers (comprising fifteen percent (15%) of the total units constructed by vertical developers in Phase 1). Under the Phase 1 DDA, the Agency agreed to use property tax increment to develop the Agency Housing Parcels (not the inclusionary units) for affordable housing as required under the CRL.

This obligation, set forth in Section 11 of the Phase 1 DDA, requires that, once sufficient property tax increment becomes available to fund construction, the Agency must start construction on the Agency affordable housing units. Specifically, Section 11 states that:

…the Agency shall first Commence Construction of its fifty (50) Agency Affordable Housing Units on Block 54. Thereafter…as Shipyard Tax Increment funding becomes available, the Agency shall, in an effort to ensure continuity of Lot development during the vertical construction phase, endeavor to develop its Agency Housing Parcels on a schedule that considers issues of adjacency and therefore complements Developer’s, and any Affiliate of Developer’s or any Community Developer’s, schedule for construction on its various lots.

The Agency’s development of affordable housing is part of the bargain between the parties and not merely an optional undertaking by the Agency. Under the Phase 1 DDA, the Agency has the obligation, not merely the right, to construct affordable housing. Moreover, the Agency is required to construct such housing in a specific order according to certain standards. Not only must the Agency construct the first block of affordable housing on a specific parcel, but the Agency’s subsequent housing development is required to take into account adjacencies so as to “complement” Developer’s market rate development. Failure of the Agency to develop these lots could result in vacant lots within developed project areas, devaluing the improved properties and destabilizing the economic underpinnings of the Phase 1 Project. In short, the Agency’s failure to develop the affordable housing as promised could deprive the Developer of the benefit of its legally enforceable bargain with the Agency.

The City’s continued obligation to construct this housing is supported by the language of the Dissolution Law, which defines an enforceable obligation to include “any legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy.” (Section 34167(d)(5), 34171(d)(1)(E)). The Agency’s housing obligations clearly do not violate the debt limit or public policy. While the intent of the Dissolution Law is to direct

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\(^4\) The buildings housing the artists’ community are currently included as part of Phase 2.
future tax revenues that would have been allocated to redevelopment to fund other “core” governmental services, a fundamental premise of the Dissolution Law is that constitutionally-protected contract rights are not to be disturbed, including rights to future tax revenues that would have been tax increment. Here, the Agency has an enforceable obligation to develop affordable housing in the manner specified in Section 11 of the Phase 1 DDA. The Agency’s failure to do so is a default for which the Developer has the right to, among other things, seek specific performance. (See Section 13.5(c) Phase 1 DDA.)

The passage of the Dissolution Law does not change any of the relevant facts underlying the contractual agreement between the parties. The only question is whether the Dissolution Law takes away funds (i.e., the tax increment funds) from the Agency (or the City, with respect to affordable housing) to meet these contractual obligations. For Phase 1 (in contrast to Phase 2) there is no tax allocation pledge agreement. But that does not matter in this instance with respect to the Agency’s affordable housing obligations because the Phase 1 DDA is an enforceable obligation under the Dissolution Law that encumbers the future property tax increment required to fulfill this obligation. Because the Phase 1 DDA contractually obligated these funds for the development of affordable housing on the Agency Housing Lots, the Agency is obliged to use these funds to meet its housing obligations, the same way that it must use former tax increment funds to fulfill all enforceable obligations. Any future tax increment from Phase 1 not used to fulfill enforceable obligations or pay administrative costs as set forth in the Dissolution Law will be distributed to the taxing agencies in accordance with the Dissolution Law.

4. **The Enforceable Obligations to Create Mello Roos Community Facilities Districts and Issue CFD Special Tax Bonds.**

The Financing and Revenue Sharing Plan (the “Phase 1 Financing Plan”), which is incorporated into the Phase 1 DDA as Attachment 25, anticipated that a significant portion of the required infrastructure would be directly financed from the sales of finished lots within Phase 1. But to pay for costs attributable to the initial public improvements, such as streets, parks and utilities, as well as to reimburse the Developer for certain predevelopment costs, the Agency and Developer agreed that:

…the Agency will use commercially reasonable efforts to issue Mello-Roos Bonds in the amounts set forth in the Preliminary Budget, and in accordance with the assumptions set forth in the Preliminary Budget and customary underwriting standards.

(Section 2.1 Financing Plan.)

The Preliminary Budget (attached to the Phase 1 Financing Plan as Exhibit A) indicates that “Net Bond Proceeds” (defined to exclude certain bond-related costs and certain pre-development and pre-agreement costs) of approximately $40,800,000 from the issuance of CFD bonds were needed to finance initial infrastructure improvements. Consistent with its obligations under the Phase 1 DDA, the Agency formed a CFD and authorized issuing $40,000,000 principal amount of bonds. The Agency issued variable rate bonds in the principal amount of $34,500,000 on April 20, 2005, generating approximately $30,000,000 of Net Bond Proceeds. In 2008, the Agency Commission authorized an increase in the bonding capacity of the CFD to $65,000,000, though, to date, the Agency has not issued bonds under this authority. If and when the Developer provides acceptable credit, the Financing Plan requires the Agency to issue additional CFD bonds to fund remaining infrastructure costs. (See Section 2.1 Financing Plan.) The Developer procured a letter of credit securing both debt service and liquidity on the existing variable rate CFD bonds.

CFD special tax revenues are not revenues of the Agency and CFD bonds are not secured
by, or payable from, tax increment. CFD bonds are secured by special taxes levied on taxable property in the CFD and, in this instance, by draws on the Developer’s letter of credit. As a result, the issuance of CFD bonds does not affect the use or amount of tax increment generated in the project area. Accordingly, the use of CFD special tax revenues and the issuance of CFD bonds should not be subject to the requirements of the Dissolution Law, including approval by the oversight board or review by the Department of Finance or the State Controller.

C. The Phase 2 Project.


In June 2010, the Agency entered into the Phase 2 DDA. For the Phase 2 project, there are at least four main sets of enforceable obligations under binding agreements that the Agency entered into with, or for the express benefit of, the Developer and other third parties:

(1) the pledge of all available property tax increment generated from the Phase 2 project site for the benefit of the Developer, for the duration of the Project Redevelopment Plans, to finance the build out of infrastructure for the project and the construction of affordable housing, including the covenant to issue bonds or other indebtedness secured by the pledge of increment;

(2) the obligation for the benefit of the Developer to create CFDs to finance the build out of infrastructure through such CFDs, including the issuance of bonds or other indebtedness secured by special tax revenues levied in such CFDs, and to create CFDs to maintain park land and open spaces for public purposes;

(3) the obligation for the benefit of the Developer, the federal government and the state government, to acquire real property from the Navy, the State of California, the City, and others, and to then transfer that real property to the Developer to build out the project, and to exchange public trust parcels and interests, under the various real property conveyance agreements; and

(4) the obligation for the benefit of the Developer to process land use approvals under the approved Project Redevelopment Plans and associated land use controls.

All of these enforceable obligations pre-date January 1, 2011 and all involve contract rights of third parties, other than simply the Agency and the City, and all have been relied upon by the Developer and other third parties. These enforceable obligations serve a number of important public purposes, including the development of approximately 10,500 residential units (including over 3,330 affordable and workforce housing units), the creation of over 330 acres of new waterfront parks and other public open space, the reconfiguration and renovation of Candlestick State Point Recreation Area (including at least $50,000,000 to the California Department of Parks and Recreation to improve and maintain this valuable asset as reconfigured), the exchange of public trust properties so as to place the trust on properties with high trust value and remove it from property with low trust value, and the creation of extensive job-generating retail and research and development space, all consistent with state legislation and local voter-approved measures relating to the development of this property. These public purposes were specifically encouraged by the voters of the City and County of San Francisco when they adopted, by more than a 60% margin, Proposition G, Mixed-Use Development Project for Candlestick Point and Hunters Point Shipyard, named the Bayview Jobs, Parks and Housing Initiative, on June 3, 2008 (“Proposition G”). There is no basis to find that any of these enforceable obligations violate the debt limit or public policy or otherwise fall under any of the exceptions in the Dissolution Law for enforceable obligations.

2. The Principal Enforceable Obligation: The DDA For The Project.
The Phase 2 DDA is a binding contract between the Agency and the Developer that gives the Developer the right to develop the 700+ acre project site as a master developer under a horizontal land development model, and obligates the Agency to implement the full build out of the Phase 2 project. The Phase 2 DDA establishes four major phases of development, and contemplates a series of sub-phases in each major phase. More particularly, the Phase 2 DDA creates a link between the Developer’s build out of phases and the Developer’s obligation to complete the parks, affordable housing parcels, transportation and other infrastructure required for that build-out. The phases are designed to ensure that the Developer satisfies its public benefit obligations proportionately along with the construction of market rate development.

Under the Phase 2 DDA, the Developer will build significant public infrastructure and complete developable lots (anticipated to cost in excess of $2.6 billion) over approximately 20 years, and will recover its private investment through an allocation of the property tax increment generated in the Phase 2 project site, CFD special taxes on the market development parcels in the Phase 2 project site, and from of the sale of the finished lots. The term of the Phase 2 DDA coincides with the Project Redevelopment Plans, so that the Phase 2 DDA terminates in 2043 with respect to the Phase 2 Hunters Point Shipyard project site and in 2036 with respect to the Phase 2 Bayview Hunters Point (Candlestick) project site.

The Phase 2 DDA includes an attached financing plan (the "Phase 2 Financing Plan") that is part of the Phase 2 DDA and describes how the project will be financed, including the pledge of property tax increment revenues from the project area and tax revenues from one or more CFDs. Concurrently with the Phase 2 DDA, the City and the Agency entered into a tax increment allocation pledge agreement (the "Tax Allocation Pledge Agreement"), attached to the Phase 2 DDA, under which the City approved and authorized the Agency’s pledge of tax increment for infrastructure and affordable housing, and which expressly provides that the Developer is a third party beneficiary of this agreement with enforcement rights.

The Agency and the City also entered into several other agreements at the same time as the DDA and the Tax Allocation Pledge Agreement, (collectively, the “Ancillary Agreements”) including: (i) Interagency Cooperation Agreement, dated June 3, 2010 (the “ICA”), (ii) Agreement for Transfer of Real Estate, dated June 3, 2010 (“RecPark Agreement”), and (iii) Planning Cooperation Agreement, dated June 3, 2010 (“PCA”). Each of the Ancillary Agreements was necessary to facilitate the project and the indebtedness under the DDA, and the Developer is an intended third party beneficiary of each Ancillary Agreement.

Under the Phase 2 DDA, the Developer is required to reimburse the Agency and the City for all of their respective costs and expenses in implementing the agreement and the project, excluding costs that are covered by permit or processing fees and third-party payments. (See section 19 of the Phase 2 DDA.) As such, the cap on administrative expenses set forth in the Dissolution Law will not apply to the administrative expenses of the Agency in implementing the Phase 2 project. The Developer is also required to indemnify the Agency and the City for losses, and to pay the defense costs of any action challenging the Phase 2 DDA or the project. (See section 22 of the Phase 2 DDA.)

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5 2043 is an approximate date. The Hunters Point Shipyard Redevelopment Plan terminates 30 years after the first fiscal year in which the Agency collects $100,000 or more in tax increment. The Agency has yet to collect $100,000 or more in tax increment in the Hunters Point Shipyard Project Area; however, it is expected that the City, as successor to the Agency will collect this amount in FY 2012-2013 or FY 2013-2014, meaning the plan will likely terminate either in 2043 or 2044.
The size and the complexity of the Phase 2 project are significant. The horizontal development costs are projected to be in excess of $2.6 billion, and the Developer's predevelopment costs were approximately $50,900,000. Upon the execution of the Phase 2 DDA, the Developer obtained the right to be reimbursed for these predevelopment costs from the development of the project, and this right survives the termination of the Phase 2 DDA. (See section 1.6(b) of the Phase 2 Financing Plan.) The Developer and its investors in this project justifiably relied on the expectation that they could complete the project in accordance with the Phase 2 DDA.


The Phase 2 Financing Plan describes how Phase 2 is to be financed, primarily through the use of CFD special tax revenues and bonds (discussed in Section II.C.4 below), the continuing pledge and allocation of property tax increment in accordance with CRL, federal and state grants and other funds (including approved CALReUSE grants for the project), private Developer contributions (including equity and debt secured by reimbursements from tax increment and CFD financing, all as contemplated in the DDA) and future land sales following the completion of infrastructure and developable lots. The CFD financing and property tax increment financing include Agency obligations to issue debt, secured by those revenue sources. The Phase 2 DDA irrevocably pledges all net available tax increment from the Phase 2 project site for the purposes of financing the construction of infrastructure and other qualified project costs, including affordable housing. Attachment 1 to this memorandum includes a more detailed description of the applicable provisions of the Phase 2 Financing Plan and the Tax Allocation Pledge Agreement, including the definition of terms that are used in those agreements and quoted in this memorandum.

The Developer is a party to the Phase 2 DDA (which includes the Phase 2 Financing Plan), is a signatory to and an express third party beneficiary of the Tax Allocation Pledge Agreement, and is an express third party beneficiary of the Ancillary Agreements. Section 1 of the Tax Allocation Pledge Agreement provides that "Developer is entitled to rely on this Agreement, receive the benefits of this Agreement for the project and enforce any provision of this Agreement against any Party." Similar language is contained in the Ancillary Agreements. The Developer also signed a separate consent form, attached to the Tax Allocation Pledge Agreement, stating that the Developer "consents to the Agreement, may enforce this Agreement, and specifically agrees to be bound by all limitations on remedies under the Agreement applicable to Developer".

As set forth in the Phase 2 Financing Plan, the Agency’s obligation to provide property tax increment to finance qualified project costs is an “indebtedness” of the Agency under section 33670(b) of the CRL. The Agency must issue tax allocation debt, secured by property tax increment, to pay for infrastructure and other permitted costs, including affordable housing:

Developer may submit written requests that the Agency issue Tax Allocation Debt for purposes of this Financing Plan, specifying requested issuance dates, amounts, and main financing terms. Following Developer’s request, Developer and the Agency will meet with the Agency’s public financing consultants to determine reasonable and appropriate issuance dates, amounts, and principal financing terms. The Agency will have the right to reject any term that is inconsistent with the Funding Goals and agrees to issue Tax Allocation Debt to the extent that the terms of financing are consistent with the Funding Goals.
(Section 3.1(c) of the Phase 2 Financing Plan.) The Agency pledged and agreed to use all net available increment received by the Agency for the payment of qualified project costs, and to take all actions necessary under the Tax Allocation Pledge Agreement to ensure that net available increment will be available for the project. (See sections 3.2(a) and 3.3(a) of the Phase 2 Financing Plan.)

The Agency has existing bonded indebtedness of more than $25,000,000 secured by property tax increment from the BVHP project area (including Candlestick Point). The Phase 2 Financing Plan acknowledges the existing indebtedness as well as the existence of “Agency-wide” indebtedness that was issued or will be issued for the benefit of all of the Agency’s redevelopment project areas, and a cross-collateralization pledge of tax increment from Candlestick Point for the Agency-wide indebtedness. To preserve the greatest amount of tax increment revenues for the Phase 2 project, the Agency agreed that it would make payments on the Agency-wide indebtedness and the existing indebtedness using sources of Agency funds other than the tax increment from Candlestick Point to the extent that doing so would not violate bond covenants or other applicable requirements. (See section 3.5(c) of the Phase 2 Financing Plan.)

Under the Phase 2 DDA, the Agency irrevocably pledged all net available tax increment from the Phase 2 project site to finance the construction of infrastructure and other qualified project costs, including affordable housing. Tax increment from the Phase 2 project site or the proceeds of bonds secured by a pledge of tax increment must be used to make payments on indebtedness of the Agency or to otherwise directly reimburse the Agency and the Developer for qualified project costs:

Under the DDA, Developer has agreed to develop the Project Site in the manner set forth in the DDA, and under this Financing Plan the Agency has agreed to reimburse Developer for Qualified Project Costs incurred in connection with such development in the amounts and in the manner set forth in this Financing Plan. The total amount of the indebtedness incurred by the Agency is set forth as the “Qualified Project Costs” for the Project as a whole in the Summary Proforma for the Stadium Alternative (or the Non-Stadium Alternative if the Stadium Termination Event has occurred), as amended pursuant to this Financing Plan. The Agency’s obligation contained in this Financing Plan is an “indebtedness” of the Agency under section 33670(b) of the CCRL that is secured by a pledge of Net Available Increment by the Agency.

(Section 3.1(a) of the Phase 2 Financing Plan.)

Under the Tax Allocation Pledge Agreement, the City approved and authorized the irrevocable pledge by the Agency of all net available tax increment from the Phase 2 project site to finance the construction of infrastructure and other qualified project costs, including affordable housing, and the issuance of bonds secured by a pledge of tax increment to be used to make payments on indebtedness of the Agency or to otherwise directly reimburse the Agency and the Developer for qualified project costs:

The City recognizes and approves the incurrence of indebtedness by the Agency under the Financing Plan for the purpose of financing or refinancing, in whole or in part, the Qualified Project Costs in accordance with the terms and conditions of the Financing Plan. The City agrees that all Net Available Increment and any interest earnings thereon shall be irrevocably pledged by the Agency, as a first pledge where applicable, for the payment of the Project Indebtedness of the Agency. . . The City and the Agency hereby determine and agree that Net Available Increment is being pledged to the payment of Project Indebtedness that has been incurred for “redevelopment activity” pursuant to section 33678 of the [CRL].
As mentioned above, the Dissolution Law expressly honors pledges of increment associated with enforceable obligations of former redevelopment agencies. (See sections 34175(a), 34172(c) and (d), and 34174(a).) Because all of the tax increment from the Phase 2 project site for the remaining life the applicable redevelopment plans has been pledged by the Agency (and approved by the City) to the Phase 2 project, the issuance of tax allocation bonds or other debt secured by this tax increment will not significantly affect the distribution of tax dollars to the taxing entities under the Dissolution Law. Until the qualified project costs of project are paid in full to the Developer, the issuance of debt will not change the availability of tax revenues to the taxing agencies.

In the pro forma analysis completed by the parties (including with the Agency’s third party financial consultants) and included in the Phase 2 Financing Plan, the proposed CFD financing and tax increment financing, including the debt issuance secured by CFD special tax revenues and property tax increment revenues, were needed in order to complete the Phase 2 project and provide a commercially reasonable rate of return to the Developer. Indeed, the Developer’s ability to reinvest tax increment and CFD proceeds into the project and otherwise commit to reimburse its investors from tax increment and CFD proceeds is a cornerstone of its ability to secure the private financing necessary to create the public benefits of the project. The Agency and the City therefore made these enforceable obligations – the pledge all of the property tax increment from the project site, the promise to create CFDs, and the promise to issue tax allocation bonds and CFD bonds – to induce and enable the Developer to secure and invest the upfront equity and other private financing that is required to begin and complete the development. The Agency, the City and the Developer understood and agreed that the Phase 2 project could not be completed without these revenues and debt issuances, and the Agency and the City therefore pledged and committed these revenues, and the Agency agreed to issue debt backed by these revenues, in order to allow for the project to proceed. Such financing tools were specifically encouraged under Proposition G, in which the voters of the City established City policy for the project to permit “the use of certain tax exempt financing tools such as the allocation of property tax increment from the Project Site, [and] the issuance of tax allocation bonds base[d] on such increment and the issuance of community facilities (Mello-Roos) bonds secured by private property in the Project Site.”

4. **The Continuing Pledge Of Property Tax Increment For Affordable Housing Development: Affordable Housing Enforceable Obligations Under The Phase 2 DDA And Tax Allocation Pledge Agreement.**

Under the Phase 2 DDA and the below market rate housing plan attached thereto (the "Housing Plan"), the Developer must prepare “building ready” land by remediating, grading and Installing the infrastructure for the residential development within the project site. The parties identified certain lots for use as the affordable housing lots and other lots for use as the market rate housing lots. (See Exhibit F-B to the Housing Plan.) The market rate lots will include specified inclusionary below market rate housing and workforce housing. But Housing Increment will not be used to subsidize these inclusionary or workforce housing units. (See section 3.2 and 3.3 of the Housing Plan.) The parties recognized the importance of integrating and simultaneously developing the market rate and affordable housing. Accordingly, the affordable housing lots were selected with care to ensure that the affordable housing lots would be mixed into, and spread throughout, the Phase 2 project site and would be completed as Housing Increment becomes available, without leaving undeveloped holes in the project areas that could undermine the success of the overall project or deflate the value of surrounding properties.
The Agency committed to build approximately 1,140 affordable housing units on the affordable housing lots, using the Housing Increment. This commitment to build affordable housing arises as and when Housing Increment becomes available, and the Agency agreed to use good faith efforts to cause the completion of the Agency affordable housing as soon as reasonably possible to the extent of available funding. (See section 4 of the Housing Plan.)

A critical component of the project is the reconstruction of an existing public housing facility known as the Alice Griffith Housing Development ("Alice Griffith"), currently owned and operated by the San Francisco Housing Authority. As set forth in the Phase 2 DDA, the Alice Griffith Developer, a partnership between the Developer and an affordable housing developer, is obligated to replace all of the existing 256 residential units in Alice Griffith, which is greatly in need of replacement, and complete an additional 248 affordable units. As described in the Housing Plan, these units will be located on parts of the existing site and adjacent sites, and integrated into the overall development as part of the larger mixed-income development. In 2011, the Department of Housing and Urban Development awarded the Alice Griffith replacement project a $30,500,000 grant to fund the vertical development of the Alice Griffith replacement projects, which funds are expendable for construction following the successful remediation and infrastructure development planned as part of the Phase 2 project. Without the tax increment and CFD financing anticipated under the Phase 2 DDA, development of Alice Griffith and use of this federal grant may be significantly delayed or otherwise impeded.

The Phase 2 DDA, including the Phase 2 Financing Plan, requires that all of the Housing Increment generated within the project site be used for the development of affordable housing units on the project site, including the Alice Griffith replacement project. The Agency committed to use the Housing Increment to build affordable housing units in furtherance of its affordable housing obligations under the CRL. (See sections 3.4(b) and (c) of the Phase 2 Financing Plan; "the Agency will use the . . . Housing Increment exclusively to satisfy the Agency Affordable Housing Costs . . . in compliance with section 33334.2 of the CRL"). Under section 1.1(b) of the Phase 2 Financing Plan, the Agency agreed "to take all actions reasonably necessary" to provide Housing Increment for the development of the affordable housing units, including the Alice Griffith replacement units. Under section 3.1(b)(ii) of the Phase 2 Financing Plan, the Agency further agreed to:

- budget the expenditure of the expected Housing Increment only to: (A) pay debt service due in the next Agency Fiscal Year on any tax allocation debt issued or to be issued to finance its affordable housing obligations under the Below-Market Rate Housing Plan; (B) pay costs incurred in meeting its affordable housing obligations under the Below-Market Rate Housing Plan; (C) repay the City-wide Housing Advance; and (D) distribute otherwise as provided in Section 3.4(a)(ii).

Due to the importance of the Alice Griffith project, the Agency required that the Alice Griffith Developer complete this project during the first major phase of development. (See section 5 of the Housing Plan.) But due to the significant subsidies required to build this project and the lack of property tax increment from the Phase 2 project site at this early stage of development, the Agency agreed to finance some of the costs with property tax increment generated outside of the Phase 2 project site (the “City-wide Housing Advance”). Under the Phase 2 Financing Plan, if the Phase 2 project site generates any net available tax increment that is not required to pay for public infrastructure and other public improvements, then this excess property tax increment will be used to repay the Agency for the City-wide Housing Advance. Section 3.4(a)(ii) of the Phase 2 Financing Plan establishes the following order of priority for the Housing Increment: first, to all predevelopment and development costs of Alice Griffith, second, to pay back the City-wide Housing Advance, third, to pay the Agency's costs of its affordable housing obligations, and fourth, to pay the Developer's unreimbursed development costs of Alice Griffith.
The Agency’s obligation to make the City-wide Housing Advance is unconditional, to the extent of available property tax increment from other project areas, and is a necessary component to the completion of the Alice Griffith replacement project. But the Phase 2 Financing Plan makes clear that the Agency would not be willing to make the City-wide Housing Advance unless the Agency had the right to pay those funds back when Housing Increment from the Phase 2 project site becomes available to do so.

In sum, the Phase 2 DDA, including the Housing Plan, includes specific enforceable obligations relating to the completion of affordable housing on the Phase 2 project site, and these obligations were entered into by the Agency, the City and the Developer in furtherance of, and in compliance with, the CRL. The Developer agreed to build all of the necessary infrastructure and affordable housing lots, and working with an affordable housing partner, agreed to build the Alice Griffith replacement project. The Agency agreed to build approximately 1,140 Agency affordable housing units, provide an advance to subsidize the Alice Griffith replacement project, and to pledge all of the Housing Increment for the Alice Griffith replacement project and the Agency affordable units. The Agency further agreed to issue debt to finance these costs, as described in Section II.B.3 above and supported by the Tax Allocation Pledge Agreement.

5. **The Enforceable Obligations to Create Mello Roos Community Facilities Districts to Finance Infrastructure and Maintain Parks and Open Space under the Phase 2 DDA.**

Under the Phase 2 Financing Plan, the parties agreed to establish CFDs under the Mello-Roos Community Facilities Act of 1982. The Developer may petition from time to time to establish one or more CFDs following the Developer’s acquisition of property within a major phase or subphase of the development. (See section 2.1(c) of the Phase 2 Financing Plan.) The Developer could propose specifications for the CFDs, including tax rates, anticipated maintenance, special taxes and any proposed improvement areas and tax zones within the CFDs, provided the total tax burden from the imposition of the special taxes and maintenance taxes cannot exceed two percent of the assessed value of affected property. Following the Developer’s request, the Agency must establish CFDs from time to time as the Developer acquires major phases and subphases and as such CFDs are needed to achieve the Funding Goals and the CFD Goals (as defined in the Phase 2 Financing Plan). (See section 2.1(a) of the Phase 2 Financing Plan.) More specifically, the Agency agreed to:

- form requested CFDs and Maintenance CFDs, adopt RMAs, and: (A) for CFDs, levy Project Special Taxes and issue CFD bonds that are consistent with the Funding Goals to finance Qualified Project Costs and, when authorized under Section 2.8, Additional Community Facilities; and (B) for Maintenance CFDs, levy Maintenance Special Taxes to pay for Ongoing Park Maintenance.

(Section 1.1(b) of the Phase 2 Financing Plan.)

The CFDs, through the Agency, will levy special taxes and issue CFD bonds to finance the acquisition of infrastructure and other improvements described in the Phase 2 Financing Plan both before and after the project site begins to generate property tax increment. Developer financing sources and CFD funds enable the payment of project expenses, particularly infrastructure, before the Phase 2 project generates enough property tax increment to pay for these expenses. But once the Phase 2 project site generates property tax increment from these initial investments, both property tax increment and CFD financing will pay for or directly reimburse the Developer and the Agency for qualified project costs. So, the agreements provide for the financing of qualified project costs through the levy of special taxes and the pledge of
those special taxes to service CFD debt or otherwise reimburse the Developer and the Agency for costs, even if there is no new tax allocation debt.

The DDA also sets up two tranches of CFD bonds. The first tranche of CFD bonds will be used to finance qualified project costs. The second tranche of CFD bonds will be used to finance additional improvements, including sea level rise improvements if necessary. The ability to issue second tranche bonds is essential for the long-term viability of the project.

In addition to the formation of CFDs for the financing of qualified project costs, the DDA also requires the formation of CFDs to finance maintenance costs. The Phase 2 project includes over 330 acres of parks and open spaces, as well as improved streetscapes with green features, and the parties agreed that ongoing maintenance of these spaces would be financed through CFDs:

Developer and the Agency understand that the City and the Agency are responsible for Ongoing Park Maintenance, and financing Ongoing Park Maintenance is of paramount importance to the City, the Agency, and Developer. Therefore, Developer agrees to establish a Maintenance CFD and supporting framework to finance Ongoing Park Maintenance.

(Section 2.7(a) of the Phase 2 Financing Plan.) The parties agreed to use maintenance CFDs only to pay for ongoing park maintenance within the Phase 2 project site. The Developer agreed to petition for, and vote in favor of, maintenance CFDs to pay for ongoing park maintenance. (See section 2.7(b) of the Phase 2 Financing Plan.) The parties further agreed on the amount of maintenance special taxes, and anticipated that the proceeds of maintenance special taxes levied in a maintenance CFD would be available to pay all of the costs of ongoing park and open space maintenance. Finally, all maintenance CFDs must have perpetual terms and the Agency and City have the right to levy maintenance special taxes in perpetuity. (See section 2.7(b) of the Phase 2 Financing Plan.)

The importance of CFD financing to the Phase 2 project was made clear in section 2.6(b) of the Phase 2 Financing Plan:

Under section 3 of article XIIIC of the California Constitution, voters may, under certain circumstances, vote to reduce or repeal the levy of special taxes in a community facilities district. However, the California Constitution does not allow the reduction or repeal to result in an impairment of contract. The purpose of this Section 2.6(b) is to give notice that: (i) the DDA (including this Financing Plan) is a contract between the Agency and Developer; (ii) the financing of the Qualified Project Costs and the Additional Community Facilities through the application of CFD Bond proceeds (which are secured by Project Special Taxes) and Remainder Taxes is an essential part of the consideration for the contract; (iii) the financing of Ongoing Park Maintenance through the application of Maintenance Special Taxes is an essential part of the consideration for the contract; and (iv) any reduction in the Agency’s ability to levy and collect Project Special Taxes or Maintenance Special Taxes would materially impair Developer’s and the Agency’s contract.

In sum, the Developer and the Agency understood and agreed that CFD financing, both for construction costs and for ongoing maintenance costs, was a necessary and integral part of the project. As is the case with the pledge of property tax increment and the use of debt secured by that pledge, the project could not be achieved without CFD special taxes and debt secured by CFD funds. Accordingly, the Agency’s obligation to create CFDs, levy special taxes and issue debt secured by CFD revenues is an enforceable obligation under the Phase 2 Financing Plan that binds the Agency.
Also, as previously discussed in the context of the Phase 1 project, CFD bonds are not secured by, or payable from, tax increment. They are secured by special taxes levied by the Agency on taxable property in the CFD. As a result, even though the Agency has an obligation to issue CFD bonds for the Phase 2 project, such issuance will not affect the allocation or use of property tax increment generated by the Phase 2 project. The CFD special tax revenues are not revenues of the Agency. And for these reasons, the use of CFD special tax revenues and the issuance of CFD bonds should not be subject to the requirements of the Dissolution Law, including approval by the oversight board or review by the Department of Finance or the State Controller.

6. The Enforceable Obligations To Assemble Land Under The Phase 2 DDA And Related Third Party Agreements.

The Phase 2 DDA includes specific provisions on the assembly of real property required to complete the development. Some of the land is already owned by the City and the Agency, while other land is owned by the Navy, State agencies (including the California Department of Parks and Recreation ("State Parks"), the California State Lands Commission ("State Lands") and the San Francisco Housing Authority (the "Housing Authority"), and by private parties. As a result of the varied owners, the Agency entered into a number of enforceable obligations that were necessary to enable the Agency to deliver land to the Developer as and when required under the Phase 2 DDA, including agreements with the State Parks, State Lands, the City, and the Housing Authority. All of these enforceable agreements were entered into in connection with the Phase 2 DDA, and under the Phase 2 DDA the Developer is an express third party beneficiary of these agreements. Generally, all of the land under these agreements is to be conveyed to the Agency, and upon the satisfaction of standard conditions of delivery, the Agency must convey the land to the Developer for completion of the project.

As previously discussed, in March 2004, the Agency, in cooperation with the City and the Developer, entered into a Conveyance Agreement with the U.S. Navy governing the terms and conditions of the phased conveyance of the Shipyard property by the Navy to the Agency. Under the Phase 2 DDA, the Agency agreed to use good faith efforts to acquire real property on the Shipyard Site in accordance with the Conveyance Agreement. (See section 6.2.2 of the Phase 2 DDA.) The Agency also agreed to promptly convey this land to the Developer upon the satisfaction of certain standard conditions. (See section 6.2 of the Phase 2 DDA.)

In 2009, the State Legislature enacted Senate Bill 792 ("SB 792") to facilitate the productive reuse of the project site in a manner that furthers the purposes of the public trust. In accordance with SB 792, the Agency, the City and State Lands entered into the Hunters Point Shipyard/Candlestick Point Title Settlement, Public Trust Exchange and Boundary Line Agreement, dated April 6, 2011 (the "Trust Exchange Agreement"). The Trust Exchange Agreement implements a trust exchange through a series of conveyances that will result in the reconfiguration of public trust lands, to re-allocate the trust as needed to impress the trust on those lands along the waterfront and other lands of high value to the trust, most of which will be used for parks and public access spaces, and free the public trust from lands that have lower trust values and will be used for development. The Phase 2 DDA requires the Developer to perform all work needed to effectuate the trust exchanges as described in the Trust Exchange Agreement. The Phase 2 DDA further provides that the Agency and Developer shall each use reasonable efforts to satisfy the conditions and diligently and timely complete the trust exchanges to achieve a configuration of trust and non-trust lands substantially similar to that set forth in the Public Trust Exchange Agreement as and when needed to enable Developer to satisfy its obligations under the Phase 2 DDA. (See section 6.1.1 of the Phase 2 DDA.)
Also in accordance with SB 792, the Agency, State Lands and State Parks entered into an agreement to reconfigure the Candlestick Point State Recreation Area consistent with the project approvals. This agreement, the Candlestick Point State Recreation Area Reconfiguration, Improvement and Transfer Agreement (the “State Park Reconfiguration Agreement”), provides for the reconfiguration and improvement of the Candlestick Point State Recreation Area and requires the phased exchange of certain lands between State Parks and the Agency. It also requires that the Agency pay to State Parks, at a minimum, $50,000,000 for improvements to and maintenance of the Candlestick Point State Recreation Area. Under the Phase 2 DDA, the Developer must perform all work needed to effectuate the land transfers and payments contemplated by this State Park Reconfiguration Agreement. (See section 6.2.1 of the Phase 2 DDA.)

The City currently owns the land that houses the football stadium used by the San Francisco 49ers, which is a part of the project site. The Agency and the City entered into the RecPark Agreement for the transfer of this property from the City to the Agency at no cost. The City must transfer the land to the Agency when the existing lease to the San Francisco 49ers terminates or expires. The Agency agreed to use this property for the project only and, under the Phase 2 DDA, the Agency must convey this property to the Developer upon the satisfaction of specified standard conditions. Due to the importance of the proposed reconfiguration and improvements to the Candlestick Point State Recreation Area, the City and the Agency included State Parks as an express third party beneficiary to the RecPark Agreement. (See section 1.3 (no extensions to the 49ers lease without the prior approval of Developer and State Parks) and section 9.16 (listing Developer and State Parks as express third party beneficiaries) of the RecPark Agreement).

Finally, the Agency and the Housing Authority entered into an memorandum of understanding in furtherance of the Alice Griffith Replacement project (the "Alice Griffith MOU"), that creates binding obligations on the parties to perform work needed to obtain necessary approvals from the United States Department of Housing and Urban Development and take additional steps toward the finalization of a disposition and development agreement with the Housing Authority for the Alice Griffith sites.

In sum, the project requires the assembly of over 700 acres of land, phased to coincide with the Developer's completion of the major phases and subphases of development. In addition to the Phase 2 DDA, the Agency entered into a number of enforceable obligations with third parties to ensure that the Agency would be in a position to deliver land to the Developer as and when required under the Phase 2 DDA. The Agency’s land assembly commitments are a necessary and integral part of the Project. As is the case with the pledge of property tax increment and the use of debt secured by that pledge as well as the existence of CFD special taxes and the use of debt secured by those CFD tax revenues, the Phase 2 project could not be achieved without the Agency’s commitment to assemble land for development in accordance with the DDA and the associated agreements outlined above. All of the costs of the land assembly are project costs to be paid by the Developer, subject to reimbursement from the property tax increment and CFD financing described above.

7. **The Enforceable Obligations To Process Entitlements In Accordance With Specific Land Use Controls Under The Phase 2 DDA.**

While the build out of the project is phased, the Agency has committed to, and the enforceable obligations in the Phase 2 DDA cover, the entirety of the project and all of the phases. The development of the first phase and each future phase, to the extent that the Developer complies its obligations under the Phase 2 DDA and the project approvals, is not discretionary on the part of the Agency. The Agency may reject applications and submittals only to the extent that they do not conform to the project approvals and the "Redevelopment
Requirements", a broad term used to include the applicable redevelopment plans, the zoning and
design requirements, the Phase 2 DDA, and applicable law. As set forth in the design review and
document approval procedures (the "DRDAP", also attached to and part of the Phase 2 DDA),
the Agency "will not disapprove any Major Phase Application, Sub-Phase Application, or
Vertical Application on the basis of any element that conforms to and is consistent with the
Redevelopment Requirements and prior applicable Approvals by the Agency." (DRDAP,
section 1.B.10.) This basic rule, disallowing the rejection of items that conform to or are
consistent with the Phase 2 DDA and the Redevelopment Requirements, is repeated throughout
the Phase 2 DDA and the DRDAP for all approvals by the Agency.

The Phase 2 DDA, the Project Redevelopment Plans, and the ICA, together create an
enforceable obligation limiting the ability of the City to adopt new laws or regulations or
amendments to existing laws or regulations that would conflict with the project. The Project
Redevelopment Plans provide that the City and the Agency shall not take any action that
"conflicts with" the project by, for example, limiting or reducing the scope of development,
adversely affecting development of the project, or materially increasing the cost of developing
the project.

Before completion of the Phase 2 project, the Agency cannot terminate the Phase 2 DDA
without the prior written consent of the Developer, except following a material default by the
Developer. Indeed, the Phase 2 DDA prevents the Agency from recommending or forwarding to
the City's Board of Supervisors or any governmental entity, without prior Developer consent, any
proposal for the termination or amendment of the "Redevelopment Documents", meaning the
Phase 2 DDA and its attachments, the applicable redevelopment plans, and related Agency
policies relating to the development of the project. (See section 12 of the Phase 2 DDA.)
Attachment 1

Further Description of Financing Plan Provisions

I. Introduction.

The Agency entered into a DDA for the Candlestick Point and Phase 2 of the Hunters Point Shipyard development (the “CP/HPS2 DDA”) with CP Development Co., LP (the “CP/HPS2 Developer”), including a Financing Plan (the “CP/HPS2 Financing Plan”). Concurrently, the City and the Agency executed a Tax Increment Allocation Pledge Agreement (the “CP/HPS2 TI Agreement”), and the Agency and the CP/HPS2 Developer agreed upon a form of Acquisition and Reimbursement Agreement (the “CP/HPS2 Acquisition Agreement”), attached to the CP/HPS2 Financing Plan, to provide the mechanism by which Developer will obtain reimbursement of qualified project costs and the Agency will inspect and accept infrastructure and other improvements that the CP/HPS2 Developer must construct under the CP/HPS2 DDA. This Attachment 1 quotes the relevant language from these documents and includes the definitions of the relevant capitalized terms so as to demonstrate that the Agency’s obligation to form CFDs, pledge tax increment, and issue debt secured by CFD revenues and tax increment to pay for qualified project costs, are all enforceable obligations under the Dissolution Law.

II. The CP/HPS2 Financing Plan, the CP/HPS2 TI Agreement, and the CP/HPS2 Acquisition Agreement.

In general, the CP/HPS2 Financing Plan contemplates the construction by the CP/HPS2 Developer of the public infrastructure necessary for private development of CP/HPS2, and the acquisition of that public infrastructure by the City with “Funding Sources,” including:

1. “Public Financing,” which is defined as First Tranche CFD bonds [CFD bonds issued to finance Qualified Project Costs; Second Tranche CFD bonds will be used by the Agency to finance other public infrastructure, including improvements relating to sea level rise], Tax Allocation Debt, Supplemental Obligation Financing and Alternative Financing.

\[\text{Attachment 1}\]

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1 “Funding Sources” is defined in the CP/HPS2 Financing Agreement: (A) Public Financing; (B) Project Grants; (C) Project Special Taxes and Remainder Taxes; (D) Candlestick Net Available Increment; (E) Shipyard Net Available Increment; (F) Excess Increment to the extent authorized and applied under Section 1.4(d); and (G) Housing Increment to the extent authorized and applied under Section 3.4.”

2 “Tax Allocation Debt” is defined in the CP/HPS2 Financing Plan as bonded indebtedness of the Agency issued for the purpose of financing Qualified Project Costs that is secured by a pledge of Shipyard Net Available Increment or Candlestick Net Available Increment, but not including any Supplemental Obligation Financing or CFD bonds. The Agency may include Tax Allocation Debt for the Project within a bond issue covering Agency areas outside of the Project Site, but the defined term will mean only that portion of the debt that is allocated to the Project.

“Supplemental Obligation Financing” is defined in Section 4.1(b) of the CP/HPS2 Financing Plan: “The Agency agrees that Developer may from time to time assign Net Available Increment that is not needed to pay debt service on existing Tax Allocation Debt to the payment of debt service on bonds, notes, or other obligations issued by or on behalf of, or special taxes, assessments or amounts levied by or on behalf of, a local agency or special district such as a community facilities district or joint powers authority (the “Supplemental Obligations”) after the respective Indebtedness Time Limit under the Shipyard Redevelopment Plan or the BVHP Redevelopment Plan, as applicable, so long as the proceeds of the Supplemental Obligations are applied to pay or reimburse for Qualified Project Costs (the “Supplemental Obligation Financing”).” The Financing Plan defines “Indebtedness Time Limit” to mean the time limits on establishing indebtedness in the Shipyard Redevelopment Plan and
(iii) Special taxes levied by the Agency (“CP/HPS2 Special Taxes”) in community facilities districts established by the Agency under the Mello-Roos Community Facilities Act of 1982, as amended (the “Mello-Roos Act”),

The CP/HPS2 Financing Plan declares that the Agency and the CP/HPS2 Developer entered into the CP/HPS2 DDA, including the CP/HPS2 Financing Plan, with specific financial goals, defined as “Funding Goals,” including “to maximize Funding Sources available to finance Qualified Project Costs by, among other things, to the extent reasonably feasible and consistent with this Financing Plan, using tax-exempt debt.” (Section 1.1(a).)

Under the CP/HPS2 TI Agreement, among other things:

(i) the City and the Agency declare that the CP/HPS2 Developer is entitled to rely on that agreement, receive the benefits of it and enforce any of its provisions (Section 1),

(ii) the City recognizes and approves the incurrence of indebtedness by the Agency under the CP/HPS2 Financing Plan and agrees that all CP/HPS2 Increment and any interest earnings thereon will be irrevocably pledged by the Agency, as a first pledge where applicable, for the payment of the Agency’s “Project Indebtedness,” which is defined as indebtedness (including bonded indebtedness (defined as Tax Allocation Debt and Supplemental Obligation Financing)) to finance or refinance authorized project costs, and

(iii) the City agrees to use good faith efforts to implement, or assist the Agency in the implementation of, any Supplemental Obligation Financing or Alternative Financing,

for the portion of the BVHP Redevelopment Plan Area in which the Candlestick Site is located in the BVHP Redevelopment Plan under the CCRL, excluding any extensions for the purpose of financing affordable housing.” “Alternative Financing” is defined in Section 4.2(a) of the CP/HPS2 Financing Plan: “The Agency acknowledges and agrees that other methods of Public Financing for Project Costs may be viable or become available: (i) before Developer’s completion of the Infrastructure; or (ii) before Developer’s full reimbursement for Project Costs. These other methods may include any municipal debt financing vehicle then available under applicable law, including tax-exempt bonds, taxable bonds, tax-credit bonds, federal or State loans issued by the Agency, the City, or a joint powers authority for application towards Qualified Project Costs and secured by Net Available Increment or Project Special Taxes, or special assessments or fees on Taxable Parcels of commercial property in the Project Site through a community taxing district formed by City ordinance.” The CP/HPS2 Financing Plan (Section 4.2) provides that the CP/HPS2 Developer may request an Alternative Financing as long as Developer’s Project Costs have not been fully paid or reimbursed and that the CP/HPS2 Developer and the Agency will meet with appropriate Agency or City consultants as to the feasibility, amount, and timing of the proposed Alternative Financing. “Neither the City nor the Agency will be required to implement Alternative Financing that: (i) is not consistent with the Funding Goals; (ii) would use, pledge, or impair receipt of taxes and fees on which the City is explicitly relying under the fiscal impact study prepared by Economic & Planning Systems, Inc., dated June 22, 2010, to pay for City services; or (iii) proposes to tax or assess Exempt Parcels… If an Alternative Financing contemplates the pledge of Net Available Increment, Developer and the Agency may mutually agree to adjust the application of Net Available Increment to accomplish the Alternative Financing.”

3 “Mandated Payment” is defined in the CP/HPS2 Financing Plan as “a valid payment obligation imposed by a Change in Law on the Agency in an Agency Fiscal Year, such as a required payment into the State’s Education Revenue Augmentation Fund.”
provided that the City is not “obligated to implement any Supplemental Obligation Financing or Alternative Financing that is not consistent with the Funding Goals.”

The CP/HPS2 Financing Plan provides that the Agency is incurring indebtedness secured by a pledge of Net Available Increment in the amount of the “Qualified Project Costs” (Sections 3.1(a), 4.1(a)). The Agency agrees to budget Net Available Increment to pay debt service on Public Financing and to pay or reimburse the CP/HPS2 Developer for Qualified Project Costs, and to apply any Net Available Increment it receives to the budgeted purposes (Section 3.1(b)). The Agency also agrees, upon receipt of a written request from the CP/HPS2 Developer for the issuance of Tax Allocation Debt, “to issue Tax Allocation Debt to the extent that the terms of financing are consistent with the Funding Goals” (Section 3.1(c)). The Agency pledges and agrees to use Net Available Increment towards the payment of Qualified Project Costs (Sections 3.2(a), 3.3(a)), including payment of debt service on Tax Allocation Debt and payment of debt service on other Public Financing (Sections 3.2(b), 3.3(b)). The CP/HPS2 Financing Plan establishes a limited set of circumstances in which the Agency or the City, in response to a request for issuance of Public Financing from the CP/HPS2 Developer, are not obligated to issue Public Financing to reimburse Qualified Project Costs.4

The Financing Plan acknowledges the existence of “Existing Indebtedness,”5 “Agency-wide Indebtedness” and a Cross-Collateralization Pledge,6 and, in order to preserve tax increment revenues for purposes of the project, the Agency agrees as follows:

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4 Section 4.4(b): The Agency will not be obligated to issue any Public Financing…, and neither the Agency nor the City will be obligated to issue any Alternative Financing, to finance Qualified Project Costs during the time in which:
(i) Developer is in default in the payment of any ad valorem tax, Project Special Taxes, or Maintenance Special Taxes levied on any Taxable Parcel it then owns in the Project Site;
(ii) Developer is in Material Breach with respect to the Major Phase or Sub-Phase for which Public Financing, Alternative Financing, or Project Grant proceeds are requested;
(iii) Developer fails to cooperate reasonably with the Agency or the City as necessary to implement Public Financing consistent with this Financing Plan;
(iv) in the judgment of the Agency or the City, as applicable, and based upon the Funding Goals and advice of Agency or City staff and consultants, market conditions or conditions affecting the property in the Project Site (such as tax delinquencies, assessment appeals, damage or destruction of improvements, or litigation) make it fiscally imprudent or infeasible to incur the requested indebtedness at the time; or
(v) the First Tranche CFD Bond or Tax Allocation Debt underwriter for the applicable bond issue exercises any right to cancel its obligation to purchase the First Tranche CFD bonds or Tax Allocation Debt during the occurrence and continuation of events specified in its bond purchase agreement with the Agency.

5 “Existing Indebtedness” means collectively: (a) the loan of $4,350,000 from the Authority to the Agency under the Loan Agreement, dated as of October 15, 2007, among the Agency, The Bank of New York Trust Company, N.A., as trustee, and the Authority; (b) the loan of $725,000 from the Authority to the Agency under the Loan Agreement, dated as of October 15, 2007, among the Agency, The Bank of New York Trust Company, N.A., as trustee, and the Authority; (c) the loan of $5,980,000 from the Authority to the Agency under the Loan Agreement, dated as of September 1, 2009, among the Agency, U.S. Bank National Association, as trustee, and the Authority; (d) the loan of $2,800,000 from the Authority to the Agency under the Loan Agreement, dated as of September 1, 2009, among the Agency, U.S. Bank National Association, as trustee, and the Authority; (e) the loan of $10,785,000 from the Authority to the Agency under the Loan Agreement, dated as of December 1, 2009, among the Agency, U.S. Bank National Association, as trustee, and the Authority; and (f) the loan of $1,280,000 from the Authority to the Agency under the Loan Agreement, dated as of December 1, 2009, among the Agency, U.S. Bank National Association, as trustee, and the Authority.

6 “Agency-Wide Indebtedness” is defined as additional indebtedness relating to the Agency’s obligation to replenish certain reserve funds associated with bonds issued by certain project areas. “Cross-Collateralization Pledge” is defined as the Agency’s pledge of tax increment from several of its project areas, including the BVHP Redevelopment Plan Area, as security for the Agency’s repayment of the Agency-Wide Indebtedness.
In keeping with the Funding Goals, however, the Agency agrees that, when it is required to make any payments on the Existing Indebtedness or on the Agency-Wide Indebtedness under the Cross-Collateralization Pledge, to the extent that doing so will not violate any Indenture or other instruments governing the Existing Indebtedness or the Agency-Wide Indebtedness, the Agency will make such payments using sources of Agency funds other than the Candlestick Increment and the Shipyards Increment.

(Section 3.5(c) of the Financing Plan.)