SIXTH AMENDMENT TO DISPOSITION AND DEVELOPMENT AGREEMENT
(Hunters Point Shipyard Phase 1)

This SIXTH AMENDMENT TO DISPOSITION AND DEVELOPMENT AGREEMENT (HUNTERS POINT SHIPYARD PHASE 1) (this "Sixth Amendment"), dated as of December 19, 2012 (the "Sixth Amendment Reference Date"), is entered into by and between the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, corporate and politic (the "Agency"), and HPS DEVELOPMENT CO., I.P., a Delaware limited partnership ("Developer"), with reference to the following facts and circumstances:

RECITALS

A. The Redevelopment Agency of the City and County of San Francisco (the "Redevelopment Agency") and Developer entered into that certain Disposition and Development Agreement Hunters Point Shipyard Phase 1, dated as of December 2, 2003, and recorded in the Official Records of the City and County of San Francisco (the "Official Records") on April 5, 2005 as Document No. 2005H932190 at Reel 1861, Image 564 (the "Original DDA"), as amended by that certain First Amendment to Disposition and Development Agreement Hunters Point Shipyard Phase 1, dated as of April 4, 2005 and recorded in the Official Records on April 5, 2005 as document No. 2005H932191 at Reel 1861, Image 565 (the "First Amendment"), and as further amended by that certain Second Amendment to Disposition and Development Agreement Hunters Point Shipyard Phase 1, dated as of October 17, 2006, and recorded in the Official Records on October 26, 2006 as Document No. 2006J275571 at Reel J254, Image 429 (the "Second Amendment"), and as further amended by that certain Amendment to Attachment 10 (Schedule of Performance For Infrastructure Development And Open Space “Build Out” Schedule of Performance) to the Disposition And Development Agreement Hunters Point Shipyard Phase 1, dated as of August 5, 2008, and recorded in the Official Records on March 24, 2009 as Document No. 2009-1738449 (the "Third Amendment"), and as further amended by that certain Fourth Amendment to Disposition and
Development Agreement (Hunters Point Shipyard Phase 1), as of August 29, 2008, and recorded in the Official Records on March 24, 2009, as Document No. 2009-1738450 (the “Fourth Amendment”), and as further amended by that certain Fifth Amendment to Disposition and Development Agreement (Hunters Point Shipyard Phase 1), dated as of November 3, 2009, and recorded in the Official Records on November 30, 2009, as Document No. 2009-1879123 (the “Fifth Amendment” and, together with the Original DDA, the First Amendment, the Second Amendment, and the Fourth Amendment, the “DDA”).

B. The Agency and CP Development Co., LP, a Delaware limited partnership (as more particularly defined as “Developer” under the CP/HPS2 DDA, “CP/HPS2 Developer”), an Affiliate of Developer, entered into that certain Disposition and Development Agreement (Candlestick Point and Phase 2 of the Hunters Point Shipyard), dated as of June 3, 2010, and recorded in the Official Records on November 18, 2010 as Document No. 2010-J083660-00, at Reel K273, Image 427 (the “CP/HPS2 DDA”).

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

D. In June 2012, the California Legislature adopted legislation amending AB 26 as a trailer bill to the State’s budget bill for the 2012-2013 fiscal year, known as Assembly Bill No. 1484 (Chapter 26, Statutes of 2011-12, Regular Session) (“AB 1484”), and the Governor signed that bill on June 27, 2012. While AB 26 defined the successor agency to be the sponsoring community, AB 1484 provided that (1) the successor agency is a separate public entity from the public agency that provides for its governance and the two entities shall not merge, (2) the successor agency has its own name and the capacity to sue and be sued, (3) the successor agency succeeds to the organizational status of the former redevelopment agency but without any legal authority to participate in redevelopment activities except to complete the work related to an approved enforceable obligation, and (4) the successor agency is a local entity for purposes of the Ralph M. Brown Act.

E. Pursuant to AB 26 and AB 1484, the Agency was designated as the successor agency to receive the non-affordable housing assets of the Redevelopment Agency, and the Agency succeeds, by operation of law, to the Redevelopment Agency’s rights, title and interest in the DDA and the CP/HPS2 DDA, without the necessity for any assignment or other action on the part of any party. On October 2, 2012, the City’s Board of Supervisors adopted Ordinance 215-12 (File No. 120898) acknowledging that the Agency is a separate legal entity, creating a commission for the Agency (the “Commission”) as a policy body of the Agency and delegating to the Commission the authority to act in place of the former San Francisco Redevelopment Agency Commission to implement certain projects, including the Project and the CP/HPS2 Project. As required by AB 26, the City also established the oversight board of the Agency (the “Oversight Board”).
F. The DDA and the CP/HPS2 DDA are enforceable obligations within the meaning of AB 26 and AB 1484 ("Enforceable Obligations"), and both were in existence prior to June 28, 2011. The Oversight Board has recognized and approved the DDA and the CP/HPS2 DDA as Enforceable Obligations, and has approved recognized obligation payment schedules that include various obligations and commitments relating to these Enforceable Obligations.

G. California Health and Safety Code Section 34177 provides that the Agency, as a successor agency, is required to (1) perform obligations required pursuant to any Enforceable Obligation, and (2) continue to oversee development of properties until the contracted work has been completed.

H. This Sixth Amendment is consistent with and in furtherance of an Enforceable Obligation that existed prior to June 28, 2011, and is in the best interests of the Agency, Developer and the taxing entities. This Sixth Amendment will likely enable Developer to obtain financing and expedite the Project, and thereby significantly aid the completion of the Project and the winding down of the affairs of the Agency.

I. Under the DDA, Developer is required to complete certain Horizontal Improvements, including in order to support certain Agency Housing Parcels on which Agency Affordable Housing Units will be constructed by the Agency utilizing tax increment revenue dedicated to improving, preserving or producing affordable housing. Developer’s Lots are available to sell to Vertical Developers, including third parties or Affiliates of Developer, for market rate homes.

J. The DDA requires that fifteen percent (15%) of the Residential Units constructed in the Project by Vertical Developers will be Affordable Inclusionary Units, with approximately seventy percent (70%) of these Residential Units targeted to households earning no more than eighty percent (80%) of AMI (the “80% AMI Units”) and thirty percent (30%) of these Residential Units being targeted to households earning no more than fifty percent (50%) of AMI (the “50% AMI Units”). The DDA further requires that the 80% AMI Units and the 50% AMI Units would be evenly distributed throughout the Project.

K. In order to permit the 50% AMI Units to be constructed earlier, the Agency and Developer desire to dedicate Block 49 for the development of an Affordable Residential Project consisting of approximately sixty (60) 50% AMI Units, and that all of the Residential Units on Block 49 shall be 50% AMI Units. By doing so, the 80% AMI Units would remain as Inclusionary Units constructed by Vertical Developers and comprise, in the aggregate, 10.5% of the total Residential Units. Accordingly, there will be no change under this Sixth Amendment in the total number of Affordable Residential Units anticipated in the Project. In addition, Developer has agreed to contribute to the Block 49 affordable housing development construction and/or permanent funds for the development of such Affordable Residential Project to the extent required after application of funds not provided through other sources (the “Block 49 Subsidy”). Developer has also agreed to make a one million dollar ($1,000,000) payment in connection with the dedication of Block 49 for the 50% AMI Units to be constructed on Block 49.

L. At the time the DDA was executed in 2005, the Parties anticipated that the issuance of Mello-Roos Bonds, together with revenue from Lots sales and other Developer
financing would provide sufficient financing for construction of the Horizontal Improvements without the need for land secured financing. Changes in the development schedule and capital markets provide the opportunity to efficiently finance the remaining Horizontal Improvements utilizing land secured financing in a manner consistent with that contemplated for the Residential Projects under the Vertical DDA and with other projects in the City, including development of Candlestick Point and Phase 2 of the Hunters Point Shipyard under the CP/HPS2 DDA (as more particularly described in the CP/HPS2 DDA, the “CP/HPS2 Project”).

M. The Project is adjacent to the CP/HPS2 Project. While the development of the CP/HPS2 Project and the Project are undertaken by separate Persons under separate agreements with the Agency, each project is substantially aided by the success of the other. In order to facilitate the simultaneous development of the Project and the CP/HPS2 Project, CP/HPS2 Developer and Developer have cooperated to pursue financing for the development of the CP/HPS2 Project and the Project, respectively. In order to permit such financing to proceed efficiently, and in recognition of such interrelationships, the Agency and Developer desire to permit mortgages on the Project Site and to provide consistency between the rights of lenders under the DDA and the CP/HPS2 DDA. Concurrently with this Sixth Amendment, the Agency and CP/HPS2 Developer are amending the CP/HPS2 DDA (the “Phase 2 Amendment”).

N. Pursuant to the DDA, Developer is constructing Infrastructure on the Project Site, including on the Hillside and the Hilltop, in accordance with the Schedule of Performance for Infrastructure Development and the Open Space Build-Out Schedule of Performance, each of which is attached to the DDA as Attachment 10 (the “Schedule of Performance”). The Schedule of Performance was formulated by Developer and the Agency to reflect the scope of the Infrastructure and the anticipated market demand for Residential Projects constructed on the Project Site. Developer is substantially complete with the construction of the Infrastructure on the Hilltop, and Lots are available for the development of Residential Projects by Vertical Developers. Developer has been actively engaged in efforts to sell portions of the Project Site to Vertical Developers, and anticipates that its Affiliates will develop Vertical Improvements on certain Lots on the Hilltop in the near term. However, certain adjustments to the Schedule of Performance are required in order to match the Schedule of Performance with anticipated market demand for Lots.

O. Developer’s obligation to construct the Horizontal Improvements is secured by certain faithful performance and labor and material bonds provided under the Hunters Point Shipyard Phase 1 Public Improvement Agreement dated as of July 21, 2009 by and among Developer, the Agency and the City (as amended and as amended from time to time, the “PIA”). In addition, under the DDA, Developer has provided the Guaranty, which secures Developer’s obligations under the DDA. Under the Fourth Amendment, Developer is permitted under the DDA to a release of any Reversionary Quitclaim Deed, or from the obligation to provide same, upon providing the Agency with specified additional security. Developer and the Agency wish to make certain changes to these provisions to decrease the amount of additional security required in order to release a Reversionary Quitclaim Deed, as described below. Consistent with other projects in the City, the Agency has determined that the provision of security in an amount equal to one hundred twenty five percent (125%) of the estimated cost to complete the Horizontal Improvements is sufficient to ensure the timely delivery of the Horizontal Improvements.
P. Under the DDA, the Vertical Developer Residential Units are restricted to For-Sale Residential Units. In order to reflect current market conditions, including increased demand for Lots on which For-Rent Residential Units may be constructed, the Agency and Developer desire to permit Vertical Developers to determine whether a Residential Project will contain For-Rent or For-Sale Residential Units.

Q. In order to (i) provide for the use of efficient and customary Mortgages on the Project Site, (ii) provide for the 50% AMI Units to be delivered on Block 49, (iii) match the Schedule of Performance to the anticipated market demand for Lots, (iv) efficiently secure Developer’s performance of its obligations under the DDA in a manner consistent with other projects in the City, (v) promote the development of Affordable Residential Units within the Project Site, (vi) permit the delivery of For-Sale and For-Rent Residential Units consistent with market demand in the Bayview Hunters Point community, (vii) amend the purchase price for the Agency’s option to acquire additional Residential Units in Vertical Developers’ Residential Projects and (viii) make other conforming amendments, all for the purposes of achieving development of the Project and the significant public benefits that derive from the Project, the Agency and Developer wish to enter into this Sixth Amendment.

AGREEMENT

ACCORDINGLY, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Agency and Developer agree as follows:

1. Block 49 Dedication and Block 49 Subsidy; Distribution of Inclusionary Units. Developer shall convey Block 49 to the Agency (or to the Mayor’s Office of Housing or other designee), in form approved by the Agency and ready for vertical development consistent with the DDA, concurrently with the execution and approval of the Block 49 Vertical DDA. The Block 49 Vertical DDA shall be in form and substance approved by the Agency and Developer, and shall provide for the construction of approximately sixty (60) 50% AMI Units. Developer shall also (1) pay to the Agency (or to the Mayor’s Office of Housing or other designee) at the time of conveyance of Block 49, one million dollars ($1,000,000) for use on Alice Griffith or other affordable housing costs within the Project Site, and (2) provide a subsidy to the Block 49 project in an amount and at times required to fill any gap financing necessary in order to build the proposed 50% AMI Units (collectively, the “Block 49 Subsidy”), provided that the Block 49 project shall be eligible to apply for four percent (4%) low-income housing tax credits and no other competitively-sought funding sources. Following Developer’s conveyance and the Agency’s acceptance of Block 49 and execution and delivery of the Block 49 Vertical DDA: (i) Developer shall have the right to determine the number of Inclusionary Units to be located in each Residential Project (as such number will be set forth in the applicable Vertical DDA for each Residential Project), so long as the following minimum requirements are met: (a) at least ten and one-half percent (10.5%) of the aggregate number of all Vertical Developer Residential Units in Phase 1 constructed or restricted under a Vertical DDA (with the applicable recorded Declaration of Restrictions for For-Rent or For-Sale Affordable Housing) are 80% AMI Units on each of the following dates (each, a “Milestone Date”): the date on which the Lot permitting construction of the (1) 300th, (2) 600th, (3) 900th and (4) 1200th Residential Unit is transferred by Developer to a Vertical Developer, and (5) the date on which the last Residential Lot is transferred by Developer to a Vertical Developer, all in accordance with Article 15 of the DDA;
(b) the number of Inclusionary Units within each Residential Project shall be no less than five percent (5%) and no more than twenty percent (20%) of the total number of Residential Units in that Residential Project; and (c) all Inclusionary Units shall be 80% AMI Units, subject to the restrictions in the Affordable Housing Program for the Inclusionary Units. Following conveyance of Block 49 to the Agency, Developer shall not, without the prior written approval of the Agency Executive Director, close sale on the 450th Residential Unit (or any subsequent Residential Unit) in Phase 1 until the Block 49 Residential Project has achieved Final Completion as defined in the Block 49 Vertical DDA. To obtain any such approval from the Agency Executive Director under the preceding sentence, Developer must notify the Agency Executive Director that the proposed sale that will permit development of the 450th Residential Unit and cite to the requirements of this Section. For purposes of calculating the number of Inclusionary Units, any fraction equal to or greater than one half (1/2) shall be rounded up to the nearest whole number and any fraction less than one half (1/2) shall be rounded down to the nearest whole number. If Developer and the Agency are not able to reach agreement on the Block 49 Vertical DDA on or before December 31, 2014 (subject to extension so long as the parties continue to negotiate in good faith), then either party shall have the right to terminate the provisions of this Section 1 by delivery of written notice to the other party. The termination shall take effect sixty (60) days following delivery of the written notice if the parties do not reach agreement during that sixty (60) day period. Following any such termination, Developer shall be required to build all of the Affordable Residential Units as described in the DDA without the changes described in this Section 1. Any Vertical DDA for a Residential Project that is executed and delivered before the date on which Block 49 is conveyed and the Block 49 Vertical DDA is executed and delivered may provide that (x) any of the 50% AMI Units, and (y) any of the 80% AMI Units in excess of 10% of the aggregate number of Residential Units in such Residential Project, may be converted to Residential Units without any Affordability restrictions so long as such conversion does not impact any existing occupant of such converted unit.

2. Reversionary Security. The amount of security required under the Fourth Amendment for a release of the Reversionary Quitclaim Deed shall be one hundred twenty five percent (125%). The Agency Executive Director shall request that the Director of the Department of Public Works release that portion of the "Reversionary Security" (as defined in the PIA) provided by Developer that the Agency Executive Director reasonably determines exceeds one hundred twenty five percent (125%) of the estimated cost to complete the remaining Horizontal Improvements, and shall use reasonable efforts to obtain any consent required of the Department of Public Works to any such release, including any revisions to the PIA that may be necessary to implement such release. Nothing in this Sixth Amendment will impact or reduce the security required under the Candlestick Point/Hunters Point Shipyard Subdivision Code (San Francisco Subdivision Code sections 1600 et seq.). Furthermore, the Agency Executive Director is hereby authorized to execute an amendment to the Guaranty, or a replacement Guaranty, such that the guaranteed obligations thereunder are limited to the payment and performance of Developer's indemnification and reimbursement obligations under the DDA, are subject to the same cap and are otherwise generally in a form consistent with the "Base Security" provided under the CP/HPS2 DDA. Nothing in the foregoing shall reduce or limit any security provided under the CP/HPS2 DDA, nor shall any such security limit or reduce any security provided under the DDA or the PIA.